



**DANR**  
SOUTH DAKOTA

**WATER MANAGEMENT BOARD  
Meeting on July 6, 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>

**July 6, 2022**

9:30 AM Call to Order

Roll Call

Adopt Final Agenda

Conflicts Disclosures and Requests for State Board Waivers

Adopt May 4, 2022 Board Meeting Minutes

Set October 5 - 6, 2022 Meeting Dates and Location

Public comment period in accordance with SDCL 1-25-1

Status and Review of Water Rights Litigation

Request to Advertise Amendments to ARSD Article 74:51, Surface Water Quality – Shannon Minerich

Administer Oath to Department of Agriculture and Natural Resources Staff

Cancellation Considerations – Ron Duvall

Future Use Reviews – Ron Duvall

9:45 AM Consider Water Permit Application No. 2833-2, Brian Burnham – Adam Mathiowetz

Consider Water Permit Application No. 2834-2, Blake Burnham – Adam Mathiowetz

11:00 AM Consider Water Permit Application No. 8620-3, Shannon Hutterian Brethren Inc. – Kim Drennon

**LUNCH**

Continue any prior agenda items not yet completed.

**ADJOURN**

## **WATER MANAGEMENT BOARD**

### **Meeting on July 6, 2022**

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

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

# WATER MANAGEMENT BOARD MEETING

## July 6, 2022

<b>Qualifications:</b>
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

2833-2	Brian Burnham	Winner	TR	1.85 cfs	130 acres	9 wells-Quaternary Eolian	wi, wcr, iq
2834-2	Blake Burnham	Winner	TR	1.85 cfs	130 acres	4 wells-Quaternary Terrace	wi, wcr, iq
8620-3	Shannon Hutterian Brethren	Winfred	MR	0.111 cfs	commercial	2 wells-Codell Aquifer	wi, 4 special

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

1988A-1	Western Construction Inc	Rapid City	MD	2.67 cfs	industrial	Belle Fourche River	lf, 5 special
2017-1	Broken Bridge Ranch LLC	Sturgis	MD	3.00 cfs	221 acres	Belle Fourche River	lf, iq
2018-1	Monarch Ridge Devel Inc	Black Hawk	MD	1.11 cfs	wds	1 well-Madison Aquifer	wi, wcr, 3 special
2841-2	HWY 79 LLC	Rapid City	PE	0.89 cfs	wds	2 wells-Inyan Kara Aquifer	wi, 2 special
2842-2	H & H Land Co #2 LLC	Rapid City	PE	0.09 cfs	wds	2 wells-Quaternary Alluvium	wi, wcr, 2 special
2845-2	USDA, Forest Service	Lakewood CO	JN	100 AF	rec,fwp,dom	runoff-trib of N Fork Medicine Cr	lf, 1 special
2846-2	Clay Kaiser	Millboro	TR	1.11 cfs	60 acres	runoff-existing storage dam	lf, iq, 2 special
2847-2	Donovan Farms LLC	Tuthill	BT	2.11 cfs	160 acres	1 well-Ogallala Aquifer	wi, wcr, iq
8572-3	Ray Martinmaas	Orient	HD	43.5 AF	rec, livestock	runoff-Matter Creek	lf, 1 special
8597-3	CHS Farmer Alliance	Freeman	HT	0.1 cfs	commercial	1 well-Niobrara Aquifer	wi, 2 special
8605-3	Lenny Peterson	Hitchcock	SP	2.29 cfs	160 acres	James River	iq, 3 special
8607-3	Spring Creek Httm Brethren	Forbes ND	MP	0.22 cfs	commercial	3 wells-Inyan Kara Aquifer	wi, wcr, 4 special
8608-3	Dennis & Wayne Fischer	Piedmont	CA	1.89 cfs	135 acres	1 well-Grand Aquifer	wi, iq
8609-3	Clover Leaf Farms Inc	Elk Point	UN	2.0 cfs	60 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8610-3	Five Star Cottages LLC	Vermillion	CL	no add'l	65 acres	1 well-Missouri:Elk Point	wi, iq
8611-3	Chase L Jensen	Aurora	BG	1.14 cfs	80 acres	1 well-Rutland Aquifer	wi, wcr, iq
8612-3	Drumgoon Digester Renewable Energy LLC	Lake Norden	HM	0.10 cfs	commercial	1 well-Prairie Coteau Aquifer	wi, wcr, 2 special
8613-3	Lewis & Clark RWS	Tea	CL	29.76 cfs	wds	well field-Missouri:Elk Point	wi, 2 special

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8615-3	Ralph & Lucille Marquardt	Yankton	CL	2.0 cfs	160 acres	1 well-Missouri Elk Point	wi, wcr, iq
8617-3	Victory Farms LLC	Milbank	GT	0.34 cfs	commercial	1 well-Revilla Aquifer	wi, 4 special
8618-3	MoDak Dairy Inc	Goodwin	DU	1.12 cfs	commercial	2 wells-Pleistocene Series Unknown	wi, 4 special
8619-3	Tim or Kari Ostrem	Centerville	CL	1.78 cfs	260 acres	1 well-Upper Vermillion Missouri South Aquifer	wi, wcr, iq
8621-3	Todd Maeschen	Ethan	DN	1.34 cfs	160 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8622-3	Cory Amdahl	Summit	GT	1.78 cfs	108 acres	3 wells-Big Sioux:North	wi, wcr, iq,1 special
8623-3	Anden VanBeek	Hudson	UN	1.56 cfs	246.45 acres	2 wells-Brule Creek Aquifer	wi, wcr, iq
8624-3	Mark Johnson	Avon	BH	1.56 cfs	136 acres	1 well-Niobrara Aquifer	wi, wcr, iq
8625-3	Marty or Teresa Gilbertson	Vermillion	CL	1.78 cfs	100 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8626-3	Tri-Cross Renewable Energy	Viborg	TU	0.10 cfs	commercial	1 well-Niobrara Aquifer	wi, wcr,2 special
8627-3	Richard L Logue	Colorado Sprs CO	CL	no add'l	60 acres	1 well-Missouri:Elk Point	wi, wcr, iq
8628-3	David E Hoops	Huron	CA	1.44 cfs	110 acres	3 wells-Herreid Management Unit of Spring Creek Aquifer	wi, wcr, iq
8631-3	Tamera A Norton (Schrempp)	Yankton	UN	1.11 cfs	40 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8632-3	Bottolfson Brothers	Vermillion	CL	1.78 cfs	122.04 acres	1 well-Lower Vermillion Missouri Aquifer	wi, wcr, iq,1 special
8633-3	Jackrabbit Family Farms	Pipestone MN	DN	0.115 cfs	commercial	1 well-Codell Aquifer	wi, 4 special
8634-3	Daniel M Ulmer	Yankton	HT	1.78 cfs	80 acres	1 well-Lower James Missouri	wi, wcr, iq,1 special

## Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
551-2	City of Winner	Winner	TR	1,568 AF	municipal	Ogallala Aquifer	none
1622-2	City of Gregory	Gregory	GY	269 AF	municipal	Ogallala Aquifer	none
1660-2	City of Burke	Burke	GY	396 AF	municipal	Ogallala Aquifer	none
3429-3	WEB Water Development	Aberdeen	BN	15,000 AF	RWS	Missouri River	none
3984-3,	Big Sioux Community	Egan	MY	589 AF	RWS	Big Sioux:Moody Aquifer	none
3984A-3,	Water System Inc						
3984B-3							
4456-3,	Aurora-Brule RWS Inc	Kimball	BL	621 AF	RWS	Missouri River	none
4456A-3							
6259-3	City of Volga	Volga	BG	1,216 AF	municipal	Big Sioux:Brookings Aquifer	none



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

MINUTES OF THE 236<sup>TH</sup> MEETING  
OF THE WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
MAY 4, 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: Rodney Freeman, Leo Holzbauer, and Peggy Dixon attended in person. Tim Bjork, Bill Larson, and Chad Comes attended remotely. Jim Hutmacher was absent.

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

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

Legislative Oversight Committee: Senator Mary Duvall.

Court Reporter: Stephanie Moen, Stephanie Moen & Associates, Mitchell, SD.

Consider Chief Engineer's Motion to Dismiss Robert Roeber Petition to Establish Ordinary High Water Mark on Cottonwood Lake in Spink County: Robert Roeber, Redfield, SD.

Consider Application No. 2840-2, Rapid Valley Sanitary District – Water Service to Reserve Water for Future Use: Talbot Wiczorek, counsel for Rapid Valley Sanitary District; Rusty Schmidt, manager of Rapid Valley Sanitary District; Dustin Dale, engineer, AE2S.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT MARCH 2, 2022, BOARD MEETING MINUTES: Motion by Freeman, seconded by Holzbauer, to approve the minutes of the March 2, 2022, Water Management Board meeting. A roll call vote was taken, and the motion with Dixon, Freeman, Holzbauer, Larson, and Bjork

voting aye. Comes abstained.

JULY 6-7, 2022, MEETING LOCATION: The July meeting will be in Pierre.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: Robert Roeber, Spink County, commented regarding his nephew possibly applying for water permits sometime in the future for non-meandered waters in the Cottonwood Lake area.

UPDATE ON DANR ACTIVITIES: Eric Gronlund, Chief Engineer, Water Rights Program, stated that included in the board packet was a copy of an email from Marv Schumacher commenting on Water Permit Application No. 8573-3, MGJR LLC filed by Jonathon Hofer for irrigation north of Pierre. The ability to file a comment on an application without causing a contested case hearing went into effect July 1, 2021, and this is the first time the department has received a comment of this nature that is required to be included in the board packet. As part of that new statute, comments become part of the record and are required to be provided to the board.

Mr. Gronlund stated that this was a water permit application for additional irrigation from an existing well that was completed into the Grey Goose aquifer about 10 miles north of Pierre. The application was to irrigate an additional 110 acres. There was no increase in diversion rate, but it brought the number of acres to be irrigated to 190. Mr. Schumacher's well is about five miles to the southeast of this well, and he is the nearest water right holder. The Grey Goose aquifer is generally unconfined in Hughes County, but the report on this application did find that at that location it was somewhat confined. Based on observation well network data for the area, drawdown from area wells pumping is fairly minimal. The observation well, which has been in place since 1980, has shown an increase in water levels over the period of record, and Water Rights staff does not believe there is going to be unlawful impairment of existing rights.

Also included in the board packet was list of DANR 2022 legislative session accomplishments and a table of some bills that were of interest to the DANR Water Rights Program. Mr. Gronlund discussed the following 2022 bills:

- HB 1013 - Make appropriation for costs related to Capitol Lake. This bill provides general funds of \$500,000 and \$3,000,000 of federal fund expenditure authority to the Bureau of Administration to develop a master plan for Capitol Lake and the Veteran's Memorial, including plugging the existing well, and activities to improve the lake water quality, including dredging. The bill was 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. This bill appropriates \$6,500,000 to the Office of School and Public Lands for replacing the Richmond Lake spillway and for general repair of other state-owned dams. The bill was signed by the Governor.
- SB 62 - Make an appropriation for eligible water, wastewater, storm water, and nonpoint source projects. This bill 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 transformative funding package that will impact South Dakota for generations. The bill was signed by the Governor.

- SB 64 - Make appropriation from the water and environment fund for various water and environmental purposes. This bill, 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 up to 45 new observation wells and repair of six observation wells in the Black Hills and Sioux Falls region. This bill was signed by the Governor.
- SB 67 - Make an appropriation to Game, Fish and Parks to improve and repair infrastructure around Lake Alvin and Newell Lake. The bill appropriates \$5,600,000 to Game, Fish and Parks for construction, reconstruction, renovation, and modernization at Lake Alvin and Newell Lake. The bill was signed by the Governor.
- SB 181 - Require the Department of Agriculture and Natural Resources to assemble a task force to study the adoption of a watershed ecosystems management approach. The bill would have required the department to assemble 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. The bill asked that the task force quantify water availability in each watershed over next fifty years taking into consideration growth, climate change and tribal needs, determine the current quality of water in each watershed and identify potential future sources of contamination, and manage watersheds using an ecosystem approach to maximize quantity and quality. The bill required a report with a recommendation by June 30, 2023. The bill provided no funding or staffing. This bill was deferred to the 41st day by the Senate Agriculture and Natural Resources Committee.

Mr. Gronlund stated that the drought of 2021 and good commodity prices, the Water Rights Program has seen an extreme increase in water permit applications being filed. Fifty-three applications were processed in 2019, 70 applications were processed 2020, 141 applications were processed in 2021, and so far in 2022, 80 applications have been received. Mr. Gronlund noted that the Water Rights Program is short on staff at this time. The Water Rights Program has four vacant engineering positions and getting qualified applicants has been a challenge so none of those positions have been filled.

While most of South Dakota received precipitation over the last week, the prediction is still for drought this year. Mr. Gronlund stated that he and Mark Rath review the USGS gaging information every day to see what the flows are.

Mr. Gronlund answered questions from the board regarding the 2021 legislation that changed the

process for petitioning for a contested case hearing.

**STATUS AND REVIEW OF WATER RIGHTS LITIGATION:** Mr. McVey reported that the Powertech appeal is pending regarding the board's order denying the motion to amend the procedural order to resume the evidentiary hearing.

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

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

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

The chief engineer recommended cancellation of the following water rights/permits/vested water rights for the reasons listed.

Ron Duvall, Water Rights Program, noted that Division I is all of the area north of the Cheyenne River and Pennington County, Division II is all of the area south of the Cheyenne River and Pennington County, and Division III includes all of the east river area.

Number	Original Owner	Present Owner(s) and Other Persons Notified	Reason
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#### **DIVISION I WATER RIGHT**

<b>RT 1245-1</b>	Navarre Bachand Farms Inc.	Pat Daly, w/Broken Bridge Ranch LLC	Abandonment/Forfeiture
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#### **DIVISION II WATER RIGHT & VESTED WATER RIGHTS**

<b>VR 599-2</b>	Dept of Game, Fish & Parks	Hilary Morey, GFP Jarrod Johnson, SPL	Abandonment/Forfeiture
<b>VR 680-2</b>	Dept of Game, Fish & Parks	Hilary Morey, GFP Jarrod Johnson, SPL	Abandonment/Forfeiture
<b>RT 737-2</b>	Larry & Loren Swick	Betty Swick	Abandonment/Forfeiture
<b>VR 2039-2</b>	Hawthorne Ditch Company	Howard Rice, Pres, Hawthorne Ditch Co.; Keith Ham & Jerry Hammerquist	Abandonment

#### **DIVISION III WATER PERMITS, WATER RIGHT & VESTED RIGHT**

<b>VR 829-3</b>	Dept of Game, Fish & Parks	Hilary Morey, GFP Jarrod Johnson, SPL	Abandonment/Forfeiture
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Water Management Board  
May 4, 2022, Meeting Minutes

<b>RT 5970-3</b>	William & Barry Juhnke	Barry Juhnke	Abandonment/Forfeiture
<b>PE 6125-3</b>	Wm & Barry Juhnke	Barry Juhnke	Abandonment/Forfeiture
<b>PE 6806A-3</b>	Bill & Barry Juhnke	Barry Juhnke	Abandonment/Forfeiture
<b>PE 7699-3</b>	David Huber	Same	Non-Construction
<b>PE 7710-3</b>	Argo Brothers	David Argo	Non-Construction
<b>PE 7814-3</b>	David Huber	Same	Non-Construction
<b>PE 7849-3</b>	John or Nancy Haefner	Same	Non-Construction
<b>PE 7889-3</b>	Todd Jongeling	Same	Non-Construction
<b>PE 8037-3</b>	Tyler Andersen	Same	Non-Construction
<b>PE 8220-3</b>	City of Pierre	Same (% Kristi Honeywell, City Administrator)	Non-Construction
<b>PE 8276-3</b>	Larry Bayer	Same	Abandonment
<b>PE 8355-3</b>	Eureka Redi Mix	Tom Mahlke w/Eureka Redi Mix and Kenny Jensen w/Jensen Rock & Sand	Abandonment
<b>PE 8357-3</b>	Jensen Rock & Sand Inc	Same (% Courtney Davis)	Abandonment

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

**CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION IN THE MATTER OF CANCELLATION OF WATER PERMIT NO. 7148-3, JASON FRERICHS:**

Mr. McVey stated that this matter was heard by the board on March 2, 2022. The reason for the requested cancellation was failure to construct within the statutory deadlines. After hearing the matter, the board cancelled Water Permit No. 7148-3 for failure to construct and place water to beneficial use within the statutory deadlines.

Ms. Mines Bailey, on behalf of the Water Rights Program, submitted proposed Findings of Fact, Conclusions of Law and Final Decision.

Mr. McVey recommended the board accept the proposed Findings of Fact, Conclusions of Law and Final Decision.

Motion by Freeman, seconded by Larson, to accept the Findings of Fact, Conclusions of Law and Final Decision in the matter of cancellation of Water Permit No. 7148-3, Jason Frerichs. A roll call vote was taken, and the motion carried with Dixon, Freeman, Holzbauer, Larson, and Bjork voting aye. Comes abstained.

**CONSIDER REMOVING QUALIFICATION REQUIRING USE OF A FLOW METER ON VESTED WATER RIGHT NOS. 1258A-1 AND 1258B-1, DOBESH RANCHES LLC:** Mark Rath, Water Rights Program, reported that in 1981 there was a drought on the Belle Fourche River and the department had issued shut-off orders. At that time, it was found that Mr. Dobesh was irrigating, but there was no water permit on file. Based on staff investigation, Mr. Dobesh filed a vested water right claim for two different systems that were part of two ranches that he had purchased. They both had old priority dates of 1891 and 1920.

The Water Management Board approved Vested Water Right No. 1258-1 in 1982 following a contested case hearing. The recognized vested right was issued with the following qualification requiring metering of water use:

All pumping under this right shall be through water flow meters that indicate the gallons per minute flowing through the meter plus a totalizer. The beginning and end of season pumping figures are to be sent to the Water Rights Program.

In 1989, a Water Rights Program staff engineer performed an inspection and investigation for validation of this water right. At that time, Mr. Dobesh indicated the engineer stated that there was not a need for the metering because no other water right had metering requirements. The Water Management Board validated the water right in 1989 without removing the qualification. The validated water right document was issued without the metering qualification, so Mr. Dobesh thought the metering requirement had been removed.

In early July of 2021, shut-off orders were issued to Mr. Dobesh because the Belle Fourche Irrigation District had ordered water from Keyhole reservoir. Staff's information, based on the gaging station at the state line, was that there were no natural flows in the Belle Fourche River, so the only water coming down from the Belle Fourche River would have been purchased water. Mr. Dobesh contacted the Water Rights Program questioning the accuracy of the gage. Mr. Dobesh said before the Keyhole Reservoir ordered water got to him, there was actually flow going past his diversion point. Mr. Dobesh said he should not have been shut off on the senior priority date, which would have been 1891 and predated the Bureau of Reclamation's 1907 water right for the Belle Fourche Reservoir. To deal with this issue, the DANR has added a gaging station downstream of Belle Fourche Reservoir and the vested water right was split into two vested rights, the older priority date and the newer priority date to avoid future issues and only issuing shutoff orders to the vested right junior to the Belle Fourche Irrigation District. The qualification for metering, which was on the original document, was included in the reissued vested water rights. Mr. Dobesh then contacted the department and said he was concerned because he thought the metering requirement had been removed in the 1989 validation. Mr. Rath researched it, and he could not find that the board had ever taken a formal action to remove the metering qualification. Mr. Rath talked to the chief engineer, and it was decided that staff would take it to the board for formal action because none of the other rights have that requirement and staff does not see a need for the metering requirement. The requirement also puts a burden on Mr. Dobesh to maintain a meter.

The Water Rights Program recommended that the board remove the metering qualification from the two vested water rights.

Motion by Freeman, seconded by Dixon, to remove the flow meter qualification on Vested Water Right Nos. 1258A-1 and 1258B-1, Dobesh Ranches LLC. A roll call vote was taken, and the 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 APPLICANT'S REQUEST TO DENY WATER PERMIT APPLICATION NO. 8563-3, TIM WELLENSTEIN: Chairman Bjork turned the gavel over to Hearing Chairman Rodney Freeman.

Mark Rath reported that Mr. Wellenstein had applied for a water permit to irrigation from Turkey Ridge Creek. Staff reviewed the application, and the chief engineer issued a recommendation, which was public noticed. Following the public notice, the Water Rights Program received 13 petitions in opposition to the application. Mr. Wellenstein submitted a letter requesting that the board deny his application. Denial of the application will allow the department to return 75 percent of the application fee to Mr. Wellenstein.

After submitting the letter requesting that the board deny the application, Mr. Wellenstein applied for a groundwater permit, which has gone through the process and has recently been issued.

Motion by Larson, seconded by Holzbauer, to deny Water Permit Application No. 8563-3, Tim

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

CONSIDER WATER PERMIT APPLICATION NO. 8579-3, BRETT GUTHMILLER: Ann Mines Bailey stated that the chief engineer recommended deferral of this application. The applicant filed a petition opposing the chief engineer's recommendation, but the applicant did not appear at the meeting today.

Hearing Chairman Freeman stated that it would be appropriate for the department to explain its position for recommending deferral.

Ms. Mines Bailey offered Exhibit 1, the administrative record for Water Permit Application No. 8579-3, Brett Guthmiller. The record contains the application, the report and recommendation of the chief engineer, the petition in opposition, and the notices of publication.

Hearing Chairman Freeman admitted the exhibit into the record.

Ms. Mines Bailey called Whitney Kilts who had previously been administered the oath by the court reporter.

Ms. Kilts testified that she is an engineer with the Department of Agriculture and Natural Resources, Water Rights Program. Ms. Kilts prepared the technical review for the chief engineer on Water Permit Application No. 8579-3.

Water Permit Application No. 8579-3 proposes to appropriate water from the Niobrara aquifer for the irrigation of 32 acres at a diversion rate of 0.89 cubic feet per second (cfs) from one well. Both the proposed well and proposed acres for irrigation are located in Hutchison County approximately four miles southeast of Menno, SD.

Ms. Kilts pointed out typographical errors on page 1 and 12. Neither of the corrections affect the conclusions of the report. She presented her report to the board.

The Niobrara Formation underlies most of eastern and western South Dakota and is a mix of chalk, marl, and shale. Within that formation there are areas where the formation contains sufficient permeability and is saturated enough to act as an aquifer. In the southeastern part of the state there are several areas where glacial activity and erosion have separated portions of the Niobrara Formation from the main body of the formation. This is in one such portion.

When conducting the availability analysis, Ms. Kilts looked at just this portion of the Niobrara aquifer since it is separate from the main body. The approximate aerial extent of this portion of the formation is 340,550 acres. This portion of the aquifer is generally under confined conditions.

The Water Rights Program monitors 12 observation wells in this portion of the Niobrara aquifer. Ms. Kilts reviewed data from all 12 observation wells, and the hydrographs for all wells are included in her report.



Based on the observation well data, unappropriated water is available within this portion of the Niobrara aquifer. The data shows stable to increasing water levels throughout the aquifer over the period of record. The period of record for most of these observation wells begins in the 1980s and extends up to 2021, and within that period of record we see response to climatic conditions and some localized seasonal pumping from irrigation, but at the end of the irrigation season we see recovery of the water levels. Overall, the stable to increasing water levels, as well as the strong response to climatic conditions indicates that there is water available in the aquifer to meet the water use proposed by this application.

No studies have not been conducted to determine the amount of recharge to the Niobrara aquifer in South Dakota. A previous application report for this portion of the Niobrara estimated discharge from the western side of this portion of the Niobrara aquifer. Basically, when observation wells show that over the period of record there are generally stable water levels, natural discharge can be estimated from the aquifer to get an idea of what the magnitude of recharge is, so if water levels are stable, water coming out should at least equal water coming in. The estimated discharge on the western side of this portion of the aquifer was 9,837 acre-feet per year.

Ms. Kilts stated that there are currently 25 active water rights or water permits in this portion of the Niobrara aquifer that are withdrawing water. Six of those are for non-irrigation and the remainder are for irrigation. The estimated average annual withdrawal associated with those water permits/rights is 1,123 acre-feet per year. Ms. Kilts' conclusion is that unappropriated water is available in this portion of the Niobrara aquifer for at least the amount that was requested by the applicant.

Exhibit 3 is a map of the area showing the proposed diversion point for this application and also shows other information from the area such as water permits completed into this portion of the Niobrara and observation wells. Ms. Kilts testified that she created this map using resources commonly used by DANR staff.

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

The proposed point of diversion for this application is shown on the map by a yellow star with a call out box labeled 8579-3 toward the lower portion of the map. The red circles on the map show diversion points for other water rights/permits completed into this portion of the Niobrara aquifer. The blue circles show the location of Water Rights' observation wells monitoring this portion of the Niobrara aquifer. The orange circles show the location of two domestic wells for which Water Rights received a complaint of unlawful impairment in August 2021. The different colored areas on the map indicate the top-most bedrock present once the overlying glacial materials are penetrated.

Regarding the potential for unlawful impairment, Ms. Kilts stated that she looked at what the application proposed to appropriate, other water rights and permits in the area, where domestic wells in the area are located, how other observation wells in the aquifer respond to pumping, and she reviewed the history of complaints within this portion of the Niobrara aquifer.

Exhibit 4 is Water Rights Program file documentation and other documentation associated with a complaint that was received in August 2021 from Dale Mehlhaf regarding domestic wells completed into this portion of the Niobrara aquifer.

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

Ms. Kilts stated that Mr. Mehlhaf's complaint was his two domestic wells went dry due to irrigation in the area. Based on the well completion reports that the Water Rights has on file for those wells, Mr. Mehlhaf's wells were deemed to meet the definition of an adequate well. An adequate well is a well that is 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 formation material when the well is constructed or to allow the pump to be placed as near to the bottom of aquifer as is practical if the aquifer thickness is less than 20 feet. Within the well construction standards, there is a definition of an adversely impacted domestic well. That definition is a well in which the pump intake was set at least 20 feet below the aquifer at the time of construction or if the aquifer is less than 20 feet thick 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.

Ms. Kilts pointed out on Exhibit 3 the location of Mr. Mehlhaf's domestic wells, which are shown on the map by the two orange circles.

When the Water Rights Program received the complaint submitted by Mr. Mehlhaf, staff began to review available information to see if a determination could be made as to whether unlawful impairment was occurring. Based on the preliminary review of the information, there was some indication that there may be potential for impairment; however, there is no observation well in the area of the two domestic wells, so information was somewhat limited. The chief engineer reached out to the irrigation permit holders in the southwest, who agreed to a voluntary shut-down of irrigation for one week to see whether there was any impact on Mr. Mehlhaf's domestic wells. The following water permits voluntarily ceased pumping for one week: 6708-3, 7478-3, and 7617-3. Ms. Kilts stated that the Water Rights Program intended to ask No. 7683-3 to shut down for a week, but there may have been a miscommunication, so they did not shut down.

Ms. Kilts stated that the Water Rights Program asked the irrigation permit holders to the southwest of Mr. Mehlhaf's wells to shut down but not the irrigation permits to the north because, at the time, there were items in the underlying geology as well as the distance and direction of water flow that indicated that even if unlawful impairment was occurring, the irrigation rights to the southwest would be the most likely to be the cause. After cessation of pumping for approximately one week, the Water Rights staff checked in the domestic well owner who indicated that he saw improvement in at least one of the wells. Staff continued to follow up the domestic well owner on a weekly basis for several weeks and continued to see improvement. It was also noted in one of the further follow-ups that there was improvement seen after the irrigation wells to the north were shut down, so they were also added at that point to the complaint. This started toward the middle of August 2021 and actions and follow-up with Water

Rights extended into September.

Based on the information that was available, it indicated that further investigation was needed. The further action was to coordinate with the South Dakota Geological Survey to install additional observation wells in the area in order to get a better picture of what was going on,. Secondly, to get all of the water permits that are due for licensing inspection inspected and licensed so the Water Rights Program knows what has been developed there. The Water Rights Program is currently planning on installing three additional observation wells in the area. At this time, installation of the observation wells is planned for May or early June of 2022. One observation well is planned to be located between the two domestic wells associated with the complaint and the irrigation wells to the southwest, and two observation wells are planned to be located between the two domestic wells associated with the complaint and the irrigation wells to the north.

Exhibit 5 is a map showing the location of cross-sections that were done as part of the water resources of Hutchinson and Turner counties study as well as two cross-sections that are associated with that location. The exhibit also includes the approximate boundary of this portion of the Niobrara aquifer, the diversion point for the application in question, the location of the complaint wells, and the other water rights/permits in the area. On the two cross-sections, emphasis was added on where this specific portion of the Niobrara is on those cross-sections.

Ms. Mines Bailey offered Exhibit 5. Hearing Chairman Freeman admitted the exhibit into the record.

Ms. Kilts pointed out on the first page of the exhibit where the cross-sections on the second and third page are located. These cross-sections are important because the cross-sections give us a picture of what the underlying geology of the formation looks like in the area in terms of how the formation was deposited then later eroded by glacial activity. The information about the underlying geology shows that the top of the Niobrara formation in this area has a dome-type shape where toward the middle of this portion the top of the formation is much higher in elevation than the formation that is closer to the edges. In the area where these domestic wells associated with the complaint are, the top of the Niobrara is at a higher elevation than what it is where the irrigation wells are located.

At the domestic well locations, the well completion reports associated with those wells at the time of completion indicated three and six feet of artesian head pressure. With that little of artesian head pressure if pumping from the irrigation wells extends out to that point, very quickly they go through that artesian head pressure and switch to being unconfined, so the water level starts to drop below the top of the aquifer. Based on the well completion reports for the irrigation wells to the southwest, the artesian head pressure ranged from 20 to 49 feet.

Ms. Mines Bailey asked what this means to Ms. Kilts when she does the review for the potential of unlawful impairment should this application be granted at this time. Ms. Kilts stated that this is something that could be happening and would explain why we're seeing what we're seeing associated with the complaint. Basically, what could be happening is as these irrigation wells turn on and pump, drawdown associated with them could be extending throughout the aquifer

and, with the shape of the aquifer where those domestic wells are at a much higher elevation than the irrigation wells, those domestic wells could potentially be seeing an impact much sooner than the wells that are at a lower elevation.

Ms. Kilts stated that based on the information the Water Rights Program currently has, she cannot say with reasonable probability that that unlawful impairment will not occur should this application be granted.

Mr. Larson asked if the deferral could be shorter than two years. Ms. Kilts answered that it will depend on what we see once the new observation wells are installed and the Water Rights Program starts monitoring the water levels to see what happens when the irrigators start pumping. It could take longer than two years or it could be shorter; it will depend on what happens once data is available.

Motion by Comes, seconded by Larson, to defer Water Permit Application No. 8579-3, Brett Guthmiller, for up to two years. A roll call vote was taken, and the motion carried unanimously.

Ms. Mines Bailey, on behalf of the Water Rights Program, waived Findings of Fact and Conclusions of Law.

CONSIDER CHIEF ENGINEER'S MOTION TO DISMISS ROBERT ROEBER PETITION TO ESTABLISH ORDINARY HIGH WATER MARK ON COTTONWOOD LAKE IN SPINK COUNTY: Ms. Mines Bailey stated that in reviewing the statutes and pertinent caselaw, it became clear that the Water Management Board's authority regarding setting an ordinary high water mark extends to meandered bodies of water and not to nonmeandered bodies of water.

The petition submitted by Mr. Roeber is a request to set the ordinary high water mark for Cottonwood Lake in Spink County. Cottonwood Lake is considered a Section 8 lake under the nonmeandered water law, so it is currently open to the public. However, in reviewing SDCL 43-17-21, which authorizes the board to set ordinary high water marks, and SDCL 43-17-28, which provides the method by which someone can petition the board for an ordinary high water mark, it becomes clear that public water is defined as a meandered water, because the purpose of setting an ordinary high water mark or an ordinary low water mark is to determine public use access rights.

Most often in the case of a meandered body of water, it is the state that owns the bed of the water body, and the riparian landowner owns to the ordinary low water mark, but it is subject to an easement for the public use between the ordinary high water mark and the ordinary low water mark. The purpose of setting the ordinary high and ordinary low water marks is to determine where that public easement is. In a nonmeandered body of water, the lakebed is privately owned for the most part. In this instance, the state owns certain small parcels of Cottonwood Lake; however, the majority of Cottonwood Lake was open for public settlement, and the vast majority of it is owned by private individuals. In this case, there is no public easement between the ordinary high and ordinary low water marks. The use of those lands and that water is governed by a specific chapter in South Dakota law.

Ms. Mines Bailey stated that after reviewing SDCL 43-17-28, it became clear to her that the board's authority extends to meandered bodies of water and not nonmeandered bodies of water. In SDCL 43-17-28, which is the means by which one can petition the board, if you define public lake as a meandered body of water, Mr. Roeber would not be the proper person to come before the Water Management Board to make this request because Cottonwood Lake is a nonmeandered body of water. Moreover, the rules that the Water Management Board has promulgated setting out what a petition for an ordinary high water mark should contain does have certain requirements. This particular petition is merely one sentence requesting an ordinary high water mark, and the petition is signed, but it fails to provide authority or the reasons for the requested action.

At one point in time, the only way the Water Management Board or its predecessor would entertain a motion for an ordinary high water mark is if it was demonstrated to be in the public interest. If the board were to entertain that type of an argument, then South Dakota law has already governed the public use of Cottonwood Lake. It is specifically mentioned in the nonmeandered waters chapter of South Dakota law, and a determination of an ordinary high water mark in this instance would not be of great value; therefore, not in the public interest.

Ms. Mines Bailey asked the board to dismiss this petition for a lack of jurisdiction.

Robert Roeber was administered the oath by the court reporter.

Mr. Roeber requested that he be allowed to distribute copies of exhibits. Ms. Mines Bailey stated that she objected to the exhibits because this is not an evidentiary hearing; it is a hearing on the Water Management Board's jurisdiction; just the motion to dismiss, which is a question of law. Ms. Mines Bailey said she does not believe evidence is necessary, and she has not seen the exhibits.

Hearing Chairman Freeman agreed with Ms. Mines Bailey and the board's counsel that this is not the type of hearing where the board accepts any evidence. The question on dismissing the petition is simply a matter of law before the board, so at this time accepting exhibits would be inappropriate.

Mr. Roeber stated he is asking for a reasonable accommodation to present the exhibits. He said the issue is that the department came out in 2002 and gave a range for a high water mark from 1318 to 1314. The lake association needs to know the high water mark for shoreline stabilization and how high the septic tanks are set, and the lots. This is also needed for some of their Section 319 applications for the Clean Water Act. Mr. Roeber said he is asking for a reasonable accommodation here. The exhibits include pictures from 2004 when Lynn Beck with the Water Rights Program conducted a site visit. In 2011 the lake association applied for a Section 319 grant. Mr. Roeber said he has some damage on his shoreline for which he submitted an application in May. It has been a year since he submitted the petition. It went to the Attorney General's Office, the Secretary of State's Office and the Department of Agriculture and Natural Resources' office. Mr. Roeber said he is trying to offer an explanation on why an ordinary high water mark is needed at Cottonwood Lake. The Cottonwood Lake Association is in a debate at this time to raise the level of the lake for fishing, etc. and a high water mark needs to be

established so the association knows what the elevation is. The properties and septic systems need to be in compliance with the Clean Water Act, and some people would like to establish camping spots. The flood plain maps have changed twice in the last 10 to 15 years, and the association needs to establish the high water mark so it knows where to build. The association is also going through the James River Water Development District to get a 401 and 405 Permits, and the application asks for how much fill to put below or above the high water mark. Mr. Roeber said the water board had people at the lake in 2002, but now there are barriers to what can be done. The association has been waiting for years, and every day they are waiting Mr. Roeber can't do his shoreline repair work from the damage. He said regarding the James River, Rocky Knippling is applying for a Section 319 grant and the James River will also need a high water mark established.

Mr. Roeber said the association could hire an engineer to set the high water mark, but technically it should come through the Water Management Board.

Hearing Chairman Freeman said Mr. Roeber is welcome to leave the information with the Water Rights Program.

Ms. Mines Bailey stated based on the interpretation of South Dakota Supreme Court of the pertinent statutes, a public lake is properly defined as a meandered body of water. If the Water Management Board agrees, that would mean the board has been divested of jurisdiction to set an ordinary high water mark on a nonmeandered body of water.

In response to questions from board members, Ms. Mines Bailey stated that without having reviewed the specifics of the Clean Water Act or any of the Section 319 grant applications that Mr. Roeber referred to, she believes that a private landowner in this situation would be able to make those decisions without the determination of an ordinary high water mark. She does not believe the board has the authority for the reasons set out in her brief. Perhaps something could be done by the legislature to provide such authority to some board or entity. At the time of surveying the lake in the 1800's, the belief was that this lake would dry up or be drained. Ms. Mines Bailey said she believes that there is no authority for the Water Management Board to set an ordinary high water mark on this lake and she does not believe that it would be in anyone's interest to set an ordinary high water mark. Ms. Mines Bailey said she believes that the landowners around the lake are free to do with their land what they so please within the confines of the law. Ms. Mines Bailey said she has not looked at the nonmeandered statutes specifically with that question in mind, but she does not believe there is anything there that would prohibit them taking some action with their land. For drainage they may run into a federal issue with the Corps of Engineers if it's considered a wetland or some sort of wetland mitigation requirement, but she believes they are free to use their land in whatever way the other aspects of the law permit.

Mr. Roeber said the Corps of Engineers requires 401 and 404 Permits for any digging in the water. In order to complete an application for those permits, he needs to know how much fill he is going to put below the high water mark, so it mitigates with what he is going remove. With the flooding in 1997, there were so many people applying for permits that the Corps of Engineers allowed people to get permits. Stephanie Herseth had a water forum and the head of the Corps

of Engineers from the Omaha District spoke. At that time, permits were required and then that aspect was waived because of the number of permit applications being submitted due to the erosion damage to the shorelines and the sediment going into the lake. Mr. Roeber said the lake association is trying to lower the sediment going into the lake, but every day that nothing is done and the wind is blowing, it is eroding more land into the lake.

Mr. Roeber said he has sent information to an environmental attorney from Chicago. The lake association is looking for pro bono representation. He has also sent information to some senators, and he has filed an issue with the Eighth Circuit Court on this because of a 1997 Supreme Court ruling on property rights.

Motion by Larson, seconded by Comes, to grant the motion to dismiss the petition for the establishment of an ordinary high water mark on Cottonwood Lake in Spink County for lack of jurisdiction. A roll call vote was taken, and the motion carried unanimously.

Ms. Mines Bailey will prepare an Order consistent with the board's ruling on the motion to dismiss the petition.

CONSIDER APPLICATION NO. 2840-2, RAPID VALLEY SANITARY DISTRICT – WATER SERVICE, TO RESERVE WATER FOR FUTURE USE: Hearing Chairman Freeman requested appearances.

Ann Mines Bailey, Assistant Attorney General, appeared on behalf of the chief engineer.

Talbot Wieczorek, attorney from Rapid City, appeared on behalf of Rapid Valley Sanitary District.

Ms. Mines Bailey offered Exhibit 1, the administrative file which includes the application, the report and chief engineer's recommendation, and the petition bringing this matter to a contested case. Hearing Chairman Freeman admitted the exhibit into the record.

Ms. Mines Bailey called Mark Rath who had been administered the oath earlier in the meeting.

Mr. Rath testified that he is an engineer with the DANR Water Rights Program. He has worked for the department for 32 years. He is the lead surface water engineer responsible for water rights issues with lakes and streams.

Mr. Rath did the technical review for Future Use Permit Application No. 2840-2, and he prepared a report on the application.

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. 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.

SDCL 46-2A-10 and 46-5-38.1 set out the criteria and conditions under which a future use

permit may be approved and ARSD 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. Mr. Rath's report addresses the first two criteria.

In reviewing the application, Mr. Rath used a study that the US Geological Survey performed years ago on the what the natural flow of the Missouri River would be in the reach of the Oahe Reservoir.

At the time Mr. Rath wrote the report, there were 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). There are 16 existing future use permits reserving 1,392,111 acre-feet annually from the Missouri River. Based on the information available and the amount requested, there would be sufficient water available for this future use permit, as requested.

The Rapid Valley Sanitary District reports their annual use to the Water Rights Program. In 2021, the sanitary district reported using 804 acre-feet of water. Mr. Rath testified that, based on his analysis, there would be sufficient water for the requested amount from the Missouri River. Mr. Rath did not conduct a review of the proposed beneficial use or public interest.

Responding to questions from Mr. Wiczorek, Mr. Rath stated that he reviewed the information provided by Rapid Valley Sanitary District's engineer, which was that the sanitary district would need 6,050 acre-feet of water annually in the future. Mr. Rath determined that water is available for that amount. Mr. Rath stated that the consultant demonstrated a need for the amount of water requested and that domestic use is a beneficial use..

In response to a question from Chairman Bjork, Mr. Rath stated that there are a couple of other future use permits for the use of Missouri River water in the Rapid City area.

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

Mr. Gronlund testified that he is the chief engineer for the Water Rights Program. One of his responsibilities is to make recommendations on water permit applications and future use water permit applications.

Mr. Gronlund reviewed the technical report for this application, and he issued the recommendation for approval of Future Use Permit Application No. 2840-2 for reservation of 1,608 acre-feet of water annually from the Missouri River for Rapid Valley Sanitary District 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.

Mr. Gronlund stated that 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. Mr. Gronlund said he relied on the Rapid Valley Sanitary District's reported water use of 804 acre-feet of water.

Regarding Chairman Bjork's earlier question regarding Rapid City area future use permits from the Missouri River, Mr. Gronlund stated that the West Dakota Water Development District has a future use permit for 10,000 acre-feet of water from the Missouri River and the city of Rapid City has a future use permit for 28,800 acre-feet of water from the Missouri River.

Responding to questions from Mr. Wiczorek, Mr. Gronlund stated that he felt obligated to use the board's rule in making his recommendation, but the rule does state that the board may, at its discretion, limit future use permits to two times the annual amount put to beneficial use. Mr. Gronlund said he agrees that there is sufficient water for the amount requested and he does not dispute anything Mr. Rath testified to. Mr. Gronlund said SDCL 46-5-38 lists the entities that are allowed to hold a future use permit. The statute states that these entities may reserve water for contemplated future needs upon a showing of availability of unappropriated water and future need. Mr. Gronlund stated that the board has more flexibility than he felt he had when he issued the recommendation. He noted that the board is not bound by his recommendation.

Mr. Wiczorek called Rusty Schmidt, who was administered the oath by the court reporter.

Mr. Schmidt testified that he is the general manager for the Rapid Valley Sanitary District. The sanitary district is located on the eastern boundary of Rapid City.

Exhibit 2 is a map showing the boundaries of the Rapid Valley Sanitary District, the newly annexed area, and the Green Valley Sanitary District, which is served by Rapid Valley Sanitary District. Hearing Chairman Freeman admitted the exhibit into the record.

Mr. Schmidt stated that the Box Elder city limits are on the northern boundary of the sanitary district and Rapid City is on the western boundary of the sanitary district. The Rapid Valley Sanitary District was incorporated in 1966, the Rapid Valley Water Company was incorporated in 1962, and the two merged in 1994. The sanitary district provides potable water services for domestic use and wastewater collection services. From the beginning of 2021 to now, there has been a six percent growth in the sanitary district. Several multi-family units are being built at this time.

The newly annexed area is for a new housing development. For the first phase of development, the developer is planning to build 452 single family unit homes. The first phase covers approximately a quarter of the newly annexed property. The developer's plans more homes in the future. Mr. Schmidt said he does not see the growth impact slowing any time soon.

Mr. Schmidt said there has been a push for regionalization in the area, and in order to assist with the regionalization the sanitary district will need more source water. The sanitary district recently received a \$5.3 million American Rescue Plan Act (ARPA) grant from Pennington County for the purpose of regionalization and assisting other entities in the area.

Mr. Schmidt stated in 2012 the Rapid Valley Sanitary District started providing potable water for Green Valley Sanitary District. The Rapid Valley Sanitary District also manages and operates the Green Valley Sanitary District. There is growth in that area as well. Mr. Schmidt expects that the Rapid Valley Sanitary District boundaries will expand with growth in the future. The future use request of 6,050 acre-feet of water annually was for growth in the current district boundaries.

The wastewater reclamation facilities plan was completed at the beginning of 2021. Since that time, the actual population is well over 10,000. DANR has moved the sanitary district to over 10,000 for testing requirements. The projected future growth of 36,000 by 2042 is driven by the current growth factor that is being seen and the multi-family units, which adds considerably more water per capita.

The Ellsworth Air Force Base is located north of the sanitary district. With the sanitary district's willingness to assist other entities outside the district, the air base will have a direct impact on the usage as well as the development of homes within the district boundaries. The air base is projected to bring 5,000 people to the area.

Mr. Schmidt said the primary use in the district is domestic. There are also commercial uses and potential industrial uses.

Responding to questions from Ms. Mines Bailey, Mr. Schmidt testified that the 6,050 acre-feet of water annual projection does not include the current 804 acre-feet annual usage. Currently, the per capita usage is averaged at 100 gallons per person, but the district is estimating a need of 150 gallons per person. There is a range between 80 gallons to 200 gallons, depending on the area and the growth. At the rate of growth at this time, the district is anticipating an increase of four times the population the district currently has. The requested 6,050 acre-feet annually is for the full buildout of the current district boundaries.

In response to a question from Chairman Bjork regarding working with the two other entities that hold future use permits for the Missouri River, Mr. Schmidt stated that the sanitary district is proactive on the regionalization and having meetings with the other entities in the area. It is key that all of the entities work together and utilize all of their sources. With the growth that Rapid Valley Sanitary District is seeing, it is vital that future use permits are granted, as requested, and also work together with all of the other entities.

Responding to a question from Mr. Wieczorek, Mr. Schmidt explained how the sanitary district and the city of Rapid City have worked together to maximize the facilities. The district has over 1,000 single family resident in the district boundaries that are actually within the municipality of Rapid City. On the wastewater side, the district provides all the collection, the lift stations, etc. and sends all of its sanitary sewer to the Rapid City Reclamation Facility. The district is a member of the Western Dakota Regional Water System, which is the organization that was established to try to build a pipeline from the Missouri River to Rapid City.

Mr. Wieczorek called Dustin Dale who was administered the oath by the court reporter. Mr. Dale testified that he is the consulting engineer for Rapid Valley Sanitary District. He is the operations manager for AE2S, which is an engineering consultant firm specializing in water. AE2S prepared the facilities plan in May 2021. The report was based off of the 2020 census data, which were the numbers from 2010 through 2019. At that time the population was 9,114 and showed a 1.2 percent growth annually from 2010 to 2019. In the facilities plan, some future growth was recognized using a growth factor of 1.5 percent. During the past two years, throughout the region, and South Dakota as a whole, has seen a lot of growth, specifically in the Black Hills. Multiple growth projections were used based on density. Mr. Dale said he believes the population projection of 12,275 individuals in 2041 will be reached sooner. Ultimate future growth projection with the annexed property is that the district will be serving 36,000 individuals. In 2022, the development growth has not slowed down.

Responding to question from the board, Mr. Dale stated that there is more developable land east of Rapid Valley than west toward the Hills.

Hearing Chairman Freeman stated that the issue before the board is whether the future use reservation should be for 6,050 acre-feet or 1,608 acre-feet. The statute says the board can exercise its discretion. He requested board action.

Motion by Bjork, seconded by Dixon, to approve Future Use Water Permit Application No. 2840-2, Rapid Valley Sanitary District for reservation of 6,050 acre-feet annually with the qualifications set forth by the chief engineer.

Ms. Dixon stated that she believes 1,608 acre-feet is not enough water to reserve.

Hearing Chairman Freeman said he agreed with Ms. Dixon, and he believes the population projections are correct and more water will be needed. He said he understands the basis for the chief engineer's recommendation, but the board does not have any evidence to show that an amount less than the 6,050 acre-feet will be needed.

Chairman Bjork noted that he agrees with Hearing Chairman Freeman.

Mr. Holzbauer stated that 1,608 acre-feet annually is enough water.

Chairman Bjork said he has been watching what's happening in the area during the five years he has lived in Rapid City; the growth in the area is exponential.

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

Ms. Mines Bailey, on the Water Rights Program, waived Findings of Fact and Conclusion of Law. Mr. Wieczorek, on behalf of Rapid Valley Sanitary District agreed.

CONSIDER WATER PERMIT APPLICATION NO 2836-2, LISA O'ROURKE-FULTON:

Ms. Mines Bailey stated that the Water Rights Program received a letter from the Rosebud Sioux Tribe, the only petitioner in this matter, withdrawing their petition in opposition.

Ms. Mines Bailey said she believes if the Water Management Board were to accept the tribe's withdrawal of the petition that there would be no contested case and no need to present evidence, and the chief can issue the permit.

Hearing Chairman Freeman stated that since the petition in opposition has been withdrawn, the board can accept that and move forward without a contested case.

Motion by Bjork, seconded by Holzbauer, to accept the withdrawal of the petition in opposition. A roll call vote was taken, and the motion carried unanimously.

Hearing Chairman Freeman stated that since the application is now uncontested, the board does not need to take any more action, and the application can be handled by the Water Rights Program.

Ms. O'Rourke-Fulton stated that she had visited with the tribe, and the tribe decided to withdraw their petition in opposition to the application.

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

A court reporter was present for the hearing and a transcript of the proceedings may be obtained by contacting Stephanie Moen & Associates, PO Box 684, Mitchell, SD; [stephanie.moen@mitchelltelecom.net](mailto:stephanie.moen@mitchelltelecom.net); phone number (605) 995-8102.

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

Approved July 6, 2022.

ATTENDANCE SHEET  
WATER MANAGEMENT BOARD

Date May 4, 2022

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY, STATE & ZIP

ITEM OF INTEREST

Robert R. Roche

4308 E 5th Ave

Rapid City SD 57709

Water project  
ASOS Meander  
water  
Legis Oversight

Mary Davall

Pierre

Tobias Wiczorek

Rapid City I.O.B. 8045

Rapid 57709

WARR

Rusty Schmidt

Rapid City 4611 TEAK DR. 57703

RC SD 57703

DANR

Dustin Daxe

1500 Calcoress DR

RC SD 57703

DNR

# WATER MANAGEMENT BOARD MEETING

May 4, 2022

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

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
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 Homeowners Association Inc	Deadwood	LA	0.10 cfs	wds	1 well-Deadwood Aquifer	wi, 2 special
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
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 Fliehs	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

# CANCELLATIONS – JULY 6, 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 II WATER PERMITS & WATER RIGHTS

PE 2739-2	Platte Hutterian Brethren	Same (% Dale Stahl)	BT	4.00	IRR	NC	Ground water Arikaree Aquifer	5-31-2022	
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## DIVISION III WATER PERMITS & WATER RIGHTS

RT 2762-3	Dennis Meyer	Same	BD	1.78	IRR	A	Ground water Warren West James Aquifer	5-31-2022	
RT 4505-3	Eltor Brenner	Joe Brenner	DG	1.00	IRR	A	Ground water Delmont Aquifer	5-31-2022	
PE 6373-3	Ernest R Namminga	Same	BH	1.78	IRR	A/F	Ground water Niobrara Aquifer	5-31-2022	
PE 6937A-3	Dean R Morman	Same	YA	1.78	IRR	NC	Ground water Lower James Missouri Aquifer	5-31-2022	
PE 7265-3 PE 7265A-3	Leesman Ranch	Leesman Ranch (% Leigh Leesman)	SU	7.47	IRR	NC	Ground water Highmore Blunt Aquifer	5-31-2022	
Permit No. 7265A-3 amended Permit No. 7265-3 by extending the construction period (no additional water or acreage)									
PE 7715-3	Allen Vannorsdel	Allen & Shawn Vannorsdel	TU	2.22	IRR	NC	Ground water Upper Vermillion Missouri West Aquifer	5-31-2022	
PE 7941-3	Joseph F Chicoine	Same	UN	1.00	IRR	NC	Ground water Missouri Elk Point Aquifer	5-31-2022	
PE 8263-3	Ohms Avon Farm	Same (% Stephen Ohms)	BH	2.28	IRR	NC	Ground water Niobrara Aquifer	5-31-2022	

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





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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Dale Stahl, Platte Hutterian Brethren, 35271 270<sup>th</sup> St, Platte SD 57369

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

SUBJECT: Cancellation of Water Permit No. 2739-2

Water Permit No. 2739-2 authorized diversion of water from the Arikaree Aquifer to irrigate the N ½ Section 31, T37N, R35W in Bennett County. The time limit for completion of works as specified in the water permit expired on July 27, 2020. A reinstatement application (No. 2839-2) was submitted and approved to cover the same project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2739-2 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 2739-2 at **9:30 am, (Central Time) Wednesday, July 6, 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. 2739-2 based upon facts presented at the public hearing. Our records show Platte Hutterian Brethren to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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 June 10, 2022.

Prior to June 10, 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 June 10, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 2739-2, PLATTE HUTTERIAN BRETHREN**

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. 2739-2.

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

The water permit specified a completion date of July 27, 2020. With the project not constructed, the permit holder applied to reinstate the permit to allow for construction of the project. Water Permit No. 2839-2 was approved April 18, 2022, for the same project.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022



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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Dennis W Meyer, 21007 396<sup>th</sup> Ave., Huron SD 57350

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

SUBJECT: Cancellation of Water Right No. 2762-3

Water Right No. 2762-3 authorizes diversion of ground water from the Warren West James Aquifer for irrigation purposes in the E ½ Section 17, T110N, R62W. On your 2021 irrigation questionnaire, you indicated the use of water as described in the water right had been abandoned. On May 24, 2022, Genny McMath in our office contacted you concerning the questionnaire. You confirmed your intent to discontinue irrigation. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 2762-3 for abandonment.

The Water Management Board will consider cancellation of Water Right No. 2762-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 2762-3 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 June 10, 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.

May 31, 2022  
Dennis W Meyer  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 2762-3, DENNIS W MEYER**

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 Right No. 2762-3.

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

The 2021 irrigation questionnaire submitted by Mr. Meyer indicated the use of water had been abandoned. During a phone conversation on May 24, 2022, Mr. Meyer confirmed he had discontinued irrigation.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022

**Note:**

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



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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Joe Brenner, 28120 US Hwy 281, Armour SD 57313-5725

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

SUBJECT: Cancellation of Water Right No. 4505-3

Water Right No. 4505-3 authorizes diversion of ground water from the Delmont Aquifer for irrigation of 150 acres in portions of Section 8, T98N, R62W. On the 2020 and 2021 irrigation questionnaires you indicated the land was no longer irrigated and the use had been abandoned. On April 28, 2022, Genny McMath with our program spoke with you regarding the questionnaires. During the conversation you confirmed you no longer intended to irrigate. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4505-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 4505-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 4505-3 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 June 10, 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.



May 31, 2022

Joe Brenner

Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.





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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NO. 4505-3, ELTOR BRENNER**

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 Right No. 4505-3, now owned by Joe Brenner.

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

The 2020 and 2021 irrigation questionnaires indicated irrigation was no longer going to be done. On April 28, 2022, Mr. Brenner contacted the office and indicated they no longer intended to irrigate and confirmed the use had been abandoned.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022

**Note:**

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



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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Ernest R Namminga, 40786 310<sup>th</sup> St, Springfield SD 57062

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

SUBJECT: Cancellation of Water Permit No. 6373-3

Water Permit No. 6373-3 authorized diversion of ground water from the Niobrara Aquifer to irrigate the NW ¼ Section 3, T93N, R61W. An inspection for licensing purposes found the well had been drilled into the Choteau West Aquifer instead of the Niobrara Aquifer. The application you filed to correct the source was approved (No. 8575-3) on March 21, 2022, authorizing the system as it was developed. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6373-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 6373-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 6373-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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.

May 31, 2022  
Ernest R Namminga  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 6373-3, ERNEST R NAMMINGA**

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. 6373-3.

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

The licensing investigation for Permit No. 6373-3 found the well had been drilled into the Choteau West Aquifer instead of the Niobrara. The permit holder filed an application to correct the source. Upon approval of the new permit, the project was licensed under Water Right No. 8575-3.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022



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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Dean R Morman, 44742 302<sup>nd</sup> St., Volin SD 57072

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

SUBJECT: Cancellation of Water Permit No. 6937A-3

Water Permit No. 6937A-3 authorizes diversion of water from the Lower James Missouri Aquifer for irrigation of the SW ¼ Section 6, T94N, R54W. In April, 2022, a staff engineer from our program spoke with you about the water permit and it is our understanding the project had not been constructed. The time limit for completion of works as specified in the permit, expired on October 20, 2019. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 6937A-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 6937A-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 6937A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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.

May 31, 2022  
Dean R Morman  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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PIERRE SD 57501-3182  
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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 6937A-3, DEAN R MORMAN**

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. 6937A-3.

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

On April 22, 2022, Keith DeJong, a staff engineer with the program conducted a field investigation of the systems authorized under both of Mr. Mormon's irrigation permits. The irrigation system described in No. 6937A-3 was not constructed. The time limit for completion of works expired October 19, 2019.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022

**Notes:**

- Cancellation of Water Permit No. 6937A-3 does not prohibit a new application for this project in the future.
- Cancellation of No. 6937A-3 does not pertain to Water Permit No. 6938-3 licensed in April, 2022 for the irrigation system in the SE ¼ Section 30, T95N, R54W.





## DEPARTMENT of AGRICULTURE and NATURAL RESOURCES

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May 31, 2022

### NOTICE OF CANCELLATION

TO: Leigh Leesman, Leesman Ranch, 19607 315<sup>th</sup> Ave., Blunt SD 57522

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

SUBJECT: Cancellation of Water Permit Nos. 7265-3 and 7265A-3

Water Permit No. 7265-3 authorized diversion of ground water in the Highmore Blunt Aquifer for irrigation of 523 acres located in portions of Sections 15, 16 and 21, T113N, R75W. Water Permit No. 7265A-3 amended No. 7265-3 to allow additional time to complete construction of works. As specified in the amendment, all construction was to be completed by March 1, 2020. An application was submitted and approved (No. 8583-3) to replace Nos. 7265-3 and 7265A-3 allowing continuation of the project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit Nos. 7265-3 and 7265A-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit Nos. 7265-3 and 7265A-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 7265-3 and 7265A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by these water permits. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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.



May 31, 2022  
Leigh Leesman  
Leesman Ranch  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.



**DEPARTMENT of AGRICULTURE  
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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NOS. 7265-3 AND 7265A-3, LEESMAN RANCH**

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 Nos. 7265-3 and 7265A-3.

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

The project described in Nos. 7265-3 and 7265A-3 was not developed by the date specified for completion of works. The permit holder applied for and received approval of Water Permit No. 8583-3 effectively replacing the existing permits allowing for development of the project and placement of water to beneficial use.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022



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PIERRE SD 57501-3182  
danr.sd.gov

May 31, 2022

**NOTICE OF CANCELLATION**

TO: Allen Vannorsdel, 45515 288<sup>th</sup> St, Viborg SD 57070  
Shawn Vannorsdel, 45442 288<sup>th</sup> St, Viborg SD 57070

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

SUBJECT: Cancellation of Water Permit No. 7715-3

Water Permit No. 7715-3 authorized diversion of water from the Upper Vermillion Missouri West Aquifer to irrigate the SW ¼ Section 16, T97N, R53W in Turner County. The time limit for completion of works as specified in the water permit expired on March 6, 2019. A reinstatement application (No. 8585-3) was submitted and approved to cover the same project. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7715-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7715-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 7715-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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.

May 31, 2022  
Allen Vannorsdel  
Shawn Vannorsdel  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 7715-3, ALLEN VANNORSDEL**

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. 7715-3.

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

In 2020, the permit holder indicated the project covered under No. 7715-3 was not constructed. To enable development of the project, the permit holder applied for a reinstatement. Water Permit No. 8585-3 is now in place to cover the same project.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022



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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Joseph F Chicoine, 32080 477th Ave., Elk Point SD 57025

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

SUBJECT: Cancellation of Water Permit No. 7941-3

Water Permit No. 7941-3 authorized diversion of ground water from the Missouri Elk Point Aquifer to irrigate the SW ¼ NW ¼ Section 29, T92N, R49W in Union County. Irrigation questionnaires submitted for this permit have indicated the project was not constructed. On May 25, 2022, Genny McMath in our program spoke with you about the permit. You confirmed the system has not been constructed. The time limit for completion of works, as described in the permit, lapsed on March 31, 2019. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7941-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 7941-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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.

May 31, 2022  
Joseph F Chicoine  
Page 2

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2022.

Prior to June 10, 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 June 10, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 7941-3, JOSEPH F CHICOINE**

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. 7941-3.

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

Water Permit No. 7941-3 was approved in March 2014 with the time for completion of works expiring in March 2019. Irrigation questionnaires submitted by the permit holder indicated the project had not been constructed. In a follow-up telephone conversation on May 26, 2022, Mr. Chicoine confirmed the information and indicated he may want to irrigate in the future.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022

**Note:**

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





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May 31, 2022

**NOTICE OF CANCELLATION**

TO: Stephen Ohms, Ohms Avon Farm, 119 Algonquin Dr., Lake Winnebago, MO 64034

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

SUBJECT: Cancellation of Water Permit No. 8263-3

Water Permit No. 8263-3 authorizes diversion of ground water from the Niobrara Aquifer to irrigate the NE ¼ Section 23, T94N, R61W in Bon Homme County. On May 17, 2022, one of our staff engineers contacted you to set up a licensing investigation. You indicated your irrigation system had not been constructed. The time limit for completion of works, as specified on the permit lapsed on April 10, 2022. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8263-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8263-3 at **9:30 am, (Central Time) Wednesday, July 6, 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. 8263-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 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 June 10, 2022.

Prior to June 10, 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 June 10, 2022.



**DEPARTMENT of AGRICULTURE  
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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 8263-3, OHMS AVON FARM**

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. 8263-3.

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

The permit holder was contacted regarding a possible licensing investigation on May 17, 2022. Mr. Ohms indicated the system had not been constructed. The time limit for completion of works, as specified in the water permit expired on April 10, 2022.

Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
May 31, 2022

**Note:**

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

## Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
551-2	City of Winner	Winner	TR	1,568 AF	municipal	Ogallala Aquifer	none
1622-2	City of Gregory	Gregory	GY	269 AF	municipal	Ogallala Aquifer	none
1660-2	City of Burke	Burke	GY	396 AF	municipal	Ogallala Aquifer	none
3429-3	WEB Water Development	Aberdeen	BN	15,000 AF	RWS	Missouri River	none
3984-3,	Big Sioux Community	Egan	MY	589 AF	RWS	Big Sioux:Moody Aquifer	none
3984A-3,	Water System Inc						
3984B-3							
4456-3,	Aurora-Brule RWS Inc	Kimball	BL	621 AF	RWS	Missouri River	none
4456A-3							
6259-3	City of Volga	Volga	BG	1,216 AF	municipal	Big Sioux:Brookings Aquifer	none



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**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 551-2, City of Winner SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 551-2, City of Winner, PO Box 691, Winner SD 57580.

The Chief Engineer is recommending that Future Use Permit No. 551-2 REMAIN in EFFECT for 1,568 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 551-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 551-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 551-2 is subject to payment of the \$195.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer  
May 16, 2022

RECEIVED

MAR 28 2022

WATER RIGHTS  
PROGRAM

March 22 2022

Dept. of Agriculture and Natural Resources

Water Rights Program DANR

Karen Schlaak

Dear Karen,

I am responding to the notice received in my office for renewal of permit No. 551-2 from the Ogallala Formation held by the City of Winner SD. The city of Winner wishes to retain the future use water permit 551-2. 1,568-acre feet.

The city of Winner has held a steady population at 2,921 up just a little as of the writing of this letter. The city has shown some growth on the commercial side as well, we will be adding two additional fast-food restaurants and one dine in restaurant this year, we are also adding a Super Ace hardware to the vacated ShopKo building. Since our last request for renewal the city has added several restaurants and there has been interest in another motel and the city has visited with tribal council and there representative RedCo, about future water and sewer needs for a casino. As always, the City of Winner is looking for potential commercial and residential growth and has put into place plans to reach those goals.

As requested, the following are the city's pumping totals for the past three years, I would like to note that in the last five years the city has made some notable improvements in our water loss percentages, as high as 28% in 2010 to a five year average of 8%, this has been done by the city committing to replacement of old infrastructure, metering equipment and the continued commitment from Mayor and Council to protect our water resource by improvements to our system.

Well Production

2019 133,370,000 gal.

2020 135,206,000 gal.

2021 147,676,000 gal.

If you have any questions or would need more information, please feel free to call (605)840-2783

Sincerely,

Troy Kruger,

PWD City of Winner SD



# AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

**Dan Bechtold**

of said county being first duly sworn, on oath says that he is the Editor of the

## WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said county of Tripp, and has full and personal knowledge of all the facts herein stated that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies weekly and has been published within said county for fifty-two successive weeks prior to the publication of the notice herein mentioned, and was printed wholly or in part in an office maintained at said place of publication; that the

141 lines @ 1 column X 90%

Hearing/Permit No. 551-2

Winner City

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 week(s), on the day of each week on which said newspaper was regularly published to wit:

5-25-2022

That the full amount of the fees for the publication of the \*annexed notice is \$53.30

*Dan Bechtold*

Subscribed and sworn to before me this 25th day of May, 2022

*Laura Brown*

Notary Public

County of Tripp, South Dakota

My Commission Expires June 12, 2025



RECEIVED

JUN 02 2022

OFFICE OF  
WATER

## NOTICE OF HEARING

TO REVIEW FUTURE USE WATER  
PERMIT NO. 551-2

Notice is given that the Water Management Board will review Future Use Permit No. 551-2 held by the City of Winner, Troy Kruger, Public Works Director, PO Box 691, Winner SD 57580 for progress made in the development of the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 551-2. This permit was approved in 1959 and currently reserves 1,568 acre-feet from the Ogallala Aquifer located in the W 1/2 NW 1/4 Section 33-T98N-R76W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 551-2 REMAIN in EFFECT for 1,568 acre-feet annually because 1) the reserve water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 551-2 on July 6, 2022 at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or

other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit of the petitioner, the reasons for the petitioner's

opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 551-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

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

hearing that may be held. Any comment must be filed by June 6, 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 the "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 issues 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the approximated cost of \$53.30



Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

RECEIVED

MAY 27 2022

OFFICE OF  
WATER

Legal Notice Number: 1442

I, Cadee Schelske, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Winner, SD- Troy Kruger- Water No. 1443 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 5/25/2022. That the full amount of the fee charged for the publishing \$ 65.23 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

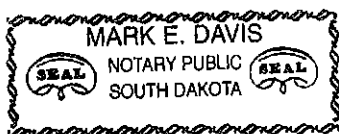
Cadee Schelske

Subscribed and sworn to me before this date 5/25/22.

Mark E. Davis

Notary Public, South Dakota

My Term Expires 12/27/2024



F. P. 05-25-22

**NOTICE OF HEARING  
TO REVIEW FUTURE  
USE WATER PERMIT  
NO. 551-2**

Notice is given that the Water Management Board will review Future Use Permit No. 551-2 held by the City of Winner, Troy Kruger, Public Works Director, PO Box 691, Winner SD 57580 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 551-2. This permit was approved in 1959 and currently reserves 1,568 acre-feet from the Ogallala Aquifer located in the W 1/2 NW 1/4 Section 33-T98N-R76W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 551-2 REMAIN in EFFECT for 1,568 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 551-2 on July 6, 2022 at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered

by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 551-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01

thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this

provision and maintains that the hearing must be conducted by the Board.

No. 1442 (adv.)

Published one time at the total approximate cost of \$65.23.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 1622-2, City of Gregory SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 1622-2, City of Gregory, Box 436, Gregory SD 57533.

The Chief Engineer is recommending that Future Use Permit No. 1622-2 REMAIN in EFFECT for 269 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1622-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 1622-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1622-2 is subject to payment of the \$85.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer  
May 16, 2022

# CITY OF GREGORY

Scott Anshutz  
Mayor

Box 436  
GREGORY, SOUTH DAKOTA 57533  
Phone (605) 835-8270 Fax (605) 835-8422

Alexander Hamilton  
City Administrator/  
Finance Officer

March 31, 2022

SD Dept. of Environmental & Natural Resources  
%Water Rights Program  
Joe Foss Building  
523 E Capital Ave  
Pierre, SD 57501-3182

RE: City of Gregory future use permit No. 1622-2

The City of Gregory would like to renew future water use permit No.1622-2 from the Ogallala formation. The best reasons being that the City's new development 66 acres, has recently became very popular. Avera is currently building a new Complex that will house not only the hospital but the clinic and a long-term care facility. This is roughly an 80,000 sq ft building. The City of Gregory's municipal water systems has successfully pumped millions of gallons over the years and remains constant with slight growth. Due to the fact of our slight growth right now and the uncertainties of what the future may bring, it is in the city's best interest to plan to have additional water supply if needed.

While is hard to estimate the city's future water needs, the city would like to retain the current 269-acre feet that is currently reserved under future use permit 1622-2.

Please feel free to contact me if there are questions or more information is needed.

Thank you,



Alex Hamilton  
City Administrator/Finance Officer  
City of Gregory  
605-835-8270 Ext. 1  
alex@cityofgregory.com

RECEIVED

APR 04 2022

WATER RIGHTS  
PROGRAM



# AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA,  
County of Gregory--ss.

CHERYL SPERL

of said county being first duly sworn, on oath says that she is the publisher of the

## GREGORY TIMES-ADVOCATE

a weekly newspaper printed and published in Gregory, said county of Gregory, and has full and personal knowledge of all the facts herein stated that said newspaper is a legal newspaper defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive and has a bona fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks prior to the publication of the notice herein mentioned, and was printed wholly or in part in an office maintained at said place of publication; that the

City

### Notice of Hearing to Review Future Use Water Permit # 1622-2

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least one in each week for

1 successive weeks,  
on the day of each week on which said newspaper was regularly published, to-wit:

05/25	20	22	20
	20		20
	20		20
	20		20
	20		20
	20		20

That the full amount of the fees for the publication of the annexed notice is \$ 68.48

Subscribed and sworn to before me this 25

day of May 20 22

Notary Public.

County of Gregory, South Dakota

My Commission Expires  
November 2, 2027

RECEIVED

JUN 10 2022

OFFICE OF  
WATER

### NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 1622-2

Notice is given that the Water Management Board will review Future Use Permit No. 1622-2 held by the City of Gregory, c/o Alex Hamilton, City Administrator, Box 436, Gregory, SD 57533, for progress made in the development of the water reserved by the Permit and for future plans for development of the water reserved by Permit No. 1622-2. This permit was approved in 1977 and currently reserves 269 acre-feet from the Ogallala Aquifer located in the S 1/2 SW 1/4, W 1/2 NE 1/4, E 1/2 NW 1/4 Section 5; S 1/2 SE 1/4 Section 6; NE 1/4 Section 7; NW 1/4 Section 8; SW 1/4, W 1/2 SE 1/4 Section 16; SE 1/4 Section 17; SE 1/4 Section 21; SW 1/4, W 1/2 SE 1/4 Section 22; all in T97N-R72W, for municipal use.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit No. 1622-2 REMAIN in EFFECT for 269 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 1622-2 on July 6, 2022, at 9:30 a.m. (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre, SD.

The recommendation of the Chief Engineer is not final or binding upon the Board, and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the

permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26 shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre, SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 1622-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the future use permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer which is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or by 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 June 6, 2022.

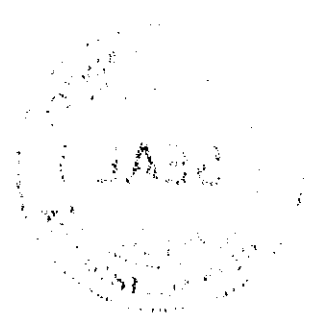
Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

(21)

(Published once at the total approximate cost of \$88.48).



Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

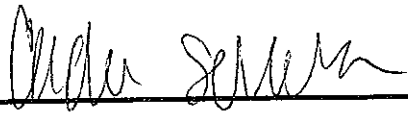
RECEIVED

MAY 27 2022

OFFICE OF  
WATER

Legal Notice Number: 1444

I, Cadee Schelske, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: City of Gregory- Alex Hamilton- Water No. 1622-2 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 5/25/2022. That the full amount of the fee charged for the publishing \$ 68.29 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



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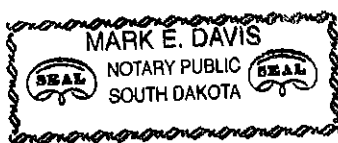
Subscribed and sworn to me before this date 5/25/22.



---

Notary Public, South Dakota

My Term Expires 12/27/2024



F. P. 05-26-22

**NOTICE OF HEARING  
TO REVIEW FUTURE  
USE WATER PERMIT  
NO. 1622-2**

Notice is given that the Water Management Board will review Future Use Permit No. 1622-2 held by the City of Gregory, c/o Alex Hamilton, City Administrator, Box 436, Gregory SD 57533 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 1622-2. This permit was approved in 1977 and currently reserves 269 acre-feet from the Ogallala Aquifer located in the S 1/2 SW 1/4, W 1/2 NE 1/4, E 1/2 NW 1/4 Section 5; S 1/2 SE 1/4 Section 6; NE 1/4 Section 7; NW 1/4 Section 8; SW 1/4, W 1/2 SE 1/4 Section 16; SE 1/4 Section 17; SE 1/4 Section 21; SW 1/4, W 1/2 SE 1/4 Section 22; all in T97N-R72W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1622-2 REMAIN in EFFECT for 269 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a

beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is 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.

The Water Management Board will conduct the hearing to review Future Use Permit No. 1622-2 on July 6, 2022 at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 1622-2 will

be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

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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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

No. 1444 (adv.)  
Published one time at the total approximate cost of \$68.29.





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 1660-2, City of Burke SD**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 1660-2, City of Burke, Wade Broome, Supt. of Utilities, PO Box 312, Burke SD 57523.

The Chief Engineer is recommending that Future Use Permit No. 1660-2 REMAIN in EFFECT for 396 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 1660-2, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 1660-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 1660-2 is subject to payment of the \$95.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer  
May 16, 2022

RECEIVED

MAR 24 2022

WATER RIGHTS  
PROGRAM

March 21, 2022

Karen Schlaak, Environmental Scientist  
Water Rights Program  
Joe Foss Building  
523 East Capitol  
Pierre, SD 57501

Dear Karen:

The City of Burke would like to retain the future use permit #1660-2 that is for 396 acre-feet of water.

The City has 4 wells that are usable and we are connected to the Tripp County Water Users District. Well #2 and well #3 have not been pumped since joining TCWUD in 2004 as they are low volume wells and are also high in nitrate, but could be used in an emergency situation. We occasionally pump well #4 and well #8 in the hot summer months if demand is high but will continue to use TCWUD water as much as possible. Well capacities are as follows. Well #2: 25 GPM, Well #3: 45 GPM, Well #4: 95 GPM, Well #8: 90 GPM. We also receive about 150 GPM from TCWUD. Since 2005 we have pumped well #4 & #8 very little mostly for maintenance purposes and for a large Main Street fire. We would like to retain the future use permit #1660-2 in case TCWUD is not able to supply the City of Burke with enough water.

Our bulk water purchases from TCWUD since 2015 are as follows.

2015: 44,403,000

2016: 40,754,000

2017: 40,890,000

2018: 30,017,000

2019: 26,217,000

2020: 33,229,000

2021: 35,678,000

If you have any questions please give me a call.

Sincerely,



Wade Broome  
Supt. of Utilities  
City of Burke  
PO box 312  
Burke, South Dakota 57523  
Ph: 605 775-2692  
Fax: 605 775-3014  
email: [burkesupt@goldenwest.net](mailto:burkesupt@goldenwest.net)

# Affidavit Of Publication

STATE OF SOUTH DAKOTA  
COUNTY OF GREGORY

ss.

CHLOE KENZY of said county being first duly sworn, on oath says that she is the publisher of THE BURKE GAZETTE, a weekly newspaper printed and published in Burke said County of Gregory and has full and personal knowledge of all facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said county for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

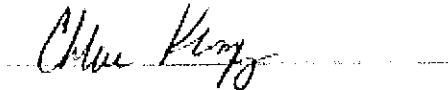
City of Burke-Notice of Hearing-Usewater Permit

a printed copy of which, taken from the paper in which the same was printed, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for

1 successive weeks, on the day of each week on which said newspaper was regularly published, to-wit:  
5/25/22

that the full amount of the fees for the publication of the annexed notice

is \$ 61.22



Subscribed and sworn to before me this 25<sup>th</sup> day of

May, 2022

Commission Expires  
October 30, 2027

Notary Public

County of Gregory, South Dakota

RECEIVED

JUN 2 2 2022

OFFICE OF  
WATER

## NOTICE OF HEARING TO REVIEW FUTURE USEWATER PERMIT NO. 1660-2

Notice is given that the Water Management Board will review Future Use Permit No. 1660-2 held by the City of Burke, Wade Broome, Supt. Of Utilities, PO Box 312, Burke SD 57523 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 1660-2. This permit was approved in 1979 and currently reserves 396 acre-feet from the Ogallala Aquifer located in the S 4 Section 26 and Section 35; all in T97N-R72W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1660-2 REMAIN in EFFECT for 396 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at [dwr.sd.gov/](http://dwr.sd.gov/) public or contact Ron Duval for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 1660-2 on July 6, 2022, at 9:30 am (Central Time). Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9

for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at [dwr.sd.gov/public](http://dwr.sd.gov/public) or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 1660-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02-01:25.01 thru 74:02-01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at [dwr.sd.gov/](http://dwr.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 June 6, 2022.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessi-

ble 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$61.22

Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

RECEIVED

MAY 27 2022

OFFICE OF  
WATER

Legal Notice Number: 1443

I, Cadee Schelske, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: City of Burke- Wade Broome – Water No. 1443 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 5/25/2022. That the full amount of the fee charged for the publishing \$ 65.23 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

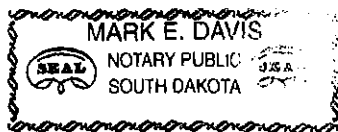
Cadee Schelske

Subscribed and sworn to me before this date 5/25/22.

[Signature]

Notary Public, South Dakota

My Term Expires 12/27/2024





F. P. 05-25-22

**NOTICE OF HEARING  
TO REVIEW FUTURE  
USE WATER PERMIT  
NO. 1660-2**

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 1660-2 REMAIN in EFFECT for 396 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 1660-2 on July 6, 2022 at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

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

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

No. 1443 (adv.)

Published one time at the total approximate cost of \$65.23.





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 3429-3, WEB Water Development Association, Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 3429-3, WEB Water Development Association, Inc., Angie Hammrich, General Manager, PO Box 51, Aberdeen SD 57501.

The Chief Engineer is recommending that Future Use Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3429-3, 2) WEB Water has demonstrated a reasonable need for the water reserved by Permit No. 3429-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3429-3 is subject to payment of the \$1,305.00 fee pursuant to SDCL 46-2-13(2) which was received on April 4, 2022.

Eric Gronlund, Chief Engineer  
May 11, 2022



# WEB Water Development Association, Inc.

P.O. Box 51 — Aberdeen, SD 57402-0051

(605) 229-4749 • Toll Free: 1-800-658-3957 • FAX: (605) 229-4492

Emergency/After Hours: (605) 229-4749 or 1-800-658-3957

email: office@webwater.org

www.webwater.org

Local Opportunity Provider

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APR 04 2022

WATER RIGHTS  
PROGRAM

PAID

APR 4 2022

Ck# 86569

Rec't#

## CHAIR

Tim Van Hatten  
PO Box 171  
Conde, SD 57434  
(605) 382-5816  
(Bulk)

## VICE-CHAIR

Craig Oberle  
PO Box 76  
Melleite, SD 57461  
(605) 887-3523  
(Spink, Beadle, Hand)

## SECRETARY

Lori Goldade  
12892 Fairfield Drive  
Aberdeen, SD 57401  
(605) 225-7884  
(Brown)

## TREASURER

Les Hinds  
PO Box 331  
Groton, SD 57445  
(605) 397-8311  
(Bulk)

## DIRECTORS

Allen Walth  
13640 Walth Bay Road  
Glenham, SD 57631  
(605) 762-3371  
(Walworth & Potter)

Bob Whitmyre  
14408 431st Avenue  
Webster, SD 57274  
(605) 345-4194  
(Day, Clark & Marshall)

Dick Werner  
PO Box 98  
Herreid, SD 57632  
(605) 350-1371  
(Campbell, McPherson,  
Emmons, Dickey & McIntosh)

Jeff Stoecker  
15180 Sherman Avenue  
Onaka, SD 57466  
(605) 442-2576  
(Edmunds, Faulk, & Hyde)

Henry Orth  
PO Box 455  
Eureka, SD 57437  
(605) 284-5132  
(Bulk)

## MANAGEMENT TEAM

Clayton Larson  
Water Treatment Plant Manager

Shane Phillips  
Operations Manager

Eric Hansen  
Construction Manager

Angie Hammrich  
General Manager

April 1, 2022

Department of Agriculture and Natural Resources  
Attn: Water Rights Program  
Joe Foss Building  
523 E Capitol Ave  
Pierre, SD 57501-3182

RE Future Use Water Permit No. 3429-3

Dear Karen:

WEB Water currently has a future use right for 15,000 acre-feet reserved under Permit No. 3429-3 and would like to retain this future use water permit. Enclosed is check #86569 for \$1,305 for the fee. A listing of our current and future projects below is the basis for our continued need to retain this water permit.

Current projects include the following:

- 13.5 miles of 30" parallel pipe from Intake at the Missouri River to the intersection of Highway 83 and Highway 12 south of Selby
- Two-million-gallon elevated storage tank
- Moratorium and low-capacity area improvements involving 120 miles of PVC pipe
- 8 new and upgraded booster stations throughout the system
- Water Treatment Plant Expansion from 11 MGD to 17 MGD

Future projects include the following:

- Second Intake
- Expand Water Treatment Plant to 26 million gallons per day
- 50 miles of additional Mainline pipe
- Construct additional storage
- Expand and upgrade distribution system

The current projects are scheduled to begin construction this year. The future projects are scheduled to begin within the next 5 – 10 years which will fully utilized the additional 15,000 acre-feet.

Sincerely,

Angie Hammrich  
General Manager



Mobridge Tribune  
Affidavit of Publication

STATE OF SOUTH DAKOTA  
COUNTY OF WALWORTH

I, Lori Cox, having first duly sworn under oath say: The Mobridge Tribune is a legal weekly newspaper of general circulation as required by South Dakota Code of Nineteen Hundred Thirty-Nine, and any acts amendatory thereto, printed and published by the Mobridge Publishing, Inc., in Mobridge, in said county and state, and has been such legal newspaper during the time hereinafter mentioned; that during all of said time as an employee or officer of said newspaper I have had personal knowledge of the facts stated in this affidavit; that the advertisement headed:

Management board to review future use water permit

DANR Water Rights Program

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive weeks upon the following dates, to-wit:

1- Mobridge Tribune: 5/18/2022

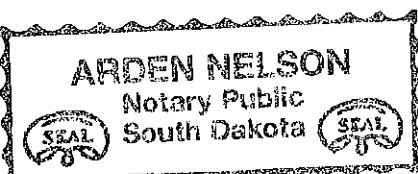
that the full amount of the fees charged for publishing the same to-wit: the sum of \$69.09 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.

*Lori Cox*

Subscribed and sworn to before me this date of  
5/20/2022

*Arden Nelson*

Arden Nelson, Notary Public  
State of South Dakota  
My commission expires August 1, 2025



Management board to review future use water permit

NOTICE OF HEARING  
TO REVIEW FUTURE USE  
WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angle Hamrick, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN IN EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by May 31, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25-01 thru 74:02:01:25-03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner.

or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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-051922

RECEIVED

JUN 09 2022

OFFICE OF  
WATER



RECEIVED

AFFIDAVIT OF PUBLICATION

JUN 2 1 2022

OFFICE OF  
WATER

State of South Dakota  
County of Edmunds

)  
) SS

D.E. Gibson of said county, being, first duly sworn on oath says: That he is the publisher or an employee of the publisher of the Ipswich Tribune, a weekly newspaper, published in the City of Ipswich, in said County of Edmunds, and State of South Dakota; that he has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Edmunds and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the advertisement headed

NOTICE OF HEARING

TO REVIEW FUTURE USE

WATER PERMIT NO. 3429-3

a 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 one successive issues.  
The First publication being made on the 18 day of May, 2022  
The Second publication being made on the day of 2022  
The Third publication being made on the day of 2022  
The Fourth publication being made on the day of 2022  
The Fifth publication being made on the day of 2022

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher; 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:  
Sixty-four Dollars and  
eighty-nine cents (\$ 64.89)

Signed: *[Signature]*

Subscribed and sworn to before me this 27 day of May, 2022

*Jana M. Gibson*

Notary Public - Edmunds County, South Dakota

My commission expires February 26, 2025

PUBLIC NOTICE

NOTICE OF HEARING

TO REVIEW FUTURE USE

WATER PERMIT NO. 3429-3

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57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. The permit was approved in 1977 and contains reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-1124N-R79W and Section 17-1121N-R78W for rural water system use. WEB Water serves users in Watworth, Edmonds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Edmonds, DeWitt and McIntosh Counties in Nebraska.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN IN EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed; 2) there is need for the reserved water; 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at the Department of Water Rights or by contacting the Department of Water Rights Program at the address below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time). Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or testimony in support of the request for renewal of the future use permit upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal of the permit. SDCL 46-2A-9, 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available at the Department of Water Rights/Edmonds County or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition (petition must be filed by either an interested person or the permit owner

must be filed by May 31, 2022. The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the basis of the reasons for the board's opposition to the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02.01.25.01 thru 74:02.01.25.03; and contested case procedures contained in SDCL 1-26. This hearing is an administrative proceeding. The permit owner or any person who files a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to contest the renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <http://water.sd.gov/public-or-by-call> 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 May 31, 2022.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify this Department of Natural Resources, Office of Hearing Board, at least 48 days 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 request a hearing to be held by the Office of Hearing Board 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 May 31, 2022. However, since this permit renewal and future use permit controversy is a future use permit renewal and future use permit controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$64.89 (Publish T 5-18)



Aberdeen News  
Watertown Public Opinion

PO Box 630567 Cincinnati, OH 45263-0567

**PROOF OF PUBLICATION**

Sd Dept Of Environment  
Sd Dept Of Environment  
WATER RIGHTS PROGRAM  
523 E. CAPITOL  
Pierre SD 57501

**RECEIVED**

**MAY 23 2022**

**OFFICE OF  
WATER**

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

The AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, and has been such a newspaper during the times hereinafter mentioned; and personal knowledge of the facts herein state that the notice hereto annexed was Published in said newspapers in the issue dated:

05/18/2022

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.  
Sworn to and subscribed before on 05/18/2022

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$70.52

Order No: 7286033

# of Copies:

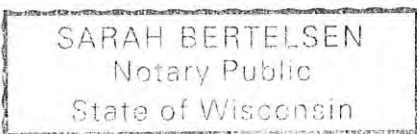
Customer No: 561450

1

PO #:

**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*



NOTICE OF HEARING TO REVIEW FUTURE USE  
WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hammrich, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capital Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by May 31, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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Published once at the approximate cost of \$70.52.

May 18, 2022 #7286033

RECEIVED

MAY 23 2022

OFFICE OF  
WATER

RECEIVED

JUN 03 2022

OFFICE OF  
WATER

AFFIDAVIT OF PUBLICATION


} ss.

County of Day  
State of South Dakota,

John Suhr, of said county and state being duly sworn on oath, says: That the Reporter & Farmer is a legal weekly newspaper of general circulation, and an official newspaper as required by Session Laws of 1893, printed and published in Webster, in said county and state, by the Day County Printing Company and has been such newspaper during the time hereinafter mentioned, that I, John Suhr, the undersigned, am publisher of said newspaper, and have personal knowledge of all facts stated in this affidavit and that the advertisement headed, WEB Water permit, a printed copy of which is hereunto attached, was printed and published in the said newspaper one successive and complete issues as follows:

First Publication	May 16;
Second Publication	;
Third Publication	;
Fourth Publication	;

That the full amount of fees for publication of the annexed notice is \$75.20 and insures solely to the Reporter & Farmer, published by The Day County Printing Company, that no arrangement or understanding for a division thereof has been made with any other person, and that no part thereof has been agreed to be paid any person whomsoever.

  
Subscribed and sworn to before me this 16th day of May,  
2022.

  
Notary Public, Day County, South Dakota

# Hearing set to review future use of water permit No. 3429-3 for WEB Water

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hamrick, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN IN EFFECT for 15,000 acre-feet annually because 1) the reserved water

may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://damr.sd.gov/public> or contact Ron Duvall for this information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 a.m. (Central Time), Floyd Matthew Training Center, Joe Foss Bldg., 523 E. Capitol Ave., Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any person who intends to participate in the hearing before the Board and present

evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://damr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given

above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by May 31, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38-1, Board Rules ARSD 74:02-01:25.01 thru 74:02-01:25.03, and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State

Supreme Court as provided by law. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://damr.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 May 31, 2022.

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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 May 31, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$75.20.

RECEIVED

JUN 10 2022

OFFICE OF  
WATER

## 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:

### #6416 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on MAY 18<sup>TH</sup> 2022. SIXTY ONE and .32/100 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.

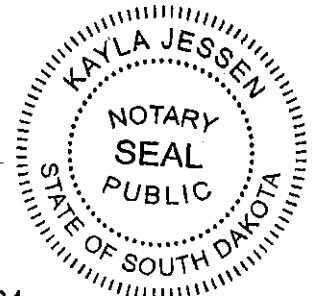
Talaya Purcell

Subscribed and sworn to before me this 18<sup>TH</sup> day of May, 2022

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



## Notice of Hearing

#6418

### NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angle Hamrich, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Watworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Dickey and McIntosh Counties in North

Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is 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.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either

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Published one time at the total approximate cost of \$61.32. (May 18)

RECEIVED

JUN 22 2022

OFFICE OF  
WATER

**AFFIDAVIT OF  
PUBLICATION**  
The Miller Press

STATE OF SOUTH DAKOTA )  
 )SS  
County of Hand )

Michael G. Caviness of said county being first duly sworn, on oath, says that he is the publisher of *The Miller Press*, a weekly newspaper published in Miller, said County of Hand by Hand County Publishing Co., Inc. and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has been published within said County for fifty weeks next prior to the publication of the notice, herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

Water permit reviewed  
for WEB Water

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 1 successive week(s), on the day of each week on which said newspaper was regularly published, to wit:

5/21/2022 to 20  
20 ; 20  
20 ; 20

that the full amount of the fees for the publication of the annexed notice is

\$  
Michael G. Caviness, Publisher

# Water permit reviewed for WEB Water

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The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or

his legal counsel. If legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at

the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 31, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00, or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published May 21, 2022, at the approximate cost of \$---186---



# Affidavit of Publication

STATE OF SOUTH DAKOTA  
 COUNTY OF HYDE

MARY ANN MORFORD

of said county and state, being duly sworn, on her oath says: THE HIGHMORE HERALD is a weekly newspaper of general circulation, printed and published in HIGHMORE in said county and state by Mary Ann Morford, as shown by the records of the county clerk, the times being more than once a week, and has been in existence for more than one year immediately preceding the first publication herein mentioned and has more than two hundred bona fide subscribers; that I 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 entitled

## Notice of Hearing

a printed copy of which is hereto attached, was printed and published in said newspaper for one (1) issue, the publication being made on May 19, 2022, and that \$68.16 being the full amount of the fee for publication of the annexed notice, insures solely to the benefit of the publisher of said newspaper, that no arrangement or understanding for a division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whatsoever.

Mary Ann Morford  
 Mary Ann Morford, Publisher

Subscribed and sworn to before me this 20<sup>th</sup> day of May 2022  
 Mary Ann Morford  
 Notary Public, Hyde County, South Dakota  
 My Commission Expires July 8, 2022

## NOTICE OF HEARING TO

## REVIEW FUTURE USE

## WATER PERMIT NO. 3429-3

Notice is given that the

Water Management Board will

review Future Use Permit No.

3429-3 held by WEB Water

Development Association, Inc.,

Angie Hammarich, General

Manager, PO Box 51, Aberdeen,

South Dakota 57402, for progress

made in the development of the

water reserved by the permit

and future plans by the permit

No. 3429-3. This permit was

approved in 1977 and currently

reserves 15,000 acre-feet from

the Missouri River located

from a point between Section

7, 21, 24, 25, 26, and Section 17,

T21N, R67W, rural water

system used by WEB water

users in Wahpeton, Edmunds,

Brown, Day, Spink, Hand,

Hyde, Campbell, Faulk, Potter,

McPherson, Beadle, Clark and

Marshall Counties in South

Dakota and Emmous, Dickey

and McIntosh Counties in North

Dakota.

Pursuant to SDCL 46-2A-2

the Chief Engineer of the Water

Rights Program

chief Permit No. 3429-3 (REMAIN

IN EFFECT for 15,000 acre-feet

annually because 1) the reserved

water may be developed, 2)

there is need for the reserved

water 3) the proposed use will

be a beneficial use and 4) it is

in the public interest. The Chief

Engineer has recommended

with qualifications and

at https://land.usd.gov/public

or contact Ron Duvall for this

information, or other information

at the Water Rights Program

address provided below.

The Water Management

Board will conduct the hearing

No. 3429-3 Future Use Permit

No. 3429-3, at 9:00 a.m. on

9:30 a.m. (Central Time) at the

Matthew Training Center, Joe

Ross Building, 523 E. Capitol

Avenue, Pierre, South Dakota.

The recommendation of the

Chief Engineer is not final, or

binding upon the Board and the

Board is authorized to 1) allow

the permit to remain in effect,

2) amend the permit, adding

and the qualifications, 3) cancel the

permit for no development, or no

planned future development, or

4) take no action after it reaches

a conclusion based upon facts

presented at the public hearing.

Any person who intends

to participate in the hearing

before the Board and present

evidence or cross-examine

witnesses according to SDCL 1-

26, shall allege that the renewal

of the future use permit, upon

approval, will cause injury to

persons that is unique from

any injury suffered by the public

in general. The injury must

concern a matter either within

the regulatory authority found

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or denial of the renewal, or other

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Within the regulatory authority

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planned future development, or

# Affidavit of Publication

STATE OF SOUTH DAKOTA,  
COUNTY OF CAMPBELL, ss.

I, Lori Cox, being first duly sworn, on oath says, that she is the bookkeeper of the Prairie Pioneer, a weekly newspaper published in Pollock, County of Campbell, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies weekly, and has been published within said county for fifty-two successive weeks next prior to the publication of the notice herein mentioned; that the

Management board to review future use water permit

DANR Water Rights Program

a printed copy of which, taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 1 successive week, on the day of each week on which said newspaper was regularly published to-wit:

1- Prairie Pioneer: 5/19/2022

That the full amount of the fees for the publication of the annexed notice is \$69.03

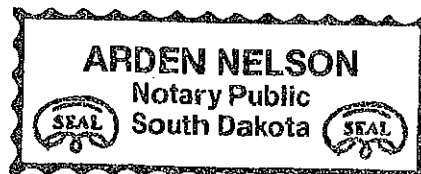
Lori Cox

Subscribed and sworn to before me this 5/21/2022

Arden Nelson

Arden Nelson, Notary Public  
State of South Dakota

My commission expires August 1, 2025



RECEIVED

JUN 06 2022

OFFICE OF  
WATER

# Management board to review future use water permit

## NOTICE OF HEARING

### TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hamrick, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's

recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of

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

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1;

Board Rules ARSD 74-02:01:25.01 thru 74-02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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

Notice is given to individuals with

disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 31, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$69.09.

-051922

## Affidavit of Publication

State of South Dakota

§

County of Faulk

Jennifer Miller of said county, being first duly sworn, on oath says that she is the publisher of the **Faulk County Record LLC**, a weekly newspaper printed and published in Faulkton in said County of Faulk and has a full and personal knowledge of all the facts therein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of a least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

## Notice Of Hearing

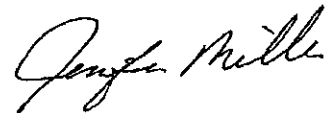
a printed copy of which, taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for

**One (1)**

week(s), on the day of each week on which said newspaper was regularly published, to-wit:

**Wednesday, May 18, 2022**

that the full amount of the fees for the publication of the annexed notice is **\$ 58.06**



Subscribed and sworn to before me this

**18th, May 2022**



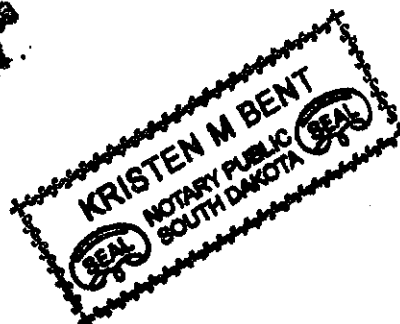
Notary Public  
Faulk County, South Dakota

RECEIVED

MAY 23 2022

OFFICE OF  
WATER

My Commission Expires  
September 8, 2022



No. 112, May 18, 2022

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hamrich, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and the future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle,

Clark and Marshall Counties in South Dakota, and Emmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN IN EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

## 18 Faulk County Record

### WEB Water Hearing

(continued from page 17)

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

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit.

## Wednesday, May 18, 2022

The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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

Notice is given to individuals with

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the

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## Wednesday, May 18, 2022

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

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## Faulk County Record

17

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The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26.

### WEB Water Hearing (continued on page 18)

Published once at the approximate cost of \$58.06.

# Hearing to review future use water permit

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN IN EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's

recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Durall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthews Training Center, Joe Foss Bldg. 523 E Capitol Ave., Pierre SD.

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

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

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petition, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5,

46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25, on thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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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 May 31, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the approximate cost of \$69.09.

-051922

## Affidavit of Publication RECEIVED

JUN 21 2022

STATE OF SOUTH DAKOTA,  
COUNTY OF POTTER, ss.

OFFICE OF  
WATER

I, Lori Cox being first duly sworn, on oath says, that she is the bookkeeper of the POTTER COUNTY NEWS, a weekly newspaper published in Gettysburg, County of Potter, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies weekly, and has been published within said county for fifty-two successive weeks next prior to the publication of the notice herein mentioned; that the

### Notice of Hearing water permits

#### WEB Water Water Rights Program

a printed copy of which, taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 1 week, on the day of each week on which said newspaper was regularly published to-wit:

May 19<sup>th</sup>, 2022

That the full amount of the fees for the publication of the annexed notice is \$69.09

Lori Cox

Subscribed and sworn to before me this \_\_\_\_\_ 9<sup>th</sup> \_\_\_\_\_

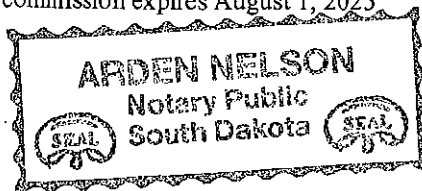
day of \_\_\_\_\_ June \_\_\_\_\_, 2022

Arden Nelson

Arden Nelson

State of South Dakota

My commission expires August 1, 2025



# AFFIDAVIT OF PUBLICATION

RECEIVED

**Northwest Blade**

P.O. Box 797; Eureka, SD 57437

JUN 23 2022

OFFICE OF  
WATER

STATE OF South Dakota: COUNTY OF McPherson

I, MaKena Vocu, am authorized by the publisher as agent to make this affidavit of publication. Under oath, I state that the following is true and correct.

The Northwest Blade is a newspaper which is published weekly and is of general circulation and is in compliance with South Dakota Newspaper Association legalized Statutes.

The notice has been published in the newspaper listed above.

DATE(S) OF PUBLICATION

5/19 Notice of Hearing Permit 3429-3

NAME OF THE CORPORATION/GOVERNMENT OFFICE: Water Rights Program

TYPE OF DOCUMENT: legal

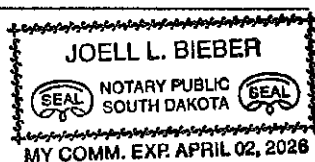
AUTHORIZED SIGNATURE: MaKena Vocu

SUBSCRIBED AND SWORN TO BEFORE ME ON THE

21<sup>st</sup> DAY OF June, 2022.

NOTARY SIGNATURE: Joell L. Bieber

Commission Expiration Date: \_\_\_\_\_



**LETTER FROM SHERIFF ACKERMAN**

During the early morning hours of May 10, 2022, Federal Authorities conducted a law enforcement operation in the City of Eureka, as part of their

investigation. The Federal Authorities were assisted by State and Local agencies as well as voluntary emergency responders. The cooperation of all parties

involved was sincerely appreciated.

*Respectfully,  
Dave Ackerman  
McPherson County Sheriff*

**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3**

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hammrich, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN IN EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing be-

fore the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by May 31, 2022.

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*Published once at an approximate cost of \$67.32 at 4 cents per reader and can be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).*



RECEIVED

MAY 20 2022

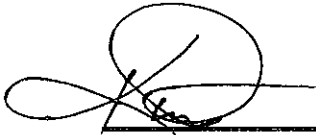
Proof Of Publication

OFFICE OF  
WATER

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

Legal Notice Number: 1426

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: WEB Water Development Association was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 5/18/2022. That the full amount of the fee charged for the publishing \$ 106.00 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

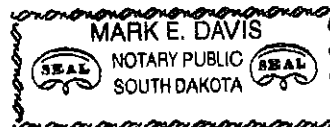


Subscribed and sworn to me before this date 5/18/22.



Notary Public, South Dakota

My Term Expires 12/27/2024



## 2000 - Legals

F. P. 05-18-22

### NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3429-3

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hamirich, General Manager, PO Box 51, Aberdeen SD 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Diokey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the

hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's

## 2000 - Legals

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The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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No. 1426 (adv.)  
Published one time at the total approximate cost of \$89.31.

**Affidavit of Publication** RECEIVED

State of South Dakota

§

MAY 23 2022

County of Clark

OFFICE OF  
WATER

William J. Krikac of said county, being first duly sworn, on oath says that he is the publisher of the **Clark County Courier**, a weekly newspaper printed and published in Clark in said County of Clark and has a full and personal knowledge of all the facts therein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

**Water Rights Program**

a printed copy of which taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for

**One**

successive week(s), on the day of each week on which said newspaper was regularly published, to wit:

**May 18, 2022**

that the full amount of the fees for the publication of the annexed notice is **\$69.56**

*William J. Krikac*

Subscribed and sworn to before me this

**19th day of May, 2022**

*Karli Paulson*

Notary Public  
Clark County, South Dakota

My Commission expires: 02/09/2028



**NOTICE OF HEARING TO REVIEW  
FUTURE USE WATER PERMIT NO. 3429-3**

Notice is given that the Water Management Board will review Future Use Permit No. 3429-3 held by WEB Water Development Association, Inc., Angie Hammrich, General Manager, P.O. Box 51, Aberdeen S.D., 57402 for progress made in the development of the water reserved by the permit and future plans for development of the water reserved by Permit No. 3429-3. This permit was approved in 1977 and currently reserves 15,000 acre-feet from the Missouri River located from a point between Section 5-T124N-R79W and Section 17-T121N-R78W for rural water system use. WEB Water serves users in Walworth, Edmunds, Brown, Day, Spink, Hand, Hyde, Campbell, Faulk, Potter, McPherson, Beadle, Clark and Marshall Counties in South Dakota and Emmons, Dickey and McIntosh Counties in North Dakota.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3429-3 REMAIN in EFFECT for 15,000 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

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AFFIDAVIT OF PUBLICATION

RECEIVED

MAY 23 2022

STATE OF SOUTH DAKOTA, County of Marshall.

OFFICE OF  
WATER

197 @ .29 =  
\$ 57.13

Douglas M. Card of said county, being first duly sworn on oath says that he is publisher of the MARSHALL COUNTY JOURNAL, a weekly newspaper printed and published in the City of Britton, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

that the Notice of Hearing to Review Future Use Water  
Permit No. 3429-3 - WEB Water Dev. Ass. Inc.

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

May 18, 2022

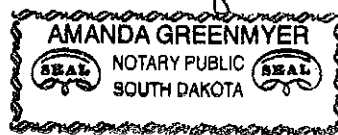
that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof

Fifty-seven and <sup>13</sup>/<sub>100</sub> DOLLARS  
Dy L M C

Subscribed and sworn to before me this 19th day of

May

A.D. 2022



Paul J. Hammer exp 4-13-27  
Notary Public, Marshall County, S.D.

57.13 —

IT (May 18)  
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REVIEW FUTURE USE  
WATER PERMIT NO. 3429-3**

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The Water Management Board will conduct the hearing to review Future Use Permit No. 3429-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by May 31, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3429-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by May 31, 2022.

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

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

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 31, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at an approximate cost of \$57.13 and can be viewed free of charge at [www.sd-publicnotices.com](http://www.sd-publicnotices.com).



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NOS. 3984-3, 3984A-3 and 3984B-3**

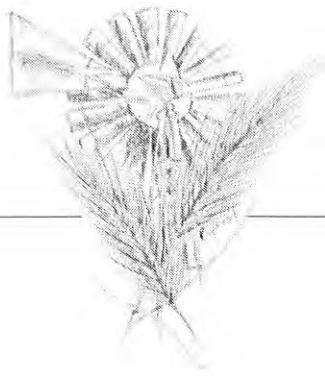
Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit Nos. 3984-3, 3984A-3 and 3984B-3, Big Sioux Community Water System, Inc., Jodi Johanson, Manager, 23343 479<sup>th</sup> Ave, Egan SD 57024.

The Chief Engineer is recommending that Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 REMAIN in EFFECT for 589 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under the permits, 2) the system has demonstrated a reasonable need for the water reserved by the permits, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 is subject to payment of the \$105.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

Eric Gronlund, Chief Engineer  
May 16, 2022





*Big Sioux*  
Community Water System, Inc.

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

RECEIVED

MAR 24 2022

WATER RIGHTS  
PROGRAM

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

March 21, 2022

Dear Ms. Schlaak,

Thank you for the letter concerning our Future Use Water Permits, No. 3984-3 and 3984A-3, both from the Moody County Aquifer held by Big Sioux Community Water System.

We are currently seeing increase water usage from current consumer. If the dry conditions continue, we will most likely be utilizing that area of the aquifer in the near future. There also is increasing interest from new consumers building new homes and developments in the area due to the large commercial growth north of Sioux Falls. These future use permits are needed to ensure we have ample water to provide those needs. A new treatment plant is also possible in the near future for which further allocation from the water supply in that area could be utilized.

The future use permits are a valuable tool when planning for the future economy and livelihood of this company and all the residents of Moody County, South Dakota.

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

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

Sincerely

Jodi Johanson  
General Manager

Big Sioux Community Water System, Inc.



# Affidavit of Publication

STATE OF SOUTH DAKOTA  
COUNTY OF MOODY) SS

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

Big Sioux Water  
Public Hearing

a printed copy of which, taken from the newspaper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 successful weeks, on the day of each week on which said newspaper was regularly published, to wit:

May 25, 2022

that the full amount of the fee charged for the publication of said Notice insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any person whomsoever, and that the fees charged for the publication thereof are

\$ 71.02

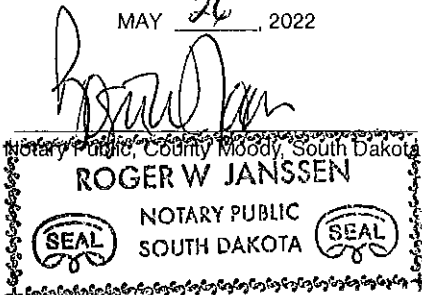
MAY 31 2022

OFFICE OF  
WATER

myHeadrick bookkeeper

Subscribed and sworn to before me this day

MAY 26, 2022



## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 held by the Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 3984-3 was approved in 1978 and currently reserves 589 acre-feet from the Big Sioux/Moody Aquifer. Permit Nos. 3984A-3 and 3984B-3 expanded the future use area which is located in the E 1/2 E 1/2 SE 1/4, E 1/2 NE 1/4 Section 7 and the W 1/2 Section 8; all in T106N-R48W with no increase in the amount of water reserved by No. 3984-3. This rural water system serves users in Moody, Minnehaha, Brookings and Lake Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3, 3984A-3 and 3984B-3 REMAIN in EFFECT for 389 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 on July 6, 2022 at 9:30 (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352.

The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be furnished if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permits renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 2022.

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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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the cost of \$71.02

RECEIVED

AFFIDAVIT OF PUBLICATION

MAY 31 2022

Wednesday, May 25

STATE OF SOUTH DAKOTA )  
 ) ss.  
County of Lake )

OFFICE OF  
WATER

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

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Wick Communications, Michelle Albers, Business Manager, and has been such legal newspaper during the times hereinafter mentioned; That the said Madison Daily Leader has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Business Manager of the said newspaper, a member of the Daily Leader staff thereof, and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

NTC REVIEW FUT WTR PERMTS  
BIG SIOUX RURAL WTR-DANR

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

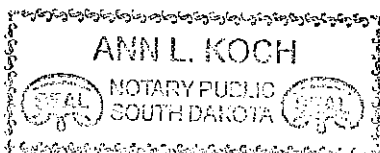
05/25/2022

That \$ 72.42 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publication of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

*Michelle Albers*

Subscribed and sworn before me this 25th day of

May, 2022



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

NOTICE OF HEARING TO  
REVIEW FUTURE USE  
WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 held by the Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479<sup>th</sup> Ave, Egan SD 57024 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 3984-3 was approved in 1978 and currently reserves 589 acre-feet from the Big Sioux/Moody Aquifer. Permit Nos. 3984A-3 and 3984B-3 expanded the future use area which is located in the E 1/2 E 1/2 SE 1/4, E 1/2 NE 1/4 Section 7 and the W 1/2 Section 8; all in T106N-R48W with no increase in the amount of water reserved by No. 3984-3. This rural water system serves users in Moody, Minnehaha, Brookings and Lake Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3, 3984A-3 and 3984B-3 REMAIN in EFFECT for 589 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Re The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 on July 6, 2022 at 9:30 (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches

a conclusion based upon facts presented at the public hearing.

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a

petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permits renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$72.42

JUN 06 2022

## OFFICE OF Affidavit of Publication

State of South Dakota WATER

ss

County of Brookings

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

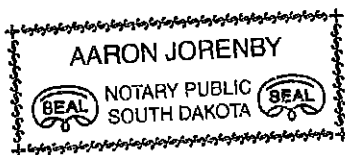
## LEG#16523 Notice of Hearing to Review Future Water Use

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

May 25, 2022  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Seventy-Four Dollars and Forty-Two Cents \$74.42  
\_\_\_\_\_



June \_\_\_\_\_  
\_\_\_\_\_

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

## PUBLIC NOTICES

Legal 16523 IX  
5/25

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

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3, 3984A-3 and 3984B-3 REMAIN in EFFECT for 589 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below. The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 on July 6, 2022 at 9:30 (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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*Kmboley*

1 day of

2022

*Ag*

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# Argus Leader

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

RECEIVED

MAY 27 2022

OFFICE OF  
WATER

Account No.: 6059972098

Ad No.: 0005263489

PO #: 3984-3

Lines : 243

Ad Total: \$73.01

BIG SIOUX COMMUNITY WATER SYSTEM  
INC  
523 E CAPITOL  
PIERRE, SD 57501

**This is not an invoice**

# of Affidavits 1

Account No.: 6059972098

Ad No.: 0005263489

## Argus Leader AFFIDAVIT OF PUBLICATION

**State of Wisconsin**

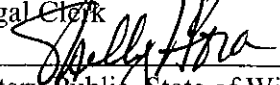
**County of Brown**


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

Sunday, May 22, 2022

Sworn to and subscribed before me this 22 day of May, 2022.

  
\_\_\_\_\_  
Legal Clerk

  
\_\_\_\_\_  
Notary Public, State of Wisconsin, County of Brown

  
\_\_\_\_\_  
My Commission expires

SHELLY HORA  
Notary Public  
State of Wisconsin

RECEIVED

MAY 27 2022

OFFICE OF  
WATER

NOTICE OF HEARING TO  
REVIEW FUTURE USE  
WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 held by the Big Sioux Community Rural Water System Inc., Jodi Johanson, Manager, 23343 479th Ave, Egan SD 57024 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 3984-3 was approved in 1978 and currently reserves 589 acre-feet from the Big Sioux/Moody Aquifer. Permit Nos. 3984A-3 and 3984B-3 expanded the future use area which is located in the E 1/2 E 1/2 SE 1/4, E 1/2 NE 1/4 Section 7 and the W 1/2 Section 8; all in T106N-R48W with no increase in the amount of water reserved by No. 3984-3. This rural water system serves users in Moody, Minnehaha, Brookings and Lake Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 3984-3, 3984A-3 and 3984B-3 REMAIN in EFFECT for 589 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, of the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 on July 6, 2022 at 9:30 (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, upon approval,

will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 3984-3, 3984A-3 and 3984B-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permits. The request for a delay must be

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WATER



filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permits renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://darr.s d.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 June 6, 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the approximate cost of \$73.01.

5263489 May 22, 2022

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**MAY 27 2022**

**OFFICE OF  
WATER**



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NOS. 4456-3 and 4456A-3, Aurora-Brule Rural Water System Inc**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit Nos. 4456-3 and 4456A-3, Aurora-Brule Rural Water System Inc, Wade Blasius, Manager, PO Box 140, Kimball SD 57355.

The Chief Engineer is recommending that Future Use Permit Nos. 4456-3 and 4456A-3 REMAIN in EFFECT for 621 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under the permits, 2) the system has demonstrated a reasonable need for the water reserved by the permits, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit Nos. 4456-3 and 4456A-3 is subject to payment of the \$115.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

Eric Gronlund, Chief Engineer  
May 16, 2022

*Aurora-Brule*  
**Rural Water System, Inc.**

P.O. Box 140  
Kimball, South Dakota 57355  
Phone 778-6110

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MAR 30 2022

WATER RIGHTS  
PROGRAM

March 28, 2022

Karen Schlaak, Environmental Specialist  
Water Rights Program  
Department of Agriculture and Natural Resources  
Joe Foss Bldg. 523 E Capitol  
Pierre, SD. 57501-3182

Dear Karen,

In Response to your letter of March 17, 2022, it is Aurora-Brule Rural Water System's intent to retain our future use permits (#4456-3 and 4456A-3).

Our System continues to operate as a public water supply, and it is necessary for us to maintain the reserve on the permits to meet future water demands.

Should you have any questions or need additional information, please contact me at 778-6110.

Sincerely,



Wade J. Blasius, Manager  
Aurora-Brule Rural Water System, Inc.  
abrws@midstatesd.net

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JUN 01 2022 AFFIDAVIT OF PUBLICATION

OFFICE OF  
WATER

STATE OF SOUTH DAKOTA )  
COUNTY OF AURORA )

SS

J.P. Studeny, Jr.  
of said County and State, being first duly sworn, on his/her oath sa

THE SOUTH DAKOTA MAIL is a weekly newspaper of gene printed and published in Plankinton, in Aurora County and State c by John Paul Studeny, Jr. and Gayle A. Van Genderen and newspaper during the times hereinafter mentioned; that the said legal newspaper, that it has a bonafide circulation of more than 200 that it has been published within said county of Aurora in the Engli more than fifty-two successive weeks next prior to the publicatio hereinafter mentioned, and has been printed during said period an time, in whole or in part in an office maintained at the said place and that I, the undersigned, am

Publisher

of said newspaper, in charge of the advertising department the personal knowledge of all the facts in this affidavit; that the advert

Notice of Hearing to Review  
Future Use Water Permit

Nos. 4456-3 and 4456A-3

a printed copy of which is hereto attached, was printed and publi newspaper for one week; that said notice in the issues of said newspaper on the dates as follows, to-wit:

The first publication being made on May 26

the second publication on \_\_\_\_\_

the third publication on \_\_\_\_\_

the fourth publication on \_\_\_\_\_

and subsequent publications on \_\_\_\_\_

that \$ 140.07, the full amount of the fee charged for publ annexed notice, insures solely to the benefit of the publisher newspaper; that no arrangement or understanding for a division ti made with any person, and that no part thereof has been agreed t any person whomsoever.



[Signature]  
subscribed and sworn to before me this 26 May

day of May

[Signature]  
Notary Public, Aurora

My Commission Expires \_\_\_\_\_

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 4456-3 and 4456A-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 4456-3 and 4456A-3 held by the Aurora-Brule Rural Water System Inc, Wade Blasius, Manager, PO Box 140, Kimball SD 57355 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 4456-3 was approved in 1979 and currently reserves 621 acre-feet from the Missouri River. Permit No. 4456A-3 corrected the location of the Missouri River diversion point which is in the NW 1/4 SW 1/4 Section 21-T104N-R71W. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas, and Jerauld Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 4456-3 and 4456A-3 REMAIN IN EFFECT for 621 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://dwr.sd.gov/public> or contact Ron Davall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 on July 6, 2022 at 9:30 am (Central Time), Floyd Mathew Training Center, Joe Fass Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://dwr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Fass Building, 523 E Capitol Ave, Pierre SD 57501 or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02-01:25.01 thru 74:02-01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permits renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://dwr.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 June 6, 2022.

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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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

(Published once at the approximate cost of \$140.07)

# AFFIDAVIT OF PUBLICATION

State of South Dakota

ss.

County of Brule

Debi Ruiz of said county, being first duly sworn, on oath, says: That she is the publisher of *Central Dakota Times*, a weekly newspaper, published in the City of Chamberlain, in said County of Brule and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Brule and State of South Dakota, for at least one year next prior to the first publication of the attached public notice and that the Notice of Hearing To Review  
Future Use Water Permit  
Nos. 4456-3 and 4456A-3

a 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 the successive week(s) to wit:

May 25, 2022; \_\_\_\_\_, 20\_\_\_\_;  
\_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_, 20\_\_\_\_;  
\_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_, 20\_\_\_\_;

That the full amount of the fee charged for the publication of the attached public notice inures 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:

\$58.65

Signed: Debi Ruiz

Subscribed and sworn to before me this 27<sup>th</sup> day

of May, 2022

Janet L. Petrak

Notary Public In and For The County of Brule,  
South Dakota



My commission expires June 5, 2022.

## NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 4456-3 and 4456A-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 4456-3 and 4456A-3 held by the Aurora-Brule Rural Water System Inc., Wade Blasius, Manager, P.O. Box 140, Kimball, SD 57355 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 4456-3 was approved in 1979 and currently reserves 621 acre-feet from the Missouri River. Permit No. 4456A-3 corrected the location of the Missouri River diversion point which is in the NW 1/4 SW 1/4 Section 21-T104N-R71W. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Program recommends that Permit Nos. 4456-3 and 4456A-3 REMAIN in EFFECT for 621 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 on July 6, 2022 at 9:30 a.m. (Central Time), Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD.

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

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OFFICE OF  
WATER

Any person who intends to participate in the hearing before the board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11 or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available on-line at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501" or call 605-773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 through 74:02:01:25.03 and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the board may be appealed to the circuit court and State Supreme Court as provided by law.

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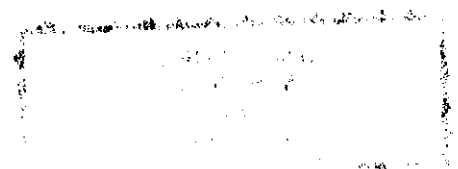
Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 2022.

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Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the board.

(Published one week, May 25, 2022, at a total approximate cost of \$58.65.)

(May 25)



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JUN 01 2022

OFFICE OF  
WATER

## Affidavit of Publication

STATE OF SOUTH DAKOTA, COUNTY OF JERAULD, SS.

Being first duly sworn, deposes and says: that he/she is a Resident of the County of Jerauld and State of South Dakota; and the True Dakotan is a weekly newspaper of general circulation, published in Wessington Springs, in said county by Kristi Hine; and is now and has been such newspaper continuously, during all the times hereafter mentioned; that the affiant is, and was during all the times hereafter mentioned, the business manager of said newspaper, in charge of the advertising department thereof; and has personal knowledge of all facts stated in this affidavit:

And that the notice and advertisement headed

*Notice of Hearing to Review  
Future Use Water Permit Nos. 4456-3 & 4456A-3*

A printed copy of which is hereunto attached and made a part hereof, was printed and published in said newspaper in 1 successive issues. That the first publication of said notice in said newspaper aforesaid was on Wednesday, the 25 day of May, 2022; and that the succeeding publications were on Wednesday, the        day of       , 20       on Wednesday, the        day of       , 20       on Wednesday, the        day of       , 20      

That the fee charged for the printing and publishing of said notice and advertisement in said newspaper aforesaid, was 70 dollars and 29 cents, and for this affidavit; and that said fee for printing and publishing said notice and advertisement in said newspaper has been full paid; that the full amount of fees charged for the publishing of the said attached and annexed notice and advertisement inures to the benefit of the publisher of the said True Dakotan; and no agreement or understanding for the division thereof has been made with any person whomsoever; that the said newspaper is a legal newspaper as provided by law.

Signed: Kristi Hine

Subscribed and sworn to before me, this 26 day of May, 2022

Delia Atkinson Notary Public in and for  
Jerauld County, South Dakota  
My Commission Expires 8/10/2027

SEAL  
DELIA ATKINSON  
Notary Public  
SOUTH DAKOTA

## c Notices

WESSINGTON SPRINGS, SOUTH DAKOTA

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT  
NOS. 4456-3 and 4456A-3

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The Water Management Board will conduct the hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 on July 6, 2022 at 9:30 am (Central Time), Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permits renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.



**AFFIDAVIT OF PUBLICATION**

STATE OF SOUTH DAKOTA

ss.

COUNTY OF DAVISON

RECEIVED

JUN 03 2022

OFFICE OF  
WATER

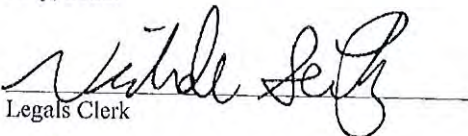
Nichole Seitz,, of said county, being first duly sworn, on oath, states as follows:

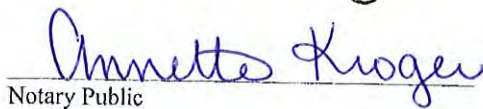
1. I am the designated agent of The *Mitchell Republic*, a daily newspaper published in the city of Mitchell, in said County of Davison, and State of South Dakota; I have full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice.

2. The newspaper listed on the exhibit published the advertisement of: *Legal Notice; (1) time: Wednesday May 25, 2022*, as required by law or ordinance.

3. That the full amount of the fee charged for the publication of the attached public notice 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: \$62.93

Subscribed and sworn to before me this 25th day of May, 2022.

  
Legals Clerk

  
Notary Public

My Commission Expires: 5-15-26





**NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NOS. 4456-3 and 4456A-3**

Notice is given that the Water Management Board will review Future Use Permit Nos. 4456-3 and 4456A-3 held by the Aurora-Brule Rural Water System Inc., Wade Blasius, Manager, PO Box 140, Kimball SD 57355 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 4456-3 was approved in 1979 and currently reserves 621 acre-feet from the Missouri River. Permit No. 4456A-3 corrected the location of the Missouri River diversion point which is in the NW 1/4 SW 1/4 Section 21-T104N-R71W. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas, and Jerauld Counties. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 4456-3 and 4456A-3 REMAIN in EFFECT for 621 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is 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. The Water Management Board will conduct the hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 on July 6, 2022 at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permits by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the

renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. Those and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permits renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at

the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 2022.

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Published once at the total approximate cost of \$62.93.  
(May 25, 2022) 66472

RECEIVED

JUN 03 2022

OFFICE OF  
WATER

# Affidavit Of Publication

RECEIVED

JUN 23 2022

STATE OF SOUTH DAKOTA

OFFICE OF  
WATER

County of Douglas

GERRI K. OLSON of said County and State, being first duly sworn, on her oath says:  
**THE ARMOUR CHRONICLE** is a weekly newspaper of general circulation, published in Armour, Douglas County, State of South Dakota by **GERRI K. OLSON** and has been such newspaper during the times hereinafter mentioned; that the said newspaper is a legal newspaper; that it has a bonafide paid circulation of more than 200 copies weekly; that it has been published within said County of Douglas in the English language and has been admitted to the United States mail under the second class mailing privilege, for at least one year prior to the publication of such notices; that I the undersigned, am Editor and Publisher of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; that the advertisement headed

A/B N. of Hearing

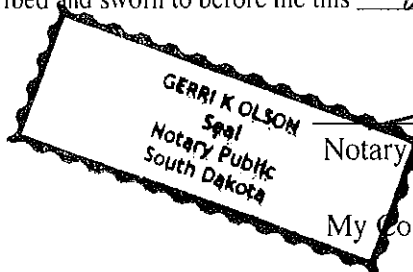
a printed copy of which is hereto attached, was printed and published in said newspaper for one successive weeks and that said notice was published in the issues of said paper on the dates as follows, to-wit:

The first publication being made on 6-21, 2022,  
the second publication being made on \_\_\_\_\_, 20\_\_\_\_,  
the third publication being made on \_\_\_\_\_, 20\_\_\_\_,  
the fourth publication being made on \_\_\_\_\_, 20\_\_\_\_,  
the fifth publication being made on \_\_\_\_\_, 20\_\_\_\_,  
the sixth publication being made on \_\_\_\_\_, 20\_\_\_\_,  
the seventh publication being made on \_\_\_\_\_, 20\_\_\_\_,  
the eighth publication being made on \_\_\_\_\_, 20\_\_\_\_,

that \$ 182.50 being the full amount of the fee for publication of the annexed notice, insures solely to the benefit of the publisher of said newspaper; that no arrangement or understanding for a division thereof has been made with any person, and that no part thereof has been agreed to be paid to any person whomsoever.

Gerri K. Olson

Subscribed and sworn to before me this 21 day of June, 2022



Notary Public, Douglas County, South Dakota

My Commission Expires Aug 2026

shing

## Notice of Hearing to Review Future Use Water Permit Nos. 4456-3 and 4456A-3

Notice is given that the Water Management Board will review Future Use Permit Nos. 4456-3 and 4456A-3 held by the Aurora-Brule Rural Water System Inc. Wade Blasius, Manager, PO Box 140, Kimball SD 57355 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 4456-3 was approved in 1979 and currently reserves 621 acre-feet from the Missouri River. Permit No. 4456A-3 corrected the location of the Missouri River diversion point which is in the NW 1/4 SW 1/4 Section 21-T104N-R71W. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas, and Jerauld Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 4456-3 and 4456A-3 REMAIN in EFFECT for 621 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 on July 6, 2022 at 9:30 a.m. (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permits, 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-

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The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permits on the petitioner, the reasons for petitioner's opposition to renewal of the future use permits, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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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 July 1, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

*Published twice at the total approximate cost of \$182.52 and can be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).*

156aLS/21c

Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

**RECEIVED**

**MAY 27 2022**

**OFFICE OF  
WATER**

Legal Notice Number: 1441

I, Cadee Schelske, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Aurora- Brule Rural Water- Water No. 4456-3 & 4456A-3 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on - 5/25/2022. That the full amount of the fee charged for the publishing \$ 69.31 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

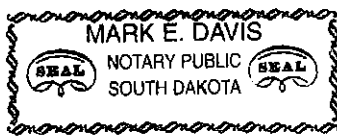
Cadee Schelske

Subscribed and sworn to me before this date 5/25/22.

[Signature]

Notary Public, South Dakota

My Term Expires 12/27/2024



F.P. 05-25-22  
**NOTICE OF HEARING  
TO REVIEW FUTURE  
USE WATER  
PERMIT NOS. 4456-3  
and 4456A-3**

Notice is given that the Water Management Board will review Future Use Permit Nos. 4456-3 and 4456A-3 held by the Aurora-Brule Rural Water System Inc, Wade Blasius, Manager, PO Box 140, Kimball SD 57355 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. Permit No. 4456-3 was approved in 1979 and currently reserves 621 acre-feet from the Missouri River. Permit No. 4456A-3 corrected the location of the Missouri River diversion point which is in the NW 1/4 SW 1/4 Section 21-T104N-R71W. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas, and Jerauld Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit Nos. 4456-3 and 4456A-3 REMAIN in EFFECT for 621 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit Nos. 4456-3 and 4456A-3 on July 6, 2022 at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

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No. 1441 (adv.)

Published one time at the total approximate cost of \$69.31.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT  
NO. 6259-3, City of Volga**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 6259-3, City of Volga, PO Box 217, Volga SD 57071.

The Chief Engineer is recommending that Future Use Permit No. 6259-3 REMAIN in EFFECT for 1,216 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under the permit, 2) the city has demonstrated a reasonable need for the water reserved by the permit, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 6259-3 is subject to payment of the \$165.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer  
May 16, 2022



PO Box 217, Volga, South Dakota 57071 605.627.9113

April 14, 2022

Karen Schlaak  
Water Rights Program

Karen,

This letter is to provide the city's response to Volga Future Use Water Permit No. 6259-3 from the Big Sioux: Brookings Aquifer held by the City of Volga.

The city's intention is to utilize areas of the 572 acre piece of land for future well drilling and pumping to increase Volga's water distribution. We currently are planning to apply to the state to drill 2 new wells to pump approximately 200gpm from each well. A water study and recent amendment to the water study also projects that one more well to pump approximately 200 gpm will be needed by 2035 or earlier. The area is close to our current wellfield and water treatment building providing a close connection for future expansion.

The population of Volga has increased in the past decade with more houses planned to be built this year and in future years. Commercial businesses and industrial businesses also plan to increase or expand, which will increase the demand for more water.

Volga is also constructing a 750,000 gallon water tower to be in commission in late 2022. Volga applied to the DANR for water funding and received approval for funding on April 13, 2022 (application with Volga's water system information and planned projects attached to the email).

If there are any questions or further information is needed regarding our future use water permit, please contact me.

Sincerely,

Michael Schulte  
City Administrator  
City of Volga



RECEIVED

JUN 06 2022

Office of Publication

State of South Dakota

OFFICE OF  
WATER

County of Brookings

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

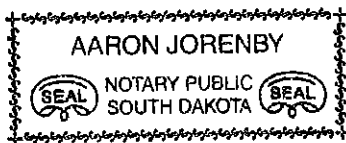
LEG#17561 Notice to Review Future Water Use Permit

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

May 26, 2022

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

Seventy Dollars and Twelve Cents \$70.12



*[Handwritten Signature]*

1 day of

June

2022

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

Legal 17561 IX  
5/26

NOTICE OF HEARING  
TO REVIEW FUTURE  
USE WATER PERMIT  
NO. 6259-3

Notice is given that the Water Management Board will review Future Use Permit No. 6259-3 held by the City of Volga, Michael Schulte, City Administrator, PO Box 217, Volga SD 57071 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 6259-3. This permit was approved in 2001 and currently reserves 1,216 acre-feet from the Big Sioux-Brookings Aquifer located in E 1/2 SE 1/4 Section 21-T10N-R51W for municipal use. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 6259-3 REMAIN in EFFECT for 1,216 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below. The Water Management Board will conduct the hearing to review Future Use Permit No. 6259-3 on July 6, 2022, at 9:30 am (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by June 6, 2022. The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 6259-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and

other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by June 6, 2022.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 6, 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 June 6, 2022. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board. Published 1X at the total approximate cost of \$70.12.



**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. 2833-2, Brian Burnham**

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. 2833-2, Brian Burnham, 31166 300th Street, Winner SD 57580

The Chief Engineer is recommending APPROVAL of Application No. 2833-2 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. 2833-2 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. 2833-2 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  
February 28, 2022

REPORT TO THE CHIEF ENGINEER  
ON  
WATER PERMIT APPLICATION NO. 2833-2  
BRIAN BURNHAM  
AND  
WATER PERMIT APPLICATION NO. 2834-2  
BLAKE BURNHAM  
FEBRUARY 28, 2022

Water Permit Application No. 2833-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from 2 existing wells and 7 proposed wells (approximately 100 feet deep) to be completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer. The land to be irrigated and the proposed well locations are located in the SE ¼ Section 16 T95N-R77W in Tripp County approximately 24 miles southwest of Winner, SD. The two existing wells authorized under Water Right No. 1260-2 will be used and are accounted for as part of the nine wells for this application.

Water Permit Application No. 2834-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from up to 4 wells (approximately 100 feet deep) located in the W ½ Se ¼ Section 11 and to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer. The land to be irrigated and the proposed well locations are located in the SE ¼ Section 11 T95N-R77W in Tripp County approximately 23 miles southwest of Winner, SD.

**AQUIFER:**  
**2833-2**

- **Quaternary aged Eolian (Quaternary Eolian) [QE]**

**2834-2**

- **Quaternary aged Terrace (Quaternary Terrace) [QT]**

Review of available hydrologic and geologic information indicates the formations likely to be encountered at both applicant's proposed well locations are either Quaternary aged Eolian or Terrace deposits. Locally, both of these formations were deposited on an erosional surface of the Ogallala Group along the Keya Paha River valley (see Figure 1). The Ogallala Group is a group of formations that comprise the Ogallala aquifer. Both of the Quaternary aged Eolian or Terrace deposits the applicants intend to withdraw water from consist of sand that has been deposited physically adjacent to the Ogallala Group, but do not have a significant portion of the Ogallala Group underlying either formation.

Filipovic (2004) stated:

"In South Dakota, the High Plains aquifer consists of one or more hydraulically connected geologic units of late Tertiary or Quaternary age. In ascending order, the late Tertiary rocks consist of the White River Group, Arikaree Group, and Ogallala Group. The Quaternary sediments consist of alluvial and eolian deposits."



Historically, the Water Rights Program and the Water Management Board has managed the High Plains aquifer by its primary groups, the Ogallala aquifer and the Arikaree aquifer. Where other permeable sediments such as eolian, alluvium and terrace deposits have directly overlain the Ogallala or Arikaree Group, the Water Rights Program has considered those sediments as a part of the Ogallala or Arikaree aquifer. In this case, the eolian and terrace deposits are primarily laterally adjacent to the Ogallala aquifer. Based on a well completion report submitted with this application and descriptions of historically encountered lithology while drilling in this area provided by a local well driller (Beck, 2022) working on these two projects, no Ogallala Group materials have been encountered in the area of either applicant's proposed well sites. Furthermore, the Arikaree Group where present lacks sufficient permeability to serve as a water source (Beck, 2022). The direction of groundwater movement in the High Plains aquifer is toward the Keya Paha River (Filipovic, 2004) which means water moves through both the Quaternary Eolian and Quaternary Terrace aquifers. Thus based on this information, it is reasonable to consider the portions of the Quaternary Eolian and Quaternary Terrace aquifer these two applications propose to withdraw water from as extensions of the Ogallala aquifer. Therefore, this report will discuss the availability of water in the Ogallala aquifer and the potential for unlawful impairment of existing appropriative and domestic users with adequate wells completed into the Ogallala, Quaternary Eolian, or the Quaternary Terrace aquifer that are relevant to these applications.

### **Aquifer Characteristics**

#### *Quaternary Eolian aquifer*

Quaternary aged Eolian deposits are a group of wind-blown and deposited sediments that range from silt to medium-grained sand deposited as sheets, barchan, linear, and dome like dunes or as a veneer on uplands (Martin et al, 2004). The particular deposit that Application No. 2833-2 proposes to withdraw water from is generally wind-blown sand that can be calcareous that was derived from the Ash Hollow and Valentine Formations, which are part of the Ogallala Group (Filipovic, 2004). This deposit has an approximate areal extent of 610 acres (Martin et al, 2004). The direction of groundwater movement is toward the Keya Paha River (Filipovic, 2004).

#### *Quaternary Terrace aquifer*

Quaternary aged Terrace deposits are a group of deposits of clay to boulder sized clasts deposited as pediments, paleochannels, and terrace fills of former flood plains (Martin et al, 2004). Filipovic (2004) noted that in Tripp and Gregory counties, "... alluvium is present in the fluvial flood plain and as terraced sediments along the more active streams and rivers." The areal extent of the deposit Application No. 2834-2 proposes to withdraw water from is approximately 835 acres (Martin et al, 2004). The direction of groundwater movement is toward the Keya Paha River (Filipovic, 2004). The well completion report filed with Application No. 2834-2 indicated "Coarse Sand/Sandstone Fragments" were encountered from 2 to 200 feet below ground surface (bgs), "Fragments Light Brown Clay Fine Gravel/Very Coarse" from 40 to 60 feet bgs, "sand Old River Bed Black Shale Fragments" from 66 to 68 bgs, and "Black Shale Unconsolidated" from 68 to 75 bgs. The static water level was 19 feet bgs at the time of well completion in November, 2021.

#### *Ogallala aquifer*

The Ogallala Group is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits (Filipovic, 2004 and 2011). The main body of the Ogallala aquifer in South Dakota

underlies approximately one million acres (Filipovic, 2004 and 2011; Martin et al, 2004). Saturated aquifer thickness can be up to approximately 200 feet (Filipovic, 2004; Water Rights, 2022e). The general direction of ground water flow is generally toward the southeast, but locally is frequently toward the edge of the deposits or toward surface water bodies, such as the Keya Paha River, that have incised the aquifer and hydrologically connected sediments. Locally, the Ogallala aquifer materials can be found at or near land surface, where present, and static water levels are generally between 10 and 50 feet below ground surface (Water Rights, 2022e). The Ogallala aquifer is generally unconfined but can be confined locally (Water Rights, 2022e). The Ogallala aquifer in South Dakota is split into two portions, the main body west of Ponca Creek and the remnant body east of Ponca Creek. Ponca Creek has completely incised through the aquifer along its channel. The area of this application is in the area of the main body of the aquifer.

#### **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 localized portions of the Quaternary Eolian and Quaternary Terrace aquifers as well as water availability from the Ogallala aquifer.

#### **WATER AVAILABILITY:**

These applications proposes to appropriate water from portions of the Quaternary Eolian and Quaternary Terrace aquifers where these specific portions are acting as extensions of the Ogallala aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

"No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

All three aquifer are not stratigraphically lower/older than the Greenhorn Formation and the proposed use is not for a water distribution system as defined in SDCL 46-1-6(17). Therefore, a comparison of average annual recharge and average annual withdrawals is required for these applications.



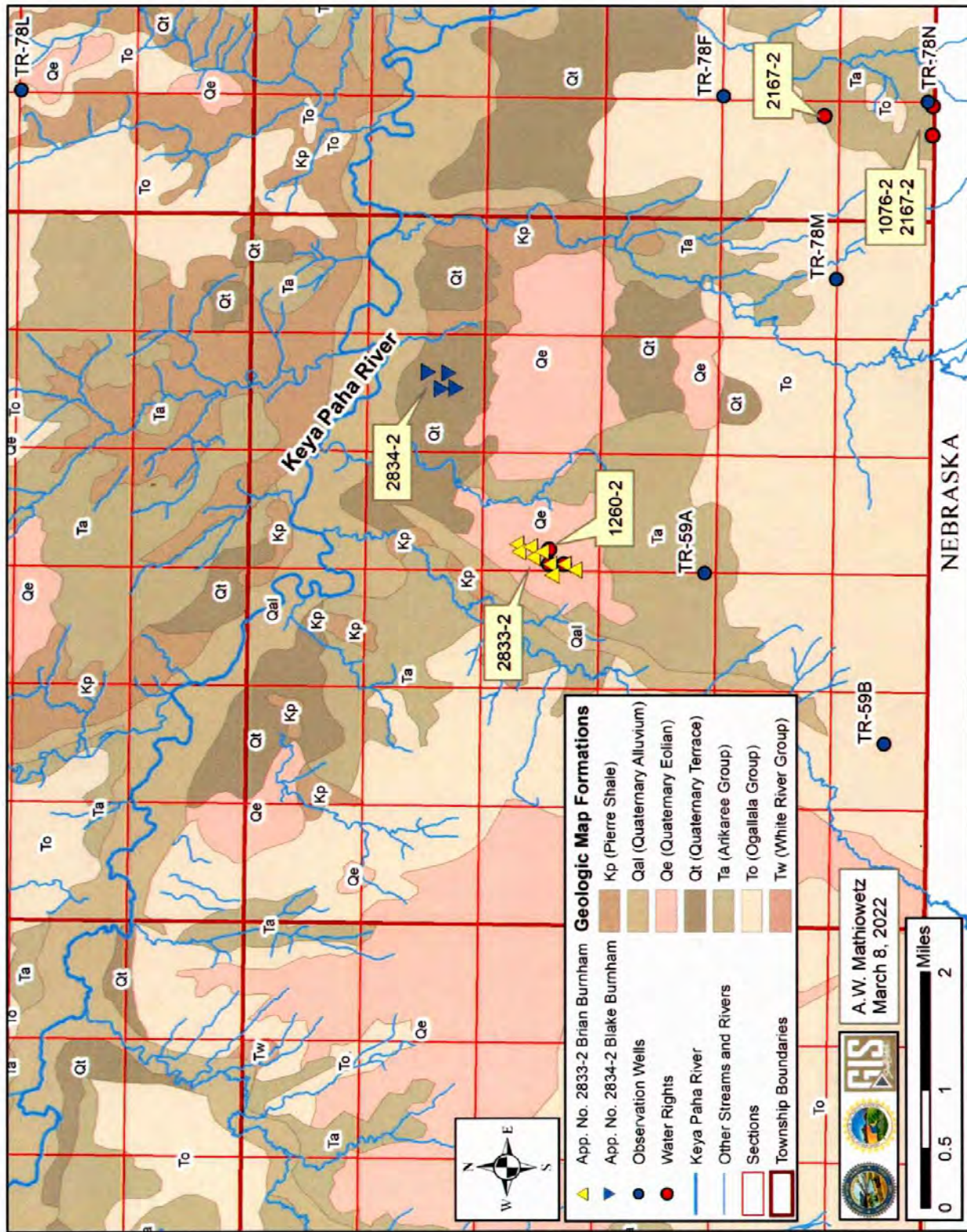


Figure 1 - Geologic formations map (modified from: Martin et al, 2004) with groundwater water rights (Water Rights, 2022d), Ogallala aquifer observation wells (Water Rights, 2022c) and local streams and rivers



## Hydrologic Budget

Both of the portions of the Quaternary Eolian and Quaternary Terrace aquifers these applications propose to use are limited in areal extent (Martin et al, 2004). The potentiometric surface information in Filipovic (2004) indicates that these two aquifers are really functioning as an extension of the Ogallala aquifer. That means applying estimates of recharge rates to aquifers of significantly larger areal extent over the limited areal extent of these aquifers would produce a relatively small mathematically estimated recharge rate that is not reflective of the unique hydrogeologic conditions of these aquifers. Also, Water Right No. 1260-2, which is labeled as withdrawing from the Arikaree aquifer, will be considered as completed into the Quaternary Eolian aquifer based on current lithologic information that was not available at the time the permit was issued and will also be added to the hydrologic budget of the Ogallala aquifer for the previously discussed reasons. There are no other water rights/permits completed into these portions of the Quaternary Eolian or Quaternary Terrace aquifers that can be considered as withdrawing water from the Ogallala aquifer. Therefore, the hydrologic budget section of this report will only discuss the Ogallala aquifer.

### *Recharge*

The Ogallala aquifer is primarily recharged by the infiltration of precipitation (Filipovic, 2004 and 2011). Kolm and Case (1983) estimated a range of recharge rates for the High Plains aquifer using a two-dimensional, finite-difference model. Kolm and Case (1983) noted previous recharge rate estimates ranged from 1.0 to 3.07 inches per year (in/yr) depending on author(s) and assumptions made by the author(s). Hedges and Burch (1985) used both base-flow recession and observation well data analysis to develop their recharge rate estimates to the Ogallala aquifer specifically. Cederberg (2021) cited a combination of sources to determine the approximate areal extent of the main body of the Ogallala aquifer to be approximately 1,005,360 acres. Table 1 lists the average annual recharge rate in acre-feet per year (ac-ft/yr) based on the source of the recharge rate and Cederberg's (2021) estimated areal extent of the Ogallala aquifer.

Table 1- Estimated average annual recharge rate to the main body of the Ogallala aquifer (Kolm and Case, 1983; Hedges and Burch 1985; Cederberg, 2021)

<b>Est. Avg. Annual Recharge Rate (in/yr)</b>	<b>Estimation Method</b>	<b>Source</b>	<b>Est. Avg. Annual Recharge Rate (ac-ft/yr)</b>
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	Obs. Well Data	Hedges and Burch, 1985	284,852

### *Discharge*

Discharge from the Ogallala aquifer is primarily through direct evapotranspiration, outflow to streams and rivers, outflow to adjacent and hydrologically connected aquifers, and well withdrawals (Filipovic, 2004 and 2011; Water Rights, 2022d and 2022e). Currently, there are 171 water rights/permits authorized to withdraw water and 4 future use permits reserving 2,233 ac-ft/yr from the entirety of the Ogallala aquifer (Water Rights, 2022d). Water Right Nos. 475-2 and 1114-2 and Water Permit Nos. 2678-2 and 2679-2 are not currently in use because the land authorized for irrigation has been sold to a nearby tribe. Thus, there are only 167 currently active water rights/permits plus the 4 future use permits. From the main body of the Ogallala aquifer, of which the aquifers for Application Nos. 2833-2 and 2834-2 are hydrologic extensions, there are 149 water rights/permits (135 irrigation and 14 non-irrigation) along with 2 future use permits (1,586 ac-ft/yr) authorized to withdraw or reserve water from the main body of the Ogallala aquifer plus Water Right No. 1260-2 for the previously mentioned reasons (Water Rights, 2022d). Table 2 displays the estimated average annual water use by non-irrigation water rights/permits and the amount of water reserved by future use permits. Non-irrigation water rights/permits that are only limited by diversion rate are assumed to pump 60% of the time at their permitted diversion rate. Water

rights/permits with a permitted volume are assumed to pump their maximum permitted volume. Future use permits are assumed to be fully developable.

Table 2- Estimated average annual use from the main body of the Ogallala aquifer by non-irrigation water rights/permits and future use permits (Water Rights, 2022d)

Permit No.	Name	County	Status	Type	CFS	Estimated Annual Use (ac-ft/yr)	Permitted Annual Vol. (ac-ft/yr)
1038-2	CITY OF WINNER	TRIPP	LC	MUN	0.87	377.9	
1285-2	CITY OF WINNER	TRIPP	LC	MUN	0.67	291.0	
1286-2	CITY OF WINNER	TRIPP	LC	MUN	0.72	312.8	
1416-2	CITY OF WINNER	TRIPP	LC	MUN	0.69	299.7	
1942-2	LITTAU & MASSA ET AL	TRIPP	LC	DOM	0.09	39.1	
2293-2	TRIPP COUNTY WATER USER DISTRICT	TRIPP	LC	RWS	3.88	1685.4	
2455-2	MARTIN J VANDERPLOEG	BENNETT	LC	FWP	0.045	19.5	
2505-2	LAKEVIEW CHRISTIAN REFORM	TODD	LC	INS	0.033	14.3	
2515-2	TRIPP COUNTY WATER USER DISTRICT	TRIPP	LC	RWS	2.68		1200
2621-2	TUTHILL COMMUNITY PRESBYTERIAN CHURCH	BENNETT	LC	INS	0.02	8.7	
2804-2	DOUGHERTY CATTLE COMPANY INC	TRIPP	PE	COM	0.13		16.12
521-2	CITY OF WINNER	TRIPP	LC	MUN	4.11	1785.3	
632-2	CITY OF COLOME	TRIPP	LC	MUN	0.22	95.6	
976-2	CITY OF COLOME	TRIPP	LC	MUN	0.33	143.3	
551-2	CITY OF WINNER	TRIPP	FU	MUN	2.44		1586
882-2	CITY OF WINNER	TRIPP	FU	MUN	n/a		0
<b>Total</b>						<b>7874.8</b>	
LC= Water Right, FU= Future Use Permit, MUN= Municipal, DOM= Domestic, RWS= Rural Water System, FWP= Fish and Wildlife Propagation, INS= Institutional							

The historic reported water use from the main body of the Ogallala aquifer plus the reported irrigation use by Water Right No. 1260-2 is shown in Table 3. The average annual reported irrigation pumpage from the main body of the Ogallala aquifer plus Water Right No. 1260-2 is 18,994.7 ac-ft/yr. However, from 1982 through 2012 and into 2013 the number of irrigation permits was relatively stable, but due to drought conditions in 2012, many irrigation permits applications were submitted and subsequently approved. To more accurately account for this change in the number of permits, it is more appropriate to consider the average irrigation pumpage from 2012 to present, which is 23,253.5 ac-ft/yr.

Table 3– Annual reported irrigation use from the main body of the Ogallala aquifer plus irrigation use by Water Right No. 1260-2 (Water Rights, 2022b)

Year	No. of Permits Reporting	Reported Pumpage (acre-feet)	Year	No. of Permits Reporting	Reported Pumpage (acre-feet)
1982	92	9,303.0	2004	91	23,868.0
1983	99	10,172.0	2005	98	20,054.7
1984	107	13,298.4	2006	106	25,657.1
1985	106	18,586.5	2007	105	24,010.9
1986	102	13,000.6	2008	101	24,483.6
1987	101	12,397.0	2009	100	22,173.6
1988	100	16,199.3	2010	99	21,209.1
1989	101	27,326.4	2011	100	15,235.7
1990	104	16,581.6	2012	103	33,144.5
1991	105	16,074.5	2013	104	26,492.3
1992	105	12,051.0	2014	104	22,126.7
1993	103	11,151.9	2015	102	23,993.9
1994	105	16,698.6	2016	104	23,297.6
1995	104	14,252.8	2017	103	27,319.3
1996	107	21,168.0	2018	106	19,384.3
1997	108	18,661.0	2019	107	11,464.1
1998	106	13,857.9	2020	105	22,058.8
1999	107	13,709.5	<b>MIN</b>	<b>91.0</b>	<b>9,303.0</b>
2000	108	16,119.0	<b>MAX</b>	<b>108.0</b>	<b>33,144.5</b>
2001	107	17,989.9	<b>AVG</b>	<b>103.1</b>	<b>18,994.7</b>
2002	102	24,179.8	<b>AVG 2012-2020</b>	<b>104.2</b>	<b>23,253.5</b>
2003	102	22,039.1			

There are domestic wells completed into the Ogallala aquifer that do not require a water right/permit, nor are required to report annual pumpage (Water Rights, 2021e). The introduction and expansions of rural water systems has caused some of the domestic wells to no longer be in use or to be used as a primary water source. Furthermore, domestic wells have a limited withdrawal rate allowed under South Dakota water law. Therefore, for the above listed reasons, withdrawal by domestic wells is not considered a significant portion of the hydrologic budget for the Ogallala aquifer.

Data was compiled for selected irrigation and municipal wells operated by the Rosebud Sioux Tribe (Valseth and Driscoll, 2020). However, it is likely not all municipal and irrigation wells that are operated by the tribe or on tribal lands were included. Furthermore, many of the selected wells that were reviewed 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 by each well. The data available is only estimated mean production (pumping



rate). Therefore, there is not sufficient information available to make a reasonably accurate estimate of average annual water use from these wells.

#### *Hydrologic Budget*

The estimated average annual recharge to the main body of the Ogallala aquifer ranges from approximately 109,000 to 285,000 ac-ft/yr. The estimated average annual withdrawals from the main body of the Ogallala aquifer is 31,128.3ac-ft/yr (non-irrigation: 7,874.8; irrigation: 23,253.5). There is one pending application, besides the two covered in this report. Permit Application No. 2836-2 proposes to irrigate 135 acres. These two applications combined propose to irrigate 260 acres. Assuming an application rate of one foot of water per permitted acres, these three proposed applications would pump 395 ac-ft/yr on average. The estimated average annual pumping plus likely pumping by proposed applications is still much less than the estimated average annual recharge. Therefore, there is a reasonable probability unappropriated water is available for this proposed appropriation.

#### **Observation Well Data:**

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer. The Water Rights Program maintains 76 observation wells completed into the Ogallala aquifer of which 69 are completed into the main body of the aquifer (Water Rights, 2022c).

There are six Ogallala aquifer observation wells within approximately five miles of the proposed diversion points for Application Nos. 2833-2 and 2834-2 as shown in Figure 8. Figures 2 through 7 show the observation well hydrographs. These 6 hydrographs are representative of the other 63 hydrographs for observation wells completed into the main body of the Ogallala aquifer (Water Rights, 2022c). In general, the observation well hydrographs show stable to rising water levels, 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 document the water level in the aquifer rises during wetter periods and slowly declines during drier periods. Furthermore, the effects of local pumping on the water level in the observation wells recover to pre-pumping season levels. This recovery and following of the climatic wet/dry cycle means that natural conditions, recharge to and natural discharge from the aquifer, govern the long term changes in water level of the aquifer. Recognizing that recharge to and natural discharge from an aquifer can be captured for pumping, the observation well data demonstrates there is unappropriated water available for these proposed appropriations. The observation well data agrees with the hydrologic budget data.

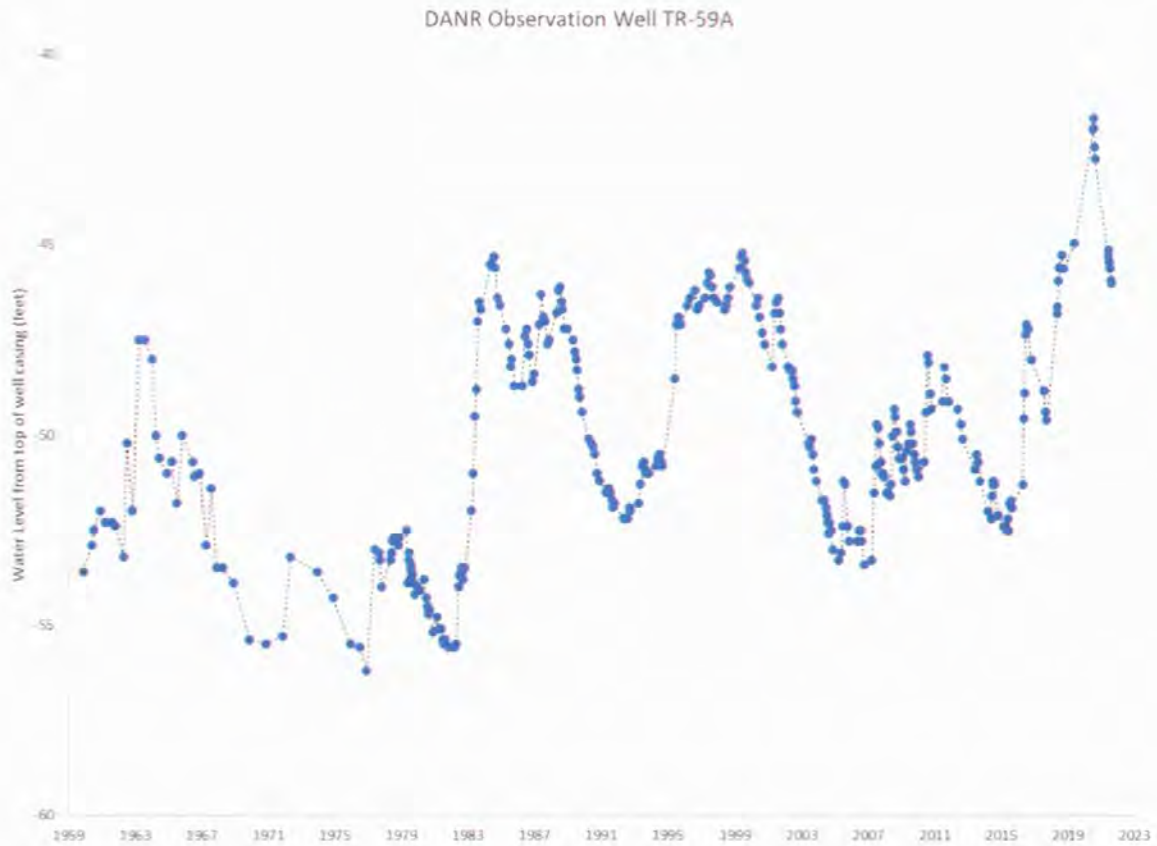


Figure 2- Hydrograph for observation well TR-59A (Water Rights, 2022c)

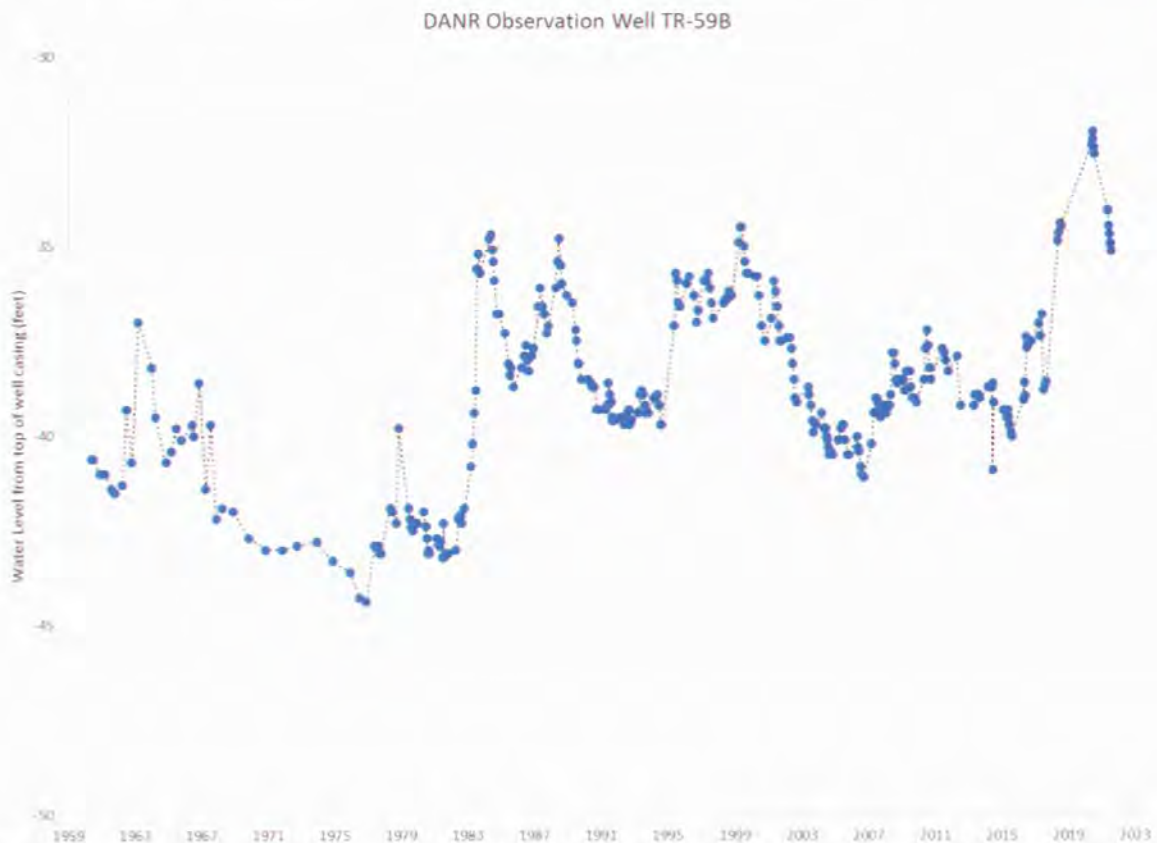


Figure 3- Hydrograph for observation well TR-59B (Water Rights, 2022c)  
Permit Application Nos. 2833-2 and 2834-2



Figure 4- Hydrograph for observation well TR-78F (Water Rights, 2022c)

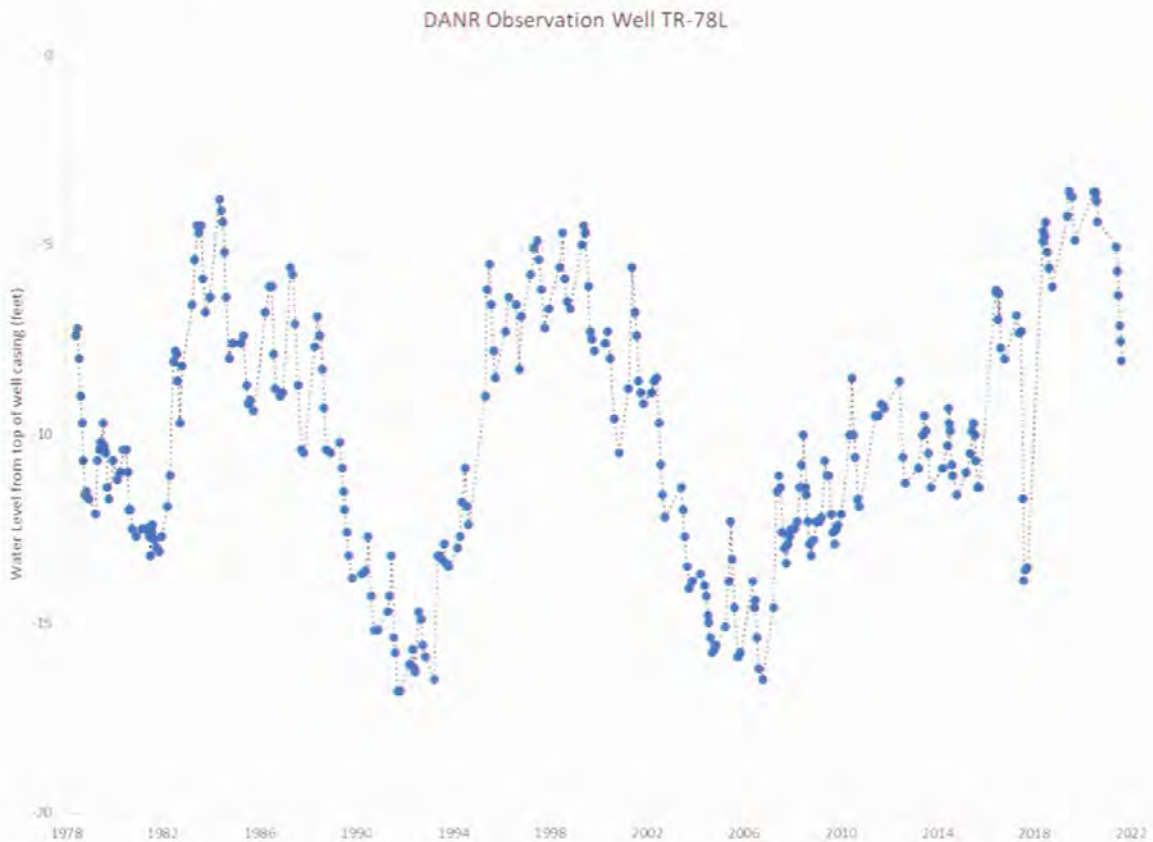


Figure 5- Hydrograph for observation well TR-78L (Water Rights, 2022c)  
Permit Application Nos. 2833-2 and 2834-2

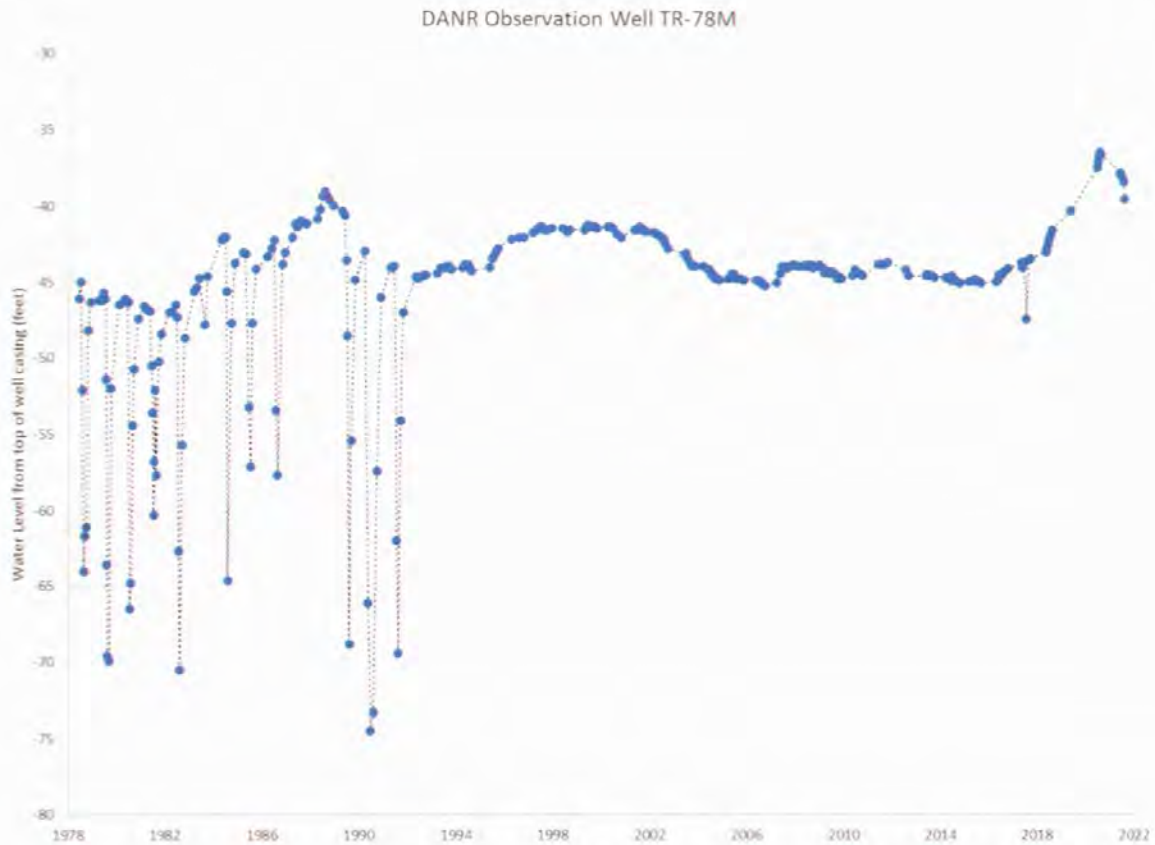


Figure 6- Hydrograph for observation well TR-78M (Water Rights, 2022c)

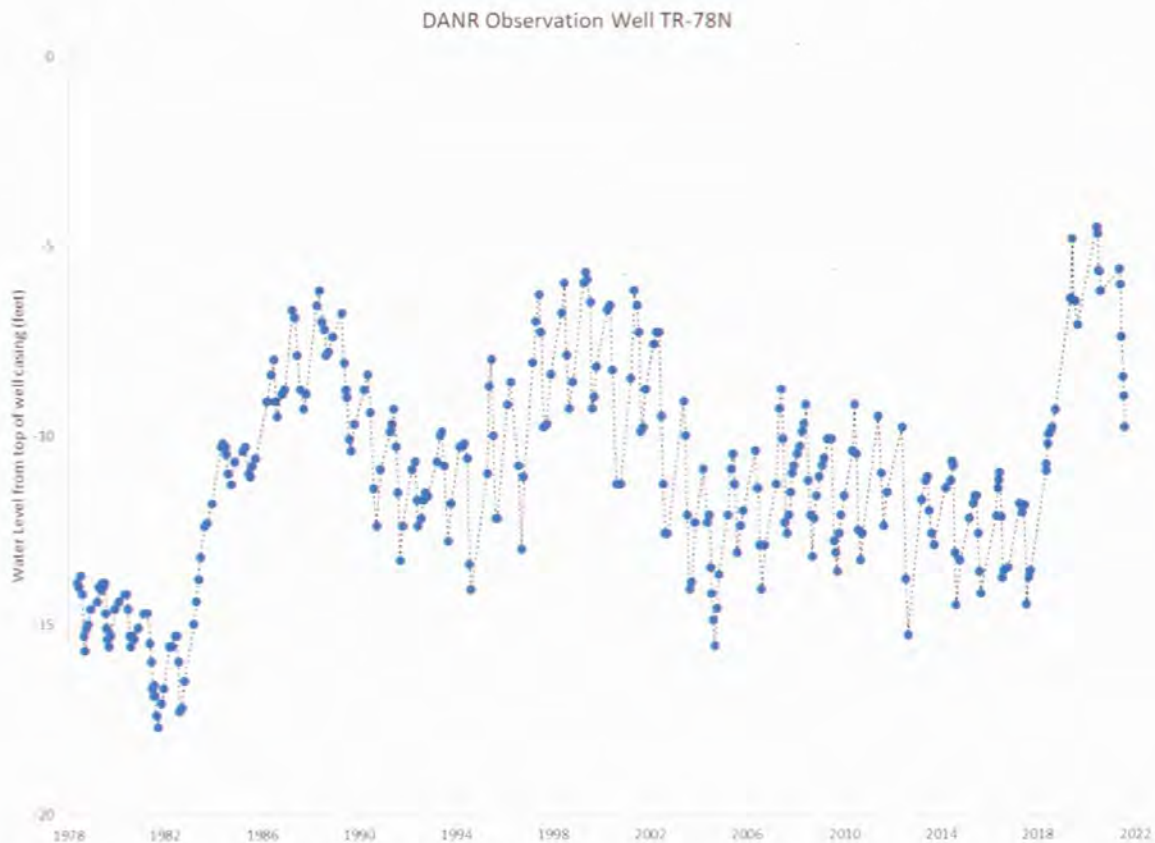


Figure 7- Hydrograph for observation well TR-78N (Water Rights, 2022c  
Permit Application Nos. 2833-2 and 2834-2



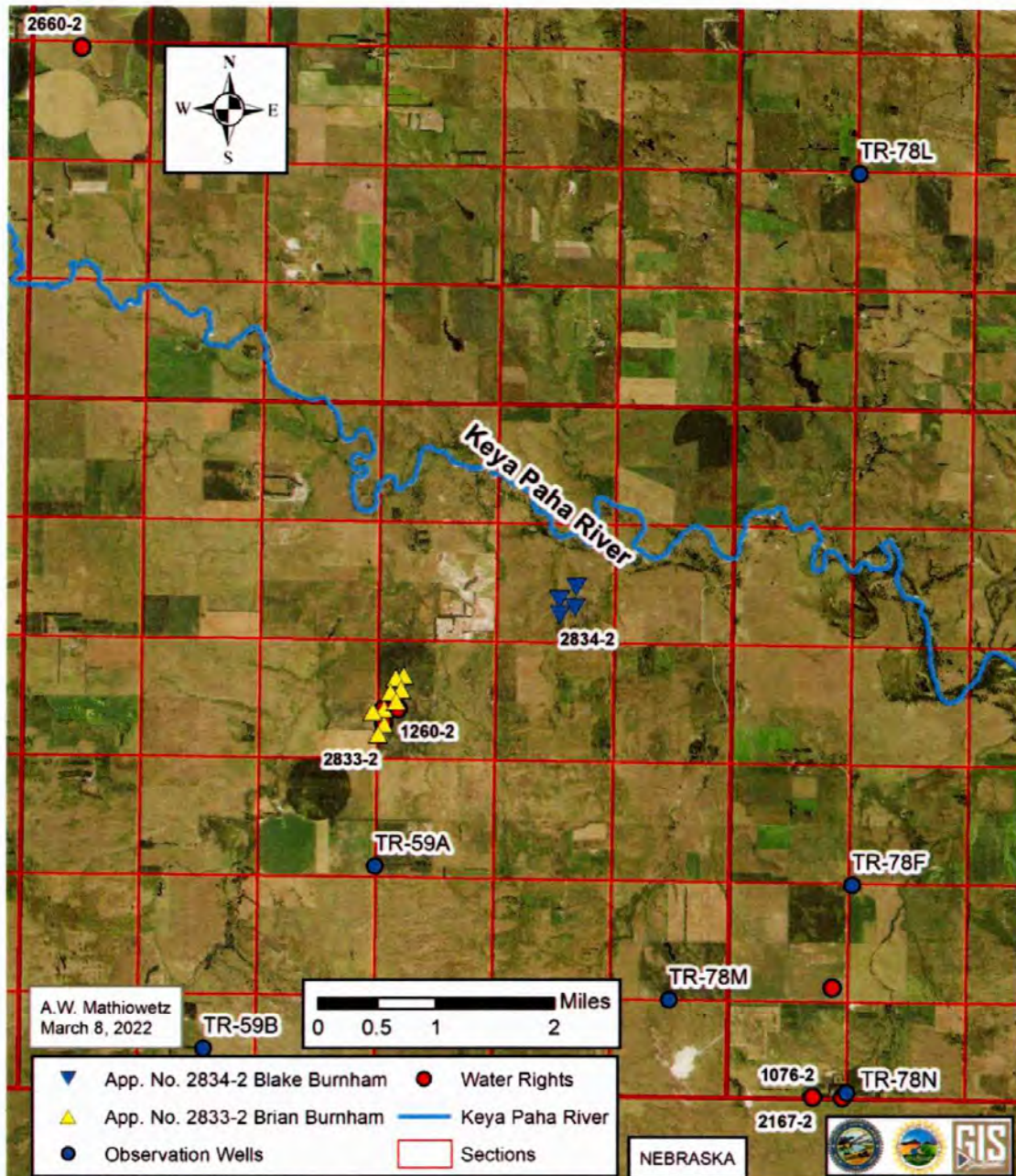


Figure 8- Map of Ogallala aquifer water rights/permits (Water Rights, 2022d), observation wells (Water Rights, 2022c) and the proposed diversion points for Permit Application Nos. 2833-2 and 2834-2

Table 4- Water rights/permits shown in Figure 8 (Water Rights, 2022d)

Permit No.	Name	County	Status	Use	CFS	Acres
1076-2	MARLENE SLOAN	TR	LC	IRR	1.63	114
1260-2	BRIAN BURNHAM	TR	LC	IRR	1.87	131
2167-2	DALE HEESE	TR	LC	IRR	1.94	136
2660-2	MISSION FARMS INC	TD	LC	IRR	1.78	135
TR= Tripp, TD= Todd, LC= Water Right, IRR= Irrigation						

### **POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:**

The nearest appropriative wells completed into the Quaternary Eolian, the Quaternary Terrace, or the Ogallala aquifer to any of the well locations proposed by Application Nos. 2833-2 and 2834-2 are authorized by Water Right No. 1260-2 which is to serve as a backup supply to Application No. 2833-2, if approved, and is held by the applicant (Water Rights, 2022d). The next nearest appropriative well is located approximately 4.6 miles and 3.9 miles to the southeast of the diversion points proposed by Application No. 2833-2 and 2834-2, respectively (Water Rights, 2022d). A map of the area is shown in Figure 8.

The nearest domestic well on file with the Water Rights Program to any of the diversion points proposed by Application Nos. 2833-2 and 2834-2 that are not held by the applicants are approximately 1.8 miles east or south from Application No. 2833-2 or approximately 0.5 miles southwest of Application No. 2834-2 (Water Rights, 2022e). There may be other domestic wells completed into the Quaternary Eolian, the Quaternary Terrace, or the Ogallala aquifer in the vicinity of these applications that are not on file with the Water Rights Program. There are no well interference complaints from any aquifer in Tripp County (Water Rights, 2022a). There was one unsubstantiated complaint regarding well interference from wells completed into the Ogallala aquifer in Bennett County (Water Rights, 2022a).

In general and in this area, the Ogallala aquifer is under unconfined conditions and both the Quaternary Eolian and Quaternary Terrace are locally unconfined (Water Rights, 2022d and 2022e). At the proposed diversion points for both applicants, the static water level is expected to be between 20 and 30 feet below grade with a saturated thickness of 20 to 40 feet (Beck, 2022; Water Rights, 2022c, 2022d and 2022e). That would allow a pump to be placed at least 20 feet into the saturated aquifer, in most cases, as required by Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) to qualify as an adequate well. The Water Management Board has recognized in the past that to place water to maximum beneficial use some drawdown may occur. In order to protect domestic users, 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.

Observation well TR-78N is within 0.5 miles of two appropriative irrigation wells (see Figure 7). The hydrograph for the observation wells shows a total variance of approximately 13 feet of the entire period of record despite being in very close proximity to multiple high pumping rate wells. Any drawdown created from pumping either of these proposed diversions is not expected to cause unlawful impairment on existing water rights with adequate wells or adequate domestic wells. This is due to the unconfined nature of the aquifer, the distance between appropriative wells, and the relatively limited amount of drawdown in the aquifer by high pumping rate wells as shown by the hydrograph for TR-78N. Therefore, there is a reasonable probability these proposed diversions will not unlawfully impair existing users appropriative or domestic users that have adequate wells.



## CONCLUSIONS:

1. Water Permit Application No. 2833-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to 9 wells to be completed into the Quaternary Eolian aquifer including the wells currently authorized by Water Right No. 1260-2.
2. The particular portion of the Quaternary Eolian aquifer Application No. 2833-2 proposes to use is acting as an extension of the Ogallala aquifer in this area and has been treated as a portion of the Ogallala aquifer in this report.
3. Water Permit Application No. 2834-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to 4 wells to be completed into the Quaternary Terrace aquifer.
4. The particular portion of the Quaternary Terrace aquifer Application No. 2834-2 proposes to use is acting as an extension of the Ogallala aquifer in this area and has been treated as a portion of the Ogallala aquifer in this report.
5. Based on the hydrologic budget and observation well data for the main body of the Ogallala aquifer, there is a reasonable probability of unappropriated water being available for Application Nos. 2833-2 and 2834-2.
6. There is a reasonable probability development of Application Nos. 2833-2 and 2834-2 will not unlawfully impair existing appropriated users with adequate wells or adequate domestic wells.



Adam Mathiowetz, PE  
SD DANR-Water Rights Program

## REFERENCES:

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- Water Rights. 2022e. Well Completion Reports. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



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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. 2833-2 Name of Applicant Brian Barnham

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:

The lowering of water in our wells at the house. The loss of water flowing in our creek. Specifically cottonwood creek.

List the reasons for your opposition to this application:

I am not writing this petition to stop my neighbor from improving their property. I am writing because of my concern of the depletion of our ground water.

The ~~creek~~ cottonwood creek which is our only source of water in our pasture, has went from 1ft. deep to 1-2 in deep in the last few years. I am afraid that further ground water depletion will cause it to dry up.

The water in our house well could also be affected. There are places in our township already have problems with getting water. I don't want that to be my future.

Drilling that many wells at one time will deplete ground water; which is the most basic of needs. Once ground water is gone, will we ever get it back? What I have need, probably not.

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

First Name: Susan

Last Name: Davis

Mailing Address: 31263 - 302nd St.

City: Millboro

State:

SD

Zip:

57580

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.





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## Petition

### DEPARTMENT of AGRICULTURE and NATURAL RESOURCES

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PIERRE SD 57501-3182  
danr.sd.gov

### Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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:**

I'm petitioning the approval of Application 2833-2 for the following reasons. Firstly, it would decrease or even dry up the current aquifer that we currently use for livestock and personal consumption. It is very possible to run our pastures (which are very close to) out of the required amount of water to maintain our livestock.

**List the reasons for your opposition to this application:**

As stated above I run livestock who are maintained by the use of wells in the vicinity. It is highly possible for those wells to run dry from over pumping of the aquifer. It is even more prevalent on a drought or dry year. Water is one of our most treasured natural resources and it needs to be sustained. Another big issue is the well we get our drinking water from. It is in the vicinity and could run low from the over use of irrigation systems. We need the water to live and for our pets to survive. Thank you for your time and consideration for the petition of this application.

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

First Name: Alex Last Name: Davis  
Mailing Address: 30113 313th Ave.  
City: Winner State: SD Zip: 57580

**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.





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and NATURAL RESOURCES

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danr.sd.gov

## Petition

### Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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:**

Depletion of water levels in our Private wells  
and Dams

**List the reasons for your opposition to this application:**

My concern is the use of that much water from sand  
Aquifer will result in lower water levels for our  
personal and livestock wells and dams. I don't think  
doing this will benefit anyone but the ones developing it.  
We are in the second year of drought and it doesn't seem  
very responsible to allow it. There are several wells in our area  
that have barely enough water for them to be used very  
much.

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

First Name: Aaron Last Name: Davis

Mailing Address: 30113 313th Ave

City: Winner State: S.D. Zip: 57580

**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.





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

## Petition

### Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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:**

The approval of this application would cause unique injury to the current & future use of water on my property. With insufficient water, our cattle operation & land value would be drastically affected, along with the water supply to our home.

**List the reasons for your opposition to this application:**

Approval of this application will drastically affect water levels in existing wells & is not in the public's interest. This will affect not only mine, but surrounding households, cattle operations, crops & land values. This would be a misuse of a natural resource with lasting effects on property surrounding the area. The public needs to be considered when approving such application.

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

First Name: Amy Last Name: Davis

Mailing Address: 30113 813th Ave

City: Winnon State: SD Zip: 57580

**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.





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and NATURAL RESOURCES

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PIERRE SD 57501-3182  
danr.sd.gov

# Petition

## Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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:**

The recommendation by the Chief Engineer to approve Application No. 2833-2 does not take into consideration the current and future needs of surrounding acres owned by my families Trust (see definition in next section) that will require additional water supply needs which will impact Crop levels, sales and other impacts including the potential (probably likely) loss of value of the property or insufficient water levels for a cattle operation should there be increased drought conditions. Such impacts would have a material financial adverse impact of the Trust and directly correlated to the increased number of wells and water usage in this application if allowed to be approved.

I strongly oppose this application and the recommendation, therein, Notwithstanding other injuries, the potential loss in value of the Trust's property of acres in proximity to the wells is by itself enough injury to oppose this application.

**List the reasons for your opposition to this application:**

I am the Trustee of the "Vernon R. Herrmann and Marilyn S. Herrmann Irrevocable Trust of 2019" (the Trust). The Trust owns land in Tripp County South Dakota, including land that would be impacted by this application. The usage of this Trust land will likely be significantly different for either the party leasing the land from the Trust or for a future owner of the land. Application No. 2833-2 (the "Application") will materially injure the Trust. Among other items, I do not believe the Chief Engineer placed sufficient consideration on current or future needs and values of surrounding property's including my Trust, among other items. With this substantial increase in wells and water usage, there appears to be no assurance that should one of my Trust land sections require additional wells, that our application would be approved due to this the requirements of a detailed review including a comparison of average annual recharge and average annual withdrawals is required for these applications, among other items. In addition, by any means, 9 wells on 130 acres is significant and could even impact current water uses on the Trust land should a significant drought occur which also would also materially injure the Trust. The Notice that was published in the Winner Advocate, mentions reasons why the Application should be approved but does not mention that it could impact "FUTURE" levels of "unappropriated water." It also mentions that approval is in the "public interest". I would ask whose "public interest" other than the Burnham property? What about the "public interest" of land owners such as the land in my Trust which has been owned by my family for decades.

To conclude, the Application requires that I allege that the Application will cause injury to the Trust that is unique from any injury suffered by the public in general. The items I discussed above clearly show that there could be an immediate loss in value of the Trust land due to the significant higher usage of a scarce resource (water). This immediate injury along with the other injuries mentioned above and potentially other injuries once more information is obtained by my legal counsel, should be sufficient to deny the Application as it is currently written.

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

First Name: Kevin Last Name: Herrmann

Mailing Address: 13565 Larimore Ave

City: Omaha State: NE Zip: 68164

**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.





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danr.sd.gov

## Petition

### Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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:**

Depletion of water available for well at my home place for house & domestic use & for livestock, also reduction in available water for livestock in Lost Creek & stream in RS-2283.

**List the reasons for your opposition to this application:**

This permit will take water from aquifers that supply my home well that is essential for home use & livestock water. Chief Engineer states that "existing domestic water uses & water rights will NOT be unlawfully impaired." Do you guarantee that? We have never had a shortage of water in our well in the past, & stream flows have been sufficient for livestock use but

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

First Name: Kaycee Kollmer Last Name: Gordon

Mailing Address: 31143 299th St,

City: Millboro State: SD Zip: 57580-6114

**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. 2833-2

Petitioner's Name ~~Brian B~~ Kaycee Kellmer-Condon

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

taking this amount of water for irrigation  
will change that. We all need water,  
for home & livestock use, & that comes  
first! over irrigation, or other uses.





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danr.sd.gov

## Petition

### Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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:**

Depletion of water available for my well for household & domestic use & for livestock. Also reduction of stream flow in Lost Creek - needed for livestock - as well as a small stream in NE 1/4 of NE 1/4 of sec 10-95-79 (RS-2283) - the ONLY source of water in that parcel.

**List the reasons for your opposition to this application:**

Taking 1.85 cu.ft. per second from 9 wells will deplete the aquifer(s) that supply my well that I need for my domestic & livestock use. The chief engineer has stated that existing domestic water uses & water rights will not be unlawfully impaired. If my well, or creeks, go dry - will the application be revoked? At that point - it may be too late for the aquifer to recharge! I need water for my household domestic & livestock use! This irrigation may also affect the flows in Lost creek & in RS-2283 - that I need for livestock!! see next page →

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

First Name: Maria Last Name: Condon  
Mailing Address: 31143 299th St.  
City: Millbrae State: SD Zip: 57580-6114

**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. 2833-2

Petitioner's Name Brian Burnham Marie Condon

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

The "test wells" (monitor wells) in my area are all located south of my place - so would not indicate what is going on at my place.

My concern is not only for me, but for my neighbors as well, & for future generations or future landowners.

We all need water!



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## Comment

**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

### Concerning Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

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

**Note.** Filing a comment does NOT make the commenter a party of record to, or a participant in, any hearing that may be held concerning this application. Your comment will be provided to the Water Management Board and become part of the public record.

#### Comments concerning this application:

Dear Sr

I am writing this as a public concern that by pumping that much surface water that it would be detrimental to our wells for private and livestock uses

We are going into a second year of drought which has taken its toll on our local water supplies i would hope you would reconsider your decision on approval of this for Blake or Brian

Thanks for reading my comment

#### Commenter's name and address:

First Name: Aaron Last Name: Davis

Address: 30113 313th ave

City: Winner State: S.D Zip: 57580

**Note.** This comment needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above, send to "Attention - Water Rights Program" or send via email to [DANRmail@state.sd.us](mailto:DANRmail@state.sd.us).

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Application No. 2833-2

NOV 1 1968

Commenter's Name Aaron Davis

NOV 1 1968  
AARON DAVIS

Any additional comments:

# AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

**Dan Bechtold**

of said county being first duly sworn, on oath says that he is the Editor of the

## WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said county of Tripp, and has full and personal knowledge of all the facts herein stated that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies weekly and has been published within said county for fifty-two successive weeks prior to the publication of the notice herein mentioned, and was printed wholly or in part in an office maintained at said place of publication; that the

102 lines @ 1 column X 90%

Notice of Application

Brian Burnham

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 week(s), on the day of each week on which said newspaper was regularly published to wit:

3-23-2022

That the full amount of the fees for the publication of the \*annexed notice is \$38.56

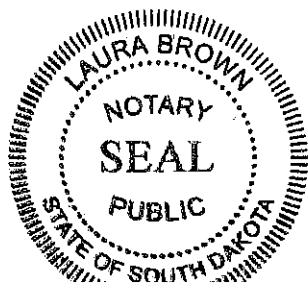
Dan Bechtold

Subscribed and sworn to before me this 23rd  
day of March, 2022

Laura Brown  
Notary Public

County of Tripp, South Dakota

My Commission Expires June 12, 2025



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MAR 28 2022

WATER RIGHTS  
PROGRAM

## NOTICE OF APPLICATION NO. 2833-2

### to Appropriate Water

Notice is given that Brian Burnham, 31166 300th St, Winner SD 57380 has filed an application for a water permit to appropriate 1.85 cubic feet of water per second from up to 9 wells to be completed into the Quaternary Eolian Aquifer (approximately 75 feet deep) located in the W 1/2 section 15; and NE 1/4 SE 1/4 section 16; all for irrigation of 130 acres in the SE 1/4 Section 16; all in T95N-R77W. Two of the 9 wells are existing wells covered by Water Rights No. 1260-2 for irrigation of the SW 1/4 section 15-T95N-R77W. The applicant requests that the 2 existing wells and the 7 proposed wells be used to irrigate all the acreage in the SE 1/4 Section 16 and SW 1/4 section 15; all in T95N-R77W. The pivots will be operated on an alternating basis. This site is located approximately 24 miles southwest of Winner SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2833-2 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 Duvall 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, 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 recommendations, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by April 4, 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 April 4, 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 once at the total approximate cost of \$38.56 (12)



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MAR 30 2022

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Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

Legal Notice Number: 1316

I, Mckenzie Castillo, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Brian Burnham – Water #2833-2 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 3/23/2022. That the full amount of the fee charged for the publishing \$ 46.89 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

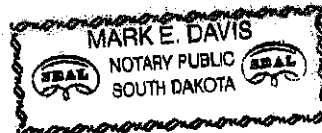
Mckenzie Castillo

Subscribed and sworn to me before this date 3/30/22.

Mark E. Davis

Notary Public, South Dakota

My Term Expires 12/27/2024



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 48-2A-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 48-2-9 and 48-2-11, or both. Any person meeting the petitioner's requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with SDCE, 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://dareid.gov/> public or by contacting the Chief Engineer. The Chief Engineer's address is Water Rights Program, Foss Building, 623 E Capitol, Pierre SD 57501 or call (605) 779-3352. 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 4, 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://dareid.gov/> public or by calling (605) 779-3352 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 4, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received by the Chief Engineer, 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 the application. Notice of the hearing will be given to the applicant and any person filing a petition. No. 1316 (rev.) Published one time at the total approximate cost of \$48.89.

F.P. 03-23-22

#### NOTICE OF APPLICATION

NO. 2833-2 to

Appropriate Water

Notice is given that

Brian Burnham, 31166

300th St., Winner SD

57800, has filed an

application for a water

right to appropriate 60

6.06 feet of water for

second from up to 9 wells

to be completed into

the Customer, Eolun

Aquifer (approximately 75

feet deep) located in the

W1/2 section 15; and NE

1/4 SE 1/4 section 16; all

for irrigation of 150 acres

in the SE 1/4 section 16;

all in T65N-R77W. Two of

the 9 wells are existing

wells covered by Water

Right No. 1280-2 for

irrigation of the SW1/4

section 15-T65N-R77W.

The applicant requests

that the 2 existing wells

and the 7 proposed

wells be used to irrigate

all the acreage in the

SE1/4 section 15 and

SW1/4 section 16 in

T65N-R77W. The wells

will be operated on an

alternating basis. This site

is located approximately

24 miles southwest of

Winner SD.

Pursuant to SDCL

48-2A-2, the Chief

Engineer's recommendation

APPROVAL of Application

No. 2833-2 with

qualifications, because

1) unappropriated water

is available; 2) existing

domestic water rights

and water rights will not

be unduly 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://dareid.gov/>

Public or contact phone

(605) 779-3352 for a

comment or information at

the Water Rights Program

address provided above.

Any person interested in

opposing this application



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

May 25, 2022

**NOTICE OF HEARING**

TO: Brian Burnham Ryan S. Vogel, Attorney  
31166 300th St Richardson Law Firm  
Winner SD 57580 PO Box 1030  
Aberdeen SD 57402-1030

Petitioners  
(see attached list dated April 19, 2022)

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

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

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2833-2, Brian Burnham

The Water Management Board will conduct a hearing to consider Application No. 2833-2 at 9:45 AM (Central Time), on Wednesday, July 6, 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.

Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. Applicable provisions of the public notice published in the Winner Advocate on March 23, 2022, Huron Daily Plainsman on March 23, 2022, and the Notice of Hearing dated March 31, 2022, still apply.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2833-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

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

Petitioner List  
Water Permit Application No. 2833-2, Brian Burnham  
April 19, 2022

**PETITIONERS**

Susan Davis  
31263 302<sup>nd</sup> St  
Millboro SD 57580

Aaron Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Alex Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Amy Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Marie Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

KayCee Kollmar-Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

Kevin Herrmann  
13565 Larimore Ave  
Omaha NE 68164

Austin Davis  
203 N Cottonwood St  
Norfolk NE 68701

Jody Soles  
29861 310<sup>th</sup> Ave  
Millboro SD 57580

## CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated May 25, 2022, regarding Water Permit Application No. 2833-2 – Brian Burnham, 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 May 25, 2022.

Brian Burnham  
31166 300th St  
Winner SD 57580

Ryan S. Vogel, Attorney  
Richardson Law Firm  
PO Box 1030  
Aberdeen SD 57402-1030

### And Petitioners as follows:

Susan Davis  
31263 302<sup>nd</sup> St  
Millboro SD 57580

Alex Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Marie Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

Aaron Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Amy Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

KayCee Kollmar-Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

Austin Davis  
203 N Cottonwood St  
Norfolk NE 68701

Jody Soles  
29861 310<sup>th</sup> Ave  
Millboro SD 57580

Kevin Herrmann  
13565 Larimore Ave  
Omaha NE 68164

Above also Sent Inter-office to:


Ann Mines Bailey, 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 25<sup>th</sup> day of May, 2022.



Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025







**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. 2834-2, Blake Burnham**

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. 2834-2, Blake Burnham, 31166 300th Street, Winner SD 57580

The Chief Engineer is recommending APPROVAL of Application No. 2834-2 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. 2834-2 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. 2834-2 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  
February 28, 2022

REPORT TO THE CHIEF ENGINEER  
ON  
WATER PERMIT APPLICATION NO. 2833-2  
BRIAN BURNHAM  
AND  
WATER PERMIT APPLICATION NO. 2834-2  
BLAKE BURNHAM  
FEBRUARY 28, 2022

Water Permit Application No. 2833-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from 2 existing wells and 7 proposed wells (approximately 100 feet deep) to be completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer. The land to be irrigated and the proposed well locations are located in the SE  $\frac{1}{4}$  Section 16 T95N-R77W in Tripp County approximately 24 miles southwest of Winner, SD. The two existing wells authorized under Water Right No. 1260-2 will be used and are accounted for as part of the nine wells for this application.

Water Permit Application No. 2834-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from up to 4 wells (approximately 100 feet deep) located in the W  $\frac{1}{2}$  Se  $\frac{1}{4}$  Section 11 and to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer. The land to be irrigated and the proposed well locations are located in the SE  $\frac{1}{4}$  Section 11 T95N-R77W in Tripp County approximately 23 miles southwest of Winner, SD.

**AQUIFER:**

**2833-2**

- **Quaternary aged Eolian (Quaternary Eolian) [QE]**

**2834-2**

- **Quaternary aged Terrace (Quaternary Terrace) [QT]**

Review of available hydrologic and geologic information indicates the formations likely to be encountered at both applicant's proposed well locations are either Quaternary aged Eolian or Terrace deposits. Locally, both of these formations were deposited on an erosional surface of the Ogallala Group along the Keya Paha River valley (see Figure 1). The Ogallala Group is a group of formations that comprise the Ogallala aquifer. Both of the Quaternary aged Eolian or Terrace deposits the applicants intend to withdraw water from consist of sand that has been deposited physically adjacent to the Ogallala Group, but do not have a significant portion of the Ogallala Group underlying either formation.

Filipovic (2004) stated:

“In South Dakota, the High Plains aquifer consists of one or more hydraulically connected geologic units of late Tertiary or Quaternary age. In ascending order, the late Tertiary rocks consist of the White River Group, Arikaree Group, and Ogallala Group. The Quaternary sediments consist of alluvial and eolian deposits.”

Historically, the Water Rights Program and the Water Management Board has managed the High Plains aquifer by its primary groups, the Ogallala aquifer and the Arikaree aquifer. Where other permeable sediments such as eolian, alluvium and terrace deposits have directly overlain the Ogallala or Arikaree Group, the Water Rights Program has considered those sediments as a part of the Ogallala or Arikaree aquifer. In this case, the eolian and terrace deposits are primarily laterally adjacent to the Ogallala aquifer. Based on a well completion report submitted with this application and descriptions of historically encountered lithology while drilling in this area provided by a local well driller (Beck, 2022) working on these two projects, no Ogallala Group materials have been encountered in the area of either applicant's proposed well sites. Furthermore, the Arikaree Group where present lacks sufficient permeability to serve as a water source (Beck, 2022). The direction of groundwater movement in the High Plains aquifer is toward the Keya Paha River (Filipovic, 2004) which means water moves through both the Quaternary Eolian and Quaternary Terrace aquifers. Thus based on this information, it is reasonable to consider the portions of the Quaternary Eolian and Quaternary Terrace aquifer these two applications propose to withdraw water from as extensions of the Ogallala aquifer. Therefore, this report will discuss the availability of water in the Ogallala aquifer and the potential for unlawful impairment of existing appropriative and domestic users with adequate wells completed into the Ogallala, Quaternary Eolian, or the Quaternary Terrace aquifer that are relevant to these applications.

### **Aquifer Characteristics**

#### *Quaternary Eolian aquifer*

Quaternary aged Eolian deposits are a group of wind-blown and deposited sediments that range from silt to medium-grained sand deposited as sheets, barchan, linear, and dome like dunes or as a veneer on uplands (Martin et al, 2004). The particular deposit that Application No. 2833-2 proposes to withdraw water from is generally wind-blown sand that can be calcareous that was derived from the Ash Hollow and Valentine Formations, which are part of the Ogallala Group (Filipovic, 2004). This deposit has an approximate areal extent of 610 acres (Martin et al, 2004). The direction of groundwater movement is toward the Keya Paha River (Filipovic, 2004).

#### *Quaternary Terrace aquifer*

Quaternary aged Terrace deposits are a group of deposits of clay to boulder sized clasts deposited as pediments, paleochannels, and terrace fills of former flood plains (Martin et al, 2004). Filipovic (2004) noted that in Tripp and Gregory counties, "... alluvium is present in the fluvial flood plain and as terraced sediments along the more active streams and rivers." The areal extent of the deposit Application No. 2834-2 proposes to withdraw water from is approximately 835 acres (Martin et al, 2004). The direction of groundwater movement is toward the Keya Paha River (Filipovic, 2004). The well completion report filed with Application No. 2834-2 indicated "Coarse Sand/Sandstone Fragments" were encountered from 2 to 200 feet below ground surface (bgs), "Fragments Light Brown Clay Fine Gravel/Very Coarse" from 40 to 60 feet bgs, "sand Old River Bed Black Shale Fragments" from 66 to 68 bgs, and "Black Shale Unconsolidated" from 68 to 75 bgs. The static water level was 19 feet bgs at the time of well completion in November, 2021.

#### *Ogallala aquifer*

The Ogallala Group is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits (Filipovic, 2004 and 2011). The main body of the Ogallala aquifer in South Dakota



underlies approximately one million acres (Filipovic, 2004 and 2011; Martin et al, 2004). Saturated aquifer thickness can be up to approximately 200 feet (Filipovic, 2004; Water Rights, 2022e). The general direction of ground water flow is generally toward the southeast, but locally is frequently toward the edge of the deposits or toward surface water bodies, such as the Keya Paha River, that have incised the aquifer and hydrologically connected sediments. Locally, the Ogallala aquifer materials can be found at or near land surface, where present, and static water levels are generally between 10 and 50 feet below ground surface (Water Rights, 2022e). The Ogallala aquifer is generally unconfined but can be confined locally (Water Rights, 2022e). The Ogallala aquifer in South Dakota is split into two portions, the main body west of Ponca Creek and the remnant body east of Ponca Creek. Ponca Creek has completely incised through the aquifer along its channel. The area of this application is in the area of the main body of the aquifer.

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

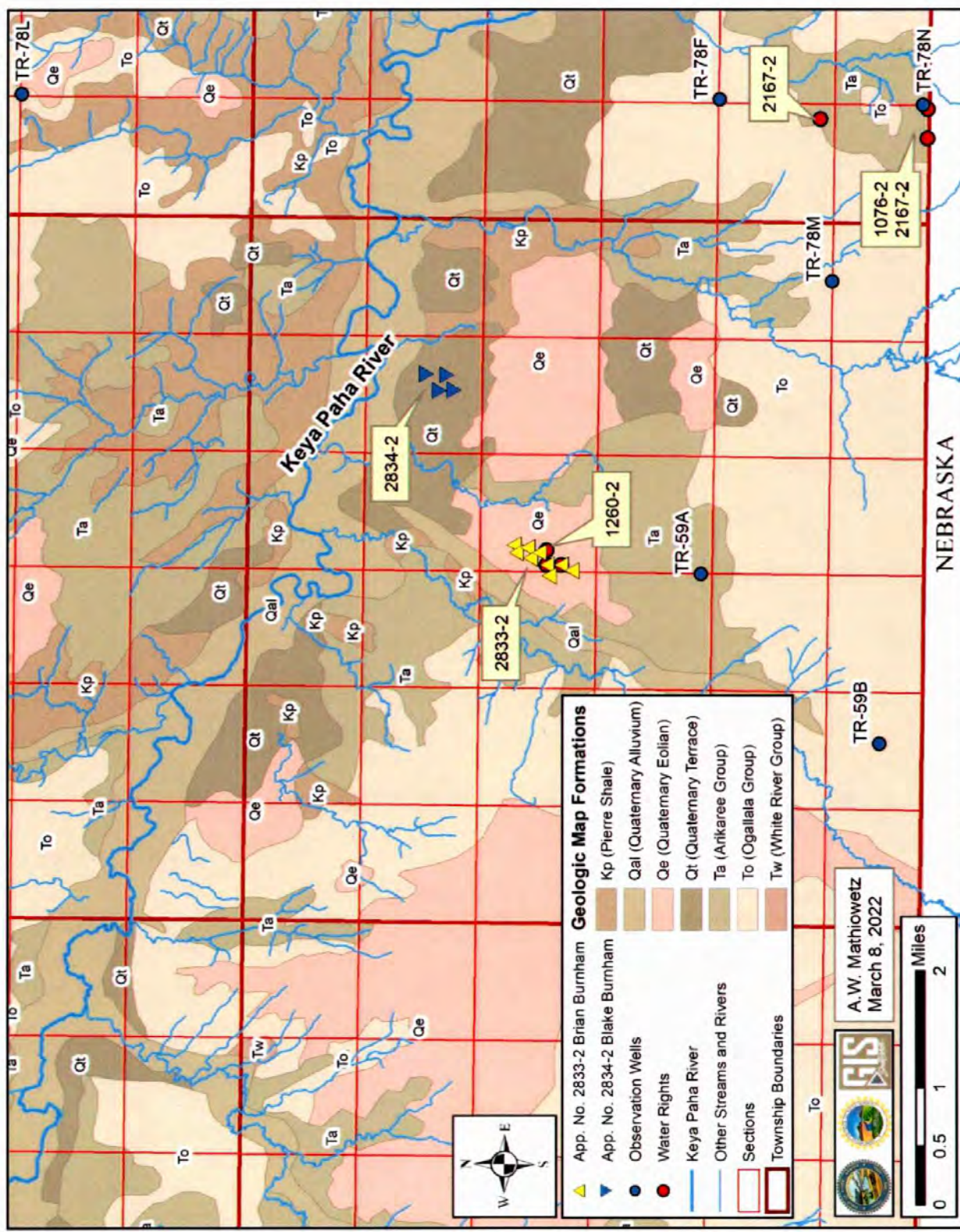
Pursuant to SDCL 46-2A-9, "A permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the diversion point can be developed without unlawful impairment of existing domestic water uses and water 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 localized portions of the Quaternary Eolian and Quaternary Terrace aquifers as well as water availability from the Ogallala aquifer.

#### **WATER AVAILABILITY:**

These applications proposes to appropriate water from portions of the Quaternary Eolian and Quaternary Terrace aquifers where these specific portions are acting as extensions of the Ogallala aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

"No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

All three aquifer are not stratigraphically lower/older than the Greenhorn Formation and the proposed use is not for a water distribution system as defined in SDCL 46-1-6(17). Therefore, a comparison of average annual recharge and average annual withdrawals is required for these applications.





## Hydrologic Budget

Both of the portions of the Quaternary Eolian and Quaternary Terrace aquifers these applications propose to use are limited in areal extent (Martin et al, 2004). The potentiometric surface information in Filipovic (2004) indicates that these two aquifers are really functioning as an extension of the Ogallala aquifer. That means applying estimates of recharge rates to aquifers of significantly larger areal extent over the limited areal extent of these aquifers would produce a relatively small mathematically estimated recharge rate that is not reflective of the unique hydrogeologic conditions of these aquifers. Also, Water Right No. 1260-2, which is labeled as withdrawing from the Arikaree aquifer, will be considered as completed into the Quaternary Eolian aquifer based on current lithologic information that was not available at the time the permit was issued and will also be added to the hydrologic budget of the Ogallala aquifer for the previously discussed reasons. There are no other water rights/permits completed into these portions of the Quaternary Eolian or Quaternary Terrace aquifers that can be considered as withdrawing water from the Ogallala aquifer. Therefore, the hydrologic budget section of this report will only discuss the Ogallala aquifer.

### Recharge

The Ogallala aquifer is primarily recharged by the infiltration of precipitation (Filipovic, 2004 and 2011). Kolm and Case (1983) estimated a range of recharge rates for the High Plains aquifer using a two-dimensional, finite-difference model. Kolm and Case (1983) noted previous recharge rate estimates ranged from 1.0 to 3.07 inches per year (in/yr) depending on author(s) and assumptions made by the author(s). Hedges and Burch (1985) used both base-flow recession and observation well data analysis to develop their recharge rate estimates to the Ogallala aquifer specifically. Cederberg (2021) cited a combination of sources to determine the approximate areal extent of the main body of the Ogallala aquifer to be approximately 1,005,360 acres. Table 1 lists the average annual recharge rate in acre-feet per year (ac-ft/yr) based on the source of the recharge rate and Cederberg's (2021) estimated areal extent of the Ogallala aquifer.

Table 1- Estimated average annual recharge rate to the main body of the Ogallala aquifer (Kolm and Case, 1983; Hedges and Burch 1985; Cederberg, 2021)

Est. Avg. Annual Recharge Rate (in/yr)	Estimation Method	Source	Est. Avg. Annual Recharge Rate (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	Obs. Well Data	Hedges and Burch, 1985	284,852

### Discharge

Discharge from the Ogallala aquifer is primarily through direct evapotranspiration, outflow to streams and rivers, outflow to adjacent and hydrologically connected aquifers, and well withdrawals (Filipovic, 2004 and 2011; Water Rights, 2022d and 2022e). Currently, there are 171 water rights/permits authorized to withdraw water and 4 future use permits reserving 2,233 ac-ft/yr from the entirety of the Ogallala aquifer (Water Rights, 2022d). Water Right Nos. 475-2 and 1114-2 and Water Permit Nos. 2678-2 and 2679-2 are not currently in use because the land authorized for irrigation has been sold to a nearby tribe. Thus, there are only 167 currently active water rights/permits plus the 4 future use permits. From the main body of the Ogallala aquifer, of which the aquifers for Application Nos. 2833-2 and 2834-2 are hydrologic extensions, there are 149 water rights/permits (135 irrigation and 14 non-irrigation) along with 2 future use permits (1,586 ac-ft/yr) authorized to withdraw or reserve water from the main body of the Ogallala aquifer plus Water Right No. 1260-2 for the previously mentioned reasons (Water Rights, 2022d). Table 2 displays the estimated average annual water use by non-irrigation water rights/permits and the amount of water reserved by future use permits. Non-irrigation water rights/permits that are only limited by diversion rate are assumed to pump 60% of the time at their permitted diversion rate. Water

rights/permits with a permitted volume are assumed to pump their maximum permitted volume. Future use permits are assumed to be fully developable.

Table 2- Estimated average annual use from the main body of the Ogallala aquifer by non-irrigation water rights/permits and future use permits (Water Rights, 2022d)

Permit No.	Name	County	Status	Type	CFS	Estimated Annual Use (ac-ft/yr)	Permitted Annual Vol. (ac-ft/yr)
1038-2	CITY OF WINNER	TRIPP	LC	MUN	0.87	377.9	
1285-2	CITY OF WINNER	TRIPP	LC	MUN	0.67	291.0	
1286-2	CITY OF WINNER	TRIPP	LC	MUN	0.72	312.8	
1416-2	CITY OF WINNER	TRIPP	LC	MUN	0.69	299.7	
1942-2	LITTAU & MASSA ET AL	TRIPP	LC	DOM	0.09	39.1	
2293-2	TRIPP COUNTY WATER USER DISTRICT	TRIPP	LC	RWS	3.88	1685.4	
2455-2	MARTIN J VANDERPLOEG	BENNETT	LC	FWP	0.045	19.5	
2505-2	LAKEVIEW CHRISTIAN REFORM	TODD	LC	INS	0.033	14.3	
2515-2	TRIPP COUNTY WATER USER DISTRICT	TRIPP	LC	RWS	2.68		1200
2621-2	TUTHILL COMMUNITY PRESBYTERIAN CHURCH	BENNETT	LC	INS	0.02	8.7	
2804-2	DOUGHERTY CATTLE COMPANY INC	TRIPP	PE	COM	0.13		16.12
521-2	CITY OF WINNER	TRIPP	LC	MUN	4.11	1785.3	
632-2	CITY OF COLOME	TRIPP	LC	MUN	0.22	95.6	
976-2	CITY OF COLOME	TRIPP	LC	MUN	0.33	143.3	
551-2	CITY OF WINNER	TRIPP	FU	MUN	2.44		1586
882-2	CITY OF WINNER	TRIPP	FU	MUN	n/a		0
<b>Total</b>						<b>7874.8</b>	
LC= Water Right, FU= Future Use Permit, MUN= Municipal, DOM= Domestic, RWS= Rural Water System, FWP= Fish and Wildlife Propagation, INS= Institutional							

The historic reported water use from the main body of the Ogallala aquifer plus the reported irrigation use by Water Right No. 1260-2 is shown in Table 3. The average annual reported irrigation pumpage from the main body of the Ogallala aquifer plus Water Right No. 1260-2 is 18,994.7 ac-ft/yr. However, from 1982 through 2012 and into 2013 the number of irrigation permits was relatively stable, but due to drought conditions in 2012, many irrigation permits applications were submitted and subsequently approved. To more accurately account for this change in the number of permits, it is more appropriate to consider the average irrigation pumpage from 2012 to present, which is 23,253.5 ac-ft/yr.

Table 3— Annual reported irrigation use from the main body of the Ogallala aquifer plus irrigation use by Water Right No. 1260-2 (Water Rights, 2022b)

Year	No. of Permits Reporting	Reported Pumpage (acre-feet)	Year	No. of Permits Reporting	Reported Pumpage (acre-feet)
1982	92	9,303.0	2004	91	23,868.0
1983	99	10,172.0	2005	98	20,054.7
1984	107	13,298.4	2006	106	25,657.1
1985	106	18,586.5	2007	105	24,010.9
1986	102	13,000.6	2008	101	24,483.6
1987	101	12,397.0	2009	100	22,173.6
1988	100	16,199.3	2010	99	21,209.1
1989	101	27,326.4	2011	100	15,235.7
1990	104	16,581.6	2012	103	33,144.5
1991	105	16,074.5	2013	104	26,492.3
1992	105	12,051.0	2014	104	22,126.7
1993	103	11,151.9	2015	102	23,993.9
1994	105	16,698.6	2016	104	23,297.6
1995	104	14,252.8	2017	103	27,319.3
1996	107	21,168.0	2018	106	19,384.3
1997	108	18,661.0	2019	107	11,464.1
1998	106	13,857.9	2020	105	22,058.8
1999	107	13,709.5	<b>MIN</b>	<b>91.0</b>	<b>9,303.0</b>
2000	108	16,119.0	<b>MAX</b>	<b>108.0</b>	<b>33,144.5</b>
2001	107	17,989.9	<b>AVG</b>	<b>103.1</b>	<b>18,994.7</b>
2002	102	24,179.8	<b>AVG 2012-2020</b>	<b>104.2</b>	<b>23,253.5</b>
2003	102	22,039.1			

There are domestic wells completed into the Ogallala aquifer that do not require a water right/permit, nor are required to report annual pumpage (Water Rights, 2021e). The introduction and expansions of rural water systems has caused some of the domestic wells to no longer be in use or to be used as a primary water source. Furthermore, domestic wells have a limited withdrawal rate allowed under South Dakota water law. Therefore, for the above listed reasons, withdrawal by domestic wells is not considered a significant portion of the hydrologic budget for the Ogallala aquifer.

Data was compiled for selected irrigation and municipal wells operated by the Rosebud Sioux Tribe (Valseth and Driscoll, 2020). However, it is likely not all municipal and irrigation wells that are operated by the tribe or on tribal lands were included. Furthermore, many of the selected wells that were reviewed 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 by each well. The data available is only estimated mean production (pumping



rate). Therefore, there is not sufficient information available to make a reasonably accurate estimate of average annual water use from these wells.

#### *Hydrologic Budget*

The estimated average annual recharge to the main body of the Ogallala aquifer ranges from approximately 109,000 to 285,000 ac-ft/yr. The estimated average annual withdrawals from the main body of the Ogallala aquifer is 31,128.3ac-ft/yr (non-irrigation: 7,874.8; irrigation: 23,253.5). There is one pending application, besides the two covered in this report. Permit Application No. 2836-2 proposes to irrigate 135 acres. These two applications combined propose to irrigate 260 acres. Assuming an application rate of one foot of water per permitted acres, these three proposed applications would pump 395 ac-ft/yr on average. The estimated average annual pumping plus likely pumping by proposed applications is still much less than the estimated average annual recharge. Therefore, there is a reasonable probability unappropriated water is available for this proposed appropriation.

#### **Observation Well Data:**

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer. The Water Rights Program maintains 76 observation wells completed into the Ogallala aquifer of which 69 are completed into the main body of the aquifer (Water Rights, 2022c).

There are six Ogallala aquifer observation wells within approximately five miles of the proposed diversion points for Application Nos. 2833-2 and 2834-2 as shown in Figure 8. Figures 2 through 7 show the observation well hydrographs. These 6 hydrographs are representative of the other 63 hydrographs for observation wells completed into the main body of the Ogallala aquifer (Water Rights, 2022c). In general, the observation well hydrographs show stable to rising water levels, 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 document the water level in the aquifer rises during wetter periods and slowly declines during drier periods. Furthermore, the effects of local pumping on the water level in the observation wells recover to pre-pumping season levels. This recovery and following of the climatic wet/dry cycle means that natural conditions, recharge to and natural discharge from the aquifer, govern the long term changes in water level of the aquifer. Recognizing that recharge to and natural discharge from an aquifer can be captured for pumping, the observation well data demonstrates there is unappropriated water available for these proposed appropriations. The observation well data agrees with the hydrologic budget data.

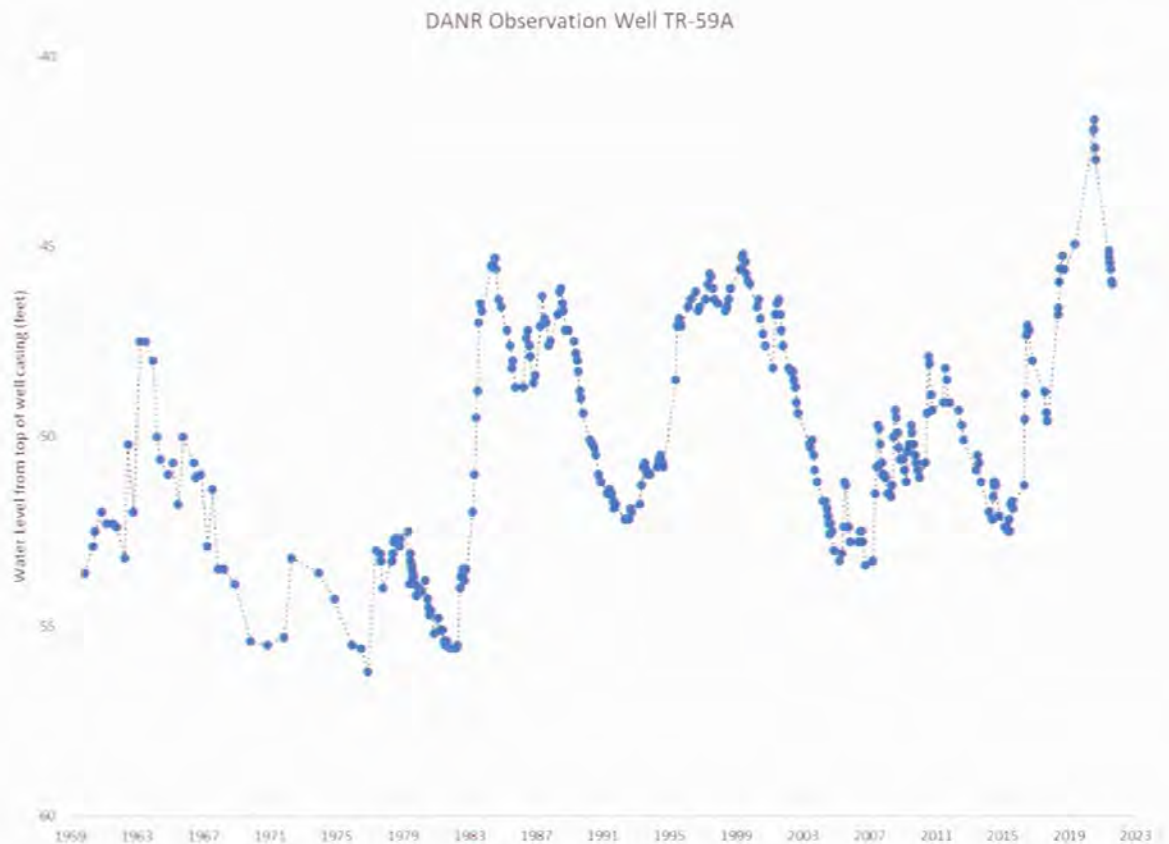


Figure 2- Hydrograph for observation well TR-59A (Water Rights, 2022c)

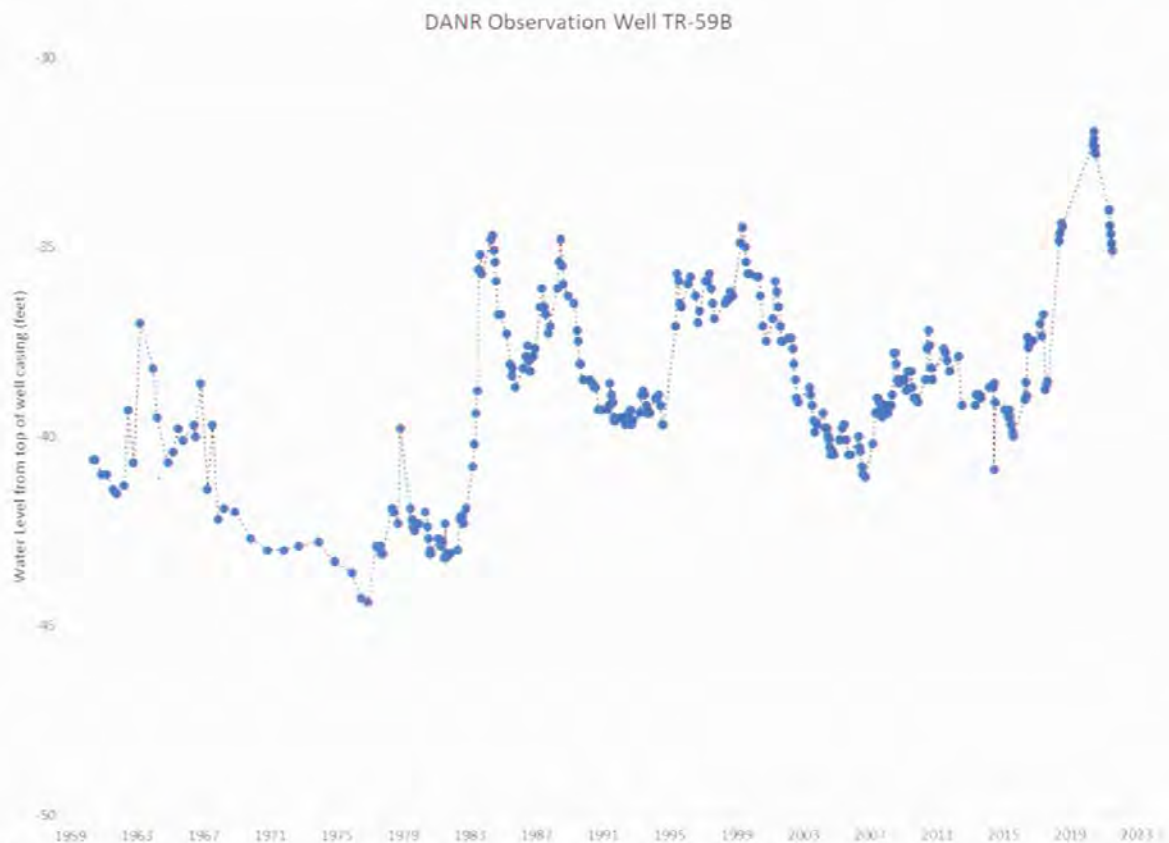


Figure 3- Hydrograph for observation well TR-59B (Water Rights, 2022c)





Figure 4- Hydrograph for observation well TR-78F (Water Rights, 2022c)

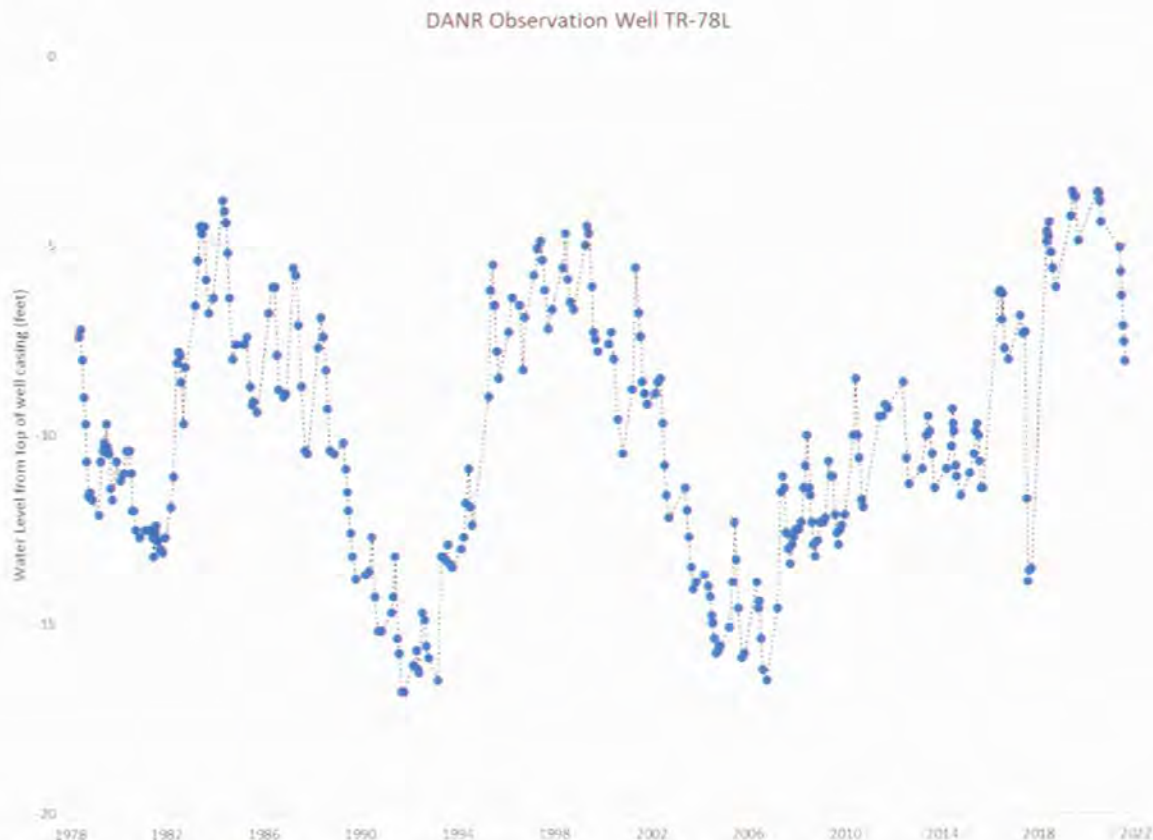


Figure 5- Hydrograph for observation well TR-78L (Water Rights, 2022c)

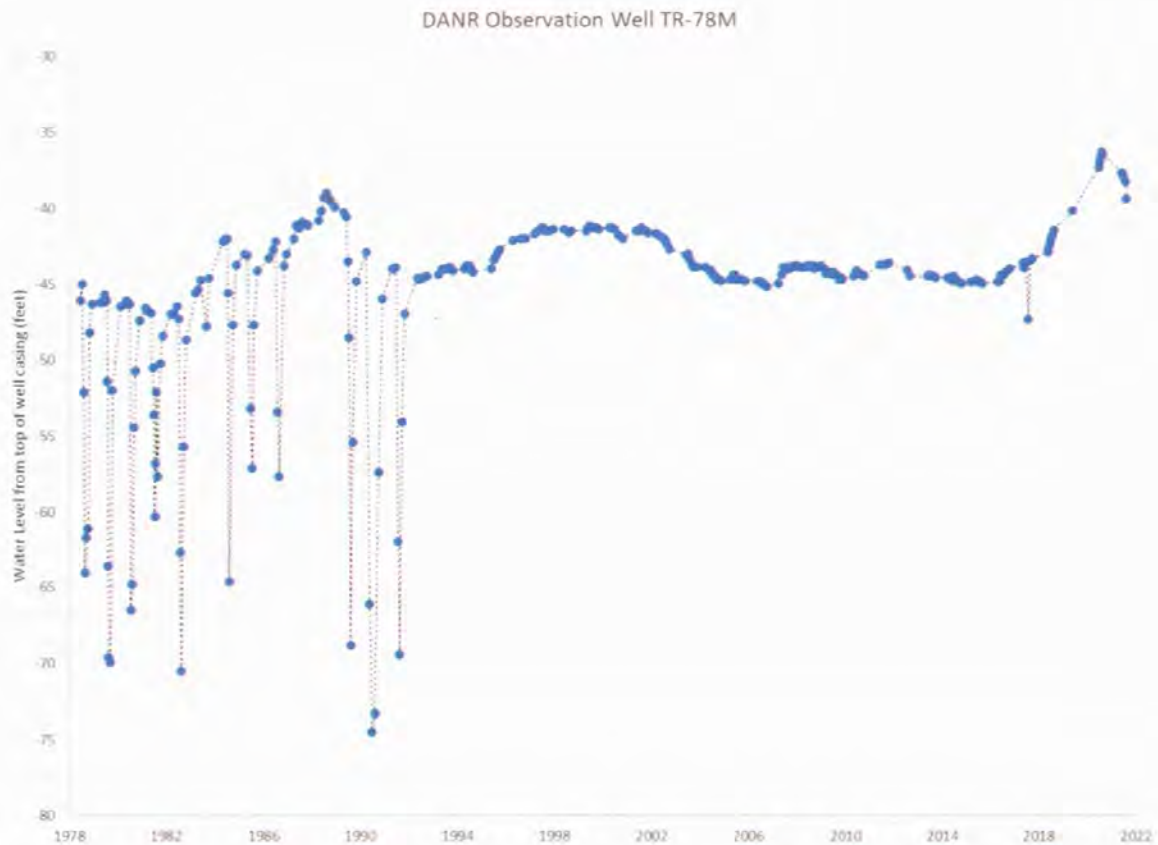


Figure 6- Hydrograph for observation well TR-78M (Water Rights, 2022c)

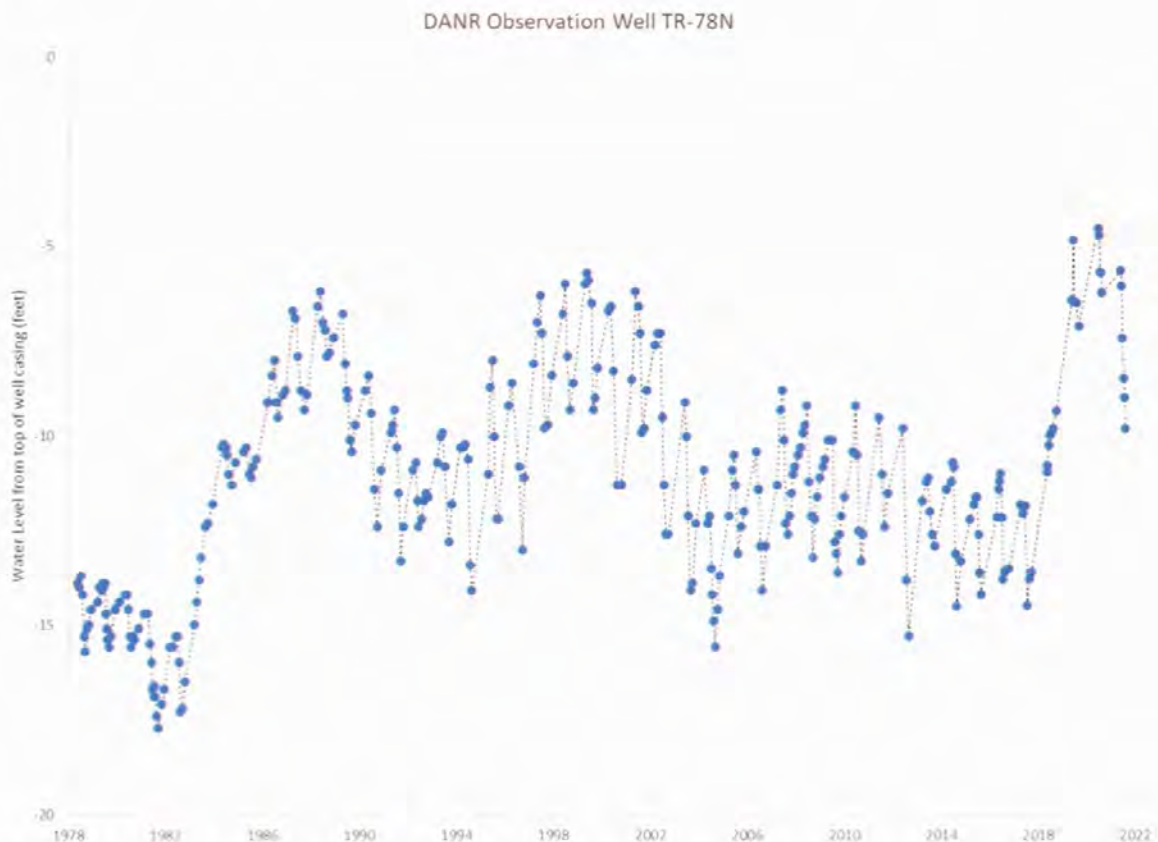


Figure 7- Hydrograph for observation well TR-78N (Water Rights, 2022c  
Permit Application Nos. 2833-2 and 2834-2



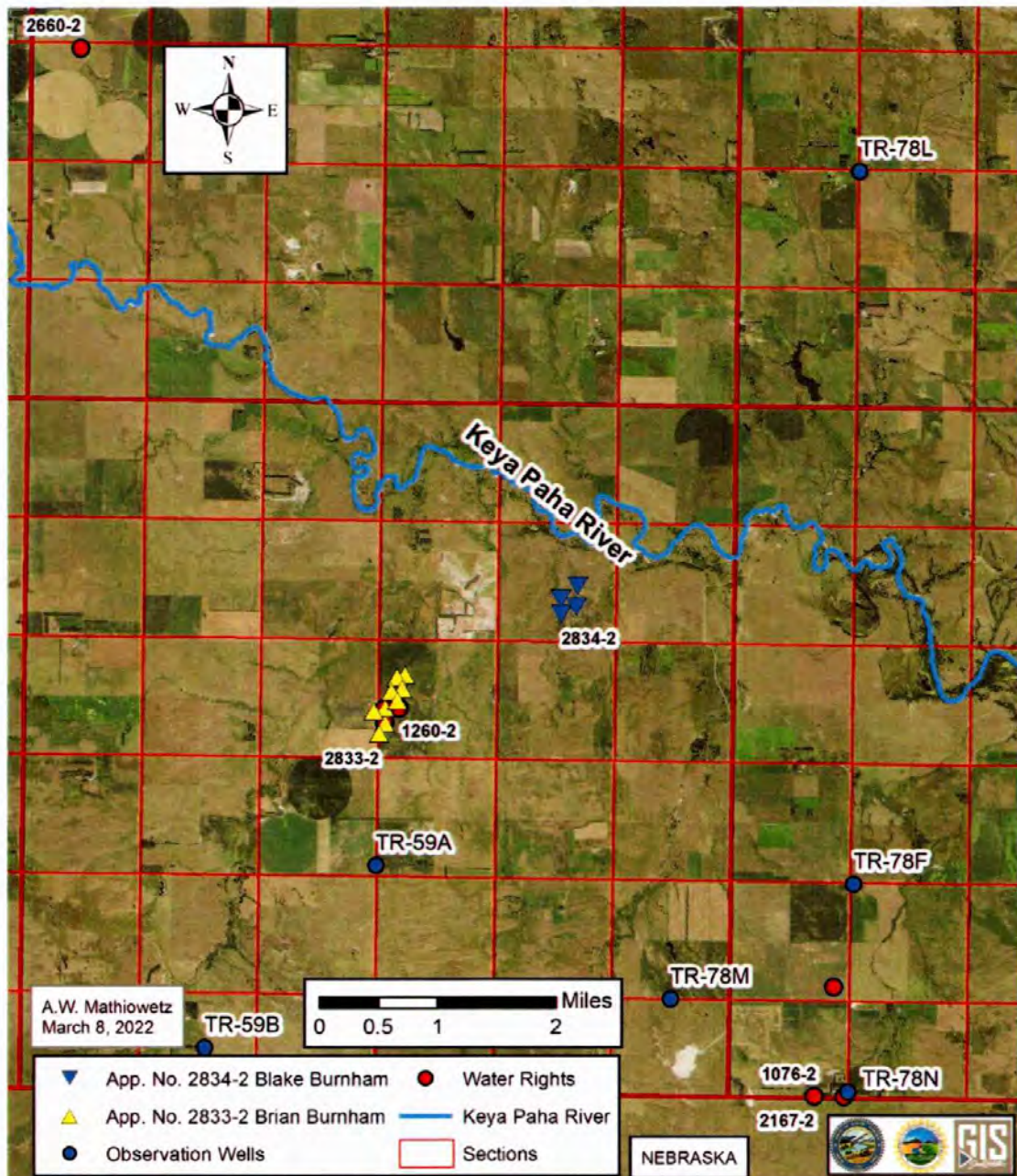


Figure 8- Map of Ogallala aquifer water rights/permits (Water Rights, 2022d), observation wells (Water Rights, 2022c) and the proposed diversion points for Permit Application Nos. 2833-2 and 2834-2

Table 4- Water rights/permits shown in Figure 8 (Water Rights, 2022d)

Permit No.	Name	County	Status	Use	CFS	Acres
1076-2	MARLENE SLOAN	TR	LC	IRR	1.63	114
1260-2	BRIAN BURNHAM	TR	LC	IRR	1.87	131
2167-2	DALE HEESE	TR	LC	IRR	1.94	136
2660-2	MISSION FARMS INC	TD	LC	IRR	1.78	135
TR= Tripp, TD= Todd, LC= Water Right, IRR= Irrigation						

**POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:**

The nearest appropriative wells completed into the Quaternary Eolian, the Quaternary Terrace, or the Ogallala aquifer to any of the well locations proposed by Application Nos. 2833-2 and 2834-2 are authorized by Water Right No. 1260-2 which is to serve as a backup supply to Application No. 2833-2, if approved, and is held by the applicant (Water Rights, 2022d). The next nearest appropriative well is located approximately 4.6 miles and 3.9 miles to the southeast of the diversion points proposed by Application No. 2833-2 and 2834-2, respectively (Water Rights, 2022d). A map of the area is shown in Figure 8.

The nearest domestic well on file with the Water Rights Program to any of the diversion points proposed by Application Nos. 2833-2 and 2834-2 that are not held by the applicants are approximately 1.8 miles east or south from Application No. 2833-2 or approximately 0.5 miles southwest of Application No. 2834-2 (Water Rights, 2022e). There may be other domestic wells completed into the Quaternary Eolian, the Quaternary Terrace, or the Ogallala aquifer in the vicinity of these applications that are not on file with the Water Rights Program. There are no well interference complaints from any aquifer in Tripp County (Water Rights, 2022a). There was one unsubstantiated complaint regarding well interference from wells completed into the Ogallala aquifer in Bennett County (Water Rights, 2022a).

In general and in this area, the Ogallala aquifer is under unconfined conditions and both the Quaternary Eolian and Quaternary Terrace are locally unconfined (Water Rights, 2022d and 2022e). At the proposed diversion points for both applicants, the static water level is expected to be between 20 and 30 feet below grade with a saturated thickness of 20 to 40 feet (Beck, 2022; Water Rights, 2022c, 2022d and 2022e). That would allow a pump to be placed at least 20 feet into the saturated aquifer, in most cases, as required by Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) to qualify as an adequate well. The Water Management Board has recognized in the past that to place water to maximum beneficial use some drawdown may occur. In order to protect domestic users, 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.

Observation well TR-78N is within 0.5 miles of two appropriative irrigation wells (see Figure 7). The hydrograph for the observation wells shows a total variance of approximately 13 feet of the entire period of record despite being in very close proximity to multiple high pumping rate wells. Any drawdown created from pumping either of these proposed diversions is not expected to cause unlawful impairment on exiting water rights with adequate wells or adequate domestic wells. This is due to the unconfined nature of the aquifer, the distance between appropriative wells, and the relatively limited amount of drawdown in the aquifer by high pumping rate wells as shown by the hydrograph for TR-78N. Therefore, there is a reasonable probability these proposed diversions will not unlawfully impair existing users appropriative or domestic users that have adequate wells.



## CONCLUSIONS:

1. Water Permit Application No. 2833-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to 9 wells to be completed into the Quaternary Eolian aquifer including the wells currently authorized by Water Right No. 1260-2.
2. The particular portion of the Quaternary Eolian aquifer Application No. 2833-2 proposes to use is acting as an extension of the Ogallala aquifer in this area and has been treated as a portion of the Ogallala aquifer in this report.
3. Water Permit Application No. 2834-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to 4 wells to be completed into the Quaternary Terrace aquifer.
4. The particular portion of the Quaternary Terrace aquifer Application No. 2834-2 proposes to use is acting as an extension of the Ogallala aquifer in this area and has been treated as a portion of the Ogallala aquifer in this report.
5. Based on the hydrologic budget and observation well data for the main body of the Ogallala aquifer, there is a reasonable probability of unappropriated water being available for Application Nos. 2833-2 and 2834-2.
6. There is a reasonable probability development of Application Nos. 2833-2 and 2834-2 will not unlawfully impair existing appropriated users with adequate wells or adequate domestic wells.



Adam Mathiowetz, PE  
SD DANR-Water Rights Program



## REFERENCES:

- Beck, T. 2022. *Personal Communication*. SD Licensed Well Driller No. 377 – Tonny Beck of Beck’s Well & Irrigation, Inc. Phone call January 16, 2022.
- Cederberg, L. 2021. Report to the Chief Engineer on Water Permit Application No. 2822-2 Johnson Land & Cattle LLC c/o Adam Johnson. DANR-Water Rights Program. Pierre, South Dakota.
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- Water Rights. 2022b. Irrigation Questionnaire Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022c. Observation Well Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022d. Water Right/Permit Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022e. Well Completion Reports. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



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## Petition

### Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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:**

The lowering of water level in our house well. I am afraid Cottonwood Creek will dry up, and I cannot water our livestock.

**List the reasons for your opposition to this application:**

I use well water for my house and garden. I also use it to water livestock. Any change in ground water could affect my well. The drilling of that many wells, and pumping that amount of water could affect my well by lowering ground water levels. Ground water is for everyone not just one person to take the lions' share and everyone else go without.

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

First Name: Charles Last Name: Davis  
Mailing Address: 31263 - 302nd St  
City: Millboro State: SD Zip: 57580

**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.





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Application No. 2834-2 Name of Applicant Blake Burnham

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**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:**

The lowering of water in our wells at the house. The loss of water flowing in our creek. Specifically cottonwood creek.

**List the reasons for your opposition to this application:**

I am not writing this petition to stop my neighbor from improving their property. I am writing because of my concern of the depletion of our ground water.

The ~~the~~ cottonwood creek which is our only source of water in our pasture, has went from 1ft. deep to 1-2 in deep in the last few years. I am afraid that further ground water depletion will cause it to dry up.

The water in our house well could also be affected. There are places in our township already have problems with getting water. I don't want that to be my future.

Drilling that many wells at one time will deplete ground water; which is the most basic of needs. Once ground water is gone, will we ever get it back? What I have need, probably not.

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

First Name: Susan Last Name: Davis

Mailing Address: 31263 - 302nd St.

City: Millboro State: SD Zip: 57580

**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.





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### Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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**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:**

I'm petitioning the approval of Application 2834-2 for the following reasons:  
Firstly, It would decrease or even dry up the current aquifer that we currently use for livestock and personal consumption. It is very possible to run our pastures (which are very close to) out of the required amount of water to maintain our livestock.

**List the reasons for your opposition to this application:**

As stated above I run livestock who are maintained by the use of wells in the vicinity. It is highly possible for these wells to run dry from over pumping of the aquifer. It is even more prevalent on a drought or dry year. Water is one of our most treasured natural resources and it needs to be sustained. Another big issue is the well we get our drinking water from. It is in the vicinity and could run low from the over use of irrigation systems. We need the water to live and for our pets to survive. Thank you for your time and consideration for the petition of this application.

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

First Name: Alex Last Name: Davis  
Mailing Address: 30113 313<sup>th</sup> Ave.  
City: Winner State: SD Zip: 57580

**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.





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## Petition

### Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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:**

Depletion of water levels in our private wells  
and Dams

**List the reasons for your opposition to this application:**

My concern is the use of that much water from said  
aquifer will result in lower water levels for our personal  
and livestock wells and dams. I don't think doing this will  
benefit anyone but the ones developing it.  
We are in the second year of drought and it doesn't seem very  
responsible to allow this.  
There are several wells in the area that have  
barely enough water for them to be used very hard.

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

First Name: Aaron Last Name: Davis

Mailing Address: 30113 313th Ave

City: Winner State: SD Zip: 57580

**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.





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## Petition

### Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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:**

The approval of this application would cause unique injury to the current + future use of water on my property. With insufficient water, our cattle operation + land value would be drastically affected, along with the water supply to our home.

**List the reasons for your opposition to this application:**

approval of this application will drastically affect water levels in existing wells + is not in the public's interest. This will affect not only mine but surrounding households, cattle operations, crops + land values. This would be a misuse of a natural resource with lasting effects on property surrounding the area. The public needs to be considered when approving such applications.

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

First Name: Amy Last Name: Davis

Mailing Address: 30113 313th ave

City: Winn State: SD Zip: 57580

**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.



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## Petition

### Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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:**

The recommendation by the Chief Engineer to approve Application No. 2834-2 does not take into consideration the current and future needs of surrounding acres owned by my families Trust (see definition in next section) that will require additional water supply needs which will impact Crop levels, sales and other impacts including the potential (probably likely) loss of value of the property or insufficient water levels for a cattle operation should there be increased drought conditions. Such impacts would have a material financial adverse impact of the Trust and directly correlated to the increased number of wells and water usage in this application if allowed to be approved.

I strongly oppose this application and the recommendation, therein. Notwithstanding other injuries, the potential loss in value of the Trust's property of acres in proximity to the wells is by itself enough injury to oppose this application.

**List the reasons for your opposition to this application:**

I am the Trustee of the "Vernon R. Herrmann and Marilyn S. Herrmann Irrevocable Trust of 2019" (the Trust). The Trust owns land in Tripp County South Dakota, including land that would be impacted by this application. The usage of this Trust land will likely be significantly different for either the party leasing the land from the Trust or for a future owner of the land. Application No. 2834-2 (the "Application") will materially injure the Trust. Among other items, I do not believe the Chief Engineer placed sufficient consideration on current or future needs and values of surrounding property's including my Trust, among other items. With this substantial increase in wells and water usage, there appears to be no assurance that should one of my Trust land sections require additional wells, that our application would be approved due to this the requirements of a detailed review including a comparison of average annual recharge and average annual withdrawals is required for these applications, among other items. In addition, by any means, 4 wells on 130 acres is significant and could even impact current water uses on the Trust land should a significant drought occur which also would also materially injure the Trust. The Notice that was published in the Winner Advocate, mentions reasons why the Application should be approved but does not mention that it could impact "FUTURE" levels of "unappropriated water." It also mentions that approval is in the "public interest". I would ask whose "public interest" other than the Burnham property? What about the "public interest" of land owners such as the land in my Trust which has been owned by my family for decades.

To conclude, the Application requires that I allege that the Application will cause injury to the Trust that is unique from any injury suffered by the public in general. The Items I discussed above clearly show that there could be an immediate loss in value of the Trust land due to the significant higher usage of a scarce resource (water). This immediate Injury along with the other injuries mentioned above and potentially other injuries once more information is obtained by my legal counsel, should be sufficient to deny the Application as it is currently written.

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

First Name: Kevin Last Name: Herrmann

Mailing Address: 13565 Larimore Ave

City: Omaha State: NE Zip: 68164

**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.





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# Petition

## Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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:**

Depletion of water available for my well for household & domestic use & for livestock. Also reduction of stream flow in Lost Creek - I need for livestock - as well as a small stream in NE 1/4 of NE 1/4 of sect 10 - T5S-7E (RS-2283) - the only source of water in that parcel.

**List the reasons for your opposition to this application:**

Taking 1.85 cu. ft. of water per second from 4 wells will deplete the aquifer(s) that supply my well that I need for my domestic & livestock use. The Chief Engineer has stated that existing domestic water uses & water rights will not be unlawfully impaired. If my well, or creeks, go dry - will the application be revoked? At that point - it may be too late for the aquifer to recharge! I need water for my household domestic & livestock use! This irrigation may affect the flows in Lost Creek & in RS-2283 - that I need for livestock!! (see next page ->

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

First Name: Marie Condon Last Name: Condon

Mailing Address: 31143 299th St

City: Millboro State: SD Zip: 57586-6114

**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. 2834-2

Petitioner's Name ~~Bleto Burnham~~ Marie Condon

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

The "test wells" (monitor) wells in my area are all located south of my place - so would not indicate what is going on at my place.

My concern is not only for me, but for my neighbors as well, & for future generations or future landowners.

We all need water!





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Opposing Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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:**

Depletion of water for well at my home place  
for house & domestic use & for livestock. May  
reduce water for livestock in Lost Creek &  
in stream in RS-2283 -

**List the reasons for your opposition to this application:**

This permit will take water from aquifers that  
supply my home well that is needed for home use  
& livestock water. Chief Engineer states that "existing  
domestic water uses & water rights will not be un-  
lawfully impaired." Do you guarantee that? We  
have never had a shortage of water in our  
well in the past, & stream flows have been  
sufficient for livestock use - but taking this

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

First Name: KayCee Last Name: Kellmar-Condon  
Mailing Address: 31143 299th St.  
City: Millbank State: SD Zip: 57580-6114

**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.

2834-2

Petitioner's Name

HayCee Kollmar-London

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

amount of water for irrigation will  
change that. We all need water, &  
home & livestock use comes first! over  
irrigation, or other uses.



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OFFICE OF  
WATER

**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

## Comment

### Concerning Application for a Water Right Permit

Application No. 2834-2 Name of Applicant Blake Burnham

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

**Note.** Filing a comment does NOT make the commenter a party of record to, or a participant in, any hearing that may be held concerning this application. Your comment will be provided to the Water Management Board and become part of the public record.

**Comments concerning this application:**

Dear Sir

i would like to take this time to voice my opposition to granting these applications. We are going into our second year of drought and our water levels have been in decline. I think this action would be detrimental to private wells and livestock water . I would hope you would reconsider approving this .

Thanks for taking the time to read my opposition

**Commenter's name and address:**

First Name: Aaron Last Name: Davis

Address: 30113 313th ave

City: Winner State: S.D Zip: 57580

**Note.** This comment needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above, send to "Attention - Water Rights Program" or send via email to [DANRmail@state.sd.us](mailto:DANRmail@state.sd.us).

09/11/2015

Application No. 2834-2

09/11/2015

Commenter's Name Aaron Davis

09/11/2015

Any additional comments:

# AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

**Dan Bechtold**

of said county being first duly sworn, on oath says that he is the Editor of the

## WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said county of Tripp, and has full and personal knowledge of all the facts herein stated that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies weekly and has been published within said county for fifty-two successive weeks prior to the publication of the notice herein mentioned, and was printed wholly or in part in an office maintained at said place of publication; that the

93 lines @ 1 column X 90%

Notice of Application

Blake Burnham

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 week(s), on the day of each week on which said newspaper was regularly published to wit:

3-16-2022

That the full amount of the fees for the publication of the \*annexed notice is \$35.15

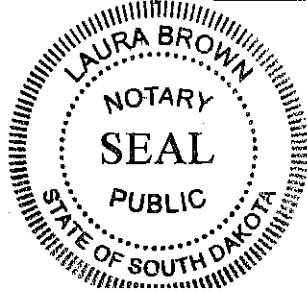
Subscribed and sworn to before me this 16th day of March, 2022

*Laura Brown*

Notary Public

County of Tripp, South Dakota

My Commission Expires June 12, 2025



## NOTICE OF APPLICATION NO. 2834-2

to Appropriate Water

Notice is given that Blake Burnham, 31166 300th St, Winner SD 57580 has filed an application for a water permit to appropriate 1.85 cubic feet of water per second from up to 4 wells to be completed into the Quaternary Terrace Aquifer (approximately 100 feet deep) located in the W 1/2 SE 1/4 Section 11 for irrigation of 130 acres located in the SE 1/4 Section 11; all in T95N-R77W. This site is located approximately 23 miles southwest of Winner SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2834-2 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 Duvall 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. The 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 by either an interested person or the applicant must be filed by March 28, 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 28, 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 person filing a petition.

Published once at the total approximate cost of \$35.15

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MAR 21 2022

WATER RIGHTS  
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MAR 30 2022

WATER RIGHTS  
PROGRAM

Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
Huron, SD 57350  
605-353-7402

Legal Notice Number: 1274

I, Mckendzie Castillo, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Brian Burnham – Water Permit #2834-2 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on - 3/16/2022. That the full amount of the fee charged for the publishing \$ 42.81 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

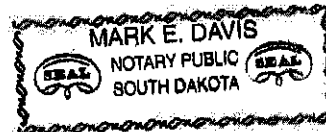
Mckendzie Castillo

Subscribed and sworn to me before this date 3/30/22.



Notary Public, South Dakota

My Term Expires 12/27/2024





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**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

May 25, 2022

**NOTICE OF HEARING**

TO: Blake Burnham Ryan S. Vogel, Attorney  
31166 300th St Richardson Law Firm  
Winner SD 57580 PO Box 1030  
Aberdeen SD 57402-1030

Petitioners  
(see attached list dated April 19, 2022)

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

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

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2834-2, Blake Burnham

The Water Management Board will conduct a hearing to consider Application No. 2834-2 at 9:45 AM (Central Time), on Wednesday, July 6, 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.

Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. Applicable provisions of the public notice published in the Winner Advocate on March 16, 2022, Huron Daily Plainsman on March 16, 2022, and the Notice of Hearing dated March 31, 2022, still apply.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2834-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

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

Petitioner List  
Water Permit Application No. 2834-2, Blake Burnham  
April 19, 2022

**PETITIONERS**

Charles Davis  
31263 302<sup>nd</sup> St  
Millboro SD 57580

Susan Davis  
31263 302<sup>nd</sup> St  
Millboro SD 57580

Marie Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

KayCee Kollmar-Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

Aaron Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Alex Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Amy Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Kevin Herrmann  
13565 Larimore Ave  
Omaha NE 68164

## CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated May 25, 2022, regarding Water Permit Application No. 2834-2 – Blake Burnham, 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 May 25, 2022.

Blake Burnham  
31166 300th St  
Winner SD 57580

Ryan S. Vogel, Attorney  
Richardson Law Firm  
PO Box 1030  
Aberdeen SD 57402-1030

### And Petitioners as follows:

Charles Davis  
31263 302<sup>nd</sup> St  
Millboro SD 57580

Alex Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

KayCee Kollmar-Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

Susan Davis  
31263 302<sup>nd</sup> St  
Millboro SD 57580

Amy Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Kevin Herrmann  
13565 Larimore Ave  
Omaha NE 68164

Aaron Davis  
30113 313<sup>th</sup> Ave  
Winner SD 57580

Marie Condon  
31143 299<sup>th</sup> St  
Millboro SD 57580-6114

Above also Sent Inter-office to:

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



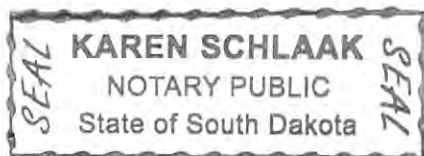
Vickie Maberry  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 25<sup>th</sup> day of May, 2022.



Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025







**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. 8620-3, Shannon Hutterian Brethren Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8620-3, Shannon Hutterian Brethren Inc., 43952 235th Street, Winfred SD 57076.

The Chief Engineer is recommending APPROVAL of Application No. 8620-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The wells approved under Water Permit No. 8620-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Water Permit No. 8620-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.
3. Water Permit No. 8620-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
  - a) Chapter 74:54:01 Ground Water Quality Standards,
  - b) Chapter 74:54:02 Ground Water Discharge Permit,
  - c) Chapter 74:51:01 Surface Water Quality Standards,
  - d) Chapter 74:51:02 Uses Assigned to Lakes,
  - e) Chapter 74:51:03 Uses Assigned to Streams, and
  - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions

(continued)



4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Codell aquifer.
5. Water Permit No. 8620-3 authorizes a total annual diversion of 61.6 acre-feet of water from the Codell aquifer.

See report on application for additional information.



Eric Gronlund, Chief Engineer

May 23, 2022

**Report to the Chief Engineer on  
Water Permit Application No. 8620-3**

Shannon Hutterian Brethren, Inc.  
16 May 2022

Water Permit Application No. 8620-3 seeks to appropriate 61.6 acre-feet of water annually (ac-ft/yr) at a maximum diversion rate of 0.111 cubic feet of water per second (cfs) from two existing wells completed into the Codell aquifer located in the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 15 for commercial use in a dairy and swine facility located in the E  $\frac{1}{2}$  Section 15, all in T106N-R55W, 5<sup>th</sup> Principal Meridian. This site is located approximately 3 miles southwest of Winfred, South Dakota.

**Aquifer: Codell (CDLL)**

*Hydrogeologic Characteristics*

The Codell aquifer consists of the permeable and saturated portions of the Codell Sandstone, which is a member of the Cretaceous-aged Carlile Shale. The Codell aquifer underlies approximately 4,960,000 acres and stores approximately 9,895,700 acre-feet of water in South Dakota east of the Missouri River [1]. In eastern South Dakota, the Codell aquifer directly underlies the Niobrara aquifer in some locations [1]. It also lies adjacent to glacial outwash aquifers when they lie in a bedrock valley that intersects the Codell aquifer [2] [3].

The applicant submitted one well completion report for a well completed on September 5, 2006 in the NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 15 T106N-R55W. Based on the measurements indicated in the map provided by the applicant and file documentation from Water Rights Program Staff Engineer Adam Mathiowetz dated April 1, 2022, that well is actually located in the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  Section 15 T106N-R55W. That same file documentation indicates that the second well the applicant proposes to use is already completed and is identical to the first well. The driller indicated the formations encountered as Yellow clay from ground level to 20 feet below grade, Blue clay from 20 to 112 feet, sand from 112 to 115 feet, blue clay from 115 to 205 feet, yellow clay from 205 to 265 feet, chalk from 265 to 395, shale from 395 to 460, and sand from 460 to 542 feet below grade. The driller also indicated that shale was below the lowest layer of sand but did not indicate a thickness. The driller screened the well from 442 to 542 feet below grade with 5-inch casing. The static water level at the time the well was completed was 190 feet below grade. Static water level is an indication of hydraulic head in the aquifer. Based on the depth of the screen and the materials encountered, the wells for this application are completed into the Codell aquifer.

**Applicable South Dakota Codified Law (SDCL)**

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing 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. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, 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 the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The applicant is not a water distribution system as defined in SDCL 46-1-6(17) and the Codell aquifer is younger and stratigraphically higher than the Greenhorn Formation. Therefore, it is necessary to find that recharge exceeds withdrawals to approve this application.

## **Availability of Water**

### *Hydrologic Budget*

#### Recharge

Recharge to the Codell aquifer is likely by groundwater inflow from hydrologically connected aquifers and glacial till when the hydraulic head of those bodies is higher than the hydraulic head of the Codell aquifer, including from the alluvium below Lake Francis Case [4]. There is no estimate of recharge available for the Codell aquifer.

#### Discharge

Natural discharge from the Codell aquifer likely occurs by groundwater outflow to hydrologically connected aquifers when the hydraulic head of those bodies is lower than the hydraulic head of the Codell aquifer. Discharge also occurs by domestic and appropriative withdrawals. Due to the low withdrawal rate of domestic wells and presence of stratigraphically higher aquifers over much of the Codell aquifer's areal extent and water distribution systems serving domestic water use needs, domestic well withdrawals are estimated to be negligible for the hydrologic budget. There are 48 water rights/permits authorized to appropriate from the Codell aquifer [5]. Of those 48, six are for irrigation [5]. Figure 1 shows the irrigation reported over the period of record (1979 – 2020) [6]. The average irrigation reported over the period of record from 1979 through 2020 is approximately 41 ac-ft/yr [6]. However, the number of irrigation permits in the Codell aquifer increased from 1 permit to 4 from 2012 to 2013 [6], so the average irrigation reported over the period of record is not likely to be representative of typical irrigation in the aquifer. Average irrigation reported from 2013 through 2020 is 108 ac-ft/yr [6]. Two irrigation permits, Water Permit Nos. 8553-3 and 8592-3, were approved since 2020, so they are not represented in the irrigation questionnaire summaries [5]. Since Water Permit Nos. 8553-3 and 8592-3 are for irrigation of turf, a combined estimated withdrawal 2 ac-ft per irrigated acre, or 84.2 ac-ft/yr is assumed.



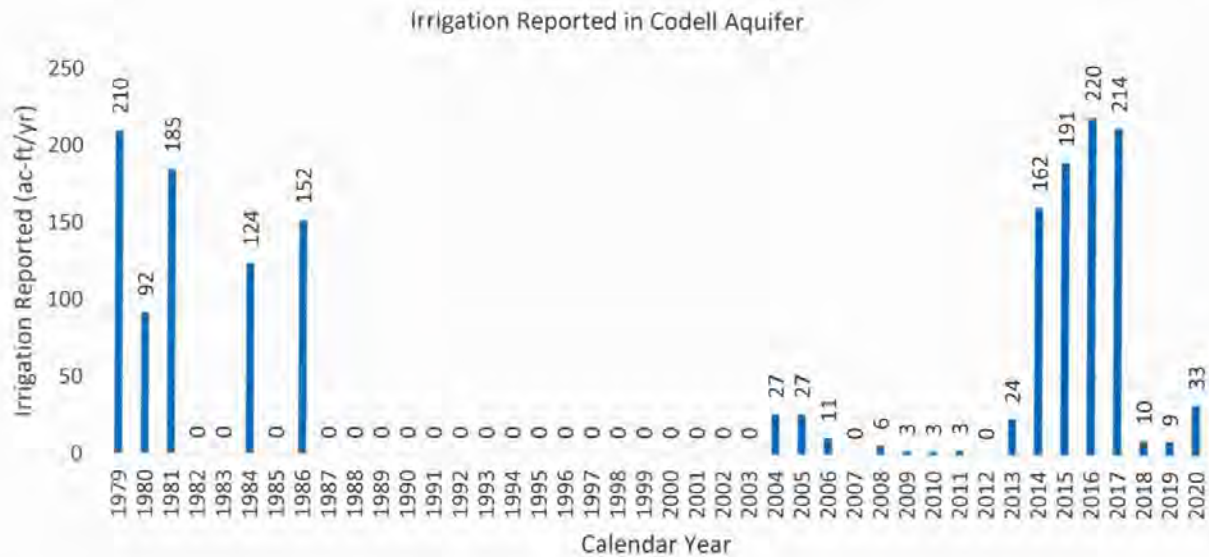


Figure 1: Irrigation reported from the Codell aquifer [6]

Of the non-irrigation water rights/permits, 12 purchase their water from another system [7] [5]. They maintain their water rights on standby for emergency purposes and are assumed to withdraw a negligible amount of water. Eight non-irrigation water rights/permits are required to report their withdrawals. All of those permits are new enough that they still may be developing their permits, so they are assumed to withdraw the full volume appropriated on their permit, for an estimated withdrawal of 365 ac-ft/yr [5]. One water right/permit is not required to report its withdrawals, but is limited on its permit to an annual volume on its permit of 10 ac-ft/yr [5]. The remaining 21 water rights/permits authorized to withdraw from the Codell aquifer are assumed to withdraw at their authorized rate 60% of the time, for an estimated withdrawal of 1,427 ac-ft/yr. There is also one water right, No. 6891-3 which was originally public noticed as withdrawing from the Niobrara aquifer. Upon later review, Water Rights Staff have determined that it withdraws from the Codell aquifer [8]. Assuming they pump at their maximum withdrawal rate 60% of the time, their estimated withdrawal is 145 ac-ft/yr.

#### Summary of Hydrologic Budget

There is no estimate of recharge available for the Codell aquifer. Table 1 summarizes withdrawals estimated for the Codell aquifer. The total estimated withdrawal for the aquifer is 1,994 ac-ft/yr. Divided across the 4,960,000 acres of the Codell aquifer, recharge to the aquifer would have to be at least 0.005 inches per acre per year to support current appropriations. The hydraulic conductivity of sandstone ranges from 0.37 inches per year to 7,500 inches per year [9] and there are known locations that the Codell aquifer is hydrologically connected to other aquifers [4] [3]. This application seeks to appropriate up to 61.6 ac-ft/yr. Therefore, based on the hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 1: Summary of withdrawals in the Codell aquifer, rounded to the nearest 1 acre-foot

Method	Number	Est. Use (ac-ft/yr)
Irrigation, Reporting	4	108
Irrigation, Too New to Report	2	84
Standby	12	0
Non-Irr, Report Required	8	365
Non-Irr, Volume Limit	1	10
60% Estimate*	22	1,572
Total	49	2,139
*Including Water Right No. 6891-3		

### *Observation Wells*

Administrative Rule of South Dakota (ARSD) 72:04:05:07 requires that the Water Management Board rely upon the record of observation wells in addition to other information in order to determine that recharge to the aquifer exceeds withdrawals. The Water Rights Program maintains 22 observation wells completed into the Codell aquifer [10]. The nearest observation well to this application is Observation Well MR-86A [10], located approximately 6 miles west of the wells for this application. Observation Well MR-86A is representative of the general behavior of the aquifer. Water levels from Observation Well MR-86A are shown in Figure 2 [10]. In general, water levels rise during periods of higher-than-average precipitation and decline during periods of lower-than-average precipitation [11]. The decline in water levels in Observation Well MR-86A in 2014 is likely due to a brief period when the well did not function properly, which was resolved by additional development of the well [10]. There are also seasonal declines due to higher pumping during the summer, although the water levels in the aquifer tend to recover after the spring recharge period. The fluctuation of water levels aligning with fluctuations in annual precipitation indicate water is naturally discharging from the aquifer and recharge to the aquifer exceeds withdrawals. The Water Management Board considers natural discharge to be available for capture. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available for this application.



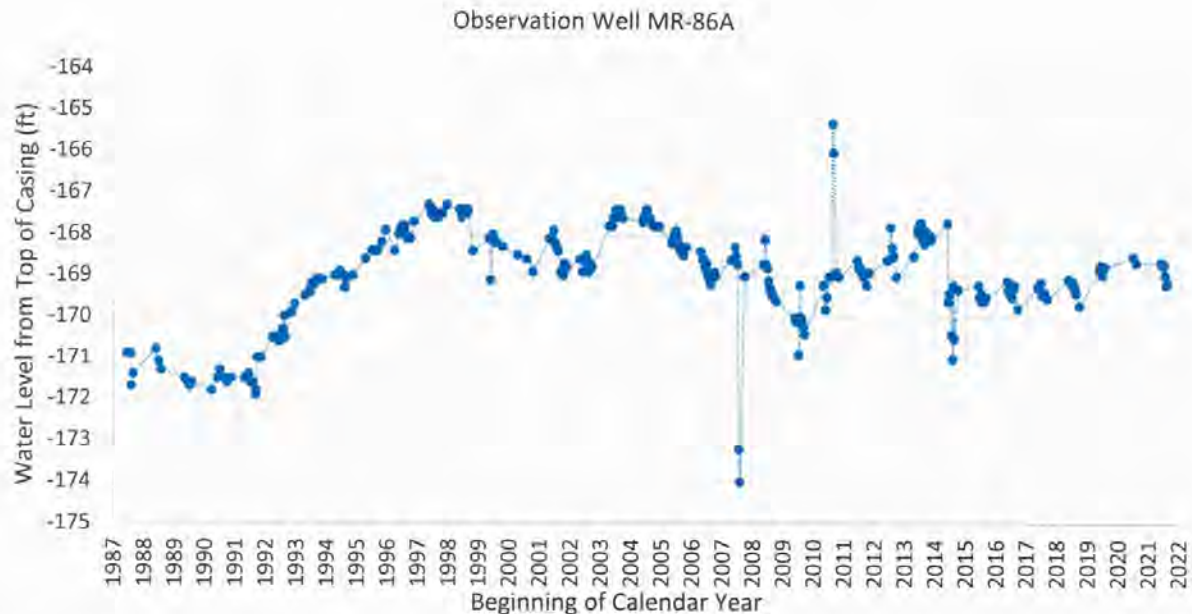


Figure 2: Observation Well MR-86A [10]

### Possibility of Unlawful Impairment of Existing Water Rights

The nearest domestic well on file with the Water Rights Program that is likely to be completed in to the Codell aquifer is the one located 1.5 miles southwest of this application [12]. The nearest water rights/permit appropriating from the Codell aquifer is located approximately 23 miles northeast of the wells for this application [5]. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota (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*

There is no record of interference of an adequate well in Miner County on file with the Water Rights Program [13]. Some drawdown is likely to occur due to use of this well. However, in order to place the waters of the state to maximum beneficial use, the Water Management Board has ruled that hydraulic head is not protected as a means of water delivery [14], and nearby well owners may be required to lower their pumps. Based on well completion report discussed in the Hydrogeologic Characteristics section, the hydraulic head in the aquifer is likely to rise 270 feet above the top of the aquifer [12]. Due to the availability of hydraulic head in the aquifer, the lack of complaints of well interference in the county, and relatively low diversion rate requested by this application, there is reasonable probability this application can be developed without unlawful impairment of existing water right/permits or adequate domestic wells.

## Conclusions

1. Water Permit Application No. 8620-3 seeks to appropriate 61.6 ac-ft/yr at a maximum diversion rate of 0.111 cfs from two existing wells completed into the Codell aquifer located in the SW ¼ NE ¼ Section 15 for commercial use in a dairy and swine facility located in the E ½ Section 15, all in T106N-R55W.
2. Based on the hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available for this application.
3. There is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits or adequate domestic wells.



Kimberly C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

## References

- [1] L. S. Hedges, S. L. Burch, D. L. Iles, R. A. Barari and R. A. Schoon, "Evaluation of ground-water resources eastern South Dakota and upper Big Sioux River, South Dakota and Iowa, Tasks 1-4," U.S. Army Corps of Engineers, Omaha, Nebraska, 1982.
- [2] L. S. Hedges, "Geology and Water Resources of Charles Mix and Douglas Counties, South Dakota - Part I: Geology," SD DANR Geological Survey Program, Vermillion, South Dakota, 1975.
- [3] C. M. Christensen, "Geology and water resources of Bon Homme County, South Dakota; Part I: Geology," SD DANR Geological Survey Program, Vermillion, South Dakota, 1974. Bulletin 21.
- [4] J. Kume, "Geology and Water Resources of Charles Mix and Douglas Counties, South Dakota - Part II: Water Resources," SD DANR Geological Survey Program, Vermillion, South Dakota, 1977. Bulletin 22.
- [5] SD DANR Water Rights Program, "Water right permit file database," SD DANR Water Rights Program, Pierre, South Dakota, 2022.
- [6] SD DANR Water Rights Program, "Irrigation questionnaire summaries," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, SD, 2021.
- [7] SD DANR Drinking Water Program, "Your Water System Information," SD DANR Drinking Water Program, 9 February 2021. [Online]. Available: <https://denr.sd.gov/des/dw/sysinfo.aspx>. [Accessed 9 February 2021].
- [8] W. Kilts, Interviewee, *Natural Resources Engineer III - Water Rights Program*. [Interview]. 3 May 2022.

- [9] G. M. Duffield, "Representative Values of Hydraulic Properties," 23 November 2019. [Online]. Available: [http://www.aqtesolv.com/aquifer-tests/aquifer\\_properties.htm](http://www.aqtesolv.com/aquifer-tests/aquifer_properties.htm). [Accessed 31 March 2022].
- [10] SD DANR Water Rights Program, "Observation wells," Pierre, South Dakota, 2022.
- [11] NOAA, "Climate at a Glance - Divisional Time Series for South Dakota Region 7," NOAA, 1 May 2022. [Online]. Available: <https://www.ncdc.noaa.gov/cag/divisional/time-series>. [Accessed 16 May 2022].
- [12] SD DANR Water Rights Program, "Well completion reports," Pierre, South Dakota, 2022.
- [13] SD DANR Water Rights Program, "County files," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [14] South Dakota Water Management Board. *On the Matter of Water Permit Application No. 2313-2 for Coca Cola Bottling Company*, 1995.





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JUN 08 2022

OFFICE OF  
WATER

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. 8620-3 Name of Applicant Shannon Hutterian Brethren

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:

We would like the Chief Engineer to take another look at this permit application as the water usage under this permit does have an effect on neighboring wells. We have a CAFO located approximately 1 1/2 miles North of permitted well. During peak usage months (Summer), we have to supplement with Rural water already - and we believe with added water usage by Shannon Colony - that our well may fail entirely as it is not as deep in the aquifer. Our well was in existence many years before theirs was dug as well. They should have to use rural water to supplement their needs if they cannot pump enough out of their well. Also - throughout the years, they have tiled all farm land in the area getting rid of surface water. Doesn't surface water replenish the aquifer? If they run our well dry - what do we do for water? Shouldn't they have to dig a new well for us? I would NOT Approve this application without some stipulations

Larry & Janet Hoak Howard, SD

RECEIVED

Madison Daily Leader 1M

JUN 06 2022

## AFFIDAVIT OF PUBLICATION

OFFICE OF  
WATER

Thursday, June 2

STATE OF SOUTH DAKOTA     )  
  ) ss.  
County of Lake                 )

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

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Wick Communications, Michelle Albers, Business Manager, and has been such legal newspaper during the times hereinafter mentioned; That the said Madison Daily Leader has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Business Manager of the said newspaper, a member of the Daily Leader staff thereof, and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

NTC TO APPROP WATER - WIPF  
SD DANR-WATER RIGHTS

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

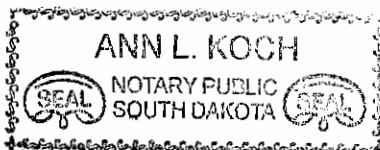
06/02/2022

That \$ 44.38 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publication of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

*Michelle Albers*

Subscribed and sworn before me this 2nd day of

June, 2022



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

NOTICE OF APPLICATION  
NO. 8620-3 to Appropriate  
Water

Notice is given that Shannom Hutterian Brethren Inc., c/o Mark J Wipf, 43952 235th St, Winfred SD 57076 has filed an application for a water permit to appropriate 61.6 acre-feet of water annually at a maximum pump rate of 0.111 cubic feet of water per second from two existing wells completed into the Codell Aquifer (542 feet deep) located in the SW 1/4 NE 1/4 Section 15 for commercial use in a dairy and swine operation located in the E 1/2 Section 15; all in T106N-R55W. This site is located approximately 3 miles southwest of Winfred SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8620-3 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. 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.

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No

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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, 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 June 13, 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 June 13, 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 once at the total approximate cost of \$44.38

JUN 23 2022

OFFICE OF  
WATER  
AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA, County of Mineral ss.

Carla Poulsen of said County and State, being duly sworn, on her oath says: That the Miner County Pioneer is a legal newspaper of general circulation, printed and published in Howard, said County and State, by Carla Poulsen, and has been such newspaper during the time hereinafter mentioned; and that I, Carla Poulsen 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 or notice headed

## Notice of Association

A printed copy of which is herewith attached, was printed and published in the regular and entire issue of said newspaper and put in a supplement, once each week for 1 successive weeks, the first publication being made on the 2 day of June 22

And the last publication on the 12TH DAY of NOVEMBER 2018

The first publication being made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

The second publication being made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

The third publication being made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

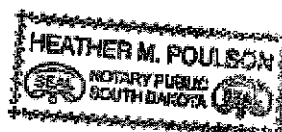
The fourth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

The fifth publication being made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

That said newspaper is a legal newspaper, and has a bona fide circulation of more than two hundred copies weekly, and has been published within the County of Miner, for more than fifty-two successive weeks next prior to the first publication of said notice, and is printed in an office maintained in Howard, South Dakota, the place of publication of said newspaper. That the full amount of fees for publication of the annexed notice is \$... **57.50** and is assured solely to the benefit of said publisher; that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any person whatsoever.

Subscribed and sworn to me this 23 day of Dec 2022

My commission expires the 10 day of Oct 2025



1992年11月13日

[illegible][illegible][illegible]

According to the United Engineers  
and Architects, the proposed canal  
will be a double bottom channel  
to allow the continuous passage of the  
vessels and to keep the water level  
high.

The author also refers to historical statistics on wages and employment, and to the importance of the institutions in the political, legal, and economic spheres in explaining the differences in the growth and productivity of the economies in the two countries. A brief summary of the author's conclusions is given in the final chapter.

The foregoing matter may be  
 discussed in the application to  
 the Chief Engineer. The document  
 shall be filed in a form prepared by  
 the Chief Engineer and a printed  
 statement of the facts shall be  
 by calling upon the Chief Engineer  
 the Chief Engineer in the subject  
 presented above. It is requested  
 that the Chief Engineer be  
 made and under the conditions of  
 the Chief Engineer in a statement  
 in any building that may be held  
 confidential and be filed in June 11,  
 1937.

In the applicant's case, we cannot find the necessary basis for the initial findings and we cannot be satisfied the application is meritorious. We stated therefore that we do not intend to proceed to the reconsideration with an opening basis under the Human Rights Committee. There is a limited possibility that applicants are prevented from obtaining a reconsideration of their applications in such cases, but we do not intend to say that before the Human Rights Committee and certainly not in this case. The fact of the hearing will be taken into account and other factors will be taken into account.

Form 1041-100 (1-78)  
 Instructions for Form 1041-100  
 Page 1 of 1



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

June 10, 2022

**NOTICE OF HEARING**

TO: Mark J. Wipf, President Larry and Janet Haak  
Shannon Hutterian Brethren Inc. 43872 SD Highway 34  
43952 235th Street Howard SD 57349  
Winfred SD 57076

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. 8620-3, Shannon Hutterian Brethren Inc.

A petition has been filed in the matter of Water Permit Application No. 8620-3 in response to the Notice of Application published in the Madison Daily Leader on June 2, 2022. This notice schedules a hearing on Application No. 8620-3 before the South Dakota Water Management Board.

Water Permit Application No. 8620-3 proposes to appropriate 61.6 acre-feet of water annually at a maximum pump rate of 0.111 cubic feet of water per second from two existing wells completed into the Codell Aquifer (542 feet deep) located in the SW 1/4 NE 1/4 Section 15 for commercial use in a dairy and swine operation located in the E 1/2 Section 15; all in T106N-R55W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 8620-3 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.

The Water Management Board will conduct a hearing to consider Application No. 8620-3 at 11:00 AM (Central Time), on Wednesday, July 6, 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 July 6, 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 **June 20, 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 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 (Shannon Hutterian Brethren Inc.), the applicant, 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, affidavit of publication, and the petition filed in the matter of Water Permit Application No. 8620-3. 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, other pleadings, and comments 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 June 20, 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](mailto:ron.duvall@state.sd.us).