



DANR
SOUTH DAKOTA

**WATER MANAGEMENT BOARD
Meeting on May 4, 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>

May 4, 2022

- 9:30 AM Call to Order
 Roll Call
 Adopt Final Agenda
 Conflicts Disclosures and Requests for State Board Waivers
 Adopt March 2, 2022 Board Minutes
 Set July 6 - 7, 2022 Meeting Dates and Location
 Public comment period in accordance with SDCL 1-25-1
 Update on DANR Activities
 Status and Review of Water Rights Litigation

 Administer Oath to Department of Agriculture and Natural Resources Staff
 Cancellation Considerations – Ron Duvall

 Consider Findings of Fact, Conclusions of Law, and Final Decision in the matter of
 Cancellation of Water Permit No. 7148-3, Jason Frerichs

 Consider removing qualification requiring use of a flow meter on Vested Water Right Nos. 1258A-
 1 and 1258B-1, Dobesh Ranches LLC – Mark Rath
- 9:45 AM Consider Applicant's Request to Deny Water Permit Application No. 8563-3, Tim Wellenstein
 – Mark Rath

 Consider Water Permit Application No. 8579-3, Brett Guthmiller – Whitney Kilts
- 10:00 AM Consider Chief Engineer's Motion to Dismiss Robert Roeber Petition to Establish Ordinary
 High Water Mark on Cottonwood Lake in Spink County – Ann Mines Bailey
- 10:30 AM Consider Application No. 2840-2, Rapid Valley Sanitary District – Water Service, to Reserve
 Water for Future Use – Mark Rath

WATER MANAGEMENT BOARD

Meeting on May 4, 2022

11:00 AM Consider Water Permit Application No. 2836-2, Lisa O'Rourke-Fulton – Adam Mathiowetz

LUNCH

Continue any prior agenda items not yet completed.

ADJOURN

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

May 4, 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

2836-2	Lisa O'Rourke-Fulton	Valentine NE	TD	1.89 cfs	135 acres	2 wells-Ogallala Aquifer	wi, wcr, iq
2840-2	Rapid Valley Sanitary Dist	Rapid City	PE	1,608 AF	future use	Missouri River	3 special
8563-3	Tim Wellenstein	Centerville	TU	1.78 cfs	126 acres	Turkey Ridge Creek	denial
8570-3	Windy Ridge Httm Brth Inc	Garden City	CK	0.11 cfs	commercial	2 wells-Altamont Aquifer	wi, 4 special
8579-3	Brett Guthmiller	Menno	HT	0.89 cfs	32 acres	1 well-Niobrara Aquifer	deferral

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

2010-1	Philip S Jerde	Reva	PK	81.7 AF	rec,fwp,livestock	runoff	lf, 1 special
2012-1	Jesse Horstmann	Spearfish	LA	0.05 cfs	43.5 acres	1 well-Madison Aquifer	wi, wcr, iq, 2 special
2014-1	Whitetail Creek Resort	Lead	LA	0.05 cfs	commercial	1 well-Crystalline Rock	wi, wcr, 2 special
2015-1	Two Bit Ranch Estates	Deadwood	LA	0.10 cfs	wds	1 well-Deadwood Aquifer	wi, 2 special
	Homeowners Association Inc						
2837-2	Oglala Lakota County School	Batesland	OL	0.67 cfs	inst & wds	1 well-Arikaree Aquifer	wi, 2 special
2838-2	SD Game, Fish & Parks	Custer	CU	0.09 cfs	recreation	1 well-Minnelusa Aquifer	wi, 2 special
2839-2	Platte Httm Brth Inc	Platte	BT	4.00 cfs	280 acres	2 wells-Arikaree Aquifer	wi, wcr, iq
2843-2	Simon Contractors of SD	Rapid City	PE	7.13 cfs	ind & com	runoff & aggregate pit	2 special
2844-2	City of Box Elder	Box Elder	PE	2,100 AF	future use	Missouri River	3 special
8000A-3	Earl or Dwight Althoff	Waubay	DA	1.22 cfs	75 acres	1 well-Coteau Lakes Aquifer	wi, iq, 1 special
8570-3	Windy Ridge Httm Brth Inc	Garden City	CK	0.11 cfs	commercial	1 well-Altamont Aquifer	wi, 4 special
8574-3	Ivan Jelsma	Springfield	BH	1.33 cfs	135 acres	1 well-Niobrara Aquifer	wi, iq
8575-3	Ernest R Namminga	Springfield	BH	1.78 cfs	124 acres	1 well-Choteau-West Aquifer	wi, iq
8576-3	BLT Family Limited Ptrs	Warner	HU	2.0 cfs	134 acres	1 well-Gray Goose Aquifer	wi, wcr, iq
8577-3	BLT Family Limited Ptrs	Warner	HU	2.0 cfs	134 acres	1 well-Gray Goose Aquifer	wi, wcr, iq
8578-3	BLT Family Limited Ptrs	Warner	HU	5.74 cfs	402 acres	1 well-Gray Goose Aquifer	wi, wcr, iq
8581-3	Andrew Russo	Watertown	CD	0.10 cfs	10 acres	1 well-Prairie Coteau Aquifer	wi, wcr, iq
8582-3	Nick Endres	Watertown	CD	2.0 cfs	153 acres	1 well-Prairie Coteau Aquifer	wi, iq
8583-3	Leesman Ranch	Blunt	SU	6.67 cfs	680 acres	2 dugouts & 10 wells-Highmore:Blunt Aquifer	wi, wcr, iq

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8584-3	Shawn Vannorsdel	Viborg	TU	2.22 cfs	156 acres	1 well-Upper Vermillion Miss:West	wi, wcr, iq
8585-3	Allen Vannorsdel	Viborg	TU	2.22 cfs	156 acres	1 well-Upper Vermillion Miss:West	wi, wcr, iq
8686-3	Bret Flihs	Groton	BN	1.33 cfs	140 acres	20 wells-Silt Lake Aquifer	wi, wcr, iq, 1 special
8588-3	T & D Farms	Centerville	LN	1.78 cfs	160 acres	1 well-Upper Vermillion Miss:South	wi, wcr, iq
8589-3	John Lindstrom	Beresford	CL	no add'l	50 acres	1 well-Lower Vermillion Miss	wi, iq
8590-3	Benjamin A & Helen M Zoss Family Trust	Forestburg	SA	2.28 cfs	160 acres	3 wells-Warren:West James	wi, wcr, iq
8591-3	D Olson & Sons LLC	Meckling	CL	1.56 cfs	80 acres	1 well-Missouri Elk Point	wi, wcr, iq, 1 special
8592-3	Dakota Trails Golf Course	Corsica	DG	0.08 cfs	2.1 acres	1 well-Codell Aquifer	wi, wcr, iq, 1 special
8593-3	Chad Dylla	DeSmet	KG	1.34 cfs	80 acres	1 well-Vermillion East Fork	wi, wcr, iq, 1 special
8594-3	Merlin Vannorsdel	Viborg	TU	2.22 cfs	156 acres	1 well-Upper Vermillion Miss:West	wi, wcr, iq
8595-3	Kirk Sorensen	Vermillion	CL	1.33 cfs	80 acres	1 well-Missouri Elk Point	wi, wcr, iq, 1 special
8596-3	Kingfisher Enterprises	Brookings	BG	0.20 cfs	commercial	1 well-Howard Aquifer	wi, 2 special
8598-3	Tim Wellenstein	Centerville	TU	1.78 cfs	126 acres	1 well-Upper Vermillion Miss:South	wi, wcr, iq
8599-3	Farron & Michelle Pratt	Vermillion	CL	0.17 cfs	17.5 acres	1 well-Upper Vermillion Miss:South	wi, iq, 1 special
8600-3	John A Swanson	Pukwana	BL	1.44 cfs	60 acres	Red Lake	iq, 3 special
8601-3	Gary & Dianne Foster	Bruce	BG	no add'l	50 acres	1 well-Big Sioux:Brookings	wi, iq
8602-3	Gary & Dianne Foster	Bruce	BG	no add'l	3.4 acres	1 well-Big Sioux:Brookings	wi, iq, 1 special
8603-3	Mark McCloud	Highmore	HY	1.78 cfs	320 acres	1 well-Tulare:Hyde Aquifer	wi, wcr, iq
8604-3	Lenny Peterson	Hitchcock	SP	2.29 cfs	160 acres	James River	iq, 3 special
8606-3	Mark Girard	Vermillion	CL	2.0 cfs	160 acres	1 well-Lower James Missouri	wi, wcr, iq

From: no-reply@caspio.com
To: [Duvall, Ron](#); [Gronlund, Eric](#)
Subject: [EXT] Comment on 8573-3, MGJR LLC, Jonathon Hofer
Date: Wednesday, February 23, 2022 9:07:40 AM

Comment On:

No. 8573-3, MGJR LLC, Jonathon Hofer

Comment Deadline Date:

02/25/2022

Date Comment Filed:

02/23/2022 09:07:34

Commenter Info:

marv schumacher
19683 hwy 1804
pierre SD, 57501

Comment:

First off I am not opposing the Hoffer application for water use permit. My main concern is the large number of expected acres to be added this year to the grey goose aquifer. We have been operating on the north edge of the aquifer for many years and are dependent on the recharge from lake Oahe. It appears this year that the lake level will be extremely low and the aquifer has not really been stressed much since the last number of acres were added. I do not pretend to understand all the makings of how the aquifer works but just wanted to voice my concern as I am on the edge and may be one of the first effected. Thank you for your time and I appreciate what you do Marv Schumacher

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 235TH MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
MARCH 2, 2022

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.

The following attended the meeting:

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

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Genny McMath, Nakaila Steen, and Mark Rath, Water Rights Program.

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

Court Reporter: Carla Bachand, Capital Reporting Services.

Water Permit Application No. 2014A-3: Chad Schroeder, city of Huron Parks and Recreation Department.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT DECEMBER 8, 2021, BOARD MINUTES: Motion by Freeman, seconded by Dixon, to approve the minutes of the December 8, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

MAY 4-5, 2022, MEETING LOCATION: The May 4-5, 2022, meeting will be in Pierre.

Mr. Larson noted that he may not be available for the May meeting.

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

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Ms. Jasper reported that Powertech has filed a notice of appeal regarding the board's order denying the motion to amend the procedural order to resume the evidentiary hearing. The appeal is currently pending.

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

APPOINTMENT OF RAPID VALLEY WATER MASTER: Nakaila Steen, DANR Water Rights Program, reported the Rapid Valley Conservancy District has requested that Kevin Ham be appointed as the water master for the 2022 irrigation season for the Rapid Creek area. Mr. Ham has been water master since 2005.

Motion by Freeman, seconded by Larson, to appoint Kevin Ham as the Rapid Valley watermaster for the 2022 irrigation season. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE PERMIT SEVEN YEAR REVIEWS: State law requires that future use permits be reviewed by the Water Management Board every seven years, and that the permit holder demonstrate a reasonable need for the future use permit.

The city of Vermillion submitted a letter requesting Future Use Permit No. 6237-3 be allowed to remain in effect for 1,900 acre-feet annually.

No petitions to intervene were submitted.

The Chief Engineer recommended that the future use permit for the city of Vermillion be allowed to remain in effect for an additional seven years.

Motion by Larson, seconded by Dixon, to allow the Future Use Permit No. 6237-3 for the city of Vermillion to remain in effect for 1,900 acre-feet annually for an additional seven years. A roll call vote was taken, and the motion carried unanimously.

IRRIGATION QUESTIONNAIRE VIOLATIONS FOR FAILURE TO REPORT 2021 WATERUSE: Genny McMath, Water Rights Program, presented her report on irrigation questionnaire violations.

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 examples of how questionnaires could be completed and returned. The three options for returning the irrigation forms are online, by mail, by fax or by calling the department. Returning the forms online is the preferred method.

In January 2022, approximately 225 notices were mailed to those irrigators who had not returned the irrigation questionnaires by the deadline. Additional questionnaire forms were included with the mailing, and all notices were sent by Certified Mail.

The January 20, 2022, 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:

1. A period of up to one year (first violation); or
2. 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).

Permit(s) without a reporting qualification could be amended to include the mandatory irrigation questionnaire qualification.

Postpone any action or take no action.

The Water Rights Program recommended that the board take the following action for permits with irrigation questionnaires not received by March 2, 2022:

Suspend the following permits/rights for one year (effective April 4, 2022)

Violation 1

6947-3	Joel Adler
2647-2	Cody Burull
2701-2	Cody Burull
6263-3	Cedar Grove Colony
8041-3	Cedar Grove Colony
881-2	Ryan Edwards
6316-3	Howard Athletic Club, Inc.
2851-3	David Huber
4955-3	David Huber
4400A-3	Huron Colony
5651-3	Huron Colony
2390A-3	Huron Colony
3268A-3	Huron Colony
6431-3	Huron Colony
7395-2	Huron Colony
7370-3	Huron Colony
7367-3	Huron Colony
7366-3	Huron Colony
7365-3	Huron Colony
7905-3	Huron Colony
7906-3	Huron Colony
7906A-3	Huron Colony
7369A-3	Huron Colony
7369B-3	Huron Colony
7369C-3	Huron Colony

Water Management Board
March 2, 2022, Meeting Minutes

7286-3	Brian Kozak
7543-3	Brian Kozak
5664-3	Pat Mentele
8326-3	Jerry D. Nelsen
7005-3	Randall Enterprise, LLC
7236-3	David Ulvestad
7237-3	David Ulvestad
2497-2	Marty Vanderploeg
8265-3	Wiskota Farm
516-1	Lawrence Woodward
517-1	Lawrence Woodward

Suspend the following permits/rights for three years (effective April 4, 2022)

Violation 2

1350-3	Scott Jensen, Mgr.
6042-3	Scott Jensen, Mgr.
410B-2	Kathi Koester

Amend the following permits/rights to include the mandatory irrigation questionnaire qualification (effective March 2, 2022)

Violation A

1397-2	Cody Burull
3487-3	Dave Hanson
2460-3	Ryan Patterson
2072-3	David Ulvestad
2126-3	David Ulvestad
3204-3	David Ulvestad

In response to a question from Chairman Bjork, Ms. McMath stated that every year the suspension list includes many of the the same permit holders who fail to submit irrigation questionnaires.

Motion by Freeman, seconded by Larson, to suspend for one year those permits listed under Violation 1, to suspend for three years those permits listed under Violation 2, and to add the qualification to those permits listed under Violation A, all to be effective April 4, 2022.

Ms. McMath noted that the permits listed under Violation A be effective today.

Motion by Freeman, seconded by Larson, to amend the previous motion to add the qualification to the permits listed under Violation A be effective March 2, 2022. A roll call vote was taken, and the motion carried unanimously.

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

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. 2049A-3, PARKS AND RECREATION, CITY OF HURON: Mark Rath, Water Rights Program reported that this application is uncontested.

Chad Schroeder, city of Huron, was present remotely.

Application No. 2049A-3 proposes to amend Water Right No. 2049-3, which authorizes 2.0 cubic feet of water per second (cfs) from the James River for municipal and recreation use. Water Right No. 2049-3 also 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. The water right has a priority date of February 13, 1974. This site is located in Beadle County on the east side of Huron SD.

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.

For Water Right No. 2049-3, the diversion rate is already included in the 300 cfs limit that the board has placed on appropriations from the James River from the North Dakota border to the Yankton-Hutchinson County line and the 200 cfs limit diversion rate between the North Dakota border and the USGS gaging station at the Fourth Street Dam in Huron.

Mr. Rath stated that the request for extension of the period 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 the qualification that 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, and 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.. It should also contain the qualification that the 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.

The Chief Engineer recommended approval of Application No. 2049A-3 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.

Motion by Freeman, seconded by Hutmacher, to approve Water Permit Application No. 2049A-3, City of Huron 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 NOS. 8565-3, 8566-3, AND 8567-3, DUSTIN HAASE: In response to questions from Ms. Mines Bailey, Nakaila Steen, Natural Resources Engineer with the Water Rights Program, testified that she reviews water permit applications for water availability and the potential for unlawful impairment of adequate wells, performs fieldwork measuring the observation wells and lake levels, and she is the department representative on the

Western States Water Council.

Ms. Steen wrote the technical report analyzing water availability and unlawful impairment for Water Permit Application Nos. 8565-3, 8566-3, and 8567-3. .

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.

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.

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.

The three proposed diversion points are located in Turner County approximately three miles west of Parker, SD.

On page 10 of the report under “Hydrologic Budget Summary” the third sentence states, “The average annual withdrawal rate is 472.1 acre-feet based on the water rights/permits authorized to appropriate water from this glacial outwash deposit...” Ms. Steen noted that 472.1 acre-feet should be changed to 70.4 acre-feet. If these three applications are approved, 472.1 acre-feet would be correct.

The Pleistocene Series: Unknown is a generic name used by the Water Rights Program for a category of sand and gravel outwash deposits that were deposited by glacial movement during the Pleistocene geologic time that are not part of a previously mapped aquifer. The aquifer consists of fine sand and gravel, and the areal extent is approximately 11,700 acres for this discontinuous outwash deposit. The thickness of the aquifer ranges between 14 and 43 feet over the extent of the aquifer.

This aquifer is expected to be confined at the proposed diversion points, based on the test hole completion reports submitted with the application as well as the nearby well completion reports and lithologic logs on file.

In the nearest observation well, TU-82C located approximately one mile from these proposed diversion points, the artesian head pressure has ranged from 90 to 100 feet over the period of record.

When reviewing the applications, Ms. Steen reviewed for water availability and the potential for unlawful impairment. The availability of unappropriated water is determined by compiling a hydrologic budget comparing annual withdrawal rates and recharge to an aquifer as well as analyzing the observation well data to see how an aquifer reacts to climatic conditions and local pumping.

A study specific to recharge for the Pleistocene Series: Unknown aquifer has not been completed at this time, but its primary mechanical mechanisms for recharge are through the infiltration of precipitation and from ground water inflow from hydrologically connected and adjacent aquifers, which is probably the underlying Niobrara aquifer at this location.

Recharge was estimated using a range from Hedges' 1985 recommended recharge rate of 0.15 to 0.60 inches per year for use by management and development programs. When you multiply this recharge rate by the areal extent 11,700 acres, the average annual recharge rate ranges between 146 to 585 acre-feet per year. Recharge to the outwash deposit is estimated to fall in the middle of this range, which is approximately 365.5 acre-feet per year. When estimating recharge using the non-aquifer specific recharge rate, it is prudent to assume the mid-range when there is not sufficient evidence available to support using the lower or higher end or a recharge rate range. Typically, overburden material can help one lean toward the lower or higher end, but the overburden material for the three proposed diversion points ranges from thick clay deposits to thinner sand deposits, which would not prevent all water from permeating through, but it also would not allow water to flow through without resistance, so also supporting the middle range value.

There are four observation wells completed into this glacial outwash deposit of the Pleistocene Series: Unknown aquifer. Ms. Steen looked at data from all four observation wells, but three of the wells were completed into aquifer in 2016, so the period of record for water level readings in these three wells is limited, therefore, an emphasis was placed on the one remaining observation well, TU-82C, which has a period of water level readings from 1982 to present.

The hydrograph for TU-82C shows the trend of the water levels over the period of record is generally stable, but from 1993 to 2002, a slight decline is noted. The cause of this slight decline is not known at this time; however, this outwash deposit may be attempting to equilibrate due to pumping from it and from adjacent and hydrologically connected aquifers that had increasing development during that period. In 2002, the city of Marion, who holds water rights within this outwash deposit, was connected to a rural water system, and there is actually a slight increasing trend from 2002 until present day. This slight decline from 1993 to 2002 is of concern due to the limited areal extent of this outwash deposit 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.

Discharge from this outwash deposit is primarily through well withdrawals and outflow through the adjacent till. Currently, there are four water rights/permits authorized to divert water from this glacial outwash deposit, which includes Water Permit No. 7495-3, which was initially coded as withdrawing from Niobrara aquifer, but through Ms. Steen's analysis it was determined to be withdrawing from the same outwash deposit of the Pleistocene Series: Unknown aquifer.

The estimated average annual withdrawal rate from the outwash deposit based on the current level of development is approximately 70.4 acre-feet per year. For the four water rights, two are authorized for irrigation use and two are authorized for non-irrigation use. The two non-irrigation permits are held by the city of Marion, which connected to a rural water system in 2002 and likely maintains their wells for standby purposes only, and as such, they are estimated to withdraw zero acre-feet per year from this outwash deposit. The two irrigation permits are required to report annual withdrawals every year and began pumping in 2014 and 2015. While it is a limited

number of reporting years, on average, 70.4 acre-feet per year was withdrawn.

Assuming the applicant for these three water permits will apply 10 inches of water per authorized acre each year, the average annual withdrawal, if these three permit applications were approved, is expected to be approximately 402 acre-feet per year.

Based on the review of all the information and on the observation well data for TU-82C, Ms. Steen concluded the amount of unappropriated water available in this outwash deposit of the Pleistocene Series: Unknown aquifer cannot be determined with certainty. However, based on the hydrologic budget, there is a reasonable probability that 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.

Given this, 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. The amount of available water was discussed with Mr. Haase, and he worked with the Water Rights Program to determine which 350 acres he would like to proceed with out of the three applications.

Ms. Steen discussed the map on page 4 of the report which shows the location of the proposed diversion points for the three applications with the approximate areal extent of the Pleistocene Series: Unknown aquifer boundary, bedrock contour lines, and the Pleistocene Series: Unknown aquifer observation wells and water rights/permits. The closest water right to the proposed diversion points is Water Permit No. 7495-3 held by Dennis Herlyn, which is located approximately one quarter to one mile southeast of the proposed diversion points. Observation Well TU-82C is approximately one mile southwest of the proposed diversion points and the three observation wells completed in 2016 are located between two and four miles southeast of the proposed diversion points.

There are domestic wells on file with the Water Rights Program that are completed into the Pleistocene Series: Unknown aquifer, with the closest domestic well on file located approximately two miles northwest of the proposed diversion points. 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 Water Rights Program.

A well owner with an adequate well is afforded certain legal protections that are not available to well owners with inadequate wells. Additionally, for a water permit application to be approved, the well needs to be adequate. There are some exceptions with Dakota and Inyan Kara wells. The definition of adequate well is a well that must be capable of allowing the inlet of a pump to be placed 20 feet into the saturated aquifer formation material if it is at least 20 feet thick when the well is constructed, and if not, the pump needs to be placed as near to the bottom of the aquifer as possible.

Unlawful impairment was investigated under the assumption that all three permit applications would be approved. There is a reasonable probability that any interference from the proposed appropriations will not impose unlawful impairments on existing users with adequate wells.

While the closest water right is located approximately one quarter mile to one mile from the proposed diversion points, Ms. Steen based her opinion on the saturated aquifer thickness, the available artesian head pressure, and the lack of well interference complaints in the Pleistocene Series: Unknown aquifer.

The saturated thickness at the proposed diversion points varies between 30 and 40 feet thick, which is generally sufficient thickness for a well to be placed into the saturated material.

The available artesian head pressure shows that, even with the nearest water right being approximately one mile away, pumping and drawdown for that well is not seen on the hydrograph, so by having significant artesian head pressure there is a reasonable probability that the proposed appropriations will not impair nearby wells.

The Chief Engineer recommended approval of Application No. 8565-3 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.

The Chief Engineer recommended 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. 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.

The Chief Engineer recommended approval of Application No. 8567-3 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.

The board members had no questions of Ms. Steen.

Motion by Hutmacher, seconded by Freeman, to approve Water Permit Nos. 8565-3 and 8567-3, Dustin Haase, subject to the qualifications set forth by the chief engineer, and to defer Water Permit Application No. 8566-3, Dustin Haase, for up to two years. A roll call vote was taken, and the motion carried unanimously.

CONSIDER CANCELLATION OF WATER PERMIT NO. 7148-3, JASON FRERICHs:

Ann Mines Bailey, assistant Attorney General, appeared on behalf of the Chief Engineer and the Water Rights Program.

Jason Frerichs, applicant, appeared pro se.

Ms. Mines Bailey offered Exhibit 1, the administrative file for Water Permit 7148-3, Jason Frerichs. The administrative file contains the application, the report and recommendation, the permit, the investigative report, and the correspondence between Mr. Frerichs and the department.

Chairman Bjork admitted the exhibit into the record.

Responding to questions from Ms. Mines Bailey, Mark Rath testified that he had been administered the oath earlier in the day. Mr. Rath is a staff engineer with the Water Rights Program. He is responsible for issues dealing with river, lake, and stream appropriations.

The department's water rights inspector, Darrel DeBoer, based in Brookings submitted an inspection report in August 2022 stating that he had done a field visit on August 18, 2022, and had a telephone conversation with Mr. Frerichs on August 20, 2022. In the report, Mr. DeBoer stated that there was no construction completed, as was reported on the annual irrigation questionnaires, and that in discussions with Mr. Frerichs, Mr. Frerichs had stated that he is interested in finding the right irrigation system to move forward.

Water Permit No. 7148-3 is an irrigation permit to irrigate 60 acres from a single well at 1.44 cfs from the Revillo aquifer and is located approximately one mile northwest of the town of Wilmot in southern Roberts County. The permit was approved September 18, 2009.

Under South Dakota law, any construction necessary to put water to beneficial use is to be completed within five years of approval of the permit; therefore, the construction should have been completed by September 18, 2014. The law provides water to be put to beneficial use within four years after construction, so the deadline for placing water to beneficial use was September 18, 2018. Those deadlines are listed on the permit, and Mr. Frerichs received a copy of the permit.

Mr. Rath testified regarding Exhibit 13, the report of examination works and an application of water for beneficial use for Water Permit No. 7148-3. It was completed by Darrel DeBoer. The document is included in the administrative file.

Ms. Mines Bailey offered Exhibit 13. Chairman Bjork admitted the exhibit into the record.

Ms. Mines Bailey noted that the board received copies of the exhibits.

When Mr. Rath reviewed Mr. DeBoer's field site report, his understanding of Mr. DeBoer's conclusions was that the irrigation project permitted under Permit No. 7148-3 had not been completed. Mr. DeBoer's report indicated that during a phone conversation Mr. Frerichs said he was still interested in completing the irrigation project if he can find the right system.

Mr. Rath stated that he reviewed the irrigation questionnaires that were submitted for Water Permit No. 7148-3.

Ms. Mines Bailey offered the following:

Exhibit 2, the 2010 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 3, the 2011 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 4, the 2012 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 5, the 2013 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 6, the 2014 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 7, the 2015 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 8, the 2016 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 9, the 2017 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 10, the 2018 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 11, the 2019 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 12, the 2020 irrigation questionnaire for Water Permit No. 7148-3

Chairman Bjork admitted the Exhibits 2 through 12 into the record.

In response to questions from Ms. Mines Bailey, Mr. Rath provided the following testimony.

Exhibit 2 - The 2010 irrigation questionnaire indicates that there was no irrigation that year. The reason given was sufficient moisture. It appears that the original irrigation questionnaire was not returned, but Kent Frerichs, who is the permit holder's father, called the department with the information contained on the irrigation questionnaire. The information states "Jason's system is operational, however, due to excess moisture in the area there was no need to irrigation in 2010."

Exhibit 3 - The 2011 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was, "Work in progress to set up pump and pivot and still plan to use in the near future."

Exhibit 4 - The 2012 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was "system not constructed" and the comment section stated, "Still working on

developing the irrigation equipment and still plan to irrigate in the near future.”

Exhibit 5 - The 2013 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Planning still in progress for irrigation.”

Exhibit 6 - The 2014 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “other” and the comment section stated, “Still working on developing an irrigating system.” This questionnaire was received by the Water Rights Program on November 6, 2014, which was after the September 18, 2014, construction deadline.

Exhibit 7 - The 2015 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still working on the system (illegible) getting as well as good yet.”

Exhibit 8 - The 2016 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “other” and the comment section stated, “Working on plans to develop a system. Still plan to use the permit. Thank you.”

Exhibit 9 - The 2017 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still working on pump and system.”

Exhibit 10 - The 2018 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still plan to build a small pivot.” This questionnaire was received by the Water Rights Program on November 30, 2018, which was after the September 18, 2018, deadline to place water to beneficial use.

Exhibit 11 - The 2019 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and there was nothing in the comment section.

Exhibit 12 - The 2020 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still plan to build a system to irrigate.”

Mr. Rath stated that he spoke to Mr. Frerichs on the telephone on August 24, 2021, as a follow-up to the inspection that Darrell DeBoer did for the permit. Mr. Rath informed Mr. Frerichs that, since the system had not been constructed and put to beneficial use within the timeframe, the water permit would be scheduled for cancellation. Mr. Frerichs indicated that he had faithfully submitted the irrigation questionnaires each year, as required, and that he still planned to build a system. Mr. Frerichs was upset that the water permit would be considered for cancellation. Late the next day Mr. Frerichs left a voice message for Mr. Rath. Mr. Rath returned the call on August 26, 2021. During the discussion, Mr. Frerichs said the well was in place and he had a big gun and pipe, and that he could be irrigating with it. He asked Mr. Rath if that would be a consideration, and Mr. Rath responded that the water permit would still be scheduled for cancellation, and that Mr. Frerichs could make his argument to the board.

Mr. Rath testified that there are several other irrigation permits in the area that have similar topography to Mr. Frerichs' land. The majority of the other permit holders were irrigating during the 2014 and 2020 time period. There were some years that the other irrigators indicated there was sufficient moisture.

Responding to questions from Mr. Frerichs, Mr. Rath testified that he believes there is one water permit in the area that is junior to Water Permit No. 7148-3. No permit applications have been denied for irrigation from the Revillo aquifer because of Water Permit No. 7148-3 being senior to any other permits.

Jason Frerichs was administered the oath by the court reporter.

Mr. Frerichs testified that he is a farmer from Wilmot, South Dakota and he holds Water Permit No. 7148-3. Mr. Frerichs purchased this piece of property in 2009. The property already had a well on it.

Mr. Frerichs said he had provided Mr. Duvall with an exhibit prior to the hearing. Ms. Jasper stated that the document is already included in Exhibit 1, the administrative file. Ms. Mines Bailey asked that Mr. Frerichs provide foundation for the exhibit.

In response to questions from Ms. Mines Bailey, Mr. Frerichs said the exhibit has two pictures on the second page of the document, and he took the pictures in August of 2021. The first is a picture of pipe located at Mr. Frerichs' farm operation, which is located 1.5 miles from the well. The second picture is an electric powered pump.

Ms. Mines Bailey requested that Mr. Frerichs' exhibit be marked separately as Exhibit A.

Mr. Frerichs offered Exhibit A. Chairman Bjork admitted the exhibit into the record.

Mr. Frerichs testified that the well is already in operation. He still wants to perform better testing on the well because it has been a hinderance to him to be able to have electricity or an additional generator at the well to power the pump. He also has a vast supply of pipe, as shown in Exhibit A. Mr. Frerichs also has a traveling gun, but it is a big decision to decide whether to use that traveling gun as opposed to using a small pivot system. He has not purchased a small pivot system yet. He is still exploring the options to use a pivot or maybe some other type of better traveling gun to reduce the number of trips across the field. Mr. Frerichs said it is his intent to utilize this existing well and irrigate on those acres. This ground is probably some of the heaviest ground that needs irrigation the least in the vicinity. He doesn't dispute anything else that has been shared as far as why other systems have been used, but it certainly is a separate case. If he found a mechanical pump that could be used so as not to have to use the existing electrical pump, that certainly would be a much better option.

Mr. Frerichs said he should have looked at his permit a little better and reviewed the statutes even more to know that he had to test pump and set up the system. He said even though he had all of the system capabilities located on his farm and dedicated for this facility, he didn't perform the test pump nor have any staff come out and witness that and check off that it is in operation. He said the only time he heard from the department was when they were asking if he had developed it

and then the cancellation notice.

Mr. Frerichs asked for an extension so he can perform a test pump and establish the system this summer. He said he would have to use a generator to power the electrical pump.

Ms. Mines Bailey had no questions of Mr. Frerichs.

Chairman Bjork requested questions from the board.

In response to questions from Mr. Hutmacher, Mr. Frerichs stated that he would like the timeframe to get this system up and running to be one year, but it could be accomplished this summer. The other problem is that the well is located in a low spot, so he will have to build a road to get there. Mr. Frerichs said in the past he has looked at a center pivot system, but the cost of operating it is going to be very difficult to justify. That is the reason he has fallen back on the idea of using a gun then perhaps changing crop systems. At this time, it is a corn/soybean rotation. He could utilize the gun he has now or get a better traveling gun to have it cover more area.

In response to questions from Mr. Holzbauer, Mr. Frerichs stated that he applied for the water permit in 2009. From 2009 to 2018, there certainly were times that irrigation could have been used, but it was a matter of justifying whether he wanted to run down the crop. Mr. Frerichs stated that he wouldn't say there was no need to irrigate, it was just a matter of justifying and setting up the pipe and the existing motor he has requires a lot of work to get established with the generator. The pump itself is existing and Mr. Frerichs bought a new motor that can also be used on another system he has.

Mr. Holzbauer stated that Mr. Frerichs has been submitting yearly irrigation questionnaires, but he has not shown the need for the water permit.

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

In response to questions from Ms. Mines Bailey, Mr. Gronlund testified that he recommended cancellation of Water Permit No. 7148-3 based on the statutory water rights law on water permitting regarding constructing and placing water to beneficial use. In the past, the board has not taken financial considerations into account when making a determination. If that were the case, a water right could not be cancelled in South Dakota. There is a statute that allows for the filing of an extension of time, but the extension of time needs to be filed prior to the expiration of the construction date on the permit.

Mr. Gronlund testified that the Water Rights Program recently processed a water permit from the Revillo aquifer, so in preparation for the hearing on cancellation of Water Permit No. 7148-3, he reviewed that recent report. Based solely on the hydrologic budget, there is unappropriated water available.

Mr. Gronlund said he is sympathetic to Mr. Frerichs' situation, but he is charged with following the water rights law, and that is why staff brought this matter before the board. Mr. Gronlund said he is concerned that if the Water Management Board goes beyond what the statutes provide in allowing an extension of time to construct and put to beneficial use, we would have difficulty

bringing forth cancellations in the future.

Mr. Frerichs had no questions from Mr. Gronlund.

Ms. Mines Bailey and Mr. Frerichs offered closing arguments.

Motion by Larson, seconded by Dixon, to cancel Water Permit No. 7148-3 for non-construction. A roll call vote was taken, and the motion carried with Dixon, Holzbauer, Hutmacher, Larson, and Bjork voting aye. Due to technical issues with the computer, Freeman was not heard.

Proposed Findings of Fact and Conclusions of Law are due by April 11, 2022, and objections are due by April 22, 2022.

Chairman Bjork granted Mr. Holzbauer permission to sign the minutes of the December 2021 meeting on his behalf.

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

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

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

Approved May 4, 2022.

Water Management Board

WATER MANAGEMENT BOARD MEETING

March 2, 2022

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

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

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

DANR 2022 Legislative Session Accomplishments

Investing in Infrastructure

- Provided \$600 million for water and sewer infrastructure investment from the American Recovery and Reinvestment Act (ARPA) funds (**SB 62**). Funding will provide quality drinking water and necessary sewer services promoting the health and welfare of the state's citizens and protecting our environment and natural resources. This is a transformation funding package that will impact South Dakota for generations.
- Provided \$60 million in ARPA funds for infrastructure upgrades at state owned facilities (**SB 50**). Includes funding for infrastructure and facility upgrades at the South Dakota State fairgrounds.
- Passed the 2022 Omnibus Water Funding Bill dedicating over \$16M in funds for water, wastewater, solid waste projects, and environmental projects (**SB 64**) including:
 - \$1.0215 million for DANR to develop new groundwater observation wells to assess, model, and quantify the state's groundwater resources
 - \$249,727 for the feasibility level study update of the Big Sioux River flood control study in the Watertown area. Study to be completed by the U.S. Army Corps of Engineers
 - \$10.5 million to provide consolidated grants and loans for drinking water, wastewater, and watershed projects on the State Water Facilities Plan
 - \$2.75 million for solid waste disposal and recycling projects
 - \$550,000 of the Clean Water State Revolving Fund program's loan fees to provide water quality grants for wastewater and watershed projects, engineering studies for small systems, and technical assistance for wastewater systems
 - \$425,000 of the Drinking Water State Revolving Fund program's loan fees and federal funds to provide engineering studies for small system, and technical assistance for drinking water systems
 - \$1.5 million to conduct lead service inventories for public water systems state-wide

Protecting and Preserving Agriculture and Natural Resources

- Provided the State Conservation Commission with the authority to spend up to \$500,000 from the Natural Resource Conservation Fund for South Dakota conservation districts to implement effective, on-the-ground conservation practices throughout the State (**HB 1034**).
- Clarify DANR's authority to collect and distribute receipts from timber sales on federal lands so DANR can effectively participate in the Good Neighbor Authority program (**HB 1035**).
- Protect South Dakota farmers and ranchers and support agritourism by closing loopholes in South Dakota's agritourism liability laws (**SB 135**).
- Modified the industrial hemp laws to support and expand the state's growing industrial hemp industry (**SB 201**).

Eliminating Fees

- Eliminate unnecessary landfill fee increases on municipal landfills accepting more than 250,000 tons per year (**HB 1046**).

2022 LEGISLATIVE SESSION UPDATE

BILL	TITLE	ACTION	STATUS
HB 1013	Make appropriation for costs related to Capitol Lake	Provides general funds of \$500,000 and \$3,000,000 of federal fund expenditure authority to Bureau of Administration. Develop of master plan for Capitol Lake and Veteran Memorial, including plugging existing well and activities to improve the lake water quality including dredging.	Signed by the Governor
SB 52	Make an appropriation for the replacement of the Richmond Lake spillway and general repair of other state-owned dams	Appropriates \$6,500,000 to Office of School and Public Lands for replacing Richmond Lake spillway and general repair of other state-owned dams	Signed by the Governor
SB 62	Make an appropriation for eligible water, wastewater, storm water, and nonpoint source projects	Provided \$600 million for water and sewer infrastructure investment from the American Recovery and Reinvestment Act (ARPA) funds. Funding will provide quality drinking water and necessary sewer services promoting the health and welfare of the state's citizens and protecting our environment and natural resources. This is a transformation funding package that will impact South Dakota for generations.	Signed by the Governor

SB 64	Make appropriation from the water and environment fund for various water and environmental purposes	Commonly referred to as the Omnibus Bill – in part appropriated \$1,021,500 to DANR for hydrology and water management studies. Specifically to fund drilling and development of new observation wells in the Black Hills and Sioux Falls region.	Signed by the Governor
SB 67	Make an appropriation to the Game, Fish and Parks to improve and repair infrastructure around Lake Alvin and Newell Lake	Appropriates \$5,600,000 to Game, Fish and Parks for construction, reconstruction, renovation, and modernization at Lake Alvin and Newell Lake.	Signed by the Governor
SB 181	<p>Require DANR to assemble a task force to study the adoption of a watershed ecosystems management approach</p> <p>Assembling a task force consisting of one representative from the department, one member from each of the river basin natural resource districts, one representative from each Native American nation possessing water rights to one or more river basin natural resource districts, one representative from the South Dakota Water Resources Institute at South Dakota State University, and any additional persons that possess the expertise in ecosystem resource management and water law and regulation.</p>	<p>Mission:</p> <ul style="list-style-type: none"> - Quantify water available in each watershed over next fifty years taking into consideration growth, climate change and right of other states and Native American nations to the water - Current quality of water in each watershed and identify potential future sources of contamination - Manage watershed using a ecosystem approach to maximize quantity and quality <p>Require report with recommendation by June 30, 2023.</p> <p>Provided no funding or staffing.</p>	Deferred to the 41 st day by Senate Agriculture and Natural Resources Committee

CANCELLATIONS – MAY 4, 2022

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

PE 1245-1	Navarre Bachand Farms Inc	Pat Daly, w/Broken Bridge Ranch LLC	MD	1.21	IRR	A/F	Belle Fourche River	3-24-2022	
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DIVISION II WATER RIGHTS AND VESTED WATER RIGHTS

VR 599-2	Dept of Game, Fish & Parks	Hilary Morey, GFP Jarrod Johnson, SPL	LY	45 AF	REC FWP	A/F	Dry draw Jackson Dam	3-24-2022	
VR 680-2	Dept of Game, Fish & Parks	Hilary Morey, GFP Jarrod Johnson, SPL	TR	105 AF	REC FWP	A/F	Tributary of Oak Creek Carter Dam	3-24-2022	
RT 737-2	Larry & Loren Swick	Betty Swick	OL	1.40	IRR	A/F	Sticking Water Creek & dugouts	3-24-2022	
VR 2039-2	Hawthorne Ditch Company	Howard Rice, Pres, Hawthorne Ditch Co.; Keith Ham & Jerry Hammerquist	PE	---	IRR	A	Rapid Creek	3-24-2022	

DIVISION III WATER PERMITS, WATER RIGHT & VESTED WATER RIGHT

VR 829-3	Dept of Game, Fish & Parks	Hilary Morey, GFP Jarrod Johnson, SPL	HS	90 AF	REC FWP	A/F	Johnson Creek Fulton Dam	3-24-2022	
RT 5970-3	William & Barry Juhnke	Barry Juhnke	HT	1.44	IRR	A/F	James River	3-24-2022	
PE 6125-3	Wm & Barry Juhnke	Barry Juhnke	HT	1.56	IRR	A/F	James River & dugout on Plum Creek	3-24-2022	
PE 6806A-3	Bill & Barry Juhnke	Barry Juhnke	HT	1.44	IRR	A/F	James River	3-24-2022	
PE 7699-3	David Huber	Same	HT	2.22	IRR	NC	Ground water - Lower James Missouri Aquifer	3-24-2022	
PE 7710-3	Argo Brothers	David Argo	RB	1.67	IRR	NC	Ground water Revilla Aquifer	3-24-2022	
PE 7814-3	David Huber	Same	HT	1.78	IRR	NC	Ground water Niobrara Aquifer	3-24-2022	
PE 7849-3	John or Nancy Haefner	Same	CA	4.0	IRR	NC	Missouri River	3-24-2022	

ABBREVIATIONS

N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE
FU = FUTURE USE PERMIT	VR = VESTED WATER RIGHT	PE = WATER PERMIT	RT = WATER RIGHT
IRR = IRRIGATION	GEO = GEOTHERMAL	COM = COMMERCIAL	MUN = MUNICIPAL
INS = INSTITUTIONAL	FWP = FISH & WILDLIFE PROPAGATION	DOM = DOMESTIC	IND = INDUSTRIAL

CANCELLATIONS – MAY 4, 2022

Number	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters
PE 7889-3	Todd Jongeling	Same	DU	1.78	IRR	NC	Ground water Big Sioux Brookings Aquifer	3-24-2022	
PE 8037-3	Tyler Andersen	Same	TU	1.61	IRR	NC	Ground water - Upper Vermillion Missouri South	3-24-2022	
PE 8220-3	City of Pierre	Same (% Kristi Honeywell, City Administrator)	HU	1.57	IRR	NC	Missouri River	3-24-2022	
PE 8276-3	Larry Bayer	Same	BH	1.85	IRR	A	Ground water Niobrara Aquifer	3-24-2022	
PE 8355-3	Eureka Redi Mix	Tom Mahlke w/Eureka Redi Mix and Kenny Jensen w/Jensen Rock & Sand	MP	0.89	COM IND	A	Dugout Selby Aquifer	3-24-2022	
PE 8357-3	Jensen Rock & Sand Inc	Same (% Courtney Davis)	FA	0.13	COM	A	Ground water Grand Aquifer	3-24-2022	

ABBREVIATIONS				PAGE 2
N/C = NON-CONSTRUCTION	A/F = ABANDONMENT OR FORFEITURE	A = ABANDONMENT	F = FORFEITURE	
FU = FUTURE USE PERMIT	VR = VESTED WATER RIGHT	PE = WATER PERMIT	RT = WATER RIGHT	
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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 24, 2022

NOTICE OF CANCELLATION

TO: Pat Daly, Broken Bridge Ranch LLC, 14780 SD Hwy 34, Sturgis SD 57785

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

SUBJECT: Cancellation of Water Permit No. 1245-1

Water Permit No. 1245-1 authorized diversion of water from the Belle Fourche River for irrigation purposes in Sections 13 & 24, T6N, R8E. On January 25, 2022, Mark Rath with our program spoke with you about the water permit. The land has not been irrigated for many years and you indicated a desire to irrigate. In 2002, the land was owned by Linda Zierer who acknowledged no irrigation had taken place for many years. Due to the years of nonuse the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1245-1 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1245-1 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

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. 1245-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Pat Daly
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



**DEPARTMENT of AGRICULTURE
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 1245-1, NAVARRE BACHAND FARMS INC.

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 1245-1, now owned by Pat Daly, Broken Bridge Ranch LLC.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment and/or forfeiture.

In 2002, Linda Zierer owned the land and indicated to her knowledge the land had not been irrigated since at least 1992. She confirmed she had no interest in irrigating but wanted to be able to use water for livestock water. A "Notice of Cancellation Consideration" was sent to her and returned by the post office marked "vacant". No follow-up was done. The new owner of the property has expressed a desire to irrigate and in a conversation with Mark Rath with our program indicated he would be filing a new application for the project.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



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March 24, 2022

NOTICE OF CANCELLATION

TO: Hilary Morey, SD Dept of Game Fish & Parks, 523 E Capitol, Pierre SD 57501

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

SUBJECT: Cancellation of Recognized Vested Water Right Nos. 599-2, 680-2 & 829-3

Recognized Vested Water Right Nos. 599-2, 680-2 & 829-3, held by the Department of Game Fish and Parks are for Jackson Dam in Lyman County, Carter Dam in Tripp County and Fulton Dam in Hanson County, respectively. Jackson and Carter Dams have been breached for at least 16 years. Fulton Dam breached in 2019. The purpose of the vested rights was to authorize impoundment of water for recreation and fish & wildlife propagation. With the dams now breached and no longer impounding water for beneficial use, the Chief Engineer of the Water Rights Program is recommending cancellation of Recognized Vested Water Right Nos. 599-2, 680-2 & 829-3 for abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Recognized Vested Water Right Nos. 599-2, 680-2 & 829-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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).*

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 Recognized Vested Water Right Nos. 599-2, 680-2 & 829-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.

c: Jarrod Johnson, Commissioner, SD School & Public Lands



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RECOMMENDATION OF CHIEF ENGINEER

**FOR RECOGNIZED VESTED WATER RIGHT NOS. 599-2, 680-2 & 829-3
SD GAME, FISH & PARKS**

Pursuant to SDCL 46-2A-2, 46-5-37.1 and ARSD 74:02:01:37, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Recognized Vested Water Right Nos. 599-2, 680-2 & 829-3.

The Chief Engineer is recommending cancellation of the recognized vested water rights described below for abandonment and/or forfeiture.

- No. 599-2 Jackson Dam,
 Lyman County – located in the SW ¼ NE ¼ Section 25, T104N, R76W
- No. 680-2 Carter Dam
 Tripp County – located in the SE ¼ NE ¼ Section 16, T99N, R79W
- No. 829-3 Fulton Dam – located in the NE ¼ Section 25, T103N, R59W

A letter was received from the Dept of Game Fish & Parks concerning No. 829-3 for Fulton Dam in December 2021. The letter acknowledged the dam was breached in 2019 and due to safety concerns, would not be reconstructed.

Jackson Dam and Carter Dam have been breached for at least 16 years ago and have not been reconstructed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022



**DEPARTMENT of AGRICULTURE
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March 24, 2022

NOTICE OF CANCELLATION

TO: Betty Swick, 46 195th Ave, Batesland SD 57716

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

SUBJECT: Cancellation of Water Right No. 737-2

Water Right No. 737-2 authorizes diversion of water from Stinking Water Creek and dugouts for irrigation of 285 acres in Sections 4 and 5, T35N, R41W. On March 8, 2022, we received notification from you of the intent to abandon the water right. Records on file with the Water Rights Program show the land has not been irrigated for many years. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 737-2 for abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 737-2 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 737-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Betty Swick
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 737-2, LARRY & LOREN SWICK

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 737-2, now owned by Betty Swick.

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

Irrigation Questionnaires on file with the Water Rights Program indicate the land has not been irrigated since at least 1982. In response to a letter sent on February 9, 2022 concerning receipt of the annual irrigation questionnaire, Betty Swick confirmed the intent to abandon the water right.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



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March 24, 2022

NOTICE OF CANCELLATION

TO: Howard Rice, President, Hawthorne Ditch Company, 6500 Higgins Ln, Rapid City
SD 57703

Keith Ham, PO Box 18, Caputa SD 57725-0018

Jerry Hammerquist, PO Box 26, Caputa SD 57725-0026

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

SUBJECT: Cancellation of Vested Water Right No. 2039-2

Vested Water Right No. 2039-2 originally authorized diversion of 21 cfs to irrigate 1,042 acres. Over the years, water has been transferred away from the ditch company for other uses. In December 2021 the remaining diversion authority was transferred to Arrowhead Golf Course and the City of Rapid City. Since the remaining water authorized under No. 2039-2 has been transferred out and no longer associated with the Hawthorne Ditch, the Chief Engineer of the Water Rights Program is recommending cancellation of Vested Water Right No. 2039-2 due to abandonment.

The Water Management Board will consider cancellation of Vested Water Right No. 2039-2 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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).*

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 Vested Water Right No. 2039-2 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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RECOMMENDATION OF CHIEF ENGINEER

FOR VESTED WATER RIGHT NO. 2039-2, HAWTHORNE DITCH COMPANY

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 Vested Water Right No. 2039-2.

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

On December 8, 2021, the remaining water authorized under the vested right was transferred to Arrowhead Golf Course and the City of Rapid City. A qualification on Water Permit No. 2829-2 required Hawthorne Ditch to render the Rapid Creek headgate inoperable. On March 16, 2022, staff engineers met with representatives from the City of Rapid and Hawthorne Ditch to verify the headgate could no longer be used. The field investigation found the gate had been welded shut, the control wheel removed, and 300 feet of the ditch had been filled in.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022



**DEPARTMENT of AGRICULTURE
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March 24, 2022

NOTICE OF CANCELLATION

TO: Barry Juhnke, 27348 County Rd 11, Parkston SD 57366

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

SUBJECT: Cancellation of Water Right No. 5970-3 and Water Permit Nos. 6125-3 & 6806A-3

Water Right No. 5970-3 and Water Permit Nos. 6125-3 & 6806A-3 collectively authorize diversion of 4.44 cubic feet of water permit second from the James River for irrigation purposes in Hutchinson County. On March 1, 2022, Genny McMath with our program contacted you concerning an incorrect address we had on file for you. During the conversation you indicated you have not irrigated for several years and have discontinued irrigation. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5970-3 and Water Permit Nos. 6125-3 & 6806A-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 5970-3 and Water Permit Nos. 6125-3 & 6806A-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5970-3 and Water Permit Nos. 6125-3 & 6806A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Barry Juhnke
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



**DEPARTMENT of AGRICULTURE
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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER RIGHT NO. 5970-3 AND WATER PERMIT NOS. 6125-3 & 6806A-3,
WILLIAM AND BARRY JUHNKE**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 5970-3 and Water Permit Nos. 6125-3 & 6806A-3 owned by Barry Juhnke.

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

On March 1, 2022, during a conversation with Genny McMath, Mr. Juhnke indicated he has not irrigated in several years and no longer intends to irrigate. He confirmed he has discontinued irrigation of all the land described in his water right and water permits.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022



**DEPARTMENT of AGRICULTURE
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JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
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March 24, 2022

NOTICE OF CANCELLATION

TO: David W Huber, 28419 431st Ave, Menno SD 57045

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

SUBJECT: Cancellation of Water Permit Nos. 7699-3 & 7814-3

Water Permit No. 7699-3 authorizes diversion of water from the Lower James Missouri Aquifer to irrigate 120 acres in the E ½ Section 33, T98N, R57W. Water Permit No. 7814-3 authorizes diversion of water from the Niobrara Aquifer to irrigate 80 acres in the NW ¼ Section 34, T98N, R57W. On March 3, 2022, a staff engineer with the Water Rights Program visited with you concerning the extent of development under the two permits. It is our understanding the wells were not drilled, and the irrigation systems were not constructed. The date for completion of works as specified in the permits, expired in 2018. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 7699-3 and 7814-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 7699-3 & 7814-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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*).

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit Nos. 7699-3 & 7814-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by these water permits. If you wish to oppose the cancellations and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

March 24, 2022
David Huber
Page 2

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.

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NOS. 7699-3 AND 7814-3, DAVID HUBER**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Nos. 7699-3 & 7814-3.

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

On March 3, 2022, a staff engineer with the Water Rights Program visited with the permit holder to find out the extent of development under Water Permit Nos. 7699-3 and 7814-3. The permit holder confirmed the wells had not been drilled and the irrigation systems had not been constructed. The time limit for completion of works expired on May 13, 2018, and June 24, 2018, respectively.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



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March 24, 2022

NOTICE OF CANCELLATION

TO: David Argo, 13148 Whipple Rd., Peever SD 57257

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

SUBJECT: Cancellation of Water Permit No. 7710-3

Water Permit No. 7710-3 appropriates ground water from the Reville Aquifer for irrigation of 160 acres in the SE ¼ Section 35, T124N, R51W. On August 30, 2021, a staff engineer with our program was in your area conducting field investigations for licensing purposes. His investigation found the project had not been constructed. The time limit for completion of works as specified in your permit expired on May 28, 2018. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7710-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7710-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

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. 7710-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
David Argo
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7710-3, ARGO BROTHERS

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. 7710-3, David Argo.

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

On August 30, 2021, an on-site investigation and follow-up conversation with Mr. Argo found the project had not been developed. Mr. Argo expressed a desire to keep the permit in the event they moved forward with the project but with the time frame for completion of works expiring in 2018, a new water permit would be needed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



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March 24, 2022

NOTICE OF CANCELLATION

TO: John or Nancy Haefner, 30061 Tislo Pl, Mound City SD 57646

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

SUBJECT: Cancellation of Water Permit No. 7849-3

Water Permit No. 7849-3 authorized diversion of water from the Missouri River to irrigate 260 acres in Sections 15 & 23, T125N, R79W in Campbell County. On January 25, 2022, you called and spoke with Genny McMath in our program in response to receiving a Notice to submit the annual irrigation questionnaire. During the conversation you indicated the irrigation system had not been constructed. The time limit for completion of works, as specified in the permit, expired on August 19, 2018. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7849-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7849-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

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. 7849-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
John or Nancy Haefner
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7849-3, JOHN OR NANCY HAEFNER**

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. 7849-3.

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

In response to receiving a "Notice" to submit the annual irrigation questionnaire, Mr. Haefner called and indicated the project has not been constructed. The time limit for completion of works expired on August 19, 2018.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



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March 24, 2022

NOTICE OF CANCELLATION

TO: Todd Jongeling, 19423 467th Ave., Estelline SD 57234

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

SUBJECT: Cancellation of Water Permit No. 7889-3

Water Permit No. 7889-3 appropriates water from the Big Sioux Brookings Aquifer in Deuel County to irrigate the SE ¼ Section 29, T113N, R50W. In June 2021, a staff engineer with our program was in your area doing field investigations for licensing purposes. He spoke with you concerning any development that may have occurred as authorized under your permit. It is our understanding the project was not constructed. The time limit for completion of works, as specified in the permit, expired on November 12, 2018. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7889-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7889-3 at **9:30 am, Wednesday, May 4, 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).*

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. 7889-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Todd Jongeling
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This hearing is an adversarial proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 7889-3, TODD JONGELING**

Pursuant to SDCL 46-2A-2, 46-5-37.1 and ARSD 74:02:01:37, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 7889-3.

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

A field investigation and follow-up communication with the permit holder on June 25, 2021, found the project had not been constructed.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



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March 24, 2022

NOTICE OF CANCELLATION

TO: Tyler Andersen, 400 Lincoln St, Centerville SD 57014

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

SUBJECT: Cancellation of Water Permit No. 8037-3

Water Permit No. 8037-3 authorized diversion of water from the Upper Vermillion South Aquifer to irrigate 103 acres in portions of Section 26 and 35, T96N, R52W. With the time limit for completion of works expiring on September 22, 2019, an application to reinstate Water Permit No. 8037-3 was received August 2021. Water Permit No. 8542-3 was approved on November 8, 2021, allowing the project to continue as planned. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8037-3 for non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8037-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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*).

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. 8037-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Tyler Andersen
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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 8037-3, TYLER ANDERSEN**

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. 8037-3.

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

The project was not constructed by the September 22, 2019, deadline specified in the permit. An application to reinstate the permit was submitted on August 9, 2021, and approved November 8, 2021.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

Cancellation of Water Permit No. 8037-3 does not affect Water Permit No. 8542-3 authorizing the same project.



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March 24, 2022

NOTICE OF CANCELLATION

TO: Kristi Honeywell, City Administrator, City of Pierre, 2301 Patron Parkway,
Pierre SD 57501

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

SUBJECT: Cancellation of Water Permit No. 8220-3

Water Permit No. 8220-3 appropriated water from the Missouri River for use in irrigating green spaces within the city. The permit was approved May 31, 2016, with the completion of works to be done by May 31, 2021. The project was not constructed, and the city applied for and received Water Permit No. 8548-3 to reinstate the original permit. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8220-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8220-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

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. 8220-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022

City of Pierre

Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 8220-3, CITY OF PIERRE**

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. 8220-3.

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

The original project was for irrigation of the green spaces within the city. The date for completion of works as specified in the water permit expired on May 31, 2021. The City obtained Water Permit No. 8548-3 to reinstate Water Permit No. 8220-3 to allow the project to continue.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

Cancellation of Water Permit No. 8220-3 does not affect Water Permit No. 8548-3 approved in October, 2021.



**DEPARTMENT of AGRICULTURE
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March 24, 2022

NOTICE OF CANCELLATION

TO: Larry D & Jennifer Bayer, 6846 Belmont Dr., Shawnee KS 66226

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

SUBJECT: Cancellation of Water Permit No. 8276-3

Water Permit No. 8276-3 authorizes diversion of ground water from the Niobrara Aquifer to irrigate 130 acres in the SW ¼ Section 27, T93N, R61W in Bon Homme County. On January 24, 2022, during a phone conversation with Genny McMath in our program, you indicated you would not be constructing an irrigation system because you could not find sufficient water. Based on your desire to have the permit cancelled, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8276-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8276-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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).*

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. 8276-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Larry & Jennifer Bayer
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



**DEPARTMENT of AGRICULTURE
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 8276-3, LARRY D & JENNIFER J BAYER

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. 8276-3.

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

On January 24, 2022, in response to receiving a "Notice" to submit the annual irrigation questionnaire, Mr. Bayer called and indicated he would not be developing the irrigation project because he could not find an adequate water supply. He requested the water permit be cancelled.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 24, 2022

NOTICE OF CANCELLATION

TO: Tom Mahlke, Eureka Redi Mix, PO Box 146, Eureka SD 57437
Kenneth Jensen, Jensen Rock & Sand Inc., PO Box 609, Mobridge SD 57601

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

SUBJECT: Cancellation of Water Permit No. 8355-3

Water Permit No. 8355-3 authorizes diversion of water from a dugout into the Selby Aquifer for commercial and industrial purposes in McPherson County. In January 2022, Tom Mahlke reported his annual water use for 2021 for the plant. Our understanding from his communication with Karen Schlaak in our program was the wash plant had been sold to Jensen Rock & Sand and shut down. The area was reclaimed, and no further water use would occur at the site. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8355-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8355-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

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. 8355-3 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

March 24, 2022
Tom Mahlke
Kenneth Jensen
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



**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. 8355-3, EUREKA REDI MIX**

Pursuant to SDCL 46-2A-2, 46-5-37.1 and ARSD 74:02:01:37, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8355-3, now owned by Jensen Rock and Sand Inc.

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

On January 18, 2022, the permit holder notified the Water Rights Program that 2021 was the last year of operation. The plant was sold to Jensen Rock and Sand. The area described in the permit has been reclaimed and no further water use will occur.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 24, 2022

NOTICE OF CANCELLATION

TO: Courtney Davis, Jensen Rock & Sand, PO Box 609, Mobridge SD 57601

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

SUBJECT: Cancellation of Water Permit No. 8357-3

Water Permit No. 8357-3 authorizes diversion of water from one well in the Grand Aquifer in Faulk County for commercial use in a ready mix plant. On January 10, 2022, you contacted our program in response to a request to report water use from plants located in Campbell, Roberts and Faulk County. It is our understanding from your conversation that Jensen Rock & Sand was unable to get a well capable of meeting water supply needs for the project in Faulk County. Based on your request to have the permit cancelled, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8357-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8357-3 at **9:30 am, (Central Time) Wednesday, May 4, 2022**, 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)*.

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. 8357-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by April 4, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by April 4, 2022.

Prior to April 4, 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 (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by April 4, 2022.



**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. 8357-3, JENSEN ROCK & SAND INC.**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 8357-3.

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

The permit holder requested cancellation of the permit due to the inability to find adequate water at the site. The plant uses city water for its water supply.

Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
March 24, 2022

Note:

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



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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APR 08 2022

WATER RIGHTS
PROGRAM

April 7, 2022

Jason Frerichs
13507 465th Avenue
Wilmot, SD 57279

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
Hand Delivered

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

To Whom it May Concern:

Enclosed please find a copy of the Water Rights' proposed Findings of Fact and Conclusions of Law and Final Decision and Certificate of Service in the above-referenced file.

Sincerely,

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

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb
Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program ✓

RECEIVED

APR 08 2022

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF CANCELLATION)	WATER RIGHTS' PROPOSED
OF WATER PERMIT NO. 7148-3,)	FINDINGS OF FACT,
JASON FRERICH'S)	CONCLUSIONS OF LAW, AND
)	FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on March 2, 2022. Board members Tim Bjork, James Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, and Bill Larson were present at the hearing and heard the evidence presented. Permit holder Jason Frerichs appeared *pro se*. Ann F. Mines Bailey represented the DANR Water Rights Program and the Chief Engineer.

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

FINDINGS OF FACT

1. On June 25, 2009, Water Rights received Water Permit Application No. 7148-3 on behalf of Jason Frerichs seeking an appropriation of water for irrigation of 60 acres with a diversion rate of 1.44 cubic feet per second (cfs) from an existing well completed into the Reville aquifer.
2. The application was granted on September 18, 2009.
3. The permit provided that one-fifth of the construction was to be completed on or before March 18, 2011, and all construction was to be

completed on or before September 18, 2014. Additionally, the permit provided that water was to be placed to beneficial use on or before September 18, 2018.

4. The permit also required that the permit holder submit irrigation questionnaires annually.

5. On November 4, 2021, the Chief Engineer recommended that Water Permit No. 7148-3 be cancelled due to lack of construction.

6. The matter was set for hearing at the Board's December 2021 meeting and Mr. Frerichs as the permit holder was provided notice of the hearing on November 4, 2021. The automatic delay provisions set forth in statute were invoked and the matter was continued to the Board's next regularly scheduled hearing in March of 2022.

7. In 2010, Kent Frerichs called in the response required for the irrigation questionnaire. He reported the "system is operational however due to excess moisture in the area, there was no need to irrigate the beans in 2010."

8. The 2011 irrigation questionnaire indicated that there was no irrigation and provided "work in progress to set up pump and pivot. Still plan to use in near future."

9. The 2012 irrigation questionnaire reflects that there was no irrigation; that the system was not constructed; and states "still working on developing the irrigation equipment. I still plan to irrigate in the near future."

10. The 2013 irrigation questionnaire provides that there was no irrigation that season because the system was not constructed. Written in the comment box is the following: "Planning still in progress for irrigation."

11. The 2014 irrigation questionnaire also indicates that there was no irrigation that season. "Still working on developing an irrigating system" is written in the comment box.

12. The 2015 irrigation questionnaire indicates no irrigation occurred that season and that the system is not constructed. In the comment box, the following is written: "Still working on setting up the system. Well is good yet."

13. In 2016, the irrigation questionnaire provided that no irrigation took place. In the comment box, Mr. Frerichs wrote "Working on plans to develop a system. Still plan to use the permit. Thank you[.]"

14. The 2017 irrigation questionnaire reflects that irrigation did not occur due the system not being constructed. In the comment box is written "Still working on a pump and system."

15. The 2018 irrigation questionnaire provides that irrigation did not occur as the system was not constructed. "Still plan to build a small pivot" is written in the comment box.

16. The 2019 irrigation questionnaire reflects that irrigation did not occur that season due to the system not being constructed.

17. Likewise, the 2020 irrigation questionnaire provides that irrigation did not occur that season due to the system not being constructed.

18. A Report of Examination of Works and/or Application of Water to Beneficial Use for Permit No. 7148-3 dated August 20, 2021, provides that Water Rights Inspector Darrell W. DeBoer determined that the works had not been completed as reported in the irrigation questionnaire. The report

indicates that Mr. DeBoer not only conducted a field visit but also spoke with Mr. Frerichs on the telephone and that Mr. Frerichs was still interested in irrigating under the permit.

19. The Board received the testimony of Water Rights Engineer Mark Rath. Mr. Rath testified that he also spoke with Mr. Frerichs by telephone. During the call, Mr. Rath indicated that he was following up on Mr. DeBoer's investigation and that Water Rights would be recommending cancellation. Mr. Rath testified that Mr. Frerichs indicated that he wished to retain the permit.

20. During a second phone call between Mr. Rath and Mr. Frerichs, Mr. Frerichs indicated that the well was in place and that he had a big irrigation gun and pipe and could irrigate with these items and wondered if that would be taken into consideration.

21. Mr. Rath further testified that he examined the irrigation questionnaires of existing water rights in the vicinity of Water Permit No. 7148-3 and determined that the majority of those existing rights were irrigating between 2014 and 2020.

22. The Board also received the testimony of Jason Frerichs. Mr. Frerichs testified the existing well is in operation but would like to perform further testing and make determinations regarding the pump and how to power the operation. He also has the pipe and a travelling gun necessary to irrigate. Mr. Frerichs further testified that he has been exploring options of using a pivot system or another type of travelling gun. He additionally testified that it

is his intent to use the permit. He believes the land permitted for irrigation under this permit needs less irrigation than surrounding acreages.

23. On rebuttal, the Board received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified he recommended cancellation of Water Right No. 7148-3 due to non-construction and failure to place water to beneficial use. Mr. Gronlund further testified that historically, the Board has not taken financial considerations into account when determining whether to cancel a water right and if such considerations were accounted for it would be unlikely that any water right could be canceled.

24. The works necessary for Water Permit No. 7148-3 were not constructed on or before September 18, 2014.

25. The water appropriated under Water Permit No. 7148-3 was not placed to beneficial use on or before September 18, 2018.

26. No evidence was presented which would indicate that construction could not be completed 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[.]” SDCL

§ 46-5-2

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

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

CONCLUSIONS OF LAW

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

2. Notice of Hearing was properly issued.

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

4. 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.

5. Thus, construction of necessary works for Water Permit No. 7148-3 needed to be completed on or before September 18, 2014, and water was required to be placed to beneficial use on or before September 18, 2018.

6. The necessary works were not constructed by September 18, 2014, nor by the date of the hearing.

7. The water appropriated under this permit was not placed to beneficial use on or before September 18, 2018.

8. An extension of the time allowed for construction can be granted under specific circumstances including "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.

Upon a finding that such circumstances exist, the Board “shall allow an extension of time on request prior applicant, equal to the time during which work was prevented by operation of law beyond the power of such applicant to avoid.” SDCL § 46-5-25.

9. The Board concludes that circumstances did not exist which would allow for the extension of time to construct the necessary works.

10. South Dakota Codified Law, section 46-2A-8.1 provides, in pertinent part, as follows:

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.

11. More than three years have passed since the expiration of the construction period and, therefore, the permit is not eligible for reinstatement pursuant to SDCL § 46-2A-8.1.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit No. 7148-3 is cancelled for failure to construct and place water to beneficial use within the statutory deadlines.

Dated this ____ day of May, 2022.

BY THE BOARD:

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE 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 a true and correct copy of the Water Rights' proposed Findings of Fact and Conclusions of Law and Final Decision in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 7th day of April 2022:

Jason Frerichs
13507 465th Avenue
Wilmot, SD 57279

And on the same date, a copy was hand-delivered to:

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. 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

March 17, 2022

NOTICE OF HEARING

TO: Tim Wellenstein Petitioners
29181 460th Ave (see attached list dated March 17, 2022)
Centerville SD 57014

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

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

SUBJECT: Notice of Hearing on Water Permit Application No. 8563-3, Tim Wellenstein

Petitions have been filed in the matter of Water Permit Application No. 8563-3 in response to the Notice of Application published in the Argus Leader and Centerville Journal on February 3, 2022. This notice schedules a hearing on Application No. 8563-3 before the South Dakota Water Management Board.

Water Permit Application No. 8563-3 proposed to appropriate 1.78 cubic feet of water per second from Turkey Ridge Creek located in the SE 1/4 SE 1/4 Section 31 for irrigation of 126 acres located in the SW 1/4 Section 32; all in T97N-R52W. Pursuant to SDCL 46-2A-2, the Chief Engineer recommended approval of Application No. 8563-3 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.

Tim Wellenstein, the applicant, submitted a letter received February 24, 2022, (copy enclosed) requesting that the Water Management Board **DENY** Application No. 8563-3 to use water from Turkey Ridge Creek for irrigation. The Chief Engineer will NOT oppose Mr. Wellenstein's request that the Board deny Application No. 8563-3.

The Water Management Board will conduct a hearing to consider the applicant's request for the Board to DENY Application No. 8563-3 at 9:45 AM (Central Time), on Wednesday, May 4, 2022, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The May 4, 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 opposing the application. A request for an automatic delay must be filed by March 28, 2022. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application or other information related to the application. 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.

Enclosed is a copy of the report, recommendation, affidavit of publication, and the petitions filed in the matter of Water Permit Application No. 8563-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, and other pleadings filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is March 28, 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 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

Petitioner List
Water Permit Application No. 8563-3, Tim Wellenstein
March 17, 2022

PETITIONERS

Jerry Null
28702 466th Ave
Centerville SD 57014

Tim Austin
45851 290th St
Viborg SD 57070

Katherine Van Hull
45919 291st St
Centerville SD 57014

Eldon & Sherry Nygaard
PO Box 174
Viborg SD 57070

Cody Van Hull
28847 461st Ave
Centerville SD 57014

Darrel Fischer
45868 292st St
Centerville SD 57014

Jeremiah Welsh
29217 460th Ave
Centerville SD 57014

Steve Welsh
29387 461st Ave
Centerville SD 57014

Alan Ward
29167 SD Hwy 19
Viborg SD 57070

Aaron Van Hull
45969 291st St
Centerville SD 57014

Gene Baker
PO Box 365
Centerville SD 57014

David Rist
45950 294th St
Centerville SD 57014

Lee/Dianne Rist
45952 294th St
Centerville SD 57014

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FEB 24 2022

WATER RIGHTS
DIVISION

Dear SD DENR Water Rights Board,

I recently applied for a water permit to pump out of Turkey Ridge Creek for use of crop irrigation, and following publishing of this application received multiple concerns from local farmers/landowners of possibly affecting livestock impairments while grazing during summer months. After discussions it is my wish for you as the water rights board to deny this permit as I intend to apply for a deep well permit instead. I would like to thank you and employees in the DENR water rights office for your time & help through this project.

Sincerely, Tim Wellenstein



**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. 8579-3, Brett Guthmiller**

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. 8579-3, Brett Guthmiller, 28680 435th Avenue, Menno SD 57045.

The Chief Engineer is recommending DEFERRAL of Application No. 8579-3 for further study because additional investigation is needed to determine if existing high capacity irrigation wells from the Niobrara aquifer in this area may unlawfully impair adequate domestic wells. The Water Rights Program is working in conjunction with the South Dakota Geological Survey to complete observation wells completed into the Niobrara aquifer in the spring of 2022. This will allow monitoring of water levels in the aquifer to aid in determining the effects pumping has on area domestic wells.

The deferral of Application No. 8579-3 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 data received from the installed observation wells. The applicant can request the application be brought before the Board prior to expiration of the two year deferral period if they can show the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights.

See report on application for additional information.

Eric Gronlund, Chief Engineer
March 18, 2022

Report to the Chief Engineer
Water Permit Application 8579-3
Brett Guthmiller

Water Permit Application No. 8579-3 proposes to appropriate water for the irrigation of 32 acres at a maximum instantaneous diversion rate of 0.89 cubic feet per second (cfs) from one well (approximately 200 ft deep) to be completed into the Niobrara aquifer. Both the proposed well and proposed acres for irrigation are located in the NE ¼ NE ¼ Section 18-T97N-R56W in Hutchinson County. The applicant is requesting a diversion rate greater than the statutory limit 1 cfs per 70 acres. This site is located approximately four miles southeast of Menno, SD.

Aquifer: Niobrara aquifer

Hydrogeology

The Niobrara Formation is a bedrock formation that underlies most of eastern and western South Dakota (Hedges et al, 1982; Allen et al, 1985). The Niobrara Formation is a Late Cretaceous age white to dark grey argillaceous (clay containing) chalk, marl, and shale that can contain thin bentonite beds, minor sand, and chalky carbonaceous shale (Tomhave, and Schulz, 2004). Locally, the Niobrara Formation is also known as “chalk rock” and is extensive throughout South Dakota; however, characteristics of the Niobrara aquifer vary greatly across the state (Hedges et al., 1982). The Niobrara aquifer is contained within portions of the Niobrara Formation where sufficient permeability exists to allow for the transmission of groundwater and where the permeable portions of the formation are sufficiently saturated to yield quantities of groundwater to wells. Both Hedges et al. (1982) and Stephens (1967) identified fractures and solution cavities as the main means of water movement through the Niobrara aquifer. Hedges et al. (1982) noted these features are partially controlled by flexures and faults. Where these secondary porosity features are absent, the Niobrara Formation is generally a low-permeability or almost a no-permeability formation that transmits little to no water (Hedges et al., 1982; Stephens, 1967). Weathering and glacial activity may also contribute to higher productive zones in the Niobrara aquifer (Hedges et al., 1982). The interconnected nature of secondary porosity is highly variable and unpredictable.

In southeastern South Dakota, there are several areas where portions of the Niobrara Formation were isolated from the main body of the Niobrara through erosional forces prior to being overlain by glacial deposits (Tomhave and Schulz, 2004). The proposed well site is located within the extent of one of these isolated portions of the Niobrara Formation. The extent of this portion of the Niobrara Formation is shown in Figure 1. This portion of the Niobrara Formation underlies approximately 340,550 acres (estimated from Tomhave and Schulz, 2004) of portions of Hutchinson, Clay, Turner, Yankton, and McCook Counties. This portion of the Niobrara directly underlies either the Pierre Shale (shown in Figure 1) or glacial deposits in areas not underlying the Pierre Shale and overlies the Carlilie Shale (Tomhave and Schulz, 2004). Well completion reports on file with the Water Rights Program report encountering water through this portion of the Niobrara Formation indicating widespread aquifer potential throughout this portion of the formation (Water Rights, 2022a; 2022b; 2022c). Since this portion of the Niobrara aquifer is

isolated from the main body, the remainder of this report will focus solely on this isolated portion of the aquifer.

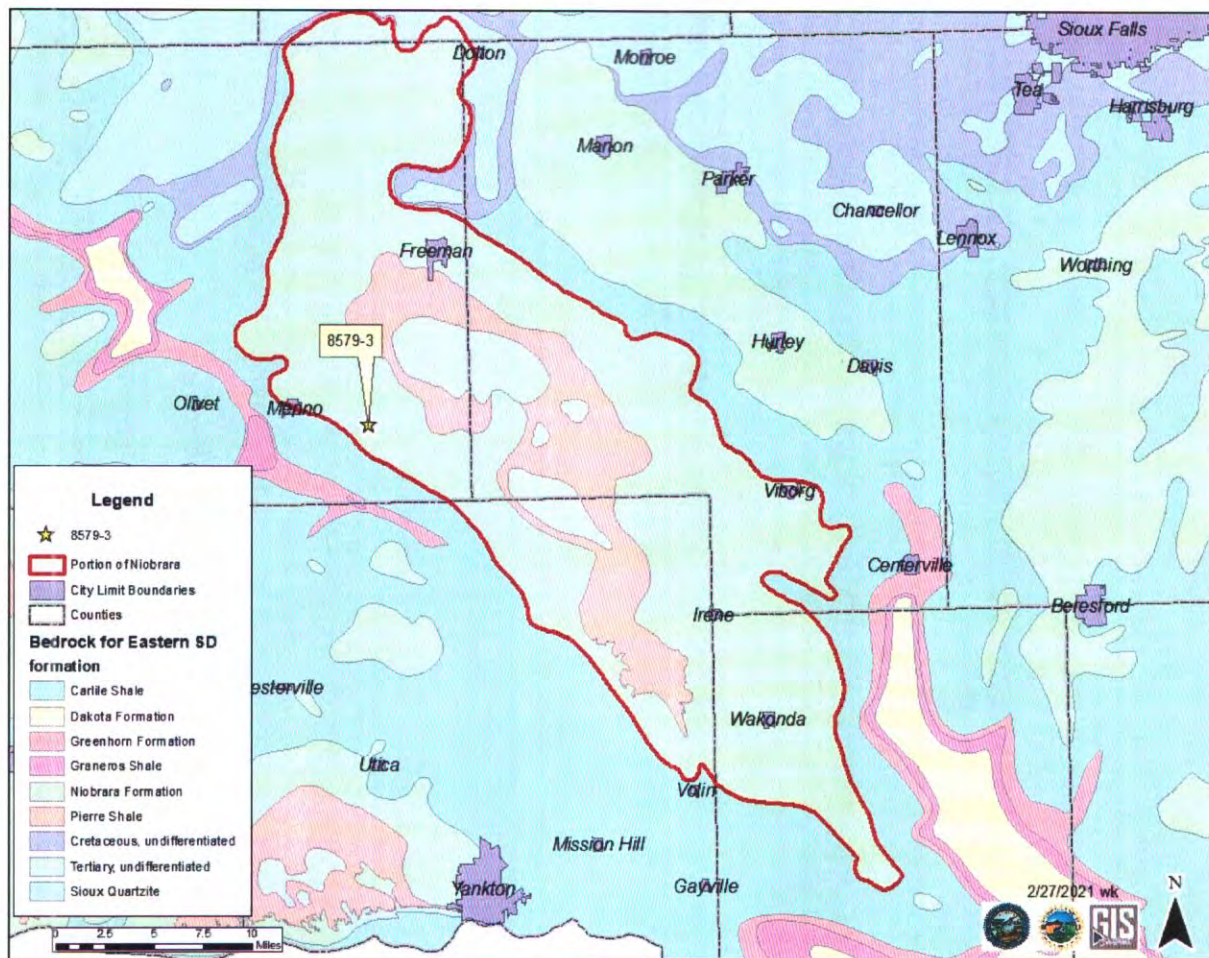


Figure 1: Map shown the first occurrence of bedrock material with the erosional remnant of the Niobrara Formation this application proposes to use (modified from Tomhave and Schulz, 2004)

This portion of the Niobrara aquifer is surrounded by valleys in the bedrock where the Niobrara Formation has been eroded, which contain deposits of glacial outwash that act as aquifers. Where these glacial outwash aquifers are in contact with this portion of the Niobrara (either overlaying or are adjacent to), there is potential for leakage between the aquifers based on hydraulic head. The Lower James Missouri aquifer lies in the bedrock valley to the west of this portion of the Niobrara and in some locations extends far enough east to be in contact with this portion of the Niobrara (Tomhave and Schulz, 2004; Hedges et al., 1982). The Upper Vermillion Missouri aquifer lies in the bedrock valley to the east of this portion of the Niobrara aquifer and can also be hydrologically connected (Lindgren and Hansen, 1990). Stephens (1967) indicated the presence of a glacial outwash aquifer (named the Wakonda aquifer) directly overlaying and with a strong hydrologic connection to this portion of the Niobrara in portions of Clay County. However, the first occurrence of aquifer materials mapping by Jensen (2000) indicates that the Wakonda aquifer is unlikely to be as extensive as was mapped by Hedges et al. (1982).

Potentiometric surface mapping done in the late 1980's and early 1990s, indicated water movement in this portion of the Niobrara aquifer is generally from the center toward the edges (Lindgren and Hansen, 1990; Bugliosi, 1986). Using more recent observation well and water well data, Mathiowetz (2016) created a May 2016 potentiometric surface (shown in Figure 2) for this portion of the Niobrara aquifer. The May 2016 potentiometric surface shows water movement in the aquifer from the center toward the edges (moving from higher head to lower head). This indicates two things this portion of the Niobrara aquifer is likely primarily discharging to aquifers located within the bedrock valleys surrounding this portion of the Niobrara aquifer and second, there is likely a recharge source near the center of the aquifer. The available reports for the area do not specifically identify a recharge source to the Niobrara aquifer but there are likely two possibilities. A portion of the Pierre Shale near the center of this portion is overlain by the Turkey Ridge aquifer which near its edges could be separated from the Niobrara by limited amounts of glacial till through which leakage could occur or the undifferentiated tertiary material can include high permeability materials (sands and gravel) which could allow for greater potential for infiltration of precipitation through overlying materials (Lindgren and Hansen, 1990; Tomhave and Schulz, 2004).

No test hole or water well completion report was submitted with this application. However, there is sufficient information to determine that at the proposed well location the requested well depth of approximately 200 feet would be expected to be completed into the Niobrara aquifer (Water Rights, 2022a and SDGS, 2022). Well completion reports on file with the Water Rights Program within one mile of the proposed well location for this application indicated that the Niobrara Formation can have sufficient permeability and saturated thickness to act as an aquifer in this area (Water Rights, 2022a). The Niobrara aquifer is expected to be under confined conditions in the area of the proposed well location for this application (Water Rights, 2022a).

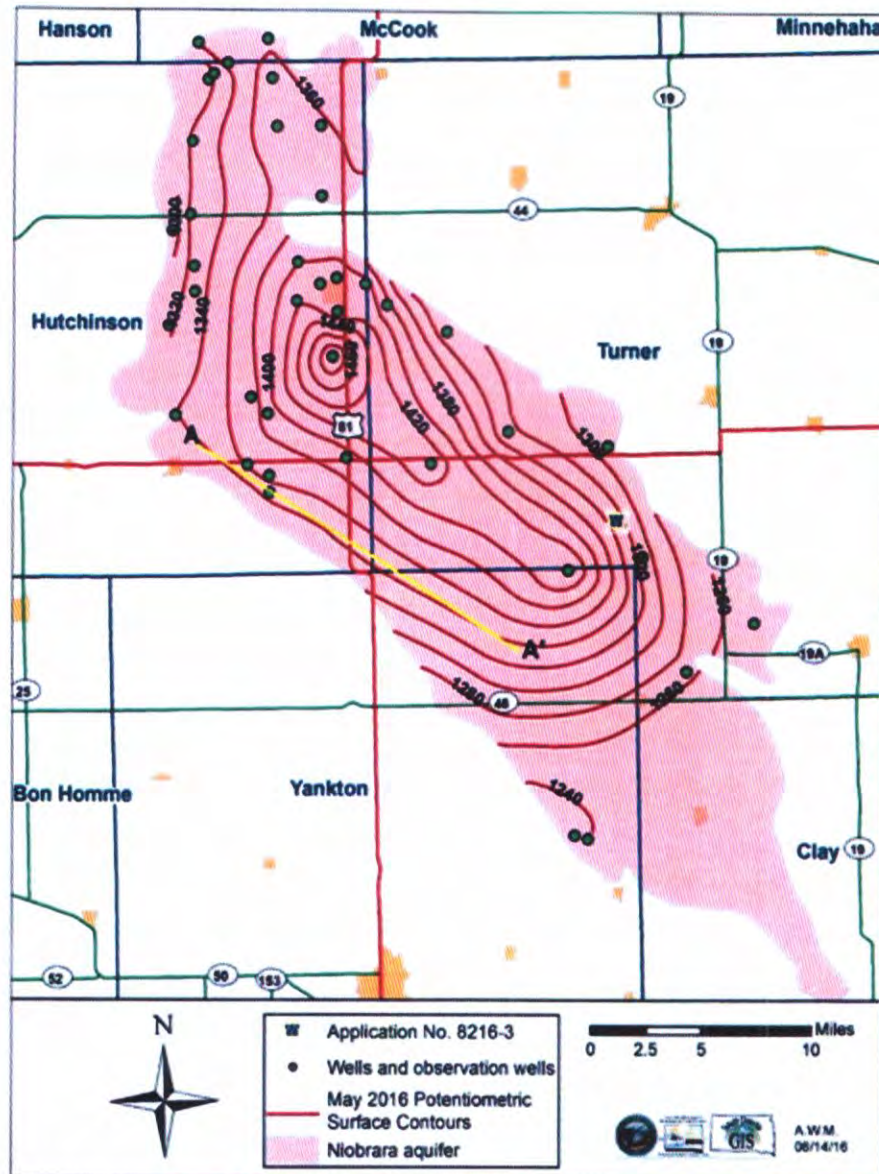


Figure 2: Approximate potentiometric surface contours from May 2016 (Mathiowetz, 2016)

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 this portion of the Niobrara aquifer.

Water Availability

Water Permit Application No. 8579-3 proposes to appropriate water from the Niobrara aquifer for irrigation use. The probability of unappropriated water being available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires, “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and the application is for a water distribution system defined in SDCL 46-1-6 (17), the Board need not consider the recharge/withdrawal issue. The Niobrara Formation is not older or lower than the Greenhorn Formation and this application is not for a water distribution system; therefore, the withdrawal/recharge issue must be considered.

Observation Well Data

In determining the availability of unappropriated water for a permit application Administrative Rule 74:02:05:07 requires the Water Management Board to rely on the record of observation well measurements, in addition to other data, to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated annual recharge.

The Water Rights Program monitors 12 observation wells in this portion of the Niobrara aquifer. The location of those observation wells is shown in Figure 3. The nearest observation well to the proposed well location is observation well HT-83F located approximately eight miles to the north. The hydrograph for observation well HT-83F is shown in Figure 4. The remaining observation well hydrographs for this portion for the Niobrara aquifer are shown in Figure 5 through Figure 15. Observation well HT-81B has frequently been reported to be underwater since 2014 and, where there are readings from the well after 2014, the comments have indicated the presence of iron bacteria, which can impair observation well performance and measurement (Water Rights, 2022c). Therefore, the accuracy of any readings from HT-81B after 2014 are considered to be suspect.

Report on Water Permit Application 8579-3

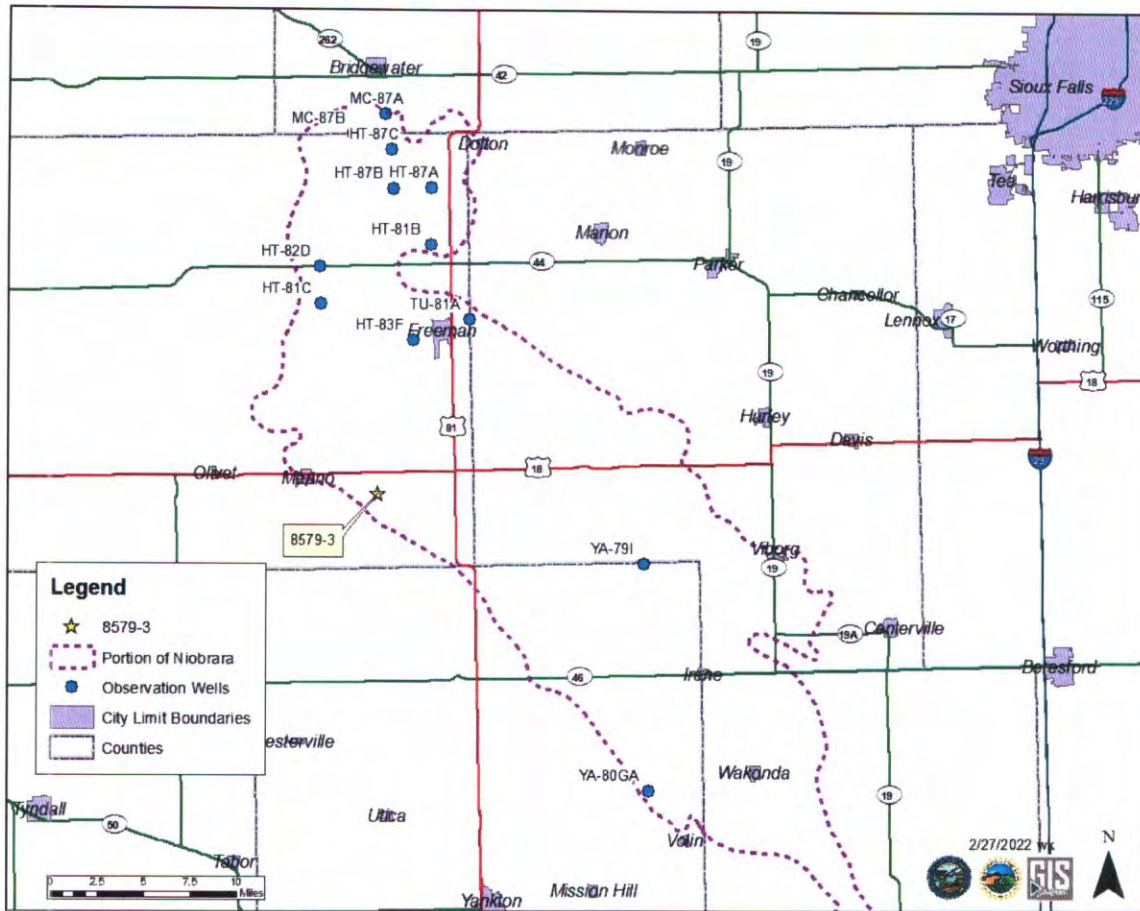


Figure 3: Location of Water Rights observation wells in this portion of the Niobrara aquifer (Water Rights, 2022c)

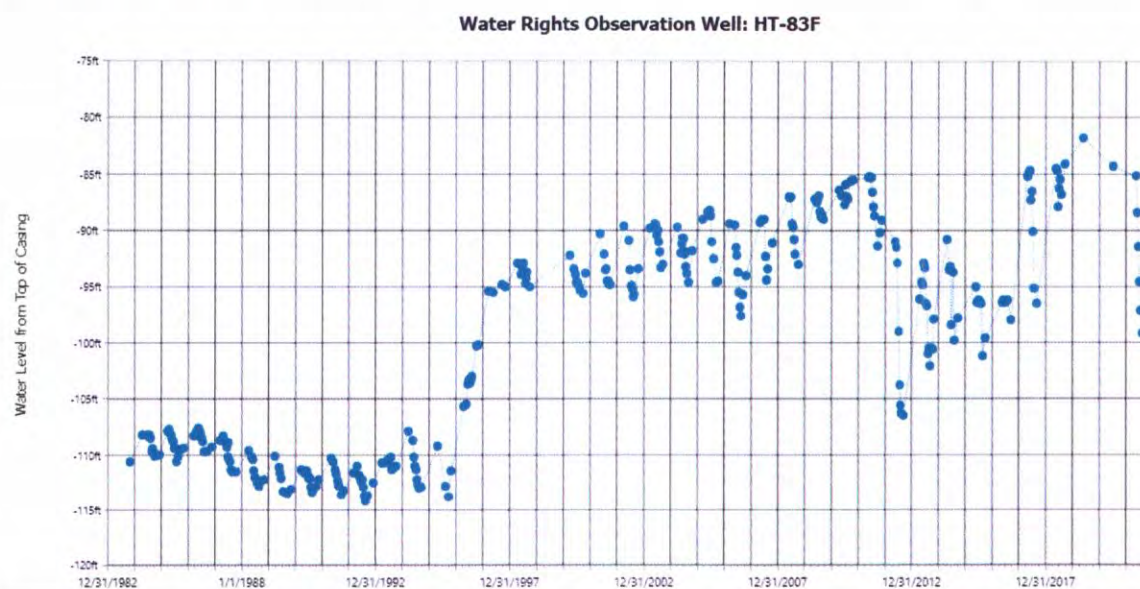


Figure 4: Hydrograph of observation well HT-83F located 8 miles north (Water Rights, 2022b)

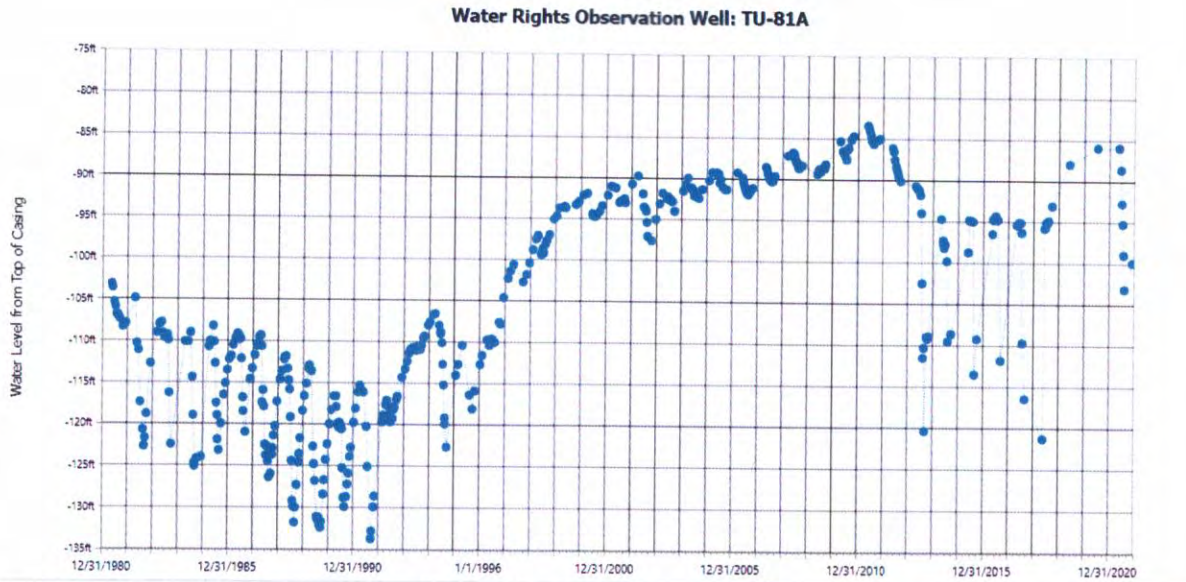


Figure 5: Hydrograph of observation well TU-81A located 10.4 miles north (Water Rights, 2022b)

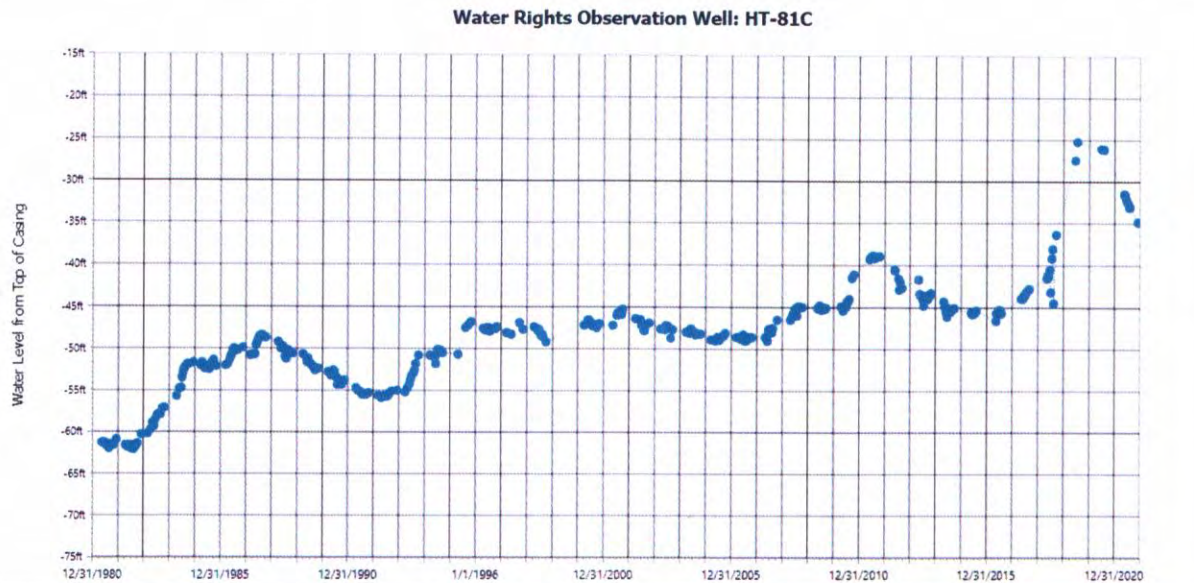


Figure 6: Hydrograph of observation well HT-81C located 10.5 miles north (Water Rights, 2022b)

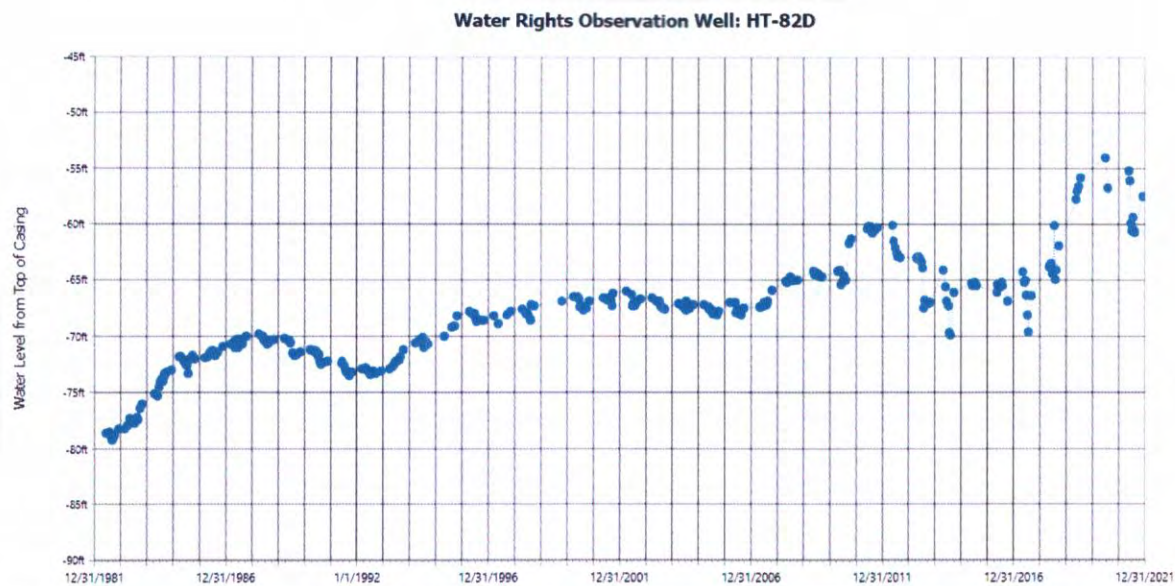


Figure 7: Hydrograph of observation well HT-82D located 12.4 miles north (Water Rights, 2022b)

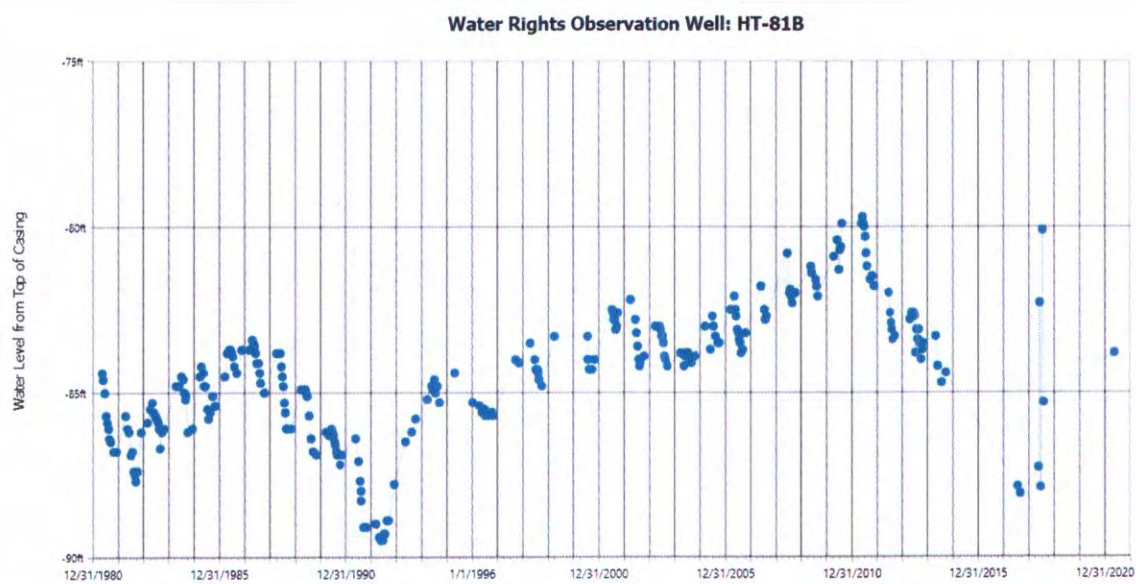


Figure 8: Hydrograph of observation well HT-81B located 13.4 miles north (Water Rights, 2022b)

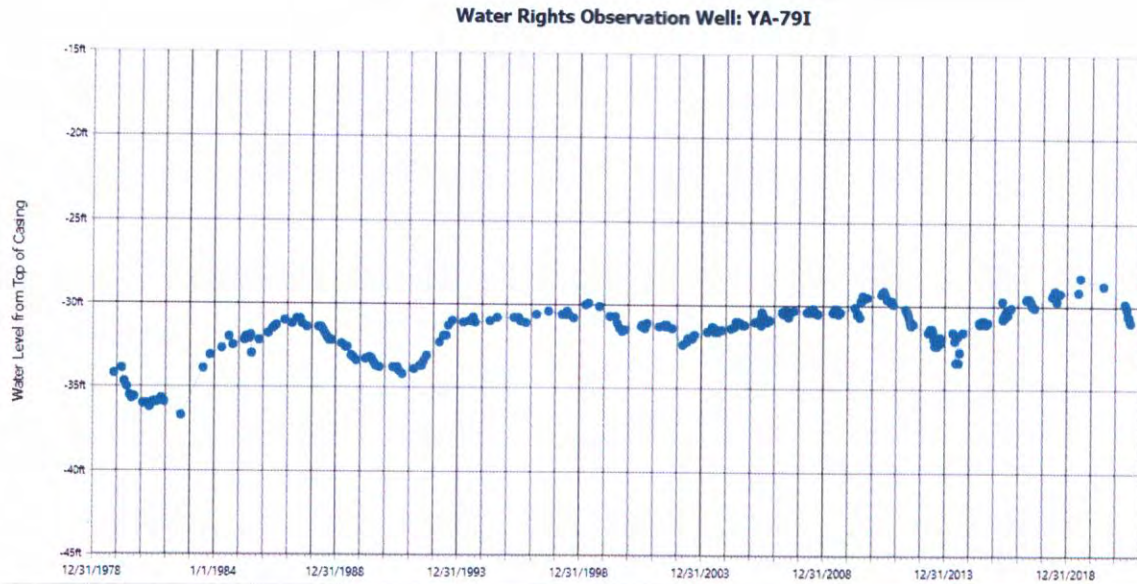


Figure 9: Hydrograph of observation well YA-79I located 14.7 miles southeast (Water Rights, 2022b)

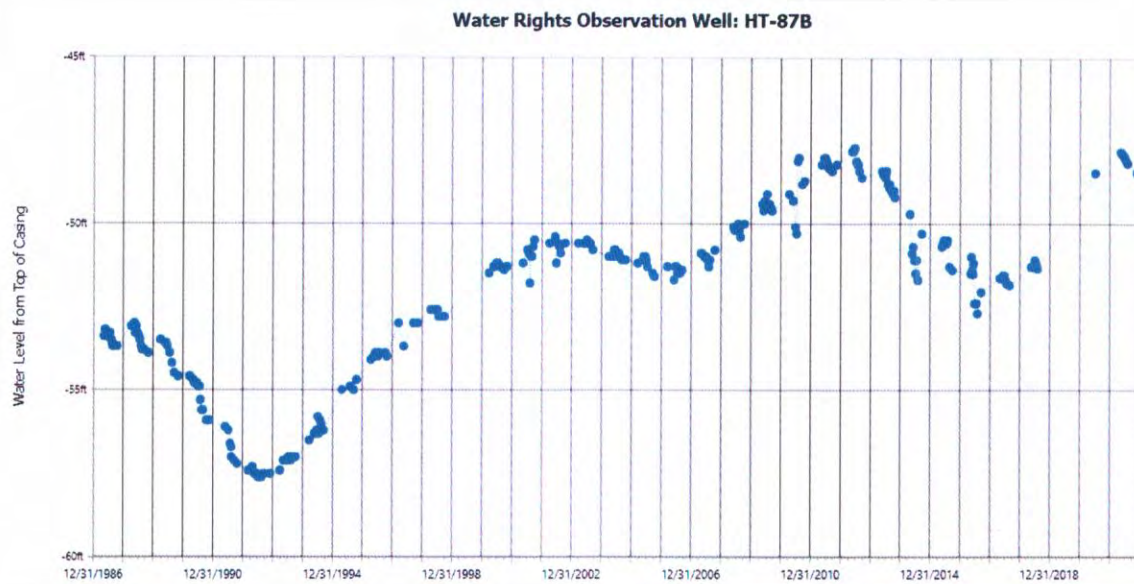


Figure 10: Hydrograph of observation well HT-87B located 16.1 miles north (Water Rights, 2022b)

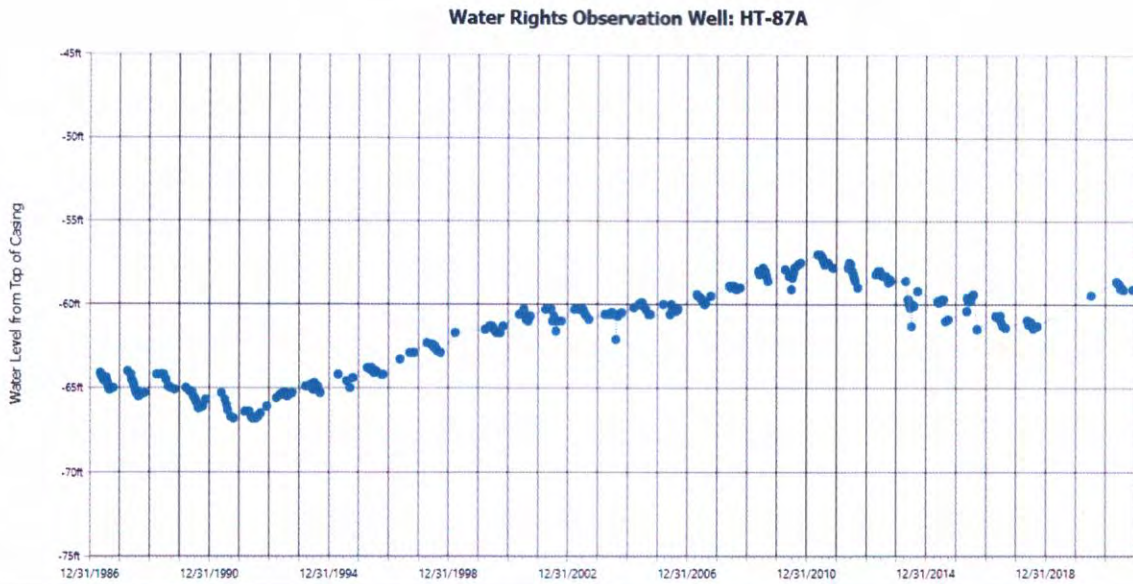


Figure 11: Hydrograph of observation well HT-87A located 16.4 miles north (Water Rights, 2022b)

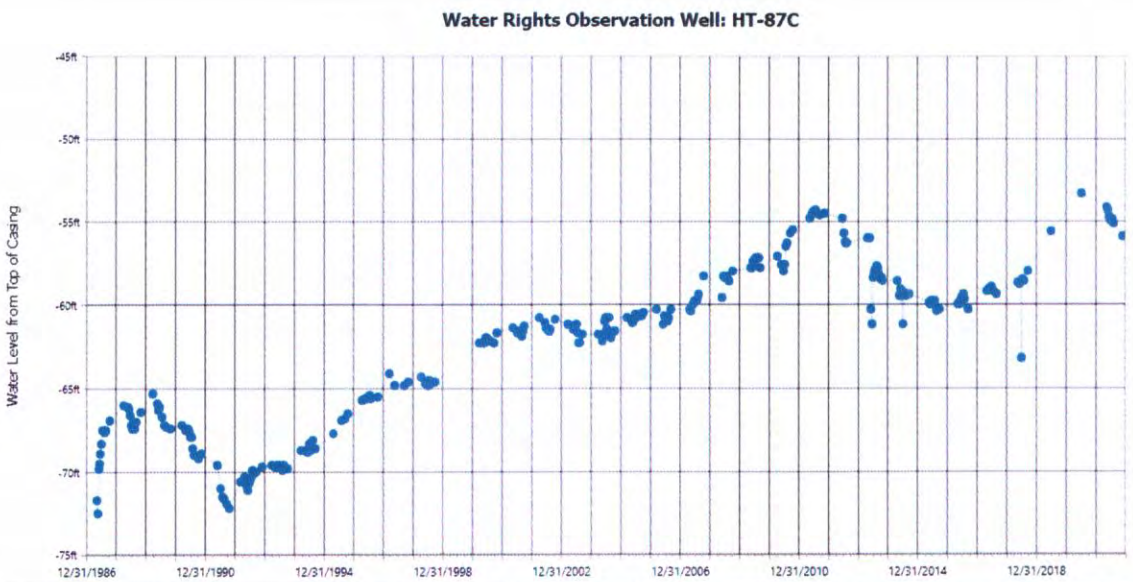


Figure 12: Hydrograph of observation well HT-87C located 18.1 miles north (Water Rights, 2022b)

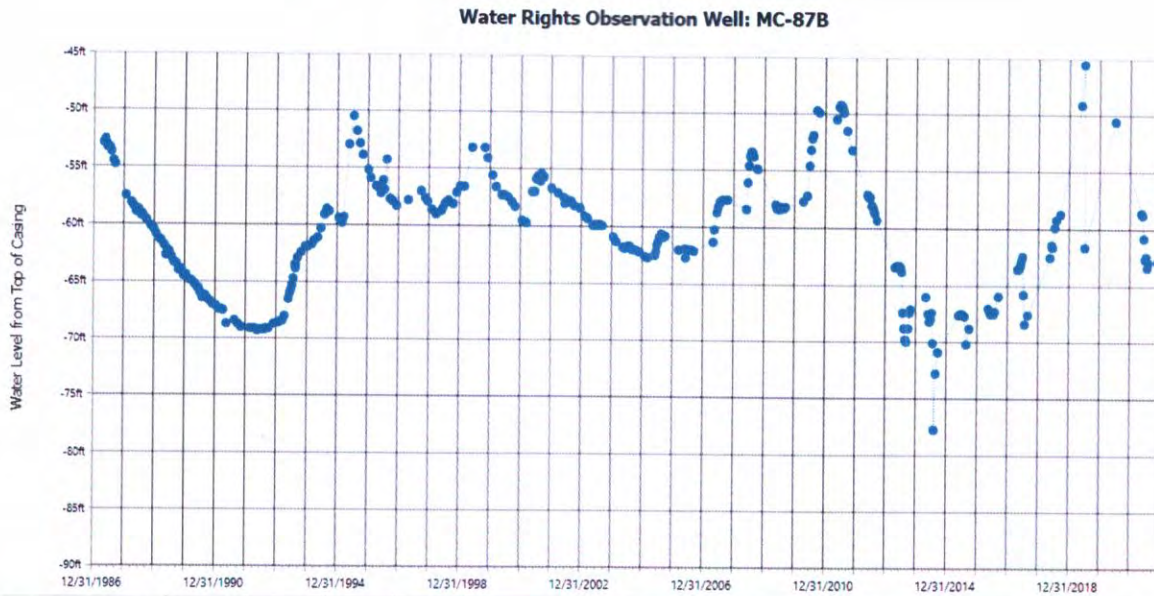


Figure 13: Hydrograph of observation well MC-87B located 19 miles north (Water Rights, 2022b)

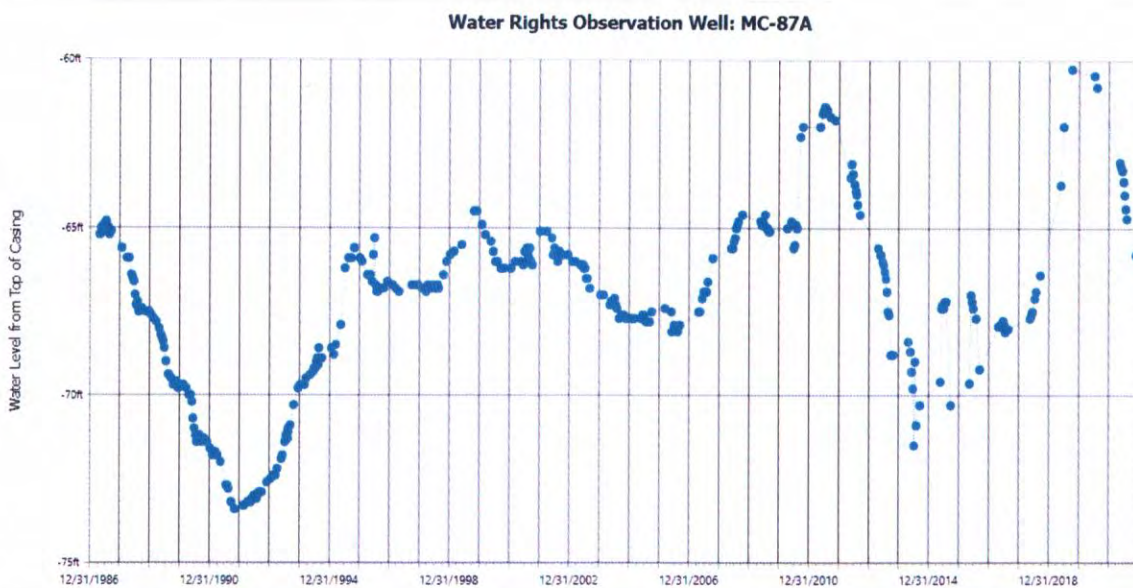


Figure 14: Hydrograph of observation well MC-87A located 20 miles north (Water Rights, 2022b)



Figure 15: Hydrograph of observation well YA-80GA located 21 miles southeast (Water Rights, 2022b)

Generally, the observation wells show an increase in water levels since the start of their periods of record (excluding HT-81B). Within that increasing trend, the response of water levels to climatic conditions can be noted, although the magnitude of the response to climatic condition varies due to localized conditions within the aquifer. Several observation wells that are close to irrigation wells show localized seasonal dips in measured water levels during the irrigation season in response to pumping (for example HT-83F and TU-81A). This is representative of the artesian head pressure of the aquifer in the area responding to seasonal irrigation pumping. However, water levels recover after the end of the irrigation season when pumping ends for the season. Water levels in the observation wells monitoring the aquifer generally rise during wet periods and decline to stable levels during drier periods. This type of behavior, along with aquifer recovery following the irrigation season, is indicative that climatic conditions, and therefore the effects of recharge to and natural discharge from the aquifer, govern the long-term fluctuations in water levels in the aquifer instead of pumping. Since recharge to and natural discharge from an aquifer can be captured for pumping, there is a reasonable probability that unappropriated water is available from this portion of the Niobrara aquifer for the proposed appropriation.

Hydraulic Budget

Recharge

Recharge to this portion of the Niobrara aquifer is likely from groundwater inflow from adjacent or overlying aquifers due to leakage from these hydrologically connected aquifers when the potentiometric gradients are favorable (a higher hydraulic head in the connected overlying or adjacent aquifer than in the Niobrara aquifer would indicate potential for leakage into the Niobrara aquifer), infiltration from precipitation where the Niobrara is at or near ground surface, and leakage through till (Lindgren and Hansen, 1990). There is no estimate of average annual recharge to this portion of the Niobrara aquifer or the Niobrara aquifer in general available for South Dakota

(Hedges et al., 1985). However, of the Niobrara aquifer in SD, Hedges, et al. (1985) notes noted the Niobrara aquifer had such high storage and low use it was unlikely that withdrawals are approaching or exceeding recharge and that there was no evidence of significant head loss in the aquifer to suggest that use is exceeding recharge. As documented in the observation well section of this report the additional years of observation well data collected since Hedges, et al. (1985) still show no evidence of significant head loss in the aquifer (Water Rights, 2022b).

Discharge

Discharge from this portion of the Niobrara aquifer is due to well withdrawals and likely leakage to hydrologically connected aquifers where the potentiometric gradients are favorable (a higher hydraulic head in the Niobrara aquifer than in an overlying or adjacent aquifer would indicate potential for discharge from the Niobrara). There are currently 25 active water rights/permits in this portion of the Niobrara aquifer (Water Rights, 2022b). Of those 19 are for irrigation use, 3 for municipal use, 2 for commercial use, and 1 for institutional use. Mathiowetz (2016) created and analyzed a May 2016 potentiometric surface (Figure 2) for this portion of the Niobrara aquifer using observation well and water well data. The Mathiowetz (2016) analysis estimated that natural groundwater discharge along the western side of this portion of the Niobrara aquifer to the Lower James Missouri aquifer to be at least 9,837 acre-feet per year. Natural discharge from an aquifer serves as an indicator of the magnitude by which recharge is exceeding withdrawals from an aquifer. Since this estimate is for a single point in time (May 2016), this value does not represent an average annual value for discharge from the aquifer but does offer insight into the magnitude by which recharge is exceeding withdrawals on the western flank of the aquifer at the time the analysis was performed. Actual natural groundwater discharge from this aquifer is likely higher then indicated by Mathiowetz (2016). This is due to the direction of groundwater flow being generally from the center of the aquifer outward to the edges of the aquifer and Mathiowetz (2016) only quantified discharge from the western side of the aquifer, so an unquantified amount of natural discharge is likely occurring from the north, east, and south edges of the aquifer.

The six non-irrigation water rights/permits in this portion of the Niobrara aquifer are summarized in Table 1. The Town of Irene and the City of Freeman both purchase their water from a rural water system but keep their water rights on standby for emergency use, so their average annual withdrawal is estimated to be zero (Drinking Water, 2022). Historically, average water use by non-irrigation appropriations limited solely by instantaneous diversion rate have been less than 60% of full time pumping at the maximum permitted diversion rate. For water rights/permits limited to an annual volume, full use of that volume is assumed for estimation of average annual withdrawal. Appropriative non-irrigation water is summarized in Table 1. The estimated average annual appropriative non-irrigation use from this portion of the Niobrara aquifer is 533 acre-ft per year. There are a number of domestic wells completed into this portion of the Niobrara aquifer that do not require appropriative water permits or report annual pumpage. Due the development of rural water systems in the area and to their relatively limited diversion rates; it is assumed the volume pumped from domestic wells is negligible to the hydrologic budget for this aquifer.

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Table 1: Non-irrigation Use (Water Rights, 2022b)							
Permit No.	Name of Permit Holder	Priority Date	Status	Use	Rate (cfs)	Annual Volume Limit (acre-ft)	Estimated Average Annual Use (acre-ft per yr.)
810-3	City of Freeman	01/01/1950	LC	MUN	1.26	n/a	0 (system on standby)
1229-3	Town of Irene	01/01/1915	LC	MUN	0.56	n/a	0 (system on standby)
5239-3	City of Freeman	10/17/1988	LC	MUN	0.33	n/a	0 (system on standby)
6524-3	Freeman Jr College & Freeman Academy	07/19/2004	LC	INS	0.07	n/a	30
6706-3	Pheasant Run Farm	02/21/2006	PE	COM	0.1	n/a	43
8216-3	B&K Dairy Farms LLC	02/01/2016	PE	COM	0.67	460	460
						Total	533
LC-water right, PE-water permit, MUN-municipal, INS-institutional, COM-commercial							

The majority of water rights/ permits for irrigation are required to report annual irrigation usage to the Water Rights Program. The 19 active water rights/permits for irrigation from this portion of the Niobrara aquifer are summarized in Table 2 and their reported annual irrigation pumping summarized Table 3. Water Right No. 5913-3 incorporated portions of another permit when licensed, so reported irrigation usage for the incorporated permit is also included in Table 3. Water Permit Nos. 7512-3, 7513-3, and 7514-3 all have a required completion of construction date of February 19, 2018; however, the 2013-2021 irrigation questionnaires for these permits all indicated that the systems have not been constructed (Water Rights, 2022a; Water Rights, 1980-2022). Water Permit No. 7814-3 has a completion of construction date of June 24, 2018; however, the 2013-2021 irrigation questionnaires for this permit all indicated that the system has not been constructed (Water Rights, 2022a; Water Rights, 1980-2022). Water Permit Nos. 7512-3, 7513-3, 7514-3, and 7814-3 are all likely subject to cancellation due to failure to construct the system in the five year construction period for the permit. Therefore, since they are subject to cancellation the average annual usage for these permits is estimated at zero acre-feet per year.

Table 2: Summary of Irrigation Water Rights/Permits (Water Rights, 2022b)						
Permit No.	Name of Permit Holder	Priority Date	Status	Rate (cfs)	Acres	Comments
5764-3	City of Freeman	03/15/1993	LC	0.24	27.5	irrigation reporting started in 2016
5913-3	Roger Schmidt	04/02/1981	LC	0.77	123	incorporates portions of 4679-3
6708-3	David Huber	04/03/2006	LC	1.78	271	
7344-3	Michael Schultz	04/09/2012	PE	5.33	399	
7448-3	Robert Heckenlaible	10/03/2012	PE	6.67	560	
7512-3	Greg Wirth	10/24/2012	PE	2.28	160	not constructed
7513-3	Greg Wirth	10/24/2012	PE	1.74	122	not constructed
7514-3	Greg Wirth	10/24/2012	PE	2.28	160	not constructed
7515-3	Greg Wirth	10/24/2012	PE	2.28	160	
7526-3	Derrick Walter	11/15/2012	PE	3.56	257	
7617-3	Brett Guthmiller	01/07/2013	LC	1.34	119	
7683-3	Roger Guthmiller	01/28/2013	LC	1.34	134	
7700-3	David Huber	02/14/2013	PE	2.22	160	
7814-3	David Huber	04/01/2013	PE	1.78	80	not constructed
7893-3	Wayne or Trina Knutson	09/03/2013	LC	0.07	1.2	
8162-3	Don Schellpfeffer	05/28/2015	PE	1.78	122.65	
8260-3	Cameron Johnson	12/27/2016	PE	1.67	117.35	
8326-3	Jerry Nelsen	01/08/2018	PE	2	120	
8416-3	Jerome Poeschl	12/02/2019	PE	1.56	116	

Average reported irrigation usage for the water rights/permits for irrigation from this portion of the Niobrara aquifer is 156 acre-ft per year. Since the number of irrigation water rights/permits has continued to increase, the estimated average annual withdrawal rate for

irrigation appropriations for the entire period of record may not accurately reflect the current level of development. The average annual withdrawal rate for irrigation appropriations from 2013 to 2020 better represents the current level of irrigation development in this portion of the Niobrara aquifer. Average reported irrigation usage from 2013 to 2020 for the water rights/permits for irrigation from this portion of the Niobrara aquifer is 590 acre-ft per year.

Balance

Estimated average annual appropriative withdrawals for this portion of the Niobrara aquifer are estimated at 1,123 acre-ft per year (irrigation: 590 acre-ft per year and non-irrigation: 533 acre-ft per year). Natural discharge along the western side of this portion of the Niobrara aquifer to the Lower James Missouri aquifer is estimated to be at least 9,837 acre-feet per year (Mathiowetz, 2016). Since natural discharge from an aquifer represents water available in excess of withdrawals at the time of the estimation, and estimated natural discharge exceeds estimate average annual withdrawals, there is a reasonable probability that unappropriated water is available in this portion of the Niobrara aquifer.

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Table 3: Reported Irrigation use (Water Rights,1981-2021; Water Rights, 1982-2022)

Year	No. Permits	Reported Pumping (acre-feet)
1981	1	0.0
1982	1	69.7
1983	1	35.6
1984	1	42.0
1985	1	50.0
1986	1	50.0
1987	1	120.0
1988	1	72.9
1989	1	136.6
1990	1	92.8
1991	1	106.1
1992	1	6.6
1993	1	0.0
1994	1	33.1
1995	1	29.4
1996	2	6.6
1997	2	18.0
1998	2	0.0
1999	2	0.0
2000	2	0.0
2001	2	0.0
2002	2	25.2
2003	2	7.7
2004	2	0.0
2005	2	0.0
2006	2	0.0
2007	2	23.1
2008	2	49.5
2009	2	28.3
2010	2	0.0
2011	2	141.4
2012	3	381.6
2013	13	999.1
2014	14	928.9
2015	15	724.6
2016	16	518.1
2017	17	616.8
2018	18	98.0
2019	18	20.5
2020	19	815.0
Max	19	999.09
Min	1	0
1981-2020 Avg	4.5	156.2
2013-2020 Avg	16.25	590.1

Potential For Unlawful Impairment of Existing Water Rights

In August of 2021, the Water Rights Program received a complaint that existing irrigation pumping from the Niobrara aquifer in the area of the proposed well location for this application had impacted two domestic wells (Water Rights, 2022d). The irrigation in question was initially interpreted to be just the nearest water rights/permits for irrigation to the domestic wells, which are to the southwest of the domestic wells (Water Rights, 2022d). The approximate location of the of the two domestic wells and area water rights/permits are shown in Figure 16. The water rights/permits are summarized in Table 1 and Table 2.

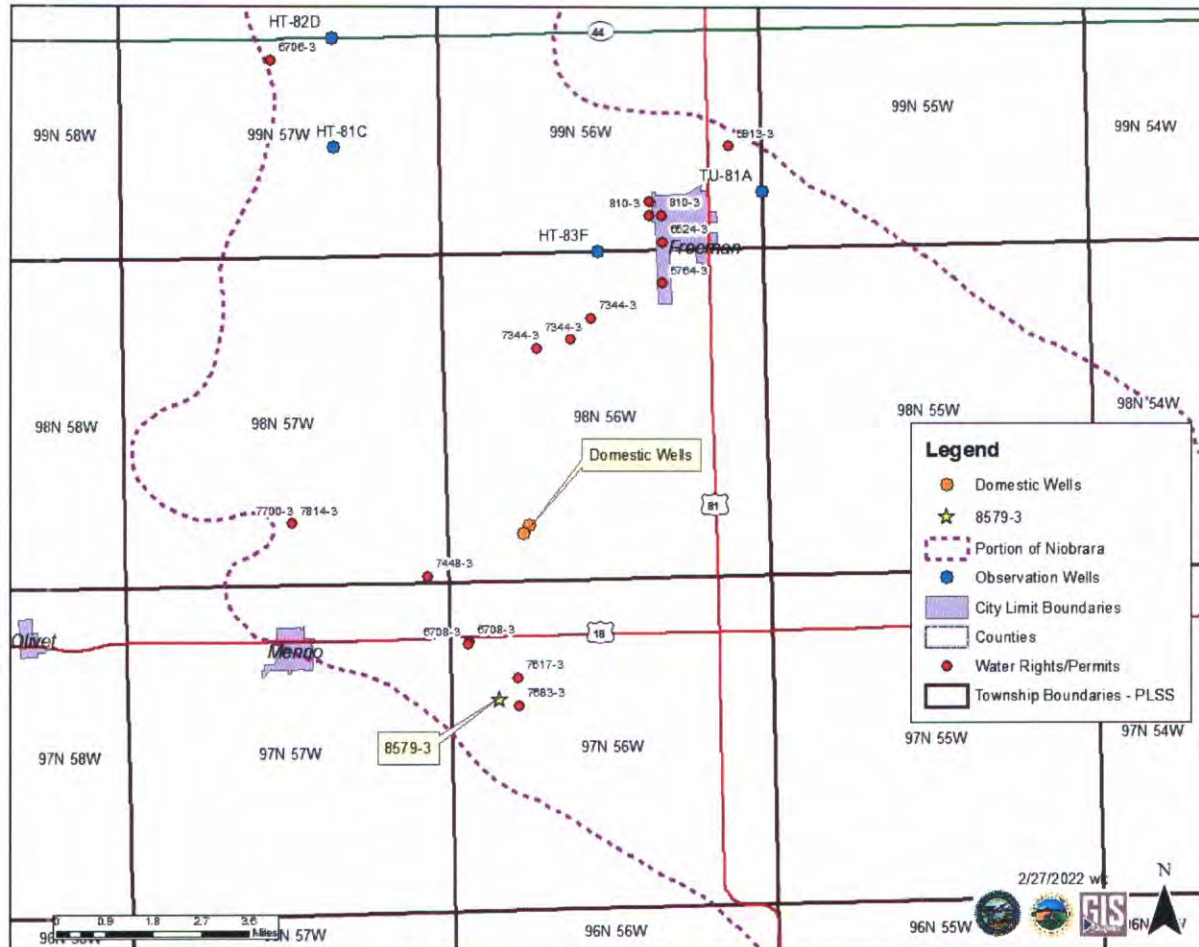


Figure 16: Water rights/permits in the area of the well for this application (Water Rights, 2022b) and the approximate location of the domestic wells from the August 2021 complaint (Water Rights, 2022d)

Review of the well completion reports for the domestic wells indicated that at the time of construction (Fall of 2012) they were adequate wells (as defined by ARSD 74:02:04:20(6)) (Water Rights, 2022a). ARSD 74:02:04:20(6) defines an adequate well as “a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet”. The Water Management Board has defined an

adversely impacted domestic well (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”. A review of area observation wells completed into the Niobrara aquifer indicated that the nearest observation well, observation well HT-83F located 5.1 miles to the northeast of the domestic wells (shown in Figure 4), was too far away and in the wrong direction to be used to determine if an unlawful impairment was occurring. However, there were local aquifer characteristics identified that could explain why the domestic wells were experiencing loss of water issues before other domestic wells located closer to the irrigation wells. To gain further information on the situation Water Rights asked the nearest irrigators to the southwest to participate in a voluntary shut down of their irrigation systems. Within one week of the voluntary shut down one of the domestic wells was reported as starting to recover and the other had stopped sucking air (Water Rights, 2022d). The domestic well reported as sucking air did not recover until several weeks later after the irrigation to the north shut down (Water Rights, 2022d).

In 2013, the Water Rights Program received a complaint of a domestic well being impacted in the general area of this application; however, when investigated, it was determined that the well had likely collapsed and was not an adequate well as defined by ARSD 74:02:04:20(6) (Water Rights, 2022d). In 2015, a complaint was received that Water Permit No. 7526-3 (near the northern edge of this portion of the Niobrara aquifer) was impacting springs; however, the springs were identified as artesian in nature and artesian head pressure is not protected as a means of delivery. Therefore, it was concluded that no unlawful impairment was occurring (Water Rights, 2022). In the case of Water Permit Application No. 2313-2 for the Coca-Cola Bottling Company of the Black Hills the Water Management Board adopted findings that noted that if the increased costs or decreased production as a result of the impacts of legitimate users on artesian head pressure could be considered an adverse impact it would conflict with SDCL 46-1-4 (Water Rights, 1995). SDCL 46-1-4 requires the water resources of the state be put to beneficial use to the maximum extent of which they are capable (Water Rights, 1995).

The Water Rights Program began planning additional investigation activities in the area prior to receiving this application (Water Rights, 2022d). The plan is to work in conjunction with the South Dakota Geological Survey to install additional observation wells in the area to better understand how pumping impacts water levels in the area (Water Rights, 2022d). The current lack of observation well coverage between the irrigation wells and the complaint domestic wells means the Water Rights Program cannot be certain that unlawful impairment is not occurring to the domestic wells at the current level of development. Additional observation wells will assist in determining whether any possible unlawful impairment is caused by a single irrigation well; the seasonal, cumulative effect of multiple irrigation wells; or general drought conditions either in conjunction with the preceding or apart from the preceding. It should be noted that discounting seasonal fluctuations the two nearest observation wells (HT-83F and TU-81A (shown in Figures 4 and 5)) both show long term climatic fluctuations in excess of 20 feet. Additionally, the primary direction of water movement in the aquifer (from the center outward as indicated by Mathiowetz (2016)) indicates the need for additional observation wells in the area to better understand the effect of the irrigation wells on water levels in the area. The planned second activity is to perform

Report on Water Permit Application 8579-3

a licensing inspection of the water permits that are past their five year construction period or have indicated that development is complete (Water Rights, 2022d). Reported irrigation by year for the water rights/permits surrounding the domestic wells is shown in Table 4. Given the historic reported irrigation in the area and lack of complaints that could be an unlawful impairment until August of 2021, it is likely that some level of irrigation can be done in the area without unlawful impairment of adequate wells (if an impairment is occurring). The addition of another high capacity well in the area could cause additional seasonal drawdown in the area. Given the Water Rights Program is investigating if existing irrigation is causing unlawful impairment of domestic wells under extended high use in the area of this application, the addition of another high-capacity irrigation well to the area could further exacerbate the issue if it is determined that under high use conditions unlawful impairment can occur as a result of drawdown. Therefore, based on the information currently available, a conclusion cannot be made whether there is a reasonable probability unlawful impairment will occur if this application is developed.

Table 4: Reported Irrigation by Year in the Area of the Complaint in Acre-Feet (Water Rights, 1981-2021; Water Rights, 1982-2022)

Permit No.	6708-3	7344-3	7448-3	7617-3	7683-3	7700-3	7814-3	Total
Priority Date	04/03/2006	04/09/2012	10/03/2012	01/07/2013	01/28/2013	02/14/2013	04/01/2013	
Approximate distance to complaint wells (miles)	2.1	3.2	1.9	2.6	3.1	4.3	4.3	
2021	86.9	155.6	192.5	43.1	57.4	15.5	0.0	551.0
2020	103.3	227.0	125.4	35.7	38.1	51.6	0.0	581.0
2019	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2018	0.0	51.7	29.0	5.7	0.0	0.0	0.0	86.4
2017	10.6	168.8	26.5	25.4	28.7	42.4	0.0	302.5
2016	0.0	205.1	117.7	30.5	31.6	28.3	0.0	413.1
2015	77.8	316.9	75.1	18.6	21.1	56.6	0.0	566.0
2014	169.7	181.4	136.7	60.8	80.4	120.2	0.0	749.2
2013	155.6	228.0	175.7	43.1	59.1	141.4	0.0	802.9
2012	272.2	109.4	n/a	n/a	n/a	n/a	n/a	381.6
2011	141.4	n/a	n/a	n/a	n/a	n/a	n/a	141.4
2010	0.0	n/a	n/a	n/a	n/a	n/a	n/a	0.0
2009	28.3	n/a	n/a	n/a	n/a	n/a	n/a	28.3
2008	49.5	n/a	n/a	n/a	n/a	n/a	n/a	49.5
2007	23.1	n/a	n/a	n/a	n/a	n/a	n/a	23.1

SDCL 46-5-6 Diversion Rate Limit

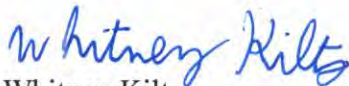
Pursuant to SDCL 46-5-6, the diversion rate for an irrigation appropriation cannot be in excess of one cfs for every 70 acres, or “the equivalent thereof.” The statute does provide that the Water Management Board may allow a greater diversion rate if the method of irrigation or soil types so require. Water Permit Application No. 8579-3 propose to diver up to 0.89 cfs for the irrigation 32 acres or the equivalent of 1.95 cfs per 70 acres. The application indicated that the proposed method of irrigation is by center pivot. Center pivots generally require a certain diversion rate for operation, so when center pivot irrigation system is not making a full turn or consists of a shorter span than a full quarter the one cfs for every 70 acres rate is sometimes exceeded. This reason has historically been accepted as an allowed exceedance due to the method of irrigation.

Conclusions

1. Water Permit Application No. 8579-3 proposes to appropriate water for the irrigation of 32 acres at a maximum instantaneous diversion rate of 0.89 cfs from one well to be completed

into the Niobrara aquifer both located in the NE ¼ NE ¼ Section 18-T97N-R56W in Hutchinson County.

2. Based on the hydrologic budget and observation well data, there is a reasonable probability that water is available in the aquifer to meet the water use proposed by this application.
3. Additional investigation is needed to determine if the existing high-capacity irrigation wells in the area maybe unlawfully impairing two existing domestic users with adequate wells under extended high use conditions. Adding another high-capacity irrigation well to the area before the Water Rights Program can further investigate the current unlawful impairment complaint could further exacerbate the issue if it is determined that under high use conditions unlawful impairment can occur as a result of drawdown from pumping of the existing high-capacity irrigation wells in the area.
4. Therefore, based on the information currently available, a conclusion cannot be whether there is a reasonable probability unlawful impairment will occur if this application is developed.
5. This application is requesting a diversion rate greater than the statutory limit 1 cfs per 70 acres due to the method of irrigation.



Whitney Kilts

SDDANR-Water Rights Program

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- Water Rights. 2022d. Hutchinson County Complaint File. Water Rights County Complaint Files. SD DANR-Water Rights Program. Joe Foss Building, Pierre, South Dakota.



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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Applicant's Petition

Opposing Chief Engineer's Recommendation on Water Permit Application

According to South Dakota Codified Law sections 46-2A-3, 46-2A-4(6) and 46-2A-23, the applicant needs to file a petition if opposing the Chief Engineer's recommended action on the applicant's water permit application.

Application No. 8574-3 Name of Applicant Brett Guthmiller

The Application No. can be found in the public notice mailed to you or at <https://danr.sd.gov/public>.

Filing Deadlines. If you are opposing a recommendation by the Chief Engineer to DENY your application, you need to submit this completed petition opposing the recommendation within twenty days of the date the recommendation was mailed to you. If you are opposing any other recommendation, this petition needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program" or personally served upon Water Rights.

List the reasons for opposing the Chief Engineer's recommendation on this application:

I would like to urge the board to not defer this application but to approve it. Last summer, when the two wells, three miles north of my current well quit pumping, myself and two neighbors were told to stop irrigating. After a week, those domestic wells began to pump again. My father's well, which is a half mile further from those wells, was allowed to continue pumping and yet water returned to those domestic wells. This proposed well is located closer to his well and further away from those problem wells.

Secondly, I would refer to the engineer's report that states "there is reasonable probability that unappropriated water is available from this portion of the Niobrara aquifer for the proposed appropriation" (located on pg. 12). My father also has an artesian flow well in a pasture approximately one half mile from his irrigation well. This well dries up after he began pumping but it was running again by mid-October 2021, approximately 6 weeks after he quit pumping. I went and measured the water levels at both his well and mine in early March before the frost came out. They were both between 25 and 30 feet, which is considered normal levels.

I have talked to Dale Mehlhof the one who called into the state last summer. He indicated the widow who he rents from and is a close relative of, would like to get on rural water (B-4), which is just over one half mile away. The biggest issue is B-4 water can be difficult to work with. However, a neighbor one mile away was able to get connected last fall.

Continued →

Application No. 8579-3

Applicant's Name Brett Gutlinke

Any additional reasons for opposing the Chief Engineer's recommendation on this application:

Lastly, this proposed well would only irrigate 32 acres. This means it will not be pumping a large volume over the season. This field contains heavy soil so it holds water much better than a sandy soil would. You probably wonder why I'm so passionate about this project. It comes down to feed for my cattle. I raise rye, corn, and alfalfa on this field as well as cover crops to make sure water and nutrients don't go unused with the current dry conditions and high feed costs, I am in need of this productive field to help supply the nutrition needs of our cattle.

I hope you can see that the stewardship of our resources are important to me. I hope to pass this passion of stewardship down through the generations along with our livestock and crop operation.

Thanks for your consideration.

Brett Gutlinke

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BRETT GUTHMILLER
28680 435TH AVE
MENNO SD 57045

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON


KELLY HERTZ, BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT (S)HE IS THE MANAGING EDITOR OF YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID
COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED
3+31 NOTICE OF HEARING ON

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 31st DAY OF March, 2022
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$79.04 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: 03/31/2022

FILED ON: 03/31/2022


SUBSCRIBED AND SWORN TO BEFORE ME THIS 31st DAY OF March, 2022


NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 07/04/2026



NOTICE OF HEARING on Application No. 8579-3 to Appropriate Water

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APR 04 2022

WATER RIGHTS
PROGRAM

Notice is given that Brett Guthmiller, 28680 435th Ave, Menno SD 57045 has filed an application for a water permit to appropriate 0.89 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately 200 feet deep) located in the NE 1/4 NE 1/4 Section 18 for irrigation of 32 acres located in the NE 1/4 NE 1/4 Section 18; all in T97N-R56W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located approximately 4 miles southeast of Menno 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 public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8579-3 for further study because additional investigation is needed to determine if existing high capacity irrigation wells from the Niobrara aquifer in this area may unlawfully impair adequate domestic wells. The Water Rights Program is working in conjunction with the South Dakota Geological Survey to complete observation wells completed into the Niobrara aquifer in the spring of 2022. This will allow monitoring of water levels in the aquifer to aid in determining the effects pumping has on area domestic wells.

The deferral of Application No. 8579-3 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 data received from the installed observation wells. The applicant can request the application be brought before the Board prior to expiration of the two year deferral period if they can show the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights.

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 9:45 am, (Central Time) on May 4, 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 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 April 11, 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.

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The May 4, 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 April 11, 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 April 11, 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 April 11, 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 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at an approximate total cost of \$79.04.

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County of Hutchinson)

) ss.

State of South Dakota)

Jeremy Waltner, of said county and state, being duly sworn, on his oath, deposes and says: That the Freeman Courier is a weekly newspaper of general circulation and a legal newspaper as required by law, printed and published in the town of Freeman in said county and state by Jeremy Waltner, and has been such newspaper during the time hereinafter mentioned: That I, Jeremy Waltner, the undersigned, am publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the advertisement headed Appropriate Water

a printed copy of which is hereto attached, was printed and published in the said newspaper for one successive issues to-wit:

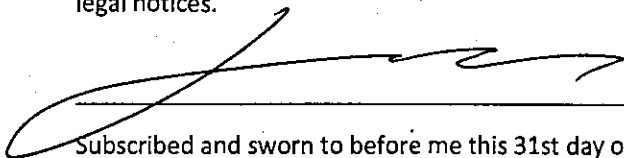
The first publication on:

March 31, 2022

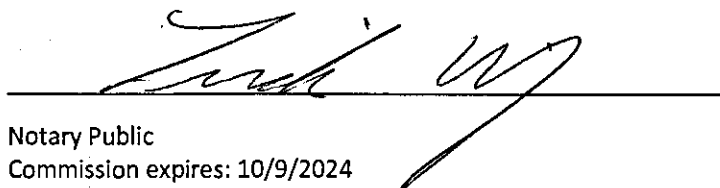
the second publication on:

and the third publication on:

That the full amount of the fees charged for publishing the same to-wit: The sum of \$80.00 insures solely to the benefit of the publisher of the Freeman Courier, that no agreement or understanding for any division thereof has been made with any other person whomsoever, and the amount of \$80.00 is the rate for publishing legal notices.



Subscribed and sworn to before me this 31st day of March 2022.



Notary Public
Commission expires: 10/9/2024

Publication fee: \$80.00

Notary fee:

Total: \$80.00

PUBLIC NOTICES

BECAUSE IT'S YOUR RIGHT TO KNOW

NOTICE OF HEARING

Guthmiller Application to appropriate water

Notice is given that Brett Guthmiller, 28680 435th Ave, Menno SD 57045 has filed an application for a water permit to appropriate 0.89 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately 200 feet deep) located in the NE 1/4 NE 1/4 Section 18 for irrigation of 32 acres located in the NE 1/4 NE 1/4 Section 18; all in T97N-R56W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located approximately 4 miles southeast of Menno 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 public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8579-3 for further study because additional investigation is needed to determine if existing high capacity irrigation wells from the Niobrara aquifer in this area may unlawfully impair adequate domestic wells. The Water Rights Program is working in conjunction with the South Dakota Geological Survey to complete observation wells completed into the Niobrara aquifer in the spring of 2022. This will allow monitoring of water levels in the aquifer to aid in determining the effects pumping has on area domestic wells.

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the Water Management Board for consideration. At that time, the Board will reconsider the application based on data received from the installed observation wells. The applicant can request the application be brought before the Board prior to expiration of the two year deferral period if they can show the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights.

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 9:45 am, (Central Time) on May 4, 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 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

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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 May 4, 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 April 11, 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.

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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 April 11, 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 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25:02; 74:02:01:35:01.

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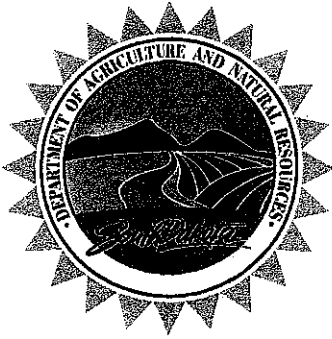
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Section 404 Clean Water Act Violation
Request for High Water mark designation
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Robert J Roeder 05/26/2021

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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danr.sd.gov

April 7, 2022

NOTICE OF HEARING

TO: Robert Roeber Cottonwood Lake Area Property Owners
309 East 6th Avenue (see attached list dated April 6, 2022)
Redfield SD 57469

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

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

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

SUBJECT: Notice of Hearing to Consider Chief Engineer's Motion to Dismiss Petition

A petition has been filed by Robert Roeber pursuant to South Dakota Codified Law (SDCL) 43-17-28 and Administrative Rules of South Dakota (ARSD) 74:02:01:51 requesting the Water Management Board to set an Ordinary High Water Mark (OHWM) on Cottonwood Lake located approximately nine miles southwest of Redfield SD in Spink County. In response to receipt of the petition, the Chief Engineer of the Department of Agriculture and Natural Resources, Water Rights Program, has filed a motion to dismiss Mr. Roeber's petition (see enclosed "Chief Engineer's Motion to Dismiss" dated March 29, 2022).

The Water Management Board will conduct a hearing to consider the Chief Engineer's Motion to Dismiss Mr. Roeber's petition at 10:00 AM (Central Time), on Wednesday, May 4, 2022, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. This hearing concerns only the motion to dismiss. If the motion is not granted by the Board, a later hearing will be scheduled to consider establishing an OHWM in a manner consistent with SDCL ch. 43-17. The time of hearing is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing. If you are an affected party and want to participate remotely, connection information is available at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106> or a livestream of the hearing is available at <https://www.sd.net>.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy Mr. Roeber's petition and the Chief Engineer's motion to dismiss the petition. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including the above items. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, and other pleadings filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the petition or motion to dismiss. 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 direct mail to you, and the applicable date to give notice to the Chief Engineer is April 18, 2022. However, since this particular matter is a motion to dismiss 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 43-17-24.1, 43-17-28, 46-2-9; and Board Rule ARSD 74:02:01:51.

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

Cottonwood Lake Area Property Owners

April 7, 2022

First name	Last name	Address	City state zip
Joshua	Schleffer	1000 Cottonwood Lane	Redfield SD 57469
Jerry J & James L Walker	Oligmuer	1001 Thompson Beach Road	Redfield SD 57469-7022
	Byrum, Martha Grantor Trust	1006 Cottonwood Lane	Redfield SD 57469
Nancy M	Valentine	1012 Lake Drive	Redfield SD 57469-7019
Karen M & Robert	Stephenson	1016 E Third Street	Redfield SD 57469-1135
Susan	Muellerberg	1016 W Second Street	Redfield SD 57469-1510
James R & Kristine L	Mattson	1017 SD Hwy 26	Redfield SD 57469-7025
Richard & Dawn	Oakley	1017 Thompson Beach Road	Redfield SD 57469-7022
	Stahl, Sharon L Living Trust	1041 SD Hwy 26	Redfield SD 57469-7025
Joshua & Shannon	Johnson	1042 Cottonwood Lane	Redfield SD 57469-7027
	E & S Family Trust	10426 E Cedar Waxwing Court	Sun Lakes AZ 85248-7738
Jerry B & Janet	Eaton	1075 SD Hwy 26	Redfield SD 57469
	Nelson, Reta Rose L/E Nelson 4d Trust	1110 N Harth Avenue Apt 5	Madison SD 57042-1072
	Carla C Revocable Living Trust Agree	1124 W Sixth Street	Redfield SD 57469-2032
	Schade, George M Rev Liv Tr Agrmt & Schade, Carla C Rev	1124 W Sixth Street	Redfield SD 57469-2032
Jacqueline J & Joeleen A Lahm	Olson	1125 Whispering Pines	Billings MT 59101-7134
Laura C & Olson, Jacqueline J & Lahm, Joeleen A	Radtke	1125 Whispering Pines	Billings MT 59101-7134
Derek & Brenda	Merkel	11766 364th Avenue	Leola SD 57456-7203
Kyle & Sandra	Roberts	11868 Grouse Street NW	Coon Rapids MN 55448-1950
	Masat, Judy Family Trust	120 E 13th Avenue	Redfield SD 57469-1645
	Kit Cottonwood LLC	120 Orion Avenue	Pierre SD 57501-5665
	Wagner, Ron Trust 2020 & Joyce Trust 2020	1220 Oakwood Lane	Aberdeen SD 57401-4084
	Cottonwood Ranch LLC	1224 Greer Avenue NW	Maple Lake MN 55358-2204
Michael & Dawn Roth	Betten	1257 SD Hwy 26	Redfield SD 57469-7008
Olivia	Full	1305 SD Hwy 26	Redfield SD 57469-7013
Brian	Wagner	1355 SD Hwy 26	Redfield SD 57469-7013
Ronald R & June M	Ohm	1369 SD Hwy 26	Redfield SD 57469-7013
Claude & Barbara	Abeln	1373 SD Hwy 26	Redfield SD 57469-7007
	Patterson, Norma L Revocable Trust	1381 SD Hwy 26	Redfield SD 57469-7013
Mark L	Vogt	1383 SD Hwy 26	Redfield SD 57469-7013
Carol Ann Etal	Leinen	1416 E Third Street	Redfield SD 57469-1903
Delbert E & Janelle J	Fortin	1425 E First Street	Redfield SD 57469-1919
Lylye & Mardelle	Brown	1447 SD Hwy 26	Redfield SD 57469-7016
Shon & Jessie	Ford	1505 N Park View Place	Miller SD 57362-1802
	Mccov, William E Etal % Schwab, Ginnv	1519 N Harrison	Aberdeen SD 57401-1543
Brian & Virginia	Bain	1604 Carrington Avenue	Gillette WY 82718-7652
George	Rahm	16693 404th Avenue	Doland SD 57436-6305
Darin & Jessica	Devoung	16711 396th Avenue	Frankfort SD 57440-6206
Edward & Cathy	Frericks	16835 395th Avenue	Frankfort SD 57440-6203
Casey & Malinda	Fey	16911 Us Hwy 281	Ashton SD 57424-6101
Kevin	Siebrecht	17168 388th Avenue	Redfield SD 57469-6612
Mark & Pamela	Edgar	17314 368th Avenue	Rockham SD 57470-5312
Carisa	Giblin	17396 374th Avenue	Redfield SD 57469-6526
Francis & Carol	Esser	17409 393rd Avenue	Redfield SD 57469-6721
Darvin L	Dickhaut	17417 Railroad Street	Redfield SD 57469-6601
John P	Blackburn	175 Lakeview Terrace	Yankton SD 57078-6752
Landon	Schade	17691 371st Avenue	Zell SD 57469-5306
Randall & Stephanie	Waldner	17738 384th Avenue	Redfield SD 57469-7107
Tyson	Nuhsbaumer	17781 370th Avenue	Zell SD 57469-5304
Sherry	Binger	17843 377th Avenue	Redfield SD 57469-7005
Rex H & Sherry	Binger	17843 377th Avenue	Redfield SD 57469-7005
	Lake Township	17843 377th Avenue	Redfield SD 57469-7005
Daryl & Connie	Roos	18272 US Hwy 281	Tulare SD 57476-7100
Richard	Dorsey	1866 Sansa Drive	Mechanicsburg PA 17055-7535
Casey	Stoner	18704 385th Street	Tulare SD 57476-7605
Richard L/E	Bottom	18755 375th Avenue	Tulare SD 57476-7506
Dean & Holly	Bottom	18771 373rd Avenue	Tulare SD 57476-6105
Holly	Bottom	18771 373rd Avenue	Tulare SD 57476-6105
Rodney A & Mary K	Wagner	18970 SD Hwy 45	Miller SD 57362-6007
Gary & Julie	Wagner	19321 SD Hwy 45	Miller SD 57362-6011
Mary	Clegg % Kellogg, Kevin & Sandra	19620 366th Ave	Saint Lawrence SD 57373-6511
Kevin E & Sandra K	Kellogg	19620 366th Avenue	St Lawrence SD 57373-6511
	Schnitzer, Nancy Rev Liv Tr	2005 Wildridge Drive	Tallahassee FL 32303-7337
Ricky	Avery	203 W Fifth Street	Redfield SD 57469-1021
Kelly & Amber	Siebrecht	206 E 13th Avenue	Redfield SD 57469-1647
	Spink County	210 E Seventh Avenue	Redfield SD 57469-1299
Karen Lee	Buhl	211 Neltom Drive	Pierre SD 57501-4806
	Jones, Wilma D Etal	212 N Broadway	Miller SD 57362-1414
	Christman Family Lake Cottage Trust	2205 Berrywood Lane	Bloomington IL 61704-2449
	Christman, Melvin Etal. % Alaca Christman	236 N Janda Ave	Tabor SD 57063-2011
	Kit Cottonwood LLC	2400 Carriage Court	Sioux Falls SD 57108-5203
Randall L & Vickie R	Anderson	2921 Oxford Court	Pierre SD 57501
	Ria Farms LLC	2921 Oxford Court	Pierre SD 57501-5638
Ruben Jr & Carmen L	Lapp	3009 Meadow Drive	Redfield SD 57469-1406
William & Brooke	Jones	303 W Eighth Avenue	Miller SD 57362-1656
Brian W & Tyann R	Jones	303 W First Avenue	Miller SD 57362-1306
Tim & Deborah M Dugan	Baxter	3040 Park Lane	Redfield SD 57469-1448
Robert D	Isaacson	305 E Second Street	Redfield SD 57469-1223
	S & S Cottonwood LLC	36413 183rd Street	Rockham SD 57470-5701
Mark & Terice	Ketelhut	36661 188th Street	St Lawrence SD 57373-6109
Gerald F & Sally L	Nuhsbaumer	37351 178th Street	Redfield SD 57469-5314
Richard M & Judy K	Wagner	37380 184th Street	Tulare SD 57476-5702

Cottonwood Lake Area Property Owners

April 7, 2022

First name	Last name	Address	City state zip
Judy K	Wagner	37380 184th Street	Tulare SD 57476-5702
	L Schultz LLC	37524 187th Street	Tulare SD 57476-7508
	Schultz, Wade B Trust	37524 187th Street	Tulare SD 57476-7508
	Apfel, Roger L & Barbara E Living Trt Agreeem	37640 178th Street	Redfield SD 57469-7006
Cassie & Tatum Zens	Binger	37848 181st Street	Tulare SD 57476-7012
Peri & Joyce	Marlow	38455 10th Ave W	Redfield SD 57469
Judyth J	Leroy & Virginia Living Rev Trust	38457 US Hwy 212	Redfield SD 57469-6630
Linda	Brandner-Woehl	38546 175th Street	Redfield SD 57469
Brett & Robin K	Tomsha	38631 180th Street	Tulare SD 57476-7108
	Jens	38663 182nd Street	Tulare SD 57476-7113
	Osborn Family Revocable Living Trust	38916 171st Street	Redfield SD 57469-6711
	Frankenstein, Ronald & Anita Trustees	39198 180th Street	Redfield SD 57469-7222
	Bindenagel, Arden & Deanna Living Trust	39586 176th Street	Frankfort SD 57440-6709
Kevin & Kimberly	Blackwell	405 Vista Drive	Miller SD 57362-1810
Madelyn & Lyle	Haring	409 Sunrise Cir	Garretson SD 57030-2093
Reggie	Rude	421 E First Street	Redfield SD 57469-1215
Leroy	Cleberg	440 W Rushmore	Spearfish SD 57783-1322
	Kvv 2020 Trust	4547 Crestview Drive	Huron SD 57350-6559
T R & Amy A	Vermeulen	4903 Nonanna Street	Rapid City SD 57703-8921
Virgil Alan	Whetsel	509 E Sixth Street	Miller SD 57362-1124
Susan L	Binger	5105 S Arden	Sioux Falls SD 57108-515D
	SD Game & Fish Dept Habt Sec	523 E Capitol Avenue	Pierre SD 57501-318
	Mcmorrow, Thomas R Revocable Trust	5950 84th Lane	Loretto MN 55357-8742
Kent & Lori & Joel & Susan	Grode	608 N Grand Avenue	Pierre SD 57501-1722
Donna D	Thomas	610 E Second Street	Redfield SD 57469-1228
Brett D & Jessica A	Spencer	612 Kathryn Avenue	Rapid City SD 57701
Gordon W	Muellerberg	622 E Seventh Avenue	Redfield SD 57469-1346
Lance & Kerl	Schade	650 W 12th Avenue	Redfield SD 57469-1615
Charles R	Groft	714 W First Street	Redfield SD 57469-1108
Craig P & Pamela J Oesirae, Derick, & Dexter	Van Zee	718 E Second Avenue	Miller SD 57362-1108
William	Esser	721 E Sixth Street	Redfield SD 57469
Thomas	Gallup	721 E Third Street	Redfield SD 57469-1304
Mark, Allen & Mary Kaye	Holm	7501 E Palomino Road	Sioux Falls SD 57110-625
Michael	Eaton	7673 S Bay Drive	Bloomington MN 55438-
Kevin & Lindsay	Haider	770 Section Line Road	Wolsey SD 57384-6801
Michael & Beverly	Rogers	803 W Fifth Street	Redfield SD 57469-2019
	Rogers, Michael & Beverly Revocable Trust	803 W Fifth Street	Redfield SD 57469-2019
	Schurch, Kevin & Maxine Living Revocable Trus	809 Wedgewood W	Beresford SD 57004-2028
Michael, Marty And Colin	Pfister	8367 N Rude Street	Hayden ID 83835-8257
	Siebling, Robbi Rev Living Trust	8519 W Bryggan Court	Sioux Falls SD 57107-8512
Raymond Lee & Brandon Dale	Whitley	910 E First Street	Redfield SD 57469-1102
Bruce	Johnson	925 E Eighth Avenue	Redfield SD 57469-1821
Patrick & Julie	Jungwirth	927 E Second Street	Redfield SD 57469-1130
Jeremiah William & Sara Jean	Kimlicka	932 E Second Street	Redfield SD 57469-1131
	Muellerberg, Mark & Sheila Living Trust	998 Cottonwood Lane	Redfield SD 57469-7000
	Muellerberg, Sheila Survivor's Trust & Mark &	998 Cottonwood Lane	Redfield SD 57469-7000
	Bau, Delores Trustee	PO Box 144	Truman MN 56088-0144
Scott & Shelli	Domke	PO Box 17	Redfield SD 57469-0017
	Rude, Arlen W Decedent's Trust	PO Box 190	Redfield SD 57469-0190
	Gross, Mark Remainder Interest Trust	PO Box 203	Tulare SD 57476-0203
Kenneth & Carinna	Fehlman	PO Box 234	Ashton SD 57424-0234
C H	Wendt % Moore, Gary	PO Box 24	Redfield SD 57469-0024
Gary E	Moore	PO Box 24	Redfield SD 57469-0024
Shane & Kristy Evans, Shawn & Toni	Wright	PO Box 282	Ashton SD 57424-0282
	Gordon, Larry & Beverly Family Trust	PO Box 68	Hitchcock SD 57348-0068
Chris P & Rhonda R/T	Nielsen	PO Box 694	Tea SD 57064-0694

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated April 7, 2022, concerning a petition to set an OHRM on Cottonwood Lake in Spink County filed by Robert Roeber (petition also enclosed) and the Chief Engineer's motion to dismiss the petition dated March 29, 2022, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on April 7, 2022.

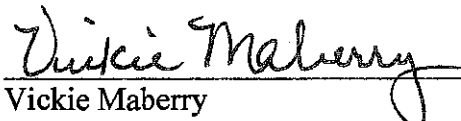
Robert Roeber
309 East 6th Avenue
Redfield SD 57469

Cottonwood Lake Area Property Owners
(see attached list dated April 7, 2022)

Above also Sent Inter-office to:


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

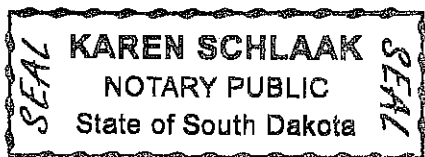
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of April, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED

MAR 29 2022

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 29, 2022

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

Re: *In the Matter of the Roeber Petition for Determination of Ordinary High
Water Mark of Cottonwood Lake in Spink County*

Dear Chairman Bjork:

Enclosed please find a copy of the Chief Engineer's Motion to Dismiss and
Certificate of Service in the above-entitled matter.

Respectfully,

A handwritten signature in cursive script, reading "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

Enclosures

By hand-delivery

cc w/encs: Robert Roeber (by U.S. mail)
Ron Duvall (by hand-delivery)
David McVey (by hand-delivery)

RECEIVED

MAR 29 2022

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE ROEBER)
PETITION FOR DETERMINATION OF)
ORDINARY HIGH WATER MARK OF)
COTTONWOOD LAKE IN SPINK)
COUNTY)

CHIEF ENGINEER'S
MOTION
TO DISMISS

Pending before the Board is a petition by Mr. Robert Roeber¹ requesting the Board to set an ordinary high water mark (OHWM) on Cottonwood Lake in Spink County.

South Dakota Codified Law, section 43-17-21 provides as follows:

The Water Management Board shall establish, pursuant to § 43-17-28 and in accordance with the contested case provisions of chapter 1-26, the ordinary high water mark and install benchmarks and may establish the ordinary low water mark on public lakes which are used for public purposes including, but not limited to boating, fishing, swimming, hunting, skating, picnicking, and similar recreational pursuits. The board may rescind and redetermine the ordinary high water mark and ordinary low water mark, in accordance with the contested case provisions of chapter 1-26, should significant natural changes occur in these levels as determined by the board.

The term "public lake" is not defined in statute or rule. However, upon reviewing the statutory scheme and pertinent caselaw, it becomes clear that the term "public lakes" is referring to meandered bodies of water. This is logical given that the purpose of setting an OHWM is to determine the rights of

¹ Mr. Roeber is an owner of land riparian to Cottonwood Lake in Spink County.

riparian landowners. See *SD Wildlife Federation v. Water Management Bd.*, 382 N.W.2d 26, 30 (S.D. 1986).

A meandered body of water is one which was given meander lines during the United States government's survey of lands in the 1800s. When a body of water was determined to meet certain qualifications, it was meandered on the survey and title of the bed of the water body was given to the State upon grant of statehood and admission into the union. In contrast, a nonmeandered body of water is one that did not meet the requirements to be meandered at the time of survey. As a result, the title of the beds of those nonmeandered bodies of water were available for public settlement. See *Parks v. Cooper*, 676 N.W.2d 823, 825, 831 (S.D. 2004).

In *South Dakota Wildlife Federation v. Water Management Bd.*, 382 N.W.2d 26, 30 (S.D. 1986), the South Dakota Supreme Court, after making reference to SDCL §§ 43-17-20 through 43-17-26,² stated,

The adjacent, riparian or upland owner takes to the edge of public lakes at the ordinary low water mark. See SDCL 43-17-2; *Anderson v. Ray*, 37 S.D. 17, 24, 156 N.W. 591, 593 (1916); *Flisrand v. Madson*, 35 S.D. 457, 470, 152 N.W. 796, 801 (1915). The riparian owner's title, however, is absolute only to the extent of the OHWM. As to the intervening shore between the ordinary high and ordinary low water marks, the riparian owner's title is qualified or limited by and subject to the public's right of access and use for navigating, boating, fishing, fowling and like public purposes. *Flisrand*, 152 N.W. at 801. See also, *State ex rel. Clark v. Deisch*, 38 S.D. 560, 564, 162 N.W. 365, 366 (1917). Thus, the riparian owner may not interfere with or prevent the public's use or lawful access. The State of South Dakota, on the other hand, owns the bed of the lake or that portion below the low

² These statutes were enacted in 1978 and are substantively similar to the statutes currently in force.

water mark. *Hillebrand v. Knapp*, 65 S.D. 414, 418, 274 N.W. 821, 822 (1937).

See also Matter of Determination of OHWM and Outlet Elevation for Beaver Lake, 466 N.W.2d 163 (S.D. 1991). The reference to the State's ownership of the land below the OLWM indicates that the Court defined "public lake" as a meandered body of water. As a result, given that "public lake" necessarily means a meandered body of water, the Board's authority to set an OHWM extends only to meandered bodies of water and not to nonmeandered bodies of water.³

The body of water at question in this petition, Cottonwood Lake located in Spink County, is a nonmeandered body of water. At the time the United States government conducted its survey in 1882, the survey instructions required the surveyor to draw meander lines around "all lakes, bayous, and deep ponds, which may serve as public highways of commerce. Shallow lakes or ponds, readily to be drained or likely to dry up, are not to be meandered. Lakes, bayous, and ponds lying entirely within a section are not to be meandered." *Instructions of the Commissioner of the General Land Office to the Surveyors General of the United States Relative to the Survey of the Public Lands and Private Land Claims*, May 3, 1881, found at

<https://www.blm.gov/sites/blm.gov/files/histrect.pdf>, p. 528. The surveyor's notes on Amended Plat of Cottonwood Lake, dated December 13, 1883, shows that a determination was made to not draw meander lines around Cottonwood Lake, but rather to "protract the lines of survey over it by imaginary lines." As

³ Additionally, it requires that the reference to "public lake" in SDCL § 43-17-28 be defined as meandered body, resulting in the conclusion that Mr. Roeber is not a proper person to request determination of an OHWM.

a result, the entirety of the bed of Cottonwood Lake did not pass to the State upon statehood but rather was open to settlement. In fact, the majority of the lakebed, with the exception of the east half of Section 8 and the southwest quarter of Section 4, was transferred to private parties through federal patents.

This is important because it means that the State does not have ownership of the entirety of the bed of Cottonwood Lake below the OLWM. Thus, determination of the OHWM and OLWM has no meaning. A riparian landowner of Cottonwood Lake owns whatever his patent or deed set forth. There is no public easement to use the land between the OHWM and the OLWM of Cottonwood Lake.⁴ Accordingly, the reading of "public lake" to mean meandered body of water divests the Board of jurisdiction to set an OHWM on Cottonwood Lake in Spink County.

Additionally, a review of water rights law and procedures further affirms that the Board's jurisdiction to set OHWMs extends only to meandered bodies of water. Until 1982, rules existed that clarified that the Water Management Board and its predecessor, the Water Rights Commission, would set OHWMs and OLWMs only on meandered waters and then only when it would be in the public interest. See ARSD §§ 74:02:03:02 (repealed) and 74:02:03:03 (repealed). Those rules were apparently repealed because it was believed that

⁴ Rather, under the current law with regard to nonmeandered bodies of water, the public has only the right to use the water and may not use the bed without permission of the landowner. See SDCL §§ 41-23-15 and 41-23-18.

the statutes encompassed those rules and established the same procedure.⁵ This history lends further support for the concept that there is no authority to set OHWMs and OLWMs on nonmeandered bodies of water.

Given that the term "public lake" as used in ch. 43-17 refers to meandered bodies of water, Mr. Roeber does not satisfy the requirements of SDCL § 43-17-28. South Dakota Codified Law, section 43-17-28 provides in pertinent part as follows:

The Water Management Board shall determine any ordinary high or low water mark upon receiving a written request from an owner or lessee of real property riparian to a public lake, from twenty-five electors of the state or from a person seeking to develop, with approval by the Department of Game, Fish and Parks, the bed of a public lake for wildlife management purposes.

Though Mr. Roeber is a riparian owner to Cottonwood Lake, Cottonwood Lake is not a "public lake" as understood by this chapter.

Finally, the Board should dismiss the petition as it fails to meet the requirements of ARSD § 74:02:01:51, which provides as follows:

Persons, as specified in SDCL 43-17-28, submitting a request to determine an ordinary high or low water mark shall provide the following information:

- (1) The authority by which the request is presented;
- (2) The name of the person, agency, or group submitting the request;
- (3) The name and location of the lake;
- (4) The requested action and reasons for the action; and
- (5) The signature of the person or the authorization of the group or agency making the request.

⁵ The minutes from the meeting at which the Water Management Board approved the repeal of these rules provide that Mr. Hatch, the Chief Engineer at the time, "stated that the purposes of the amendments is to delete sections that are already in the Ordinary High Water Mark Statutes. The remaining sections are already established procedure."

The petition presented by Mr. Roeber does not provide the authority of the request presented or the reasons for the requested action. The entirety of the petition reads as follows: "Request for High Water mark designation for Cottonwood Lake Spink County." Accordingly, the Chief Engineer requests that the Board dismiss the petition for the establishment of an OHWM on Cottonwood Lake in Spink County for lack of jurisdiction.

Dated this 29th day of March 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*

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

IN THE MATTER OF THE ROEBER
PETITION FOR DETERMINATION OF
ORDINARY HIGH WATER MARK OF
COTTONWOOD LAKE IN SPINK
COUNTY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Chief Engineer's Motion to Dismiss, in the above matter, were served by U.S. mail, first class, postage prepaid, upon the following on this 29th day of March 2022:

Robert Roeber
309 East 6th Avenue
Redfield, SD 57469

And on the same date the original was hand-delivered to Ron Duvall, DANR – Water Management Board, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; a copy was hand-delivered 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*

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APR 21 2022

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Talaya Purcell, being duly sworn on oath, say that THE REDFIELD PRESS is a weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS. I, Talaya Purcell, am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

#6365 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on APRIL 13TH 2022, THIRTY NINE and .86/100 Dollars. insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

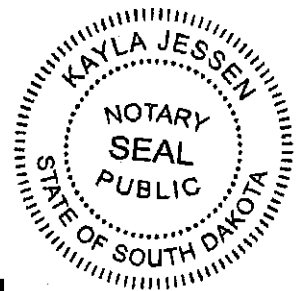
Talaya Purcell

Subscribed and sworn to before me this 13TH day of April, 2022

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



Notice of Hearing

#6365

NOTICE OF HEARING on Motion to Dismiss - Cottonwood Lake Petition to Set Ordinary High Water Mark

A petition has been filed by Robert Roeber pursuant to South Dakota Codified Law (SDCL) 43-17-26 and Administrative Rules of South Dakota (ARSD) 74-02-01-51, requesting the Water Management Board to set an Ordinary High Water Mark (OHWM) on Cottonwood Lake located approximately nine miles southwest of Redfield in Spink County. In response to receipt of the petition, the Chief Engineer of the Department of Agriculture and Natural Resources Water Rights Program has filed a motion to dismiss Mr. Roeber's petition.

The Water Management Board will conduct a hearing to consider the Chief Engineer's Motion to Dismiss Mr. Roeber's petition at 10:00 AM (Central Time) on Wednesday, May 4, 2022, at the Floyd Matthew Training Center, Joe Boss Building, 526 E. Capitol Avenue, Pierre, SD. This hearing concerns only the motion to dismiss. If the motion is not granted by the Board, a later hearing date will be scheduled to consider establishing an OHWM in a manner consistent with SDCL ch. 43-17. The time of hearing is an estimate and may be delayed due to prior

items on the agenda. Notice will be provided if there is a change in the time or date of the hearing. If you are an affected party and want to participate remotely, connection information is available at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106> or a livestream of the hearing is available at <https://www.sd.net>.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of this Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings. A copy Mr. Roeber's petition and the Chief Engineer's motion to dismiss the petition are being sent to the Board members in advance of the hearing. The petition and motion to dismiss, as well as any other notices, orders and pleadings filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

Contact Ron Duvall at the above listing Engineers' address to request a copy of the petition or motion to dismiss. 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 this 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(1) 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 to the requestor. If the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17, this is a Notice of Hearing, service is being provided by direct mail to you and the applicable date to give notice to the Chief Engineer is April 26, 2022. However, since this particular matter is a motion to dismiss 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 1-26-25; SDCL 43-17-24(1), 43-17-26, 43-29, and Board Rule ARSD 74-02-01-51.

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

Published once at the total approximate cost of \$39.86. (Apr. 13)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
APPLICATION NO. 2840-2, Rapid Valley Sanitary District – Water Service**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit Application No. 2840-2, Rapid Valley Sanitary District – Water Service, c/o Rusty Schmidt, 4611 Teak Drive, Rapid City SD 57703.

The Chief Engineer is recommending APPROVAL of Application No. 2840-2 for reservation of 1,608 acre feet of water annually because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) Rapid Valley Sanitary District has demonstrated a reasonable need to reserve water in the amount of 1,608 acre feet of water annually, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Future Use Permit No. 2840-2 reserves 1,608 acre-feet of water annually from the Missouri River.
2. That Future Use Permit No. 2840-2 is approved with the stipulation that this Permit is subject to review by the Water Management Board as to accomplishment in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted prior to construction of facilities pursuant to SDCL 46-5-38.1.

See report on application for additional information.

Eric Gronlund, Chief Engineer
March 21, 2022

Continued

NOTE: Based on the Water Management Board's Administrative Rule 74:02:01:24.01, the recommendation is to limit this future use reservation to the two times the annual amount actually put to beneficial use by the District. The District reported use of 803.7 acre feet of water in 2021. Therefore, the recommendation is for a reservation of 1,608 acre feet of water per year.

Under South Dakota Codified Laws 46-2A-10 and 46-5-38, a qualifying entity may reserve water for contemplated future needs upon a showing of availability of unappropriated water and future need. Based on the technical report prepared, unappropriated water is available. Based on the Board rule, the recommendation is for two times the amount the District puts to beneficial use. At the time of the Board hearing on the application, the District has the opportunity to demonstrate its contemplated future need for a greater amount.

REPORT ON FUTURE USE PERMIT APPLICATION NO. 2840-2

Rapid Valley Sanitary District-Water Service

March 10, 2022

Future Use Permit Application No. 2840-2 proposes to reserve for a future use water permit to appropriate 6,050 acre-feet of water (ac-ft) annually from the Missouri River located between points in Section 31-T9N-R24E and Section 32-T6N-R31E. The water is to be reserved for the purpose of providing future water supplies to the rural water system. This application does not authorize construction of works or application of water to beneficial use. The Missouri River diversion would be located on the Oahe reservoir reach between the Cheyenne River confluence and Oahe dam in Haakon and Stanley counties respectively.

South Dakota Codified Law (SDCL) 46-2A-10 and 46-5-38.1 sets out the criteria and conditions under which a future use permit may be approved and Administrative Rule 74:02:01:24.01 defines the limits the Water Management Board may place on a future use permit. SDCL 46-2A-10 allows a future use permit to be approved only if 1) there is reasonable probability unappropriated water is available for appropriation; 2) the quantity of water reserved will be needed by the entity; 3) the proposed use will be a beneficial use; and 4) the proposed use is in the public interest. This report will address the first two criteria.

Review of the Proposed Water Source

The water source for this future use reservation is from the natural flow of the Missouri River flowing through Lake Oahe in the reach impounded behind Oahe Dam. The US Army Corps of Engineers constructed Oahe Dam impounding Lake Oahe in the 1950s and 1960's as a part of a six reservoir Pick-Sloan project for the Missouri River. The six project dams, Ft. Peck, Garrison, Oahe, Big Bend, Ft. Randall, and Gavins Point, are operated as a system providing storage and water releases for congressionally-authorized purposes. Specifically, Oahe Reservoir can impound up to 23.4 million acre-feet of water (MAF) when full. Natural flow in an instream reservoir system like the Missouri River mainstem system is the volume of water moving past a point along a river that is not augmented by artificial releases from the storage. When there is an excess of natural flow, the excess can be used to fill empty storage space in the instream reservoir and typically occurs during spring run-off. The natural flow of the Missouri River is available for appropriation without the need for releases from storage in the reservoirs to augment the natural flow.

The flow hydrograph of the Missouri River in South Dakota has been altered in the past 60 to 80 years due to the presence of the Missouri River mainstem reservoir system, with excess natural flow going into storage and stored water released to supplement flows. The USGS, in a 2001 research study, made an estimation of the Missouri River natural flows at locations on the river

at Oahe Dam and at Gavins Point Dam (Jacobson, 2001). A percentile hydrograph displaying the daily 50, 25 and 10 percentile flows corresponding to drier climatic conditions, can be derived from this study for the Missouri River at Oahe Dam (Figure 1). A percentile is a measure used in statistics to indicate the value below which a given percentage of observations in a group of observations fall, in this case daily flow. The Missouri River natural flow percentile hydrograph shows a double peak for the three percentile levels shown. The first March-April peak corresponds to the snowpack and spring rains runoff from plains of Montana, Wyoming, North Dakota, and South Dakota. The second June peak corresponds to snowmelt runoff from the mountains in Wyoming and Montana and from upstream summer thunderstorms. Considering the 10th percentile hydrograph, corresponding to the daily flow values at or below this level on average one out of ten years, there is ample natural flow available (Jacobson, 2001).

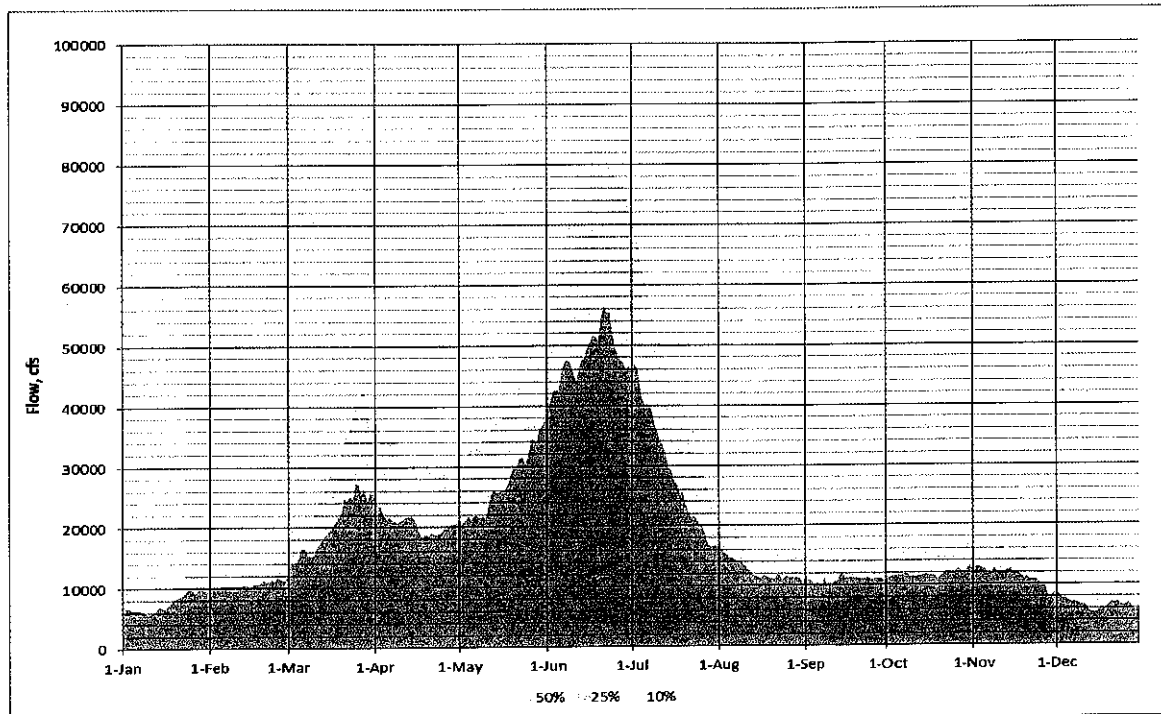


Figure 1. Natural Flow Hydrograph for the Missouri River at Oahe Dam (Jacobson, 2001).

Even at the 10th percentile flow level, this hydrograph demonstrates there is ample natural flow available, if this future use reservation is approved, throughout the year including the irrigation season of April through November. Water availability is not a concern when using the natural flows of the Missouri River as a source.

As noted earlier, the flow hydrograph of the Missouri River in South Dakota has been altered in the past 60 to 80 years due to the presence of the Missouri River mainstem reservoir system, with

excess natural flow going into storage and stored water released to supplement flows. The USGS, in a 2001 research study, made an estimation of the Missouri River natural flows at locations on the river at Oahe Dam and at Gavins Point Dam (Jacobson et. al. 2001). A percentile hydrograph displaying the daily 50, 25, and 10 percentile flows corresponding to drier climatic conditions, can also be derived from this study for the Missouri River at a point near Gavins Point Dam (Figure 2). This natural flow percentile hydrograph shows a similar double peak for the three percentile levels shown. The first April peak corresponds to the snowpack and spring rains runoff from the plains of Montana, Wyoming, North Dakota and South Dakota. The second June peak corresponds to snowmelt runoff from the mountains in Wyoming and Montana and from upstream summer thunderstorms. Considering the 10th percentile hydrograph corresponding to the daily flow values at or below this level on average one out of ten years, there is ample natural flow available, if this project is approved. As Figure 2 demonstrates, there is sufficient water at this time for this future use reservation. Water availability is not a concern if diversion is developed under this reservation of water when using the natural flows of the Missouri River as a source (Jacobson, 2001).

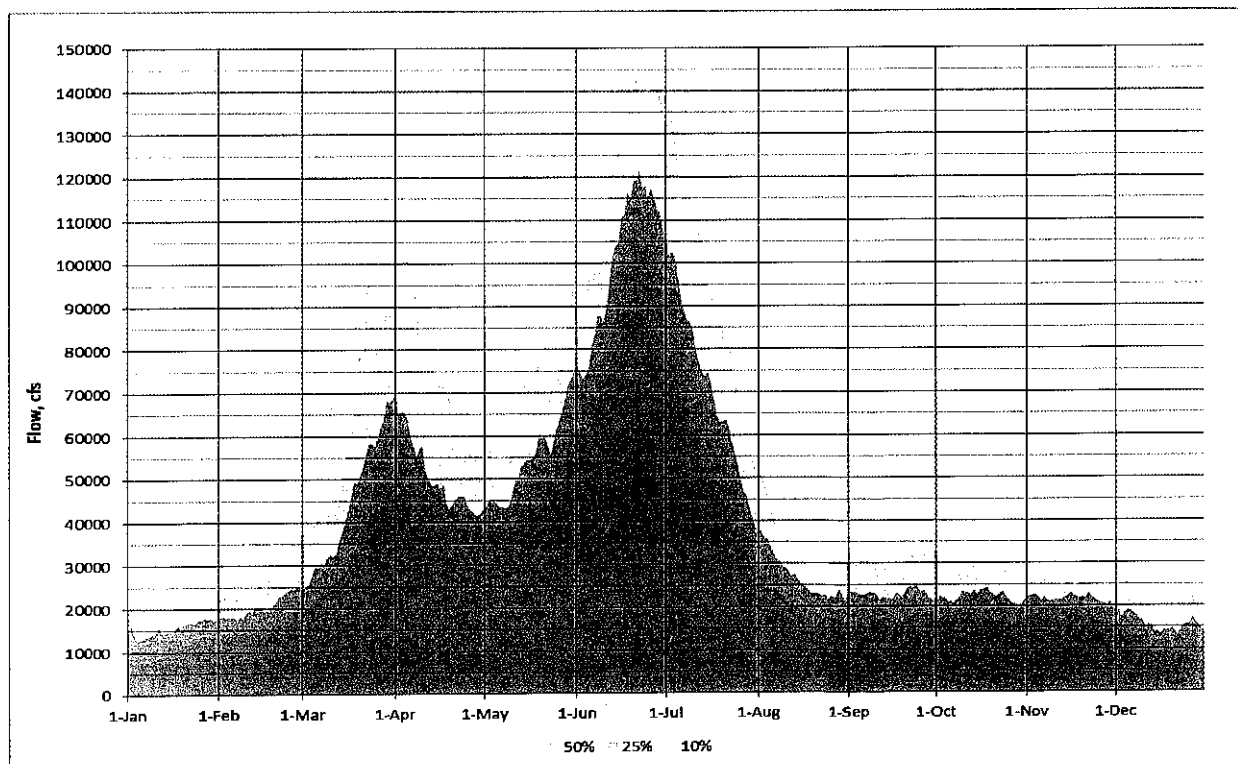


Figure 2 - Natural Flow Hydrograph for the Missouri River at Gavins Point Dam. (Jacobson, 2001)

Review of the Existing Water Rights

There are 256 existing water rights/permits appropriating water from the natural flows of the Missouri River in South Dakota with a total authorized appropriation of 1270.36 cubic feet of

water (cfs). Currently there are 16 future use permits reserving 1,392,111 acre-feet annually from the Missouri River (Water Rights. 2022). This volume of water equates to a continuous pump rate of 1,923 cfs. Water availability from the Missouri River would not be an issue, approval of this permit would not be expected to adversely affect these existing water rights if future development of water reserved under this future permit occurred.

Reported and Projected Water Use by Rapid Valley Sanitary District-Water Service

Administrative Rule South Dakota (ARSD) 74:02:01:24.01 limits future use future use permits to the amount of water needed to cover the uses specified in the future use application or future use permit. The Water Management Board may, at its discretion, limit future use applications and future use permits for entities with permits to use water to two times the annual amount actually put to beneficial use.

The Rapid Valley Sanitary District-Water Service submitted information with their current water use and future projected needs to justify this future use request. Water use information has been submitted annually to the Water Rights Program by the district, Table 1 shows the information submitted for the past six years.

Year	Reported Annual Use, ac-ft
2016	727
2017	780
2018	599
2019	586
2020	686
2021	804

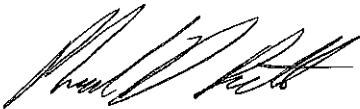
Table 1 – Rapid Valley Sanitary District – Water Service reported annual use (Water Rights. 2022).

Supplemental information provided with the application compiled by the district's engineering consultant indicates the district served 9,114 individuals in 2020 with projections of serving 12,275 individuals in 2041. Ultimate future growth estimates project the district will be serving 36,000 individuals. This projection did not set forth when that may occur. Based on the ultimate population estimate at a gallons per capita per day demand of 150 gallons, the District requests a future use reservation of 6,050 ac-ft annually.

Conclusions

1. The Rapid Valley Sanitary District-Water Service proposes to reserve for future use of 6,050 acre-feet of water from the Missouri River.

2. The water source for the proposed future use reservation is natural flows of the Missouri River for the purpose of providing future water supplies to the rural water system.
3. The proposed Missouri River diversion would be located on the Oahe reservoir reach between the Cheyenne River confluence and Oahe dam in Stanley County.
4. Based upon an evaluation of a USGS report analyzing the natural flow of the Missouri River, the review indicates a reasonable probability unappropriated water is available for reservation of water.
5. ARSD 74:02:01:24.01 limits future use permits to the amount of water needed to cover the uses specified in the future use application or future use permit. The Water Management Board may, at its discretion, limit future use permits to two times the annual amount actually put to beneficial use by the entity.
6. The applicant provided information projecting future Rapid Valley Sanitary District-Water Service water needs of 6,050 ac-ft annually.



Mark D. Rath
Natural Resources Engineer III

References

1. Jacobson. 2001. Visualization of Flow Alternatives, Lower Missouri River U.S. Geological Survey Open-file Report OF02-122. Robert B. Jacobson and Jeanne Heuser, U.S. Geological Survey, Columbia, MO.
2. Water Rights. 2022. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



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WATER RIGHTS
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**DEPARTMENT of AGRICULTURE
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Applicant's Petition

Opposing Chief Engineer's Recommendation on Water Permit Application

According to South Dakota Codified Law sections 46-2A-3, 46-2A-4(6) and 46-2A-23, the applicant needs to file a petition if opposing the Chief Engineer's recommended action on the applicant's water permit application.

Application No. 2840-2 Name of Applicant Rapid Valley Sanitary District

The Application No. can be found in the public notice mailed to you or at <https://danr.sd.gov/public>.

Filing Deadlines. If you are opposing a recommendation by the Chief Engineer to DENY your application, you need to submit this completed petition opposing the recommendation within twenty days of the date the recommendation was mailed to you. If you are opposing any other recommendation, this petition needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program" or personally served upon Water Rights.

List the reasons for opposing the Chief Engineer's recommendation on this application:

The Rapid Valley Sanitary District appreciates the Chief Engineers recommendation of 1608 acre feet for a future use permit, but below are the reasons for opposing the recommendation to reduce the requested amount from 6050 acre feet to 1608 acre feet.

1. ASRD 74:02:01:24.01 suggests limiting the future use to two times the annual amount but does not bar allowing more. Given this rule does not take in account increased growth factor, gross area in acres to be served (10,900), and the addition of 900+ acres the District recently annexed totaling 11,800 acres. Based just on the current undeveloped property in the District there is projected over the 36,000 more population when built out.
2. In its facilities plan, the District only used a very conservative 1.5% growth factor in estimating the 2041 population of 12,275. However, from 2020 to 2021, the District experienced a growth of 5% with increased growth predicted in 2022. If this past year's growth percent is sustained, RVSD population served in 20 years could be closer to 30,000.
3. The 3.3 population per gross acre is an conservative figure as well, as within the District 6 apartment projects are currently being constructed totaling at full build out over 1,000 units within 40 acres. This equates to 66 people per gross acre. One planned subdivision has a full build out of over 400 single family homes/average lot size is 0.13 acres. This planned density equates to 20 people per gross acre using 2.65 per household.
4. RVSD recognizes ASRD 74:02:01:24.01 grants the Board the discretion to limit to no greater than double the current use. However the time it will take to plan, design, and construct the conveyance of the Missouri River has a long time horizon. Therefore, the allocation should be based on growth trends and population to be served, the amount requested.

NOTICE OF HEARING

**WATER RIGHTS
PROGRAM**

COUNTY OF HAAKON

Notice of Hearing

X Selma Shaw

Tamar Lawrence

January 24, 2026

[illegible]

The Water Management Board will consider the recommendation of the Board of Trustees on May 4, 2017 at the May/June Meeting. The Board may, at its discretion, accept, modify or reject the Board of Trustees' recommendation. The Board may also request additional information from the Board of Trustees. The Board may also request additional information from the Board of Trustees. The Board may also request additional information from the Board of Trustees.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hughes) SS

I, Marilynn Baker

certify that the attached printed Notice was taken

from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following date:

3-31-22

Cost of Printing \$102.05

Marilynn Baker
(Signature)

Business Manager
(Title)

4-5-21

(Date Signed)

NOTICE OF HEARING on Application No. 2840-2 to Reserve Water for Future Use

Notice is given that Rapid Valley Sanitary District - Water Service, c/o Rusty Schmidt, Manager, 4611 Task Drive, Rapid City SD 57703 has filed an application for a future use permit to appropriate 8,050 acre-feet of water annually from the Missouri River located between points in Section 31-T9N-R24E and Section 32-T9N-R21E. The water is to be reserved for the purpose of providing future water supplies to the rural water system. This application does not authorize construction of works or application of water to beneficial use.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2840-2 for reservation of 1,605 acre-feet of water annually because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use; 2) Rapid Valley Sanitary District has demonstrated a reasonable need to reserve water in the amount of 1,605 acre-feet of water annually; 3) the proposed use is a beneficial use; and 4) 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 Dival for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:30 am (Central Time) on May 4, 2022 in the Mathew 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 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 April 11, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application on the part of 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 May 4, 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 April 11, 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 visiting 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 April 11, 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 1-26-17.7. This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 11, 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 dispenses the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39; 46-6-46, 46-6-47, 46-6-48; 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 74.02.01.35.02; 74.02.01.35.01.

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APR 07 2022

WATER RIGHTS
PROGRAM

*** Proof of Publication ***

STATE OF SOUTH DAKOTA)

County of Pennington)

SS:

RAPID VALLEY SANITARY DISTRICT

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RAPID CITY, SD 57703

ORDER NUMBER 44304

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APR 06 2022

WATER RIGHTS
PROGRAM

The undersigned, being duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared

in said newspaper once each week for one

successive week, the first publication there of being on the

31 day of March, 20 22.
Karisa Covach

Section: Legal

Category: 0058 Hearings

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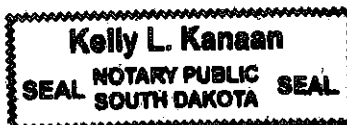
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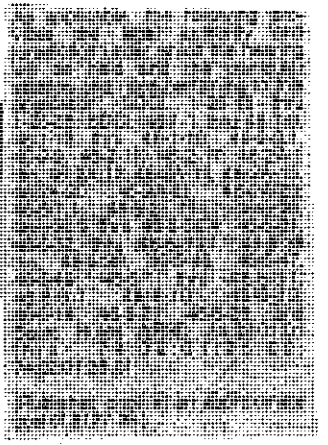
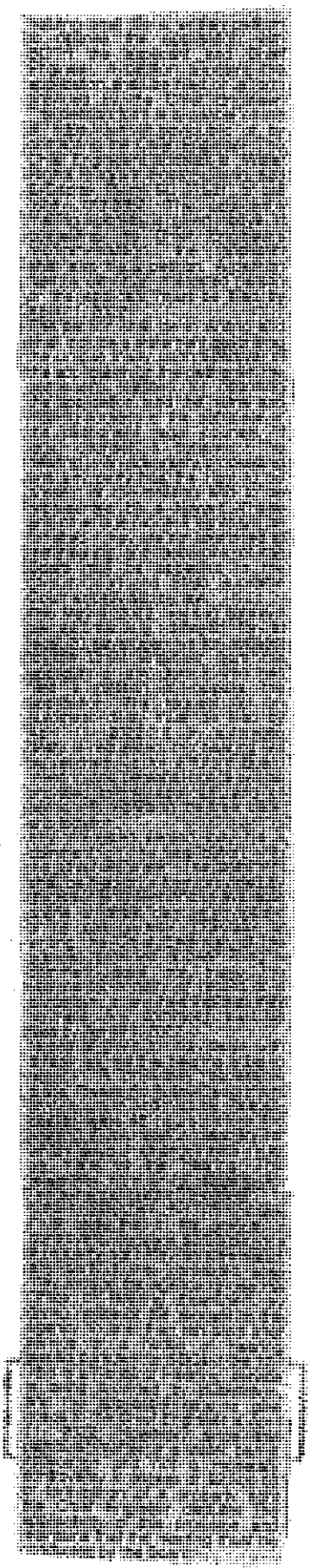
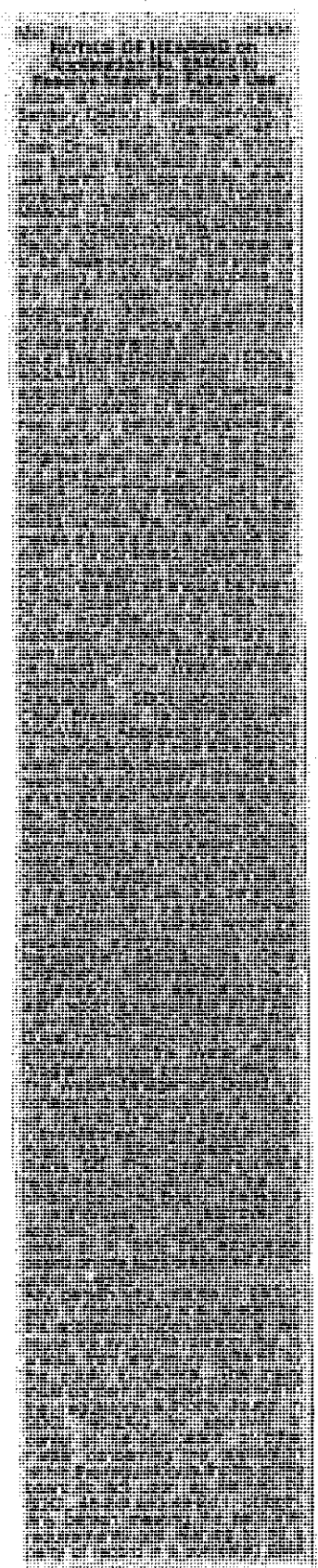
4th day of April, 20 22

Kelly L. Kanaan Notary Public

My commission expires

Jan 17, 20 25







**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2836-2, Lisa O'Rourke-Fulton**

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. 2836-2, Lisa O'Rourke-Fulton, 29393 272nd Avenue, Valentine NE 69201.

The Chief Engineer is recommending APPROVAL of Application No. 2836-2 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 wells approved under Water Permit No. 2836-2 are 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 wells authorized by Permit No. 2836-2 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
March 3, 2022

Report to the Chief Engineer
On Water Permit Application No. 2836-2

Lisa O'Rourke-Fulton

February 9, 2022

Water Permit Application No. 2836-2 proposes to appropriate water at a maximum instantaneous diversion rate of 1.89 cubic feet of water per second (cfs) from two wells to be completed into the Ogallala aquifer (approximately 210 feet deep) located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the approximate center of the NE $\frac{1}{4}$ of Section 25 for the irrigation of 135 acres located in the NE $\frac{1}{4}$ of Section 25; all in T37N-R29W. The site is located in Todd County approximately 11 miles southwest of Mission, SD.

AQUIFER: Ogallala (OGLL)

The Ogallala aquifer is encompassed within the High Plains aquifer. The High Plains aquifer underlies eight states in the central United States (Gutentag et al., 1984). The High Plains aquifer contains geologic units of late Tertiary and Quaternary age that consist of the Brule Formation, Arikaree Group, Ogallala Group, as well as other alluvial, dune-sand, and valley-fill deposits (Gutentag et al., 1984). The Ogallala Group is composed of the Fort Randall, Ash Hollow and Valentine Formations (Hammond, 1994; Filipovic, 2011). Within the High Plains aquifer system in South Dakota, the Ogallala aquifer is the uppermost, most readily available aquifer (Hammond, 1994). The South Dakota Department of Agriculture and Natural Resources (SD DANR) Water Rights Program and the South Dakota Water Management Board have historically considered the High Plains aquifer to be comprised of the Ogallala aquifer and the Arikaree aquifer to manage this regional resource and treat the two aquifers as separate water sources.

The Ogallala Group is comprised of gravel, fine to medium sand and sandstone, and poorly consolidated sand, silt and clay that were deposited from eastward flowing braided streams (Gutentag et al., 1984; Hammond, 1994). The Ogallala Group has a recorded maximum cumulative thickness of 700 ft; however, the thickness ranges from approximately 76 to 230 feet in Todd County (Gutentag et al., 1984; Hammond, 1994). The saturated thickness of the Ogallala aquifer ranges from approximately 57 to 160 feet (Hammond, 1994). The top of the Ogallala aquifer materials is on average approximately 0 to 164 feet below the land surface (Hammond, 1994). The static water levels within the Ogallala aquifer can generally range from approximately 3 to 164 feet below the land surface (Hammond, 1994). The Ogallala aquifer is hydrologically connected to the Batesland Formation, Arikaree Group, as well as alluvial and eolian deposits (Filipovic, 2011). The Ogallala aquifer is generally under unconfined conditions but can be overlain by unconsolidated alluvium and eolian deposits (Carter, 1998). If these overlying sediments are highly transmissive, they have historically been considered as a portion of the Ogallala aquifer by the Water Rights Program. The direction of groundwater movement of the Ogallala aquifer is locally to the southeast and naturally discharges into streams and springs (Carter, 1998; Gutentag et al., 1984).

The Ogallala aquifer underlies approximately 1,140,360 acres and contains approximately 19,929,600 acre-feet (ac-ft) of recoverable water in storage within Bennett, Gregory, Shannon, Todd, and Trip Counties (Allen et al., 1985). The Ogallala aquifer is composed of a main body and an erosional remnant body that is hydraulically disconnected from the main body due to Ponca Creek eroding through the High Plains aquifer leaving only the underlying Pierre Shale (Filipovic, 2004 and 2011). The main body of the Ogallala aquifer is located west of Ponca Creek and the erosional remnant body is located east of Ponca Creek (Filipovic, 2004). The proposed wells for this application would be completed into the main body of the Ogallala aquifer. The areal extent of the main body of the Ogallala aquifer is approximately 1,005,360 acres (Allen et al., 1985; Filipovic, 2004; Magstadt, 2019; Martin et al., 2004). It should be noted that the proposed diversion points are approximately one mile north of the approximate formation boundary of the Ogallala Group. However, the proposed diversion points are still incorporated with the Ogallala aquifer as the formation log provided with Water Permit Application No. 2836-2 is consistent with other nearby wells completed into the Ogallala aquifer (SDGS, 2022).

Two formation logs were submitted with Water Permit Application No. 2836-2. The formation logs for both proposed wells were recreated and are shown in Table 1 and Table 2. The static water levels were not recorded at the time the test holes were drilled (September 2021). The Ogallala aquifer is expected to be unconfined at the proposed diversion points based on the submitted formation logs, water levels, and lithologic logs on file for nearby observation wells (SDGS, 2022; Water Rights, 2022b and 2022d). The Ogallala aquifer starts near land surface and ends at 206 and 196 feet below land surface as shown in Tables 1 and 2, respectively

Table 1: Formation log for the proposed well located at NW ¼ NE ¼ of Section 25-T37N-R29W.

Formation Log	Starting Depth (ft)	Ending Depth (ft)
Topsoil	0	3
Sandstone	3	18
Fine Sand and Sandstone Layers	18	36
Fine Sand	36	60
Hard White Siltstone	60	80
Hard Sandstone	80	90
Fine Hard Sandstone	90	108
Sandstone	108	120
Fine to Medium Sand	120	130
Sandstone	130	140
Brown Clay	140	144
Clean Coarse Sand	144	162
Medium -Course Clean Sand	162	180
Clean Coarse Sand	180	198
Clean Medium Course Sand	198	206
Brown Clay	206	225
Red Rock	225	232

Table 2: Formation log for the proposed well located at the approximate center of the NE ¼ of Section 25-T37N-R29W.

Formation Log	Starting Depth (ft)	Ending Depth (ft)
Topsoil	0	3
Fine Sandstone	3	18
Fine Sand	18	36
Fine Sand	36	54
Hard White Siltstone	54	65
Fine Sand	65	72
Fine Sand	72	80
Sandstone	80	90
Fine-Medium Sand	90	126
Brown Clay	126	132
Fine-Medium Sand	132	146
Medium Sand	146	162
Coarse Sand	162	196
Brown Clay	196	216
Red Rock	216	232

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 Ogallala aquifer.

WATER AVAILABILITY:

Water Permit Application No. 2836-2 proposes to appropriate water from the Ogallala aquifer for irrigation. 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. However, an application may be approved for a water distribution system 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.” The Ogallala 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 Ogallala aquifer must be considered.

HYDROLOGIC BUDGET:

Recharge

Recharge to the Ogallala aquifer is primarily through the infiltration of precipitation where the aquifer is at or near land surface (Carter, 1998). Another source of recharge to the Ogallala aquifer is stream loss when the stream stage is higher than the hydraulic head in the aquifer (Carter, 1998). The average annual recharge rate to the Ogallala aquifer was estimated by Hedges and others (1985) as well as Kolm and Case (1983). The average annual recharge rate was estimated by utilizing observation well data, analyzing base-flow recession, and through computer models as shown in Table 3.

Table 3: Estimated average annual recharge rate to the main body Ogallala aquifer (Kolm and Case, 1983; Hedges et al., 1985).

Est. Avg. Ann. Recharge rate (in/yr)	Method	Source	Est. Avg. Ann. Recharge (ac-ft/yr)
1.3	Computer model	Kolm and Case, 1983	108,914
1.8	Computer model	Kolm and Case, 1983	150,804
1.88	Base-flow recession	Hedges and Burch, 1985	157,506
3.4	Observation well data	Hedges and Burch, 1985	284,852

The areal extent of the Ogallala aquifer in the main body was estimated to be approximately 1,005,360 acres (Hedges et al., 1985; Filipovic, 2004; Magstadt, 2019; Martin et al., 2004). Therefore, the average annual recharge rate to the main body of the Ogallala aquifer in South Dakota ranges between approximately 108,914 to 284,852 acre-feet/year (ac-ft/yr).

Discharge

Discharge from the Ogallala aquifer is primarily through direct evapotranspiration where the aquifer is near or at land surface, loss to surface features and adjacent aquifers when the hydraulic head of the Ogallala aquifer is higher than the stage of surface water features and that of aquifers that the Ogallala aquifer is in hydraulic connection with, and well withdrawals (Carter, 1998; Filipovic, 2004 and 2011). Currently, there are 167 water rights/permits authorized to appropriate water from the Ogallala aquifer (Water Rights, 2022c). Out of the 167 water rights/permits are authorized to appropriate water from the Ogallala aquifer, 149 (135 irrigation and 14 non-irrigation) are within the main body (Water Rights, 2022c). There are four future use permits (Permit Nos. 551-2, 882-2, 1622-2, and 1660-2) reserving water from the Ogallala aquifer presently. For the purpose of estimating the average annual withdrawal rate from the Ogallala aquifer, the four future use permits are assumed to be fully developable for a total of 2,233 ac-ft/yr (Water Rights, 2022c).

Table 4 summarizes the 30 non-irrigation water rights/permits authorized to appropriate water from the Ogallala aquifer with the estimated annual use for each water right/permit as determined by their maximum permitted diversion rate or annual volume. It should be noted that Table 4 also includes water rights/permits that are completed into the erosional remnant of the

Ogallala aquifer. The amount of water that can be withdrawn was estimated by assuming the non-irrigation water rights/permits limited by an annual volume will withdraw their entire appropriated volume every year. It is estimated that the non-irrigation water rights/permits limited only by a diversion rate will pump at their maximum permitted diversion rate for 60 percent of the time. Six municipal water rights were identified as being connected to a rural water system and maintain their wells for standby purposes (Friedeman, 2020; Water Rights, 2022c); as such, the average annual water use for these water rights has been estimated to be zero ac-ft per year in Table 4. It is worth noting, Water Permit No. 2804-2 is authorized to withdraw from both the Ogallala and Dakota aquifers (Water Rights, 2021c). However, it was noted in the file that 16.12 acre-feet of the authorized volume is authorized for their Ogallala well, and for the purpose of estimated average annual withdrawals, this permit is expected to withdraw only that amount. Overall, the average annual withdrawal rate for the main body of the Ogallala aquifer for non-irrigation water rights/permits is approximately 6,289 ac-ft/yr (Table 4) (Water Rights, 2022c).

Table 4: Estimated annual water use for non-irrigation water rights/permits authorized to appropriate water within the Ogallala aquifer (Water Rights, 2022c).

Permit No.	Name	Status	Use	Aquifer	County	Rate (cfs)	Authorized Volume (ac-ft/yr)	Estimated use (ac-ft/yr)
2758-2	Estate of James Riley Wllingford	PE	COM	OGLL	BT	0	63	63
1942-2	Littau & Massa Et Al	LC	DOM	OGLL	TR	0.090	N/A	39.1**
2455-2	Martin J Vanderploeg	LC	FWP	OGLL	BT	0.045	N/A	19.5**
2505-2	Lakeview Christian Reform	LC	INS	OGLL	TD	0.033	N/A	14.3**
2621-2	Tuthill Community Presbyterian Church	LC	INS	OGLL	BT	0.020	N/A	8.7**
1031-2	City of Gregory	LC	MUN	OGLL	GY	0.600	N/A	260.6
1038-2	City of Winner	LC	MUN	OGLL	TR	0.870	N/A	377.9**
1285-2	City of Winner	LC	MUN	OGLL	TR	0.670	N/A	291**
1286-2	City of Winner	LC	MUN	OGLL	TR	0.720	N/A	312.8**
1416-2	City of Winner	LC	MUN	OGLL	TR	0.690	N/A	299.7**
1603-2	City of Bonesteel	LC	MUN	OGLL	GY	0.070	N/A	0*
1661-2	City of Burke	LC	MUN	OGLL	GY	0.100	N/A	0*
1668-2	City of Gregory	LC	MUN	OGLL	GY	0.140	N/A	60.8
1842-2	Town of Herrick	LC	MUN	OGLL	GY	0.160	N/A	69.5
2065A-2	City of Burke	LC	MUN	OGLL	GY	0.210	N/A	0*
2091-2	City of Bonesteel	LC	MUN	OGLL	GY	0.100	N/A	0*
256-2	Town of Fairfax	LC	MUN	OGLL	GY	0.250	N/A	108.6
455-2	City of Burke	LC	MUN	OGLL	GY	0.330	N/A	0*
521-2	City of Winner	LC	MUN	OGLL	TR	4.110	N/A	1785.4**
632-2	City of Colome	LC	MUN	OGLL	TR	0.220	N/A	95.6**
872-2	City of Burke	LC	MUN	OGLL	GY	0.260	N/A	0*
976-2	City of Colome	LC	MUN	OGLL	TR	0.330	N/A	143.4**
2339-2	Town of Herrick	LC	MUN	OGLL	GY	0.220	N/A	95.6
2728-2	City of Gregory	LC	MUN	OGLL	GY	3.880	309	309.0
1085-2	Schitz Well Group	LC	RWS	OGLL	GY	0.060	N/A	26.1
1719-2	Tripp County Water User District	LC	RWS	OGLL	GY	0.200	N/A	86.9
2293-2	Tripp County Water User District	LC	RWS	OGLL	TR	3.880	N/A	1685.5**
2435-2	Tripp County Water User District	LC	RWS	OGLL	GY	0.280	N/A	121.6
2515-2	Tripp County Water User District	LC	RWS	OGLL	TR	2.680	1,200	1200**
2804-2	Dougherty Cattle Company Inc	PE	COM	DKOT, OGLL	TR	0.130	77	16.12***
LC: Licensed Water Permit; PE: Water Permit							TOTAL:	7,491
OGLL: Ogallala ; DKOT: Dakota							MAIN BODY	
BT: Bennett; GY: Gregory; TD: Todd; TR: Tripp							TOTAL:	6,289
COM: Commercial; MUN: Municipal; INS: Institutional; FWP: Fish and Wildlife Propagation; RWS: Rural Water System								
*Identified as being connected to a Rural Water System; **Water Rights/Permits within main body ***Multiple aquifer permit								

Currently, there are 135 irrigation water rights/permits appropriating water from the main body of the Ogallala aquifer (Water Rights, 2022c). However, there are only 130 water rights/permits that have been fully developed and are reporting to the SD DANR – Water Rights Program.

Water Right Nos. 475 -2 and 1114-2 were suspended in 2000 for three years and the land was subsequently sold to a nearby tribe, Permit Nos. 2678-2 and 2679-2 were never developed and sold their authorized acres to a nearby tribe, and Water Permit No. 2822-2 was issued in 2021 and has not yet reported water usage to the SD DANR-Water Rights Program irrigation questionnaire (Water Rights, 2022c). Water Permit No. 2822-2 is expected to appropriate approximately 180 ac-ft/yr (assuming an application rate of 1ft/ac). The reported annual irrigation withdrawals from the Ogallala aquifer are shown in Table 5. The average annual withdrawal rate within the main body of the Ogallala aquifer irrigation water rights/permits that have reported over the period of record is approximately 18,952 ac-ft/yr (Table 5) (Water Rights, 2022a).

Since the number of irrigation water rights/permits has continued to increase over the period of record, the estimated average annual withdrawal rate for irrigation appropriations for the entire period of record may not accurately reflect the current level of development. The average annual withdrawal rate for irrigation appropriations from 2012 to 2020 better represents the current level of irrigation developments in the main body of the Ogallala aquifer. The average annual withdrawal rate within the main body of the Ogallala aquifer from 2012 to 2020 is approximately 23,207 ac-ft/yr (Table 5) (Water Rights, 2022a).

There are domestic wells completed into the main body of the Ogallala aquifer that do not require a water right/permit, so the withdrawal amount from those wells is unknown (Water Rights, 2022d). Withdrawals from domestic wells on an average annual basis are not considered to be a significant portion of the hydrologic budget due to their relatively low diversion rates. Additionally, with the development of rural water systems in areas where the Ogallala 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 main body of the Ogallala aquifer.

Valseth and Driscoll (2020) compiled data for selected irrigation and municipal wells operated by the Rosebud Sioux Tribe. However, it is not likely all municipal and irrigation wells that are operated by the tribe were included, because the report notes these are selected wells. Furthermore, many of the wells do not include well depth or aquifer assignment to determine if the wells are completed into the Ogallala aquifer. The data does not include an estimated annual volume pumped from each well, just an estimated mean production (pumping) rate.

It is worth noting that Water Permit Application Nos. 2833-2 and 2834-2 will be completed into relatively small sand and gravel deposits that have a significant hydrologic connection to the Ogallala aquifer, deposits of quaternary Eolian and Quaternary Terrace aquifers, respectively. However, these deposits are geologically distinct from the Ogallala Group, and do not directly overlie the Ogallala aquifer and have subsequently been identified as independent formations from the Ogallala aquifer. Due to the nature of natural discharge from the Ogallala aquifer flowing into and subsequently through these two particular deposits before discharging to the Keya Paha River, the estimated annual use by Application Nos. 2833-2 and 2834-2 will be accounted for as Ogallala aquifer withdrawals. A more detailed discussion is available in Mathiowetz (2022).

Table 5: Reported historic irrigation use from the main body of the Ogallala aquifer (Water Rights, 2022a).

Year	No. of Permits Reporting	Reported Pumpage (acre-feet)
1982	92	9,217
1983	99	10,162
1984	107	13,273
1985	106	18,537
1986	102	12,933
1987	101	12,342
1988	100	16,141
1989	101	27,240
1990	104	16,502
1991	105	16,029
1992	105	11,985
1993	103	11,100
1994	105	16,676
1995	104	14,253
1996	107	21,168
1997	108	18,661
1998	106	13,739
1999	107	13,704
2000	108	16,096
2001	107	17,990
2002	102	24,091
2003	102	22,039
2004	104	23,840
2005	105	20,026
2006	108	25,630
2007	110	23,976
2008	111	24,456
2009	111	22,070
2010	110	21,187
2011	111	15,214
2012	113	33,111
2013	123	26,459
2014	130	22,060
2015	130	23,928
2016	133	23,231
2017	134	27,253
2018	131	19,336
2019	130	11,464
2020	130	22,024
MIN	92	9,217
MAX	134	33,111
AVG	110	18,952
AVG 2012-2020	128	23,207

Hydrologic Budget Summary

The average annual withdrawal rate from the main body of the Ogallala aquifer totals approximately 32,304 ac-ft/yr (irrigation: 23,207 ac-ft/yr; non-irrigation: 6,289 ac-ft/yr; future use: 2,233 ac-ft/yr; Water Permit No. 2822: 180 ac-ft/yr; Water Permit Application Nos. 2833-2 and 2834-2: 260 ac-ft/yr; Water Permit Application No. 2836-2 (if approved) (assuming an application rate of 1 ft/ac): 135 ac-ft/yr) (Water Rights 2022a and 2022c). The estimated average annual recharge rate to the main body of the Ogallala aquifer ranges from approximately 108,914 to 284,852 ac-ft/yr. Overall, the estimated average annual recharge to the main body of the Ogallala is greater than the estimated average annual withdrawal rate from the aquifer. Therefore, there is a reasonable probability that unappropriated water is available for the appropriation proposed by this permit application.

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.

The DANR-Water Rights Program monitors 69 observation wells completed into the main body of the Ogallala aquifer (Water Rights, 2022b). These observation wells provide data on how the aquifer reacts to regional climatic conditions and local pumping. There are two observation wells within approximately two and one-half miles of the proposed diversion points. The closest observation well to the proposed diversion points is observation well TD-76G (approximately 0.8 miles southeast). The hydrographs for these two observation wells are displayed in Figures 1 and 2 (Water Rights, 2022b).

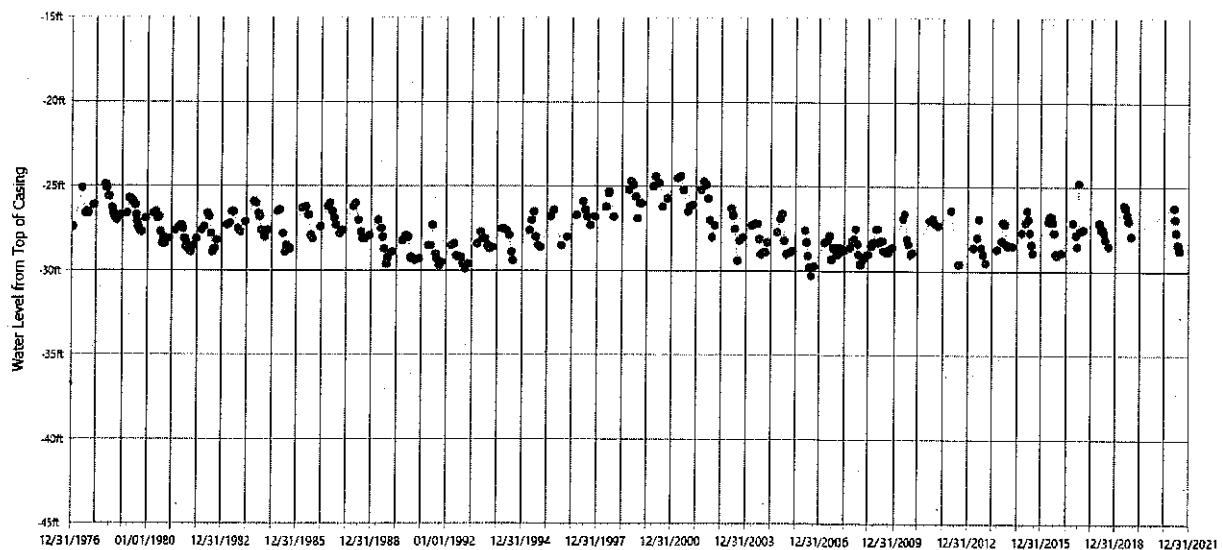


Figure 1: Hydrograph of the Ogallala aquifer observation well TD-76G, located approximately 0.8 miles southeast of the proposed diversion points (Water Rights, 2022b).

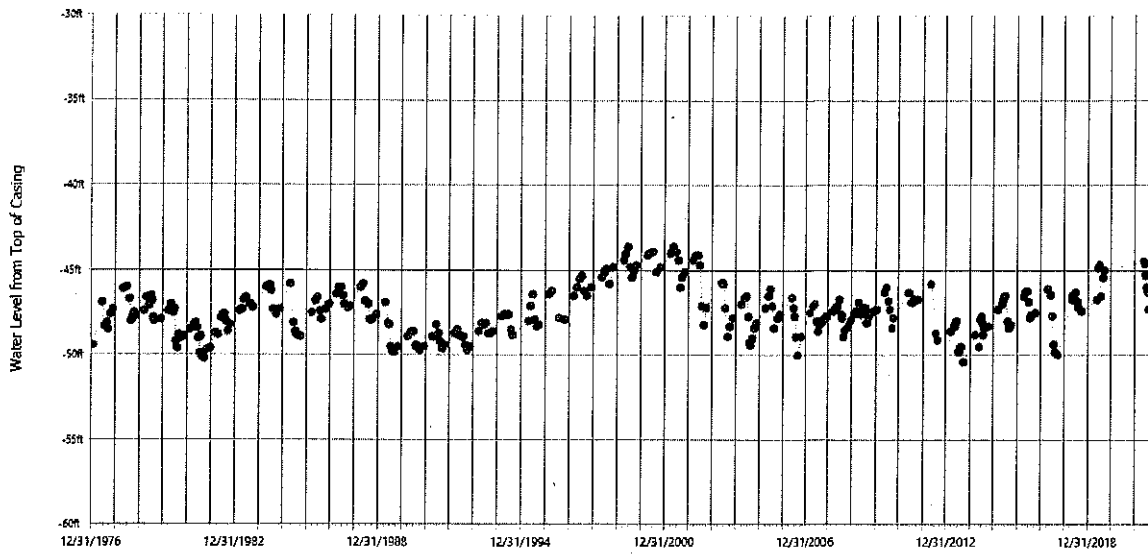


Figure 2: Hydrograph of the Ogallala aquifer observation well TD-76H, located approximately 2.3 miles east of the proposed diversion points (Water Rights, 2022b).

The hydrographs for the observation wells display stable water levels over their respective periods of record, except in areas of significant recent development such as Bennett County. In the areas of significant recent development, some hydrographs show a slight recent decline in water levels. This is representative of the potentiometric surface of the aquifer equilibrating to new and increased pumping and not indicative of over appropriation.

The hydrographs for the Ogallala aquifer indicate that the aquifer responds well to climatic conditions because water levels are rising during wetter periods (early spring snowmelt and precipitation) and declining to a stable water level during drier periods. Additionally, the water levels in the observation wells display that the amount of recharge to and natural discharge from the aquifer greatly exceeds pumping with the aquifer returning to pre-pumping conditions between irrigation seasons. This recovery of the aquifer 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 Ogallala aquifer. By recognizing that both recharge to and natural discharge from an aquifer can be captured for pumping, the observation well hydrographs demonstrate unappropriated water is available for the proposed appropriation.

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

Currently, there are 167 water rights/permits authorized to appropriate water from the main body of the Ogallala aquifer, including four future use permits (Water Rights, 2022c). Out of the 167 water rights/permits are authorized to appropriate water from the Ogallala aquifer, 149 are within the main body (Water Rights, 2022c). There are 18 water rights/permits authorized to appropriate water from the main body of the Ogallala aquifer within approximately three miles of the proposed diversion points (Water Rights, 2022c). The 18 water rights/permits are shown in Figure 3 and identified in Table 6. The nearest water right/permit (not held by the applicant) to

the proposed diversion points completed into the main body of the Ogallala aquifer is Water Right No. 1922-2 located approximately 0.4 miles southwest of the proposed diversion points.

There are domestic wells on file with the DANR-Water Rights Program that are completed into the main body of the Ogallala aquifer, with the closest domestic well on file (not held by the applicant) approximately 0.4 miles southwest of the proposed diversion points (Water Rights, 2022d). There could potentially be other domestic wells completed into the main body of the Ogallala aquifer near the proposed diversion points that are not on file with the DANR-Water Rights Program.

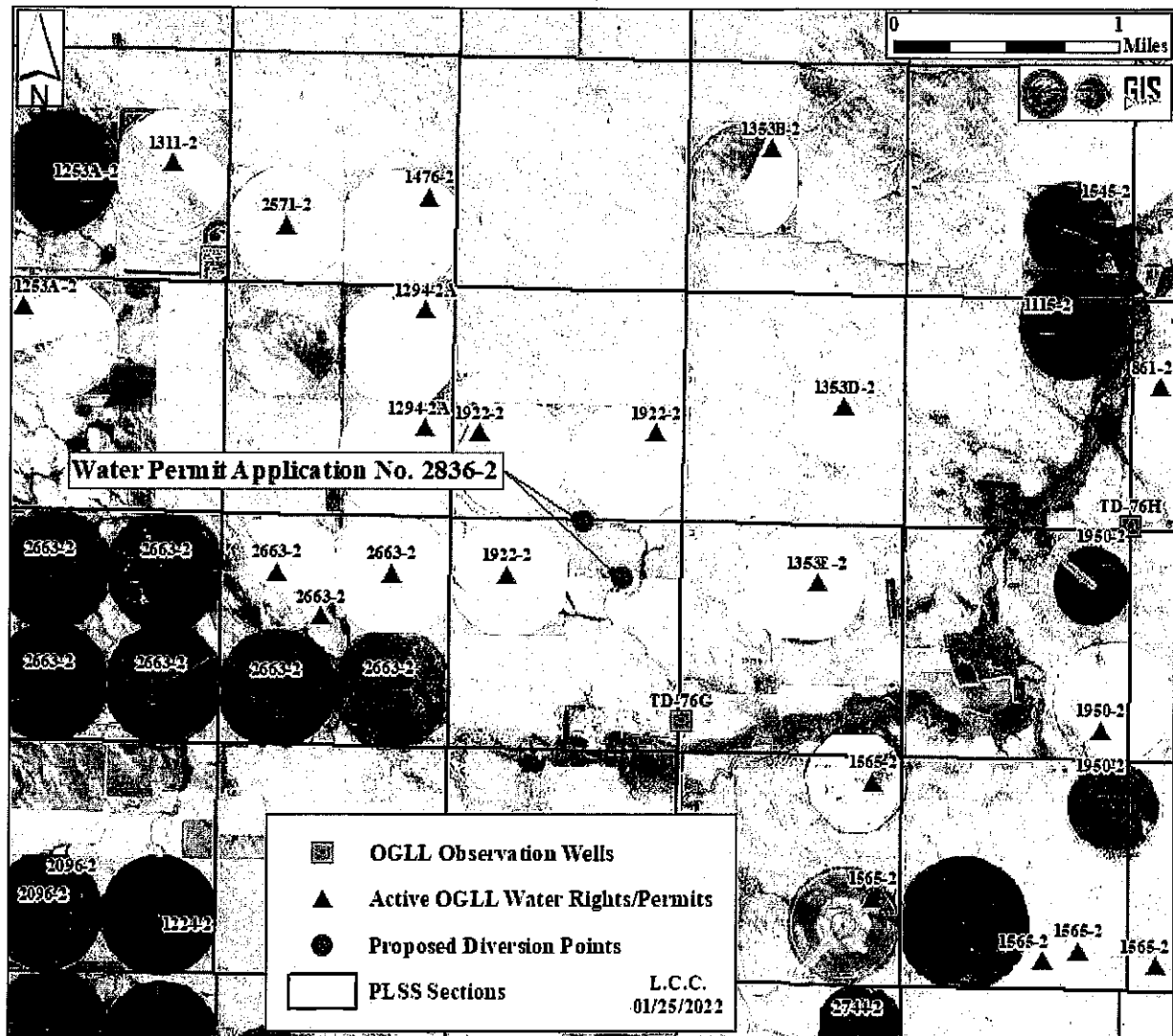


Figure 3: Map of the site location of Water Right Permit Application No. 2836-2, nearby observation wells, and nearby water rights/permits completed into the main body of the Ogallala aquifer (Water Rights, 2022b and 2022c).

Table 6: Water rights/permits from the main body of the Ogallala aquifer within approximately three miles of the proposed diversion points (Water Rights, 2022c).

Permit No.	Name	Use	Status	Rate (cfs)	Acres
861-2	Bobbi Reagle	IRR	LC	1.75	122.6
1115-2	Scott/Samantha Flannery	IRR	LC	1.6	112
1224-2	Mission Farms	IRR	LC	14.3	1048
1253A-2	Daniel & Gerry Vavra	IRR	LC	5.3	389
1294-2A	Mission Farms	IRR	LC	3.6	255
1311-2	Gene Popkes	IRR	LC	1.89	142
1353B-2	Danielski Harvesting & Farming LLC	IRR	LC	1.78	129
1353D-2	Bobbi Reagle	IRR	LC	1.74	133.4
1353E-2	Danielski Harvesting & Farming LLC	IRR	LC	1.7	129.5
1476-2	Mission Farms	IRR	LC	1.8	128
1545-2	Scott/Samantha Flannery	IRR	LC	1.15	80.6
1565-2	Bobbi Reagle	IRR	LC	7.6	554
1922-2	Danielski Harvesting & Farming	IRR	LC	5.57	401
1950-2	Bobbi Reagle	IRR	LC	5.53	450.9
2096-2	Mission Farms Inc	IRR	LC	1.78	132
2571-2	Jay & Malinda Gunnink	IRR	LC	1.56	132
2663-2	Danielski Harvesting And Farming	IRR	LC	14.5	1017
2744-2	Rocking J Taylor Company	IRR	LC	1.78	150
LC: Licenced Water Right; IRR: Irrigation					

The Ogallala aquifer is generally under unconfined conditions in Todd County (Carter, 1998; SDGS, 2022; Water Rights, 2022c and 2022d). The diversion points are expected to be under unconfined conditions based on the submitted formation logs, water levels, and lithologic logs on file for the nearby observation wells (Water Rights, 2022d). Observation well data (see Figures 2 and 3) documents minimal drawdown from withdrawals of existing wells near the proposed diversion points. Therefore, pumping from the proposed diversion points is not expected to significantly lower water levels within the aquifer. Drawdown created by pumping a well generally does not extend far from the pumped well in an unconfined aquifer. However, the exact drawdown behavior cannot be known without an aquifer performance test. In Todd County, there have been no complaints submitted to the DANR-Water Rights Program regarding potential well interference for adequate wells completed into the Ogallala aquifer (Water Rights, 2022e).

Within approximately one mile of the proposed diversion points for this application, the Ogallala aquifer has a saturated aquifer thickness ranging from approximately 150 to 200 feet, with the depth to the top of aquifer materials ranging from approximately 2 to 40 feet below land surface, and static water levels at well completion varying from approximately 15 to 70 feet below land surface (SDGS, 2022; Water Rights 2022b and 2022d). This would allow for sufficient saturated thickness for a pump 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).

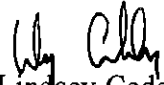
The Water Management Board recognizes that putting water to beneficial use requires a certain amount of drawdown to occur. The Board has developed rules to allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure for domestic use. The Water Management 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."


Any drawdown created from pumping these proposed diversion points is not expected to cause unlawful impairment on existing water right/permit holders or domestic users with adequate wells considering the location of the diversion point, the saturated thickness, and the lack of complaints for adequate wells completed into the Ogallala aquifer. Therefore, there is a reasonable probability that any interference from the proposed appropriation will not impose unlawful impairments on existing users with adequate wells.

CONCLUSIONS:

1. Water Permit Application No. 2836-2 proposes to appropriate water at a maximum instantaneous diversion rate of 1.89 cfs from two wells completed into the main body of the Ogallala aquifer for the irrigation of 135 acres. The site is located in Todd County approximately 11 miles Southwest of Mission, SD.
2. There is a reasonable probability that unappropriated water is available from the Ogallala aquifer for this proposed appropriation based on the hydrological budget and observation well data.
3. There is a reasonable probability this diversion will not unlawfully impair adequate wells authorized by existing water rights or domestic use wells.


Lindsey Cederberg
Natural Resources Engineer I
SD DANR - Water Rights Program

Reviewed by:


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

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RECEIVED

MAR 21 2022

WATER RIGHTS
PROGRAM

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Petition

Opposing Application for a Water Right Permit

Application No. 2836-2 **Name of Applicant** Lisa O'Rourke- Fulton

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

1. The permit is being issued within the exterior boundary of the Rosebud Sioux Tribe Reservation to withdraw ground water from the Ogallala Aquifer. The Water Resources of Rosebud Reservation is managed by the Tribe using the Rosebud Sioux Tribal Water Code and any water withdrawal permit must be issued by the Rosebud Sioux Tribal Water Resources Program as per the Water Code. Lisa O'Rourke-Fulton must be directed to adhere to the Rosebud Sioux Tribal Water Code. A copy of the water code is attached.

Type text here

Issuing this permit by the State of South Dakota can jeopardize groundwater resources managed by Rosebud Sioux Tribe.

List the reasons for your opposition to this application:

2. There are 28 monitor wells on the Ogallala Aquifer (Figure 1) and the water table fluctuation is monitored at least once a month by the Rosebud Sioux Tribal Water Resources Program. Hydrographs have been generated, for data for over 30 years of the water table fluctuation and the water table has a falling trend in several of the wells (copies of hydrographs are attached). Climate change and drought can cause synergistic impact to the water table fall along with the water withdrawal, should the permit be approved.

There are 5 production wells south of Rosebud and 4 production wells in the St. Francis area that supplies 70 percent of the drinking water to the Rosebud Sioux Tribal population. The water withdrawal as per the permit 2836-2 can jeopardize the drinking water supply to the tribal population. There are tribal center pivot irrigation systems using the Ogallala Aquifer water near the location of permit 2836-2 that can be interfered with water withdrawal by the issuance of the permit.

Rosebud Sioux Tribe opposes the permit, first because the State must not issue water permit within the exterior boundary of Rosebud Reservation, such permits must be issued by Rosebud Sioux Tribe as per the Tribal Water Code. Second the State did not complete a thorough hydrologic study to determine the impact of the permit 2836-2 on existing tribal water wells for domestic drinking and center pivot irrigation. State has provided some arbitrary recharge amounts to the Aquifer but the most important criteria should be the specific yield of the Aquifer and the hydrographs of water table fluctuation trend. (Continued)

Type text here

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Scott **Last Name:** Herman

Mailing Address: Box # 430

City: Rosebud **State:** SD **Zip:** 57570

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

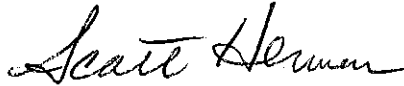
Application No. 2836-2

Petitioner's Name Lisa O'Rourke- Fulton

Any additional description of the unique injury or reasons for opposing this application:

2. The water table fluctuation data shows ominous trend and the drought monitor map (attached) of South Dakota is more ominous and hence the permit 2836-2 must be rejected. The Tribe was provided with a very short notice to comment on this permit, less than 10 days from the receipt of the letter from the State Chief Engineer.

Any response can be sent to me as the Tribal President with a copy to the Director of the Office of Water Resources Syed Huq. thank you

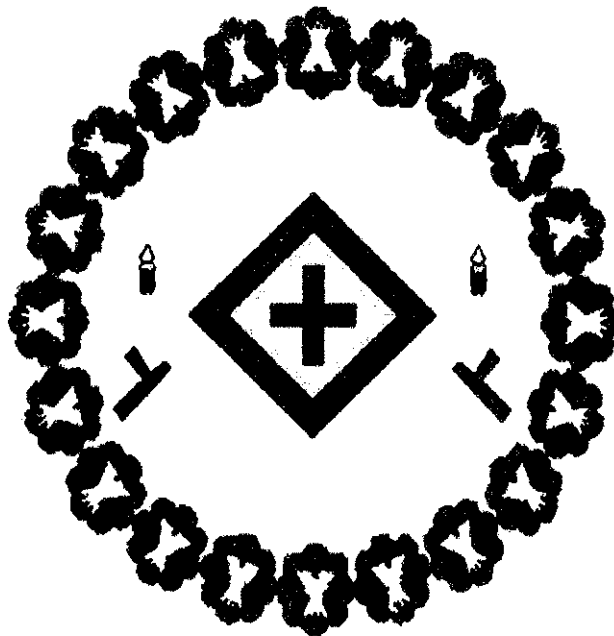


Mr. Scott Herman, Tribal President
Rosebud Sioux Tribe

ROSEBUD SIOUX TRIBE

WATER CODE

Tribal Council Resolution 2015- 339



May 2015

Rosebud Sioux Tribe

June 2015

WATER CODE

President – William Kindle

Vice President – Richard “Tuffy” Lunderman

Secretary – Julie Peneaux

Treasurer – Byron “Barney” Wright

Land and Natural Resources Committee

Chairman – William Bear Shield

Members: Wayne Fredrick

Brian Dillon

Michael Boltz

Mary Waln

Richard “Smokey” Whipple

Keith Fielder

Lydia Whirlwind Solder

Keith Horse Looking Sr.

Eric Antoine – RST Attorney

Syed Huq, Director
RST Water Resources

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2015-339**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and Bylaws; and

WHEREAS, free access and unhindered control of the water of the Rosebud Sioux Tribe is essential to the existence of the Rosebud Sioux Tribe and its people and without such access and control, the viability of the Rosebud Sioux Indian Reservation as a permanent home and abiding place will be increasingly threatened and the economic development of the Rosebud Sioux Indian Reservation thwarted; and

WHEREAS, the uncontrolled use and obstruction of the water of the Rosebud Sioux Indian Reservation causes or will cause over appropriation, waste, interference between users, unreliable water supplies, lowering of water quality, dangerously low lake and stream levels, destruction of fish and other wildlife habitats, and the loss of other economic and environmental amenities needed to ensure an acceptable quality of life within the Rosebud Sioux Indian Reservation; and

WHEREAS, the Rosebud Sioux Tribe has sovereign jurisdiction over and beneficial ownership of waters of the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation; and

WHEREAS, the current Rosebud Sioux Tribe Water Code contains outdated provisions, is difficult to administer, and does not address issues of current importance such as extended droughts, climate change, depletion of aquifers, and risks to the quality of the waters of the Rosebud Sioux Tribe; and

WHEREAS, the water resources of the Rosebud Sioux Tribe has to be protected from potential contamination by pipelines carrying hazardous materials and injection of hazardous materials into or through the aquifers; and

WHEREAS, assessment, evaluation, monitoring, protection and development of the water resources of Rosebud Sioux Tribe is in need of a framework such as the Water Code; and

WHEREAS, comprehensive management of the water resources on the Rosebud Reservation is in need of an up to date Water Code; and

WHEREAS, the enforcement of the Rosebud Sioux Tribal Water Code will allow the RST Water Resources Program to implement a fair water use permit system for all residing within the exterior boundary of the reservation in Todd County and tribal lands in Mellette, Tripp, Lyman and Gregory counties; and

WHEREAS, the previous resolution no. 77-32 adopting a water code for Rosebud Sioux Tribe is rescinded and is replaced by a new one under this resolution; and

WHEREAS, the new Water Code has gone through the process of a public hearing, review by a tribal attorney, and Land & Natural Resources Committee; now

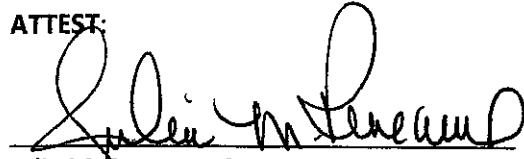
THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council approved the new RST Water Code and direct the RST Water Resources Program Director for implementation.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2015-339**

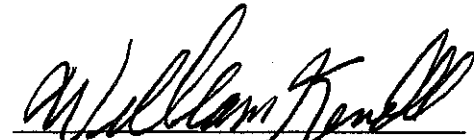
CERTIFICATION

This is to certify that the above Resolution No. 2015-339 establishing the Water Code was duly approved by the Rosebud Sioux Tribal Council in session on June 14, 2016, for a first reading with a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. A second reading was duly approved on January 31, 2017, by a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. The said Water Code was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Julia M. Peneaux, Secretary
Rosebud Sioux Tribe



William Kindle, President
Rosebud Sioux Tribe

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CHAPTER 11 - ROSEBUD SIOUX TRIBE WATER CODE

100 General Provisions

101 Declarations of Rights and Ownership

(A) Declaration

The Rosebud Sioux Tribe hereby asserts its prior, exclusive, and supreme rights in ownership of and jurisdiction over the Waters of the Rosebud Sioux Indian Reservation, defined herein, for all purposes for a homeland.

The Rosebud Sioux Tribal Council has the right to amend this Water Code by a 2/3rds majority of the Tribal Council, and any amendment will be published in a newspaper of general circulation and all Water Use Permits held shall be reviewed by RST Land and Natural Resources Committee for approval in writing.

(B) Nature of Ownership

- (1) The Rosebud Sioux Tribe is the owner of the full equitable title to the rights to the use of all of the Waters of the Rosebud Sioux Indian Reservation, as defined herein, and that the United States holds only the naked legal title to those waters solely as trustee for the Rosebud Sioux Tribe.
- (2) All rights to the use of the Waters of the Rosebud Sioux Indian Reservation, as defined herein, are held by the Rosebud Sioux Tribe in perpetuity, for the use and benefit of the Rosebud Sioux Tribe and the lands and other resources of the Rosebud Sioux Indian Reservation. No right or privilege of any kind, from whatever source shall be recognized or granted unless the same shall be subject to overriding, prior and supreme right and interest of the Rosebud Sioux Tribe, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder. No agent of the Rosebud Sioux Tribe or the United States shall take any action or grant or recognize any right affecting the water resources of the Rosebud Sioux Indian Reservation which in any way decreases or threatens to decrease the prior and supreme rights and interests of the Rosebud Sioux Tribe.

(C) Waters of the Rosebud Sioux Indian Reservation Defined

- (1) All waters located within the exterior boundaries of the Rosebud Sioux Indian Reservation whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined water course or water body of any kind
- (2) All waters reserved at any time to the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation by the United States and the Rosebud Sioux Tribe
- (3) All water which, in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.

102 Purposes

- (A) To promote the general welfare of the Rosebud Sioux Tribe and develop, manage, and preserve the waters and other resources of the Rosebud Sioux Indian Reservation
- (B) To provide for the exercise by the United States of its duties to preserve and protect in perpetuity all waters reserved for the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation as a homeland
- (C) To provide for the exercise of the inherent sovereign power of self-government by the Rosebud Sioux Tribe
- (D) To further the present and future preservation and development of the water resources of the Rosebud Sioux Tribe as a homeland
- (E) To protect the health and welfare of the Rosebud Sioux Tribal population from any adverse impact of any pipeline carrying hazardous materials traversing tribal lands or adjacent to tribal lands.

103 Application of Code

Ninety (90) days after the effective date of this Code, it shall be unlawful to divert or withdraw or otherwise make any use of, or take any action of whatever kind substantially affecting, the Waters of the Rosebud Sioux Indian Reservation unless the applicable provisions of this Code and the regulations and determinations made hereunder have been complied with. No water rights, from whatever source, shall be recognized, except rights obtained under and subject to this Code.

104 Notice of Enactment and Effect

(A) Notice Required

To ensure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Office of Water Resources shall, within 15 days after the enactment date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this Section.

(B) Contents of Notice

- (1) Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER _____ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO MAKE ANY USE OF OR OTHERWISE AFFECT THE WATERS OF THE ROSEBUD SIOUX INDIAN RESERVATION, AS DEFINED IN SECTION 101 OF THE ROSEBUD SIOUX TRIBE WATER CODE, UNLESS SUCH USE IS AUTHORIZED BY A WATER USE PERMIT AS

PROVIDED FOR BY THE ROSEBUD SIOUX TRIBE WATER CODE. NO OTHER WATER RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. APPLICABLE PORTIONS OF THE ROSEBUD SIOUX TRIBE WATER CODE ARE QUOTED BELOW. THE NECESSARY FORMS FOR WATER USE PERMIT APPLICATIONS HAVE BEEN INCLUDED WITH THIS NOTICE WHENEVER POSSIBLE. SUCH FORMS MAY ALSO BE PROCURED FROM THE ROSEBUD SIOUX TRIBE OFFICE OF WATER RESOURCES OR THE ROSEBUD SIOUX TRIBE AT THE FOLLOWING ADDRESS OR TELEPHONE NUMBER: Office of Water Resources, BIA Road 903 Hospital Complex, Rosebud, South Dakota, 57570, (605) 747-2559 COMPLETE COPIES OF THE ROSEBUD SIOUX TRIBE WATER CODE ARE ALSO AVAILABLE FOR SALE AT THE ABOVE ADDRESS.

- (2) In addition to the above-quoted statement, such public notice shall also contain, prominently displayed, the Section of this Code declaring the prior and supreme rights of the Rosebud Sioux Tribe, defining the Waters of the Rosebud Sioux Indian Reservation, describing the procedures to be followed in obtaining a permit, and setting forth penalties for use of water without authorization under this Code.
- (3) In addition, the Director of the Office of Water Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

(C) Notice - How Given

The Director of the Office of Water Resources shall give notice of the provisions of this Code as follows:

- (1) The notice provided above shall be placed in at least one regularly published newspaper in Todd, Tripp, Gregory, and Mellette Counties, at least once every other week over a four week period.
- (2) The notice provided above shall be placed in a prominent and conspicuous location in the County Courthouse of Todd, Tripp, Gregory, and Mellette Counties, and at the Tribal Office. The Director of the Office of Water Resources may post notices in other locations as it deems necessary.
- (3) The Director of the Office of Water Resources may take any other steps and post any other notices it deems necessary to provide notice of the provisions of this Code.
- (4) Whenever possible, forms for "Application for Water Use Permit", as provided in Section 400 of this Code, shall be included with notices in order to facilitate compliance with this Code.

105 Definitions

(A) "Aquifer" means a water-bearing bed or stratum of permeable rock, sand, or gravel capable of

storing, transmitting or yielding water.

(B) **"Boundaries of the Rosebud Sioux Indian Reservation"** means all lands located in Todd County and all Trust Lands located in Tripp County, Gregory County, and Mellette County.

(C) **"Community or Municipal Uses"** means all reasonable water uses necessary in carrying out the functions of municipal government.

(D) **"Domestic Use"** means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

(E) **"Effective Date"** referred to herein shall be a date set by resolution of the Rosebud Sioux Tribal Council after which the water code is effective.

(F) **"Fee Lands"** means a land ownership status in which the owner holds title to and control of the property. Fee lands are not held in trust for a tribal member by the United States government.

(G) **"Hazardous"** means any radioactive, toxic, or other hazardous material, whether in liquid, solid, gaseous, or explosive form which may be discharged, deposited, generated, spilled, or disposed of and that will or may pose adverse effects to the surface or subsurface land, including existing rivers, streams, lakes, reservoirs, groundwater or aquifers, water recharge areas, as well as to the human environment.

(H) **"Irrigation Uses"** means any use of water for the purpose of facilitating the growth of agricultural crops.

(I) **"Pollution"** means such artificial or induced natural contamination, or other alteration of the physical, chemical, biological, radiological, or thermal properties of any Water of the Rosebud Sioux Indian Reservation, or such discharge of any liquid, gaseous, or solid substance into any Water of the Rosebud Sioux Indian Reservation that will create a nuisance or render such waters harmful or detrimental or injurious to public health; safety; welfare; domestic, commercial, industrial, agriculture, traditional, cultural, recreational, or other beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life and organisms.

(J) **"Trust Lands"** means all lands held in trust for the Rosebud Sioux Tribe by the United States government.

106 Severability

If any provision of this Code or the application thereof to any person or circumstance is held invalid, the Code can be given effect without the provision or application; and to this end, the provisions of this Code are declared to be severable.

107 Construction

This Code shall be liberally construed to effectuate its purposes.

108 Extension of Time Limits

The time limits provided in various places of this Code may be extended, for good cause shown, by the agency or committee before whom the proceeding is pending when the ends of justice so require.

109 Representation

Parties appearing at hearings and other proceedings provided for in this Code may be represented by attorneys if they desire.

200 Water Administration

201 Land and Natural Resources Committee

(A) Powers and Duties

The Land and Natural Resources Committee is responsible for providing oversight and direction for the Office of Water Resources. All powers of the Office of Water Resources shall only be exercised with the approval of the Land and Natural Resources Committee. The Office of Water Resources is the administrative arm of the Land and Natural Resources Committee.

202 Office of Water Resources

(A) General Powers

In administering this Code, the Office of Water Resources may, in concurrence with the Land and Natural Resources Committee, in addition to other actions:

- (1) Enter appropriate orders**
- (2) Grant, deny, modify, and revoke water use permits**
- (3) Make determinations of water rights**
- (4) Make determinations of water availability**
- (5) Start proceedings involving penalties**
- (6) With the permission of the Rosebud Sioux Tribal Council**
- (7)**
 - (a) Enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off the Reservation;**
 - (b) File or intervene in any lawsuit;**

- (8) Ensure adequate water levels in groundwater wells;
- (9) Ensure adequate levels in streams and lakes for wildlife conservation and other values;
- (10) In cooperation with the other departments, offices, and agencies of the Rosebud Sioux Tribe, determine existing and foreseeable uses of and needs for water and other related resources
- (11) With the approval of the Rosebud Sioux Tribal Council, reserve and set aside water for future use
- (12) Take other actions provided for under this Code.

(B) Power to Establish Water Reserves

The Office of Water Resources, with the approval of the Rosebud Sioux Tribal Council, may establish reserve supplies within particular areas, watersheds, or aquifers that are dependent upon common supplies. However, the reserve supplies may be subject to existing use on an interim basis or set aside for future Tribal use and other needs.

(C) Power to Make Water Assessments

Whenever the Office of Water Resources determines that water not presently available is necessary for purposes and projects that benefit all or a portion of the Reservation and the inhabitants thereof, the Office of Water Resources may, upon approval of the Rosebud Sioux Tribal Council, reduce and assess individual water users a fair share of water, in predetermined units for such purposes.

(D) Power to Designate Local Water Management Areas and Subareas

In areas where the surface and ground water systems are used by individual water uses but are to some degree related by reason of common supply, the Office of Water Resources may isolate and define "local management areas and subareas," for specialized administration and regulation under this Code.

202 Director of Water Resources

(A) Designation.

The Director of Water Resources shall, with concurrence of the Land and Natural Resources Committee, shall be responsible for administration of this Code.

(B) Information Function.

It shall be the duty of the Director of Water Resources and his/her staff to gather for their own use and for submission to the Land and Natural Resources Committee information related to the waters administered under this Code. To this end, the Director of Water Resources shall:

- (1) Collect, organize and catalog existing information and studies available from all resources, both public and private, pertaining to the Waters of the Rosebud Sioux Tribe.

- (2) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Code.
- (3) Solicit public comment and obtain expert advice when appropriate.
- (4) Investigate water uses and other activities affecting the Waters of the Rosebud Sioux Tribe to determine whether they are in compliance with this Code and with applicable regulations, orders, determinations, permits, water quality standards, etc. issued under this Code.
- (5) Investigate water quality whenever appropriate.

(C) Enforcement Function

It shall be the duty of the Director of Water Resources and his staff to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of Water Resources and his staff may with concurrence of the Land and Natural Resources Committee:

- (1) Remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities that adversely affect water quality.
- (2) Initiate by citation and other means, as provided herein, proceedings involving penalties for violations of this Code and the actions taken under this Code.
- (3) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities that affect water quality and quantity, install and monitor measuring and recording devices when necessary, and elicit testimony and data concerning actions that affect the quality or quantity of the Waters administered under this Code.

(D) Advisory Function.

In addition to the duties of the Director of Water Resources and his staff with respect to information and enforcement, the Director of Water Resources and his staff may, from time to time make proposals to the Land and Natural Resources Committee concerning the following:

- (1) The advisability of establishing local management areas and subareas as provided elsewhere in this Code
- (2) The advisability of making determinations of water availability for specific watersheds or aquifers
- (3) The advisability of taking other actions and adopting other plans and methods to optimize available water supplies and minimize pollution and thermal degradation

- (4) The advisability of purchasing or selling any interest including interests in real or personal property
- (5) The advisability of participating in lawsuits and other actions
- (6) The advisability of entering into administrative agreements and other cooperative ventures with various agencies outside of the Rosebud Sioux Tribal Council and the Office of Water Resources
- (7) The advisability of amending or otherwise changing various sections of this Water Code or adding new sections
- (8) The advisability of taking any other action which will further the purposes and increase the effectiveness of this Code.

(E) Other Functions

(1) Rules and Regulations.

The Director of Water Resources is authorized and directed to adopt such rules and regulations as it deems necessary to implement the objectives and purpose of this Code. Such rules and regulations shall not be valid until they have been submitted to and approved by the Rosebud Sioux Tribal Council through the Land and Natural Resources Committee.

(2) Review of Authority.

The Director of Water Resources shall, from time to time, review the authority granted under this Code and propose amendments and additions thereto to the Land and Natural Resources Committee to improve administration under this Code.

(3) Establish Water Charges.

A reasonable charge may be imposed at the option of the Tribal Council for the use of the Water administered under this Code.

203 Administration Policies and Guidelines

In taking any action under this Code, the Director of Water Resources shall be guided by the following policies and guidelines:

(A) Policies

- (1) Whenever practicable, actions taken shall benefit the Rosebud Sioux Tribe and their members and further the objective for which the Rosebud Sioux Indian Reservation was created, namely, to provide a permanent home and abiding place for the Rosebud Sioux Tribe and their members, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable to achieve this goal. Included in those

alternatives shall be the option to restrict or prohibit entirely any further use of water for any reason. If a conflict between the Rosebud Sioux Tribe and any of the members with non-Tribal projects or uses is presented to the Director of Water Resources, the Director of Water Resources will grant appropriate preference to the Tribe or its members over non-Tribal projects or uses.

- (2) In taking any action under this Code that may impose substantial economic hardship on persons or entities presently using water, or that threatens degradation of other economic, cultural, historic, aesthetic, natural, or environmental values, the Director of Water Resources shall, in reaching decisions, carefully consider and give weight to:
 - (a) The economic dislocation and hardship that will be imposed by its actions
 - (b) The investment in time, money and other resources that is made by the parties affected in relying upon the existing system of distribution and use of water
 - (c) Other burdens that may be imposed by the action.

(B) Guidelines

- (1) In promoting the most effective use of Tribal water resources, the Director of Water Resources shall take appropriate action to:
 - (a) Ensure adequate water supplies
 - (b) Maintain water levels for diversion and withdrawal systems
 - (c) Maintain head and pressure in groundwater
 - (d) Prevent or reduce obstruction of surface water flows
 - (e) Increase efficiency of conveyance systems, increase efficiency in water application, increase return flow, prevent waste, and maximize use of the available water supply
 - (f) Increase and enhance the efficiency of natural and artificial surface and underground storage
 - (g) Define and control interbasin transfers of both surface and groundwater
 - (h) Provide for some degree of overdraft from aquifers when short-term recharge is not possible
 - (i) Minimize interference between competing users of water sources, whether surface or groundwater
 - (j) Minimize water quality degradation and the adverse effects of water pollution, whether

from point or nonpoint sources

(k) Minimize thermal degradation or the adverse effects of thermal degradation

(l) Minimize interaquifer communication

(m) Shape how available water supplies are used to promote economic, scenic, aesthetic, historical, cultural, natural, or domestic values

(n) Provide for long-term development and prevent untimely quantification

(o) Penalize misuse

(p) Prevent interference with Tribal administration of water

(q) Otherwise ensure conformity with the provision of this Code.

(2) Additional Guidelines

(a) Rivers and streams of the Rosebud Sioux Indian Reservation should be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental and navigational values. Lakes and ponds should be retained substantially in their natural condition. Withdrawals of water that would conflict therewith should be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of wildlife and fishery resources in the planning for the construction of water impoundment structures and other artificial obstructions.

(c) Individuals, corporations, groups, associations, and other entities shall be encouraged to carry out practices of conservation and environmental protection as they relate to the use of the Waters of the Rosebud Sioux Indian Tribe.

300 Water Rights

301 Ownership

The Rosebud Sioux Tribe is the owner of the full equitable title to the rights to the use of all waters originating and flowing into the Exterior boundary of the Rosebud Sioux Indian Reservation as defined herein and all other waters, including implied and granted to the tribe, and that title resides undiminished in the Rosebud Sioux Tribe. The United States hold only the legal title to those waters solely as trustee for the Rosebud Sioux Tribe pursuant to the rights and responsibilities included in the

following treaties and acts: The Portage des Sioux Treaty (July 1815); the Treaty of Ft. Laramie, 11 Stat. 749 (September 17, 1851); the Treaty with the Omaha, 10 Stat. 1043 (March 16, 1854); the Treaty of Ft. Laramie, 15 Stat. 635 (April 29, 1868); Title VI-Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration Act of the Omnibus Consolidated and Emergency Appropriations Act of 1999, PL 105-277, 112 Stat. 2681, 2861-660-670 (October 21, 1998), as amended by Title IV of the Water Resources Development Act of 1999, PL 106-53, 113 Stat. 269, 385-397 (August 17, 1999), and as otherwise amended; and any other treaty or right. These water rights include tribal reserved water rights, treaty rights, and water rights administered by the Rosebud Sioux Tribe, including the "Winters' Doctrine", *Winters v United States*, 207 U.S. 564 (1908).

302 Water Right Required

The right to the use of Waters of the Rosebud Sioux Indian Reservation as defined in Section 101(c) is recognized through obtaining a water right pursuant to the provisions of this Code. A water right is needed for all uses of water except certain exempt uses (see Section 402) and is administered through a water use permitting system.

303 Tribal Waters

All Waters of the Rosebud Sioux Indian Reservation are the property of the Rosebud Sioux Tribe, and the right of the use of that water may only be acquired as provided for in this Code.

304 Right to Use Tribal Waters

A Water Use Permit is an authorization granted by the Rosebud Sioux Tribe to make a beneficial use of Waters of the Rosebud Sioux Indian Reservation. An approved Water Use Permit authorizes use of either ground or surface water upon compliance with the conditions provided for in the Water Use Permit. The Rosebud Sioux Tribe recognizes the need to allow the use of Waters of the Rosebud Sioux Indian Reservation for basic domestic and sanitary needs of tribal members, as well as for other minor and temporary uses that promote the health, education, safety, and welfare of the Rosebud Sioux Tribe. Therefore, water diverted or pumped for certain basic domestic and other minor and temporary purposes defined in Section 300 are exempt from obtaining a Water Use Permit; however, a well construction permit is still required for those exempt purposes whose water source is from groundwater. The Office of Water Resources may issue temporary Water Use Permits for those activities that are temporary in nature and will not place a long term draw on the Tribal water resources.

305 Beneficial Uses

Beneficial Use refers to a reasonable quantity of water applied to a non-wasteful use. Beneficial Uses for water of the Rosebud Sioux Tribe are as follows:

- Domestic (including drinking, sanitary, and limited irrigation)
- Livestock watering

- Industrial
- Commercial
- Agriculture irrigation
- Mining
- Fishery
- Wildlife maintenance and enhancement
- Recreational
- Fire protection
- Dust suppression.

Beneficial Uses reserved for use by the Rosebud Sioux Tribe are as follows:

- Preservation of environmental and aesthetic values
- Cultural
- All other uses compatible with the goals and priorities of the Rosebud Sioux Tribal Council

Water shall be appropriated for, and the use of such water shall be permitted for, only these beneficial uses.

306 Water Conservation

Water resources for the Rosebud Sioux Tribe are provided by the Earth, are needed to meet the needs of the natural communities and ecosystems as well as the needs of the Rosebud Sioux Tribe, and are of limited supplies. Recognition of this requires all water users who use water from the Rosebud Indian Reservation to conserve water to the maximum extent practicable. All water users and uses shall include water conserving fixtures and facilities to reduce the water demand on the Rosebud Sioux Tribe's water resources.

400 Water Use Permits

401 General

Ninety days after the effective date of this Code no use of water within the jurisdiction of this Code shall occur without first being approved through a Water Use Permit except as provided for in Sections 402 and 403.

402 Exempt Water Uses

The following water uses are exempt from the requirement to obtain a Water Use Permit:

- (1) Domestic Uses that do not exceed 20 gpm and 0.5 acre-feet per year.

403 Existing Water Uses

All uses of water existing on the effective date of this Code are exempt from the requirement of obtaining a Water Use Permit for a period of one year after the effective date as long as the following conditions are met:

- (1) The existing water use continues at the same or less rates and volumes and for the same uses as existed before the effective date of this Code
- (2) The existing water use is for an allowed beneficial use as defined in this Code
- (3) The Director of Water Resources is provided substantiating evidence upon application for a Water Use Permit that the water use existed before the effective date of this Code.

Before one year after the effective date of this code, all existing water uses not exempt as provided for in Section 402 shall apply for a Water Use Permit using an administrative registration and permitting process upon forms provided by the Office of Water Resources. This process allows existing water users to obtain a Water Use Permit for the same rate, volume, and use that was occurring before the effective date of this Code. Any increases in rate, volume, or changes in use of water shall require the user to file for and obtain a new Water Use Permit before increasing the rate, volume, or changing the use for which the water is being used.

404 Permit Applications

Applications for Water Use Permits shall be on forms provided by the Director of Water Resources and shall as a minimum include the following information in addition to any other information deemed necessary by the Director of Water Resources:

- (A) The name and mailing address of the applicant
- (B) The name of, if available, or a description of, the source or sources from which water is or will be diverted or withdrawn
- (C) The rate and quantity of water that is or will be diverted or withdrawn and used during each month of the year
- (D) A map and legal description, if such is readily available, or other description that reasonably describing, the point or points of diversion, withdrawal, or impoundment
- (E) A description of the method or methods of diversion, withdrawal, or impoundment
- (F) The purpose or purposes for which water is or will be used
- (G) A description of how water will be applied or consumed, including acreage and crop if the

water is for irrigation, the kind and number of stock if water is for stock watering, or other measure of water application and consumption for other water uses

(H) The best estimate reasonably possible of how much water will be returned to the source or sources, and how, when, at what point or points, and with what changes in quality and temperatures

(I) The estimated date on which the use or uses were commenced or will be commenced

(J) If a use is an existing use, the history of the use, including the names of any predecessors in title and the dates of their ownership, if known and including a description of their water uses

(K) If any pre-existing right is claimed, a description of any documents or programs upon which it is based, any statute or statutes or legal doctrine upon which the claim is based, and any pertinent litigation creating or affecting the claim

(L) If a pre-existing use or uses are described, an indication whether problems of declining water levels and supply or problems of declining quality have been encountered in the past

(M) The water user's plan for future development of the water use or uses and related activities.

405 Application Fee

An application for a Water Use Permit shall be accompanied by a \$25.00 filing fee except for registration of an existing use pursuant to Section 403, which shall require no filing fee. The Director of Water Resources may waive payment of an application fee in cases of demonstrated financial hardship.

406 Public Notice of Water Use Permit Application

(A) As soon as possible and no more than 30 days after the Director of Water Resources receives an application for a Water Use Permit the Director of Water Resources shall provide public notice that the applicants described in the application have applied for a Water Use Permit under the Rosebud Sioux Tribe Water Code and that any persons claiming that their rights may be adversely affected by the issuance of such permit may object to their issuance in accordance with the provisions for objection, notice and hearing provided elsewhere in this Code.

(B) The notice shall include the following information:

- (1) The information as provided in the Application;
- (2) A brief description of the objection, notice and hearing provisions of this Code;

(C) This notice shall forthwith be published, posted, and mailed at the locations as provided in Section 104(C) herein, except the newspaper publication may be limited to local papers, and except that the notice need be published and distributed only in the hydrologic basins or areas affected by the applied for uses.

407 Objection Procedure

(A) Any person or entity whose interests are or may be affected by a water use described and applied for may, within 30 days from the publishing, posting, and mailing of notice that such use has been applied for, file a formal objection to the issuance of the permit applied for as follows:

- (1) Objections may be on forms prepared and made available by the Director of Water Resources and shall include the name and mailing address of the party objecting, the name of the applicant whose application is objected to, a description of the water use objected to, a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for, and any suggested conditions or other provisions that should be included in any permit granted.
- (2) Oral objections may be made to the Director of Water Resources or his designee when either determines, in his discretion, that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of Water Resources or his designee.

(B) Any applicant for a Water Use Permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

408 Application Hearing

Any applicant directly affected or any party objecting in accordance with this Code may request and obtain, as a matter of right, a hearing concerning such objection. In addition, the Director of Water Resources may recommend to the Land Committee that a hearing be scheduled concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed or advisable. Unless otherwise provided in this Code, notice of such hearings shall be in the form as provided for in Section 500, and shall be given to the applicants whose uses are objected to, the objecting parties, other persons designated by the objecting parties and applicants, and all other persons requesting notice. Unless otherwise provided in this Code, hearings shall be conducted as provided in Section 500.

409 Public Comments

In addition to objections, any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code within 30 days from the publishing, posting, and mailing of notice that such use has been applied for or, if a hearing is scheduled, at the public hearing.

410 Investigations and Review of Application

In addition to gathering information from the objections, comments, and hearings provided above, the Director of Water Resources may make any reasonable investigation of the facts and circumstances that surround the permit application, may solicit comments and information from the public and from appropriate governmental agencies, and may otherwise gather information which will assist in issuing or

denying a permit in accordance with the provisions of this Code. Pertinent to this investigation is a determination by the Director of Water Resources that water is or is not available in the quantities, rates, or quality needed to satisfy the proposed uses and needs presented in the Water Use Permit application. If the Director of Water Resources does not have sufficient evidence that water is available for the proposed application, the Director of Water Resources may require the applicant to provide or fund a study to confirm water availability for the proposed application.

411 Issuance or Denial of Permits

As soon as possible after objections and hearings and after a reasonable period for public comment shall have passed, as provided above, and no more than 90 days after the filing of an Application for a Water Use Permit, the Director of Water Resources shall review the comments and information gathered with respect to a specific application and then recommend to the Land Committee who may then deny a permit or issue a permit in the form provided for Section 413.

412 Appeal Process

Appeals to the decision of the Director of Water Resources shall be as provided for in Section 600.

413 Final Water Use Permit

Water permits issued in accordance with this Code shall be on a form standardized by the Director of Water Resources and his staff and shall contain the following information:

- (1) The name and mailing address of the applicant;
- (2) The name of, if available, or a description of the source or sources from which water is or will be diverted or withdrawn
- (3) The quantity of water which may be diverted or withdrawn and used during each month of the year
- (4) A map and legal description, if such is readily available or other description that reasonably describes the point or points of diversion or withdrawal
- (5) A description of the method or methods of diversion or withdrawal
- (6) The purpose or purposes for which water is or will be used
- (7) A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, and the kind and number of stock if water is for stock watering.

In addition, the Water Use Permit shall also contain conditions under which the permit may be operated. These conditions will address, as applicable, the following:

- (1) Provisions for surface or ground water storage of surplus flows
- (2) Provisions for increasing the efficiency of diversion or withdrawal and application
- (3) Provisions for maintaining minimal levels for fish, wildlife, recreational and aesthetic values
- (4) Provisions for insuring minimum pumping and diversion levels with respect to both surface and underground water
- (5) Provisions designed to maintain head and pressure in surface and underground water
- (6) Provisions designed to prevent or reduce obstruction of surface and underground flows
- (7) Provisions designed to minimize pollution and thermal degradation
- (8) Provisions designed to ensure minimum recharge of aquifers
- (9) Provisions designed to prevent or reduce loss from losing streams and aquifers
- (10) Provisions designed to define and limit interbasin transfers from shifting aquifer boundaries
- (11) Provisions for some degree of overdraft from aquifers when short-term recharge is not available or appropriate
- (12) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground
- (13) Provisions to insure long term development and prevent untimely quantification
- (14) Penalties for misuse
- (15) Provisions to prevent interference with Tribal administration of water
- (16) Other provisions necessary to insure conformity with this Code and actions taken hereunder.

414 Standard Permit Conditions

All Water Use Permits shall contain the following conditions:

(1) Entry on Land

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he shall consent to reasonable entry upon his land by Tribal officers engaged in the administration of this Code. No use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his land.

Acceptance of the Water Use Permit shall be irrefutable evidence of this consent.

(2) Effect

A Water Use Permit issued under this Code constitutes nothing more than Tribal permission to use the Waters of the Rosebud Sioux Tribe, subject to the terms and conditions of the permit, to this Code and to actions taken pursuant to this Code. No Water Use Permit used hereunder shall be construed as creating or recognizing any right other than Tribal permission to use water. Nor shall any permit ripen into any interest other than such limited permission.

(3) Revocability and Termination

Unless otherwise indicated, water permits issued under this Code are revocable and may be terminated in accordance with the policies, purposes, guidelines, and procedures established in this Code. However, the Director of Water Resources may, at the Director's option or upon application, propose for consideration by the full Rosebud Sioux Tribal Council the granting of permits for specific periods of time, permits revocable or terminable only upon stated conditions, and other forms of permits providing varying degrees of permanence and contractual terms.

(4) Waste of Water Prohibited

No waters that have been withdrawn, diverted or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion and withdrawal works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions and withdrawals, such shall not be construed a waste if reasonable diligence is shown by the permittee in completing the necessary repairs.

(5) Water Conservation Measures

The use of water allowed by this permit is conditioned upon the installation and use of water conserving fixtures to reduce water demands. Tampering with or removal of these fixtures is grounds for revocation of the Water Use Permit.

(6) Penalties

Any and all misuse of water and other acts in violation of this Code are subject to penalties as provided for in this Code.

415 Transfer of Water Use Permit

Permits issued under this Code shall not be subject to transfer, assignment, or creation of any security interest without the express written permission of the Director of Water Resources with the concurrence of the Tribal Council. Applications for transfer, assignment, or creation of security interest shall be made on forms prepared and made available by the Director of Water Resources. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a

result of the transfer, assignment, or creation of a security interest.

416 Modification of Water Use Permit

All Water Use Permits are modifiable upon filing of an application to modify the Water Use Permit using and following the same process for the initial Water Use Application.

417 Termination of Water Use Permit

(A) Nonuse.

Any Water Use Permit shall become void and revert, to the extent of the abandonment or nonuse, to the Rosebud Sioux Tribe when the holder of such Water Use Permit wholly or partially abandons the same, or voluntarily fails without sufficient cause, to use all or a portion of the water available under such Water Use Permit for a period of five consecutive years. This section shall be retroactive to the effective date of the Code.

"Sufficient cause" shall include:

- (a) Drought or other unavailability of water
- (b) Active service in the armed forces of the United States during military crisis
- (c) Non-voluntary service in the armed forces of the United States
- (d) The operation of legal proceedings
- (e) The application of any laws restricting water use
- (f) Incarceration in a penal institution
- (g) Confinement in a mental institution, whether voluntary or not
- (h) Incompetence by reason of age or mental incapacity
- (i) Provision for future use as provided in this Code
- (j) Other substantiated causes of nonuse beyond the control of the holder or holders of the right claimed.

Before such water rights may be deemed lost by nonuse or abandonment, the Director of Water Resources or his designee shall serve notice on the holders of such rights to appear at a hearing to be held before the Land and Natural Resources Committee not less than 30 days after the mailing or personal service of such notice and show cause why their rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Section 500.

(B) Loss by Adverse Possession, Prescription, Estoppel, or Acquiescence.

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel, or acquiescence.

(C) Outside Proceedings.

No right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided in this Code.

500 General Hearing Provisions

501 Hearing Procedures

Whenever not otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this Chapter.

502 Notices

All parties who will be directly affected by a proposed action shall be given notice by registered mail, return receipt requested, of any hearings held under this Code. In addition, notice of hearings shall be published in one paper that has general circulation in the affected area, and notice of hearing shall be posted in prominent places in the affected area.

503 Time and Place of Hearing

Whenever possible hearings shall be held in the affected area a time and place that is convenient for a major portion of the parties affected in the Tribal Council Chambers or as determined by the Director of Water Resources.

504 Continuances

Continuances shall be freely granted when the ends of justice so require and to ensure adequate notice and opportunity to be heard.

505 Presiding Officer

The Chairman of the Land and Natural Resources Committee or his designee shall preside as the hearing officer over hearings provided in this chapter.

506 Forms of Evidence

Evidence may be submitted in any practical form, including oral testimony, written evidence, and descriptive evidence. The ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, or unduly prejudicial, may be excluded or admitted only under special conditions or stipulations.

507 Consolidation of Hearings

Whenever possible hearings concerning proposed or existing actions, in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication.

508 Recording

Whenever possible, hearings shall be recorded by mechanical means. However, any person may provide and pay for a stenographic record at their expense.

509 Decisions

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the hearing officer shall cause such decision to be published and served upon the parties in the same manner as provided in 502 covering notice of hearings.

600 General Appeal Provisions

601 Appeals Provided For

There shall be no appeal from actions taken under this Code except as provided herein. Appeals shall be made to the Rosebud Sioux Tribal Council.

602 Rosebud Sioux Tribal Council - Appeal Board Constituted

(A) Members of the Office of Water Resource and the Land and Natural Resources Committee shall be excluded from hearing and considering an appeal under this Code.

(B) Members of the Rosebud Sioux Tribal Council who have a direct interest in or bias with respect to the outcome of any appeal shall be disqualified from hearing and considering such appeal. Once raised, the matter of direct interest or bias shall be decided by a majority vote of the Rosebud Sioux Tribal Council, excluding the Councilman alleged to be interested or biased.

(C) The remainder of the Rosebud Sioux Tribal Council, after such exclusions and disqualifications, shall constitute an Appeal Board for purposes of this Chapter.

603 Notice of Appeal - Jurisdiction

Except as may be otherwise provided elsewhere in this Code, any party aggrieved by any final action taken under this Code, obtain review of such final action by an Appeal Board may by filing a Notice of Appeal with the Director of Water Resources. The Rosebud Sioux Tribal Council, and the Appeal Board constituted therein, shall have jurisdiction over any appeal brought under this chapter. The Notice of Appeal must be filed with the Rosebud Sioux Tribal Council no more than 30 days after the date when the party appealing knew or should have known that the action appealed from had been taken. By "final action" is meant any action taken under this Code for which no further consideration by the Director of Water Resources is required.

604 Notice

Upon receipt of the Notice of Appeal the Director of Water Resources shall forthwith, and no more than 5 days after receipt of the Notice of Appeal, cause the Notice of Appeal to be published in the same manner as notice was provided in the proceeding leading to the final action appealed from, with notice served to all parties to the proceeding being appealed from.

605 Transmittal of Record

(A) Upon receipt of the Notice of Appeal, the Director of Water Resources shall cause the Notice of Appeal, any pertinent documents in its possession, and any other articles of evidence in its possession, be transmitted to the Rosebud Sioux Tribal Council.

(B) Any party to an appeal, including the Director of Water Resources, may, in addition, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Rosebud Sioux Tribal Council provided that the Director of Water Resources, in the Director's discretion, shall bear the financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

606 Oral Argument

Upon receipt of the Notice of Appeal from the Director of Water Resources, the Rosebud Sioux Tribal Council shall, as soon as possible and no more than 15 days after receipt thereof, notify the Director of Water Resources, the appealing party, and the other parties to the proceeding, of a date certain for full hearing before the Rosebud Sioux Tribal Council. The date for hearing shall be not less than 30, nor more than 90, days after the date notice provided in this section is transmitted.

607 Briefs

Parties may at their own option, or must when requested to do so by the Rosebud Sioux Tribal Council, file briefs in support of their appeal. Briefs shall be due on dates set by the Rosebud Sioux Tribal Council

and no less than 30 days after receipt of the notice provided for in the proceeding section.

608 Scope of Review

The Appeal Board, in reviewing the final action appealed from, shall limit its review to those matters that were before the Director of Water Resources at the time of the action appealed from. The Appeal Board may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed provided the actions appealed may only be reversed when it appears that they are arbitrary and capricious or otherwise not in substantial conformity with this Code.

609 Appeal Board - Additional Powers

(A) An Appeal Board may, on its own motion or upon motion of any party, dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.

(B) In addition, an Appeal Board may stay the operation of actions appealed from, in whole or in part, and may, when the ends of justice require, provide for a supersedes bond or other security from the parties to the appeal.

700 Enforcement and Penalties

701 Unauthorized Actions Affecting Tribal Waters Prohibited

Whenever any use or other action affecting the Waters of the Rosebud Indian Reservation is required by this Code to be authorized under the provisions of this Code, it shall be an offense punishable by a fine of not more than \$500.00 and/or a sentence of not more than six months in jail, to knowingly make such use or take such other action without the authorization required.

702 Obstruction of Tribal Officers

The willful obstruction of or interference with Tribal officers performing their lawful duties under this Code shall be an offense punishable by a fine of not more than \$500.00 and/or a sentence of not more than six months in jail.

703 Additional Penalties

In addition to the penalties imposed under Section 701 and 702 herein, violations of this Section shall subject the person(s) or entity (ies) responsible to forfeiture of all rights and permits to water administered under this Code.

704 Overstatement of Use

Any person or entity who shall knowingly, when providing information required by this Code, with respect to Descriptions of Use and Applications for Permits or otherwise, misstate material facts shall be guilty of an offense punishable by forfeiture of all right here under and/or by fine of not more than \$500.00.

**WATER USE PERMIT
PERMIT APPLICATION**

DATE: _____

SECTION 1 – GENERAL INFORMATION

(TO BE COMPLETED BY THE APPLICANT)

A) NAME OF APPLICANT: _____

B) MAILING ADDRESS: _____

C) PHONE: _____ **D) FAX:** _____ **E) EMAIL:** _____

F) PROJECT CONTACT: _____

G) PHONE: _____ **H) FAX:** _____ **I) EMAIL:** _____

SECTION 2 – PROJECT DESCRIPTION

(TO BE COMPLETED BY THE APPLICANT)

A) THE NAME, IF AVAILABLE OR A DESCRIPTION OF THE SOURCE(S), FROM WHICH WATER WILL BE DIVERTED OR WITHDRAWN: _____

B) PROVIDE THE RATE AND QUANTITY OF WATER WHICH WILL BE DIVERTED, WITHDRAWN, AND USED DURING EACH MONTH OF THE YEAR: _____

C) PROVIDE THE LEGAL DESCRIPTION, OR OTHER DESCRIPTIONS REASONABLY DESCRIBING THE POINT(S) OF DIVERSION, WITHDRAWAL, OR IMPOUNDMENT (ATTACH MAP): _____

D) PROVIDE A DESCRIPTION OF THE METHOD(S) OF DIVERSION, WITHDRAWAL, OR IMPOUNDMENT:

E) THE PURPOSE FOR WHICH WATER WILL BE USED FOR: (CHOOSE ALL THAT APPLY)

☐ 1. DOMESTIC (INCLUDING DRINKING, SANITARY, AND LIMITED IRRIGATION)

☐ 2. LIVESTOCK WATERING

☐ 3. INDUSTRIAL

☐ 4. COMMERCIAL

☐ 5. AGRICULTURE IRRIGATION

☐ 6. MINING

☐ 7. FISHERY

☐ 8. WILDLIFE MAINTENANCE AND ENHANCEMENT

☐ 9 RECREATIONAL

☐ 10. FIRE PROTECTION

☐ 11. DUST SUPPRESSION

F) PROVIDE A DESCRIPTION OF HOW WATER WILL BE APPLIED OR CONSUMED, INCLUDING ACREAGE AND CROP IF THE WATER IS FOR IRRIGATION; THE KIND AND NUMBER OF STOCK IF THE WATER IS FOR STOCK WATERING; OR OTHER MEASURE OF WATER APPLICATION AND COMSUMPTION FOR OTHER WATER USES: _____

SECTION 3 – ADDITIONAL INFORMATION

(TO BE COMPLETED BY THE APPLICANT)

- G) PROVIDE THE BEST ESTIMATE REASONABLY POSSIBLE OF HOW MUCH WATER WILL BE RETURNED TO THE SOURCE(S), INCLUDING HOW, WHEN, AT WHAT POINT(S) AND CHANGES IN QUALITY AND TEMPERATURES:** _____

- H) PROVIDE THE ESTIMATED DATE ON WHICH THE USE(S) WILL BE COMMENCED:** _____

- I) IF A USE IS AN EXISTING USE, THE HISTORY OF THE USE, INCLUDING THE NAMES OF ANY PREDECESSORS IN TITLE AND THE DATES OF THEIR OWNERSHIP, IF KNOWN AND INCLUDING A DESCRIPTION OF THEIR USES OF WATER:** _____

- J) IF A PRE-EXISTING USE OR USES ARE DESCRIBED, AN INDICATION WHETHER PROBLEMS OF DECLINING WATER LEVELS AND SUPPLY OR PROBLEMS OF DECLINING QUALITY HAVE BEEN ENCOUNTERED IN THE PAST:** _____

- K) PROVIDE THE WATER USERS PLAN FOR FUTURE DEVELOPMENT OF THE WATER USE(S) AND RELATED ACTIVITIES:** _____

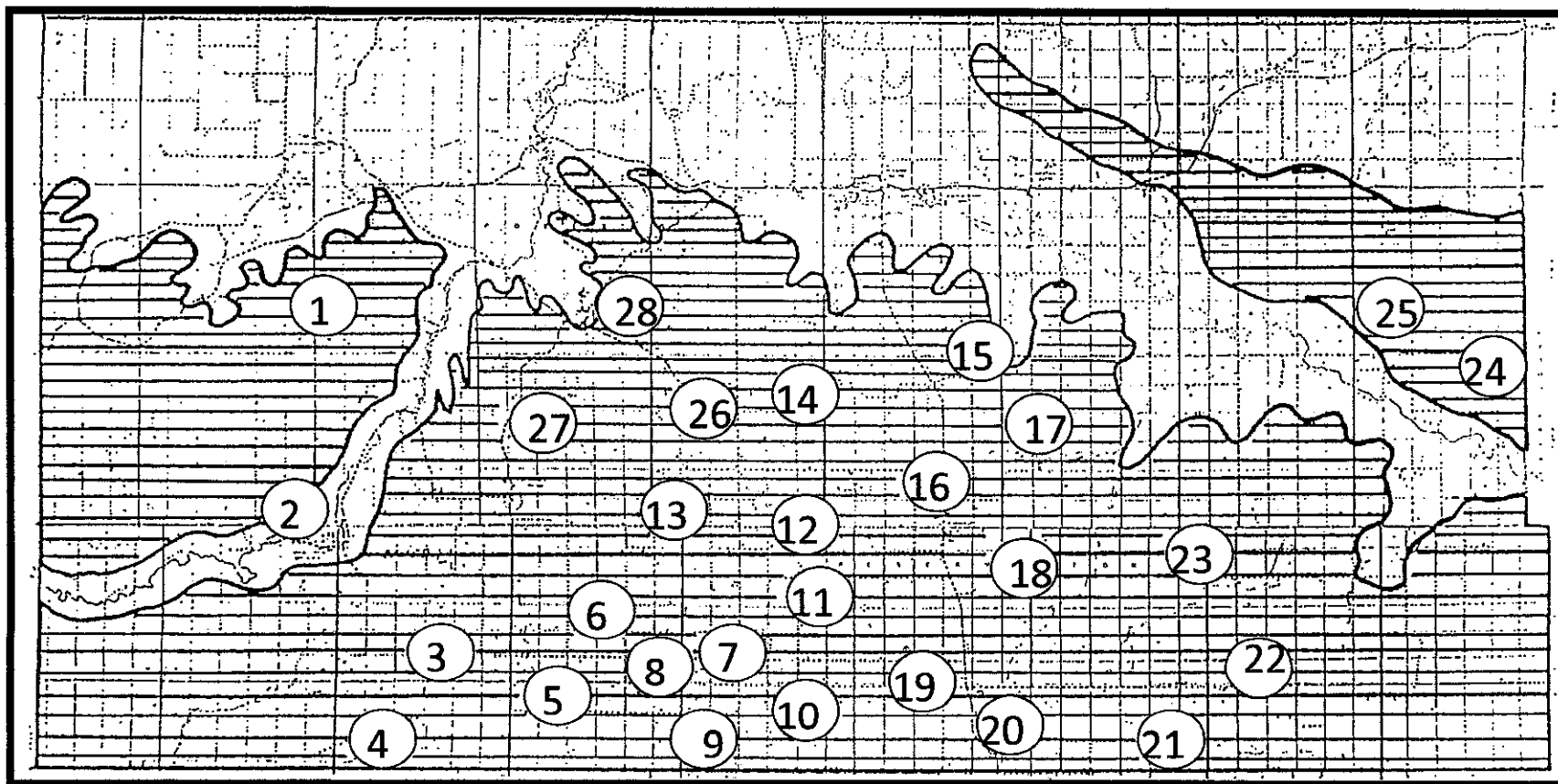
ACKNOWLEDGEMENT:

BY SIGNING THIS WATER USE PERMIT APPLICATION I HEREBY CERTIFY THAT I HAVE READ THIS APPLICATION, THAT THE MATTERS STATED ARE TRUE, AND THAT I WILL COMPLY WITH ALL REQUIREMENTS OF THE ROSEBUD SIOUX TRIBE WATER CODE INCLUDING ALL PROVISIONS FOR ENFORCEMENT AND PENALTIES.

APPLICANT'S SIGNATURE

DATE:

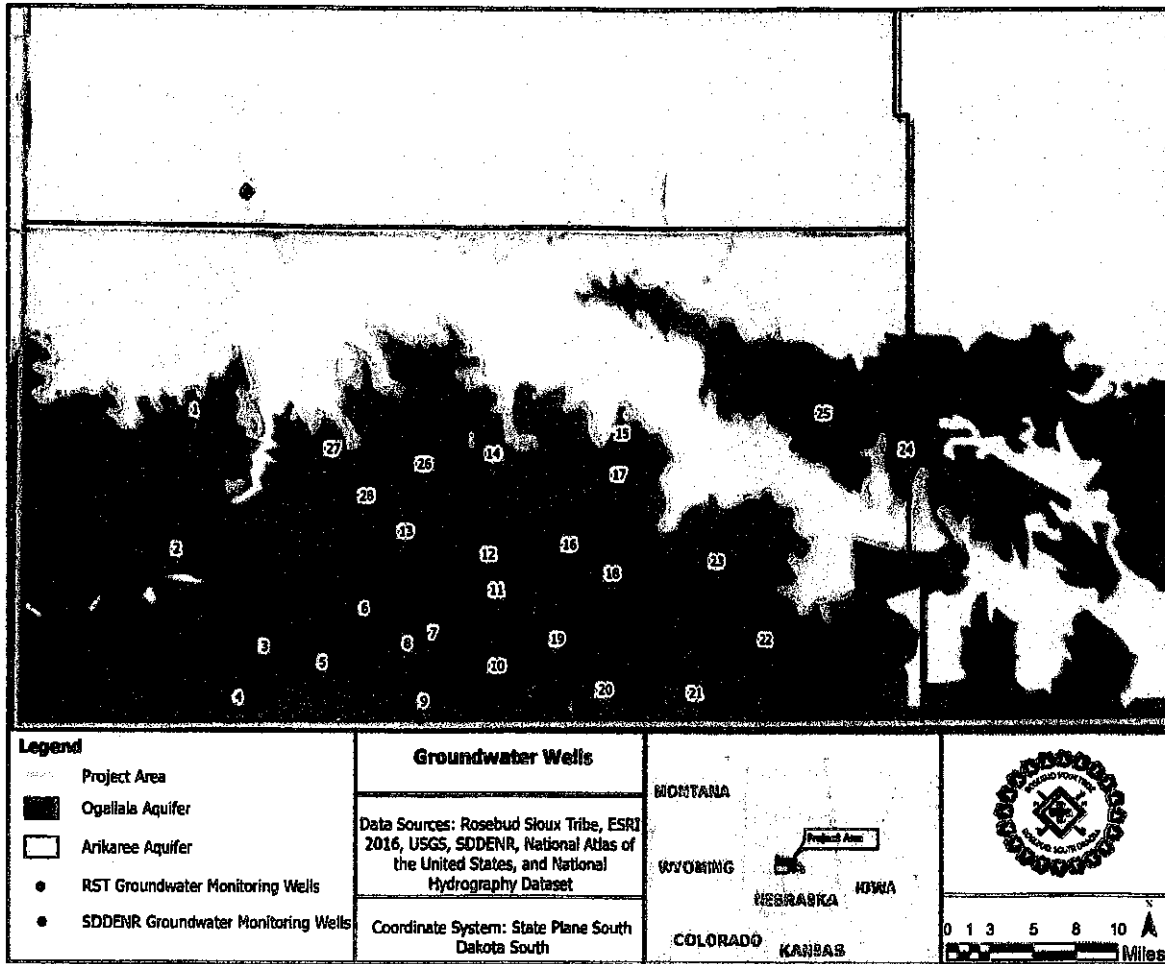
Rosebud Reservation, TODD COUNTY



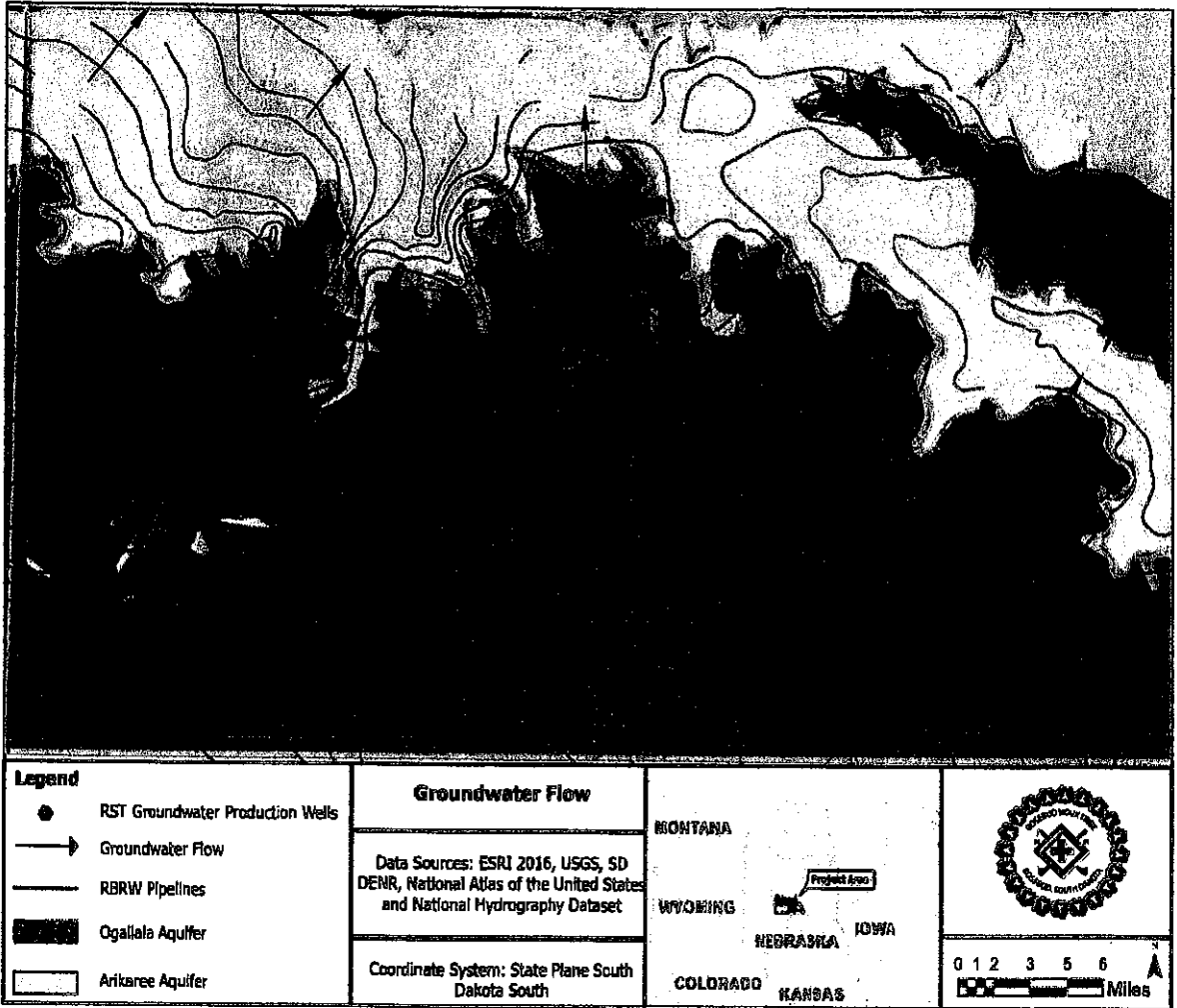
Location of Monitoring Wells On
The Ogallala Aquifer Rosebud Reservation



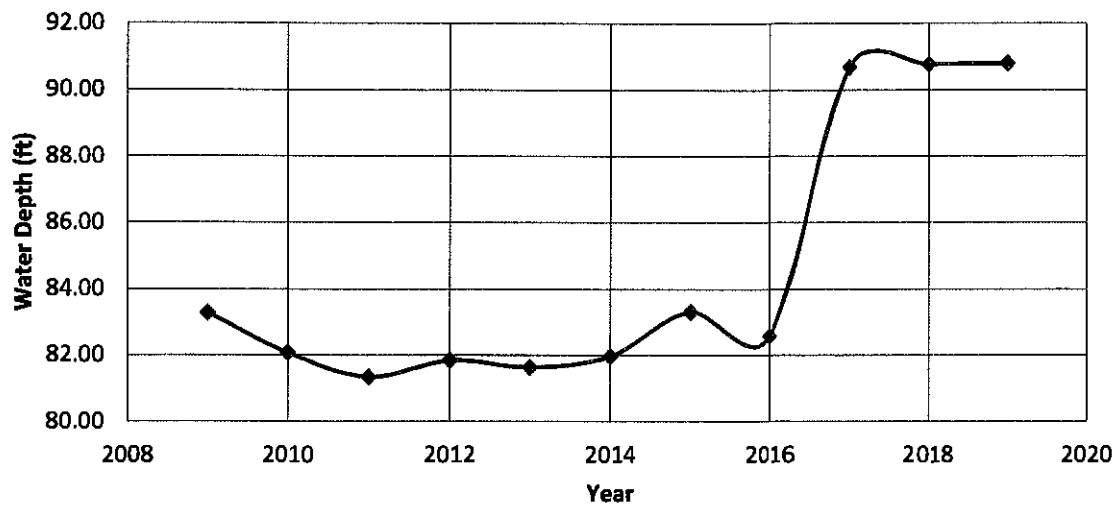
Aquifers and Groundwater Wells of the Rosebud Reservation



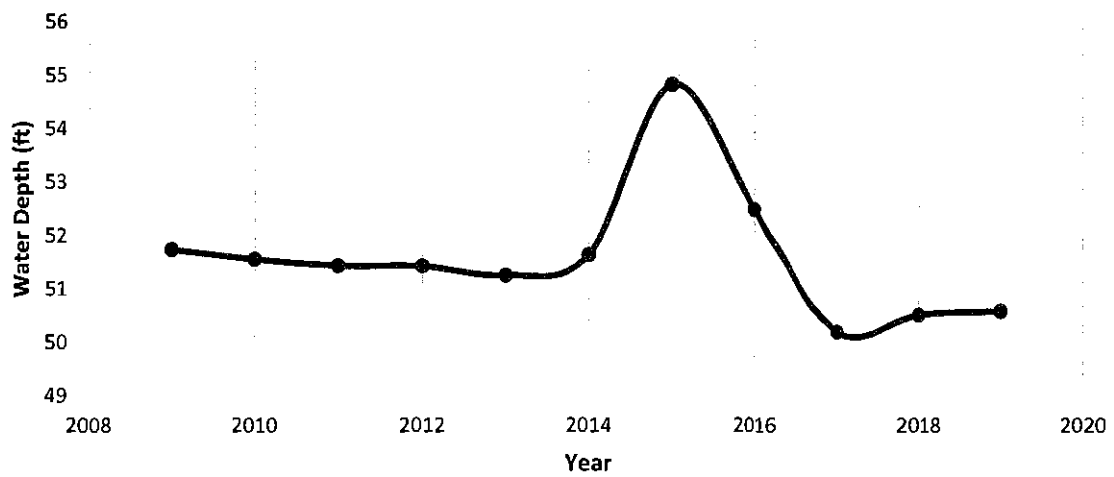
Groundwater Flow on the Rosebud Reservation



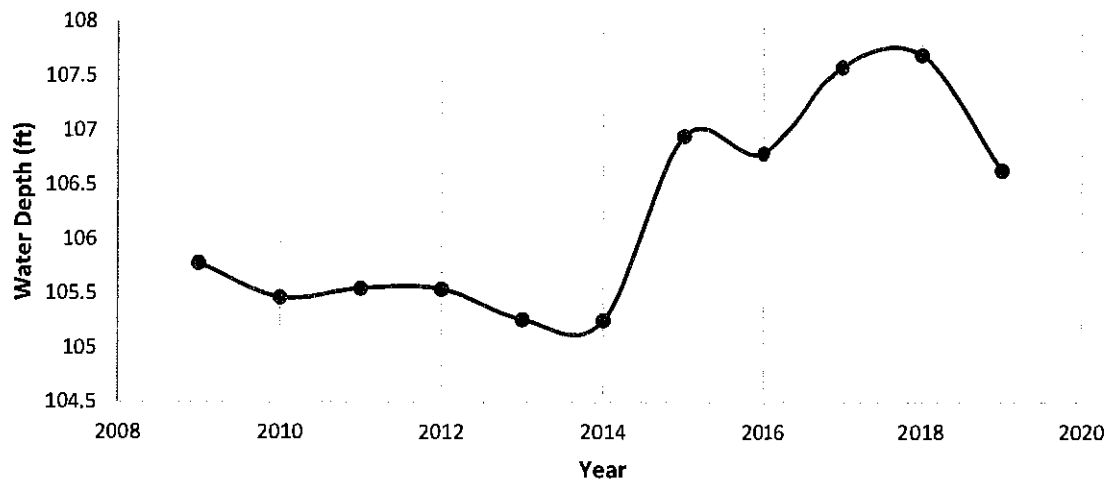
RST Monitor Well No. 11 2009-2019



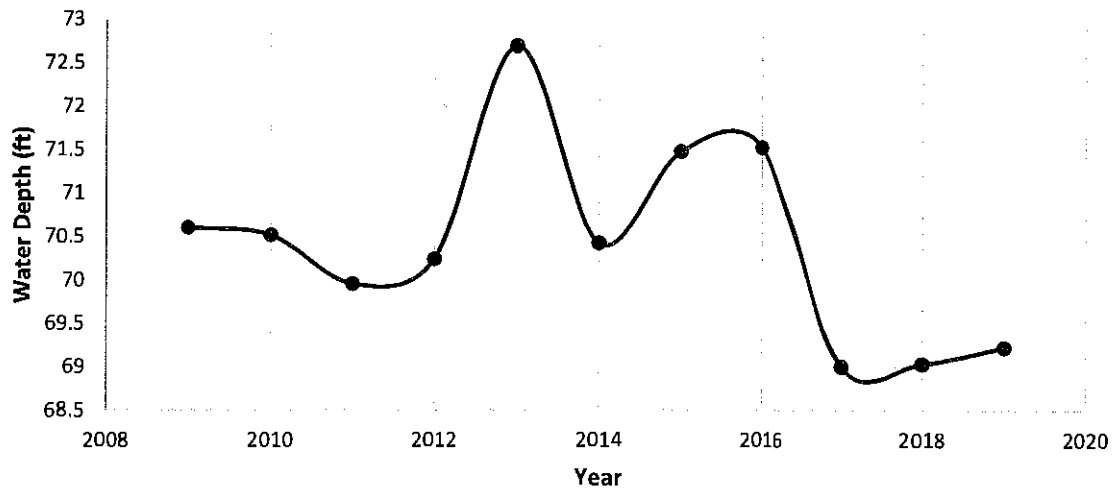
RST Monitor Well No. 12 2009-2019



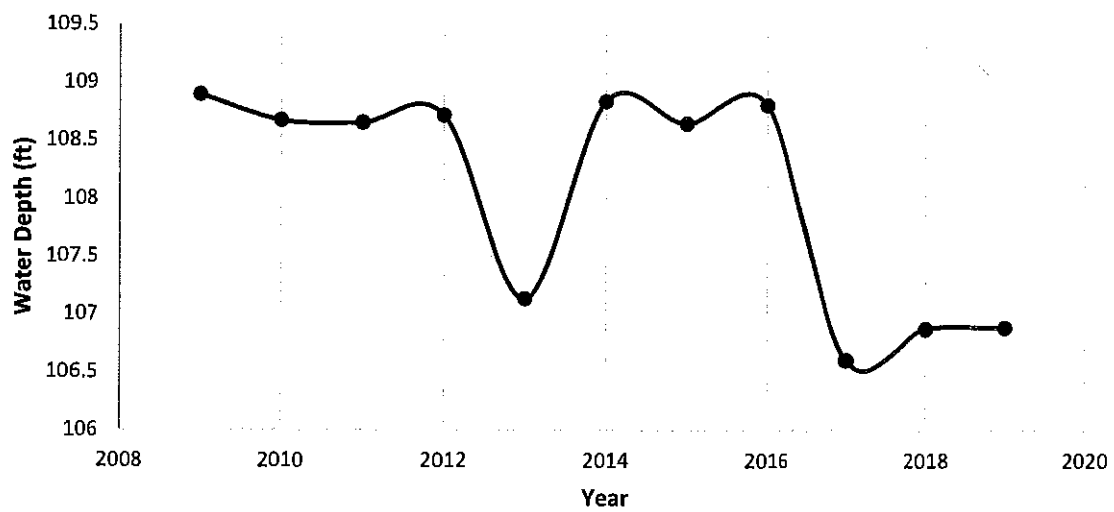
RST Monitor Well No. 13 2009-2019



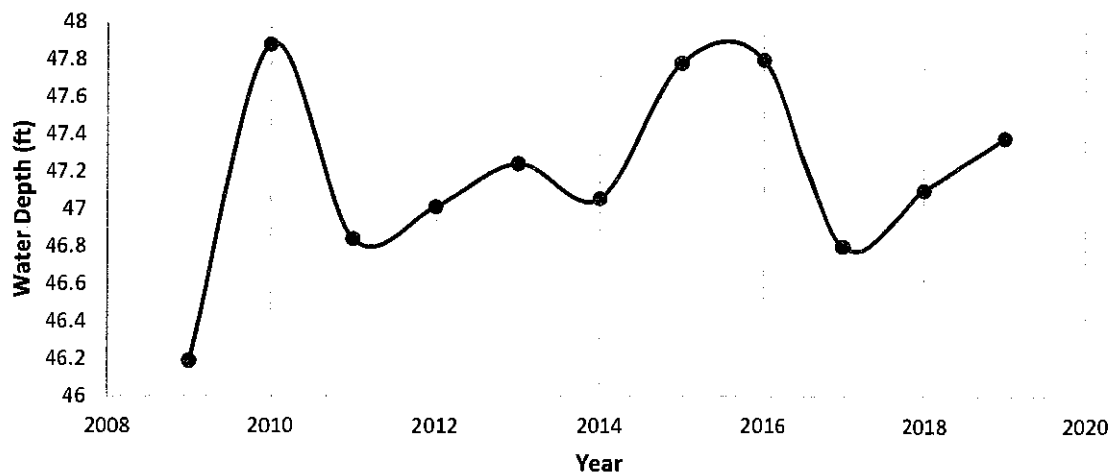
RST Monitor Well No. 14 2009-2019



RST Monitor Well No. 27 2009-2019



RST Monitor Well No. 28 2009-2019



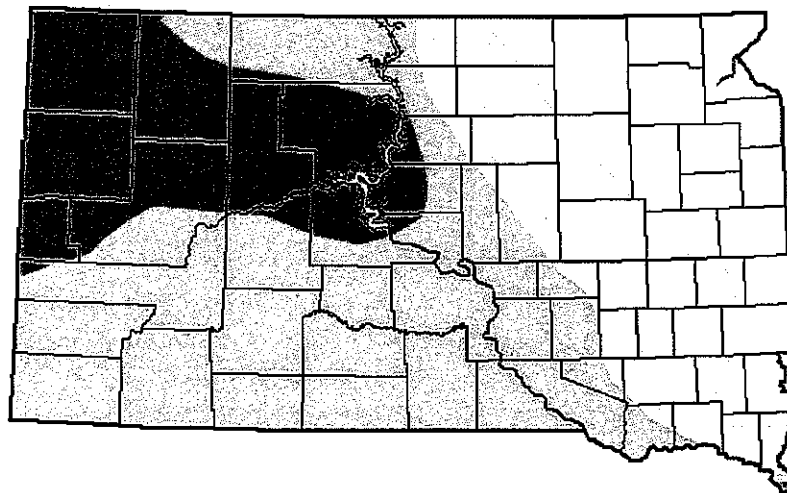


Current Forecasts/Outlooks Collapse All

U.S. Drought Monitor South Dakota

March 15, 2022
(Released Thursday, Mar. 17, 2022)
Valid 8 a.m. EDT

General Drought Information



Links: [The National Drought Mitigation Center](#)

Temperature

Precipitation

Standardized Precipitation Index (SPI)

Hydrologic Information

Agricultural Information

Soil Moisture

[The National Drought Mitigation Center](#)

[Citation](#)

Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	18.13	81.87	65.77	22.14	0.00	0.00
Last Week 03-08-2022	18.13	81.87	65.77	22.09	0.00	0.00
3 Months Ago 12-14-2021	21.58	78.42	34.88	6.59	0.00	0.00
Start of Calendar Year 01-04-2022	21.31	78.69	34.91	6.63	0.00	0.00
Start of Water Year 09-28-2021	7.06	92.94	83.37	59.21	10.76	0.00
One Year Ago 03-16-2021	0.00	100.00	78.48	39.29	0.00	0.00

Intensity:

None	D2 Severe Drought
D0 Abnormally Dry	D3 Extreme Drought
D1 Moderate Drought	D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

Author:

Adam Hartman
NOAA/WSNCEP/CPC



droughtmonitor.unl.edu



Affidavit of Publication

State of South Dakota

County of Todd

RECEIVED

MAR 11 2022

WATER RIGHTS
PROGRAM

Taylor Risse, being, first duly sworn, on oath, says: That he/she is an employee of Scherer Publishing, LLC, Inc., and that the Todd County Tribune is, and during all the times hereinafter mentioned was, a weekly legal newspaper as defined in the SDCL 17-2-2.1 through the 17-2-2.4 inclusive; that said newspaper has been published within the said county of Todd and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 successive week(s) to wit:

March 9, 2022

That the full amount of the fee charged for the publication of the attached public notice, \$48.18 insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Signed: _____

Subscribed and sworn to before me this 9 day of March, 2022.

Notary Public

My Commission Expires
December 9, 2027



Legal Notices

Notice of Hearing

Rosebud Sioux Tribal Court
Rosebud Indian Reservation
Rosebud, South Dakota

IN THE MATTER OF THE
NAME CHANGE

Nives Lourdes Sautterman
MINOR

TO THE PUBLIC
Please take notice that on the 5th day of April, 2022, at 1:00 p.m., a hearing shall be held to change the name of:
Nives Lourdes Sautterman to Nives Lourdes Menard
at the Rosebud Sioux Tribal Court House, Rosebud, South Dakota. All persons seeking to enter objections should appear at such time. Dated this 4th day of March, 2022.

1/s/ Ron High Rock
Ron High Rock, Jr.
Clerk of Court
Rosebud Sioux Tribal Court
Published four times at the total approximate cost of \$75.00
Published: March 9, 15, 23, 30, 2022

Summons

Rosebud Sioux Tribal Court
Rosebud Indian Reservation
Rosebud, South Dakota

The People of the Rosebud Sioux
Tribal Court in the interest of:

A.W.
Minor children and concerning.

TO: BRANDON WITT,
PLEASE TAKE NOTICE that the Hearing on the Petition for Review
Hearing and concerning the child named minor(s) has been set for
the day of 24th of MARCH, 2022 at 2:00 p.m. in the Rosebud Sioux
Children's Court House at the Woodlawn Wapiti Wellness and
Renewal Center (JDC) at Ring Thunder, South Dakota. This is your
official notice of said hearing.
Date This 23rd Day of February, 2022

By The Court:
Janet Routzen
Tribal Court Judge
Attest:
Lynn Means
Clerk of Court
Published three times at the total approximate cost of \$64.04
Published: March 9, 15, 23, 2022

Notice Of Application No. 2836-2 To Appropriate Water

Notice is given that Lisa O'Rourke-Pullon, 29303 272nd Ave,
Valentine NE 69201 has filed an application for a water permit to
appropriate 1.89 cubic feet of water per second from two wells to be
completed into the Ogallala Aquifer (approximately 210 feet deep)
located in the NW 1/4 NE 1/4 and the approximate center of the NE
1/4 Section 25 for irrigation of 135 acres located in the NE 1/4
Section 25; all in T37N-R29W. This site is located approximately 11
miles southwest of Mission SD.

Pursuant to SDCL 45-2A-2, the Chief Engineer recommends
APPROVAL of Application No. 2836-2 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
agriculture 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://damm.sd.gov/public> or contact Ron Durrell for this information, or other
information, at the Water Rights Program address provided below.

Any person interested in opposing this application or
recommending 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 45-2A-9 for
approval or denial of the application, or other matter concerning
the application within the regulatory authority of the board to act
upon as defined by SDCL 45-2-9 and 45-2-11, 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://damm.sd.gov/public> or by contacting the Chief Engineer.
The Chief Engineer's address is "Water Rights Program, Post Building, 535
E. Capitol, Pierre SD 57501" or call (605) 773-3332. 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
March 21, 2022.

The petition 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.

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. The comment form is available online at <https://damm.sd.gov/public> or by contacting the Chief Engineer.
The Chief Engineer's address is "Water Rights Program, Post Building, 535
E. Capitol, Pierre SD 57501" or call (605) 773-3332. 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
March 21, 2022.

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 not on the application pursuant to the
recommendation with no hearing held before the Water Management
Board. If a petition opposing the application or contesting the
recommendation is filed, then a hearing will be scheduled, and the
Water Management Board will consider this application. Notice of
the hearing will be given to the applicant and any person filing a
petition.
Published once at the total approximate cost of \$48.18
Published: March 9, 2022

REPORTER Register

The Brookings Register is looking for an ambitious and talented individual
to fill a news reporter position. Coverage areas include city government, law
enforcement, and general assignment news and feature stories. Candidates
should be self-starters who can generate story ideas and meet deadlines.
Requires the ability to work nights and weekends, strong writing and
grammar skills, knowledge of AP style and solid photography skills. This is
an hourly position with a full benefits package, EOE.
Any persons interested should send a cover letter and resume, along with
professional writing samples to:
c/o Jill Riet, Managing Editor, jriet@brookingsregister.com
312 5th Street, Brookings, SD 57008 www.brookingsregister.com

Request for Bids

TLE Shareholders Meeting
"Meal Bid"

TLE is seeking sealed bids for a meal to be served at a scheduled
shareholders meeting. The meeting is scheduled for March 26, 2022.
This meal is for 75 people and is a "full" course meal with a

1. Menu entrée
2. Side dishes
3. "Breads"
4. A Dessert & Drinks
5. Bidders must provide plates, cups, spoons/forks/knives and
napkins. Bidders will also be responsible for serving the meal.
6. Bidders will need to identify each entrée, the dessert and the
drink. Once the bid is awarded the vendor can receive half of the bid
amount to help buy supplies.

The bids will be sealed, therefore faxes, phone and e-mails will
not be accepted. The deadline is Friday March 18, 2022 at 4:30 p.m.
Please mark envelope "TLE Meal"

For more information concerning this meal, contact the Executive
Director of Tribal Land Enterprise at (605) 773-2371.
Published twice at the total approximate cost of \$31.44
Published: March 9, 16, 2022

Notice Of Bid For Star Quilts

Notice is hereby given that St. Francis Indian School will accept
sealed bids and will be reviewed at each regular board meeting, until
5:00 p.m., Wednesday, March 9, 2022, or until three (3) Bidders
have been awarded. Sealed bids will be received in the office of the
Executive Assistant, Greater Hall Building, St. Francis Indian
School, St. Francis, S.D., for the cost of ten (10) Star Quilts to be
made as described in Item Description. Three (3) bidders will be
selected to furnish ten (10) Star Quilts each by May 6, 2022 to the
school. This will be opened and read at each regular Board meeting
by the Board Treasurer and Business Manager. Local and Tribal
preference claimed.

Item Ten (10) Star Quilts, each approximate size 80 x 90 inches,
and in the following colors or shades: white, red, yellow, blue,
green, orange, pink, purple. The Star Quilts can either be hand
or machine quilted. Please provide star quilts only (quilts with
cartoon characters, eagles, bunnies, or other animals will not be
accepted, and quilts made smaller or larger than the requested size
will not be accepted).


Quilt delivery date will be May 6, 2022. Each star quilt will be
inspected upon delivery.

The approval of bid will be made at a meeting of the Board of
Directors.

Bids must be in a sealed envelope and addressed to BID-STAR
QUILTS, c/o Executive Assistant, Steven Oyate Ho, Inc., P.O.
Box 379, St. Francis, SD 57572. Bids can be mailed by USPS or
other delivery service. Bids can be hand delivered to the Executive
Assistant.

The Board reserves the right to accept or reject any and all bids.
For more information, please contact the SFB Superintendent
Danielle Walking Eagle at
(605) 747-2299. FAX or email transmittals will not be accepted.

Marilyn R. Short Bull
Executive Assistant
Published seven times at the total approximate cost of \$159.08
Published: January 26, February 2, 9, 16, 23, March 2, 9, 2022



You can get along without
electricity and advertising...
BUT WHY TRY?

Todd
County
Tribune
856-4469
tribnews@gwtc.net

Job Openings

Cherry-Todd Electric has a position opening
for Cashier/Secretary effective immediately.

Candidate must have excellent customer service and
communication skills and be proficient in the use of Microsoft
Office Excel and Word software along with some knowledge
of Microsoft PowerPoint software. Candidate needs to be
excellent in cashier skills including balancing a cash drawer
and confident in using a computer. The candidate must be
proficient in the operation of office machines, including
calculator, copier, fax and, printing machines.

Cherry-Todd Electric has a position opening for a
Bookkeeper effective immediately.

Cherry-Todd Electric is a high paced work environment.
Candidate must have excellent customer service and
communication skills and be proficient in the use of Microsoft
Office Excel and Word software along with some knowledge
of Microsoft PowerPoint software. The candidate must be
proficient in the operation of office machines, including
calculator, copier, fax and printing machines.

Job description includes but not limited to: maintaining
financial records; capital credits; general ledger; accounts
payable and receivable; transportation; purchase orders
& employee payroll. Ideal candidate will have a Bachelor's
Degree in accounting, business administration, economics or
related field. An Associate Degree in any of the above listed
fields and/or work experience in lieu of a Bachelor's Degree
will be considered.

Applications are available at the Cherry-Todd office located
in Mission, SD or can be found on-line on our website: www.cherry-todd.com. All applications must be submitted to the
Cherry-Todd Office no later than 5 p.m. on March 30, 2022. If
you have questions, please call 605-856-4416.

Cherry-Todd Electric is an equal opportunity
provider and employer.

Contact Information:
Cherry-Todd Electric Cooperative, Inc.
PO Box 169
Mission SD 57555
Phone: 605-856-4416
Fax: 605-856-4268
Attn: Colleen Farley
e-mail: colleenf@cherry-todd.com



Dusty Johnson

U.S. Representative of South Dakota

ICYMI—A State of the Union Recap

On Tuesday, President Biden visited the U.S. Capitol
to address both chambers of Congress while 37 million
Americans tuned in at home to listen to the annual State
of the Union.

While the current outlook of our nation and the world may
appear bleak to many, I was proud to see Republicans and
Democrats alike stand in unity to support Ukraine and its
people at the start of his address.

RUSSIA - UKRAINE: This was President Biden's first major
point in his State of the Union address. He spoke of increased
sanctions on Russia and Russian oligarchs and closing off
American airspace to all Russian flights, further cutting off
Putin and the Russians off from the rest of the world and the
global economy. We must continue to support Ukraine by
escalating our economic response with unrelenting sanctions.
The U.S. should set its sights on bringing back the energy
independence we gained during the last administration. Putin
should map the consequences for what he's done.

BORDER SECURITY: "We need to secure the Border and fix
the immigration system," President Biden said. He mentioned
new technology that better detects drug smuggling, as well as
new patrols with Mexico and Guatemala to stop human
traffickers. This was surprising to hear from the President. For
the last year, the administration's actions have basically been
the opposite of the President's State of the Union remarks.
President Biden has the tools at his disposal to secure the
border—like the REMAIN in Mexico Act, the Finish the Wall
Act, and the Transparency of Migration Act—he just needs to
take action.

CRIME: President Biden urged that instead of defunding the
police, the answer is to "fund the police." This is a
major turnaround. I agree with this, which is why I proudly
cosponsored the Invest to Protect Act, a bill that makes critical
investments in local police departments for training, body
cameras, mental health resources, recruitment, and retention
that are needed resources for our local communities.

INFLATION: While there was no talk of inflation being a
result of oversteering, President Biden did call out the ocean
carriers that are driving up prices due to port backlogs and
unfair shipping practices. I know this impacts more than
just ocean carriers and port employees, but its effects reach
all the way to consumers, manufacturers, family farms, and
small businesses in South Dakota. That is why I led the Ocean
Shipping Reform Act that passed the House in December
and is on track to pass in the Senate soon. The quicker this
gets signed into law by the President, the sooner American
consumers, producers, and consumers will start to feel some
relief of high prices.

There is a lot that Congress—as well as the President—can
be working on to get us through the crises we are facing as a
nation. President Biden signaled he would support legislation
that both parties can agree on—time will tell if that proves to
be true.



Sinte Gleska University

Job Announcement

Position: Faculty, Construction Trades

Department: Institute Of Technology-IOT

Supervisor: Department Chairperson/IOT Director

Classification: Full-Time Faculty Contract: 12 month/Salary

JOB SUMMARY: Faculty member will prepare for and teach
Construction Trades curriculum.

DUTIES & RESPONSIBILITIES:

1. Faculty member will prepare for and teach Construction
Trades curriculum at minimum of 30 credits contract year.
2. Prepare course schedule for each academic semester.
3. Keep record of student's degree plan in collaboration with
Program Director.
4. Attend mandatory professional development trainings.
5. Assist with academic registration.
6. Serve on and contribute to campus-wide committees.
7. Support the mission of the University, and the mission of the
Institute of Technology Department.
8. Provide office hours according to department requirements.
9. Follow the policies and procedures of the University.
10. Participate in the development, evaluation and revision of
the curriculum in collaboration with Program Director.
11. Develop and update syllabi based upon the approved
curriculum.
12. Conduct on-going assessment of student progress.
13. Advise students in the Construction Trades Program.
14. Follow and adhere to SGU's Faculty contract's responsibilities
and duties.

QUALIFICATIONS:

Two-year associates degree in Construction Trades with
Certification(s) in related field. 5-10 year work experience
in related field. Knowledge working with basic computers
(printing etc.) and Microsoft word documents. On-10-15 years
of work experience in related field with certification(s) in related
field. Knowledge in carpentry work, plumbing and electrical.
Knowledge working with basic computers (printing etc.) and
Microsoft word documents.

Preferred:
Preferred teaching experience, but not required. (Higher
education level/or Secondary) Preferred online teaching
experience, but not required.

* Salary dependent upon experience
and education in related field

To Apply: Submit a completed SGU job application with a
copy of your HS Diploma or equivalent, Resume, Transcripts,
verification of College Degree(s), Certificates, Driver's license,
Tribal ID or abstract, proof of COVID-19 vaccination to the HR
Department. Applications are available on the SGU Website
under job opportunities.

Open until filled.

For further information and position description contact
Brenda L. Farmer, Acting HR Director in care of the SGU HR office
at the Antelope Lake campus. Administration Bldg. 605-856-8262.
Brenda.Farmer@sinte.gleska.edu.

Incomplete applications will not be considered.

*** Proof of Publication ***

STATE OF SOUTH DAKOTA)

County of Pennington)

SS:

S.D. DEPT. OF AGRICULTURE
AGRICULTURAL SERVICES
523 E. CAPITOL AVE.
PIERRE SD 57501

ORDER NUMBER 43617

RECEIVED

MAR 11 2022

WATER RIGHTS
PROGRAM

The undersigned, being duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared in said newspaper once each week for one

successive week, the first publication there of being on the

9 day of March, 20 22
Karise Corniche

Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 03/09/2022

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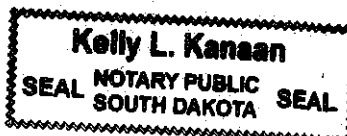
FILED ON: 3/9/2022

Subscribed and sworn to before me this

9th day of March, 20 22
Kelly L. Kanaan Notary Public

My commission expires

Jan 17, 20 25



March 9, 2022
NOTICE OF APPLICATION NO. 2836-2 to Appropriate Water

Notice is given that Lisa O'Rourke-Fulton, 29393 272nd Ave, Valentine NE 69201 has filed an application for a water permit to appropriate 89 cubic feet of water per second from two wells to be completed into the Ogallala Aquifer (approximately 210' feet deep) located in the NW 1/4-NE 1/4 and the approximate center of the NE 1/4 Section 25 for irrigation of 135 acres located in the NE 1/4 Section 25 all in T37N-R29W. This site is located approximately 11 miles southwest of Mission SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2836-2 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. The Chief Engineer's recommendation with qualifications the application and staff report are available at <https://danr.sd.gov/public> or contact Ron Duval for this information or other information at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation 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 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, Ross 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 March 21, 2022.

The petition 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.

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 March 21, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

(Published one time at the approximate cost of \$69.12)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 25, 2022

NOTICE OF HEARING

TO: Lisa O'Rourke-Fulton Rosebud Sioux Tribe
29393 272nd Ave c/o Scott Herman, Tribal President
Valentine NE 69201 Box 430
 Rosebud SD 57570

Syed Huq Ann Mines Bailey, Assistant Attorney General
PO Box 910 1302 East Highway 14, Suite 1
Rosebud SD 57570 Pierre SD 57501-8501

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

SUBJECT: Notice of Hearing on Water Permit Application No. 2836-2, Lisa O'Rourke-Fulton

A petition has been filed in the matter of Water Permit Application No. 2836-2 in response to the Notice of Application published in the Todd County Tribune and Rapid City Journal on March 9, 2022. This notice schedules a hearing on Application No. 2836-2 before the South Dakota Water Management Board.

Water Permit Application No. 2836-2 proposes to appropriate 1.89 cubic feet of water per second from two wells to be completed into the Ogallala Aquifer (approximately 210 feet deep) located in the NW 1/4 NE 1/4 and the approximate center of the NE 1/4 Section 25 for irrigation of 135 acres located in the NE 1/4 Section 25; all in T37N-R29W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 2836-2 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.

The Water Management Board will conduct a hearing to consider Application No. 2836-2 at 11:00 AM (Central Time), on Wednesday, May 4, 2022, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The May 4, 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 opposing the application. A request for an automatic delay must be filed by **April 4, 2022**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." 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.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. As a legal entity (Rosebud Sioux Tribe), the petitioner, is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy of the report, recommendation, and affidavit of publication. In addition, a copy of the petition filed in the matter of Water Permit Application No. 2836-2 is being provided to the applicant and legal counsel for DANR. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, and other pleadings filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application or other information related to the application. 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 direct mail to you, and the applicable date to give notice to the Chief Engineer is April 4, 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 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated March 25, 2022, with attachments regarding Water Permit Application No. 2836-2 - Lisa O'Rourke-Fulton, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on March 25, 2022.

Lisa O'Rourke-Fulton
29393 272nd Ave
Valentine NE 69201

Rosebud Sioux Tribe
c/o Scott Herman, Tribal President
Box 430
Rosebud SD 57570

Syed Huq
PO Box 910
Rosebud SD 57570

Above also Sent Inter-office to:

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

Vickie Maberry
Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of March, 2022.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2025

