



DANR
SOUTH DAKOTA

**WATER MANAGEMENT BOARD
Meeting on March 2, 2022**

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

Any person(s) interested in speaking during the public comment period via remote connection can learn how at <https://boardsandcommissions.sd.gov> on the Water Management Board page.

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>

March 2, 2022

- 9:30 AM Call to Order
 Roll Call
 Adopt Final Agenda
 Conflicts Disclosures and Requests for State Board Waivers
 Adopt December 8, 2021 Board Minutes
 Set May 4 - 5, 2022 Meeting Dates and Location
 Public comment period in accordance with SDCL 1-25-1
 Status and Review of Water Rights Litigation
- Administer Oath to Department of Agriculture and Natural Resources Staff
 Appointment of Rapid Valley Water Master – Nakaila Steen
 Future Use Reviews – Ron Duvall
 Irrigation Questionnaire Violations for Failure to Report 2021 Water Use – Genny McMath
- 10:00 AM Consider Water Permit Application No. 2049A-3, Parks and Recreation, City of Huron – Mark Rath
- Consider Water Permit Application Nos. 8565-3, 8566-3, and 8567-3, Dustin Haase – Nakaila Steen
- 10:15 AM Consider Cancellation of Water Permit No. 7148-3, Jason Frerichs – Mark Rath

LUNCH

Continue any prior agenda items not yet completed.

ADJOURN

WATER MANAGEMENT BOARD

Meeting on March 2, 2022

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.

WATER MANAGEMENT BOARD MEETING

March 2, 2022

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
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Water Permit Applications to be Considered as Scheduled

2049A-3	City of Huron	Huron	BD	no add'l	municipal	James River	6 special
8565-3	Dustin Haase	Parker	TU	1.11 cfs	124 acres	1 well-Pleistocene Series	wi, wcr, iq
8566-3	Dustin Haase	Parker	TU	1.78 cfs	132 acres	1 well-Pleistocene Series	deferral
8567-3	Dustin Haase	Parker	TU	2.22 cfs	226 acres	1 well-Pleistocene Series	wi, wcr, iq

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

2009-1	Kent P Wilsey	Owanka	MD	0.167 cfs	commercial	1 well-Quaternary Terrace	wi, wcr, 2 special
2011-1	Meadow Crest Sanitary Dist	Deadwood	LA	0.089 cfs	wds	2 wells-Deadwood & Madison	wi, 5 special
2830-2	Weinreis Brothers	Scottsbluff	FR	0.33 cfs	commercial	2 wells-Inyan Kara	wi, wcr, 4 special
2831-2	Hell Canyon Horse Camp & RV Resort	Custer	CU	0.07 cfs	commercial & domestic	1 well-Crystalline Rock	wi, 2 special
2832-2	Reel Simple LLC	Rapid City	PE	0.044 cfs	wds	1 well-Inyan Kara	wi, 2 special
2835-2	Blake Burnham	Winner	TR	2.07 cfs	145 acres	dugout	iq, 2 special
8547-3	L & E Holdings LLC	Sioux Falls	MA	0.10 cfs	11.39 acres	1 well-Sioux Quartzite	wi, wcr, iq
8549-3	James Orris Living Trust	Clark	CL	3.78 cfs	350 acres	3 wells-Altamont	wi, wcr, iq
8551-3	Mill Valley LLC	Sioux Falls	GT	0.17 cfs	commercial	1 well-Greenhorn Formation	wi, wcr, 4 special
8553-3	Lake Platte Golf Course	Platte	CM	0.33 cfs	40 acres	1 well-Codell Aquifer	wi, wcr, iq, 2 special
8554-3	Ferdy Zirbel	Ortley	GT	1.78 cfs	130 acres	2 wells-Big Sioux:North	wi, wcr, iq
8555-3	Jon Miller	Sioux Falls	TU	2.22 cfs	320 acres	1 well-Upper Vermillion Missouri:West	wi, wcr, iq
8556-3	Bradley Jongeling	Estelline	HM	1.33 cfs	120 acres	2 wells-Big Sioux:Brookings	wi, wcr, iq
8557-3	Buzz Wilson LLC	Marion	TU	1.78 cfs	160 acres	1 well-Parker Centerville	wi, wcr, iq
8558-3	Allthatisleft	Fontana CA	TU	1.78 cfs	140 acres	1 well-Parker Centerville	wi, wcr, iq
8559-3	TR Golf LLC	Dakota Dunes	UN	3.11 cfs	recreation	Big Sioux River	3 special
8560-3	TR Golf LLC	Dakota Dunes	UN	0.12 cfs	65 acres	2 wells-Dakota & Missouri:Elk Point	wi, iq

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8561-3	Blaine Nagel	Springfield	BH	1.33 cfs	65 acres	1 well-Niobrara	wi, wcr, iq,1 special
8562-3	Riverview LLP	Morris MN	CK	1.45 cfs	commercial	1 well-Dakota	wi, wcr, 5 special
8564-3	David R Hansen	Wilmot	RB	0.03 cfs	11 add'l acres	1 well-Revilla Aquifer	wi, iq
8568-3	James Barger	Utica	YA	0.22 cfs	30 add'l acres	1 well-Lower James Miss:Scotland	wi, iq
8569-3	L. G. Everist Inc	Sioux Falls	MA	1.44 cfs	industrial	dewatering Ode Pit	3 special
8571-3	Maxwell Colony	Scotland	YA	2.22 cfs	121 acres	1 well-Lower James Miss:Scotland	wi, wcr, iq
8573-3	MGJR LLC	Ft. Pierre	HU	no add'l	110 acres	1 well-Gray Goose	wi, wcr, iq
8580-3	Dale & Jon Bunkers	Chester	LA	1.78 cfs	130 acres	2 wells-Big Sioux Northern Skunk Creek	wi, wcr, iq,1 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
6237-3	City of Vermillion	Vermillion	CL	1,900 AF	municipal	Missouri:Elk Point Aquifer	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 234TH MEETING OF THE
WATER MANAGEMENT BOARD
REMOTE VIA AUDIO/VISUAL CONFERENCE AND
MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

DECEMBER 8, 2021

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

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

Chairman Bjork welcomed Legislative Oversight Committee members, Senator Mary Duvall and Representative Mike Weisgram.

The following were present either remotely or in person:

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

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Mark Rath, and Adam Mathiowetz.

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.

Court Reporter: Carla Bachand, Capital Reporting Services.

Consider action on Order denying Powertech motion to amend procedural order, denying Clean Water Alliance's motion to allow electronic service, and updating parties of record concerning the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.: Matt Naasz, attorney for Powertech.

Water Permit Application No. 2828-2, Arrowhead, and Application No. 2829-2, City of Rapid City: Richard Huffman, Chris Barnes, Eric Sharpe, Mark T. Anderson, Ron Conrad, Nicholas Marnach, Pete Rausch, Howard Rice, Brandon Quiett, and Justin Williams.

Water Permit Application No. 8527-3, Finley Family LLLP: Lindsey Riter-Rapp, Dave and Connie Finley.

ADOPT FINAL AGENDA: Mr. Gronlund requested that a DANR update be added to the agenda.

Motion by Hutmacher, seconded by Freeman, to adopt the final agenda, as amended. Motion carried.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT OCTOBER 6, 2021, BOARD MINUTES: Motion by Freeman, seconded by Holzbauer, to approve the minutes of the October 6, 2021, Water Management Board meeting. Motion carried.

2022 TENTATIVE DATES FOR REGULARLY SCHEDULED MEETINGS: The board set the following tentative meeting dates for 2022: March 2-3, May 4-5, July 6-7, October 5-6, December 7-8.

MARCH 2-3, 2022, MEETING LOCATION: The March meeting will be held in Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

UPDATE ON DANR ACTIVITIES: Eric Gronlund reported that the Foss Building is being remodeled, and DANR staff are being relocated to different areas of the building. In the process of going through documents, staff found a book containing handwritten minutes of the Board of Water Commissioners of South Dakota. The book contains minutes from July 14, 1906, which was the first meeting, through 1909.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

ADMINISTER OATH TO DANR STAFF: The court reporter administered the oath to DANR staff who intended to testify.

CANCELLATION CONSIDERATIONS: Prior to the meeting, the board members received the board packet, which included a table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

Six water rights/permits were scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The department received no comments or letters in response to the notices of cancellation.

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
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DIVISION II WATER RIGHT

RT 2323B-2	Jeffrey & Brenda Barber	Same	Abandonment/Forfeiture
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DIVISION III WATER PERMITS

PE 7079-3	Richard Vendrig	Kingsbury Hutterian Brethren % Joseph Waldner	Non-Construction
PE 7394-3	Rodney Fenhaus	Same	Non-Construction
PE 7496-3	Jeff Donnay	Same	Non-Construction
PE 7787-3	L G Everist Inc	Same % Chris Klein	Non-Construction
PE 8169-3	Lyle Anderson	Lyle Anderson, Kevin Toews	Non-Construction

Motion by Freeman, seconded by Hutmacher, to accept the chief engineer's recommendations for cancellation of the six water right/permits for the reasons listed. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE REVIEW: Included in the board packet was a table listing one future use permit up for a seven-year review. Mr. Duvall reported that certain entities such as water distribution systems, municipalities and rural water systems can reserve water for future needs.

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.

The board packet included a letter from the Watertown Municipal Utilities Department requesting that they be allowed 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 the board allow the following Future Use Permit to remain in effect as listed below.

No.	Name	Amount Remaining in Reserve	Source
5862-3	Watertown Municipal Utilities	700 AF	Big Sioux:North Aquifer

Motion by Freeman, seconded by Holzbauer, that Future Use Permit No. 5862-3 for Watertown Municipal Utilities remain in effect for 700 acre-feet from the Big Sioux:North Aquifer. A roll call vote was taken, and the motion carried unanimously.

CONSIDER ACTION ON ORDER DENYING POWERTECH MOTION TO AMEND PROCEDURAL ORDER, DENYING CLEAN WATER ALLIANCE'S MOTION TO ALLOW

ELECTRONIC SERVICE, AND UPDATING PARTIES OF RECORD CONCERNING THE CONSOLIDATED CASE IN THE MATTER OF WATER PERMIT APPLICATION NOS. 2685-2 AND 2686-2 AND GROUND WATER DISCHARGE PLAN GWD 1-13.

POWERTECH (USA), INC.: Assistant Attorney General David McVey reported that at the October 2021 meeting, the board heard argument regarding Powertech's motion to amend the procedural order. Following that hearing, an order was prepared and circulated among the parties. On December 6, 2021, Powertech filed objections to the proposed order.

Mr. Duvall stated that, based on the August 18, 2021, order by prehearing chair Rodney Freeman to parties to update contact information, Section 4 a. of the order lists several individuals to be removed from future mailings until such time as corrected mailing addresses are received from the party. Section 4 b. lists individuals whose addresses were updated due to mailing address corrections received from the U.S. Postal Service or responses to the August 18 order. Section 4 c. lists deceased individuals to be removed as parties of record based on requests from spouses or post office notification. Section 4 d. is a list of individuals who requested to be removed as parties of record.

Mr. Duvall stated that since the order was distributed to the parties, several more individuals have been added to Section 4 a. due to undeliverable addresses. He noted that Mary Helen Pederson was removed Section 4 a. and added to Section 4. b. because she has provided DANR with the correct mailing address. Margaret Mary Keogh was added to Section 4 c.

Mr. McVey stated that he had prepared an amended order, which includes the changes made by Mr. Duvall in Section 4.

Matt Naasz, attorney for Powertech, stated that Powertech submitted written objections to the proposed order. The draft order states that Powertech must obtain the approval of the Plan of Operations by the BLM. Mr. Naasz stated that it was made very clear during the hearings on this matter that Powertech does not need the approval of BLM prior to conducting operations, and for that reason it is inappropriate to include a reference to the BLM in the board's order.

Mr. Naasz stated that order provides no legal authority for the Water Management Board to require Powertech to delay moving forward with its water permit application and ground water discharge plan approval until such time as the federal issues are resolved to the board's satisfaction. Such a standard is, by definition, arbitrary and without legal authority. The draft order, in as much as it sets an arbitrary standard, denies Powertech its due process rights to proceed and have an opportunity to be heard on its application.

Mr. Naasz stated that he would like to incorporate the arguments Powertech made during the October 2021 board hearing and in its brief.

Mr. McVey suggested that deleting "to the board's satisfaction" would remove the arbitrariness and resolve Mr. Naasz's concern.

Mr. Naasz stated that Powertech believes those federal requirements are resolved and the permits have been issued, and because of that Powertech should be allowed to proceed the hearing now. That is the basis for Powertech's objection, in addition to the fact that "to the board's

satisfaction” is certainly an arbitrary standard. Mr. Naasz said, given the board’s decision in October, he is not sure that simply using the word “resolved” changes the arbitrary nature of the order. He said given the fact that, as discussed in October, the necessary federal permits have been issued pending the appeal, it is Powertech’s position that it should be allowed to move forward now.

Motion by Freeman, seconded by Hutmacher, to adopt the order with the changes to Section 4 and deleting “to the board’s satisfaction” in the first sentence of the third paragraph on page 4. A roll call vote was taken, and the motion carried with Dixon, Freeman, Holzbauer, Hutmacher, and Bjork voting aye. Comes abstained.

The approved order denying Powertech’s motion to amend procedural order, denying Clean Water Alliance’s motion to allow electronic service, and updating parties of record is available on DANR’s website at https://danr.sd.gov/wrimage/pub/PT_ord2.pdf.

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.

CONSIDER WATER PERMIT APPLICATION NO. 2828-2, ARROWHEAD AND APPLICATION NO. 2829-2, CITY OF RAPID CITY: Chairman Bjork requested appearances.

Appearances

Richard Huffman, DeMersseman Jensen law firm, representing Arrowhead
Justin Williams, assistant city attorney, representing the city of Rapid City
Ann Mines Bailey, assistant Attorney General, representing the DANR Water Rights Program

Mark Rath, Water Rights Program, presented the two applications, which were uncontested. He noted that if the two applications are approved, Hawthorne Ditch Company will essentially be out of the irrigation business.

Application No. 2828-2, Arrowhead, proposes to transfer Rapid Creek natural flow water from Hawthorne Ditch to Arrowhead for irrigation of 167 acres at a diversion rate of 2.79 cubic feet of water per second (cfs) with an annual volume of 231.86 acre-feet per year.

The statutes that pertain to this transfer are SDCL 46-2A-12 and SDCL 46-5-30.4, which allow existing rights to be amended but do not allow the amendment to impair existing rights. Hawthorne Ditch Company retained the services of RESPEC, an engineering consulting firm, to demonstrate that these transfers will not impair existing rights in Rapid Valley. RESPEC provided a detailed technical analysis that calculated the diversion rate and the annual volume based on the pro rata share of this portion of the transfer.

This transfer involves the July 12, 1886, priority date and the July 2, 1973, priority date. The transferable volume is calculated with the water available for crop consumptive use calculated by historical diversions that were delivered to the field, the ditch carriage loss, irrigation efficiencies. The potential crop consumptive use is compared to the amount of water available, and the lesser of these two is available for the transfer. This done on a monthly basis during the irrigation season.

The water lost to irrigation inefficiency historically had been returned to Rapid Creek and has been available for use by downstream water right holders and domestic users. Arrowhead is not able to demonstrate that they would put that water back in creek based on the type of irrigation that will occur. The golf course is located in southwestern Rapid City, and the diversion point is on Rapid Creek approximately two to three miles upstream. The diversion point will be moved from the east edge of town behind the Central States Fairgrounds up to the intake, which is just below Canyon Lake. Since Arrowhead cannot demonstrate that they would put a return flow back into the creek, at this time, they would not get the credit for that. The annual volume will be reduced from 231.86 acre feet per year to 115.93 acre feet per year, which is half the amount due to the irrigation efficiency of flood irrigation.

The chief engineer approval of Application No. 2828-2 with the following qualifications:

1. Permit No. 2828-2 is limited to a diversion rate of 2.79 cubic feet of water per second for a total annual volume of 115.93 acre feet of natural flow water from Rapid Creek. Arrowhead shall measure diversions at their pump site. The total monthly diversion shall not exceed the amount listed in the following table.

Transferable volume (acre-feet) if taken at the Arrowhead intake

Priority	April	May	June	July	Aug	Sept	Oct	Total
H1 - July 12, 1886	0.84	14.75	16.80	25.91	22.69	17.34	2.85	101.18
H2 - July 8, 1890	--	--	--	--	--	--	--	--
H3 - May 21, 1896	--	--	--	--	--	--	--	--
H4 - Oct 1, 1907	--	--	--	--	--	--	--	--
H5 - July 2, 1973	0.13	2.15	2.45	3.76	3.31	2.53	0.42	14.75
H6 - July 12, 1973	--	--	--	--	--	--	--	--
Totals	0.97	16.90	19.25	29.67	26.00	19.87	3.27	115.93

2. The amount of water appropriated under partial Vested Water Right No. 2039-2 being transferred by this permit is 2.79 cfs with the following associated priority dates:

July 12, 1886 = 2.49 cfs

July 2, 1973 = 0.30 cfs

3. Permit No. 2828-2 authorizes diversion of only natural flow water by Arrowhead and does not include any right to stored irrigation water available under contract with the Bureau of Reclamation.
4. The Water Management Board retains jurisdiction over Permit No. 2828-2 in the event that changes occur in the system that require adjustments to be made in the monthly or total annual volumes authorized by Permit No. 2828-2.
5. Diversions under Permit No. 2828-2 may not interfere with existing water rights in effect prior to approval of No. 2828-2 or any domestic water use.
6. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Motion by Freeman, seconded by Holzbauer, to approve Water Permit Application No. 2828-2, Arrowhead subject to the qualifications set forth by the chief engineer. A roll call vote was taken, and the motion carried unanimously.

Application No. 2829-2, city of Rapid City, proposes to transfer Rapid Creek natural flows from Hawthorne Ditch to the city of Rapid City at a diversion rate of 17.19 cfs with an annual volume of 1,705.64 acre feet from irrigation use by Hawthorne Ditch to municipal use within the City of Rapid City's water distribution system.

The statutes that pertain to this transfer are SDCL 46-2A-12, SDCL 46-5-30.4, and SDCL 46-5-34.1.

SDCL 46-5-34.1, which pertains to the post July 1, 1907, priority water rights, does not allow the amendment to impair existing rights, but also places a further restriction that any land that has

had an irrigation right transferred from it cannot qualify for another irrigation right from any water source.

This transfer involves five priority dates; a portion of the May 21, 1886, priority date, July 8, 1890, May 21, 1896, October 1, 1907, and July 2, 1973, priority dates.

The applicant has provided technical analysis by RESPEC, an engineering consultant, which calculated the diversion rate and annual volume based on the pro rata share. The transferable volume is calculated with the water available for crop consumptive used calculated by historical diversions that were delivered to the field, considering the ditch carriage loss and irrigation efficiencies. The potential crop consumptive use is compared to the amount of water available, and the lesser of these two is available for the transfer.

Mr. Rath stated that in this case, water lost to irrigation inefficiency gets back to Rapid Creek is historically available for the downstream water right holders and for domestic use. Rapid City can get credit for this because the city pipes its wastewater to the Rapid City wastewater treatment plant for treatment with the effluent being discharged back to Rapid Creek. Like the irrigation return flows, this treated effluent will continue to be available for downstream existing water use. If the city chooses to store the water at Pactola Reservoir, there will be no return flow credit, and the city would be limited to storing the portion attributed to the historic crop consumptive use minus the ditch delivery loss.

The chief engineer recommended approval of Application No. 2829-2 with the following qualifications:

1. Permit No. 2829-2 is limited to a diversion rate of 17.19 cubic feet of water per second for a total annual volume of 852.82 acre feet of water annually at Pactola Reservoir or a total annual volume of 1705.64 acre feet of water annually at the SE¹/₄ NE¹/₄ Section 3 (Mountain View Water Treatment Plant); the SW¹/₄ SW¹/₄ Section 3 (Sioux Park Gallery); the NW ¹/₄ SE ¹/₄ Section 8 (Jackson Springs Gallery); all within T1N-R7E. Maximum monthly diversion volumes at Pactola or the diversion points within Rapid City are as follows:

Monthly Volume Limitation (acre feet) transferrable if taken at the City of Rapid City's intakes

Priority	April	May	June	July	Aug	Sept	Oct	Total
H1 - July 12, 1886	0.48	8.60	9.79	15.09	13.22	10.10	1.66	58.94
H2 - July 8, 1890	9.48	165.03	187.97	289.69	253.78	193.95	31.90	1131.80
H3 - May 21, 1896	0.63	10.89	12.41	19.12	16.74	12.80	2.11	74.70
H4 - Oct 1, 1907	3.11	54.15	61.68	95.06	83.29	63.64	10.47	371.40
H5 - July 2, 1973	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
H6 - July 12, 1973	0.58	10.03	11.42	17.60	15.42	11.80	1.95	68.80
Totals	14.28	248.70	283.27	436.56	382.45	292.29	48.09	1705.64

Monthly Volume Limitation (acre feet) transferrable if stored at Pactola

Priority	April	May	June	July	Aug	Sept	Oct	Total
H1 - July 12, 1886	0.24	4.30	4.90	7.55	6.61	5.05	0.82	29.47
H2 - July 8, 1890	4.74	82.52	93.98	144.84	126.89	96.98	15.95	565.90
H3 - May 21, 1896	0.31	5.45	6.21	9.56	8.37	6.40	1.05	37.35
H4 - Oct 1, 1907	1.56	27.07	30.83	47.53	41.65	31.82	5.24	185.70
H5 - July 2, 1973	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
H6 - July 12, 1973	0.29	5.02	5.71	8.80	7.71	5.89	0.98	34.40
Totals	7.14	124.36	141.63	218.28	191.23	146.14	24.04	852.82

Diversion during a month may be made at either Pactola Reservoir or at the diversion points within Rapid City, but not simultaneously at both Pactola and the Rapid City diversion points.

- The amount of water appropriated under partial Vested Water Right No. 2039-2 being transferred by this permit is 17.19 cfs with the following associated priority dates:

July 12, 1886 = 0.73 cfs	July 8, 1890 = 12.71 cfs
May 21, 1896 = 0.55 cfs	October 1, 1907 = 2.70 cfs
July 12, 1973 = 0.50 cfs	
- Permit No. 2829-2 authorizes diversion of only natural flow water by the city of Rapid City and does not include any rights to stored irrigation water available under contract with the Bureau of Reclamation.
- No diversion of water under this permit may occur at the Rapid Creek intake for the Jackson Springs treatment plant when natural flows are less than 10 cubic feet of water per second (cfs) as measured at USGS gaging station on Rapid Creek located above Canyon Lake near Rapid City, No. 06412500. Further, no diversions may be made when natural flows measured at the same gaging station are less than 20 cfs during the period from April 1 through September 30 except for water being released from storage in Pactola Reservoir as provided by this permit.
- The city of Rapid City shall report to the Chief Engineer annually the amount of water withdrawn each month at Pactola reservoir or the diversion points within Rapid City.
- The Water Management Board retains jurisdiction of Permit No. 2829-2 in the event that changes occur in the system that require adjustments to be made in the monthly or total annual volumes authorized by Permit No. 2829-2.
- Diversion under Permit No. 2829-2 may not interfere with existing water rights in effect prior to approval of No. 2829-2 or any domestic water uses.
- Prior to water being placed to beneficial use under this permit, the permit holder shall permanently render inoperable the structural means of diverting Rapid Creek water into Hawthorne Ditch since the transfer authorized by this permit leaves no acres available for

irrigation under No. 2039-2. This qualification does not grant access to property owned by third parties or authorize making structural changes to property owned by third parties without the permission of the third parties. The permit holder is responsible for ensuring that access is obtained from such third parties as well as approval of the structural changes to be made to the Rapid Creek diversion structure. Following completion of the structural changes to the Rapid Creek diversion works, the permit holder must notify the Chief Engineer and allow access for an inspection of the work to be completed. The transfer authorized by this permit is subject to the Chief Engineer's approval that the works are rendered inoperable.

In response to a question from Mr. Hutmacher, Mr. Rath stated that throughout the year the majority of the water used by the city of Rapid City is from the new Jackson Springs gallery that was rebuilt on the west side of town. During the summer months when the demand gets high, the city uses water from Madison Aquifer wells to make up any extra demand.

Motion by Hutmacher, seconded by Freeman, to approve Water Permit Application No. 2829-2, city of Rapid City subject to the qualifications set forth by the chief engineer. A roll call vote was taken, and the motion carried unanimously.

CONSIDER WATER PERMIT APPLICATION NO. 8516-3, CEDAR GROVE HUTTERIAN BRETHREN, INC.: Mr. Rath presented the water permit application.

Application No. 8516-3, proposes to appropriate 11.14 cfs from Torrey Lake to irrigate 1,236 acres which are authorized by Water Right No. 6263-3 and Water Permit No. 8041-3.

Torrey Lake is a non-meandered water body located in southeast Brule County near Platte. The surface area of Torrey Lake when full is approximately 2,080 acres and it stores approximately 9,400 acre feet of water. Torrey Lake experiences a wide variation in annual precipitation amounts, which results in the lake levels fluctuating drastically. The lake was nearly dry in 2006 and it spilled through the outlet in 2019 and 2020.

Cedar Grove Colony does not own any of the land that is inundated by Torrey Lake, but they did provide a petition with signatures of the 16 landowners whose land is inundated by the lake fully agreeing to allow Cedar Grove Colony to pump from Torrey Lake down to a level of 1613.48 feet.

Mr. Rath stated that during his review of the application, he was in touch with Cedar Grove Colony, and they mentioned that the USDA Natural Resource Conservation Service (NRCS) had concerns that pumping down the lake could potentially violate the USDA rules regarding farm subsidy payments. Mr. Rath contacted the NRCS which indicated that the NRCS would allow the colony to pump down to a certain level on an emergency basis if the conditions were correct, but if they went below that certain level, they would not only endanger the chance of the farm subsidy payments to the colony, it would also potentially impact the 16 landowners.

The chief engineer recommends deferral of Application No. 8516-3 to allow Cedar Grove Hutterian Brethren up to one year to consult with the NRCS to establish a water surface elevation of elevations for Torrey Lake which protects eligibility for farm program benefits to landowners with property inundated by Torrey Lake. Upon establishment of a surface water elevation or

elevations, this recommendation can be revised with any needed qualifications to identify when water diversions may occur from Torrey Lake.

In response to questions from the board members, Mr. Rath stated that he does not know what will need to be done in order to establish the elevation. Mr. Rath also said he has visited with the colony about the possibility of losing their farm program benefits. Establishing the elevation will basically define the emergency.

Mr. Gronlund stated that he personally contacted Cedar Grove Colony to discuss the issue of the 16 landowners who signed off on this, but there could be unintended consequences. Mr. Gronlund said he expressed to the colony that an elevation needs to be set, but he does not believe it would be appropriate for the department, who is the regulatory agency, to step in and negotiate on behalf of an applicant.

Motion by Hutmacher, seconded by Freeman, to defer Water Permit Application No. 8516-3 for one year. A roll call vote was taken, and the motion carried unanimously.

CONSIDER WATER PERMIT APPLICATION NO. 8527-3, FINLEY FAMILY LLLP:
Chairman Bjork requested appearances.

Appearances

Ann Mines Bailey, Assistant Attorney General represented the Water Rights Program.
Lindsey Riter-Rapp, attorney from Pierre, represented Finley Family.

Ms. Mines Bailey stated that Blaise Hanson, who was scheduled to testify on the application was out of the office, so Adam Mathiowetz would be testifying on the application.

Ms. Mines Bailey said the individuals that petitioned in opposition to the application were not present at the hearing.

Adam Mathiowetz, Water Rights Program, was administered the oath by the court reporter.

Ms. Mines Bailey offered the following exhibits, which were admitted into the record:

Exhibit 1 - Administrative file

Exhibit 3 - a. Hydrograph, Observation Well BN-77P
 b. Hydrograph, Observation well BM-79B
 c. Hydrograph, Observation Well BN-79A

Exhibit 4 – Map

Exhibit 5 - Curriculum vitae of Adam Mathiowetz

Mr. Mathiowetz testified regarding the report on the application, which was prepared by Blaise Hanson and reviewed by Mr. Mathiowetz.

In response to questions from Ms. Mines Bailey, Mr. Mathiowetz testified that Water Permit Application No. 8527-3 proposes to appropriate water for the irrigation of 160 acres at a

maximum instantaneous diversion rate of 1.78 cfs from the Middle James: Columbia aquifer in Brown County approximately four miles northeast of Hecla.

The scope of Mr. Hanson's review was determination of the availability of unappropriated water and the potential for unlawful impairment to existing water rights. Mr. Mathiowetz stated that on page 4 of Mr. Hanson's report, the first paragraph states that there is one pending application, Water Permit Application No. 8533-3, proposing to irrigate 600 acres. That application is actually for a rural water system, and the application has now been approved for 600 acre feet of withdrawals per year from Middle James:Columbia aquifer. On page 7 of the report, in the third line of paragraph 2, it states "...1.2 miles southeast of the proposed application." That should be changed to "southwest." Mr. Mathiowetz stated that neither of those corrections alter his opinion or any of the analysis contained in the report.

The Middle James: Columbia aquifer, also called the Columbia Management Unit of the Middle James aquifer, is a glacial outwash deposit composed of sorted gravel, sand, and silt. It underlies approximately 315,900 acres of Brown and Marshall counties in South Dakota with an estimated 1,376,000 million acre feet of recoverable water in storage. The aquifer is primarily under confined conditions in South Dakota. In the general location of the proposed diversion point, there is approximately 65 feet of artesian head pressure, based on available well completion reports and observation wells. The well completion reports show an average of 77 feet of overlying material before it reaches the saturated aquifer.

Availability of unappropriated water is reviewed primarily in one of two ways. First is a hydrologic budget calculating an estimated recharge on an annual average basis as well as estimated annual withdrawals. The other is review of observation well data when it is available. In this case there are observation wells into the aquifer.

Recharge is water entering an aquifer. The Middle James:Columbia primarily receives recharge through inflow from adjacent glacial and hydrologically connected aquifers, although where it is closer to land surface, it may receive some infiltration and percolation through overlying sediments. The best information available to the Water Rights Program regarding recharge to the Middle James:Columbia aquifer comes from the Corps of Engineers' report written by Lynn Hedges and others, and they developed a general range of recharge rates for buried, confined aquifers. The Middle James:Columbia is a buried and confined aquifer. Their estimate of recharge rates for those aquifers ranges from 0.15 inches per year to 0.60 inches per year. Using the area that was provided earlier, which is also from the Corps report, that comes to 3,950 to 15,800 acre feet per year. That range was developed and suggested for use by development and management programs.

Mr. Mathiowetz stated that review of the observation well data shows that the actual average recharge to the Middle James:Columbia is above the low end of the range. The Water Rights Program maintains 25 observation wells completed into the Middle James: Columbia aquifer. The three observation wells (Exhibit 3) are the closest to the location of the application and are representative of the other 22 observation wells. Hydrographs are created from the observation well database, data on the water levels that the Water Rights Program has measured in those observation wells. As part of the Water Rights Program's regular course of business, staff

measures the observation wells across the state throughout the summer, and that data is recorded in the observation well database.

Mr. Mathiowetz stated that all three hydrographs in Exhibit 3 are similar, so he would discuss them collectively. The hydrographs show a general increase and a rise in water level over the period of record, particularly rising from the beginning of the year, which is pre-irrigation season. During the irrigation season there is a decline in the artesian head pressure in the wells, which is common in a confined aquifer. The water level recovers after the end of irrigation season. The observation well data indicates that while there is a seasonal effect of drawdown of artesian head pressure, there is no dewatering of the aquifer, and having that long-term rise in water level indicates that unappropriated water is available for this proposed appropriation.

A withdrawal is a deliberate removal of water from an aquifer. Withdrawals from the Middle James:Columbia include reasonable domestic uses that are non-appropriative, commercial uses, appropriative domestic uses, industrial, municipal, rural water system, and irrigation uses. The estimated average withdrawals from the Middle James:Columbia is estimated to be 4,117 acre feet per year. Mr. Mathiowetz stated that for irrigation usage, the Water Rights Program reviewed the summary of the annual irrigation questionnaires and calculated an average volume based off of what the irrigators submitted as actual pumpage. For non-irrigation users, two methods were used in this case to estimate annual use. For those permits that are limited to an annual volume, such as a rural water system, staff assumed full use of that volume. This included the application that was listed as pending in the report and has since been approved. For those that are only limited by a diversion rate, staff assumed that they pumped 60 percent of the time at the maximum permitted diversion rate. Sixty percent has been the practice used by the Water Rights Program and accepted by the Water Management Board in the past, and it developed through the review of data of water use for those systems that do report as well as communications in the past with the appropriators. Mr. Mathiowetz stated that staff has reviewed many irrigation questionnaires over the years and has determined that east of the Missouri River crop irrigators generally apply less than 12 inches of water per year on average to their acreage. For this application staff assumed applying 12 inches, and since the request is for 160 acres, subsequently the estimated water use would be 160 acre feet per year. Mr. Mathiowetz concluded that there is unappropriated water available for this proposed appropriation.

The green circle on Exhibit 4 is the approximate location of the proposed well. The crosshatch on the map is an approximation of the acres to be irrigated under Water Permit Application No. 8527-3. The yellow circles are approximate locations for wells on file with the Water Rights Program that are completed or likely completed in the Middle James:Columbia aquifer. The black triangles are the Water Rights Program observation wells completed into the Middle James:Columbia aquifer. The red circle is the water rights that are within the map's extent that are authorized to withdraw water from the Middle James:Columbia aquifer.

There were 26 active water rights and permits and two future use permits reserving water from the Middle James:Columbia aquifer. The closest water right to the proposed point of diversion is Water Right No. 4898-3, which is located approximately 1.2 miles southwest of the application. Based on the information available, the closest domestic well is within the same quarter that the applicant intends to irrigate. Not all domestic wells are on file with the Water Rights Program

because well reports were not required to be submitted to the Water Rights Program until the late 1970s. The depths shown with the yellow circles on Exhibit 4 are the reported total well depths and are shown to provide a sense as to whether they are likely completed into the aquifer. Other than the domestic well that is located on the applicant's land near the proposed well, the next closest well is either the well labeled "90 feet deep" to the south southeast or the well labeled "120 feet deep" to the south southwest.

There are requirements for existing rights and domestic uses to receive protection under the law. Wells need to be constructed and maintained in such a manner as to qualify as an adequate well defined in the South Dakota Well Construction Standards. An adequate well is a well that is constructed such that the inlet to the pump can be placed at least 20 feet into the saturated aquifer or, if the aquifer is less than 20 feet thick, as near to the bottom of the aquifer as possible. Mr. Mathiowetz stated that there is a reasonable probability that this application can be developed without causing unlawful impairment to existing water rights with adequate wells and existing adequate domestic wells. Mr. Mathiowetz said his opinion is based on the amount of artesian head pressure in the observation wells as well as the amount of artesian head pressure during the lowest recorded water levels during the irrigation season. It is also based on the hydrographs of the nearby observation wells not showing detrimental impact from pumping even though there is a nearby irrigator even closer to the observation well than the applicant, and there have been no well interference complaints in this area or for this aquifer on file with the Water Rights Program. Observation Well BN-79B is located approximately 0.3 miles from No. 4898-3. BN-79B has shown over the period of record a drawdown in the well during a pumping season ranging from next to none during seasons where irrigation is minimal due to precipitation or other conditions up to approximately 30 to 40 feet of drawdown from the static water level, but the water level recovers at the end of the irrigation season. The artesian head pressure at that observation well is in the range of 60 to 70 feet under static conditions. Distance determines the amount of measurable effect in a glacial aquifer, such as the Middle James:Columbia. The further away the less measurable drawdown is caused by pumping at a specific location. Mr. Mathiowetz noted that the applicant is applying for a notably lower diversion rate than is authorized by No. 4898-3.

Mr. Mathiowetz said he has reviewed the petition filed by Hal and Brad Treeby. The Treeby's expressed concerns that there will be additional strain on the aquifer and that the irrigation Finley Family plans to do will cause issues related to installation of drain tile. Mr. Mathiowetz stated that review of the application did not address drainage. After reviewing the observation well data for all three of the observation wells in the area, Mr. Mathiowetz would not expect an unlawful impairment to occur if this application were developed.

Mr. Mathiowetz stated that he also reviewed Lyndse Dellman's petition. Ms. Dellman's concerns were that the irrigation will ruin their water source and aquifer and that no research has been done to see if the area can handle this much irrigation. Water Rights has no record on file for Ms. Dellman's well, but based on the application, Mr. Mathiowetz would expect the Dellman well to be in the section west of the applicants. Ms. Mathiowetz said Ms. Dellman cited in her petition that she has a surface well, which he views as a well generally less than 50 feet deep, which would not be in the same aquifer as the applicant. With the protections afforded through statute and the information gleaned from review of the observation well data, Mr. Mathiowetz would not expect an unlawful impairment of an adequate domestic well in the same aquifer as

the applicant's well. If the Treebys or Dellmans submit a complaint about their wells being affected by this application, the Water Rights Program would conduct an investigation starting with a review of the observation well data and all of the well construction information for the petitioner's well. The nearest observation well is within a quarter mile of the application.

The chief engineer recommended approval of Application No. 8527-3 with the following qualifications:

1. The well approved under Water Permit No. 8527-3 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 well authorized by Permit No. 8527-3 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. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Ms. Riter-Rapp had no questions for Mr. Mathiowetz.

In response to a question from Ms. Dixon regarding the Finley Family address being in North Dakota, Mr. Gronlund stated that it is not uncommon that a water permit holder has a water right even if they are located in another state.

Motion by Freeman, seconded by Hutmacher, to approve Water Permit No. 8527-2, Finley Family LLLP subject to the qualifications set forth by the chief engineer. A roll call vote was taken, and the motion carried unanimously.

The parties agreed to waive Findings of Fact and Conclusions of Law.

ADJOURN: Motion by Holzbauer, seconded by Comes, to adjourn. Motion carried unanimously.

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

Approved on the 2nd day of March 2022.

WATER MANAGEMENT BOARD MEETING

December 8, 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

No.	Name	Address	County	Amount	Use	Source	Qualifications
2826-2	Andy Edsen	Bennington NE	PE	0.033 cfs	commercial	1 well-Crystalline Rock	wi, wcr, 2 special
2827-2	A & B Ranch Inc	Hermosa	PE	3.04 cfs	212.8 acres	Spring Creek	lf
8515-3	Riverview LLP	Morris MN	CK	1.45 cfs	commercial	3 wells-Pleistocene Series	wi, wcr, 2 special
8533-3	BDM Rural Water System	Britton	ML	1.11 cfs	rws	1 well-Middle James:Columbia	wi, wcr, 2 special
8535-3	Jay Cutts	Mission Hill	YA	1.78 cfs	92 acres	1 well-Lower James Missouri	wi, iq, 1 special
8536-3	Berwald Family RLLP	Toronto	DU	2.0 cfs	154 acres	2 wells-Pleistocene Series	wi, wcr, iq
8537-3	Berwald Family RLLP	Toronto	DU	2.0 cfs	160 acres	3 wells-Big Sioux Brookings	wi, wcr, iq
8539-3	JD Bieber Enterprises Inc	Bowdle	MP	1.78 cfs	120 acres	1 well-Grand	wi,wcr, iq, 1special
8540-3	JD Bieber Enterprises Inc	Bowdle	MP	no add'l	70 acres	2 wells- Grand	wi, iq
8541-3	Townsend Family Farms	Andover	DA	1.78 cfs	90 acres	1 well-Altamont	wi, wcr, iq
8542-3	Tyler Anderson	Centerville	TU	1.61 cfs	103 acres	1 well-Upper Vermillion Missouri:South	wi, wcr, iq, 1special
8543-3	Kokes Farms LLC	Tabor	YA	no add'l	52 acres	1 well-Lower James Missouri	wi, iq
8544-3	Ducks Unlimited	Bismarck ND	CL	100 AF	FWP	runoff	lf, 2 special
8545-3	Larry Braun Farms Limited Ptr	Warner	BN	2.00 cfs	140 acres	1 well-Elm:South Brown	wi, wcr, iq
8546-3	Brandon Valley Baseball	Brandon	MA	0.13 cfs	7 acres	1 well-Big Sioux:South	wi, wcr, iq, 1 special
8548-3	City of Pierre	Pierre	HU	no add'l	no add'l	Missouri River	iq, 1 special
8549-3	James Orris Living Trust	Clark	CK	3.78 cfs	350 acres	3 wells-Altamont	wi, wcr, iq
8550-3	Maxwell Colony	Scotland	YA/BH	no add'l	no add'l	90 AF storage dam	wi, iq , 2 special
8552-3	WEB Water Development Association	Aberdeen	WL	10,000 AF	rws	Missouri River	3 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
5862-3	Watertown Municipal Utilities	Watertown	CD	760 AF	municipal	Big Sioux:North Aquifer	none

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
6237-3	City of Vermillion	Vermillion	CL	1,900 AF	municipal	Missouri:Elk Point Aquifer	none



**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. 6237-3. City of Vermillion SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 6237-3, City of Vermillion, Shane Griese, Utilities Mgr, 25 Center St, Vermillion SD 57069.

The Chief Engineer is recommending that Future Use Permit No. 6237-3 REMAIN in EFFECT for 1,900 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 6237-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 6237-3, 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. 6237-3 is subject to payment of the \$215.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer
January 14, 2022



25 Center Street • Vermillion, SD 57069
Ph: 605.677.7050 • Fax: 605.677.5461
Info@cityofvermillion.com
www.vermillion.us

January 5, 2022

Karen Schlaak
Water Rights Program
SD DANR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RECEIVED

JAN 10 2022

WATER RIGHTS
PROGRAM

Re: Extension of Future Use Water Permit No. 6237-3

Ms. Schlaak:

The City of Vermillion is requesting to retain the Future Use Water Permit No. 6237-3. By reserving the rights for water we are ensuring that our utility is capable of meeting the future needs of the city. The population of our community has been steadily increasing and we would like to ensure that we are prepared to adequately service future growth.

The City of Vermillion has a water treatment plant capacity of 4.6 MGD. Currently, our firm well pumping capacity is approximately 3.0 MGD. Future Use Water Permit No. 6237-3 provides us with the ability to pump the 4.6 MGD of water that our treatment facility is designed to accommodate.

Feel free to contact me should additional information or clarification be needed. My direct phone number is (605) 677-7084 and my e-mail address is shaneg@cityofvermillion.com. Thank you for your consideration.

Sincerely,

Shane Griesse
Utilities Manager

Enclosure

Cc: Curt Haakinson, Water Department Supervisor

2019 Raw Water

	Meter (EOM Reading)	Gallons
January	30257	30257000
February	59471	29214000
March	95139	35668000
April	128395	33256000
May	162390	33995000
June	201203	38813000
July	248213	47010000
August	296095	47882000
September	342140	46045000
October	384337	42197000
November	426349	42012000
December	469333	42984000
	Total Gallons	469333000

2020 Raw Water

	Meter (EOM Reading)	Gallons
January	38409	38409000
February	75337	36928000
March	110197	34860000
April	142410	32213000
May	168364	25954000
June	214404	46040000
July	259957	45553000
August	307238	47281000
September	351481	44243000
October	387773	36292000
November	417071	29298000
December	447443	30372000
	Total Gallons	447443000

2021 Raw Water

	Meter (EOM Reading)	Gallons
January	33591	33591000
February	68127	34536000
March	100387	32260000
April	130830	30443000
May	163332	32502000
June	214552	51220000
July	262607	48055000
August	312426	49819000
September	353584	41158000
October	391130	37546000
November	421509	30379000
December	449183	27674000
	Total Gallons	449183000

The second component of demand discussed is the desired level of fire protection. This demand is harder to determine because historical use is not indicative to future requirements or water use. However, for the City the required fire flow is going to be the governing factor in the design and consideration of existing and future improvements. Each building is recommended to have a certain level of fire protection based on Insurance Services Office (ISO) ratings. Oftentimes the level of fire protection is significantly larger than the historical domestic water use. It should be noted that the calculations that Banner Associates, Inc. used to determine the level of fire protection is to be used only as a baseline for establishing a certain level of protection for this study. Actual fire flow required is often determined by many outside conditions, including available equipment, level of training, and the number of personnel of the local fire department. Determination of the actual fire flows required is outside the scope of services for this study and will not be established.

2.2.2 Domestic Water Usage

Historical water production and sales records were furnished by City for the years 2003 through 2009. USD is the largest water user for the City of Vermillion. In 2008, USD purchased approximately 43,725,000 gallons of water from the City of Vermillion.

The following sub-sections will identify the historical water usage and project the domestic water usage using the historical population and population projections to determine the domestic water usage as a result of growth in the student population.

2.2.2.1 Population Estimate

Establishing the current and future population will provide the basis for projecting future domestic water usage. The population estimate in the Facility Plan for Vermillion Sanitary Sewer

Improvements- 2009, Banner Associates, Inc, April 2009 was used for the 30 year design period to the year 2040 for this report.

The population data was used in conjunction with three well known methods to perform population projections. The first method is an Arithmetic method which assumes the population increases at a constant rate. The second method is a Decreasing Rate of Increasing which assumes the population increases to a limiting value or saturation point. The final method is the Geometric Progression which places a line of best fit to data based off of historical population data using a compound interest equation. The population analysis is shown in Section 4.4 of the Facility Plan for Vermillion Sanitary Sewer Improvements- 2009, Banner Associates, Inc, April 2009.

The following table shows the resulting average projected population for the City of Vermillion.

Table 2.4: Population Projections

	2009	2019	2029	2039
Linear Regression Method	12,195	13,473	14,656	15,840
Arithmetic Method	11,231	12,292	13,353	14,413
Geometric Method	12,118	14,555	17,481	20,996
Average	11,848	13,440	15,163	17,083

The present population of Vermillion, for the year 2009, is estimated to be 11,848. The design population needs to be determined for the year 2040. The year 2040 design population is determined by using the averages of the population projections from the years 2020, 2030, and 2040.

2.2.2.2 Future Domestic Water Demands

Review of the "Vermillion Water Treatment Facilities Capital Improvements Plan-2000" shows that historically the ratio of the maximum day to average day demands for the City of Vermillion averaged about 1.98 from 1987 to 1999 and 1.80 from 2002 to 2009. Typical values are between 1.5 and 2.0, so the maximum day to average day ratio of 1.8 was used to determine maximum day water usage. Table 2.5 summarizes the past and projected water use.

Table 2.5: Past and Projected Water Use

Year	Population	Ave. Daily Demand (gpd)	Max. Day Demand (gpd)	*Max Day/Ave Day	Ave. Daily Demand (gpcd)
2002	10,253	1,034,098	1,721,773	1.67	100.9
2003	10,371	1,012,262	1,685,417	1.67	97.6
2004	10,489	965,479	1,607,522	1.67	92.0
2005	10,608	985,050	1,640,108	1.67	92.9
2006	10,728	1,007,289	1,677,136	1.67	93.9
2007	10,848	1,056,191	1,758,558	1.67	97.4
2008	10,969	941,466	1,770,000	1.88	85.8
2009	11,848	996,000	1,745,000	1.75	84.1
2010	12,029	1,022,500	1,840,500	1.80	85
2020	13,604	1,156,300	2,081,300	1.80	85
2030	15,346	1,304,400	2,347,900	1.80	85
2040	17,287	1,469,400	2,644,900	1.80	85

*The past max day to average day ratio is approximately 1.67, so the maximum day was calculated using the average ratio for 2002 to 2007.

The existing average daily water use is approximately 996,000 gpd (692 gpm). The past water sales data for the last five years in gpd per capita was plotted and a trend line extended to determine an estimate of total future water use. The trend line is generally decreasing, so the 2009 value was used (85 gpcd) as the basis of design. This value was used with the projected population estimates to calculate the overall water use in 2040. Based on an overall water

use of 85 gpcd and estimated population of 17,287 people, the average daily water use for 2040 is estimated to be 1,469,400 gpd (1020 gpm) and assuming a maximum day to average day factor of 1.80, the maximum day water use is estimated to 2,644,900 gpd (1837 gpm) for 2040.

The existing average day residential demand is approximately 652,700 gpd (453 gpm), which is approximately 60 gpcd and 68 percent (68%) of the total water demand. The past average residential water use in percent of total water demand was plotted and a trend line extended to determine the estimated percent of total water demand for the future. The trend line is generally constant, so the 4-year average was the basis of design. Based on the 4-year average commercial percent sales of 68% and the overall average daily water use, the future commercial water use was determined to be 58 gpcd for 2040. Therefore, a total of 1,001,700 gpd (696 gpm) is assumed for residential water use in 2040.

The existing average day commercial demand is approximately 288,800 gpd (200 gpm), which is approximately 26 gpcd and 32 percent (32%) of the total water demand. The past average commercial water use in percent of total water demand was plotted and a trend line extended to determine the estimated percent of total water demand for the future. The trend line is generally constant, so the 4-year average was the basis of design. Based on the 4-year average commercial percent sales of 32% and the overall average daily water use, the future commercial water use was determined to be 27 gpcd for 2040. Therefore, a total of 467,700 gpd (325 gpm) is assumed for commercial water use in 2040.

Currently, no water is demanded for industrial use and little growth in industrial use is projected over the next 20 years. In the case that a wet industry, such as an ethanol plant, is interested in moving to Vermillion, the necessary improvements to the distribution system should be analyzed and typically paid for by the industry.

The water produced at the water treatment plant was compared with the total water sold to determine the percentage of unaccounted for water. Unaccounted for water includes water used for fighting fires and water lost due to leaks in the system and inaccuracies in flow meters. The following table summarizes the unaccounted for water data over the last four years.

Table 2.6: Unaccounted For Water Use

Year	*Water Produced (gal)	Water Sold (gal)	Unaccounted For (gal)	Percent Unaccounted For (%)
2002	376,491,000	377,445,692	-954,692	-0.3%
2003	409,758,000	369,475,789	40,282,211	9.8%
2004	340,200,810	352,399,660	-12,198,850	-3.6%
2005	391,545,000	359,543,165	32,001,835	8.2%
2006	416,042,993	367,660,408	48,382,585	11.6%
2007	417,473,999	385,509,611	31,964,389	7.7%
2008	370,405,007	343,635,067	26,769,940	7.2%
4-Year Average	398,867,000	364,088,000	34,780,000	8.7%

Using the 4-year average, the unaccounted for water is expected to be approximately 8.7 percent (8.7%) of the total water produced; therefore, 140,400 gpd (98 gpm) is allocated for the 2040 total, making the total average day water produced to be 1,609,800 gpd (1118 gpm) and total maximum day water produced to be 2,897,700 gpd (2012 gpm). The following table summarizes the above discussion.

Table 2.7: Existing and Projected Water Requirements

	2008	2010	2020	2030	2040
Population	10,969	12,029	13,604	15,346	17,287
Residential					
gpcd	60	58	58	58	58
Subtotal (gpd)	652,700	697,000	788,300	889,200	1,001,700
Residential %	69.3%	68.2%	68.2%	68.2%	68.2%
Commercial					
gpcd	26	27	27	27	27
Subtotal (gpd)	288,800	325,500	368,100	415,200	467,700
Commercial %	30.7%	31.8%	31.8%	31.8%	31.8%
Unaccounted For (gpd)	73,300	97,700	110,500	124,600	140,400
Unaccounted For %	7.2%	8.7%	8.7%	8.7%	8.7%
Average Day Demand (gpd)	1,014,900	1,120,200	1,266,800	1,429,100	1,609,800
Max Day Demand (gpd)	1,778,200	2,016,400	2,280,300	2,572,400	2,897,700

2.2.3 Fire Flow Analysis

A fire flow analysis is part of the study because the design of improvements will be governed by the fire flow requirements. All evaluations of piping size will be done to ensure that the required flow rate is obtained while maintaining at least 20 psi in the system and based on an assigned fire flow requirement for each hydrant. The City's existing zoning map, as seen in Figure 2.3, was overlaid on the existing hydrants. The level of fire protection needed at each hydrant is dependent on the zone in which it is located. Each hydrant was assigned a fire flow rate that corresponds to the zone in which it is located. It can be seen from Figure 2.3 and Table 2.8 that the fire flow requirement varies from zone to zone. This is because of the size and type of buildings found within each zone, as well as the distance between the structures influences the level of fire protection needed.

AFFIDAVIT OF PUBLICATION

PLAIN TALK

CITY OF VERMILLION LEGALS
25 CENTER ST
VERMILLION SD 57069

STATE OF SOUTH DAKOTA
COUNTY OF CLAY

MICHELE SCHIEVELBEIN, BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT (S)HE IS THE ADVERTISING DIRECTOR OF YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
PLAIN TALK, A LEGAL WEEKLY NEWSPAPER PUBLISHED AND CIRCULATED
IN THE CITY OF VERMILLION, SAID COUNTY AND STATE, AND ONE OF
THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN
THIS AFFIDAVIT; THAT THE ANNEXED
NOTICE OF HEARING TO REVI

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 21st DAY OF January, 2022
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$60.64 ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND 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.

PUBLISHED ON: 01/21/2022

FILED ON: 01/21/2022



SUBSCRIBED AND SWORN TO BEFORE ME THIS 21st DAY OF January, 2022



NOTARY PUBLIC, SOUTH DAKOTA

MY COMMISSION EXPIRES 07/04/2026



Ad text : NOTICE OF HEARING TO
REVIEW FUTURE USE WATER PERMIT NO. 6237-3

Notice is given that the Water Management Board will review Future Use Permit No. 6237-3 held by the City of Vermillion, Shane Griese, Utilities Manager, 25 Center St, Vermillion SD 57069 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 6237-3. This permit was approved 2001 and currently reserves 1,900 acre-feet from the Missouri/Elk Point Aquifer located in N 1/2 Section 24-T92N-R52W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 6237-3 REMAIN in EFFECT for 1,900 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 Chief Engineers recommendation with qualifications is available at <https://danr.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 conduct the hearing to review Future Use Permit No. 6237-3 at 9:30 am, March 2, 2022 in the Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit 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 person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by January 31, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 6237-3 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.

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 renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by January 31, 2022.

Any Interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by January 31, 2022.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture 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 January 31, 2022. However, since this particular matter is a future use permit renewal 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.

Published once at the total approximate cost of \$60.64.

Published January 21, 2022.

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

CITY OF VERMILLION LEGALS
25 CENTER ST
VERMILLION SD 57069

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

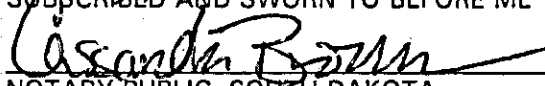
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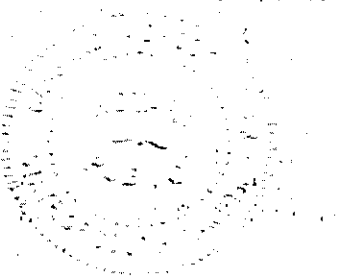
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PUBLISHED ON: 01/21/2022

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SUBSCRIBED AND SWORN TO BEFORE ME THIS 21st DAY OF January, 2022


NOTARY PUBLIC, SOUTH DAKOTA
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Published once at the total approximate cost of \$60.80.

**REPORT ON
IRRIGATION QUESTIONNAIRE VIOLATIONS
March 2, 2022**

On October 22, 2021, 3,873 irrigation questionnaires were mailed by first class mail to 1,960 irrigators for reporting water use for 2021. The permit holders were given until December 3, 2021, to return the forms. The cover letter included the following examples of how questionnaires could be completed and returned:

3 easy options to return your irrigation questionnaire(s)	1. Online (preferred method),	2. Mail, or	3. Fax
	https://danr.sd.gov/iq	Use the enclosed postage paid return envelope	Fax the completed form(s) to 605 773-4068
For assistance completing your form(s), contact Genny McMath at 605 773-3352 or by email: genny.mcmath@state.sd.us			

On January 20, 2022, approximately 225 notices were mailed to those irrigators who had not returned their irrigation questionnaires. Additional questionnaire forms were included with the mailing. All notices were sent by "certified mail."

The January 20th notice advised permit holders that the Board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for:
A period of up to one year (first violation); or
A period of up to three years (second violation - includes one previous suspension).
- The permit(s) could be canceled for a third violation (includes at least two previous suspensions).
- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification.
- Postpone any action or take no action.

The Water Rights Program is recommending the Board take the following action for those permits with irrigation questionnaires not received by March 2, 2022:

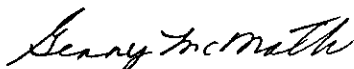
- Suspend the permits/rights (listed on attachment) effective April 4, 2022, unless the questionnaire is returned prior to April 4, 2022:
 1. First Violation - one year suspension
 2. Second Violation – three year suspension

Following the hearing, all permit holders will be sent a notice informing them of the Board action with the opportunity to submit the questionnaire by April 4th to avoid suspension. All follow-up notices will be sent by certified mail.

- Amend the permits/rights (listed on attachment) to include the following qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The amendment of the water permits, or rights will be effective immediately.



Genny McMath
Water Rights Program

Permits/Rights Subject to Amendment or Suspension

2021 Irrigation Questionnaire Report Violations

March 2, 2022

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
6947-3	JOEL ADLER	GT	1
8226-3	JEFFREY ALBRECHT	KG	1
5844-3	CRAIG ANDERSEN, RENTER	CL	1
7423-3	MICHAEL BOTTOLFSON	CL	1
7519-3	MICHAEL BOTTOLFSON	CL	1
1714-2	BRASSFIELD RANCH LLC	PE	1
2063-2	BRASSFIELD RANCH LLC	PE	1
400-2	BRASSFIELD RANCH LLC	PE	1
401-2	BRASSFIELD RANCH LLC	PE	1
2647-2	CODY BURULL	LY	1
2701-2	CODY BURULL	LY	1
6263-3	CEDAR GROVE COLONY	BL	1
8041-3	CEDAR GROVE COLONY	BL	1
2579-3	CLAREMONT COLONY	HM	1
4353-3	CLAREMONT COLONY	HM	1
5774-3	CLAREMONT COLONY	HM	1
6424-3	CLAREMONT COLONY	HM	1
6606-3	CLAREMONT COLONY	HM	1
6870-3	CLAREMONT COLONY	HM	1
7193-3	CLAREMONT COLONY	HM	1
7490-3	CLAREMONT COLONY	HM	1
7491-3	CLAREMONT COLONY	HM	1
1411A-1	BARB & RON CLINE	BU	1
1553-3	RICK ECKMANN, OPERATOR	BD	1
881-2	RYAN EDWARDS	MT	1
2692A-2	STEVE ELSHERE LAND COMPANY	HK	1
2698-2	NEIL & LUPITA FANNING	BT	1
2721-2	NEIL & LUPITA FANNING	BT	1
6920-3	FOUR WINDS ENTERPRISES LLC	BH	1
5870-3	ROBERT J GEARY	UN	1
6044-3	ROBERT J GEARY	UN	1
6072-3	ROBERT J GEARY	UN	1
7768-3	ROBERT J & THERESA GEARY	UN	1

Violations:

1 = First violation, one year suspension 2 = Second violation, three year suspension
3 = Third violation, cancellation A = Amendment to add IQ qualification

Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
7769-3	ROBERT J & THERESA GEARY	UN	1
7770-3	ROBERT J GEARY	UN	1
7771-3	ROBERT J & THERESA GEARY	UN	1
7772-3	ROBERT J & THERESA GEARY	UN	1
7773-3	ROBERT J GEARY	UN	1
7774-3	ROBERT J GEARY	UN	1
7775-3	ROBERT J GEARY	UN	1
7776-3	ROBERT J & THERESA GEARY	UN	1
8332-3	ROBERT OR CODY GEARY	UN	1
8364-3	DANIEL & SCOTT HANSON	UN	1
6878-3	SCOTT HANSON, MGR	UN	1
1994-3	ALBERT HATTUM	HU	1
3805A-3	RICHARD HORTON, MGR	TU	1
6316-3	HOWARD ATHLETIC CLUB, INC	MR	1
2851-3	DAVID HUBER	CK	1
4955-3	DAVID HUBER	CK	1
4292-3	DAVE A HUBER, MGR	CK	1
4400A-3	HURON COLONY	BD	1
5651-3	HURON COLONY	BD	1
2390A-3	HURON COLONY	BD	1
3268A-3	HURON COLONY	BD	1
6431-3	HURON COLONY	BD	1
7395-3	HURON COLONY	BD	1
7370-3	HURON COLONY	BD	1
7367-3	HURON COLONY	BD	1
7366-3	HURON COLONY	BD	1
7365-3	HURON COLONY	BD	1
7905-3	HURON COLONY	BD	1
7906-3	HURON COLONY	BD	1
7906A-3	HURON COLONY	BD	1
7369A-3	HURON COLONY	BD	1
7369B-3	HURON COLONY	BD	1
7369C-3	HURON COLONY	BD	1
7043-3	COREY JOHANNSEN, RENTER	PT	1
7114-3	MICHAEL A KOSLOWSKI	DA	1
7336-3	MICHAEL A KOSLOWSKI	DA	1
7286-3	BRIAN KOZAK	BH	1

Violations:

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Permit Nos.	Name	County	Irr Ques Violation
Violation: 1			
7543-3	BRIAN KOZAK	BH	1
5735-3	MARK MCCLOUD	HY	1
1692A-2	ED MCMAHON, MGR	PE	1
5914-3	MDB PROPERTIES	TU	1
5664-3	PAT MENTELE	SA	1
8326-3	JERRY D NELSEN	TU	1
4041-3	NORTH STAR CATTLE & RANCH CO	RB	1
4041A-3	NORTH STAR CATTLE & RANCH CO	RB	1
6029-3	NORTH STAR CATTLE & RANCH CO	RB	1
8423-3	CITY OF PLATTE	CM	1
2074-2	PRAIRIE GARDENS, INC	CU	1
7005-3	RANDALL ENTERPRISE LLC	MY	1
287A-1	JEFFREY DAVID RATHBUN	BU	1
5566-3	WAYNE REIERSON	CA	1
7615-3	WAYNE REIERSON	CA	1
7616-3	WAYNE REIERSON	CA	1
7924-3	BRANDON RITTER	CA	1
3803-3	BRANDON RITTER, MGR	CA	1
4448-3A	BRANDON RITTER, MGR	CA	1
4705-3	BRANDON RITTER, MGR	CA	1
3213-3A	SANDERSON FARMS INC	BG	1
484B-1	DALE SPRAGUE	BU	1
7135-3	RUSSELL TESCH	HM	1
7236-3	DAVID ULVESTAD	BG	1
7237-3	DAVID ULVESTAD	BG	1
2497-2	MARTY VANDERPLOEG	BT	1
8265-3	WISKOTA FARM	DA	1
516-1	LAWRENCE WOODWARD	ZB	1
715-1	LAWRENCE WOODWARD	ZB	1

Violation: 2

2547-3	JEFF DEVRIES	BD	2
2548-3	JEFF DEVRIES	BD	2
3085-3	JEFF DEVRIES	BD	2
6381-3	JEFF DEVRIES	BD	2
6440-3	JEFF DEVRIES	BD	2
1350-3	SCOTT JENSEN, MGR	MY	2
6042-3	SCOTT JENSEN, MGR	MA	2

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Permit Nos.	Name	County	Irr Ques Violation
Violation: 2			
5970-3	BARRY JUHNKE	HT	2
6125-3	BARRY JUHNKE	HT	2
6806A-3	BARRY JUHNKE	HT	2
1463A-1	DONALD KISSACK	BU	2
410B-2	KATHI KOESTER	FR	2
2954-3	LANE TEKRONY	DU	2
Violation: A			
1397-2	CODY BURULL	LY	A
659-3	RICK L & PEGGY S ECKMANN	BD	A
1786-3	ROBERT & THERESA GEARY	UN	A
2109-3	ROBERT J GEARY	UN	A
2345-3	ROBERT J GEARY	UN	A
2346-3	ROBERT J GEARY	UN	A
1567A-3	ROBERT J & CODY J GEARY	UN	A
3487-3	DAVE HANSON	CL	A
1374-3	SCOTT HANSON, MGR	UN	A
179-3	SCOTT HANSON, MGR	UN	A
2357-3	SCOTT HANSON, MGR	UN	A
2358-3	SCOTT HANSON, MGR	UN	A
306A-3	SCOTT HANSON, MGR	UN	A
408-1	JAMES A MICKELSON	BU	A
2460-3	RYAN PATTERSON	ML	A
638-1	R PAN RANCHES LLC	BU	A
1613-2	ROGERS RIVER RANCH	CU	A
2594-3	RUSSELL TESCH	HM	A
2072-3	DAVID ULVESTAD	BG	A
2126-3	DAVID ULVESTAD	BG	A
3204-3	DAVID ULVESTAD	BG	A

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**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
APPLICATION NO. 2049A-3, City of Huron, Parks and Recreation**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 2049A-3, City of Huron, Parks and Recreation, PO Box 1369, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 2049A-3 because 1) the amendment of Water Right No. 2049-3 as qualified does not unlawfully impair existing rights, 2) is for a beneficial use and 3) is in the public interest with the following qualifications:

1. This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer.
2. Diversions under this permit during the period from July 1 through October 31 are subject to existing water rights with priority dates predating October 4, 2021, and any written orders issued by the Chief Engineer.
3. This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the gage at Huron SD, after pumping.
4. Approval of this Permit does not increase the additional storage of 90 acre-feet annually in Ravine Lake authorized by Water Right No. 2049-3.
5. Water Right No. 2049-3 and Water Permit No. 2049A-3 authorize a, combined, total annual diversion of 361 acre feet of water from the James River.
6. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the James River.

See report on application for additional information.

Eric Gronlund, Chief Engineer
November 30, 2021

REPORT ON WATER PERMIT APPLICATION NO. 2049A-3

City of Huron

November 10, 2021

Application No. 2049A-3 proposes to amend Water Right No. 2049-3. Water Right No. 2049-3 authorizes 2.0 cubic feet of water per second (cfs) from the James River located in the SW 1/4 NE 1/4 Section 6-T110N-R61W for municipal and recreation use. In addition, Water Right No. 2049-3 authorizes an additional storage of 90 acre feet of water annually in Ravine Lake by installation of splash boards to raise the level of Ravine lake one foot. This application requests to change the period of annual use from April 1 through June 30 to April 1 through October 31. No additional water appropriation is authorized by this application. This site is located in Beadle County on the east side of Huron SD.

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application including amendment to an existing permit or license. SDCL 46-2A-12 provides that amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest. Further, SDCL 46-5-30.4 provides further guidance that subject to the limitations in SDCL 46-5-33 and 46-5-34 governing changes in irrigation rights from one parcel of land to another, any water permit or right holder may apply for a change of use of the water, a change of location of the use or other amendment to the permit or right. Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.

This report analyzes available information to determine whether the amendment may unlawfully impair existing rights in order for the Chief Engineer to make an official recommendation to the Water Management Board.

Review of the Proposed Project

The applicant holds Water Right No. 2049-3 to divert James River water at a rate of 2.0 cfs during the annual use period April through June and additional storage capacity of 90 acre-feet in Ravine Lake located in the city of Huron. The maximum volume of water diverted by pumping water continuously at a rate of 2.0 cfs from April through June equates to 361 acre-feet of water annually. This application requests to amend the permit to allow the annual period of use to be extended by changing the time period to April through October. The application does not

request any increase in the maximum, annual volume of water that could be diverted under Water Right No. 2049-3.

Review of the Proposed Water Source

Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation, the James River experiences extremely low flows and cannot be considered a reliable source of water.

The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. The USGS collects realtime stream flow data and retains a historical record of the flow data for each of these stations (USGS, 2021). Water Rights staff uses this flow data to help regulate water usage during dry periods and for performing flow analyses in determining the likelihood of water availability at a particular location. The USGS provides an online statistical package to help analyze the flow data.

Two of the measures considered are Mean, often referred to as average, and Median, otherwise referred to as 50th percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean, often used to describe the middle value of a dataset, is calculated by determining the sum of the entries composing the dataset and then dividing that sum by the total number of entries in the dataset. Median, is the central value separating the higher half of values in a dataset from the lower half. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long-term flow data, large flood event data values skew the calculated mean value giving an unreasonable expectation of a higher flow value over a period of time.

The USGS operates stream flow gaging station No. 06476000, on the James River at Huron, SD (USGS, 2021). Figure 1 shows plots of historical percentile data from 1943 to 2020 for this stream flow gage. Looking at the requested period of use at the 50th percentile, with flows at or below this level on average one out of two years, the median daily flow values range from over 650 cfs throughout May before steadily dropping to a low of 60 cfs by mid-August. During the period of proposed use at the 25th percentile level, with flow is at this level or below on average one out of four years, the median daily flow values range between 210 cfs in May before dropping below 20 cfs by mid to late August. During the period of proposed use at the 10th percentile level, with flow is at this level or below on average one out of ten years, the median daily flow values range between 40 cfs in May before near zero cfs by mid-July. Based upon the historical stream gaging data, there will be times when shutoff orders will need to be issued for this reach of the James River.

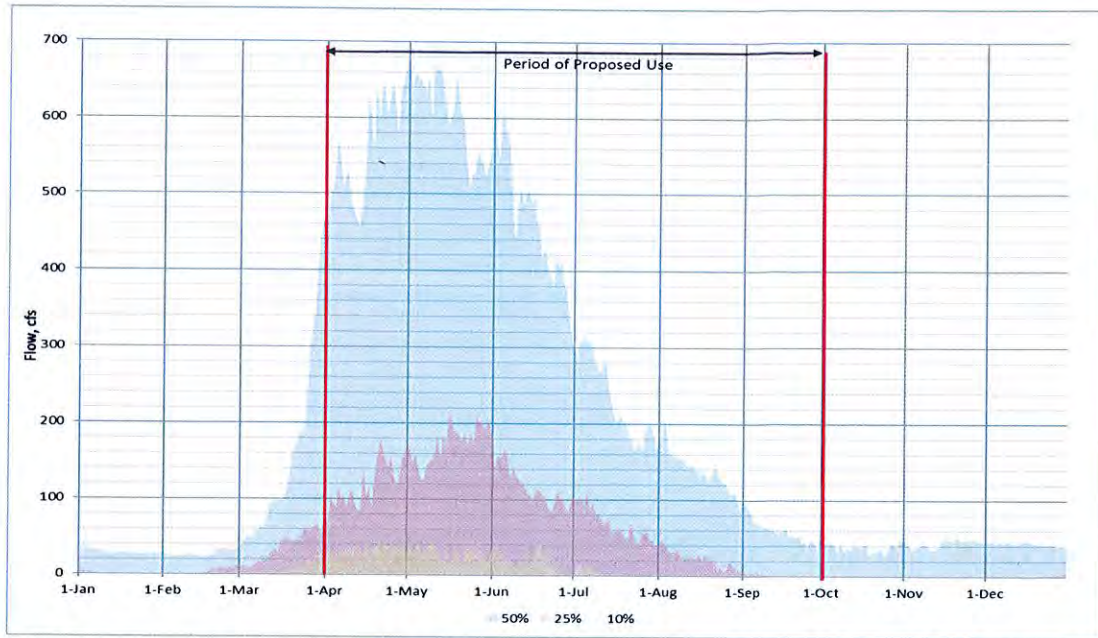


Figure 1. Daily percentile flow hydrograph for the USGS gaging station No. 06476000, 1943-2020, on the James River at Huron, SD, contributing drainage area 13,795 mi², (USGS, 2021).

Review of the James River Water Management Regulation

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed maximum appropriation limits over sections of the James River in South Dakota. A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota border to the Yankton-Hutchinson County Line (Water Rights. 2021). Of this restriction, a 200 cfs appropriation limit restriction was placed from the North Dakota border to the USGS gaging station in Huron, SD. The SD Water Management Board has adopted these appropriation limits.

In 2007, the SD Water Management Board adopted standardized qualifications and amended the existing water rights/permits for current and future James River water rights/permits (Water Rights. 2012). In order to address times when water availability is scarce from the James River, the Water Management Board has placed the following qualifications on James River permits with diversions located between the Ashton and Huron gaging stations:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station at Huron, SD, after pumping.

Although the original Water Right No. 2049-3 does not contain either of these qualifications, this requested extension of the annual period of use may have the potential of adversely affecting existing rights' ability to divert water during dry periods. If this application is approved, the water permit should contain these same qualifications.

Review of Existing Water Rights/Permits

Currently there are 74 water rights/permits and one future use permit appropriating or reserving 194.58 cfs of the 200 cfs appropriation limit between North Dakota border and the USGS gaging station at Huron, SD, and there are 120 water rights/permits and one future use permit appropriating or reserving 297.71 cfs of the 300 cfs appropriation limit between the North Dakota border and the Yankton-Hutchinson County Line. At the time this report was written there is 2.29 cfs available from the James River for appropriation (Water Rights. 2021).

There is Future Use Permit No. US594-3 bearing a priority date of November 7, 1963, held by the US Bureau of Reclamation for the reservation of 500 cfs from the James River and other sources. The majority of the water reserved by this permit and attributed to the James River would have come from runoff created by the defunded and non-constructed Oahe Project with the water being diverted at the James River pumping plant. Originally the reservation of water was by Future Use Permit No. 1067-3 held by the Oahe Conservancy Sub-District but was transferred to the Bureau of Reclamation under Future Use Permit No. US594-3 in 1974. The remainder of Future Use Permit No. 1067-3 was cancelled by the Water Management Board in 2012. The status of this future use permit should be reviewed since the source of the majority of the water reserved was to be from a federal irrigation project that was never constructed and has been defunded (Water Rights. 2021).

Water Right No. 2049-3 is qualified to allow diversion of James River water during the months of April, May and June when there are flows in excess of those needed for downstream domestic use, including, livestock watering and prior water rights use. This application seeks to extend the period when diversion may occur to include July, August, September and October of each calendar year. However, as set forth above, many water rights issued since Water Right No. 2049-3 was obtained in 1974 are qualified requiring cessation of pumping after August 10th and a requirement that there be a 20 cfs of flow at a downstream US Geological Survey gaging station (Water Rights. 2021). Under certain low flow conditions allowing pumping after July 1st as requested by Application No. 2049A-3 may cause the 20 cfs bypass threshold to be reached which may impair existing rights. Therefore, qualifications should be considered to include the standard August 10th shutoff qualification, a 20 cfs flow at the USGS gaging station at Huron and a special qualification that diversions after June 30th are subject to existing water rights with priority dates predating October 4, 2021 (date of filing of Application No. 2049A-3) to ensure there is not an unlawful impairment of existing rights.

Discussion

The applicant is proposing to extend the period of use from April 1 through June 30 to April 1 through October 31. Since this is not a request for a new appropriation, the current appropriation under Water Right No. 2049-3, which would be amended, is already accounted for within the Water Management Board's James River 300 cfs appropriation limit restriction for the river reach between the North Dakota border to the Yankton-Hutchinson County Line and a 200 cfs appropriation limit restriction for the North Dakota border to the USGS gaging station in Huron, SD. Also, if this application is approved, the permit should be qualified with a 20 cfs bypass at the stream gage in Huron, the August 10th shutoff qualification, being subject to existing water rights predating October 4, 2021, and an annual volume limit of 361 acre feet of water from the James River.

Conclusions

1. The applicant proposes to amend Water Right No. 2049-3 to extend the period of use from April 1 through June 30 to April 1 through October 31.
2. The request to amend the annual period of use Water Right No. 2049-2 will not change the current appropriation 2.0 cfs and is already accounted for within the Water Management Board's James River appropriation limit restrictions for the James River.
3. If approved the permit should contain the following qualifications:
 - This permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
 - This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station at Huron, SD, after pumping.
 - Diversions under Permit No. 2049A-3 during the period from July 1 through October 31 are subject to existing water rights with priority dates predating October 4, 2021, and any written orders issued by the Chief Engineer.
 - Water Right No. 2049-3 and Water Permit No. 2049A-3 authorize a, combined, total annual diversion of 361 acre feet of water from the James River.



Mark D. Rath

Natural Resources Engineer III

References

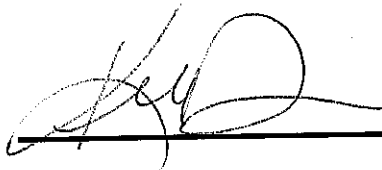
1. USGS. 2021. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.
2. Water Rights. 2021. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Proof Of Publication

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

Legal Notice Number: 1198

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: WATER RIGHTS NO. 2049-3, was published for one day, in said newspaper and not in any supplement of the said newspaper, the publication was on - 1/21/22. That the full amount of the fee charged for the publishing \$ 77.46 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 1/21/22.



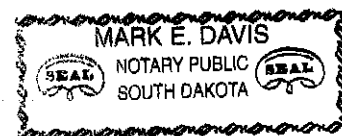
Notary Public, South Dakota

My Term Expires 12/27/24

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JAN 25 2022

WATER RIGHTS
PROGRAM



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F. P. 01-21-22

NOTICE OF HEARING on Application

No. 2049A-3 to Amend Water Right No. 2049-3

Notice is given that the City of Huron, Parks and Recreation, c/o Chad Schroder, Director, PO Box 1389, Huron SD 57350 has filed an application to amend Water Right No. 2049-3. Water Right No. 2049-3 authorizes 2.0 cubic feet of water per second from the James River located in the SW 1/4 NE 1/4 Section 6-T10N-R61W for the municipal and recreation use of storing water in Ravine Lake. This application requests to change the period of annual use from April 1 through June 30 to April 1 through October 31. Water Right No. 2049-3 and Water Permit No. 2049A-3 will authorize a combined total annual diversion of 361 acre-feet of water from the James River. No additional water appropriation is authorized by this application. This site is located on the east side of Huron SD.

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

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public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 2049A-3 as qualified by the Chief Engineer's recommendation because 1) existing domestic water uses and water rights will not be unlawfully impaired; 2) it is a beneficial use of water; and 3) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.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 10:00 am on March 2, 2022 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 person who intends to participate in the hearing shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the

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regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/> public or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by January 31, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name 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 March 2, 2022

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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 the application. The request for an automatic delay must be filed by January 31, 2022. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/> public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by January 31, 2022.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture 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

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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 January 31, 2022. 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 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 46-5-28, 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.

No. 1198 (adv.)
Published once at an approximate cost of \$77.46.



**DEPARTMENT of AGRICULTURE
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8565-3, Dustin Haase**

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. 8565-3, Dustin Haase, 44881 SD Highway 44, Parker SD 57053.

The Chief Engineer is recommending APPROVAL of Application No. 8565-3 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well approved under Water Permit No. 8565-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals 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 well authorized by Permit No. 8565-3 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. 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
February 1, 2022

Note: Based on your amendment to the application, if approved, you will be limited to development of 124 acres of irrigation in the SE 1/4 Section 15-T99N-R54W



**DEPARTMENT of AGRICULTURE
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8566-3, Dustin Haase**

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. 8566-3, Dustin Haase, 44881 SD Highway 44, Parker SD 57053.

The Chief Engineer is recommending DEFERRAL of Application No. 8566-3 because at this time it is not possible to conclude that unappropriated water is available to support this application in addition to Water Permit Application Nos. 8565-3 and 8567-3. Three of the four observation wells completed into this portion of the aquifer were completed in 2016 and; therefore, the period of record is limited. Based the best information available, the hydrologic budget only supports enough unappropriated water available to recommend approval of Application Nos. 8565-3 and 8567-3.

The deferral of Application No. 8566-3 is for up to two years at which time the application will be brought back before the Water Management Board for consideration. At that time, the Board will reconsider the application based on the additional period of record. The applicant can request the application be brought before the Board prior to expiration of the two year deferral period if they can show unappropriated water is available.

See report on application for additional information.

Eric Gronlund, Chief Engineer
February 1, 2022



**DEPARTMENT of AGRICULTURE
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8567-3, Dustin Haase**

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. 8567-3, Dustin Haase, 44881 SD Highway 44, Parker SD 57053.

The Chief Engineer is recommending APPROVAL of Application No. 8567-3 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well approved under Water Permit No. 8567-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals 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 well authorized by Permit No. 8567-3 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. 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
February 1, 2022

Note: Based on your amendment to the application, if approved, you will be limited to development of 226 acres of irrigation in the N 1/2 Section 15-T99N-R54W

Report to the Chief Engineer

On Water Permit Application Nos. 8565-3, 8566-3, and 8567-3

Dustin Haase

January 31, 2022

Water Permit Application No. 8565-3 proposes to appropriate 1.11 cubic feet of water per second (cfs) from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 210 feet deep) located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15 for the irrigation of 124 acres located in the SE $\frac{1}{4}$ of Section 15; all in T99N-R54W.

Water Permit Application No. 8566-3 proposes to appropriate 1.78 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 236 feet deep) located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15 for the irrigation of 132 acres located in the NW $\frac{1}{4}$ of Section 16; all in T99N-R54W.

Water Permit Application No. 8567-3 proposes to appropriate 2.22 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 210 feet deep) located in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15 for the irrigation of 226 acres located in the N $\frac{1}{2}$ of Section 15; all in T99N-R54W.

The site of the proposed diversion points is located in Turner County approximately three miles west of Parker, South Dakota.

AQUIFER: Pleistocene Series: Unknown (PS: U)

HYDROGEOLOGY:

The Pleistocene Series: Unknown is a generic name used by the DANR-Water Rights Program for a category of aquifer materials that were deposited by glacial movement during the Pleistocene geologic epoch that are not part of a previously mapped aquifer (Water Rights, 2022c). The glacial geology in the area of the proposed diversion points was deposited during the Late Wisconsin glaciation and is primarily composed of sand and gravel that are limited in areal extent (Schulz and Jarrett, 2009).

No water well completion reports were submitted with Water Permit Application Nos. 8565-3, 8566-3, and 8567-3. However, test hole completion reports were submitted with each water permit application. A reiteration of each test hole completion report is displayed in Tables 1 to 3.

Hydrologic Investigations (Lindgren and Hansen, 1990) did not identify a glacial outwash deposit of sufficient size to map at the location and depth of the proposed applications. Test hole and water well completion reports on file (Water Rights, 2022d), observation well logs (Water Rights, 2022b), lithologic logs from the South Dakota Geological Survey (SDGS) (SDGS, 2022), elevation data (USGS, EROS, 1999) and a bedrock topography map (Tomhave and Schultz, 2004) were utilized in this analysis to map the approximate areal extent of this glacial outwash deposit of the Pleistocene Series: Unknown aquifer and to determine the approximate elevation of this outwash near the proposed diversion points.

Table 1. Test hole completion report submitted with Water Permit Application No. 8565-3

Formation Log	From	To
Top Soil	0	2
Clay Brown	2	27
Clay Gray	27	44
Sand & Coal	44	47
Clay Gray W/ Sand Layers	47	52
Clay Gray Pebbly	52	77
Gravel Med W/ Clay Layers	77	83
Clay Gray W/ some Sand Layers	83	114
Clay Gray Pebbly	114	174
Gravel Coarse - Rock @ 197, Coarser @ Bottom	174	198
Clay Gray	198	210

Table 2. Test hole completion report submitted with Water Permit Application No. 8566-3

Formation Log	From	To
Top Soil	0	2
Clay Brown	2	11
Gravel	11	12
Clay Brown Gravely	12	35
Gravel	35	38
Clay Brown	38	49
Clay Brown Gravely	49	51
Gravel	51	53
Clay Gray	53	95
Gravel Coarse Clay Layer @ 130	95	131
Gravel Medium	131	141
Clay Gray	141	149
Sand & Coal	149	155
Clay Gray Some Sand layers & Coal	155	193
Coarse	193	236
Quartzite	236	

Table 3. Test hole completion report submitted with Water Permit Application No. 8567-3

Formation Log	From	To
Top Soil	0	3
Clay Brown	3	7
Sand	7	18
Clay Gray	18	103
Gravel	103	111
Sand	111	115
Clay W/ Sand Layers	115	129
Clay Gray with Gravel Layers - Very Mixed	129	135
Gravel Coarse	135	144
Clay Gray	144	146
Gravel Med Coarse	146	150
Clay	150	151
Gravel Coarse Rocky	151	181
Clay W/ Gravel Layers (1-2" layers of gravel w/ 1" layers of clay)	181	189
Gravel	189	208
Rock Quartzite or Quartzite Boulder	208	210

Figure 1 displays a map of the proposed diversion points, with the approximate Pleistocene Series: Unknown aquifer boundary for this location, and the Pleistocene Series: Unknown aquifer observation wells and water rights/permits (Water Rights, 2022b and 2022c). The areal extent of this glacial outwash deposit of the Pleistocene Series: Unknown aquifer (as seen in Figure 1) is approximately 11,700 acres. The top of the glacial outwash deposit at the proposed diversion points ranges from approximately 1,272 to 1,262 feet above mean sea level (fmsl) and varies from approximately 19 to 43 feet thick. The depth to the top of this glacial outwash deposit ranges from approximately 174 to 193 feet below grade over the area this outwash. This deposit primarily lies in a channel incised into the bedrock (Niobrara Formation at this location) (as seen in Figure 1) (Tomhave and Schulz, 2004). Based on the test hole completion reports submitted with the water permit applications, and the well completion reports and lithologic logs on file with the DANR-Water Rights Program (SDGS, 2022; Water Rights, 2022b and 2022d), the Pleistocene Series: Unknown aquifer is expected to be confined at the proposed diversion points.

The water well completion report on file for Water Permit No. 7495-3 identified a water bearing sand and gravel material at approximately 1,270 fmsl (USGS, EROS, 1999; Water Rights, 2022d). The available information at that time implied a Niobrara aquifer water source, and the permit application was approved for diversion from the Niobrara aquifer. This water bearing sand and gravel material occurs at the same elevation as the water bearing sand and gravel material identified in the test hole logs for the proposed diversion points. For this analysis, the well authorized by Water Permit No. 7495-3 (located approximately 0.5 to 1 mile(s) southeast of the proposed diversion points) will be assumed to be completed into the same outwash deposit of the Pleistocene Series: Unknown aquifer as the proposed diversion points.

Near the proposed diversion points, there are several known and mapped aquifers. The best information currently available indicates that the nearest portion of the Upper Vermillion Missouri: West and Parker-Centerville aquifers are located approximately five miles southeast, and the Vermillion West Fork aquifer is approximately one mile northeast (Jarrett, 1986, Lindgren and Hansen, 1990; SDGS, 2022; Water Rights, 2022b, Water Rights, 2022d). The Niobrara aquifer likely underlies this glacial outwash deposit (Lindgren and Hansen, 1990). It is probable that this outwash is hydraulically connected to the Niobrara aquifer (Water Rights, 2022b, 2022c and 2022d). It is also possible that this outwash deposit is connected to a large outwash body, the Upper Vermillion Missouri: West aquifer (Water Rights, 2022b, 2022c and 2022d).

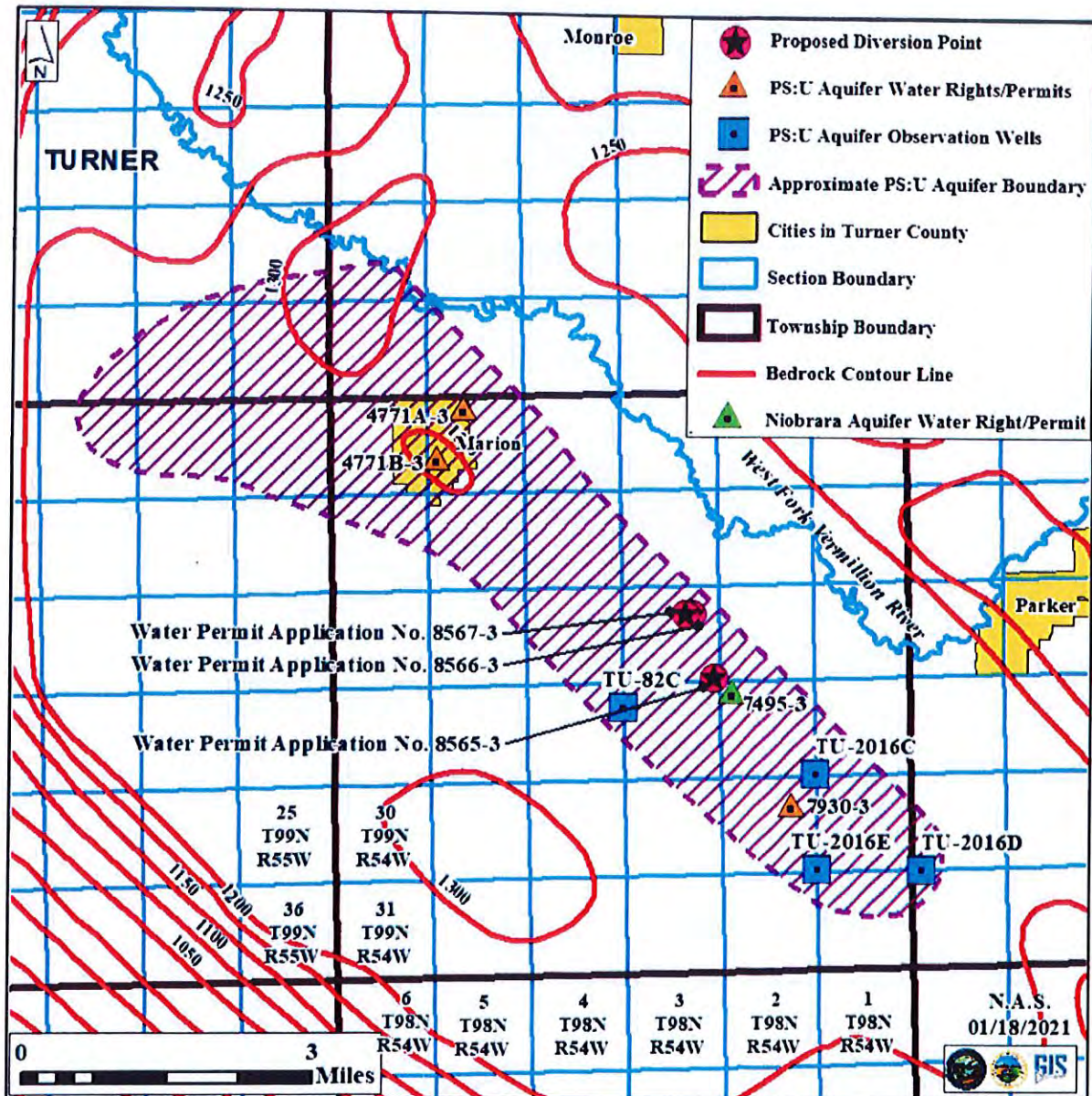


Figure 1. Location of the proposed diversion points for Water Permit Application Nos. 8565-3, 8566-3, and 8567-3 with the approximate areal extent of the Pleistocene Series: Unknown aquifer boundary, bedrock contour lines (Tomhave and Schultz, 2004), and the Pleistocene Series: Unknown aquifer observation wells and water rights/permits (Water Rights, 2022b and 2022c)

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 diversion point can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SDCL 46-2-9 and 46-2-11.” This report will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within the Pleistocene Series: Unknown aquifer.

WATER AVAILABILITY:

Water Permit Application Nos. 8565-3, 8566-3, and 8567-3 propose to appropriate water from the Pleistocene Series: Unknown aquifer. The probability of unappropriated water being 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.” The Pleistocene Series: Unknown aquifer is not older than or stratigraphically lower than the Greenhorn Formation (Fahrenbach et al., 2010), and the applicant’s proposed use is not for use in a water distribution system as defined by SDCL 46-1-6(17). Therefore, the average annual recharge and average annual withdrawal rates to and from the Pleistocene Series: Unknown aquifer must be considered.

OBSERVATION WELL DATA:

Administrative Rule of South Dakota (ARSD) 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.

Observation wells provide data on how the aquifer reacts to regional climatic conditions and local pumping. The DANR-Water Rights Program monitors 112 observation wells completed into the Pleistocene Series: Unknown aquifer (Water Rights, 2022b). There are 4 observation wells completed into this glacial outwash deposit of the Pleistocene Series: Unknown aquifer (Water Rights, 2022b). These observation wells are TU-82C (approximately one mile southwest), TU-2016C (approximately two miles southeast), TU-2016E (approximately three miles southeast), and TU-2016D (approximately 3.5 miles southeast) (as shown in Figure 1). The hydrographs for these observation wells are displayed in Figures 2 to 5 (Water Rights, 2022b). The data points utilized to construct the hydrographs are measurements of the static water level in the observation wells from the top of the well casing.

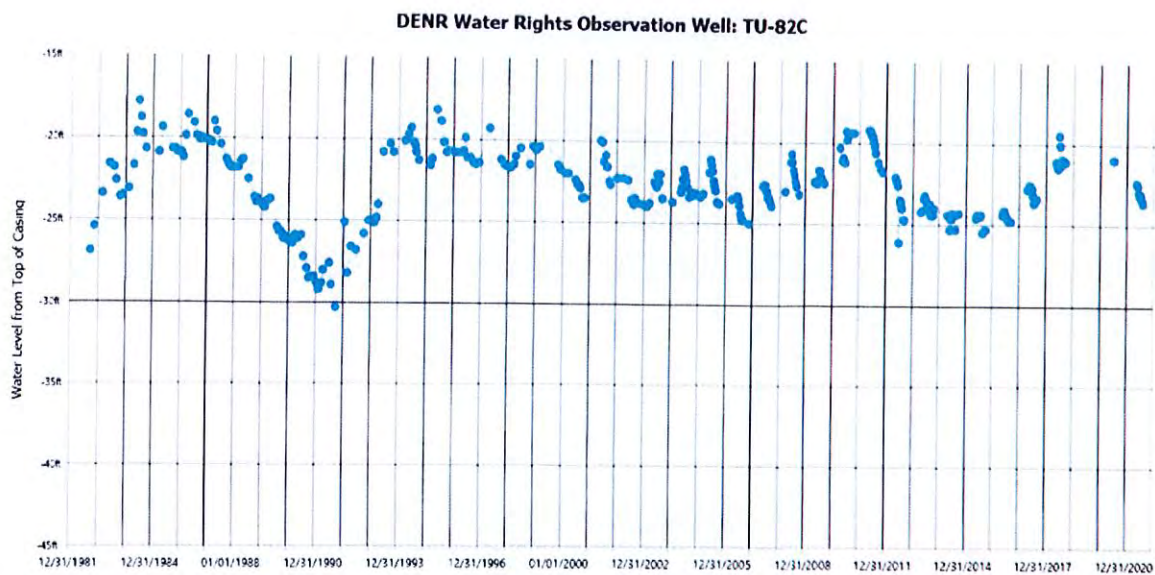


Figure 2. Hydrograph for observation well TU-82C (Water Rights, 2022b)

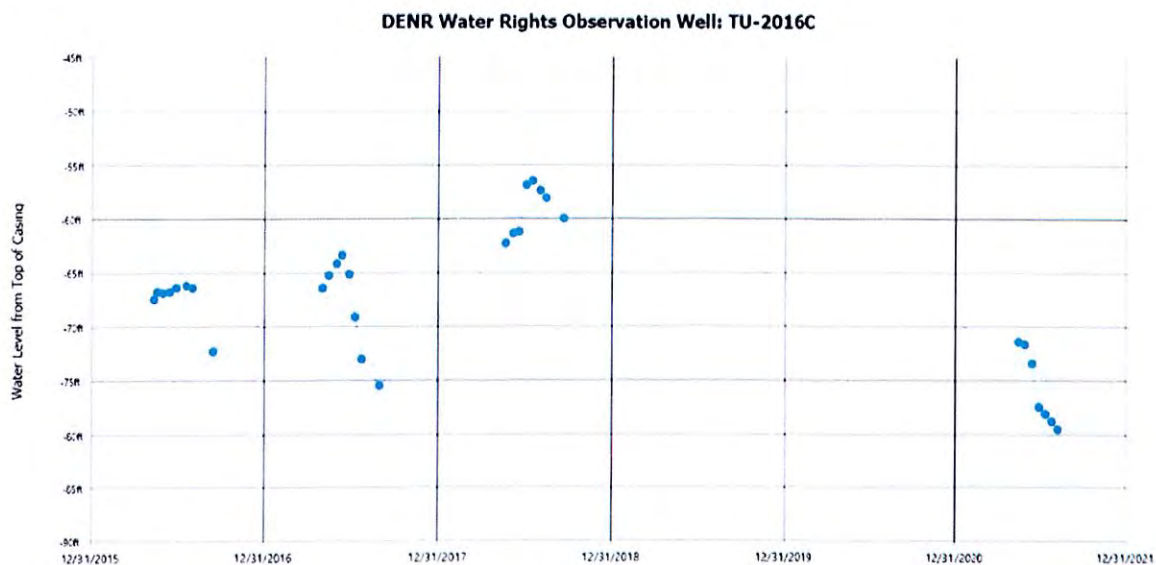


Figure 3. Hydrograph for observation well TU-2016C (Water Rights, 2022b)

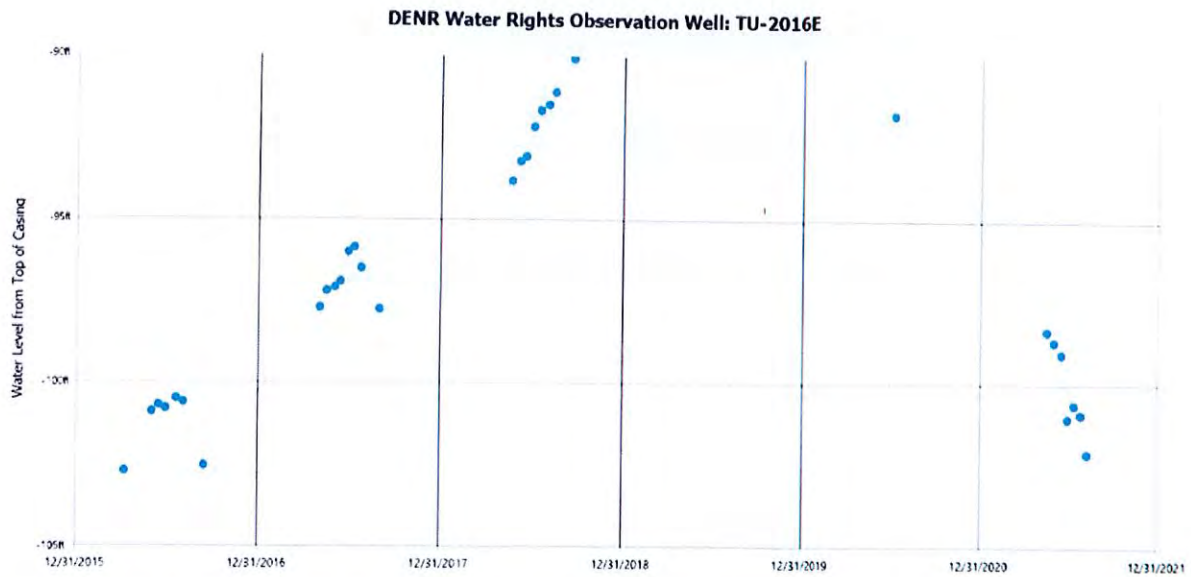


Figure 4. Hydrograph for observation well TU-2016E (Water Rights, 2022b)

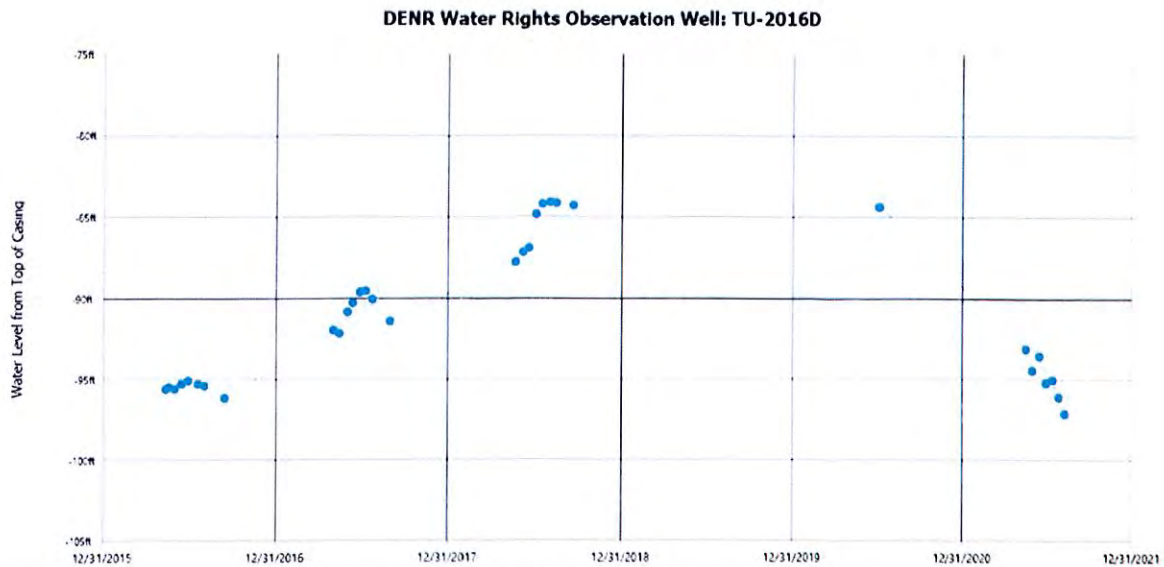


Figure 5. Hydrograph for observation well TU-2016D (Water Rights, 2022b)

Observation wells TU-2016C, TU-2016E, and TU-2016D were completed into the Pleistocene Series: Unknown aquifer in 2016 so the period of record of water level readings in these wells is limited (Water Rights, 2022b). Due to the extremely wet conditions in 2019 (NOAA, 2022), these observation wells could not be accessed; thus, no water level data for these observation wells was collected for that year. This was primarily due to Turner County enforcing a no non-essential travel on the gravel roads within the county for most of the summer (Kilts, 2022). Additional years of data collection are necessary to interpret the water levels in observation wells TU-2016C, TU-2016E, and TU-2016D. Therefore, an emphasis on observation well TU-82C will be used in this investigation of the Pleistocene Series: Unknown aquifer observation well hydrographs.

The hydrograph for the observation well TU-82C displays a generally stable water level over the respective period of record. However, from 1993 to 2020, the trend of the water levels on the hydrograph is slightly declining (Water Rights, 2022b). The cause of this slight decline is not known at this time. However, this glacial outwash deposit of the Pleistocene Series: Unknown aquifer may be attempting to equilibrate to new pumping from it, and from adjacent and hydrologically connected aquifers that were increasing development during that period. This is of concern due to the limited areal extent of the aquifer and the lack of other observation well data to show whether the water levels of TU-82C should be considered as stable or slightly declining. The hydrograph for observation well TU-82C indicates that the aquifer responds well to climatic conditions because water levels are rising during wetter periods (early spring snowmelt and precipitation) and declining during drier periods. Additionally, the water level in the observation well displays that the amount of recharge to and natural discharge from the aquifer exceeds pumping, with the aquifer recovering during the recharge season (late winter to early summer). Aquifer recovery indicates that climatic conditions and therefore, the effects of recharge to and natural discharges from the aquifer govern the long-term fluctuations of waters levels in the aquifer rather than the impacts of pumping from the Pleistocene Series: Unknown aquifer. By recognizing that both recharge to and natural discharge from an aquifer can be captured for pumping, the hydrograph for observation well TU-82C demonstrates some unappropriated water is available for the proposed appropriations. The amount of unappropriated water available in this outwash deposit of the Pleistocene Series: Unknown aquifer cannot be definitely determined based on this observation well data.

HYDROLOGIC BUDGET:

Recharge

Recharge to the Pleistocene Series: Unknown aquifer is primarily through the infiltration of precipitation and by groundwater inflow from adjacent and hydrologically connected aquifers, which is possibly from the Niobrara aquifer at this location (Lindgren and Hansen, 1990; Water Rights, 2022b and 2022d). Due to the likely hydraulic connection with the Niobrara aquifer, any pumping from this outwash may induce recharge from the Niobrara aquifer.

An average annual recharge rate has not been calculated for the Pleistocene Series: Unknown aquifer. For confined aquifers, Hedges and others (1985) recommended recharge rates of 0.15 to

0.60 inches per year for use by management and development programs. The areal extent of this glacial outwash deposit of the Pleistocene Series: Unknown aquifer is approximately 11,700 acres; therefore, the average annual recharge rate to this outwash ranges between approximately 146 to 585 acre-feet per year. The average annual recharge rate may be greater than that range due to the possible hydrologic connection with the Niobrara aquifer. In general, it is prudent to assume the mid-range of the average annual recharge rate to a glacial outwash deposit (365.5 acre-feet per year) when estimating recharge from a non-aquifer specific recharge rate range. Furthermore, there is not sufficient evidence available at this time to support using the lower or higher end of the recharge rate range.

Discharge

Discharge from the Pleistocene Series: Unknown aquifer is primarily through well withdrawals and outflow to adjacent till (Water Rights, 2022c). Currently, there are four water rights/permits authorized to divert water from this glacial outwash deposit of the Pleistocene Series: Unknown aquifer, including Water Permit No. 7495-3 which is currently authorized to divert water from the Niobrara aquifer (Water Rights, 2022c).

Table 4 summarizes the two non-irrigation water rights/permits authorized to appropriate water from the Pleistocene Series: Unknown aquifer (Water Rights, 2022c). The City of Marion has been connected to TM Rural Water District since 2002 (Drinking Water Program, 2022; Friedeman, 2022), and it is likely they maintain the wells authorized by Water Permit Nos. 4771A-3 and 4771B-3 for standby purposes. Therefore, the average annual withdrawal rate for the non-irrigation water rights/permits within this outwash deposit of the Pleistocene Series: Unknown aquifer is zero acre-feet per year.

Table 4. Non-irrigation water rights/permits authorized to divert water from the Pleistocene Series: Unknown aquifer (Drinking Water Program, 2022; Friedeman, 2022; Water Rights, 2022c)

Permit No.	Name	Status	Use	Authorized Diversion Rate (cfs)	Estimated Use (acre-feet/year)
4771A-3	City of Marion	LC	MUN	0.45	0*
4771B-3	City of Marion	LC	MUN	0.4	0*

LC: Licensed Water Right; MUN: Municipal

Currently, there are two irrigation water rights/permits authorized to appropriate water from the Pleistocene Series: Unknown aquifer (Water Rights, 2022c). These irrigation water rights/permits are Water Permit No. 7495-3 (priority date of November 1, 2012; 160 authorized acres) and Water Permit No. 7930-3 (priority date of December 2, 2013, 162 authorized acres) (Water Rights, 2022c). Irrigation water rights/permits have been typically required to report their annual usage on an irrigation questionnaire since 1979. The reported annual withdrawal rate for these two irrigation water rights/permits is summarized on Table 5. The average annual withdrawal rate for the Pleistocene Series: Unknown aquifer irrigation water rights/permits that have reported over the period of record is approximately 70.4 acre-feet per year (Table 5) (Water Rights, 2022a).

Table 5. Average annual withdrawal rate based off reported withdrawal rates from the water rights/permits authorized to appropriate water from the Pleistocene Series: Unknown aquifer for irrigation use (Water Rights, 2022a)

Permit No.	7495-3	7930-3
	Reported Withdrawal (acre-feet)	Reported Withdrawal (acre-feet)
Year		
2020	29.92	83.52
2019	0	0
2018	8.84	18.71
2017	50.82	40.3
2016	38.94	81.31
2015	18.23	76.6
2014	16.2	n/a
2013	0	n/a
Average Withdrawal Rate (acre-feet/year)	20.37	50.07

There are domestic wells completed into the Pleistocene Series: Unknown aquifer that do not require a water right/permit, so the withdrawal amount from those wells is unknown (Water Rights, 2022d). Due to their relatively low diversion rates, withdrawals from domestic wells are not considered to be a significant portion of the hydrologic budget. Additionally, with the development of rural water systems in areas where the Pleistocene Series: Unknown aquifer is the uppermost aquifer available; it is likely some domestic users may have transitioned to rural water. Therefore, the quantity of water withdrawn by domestic wells is estimated to be negligible to the hydrologic budget for the Pleistocene Series: Unknown aquifer.

Hydrologic Budget Summary

The average annual recharge rate to this glacial outwash deposit ranges between approximately 146 to 585 acre-feet per year. The mid-range of the average annual recharge rate to this outwash deposit is approximately 365.5 acre-feet per year. The average annual withdrawal rate is approximately 472.1 acre-feet per year based on the water rights/permits authorized to appropriate water from this glacial outwash deposit (approximately 70.4 acre-feet per year listed on Table 6), plus an additional 401.7 acre-feet of water per year assuming approval of these three applications and an average application rate of ten inches per year applied to each acre authorized to be irrigated. A ten-inch application rate used for irrigation is based on a historic average application rate for irrigators in more arid conditions in eastern South Dakota than expected in Turner County near the proposed diversion points (Water Rights, 2022c). If approved, it is likely that on an average annual basis, these three applications will apply less than 10 inches per acre (Water Rights, 2022a and 2022c). However, there is not a reliably accurate irrigation application rate estimated currently for this specific area using water withdrawals from a hydrologically similar aquifer with a large enough number of irrigators as to be statistically representative. Additional recharge may be induced from the underlying Niobrara aquifer. The

areal extent of this outwash deposit of the Pleistocene Series: Unknown aquifer was approximated using many variables (SDGS, 2022; Tomhave and Schultz, 2004; USGS, EROS, 1999; Water Rights, 2022b and 2022d), but it is still an approximation that may vary to an unknown degree. Based on the hydrologic budget and the previously mapped assumptions, there is a reasonable probability up to 295 acre-feet of unappropriated water is available from this glacial outwash deposit of the Pleistocene Series: Unknown aquifer for the proposed appropriations. Furthermore, this indicates there is a reasonable probability there is sufficient unappropriated water available to support 350 new irrigable acres proposed by Water Permit Application Nos. 8565-3, 8566-3, and 8567-3, but not the entire 482 acres requested by the three applications based on the current information available.

Table 6. Estimated use from this glacial outwash deposit of the Pleistocene Series: Unknown aquifer (Water Rights, 2022a and 2022c)

Type of Water Right/Permit	Estimated Use (acre-feet/year)
Non-Irrigation	0
Irrigation	70.4
Application Nos. 8565-3, 8566-3, and 8567-3 (assuming application rate of ten inches of water per authorized acre)	401.67
TOTAL:	472.1

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

Currently, there are four water rights/permits authorized to appropriate water from this outwash deposit of the Pleistocene Series: Unknown aquifer (Water Rights, 2022c). The closest water right/permit to proposed diversion points is Water Permit No. 7495-3 which is held by Dennis Herlyn. The diversion point for Water Permit No. 7495-3 is located approximately one mile southeast of the proposed diversion points for this application (Figure 1) (Water Rights, 2022c).

There are domestic wells on file with the DANR-Water Rights Program that are completed into the Pleistocene Series: Unknown aquifer, with the closest domestic well on file (not held by the applicant) approximately two miles northwest of the proposed diversion points (Water Rights, 2022d). There could potentially be other domestic wells completed into the Pleistocene Series: Unknown aquifer near the proposed diversion points that are not on file with the DANR-Water Rights Program.

Observation well TU-82C (approximately one mile southwest of the proposed diversion points) has two high-yield wells (assumed to be a well with an authorized diversion rate greater than 0.2 cfs) within approximately two miles of it (as shown on Figure 1) (Water Rights, 2022b and 2022c). The lithologic log on file for TU-82C noted the well was drilled 200 feet deep below the ground surface with the top of aquifer at approximately 121 feet below the ground surface (Water Rights, 2022b). The lowest recorded static water level on the hydrograph (displayed in Figure 2) is approximately 30 feet below the ground surface, which indicates there was still

approximately 90 feet of artesian head pressure in TU-82C even during drier periods when high-yield wells are expected to be pumping more water (Water Rights, 2022b).

The Pleistocene Series: Unknown aquifer is expected to be under confined conditions near the proposed diversion points based on the test hole completion reports submitted with the water permit applications, and the well completion reports and lithologic logs on file with the DANR-Water Rights Program (SDGS, 2022; Water Rights, 2022b and 2022d). Since this glacial outwash deposit of the Pleistocene Series: Unknown aquifer is expected to be confined near the proposed diversion points, drawdown can extend some distance but the exact drawdown behavior of a well cannot be known without an aquifer performance test.

Near the proposed diversion points, the Pleistocene Series: Unknown aquifer has a saturated aquifer thickness ranging from approximately 19 to 43 feet, with the depth to the top of aquifer materials ranging from approximately 174 to 193 feet below the ground surface (Water Rights, 2022b, 2022c and 2022d). This would allow for enough thickness for a pump inlet to be placed 20 feet below the top of the aquifer, which is required for the well to be considered adequate under ARSD 74:02:04:20(6). Any drawdown as a result of the proposed diversions is not expected to unlawfully impair nearby adequate wells. In Turner County, there have been no substantiated complaints submitted to the DANR-Water Rights Program regarding well interference for adequate wells completed into the Pleistocene Series: Unknown aquifer (Water Rights, 2022e).

The Water Management Board recognizes that putting water to beneficial use requires a certain amount of drawdown to occur. The Board has developed rules to allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure for domestic use. The Water Management Board defined an “adversely impacted domestic well” in 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.”

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use during the issuance of Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills. The Board adopted the Findings of Facts and Conclusions of Law that noted the 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 as an unlawful impairment, it would also conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to install or lower pumps depending on the specific characteristics of the Pleistocene Series: Unknown aquifer at their location. However, when

considering the statutes (SDCL 46-1-4 and 46-6-6.1), rules (ARSD 74:02:04:20(6) and (7)), the saturated thickness of this glacial outwash deposit of the Pleistocene Series: Unknown aquifer near the proposed diversion points, the artesian head pressure in observation wells and appropriative user's wells completed into this glacial outwash deposit of the Pleistocene Series: Unknown aquifer near the proposed diversion points, and the lack of well interference complaints from the Pleistocene Series: Unknown aquifer in the area, any drawdown created from the proposed diversions is not expected to cause an unlawful impairment on existing water right/permit holders or domestic users with adequate wells. Therefore, there is a reasonable probability that any interference from the proposed appropriations will not impose unlawful impairments on existing users with adequate wells.

CONCLUSIONS:

1. Water Permit Application No. 8565-3 proposes to appropriate 1.11 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 210 feet deep) for the irrigation of 124 acres.
2. Water Permit Application No. 8566-3 proposes to appropriate 1.78 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 236 feet deep) for the irrigation of 132 acres.
3. Water Permit Application No. 8567-3 proposes to appropriate 2.22 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 210 feet deep) for the irrigation of 226 acres.
4. Based solely on observation well data, the amount of unappropriated water available in this outwash deposit of the Pleistocene Series: Unknown aquifer cannot be definitely determined. Additional years of data are necessary to fully interpret the water levels in observation wells TU-2016C, TU-2016E, and TU-2016D.
5. Based on the hydrologic budget, there is a reasonable probability up to 295 acre-feet of unappropriated water is available from this glacial outwash deposit of the Pleistocene Series: Unknown aquifer for the proposed appropriations.
6. Based on the best information available, there is a reasonable probability there is sufficient unappropriated water available to support 350 new irrigable acres proposed by Water Permit Application Nos. 8565-3, 8566-3, and 8567-3, but not the entire 482 acres requested by the three applications based on the current information available.
7. There is a reasonable probability that the proposed diversions by Water Permit Application Nos. 8565-3, 8566-3, and 8567-3 for the irrigation of up to 350 acres will not unlawfully impair adequate wells for existing water rights/permits and domestic users.

Nakaila Steen

Nakaila Steen
Natural Resources Engineer I
SD DANR - Water Rights Program

Adam Mathiowetz

Adam Mathiowetz, PE
Natural Resources Engineer IV
SD DANR - Water Rights Program

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I being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper 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 issue(s) :

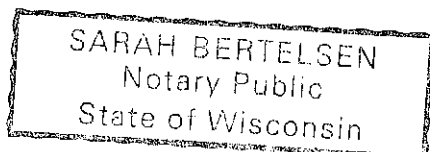
Thursday, February 10, 2022

Sworn to and subscribed before me this 10 day of February, 2022.

Legal Clerk

Notary Public, State of Wisconsin, County of Brown

My Commission expires



NOTICE OF HEARINGS to

Appropriate Water
Notice is given that Dustin Hoase, 44881 SD Hwy 44, Parker SD 57053 has filed the following applications for water permits. These sites are located approximately 3 miles west of Parker SD.

Application No. 8565-3 proposes to appropriate 1.11 cubic feet of water per second (cfs) from one well to be completed into the Pleistocene Series: Unknown Aquifer (approximately 210 feet deep) located in the SE 1/4 SE 1/4 Section 15 for irrigation of 124 acres located in the SE 1/4 Section 15; all in T99N-R54W.

Application No. 8566-3 proposes to appropriate 1.78 cfs from one well to be completed into the Pleistocene Series: Unknown Aquifer (approximately 236 feet deep) located in the SW 1/4 NE 1/4 Section 15 to irrigate 132 acres located in the NW 1/4 Section 16; both in T99N-R54W.

Application No. 8567-3 proposes to appropriate 2.22 cfs from one well to be completed into the Pleistocene Series: Unknown Aquifer (approximately 210 feet deep) located in the S 1/2 NE 1/4 Section 15 to irrigate 226 acres located in the N 1/2 Section 15; all in T99N-R54W.

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 the applications present important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application Nos. 8565-3 and 8567-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recom-

mends Deferral of Application No. 8566-3 because at this time it is not possible to conclude that

unappropriated water is available to support this application in addition to Water Permit Application Nos. 8565-3 and 8567-3. Three of the four observation wells completed into this portion of the aquifer were completed in 2016 and; therefore, the period of record is limited. Based on the best information available, the hydrologic budget only supports enough unappropriated water available to recommend approval of Application Nos. 8565-3 and 8567-3.

The Chief Engineer's recommendations with qualifications, the applications, and staff report are available at <https://danr.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 these applications at 10:00 am (Central Time) on March 2, 2022 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the applications based on the facts presented at the public hearings.

Any person who intends to participate in the hearing shall allege that the applications, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the applications, or other matter concerning the applications within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the applications with BOTH the applicant and Chief Engineer. A petition opposing the applications shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address

is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by February 22, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the applications on the petitioner, the petitioner's reasons for opposing the applications, and the name 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 March 2, 2022, 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 the application. The request for an automatic delay must be filed by February 22, 2022. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the applications with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 22, 2022.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture 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 terminat-

ed, 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 February 22, 2022. 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 the applications: 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, 46-6-1 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 74:02:01:35.01.

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA



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JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

February 17, 2022

Timothy Bjork, Chairman
DANR – Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: *In the Matter of Cancellation of Water Permit No. 7148-3, Jason Frerichs*

Dear Chairman Bjork:

Enclosed please find a copy of DANR's Prehearing Brief and Certificate of Service in the above-entitled matter.

Respectfully,

A handwritten signature in cursive script that reads "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

Enclosures

By interoffice mail

cc w/encs: Jason Frerichs (by U.S. mail)
Ron Duvall (by interoffice mail)
David McVey (by hand-delivery)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF CANCELLATION)
OF WATER PERMIT NO. 7148-3,)
JASON FRERICHs)
)

DANR'S
PREHEARING BRIEF

Pending before the Board is the Chief Engineer's Recommendation to cancel Water Permit No. 7148-3, Jason Frerichs, for non-construction. Mr. Frerichs is contesting the cancellation. As this is not an area that is frequently litigated before the Board, the undersigned counsel, on behalf of the Chief Engineer and the Water Rights Program, offers the following brief summarizing South Dakota law pertaining to the cancellation of a water permit for non-construction. Attached to the brief is a copy of the pertinent statutes and regulations.

BACKGROUND

Water Permit No. 7148-3 provides for the appropriation of 1.44 cfs from an existing well completed into the Reville aquifer for the purpose of irrigating sixty acres. The application for the permit was submitted to Water Rights on June 25, 2009 and was approved on September 18, 2009. Thus, pursuant to statute, any necessary construction for this permit was required to be completed on or before September 18, 2014, and water was to be placed to beneficial use on or before September 18, 2019.

SUMMARY OF SOUTH DAKOTA LAW

Under South Dakota law, "any construction necessary to put water to beneficial use shall be completed within five years of approval of the permit and the water shall be put to beneficial use within an additional four years." SDCL § 46-2A-8. "Failure to construct the necessary works within the statutory time limits invalidates the water permit." *In the Matter of Application No. 5189-3 to Extend Time*, 467 N.W.2d 907 (S.D. 1991) (citing ARSD 74:02:01:37).

The period of time allowed for construction or to place the water to beneficial use may be extended only under certain circumstances as set forth in statute. Those circumstances include "delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board." SDCL § 46-5-26. Should the Board find that those circumstances exist, the Board "shall allow an extension of time at the request of the prior applicant, equal to the time during which work was prevented by operation of law beyond the power of the applicant to avoid." SDCL § 46-5-25.*

The South Dakota Supreme Court reviewed the Board's finding of exigent circumstances and amendment of a permit's construction period in *In the Matter of Application No. 5189-3*. *In the Matter of Application No. 5189-3 to*

* This statute also requires diligence on the part of the applicant to complete the construction of the necessary works in that one-fifth of the works must be completed within one-half of the time allowed or the permit could be deemed to be forfeited.

Extend Time, 467 N.W.2d 907 (S.D. 1991). The permit at issue in that matter was granted in 1981 and required that necessary construction be completed by July of 1986, and water be put to beneficial use by July of 1990. *Id.* at 909. Shortly after the permit was issued, disputes arose between the landowner upon which the permit was sited and the tenant who had applied for the permit. *Id.* Litigation over the disputes continued until 1987. *Id.* In 1988, an application for reinstatement of the water permit was submitted by the landowners who were the permitholders. *Id.* That application for reinstatement was "revised" to an application to extend the time to complete construction. *Id.* The Board determined that exigent circumstances existed due to the combined effects of the permitholders' ages (late 70s and early 80s) and health issues (including congestive heart failure), the economic stress of the litigation, and the circumstances surrounding the litigation. *Id.* at 909-10, 913-14. As a result, the Board granted an amendment to the permit to extend the period of time to construct the necessary works. *Id.*

In reviewing the Board's determination, the South Dakota Supreme Court first examined SDCL § 46-5-26 and found that it


provides sufficient standards to guide the agency in determining when a water permit may be amended due to exigent circumstances and that the definition adopted by the agency, 'extraordinary circumstances not reasonably subject to the control of the person seeking the extension,' is consonant with the statutory guidelines of the chapter.

In the Matter of Application No. 5189-3, 467 N.W.2d at 913. The Court, however, reversed the Board's finding of exigent circumstances stating,

"[c]learly the exigent circumstances identified by the Board did not prevent the [permitholders] from promptly attending to their business affairs. Likewise, the circumstances in no manner prevented or inhibited the [permitholders] from applying for a construction extension prior to July 29, 1986." *Id.* at 914.

Thus, the Court made clear that exigent circumstances must be of the type that prevent the permitholder from conducting the simple task of requesting an extension during the initial period of construction.

Dated this 17th day of February 2022.


Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
*Counsel for Chief Engineer and Water
Rights Program*

PERTINENT STATUTES AND RULES

46-1-15. Permit required for appropriation of waters

Except as otherwise provided throughout this title, no person may appropriate the waters of this state for any purpose without first obtaining a permit to do so.

46-2A-8. Time for completion of construction and use of water-Application for lesser amount of water or variance in periods of use

Any construction necessary to put water to beneficial use shall be completed within five years of approval of the permit and the water shall be put to beneficial use within an additional four years. The Water Management Board, may in its discretion, approve any application for a lesser amount of water or may vary the periods of annual use and the permit to appropriate the water shall be regarded as limited accordingly.

46-2A-8.1. Reinstatement of permit after expiration of time for construction-Application-Priority

The Water Management Board may reinstate any water permit with a priority date after March 31, 1977, if unappropriated water is available and construction necessary to put water to beneficial use was not completed pursuant to § 46-2A-8 or 46-5-26. Any application under this section shall be made within three years of the expiration of the original construction period pursuant to chapter 46-2A. the priority date for the application to reinstate a permit shall be the date the application to reinstate is filed.

SDCL 46-5-24. Amendment or change of plans of construction or place of diversion

The plans of construction or place of diversion may be amended, but no amendment may authorize any extension of time for construction beyond five years from the date of the permit, except as provided by this chapter. A change in the proposed point of diversion of water or change of construction plans shall be subject to the procedures contained in chapter 46-2A and may not be allowed to the detriment of the rights of others having valid water permits or rights to the use of the water.

46-5-25. Diligent prosecution of work of construction – Failure to complete work, approval by board of prior appropriation

The work of construction shall be diligently prosecuted to completion. If one-fifth of the work is not completed within one-half the time allowed, as determined by the Water Management Board, the board may accept and approve an application for the use of any of the waters included in the permit issued to the prior applicant, and the right to use the waters under the former permit are forfeited. However, the Water Management Board shall allow an extension of time at the request of the prior applicant, equal to the time during which work was prevented by the operation of law beyond the power of the applicant to avoid. This section does not apply to permits or licenses issued under § 46-5-8.1.

46-5-26. Extension of time for completion of construction or application to beneficial use

A permit may be amended by extending the time for the completion of construction, or for application to beneficial use, for a reasonable time, but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board.

ARSD 74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

ARSD 74:02:01:37. Invalid water permit, right or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions:

- (1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;
- (2) Use of the water has been abandoned as specified in SDCL 46-5-36;
- (3) Use of the water has been forfeited for nonuse as specified in SDCL 46-5-37.


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

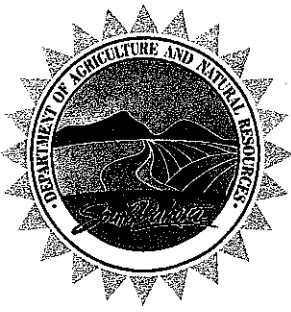
IN THE MATTER OF CANCELLATION)	
OF WATER PERMIT NO. 7148-3,)	CERTIFICATE OF SERVICE
JASON FRERICHS)	
)	

The undersigned hereby certifies that true and correct copies of DANR's Prehearing Brief, in the above matter, were served by U.S. mail, first class, postage prepaid, upon the following on this 17th day of February 2022:

Jason Frerichs
13497 465th Avenue
Wilmot, SD 57279

And on the same date the original was mailed interoffice to Ron Duvall, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; a copy was mailed interoffice to Timothy Bjork, Chairman, DANR – Water Management Board, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; and a copy was hand-delivered to David McVey, Assistant Attorney General, Counsel for Water Management Board, Office of the Attorney General, 1302 East Highway 14, Suite 1, Pierre, SD 57501-8501.


Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
*Counsel for Chief Engineer and Water
Rights Program*



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 18, 2022

NOTICE OF HEARING

TO: Jason Frerichs, 13507 465th Ave., Wilmot SD 57279

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

SUBJECT: Hearing on Cancellation Consideration of Water Permit No. 7148-3

Cancellation consideration for Water Permit No. 7148-3 was originally scheduled for the December 8, 2021 Water Management Board meeting and was delayed until the March 2022 Board meeting at your request.

The Water Management Board will now consider cancellation of Water Permit No. 7148-3 at **10:15 am, Wednesday, March 2, 2022 (Central Time)** in the Floyd 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)*.

Water Permit No. 7148-3 authorizes diversion of ground water from the Reville Aquifer (existing well) for irrigation of 60 acres located in the SW ¼ Section 25, T123N, R50W in Roberts County. A field investigation and subsequent phone conversations in August 2021 with Darrell DeBoer and Mark Rath, found the irrigation system had not been constructed. The water permit specifies the date for completion of works was to be on or before September 18, 2014, with water to be placed to beneficial use on or before September 18, 2018.

The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7148-3 for non-construction. 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. 7148-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit.

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.

(continued)

January 18, 2022

Jason Frerichs, regarding Water Permit No. 7148-3

Page 2 of 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.

Prior to February 18, 2022, 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 at the Water Rights Program, 523 E. Capitol Avenue, Pierre SD by January 28, 2022.

c: Ann Mines Bailey, Assistant Attorney General



**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 NO. 7148-3, JASON FRERICH**

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. 7148-3.

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

A staff engineer conducted a field investigation on August 18, 2021, as part of a licensing investigation and found the project had not been constructed. The water permit specifies the date for completion of the project was on or before September 18, 2014 with water to be placed to beneficial use on or before September 18, 2018. On August 24, 2021, Mark Rath with our program contacted the permit holder who confirmed the project was not developed however he still intended to construct the irrigation system.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
November 4, 2021

Note:

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

Water Rights Program - DANR

Conversation or File Documentation

Name of Person: *Jason Frerichs*

File No. *7148-3*

Address: *13497 465th Ave, Wilmot SD 57279*

County: *Roberts*

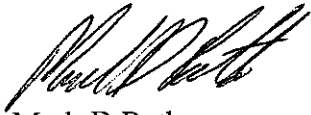
Date: *08-24-2021* **Telephone:** *605-949-2204*

RE: *Cancellation of Water Permit No. 7148-3*

Comments:

I called Jason Frerichs as a follow-up to an inspection Darrell DeBoer did for the permit where he reported that no construction had been completed. Mr. Frerichs has reported annually on his annual irrigation questionnaire since 2010 that he was either working on or planning to build his irrigation system.

I informed Mr. Frerichs that since the systems was never constructed nor put to beneficial use within the allotted time listed on his water permit we would be scheduling the permit for cancellation. Mr. Frerichs protested and said he still intended to construct the irrigation system. Mr. Frerichs said he had done all he was required by reporting his status annually. I explained that he was also required to construct the system within 5 years and put the system to beneficial use within 9 years of the permit being issued which he had not done. I told we will be scheduling the permit for cancellation and he will be notified of the hearing. Mr. Frerichs said he will be contesting the cancellation of the permit.



Mark D Rath

Natural Resources Engineer III