



DANR
SOUTH DAKOTA

WATER MANAGEMENT BOARD
Meeting on July 7, 2021

Floyd Matthew Training Center
Joe Foss Bldg., 523 E Capitol Ave, Pierre SD

Any person(s) interested in speaking during the public comment period needs to contact the Department at (605) 773-3352 no later than 5:00 PM on Tuesday, July 6, 2021, if desiring to speak via remote connection.

Scheduled times are based on Central Time and are estimated start times.

Agenda items may be delayed due to prior scheduled items.

Live audio of the meeting is available at <https://www.sd.net>

July 7, 2021

9:30 AM Call to Order
Annual Election of Officers
Adopt Final Agenda
Conflicts Disclosures and Requests for State Board Waivers
Adopt May 5, 2021 Board Minutes
Adopt May 19, 2021 Board Minutes
October 6 - 7, 2021 Meeting and Location
Status and Review of Water Rights Litigation
Public comment period in accordance with SDCL 1-25-1

Administer Oath to Department of Agriculture and Natural Resources Staff

Consider Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2814-2, Jude Wildeman\Big Mountain Cabins

Deferred Water Permit Application No. 8433-3, City of Lake Norden – Adam Mathiowetz

Deferred Water Permit Application No. 7610-3, Bret Fliehs – Ron Duvall

Water Permit Application No. 8450-3, Tom Nuhsbaumer – John Farmer

Cancellation Considerations – Ron Duvall

Future Use Reviews – Ron Duvall

ADJOURN

WATER MANAGEMENT BOARD

Meeting on July 7, 2021

Board members are reminded they are subject to SDCL 3–23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Agriculture and Natural Resources at (605) 773-3352 at least 48 hours before the meeting if you have a disability for which special arrangement must be made.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>

MINUTES OF THE 230TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

MAY 5, 2021

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 9:30 a.m. Central Time. The roll was called, and a quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following were present for the meeting:

Board Members: Jim Hutmacher, Leo Holzbauer, Peggy Dixon, and Rodney Freeman attended in person. Tim Bjork and Bill Larson attended remotely. Chad Comes was absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Genny McMath, and Adam Mathiowetz, Water Rights Program; Jeanne Goodman, DANR Deputy Secretary/Director, Office of Water; Brian Walsh, Public Affairs Director; Kelli Buscher, Shannon Minerich, and Patrick Snyder, Surface Water Quality Program.

Attorney General's Office: David McVey, board counsel; Ann Mines Bailey, Water Rights Program counsel.

Legislative Oversight Committee: Senator Mary Duvall and Representative Mike Weisgram.

Consider rescission of suspension of Water Right No. 6168-3, Todd Hattum: Bill Van Camp, counsel for Todd Hattum.

Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc.: Matthew Naasz, counsel for Mineral Mountain Resources (SD), Inc., and Lillas Jarding, Rapid City.

Powertech (USA) Inc. Status Conference concerning Water Permit Application No. 2685-2 and 2686-2 and GWD 1-13: Matt Naasz and Rich Williams, counsel for Powertech; DeAnn McComb and Joe Allen, Hot Springs; Bruce Ellison, Carla Marshall, Lillas Jarding, and Gena Parkhurst, Rapid City.

Water Permit Application No. 2814-2, Jude Wildeman/Big Mountain Cabins: Jude Wildeman, and Lon Buehner, Rapid City.

Recommendation to Department Secretary to approve applications for renewal of the ground water discharge plans for Wharf Resources' Reliance Spent Ore Depository (GWD 1-94) and Juno Foley Spent Ore Depository (CWD 1-98): Dwight Gubbrud, counsel for Wharf Resources.

Court Reporter: Carla Bachand, Capital Reporting Services.

Other: Bob Mercer, Keloland News

ADOPT FINAL AGENDA: Motion by Freeman, seconded by Holzbauer, to adopt the final agenda. Motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT MARCH 3, 2021, BOARD MINUTES: Motion by Bjork, seconded by Freeman, to approve the minutes of the March 3, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

UPDATE ON DANR ACTIVITIES: Eric Gronlund reported that Bill O'Connor, a natural resources technician with the Water Rights Program, has passed away.

Brian Walsh, DANR public affairs director, provided an overview on the status of the merger of the Department of Agriculture and the Department of Environment and Natural Resources.

Mr. Walsh reported that the process began in August 2020 when Governor Noem announced her plan to merge the two agencies. In September 2020, DENR Secretary Hunter Roberts was appointed as the interim secretary for the Department of Agriculture, and he has been leading both agencies since.

On January 9, 2021, the Governor issued an Executive Order that officially reorganized the two agencies into the Department of Agriculture and Natural Resources. The Executive Order took effect 90 days after it was issued. It did not require legislative approval; however, the legislature had the opportunity through a Resolution of Disapproval, if they chose to do so, to reject the reorganization. Mr. Walsh noted that such an attempt was made, but it failed on the Senate floor, which cleared the way for the merger to proceed.

On April 19, 2021, the Department of Agriculture and Natural Resources officially began serving South Dakota. The department's mission is to protect and preserve South Dakota's agriculture, environment, and natural resources through effective regulatory services, natural resource conservation, and financial and technical assistance.

Mr. Walsh said it is important to note that no laws or regulations for either agency were changed as part of the merger, and DANR does not anticipate significant changes to the work that the Water Management Board does.

Mr. Walsh noted that Jeanne Goodman, DANR deputy secretary, is also the director of the DANR Office of Water, which includes the Drinking Water Program, the Surface Water Quality Program, and Water Rights Program. Other divisions in DANR are Agriculture and Environmental Services which includes Air Quality, Inspection, Compliance and Remediation, Livestock Services, Minerals and Mining and Waste Management; Finance and Technical Assistance, which includes

Environmental Funding and Geological Survey; and Resource Conservation and Forestry which includes Conservation, Forestry, Plant Industry, Watershed Protection, and Apiary, and the State Fair.

Mr. Walsh stated that the department is excited about the merger and is looking forward to working with the board. DANR believes that the merger puts the state in a strong position to protect the environment and natural resources.

Chairman Hutmacher asked if there are any changes with employee status or numbers. Mr. Walsh answered that there were five vacant positions between the two departments that were released after the merger, and all other positions were combined into DANR.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: Gena Parkhurst, Rapid City, commented on the Powertech project.

ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to DANR staff who were present and intended to testify during the meeting.

REQUEST TO AMEND ARSD 74:51:01:11, PROTECTION OF WETLANDS AS WATERS OF THE STATE: Kelli Buscher reported that the Surface Water Quality Program is included in the DANR Office of Water. She stated that due to the merger, groundwater permitting activities are now within the Surface Water Quality Program. Ms. Buscher also noted the Patrick Snyder will be retiring on June 8, 2021. She introduced Shannon Minerich and Sean Kruger, who will be helping with some of the work that Mr. Snyder does.

Ms. Buscher noted that the rules the board approved at the December 2020 meeting received final approval from the Interim Rules Committee and were filed with the Secretary of State.

Ms. Buscher reported that EPA has been working on changes to the Waters of the U.S. definition. This is a provision in the federal Clean Water Act that basically determines which waters are regulated under that Act. The state has its own definition of Waters of the State, so those changes have not impacted the department's regulatory programs. Changes have been made through court cases, the Obama administration, and the Trump administration, and now President Biden is pulling back all those rule changes for further review. The Corps of Engineers is not requiring permits for some of the activities for which permits have been required in the past. Specifically, there are wetlands that people have been filling that no longer require a permit from the Corps of Engineers.

Ms. Buscher stated that the department's concern is that there is now a gap in protection. These wetlands are protected as Waters of the State, but there is no mitigation or other regulatory activities by the Corps of Engineers.

DANR is proposing to amend ARSD 74:51:01:11 to allow the state some authority to review a project that does not have a permit from the Corps of Engineers, and to require some mitigation and control measures to make sure there are not further water quality impacts.

Ms. Buscher requested permission to proceed with rulemaking activities and permission to advertise for a public hearing to consider amendments to ARSD 74:51:01:11.

Motion by Freeman, seconded by Dixon, to authorize DANR to proceed with rulemaking activities and to advertise for a public hearing to consider amendments to ARSD 74:51:01:11. A roll call vote was taken, and the motion carried unanimously.

CANCELLATION CONSIDERATIONS: Included in the board packet that the board received prior to the meeting was a table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

Mr. Duvall explained that the three reasons for cancellation, which are abandonment, forfeiture, and non-construction.

Seventeen water rights/permits were scheduled for cancellation. The owners were notified of the hearing, the reason for cancellation, and the chief engineer's recommendation. The department received no comments or letters in response to the notices of cancellation.

None of the right/permit holders were present at the meeting.

The following water rights/permits were recommended for cancellation for the reasons listed in the table.

NUMBER	ORIGINAL OWNER	PRESENT OWNER(S) & OTHER PERSONS NOTIFIED	REASON
DIVISION I WATER RIGHTS			
RT 1010-1	Donald & Ann Brady	Donald Brady	Abandonment/Forfeiture
PE 1933-1	Roy & Karin Schley & Roger Simon	Janet Burbach, dba Tilton Ranch Inc	Non-Construction
DIVISION II WATER RIGHT			
RT 1262-2	Thomas Lebeda	Charles Lebeda	Abandonment
DIVISION III WATER PERMITS AND WATER RIGHTS			
RT 985-3	City of Yankton	Same (% Kyle Goodmanson)	Abandonment
RT 1673-3	Constance Templeton	Same	Abandonment/Forfeiture
RT 1696-3	Donald G Ahlers	Sharon Nelson, Adam Wiese	Abandonment/Forfeiture
RT 1978-3	City of Yankton	Same (% Kyle Goodmanson)	Abandonment
RT 3291B-3	Rocky Quam	Paul & Jonathan Edwards	Abandonment/Forfeiture
FU 3371-3	City of Yankton	Same (% Kyle Goodmanson)	Abandonment

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RT 3504-3	Jon Parsons	Jon or Jay Parsons	Abandonment/Forfeiture
PE 6880A-3	Pheasant Crest Lodge Inc. % Brian Havlik	Same	Non-Construction
PE 6929-3	Marvin Post	Marvin & Joyce Post	Non-Construction
PE 7287-3	Bret Fliehs	Same	Non-Construction
PE 7689-3	Nicholas Olson	Gary & Amy Freeburg dba Freeburg Limited Partnership	Non-Construction
PE 7777-3	Arlen Zomermaand	Same	Non-Construction
PE 7811-3	Charles Storm	Same	Non-Construction
PE 8219-3	Jack R Tolk	Same	Abandonment

Motion by Dixon, seconded by Bjork, to accept the chief engineer's recommendation for cancellation of the seventeen water rights/permits for the reasons listed. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE PERMIT SEVEN YEAR REVIEWS: Included in the packet the board members received prior to the meeting was a table listing one future use permit up for a seven-year review. State law requires future use permits to be reviewed by the Water Management Board every seven years, and it requires the permit holder to demonstrate a reasonable need for the future use permit.

Also included in the board packet was a letter submitted by the city of Mobridge requesting to retain the future use permit, the chief engineer's recommendation, and the Affidavit of Publication showing that the hearing was public noticed.

No letters in opposition were received in response to the public notice.

The chief engineer recommended that Future Use Permit No. 4290-3 for the city of Mobridge be allowed to remain in effect for an additional seven years with 1,656 acre-feet of water in reserve.

Motion by Holzbauer, seconded by Bjork, to allow Future Use Permit No. 4290-3 for the city of Mobridge to remain in effect for an additional seven years with 1,656 acre-feet of water in reserve. A roll call vote was taken, and the motion carried unanimously.

CONSIDER RESCISSION OF SUSPENSION OF WATER RIGHT NO. 6168-3, TODD HATTUM: Bill Van Camp, attorney for Todd Hattum and the estate of Robert Hattum. Mr. Van Camp stated that Robert Hattum passed away in November 2020, and Todd Hattum was named personal representative by the court in Hughes County in December 2020. Todd Hattum became aware that the Water Right No. 6168-3 was suspended by the Water Management Board in early 2020 because Robert Hattum had not completed the necessary paperwork to maintain the permit. Todd Hattum intends to transfer the interest in the rights in the property that utilized the water permit as part of the estate process. Mr. Van Camp requested that the suspension on the water right be lifted so Todd Hattum can proceed with irrigating the property as was done in the past by his father. Mr. Van Camp stated that Todd Hattum is aware that he must comply with the requirements of statutes and rules regarding the permit, and he has pledged to do so. Mr. Van Camp requested that the Water Management Board lift the suspension of the water right.

In response to a question from Mr. Holzbauer, Mr. Van Camp stated that over the years Robert Hattum had a history of not returning the annual irrigation questionnaires.

Motion by Bjork, seconded by Holzbauer, to rescind suspension of Water Right No. 6168-3, Todd Hattum.

Mr. Freeman stated that he believes in second chances, but Mr. Van Camp should remind his client that he needs to submit the paperwork to the department. Mr. Van Camp stated that Todd Hattum has discovered that, since his father passed, there are several things that need to be taken care of, with this being one of them.

A roll call vote was taken, and the motion carried unanimously.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 2813-2, MINERAL MOUNTAIN RESOURCES (SD) INC.: Mr. McVey stated that the board held a hearing and approved Water Permit Application No. 2813-2 on March 3, 2021.

Proposed Findings of Fact, Conclusions of Law, and Final Decision were submitted by Ann Mines Bailey on behalf of the Water Rights Program. The applicant filed objections to the proposed Findings of Fact and Conclusions of Law and requested board adopt the Findings of Fact and Conclusions of law with the following additional Findings of Fact:

The board finds that there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

Mr. McVey stated that applicant's additional Finding of Fact was incorporated into the final Findings of Fact, Conclusions of Law, and Final Decision, and based on the Findings of Fact and Conclusions of Law, the board will enter its determination that Water Permit Application No. 2813-2 is granted with the following qualifications:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the chief engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2813-2 authorizes a total annual diversion of 3.68 acre-feet of water for exploratory drilling.

Motion by Freeman, seconded by Bjork, to adopt the Findings of Fact, Conclusions of Law, and Final Decision with the addition of Finding No 26 regarding the reasonable probability that there is unappropriated water available in the matter of Water Permit Application No. 2813-2, Mineral Mountain Resources (SD) Inc. A roll call vote was taken, and the motion carried unanimously.

POWERTECH (USA) INC. STATUS CONFERENCE CONCERNING WATER PERMIT

APPLICATION NOS. 2685-2 AND 2686-2 AND GWD 1-13: Matt Naasz, attorney for Powertech (USA) Inc. stated that Powertech intends to proceed with the water permit applications and the Groundwater Discharge Plan for Powertech (USA), Inc.

Mr. Naasz stated that in 2013, the Water Management Board granted Powertech's motion to continue these matters pending review by the Nuclear Regulatory Committee (NRC) and the Environmental Protection Agency (EPA). Since that time and recently, the NRC and EPA have issued permits and made determinations of financial assurance regarding Powertech's application before those federal agencies. Those permits are currently working their way through appeals process. The issuance of those permits effectuates the goal of Powertech's motion to continue, which was to narrow the issues before the board. Because those permits have been issued, Powertech intends to move forward with the state permitting process. Mr. Naasz said he and Mr. Williams intend to file a motion for a scheduling order, which would provide dates for reestablishing the proceedings before the Water Management Board. The motion for a scheduling order will be filed with the prehearing chair Freeman. Mr. Naasz said he also intends to file a motion for a scheduling order with the Class A intervenors, which are the intervenors that elected to fully participate in the contested case and received notice of the board's order granting the continuance in 2013.

Mr. Naasz asked if the board has any guidance regarding filing the motion for a scheduling order.

Mr. McVey suggested that all the intervenors should be served, rather than only the Class A intervenors.

Mr. Bjork asked Mr. Naasz if he plans to file a motion with the Board of Minerals and Environment. Mr. Naasz stated that his understanding is that in 2013 the Board of Minerals and Environment continued the Powertech contested case hearing until such time as the Water Management Board makes its decision.

Mr. Bjork asked why the decision was made to file with the Water Management Board before the Board of Minerals and Environment. Mr. Naasz said the reason for filing with the Water Management Board first that is something that can be included in the initial motion.

Bruce Ellison asked if the board would receive input from the intervenors today.

Mr. McVey stated that this is a status conference, and Powertech is entitled to file whatever motions they want to file. He stated that Mr. Ellison will have the opportunity to be heard as part of the notice and the hearing process on the motion for scheduling order.

Mr. Ellison stated that the federal matters are far from complete. Powertech may file a written motion, but the record is particularly clear from Mr. Freeman's order in 2013 that all Powertech was doing was filing what all intervenors had already discussed with the board to continue the hearing pending resolution of the federal applications. The EPA has not even had a hearing on Powertech's license. The BLM is just beginning. This whole issue is arising because a federal appeals court and the EPA are wondering what Powertech's status is in front of the state boards. The state boards clearly said until the federal permitting is complete, they will not resume the hearing.

Chairman Hutmacher stated that Powertech has the right to file a motion with the Water Management Board and so does Mr. Ellison. That does not necessarily mean that any of the motions are going to be granted. Chairman Hutmacher said the Water Management Board will not debate the issue of whether or not Powertech has the right to file a motion.

Mr. Ellison requested that there be a hearing on the motions. Chairman Hutmacher stated that Mr. Ellison will receive notice of the motions as they are presented to the board and the board's attorney.

Mr. Ellison stated that it has been very difficult to get written orders and he requested that they be done electronically.

Mr. McVey stated that transmittal of orders will be done in the normal manner with regular mail.

No board action was taken.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: Prior to the meeting the board received a copy of the table listing the unopposed new water permits issued by the chief engineer. (See attachment.)

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. ____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. ____ shall be constructed by a licensed well driller and construction 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.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER PERMIT APPLICATION NO. 2814-2, JUDE WILDEMAN/BIG MOUNTAIN CABINS:
Chairman Hutmacher opened the hearing.

Ann Mines Bailey represented the Water Rights Program.

Jude Wildeman, applicant, appeared pro se.

Lon Buehner, intervenor, appeared pro se.

Ms. Mines Bailey reported that the application was initially submitted by Big Mountain Cabins, and it was subsequently transferred to Jude Wildeman.

Ms. Mines Bailey offered Exhibit 1, the administrative file. Chairman Hutmacher admitted the exhibit into the record.

Ms. Mines Bailey called Adam Mathiowetz who was previously administered the oath.

Mr. Mathiowetz testified that he is a senior groundwater engineer with the Water Rights Program. He is responsible for preparing reports on groundwater permit applications and is the lead reviewer of other engineer's groundwater permit application reports. He reviews well completion reports and well construction standards, licenses driller and pump installers, he is the day-to-day manager for two permanent technicians and the primary manager for four seasonal technicians. Mr. Mathiowetz also provides technical assistance to the chief engineer, Water Management Board, department staff, and the public, when needed. Mr. Mathiowetz has worked in the Water Rights Program for 9 years.

Mr. Mathiowetz stated that Exhibit 2 is his curriculum vitae.

Ms. Mines Bailey offered Exhibit 2. Chairman Hutmacher admitted the exhibit into the record.

Mr. Mathiowetz presented his report on the application. He pointed out that in first paragraph on page 1, fourth line, "and to serve a single domestic household" was added to the end of the sentence.

Water Permit Application No. 2814-2 proposes to appropriate less than two acre-feet of water annually at a maximum instantaneous diversion rate of 0.067 cubic feet of water per second (30 gallons per minute) from one existing well approximately 160 feet deep completed into the Crystalline Rock aquifer for commercial use. The well is located in Pennington County approximately two miles southwest of Rockerville, SD.

Mr. Mathiowetz stated that this well does not have a permit.

The scope of Mr. Mathiowetz's review was determination that there is a reasonable probability the unappropriated water is available for the proposed appropriation and that there is reasonable probability this proposed diversion can be made without unlawfully impairing existing users. He used the best information available to determine whether there is a greater or equal amount of recharge entering the aquifer as there is withdrawals. Recharge is water entering the aquifer and withdrawal is a deliberate removal of water from the aquifer.

At the area of the application the Crystalline Rock aquifer consists of metaconglomerate, quartzite, and metapelite that is gray, dark-gray, and tan in color. Metagraywacke and metagabbro are also common within two miles of the well site. Water is stored in the secondary porosity, which are the faults, fractures, and cracks within the rock. The secondary porosity is uneven and unpredictable due to the nature of crystalline rock. The Crystalline Rock aquifer makes up the central core of the Black Hills underlying approximately 574,000 acres.

Due to the unpredictable nature of the fractures and cracks where the water is stored, it needs to be determined whether site specific data is available when determining unappropriated water availability.

The Crystalline Rock aquifers are recharged through the infiltration of precipitation and streamflow losses. In 2001 Driscoll and Carter wrote a report regarding a study on recharge to the Crystalline Rock aquifers that was conducted as part of the Black Hills Hydrology Study. They estimated the recharge to the entirety of the Crystalline Rock aquifers within the core of the Black Hills must be at least equal to average withdrawals, which is 3,600 acre-feet per year. Driscoll and Carter also noted the actual recharge to the Crystalline Rock aquifers must be much larger than estimated to account for discharge to streams.

There is no average annual recharge estimate available for the localized Crystalline Rock aquifer the applicant proposes to use.

The DANR-Water Rights Program maintains two observation wells that have historically been considered completed into the Crystalline Rock aquifer, CU-86A and PE-95D. Mr. Mathiowetz stated that he relied on the data from CU-86A because it was determined that PE-95D is open to both the Deadwood Formation and the Crystalline Rock, and water levels appear to be more similar to the Deadwood aquifer than the Crystalline Rock aquifer. CU-86A, which is in the city of Custer, is approximately 15.2 miles southwest of the applicant's well.

Ms. Mines Bailey asked how looking at data from an observation well that is 15 miles away helpful in reviewing this application. Mr. Mathiowetz stated that Observation Well CU-86A shows that the Crystalline Rock aquifer receives recharge.

Mr. Mathiowetz stated that Exhibit 3 is an enlarged version of Figure 1 on page 2 of his report. This is a map of the area near Application No. 2814-2 with Crystalline Rock aquifer water rights and fault locations. Mr. Mathiowetz used ARC GIS and information from databases maintained by the Water Rights Program, the US Geological Survey, and SD Geological Survey to create the map.

Ms. Mines Bailey offered Exhibit 3. Chairman Hutmacher admitted the exhibit into the record.

Mr. Mathiowetz stated that Exhibit 4 is a modified version of Figure 3 on page 8 of his report. It is zoomed in to an approximate radius of one mile around the applicant's well completion reports on file at the Water Rights Program, water rights in the area, the applicant's well, and faults. Mr. Mathiowetz used ARC GIS, databases maintained by the Water Rights Program, the well completion reports, downloads from the US Geological Survey, and SD Geological Survey to create the map.

Ms. Mines Bailey offered Exhibit 4. Chairman Hutmacher admitted the exhibit into the record.

Mr. Mathiowetz stated that on Exhibit 3, the red dots are the locations of diversion points for the water rights on file with the Water Rights Program. The red line is Highway 16, the blue lines are section lines, and the various types of black lines are fault locations as provided by his data source.

Exhibit 4 includes one extra designation that Exhibit 3 does not, and that is the addition of the blue triangles, which represent the map locations as they are mapped in well completion reports on file with the Water Rights Program.

In general, fault lines act as maximum limits of aquifer extent for the localized Crystalline Rock aquifers because due to misalignments of the smaller fractures that form there will be limitations to what extent water can move up. It will move along the fault instead of across it, therefore, acting as a boundary.

Ms. Mines Bailey asked Mr. Mathiowetz to describe on Exhibit 4 the area that he looked to for his technical analysis of the application. Mr. Mathiowetz stated that he looked primarily between the two faults where the applicant's well is located which is marked by the blue W within the yellow circle. The faults predominately act as boundary conditions and are limiting factors on the probable maximum extent of any localized aquifer the applicant could withdraw water from.

Ms. Mines Bailey asked how Mr. Mathiowetz determined what water rights are in existence and where they are located. Mr. Mathiowetz said he used the Water Rights database, which includes denoting where the wells are located. From the localized area between the two faults there is the applicant's proposed withdrawal of up to two acre-feet per year, Water Right No. 2224-2 is estimated to withdraw 1.7 acre-feet per year, and any domestic users, making the assumption that use is 70 gallons per day per person, which came from a USGS study specific to Pennington County, as well as assuming 2.5 people per rural dwelling would use 0.2 acre-feet per year per rural dwelling. Based on the Water Rights well completion report database, there are three domestic wells that staff knows are between the fault space on the map and an additional five that may be located between the faults.

Mr. Mathiowetz stated that when he identified the water rights, he did not include the rights located in the upper right corner and the lower portion of Exhibit 3 because they are outside the faults and at that distance, due to the unpredictable nature of the fractures, it is unlikely that they would have any connection.

Mr. Mathiowetz said it is his opinion that there is a reasonable probability of unappropriated water available for the applicant. He said his opinion is based on the fact that the observation well shows that the aquifer can receive recharge, there is relatively limited use between the faults where the well is located, and that the applicant's well has been in use for some time without issue. In his opinion, there is a reasonable probability that there would be no unlawful impairment of adequate wells for existing water rights and domestic wells. This opinion is based, in part, on the relatively low diversion rate that the applicant plans to use for the majority of the year, which would only be their domestic use and would not need a permit, and based on the distance between wells and the unique protections that are in place to ensure the applicant does not unlawfully impair existing rights.

Mr. Mathiowetz said he is not aware of any complaints regarding water availability or impairment in the localized area between the faults.

Mr. Mathiowetz stated that he has reviewed Mr. Buehner's petition. In the first paragraph of his letter, Mr. Buehner states that he is a domestic water user located approximately two miles from the subject application. Mr. Mathiowetz stated that, given Mr. Buehner's location, he does not have any concerns regarding the applicant's proposed water use. Referencing Exhibit 3, Mr. Mathiowetz said Mr. Buehner's water supply wells are located in the upper northeast corner of the map in the vicinity of the wells for Water Right Nos. 2211-2 and 483-2. It is unlikely that Mr. Buehner's water source would be impaired because of the faults acting as limiting factors on the potential to influence wells outside of them. Also, over this distance, especially at the applicant's low diversion rate, the potential for creating any drawdown from the applicant's well to go that far is essentially zero.

In his petition, Mr. Buehner states that that he does not believe the report to the chief engineer properly describes and assesses the potential impact to the large number of domestic wells in the area. Mr. Mathiowetz said he can only assess the wells for which completion reports are filed with the Water Rights Program or that he has become aware of through various processes when he may be in the field and becomes aware of things. Not all domestic wells are on file in the department because well completion reports were not required until sometime in the 1980's and there are many wells that predate that time.

In the petition, Mr. Buehner states that Table 1 in the report names water rights entities that apparently are no longer in existence. Mr. Mathiowetz stated that he is charged with reviewing the water rights that are on file at the department with the information that is available, and he can only review the wells he knows exist.

Mr. Buehner's petition also states that the report appears to potentially exclude other existing commercial entities in the area. Mr. Mathiowetz said once the Water Rights Program becomes aware of these commercial entities, it pursues bringing them into compliance with South Dakota water law.

The petition also states that the application seems to show that the applicant's commercial entity has been operating without the water permit required by state law. Mr. Mathiowetz said this hearing is meant to potentially issue the entity a water permit, which would bring them into compliance. Mr. Mathiowetz agrees that the entity has been operating without a water permit.

Mr. Buehner said in his report, Mr. Mathiowetz states that the Crystalline Rock aquifer consists of numerous localized aquifers and because of the faults he believes that the applicant's area would not affect the Rockerville area, which is about two miles away, so what Mr. Mathiowetz is saying is that he is looking at multiple aquifers that potentially are very small in size, but yet he is comfortable using a well 15 miles away to say that that well can appropriately determine whether or not there is recharge in the applicant's area as well as the Rockerville area. Mr. Buehner asked how that can be consistent because Mr. Mathiowetz refers to that as an aquifer, but it's not an aquifer; it's a very large number of localized aquifers. Mr. Mathiowetz said he believes he stated that it shows the aquifers can be recharged in an area where there are other users.

Mr. Buehner said 3,600 acre-feet sounds like a big number when Mr. Mathiowetz talks about recharge has to be at least equal to withdrawals, but the report also says that the exposed area of the Crystalline Rock is 574,000 acres, so that 3,600 acre-feet only represents 0.07 of an inch of water. Mr. Buehner said he does not disagree with the statement that recharge is greater than 3,600 acre-feet,

but he believes we need to recognize that recharge is critical for all the wells whether they are domestic or commercial to continue to get water. He asked Mr. Mathiowetz if that is true. Mr. Mathiowetz answered that recharge is critical.

Mr. Buehner said there is literature that says it is difficult to predict the recharge in a particular area, yet there is a map that does predict, in general, how much recharge will be available based on projected rainfall and snowfall. Mr. Mathiowetz said he is not aware of a recharge map; he is aware of a yield map, and they are not the same. Mr. Buehner asked Mr. Mathiowetz to explain the difference between a yield map and recharge map. Mr. Mathiowetz said to his understanding, the yield map is a broad prediction of essentially the difference between precipitation and the evaporation. Mr. Buehner said he would encourage Mr. Mathiowetz to go back and re-look at that literature and assess what the yield is because his understanding, having read that and having been through the hearing, is they do take into account evaporation.

Ms. Mines Bailey objected to Mr. Buehner testifying rather than asking questions. Chairman Hutmacher sustained the objection.

Mr. Buehner said Mr. Mathiowetz has a table in the report where he estimates the water usage of the various water rights in the area and Mr. Mathiowetz assumes that there using 60 percent of the maximum permitted diversion rate. He asked if that is correct. Mr. Mathiowetz said that is correct. Mr. Buehner asked why Mr. Mathiowetz uses that approach to estimate water use. Mr. Mathiowetz said that is the standardized approach that is used in the Water Rights Program that was developed during discussions with municipalities. At that time the program went from issuing permits exclusively on diversion rate to assigning volumes. Mr. Buehner asked if Mr. Mathiowetz is aware there is a state law for wastewater flow capacity requirements that project usage for various types of properties. Mr. Mathiowetz said he is aware of wastewater flow numbers.

Mr. Buehner said for the wastewater flow numbers in his particular area the water that is produced generally goes into the wastewater. An example would be if rural dwellings use 70 gallons of water per person per day yet a domestic well can produce up to 18 gallons per minute and still be within their rights under law, so if 60 percent were applied in domestic wells it would appear that over 10 gallons per minute is being produced but in reality 70 gallons per person per day is being used. Depending on what method is used in this domestic use case, there is a wide range regarding how much water is being used. Mr. Buehner said part of his concern is the water usage that is in Mr. Mathiowetz's report. He is concerned about the completeness of the report. Mr. Buehner said the hearing is being held because he informed the department that Big Mountain Cabins does not have a water permit.

Ms. Mines Bailey objected stating that Mr. Buehner is testifying rather than asking a question. Chairman Hutmacher sustained the objection.

Mr. Buehner asked Mr. Mathiowetz what information, other than a map that shows faults, does he have to confirm that there is no affect to other wells in the area. Mr. Mathiowetz answered that he has statements from well drillers and well owners that to pump the wells hard enough to create significant drawdown far from their wells also caused the wells to run dry because they over-pumped the well. Mr. Mathiowetz said he can apply various equations to that data to estimate drawdown over

a certain distance. He discussed a method he used to estimate drawdown in the Madison aquifer. Mr. Buehner said we're not dealing with the Madison aquifer in this instance.

Mr. Buehner said Mr. Mathiowetz testified that he is not aware of any complaints. He asked if Mr. Mathiowetz is aware that water complaints, not only on water quantity but also water quality, have been filed with DANR in this vicinity. Mr. Mathiowetz answered that he testified that between the two faults there were no complaints that his was aware of; however, he is aware the one that he mentioned in his report. Mr. Buehner asked if Mr. Mathiowetz is aware that those complaints have also been filed in Pennington County. Mr. Mathiowetz stated that he is not aware of complaints filed in Pennington County. Mr. Buehner said Mr. Mathiowetz's report did state that there were no complaints in the Pennington County file, so he is trying to understand what information Mr. Mathiowetz has regarding complaints. Mr. Mathiowetz said he was referring to the DANR Pennington County file which is list of complaints that have occurred in Pennington county filed with the Water Rights Program.

Mr. Buehner said regarding Table 1 in the report, Mr. Mathiowetz states that he only reviews what is available. He asked if Mr. Mathiowetz reviews any DANR information that is outside of the Water Rights Program. Mr. Mathiowetz answered that he generally does not. Mr. Buehner asked if there is additional DANR information available regarding the water usage of commercial entities. Mr. Mathiowetz said he is not aware of additional DANR information for water usage of commercial entities. There may be information on public water systems, but he does not know if those are commercial entities. Mr. Buehner asked if Mr. Mathiowetz has looked at the public water system database when preparing his report on Water Permit Application No. 2814-2. Mr. Mathiowetz answered that he has looked at that database in the past, but he does not remember if he looked at it for this report. Mr. Buehner asked Mr. Mathiowetz if it would surprise him if the public water database would show that there is significant additional commercial production in this area that apparently is not under a water right. Mr. Mathiowetz said it would not surprise him if there were additional commercial diversion rates in the Rockerville area that are not covered in his report. Mr. Buehner said that would mean that the report, which is used by the chief engineer to assess whether this water right should be approved, is incomplete or perhaps inaccurate. Mr. Mathiowetz said he would not agree to that. Mr. Buehner said if there are additional commercial entities other than what has already been reported to DANR that are producing water but apparently do not have a water right, would that indicate that perhaps revisions and modifications should be made to the report prior to the decision being made by the Water Management Board. Mr. Mathiowetz said that is not a decision for him to make. Mr. Buehner asked Mr. Mathiowetz if, for the water rights that are listed in the report, he looked at purpose of the water use. Mr. Mathiowetz said he checked to make sure the listed use makes sense. Mr. Buehner asked Mr. Mathiowetz to describe what the water for Pine Haven Heritage Home, Rockerville Gold Town, and Rockerville Park is being used for. Mr. Mathiowetz said the water is being used in some form by a commercial entity. Mr. Buehner asked Mr. Mathiowetz if it would surprise him that none of those three commercial entities are listed in the Drinking Water Program database. Mr. Mathiowetz said it would not surprise him. Mr. Buehner asked if it is correct that state law requires most if not all commercial entities to have a water right as well as, if they are serving the public, a drinking water permit. Mr. Mathiowetz answered that he does not know the full extent of drinking water permit, but most commercial entities are required to have a water permit. Mr. Buehner asked if any of these commercial entities been visually inspected with regard to their water right. Mr. Mathiowetz answered that they were licensed at one point, which means the department staff was there at the time of licensing. Part of the permitting process

requires a site visit to ensure that it is being licensed as built. Mr. Buehner indicated the Water Right database shows some of the entities do have an inspection report from when it was issued, many do not. He asked if that means the data is missing or does it mean that perhaps there was not an inspection. Mr. Mathiowetz answered that he cannot speak for inspection done prior to his employment with the department. Mr. Buehner said Mr. Mathiowetz does not really know whether these entities have been inspected or not.

Ms. Mines Bailey objected; asked and answered and argumentative. Chairman Hutmacher sustained the objection.

Mr. Buehner had no further questions for Mr. Mathiowetz.

Responding to questions from Mr. Wildeman, Mr. Mathiowetz stated that it is likely that Mr. Wildeman's well is not in the same portion of the aquifer as Mr. Buehner, in part, due to the elevation of fractures, but the faulting in general is going to prevent any significant transfer of drawdown created by Mr. Wildeman pumping to that distance of several miles away.

Responding to questions from the board, Mr. Mathiowetz said it is his understanding that the entities that are operating without a water permit have been contacted by the Water Rights Program and asked to apply for a water permit.

Mr. Mathiowetz stated that the well log for this application is included in the administrative file. The well was completed by Alexander Drilling on May 22, 2014, with a listed use as domestic/stock use.

Ms. Mines Bailey called Eric Gronlund who had previously been administered the oath.

Mr. Gronlund testified that he is the chief engineer and the administrator of the Water Rights Program. He has been the chief engineer for 14 months. Prior to being appointed chief engineer he handled the day-to-day processing of water permit applications. Mr. Gronlund is familiar with Water Permit Application 2814-2. The application originated based on a letter he sent to Big Mountain Cabins.

Ms. Mines Bailey asked why Mr. Gronlund sent a letter to Big Mountain Cabins. Mr. Gronlund stated that there was a contested case last July that resulted in Findings being considered by the Water Management Board in October 2020. In the response to those Findings, Mr. Buehner listed three entities that did not have water permits and two other entities that he thought were permitted as a rate less than what is actually being used. Based on that, the Water Management Board directed staff to contact those entities.

Mr. Gronlund recommended approval of Water Permit Application No. 2814-2, Jude Wildeman/Big Mountain Cabins 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.

Mr. Gronlund stated that he has reviewed Mr. Buehner's petition. Mr. Buehner's petition states that Table 1 of the report to the chief engineer names water rights entities that apparently are no longer in

existence and that those entities were considered in the report. Mr. Gronlund said if those entities are in the Water Rights database as water rights that are licensed, the Water Rights Program is under an obligation to consider those being in place until those individuals have due process and those matters are brought before the board potentially for cancellation. He stated that the permit holder and the user do not always match by name. There is a process in state law that a transfer of ownership needs to be filed with the Water Rights Program, but it is not uncommon that when a property changes hands that transfer of ownership does not get filed with the Water Rights Program.

Mr. Buehner's petition also states that there are entities in this area that operating without a water permit. Mr. Gronlund stated that last October, Mr. Buehner pointed out that there were three entities that he felt were operating without a water right and two that were under permitted so staff was aware that some entities are operating without a permit. The Water Rights Program has contacted all five of the entities. Mr. Wildeman was one of the first to file an application. Mr. Gronlund had contact from another entity that Mr. Buehner felt was under-permitted. In that case, the water right holder informed Mr. Gronlund that the well is capable of 13 gallons per minute, which is the amount the well is permitted at. Another application is currently out for staff review for a third entity. Mr. Gronlund has had personal contact with the other two, but neither has submitted an application yet.

Ms. Mines Bailey asked if there are methods by which a commercial entity can receive water without requiring a water permit. Mr. Gronlund stated that if the commercial entity is receiving water from someone who is permitted, such as a water distribution system, the entity does not need a water permit.

Mr. Buehner's petition states that Big Mountain Cabins has been operating without a permit and that he does not feel the qualifications recommended by Mr. Gronlund are sufficient. Mr. Gronlund stated that he is recommending approval of the application with the following qualifications.

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the chief engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

If the board approves the water permit application, in order to remain compliant with the law, the permit holder will be required to comply with the conditions and limitations of the permit being a maximum pump rate of 30 gallons per minute, the annual diversion is not to exceed two acre-feet per year, and to annually report to the chief engineer the amount of water withdrawn.

Mr. Gronlund stated that, if there is a problem, the well interference qualification will address whether this well is causing some sort of impairment.

Ms. Mines Bailey asked Mr. Gronlund if there are any additional actions the Water Rights Program is taking to provide further information for the board or to protect existing users. Mr. Gronlund stated that there have been several contested cases from the Precambrian rock recently that caused staff to have discussions and Mr. Gronlund has authorization to place two new Crystalline Rock observation wells in the area. Initially, Mr. Gronlund was given direction to have the observation wells completed this year. Due to the workload of well drillers, it won't be possible to drill the observation wells this year. One of the wells will be located at Rockerville in the median of Highway 16.

Mr. Mines Bailey asked Mr. Gronlund when the Water Rights Program conducts an inspection. Mr. Gronlund stated that when an applicant is granted a water permit by Water Management Board, the water permit is basically authorization to construct and start using the water. The permit holder has a five-year period in which to construct the works. When the new water permit is issued, a notice of completion report is included. The owner is supposed to file that notice of completion report with the Water Rights Program, but even if they don't file the report, after that five-year period they go on the list to have an inspection where one of the staff engineers with the Water Rights Program physically views the water works to verify that the works are constructed and the extent that the works are constructed.

Mr. Gronlund noted that inspections are also done when a complaint is filed with the Water Rights Program.

Mr. Buehner asked Mr. Gronlund if he knows the time period that state law requires for someone to file a transfer of ownership of a water right. Mr. Gronlund answered that he believes it is 90 days. Mr. Buehner asked if it is correct that in the area shown on Figure 1 in the report there are several of those entities where the 90-day time period was not met for transfer of ownership. Mr. Gronlund said that is very possible. Mr. Buehner asked if that is a violation of a water right. Mr. Gronlund said that is a legal question. Mr. Buehner asked if commercial entities producing water without a water right in violation of water right law. Mr. Gronlund answered yes. Mr. Buehner asked if state law says that each day is a separate violation and that, potentially, they can have a civil fine of no more than \$500 for each violation. Mr. Gronlund said that is the statute on violations. Mr. Buehner asked who would be responsible for determining whether a violation occurred and whether they should be fined. Mr. Gronlund answered that he believes he has the ability to issue an order, but it would ultimately be a Water Management Board determination. He stated that the Water Rights Program usually works to bring people into compliance.

Mr. Buehner stated that he appreciates the effort the Water Rights staff has made to try to correct some of the issues in this area. These issues have developed over decades. Regarding the individual that said they were in compliance, Mr. Buehner said he is concerned that even though there is a note in the file saying they are in compliance based on a phone call, but there is nothing in writing from that particular entity stating that they are in compliance. He asked if Mr. Gronlund is comfortable with that. Mr. Gronlund said it is common for the Water Rights Program to just do file documentation when available, but he is certainly willing to revisit that matter and require something with a signature if that is what the Water Management Board feels is necessary. Mr. Buehner stated that in that case the issue at hand is how much water they are producing. The previous owner indicated that the well was for 25 gallons per minute. The new owner has indicated that he is staying within the allocated permitted volume of 13 gallons per minute. He asked if Mr. Gronlund asked the individual what size of the pump is in the well. Mr. Gronlund answered that he does not recall. Mr.

Buehner asked if it would be a violation of the water right if that individual had a pump in the well capable of pumping greater than 13 gallons per minute. Mr. Gronlund stated said if he is pumping at a rate greater than 13 gallons per minute, that could be a violation. Mr. Gronlund stated that Mr. Buehner is using the 25 gallons per minute from the R & J matter as being what they told Pennington County. There are several systems that pump to storage or some sort of pressure tank, so he is not certain if the reference Mr. Buehner is making at 25 gallons per minute from storage or if that was from the source. Mr. Buehner said he lives in that area and he saw the cistern setting on the property before it was installed.

Mr. Buehner said his concern is water volumes are elevated substantially above the allocated volume. He said in this case, the allocated volume that is requested is 21 times the septic volume so he would like the board to consider a qualification requiring metered volumes. He asked Mr. Gronlund if he thinks it is prudent to approve a water right where the maximum permitted rate is 20 times what the approved septic volume is. Mr. Gronlund stated that the Water Rights Program processes the application and reviews it under the criteria for a water right permit based on the application requested quantity of water. Mr. Buehner asked if, as chief engineer, Mr. Gronlund has the right to place that qualification on the water permit. Mr. Gronlund said the Water Management Board has the ability to place qualifications and limitations on a water right if it deems necessary.

Mr. Buehner said state law says if a permit holder does not use the water that has been allocated for the use that it is intended during a three-year period any portion that is not used becomes unappropriated water and reverts back to the public. Mr. Buehner said Mr. Gronlund has reviewed the report for many of these entities when that 60 percent of the diversion rate is applied, which provides for a huge volume of water. He asked Mr. Gronlund without doing a physical inspection how would he know whether, during that 3-year period, they were using their allocated water. Mr. Gronlund answered that the permit holder is required to annually report water use. Mr. Buehner asked if Mr. Gronlund knows the annual volume for Pine Haven Heritage Home and Rockerville Park. Mr. Gronlund said he did not look at that, but his sense is that those water rights are extremely old, some dating back to the 1950's, which was prior to the Water Rights Program requiring reporting on those types of uses. Mr. Buehner asked Mr. Gronlund if these are entities that are not producing water and are not showing up on the DANR public water system database, how would he know that they have produced their allocated water in the last three years if an inspection has not been done. Mr. Gronlund said he does not know for certain whether they are or are not using water.

Mr. Buehner said he has not brought up Hillside Country Cabins because they have a water right and they are listed on the public water system database with a priority date of 1898. The water right is for two gallons per minute and Table 1 in the report shows an estimated usage of 1.2 gallons per minute. The website says they have 18 cabins, log homes, and an executive lodge with a maximum occupancy of 80 people. This entity was initially established in 1933 by bringing in cabins from a work camp so it has been operating since 1931. They say it's probably the oldest rental cabins in the Hills. He asked Mr. Gronlund if he believes it is likely under permitted. Mr. Gronlund said he does not know, but that is one of the entities the Water Rights Program sent a letter to. Mr. Gronlund said he had a telephone call from the new owner who was going to research the pump size and complete a transfer of ownership. The application has not yet been submitted.

Mr. Buehner asked if water right priority dates are important. Mr. Gronlund answered that they can be.

Mr. Buehner had no further questions of Mr. Gronlund.

There were no questions from the board.

Ms. Mines Bailey had no other witnesses.

Mr. Wildeman had no witnesses.

The court reporter administered the oath to Mr. Buehner.

Mr. Buehner testified that he lives in the Rockerville area. He said after the R & J hearing he invited Mr. Gronlund to visit the Rockerville area so he could explain to Mr. Gronlund what he believes to be some of the water rights issues in the area. Mr. Buehner said he and Mr. Gronlund were unable to meet due to Covid 19.

Mr. Buehner offered Exhibit 200, a screenshot of a map of in the DANR Water Rights Program database. Chairman Hutmacher admitted the exhibit into the record.

Mr. Buehner stated that Exhibit 200 shows the same water rights in the area along Highway 16 where it splits as the water rights that are listed in Mr. Mathiowetz's report in Table 1.

Mr. Buehner offered Exhibit 201, a screen shot of a map from the DANR public water systems database. Chairman Hutmacher admitted the exhibit into the record.

Mr. Buehner stated that Exhibit 201 shows some entities that do not show up on Exhibit 200, such as Rockerville Gold Nugget Lodge, Rocker Motel and Cabins. The Gas Light Restaurant is also located in this area, but it does not show up on the map. Hillside Country Cabins is shown on Exhibit 201. Mr. Buehner said when comparing what entities are present on Exhibit 200 with those present on Exhibit 201, there are some differences. Shown in the water systems database is the Rockerville Gold Nugget Lodge, which used to be the Pine Haven Heritage Home. Pine Haven Heritage Home hasn't been in operation for at least five years. This is one of those entities that transfer of ownership has not been properly made within the 90-day period. The Rockerville Motel and Cabins shown on the water systems database map is actually the Rockerville Trading Post, as shown on the water rights database map. Mr. Buehner stated that again, transfer of ownership has not occurred. He said he personally visited the Rockerville Trading Post in 1970 when he was in college; it was a gift shop, and the Rockerville Motel and Cabins are now present on that same property. Mr. Buehner stated that the Gas Light does not show up on the water rights database map, but it does show up on the drinking water database map.

Mr. Buehner said he is concerned that these entities that are producing water do not have a water right. Neither one of these exhibits show Silver Mountain Cabins, which are located between the applicant and Storm Mountain Center. He said when you look at the number of occupancies on their website, it should trigger the need to be in that water right database. Mr. Buehner said depending on the number of diversion points and what their water systems are like, there is a chance that they do not have to be regulated even though they serve the public. They have been operating for years without a water right. Mr. Buehner said this is a new entity that he did not previously know about.

In the lower left corner of the drinking water database map is Cosmos Mystery Area, which has been present since 1952. It is not listed as having a water right.

Mr. Buehner said he recognizes that there are a lot of different reasons for water rights, but the Hills are in a unique situation because when you look at all these entities, they serve the public. State law says that they need a drinking water permit and state law says they need a water right.

Mr. Buehner said there are many omissions and errors that he would like to see cleaned up. Some commercial entities are shown to have a water right, but there is no public water system.

Ms. Mines Bailey objected to Mr. Buehner's testimony due to relevance. She said she understands that Mr. Buehner has a lot of concerns, but she is not sure of the relevance of many of his statements.

Mr. Buehner said this gets back to the accuracy and completeness of the report, and the report is the basis for the chief engineer's recommendation.

Chairman Hutmacher sustained the objection.

Mr. Buehner offered Exhibit 202, copies of pages from the DANR database. Ms. Mines Bailey objected as to relevance.

Mr. Buehner said the exhibit is relevant because it gets back the department or the federal government saying that it is appropriate to inspect these at least periodically.

Chairman Hutmacher sustained the objection, and the exhibit was not admitted into the record.

Mr. Buehner said in 1988 the Bureau of Reclamation within the Department of Interior had apparently stated they were going to oppose vested water rights in three counties in western South Dakota because of the lack of inspection. The state performed some inspections and got back to the Bureau of Reclamation. The point of that effort was that there was an expectation that these rights should be inspected periodically, and state law indicates that they should be inspected periodically. For example, if allocated a right holder does not use the water in three years, it loses the right.

Mr. Buehner said when he looks at the detailed file of information on the DANR water rights database, he can't say it is complete, but he has no reason to not believe it is complete. The Rockerville Gold Town water right was last inspected in 1971, Rockerville Park was last inspected in 1971, Rockerville Trading Post was last inspected in 1990, Pine Haven Heritage Home was last inspected in 1991.

Mr. McVey asked Mr. Buehner to take what he is talking about and tie it back to this specific application.

Mr. Buehner said the lack of inspections has resulted in information that is used in the preparation of the report, which is incomplete and inaccurate. He said he made a request to the chief engineer prior to the R & J LLC report being prepared that the Water Rights Program consider rewriting the report because of these issues, but that was not done. The lack of inspection has been the cause of having water rights listed that are probably not actually using water. These water rights, keeping in the mind

the 60 percent rule, are used to estimate use. When a water problem develops it will be critical for DANR to understand what the water use is in the area. It is important that the data be complete and correct before granting an application.

Mr. Buehner said he does not believe that the information can be corrected without on-site inspections. He requested adding a qualification that there be periodic inspections, and he encouraged the Water Rights Program to develop a process for inspections that is like that of the Drinking Water Program.

Mr. Buehner offered Exhibit 203, a letter from Eric Gronlund written in 2000 to Mr. Parker who was inquiring about a water right at the Gas Light Restaurant. Ms. Mines Bailey objected as to relevance. Chairman Hutmacher sustained the object, and the exhibit was not admitted into the record.

Mr. Buehner stated that with regard to the allocated water for Water Right No. 479-2, there was a letter written by the owner of the Gas Light Restaurant in 2000, and there were questions regarding whether or not the transfer of ownership should occur for the owner who had purchased part of the property, and that issue apparently was not resolved. Mr. Buehner said that same water right is under the Rockerville Planned Unit Development. The Water Rights Program was asked how much water they were entitled to, and they were told that they were entitled to the full allocation. In addition to that, the report for estimated water use says this water is already being used.

Mr. Buehner said the approval of this application, in his opinion, clearly has the potential to be very detrimental to other commercial entities that are operating now but do not have a water right, and the Gas Light Restaurant is an example.

This concluded Mr. Buehner's testimony.

Ms. Mines Bailey asked if Mr. Buehner believes there is available water to be appropriated. Mr. Buehner said he believes there are enough errors in the assumptions that have been made in the report such that he is not comfortable that there is unallocated water available.

Ms. Mines Bailey asked Mr. Buehner what his opinion is regarding the potential for Mr. Wildeman's application to unlawfully impair another water right. Mr. Buehner answered that across the road from Mr. Wildeman is Hillside Country Cabins, and he has no idea how much water they are using or how much water Mr. Wildeman is using; he's been using water for years.

Ms. Mines Bailey asked if Mr. Buehner knows if Hillside Country Cabins has filed any complaints. Mr. Buehner said he suspects they have not, but he knows that they had their water right re-validated in the early 1990's. He suspects that they probably would not raise an issue knowing that they are servicing their needs with a two gallon per minute water right.

Ms. Mines Bailey asked Mr. Buehner if he believes granting a water right for purposes of a cabin would be a beneficial use of water. Mr. Buehner said if a water right for the purposes of a cabin is granted with a maximum permissible rate, that is 21 times the approved septic volume, and as a result of that water is contaminated, he would argue that is not a beneficial use of water. Water quality should be considered at the same time as water appropriation. Mr. Buehner said the application for a

water right permit asks what the septic volume is, and just the fact that is on the application tells him it should be considered and be a factor.

Responding to questions from Mr. Wildeman, Mr. Buehner said his concern is that Pennington County approves Mr. Wildeman's building permit and construction permit without determining if he has a water right in place. Mr. Buehner stated that he is trying to recognize the process of reports being prepared and the understanding of the approval process of the water right itself. The reason for this hearing is that there was an ordinance developed in the county that required a water right to be obtained prior to county permits being received. Mr. Buehner said he believes it was appropriate given issues that have existed with water quality and quantity down the road from Mr. Wildeman. He stated that this is not the first time he has brought his concerns forward, but he hopes it's the last. Mr. Buehner said he recognizes he is asking the Water Management Board and the Water Rights staff to take whatever steps are necessary to correct the situation.

Mr. Wildeman asked Mr. Buehner if his complaint is about his application or a complaint about the procedural workings of the Department of Agriculture and Natural Resources. Mr. Buehner answered that he has a complaint with not only the department, but also with Mr. Wildeman because state laws were violated.

There were no questions from the board.

Mr. Wildeman, Ms. Mines Bailey, and Mr. Buehner offered closing statements.

Mr. Wildeman stated that he built his family's home, which is a cabin, first and drilled a well that was on commercial property. The commercial cabin business was built in 2018, and he was not aware that he had to have a water rights permit. He believed he was in compliance in the sense that he had to submit quarterly water samples to the state, and the state did not tell Mr. Wildeman that he needed a water rights permit. He said the business is small, but he plans to expand the business eventually. Mr. Wildeman requested board approval of the water permit application.

Ms. Mines Bailey stated that SDCL 46-2A-9 states that a water permit may be issued if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is a beneficial use and it is in the public interest.

Ms. Mines Bailey said the board is to use the best information reasonably available. The board heard evidence and testimony based on the best information reasonably available, which is the Driscoll and Carter report. The report says there is a minimum of 3,600 acre-feet of recharge available, and the report says there is more than 3,600 acre-feet because it is going to streams. Mr. Mathiowetz testified that there is unappropriated water available. He also testified that, based on his experience and expertise, there is a reasonable probability that unlawful impairment will not occur, and that the faults function as a boundary. Ms. Mines Bailey said Exhibit 3 shows how close Water Permit 2224-2, Hillside Country Cabins, is to this proposed diversion. Hillside Country Cabins has not filed a complaint, nor have they intervened in this proceeding. Ms. Mines Bailey said one could reasonably assume that there is no problem with unlawful impairment. The chief engineer testified that this is consistent with previous findings of beneficial use and public interest.

Ms. Mines Bailey said she understands Mr. Buehner's concerns. She believes some of it is miscommunication and some of it is a desire to see things done the way Mr. Buehner believes they should be done, and not necessarily the way it is required by law or by rule. Ms. Mines Bailey said Mr. Gronlund has heard what Mr. Buehner said and has taken great strides to advance the information available and to try to resolve some of those concerns.

Ms. Mines Bailey requested that the board approve the application with the qualifications set forth in the chief engineer's recommendation. Ms. Mines Bailey stated that Mr. Buehner has asked that the board add a qualification requiring metering. That is not something that has been done typically for this type of water right, however, the chief engineer will abide whatever decision the board makes in that regard.

Mr. Buehner stated that regarding his proposed metering qualification, this is a water right in which large volumes of water will be allocated that greatly exceed septic issues. Mr. Buehner said he is not saying that Mr. Wildeman shouldn't have a water right, he is just asking the board not to grant the water right now. He would like to see the issues he raised addressed together. He would like to see a report prepared that will clean these issues up, and he would like to see the board give water rights to the people that need water rights. Mr. Buehner said he would like to see the priority dates go back to the dates that these entities started operating. Mr. Buehner stated that he was one of the petitioners that came in and said certain wells had created issues with interference with existing wells.

Mr. Buehner said he does not believe granting this water right now is appropriate because of the lack of proper information and the potential problems regarding the priority dates. He said this matter is important enough to himself and his community that he will be hand delivering a complaint submittal to the chairman of the Water Management Board and to Chief Engineer Gronlund.

Chairman Hutmacher requested board action.

Motion by Freeman, seconded by Larson, to approve Water Permit Application No. 2814-2 subject to the qualifications set forth by the chief engineer.

Ms. Dixon said she understands the broad issues that Mr. Buehner presented, and she agrees that they need to be addressed but she does not believe the board should punish Mr. Wildeman for all those oversights and shortcomings.

Mr. Holzbauer stated that the issues need to be addressed, but he does not believe the board should deny Mr. Wildeman's permit because of the issues.

Mr. Freeman said he understands the concerns, but he would like to remind everyone that, unfortunately, we don't live in a perfect world and there is not a money tree in the backyard that the state can shake. There are limitations to manpower and other things that can be done because of the financial limitations.

Mr. Hutmacher stated that he agrees with Mr. Freeman. He believes the Water Rights Program is taking steps to take care of the problem. He noted that if there were several more people on staff, they could probably do a lot of inspections.

A roll call vote was taken, and the motion carried unanimously.

Ms. Mines Bailey will prepare proposed Findings of Fact and Conclusions of Law by June 17, 2021, and objections or alternative proposals are due June 25, 2021.

RECOMMENDATION TO DEPARTMENT SECRETARY TO APPROVE APPLICATIONS FOR RENEWAL OF THE GROUND WATER DISCHARGE PLANS FOR WHARF RESOURCES' RELIANCE SPENT ORE DEPOSITORY (GWD 1-94) AND JUNO FOLEY SPENT ORE

DEPOSITORY (CWD 1-98): Mr. McVey stated that on January 27, 2021, and January 29, 2021, the Secretary of the Department of Agriculture and Natural Resources formally requested that the Water Management Board act as the Secretary's hearing examiner for the purpose of hearing applications for renewal of the Ground Water Discharge Plans for Wharf Resources' Reliance Spent Ore Depository (GWD 1-94) and Juno Foley Spent Ore Depository (CWD 1-98). At the March 3, 2021, the Water Management Board accepted the Secretary's request and appointed board member Larson as hearing chair. At that time, there was already a motion to dismiss, which had been filed by the applicant, and on March 31, 2021, a preconference hearing was held to decide on the applicant's motion to dismiss. The intervener did not appear at the prehearing conference. Testimony was taken from the applicant, and the intervener's papers were reviewed in relation to the motion to dismiss. At the conclusion of the prehearing conference, hearing officer Larson granted the motion to dismiss, and the Order commanded that any appeal of the Order to be appealed to the Water Management Board in its entirety and that an appeal would have to be filed by April 26, 2021, before 5:00 p.m. No appeal was filed.

The Order also stated that in the event the intervener fails to appeal by April 26, 2021, a recommendation to approve the application will be delivered to the Secretary of DANR.

Mr. McVey stated that since the time has run for appeal, it is appropriate that the board makes their recommendation to the Secretary.

Ms. Mines Bailey noted her appearance for the record. Dwight Gubbrud, attorney for Wharf Resources, noted his appearance for the record.

Motion by Freeman, seconded by Dixon, to adopt the hearing officer's Order and forward the recommendation for approval to the Secretary of DANR. A roll call vote was taken, and the motion carried unanimously.

Mr. Duvall noted that the next meeting is scheduled for July 7 and 8, 2021. Mr. Larson stated that at this time he had a trial in Iowa scheduled for July 7 and 8, so he may not be able to attend the next meeting.

ADJOURN: Motion by Freeman, seconded by Holzbauer, to adjourn the meeting. Motion carried unanimously.

A court reporter was present for the hearing and a transcript of the proceedings may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre SD 57501, telephone number (605) 222-4235.

The meeting was also recorded, and the recording is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Approved this 7th day of July 2021.

Water Management Board

DRAFT

WATER MANAGEMENT BOARD MEETING

May 5, 2021

Qualifications: wi - well interference wcr - well construction rules iq - irrigation questionnaire lf - low flow

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

2002-1	City of Spearfish	Spearfish	LA	1.33 cfs	40 acres	2 wells-Madison Aquifer	wi, wcr, iq 2 special
2004-1	Stephen or Connie Sulzbach	Newell	BU	1.06 cfs	70 acres	Return flows-Belle Fourche Irrigation Project	lf, iq
2377A-2	Southern Black Hills WS	Hot Springs	CU	no add'l	RWS	2 wells-Madison Aquifer	wi, 1 special
2752A-2	Southern Black Hills WS	Hot Springs	CU	no add'l	RWS	3 wells-Inyan Kara Aquifer	wi, 2 special
8463-3	Brook Bye	Vermillion	CL	1.78 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8464-3	Lakeview Httm Brethren	Lake Andes	CM	0.30 cfs	commercial	3 wells-Dakota, Codell & Choteau:West Aquifers	wi, 4 special
8465-3	Robert Maeschen	Ethan	DN	1.22 cfs	91 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8466-3	Leber Bros LLC	Parker	TU	1.78 cfs	120 acres	1 well-Parker Centerville Aqu	wi, wcr, iq,1 special
8467-3	Leber Bros LLC	Parker	TU	1.78 cfs	140 acres	1 well-Parker Centerville Aqu	wi, wcr, iq
8469-3	Double A Farms LLC	Centerville	LN	2.22 cfs	114 acres	1 well-Upper Vermillion Missouri:South Aquifer	wi, wcr, iq,1 special
8470-3	Nicholas Blake	Centerville	TU	1.78 cfs	160 acres	1 well-Upper Vermillion Missouri:South Aquifer	wi, wcr, iq
8471-3	Roger Blake	Centerville	TU	1.78 cfs	160 acres	1 well-Parker Centerville Aqu	wi, wcr, iq
8472-3	Roger Blake	Centerville	TU	0.22 cfs	60 acres	1 well-Parker Centerville Aqu	wi, iq
8473-3	Terry Wieting	Huron	BD	1.78 cfs	160 acres	James River	iq, 2 special
8474-3	Mike Chicoine	Jefferson	UN	2.22 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
8475-3	Mike Chicoine	Jefferson	UN	2.22 cfs	80 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8476-3	Mike Chicoine	Jefferson	UN	2.22 cfs	48.2 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8477-3	Larry Braun Farms LP	Warner	MP	1.78 cfs	132 acres	1 well-Spr Creek:McPherson	wi, wcr, iq
8478-3	Xcel Energy	Marvin	GT	0.022 cfs	commercial	1 well-Prairie Choteau Aquifer	wi
8479-3	Concrete Materials	Sioux Falls	UN	0.133 cfs	industrial	1 well-Lower James Missouri	wi, 2 special
8480-3	David Zubke	Waubay	DA	0.67 cfs	40 acres	2 wells-Big Sioux:North	wi, wcr, iq,1 special
8481-3	MGJR LLC	Ft. Pierre	HU	2.22 cfs	80 acres	1 well-Gray Goose Aquifer	wi, wcr, iq,1 special
8483-3	Frank Kralicek & Frank Kralicek Jr.	Yankton	YA	2.22 cfs	400 acres	2 wells-Lower James Missouri	wi, wcr, iq
8484-3	Dean & John Lindstrom	Beresford	CL	1.78 cfs	120 acres	1 well-Lower James Missouri	wi, wcr, iq,1 special
8485-3	Hilltop Irrigation District	Chamberlain	BL	no add'l	160 acres	Missouri River	iq
8487-3	Spink Hutterian Brethren	Frankfort	SP	0.144 cfs	comm & dom	2 wells-Dakota Aquifer	wi, wcr, 5 special
8489-3	Blake Allard	Jefferson	UN	1.78 cfs	120 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special

8490-3	Nathan Meland	Wallace	CD	0.87	30 acres	slough	iq
8491-3	Mike Barber	Sioux Falls	LN	2.56 cfs	232 acres	4 wells-Big Sioux:South	
8492-3	Tim or Kari Ostrem	Centerville	CL	no add'l	180 acres	1 well-Upper Vermillion Missouri:South	wi, iq, 1 special
8493-3	Melvin Donnelly	Elk Point	UN	1.78 cfs	130 acres	1 well-Missouri:Elk Point	wi, wcr, 1 special
8502-3	Bret Fliehs	Groton	BN	1.33 cfs	130 acres	drainage tile outflow	iq

Future Use Review

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
4290-3	City of Mobridge	Mobridge	WL	1,656 AF	municipal	Missouri River	none

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>

MINUTES OF THE 231ST MEETING OF THE
WATER MANAGEMENT BOARD
REMOTE MEETING VIA AUDIO/VISUAL CONFERENCE
PIERRE, SOUTH DAKOTA

MAY 19, 2021

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 9:00 a.m. Central Time. The roll was called, and a quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following were present for the meeting:

Board Members: Jim Hutmacher, Leo Holzbauer, Peggy Dixon, and Tim Bjork. Chad Comes, Rodney Freeman, and Bill Larson were absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, and Genny McMath.

Attorney General's Office: David McVey, board counsel; Ann Mines Bailey, Water Rights Program counsel.

Consider rescission of suspension of Water Right 2675-3, Beau Gregg, Harrold, SD: Beau Gregg.

Court Reporter: Carla Bachand, Capital Reporting Services.

ADOPT FINAL AGENDA: Motion by Bjork, seconded by Holzbauer, to adopt the final agenda. A roll call vote was taken, and the motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: None.

ADMINISTER OATH TO DENR STAFF: The court reporter administered the oath to Eric Gronlund, Ron Duvall, Genny McMath, and Beau Gregg.

CONSIDER RESCISSION OF SUSPENSION OF WATER RIGHT NO. 2675-3, BEAU GREGG, HARROLD, SD: Ron Duvall stated that Water Right No. 2675-3 was licensed in 1980 for the irrigation of 278 acres from the Missouri River. The annual irrigation questionnaire was

Water Management Board
May 19, 2021, Meeting Minutes

sent to Beau Gregg as the renter. Mr. Gregg has filed a transfer of ownership with the Water Rights Program to get the water right in his name.

The 2020 irrigation questionnaire was not received by the Water Rights Program. Notice was sent to Mr. Gregg via Certified Mail in January 2021 advising permit holders who hadn't submitted the irrigation questionnaire that the Water Management Board may suspend the water permit at its March board meeting. The Water Rights Program did not receive the questionnaire in the interim, and on March 3, 2021, the board suspended the water permit for one year effective April 3, 2021.

Mr. Gregg contacted the Water Rights Program requesting a meeting for the board to consider rescinding the suspension

Mr. Gregg stated that he did not receive the letter regarding the suspension until the end of April 2021. After receiving the letter, Mr. Gregg contacted the Water Rights Program, and explained that the letter was delivered to his neighbor's mailbox, and his neighbor had passed away in the fall of 2020. The property was in probate and the mailbox was not being checked regularly. Mr. Gregg said the person who now owns the neighbor's property gave him the letter a week prior to this Water Management Board meeting.

Mr. Gregg said he had completed the irrigation questionnaire online, so he believed the Water Rights Program had received it, but apparently it did not go through.

Mr. Duvall noted that Mr. Gregg has now completed and submitted the irrigation questionnaire.

Ms. Dixon asked if Mr. Gregg had routinely submitted irrigation questions in the past. Mr. Duvall said Mr. Gregg has been submitting irrigation questions on time in the past.

Motion by Bjork, seconded by Holzbauer, to rescind suspension of Water Right No. 2675-3, Beau Gregg.

Ms. Dixon asked if the letters are sent via Certified Mail, and if so, did the Water Rights Program receive a signature card.

Mr. Duvall said the post office indicated that it was signed for on January 26, 2021, but it does not say who signed for it.

A roll call vote was taken, and the motion carried unanimously.

Chairman Hutmacher suggested that in the future Mr. Gregg not have any late questionnaires.

ADJOURN: Motion by Holzbauer, seconded by Dixon, to adjourn the meeting. A roll call vote was taken, and the motion carried unanimously.

Water Management Board
May 19, 2021, Meeting Minutes

A court reporter was present, and a transcript of the proceedings may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre SD 57501, telephone number (605) 222-4235.

The meeting was also recorded, and the recording is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Approved 7th day of July 2021.

Water Management Board

DRAFT



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

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<http://atg.sd.gov/>

JASON R. RAVNSBORG

ATTORNEY GENERAL

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JUN 14 2021

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN

CHIEF DÉPUTY ATTORNEY GENERAL

June 10, 2021

Jude Wildeman/Big Mountain Cabins
13310 Silver Mountain Road
Rapid City, SD 57702

Long Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Rights Program

Re: *In the Matter of Water Permit Application No. 2814-2, Big Mountain
Cabins/Jude Wildeman*

To Whom it May Concern:

Enclosed please find a copy of the Water Rights' Proposed Findings of Fact,
Conclusions of Law and Final Decision along with the Certificate of Service in
the above-entitled matter.

Sincerely,

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

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall, DENR Water Rights Program (*Interoffice mail*)

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JUN 14 2021

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	WATER RIGHTS' PROPOSED
APPLICATION NO. 2814-2, BIG)	FINDINGS OF FACT,
MOUNTAIN CABINS/JUDE)	CONCLUSIONS OF LAW, AND
WILDEMAN)	FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on May 5, 2021. Board members James Hutmacher, Tim Bjork, Rodney Freeman, Peggy Dixon, Leo Holzbauer, and Bill Larson were present at the hearing and heard the evidence presented. Applicant Jude Wildeman and Intervenor Lon Buehner appeared *pro se*. Ann F. Mines Bailey represented the DANR Water Rights Program and the Chief Engineer.

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 November 16, 2020, Water Rights received Water Permit Application No. 2814-2 on behalf of Big Mountain Cabins seeking an appropriation of water for commercial use for cabin rentals near Rockerville, SD. The application proposes the diversion of less than 2 acre-feet of water annually with an instantaneous diversion rate of 0.067 cubic feet of water per second (cfs) from an existing well completed into the Crystalline Rock aquifer in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22-T1S-R6E in Pennington County.

2. The Chief Engineer, Eric Gronlund, recommended approval of the application subject to the permit including three qualifications. Those qualifications are as follows:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

3. Notice of the application was timely advertised on January 29, 2021, in the Rapid City Journal (Pennington County).

4. DENR received a timely petition to intervene from Lon Buehner.

5. On February 18, 2021, the application was transferred from Big Mountain Cabins to Jude Wildeman.

6. The matter was initially scheduled to be heard by the Water Management Board during its March 4, 2021 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May.

7. Water Permit Application No. 2814-2 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.

8. In considering water availability this Board must examine whether the average quantity of the 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.

9. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from an observation well completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

10. In this area, the Crystalline Rock aquifer consists of metaconglomerate, quartzite, metapelite, and metagraywacke. The aquifer has very low primary porosity. Water movement in the aquifer occurs through its secondary porosity which consists of fractures, joints, and faults within the aquifer material. This secondary porosity is very uneven and unpredictable. The aquifer is estimated to contain approximately 2,900,000 acre-feet of recoverable water in storage in western South Dakota.

11. When determining the availability of unappropriated water and the potential for unlawful impairment, the Crystalline Rock aquifer must be examined within a more localized area rather than as a whole due to these aquifer characteristics.

12. Mr. Mathiowetz testified recharge to the Crystalline Rock aquifer occurs mainly through infiltration of precipitation and streamflow losses.

13. There are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought. However, the best information available is a report analyzing the different water sources within the Black Hills. The authors of that study concluded that recharge to the Crystalline Rock aquifer must be *much greater* than 3600 acre-feet.

14. There are two observation wells completed into the Crystalline Rock aquifer. One of the wells is believed to be open to both the Deadwood Formation and the Crystalline Rock aquifer and, therefore, was not relied upon when reviewing this application. The other observation well, CU-86A, is located approximately 15.2 miles southwest of the proposed diversion point. The data from this observation well demonstrates that the aquifer responds to climatic trends, recharging during wet periods and declining during dry periods. The observation well data demonstrates that the aquifer can receive recharge and that the effects from pumping are temporal and are masked by climatic conditions.

15. Mr. Mathiowetz testified that in reviewing the pertinent information, he concluded that the localized portion of the Crystalline Rock aquifer in which this diversion is sought is limited by larger faults and significant geologic features which have been mapped to some extent.

16. Within this localized area, there is one existing water right in the Crystalline Rock aquifer located approximately 750 feet to the south of the proposed diversion point. Additionally, there are up to 8 domestic wells within the vicinity.

17. Mr. Mathiowetz concluded that based upon the observation well data that demonstrates the aquifer receives recharge, the relatively limited use in the localized area, and that the proposed diversion point has been in use for some time without issue, there is a reasonable probability that unappropriated water is available.

18. Mr. Mathiowetz further concluded that based upon the limited diversion rate and volume requested and minimal history of well interference in that area, there is a reasonable probability that the proposed diversion would not result in an unlawful impairment of existing rights.

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

16. The Board also received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified that he had contacted Big Mountain Cabins, owned and operated by Mr. Wildeman, upon direction of the Board after Mr. Buehner had suggested in a prior proceeding that Big Mountain Cabins did not have a permit. Based upon that contact, Big Mountain Cabins submitted this application. Mr. Gronlund testified that based upon his review of the report

and the best information available, he recommended approval of the application. He further testified that he believed the proposed diversion to be a beneficial use and in the public interest consistent with the Board's previous decisions.

17. Mr. Gronlund further testified that the Water Rights Program is aware that there are entities operating without a permit and that the goal is to bring them into compliance. To that end, contact is being made with those entities believed to be operating without a permit.

18. The Board finds Chief Engineer Gronlund to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Gronlund's testimony.

19. Lon Buehner also testified before the Board. Mr. Buehner testified that he lives in the Rockerville area. Mr. Buehner expressed concerns regarding a number of issues regarding water rights in that area. Mr. Buehner further expressed concerns that the report by Water Rights is incomplete because it does not account for those entities which are operating without a permit. In particular, Mr. Buehner expressed concerns regarding inspections and urged that periodic inspections be required. Additionally, Mr. Buehner urged the theory that the septic volumes that are permitted should act as a limitation for the water volumes permitted and suggested that a qualification should be added to that effect. Mr. Buehner additionally expressed concerns that the approval of this application would be a detriment to those commercial entities currently operating without a permit.

20. The Board finds that there is unappropriated water available to satisfy this application.

21. The Board finds that granting this application would not unlawfully impair existing water rights.

22. The Board further finds that the proposed use of the water for commercial use for cabin rentals constitutes a beneficial use.

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

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

6. 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.

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 to fulfill the amount requested by the application.

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

10. 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.

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 (commercial) 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 concludes that appropriating water for this commercial 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. 2814-2 is granted with the following qualifications:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a

reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.

3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

Dated this ____ day of July, 2021.

BY THE BOARD:

South Dakota Water Management Board

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JUN 14 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)	
APPLICATION NO. 2814-2, BIG)	CERTIFICATE OF SERVICE
MOUNTAIN CABINS/JUDE)	
WILDEMAN)	

The undersigned hereby certifies that true and correct copies of the Water Rights' Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter were served by U.S. mail, first class, postage prepaid, upon the following, on this 10th day of June 2021:

Jude Wildeman
Big Mountain Cabins
13310 Silver Mountain Road
Rapid City, SD 57702


Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

And true and correct copies were served by e-mail and hand-delivery upon the following:

David M. McVey
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
Counsel for Water Rights Program

And the original was sent for filing by interoffice mail to the following:

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**DEPARTMENT of AGRICULTURE
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**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8433-3, City of Lake Norden**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8433-3, City of Lake Norden, Jason Aho, Mayor, PO Box 213, Lake Norden SD 57248.

The Chief Engineer is recommending APPROVAL of Application No. 8433-3 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 wells approved under Water Permit No. 8433-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals under this Permit shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Prairie Coteau aquifer.
3. Water Permit No. 8433-3 authorizes a total annual diversion not exceeding 967 acre-feet of water annually from the Prairie Coteau aquifer.

See report on application for additional information.

Eric Gronlund, Chief Engineer
June 11, 2021

NOTE: The City of Lake Norden completed monitoring wells as part of the aquifer performance tests on the aquifer. South Dakota Department of Agriculture and Natural Resources (DANR) requests that the wells identified as NNMW, NEMW and SWMW-D become part of the state observation well network. This can be accomplished by the city agreeing to either transfer ownership of these three wells to the department, located in a right-of-way, or grant a perpetual easement to the State if located on property owned by the Permit holder.

For specific information regarding either granting ownership or entering into a perpetual easement, or both, for the State's access to the observation wells, please contact Adam Mathiowetz at (605) 773-3352.

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8433-3
CITY OF LAKE NORDEN
JUNE 11, 2021

Water Permit Application No. 8433-3 proposes to appropriate 967 acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 1.34 cubic feet of water per second (cfs) from three wells completed into the Prairie Coteau aquifer (97-114 feet deep) located in the SW $\frac{1}{4}$ Sec.15-T113N-R53W for municipal use. The well locations are approximately one mile east of the City of Lake Norden in Hamlin County.

This application was received by the DANR-Water Rights Program on June 29, 2020 and originally proposed to appropriate 1,458 ac-ft/yr at a maximum instantaneous diversion rate of 2.11 cfs. An initial review of the application determined further study was needed to assess the availability of unappropriated water. The Chief Engineer recommended deferral on July 21, 2020, and the application was public noticed for the October 2020 meeting of the Water Management Board. A constant pump rate aquifer performance test was designed by Banner Associates, Inc. to determine aquifer characteristics using recommendations and requirements provided by the DANR-Water Rights Program. The aquifer performance test was conducted from August 6 to August 21, 2020, with continued monitoring as required in the Temporary Permit To Use Public Waters issued by the Chief Engineer on July 27, 2020. At the October 7, 2020 Water Management Board meeting the board deferred the application for further study.

The Water Rights Program review of and subsequent report on the August 2020 aquifer performance test was completed on November 19, 2020. The review of the data indicated that only 57.8 ac-ft/yr was available for appropriation and the remainder of the request (1,420.2 ac-ft/yr) should be deferred for further study. In late 2020, the city's engineers, Banner Associates, Inc. (Banner), contracted with LRE Water (LRE) to reevaluate the August 2020 aquifer performance test data. LRE's review determined that it would be prudent to run a single well 30-day aquifer performance test. The pumping portion of the 2021 aquifer test began on March 17 and concluded on April 16 when the recovery portion of the test began. The recovery period started at the cessation of pumping on April 16 and went until April 30 following a video conference meeting between Banner, LRE, Water Rights Program staff, and DANR-Geological Survey Program staff that concluded enough recovery of the water level to pre-pumping/background conditions in the wells had occurred. The City of Lake Norden is allowed to keep pumping water under a temporary permit for continued testing until July 9, 2021 as long as monthly water level measurements from the 2020 monitoring (EMW and NMW) and pumping (L1, L2 and L3) wells are recorded and submitted to the Water Rights Program.

AQUIFER: Prairie Coteau (PCO)

Aquifer Characteristics:

The Prairie Coteau aquifer consists of many discontinuous and often lenticular bodies of glacial outwash (sand and gravel) that do not typically include surficial (at or very near land surface) or basal (in contact with or very near bedrock) aquifers, such as the Big Sioux and Altamont aquifers, respectively (Kume, 1985). The Prairie Coteau aquifer is the name used by the DANR-Water

Rights Program and accepted by the Water Management Board for discontinuous intermediate aquifers located on the Coteau des Prairies in northeastern South Dakota that are not a part of another named aquifer (Water Rights, 2021b, 2021c, and 2021d). These discontinuous outwash deposits can be in lenses separated by layers of glacial till (vertical separation) as well as being geographically separated (SDGS, 2020; Water Rights, 2021d). In Deuel and Hamlin Counties, the Prairie Coteau aquifer is generally buried by 30 feet or more of glacial till and underlies approximately 1,100 square miles in discontinuous deposits. The aggregate thickness, total thickness of all layered Prairie Coteau aquifer deposits regardless of hydrologic connection, in Deuel and Hamlin Counties where the aquifer is present, ranges from 4 to 144 feet (Kume, 1985).

The wells completed for this application and the subsequent monitoring wells are completed into a portion of the Prairie Coteau aquifer with an approximate elevation range of 1,560 to 1,580 feet above mean sea level (Water Rights, 2021c). The well completion reports indicate aquifer thickness ranging from 14 to 19 feet. The aquifer materials encountered during the drilling of the three pumping wells and two monitoring wells was fine to coarse sand ranging in color from yellow to grey as labeled by the well driller. Review of the well completion reports (Water Rights, 2021d) and lithologic logs (SDGS, 2021) indicate the local Prairie Coteau aquifer material is glacial outwash sand that has some fine sand and silt, or clay intermixed. Review of the analysis for the 2020 aquifer performance test (Banner, 2020) and the monitoring well completion reports for the monitoring wells drilled for the 30-day aquifer performance test as presented in the LRE report (2021) indicates the glacial outwash is primarily medium to coarse poorly sorted sand with varying amounts of gravel and minor amounts of silt and clay. The aquifer is confined at the City of Lake Norden's pumping wells, L1, L2 and L3, and the monitoring wells drilled for both the 2020 (Banner, 2020) and the 2021 (LRE, 2021) aquifer performance tests.

2021 AQUIFER PERFORMANCE TEST:

Technique and Methodology Review:

A 30-day constant rate aquifer performance test was conducted by the City of Lake Norden and Banner Associates, Inc. and analyzed by engineering firm LRE Water, Inc. using well L2 as production (pumping) wells and city wells L1 and L3, along with six monitoring wells completed into the Prairie Coteau aquifer, one monitoring well completed into the confining till layer above the Prairie Coteau aquifer, and three monitoring wells completed into the surficial and overlying Big Sioux: Brookings aquifer. All of these wells shown and labeled in Figure 1 are used throughout the LRE report (2021) and will be used throughout this report.

The background monitoring period of the aquifer performance test was from February 22 to March 17, 2021 (LRE, 2021). During that time, the City of Lake Norden's Prairie Coteau aquifer well field was completely shut down. The pumping portion of the aquifer performance test started at 11:00 am Central time on March 17 and was completed 30 days later at 11:16 am Central time on April 16, 2021. The recovery period was from 11:16 am Central time on April 16 to 3:20 pm on April 30, 2021. The recovery period was stopped after approximately 14 days instead of the more standard 30 days for this length of aquifer performance test. This was done after consultation between Banner Associates, LRE Water, the DANR-Geological Survey, and DANR-Water Rights Program staff via video conference to discuss the recovery of the wells. All wells had recovered to near or greater than 100% of pre-pumping static water levels. Therefore, it was decided the recovery period could be ended early and the city could resume pumping from their Prairie Coteau aquifer well field.

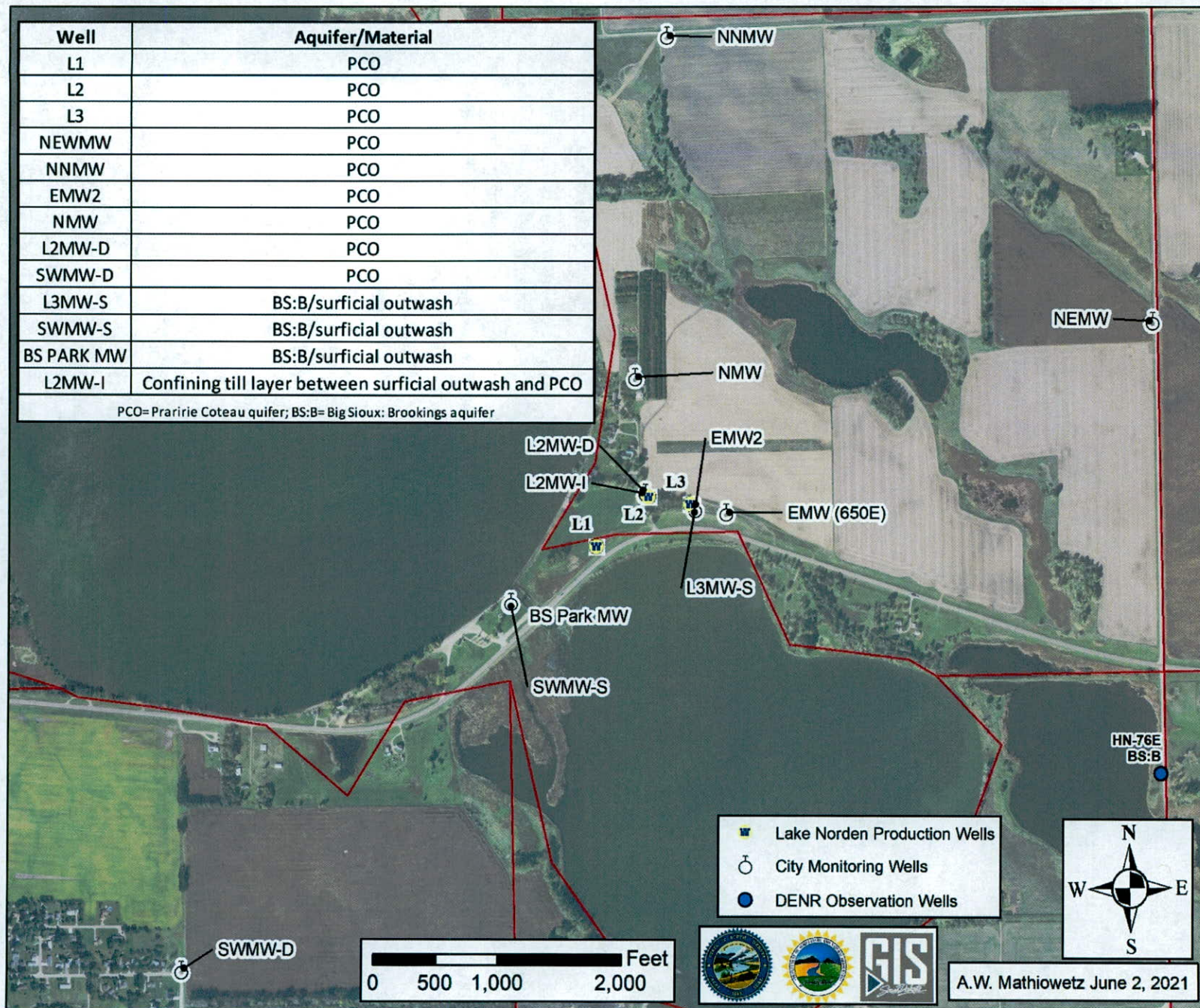


Figure 1-Map of wells used for the 2021 City of Lake Norden aquifer performance test

The water levels in wells L2MW-D, EMW2, NMW, NNMW, NEMW, SWMW-D, L2MW-I, L3MW-S, BS Park MW, and SWMW-S were measured using dedicated In-Situ LevelTroll pressure transducers with integrated data loggers (LRE, 2021). Wells L1, L2, and L3 were measured using dedicated and existing TE Connectivity KPSI 320 transducers with integrated Supervisory control and data acquisition (SCADA) communication to the city's water treatment plant installed (LRE, 2021). Manual water level measurements were collected periodically in the wells equipped with a transducer using an electronic water-level meter (LRE, 2021). An existing flow-rate meter connected to the SCADA system and located at the water treatment plant was used to record flow rates during the aquifer performance test (LRE, 2021). Pumping well L2 was pumped at an average rate of 353 gallons per minute (gpm). Figure 4 of the LRE (2021) report shows the pump rate from well L2 was very consistent for the duration of the aquifer performance test.

The methodology and equipment used to measure water levels for this aquifer performance test as well as how the aquifer performance test was conducted were consistent with or exceeded standard operating procedures and methods as set forth by the American Water Works Association (AWWA) (1998), United States Environmental Protection Agency (Osborne, 1993), Fetter (1980), and Driscoll (1986) among others. The aquifer performance test as conducted by Banner Associates, Inc. and reviewed by LRE Water is acceptable to the DANR-Water Rights Program.

The water level and time data collected during the whole aquifer performance test was analyzed using AQTESOLV software along with a diagnostic and qualitative review of the data by a licensed professional engineer (LRE, 2021). The AQTESOLV software was used to estimate Transmissivity (T) and Storativity (S) using the confined Theis (1935), confined Cooper-Jacob (1946), Agarwal Recovery method for each the confined Cooper-Jacob and confined Theis (Agarwal, 1980) leaky-confined Hantush-Jacob (1955), and leaky-confined Neuman-Witherspoon (1969) methods (LRE, 2021). The Theis recovery method was used to evaluate the ratio of storativity during pumping (S) and after pumping (S') to determine if negative boundaries (low or impermeable) or positive boundaries (recharge) were encountered during the aquifer performance test (LRE, 2021). A value of S/S' greater than 1 indicates a positive boundary condition and less than 1 indicates a negative boundary condition. A distance-drawdown analysis was completed to estimate a theoretical radius of influence (r_0) for the aquifer performance test's cone of depression in the Prairie Coteau aquifer.

The AQTESOLV software and the various methods and analyses used for this aquifer performance test are commonly used and accepted for analyzing aquifer performance test data. The methods and software used by LRE Water for the analysis of the aquifer performance test data is acceptable to the DANR-Water Rights Program.

Test Data Analysis Review:

The primary purposes of this constant-rate aquifer pumping test were to determine the aquifer characteristics and possible aquifer extent of Prairie Coteau aquifer at the City of Lake Norden's Prairie Coteau aquifer well field. The maximum measured drawdown in the pumping well, L2, was 53.01 feet (LRE, 2021). Appendix D of the LRE report (2021) is an "Aquifer Test Summary Data Sheet" that contains general information regarding well depth, screen setting, distance from

the pumping well, static water level, transducer type, and maximum drawdown amongst other useful data.

Transmissivity (T) values calculated using the various previously mentioned methods ranged from 1,441 to 4,729 ft²/day with a geometric mean of 2,721 ft²/day for the data used in the calculations (LRE, 2021). The hydraulic conductivity (K), T divided by aquifer thickness at each well, ranged from 69 to 394 ft/day with a geometric mean of 165 ft/day (LRE, 2021). These hydraulic conductivity values are within the general range of fine to coarse sand listed by Driscoll (1986) which is consistent with the geology shown on the well completion reports for the production and monitoring wells on file with the Water Rights Program (Water Rights, 2021d). Some of the calculated T and K values were not used in the statistics. This was due to "...either poor curve match, misalignment with other solutions, or results inconsistent with the conceptual model." Those are reasonable and acceptable reasons for excluding some data from the statistical analysis. Re-calculation of several of the analyses yielded comparable results when making the same assumptions as the LRE (2021) report (Halford Hydrology LLC, 2021; Halford and Kuniansky, 2002). Therefore, the hydraulic conductivity and transmissivity analyses can be assumed to have been completed properly when using the same assumptions as the LRE (2021) report.

The four distance-drawdown calculations completed to estimate the theoretical radius of influence (r_0) each had slightly different data set used for the calculation. Therefore, each calculation resulted in a different r_0 value. A brief explanation of the different data sets and the associated r_0 for each set of data used for the calculations are shown in Table 1. The two larger r_0 values used data after the aquifer had reached a stable drawdown but before precipitation that lead to recharge events that occurred on April 6 and 8, approximately 21 days into the pumping portion of the test.

Table 1- Radius of influence (r_0) estimates from distance-drawdown analysis (LRE, 2021)

r_0	Wells	Monitoring Well Data Set
15,804 ft	L2, L2MW-D, L3, EMW2, L1, NMW, NNMW, SWMW-D	Used data from all PCO wells that had pumping-induced drawdowns and use drawdowns measured at the end of the pumping period (note: drawdown influenced by recharge events on April 6 and 8)
18,455 ft	L2MW-D, L3, EMW2, NMW, NNMW	Use data from only select PCO wells that had pumping-induced drawdowns that exhibited a generally linear trend relative to each other and use drawdowns measured at the end of the pumping period. (note: drawdown influenced by recharge events on April 6 and 8)
19,804 ft	L2MW-D, L3, EMW2, NMW, NNMW	Used data from select PCO wells that had pumping induced drawdowns that exhibited a generally linear trend relative to each other and drawdowns from before the recharge events (21 days of pumping)
23,099 ft	L2MW-D, L3, EMW2, NMW, NNMW	Used data from select PCO wells that had pumping induced drawdowns that exhibited a generally linear trend relative to each other and adjusted drawdown data for the background trend of the aquifer and from before the recharge event (21 days of pumping)

Each of these four data sets used to calculate a theoretical r_0 were done to examine the impacts of several different factors on the calculated value. Each of the data sets were adjusted/selected in a valid manner to examine the impacts of the different factors on the calculated theoretical r_0 . The radius of influence, r_0 , is useful for estimating a likely minimum aquifer areal extent.

It was determined there are eight domestic wells located within approximately one mile of the Prairie Coteau aquifer well field (LRE, 2021). Two of the wells were determined to be completed into glacial aquifer materials that are stratigraphically above the aquifer the city's wells are completed into (LRE, 2021). The remaining six domestic wells appear to be completed into the same portion of the Prairie Coteau aquifer as the city's wells (LRE, 2021). The confined Cooper-Jacob method and the geometric mean values for T and S were used to estimate if potential drawdown after 1 year of continuous pumping at 595 gpm from the City of Lake Norden's Prairie Coteau aquifer well field could affect the six wells (LRE, 2021). The analysis concluded, that at the two closest domestic wells, there would be an estimated drawdown of 40 to 45 feet (LRE, 2021). Those wells had 51 to 63 feet of artesian head pressure above the top of the aquifer at the time of completion (LRE, 2021). The owner of these wells is known to the City of Lake Norden and did not indicate any adverse impacts associated with the city's past pumping or the pumping conducted for the 30-day aquifer performance test (LRE, 2021). The estimated drawdown at the more distant wells ranged from 28 to 33 feet at the conclusion of the test and the wells had artesian head pressures ranging from 88 to 139 feet when drilled (LRE, 2021). Water Rights Program review of the well completion reports and a re-calculation of several of the drawdown estimates (Cooper and Jacob, 1946) using the same values and assumptions as the LRE (2021) report yielded comparable results (Halford Hydrology LLC, 2021; Halford and Kuniansky, 2002).

The potential yield of the Prairie Coteau aquifer well field was estimated using the Cooper-Jacob method (LRE, 2021). The analysis was conducted using two different well efficiencies 85% and 99%, both determined from the 30-day aquifer performance test data but using different methods, and the geometric means for T and S and a pumping duration of one year (LRE, 2021). The results indicated a long-term yield of 550 to 600 gpm from the Prairie Coteau aquifer well field could be sustained while also maintaining at least 10 feet of water above the top of the well screens in L1, L2, and L3 and nearby domestic wells is possible (LRE, 2021). It was noted the Cooper-Jacob method (1946) does not include recharge and data from the aquifer performance test (see Figure 2) shows this portion of the Prairie Coteau aquifer can be rapidly recharged by a precipitation-recharge event (LRE, 2021). Therefore, calculations using longer pumping durations will likely overestimate the amount of drawdown. The effects of adding a fourth well to the well field, assumed to be located near SWMW-D, were evaluated and determined that well field yield may only increase to approximately 650 gpm (LRE, 2021). It was determined the limiting factors to the yield are aquifer thickness, and aquifer T and S, rather than the amount of recharge. The expected long-term yield of a well field does not necessarily represent the availability of unappropriated water in the aquifer (LRE, 2021).

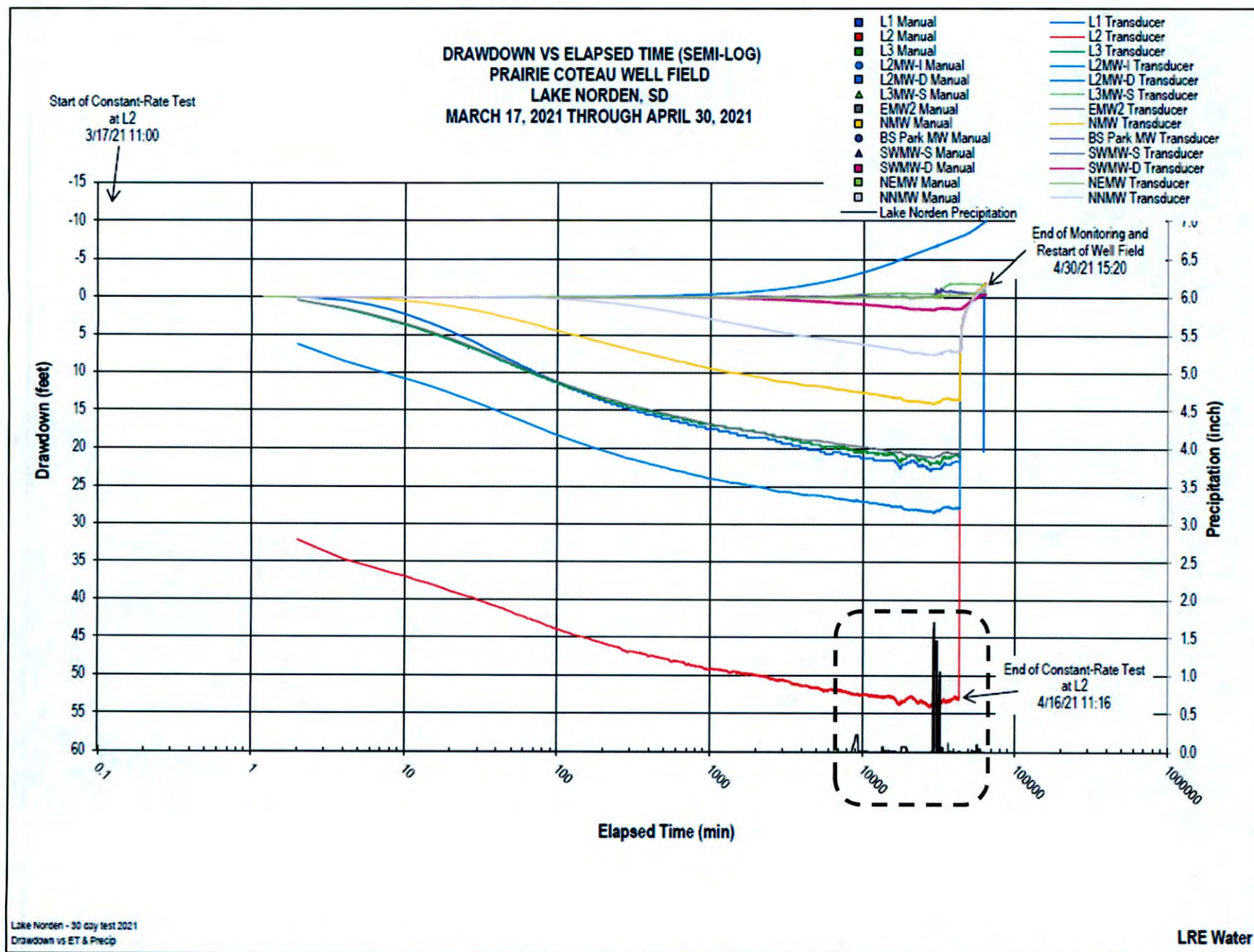


Figure 2- Drawdown vs. elapsed time and precipitation with recharge event indicated with black dashed box (modified from: LRE, 2021)

LRE (2021) concluded this portion of the Prairie Coteau aquifer, while lenticular and discontinuous, appears to recharge directly from the infiltration of precipitation (see Figure 2). While the exact location and mechanism of the recharge is unknown, it is likely a portion of this aquifer directly underlies surficial outwash, the Big Sioux: Brookings aquifer, or has an unconfined portion that is near land surface (LRE, 2021). It was noted there are multiple lines of evidence for the recharge including the observed water level rise following a precipitation event (see Figure 2), the lack of any observed negative boundary conditions, the S/S' values of 2.3 to 3.3 (positive boundary condition), and the superior water quality of the Prairie Coteau aquifer wells located near the city's Prairie Coteau aquifer well field (LRE, 2021).

A recharge analysis indicated an estimated range of 2 to 6 inches per year (in/yr) (LRE, 2021). Hedges and others (1985) estimated a recharge rate of 4.0 in/yr and 4.9 in/yr for the unconfined portions of the Prairie Coteau aquifer. Hedges and others (1985) also recommended a recharge range of 0.15 to 0.60 in/yr for buried confined aquifers be used by management and development programs. It was concluded at the 2 to 6 in/yr recharge rate an average annual withdrawal at a continuous rate of 550 to 600 gpm would not exceed the annual recharge rate (LRE, 2021). Furthermore, at the higher end of the range (6 in/yr), withdrawals at a continuous pumping rate of 904 gpm would not exceed average annual recharge (LRE, 2021). It was noted, "However, based on available data, the aquifer cannot likely sustain withdrawals from the City's Prairie Coteau well field at continuous pumping rates greater than 550 to 600 gpm (887 to 967 ac-ft/yr) without producing drawdown that would lower the water-levels to below the top of the aquifer." (LRE, 2021).

The recommendations in the report stated the City of Lake Norden's Prairie Coteau aquifer well field should be limited to 967 ac-ft/yr at a maximum instantaneous diversion rate of 1.34 cfs (600 gpm) and that long term monitoring of the water levels of the Prairie Coteau aquifer be conducted using at a minimum observation wells NNMW and EMW2, as well as the SCADA data from L1, L2, and L3 with a minimum frequency of once a month (LRE, 2021). The final recommendation listed in the aquifer performance test report is that additional water supply options be investigated to provide redundancy and continue to support population growth of the city (LRE, 2021).

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9:

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

WATER AVAILABILITY:

This application proposes to appropriate water from the Prairie Coteau aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

"No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water

withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the Greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems.”

While the applicant is a water distribution system as defined in SDCL 46-1-6(17), the Prairie Coteau aquifer is not stratigraphically lower/older than the Greenhorn Formation. Therefore, a comparison of average annual recharge and average annual withdrawals from the Prairie Coteau aquifer is required for this application.

Hydrologic Budget:

Recharge

The Prairie Coteau aquifer receives recharge from infiltration of precipitation and snowmelt where the aquifer is near land surface and permeable layers overlie it, leakage from adjacent aquifers with higher hydraulic head, and hydraulically connected surface water bodies and surficial aquifers with higher potentiometric surfaces (Leap, 1972). However, it is not clear what the specific source of recharge to this portion of the Prairie Coteau aquifer is. The most likely sources of recharge are infiltration of precipitation and snowmelt and a hydraulic connection to the Big Sioux: Brookings aquifer and/or nearby lakes.

Observation well data collected during the pumping portion of the 30-day aquifer performance test (see Figure 2) shows that water levels in this portion of the Prairie Coteau aquifer rapidly respond to precipitation-recharge events. The water levels in the observation wells and the pumping well L2 all rose immediately following a precipitation event that occurred over three days, April 6 to 8. This means it is highly likely that there is a direct connection with the aquifer to either the surface or unconfined and overlying aquifer material that readily provides recharge to this portion of the Prairie Coteau aquifer. However, there is not sufficient information available to determine where or by what mechanism this portion of the aquifer is recharged.

Hedges and others (1985) suggested a range of 0.15 to 0.6 inches per year (in/yr) be used for confined aquifers by management and development programs. It was further noted that locally where confined aquifers may encounter unconfined conditions the recharge rates may be within the range calculated for non-buried surficial aquifers (2.0 to 5.6 in/yr) (Hedges et. al, 1985). The nearest known non-buried surficial aquifer to this portion of the Prairie Coteau aquifer is the Big Sioux: Brookings aquifer. Hedges and others (1985) calculated a recharge rate of 4.0 in/yr by performing observation well data analysis. Recharge analysis using the water-table fluctuation (WTF) method was performed by LRE (2021) as part of the 30-day aquifer performance test analysis. The WTF method is used to estimate a percentage of precipitation that may enter an aquifer as recharge, but the WTF method is generally only considered applicable to unconfined aquifers. This portion of the Prairie Coteau aquifer is confined or mostly confined (SDGS, 2020; Water Rights, 2021d). However, review of the observation well data for the Big Sioux: Brookings and the Prairie Coteau aquifer observation wells show a nearly identical response to the precipitation event (LRE, 2021). The significant similarity in response to precipitation suggests

this portion of the Prairie Coteau aquifer, "...likely receives recharge from an unconfined source, in direct connection with the ground surface and infiltrating precipitation." (LRE, 2021).

The range of percentages of precipitation that would infiltrate to become recharge was from 28% to 93% with a geometric mean of 65% (LRE, 2021). LRE (2021) reported the City of Lake Norden has an average annual precipitation of 24.12 in/yr. Three different percentages, 65, 28, and 10 (10 percent is commonly used in groundwater modeling applications), were used to come up with recharge rates of 15.67 in/yr, 6.87 in/yr, and 2.41 in/yr, respectively (LRE, 2021). The average annual recharge for these three rates along with the values suggested by Hedges and others (1985) as previously mentioned and calculated for each of the four radii of influence as determined from the distance-drawdown calculations are shown in Table 2.

Table 2- Recharge rates, type of calculation, rate source, and average annual recharge

Recharge Rate (in/yr)	Type	Source	Average Annual Recharge (ac-ft/yr)				
			Radii of Influence (ft)				
			15,804	18,455	19,804	23,099	
15.67	68% precip. infiltration	LRE, 2021	23,522.5	32,075.8	36,936.5	50,250.0	
6.87	28% precip. infiltration		10,312.7	14,062.6	16,193.6	22,030.5	
2.41	10% precip. infiltration		3,617.7	4,933.2	5,680.7	7,728.3	
5.6	Range for non-buried surficial aquifers	Hedges et al, 1985	8,406.3	11,463.0	13,200.0	17,957.9	
2			3,002.2	4,093.9	4,714.3	6,413.5	
4	Obs. well data analysis for BS:B aquifer		6,004.5	8,187.8	9,428.6	12,827.0	
0.6	Range for buried confined aquifers		900.7	1,228.2	1,414.3	1,924.1	
0.15			225.2	307.0	353.6	481.0	
Min			225.2	307.0	353.6	481.0	
Max			23,522.5	32,075.8	36,936.5	50,250.0	
BS:B= Big Sioux Brookings; obs.= observation; precip.= precipitation							

The range of estimated average annual recharge ranges from 225.2 ac-ft/yr to 50,250 ac-ft/yr. It is very unlikely that the upper ends of those ranges are reasonable. However, based on the observation well data collected during the 30-day aquifer performance test, it is reasonable that the recharge rate to this portion of the Prairie Coteau aquifer is between the upper limit of the buried confined aquifers, 0.6 in/yr, and the rate calculated for the nearby Big Sioux: Brookings aquifer, 4.0 in/yr. Therefore, the likely range of recharge rates to this portion of the Prairie Coteau aquifer is 900.7 ac-ft/yr to 12,827.0 ac-ft/yr using the four different theoretical radii of influence as approximate minimum aquifer areal extents.

Using the most conservative radius of influence, 15,804 ft, the estimated average annual recharge to this portion of the Prairie Coteau aquifer ranges from 900.7 to 6,004.5 ac-ft/yr. This range is very reasonable, uses the conservative theoretical areal extent for calculations, and based on the currently available information for this portion of the Prairie Coteau aquifer should be used for appropriating water from this portion of the Prairie Coteau aquifer. Based on lithologic logs

(SDGS, 2020) and well completion reports (Water Rights, 2021d) it is possible this portion of the Prairie Coteau aquifer extends further to the southeast toward Lake Poinsett and north toward Lake Marsh. However, when the application was originally filed with the Water Rights Program, there was insufficient information available to consider if there was a hydrologic connection between aquifer materials located near Lakes Poinsett and Marsh and this portion of the Prairie Coteau aquifer. The results of this aquifer performance test indicate that it is possible, but further drilling in the area is required to confirm.

Withdrawals:

Discharge from this portion of the Prairie Coteau aquifer occurs through well withdrawals (Water Rights, 2021c and 2021d) and likely through discharge to adjacent aquifers like the Big Sioux: Brookings and possibly to hydrologically connected surface water bodies. There is one existing water right authorized to withdraw water from the same portion of the Prairie Coteau aquifer the applicant proposes to use (Water Rights, 2021c), Water Permit No. 7163-3 for Travis or Kimberly Hymans. Water Permit No. 7163-3 authorizes the diversion of water at a maximum instantaneous diversion rate of 0.1 cfs for domestic purposes. Historically, the average annual water use by non-irrigation appropriations limited by instantaneous diversion rate has been less than 60 percent of full time pumping at the permitted diversion rate. That is an estimated annual use of 26.9 ac-ft/yr. The water use under Water Permit No. 7163-3 is likely much less than 26.9 ac-ft/yr because it is for domestic use and the 60 percent estimate is based off of review of submitted water use numbers and discussions with various large non-irrigation appropriators in the past. Furthermore, a Kingsbrook Rural water system valve was observed near the entrance to the Hyman's residence (LRE, 2021). A member of the Hyman residence stated the connection between the valve and the home had not yet completed but was planned for 2021 (LRE, 2021). Until such time as Water Permit No. 7163-3 is canceled or the Water Rights Program is informed that it is only maintained for standby purposes, the assumption of pumping 26.9 ac-ft/yr under Water Permit No. 7163-3 will be used.

There are several domestic wells on file with the Water Rights Program that appear to be completed into the same portion of the Prairie Coteau aquifer as the applicant's wells (Water Rights, 2021d). LRE (2021) reported there are six domestic wells completed into the Prairie Coteau aquifer within approximately one mile of the City of Lake Norden's Prairie Coteau aquifer well field. It is possible there are other domestic wells not on file with the Water Rights Program and outside of the area surveyed for the LRE (2021) report that may be completed into the same portion of the Prairie Coteau aquifer. Assuming 2.5 people per residence and a per capita daily water use of 72 gallons per day (Carter and Netizert, 2005), it is estimated a rural residence will use approximately 0.2 ac-ft/yr. The usage by rural domestic wells completed into the same portion of the Prairie Coteau aquifer as the applicant is very likely insignificant compared to the estimated recharge and the annual use proposed by this application.

Balance of Hydrologic Budget

This application proposes to appropriate 967 ac-ft/yr from a portion of the Prairie Coteau aquifer. Currently, the estimated average annual appropriative use is assumed to be 26.9 ac-ft/yr but is likely much less from this portion of the Prairie Coteau aquifer. The most likely average annual recharge ranges from 900.7 to 6,004.5 ac-ft/yr. The 900.7 ac-ft/yr recharge estimate uses the relatively conservative recharge rate of 0.60 in/yr and the smallest radius of influence calculation,

15,804 ft, as an estimated minimum aquifer areal extent. Considering the conservative nature of the recharge rate estimate, there is a reasonable probability unappropriated water is available for this proposed appropriation.

Observation Well Data:

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

There are no DANR-Water Rights Program observation wells completed into this portion of the Prairie Coteau aquifer (Water Rights, 2021b). Two monitoring wells, EMW and NMW, were installed and used as part of the August 2020 aquifer performance test and an additional five monitoring wells were completed into this portion of the aquifer for the 2021 30-day aquifer performance test (LRE, 2021). Manual measurements taken from Prairie Coteau aquifer wells as required by the City of Lake Norden's temporary permit to use public waters or as part of the 2021 aquifer performance test are shown in Figure 3.

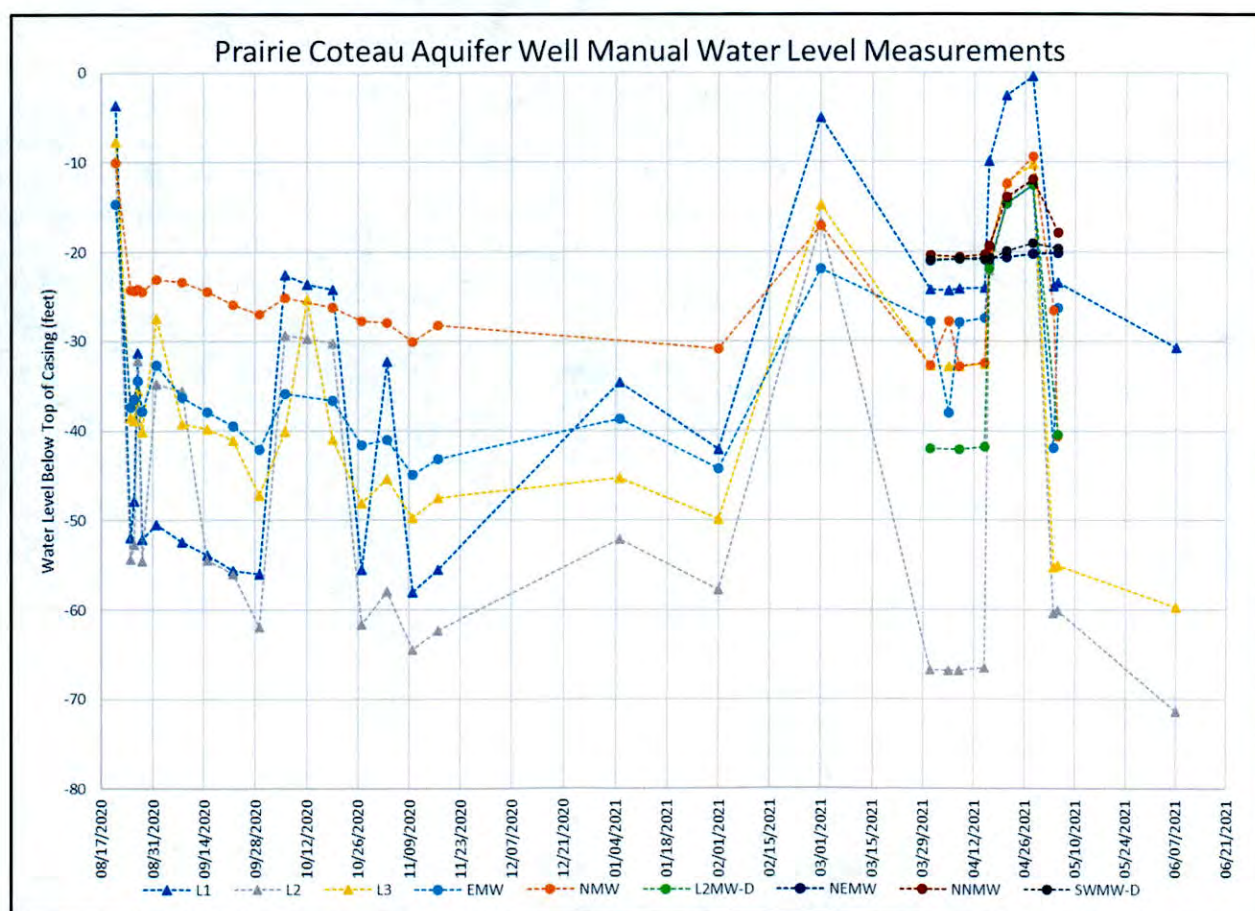


Figure 3- Prairie Coteau Aquifer Well Manual Water Level Measurements (Beck, 2020; Koistinen, 2021; Odens, 2021)

The water levels in the Prairie Coteau aquifers wells demonstrate the aquifer recovers once pumping has ceased and readily recovers after recharge events (e.g. infiltration of spring snowmelt). Furthermore, the manual water level data shown in Figure 3 and the continuous transducer water level data shown in Figure 2 are consistent with each other and both data sets support the information presented in and conclusions drawn from the LRE (2021) aquifer performance test analysis and report. Therefore, there is a reasonable probability unappropriated water is available for this proposed appropriation.

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

Figure 4 shows the location of the production wells this application proposes to use, the appropriative well that is completed into this portion of the Prairie Coteau aquifer (Water Rights, 2021c), Prairie Coteau aquifer monitoring wells used for the 30-day aquifer performance test (LRE, 2021), and Prairie Coteau aquifer domestic wells that are completed into the same portion of the Prairie Coteau (LRE, 2021; Water Rights, 2021d). The well authorized by Water Permit No. 7163-3 is approximately 0.8 miles away from the nearest of the City of Lake Norden's wells (production well L2) (Water Rights, 2021c). The nearest domestic well is approximately 240 feet away from the nearest City of Lake Norden well (production well L2) (LRE, 2021; Water Rights, 2021d). No complaints regarding well interference were filed with the DANR-Water Rights Program for the duration of either the 2020 or the 2021 aquifer performance tests. Furthermore, there have been no complaints regarding well interference in Hamlin County (Water Rights, 2021a). In other counties, complaints regarding well interference from wells completed into the Prairie Coteau aquifer have been filed with the DANR-Water Rights Program. Most of the complaints have been unsubstantiated and were the result of inadequate depth setting for the pump inlet in the well (Water Rights, 2021a).

At the well sites for this application, the Prairie Coteau aquifer is under confined conditions. Generally, that means the water level of the aquifer can be subject to significant fluctuations caused by natural conditions and pumping. The drawdown created by pumping a well completed into a confined aquifer may extend a considerable distance from the well as shown by the data from the aquifer performance test. The City of Lake Norden has installed pressure transducers in their production wells (L1, L2 and L3) that are connected to their SCADA system (Beck, 2020) to ensure they do not accidentally pump their own wells dry. By self-limiting their wells, the city protects other nearby adequate domestic wells because there is generally more drawdown at a pumping well than at other locations. The artesian head pressure above the top of the aquifer at the City of Lake Norden's production wells was around 80 feet at the time of completion in late-spring and mid-fall of 2018.

South Dakota Codified Law (SDCL) 46-6-6.1 does not necessarily protect artesian head pressure as a means of delivery, and the Water Management Board has recognized in the past to place water to maximum beneficial use, a certain amount of drawdown may occur. In order to balance interests between appropriative use and delivery of water by artesian head pressure, the Water Management Board defined an "adversely impacted domestic well" in Administrative Rule of South Dakota (ARSD) 74:02:04:20(7) as:

"a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to

the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs”.

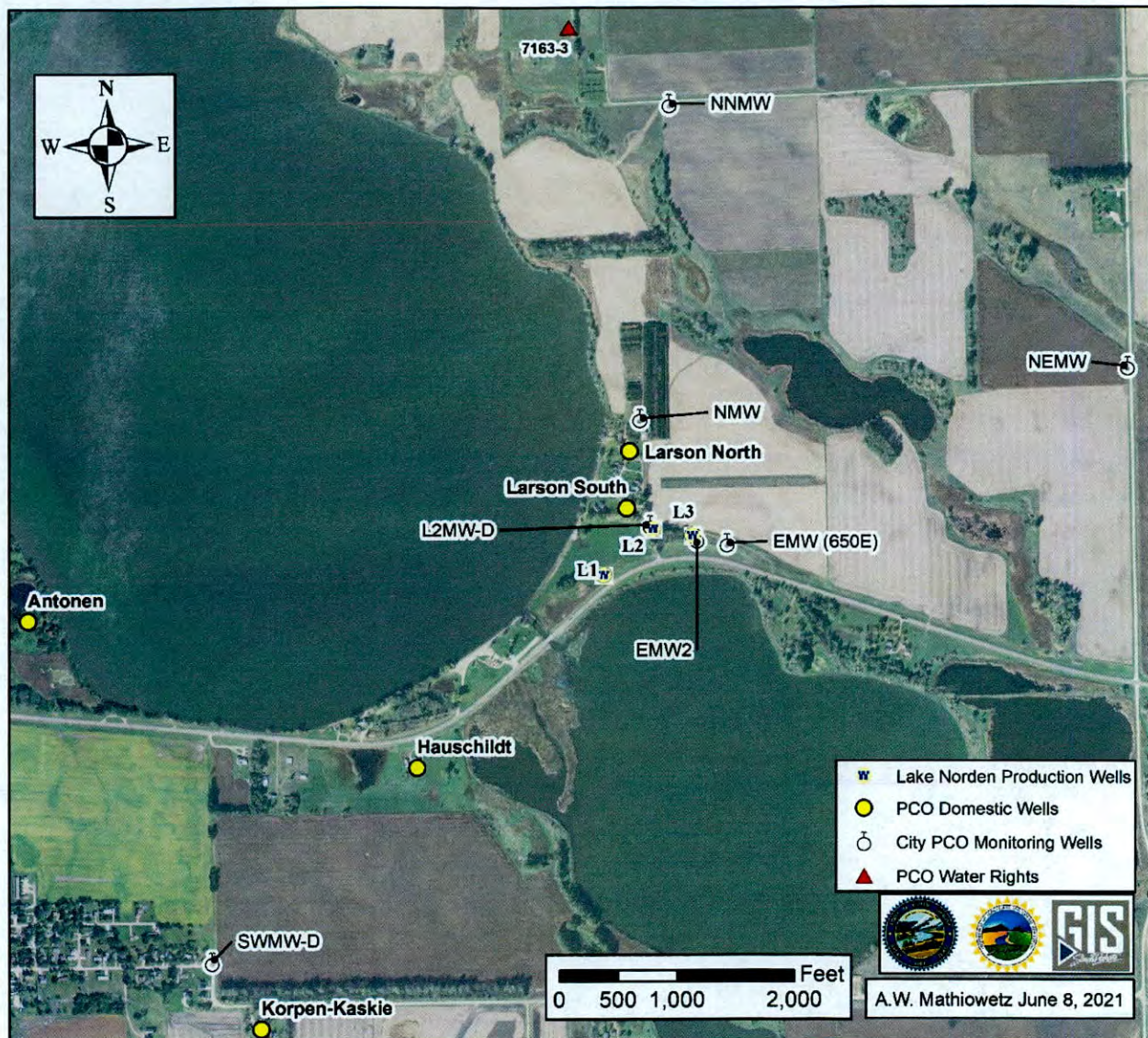


Figure 4- Prairie Coteau aquifer City of Lake Norden, appropriative, monitoring and domestic wells (LRE, 2021; Water Rights, 2021c and 2021d)

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use of water issue for Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Water Management Board adopted Findings of Facts and Conclusions of Law that noted reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, “general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable...” (Water Rights, 1995). Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered an adverse impact it would also be in conflict with SDCL 46-1-4 (Water Rights,

1995). With that in mind, some existing well owners may need to lower their pumps to accommodate for deeper water levels. However, when considering the statute (SDCL 46-6-6.1), rule (ARSD 74:02:04:20(7)), and the artesian head pressure, well interference from this proposed diversion is not expected to unlawfully impair existing appropriative or domestic users with adequate wells. Continued monitoring of the water levels in the aquifer is recommended to establish a longer-term trend for the aquifer. Several of the monitoring wells used for the aquifer performance test may be given to DANR-Water Rights Program for continued monitoring as part of South Dakota's observation well network.

CONCLUSIONS:

1. Application No. 8433-3 proposes to appropriate up to 967 ac-ft/yr at a maximum instantaneous diversion rate of 1.34 cfs from a portion of the Prairie Coteau aquifer.
2. The Prairie Coteau aquifer is under confined conditions in the area of the well sites.
3. The applicant had a 30-day constant-rate aquifer performance test conducted by Banner Associates, Inc., an engineering firm, and analyzed by LRE Water, an engineering firm, in 2021.
4. The methodology for completing the aquifer performance test and analyzing the data is sound and within published standard operating procedures for conducting a constant-rate aquifer performance test.
5. Based on the observation well data and a hydrologic budget, there is a reasonable probability unappropriated water is available for this proposed appropriation.
6. It would be prudent to have several permanent observation wells monitored by the DANR-Water Rights Program completed into this portion of the Prairie Coteau aquifer. If possible, the wells used for the aquifer performance could be used as permanent observation wells through either the granting of easements or transfer of ownership to the department, or both.
7. There is a reasonable probability the diversion proposed by this application can be made without unlawfully impairing existing appropriative or domestic users with adequate wells.



Adam Mathiowetz, PE
SD DANR-Water Rights Program

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Form 8

WATER RIGHTS
PROGRAM

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:

July 29, 2020

Cost of Printing \$90.99

Jackie Wettestad
(Signature)

Office Manager
(Title)

7-31-2020
(Date Signed)

SOUTH DAKOTA DEPARTMENT OF ENERGY AND NATURAL RESOURCES

NOTICE OF HEARING on Application No. 8433-3 to Appropriate Water

Notice is given that City of Lake Norden, PO Box 213, Lake Norden SD 57248 has filed an application for a water permit to appropriate 1,458 acre-feet of water annually at a maximum pump rate of 2.11 cubic feet of water per second from three wells completed into the Prairie Coteau Aquifer (97-114 feet deep) located in the SW 1/4 Section 15-T113N-R53W for municipal use. This site is located one mile east of the city Lake Norden. South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "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 Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board. The Chief Engineer is recommending DEFERRAL of Application No. 8433-3 for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral recommendation is so the city of Lake Norden can provide information to assist with determining if there is unappropriated water available and the potential effect of pumping on existing water users. These criteria need to be addressed as required by SDCL 46-2A-9 to determine whether a water right permit may be issued. The further study needed entails further delineation of either the aquifer boundaries or a 7-day aquifer performance test, or both. The Chief Engineer's recommendation and the application are available at <http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below. The Water Management Board will consider this application at 1:00 pm, October 7, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. 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 this application based on the facts presented at the public hearing. Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to 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 September 28, 2020.

The petition may be informal, but shall be in writing and shall 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The October 7, 2020 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 28, 2020. 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. 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. 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 publication, and the applicable date to give notice to the Chief Engineer is August 10, 2020. 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; and Board Rules ARSD 74:02:01.01 thru 74:02:01.25.02; 74:02:01.35.01. Published once at the approximate cost of \$85.99. 90.99 (July 29, 2020)

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WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hamlin) SS

I, Lee Anne Dufek

certify that the attached printed Notice was taken

from the Hamlin County
Herald Enterprise

printed and published in Hamlin

County of Hamlin and

state of South Dakota. The notice was published

in the newspaper on the following date:

July 29, 2020

Cost of Printing \$ 59.99

Lee Anne Dufek
(Signature)

Owner
(Title)

7-29-2020
(Date Signed)

16 / July 29, 2020

NOTICE OF HEARING ON APPLICATION NO. 8433-3 TO APPROPRIATE WATER

Notice is given that City of Lake Norden, PO Box 213, Lake Norden SD 57248 has filed an application for a water permit to appropriate 1,458 acre-feet of water annually at a maximum pump rate of 2.11 cubic feet of water per second from three wells completed into the Prairie Coteau Aquifer (97-114 feet deep) located in the SW 1/4 Section 15-T113N-R53W for municipal use. This site is located one mile east of the city Lake Norden.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "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 Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

The Chief Engineer is recommending DEFERRAL of Application No. 8433-3 for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral recommendation is so the city of Lake Norden can provide information to assist with determining if there is unappropriated water available and the potential effect of pumping on existing water users. These criteria need to be addressed as required by SDCL 46-2A-9 to determine whether a water right permit may be issued. The further study needed entails further delineation of either the aquifer boundaries or a 7-day aquifer performance test, or both.

The Chief Engineer's recommendation and the application are available at <http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address pro-

vided below.

The Water Management Board will consider this application at 1:00 pm, October 7, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. 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 this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to 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 September 28, 2020.

The petition may be informal, but shall be in writing and shall 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 7, 2020 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by September 28, 2020. 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.

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 you have a disability for which special arrangements must be made for the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notice must state that "if the amount in controversy exceeds \$2,500.00 or 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 notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is August 10, 2020. 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published July 29, 2020, at total cost of \$59.99.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 16, 2021

NOTICE OF HEARING

TO: Jason Aho, Mayor
City of Lake Norden
PO Box 213
Lake Norden SD 57248

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: Scheduling of Hearing on Deferred Water Permit Application No. 8433-3, City of Lake Norden

On October 7, 2020, the South Dakota Water Management Board deferred Water Permit Application No. 8433-3 for further study in order for the city to provide information to assist with determining if there is unappropriated water available and the potential effect of pumping on existing users. Subsequently, the city undertook a 30-day aquifer pumping test at Lake Norden's Prairie Coteau aquifer well field. The analysis and results of the test performed by LRI Water was provided to the Water Rights Program on May 21, 2021.

Enclosed is DANR Water Rights Program's supplemental report and the Chief Engineer's revised recommendation on Application No. 8433-3. The recommendation is for APPROVAL of Application No. 8433-3 with qualifications as listed in the recommendation.

The Water Management Board will conduct a hearing to consider deferred Application No. 8433-3 at 9:30 AM (Central Time) on Wednesday, July 7, 2021, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. **Please be aware a municipality is required to be represented by legal counsel in this administrative proceeding.** To participate in the hearing, you have two options:

Option 1. Attend the meeting in person at the Matthew Training Center in Pierre. Please note you will need to enter the Joe Foss Building from Capitol Avenue main entrance and check in at the lobby desk to get access to the Matthew Training Center meeting room.

Option 2. Audio/visual via the internet using Pexip. To be seen and heard requires a device equipped with a camera and microphone. No software install is necessary, the recommended web browser is Google Chrome. To participate, start Google Chrome and navigate to <https://ddn.sd.gov>. You will join the meeting by:

- Entering the Conference ID which is 25899
- Adding your name, and
- Selecting "guest" for the role.

Applicable provisions of the public notice published in the Hamlin Co. Herald Enterprise and Public Opinion on June 29, 2020, still apply.

Enclosure

c: Gregg Jorgenson, Banner Associates
Ann Mines Bailey, Assistant Attorney General



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7610-3, Bret Fliehs**

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. 7610-3, Bret Fliehs, 39865 137th Street, Groton SD 57445.

The Chief Engineer is recommending DEFERRAL of Application No. 7610-3 until an aquifer pump test is completed by the applicant to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer which are criteria set forth in SDCL 46-2A-9 for when a water right permit may be issued.

See report on application for additional information.

Garland Erbele, Chief Engineer
March 13, 2013

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 7610-3
BRET FLIEHS
MARCH 13, 2013

Water Permit Application No. 7610-3 proposes to develop a new water source for acreage authorized for irrigation under Water Permit No. 7287-3. Water Permit No. 7287-3 authorizes the appropriation of 720 acre-feet (ac-ft) annually at a maximum diversion rate of 5.14 cubic feet of water per second (cfs) from a dugout and a slough area located in the NW ¼ SE ¼ Section 11 for irrigation of 360 acres in the SE ¼ and N ½ Section 11; all in T122N-R62W. Water Permit Application No. 7610-3 proposes to construct 18 wells to be approximately 45 feet deep and to be located in the SE ¼ SW ¼, SW ¼ NE ¼, and SE ¼ Section 11 (three wells in each quarter-quarter) for the irrigation of 360 authorized under Water Permit No. 7287-3 in Brown County.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for 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. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

The test hole logs submitted with this application are shown in table 1.

Location	SE ¼ SE ¼ Sec 11, T122N-R60W		Location	SE ¼ SE ¼ Sec 11, T122N-R60W	
Drill Date	12/05/11		Drill Date	12/05/11	
	Depth			Depth	
Formation	From	To	Formation	From	To
Topsoil	0	1	Topsoil	0	1
Yellow Clay	1	15	Yellow Clay	1	12
Blue Clay	15	25	Blue Clay	12	18
Fine Sand	25	45	Fine Grey Sand	18	38

Table 1- Test hole logs submitted with Water Permit Application No. 7610-3

Within approximately two miles of the proposed well sites, there has not been any historic groundwater development from shallow wells (Water Rights, 2013a and 2013b). There also has not been much test hole boring within two miles of the proposed well sites (SDGS, 2013). The Geologic Map of South Dakota (Martin et. al, 2004) and Leap (1986) identify the deposits (the fine sand identified in the test hole logs) as either quaternary aged alluvium or quaternary aged lacustrine deposits. The quaternary aged alluvium lies within the "slough area" where the dugout authorized by Water Permit No. 7287-3 is located and the quaternary aged lacustrine deposit is outside of the "slough area". There is no mapped glacial outwash aquifer identified at the approximate depth of the wells. In this area, the bedrock (Pierre Shale) may be overlain by the glacial till or lake deposits, and potentially the Deep James aquifer (Koch and Bradford, 1976).

The quaternary alluvium and quaternary lacustrine deposits are likely hydraulically connected. The nearest well that is likely completed into these deposits is a domestic well approximately four miles east of the proposed well sites. The depth and geology from the well completion report agrees with the test hole logs submitted with this application. There are no DENR-Water Rights Program observation wells completed into these deposits. The recharge source and the quantity of recharge for these deposits is not known. The areal extent of these deposits is not clearly defined. Sufficient information is not available at this time to accurately appraise the potential aquifer characteristics of the quaternary aged alluvium and lacustrine deposits in this area. An aquifer pump test including monitoring wells should be conducted to aid in the evaluation of this potential aquifer and to allow for the consideration of the availability of unappropriated water from the aquifer and potential impacts to existing users, as required by SDCL 46-2A-9.

CONCLUSIONS:

1. Information is not available to determine if unappropriated water is available for this proposed development of a new water source.
2. Information is not available to determine if this proposed appropriation would adversely impair existing users.
3. An aquifer pump test should be conducted to allow evaluation of any "minor" aquifer that would be encountered at these proposed well sites.



Adam Mathiowetz
SD DENR-Water Rights Program

Approved by:



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
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June 16, 2021

NOTICE OF HEARING

TO: Bret Fliehs
39865 137th Street
Groton SD 57445

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
SD DENR, Water Rights Program

SUBJECT: Scheduling of Hearing on Deferred Water Permit Application No. 7610-3, Bret Fliehs

On May 2, 2013, the Water Management Board deferred consideration of Water Permit Application No. 7610-3 to appropriate groundwater from eighteen wells for irrigation of 360 acres permitted under Water Permit No. 7287-3. The deferral was based on the need for an aquifer pump test to allow evaluation of the potential aquifer including the availability of unappropriated water and potential impacts to existing users from the aquifer.

In response to a request from Karen Schlaak with the Water Rights Program, you responded via email on April 21, 2021, asking that Water Permit Application No. 7610-3 be withdrawn. Since it is no longer your intention to seek approval of the application, attached is a revised recommendation to the Water Management Board to deny Application No. 7610-3. If the board denies the application, seventy-five percent of the application filing fee will be refunded along with the inspection fee for a total of \$575.00.

The Water Management Board will conduct a hearing to consider deferred Application No. 7610-3 at 9:30 AM (Central Time) on Wednesday, July 7, 2021, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided if there is a change to the hearing date, time, or location. If you do not contest denial of the application, you do not need to attend the hearing.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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**REVISED RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT APPLICATION NO. 7610-3, Bret Fliehs**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 7610-3, Bret Fliehs, 39865 137th St., Groton SD 57445.

The Chief Engineer is recommending **DENIAL** of Application No. 7610-3 since water availability and potential impacts to existing users cannot be assessed without completion of an aquifer performance test. The applicant has requested the application be withdrawn. Denial of the application will allow seventy five percent of the application fee to be returned to the applicant along with the inspection fee.

Eric Gronlund, Chief Engineer
June 16, 2021



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8450-3, Tom Nuhsbaumer**

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. 8450-3, Tom Nuhsbaumer, 17781 370th Ave, Zell SD 57469.

The Chief Engineer is recommending APPROVAL of Application No. 8450-3 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 wells approved under Water Permit No. 8450-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his 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 wells authorized by Permit No. 8450-3 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8450-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 101.4 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer
May 10, 2021

REPORT TO THE CHIEF ENGINEER

Water Permit Application No. 8450-3

Tom Nuhsbaumer

April 29, 2021

Water Permit Application No. 8450-3 proposes to appropriate water at a maximum instantaneous diversion rate of 1.78 cubic feet per second (cfs) for the irrigation of 101.4 acres. The proposed diversion points are four wells to be completed into the Pleistocene Series: Unknown aquifer with well depths less than 60 feet. The location of the proposed wells and the proposed acres is in the NE ¼ of Section 5 T115N-R66W. This application is requesting a diversion rate that exceeds the statutory limit of 1 cfs per 70 acres. This application is in Hand County and located approximately 6.5 miles south of Rockham, SD.

Aquifer: Pleistocene Series: Unknown (PS:U)

HYDROGEOLOGY

The glacial geology in the area of the application was deposited during the Late Wisconsin glaciation. In Hand County, these deposits range in thickness from zero to 500 feet (Helgeson and Duchossois, 1987). The hydrogeology in the area of this application has been studied in the past as part of the Oahe Unit of the Missouri River Basin Project in the 1950's and again in the 1980's as part of the Central South Dakota Water Supply System (abbreviated as CENDAK). As part of the 1980's investigations into the aquifer, additional drilling was completed in Hand County to identify a site to conduct a pumping test of the Tulare aquifer. This additional drilling found that the areal extent of the Tulare aquifer that can produce significant yields was significantly less than area delineated in Koch's (1980) and Hedges' et al. (1982) reports (James M. Montgomery, 1986). Later mapping of the geology and aquifer materials in Hand County shows a much-reduced area of aquifer materials within the county (James M. Montgomery, 1986; CENDAK, 1987; Rich, 2013).

The well log submitted with the application shows that the driller encountered yellow clay from 1 to 6 feet, sand and gravel from 6 to 10 feet, yellow clay from 10 to 13 feet, brown medium sand from 13 to 17 feet, medium to coarse gray sand from 17 to 23 feet, coarse sand to gravel from 23 to 35 feet, coarse gravel from 35 to 41 feet, and blue clay from 41 to 60 feet. The static water level at the time of well completion (Dec. 28, 2020) was 10.8 feet below ground surface, indicating that the aquifer in the immediate area of this application may be under locally confined conditions.

The location of this well is within the boundaries of the Tulare aquifer as identified by Koch (1980) and within the boundaries of the Western Spink management unit of the Tulare aquifer as identified by Hedges et al. (1982). However, with the reduced aquifer areas as identified by James M. Montgomery (1986) and Rich (2013), and the variability in thickness and lateral continuity of the outwash (CENDAK Drainage Steering Committee, 1987), a look into local geology near the application was warranted. All available lithologic logs and well completion reports were reviewed in townships T115N R66W (Wheaton), T116N R66W (Plato), T116N R67W (Linn), and T115N 67W (Carlton) (SD Geological Survey, 2021; Water Rights, 2021b). After reviewing the lithologic logs and well completion reports, a cross-section through the area

was constructed and an areal extent of this material was estimated (Figure 1) with an approximate area of 5,000 acres. The lithologic logs and well completion reports show that a body of outwash material exists below an approximate elevation of 1,340 feet with a thickness ranging from 9 to 43 feet. This interval of outwash material corresponds to the outwash material that the proposed well is completed into. Above this body of outwash lies approximately 30 to 60 feet of additional glacial material consisting primarily of weathered and unweathered glacial till with a smaller body of outwash located near the surface. At the location of this application, the body of outwash is covered by less than 15 feet of yellow clay, which is likely weathered till.

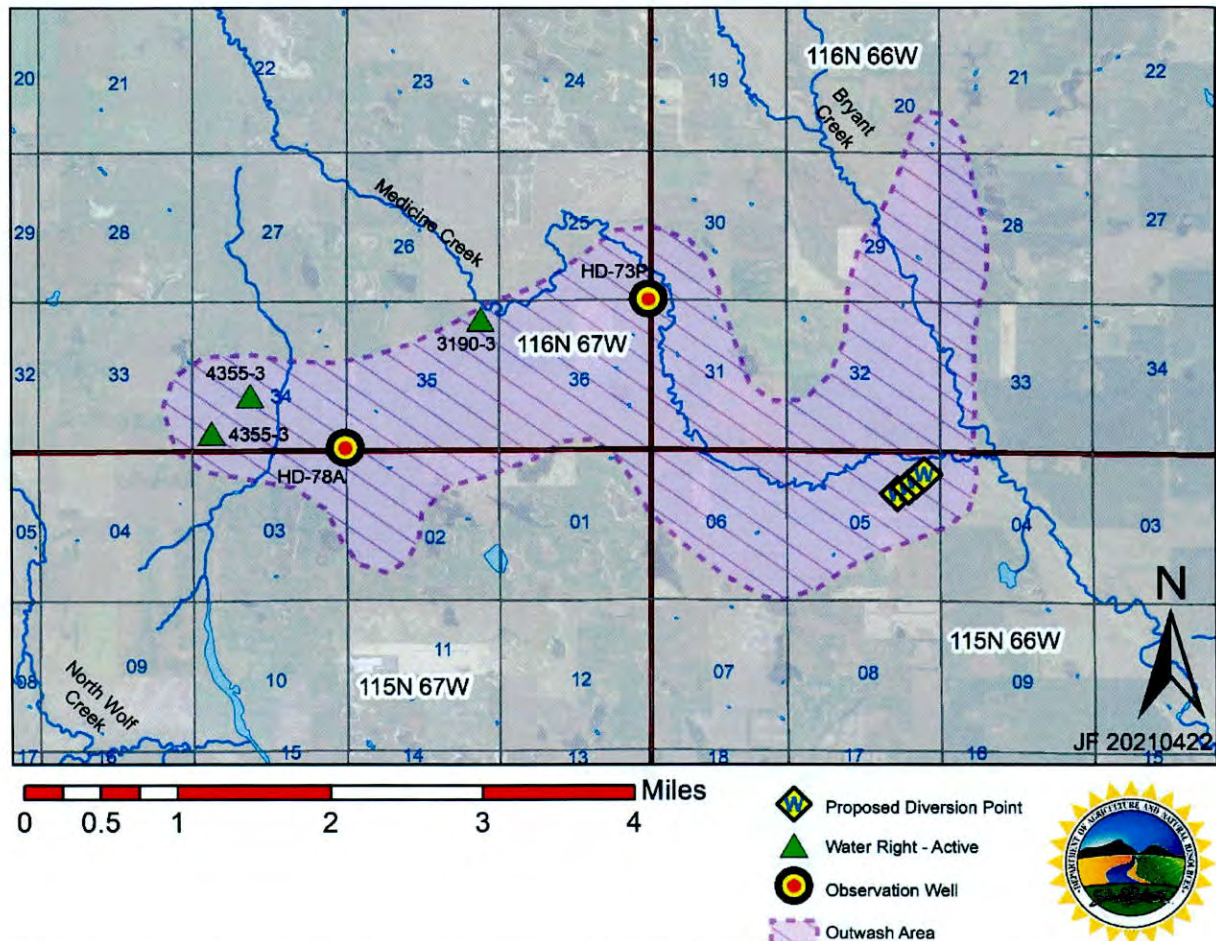


Figure 1. Map showing the location of the proposed diversions, active water rights and observation wells completed into this deposit of Pleistocene Series: Unknown aquifer, and the identified approximate extents of the Pleistocene Series: Unknown aquifer (Water Rights, 2021a; Water Rights, 2021c)

The surficial geology at the applicant's location is identified as being "outwash-alluvium" (CENDAK Drainage Steering Committee, 1987) or as part of the "Alluvium/Outwash Complex" (Helgeson and Duchossois, 1987). Outwash-alluvium occurs in stream channels and meltwater channels and may contain outwash sand and gravel that is overlain by finer-grained alluvial material. Outwash-alluvium is a highly variable geologic unit due to the variability of the individual thicknesses of the sand and gravel deposits; the combined thicknesses may reach 50

feet (CENDAK Drainage Steering Committee, 1987). The well log and test holes completed by the applicant in Section 5 show that the driller encountered several layers of yellow clay (weathered till) down to 12-15 feet below ground surface. Interspersed within the layers of yellow clay were layers of brown sand and/or gravel, indicating that the sand and gravel that the applicant's well is completed into can be considered as part of the outwash-alluvium.

Considering the complex geology in the area of this application due to parts of this outwash deposit being buried beneath unweathered till and other parts considered as part of the outwash-alluvium, the aquifer that this application proposes to withdraw water from is the Pleistocene Series: Unknown (PS:U). The Pleistocene Series: Unknown aquifer is not a contiguous aquifer body, it is a name applied to aquifers of glacial origin that are found to not be a part of a larger previously identified aquifer. This portion of the Pleistocene Series: Unknown aquifer is a distinct and separate portion from other Pleistocene Series: Unknown aquifers across South Dakota.

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

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for 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. This report will address the availability of unappropriated water and existing rights within this portion of the Pleistocene Series: Unknown aquifer.

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 that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older than or stratigraphically lower than the Greenhorn Formation and a water distribution system as defined by SDCL 46-1-6 (17) has applied for a permit, the Board need not take into consideration the balance of aquifer recharge and withdrawal. Here, the water source is not older or lower than the Greenhorn Formation and a water distribution system is not involved. Therefore, the balance of withdrawal and recharge must be considered.

Hydrologic Budget

Recharge

Recharge to this deposit of Pleistocene Series: Unknown aquifer is likely to occur through infiltration of precipitation and by groundwater inflow from adjacent and hydrologically connected pieces of outwash. Studies analyzing water movement through the glacial till have found that the water movement through the weathered portions is three to four orders of magnitude greater than the water movement through the unweathered portions (CENDAK Drainage Steering Committee, 1987). A pumping test conducted as part of the CENDAK project found that the water moved too slowly through the confining glacial till layers to allow proper drainage of the proposed CENDAK irrigation project (James M. Montgomery, 1986). However, given enough time with a vertical hydraulic gradient, water does infiltrate through the unweathered till (Cowman, 1996). Cowman (1996) used a typical hydraulic vertical gradient for

unweathered till of 0.4 to calculate an average Darcy velocity, or the rate that water can be transmitted through the till, which ranged between 0.10 and 0.13 inches per year. Multiplying the Darcy velocity by the area of recharge produces an estimate of the volume of water that is being recharged per year through infiltration. Considering that this deposit of Pleistocene Series: Unknown is only partially beneath unweathered till, a composite recharge rate will need to be used to estimate the average annual recharge.

The most conservative estimate of recharge to this piece of Pleistocene Series: Unknown aquifer would be to estimate it as if the entire area of 5,000 acres received recharge through unweathered till. Using the Darcy velocity of 0.10 inches per year, the estimated average annual recharge would be 42 acre-feet per year. However, the eastern portion of this piece of aquifer is shallower and not located beneath unweathered till, this area can be conservatively estimated as encompassing 1,000 acres. The recharge rate to this shallower material that may be identified as outwash-alluvium has not been estimated; however, recharge to the unconfined portions of what was identified as the Tulare: Hand aquifer by Hedges et al. (1985) was estimated to be 3.4 inches per year. It is unknown which observation wells were included in the analysis by Hedges et al. (1985), but the geology of the other unconfined observation wells in Hand County is hydrologically similar. The recharge to these 1,000 acres at an estimated recharge rate of 3.4 inches per year results in 283.3 acre-feet of water being recharged on average annually. The remaining 4,000 acres at a recharge rate of 0.10 inches per year would add an additional 33.3 acre-feet of water to the estimated average annual recharge. The total estimated average annual recharge to this portion of the Pleistocene Series: Unknown aquifer is 316.6 acre-feet per year.

Discharge

This application is seeking to irrigate 101.4 acres. Assuming that the soil types are similar to the soil encountered in the area of the Western Spink Hitchcock management unit of the Tulare aquifer, located to the southeast of this application, the estimated amount of water applied to crop irrigation has averaged less than 10 inches per year (Farmer, 2020). This application would require an estimated average of 85 acre-ft of water annually with an estimated average application rate of 10 inches per year.

There are five other water rights that have appropriated water out of this portion of the Pleistocene Series: Unknown aquifer. These five water rights are all currently identified as being completed into the Tulare: Hand aquifer, however with the data that is currently available, they should be identified as being completed into this portion of the Pleistocene Series: Unknown aquifer. All five were for irrigation use and their current status is included in Table 1. Annual irrigation withdrawals as reported by the irrigators is shown in Figure 2.

Report on Water Permit Application No. 8450-3

Table 1: Summary of irrigation water rights/permits (Water Rights, 2021a)

Water Right Holder	Water Right Number	Water Right Status	Approved Acres [acres]	Diversion Rate Limit [cfs]	Active Irrigation Years ^{ve}	Average Withdrawal [acre-feet]
Daelyn Sanger	3110-3	IL	152*	2.1	1979-1988 ^{IL}	See 3190-3
Daelyn Sanger	3190-3	LC	264	1.55	1979-2013 ^{ve}	65.0
Clifford Jackson	3423-3	CA	160*	2.0	NC	N/A
Daelyn Sanger	4016-3	CA	160*	2.2	NC	N/A
Kraig Jackson	4355-3	LC	133	1.67	1979-2020	99.6
LC = License, IL = Incorporated into another License, PE = Permit, CA = Canceled						
* = Acres no longer approved under this water right, NC = Not Constructed, N/A = Not Applicable						
ve = Active irrigation years excluding continuous years of non-irrigation independent of valid legal excuse status						

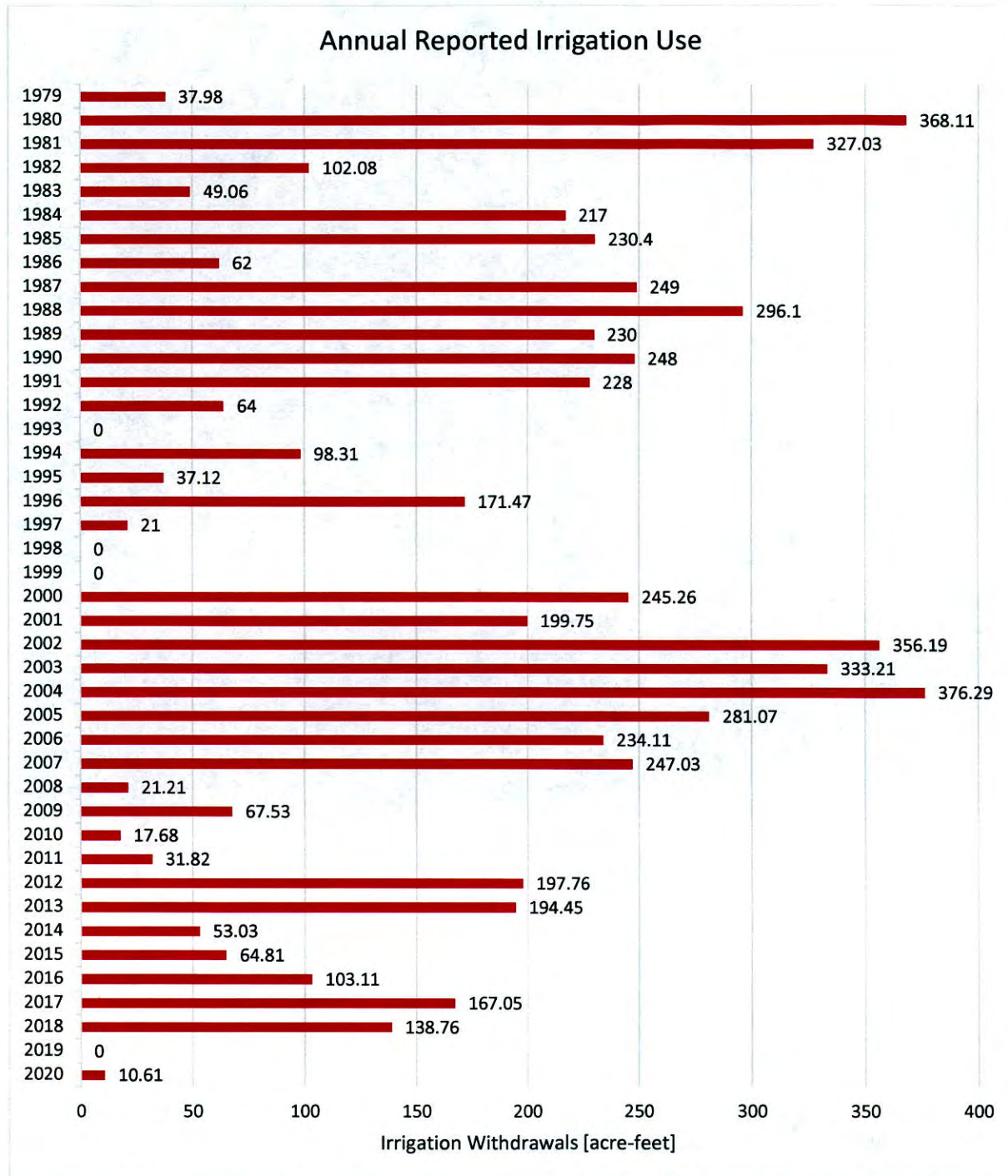


Figure 2: Reported irrigation use from this portion of the Pleistocene Series: Unknown aquifer (Water Rights, 2021d; Water Rights, 2021e)

The average withdrawal calculation for Water Right No. 3190-3 is only for the period of 1979-2013 as it has not been used for irrigation since the 2013 irrigation season. The annual irrigation questionnaires for Water Right No. 3190-3 for the years of 2016, 2017, and 2019 all indicate that the irrigation system was damaged, and the irrigation questionnaire for 2018 was marked as “use abandoned” (Water Rights, 2021d). The calculation for Water Right No. 3190-3 also includes the withdrawals from Water Permit No. 3110-3 as it was eventually incorporated into Water Right No. 3190-3.

For the purposes of estimating average annual withdrawals, the calculated average irrigation withdrawals of Water Right Nos. 3190-3 and 4355-3 in Table 1 are assumed to be reflective of their ongoing use. The estimated average annual withdrawal from these two water rights is 164.6 acre-feet per year. There is likely some domestic use from this portion of the Pleistocene Series: Unknown aquifer; however, it is negligible to the hydrologic budget. The estimated average annual withdrawal from this application is 85 acre-feet per year. In total, the estimated average annual withdrawals, if this application is approved, is 249.6 acre-feet per year.

Hydrologic Budget

The estimated average annual withdrawal from this portion of Pleistocene Series: Unknown aquifer is 249.6 ac-ft/yr, including the use for irrigating the 101.4 acres as proposed by this application. The estimated average annual recharge to this portion of Pleistocene Series: Unknown aquifer is 316.6 ac-ft/yr. Therefore, based upon the estimated average annual recharge being greater than the estimated average annual withdrawals, there is a reasonable probability there is unappropriated water available from this portion of Pleistocene Series: Unknown aquifer for this application.

Observation Well Data

In determining the availability of unappropriated water for a permit application Administrative Rule of South Dakota (ARSD) 74:02:05:07 requires the Water Management Board to rely on 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 annual recharge.

The Water Rights Program currently maintains 2 observation wells completed in this portion of Pleistocene Series: Unknown aquifer (Water Rights, 2021c). These two observation wells are currently identified as being completed into the Tulare: Hand aquifer; however, with the data that is currently available, they should be identified as being completed into this portion of the Pleistocene Series: Unknown aquifer. The nearest observation well is HD-73P, located just over 2 miles northwest of the proposed well locations for this application.

The observation well hydrographs shown in Figure 3 and 4 are representative of this portion of Pleistocene Series: Unknown aquifer. The hydrographs show that the aquifer responds well to hydrologic conditions, recharging during wetter periods and declining during drier periods. The observation well measurements show that the effects from seasonal changes in hydrologic conditions and pumping are temporal, and that the aquifer has remained relatively stable over the period of record. Observation Well HD-78A is located near the two water rights within this portion of the Pleistocene Series: Unknown aquifer and shows the seasonal drawdown effects of irrigation and subsequent recovery of the aquifer. The observation well data indicates that there

is a reasonable probability unappropriated water is available from this portion of Pleistocene Series: Unknown aquifer.

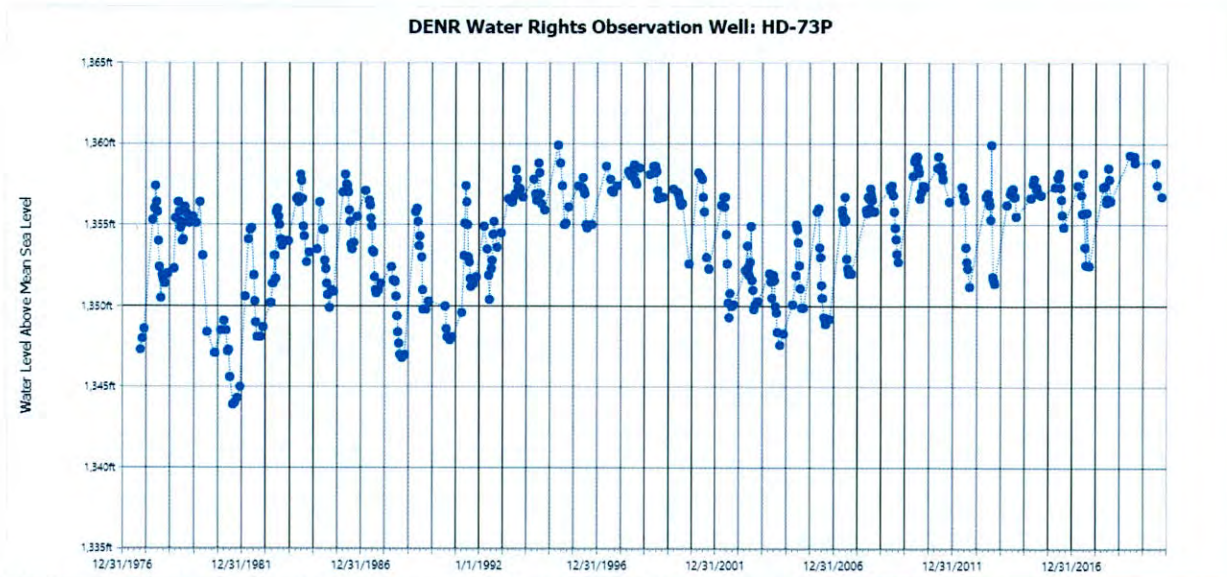


Figure 3: Hydrograph for Observation Well HD-73P (Water Rights, 2021c)

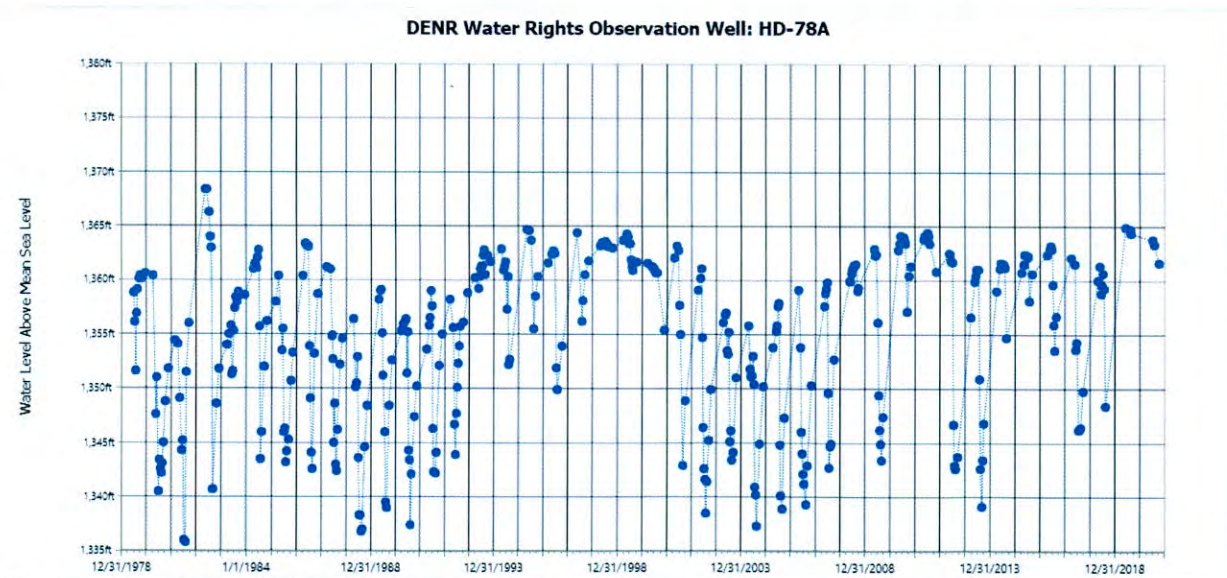


Figure 4: Hydrograph for Observation Well HD-78A (Water Rights, 2021c)

Potential for unlawful impairment of existing water rights

There are 2 water rights/permits appropriating water from this portion of Pleistocene Series: Unknown aquifer (Water Rights, 2021a). The location of the diversion points for water rights/permits authorized to withdraw water in the vicinity of this application are shown in Figure 1. The nearest existing water right/permit is held by Daelyn Sanger and is located 3 miles to the west-northwest of the applicant's proposed diversion. The nearest domestic well on file with the SD DANR is located just over half of a mile north of the proposed diversion location for

this application (Water Rights, 2021b). This domestic well was drilled for Carl Nuhsbaumer and is on land owned by the applicant. There are other domestic wells in the area; however, they are much deeper and likely completed into the Dakota Formation.

This application is in an area of this portion of the Pleistocene Series: Unknown aquifer that is likely under conditions that behave like an unconfined aquifer; however, there may be locations where the aquifer may exhibit locally confined conditions. Due to the behavior of unconfined aquifers, drawdown from well withdrawals within unconfined aquifers is generally not significant at distances far from the pumping well. In the past, the Water Management Board has recognized that to place water to the maximum beneficial use, a certain amount of drawdown may occur. With no history of well interference complaints from users in this portion of the Pleistocene Series: Unknown aquifer, adequate wells (ARSD 74:02:04:20(6)) are not expected to be unlawfully impaired if this proposed appropriation is approved.

SDCL 46-5-6:

Pursuant to SDCL 46-5-6, the diversion rate for an irrigation appropriation cannot be in excess of one cfs for every 70 acres, or “the equivalent thereof.” The statute does provide that: “The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land.” Water Permit Application No. 8450-3 proposes to divert water at a maximum rate of 1.78 cfs for the irrigation of 101.4 acres or at a rate of 1.229 cfs per 70 acres. The application is for a center pivot irrigation system; however, the pivot length is shorter than a typical quarter section pivot system. Due to the operational requirements of the irrigation system, a certain amount of diversion rate is required, independent of the number of acres the system covers. The reason for this request is reasonable and has been accepted by the Water Management Board in the past.

Conclusions

1. Water Permit Application No. 8450-3 proposes to appropriate water for the irrigation of 101.4 acres at a maximum diversion rate of 1.78 cubic feet per second (cfs) from up to four wells to be completed into the Pleistocene Series: Unknown aquifer in Hand County.
2. The portion of the Pleistocene Series: Unknown aquifer that this application proposes to use has been estimated to encompass an area of 5,000 acres using the best reasonably available information from well completion reports, test holes, and lithologic logs.
3. Water Permit Application No. 8450-3 has requested a diversion rate exceeding the statutory limit of one cfs per 70 acres. It is a reasonable request and similar requests have been accepted by the Water Management Board in the past.
4. Based on observation well data and the hydrologic budget, there is a reasonable probability that unappropriated water is available from this portion of the Pleistocene Series: Unknown aquifer.

5. There is a reasonable probability that the diversion proposed by this application will not unlawfully impair adequate wells for existing water rights and domestic uses.



John Farmer
SD DANR – Water Rights Program

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Water Rights. 2021d. Irrigation Questionnaire Database. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

STATE OF SOUTH DAKOTA)
)SS
County of Hand)

Tom Whisbauer to appropriate water

6/12 20 21 : _____ 20 _____
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\$ 58⁴⁷

Subscribed and sworn to before me
this 14 day of June 2011

Tom Nuhsbaumer to appropriate water

Published June 12, 2021 at approximate cost of \$58.4.-

Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402

RECEIVED

JUN 01 2021

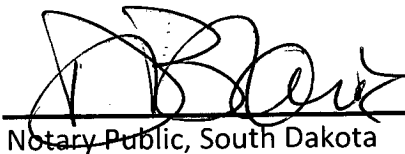
WATER RIGHTS
PROGRAM

Legal Notice Number: 0872

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: SD ENVIRONMENTAL & NATURAL- NUHSBAUMER, was published for one day, in said newspaper and not in any supplement of the said newspaper, the publication was on - 5/22/21. That the full amount of the fee charged for the publishing \$ 60.96 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to me before this date 5/26/21.


Notary Public, South Dakota

My Term Expires 03/11/2022

F. P. 05-22-21

NOTICE OF APPLICATION

NO. 8450-3 to Appropriate Water Notice is given that Tom Nuhsebaumer, 17781 370th Ave, Zell SD 57419 has filed an application for a water permit to appropriate 1.78 cubic feet of water per second (cfs) from four wells to be completed into the Pleistocene Series/Unknown Aquifer (50 feet deep) located in the NE 1/4 Section 5 to irrigate 101.4 acres located in the NE 1/4 Section 5; all in T154N-R65W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located approximately 7 miles southwest of Zell SD.

South Dakota Codified Law (SDCL) 49-2A-4(10) provides that "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 Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 49-2A-2, the Chief Engineer recommends Approval of Application No. 8450-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unreasonably 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/> or contact Ron Dowd for this information, or other information, at the Water Rights Program address provided below. The Water Management Board will consider this application at 9:30 am on July 7, 2021 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. 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 this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501 (605 778-3352)" 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 28, 2021.

The petition may be informal, but shall be in writing and shall 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 7, 2021 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 June 28, 2021.

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.

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) 778-3352.

Under SDCL 49-2B-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 49-2B-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 1, 2021. 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 49-2B-10 thru 49-2B-20; SDCL 49-1-1 thru 49-1-18; 49-2-1, 49-2-8, 49-2-11, 49-2-17, 49-2A-1 thru 49-2A-12, 49-2A-14, 49-2A-15, 49-2A-20, 49-2A-21, 49-2A-22, 49-5-1, 49-5-2 thru 49-5-28, 49-5-30.2 thru 49-5-30.4, 49-5-31, 49-5-32 thru 49-5-34.1, 49-5-38 thru 49-5-39, 49-5-48, 49-5-47, 49-5-49; 49-6-1 thru 49-6-3.1, 49-6-6.1, 49-6-10, 49-6-13, 49-6-14, 49-6-21, 49-6-28; and Board Rules ARSD 74:02-01:01 thru 74:02-01:25:02; 74:02-01:35:01.

No. 0872 (adv.) Published once at the total approximate cost of \$80.05.

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WATER RIGHTS
PROGRAM

CANCELLATIONS – July 7, 2021

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
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DIVISION I WATER PERMIT

PE 1954-1	Katmandu Enterprises LLC	Same (% Mike Russell)	MD	0.23	COM	NC	Ground water, one well Madison or Minnelusa Aquifer	6-3-2021	
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DIVISION II WATER PERMITS

PE 2632-2	City of Box Elder	Same (% Bob Kaufman)	PE	1.00	MUN	NC	Ground water, one well Madison Aquifer	6-7-2021	
PE 2646-2	Fred Rittberger & Sons Inc	same	CU	2.00	IRR	NC	Cheyenne River	6-3-2021	
PE 2745-2	Croell Redi Mix	Same (% Kyle Frisinger)	PE	0.33	IND DOM	A	Ground water, one well Deadwood Aquifer	6-3-2021	

DIVISION III WATER PERMITS AND WATER RIGHT

RT 164-3	Debra L Hansen	Debra L Hansen, Alan Flyger	TU	1.12	IRR	A/F	Ground water, one well Parker Centerville Aquifer	6-3-2021	
PE 6853-3	Pine Knoll Inc.	Same (% Don Boyd)	TU	0.26	IRR	NC	Ground water, one well Upper Vermillion Missouri	6-3-2021	
PE 6853A-3	Pine Knoll Inc.	Same (% Don Boyd)	TU	---	IRR	NC	Ground water, one well	6-3-3021	
PE 7016-3	Richard Kor	Same	BG	0.67	COM	A	Tributary of Six Mile Creek	6-7-2021	
PE 7420-3	Rick Even	Same	BG	2.22	IRR	NC	Ground water, one well Rutland Aquifer	6-3-2021	
PE 7536-3	Eugene Kleinjan	Same	BG	1.33	IRR	NC	Ground water, one well Big Sioux Brookings Aquifer	6-3-2021	
PE 7672-3	Mayfield Hutterian Brethren	Same (% Joe Waldner)	CK	11.09	IRR	NC	Dry Lake	6-3-2021	
PE 7673-3	Mayfield Hutterian Brethren	Same (% Joe Waldner)	CK	1.93	IRR	NC	Ground water, one well Prairie Coteau Aquifer	6-3-2021	
PE 7992-3	Porter Farm Inc.	Same (% Mark Porter)	BG	1.78	IRR	NC	Ground water, one well Big Sioux Brookings Aquifer	6-3-2021	

ABBREVIATIONS				PAGE 1
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE	
FU = FUTURE USE PERMIT	VR = VESTED WATER RIGHT	PE = WATER PERMIT	RT = WATER RIGHT	
IRR = IRRIGATION	GEO = GEOTHERMAL	COM = COMMERCIAL	MUN = MUNICIPAL	
INS = INSTITUTIONAL	GWR = GROUND WATER REMEDIATION	DOM = DOMESTIC	IND = INDUSTRIAL	




**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
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PIERRE SD 57501-3182
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June 3, 2021

NOTICE OF CANCELLATION

TO: Mike Russell, Katmandu Enterprises LLC, 12927 Katmandu Lane, Sturgis SD 57785

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program 

SUBJECT: Cancellation of Water Permit No. 1954-1

Water Permit No. 1954-1 authorizes diversion of water from the Madison or Minnelusa Aquifer for commercial use in a campground. On May 11, 2021, Steve Quissell with our program, contacted you to set up a possible licensing investigation for the water permit. It is our understanding the well was never drilled. The date for completion of works, as specified in the permit, lapsed August 10, 2020. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1954-1 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 1954-1 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1954-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 1954-1, KATMANDU ENTERPRISES LLC

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 1954-1.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On May 11, 2021, Steve Quissell with the Water Rights Program contacted the permit holder and found the well authorized under the permit had not been drilled and the project was not developed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 7, 2021

NOTICE OF CANCELLATION

TO: Bob Kaufman, City of Box Elder, 420 Villa Dr., Box Elder SD 57719

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 2632-2

Water Permit No. 2632-2 appropriates 435 acre feet of water annually from one well into the Madison Aquifer located in the NW ¼ NW ¼ Section 27, T2N, R8E. The well described in the permit was to have been completed in 2013 and water placed to beneficial use in 2017. On June 3, 2021, confirmation was received from you indicating the well described in the permit was not constructed. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2632-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2632-2 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2632-2 based upon facts presented at the public hearing. Our records show the city to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 18, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2632-2, CITY OF BOX ELDER

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 2632-2.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

In 2017, a staff inspector met with Bob Kaufman to complete investigations for licensing purposes on several water permits. At that time, the well for No. 2632-2 was not yet constructed but time remained on placing water to beneficial use. On June 3, 2021, Mr. Kaufman confirmed the well had not been constructed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 7, 2021

Notes:

- Cancellation of the water permit does not prohibit a new application for this project in the future.
- Cancellation of the water permit does not pertain to other water permits or rights held by the city.



**DEPARTMENT of AGRICULTURE
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June 3, 2021

NOTICE OF CANCELLATION

TO: Fred Rittberger & Sons Inc., 25111 Rittberger Rd., Hermosa SD 57744

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 2646-2

Water Permit No. 2646-2 authorizes diversion of water from the Cheyenne River to irrigate 97 acres in portions of Section 33, T5S, R9E. On April 26, 2021 we contacted Kibben Rittberger concerning the project authorized under this permit. It is our understanding the project has not been developed. The time limit for completion of works, as specified in the permit lapsed on May 3, 2015 with the date set for putting water to beneficial use on May 3, 2019. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2646-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2646-2 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2646-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

June 3, 2021
Fred Rittberger & Sons Inc.
Page 2

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2646-2, FRED RITTBERGER & SONS INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 2646-2.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On April 26, 2021, Kibben Rittberger indicated the project had not been developed and the acreage had not been irrigated.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 3, 2021

NOTICE OF CANCELLATION

TO: Kyle Frisinger, Croell Redi Mix, PO Box 1352, Sundance WY 82729

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 2745-2

Water Permit No. 2745-2 authorizes diversion of water from the Deadwood Aquifer for industrial and domestic purposes. In April 2021 Steve Quissell with our program met with Travis Kirsch as part of a licensing investigation for a Madison well Croell Redi Mix has permitted. It is our understanding the company no longer wishes to proceed with development of the Deadwood Aquifer well and has requested cancellation of the permit. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2745-2 for abandonment.

The Water Management Board will consider cancellation of Water Permit No. 2745-2 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 2745-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 2745-2, CROELL REDI MIX

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 2745-2.

The Chief Engineer is recommending cancellation of the above water permit for abandonment.

Through part of a licensing investigation for another water permit Croell Redi Mix holds, the company confirmed they no longer intend to develop the Deadwood Aquifer well authorized under Permit No. 2745-2 and have requested cancellation of the water permit.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



**DEPARTMENT of AGRICULTURE
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June 3, 2021

NOTICE OF CANCELLATION

TO: Debra L. Hansen, 1208 S Dunham Circle, Sioux Falls SD 57106
Alan Flyger, 27964 454th Ave., Parker SD 57053

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Right No. 164-3

Water Right No. 164-3 authorizes diversion of water from ground water into the Parker Centerville Aquifer to irrigate the N ½ NW ¼ Section 9, T98N, R53W in Turner County. On May 18th and May 24th, 2021, Genny McMath with our program spoke with each of you concerning the use of water as authorized under the water right. It is our understanding the irrigation system has been removed from the land and irrigation discontinued. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 164-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 164-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 164-3 based upon facts presented at the public hearing. Our records show Debra Hansen to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

June 3, 2021
Debra L Hansen
Alan Flyger
Page 2

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 164-3, DEBRA L HANSEN**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 164-3.

The Chief Engineer is recommending cancellation of the above water right for abandonment and/or forfeiture.

Information submitted with the annual irrigation questionnaire indicated the use of water had been abandoned. Both the renter and the land owner of the property covered under the water right confirmed the irrigation system had been removed and the acreage was no longer irrigated.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 3, 2021

NOTICE OF CANCELLATION

TO: Don Boyd, Pine Knoll Inc., 4505 W 12th St, Sioux Falls SD 57107

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit Nos. 6853-3 and 6853A-3

Water Permit No. 6853-3 appropriated additional water with construction of an additional well to irrigate land authorized under Water Right No. 3541-3. The project was to have been completed in August 2012. Water Permit No. 6853A-3 was obtained to extend the length of time to complete construction until August 13, 2016. During an April 27, 2021 phone conversation with Genny McMath in our program, you confirmed the additional well had not been drilled. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 6853-3 and 6853A-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 6853-3 and 6853A-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 6853-3 and 6853A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by these water permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NOS. 6853-3 AND 6853A-3, PINE KNOLL INC

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 6853-3 and 6853A-3.

The Chief Engineer is recommending cancellation of the above water permits due to non-construction.

The 2020 irrigation questionnaire indicated the project had not been constructed. In follow-up to a letter concerning the permits, Mr. Boyd contacted the office and indicated the additional well had not been drilled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 3, 2021

NOTICE OF CANCELLATION

TO: Don Boyd, Pine Knoll Inc., 4505 W 12th St, Sioux Falls SD 57107

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit Nos. 6853-3 and 6853A-3

Water Permit No. 6853-3 appropriated additional water with construction of an additional well to irrigate land authorized under Water Right No. 3541-3. The project was to have been completed in August 2012. Water Permit No. 6853A-3 was obtained to extend the length of time to complete construction until August 13, 2016. During an April 27, 2021 phone conversation with Genny McMath in our program, you confirmed the additional well had not been drilled. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 6853-3 and 6853A-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 6853-3 and 6853A-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 6853-3 and 6853A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by these water permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NOS. 6853-3 AND 6853A-3, PINE KNOLL INC

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 6853-3 and 6853A-3.

The Chief Engineer is recommending cancellation of the above water permits due to non-construction.

The 2020 irrigation questionnaire indicated the project had not been constructed. In follow-up to a letter concerning the permits, Mr. Boyd contacted the office and indicated the additional well had not been drilled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 7, 2021

NOTICE OF CANCELLATION

TO: Richard Kor, 20084 474th Ave., White SD 57276

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7016-3

Water Permit No. 7016-3 authorized diversion of water from a tributary to Six Mile Creek for commercial use for ethanol production. On June 3, 2021, a staff inspector contacted you concerning possible inspection of the project for licensing purposes. You advised no water had been used for several years and there was no intent to do so in the future. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7016-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 7016-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7016-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 18, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7016-3, RICHARD KOR**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7016-3.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment.

On June 3, 2021, a staff inspector contacted the permit holder to set up a licensing investigation. Mr. Kor requested the permit be cancelled since he had not used water for several years and no longer intended to.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 7, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 3, 2021

NOTICE OF CANCELLATION

TO: Rick Even, 48504 210th St., Elkton SD 57026

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7420-3

Water Permit No. 7420-3 authorizes diversion of water from the Rutland Aquifer for irrigation of the W ½ Section 28, T110N, R47W. On May 11, 2021, a staff member contacted you concerning a possible inspection of the project for licensing purposes. You confirmed the irrigation project had not been developed. The time limit for completion of works as specified in the permit lapsed December 3, 2017. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7420-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7420-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7420-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7420-3, RICK EVEN

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7420-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

A telephone visit with the permit holder on May 11, 2021 and subsequent field investigation on the same day found the project had not been developed. The time limit for completion of works expired December 3, 2017.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.



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June 3, 2021

NOTICE OF CANCELLATION

TO: Eugene Kleinjan, 20707 464th Ave, Bruce SD 57220

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7536-3

Water Permit No. 7536-3 authorizes diversion of ground water from the Big Sioux Brookings Aquifer located in the SE ¼ NE ¼ Section 34 to irrigate 160 acres in the NE ¼ Section 34, all in T111N, R51W. On May 26, 2021 our staff inspector met with you as part of a licensing investigation. At that time, you indicated you were unable to find water in that quarter and did not develop the irrigation system. The time limit for completion of works as described in the permit lapsed on February 11, 2018. Since the project was not developed, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7536-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7536-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7536-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

June 3, 2021
Eugene Kleinjan
Page 2

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7536-3, EUGENE KLEINJAN**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7536-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On May 26, 2021, a staff inspector met with the permit holder to discuss any development that had occurred. Mr. Kleinjan indicated he would not be developing an irrigation system in that quarter due to the inability to find water.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Notes:

- Cancellation of the water permit does not prohibit a new application for this project in the future.
- Mr. Kleinjan also holds Water Right No. 4036-3 for irrigation of the NW ¼ Section 34, T111N, R51W. Board action concerning Water Permit No. 7536-3 does not pertain to the irrigation system authorized under Water Right No. 4036-3.



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June 3, 2021

NOTICE OF CANCELLATION

TO: Joe Waldner, Mayfield Hutterian Brethren, 43188 Mayfield Rd,
Willow Lake SD 57278

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit Nos. 7672-3 and 7673-3

Water Permit No. 7672-3 authorizes diversion of water from Dry Lake for irrigation purposes. Water Permit No. 7673-3 authorized irrigation from ground water into the Prairie Coteau Aquifer and was intended to be developed for use as a standby water source in the event Dry Lake was not utilized. The time limit for completion of works as specified in the permits lapsed in 2018. On April 27, 2021, you called in response to a letter received from Genny McMath in our program and discussed the permits. It is our understanding neither water source was developed, and the projects were not constructed. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 7672-3 and 7673-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 7672-3 and 7673-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 7672-3 and 7673-3 based upon facts presented at the public hearing. Our records show Mayfield Hutterian Brethren to be the owner of property covered by these water permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NOS. 7672-3 AND 7673-3, MAYFIELD HUTTERIAN BRETHERN

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 7672-3 and 7673-3.

The Chief Engineer is recommending cancellation of the above water permits due to non-construction.

The time limit for completion of works as specified in the water permits expired in 2018. Mr. Waldner spoke with Genny McMath in our program on April 27, 2021 and confirmed no development had taken place.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permits does not prohibit new applications for the projects in the future.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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PIERRE SD 57501-3182
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June 3, 2021

NOTICE OF CANCELLATION

TO: Joe Waldner, Mayfield Hutterian Brethren, 43188 Mayfield Rd,
Willow Lake SD 57278

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit Nos. 7672-3 and 7673-3

Water Permit No. 7672-3 authorizes diversion of water from Dry Lake for irrigation purposes. Water Permit No. 7673-3 authorized irrigation from ground water into the Prairie Coteau Aquifer and was intended to be developed for use as a standby water source in the event Dry Lake was not utilized. The time limit for completion of works as specified in the permits lapsed in 2018. On April 27, 2021, you called in response to a letter received from Genny McMath in our program and discussed the permits. It is our understanding neither water source was developed, and the projects were not constructed. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 7672-3 and 7673-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 7672-3 and 7673-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 7672-3 and 7673-3 based upon facts presented at the public hearing. Our records show Mayfield Hutterian Brethren to be the owner of property covered by these water permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NOS. 7672-3 AND 7673-3, MAYFIELD HUTTERIAN BRETHERN

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 7672-3 and 7673-3.

The Chief Engineer is recommending cancellation of the above water permits due to non-construction.

The time limit for completion of works as specified in the water permits expired in 2018. Mr. Waldner spoke with Genny McMath in our program on April 27, 2021 and confirmed no development had taken place.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permits does not prohibit new applications for the projects in the future.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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PIERRE SD 57501-3182
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June 3, 2021

NOTICE OF CANCELLATION

TO: Mark Porter, Porter Farm Inc., 21618 471st Ave., Brookings SD 57006

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Cancellation of Water Permit No. 7992-3

Water Permit No. 7992-3 authorizes diversion of ground water from the Big Sioux Brookings Aquifer to irrigate 125 acres in the NW ¼ Section 13, T109N, R50W. On May 11, 2021, a staff member contacted you about setting up an inspection for licensing purposes. It is our understanding from the conversation the project has not been constructed. The time limit for completion of works as specified in the permit expired on June 16, 2019. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7992-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7992-3 at **9:30 am, Wednesday, July 7, 2021** (Central Time) in the Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7992-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 28, 2021. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-8; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 28, 2021.

Prior to June 28, 2021, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 14, 2021.



**DEPARTMENT of AGRICULTURE
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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7992-3, PORTER FARM INC.**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7992-3.

The Chief Engineer is recommending cancellation of the above water permit due to non-construction.

On May 11, 2021, a staff person contacted the permit holder to set up a possible inspection for licensing purposes. The permit holder confirmed no development had occurred. The time limit for completion of works as specified in the permit expired June 16, 2019.

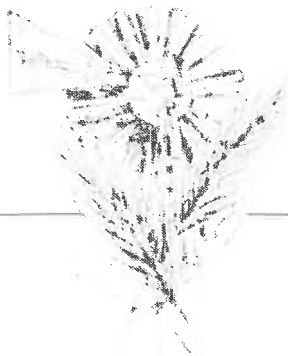
Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
June 3, 2021

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future.

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
5689-3	Big Sioux Community Rural Water System	Egan	LK	360 AF	RWS	Big Sioux:Northern Skunk Creek	none
6834-3	Big Sioux Community Rural Water System	Egan	LK	600 AF	RWS	Big Sioux:Northern Skunk Creek	none



Big Sioux Community Water System, Inc.

23343 479TH AVE. • EGAN, SOUTH DAKOTA 57024 • (605) 997-2098

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MAY 19 2021

WATER RIGHTS
PROGRAM

Karen Schlaak
Water Rights Program
Department of Agriculture & Natural Resources
Joe Foss Building, 523 East Capitol
Pierre, SD 57501

May 17, 2021

Dear Ms. Schlaak,

Thank you for the letter concerning our Future Use Water Permits, No. 5689-3 and 6834-3, both from the Big Sioux: Northern Skunk Creek Aquifer.

We are currently operating a micro-filtration water treatment plant utilizing this aquifer. This Treatment plant serves the Lake Madison and Lake Brant areas where we are continuing to see growth in the number of homes hooking up to the system.

We serve Dakota Ethanol 600,000 to 800,000 gallons per day since 2001, also from this aquifer. Dakota Ethanol is continuously updating their treatment process which may increase their water usage slightly. An overall expansion of the plant is also possible in the near future for which further allocations from the water supply would be required.

I hope the above examples illustrate that the future use permits are a very valuable tool when planning for the future economy and livelihood of this company and all the residents of Lake County, South Dakota.

Big Sioux Community Water System Inc. strongly wants to retain these future use permits and would very much appreciate the Board allowing us to retain them.

If I can be of any further assistance, please don't hesitate to contact me at the above address,

Sincerely



Jodi Johanson
General Manager

Big Sioux Community Water System, Inc.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 5689-3, Big Sioux Community Rural Water System Inc.**

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 Future Use Water Permit No. 5689-3, Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024.

The Chief Engineer is recommending that Future Use Permit No. 5689-3 REMAIN in EFFECT for 360 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 5698-3, 2) the system has demonstrated a reasonable need for the water reserved by Permit No. 5698-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 5698-3 is subject to payment of the \$85.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

Eric Gronlund, Chief Engineer
June 7, 2021



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 6834-3, Big Sioux Community Rural Water System Inc.**

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 Future Use Water Permit No. 6834-3, Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024.

The Chief Engineer is recommending that Future Use Permit No. 6834-3 REMAIN in EFFECT for 600 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6834-3, 2) the system has demonstrated a reasonable need for the water reserved by Permit No. 6834-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 6834-3 is subject to payment of the \$105.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

Eric Gronlund, Chief Engineer
June 7, 2021

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF MOODY) SS

MARY LYNN HEADRICK, of said county, being first duly sworn on oath says that she is the bookkeeper of the Moody County Enterprise, a weekly newspaper printed and published in said county of Moody and State of South Dakota, 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 200 copies weekly, and has been published within said county for 52 consecutive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the advertisement headed:

Notice of Hearing to
Review Future Use
Water Permits Nos.

5689-3 and 6834-3

a printed copy of which, taken from the newspaper 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 in each week for 1 successful weeks, on the day of each week on which said newspaper was regularly published, to wit:

6-16-21

that the full amount of the fee charged for the publication of said Notice inures to the benefit of the 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 person whomsoever, and that the fees charged for the publication thereof are

\$ 47¹²

my Headrick bookkeeper

Subscribed and sworn to before me this

18 day of June AD 2021

[Signature]
Notary Public, County Moody, South Dakota

ROGER W JANSSEN
NOTARY PUBLIC
SOUTH DAKOTA
My commission expires 2-16-24

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 5689-3 and 6834-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 5689-3 and 6834-3 held by Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the permits.

Permit No. 5689-3 was approved in 1992 and currently reserves 360 acre-feet from the Big Sioux Northern Skunk Creek Aquifer located in the N 1/2 NW 1/4 Section 9-T105N-R51W. Permit No. 6834-3 was approved in 2007 and currently reserves 600 acre-feet of water from the Big Sioux Northern Skunk Creek Aquifer located in the SW 1/4 Section 16-T105N-R51W. The water is reserved for rural water system use in Lake, Brookings, Moody and Minnehaha Counties. The permits were last reviewed in 2014.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 5689-3 and 6834-3 REMAIN in EFFECT for 360 acre-feet annually and 600 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 5689-3 and 6834-3 at 9:30 am, July 7, 2021, Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendations of the Chief Engineer are not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by June 28, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 5689-3 and 6834-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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WATER RIGHTS
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This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendations, further information on the permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by June 28, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 28, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 28, 2021.

Published at a cost of \$47.12

JUN 21 2021

Wednesday, June 16

AFFIDAVIT OF PUBLICATION

WATER RIGHTS
PROGRAM

**NOTICE OF HEARING TO
REVIEW FUTURE USE
WATER**

STATE OF SOUTH DAKOTA)

County of Lake)

) ss.

Joanne Wheeler, of the City of Madison, County of Lake, State of South Dakota, being first duly sworn on oath, deposes and says:

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Hunter Publishing, Inc., John M. Hunter, publisher, and has been such legal newspaper during the times hereinafter mentioned; That the said Madison Daily Leader has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Secretary of the said newspaper, in charge of the advertising department thereof, and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

REVIEW PERM 5689-3/6834-3
WATER RIGHTS PROGRAM

printed copy of which hereunto attached, was printed and published in the said newspaper for 1 successive week(s), once each week and on the same day of the week, on the following dates, to-wit:

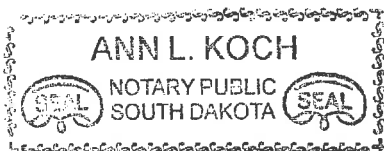
06/16/2021

That \$ 47.48 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publication of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

Joanne Wheeler

Subscribed and sworn before me this 17th day of

June, 2021



Ann L. Koch
Notary Public, Lake County, South Dakota
Exp. 11-14-25

Publication

Notary F

T

Received

PERMIT NOS. 5689-3 and 6834-3
Notice is given that the Water Management Board will review Future Use Permit Nos. 5689-3 and 6934-3 held by Big Sioux Community Rural Water System, Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the permits.

Permit No. 5689-3 was approved in 1992 and currently reserves 360 acre-feet from the Big Sioux: Northern Skunk Creek Aquifer located in the N 1/2 NW 1/4 Section 9-T105N-R51W. Permit No. 6834-3 was approved in 2007 and currently reserves 600 acre-feet of water from the Big Sioux: Northern Skunk Creek Aquifer located in the SW 1/4 Section 16-T105N-R51W. The water is reserved for rural water system use in Lake, Brookings, Moody and Minnehaha Counties. The permits were last reviewed in 2014.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 5689-3 and 6834-3 REMAIN in EFFECT for 360 acre-feet annually and 600 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 5689-3 and 6834-3 at 9:30 am, July 7, 2021, Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendations of the Chief Engineer are not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by June 28, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a

statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 5689-3 and 6834-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendations, further information on the permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by June 28, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 28, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 28, 2021.

Published once at the total approximate cost of \$47.48

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JUN 21 2021

Exhibit "A"

Affidavit of Publication

State of South Dakota

ss

County of Brookings

WATER RIGHTS
PROGRAM

Legal 15312 1X
6/16

NOTICE OF HEARING
TO REVIEW FUTURE
USE WATER PERMIT
NOS. 5689-3 AND
6834-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 5689-3 and 6834-3 held by Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the permits. Permit No. 5689-3 was approved in 1992 and currently reserves 360 acre-feet from the Big Sioux:Northern Skunk Creek Aquifer located in the N 1/2 NW 1/4 Section 9-T105N-R51W. Permit No. 6834-3 was approved in 2007 and currently reserves 600 acre-feet of water from the Big Sioux:Northern Skunk Creek Aquifer located in the SW 1/4 Section 16-T105N-R51W. The water is reserved for rural water system use in Lake, Brookings, Moody and Minnehaha Counties. The permits were last reviewed in 2014. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 5689-3 and 6834-3 REMAIN in EFFECT for 360 acre-feet annually and 600 acre-

feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 5689-3 and 6834-3 at 9:30 am, July 7, 2021, Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendations of the Chief Engineer are not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by June 28, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

Katherine Foiles of said county, first duly sworn, on oath, says: That she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," hereto attached and herein mentioned, and was and is printed that the

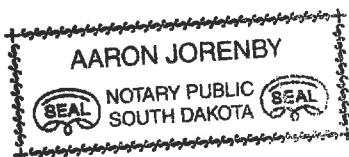
Leg#15312 Notice of Hearing - Permit 5689-3 and 6834-3

same was published, is hereto attached marked Exhibit said newspaper for _____ 1 times, to-wit:

June 16, 2021

said Exhibit "A" inures to the sole benefit for the publishers of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Forty-Nine Dollars and Ninety-Nine Cents \$46.99



June

17 day of

2021

Notary Public in and for the County of Brookings, South Dakota.
My Commission expires February 22, 2026

The hearing to review Future Use Permit Nos. 5689-3 and 6834-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendations, further information on the permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Wa-

ter Rights Program, (605 773-3352) by June 28, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 28, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by June 28, 2021.

Published 1X at the total approximate cost of \$49.99.

Argus Leader

P.O. Box 677349, Dallas, TX 75267-7349

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JUN 22 2021

WATER RIGHTS
PROGRAM

Account No.: 6059972098

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Lines : 171

Ad Total: \$54.34

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of Affidavits 1

BIG SIOUX COMMUNITY WATER SYSTEM INC
23343 479TH AVE
EGAN, SD 57024

Account No.: 6059972098

Ad No.: 0004774719

Argus Leader AFFIDAVIT OF PUBLICATION


STATE OF SOUTH DAKOTA

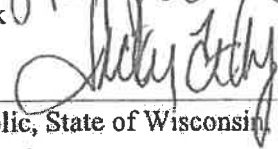
COUNTY OF MINNEHAHA

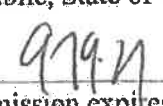
I being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Wednesday, June 16, 2021

Sworn to and subscribed before me this 16 day of June, 2021.


Legal Clerk


Notary Public, State of Wisconsin, County of Brown


My Commission expires

VICKY FELTY
Notary Public
State of Wisconsin

NOTICE OF HEARING TO
REVIEW FUTURE USE
WATER PERMIT NOS.
5689-3 and 6834-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 5689-3 and 6834-3 held by Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the permits.

Permit No. 5689-3 was approved in 1992 and currently reserves 360 acre-feet from the Big Sioux Northern Skunk Creek Aquifer located in the N 1/2 NW 1/4 Section 9-T105N-R51W. Permit No. 6834-3 was approved in 2007 and currently reserves 600 acre-feet of water from the Big Sioux Northern Skunk Creek Aquifer located in the SW 1/4 Section 16-T105N-R51W. The water is reserved for rural water system use in Lake, Brookings, Moody and Minnehaha Counties. The permits were last reviewed in 2014.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 5689-3 and 6834-3 REMAIN in EFFECT for 360 acre-feet annually and 600 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 5689-3 and 6834-3 at 9:30 am, July 7, 2021, Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendations of the Chief Engineer are not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

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523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 5689-3 and 6834-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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4774719 June 16, 2021