



**DANR**  
SOUTH DAKOTA

**WATER MANAGEMENT BOARD  
Meeting on October 5, 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>**

**October 5, 2022**

- 9:30 AM    Call to Order  
              Roll Call  
              Adopt Final Agenda  
              Conflicts Disclosures and Requests for State Board Waivers  
              Adopt July 6, 2022 Board Minutes  
              Set December 7-8, 2022 Meeting Dates and Location  
                    Tentative Meeting Dates for 2023 – Mar 7-8; May 3-4; Jul 12-13; Oct 4-5; Dec 6-7  
              Public comment period in accordance with SDCL 1-25-1  
              Update on DANR Activities  
              Status and Review of Water Rights Litigation  
  
              Administer Oath to Department of Agriculture and Natural Resources Staff  
              Cancellation Considerations – Ron Duvall  
  
              Consider Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Application No. 2833-2, Brian Burnham and No. 2834-2, Blake Burnham  
  
              Consider Application for Renewal of South Dakota Well Driller License No. 285, Manikowski Well Drilling – Eric Gronlund
- 9:45 AM    Consider Water Permit Application No. 2016-1, South Dakota Ellsworth Development Authority – Kim Drennon
- LUNCH**
- Continue any prior agenda items.
- 1:00 PM    Consider the Matter of the Town of Hermosa's Noncompliance with its Surface Water Discharge Permit – Ann Mines Bailey

**ADJOURN**

## **WATER MANAGEMENT BOARD**

### **Meeting on October 5, 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 the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services to participate in the meeting or materials in an alternate format should contact Brian Pontious, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Pontious@state.sd.us](mailto:Brian.Pontious@state.sd.us) as soon as possible but no later than two business days prior to the meeting to ensure accommodations are available.

# WATER MANAGEMENT BOARD MEETING

## October 5, 2022

<b>Qualifications:</b> wi - well interference wcr -well construction rules iq - irrigation questionnaire lf - low flow
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No.	Name	Address	County	Amount	Use	Source	Qualifications
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### Water Permit Applications to be Considered as Scheduled

2016-1	SD Ellsworth Development Authority	Rapid City	MD	2.22 cfs	wds	1 well-Madison Aquifer	wi, wcr, 3 special
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### Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

2019-1	Poss Ranch Inc	Sturgis	MD	2.0 cfs	65 acres	Belle Fourche River	lf, iq, 1 special
2020-1	Bear Butte Valley Water Inc	Sturgis	MD	1.40 cfs	rws	1 well-Madison Aquifer	wi, wcr, 3 special
2021-1	Riverview LLP	Morris MN	CN	0.50 cfs	commercial	5 wells-Fox Hills Aquifer	wi, wcr, 4 special
2848-2	Rapid Valley Sanitary Dist.	Rapid City	PE	1.56 cfs	rws	1 well-Madison Aquifer	wi, wcr, 3 special
2849-2	Tripp Co Water User Dist.	Winner	TR	4,000 AF	rws-future use	Ogallala Aquifer	3 special
3178B-3	Mark LaBrie	Frankfort	SP	no add'l	no add'l	2 wells-Tulare East James	wi, iq, 1 special
8521A-3	Terry Brandenburg Legacy Trust	Clear Lake	DU	no add'l	no add'l	Lake Alice	iq, 4 special
8626-3	Tri-Cross Renewable Energy LLC	Viborg	TU	0.10 cfs	commercial	1 well-Niobrara Aquifer	wi, wcr, 2 special
8630-3	Margaret A Dailey	Jefferson	UN	1.33 cfs	54 acres	1 well-Missouri:Elk Point	wi, wcr, iq,1 special
8635-3	Big Watt Digital SD LLC	Humacao PR	SU	0.67 cfs	commercial	1 well-Inyan Kara Aquifer	wi, wcr, 2 special
8636-3	Arnie Beisch	Waubay	RB	no add'l	15 acres	2 wells-Coteau Lakes	wi, iq, 1 special
8637-3	Wilde Air Service LLC	Volga	KG	0.056 cfs	commercial	1 well-Vermillion East Fork	wi, wcr, 2 special
8638-3	Darrel or Karen Jongeling	Brookings	HM	1.11 cfs	120 acres	1 well-Big Sioux Brookings	wi, wcr, iq
8639-3	James Bondesen	Hurley	TU	2.0 cfs	no add'l	2 wells-Upper Vermillion Miss	wi, wcr, iq,1 special
8640-3	City of Volga	Volga	BG	1.11 cfs	municipal	2 wells-Big Sioux:Brookings	wi, wcr, 2 special
8641-3	Derrick Skogsberg	Benbrook TX	UN	1.78 cfs	160 acres	1 well-Lower Vermillion Miss	wi, wcr, iq
8642-3	John & Melissa Schutte	Canton	LN	no add'l	16.5 acres	Big Sioux River	lf, iq, 1 special
8643-3	Blumengard Httm Brth	Faulkton	FA/ED	4.21 cfs	295 acres	runoff – Hamak Dam	lf, iq, 1 special
8644-3	Riverview LLP	Morris MN	HM	120 AF	commercial	3 wells-Altamont	wi, 4 special

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8645-3	Poinsett Httm Brth	Estelline	HM	1.78 cfs	136 acres	1 well-Big Sioux:Brookings	wi, iq
8646-3	Residence Parcel Trust	Sioux Falls	MA	18.56 AF	rec, fwp	runoff-unnamed tributary	lf, 1 special
8653-3	Pleasant Dutch Dairy LLP	Willow Lake	CK	5.57 cfs	commercial	wetland	none
8655-3	By Lane Well	Yankton	YA	1.60 cfs	67 acres	1 well-Lower James Missouri	wi, wcr, iq, 1 special



RECEIVED

APR 15 2022

WATER RIGHTS  
PROGRAM

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. 2013-1 Name of Applicant Santa Maria Land & Cattle

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:**

I am the owner of property adjoining the property on this application #2013-1. I question this application because I'm concerned about my existing well that is less than a half mile away. It is large amount of water to be used and it could be detrimental to my well that is used for watering livestock, my well is the only water source for that pasture. The application states it will be used for irrigation, but the applicant is in the process of building a proposed housing development on the same property, which is concerning because of the amount of water that could be used. Please review this application which will probably be used for the housing project and not irrigation of pasture. Thanks for your reconsideration.

**Commenter's name and address:**

First Name: Mike Last Name: Lesmeister

Address: 19345 Upper Redwater Road

City: Belle Fourche State: SD Zip: 57717

**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).

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 237<sup>TH</sup> MEETING  
OF THE WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
JULY 6, 2022

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

Mr. Freeman stated that Chairman Bjork was unable to attend the meeting and Vice Chairman Larson was attending the meeting remotely, so with the concurrence of the board, he would be the acting chairman for today's meeting.

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 Jim Hutmacher attended in person. Peggy Dixon, Bill Larson, and Chad Comes attended remotely. Tim Bjork was absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Mark Rath, Adam Mathiowetz, and Kim Drennon, Water Rights Program; Kelli Buscher, Shannon Minerich, and Sean Kruger, Surface Water Quality Program.

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

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

Court Reporter: Carla Bachand, Capital Reporting Services.

Water Permit Application No. 2833-2 and Water Permit Application 2834-2: Ryan Vogel, counsel for the Burnhams, Blake Burnham, Bryce Burnham, Brian Burnham, Amy Davis, Aaron Davis, Charles Davis, Laura Herrmann, Kevin Herrmann, Marie Condon, and Nate Hunke.

Water Permit Application No. 8620-3: Jason Erickson, counsel for Shannon Hutterian Brethren, Inc., Mark Wipf, Ben Wipf, Brian Friedrichsen.

ANNUAL ELECTION OF OFFICERS: Motion by Hutmacher, seconded by Holzbauer, to nominate Bill Larson as chairman, Jim Hutmacher as vice chairman, and Leo Holzbauer as secretary.

There were no other nominations.

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

Motion by Hutmacher, seconded by Holzbauer, to appoint Rodney Freeman as prehearing chairman for the next year and Bill Larson as alternate prehearing chairman. A roll call vote was taken, and the motion carried unanimously.

ROLL CALL: The roll was called, and a quorum was present.

ADOPT FINAL AGENDA: Motion by Hutmacher, 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 MAY 4, 2022, BOARD MEETING MINUTES: Motion by Holzbauer, seconded by Comes, to approve the minutes of the May 4, 2022, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

OCTOBER 5-6, 2022, MEETING LOCATION: The October 5-6 meeting will be in Pierre.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: David McVey stated that on July 5, 2022, the Water Rights Program received a letter signed by Scott Herrmann, Rosebud Sioux Tribe President, taking a position on the granting of Water Permit Application No. 2834-2, Blake Burnham. Mr. McVey stated that the letter follows the form for a petition in opposition to the permit, but it was not timely so it should not be considered by the board. Mr. McVey noted that if Mr. Herrmann or someone on behalf of the tribe is present at the meeting, the proper time to address the board would be during this public comment period.

Marie Condon read the letter that Scott Herrmann sent to the Water Rights Program. She noted that a separate letter regarding Brian Burnham's application was emailed to the Water Rights Program.

There were no other public comments.

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

REQUEST TO ADVERTISE AMENDMENTS TO ARSD 74:51, SURFACE WATER QUALITY: Shannon Minerich, DANR Surface Water Quality Program, requested permission to advertise for a public hearing, to be held during the December 7-8, 2022, Water Management Board meeting, to consider amendments to 74:51, Surface Water Quality.

Ms. Minerich reported that the Clean Water Act requires that states develop surface water quality standards. States are required to review the water quality standards in a triennial review. The triennial reviews are open to the public and all of the water quality standards are open for public input. The Surface Water Quality Program is proposing more frequent public hearings to update a few select sections of the water quality standards each time rather than having one triennial review.

Ms. Minerich discussed the process for making rule changes. She provided a summary of proposed amendments to the rules which include adopting and updating Cadmium criteria, updating irrigation beneficial use to a seasonal use, deleting unused terms in the definitions, updates and corrections to Uses Assigned to Lakes, and updates and corrections to Uses Assigned to Streams. Ms. Minerich stated that in August 2022 the Surface Water Quality Program plans to issue a press release and hold a Teams meeting with interested parties regarding the updates.

Motion by Hutmacher, seconded by Larson, to authorize the DANR Surface Water Quality Program to advertise for a public hearing to consider amendments to ARSD 74:51-Surface Water Quality Standards. A roll call vote was taken, and the motion carried unanimously.

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.

Ten water rights and water permits were scheduled for cancellation. Mr. Duvall stated that 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 and water permits for the reasons listed.

Number	Original Owner	Present Owner(s) and Other Persons Notified	Reason
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## **DIVISION II WATER PERMITS & WATER RIGHTS**

<b>PE 2739-2</b>	Platte Hutterian Brethren	Same (% Dale Stahl)	Non-Construction
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## **DIVISION III WATER PERMITS & WATER RIGHTS**

<b>RT 2762-3</b>	Dennis Meyer	Same	Abandonment
<b>RT 4505-3</b>	Eltor Brenner	Joe Brenner	Abandonment
<b>PE 6373-3</b>	Ernest R Namminga	Same	Abandonment/Forfeiture
<b>PE 6937A-3</b>	Dean R Morman	Same	Non-Construction
<b>PE 7265-3</b>	Leesman Ranch	Leesman Ranch (% Leigh	Non-Construction
<b>PE 7265A-3</b>		Leesman)	
<b>Permit No. 7265A-3 amended Permit No. 7265-3 by extending the construction period (no additional water or acreage)</b>			
<b>PE 7715-3</b>	Allen Vannorsdel	Allen & Shawn Vannorsdel	Non-Construction
<b>PE 7941-3</b>	Joseph F Chicoine	Same	Non-Construction
<b>PE 8263-3</b>	Ohms Avon Farm	Same (% Stephen Ohms)	Non-Construction



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

**FUTURE USE REVIEWS:** A table listing the future use permits up for a seven-year review was included in the board packet the board members received prior to the meeting. Certain entities such as water distribution systems, municipalities and rural water systems can reserve water for future needs.

State law requires future use permits to be reviewed by the Water Management Board every seven years, and it requires the permit holder to demonstrate a reasonable need for the future use permit.

Mr. Duvall stated that the Water Rights Program contacted each of the entities regarding whether the entity wanted to retain the future use permit. The letters from the entities requesting that they be allowed to retain their future use permits, the Chief Engineer's recommendations, and the Affidavits of Publication showing that the hearing was public noticed were included in the board packet. No letters in opposition were received in response to the public notice.

The chief engineer recommended that the board allow the following Future Use Permits to remain in effect as listed below.

No.	Name	Amount Remaining in Reserve	Source
551-2	City of Winner	1,568 AF	Ogallala Aquifer
1622-2	City of Gregory	269 AF	Ogallala Aquifer
1660-2	City of Burke	396 AF	Ogallala Aquifer
3429-3	WEB Water Development	15,000 AF	Missouri River
3984-3, 3984A-3, 3984B-3	Big Sioux Community Water System Inc.	589 AF	Big Sioux:Moody Aquifer
4456-3, 4456A-3	Aurora-Brule RWS Inc.	621 AF	Missouri River
6259-3	City of Volga	1,216 AF	Big Sioux:Brookings Aquifer

Motion by Comes, seconded by Holzbauer, that the future use permits shown in the table remain in effect for the amounts listed. 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 withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

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

Well Construction Rule Qualification No. 2

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

Irrigation Water Use Questionnaire Qualification

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

Low Flow Qualification

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

CONSIDER WATER PERMIT APPLICATION NO. 2833-2, BRIAN BURNHAM AND WATER PERMIT APPLICATION NO. 2834-2, BLAKE BURNHAM: Ann Mines Bailey requested that Application No. 2833-2 and Application No. 2834-2 be addressed in one hearing. She noted that both applications relate to a project owned by the same family.

Ryan Vogel, attorney for the applicants, had no objection to considering both applications in one hearing. The intervenors also had no objection.

Acting Chairman Freeman stated that the board would proceed with hearing both applications in one hearing.

Ms. Mines Bailey appeared on behalf of the chief engineer and the Water Rights Program, Ryan Vogel appeared on behalf of Brian and Blake Burnham, and intervenors Kevin Herrmann, Aaron Davis, and Marie Condon appeared pro se.

David McVey, board attorney, asked if all of the opponents properly submitted petitions in opposition. Ms. Mines Bailey stated that she believes that all of the petitions would be considered timely.

The parties waived opening statements.

Ms. Mines Bailey offered Exhibit 1A, the administrative file for Water Permit Application No.

2833-2, Brian Burnham, and Exhibit 1B, the administrative file for Water Permit Application No. 2834-2, Blake Burnham. The administrative files contain the applications, the reports and recommendations of the chief engineer, the petitions in opposition, and the notices of publication.

Exhibits 1A and Exhibit 1B were admitted into the record.

Ms. Mines Bailey called Adam Mathiowetz, staff engineer with the Water Rights Program, who had previously been administered the oath by the court reporter.

Mr. Mathiowetz testified that Exhibit 2 is his Curriculum Vitae.

Ms. Mines Bailey offered Exhibit 2. The exhibit was admitted into the record.

Mr. Mathiowetz testified that he is a senior groundwater engineer, and his primary responsibilities include reviewing water permit applications for technical aspects as required by South Dakota water law, distribution of those applications to other staff members for review, and peer review of their reports. Mr. Mathiowetz is also responsible for reviewing well completion reports and licensing well drillers and pump installers. He provides technical assistance to the Water Management Board and members of the public regarding ground water and wells. Mr. Mathiowetz is also responsible for the management of the observation well network, including two full-time staff technicians and the seasonal members of the Water Rights Program that measure the observation well network.

Mr. Mathiowetz stated that he prepared one report regarding both Water Permit Application Nos. 2833-2 and 2834-2. The joint review was based on his initial review in determining aquifers and realizing that both of the aquifers the applicants were proposing to use were acting as extensions of the Ogallala aquifer and that this is essentially one farm operation owned by the family.

Water Permit Application No. 2833-2, Brian Burnham, proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from two existing wells, authorized under Water Rights No. 1260-2, and seven proposed wells approximately 100 feet deep to be completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer in this location. The proposed wells and the land to be irrigated are located in Tripp County approximately 24 miles southwest of Winner, SD.

Water Permit Application No. 2834-2, Blake Burnham, proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to four wells approximately 100 feet deep to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer in this area. The land to be irrigated and the proposed well locations are located in Tripp County approximately 23 miles southwest of Winner, SD.

Pursuant to SDCL 46-2A-9, Mr. Mathiowetz's report addresses 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.

Mr. Mathiowetz noted that in the opening paragraph regarding Water Permit Application No. 2833-2,

the report that was made available to the public did not include the location of the wells being within the western half of Section 15; however, within the report the maps do indicate the locations. The analysis does include the correct location for the wells, which is also how it was public noticed.

Mr. Mathiowetz testified that Exhibit 3 is a map of the project area including geologic formations, surface water sources, and other information. The map is included on page 4 in the report and is labeled as Figure 1. Mr. Mathiowetz created the map using the ESRI ArcMap software, data sources from the South Dakota Geological Survey for the geologic map, and other databases maintained by the State of South Dakota and the Water Rights Programs.

Ms. Mines Bailey offered Exhibit 3. The exhibit was admitted into the record.

Mr. Mathiowetz pointed out on Exhibit 3 the locations of Application No. 2833-2, Brian Burnham, Application No. 2834-2, Blake Burnham, the five ground water observation wells completed into the Ogallala aquifer, the diversion points for existing Ogallala aquifer water rights, the Keya Paha River, other streams and rivers, sections, and township boundaries. The map also shows the various geologic formations that are encountered when excavating, drilling, or digging.

Based on the geologic map, the aquifer materials in the location of the diversion point for Application No. 2833-2, Brian Burnham, are Quaternary aged Eolian deposits. The Eolian deposits are wind-blown silts to finer sands and locally derived from the Valentine Formations sandhills formations.

Based on the geologic map, the aquifer materials in the location of the diversion point for Application No. 2834-2, Blake Burnham, are Quaternary aged Terrace deposits. Terrace deposits are clay to boulder sized clasts, which could include fine sand up to very coarse gravel. These are deposited as pediments, paleochannels, and terrace fills of former flood plains.

The primary difference between Eolian deposits and Terrace deposits is how they were deposited, which also leads to their physical structure distinction. Eolian were deposited by wind and, therefore, have to be, in general, average sized, smaller particles than Terrace deposits which are deposited generally by water or gravity. The Terrace deposits tend to have, on average, a larger size particle than Eolian deposits.

Mr. Mathiowetz stated that review of data and available sources showed that the High Plains aquifer, which is a country regional scale aquifer ranging from South Dakota to Texas, includes several different formations and deposits, the Arikaree, which is underlying the Ogallala, and the overlying Quaternary aged materials, which includes alluvium, terrace, and eolian deposits. Work done by Filipovic with the S.D. Geological Survey in 2004 indicated the High Plains aquifer was present at this location and that water movement was from the southwest toward the northeast to the Keya Paha River. Further review was conducted of the available lithologic logs, test hole logs, and geologic information and a discussion with Tony Beck, who is a licensed driller from Nebraska working at the site for Burnhams. Based on the driller's information the first material encountered when drilling was not Ogallala aquifer formation material. Mr. Beck then drilled into the Arikaree, which is commonly called red rock. The Arikaree, where he was working, was not acting as an aquifer. Information indicates that water moves through this area, and it is part of the High Plains aquifer, which the Water Rights Program manages as two separate components, the overlying Ogallala

aquifer and the underlying Arikaree aquifer. Information provided by the driller indicated the Arikaree aquifer was not acting as an aquifer at the applicant's location. Looking at these three sources independently, then combining that information, it was determined that these particular portions of the Quaternary Terrace aquifer and Quaternary Eolian aquifer are acting as an extension of the Ogallala aquifer in this area.

The Ogallala aquifer specifically and in the formation in and of itself that makes up the bulk of aquifer is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits. It is broken up into two bodies in South Dakota, the main body where the applicants propose to withdraw water and the erosional remnants. The main body is south and west of Ponca Creek and the erosional remnant is north and east of Ponca Creek. The main body in South Dakota underlies approximately 1,000,000 acres. Mr. Mathiowetz stated that for his analysis he relied on just the main body.

Determination of the availability of unappropriated water is done by creating a hydrologic budget comparing estimate average annual recharge with estimated average annual withdrawals and reviewing observation well data.

The Ogallala receives recharge through the infiltration of precipitation. The Ogallala, as well as the Quaternary Terrace and Quaternary Eolian deposits that the applicants intend to use, is unconfined in this area. Several studies have been done calculating the recharge to the Ogallala aquifer. None of the studies were specific to the Quaternary Terrace and Quaternary Eolian deposits functioning as an extension of the aquifer, but some of the studies appear to include those deposits as portions of the Ogallala aquifer.

Mr. Mathiowetz stated that he approached his review of the recharge by using an area of the Ogallala that did not necessarily include the Eolian and Terrace deposits for calculating a recharge estimate, he used the published available recharge rates. The recharge rates, which range from 1.3 inches per year to 3.4 inches per year, were multiplied by the area of the main body of the aquifer, which is approximately 1,000,000 acres, to reach totals for the main body of the Ogallala aquifer of 108,914 acre-feet per year to 284,852 acre-feet per year.

Withdrawals from the Ogallala aquifer occur through well withdrawals for reasonable domestic use and appropriate domestic use, municipal, rural water systems, irrigation, fish and wildlife propagation, institutional, and commercial for use in a livestock feeding operation.

Mr. Mathiowetz stated that at the time of completion of his report, there were 171 active water rights and permits authorized to withdraw water and four future use permits. The estimated total of withdrawals from the main body of the Ogallala aquifer is approximately 31,128.3 acre-feet per year. Mr. Mathiowetz came to that number by adding two categories of use. One is the annual irrigation using an average of the reported irrigation use for the period of 1982 to 2020. After further review of the data, Mr. Mathiowetz decided to use the average from 2012 through 2020, as shown in Table 3 on page 7 of his report. This time period is more representative of current irrigation methods and technologies in terms of how much water is being applied.

Future use permits were included in the other broad category of non-irrigation use. Future use permits are assumed to be fully developable because an entity with a future use permit could request

a volume and if they did not develop that total volume, the portion undeveloped rolls back into the future use permit and, therefore, over time would be fully developable.

For other non-irrigation permits, there were two methods of estimation. For those permits limited by an annual volume, Mr. Mathiowetz assumed that the entire annual volume would be pumped and for those permits limited by a diversion rate, he assumed pumping at the licensed or permitted diversion rate for 60 percent of the time. Based on experiences with staff members in the Water Rights Program and working with licensees in the past to establish annual volumes, it was determined that 60 percent was reasonable for most entities that would not be pumping continuously.

Mr. Mathiowetz stated DANR maintains 69 observation wells completed into the main body of the Ogallala aquifer, and he reviewed data from all 69 observation wells. Hydrographs for six of the observation wells are included in Mr. Mathiowetz's report. These six observation wells are within approximately five miles of the applicants' various proposed well locations. In general, the observation wells show a stable to slightly rising water levels over the period of record, with the exception of one area in Bennett County where there has been a recent proliferation of new applications. Also, in that area some of the observation wells are confined, and the water appears to be equilibrating to withdrawals by the new permits, but these Bennett County observation wells are an outlier compared to the bulk of the geographic area represented by the observation wells. The oldest of the six observation wells has data from 1959 through the end of 2021.

The observation well data shows that the natural conditions, not pumping, is dominating the changes in water levels and that there is not only recharge but also natural discharge from the aquifer. Mr. Mathiowetz concluded that there is a reasonable probability that unappropriated water is available for both of these applications.

Mr. Mathiowetz stated that Exhibit 4 is an aerial map of the project area that includes property as shown in a plat book for the various petitioners as well as the Keya Paha River and two major local streams that are flanking the area where the applicants' proposed wells will be located. Mr. Mathiowetz created the map using the ESRI ArcMap software, various databases maintained by the state and the Water Rights Program, and information from the 2020 Tripp County plat book for the various properties.

Ms. Mines Bailey offered Exhibit 4. The exhibit was admitted into the record.

Mr. Mathiowetz pointed out on the map the location of the proposed well locations for Application No. 2833-2 and Application No. 2834-2, the DANR Ogallala aquifer observation wells, the Ogallala aquifer water rights and permits proposed diversion points, the Keya Paha River, Lost Creek, and Cottonwood Creek, petitioners' properties as taken from the 2020 Tripp County plat book, and the section lines.

The closest water right to the proposed points of diversion for Application No. 2833-2 is Water Right No. 1260-2, which is held by the applicant. The next closest is Water Right No. 2167-2 located to the southeast. With the exception of Water Right No. 1260-2, the closest existing water right to Application No. 2834-2 is also Water Right No. 2167-2.

The nearest observation well to Application No. 2833-2 is TR-59A, which is approximately one mile south of the most southern proposed well locations. The nearest observation well to Application No. 2834-2 is also TR-59A, which is approximately two and a half miles away.

There are domestic wells in the area. The presence of domestic wells is determined by reviewing the Water Rights Program well completion report database. Not all domestic wells are included in the database. Some wells predate the requirement for well completion reports to be submitted to the Water Rights Program, and sometimes wells are drilled by the landowner, who may be unaware that they need to submit a well completion report.

The nearest domestic well on record to Application Nos. 2833-2 and 2834-2 not held by the applicants is approximately 1.8 miles east of Application No. 2833-2 and approximately one-half mile southwest of Application No. 2834-2.

In order to receive protection under the law, an existing right or domestic well must meet the definition of an adequate well as set forth in South Dakota Well Construction Standards. An adequate well is defined as a well that is constructed such that at the time of construction the inlet to the pump can be placed at least 20 feet into the saturated aquifer or if the aquifer is less than 20 feet thick, as near to the bottom of the saturated aquifer as possible. The thickness of the aquifer in this particular area is frequently 20 to 40 feet, however, several wells do show that it could be up to 50 feet.

Mr. Mathiowetz stated that based on the information available, there is a reasonable probability that development of Application Nos. 2833-2 and 2834-2 will not unlawfully impair existing appropriations using adequate wells or adequate domestic wells. This is based upon the relatively limited natural variance of the water level, as shown in the hydrographs included in the report, especially those that are in close proximity to multiple permits pumping, such as Observation Well TR-78N shown in the bottom right corner of Exhibit 4, and the fact that the aquifer is unconfined. In general, in an unconfined aquifer, significant drawdown does not extend far from the pumping well. This is also based on the lack of history of substantiated complaints regarding well interference from the Ogallala aquifer, and the distance between the various appropriative, high-capacity, pumping water rights.

Mr. Mathiowetz stated that his understanding of the petitioners' concerns include:

- Development of these applications would lower ground water levels and prevent and damage use of personal and private wells;
- Development of these applications would reduce availability of water in various surface water bodies, particularly cited was Lost Creek;
- Development of these applications would affect future land values for adjacent properties; and
- Development of these applications would not be in the public interest, but only in the interest of the applicants.

Mr. Mathiowetz stated that public interest is not part of his review and land values are not considered when determining whether to recommend granting a water right. In terms of water availability, by review of the hydrologic budget, the Ogallala aquifer has a significant amount water available. The

minimum estimated recharge is more than 108,000 acre-feet per year with the estimated average use being slightly more than 30,000 acre-feet per year. In terms of potential for unlawful impairment, the unconfined nature of the aquifer will help prevent some of that spread of drawdown because that is the physics of how it works. The number of wells proposed would mean that, at least from an outside view, the potential that the sediments the wells are completed into are finer, therefore, they are going to have more drawdown locally, and potentially impact themselves before there is time to have sufficient pumping to have drawdown significantly further away. Mr. Mathiowetz made general assumptions that the applicants are likely going to have to run multiple wells at the same time to operate the system.

Regarding the petitioners' concerns about the reduction of surface water, particularly Lost Creek, Mr. Mathiowetz stated that since he does not know whether the creek is a losing stream (water flows from the creek horizontally into the aquifer) or a gaining stream (water flows from the aquifer into the creek) he cannot be certain of the exact type of potential effects. However, at the distances from the applicants' proposed wells to Lost Creek, it would be difficult to discern, over a standard pumping season and methodology of how most irrigators run, whether it was natural effects or specifically pumping from the applicants' wells that would cause any changes in that creek.

This concluded questioning by Ms. Mines Bailey.

In response to questions from Mr. Vogel, Mr. Mathiowetz stated that there have been no well interference complaints from any aquifer in Tripp County. Mr. Mathiowetz stated that he does not have the well construction reports for the observation wells in front of him, so he is not aware of whether they are adequate wells. The information regarding water levels in the observation wells is collected by seasonal or full-time DANR Water Rights Program staff.

Mr. Herrmann asked if Mr. Mathiowetz can assure the petitioners that the observation well data will show there won't be a problem in the future with the nine wells. Mr. Mathiowetz stated there are areas to the north and particularly in Bennett County where there has been recent proliferation of wells for irrigation completed and there has not been significant drawdown causing unlawful impairment. There are observation wells near these two applications that do support usage. The number of wells is not necessarily fully relevant. The applicants are requesting a diversion rate of 1.85 cfs. That could come from one well or it could a combination of the wells requested. The maximum permitted diversion rate is 1.85 whether it all comes from one well or several wells, the total pump rate is the same. As part of the licensing process, after five years or if the applicant submits a completion of works form, the Water Rights Program staff will perform an on-site visit, look at the system, collect information from the pumps and the well log information. The permit holder is required to submit annual irrigation questionnaires stating how much was pumped, when it was pumped, what rate they were pumping at, and how many acres were irrigated. The observation wells are measured throughout the summer into early fall. The effects of pumping will be seen at the closer observation wells, but observation wells that are farther away will show the general aquifer characteristics and what's happening in static conditions. By being able to compare the two you would be able to determine whether what is happening is more a natural condition or more specific to pumping at a site. The hydrographs, which are included in Mr. Mathiowetz's report, show the information that is directly obtained from the observation wells. The hydrographs document the water level in the aquifer rises during wetter periods and slowly declines during drier periods. The



effects of local pumping on the water level in the observation wells is temporary as water levels recover to pre-pumping season levels. The 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.

Mr. Herrmann asked what Mr. Mathiowetz does if he sees a problem in one of the hydrographs. Mr. Mathiowetz stated that he would keep watching the hydrograph, but if there is a drawdown or a well going dry, the Water Rights Program needs to be made aware of it. Mr. Herrmann asked Mr. Mathiowetz if he needs to file a complaint if there is a problem with one of his wells.

Mr. Vogel objected to the question. Mr. Freeman sustained the objection.

Mr. Herrmann asked Mr. Mathiowetz to point out on Exhibit 4 a well that is not an irrigation well. Mr. Mathiowetz stated that he cannot do that because all of the permitted wells on that exhibit are for irrigation uses. Mr. Herrmann asked if he has a well that is being used for cattle only in this area and it goes dry, and then the owner of the well complains that there is an issue if this is the first time Mr. Mathiowetz will find out about it? Mr. Herrmann said he is trying to understand. He said Mr. Mathiowetz mentioned that the observation well itself doesn't necessarily tell us that there is a problem with someone's non-irrigation well.

Mr. Vogel objected stating that he is not sure what the question was. Mr. Freeman did not rule on the objection.

Mr. Herrmann asked if the observation wells will show whether there is a problem with someone else's well in the area? Mr. Mathiowetz said the observation well data will not indicate that there is a problem with someone else's well because it doesn't measure that person's well specifically.

In response to questions from Mr. Davis, Mr. Mathiowetz stated that drawdown moves out radially from a pumping well. If the groundwater movement is from left to right, the left side of the drawdown cone will be a little squashed and the right side becomes elongated. The location of the observation wells is not going to be as site-specific but will still be relatively reflective because the groundwater movement is a very slow movement. The cone still goes out radially and, while it gets a little elongated in the direction of movement, the squashing isn't that much, so being upgradient you would need to be closer than comparatively downstream to measure the same amount of drawdown downgradient, but it still allows you to measure it. All of the observation wells in the area that are measured are in the Ogallala aquifer.

There were no questions of Mr. Mathiowetz from the board members.

Mr. Vogel called Blake Burnham who was administered the oath by the court reporter.

Mr. Burnham testified regarding Application No. 2833-2 and 2834-2. Mr. Burnham's grandfather starting the farming operation in 1949. Mr. Burnham pointed out on Exhibit 4 the location the home place, which is near Application No. 2833-2. On the home place are the shop, a hay shed, the old dairy parlor, the feedlot pens, the calving area, the calving kickout pens, equipment storage, a house, and nine houses for employees. There are two domestic wells at the home base. The wells are used

for domestic use and for cattle and are the closest wells to Application No. 2833-2.

Mr. Burnham stated that Application No. 2833-2 is in conjunction with Water Right No. 1260-2. This was an old pivot that will be replaced so there are two pivots going in. This application is for the irrigation of 130 acres. The Burnhams intends to run the two pivots alternately so only one will run at a time at 835 gpm, which is 1.85 cfs. Mr. Burnham stated that this application is for up to 7 wells, but 7 wells is the worst-case scenario. He will only install enough wells needed to get to the approved pumping rate. Corn and alfalfa are grown, and the crop is fed to the livestock. Mr. Burnham stated that Tony Beck is the well driller, and he recommended that the wells be 600 feet apart. If significant drawdown occurs in his domestic wells, Mr. Burnham would shut off the irrigation wells.

Mr. Burnham stated that Application No. 2834-2 is to irrigate 130 acres with up to four proposed wells. There will be one center irrigation pivot. Corn and alfalfa are also grown in this area. Mr. Beck will also be the well driller for these wells. The wells will be used all at once at the approved pumping rate.

The timeline for completion of both projects is two months for well completion and two weeks to install the center pivots.

Mr. Burnham stated that he does not have any concerns about his domestic wells being affected by these two water permit applications.

There were no questions from the parties or the board members.

Mr. Herrmann was administered the oath by the court reporter. He offered a report from a geologist.

Mr. Vogel and Ms. Mines Bailey objected because the report was not prepared by Mr. Herrmann and there is no foundation to admit the exhibit. Ms. Mines Bailey stated that the exhibit needs to come in through the author of the report.

Mr. Freeman sustained the objection.

Mr. McVey asked Mr. Herrmann if the report is a government-created public record. Mr. Herrmann stated that the report is not a government-created public record. He contracted with Prairie Consulting to prepare the report. Nate Hunke prepared the report and was available to testify regarding the report.

Mr. Herrmann stated that land in the area of the applications was gifted to him from his parents. He is concerned that the wells on his land will be affected by the number of wells the Burnhams intend to install and the amount of water they intend to pump out of the aquifer. This is the reason he hired an expert to determine if his wells will be affected.

There were no questions from the parties or the board members.

Mr. Herrmann called Nate Hunke who was administered the oath by the court reporter.

Mr. Herrmann offered Exhibit A, Mr. Hunke's curriculum vitae.

The exhibit was admitted into the record.

Mr. Hunke stated that he has a bachelor's degree in geology and master's degree in hydrogeology. He discussed his publications and work history as well as other information included on his curriculum vitae.

Mr. Hunke testified regarding his report. He said the purpose of his analysis was to look at the permit applications and, based on the diversion rates, what kind of an impact pumping would have on the Ogallala aquifer.

Mr. Vogel offered Exhibit B, a groundwater modeling assessment report prepared by Mr. Hunke, Prairie Consulting.

Responding to questions from Ms. Mines Bailey, Mr. Hunke stated that he prepared Exhibit B, the report. The sources of information he used in preparing the report are the South Dakota Geological Survey, Filipovic 2004 - Hydrogeologic Assessment of the High Plains Aquifer in Tripp and Gregory Counties, South Dakota, and Filipovic 2011 - Hydrogeologic Assessment of the High Plains Aquifer in Bennett County, South Dakota, U.S. Geological Survey 2022 - Modflow 6, which is the model used to generate the report, and miscellaneous reports that are relevant to the study area.

Ms. Mines Bailey had no objection to admitting the exhibit.

Mr. Vogel asked Mr. Hunke if, through his work history, he has any experience conducting an analysis like the one he did in this report. Mr. Hunke stated that most of his work history is related to petroleum cleanup and petroleum assessment. Most of the groundwater cleanup work he does involves the saturated zone, which is beneath the water table and the petroleum contaminants absorb into the underlying aquifers or aquitards. Monitoring wells need to be installed to establish groundwater contours, flow directions, contamination concentrations, slug testing analysis to determine hydraulic conductivity, which basically determines how quickly water moves through an aquifer.

Mr. Hunke stated that in the early 1990's he took a five-day course, 40 hours of training, in which he did groundwater modeling. Since then, this is the only time he has used this particular type of analysis. He stated that his consulting firm does do a lot of modeling in the form of slug testing, groundwater contour, groundwater movement, etc.

Mr. Vogel asked if contamination cleanup analysis is the same as determining impact on other wells in the area? Mr. Hunke said that one part of the petroleum contamination cleanup criteria is to determine what wells may be impacted by the petroleum contamination, and that is based on the hydraulic conductivity, the groundwater elevation contours, to make an assessment on what private wells are in the area and make a determination if there are potential impacts. Mr. Vogel asked if that has anything to do with water. Mr. Hunke said he does not use Modflow 6 specifically to model that, but Modflow 6 does basically the same.

Mr. Vogel asked if it has anything to do with the water levels in those wells. Mr. Hunke answered that it definitely does. Mr. Hunke cited as an example in which petroleum contamination at Watertown had migrated underneath Highway 212 onto the next property, so wells were installed to the south. By measuring the groundwater level in the wells, then surveying the top of casing elevation of the wells, flow direction was determined and potential impacts to the Big Sioux River. Mr. Vogel asked if Mr. Hunke was determining drawdown in the wells. Mr. Hunke stated that a pumping wells were originally involved in that project, then they changed to soil vapor extraction.

Mr. Vogel objected to Exhibit B, stating that Mr. Hunke is not qualified to testify as an expert, based on his work history.

The other parties had no objection.

Mr. Freeman admitted Exhibit B into the record. He said the experience issue goes to the weight that the board gives it as opposed to the qualifications.

Mr. Vogel said Mr. Hunke's title on the report is senior hydrologist. He asked what the definition of hydrologist is. Mr. Hunke stated that his title is actually hydrogeologist, which is what his background is in. He has seven years of experience in geology and in hydrogeology. His focus in graduate school was on hydrogeology.

Mr. McVey told Mr. Herrmann that at some point when he is qualifying a witness as an expert, it is prudent to request that he be treated as an expert witness. Non-qualified witnesses cannot give expert testimony, so Mr. Herrmann should ask the board for permission to treat Mr. Hunke as an expert witness.

Mr. Herrmann moved for the board to treat Mr. Hunke as an expert witness.

Ms. Mines Bailey had no objection.

Mr. Vogel objected.

The other parties had no objection.

Mr. Freeman stated that Mr. Hunke would be treated as an expert witness.

Mr. Herrmann asked Mr. Hunke if there is anything in the report that he would not be able to stand by, based on the objections that were presented and based on his qualifications. Mr. Hunke stated that he stands by all of the information provided in his report.

In his report, Mr. Hunke recommends that, based on the fact that the wells in both applications request using 1.85 cfs, in order to not damage surrounding wells, that number should be decreased from 1.85 cfs for both applications. He said when he put the numbers into the model he included both permit application rates as pumping wells to represent the amount of water diversion that was applied for; 835 gallons per minute, for each permit. Figure 3 in Mr. Hunke's report is a layout of the

grid he used in the model. It is nine miles from east to west and four miles from north to south; it is broken up into sections to get more specific about locations. He inserted the private well locations, based on the locations given to him as represented in Appendix 3, and the locations were plotted onto the grid. In addition, pumping wells 1, 2, and 3 were plotted. Mr., Hunke said his understanding is that pumping wells 1 and 2 are both representing the 9 wells. Pumping well 1 is in part of Section 16 on the left and in the western half of Section 16 is represented by pumping well 2. The Blake Burnham permit application represents pumping well 3, and that is in the southeast corner of Section 11.

Figure 4 is a map representing the groundwater elevation. These valleys were inputted into the model, and he used Observation Well TR-59A, which is about one mile south of pumping wells 1 and 2. Observation well TR-59B is located a mile and a half south and a mile and a half from the pumping wells. The groundwater elevation is included for that observation well. Approximately one mile south of Observation Well TR-59A and two and a half miles east is Observation Well TR-78M, which also has a water table elevation associated with it. The water table elevations are based on the July 22, 2003, readings from those wells. Mr. Hunke said he used July 22, 2003, in this case because that is approximately date that the 2004 paper was written. That study provided him with some aquifer elevations, shown in Figure 2 of his report. This is a study done between July 22, 2003, and August 7, 2003. It shows the aquifer elevation based on those observation wells. There was 2,250 feet of head on the upper part and, towards the Keya Paha River it was 2,150 feet, there is a 100-foot elevation drop.

Figure 5 represents when the pumping wells are turned on, so basically stress is being applied to the Ogallala aquifer with 1.85 cfs or 835 gpm. The contours that are shown are a representation of the water table elevations. Surrounding the pumping wells there is a drawdown going from 670 to 660 to 650 feet mean sea level where, if you go back to Figure 4, it shows that there is about 680 to 670 feet mean sea level in that area, so there is a substantial water table drawdown. These aren't metered so in that area 10 to 15 meters of drawdown is roughly to 33-49 feet of drawdown on the water table. That is based on the hydraulic conductivity of the Ogallala aquifer as measured by studies that have been conducted in that area. Around Pumping well 3 there is a water table elevation that is approximately 630 meters above feet mean sea level as opposed to the static conditions shown in Figure 4. Based on that, Mr. Hunke formulated results from the pumping in those two areas. He projected a drawdown amounts of up to 66 feet for Private Well 1, 33 to 39 feet for Private Well 2, and 0 to 16 feet for Private Well 3. There is a little bit of drawdown in Well 5, but basically Wells 5, 6, 7, 8, and 9 are relatively unaffected.

Mr. Hunke ran the model for current conditions. The most recent conditions he could get from the observation wells were from August 9, 2021, and he got basically the same results. Based on the model results, the private wells would see the water level decline upwards of 66 feet in the closest well and 33 to 39 feet in the next closest well, and 0 to 16 feet in Private Well 3. This is estimated based on static conditions, no pumping versus stress to the aquifer with the pumping and the drawdown that would occur. Depending on saturated thickness and depth of the water, the private wells could potentially dry up. Mr. Hunke recommended that observation wells be placed to the south to monitor the wells when actual pumping is occurring. At this time, the closest observation well is one mile south, which is upgradient of the pumping wells. In the upgradient direction, there is less of an effect than in the downgradient direction, so that observation well would not give a good

depiction of the drawdown occurring from the pumping wells.

Mr. Hunke stated that in his expert opinion, of the six observation wells that have been discussed (Exhibit 4), none of the observation wells would be sufficient to determine the effect of the drawdown from the pumping wells. He recommended that observation wells be placed to the south and the east of Pumping Wells 1 and 2, and also downgradient less than a mile from Pumping Well 3.

Mr. Hunke recommended that the flow rates be reduced from 1.85 cfs; however, he would have to model different varied rates of pumping in order to recommend a safe pumping rate for the wells. Mr. Hunke stated that when he was generating the water table elevations for the model, he used the Keya Paha River gaging stations, Figure 6. There is a gaging station to the northwest of and one to the southeast. He measured the distance between the two, and the difference in stream elevation between the two, which generates a slope. In this case the elevation is declining as you go to the southeast, so the drop in elevation divided by the distance, which is about 28,000 meters, gives you a slope. Using that information, Mr. Hunke estimated what the elevation of the stream is at the site boundaries in the northeast portion of the study area. The river represents a window to the water table. There is no resistance to the groundwater flow to the surface water flow. That information went into the groundwater contour map.

Responding to questions from Ms. Mines Bailey, Mr. Hunke stated that in the report he reviewed the water source broadly as the High Plains aquifer. He understands that the Water Rights Program manages the two aquifers separately. He said the only way he could assess the aquifer appropriately was to treat it as one aquifer because it is hydraulically connected. There might be some variations in hydraulic conductivity but, based on the literature from the South Dakota Geological Survey that he had access to, they had indicated that the High Plains aquifer in that area hydraulic conductivity of about 14.4 feet per second, which includes the aquifer itself. Mr. Hunke said he does not fundamentally disagree with how the Water Rights Program administers the Ogallala and Arikaree aquifers. He said the Arikaree in this area would be irrelevant because it is not part of the High Plains aquifer. This model also includes the Pierre Shale, which is directly beneath the Ogallala formation, and that forms the base of the aquifer for the study in this area. Mr. Hunke said he agrees with Mr. Mathiowetz's report that the Quaternary Eolian and Quaternary Terrace deposits are functioning as the Ogallala aquifer, or part of the High Plains aquifer for purposes of reviewing these two applications. He also agrees that the water in the Ogallala aquifer flows to the northeast toward the Keya Paha River. Groundwater flow will generally mimic the elevation of the ground surface elevation.

Mr. Hunke stated that when he puts a model together the model assumes a homogeneous aquifer material, so there would be a variation that would not be reflective of the actual aquifer materials.

Mr. Hunke said on page 7 of his report the 9 private wells are referenced. The information for these wells was provided by Kevin Herrmann and the petitioners. The information did not include well logs. Mr. Hunke said the only information he received was location of the wells and that the wells are drilled to approximately 100 feet below grade. The private well locations consisted of the section, township, and range, and quarter section information. Mr. Hunke did not receive information as to what water source each of the private wells is completed into, whether the wells are considered adequate wells, or how the private wells are used. He said meters per second pumpage from those

wells is included in the model. It based on 300 gallons per day, which is an average for domestic use. He assumed the wells were used for domestic use, but he also understands that some of the wells are used for livestock watering purposes. Mr. Hunke said he does not have any information that indicates that those households actually use those 9 wells. Based on what he has been told about the average depth of the wells, most of the wells completed in the area are in the Ogallala aquifer because it does provide an adequate water supply to the wells, so it qualifies as an aquifer. It would be of no use to complete a well in an aquitard, like the Pierre Shale, because you would never get enough water out of that well to provide an economic source of water. Mr. Hunke said he does not have well logs for the wells, so he doesn't know what water source the wells are completed into.

Regarding page 13 of his report, Mr. Hunke stated that the model assumes both wells are pumping at the same time at the same rate. He said he assumed that if the Burnhams were given approval for the water permits, the wells could both operate at the same time at the maximum rate for a 24-hour period. Mr. Hunke said since he assumed that both wells would be pumping at the same time when he developed the model results, he does not know if pumping the wells one at a time would make a difference in the model. He said for the model, he assumed that both wells were each pumping 835 gpm at the same time, as laid out in the permit. Mr. Hunke said he took the maximum amount of proposed pumping, and based on the proposed appropriation, he applied that to each well.

In the model, Mr. Hunke assumed that a homogeneous aquifer material and a saturated thickness of 50 feet. Three wells are represented in the report, Appendix 2, and Mr. Hunke did an evaluation of saturated thicknesses. He utilized the 50 feet using the well log from Section 11, which is Pumping Well 3 in the report. The 50-foot thickness roughly coincides with the other two wells he used to evaluate the aquifer thickness. The well log for the Burnham's well in Section 11 shows a saturated thickness of approximately 49 feet.

Ms. Mines Bailey asked if Pumping Well 3 would pump itself dry before it would drawdown Private Well 1, 33 to 49 feet, if the saturated thickness at the pumping well is only 50 feet. Mr. Hunke answered that the High Plains aquifer has high transmissivity for time activity so it can be pumped at a high rate and provide water. He did not look at the drawdown effect in the actual well, he just looked at the drawdown effect in surrounding wells. Theoretically, it could be pumped dry. Mr. Hunke said once it is pumped dry, the pump would shut off so it would not be able to pull another 49 feet a half mile away. The model just assumes that the given pumping rate and the associated drawdowns in water table elevation, which appeared to be 10 to 20 meters in the vicinity of the pumping well.

Ms. Mines Bailey pointed out that on page 13 of Mr. Hunke's report, he states that it would probably result in a 10 to 15 meter drawdown at Private Well 1; but in the summary on page 16, he wrote that there would be approximately 66 feet of drawdown in Private Well 1. Figures 4 and 5 in the report, show a drop of 20 meters, which is about 65.5 feet difference. Ms. Mines Bailey asked why there is a discrepancy? Mr. Hunke said that is because he does not know the exact depth of the private well. He assumed the private well is 100 feet deep, but it could be deeper, and the aquifer could be a greater depth as well because the maximum depth reported for the aquifer is 210 feet. Ms. Mines Bailey asked if Mr. Hunke is asserting the 33 to 49 feet of drawdown or is he asserting the 66-foot drawdown. Mr. Hunke stated that based on the pre-pumping conditions or static conditions versus pumping conditions, it will be in the neighborhood at Private Well 1, assuming everything is

homogeneous, and about a 33 to 39-foot drop in Private Well 2, but they are within a quarter mile of the pumping well. Mr. Hunke said he took the quarter section, township, range information and put them on a topo map, which shows the farms in the area. Then he assumed that the private well would be in the location of the farm. He stated drawdown would be 66 feet at Private Well 1 and 33 to 39 feet at Private Well 2, and 16 feet at Private Well 3.

Ms. Mines Bailey asked what changed between page 13 of the report and the summary and conclusion. Mr. Hunke answered that he believes he re-ran the model, and it came up with a different result. One of the wells was in the wrong location, so that caused the discrepancy. He stated that the information on page 13 of the report is accurate.

Mr. Hunke's recommendation is for a decrease in the rate of diversion for these applications. Ms. Mines Bailey asked what rate Mr. Hunke would recommend. Mr. Hunke stated that he would not know what that rate is without running the model for different varying pumping rates.

Mr. Hunke also recommended installing more observation wells, and as he was testifying to Mr. Herrmann's questions he stated that it would be best to install the observation wells to the south. Mr. Hunke stated that he meant to testify that the observation wells should be installed to the north, which would be downgradient of the pumping wells, because the effect of pumping will be greater in the downgradient direction, which is toward the river. He stated that the present observations are all upgradient and won't show an accurate depiction of the actual effects of pumping.

Mr. Vogel and the other parties had no questions of Mr. Hunke.

Responding to a question from Mr. Hutmacher regarding the cone of depression diameter, Mr. Hunke stated that Figure 5 in his report illustrates the cone of depression every 10 meters, so it would be a quarter mile wide right at pumping well. However, the cone of depression extends out from that because it lowers the aquifer at Private Well 2 and it lowers the aquifer at Private Well 3. That is a combined cone of depression, so the diameter will be greater than a quarter section because it is affecting wells a mile or so out from there. Mr. Hunke said the cone of depression could be up to a mile from the well.

No other board members had questions of Mr. Hunke.

Aaron Davis was administered the oath by the court reporter. Mr. Davis testified that he is a neighbor of the Burnhams. He is concerned about the usage amount in the proposed irrigation wells and the possible consequences. Mr. Davis stated his needs are for livestock and home. He is concerned about how long it will take to replenish the wells if there is a problem, and he is concerned that the cost associated with having to drill new wells to keep water available if there is an issue. Mr. Davis said there are several wells in the area that he knows of that would be affected if there is a drawdown issue. These are not physically good wells, even without a drawdown on them. Mr. Davis said he realizes that the Burnhams need water for their feedlot operation, but so do all the other families in the surrounding area. Mr. Davis asked the board to take into consideration the needs of all the other families in the neighborhood.

In response to a question from Mr. Holzbauer, Mr. Davis stated that he believes his wells are



classified as adequate wells.

Marie Condon was administered the oath by the court reporter. She testified that her well was drilled in the early 1980's. The well driller told her at that she could run three hydrants 24 hours a day, seven days a week and never run out of water. Ms. Condon stated that she is concerned that the proposed new wells will use too much water and deplete water for livestock and domestic use. She said SDCL 46-1-1, SDCL 46-1-3, and SDCL 46-5-5, states that domestic use of water takes precedence over appropriative rights. Ms. Condon said she would like to be sure that her concerns of water available for livestock and domestic use are considered; they should have first priority. She is also concerned about Lost Creek, which runs through her property. There is another small creek that runs through some Indian land she rents. These creeks are the only way she waters livestock, and without water in those creeks, there is no pasture use.

In response to a question from Mr. Holzbauer, Ms. Condon said the water in Lost Creek originates in Nebraska. She is not sure where the water originates in the other small creek on Indian land.

Ms. Mines Bailey called Eric Gronlund, Chief Engineer, as a rebuttal witness. Mr. Gronlund was previously administered the oath.

Mr. Gronlund recommended approval of Water Permit Application No. 2833-2, Brian Burnham 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.

Mr. Gronlund recommended approval of Water Permit Application No. 2834-2, Blake Burnham 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.

Mr. Gronlund stated that, although it was permitted for much more, Water Permit No. 1260-2 was licensed for 1.85 cfs for irrigation of 130 acres. Mr. Burnham testified that he is planning to alternate use, so Mr. Gronlund recommends attaching an additional qualification to the permit that the diversion of water under Water Right No. 1260-2 and Water Permit No. 2833-2, combined, be limited to 1.85 cfs.

Mr. Gronlund testified that he briefly reviewed Mr. Hunke's report. Mr. Hunke recommended the installation of additional observation wells in the proposed diversion point areas. Mr. Gronlund stated that observation wells are always a good to have, so he is not opposed to that, but Blake Burnham testified that they have two domestic wells for their home place. Mr. Gronlund said it is likely the Burnham's domestic wells would be the first to be impacted and therefore would be the "Canary in the Mine" if a problem does occur.

Ms. Mines Bailey asked if Mr. Gronlund has a request as to DANR's role in the location of observation wells if the board imposes such a qualification. Mr. Gronlund stated that, although rare, the board has on occasion required the installation of observation wells as part of approval of a permit that would become part of the South Dakota Observation Well Network. He asked that the locations of the observation wells be approved by DANR, with the assistance of the South Dakota Geological Survey.

Mr. Gronlund stated that he believes the two applications constitute a beneficial use. He believes the applications are in the public interest as it pertains to the jurisdiction of the Water Management Board.

Ms. Mines Bailey asked when Mr. Gronlund looks at administering water rights, does he look at any one specific year. Mr. Gronlund answered that the Water Rights Program does not administer water rights in South Dakota based on a specific year, whether it's a dry year or a flooding year. The history of record is used to administer water rights.

Regarding the concerns expressed by the petitions regarding impact to their private domestic wells, Mr. Gronlund stated that his recommendation includes the Well Interference Qualification. South Dakota statute states that domestic use takes precedence over appropriative rights. Domestic use includes household uses and livestock watering.

Ms. Mines Bailey asked, if petitioners run into issues with their domestic wells should these applications be granted, what information would the Water Rights Program need from them to commence an investigation. Mr. Gronlund said it is advisable for the petitioners to know as much as possible about their wells. Testimony today indicated that there are no well completion reports of file for the petitioners' wells. If a domestic well was drilled after the 1980's there should be a well completion report for the well. He said the petitioners need to know the well depth, what pump is in

the well and where the pump is sitting. This is information the Water Rights Program would need for deciding whether the well is adequate and whether it is being adversely impacted by these appropriative rights.

Ms. Condon asked how she can get an observation well installed on her property. Mr. Freeman stated that is irrelevant for this hearing, but Ms. Condon can take it up with the Water Rights Program after the hearing.

There were no other questions of Mr. Gronlund.

Mr. Larson left the meeting at this time.

The parties offered closing statements.

Mr. Freeman requested board action.

Motion by Hutmacher, seconded by Holzbauer, to approve 2833-2, Brian Burnham, subject to the three qualifications set forth by the Chief Engineer and the following new qualification: Water Permit No. 2833-2 and existing Water Right No. 1260-2 may not be utilized at the same time. Further, the maximum usage for Water Permit No. 2833-2 and Water Right No. 1260-2 is capped at 1.85 cfs.

Mr. Hutmacher stated that one of the qualifications attached to the water permit is the well interference qualification. The Burnhams will be the first ones to know that there is a problem. If there is a problem, it will affect their domestic wells and irrigation wells before it affects anyone else's wells. Mr. Hutmacher said he has reason to believe that the aquifer will produce better than the Burnhams are anticipating. He also believes no one else's wells will be affected. If there is a problem with other wells, it needs to be reported so the department can investigate. The petitioners need to get the information for their wells, as suggested by Mr. Gronlund.

Mr. Holzbauer stated that by combining Water Permit No. 2833-2 with Water Right No. 1260-2, the Burnhams will be authorized to use less water. Water Right No. 1260-2 is currently authorized for 2.1 cfs, but when combined with No. 2833-2 will now be authorized for 1.85 cfs.

Ms. Dixon asked if there is a need to amend Water Right No. 1260-2, or is that covered by adding it to Water Permit No. 2833-2?

Mr. Freeman said he does not believe it is necessary to amend No. 1260-2 because it is covered by No. 2833-2.

Mr. Gronlund stated that No. 1260-2 is authorized at 1.87 cfs, not 2.1 cfs, for 131 acres. Mr. Gronlund believes the Burnhams cannot operate under No. 2833-2, unless they abide by the new qualification,. He believes that Water Right No. 1260-2 does not need to be amended. The qualification being on No. 2833-2 is going to rule the day.

Ms. Dixon asked if both wells could run at the same time at half of the 1.85 cfs?

Mr. Vogel said the intention is that both pivots on No. 1260-2 and No. 2833-2 are using the same wells, so both could not run at the same time; the wells are intended to run alternatively.

A roll call vote on the motion to approve Water Permit No. 2833-2 with the four qualifications was taken, and the motion carried unanimously.

Motion by Hutmacher, seconded by Holzbauer, to approve Water Permit No. 2834-2, Blake Burnham, subject to the three qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

Ms. Mines Bailey will prepare one set of proposed Findings of Fact, Conclusions of Law, and Final Decision pertaining to both water permits. The draft is due by August 31, 2022, and objections are to be submitted by September 15, 2022.

CONSIDER WATER PERMIT APPLICATION NO. 8620-3, SHANNON HUTTERIAN BRETHREN, INC.: Ann Mines Bailey stated that the petitioners in this matter were not in attendance at the hearing.

Ms. Mines Bailey represented the Water Rights Program.

Jason Erickson represented Shannon Hutterian Brethren, Inc.

Ms. Mines Bailey offered Exhibit 1, the administrative file for Water Permit Application No. 8620-3. The administrative file contains the application, the report and recommendation of the chief engineer, the petition in opposition, and the notices of publication.

The exhibit was admitted into the record.

Ms. Mines Bailey called Kim Drennon, engineer with the Water Rights Program, who had previously been administered the oath by the court reporter.

Ms. Drennon stated that Exhibit 2 is her Curriculum Vitae. Ms. Mines Bailey offered Exhibit 2.

The exhibit was admitted into the record.

Ms. Drennon testified that she received a Bachelor of Science in engineering with a civil emphasis from Dordt University in May 2015. The same month she passed the Fundamentals of Engineering exam, which designates her as an engineer intern or engineer in training, depending on the state. She received a master's degree in civil and environmental engineering from South Dakota School of Mines and Technology in December 2018.

Ms. Drennon has been employed with the Department of Agriculture and Natural Resources since January 2019. She performs the technical review of applications, installs data loggers for special projects, inspects dams, and answers constituent complaints.

Ms. Drennon testified regarding her report on Water Permit Application 8620-3. She stated that she reviewed whether unappropriated water is available and whether this application can be developed without unlawful impairment to the existing water rights. Ms. Drennon pointed out that the header on pages 2 through 7 of the report shows Water Permit Application No. 8592-3; that should be changed to Water Permit Application No. 8620-3. This change does not affect Ms. Drennon's analysis.

Water Permit Application No. 8620-3 seeks to appropriate 61.6 acre-feet of water annually at a maximum instantaneous diversion rate of 0.111 cfs (50 gpm) from two existing wells completed into the Codell aquifer. This site is located approximately three miles southwest of Winfred, South Dakota in Miner County. The water will be for commercial use in a dairy and swine facility.

The Codell aquifer is a Cretaceous-age sandstone, which is a member of the Carlile Shale. The Codell aquifer underlies approximately 4,960,000 acres in South Dakota east of the Missouri River and stores approximately 9,900,000 acre-feet of water. The aquifer is confined.

Near this application there were about 270 feet of hydraulic head lifting water above the top of the aquifer. The aquifer materials are about 82 feet thick in this location.

Ms. Drennon determined the availability of unappropriated water by doing a hydrologic budget analysis and reviewing observation well water levels. A hydrologic budget is used to determine recharge and withdrawals to the aquifer.

The Codell aquifer receives recharge mainly by infiltration from glacial aquifers and other aquifers that are in contact with the Codell aquifer. No studies have been done to calculate recharge to the Codell aquifer. For recharge, Ms. Drennon estimated withdrawals from the aquifer using data available to the Water Rights Program, then she divided that withdrawal over the area of the aquifer to find an amount of recharge that would have to happen for recharge to exceed withdrawals. Withdrawal is an intentional taking of water from the aquifer.

There are 48 water rights/permits authorized to appropriate water from the Codell aquifer. Six of the 48 water rights/permits are for irrigation. The total estimated withdrawal for the aquifer is 1,994 acre-feet per year. This application proposes to appropriate up to 61.6 acre-feet per year. The recharge to the aquifer would have to be at least 0.005 inches per year to support current appropriations. Ms. Drennon stated that the Codell aquifer receives recharge of more than 0.005 inches per year.

The Water Rights Program maintains 22 observation wells completed into the Codell aquifer. In preparing her report, Ms. Drennon reviewed all 22 observation wells.

Ms. Drennon stated that Exhibit 3 is a hydrograph for Observation Well MR-86A, which is the nearest observation well to this application. The hydrograph is included as Figure 2 in the report. Ms. Drennon used information in the Water Rights Program observation well database to create the hydrograph.

Ms. Mines Bailey offered Exhibit 3. The exhibit was admitted into the record.

Ms. Drennon stated that hydrograph shows that, in general, water levels rise during periods of higher than average precipitation and decline when there is less than average precipitation, which indicated that water is flowing out of the aquifer naturally. It indicates that there is natural discharge occurring, which the Water Management Board has traditionally considered available for appropriation.

Based on her review, Ms. Drennon concluded that there is reasonable probability unappropriated water is available for this application.

Ms. Drennon stated that Exhibit 4 is an aerial imagery map of the application and other information pertaining to this application. She created the map using ArcMap. Most of the data points on the map were obtained from information maintained by the Water Rights Program, and the petitioner's property boundary was from the 2020 plat book.

Ms. Mines Bailey offered Exhibit 4. The exhibit was admitted into the record.

The applicant's proposed wells are indicated by the yellow triangle with the pink outline in the lower left quadrant of the map. The nearest domestic well on file with the Water Rights Program is indicated by the pink triangle located approximate a mile and a half southwest of the application. The nearest observation well is indicated with an orange plus over top of a black circle located approximately six miles southwest of the application. The nearest water right to this application in the Codell aquifer is indicated by an orange triangle located in the upper right quadrant of the map. The nearest water right is approximately 23 miles away from the application. The nearest domestic well on file with the Water Rights Program is a mile and a half from the application. Not all domestic wells are on file because some of the of them may have been installed before all well completion reports were required to be submitted to the Water Rights Program, and some could be drilled by the landowner themselves, and they have not submitted a well completion report.

Ms. Drennon stated that there is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits or adequate domestic wells. This is based on the fact that there are 270 feet of hydraulic head above the top of the aquifer, the fact that the nearest domestic well on file is about a mile and a half away, and the fact that the aquifer is 82 feet thick. Ms. Drennon also looked at the record of complaints on file in Miner County, and there no complaints in Miner County.

Ms. Drennon reviewed the petition in opposition for this matter. Her understanding of the petitioner's concern is that their well is unable to get water at this time, and they are hauling water. The petitioners are also concerned about the effect that drain tiling has on water availability. Drain tiling was not included in Ms. Drennon's review of the application. Ms. Drennon stated that there is no well completion report on file for the petitioner's well, so she cannot determine if the well is adequate or if it is completed into the same aquifer. Based on her technical analysis, Ms. Drennon does not believe that this application will impair a well located in the vicinity of the petitioner's property.

There were no questions of Ms. Drennon.

Mr. Erickson called Mark Wipf, who was administered affirmation by the court reporter. Mr. Wipf stated that he is the president of Shannon Hutterian Brethren, Inc., and he oversees the communal life the colony is living. Mr. Wipf requested that the board consider approval of the water permit application. The water will be used for a swine and dairy operation.

Mr. Wipf stated that the colony has a CAFO permit, and DANR notified the colony that the permit needed to be upgraded. The colony started studying its water usage because DANR wanted to know how much water was being used for the swine and dairy operations. That is how the colony found out they needed a water permit. Mr. Wipf said the dairy and swine operations are of benefit to the Shannon Hutterian Brethren, and providing clean drinking water for the dairy and swine operations is a beneficial use of the water.

In response to a question from Ms. Mines Bailey, Mr. Wipf said the colony is connected to a rural water system. The purpose for the water appropriation is for livestock drinking, wash down, and finishing.

In response to a question from Mr. Hutmacher, Mr. Wipf stated that the colony is in the process of adding 120 dairy cows to the operation. This is the reason for a second well.

There were no other questions of Mr. Wipf.

The Chief Engineer recommended approval of the application 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
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.

Motion by Hutmacher, seconded by Holzbauer, to approve Water Permit Application No. 8620-3, Shannon Hutterian Brethren, Inc. subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

The parties waived Findings of Fact and Conclusions of Law.

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

A court reporter was present for the hearings and a transcript of the proceedings may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501, phone number (605) 224-7611, or email [pcbachand@pie.midco.net](mailto:pcbachand@pie.midco.net).

Approved October 5, 2022.

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Water Management Board



# WATER MANAGEMENT BOARD MEETING

July 6, 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
1988A-1	Western Construction Inc	Rapid City	MD	2.67 cfs	industrial	Belle Fourche River	If, 5 special
2017-1	Broken Bridge Ranch LLC	Sturgis	MD	3.00 cfs	221 acres	Belle Fourche River	If, iq
2018-1	Monarch Ridge Devel Inc	Black Hawk	MD	1.11 cfs	ws	1 well-Madison Aquifer	wi, wcr, 3 special
2841-2	HWY 79 LLC	Rapid City	PE	0.89 cfs	ws	2 wells-Inyan Kara Aquifer	wi, 2 special
2842-2	H & H Land Co #2 LLC	Rapid City	PE	0.09 cfs	ws	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	If, 1 special
2846-2	Clay Kaiser	Millboro	TR	1.11 cfs	60 acres	runoff-existing storage dam	If, 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	If, 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 Htn 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	Lake Norden	HM	0.10 cfs	commercial	1 well-Prairie Coteau Aquifer	wi, wcr, 2 special
	Renewable Energy LLC						
8613-3	Lewis & Clark RWS	Tea	CL	29.76 cfs	ws	well field-Missouri:Elk Point	wi, 2 special
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-Revillo Aquifer	wi, 4 special
8618-3	MoDak Dairy Inc	Goodwin	DU	1.12 cfs	commercial	2 wells-Pleistocene Series	wi, 4 special
						Unknown	
8619-3	Tim or Kari Ostrem	Centerville	CL	1.78 cfs	260 acres	1 well-Upper Vermillion	wi, wcr, iq
						Missouri South Aquifer	
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 Springs, 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	wi, wcr, iq
						Unit of Spring Creek Aquifer	

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

# CANCELLATIONS – OCTOBER 5, 2022

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

RT 813-1	Alimadad Jatoi	Jatoi Family	LA	0.10	IRR DOM	A/F	Bear Butte Creek Ground water (Quaternary Alluvium)	8-24-2022	
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## DIVISION II WATER PERMIT AND WATER RIGHT

RT 1105-2	Donald Moody	Same	PE	0.30	IRR	A	Rapid Creek	8-24-2022	
PE 2794-2	Brent or Pamela Veurink	Same	GY	2.12	IRR	A	Ground water (Ogallala Aquifer)	8-24-2022	

## DIVISION III WATER RIGHTS AND WATER PERMITS

RT 1912-3	Bon Homme Hutterian Brethren Inc.	Same (% Samuel Waldner)	BH	6 AF	FWP REC	A/F	Runoff (into storage dam)	8-24-2022	
RT 2510A-3	Donna Johnson Revocable Living Trust	Same (% Lori Johnson)	SU	1.83	IRR	A/F	Missouri River	8-24-2022	
RT 2510B-3	Donna Johnson Revocable Living Trust	Same (% Lori Johnson)	SU	7.14	IRR	A/F	Missouri River	8-24-2022	
PE 4888B-3	Jacob & Bradley Den Herder	Same	UN	1.14	IRR	A	Ground water (Big Sioux South Aquifer)	8-24-2022	
RT 6940-3	Ken Less	James Jay Ryon, owner Doug Halvig, Farm Mgr Ken Less	CL	1.11	IRR	A	Ground water (Missouri Elk Point Aquifer)	8-24-2022	
RT 6941-3	Ken Less	James Jay Ryon, owner Doug Halvig, Farm Mgr Ken Less	CL	0.73	IRR	A	Ground water (Missouri Elk Point Aquifer)	8-24-2022	
PE 7970-3	David H Hoops	Same	CA	1.44	IRR	NC	Ground water (Spring Creek Herreid Aquifer)	8-24-2022	
PE 8160-3	Scott Carlson	Same	KG	0.67	IRR	NC	Ground water (Big Sioux Brookings Aquifer)	8-24-2022	

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	



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

August 24, 2022

**NOTICE OF CANCELLATION**

TO: Jatoi Family, 2315 Oak Knoll Dr., Colleyville TX 76034

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

SUBJECT: Cancellation of Water Right No. 813-1

Water Right No. 813-1 authorizes diversion of water from Bear Butte Creek and ground water (2 wells) to irrigate 7.59 acres in the SW ¼ SW ¼ Section 19, T4N, R4E in Lawrence County SD. The water right also authorized use of water for fire protection and landscaping. Records on file with the Water Rights Program show the land has not been irrigated for at least 27 years and perhaps longer. A site visit by a staff engineer found the property to be vacant with no evidence of an irrigation system or any other water use as described in the water right. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 813-1 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 813-1 at **9:30 am, (Central Time) Wednesday, October 5, 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. 813-1 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 September 6, 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.

August 24, 2022

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

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Prior to September 6, 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 September 6, 2022.





**DEPARTMENT of AGRICULTURE  
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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 813-1, ALIMADAD JATOI**

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. 813-1, now owned by the Jatoi Family.

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

Records on file with the Water Rights Program show the land has not been irrigated for at least 27 years. On May 19, 2021, a site visit was conducted by Steve Quissell. His investigation found the property to be vacant and in disrepair. There was no evidence of an irrigation system such as ditches, dikes, variation in vegetation, pumps or above ground power lines or power panels.

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

**Note:**

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



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August 24, 2022

**NOTICE OF CANCELLATION**

TO: Donald Moody, 14881 E Hwy 44, Rapid City SD 57703

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

SUBJECT: Cancellation of Water Right No. 1105-2

Water Right No. 1105-2 authorizes diversion of water from Rapid Creek for irrigation of 21 acres in Sections 19 & 30, T1N, R9E in Pennington County. On your 2021 irrigation questionnaire, you reported you had abandoned the use of water for irrigation. In follow-up to a letter sent to you for confirmation, you called and spoke with Genny McMath in our office. It is our understanding that due to a road being rebuilt, cutting off most of the acreage, you opted to discontinue irrigation. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1105-2 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 1105-2 at **9:30 am, (Central Time) Wednesday, October 5, 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. 1105-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 6, 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 September 6, 2022.

Prior to September 6, 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 September 6, 2022.





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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 1105-2, DONALD MOODY**

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. 1105-2.

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

The 2021 irrigation questionnaire submitted by the water right holder indicated the use of water for irrigation had been abandoned. A letter was sent requesting confirmation of the intent to discontinue irrigation. Mr. Moody called and confirmed his intent to abandon irrigation. He explained that after the road was rebuilt, it cut off most of the acreage he had irrigated. He indicated he didn't feel it was worth irrigating what little acreage was left.

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

**Note:**

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



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August 24, 2022

**NOTICE OF CANCELLATION**

TO: Brent or Pamela Veurink, PO Box 906, Platte SD 57369-0906

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

SUBJECT: Cancellation of Water Right No. 2794-2

Water Permit No. 2794-2 authorizes three wells to be completed into the Ogallala Aquifer to irrigate 150 acres in the NE ¼ Section 6, T96N, R71W. On your 2021 irrigation questionnaire you indicated you had abandoned the idea of irrigation due to lack of sufficient water. On June 27, 2022, in a phone conversation with Genny McMath in our program, you confirmed you had made a business decision not to pursue irrigation. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 2794-2 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 2794-2 at **9:30 am, (Central Time) Wednesday, October 5, 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. 2794-2 based upon facts presented at the public hearing. Our records show you to be the owners 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 September 6, 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 September 6, 2022.

Prior to September 6, 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 September 6, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 2794-2, BRENT OR PAMELA VEURINK**

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. 2794-2.

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

Due to lack of sufficient water, the permit holders made a business decision not to pursue irrigation as authorized in the water permit. This information was submitted as part of the annual reporting requirement and a follow-up phone conversation with Genny McMath in the Water Rights Program.

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

**Note:**

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



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August 24, 2022

**NOTICE OF CANCELLATION**

TO: Samuel Waldner, Bon Homme Hutterian Brethren Inc., 31232 Colony Rd.,  
Tabor SD 57063

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

SUBJECT: Cancellation of Water Right No. 1912-3

Water Right No. 1912-3 authorized storage of runoff water in a 6 acre-feet dam for fish & wildlife propagation and recreational use. On June 23, 2022, a staff engineer contacted you about the water right and whether the storage dam still existed. You indicated the dam had been removed and the area has been farmed through for several years. It is our understanding the intent is to continue farming the land and not rebuild the dam. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 1912-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right No. 1912-3 at **9:30 am, (Central Time) Wednesday, October 5, 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. 1912-3 based upon facts presented at the public hearing. Our records show the Colony 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 September 6, 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 September 6, 2022.

Prior to September 6, 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 September 6, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NO. 1912-3, BON HOMME HUTTERIAN BRETHREN INC.**

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. 1912-3.

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

The water right authorizes a 6 acre-feet storage dam for fish & wildlife propagation and recreational use. A representative of the Colony indicated the storage dam was removed and the area has been farmed through for several years. The intent is to continue farming the area.

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

**Note:**

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



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August 24, 2022

**NOTICE OF CANCELLATION**

TO: Lori Johnson, 17806 Quantum Pl., Pierre SD 57501

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

SUBJECT: Cancellation of Water Right Nos. 2510A-3 & 2510B-3  
for the Donna Johnson Revocable Living Trust

Water Right Nos. 2510A-3 and 2510B-3 collectively authorize diversion of water from the Missouri River for irrigation of 628.5 acres. Records on file with the Water Rights Program indicate the land was last irrigated in 2012. The 2021 irrigation questionnaires for both water rights indicated the use had been abandoned. In a follow-up letter, you confirmed there was no irrigation system on site. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 2510A-3 and 2510B-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right Nos. 2510A-3 & 2510B-3 at **9:30 am, (Central Time) Wednesday, October 5, 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 Nos. 2510A-3 & 2510B-3 based upon facts presented at the public hearing. Our records show the "Donna Johnson Revocable Living Trust" to be the owner of property covered by these water rights. 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 September 6, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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



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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 September 6, 2022.



**DEPARTMENT of AGRICULTURE  
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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NOS. 2510A-3 & 2510B-3  
DONNA JOHNSON REVOCABLE LIVING TRUST**

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 Nos. 2510A-3 & 2510B-3.

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

The land described in the water rights was last irrigated in 2012. Sufficient moisture was cited as the reason for not irrigating. The 2021 irrigation questionnaire indicated the use had been abandoned. A letter was directed to Donna Johnson concerning whether or not irrigation had actually been discontinued. On June 9, 2022, a letter was received from Lori Johnson, as conservator for Donna Johnson confirming there was no irrigation system on site.

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

**Note:**

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



**DEPARTMENT of AGRICULTURE  
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August 24, 2022

**NOTICE OF CANCELLATION**

**TO:** Lori Johnson, 17806 Quantum Pl., Pierre SD 57501

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

**SUBJECT:** Cancellation of Water Right Nos. 2510A-3 & 2510B-3  
for the Donna Johnson Revocable Living Trust

Water Right Nos. 2510A-3 and 2510B-3 collectively authorize diversion of water from the Missouri River for irrigation of 628.5 acres. Records on file with the Water Rights Program indicate the land was last irrigated in 2012. The 2021 irrigation questionnaires for both water rights indicated the use had been abandoned. In a follow-up letter, you confirmed there was no irrigation system on site. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 2510A-3 and 2510B-3 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right Nos. 2510A-3 & 2510B-3 at **9:30 am, (Central Time) Wednesday, October 5, 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 Nos. 2510A-3 & 2510B-3 based upon facts presented at the public hearing. Our records show the "Donna Johnson Revocable Living Trust" to be the owner of property covered by these water rights. 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 September 6, 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.

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Prior to September 6, 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 September 6, 2022.



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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER RIGHT NOS. 2510A-3 & 2510B-3  
DONNA JOHNSON REVOCABLE LIVING TRUST**

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 Nos. 2510A-3 & 2510B-3.

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

The land described in the water rights was last irrigated in 2012. Sufficient moisture was cited as the reason for not irrigating. The 2021 irrigation questionnaire indicated the use had been abandoned. A letter was directed to Donna Johnson concerning whether or not irrigation had actually been discontinued. On June 9, 2022, a letter was received from Lori Johnson, as conservator for Donna Johnson confirming there was no irrigation system on site.

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

**Note:**

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



**DEPARTMENT of AGRICULTURE  
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August 24, 2022

**NOTICE OF CANCELLATION**

TO: Brad & Jacob Den Herder, 2968 400<sup>th</sup> St, Sioux Center IA 51250

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

SUBJECT: Cancellation of Water Permit No. 4888B-3

Water Permit No. 4888B-3 authorizes diversion of water from one well (Big Sioux South Aquifer) to irrigate the N ½ NW ¼ Section 10, T95N, R48W. On June 15, 2022, Genny McMath in our program spoke with you about the permit. You confirmed the land is not being irrigated. A small dugout was originally on the property but has since been filled in. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 4888B-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 4888B-3 at **9:30 am, (Central Time) Wednesday, October 5, 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. 4888B-3 based upon facts presented at the public hearing. Our records show you to be the owners 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 September 6, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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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 September 6, 2022.

Prior to September 6, 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 September 6, 2022.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER PERMIT NO. 4888B-3, BRAD AND JACOB DEN HERDER**

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. 4888B-3.

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

The originating Water Permit No. 4888-3 was divided and reissued to reflect separate ownership. When contacting the owners for the land in Section 10, T95N, R48W (4888B-3), Brad Den Herder confirmed the land was not irrigated. A small dugout was on the property when they purchased the land that the former owner may have tried to irrigate with. The dugout has been filled in and the new permit holders do not irrigate.

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

**Note:**

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





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August 24, 2022

**NOTICE OF CANCELLATION**

**TO:** James Jay Ryon, 1381 Forebay Rd, Pollock Pines CA 95726  
Doug Halvig, PO Box 2697, Sioux City IA 51106

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

**SUBJECT:** Cancellation of Water Right Nos. 6940-3 and 6941-3

Water Right Nos. 6940-3 and 6941-3 are currently listed in the name of Ken Less, Merrill IA. The land covered under the water rights is now owned by James Ryon. The water rights authorize diversion of ground water to irrigate land in Clay County SD. On June 13, 2022, Mr. Halvig as farm manager contacted our office and indicated the land was not irrigated and Mr. Ryon did not want to maintain either water right. Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 6940-3 and 6941-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right Nos. 6940-3 and 6941-3 at **9:30 am, (Central Time) Wednesday, October 5, 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 Nos. 6940-3 and 6941-3 based upon facts presented at the public hearing. Our records show James Jay Ryon to be the owner of property covered by these water rights. 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 September 6, 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.

August 24, 2022  
James Jay Ryon  
Doug Halvig  
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 September 6, 2022.

Prior to September 6, 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 September 6, 2022.

c: Ken Less, 21601 Fir Ave., Merrill IA 51038



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NOS. 6940-3 AND 6941-3, KEN LESS**

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 Nos. 6940-3 and 6941-3, now owned by James Jay Ryon.

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

The previous owner of the property notified the Water Rights Program he removed the pivots and no longer owned the land. The new owner of the land does not irrigate and does not wish to maintain the water rights.

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

**Note:**

Cancellation of the water rights does not prohibit new applications for this project in the future.



**DEPARTMENT of AGRICULTURE  
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August 24, 2022

**NOTICE OF CANCELLATION**

TO: James Jay Ryon, 1381 Forebay Rd, Pollock Pines CA 95726  
Doug Halvig, PO Box 2697, Sioux City IA 51106

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

SUBJECT: Cancellation of Water Right Nos. 6940-3 and 6941-3

Water Right Nos. 6940-3 and 6941-3 are currently listed in the name of Ken Less, Merrill IA. The land covered under the water rights is now owned by James Ryon. The water rights authorize diversion of ground water to irrigate land in Clay County SD. On June 13, 2022, Mr. Halvig as farm manager contacted our office and indicated the land was not irrigated and Mr. Ryon did not want to maintain either water right. Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Nos. 6940-3 and 6941-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right Nos. 6940-3 and 6941-3 at **9:30 am, (Central Time) Wednesday, October 5, 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 Nos. 6940-3 and 6941-3 based upon facts presented at the public hearing. Our records show James Jay Ryon to be the owner of property covered by these water rights. 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 September 6, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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Doug Halvig  
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Prior to September 6, 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 September 6, 2022.

c: Ken Less, 21601 Fir Ave., Merrill IA 51038



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER**

**FOR WATER RIGHT NOS. 6940-3 AND 6941-3, KEN LESS**

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 Nos. 6940-3 and 6941-3, now owned by James Jay Ryon.

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

The previous owner of the property notified the Water Rights Program he removed the pivots and no longer owned the land. The new owner of the land does not irrigate and does not wish to maintain the water rights.

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

**Note:**

Cancellation of the water rights does not prohibit new applications for this project in the future.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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August 24, 2022

**NOTICE OF CANCELLATION**

TO: David E Hoops, PO Box 462, Huron SD 57350

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

SUBJECT: Cancellation of Water Permit No. 7970-3

Water Permit No. 7970-3 authorized up to three wells to irrigate the NE ¼ Section 9, T128N, R78W. In February 2022, Genny McMath, in our program, spoke with you about the permit and found the project had not been constructed. The date for completion of works expired in May 2019. Recently, Water Permit No. 8628-3 was approved to reinstate Water Permit No. 7970-3. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7970-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7970-3 at **9:30 am, (Central Time) Wednesday, October 5, 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. 7970-3 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 September 6, 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.

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Prior to September 6, 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 September 6, 2022.





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 7970-3, DAVID E HOOPS**

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. 7970-3.

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

The 2021 irrigation questionnaire indicated the project was not constructed. In February 2022, Mr. Hoops was contacted regarding the extent of development and his intent towards the project. He confirmed the irrigation system had not been constructed but he still planned to irrigate the acreage described in Permit No. 7970-3. A new water permit application was filed and approved to authorize reinstatement of permit.

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

**Note:**

Cancellation of Water Permit No. 7970-3 does not affect Water Permit No. 8628-3 approved June 20, 2022, for the same project.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

August 24, 2022

**NOTICE OF CANCELLATION**

TO: Scott Carlson, 19893 446<sup>th</sup> Ave., Lake Preston SD 57249

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

SUBJECT: Cancellation of Water Permit No. 8160-3

Water Permit No. 8160-3 authorizes diversion of ground water from the Big Sioux Brookings Aquifer to irrigate 55 acres in the NW ¼ Section 2, T112N, R54W. On August 16, 2022, Mark Rath from our program spoke with you about the irrigation project. You confirmed the project had not been constructed. The time limit for completion of works as specified in the permit lapsed on August 10, 2020. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8160-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8160-3 at **9:30 am, (Central Time) Wednesday, October 5, 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. 8160-3 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 September 6, 2022. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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Prior to September 6, 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 September 6, 2022.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER  
FOR WATER PERMIT NO. 8160-3, SCOTT CARLSON**

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. 8160-3.

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

On August 16, 2022, during a phone conversation with Mark Rath, the permit holder confirmed the irrigation project had not been constructed but may use the well for livestock watering purposes.

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

**Notes:**

- Cancellation of the water permit does not prohibit a new application for this project in the future.
- The existing well can be used for domestic purposes such as livestock watering without a water permit within the parameters specified in South Dakota Codified Law 46-1-6(7).

STATE OF SOUTH DAKOTA



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<http://atg.sd.gov>

MARK A. VARGO  
ATTORNEY GENERAL

CHARLES D. McGUIGAN  
CHIEF DEPUTY ATTORNEY GENERAL

August 31, 2022

Bill Larson  
DANR – Water Management Board  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501

Re: *Water Permit Application No. 2833-2, Brian Burnham and  
Water Permit Application No. 2834-2, Blake Burnham*

Dear Mr. Larson:

Enclosed please find a copy of the Water Rights Program's Proposed Findings of Fact, Conclusions of Law, and Final Decision and Certificate of Service in the above-entitled matter. A copy of the Water Rights Program's Proposed Findings of Fact, Conclusions of Law, and Final Decision and Certificate of Service is being either mailed or hand-delivered to all interested parties.

Respectfully,

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

Ann F. Mines Bailey  
Assistant Attorney General

AFM/cmb

Enclosures

cc w/encs: Parties on Certificate of Service

STATE OF SOUTH DAKOTA  
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF WATER	)	
APPLICATION NO. 2833-2, Brian	)	
Burnham,	)	
and	)	
IN THE MATTER OF WATER PERMIT	)	WATER RIGHTS PROGRAM'S
APPLICATION NO. 2834-2, Blake	)	PROPOSED FINDINGS OF FACT,
Burnham	)	CONCLUSIONS OF LAW, AND
		FINAL DECISION

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This matter came before the South Dakota Water Management Board for hearing on July 7, 2022. Board members James Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Chad Comes, and Bill Larson were present at the hearing and heard the evidence presented. Applicants Brian Burnham and Blake Burnham appeared represented by Ryan Vogel. Petitioners Kevin Herrmann, Aaron Davis, and Marie Condon appeared *pro se*. Ann F. Mines Bailey represented the DANR Water Rights Program and the Chief Engineer.

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

FINDINGS OF FACT

1. On December 28, 2021, Water Rights received Water Permit Application No. 2833-2 on behalf of Brian Burnham seeking an appropriation of water for irrigation near Winner, South Dakota. Subsequent changes and supplemental information were received on March 4 and March 16, 2022.

The application in its final form proposes the diversion of 1.85 cubic feet of water per second (cfs) from two existing wells and seven proposed wells completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer in this location and located in the SE¼ Sec. 16-T95N-R77W in Tripp County. The application proposes to irrigate 130 acres also in the SE¼ Sec. 16-T95N-R77W.

2. On December 28, 2021, Water Rights also received Water Permit Application No. 2834-2 on behalf of Blake Burnham seeking an appropriation of 1.85 cfs for irrigation from four proposed wells to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer in this location in the W½SE¼ Sec. 11-T95N-R77W in Tripp County. The application proposes to irrigate 130 acres in the SE¼ Sec. 11-T95N-R77W.

3. The Chief Engineer, Eric Gronlund, recommended approval of these applications subject to qualifications.

4. Notices of Water Permit Application No. 2833-2 were timely advertised on March 23, 2022, in the Winner Advocate (Tripp County) and the Plainsman (Beadle County) and posted on the DANR website.

5. Notices of Water Permit Application No. 2834-2 were timely advertised on March 16, 2022, in the Winner Advocate (Tripp County) and the Plainsman (Beadle County) and posted on the DANR website.

6. DANR received the following timely petitions in opposition to Water Permit Application No. 2833-2, Brian Burnham: Susan Davis, Alex

Davis, Aaron Davis, Amy Davis, Kevin Herrmann, Marie Condon, and KayCee Kollmar-Condon.

7. DANR received the following timely petitions in opposition to Water Permit Application No. 2834-2, Blake Burnham: Charles Davis, Susan Davis, Alex Davis, Aaron Davis, Amy Davis, Kevin Herrmann, Marie Condon, and KayCee Kollmar-Condon

8. The matter was initially scheduled to be heard by the Water Management Board during its May 4, 2022 meeting; however, an automatic delay was requested, and the hearing was rescheduled for the next regular Board meeting in July.

9. Water Permit Applications Nos. 2833-2 and 2834-2 are new water permit applications which require a determination pursuant to SDCL § 46-2A-9 whether there is a reasonable probability that unappropriated water is available for the proposed use, whether the proposed use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

10. In considering water availability this Board must examine whether the average quantity of the water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

11. DANR witness, Adam Mathiowetz, a natural resources engineer with over ten years of experience, reviewed the permit application and



analyzed the hydrology of the Quaternary Eolian aquifer, Quaternary Terrace aquifer, and Ogallala aquifer. Mr. Mathiowetz additionally reviewed the information obtained from nearby observation wells, as well as current water right/permit files and well completion reports for the aquifers.

12. The High Plains aquifer includes several different formations including Arikaree, Ogallala, and quaternary deposits including alluvium and terrace and eolian deposits.

13. For management purposes, Water Rights treats the Arikaree aquifer and the Ogallala aquifer as separate units.

14. The Quaternary Eolian aquifer consists of a group of wind-blown and deposited sediments that range from silt to medium-grain sand deposited as sheets, barchan, linear, and dome-like dunes or as a veneer on uplands. This deposit has an approximate areal extent of 610 acres and groundwater flow is toward Keya Paha River.

15. The Quaternary Terrace aquifer consists of a group of deposits of clay to boulder-sized clasts deposited as pediments, paleochannels, and terrace fills of former flood plains. The areal extent of this deposit is approximately 835 acres and groundwater flows toward the Keya Paha River.

16. The Ogallala aquifer in this location exists in unconfined conditions and is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits. The areal extent of the main body of the Ogallala aquifer is approximately one million acres. Water movement within the Ogallala aquifer is toward the Keya Paha River.

17. Earlier studies indicate the presence of the High Plains aquifer in the location of the proposed points of diversion and that water movement is from southwest toward the northeast and the Keya Paha River. Further review of lithologic logs and geologic information of the area and conversations with the well driller who worked at the site in this matter, indicate that Ogallala aquifer materials are not present and that the Arikaree aquifer is not functioning as an aquifer at this location. Based upon the review of all this information, Mr. Mathiowetz concluded that the Quaternary Eolian and Quaternary Terrace aquifers in this location are functioning as an extension of the Ogallala aquifer.

18. Mr. Mathiowetz testified recharge to the Ogallala aquifer occurs mainly through infiltration of precipitation.

19. Several studies have been done regarding the rate of recharge to the Ogallala aquifer. While none of the studies are specific to the Quaternary Eolian and Quaternary Terrace deposits functioning as extensions of the Ogallala aquifer, several of the studies include both of these deposits as part of the areal extent of the Ogallala aquifer.

20. Using the recharge rates from those studies, which ranged from 1.3 inches per year to 3.4 inches per year, Mr. Mathiowetz calculated that recharge to the main body of the Ogallala aquifer ranges from 108,914 acre-feet per year to 284,852 acre-feet per year.

21. Mr. Mathiowetz further testified regarding withdrawals from the Ogallala aquifer. He testified that there are 171 water right permits and four

future use permits completed into the Ogallala aquifer with an estimated withdrawal of 31,128.3 acre-feet per year.

22. There are sixty-nine observation wells completed into the main body of the Ogallala aquifer. Six of the observation wells are located within five miles of the proposed points of diversion with the nearest observation well located within 1 mile south of the points of diversion proposed by Water Permit Applications No. 2833-2 and 2.5 miles from the points of diversion proposed by Water Permit Application No. 2834-2.

23. The data from the observation wells demonstrate a stable to slightly rising water level over the periods of record with an exception in Bennett County, which is considered an outlier. The natural conditions dominate changes in water level and, therefore, there is recharge and natural discharge available for appropriation.

24. Based upon the review of recharge to, and withdrawal from, the water sources and the observation well data, Mr. Mathiowetz concluded there is water available for appropriation.

25. The closest water right to the proposed points of diversion is held by the applicants. The next closest water right is located approximately 4.6 miles from the proposed points of diversion for Water Permit Application No. 2833-2 and 3.9 miles from Water Permit Application No. 2834-2. The closest domestic well on record is located approximately 1.8 miles east of Water Permit Application No. 2833-2 and 0.5 miles to the south of Water Permit Application No. 2834-2.

26. Mr. Mathiowetz concluded that there is a reasonable probability that these applications could be developed without causing unlawful impairment to existing water rights and domestic water uses.

27. Mr. Mathiowetz based this conclusion upon the relatively limited natural variance in the aquifer as shown in the hydrographs of the observation wells – especially those in close proximity to multiple permits; the unconfined nature of the aquifer which limits the effects of drawdown; the lack of history of substantiated claims of well interference; and the distance between the proposed points of diversion and existing rights. Additionally, Mr. Mathiowetz testified that the applicants will most likely pump their own wells dry before the effects of pumping are felt by existing rights not held by the applicants.

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

29. The Board also received the testimony of Blake Burnham. Blake testified that he and his father, Brian, were seeking the appropriations for irrigation. Mr. Burnham testified that they operate a small feedlot and most of the crops raised are used in support of their feedlot. He testified that it is his hope that he won't need to drill the full number of wells requested. Additionally, Mr. Burnham testified that Water Permit Application No. 2833-2 and Water Right No. 1260-2 will be used alternately.

30. Mr. Kevin Herrmann testified that he owns land nearby. He is very concerned about the number of wells and the amount of water being requested. He is concerned about the future availability of water and protecting his land.

31. Mr. Nathan T. Hunke also testified before the Board. Mr. Hunke is a hydrogeologist and principal in charge with Prairie Consulting Group, Inc. Mr. Hunke was retained to examine what kind of an impact pumping would have on the aquifer based upon the diversion rates requested by the applications. The Board recognized Mr. Hunke as an expert witness.

32. Mr. Hunke agreed with the analysis that the Quaternary Terrace and Quaternary Eolian aquifers were functioning as an extension of the Ogallala aquifer in this location.

33. Mr. Hunke testified that his analysis was based upon a groundwater model he created. In the model, he assumed both permit application rates as pumping wells at 835 gallons per minute per permit. The model also used locations of private wells provided to Mr. Hunke by Mr. Hermann. Several of these wells are not on record with DANR and Mr. Hunke did not have lithologic logs or gps coordinates for these private wells. Based upon the model results, Mr. Hunke initially testified the closest private well (Private Well 1) would see a drawdown of up to 66 feet, drawdown of 33 to 39 feet in the next closest well (Private Well 2), and 0-16 feet drawdown in Private Well 3. Upon cross-examination, Mr. Hunke stated that the correct estimated drawdown was 33-49 feet at the closest well (Private

Well 1), 16-33 feet at the next closest well (Private Well 2), and 0-16 feet at the Private Well 3.

34. Based upon his analysis, Mr. Hunke recommended a decrease of the rate of diversion but could not provide a rate of diversion that would be acceptable. Mr. Hunke also recommended placement of observation wells to the north of the proposed points of diversion to assist in monitoring groundwater levels.

35. The Board finds Mr. Hunke's groundwater model analysis to be unreliable. The model assumed diversions which are not reflective of the application or current activity in the aquifer. The model also assumed the locations and depths of private wells and water sources in which they are completed and further assumed that all were in use and that all withdraw the maximum limit allowable for domestic use.

36. Mr. Aaron Davis also provided testimony to the Board. He is neighbors of the applicants. He is concerned about the availability of water and how long it would take to replenish his water supply should there be issues. Mr. Davis testified that he believes that there are several wells in the area that would be affected. He asked that the Board consider the needs of all the families in the area.

37. Ms. Marie Condon also provided evidence to the Board. Ms. Condon testified as to her concerns that this irrigation use would deplete the sources of water available for domestic and livestock use. She

emphasized that, under South Dakota law, domestic use takes priority over other uses.

38. The Board also received testimony from Chief Engineer Eric Gronlund. Mr. Gronlund testified regarding his recommendations. His recommendations for both permits included a qualification that the diversion must be controlled so there is not a reduction of needed water supplies in adequate domestic wells. Mr. Gronlund opined that the applicants own domestic wells, because of their proximity, would be impacted before any other existing water rights or domestic uses would feel the impact of the pumping of these applications.

39. Mr. Gronlund suggested an additional qualification clarifying that Water Permit Application No. 2833-2 and Water Right No. 1260-2 would not be used simultaneously. Mr. Gronlund also discussed the potential of adding a qualification for an additional observation well.

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

41. The Board finds that there is unappropriated water available to satisfy each of these applications.

42. The Board finds that granting these applications would not unlawfully impair existing water rights or domestic water uses.

43. The Board further finds that the proposed use of the water for irrigation constitutes a beneficial use.

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

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

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

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The applications fall within the Board's responsibility over water appropriation and regulation in Title 46.
2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.
3. The Chief Engineer recommended granting these applications. The recommendations are not, however, binding on the Board. SDCL § 46-2A-4(8).
4. The applicants are required to satisfy each of the factors set forth in SDCL § 46-2A-9.
5. The Board concludes that the applicants have satisfied each of the factors set forth in SDCL § 46-2A-9.
6. South Dakota Codified Law section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public



interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

7. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether “according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

8. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by each of the respective applications.

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

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversions can be developed without unlawful impairment of existing water rights or domestic water uses.

11. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best

utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be “consistent with the interests of the public of this state in the best utilization of water supplies.” SDCL § 6-1-6(3). The Board concludes that appropriating water for irrigation is in the public interest.

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

#### FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2833-2 is granted with the following qualifications:

1. The wells approved under Water Permit Application 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 the 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.

4. Water Permit No. 2833-2 and Water Right No. 1260-2 may not be exercised simultaneously, and the maximum combined diversion rate authorized by Permit No. 2833-2 and Water Right No. 1260-2 may not exceed 1.85 cubic feet of water per second.

Additionally, the Board enters its determination that Water Permit Application No. 2834-2 is granted with the following qualifications:

1. The wells approved under Water Permit Application 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 the 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.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2022.

BY THE BOARD:

\_\_\_\_\_  
South Dakota Water Management Board

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

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IN THE MATTER OF WATER	)	
APPLICATION NO. 2833-2, Brian	)	CERTIFICATE OF SERVICE
Burnham,	)	
and	)	
IN THE MATTER OF WATER PERMIT	)	
APPLICATION NO. 2834-2, Blake	)	
Burnham	)	

---

The undersigned hereby certifies that a true and correct copy of the Water Rights Program's proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 30<sup>th</sup> day of August 2022:

Ryan S. Vogel, Attorney  
Counsel for Brian and Blake Burnham  
Richardson Law Firm  
P.O. Box 1030  
Aberdeen, SD 57402-1030

Susan Davis  
31263 302nd St.  
Millboro, SD 57580

Aaron Davis  
30113 313th Ave.  
Winner, SD 57580

Alex Davis  
30113 313th Ave.  
Winner, SD 57580

Amy Davis  
30113 313th Ave.  
Winner, SD 57580

Marie Condon  
31143 299th St.  
Millboro, SD 57580-6114

KayCee Kollmar-Condon  
31143 299th 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 310th Ave.  
Millboro, SD 57580

Charles Davis  
31263 302nd St.  
Millboro, SD 57580

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

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

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

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



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

pld\_afm (cmb)

September 11, 2022

David McVey  
Water Management Board Counsel  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501

RECEIVED

SEP 14 2022

OFFICE OF  
WATER

RE: *Water Permit Application No. 2833-2, Brian Burnham and  
Water Permit Application No. 2834-2, Blake Burnham*

Dear Mr. McVey:

This letter serves as a written objection and alternative Finding of Facts to the "Water Rights Program's Proposed Finding of Fact, Conclusion of Law and Final Decision." I respectfully request that this letter along the Enclosure be considered at the Water Management Board's October 5, 2022, Meeting or at a subsequent meeting should consideration of Applications 2833-2 and 2834-2 be delayed.

I am enclosing a letter from Nate Hunke who is a hydrologist and principal in charge with Prairie Consulting Group. The Board recognized Mr. Hunke as an expert witness at the hearing on July 7, 2022. I respectfully submit my letter and the Enclosure which is Mr. Hunke's letter as Exhibits to be admitted and considered by the Board.

I also ask the Board to consider the following:

**The Board's FINDINGS OF FACT, Item 39 on Page 10 of the "Water Rights Program's Proposed Finding of Fact, Conclusion of Law and Final Decision."**

"Mr. Gronlund also discussed the potential of adding a qualification for an additional observation well."

I would respectfully point out that the Board's FINAL DECISION on pages 13 and 14 in the "Water Rights Program's Proposed Finding of Fact, Conclusion of Law and Final Decision" did not include this qualification suggested by Mr. Gronlund. I would request the Board amend the FINAL Decision to include this qualification. Should the Board decline to include this qualification, I would respectfully request the Board formally document why they would not consider the suggestion of Mr. Gronlund who is the Chief Engineer of the SD DANR, Water Rights Program.

#### **Conclusion**

I respectfully request the Board review this letter and the Enclosure and make reasonable changes including but not limited to:

- Adding the additional qualification made by the Chief Engineer to both permits.
- Combining the Permits into 1 Permit as discussed in the Enclosure and specifically when Mr. Hunke is discussing Item 34 on page 2.

- Reducing the maximum overall maximum conversion rate so the overall water withdrawals are controlled so there is not a reduction of needed water supplies for wells in the area.
- Placing an observation well that is monitored east of the proposed pumping wells in Application 2834-2, between the proposed pumping wells and the nearest private wells in the vicinity of the pumping wells, not to the north. However, the more observation wells, the better the definition of the effects of the pumping on the aquifer. The nearest private well is located less than ¼ mile east of the proposed pumping wells.

Sincerely,



Kevin Herrmann

Petitioner

Enclosure: Water Rights Permit Response – Nate Hunke

Cc:

Ann Mines Baily, Assistant Attorney General

Ryan S. Vogel, Attorney for Applicants

Bill Larson, Chair of DANR, Water Rights Board

Brian Burnham, Applicant Water Permit Application No. 2833-2

Blake Burnham, Applicant Water Permit Application No. 2834-2

Parties on Certificate of Service

RECEIVED

SEP 14 2022

OFFICE OF  
WATER



**PRAIRIE CONSULTING GROUP, INC.**

312 9th Avenue SE, Suite C • Watertown, South Dakota 57201

Phone: 605-886-4009 • Fax: 605-882-4152

September 10, 2022

Mr. Kevin Herrmann  
13565 Larimore Ave  
Omaha, NE 68164

RE:

Brian and Blake Burnham Irrigation Wells  
Water Permit No. 2833-2  
NE1/4SE1/4 sec.16, W1/2 sec.15 T.95N. R.77W.  
Water Permit No. 2834-2  
SE1/4 sec.11 T.95N. R.77 W.  
Tripp Co., South Dakota

Dear Mr. Herrmann:

The following is in response to the Water Rights Permit Approval dated August 31, 2022 for the above-referenced water appropriations permit applications:

**FINDINGS AND FACTS**

**1. Item 27**

The boards FINDINGS OF FACTS indicate that "Mr. Mathiowetz testified that the applicants will most likely pump their own wells dry before the effects of pumping are felt by existing rights not held by the applicants." It is my understanding that the "unlawful impairment" clause of the approval process includes all domestic wells, including the owners of private/domestic wells that hold the approved appropriation permits. Wouldn't pumping the owners private wells dry represent an "unlawful impairment"? Doesn't the permit applicants owners have the option of switching to an alternative water source if their wells do go dry and continue pumping at the maximum rate outlined in the permit application for the irrigation wells. Please note that the ground water model I developed does not include the owners domestic/private wells in the assessment.



2. Item 33

The permit application approval indicated that my analysis was based on the ground water model that I created. The model was not created by me, the model was created by the United States Geological Survey (USGS Modflow 6 updated in 2022). I simply utilized the model already created by USGS and applied appropriate input parameters to the model to emulated ground water flow conditions in the vicinity of the proposed pumping wells outlined in the above-referenced permit applications, based on available literature and data provided by the South Dakota Geological Survey (SDGS), the United States Geological Survey (USGS) and the South Dakota Department of Agriculture and Natural Resources (DANR) Water Rights.

3. Item 34

The permit application approval indicates that I could not provide a rate of diversion that would be acceptable. I was not hired to provide an acceptable pumping rate for the pumping wells. That is the obligation of the applicants and the approval of the board. My job was simply to determine the impacts of the proposed appropriations/diversions outlined in the above-referenced permit applications to domestic/private wells in the vicinity of the pumping wells. The final decision of the boards' approval mandates that the permit application diversions may not be exercised simultaneously. This information was not available to me at the time the model was developed for the above-referenced appropriations. However, it is likely that this decision would not impact the effects to the private wells near the Blake Burnham proposed diversion due to proximity of the private wells to the proposed diversion point and rate. Additional modeling would be required to assess the impacts of non-simultaneous application of the permit applications. My question to the board is "if the permit applications are separate and filed by different applicants, what prevents the applicant from applying the permitted pumping rate independent of any other appropriations permit in the area?" Shouldn't the permit applications be combined into one (1) application to make Item 4 of the FINAL DECISION enforceable?

As far as placement of observation wells in the vicinity of the Blake Burnham pumping well, I recommend that an observation well be placed and monitored east of the proposed pumping wells (application No. 2834-2), between the proposed pumping wells and the nearest private wells in the vicinity of the pumping wells, not to the north. However, the more observation wells, the better the definition of the effects of pumping on the aquifer. The nearest private well is located less than ¼ mile east of the proposed pumping wells.

4. Item 35

The board finds that the ground water model analysis I developed is unreliable. What are the qualifications of the board to make this decision? They indicate that the assumed diversions are not reflective of the applications or current activity in the aquifer. When performing the aquifer model analysis, I assumed that the pumping rates outlined in the permit applications are "reflective" of the operational pumping rates as permit approval allows the applicant to operate the wells, up to but not exceeding the rate outlined in the permit application. In other words, the assumptions are based on the diversion rates outlined in the permit application. Subsequently,

the board decided that the applications may not be applied simultaneously (see the August 31, 2022 permit application approval). Again, my question to the board is if the permit applications are separate and filed by different applicants, what permits the applicant from applying the permit independent of any other appropriations permit in the area? Shouldn't the permit applications be combined into one (1) application to make Item 4 of the FINAL DECISION enforceable?

The board states that the model assumed locations and depths of private wells and water sources in which they are completed and further assumed that all were in use and that all withdraw the maximum limit allowable for domestic use. In fact, it is my understanding that private wells do not have to be permitted by the State of South Dakota Water Rights Board. It is also my understanding that the locations and depths of the private wells in the vicinity of the proposed pumping wells were provided by the private well owners of the private wells. In addition, the model does not assume a maximum domestic use but an "average" household use in the United States. This is clearly stated in my report under the section entitled "Ground Water Withdrawals".

However, if I had assumed "maximum allowable" domestic well pumping rates, the model would likely estimate additional drawdown in the private wells, not less drawdown. Therefore the "average" household value provides a conservative estimate regarding estimated drawdown in the private wells. In addition, the existence of the private/domestic well implies that the private/domestic well can be utilized to pump water for domestic use, at any time, now or in the future.

It is my understanding that private domestic wells do not need to be permitted by the State of South Dakota Water Rights Board and an unpermitted well does not negate the application of the "unlawful impairment" clause of the permit application approval process.

## CONCLUSIONS OF LAW

### 1. Item 6

"South Dakota Codified Law section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicants proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in public interest".

The model I developed was based on available literature and data for the impacted aquifer provided by the South Dakota Geological Survey (SDGS), the United States Geological Survey (USGS) and the South Dakota Department of Agriculture and Natural Resources (DANR) Water Rights. The model run I developed provided evidence that an adverse impact to nearby private wells would occur if the permitted diversion rates are approved. This is "reasonable probability" that the pumping of the irrigation wells at the proposed rate would result in "unlawful impairment".

2. Item 7

"First factor for consideration under SDCL 46-2A-9 is whether there is water available for appropriation." This requirement is irrelevant in regard to the potential impacts or "unlawful impairment" to nearby private wells.

3. Item 10

"The second requirement of SDCL 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. Based on the ground water modeling results, "unlawful impairment" would occur to nearby private wells, whether the private/domestic wells are permitted. Please note that I recommend that the model be rerun using non-simultaneous pumping of the proposed irrigation wells.

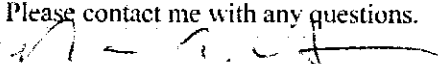
FINAL DECISION

1. Item 1

"The wells approved under Water Permit Application 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."

The boards final decision that the pumping withdrawals be "controlled" is identical to my recommendation that based on model assessment results, the pumping rates of the irrigation wells outlined in the permit application be reduced from the maximum rate outlined in the permit application to prevent and "unlawful impairment" to the nearby domestic wells.

Please contact me with any questions.

  
Nathan T. Hunke, M.S., P.G.

President

Prairie Consulting Group, Inc.

312 9th Ave. SE Suite C

Watertown, SD 57201

(605) 886-4009 (w)

(605) 237-2207 (c)



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

September 2, 2022

**NOTICE OF HEARING**

TO: Manikowski Well Drilling  
Attn: Byron Manikowski  
PO Box 370  
Lidgerwood ND 58053

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: Notice of Hearing to Consider Application for Renewal of South Dakota Well Driller  
License No. 285, Manikowski Well Drilling, License Representative Byron Manikowski

Pursuant to SDCL 46-2A-13, the Chief Engineer is recommending that the Water Management Board DEFER renewal of 2022 South Dakota Well Driller License No. 285, Manikowski Well Drilling, License Representative Byron Manikowski. The enclosed recommendation is based on the inability or refusal of Manikowski Well Drilling to abide by the rules governing well construction and the Water Management Board's Well Construction Standards.

Administrative Rules of South Dakota 74:02:04:58 requires wells be thoroughly developed by the driller until the water is clear and reasonably free of silt, mud, and sand. The Garrett Penfield well drilled in 2019 produces an excess amount of sand and mud. Manikowski Well Drilling has violated the well construction standards by failing to develop the Penfield well until the water is clear and reasonably free of silt, mud, and sand. Upon receiving notice of the issue, the Chief Engineer set conditions upon Manikowski Well Drilling, with its agreement to those terms. Since that agreement, the Chief Engineer's efforts to contact Manikowski Well Drilling have gone unanswered and there has been no verification that the conditions are being met.

A letter dated August 19, 2022, from the Attorney General's office details the Chief Engineer's efforts to require Manikowski Well Drilling to bring the Garrett Penfield well into compliance with the well construction standards. Manikowski Well Drilling has failed to respond to efforts to maintain contact and remedy the Penfield well matter.

In addition, SDCL 46-6-11 and ARSD 74:02:04:65 require a record of water well construction be furnished by the driller to the chief engineer and the well owner. The record of well construction is to be submitted within one month of completion of a well driller's work on a well. DANR has become aware that Manikowski Well Drilling completed a well for the town of South Shore in 2019 and failed to submit a well completion report.

The deferral of renewal of the 2022 South Dakota Well Driller License No. 285 will result in Manikowski Well Drilling being prohibited from performing for compensation the drilling or repair of wells or installing pumps in South Dakota.

The Water Management Board will conduct a hearing to consider Application for Renewal of South Dakota Well Driller License No. 285, Manikowski Well Drilling, License Representative Byron Manikowski at 9:30 AM (Central Time), on Wednesday, October 5, 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 Water Management Board has legal authority and jurisdiction to consider this matter pursuant to SDCL §§ 46-2-9, 46-2-17, 46-2A-1, 46-2A-13, 46-6-9, and 46-6-20. After all evidence is taken at the hearing, the Board is authorized to 1) approve, 2) defer, 3) deny, or 4) take no action on your 2022 Well Driller License renewal application.

The hearing is an adversary proceeding. Any party has the right, at the hearing, to be present, and be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing. As a legal entity, Manikowski Well Drilling is required by law to be represented by legal counsel in this administrative proceeding. If the amount in controversy exceeds two thousand five hundred dollars 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 § 1-26-17. This document is a notice of hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosure

C: Garrett Penfield





**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 RENEWAL OF SOUTH  
DAKOTA WELL DRILLER LICENSE NO. 285, MANIKOWSKI WELL  
DRILLING, LICENSE REPRESENTATIVE BYRON MANIKOWSKI**

Pursuant to SDCL 46-2A-13, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources with a statement of reasons for the recommendation.

The Chief Engineer is recommending DEFERRAL of the Application for Renewal of the 2022 South Dakota Well Driller License No. 285, Manikowski Well Drilling, License Representative Byron Manikowski for the following reasons:

Administrative Rules of South Dakota 74:02:04:58 requires wells be thoroughly developed by the driller until the water is clear and reasonably free of silt, mud, and sand. The Garrett Penfield well drilled in 2019 produces an excess amount of sand and mud. Manikowski Well Drilling has violated the well construction standards by failing to develop the Penfield well until the water is clear and reasonably free of silt, mud, and sand. Despite requests from the Chief Engineer to bring the well into compliance, Manikowski Well Drilling has failed to bring the well into compliance.

Additionally, South Dakota Codified Law 46-6-11 and Administrative Rules of South Dakota 74:02:04:65 require a record of water well construction be furnished by the driller to the chief engineer and the well owner. The record of well construction is to be submitted within one month of completion of a well driller's work on a well. DANR is aware that Manikowski Well Drilling completed a well for the town of South Shore in 2019 and failed to submit a well completion report.

Manikowski Well Drilling failed to comply with the laws and regulations of this State and the Well Construction Standards approved by this Board intended to protect the public safety.

Eric Gronlund, Chief Engineer  
September 2, 2022





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**ORDER**

To: Manikowski Well Drilling, Licensed Representative Byron  
Manikowski

From: Eric Gronlund, Chief Engineer

Re: Order to Cease Performing Activities Which Require Licensure

Well Driller's License No. 285 was last issued to you for the 2021 calendar year. That license expired on December 31, 2021. On January 27, 2022, Water Rights received a timely application for renewal of your license. During the processing of your renewal application, Water Rights became aware of your failure to comply with the Well Construction Standards, particularly ARSD 74:02:04:58 when drilling a well for Garrett Penfield. As a result, your license renewal was held in abeyance, and you were allowed to continue to perform activities which required a well driller's license as you worked toward compliance with the regulations regarding the Penfield well. You have failed to respond to attempts to confirm continued progress toward compliance.

Recently, Water Rights received information that you drilled a well for the City of South Shore in 2019 and failed to submit a well completion report.

Because you have ceased communicating with the Water Rights Program, I am unable to verify your efforts towards compliance. Failure to comply with the laws and regulations regarding the construction of wells presents a risk to public health and safety. Accordingly,

IT IS HEREBY ORDERED that you immediately cease all South Dakota activities which require licensure until such time as the Water Management Board authorizes you to engage in such activity.

If you are actively engaged in drilling a well in South Dakota, contact the Water Rights Program at (605) 773-3352 to discuss whether suitable arrangements can be made to allow completion of that well.

Eric Gronlund, Chief Engineer

SEP 02 2022  
Date

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated September 2, 2022, with a recommendation and order regarding South Dakota Well Driller's License No. 285, Manikowski Well Drilling, License Representative Byron Manikowski, 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 September 2, 2022.

Manikowski Well Drilling  
Attn: Byron Manikowski  
PO Box 370  
Ledgerwood ND 58053

Garrett Penfield  
PO Box 124  
Ipswich SD 57451

Above also Sent Inter-office to:

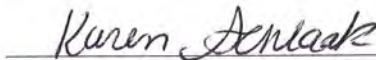
Ann Mines Bailey, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501



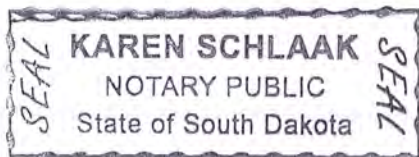
Eric Gronlund  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 2<sup>nd</sup> day of September, 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

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 2016-1, South Dakota Ellsworth Development Authority**

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. 2016-1, South Dakota Ellsworth Development Authority, c/o John Wetstein, Project Engineer, PO Box 477, Rapid City SD 57709.

The Chief Engineer is recommending APPROVAL of Application No. 2016-1 with a priority date of June 13, 2022, and with a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) existing domestic water use and water rights will not be unlawfully impaired, 3) the proposed use is a beneficial use and, 4) it is in the public interest with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2016-1 is issued for a twenty-year term. Pursuant to SDCL 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2016-1 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The well 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.
3. The well authorized by Permit No. 2016-1 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.
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.
5. Water Permit No. 2016-1 appropriates up to 1,600 acre-feet of water annually.

See revised report on application for additional information.

*Eric Gronlund*

Eric Gronlund, Chief Engineer  
August 5, 2022

**Revised Report to the Chief Engineer on  
Water Permit Application No. 2016-1**

South Dakota Ellsworth Development Authority  
11 July 2022

Water Permit Application No. 2016-1 seeks to appropriate up to 1,600 acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 2.67 cubic feet of water per second (cfs) from one well to be completed into the Madison Aquifer (approximately 1,500 feet deep) located in the NW ¼ SW ¼ Section 32 T3N-R7E, Black Hills Meridian for a water distribution system for the Meade County Water Line project serving users in Meade and Pennington Counties. This site is located approximately one-half mile east of Summerset, South Dakota.

Applicant's initial application was submitted March 1, 2022. The undersigned performed a technical review of that application and issued a report on April 20, 2022. On June 13, 2022, after public notice of the application and the Chief Engineer's recommendation, applicant amended the application and changed the location of the proposed point of diversion. This amendment triggered the need to perform a new technical analysis which is presented in this revised report.

**Aquifer: Madison (MDSN)**

*Hydrogeologic Characteristics*

The Madison Group in South Dakota is a Lower Mississippian and Upper Devonian group of formations that in the Black Hills consists of the Englewood and Pahasapa Limestone formations [1]. The Pahasapa Limestone is a "white, light-gray to tan, fine- to medium-grained limestone and dolomite containing brown to gray chert [2]." The Englewood Limestone is a "pink to lavender to light-gray, thin- to medium-bedded, fine- to medium-grained, argillaceous, dolomitic limestone [2]." The Madison aquifer consists of the permeable and porous portions of the Madison Group that are sufficiently saturated to deliver useful quantities of water. The Madison aquifer extends over more than 210,000 square miles in Montana, Wyoming, North Dakota, South Dakota, and Nebraska [3], although it may not be suitable as a source of water in all of those areas due to extreme depth to the aquifer and low water quality far from the outcrops [4]. It crops out in the Black Hills and is buried elsewhere in South Dakota [3]. The Madison aquifer may be hydrologically connected to the Deadwood aquifer underlying it in some locations [5]. It is also connected to the Minnelusa aquifer above it in some areas of the aquifer [5]. There are other bedrock aquifers that receive natural discharge from the Madison aquifer further away from the Black Hills where confining layers between the Madison aquifer and those aquifers are absent. The hydraulic head of the Madison aquifer is higher than land surface in many places around the Black Hills, causing some wells completed into the aquifer to flow without a pump [6]. Numerous springs and seeps in the Black Hills flow with water that has been determined to come from the Madison aquifer [7].

The applicant did not submit a well completion report with the application, but sufficient information is available to determine the availability of water and possibility of unlawful impairment of existing water rights/permits. There is a well completion report for Water Right No. 1674-1 completed on June 30, 1999 in the SW ¼ SE ¼ Section 31 T3N-R7E, which is

approximately 0.7 miles southwest of this application [8]. The geologist on site indicated the top of the Madison Formation occurred from 840 to 1,220 feet below grade at that location. The static water level, which is an indication of hydraulic head in an aquifer, was 87 feet below grade at the time the well was completed [8]. The land surface elevation at the location of the well for Water Right No. 1674-1 is approximately 50 feet lower than the land surface elevation for the proposed well for this application [9], but the top of the Madison aquifer slopes down to the east of the well for Water Right No. 1674-1, so it is likely the Madison Formation will be encountered at similar depths.

### **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 Madison aquifer is older and stratigraphically lower than the Greenhorn Formation and the applicant is a water distribution system as defined in SDCL 46-1-6(17). Therefore, the Water Management Board's authority to approve this application is not restricted by whether or not recharge exceeds withdrawals. However, a statewide and local hydrologic budget is included in this report for the information of the Chief Engineer and the Water Management Board.

Pursuant to SDCL 46-2A-20:

*Notwithstanding §§ 46-1-14 and 46-2A-7, no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the Water Management Board determines, based upon the evidence presented at a hearing that:*

*(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and*

*(2) The information, whether provided by the applicant or by other means, shows that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs.*

This application proposes to withdraw water from the Madison aquifer in one of the counties listed above. Therefore, in addition to the other requirements, the Water Management Board

must consider the effect this application may have on nearby Madison aquifer wells and springs and this application is subject to a 20-year term limit.

## **Availability of Water**

### *Statewide Hydrologic Budget*

#### Statewide Recharge

The Madison aquifer receives recharge from infiltration of precipitation and streamflow on the outcrop area and may also receive inflow from the underlying Deadwood aquifer [5]. There are several reports available estimating recharge to the Madison aquifer.

Woodward-Clyde Consultants [10] estimated recharge to the outcrop of the Madison aquifer in the Black Hills as part of an environmental impact statement for the ETSI Coal Slurry Pipeline Project. The upper-bound estimate of recharge in the Woodward-Clyde Consultants report is approximately 400,000 ac-ft/yr, assuming almost all of the precipitation that falls on the outcrop infiltrates into the aquifer [10]. Woodward-Clyde Consultants produced a lower-bound recharge estimate of 140,000 ac-ft/yr based on the Rahn and Gries [7] report [10]. However, the Rahn and Gries report estimated recharge for all Paleozoic limestone in the Black Hills, which includes the Madison Group, the Minnelusa Formation, and the Minnekahta Formation [7]. Rahn and Gries [7, p. 15] reported that 146.14 cfs was their minimum estimated recharge rate for the Paleozoic limestone from infiltration of precipitation, which converts to approximately 106,000 ac-ft/yr for all Paleozoic formations. The Woodward-Clyde Consultants report did not acknowledge the fact that the Rahn and Gries [7] report estimated minimum recharge for a larger group of formations than the Woodward-Clyde Consultants report covers, and therefore is likely to overestimate recharge to the Madison aquifer [10].

Carter, Driscoll, and Hamade [5] analyzed streamflow and precipitation data from water years 1931 to 1998 in the Black Hills area in South Dakota and Wyoming to determine the average annual recharge to the Madison and Minnelusa aquifers. They estimated a combined average annual recharge to both aquifers to be 344 cfs, or approximately 249,000 ac-ft/yr, not including possible flow from the Deadwood aquifer [5]. Carter, Driscoll, and Hamade [5] estimate that approximately 55% of the recharge goes to the Madison aquifer, so the total estimated average recharge to the Madison aquifer from the outcrop in the Black Hills is 137,000 ac-ft/yr, not including possible inflow from adjacent aquifers. The Carter, Driscoll, and Hamade [5] report uses more years of data, more recent data, and better assumptions than the Woodward-Clyde Consultants [10] and Rahn and Gries [7] reports. Therefore, the best estimate of recharge to the Madison aquifer is based on the Carter, Driscoll, and Hamade [5] report.

#### Statewide Discharge

Discharge from the Madison aquifer in South Dakota is mainly by outflow to other aquifers when the hydraulic head in the Madison aquifer is higher than those aquifers, outflow to springs and seeps, and by withdrawals by domestic and appropriative wells [11]. Due to the presence of overlying aquifers and water distribution systems in many areas of the aquifer, domestic well withdrawals are a negligible portion of the hydrologic budget of the Madison aquifer. There are 160 water rights/permits currently authorized to withdraw from the Madison aquifer and 10



future use water rights/permits reserving water from the Madison aquifer. Table 1 shows the future use permits reserving water from the Madison aquifer [8].

Of the 160 active water rights/permits, 95 are primarily for some type of water distribution system (rural water system, municipal, etc), 31 primarily for irrigation, 14 for commercial use, 11 for industrial use, 4 for domestic use, 2 for geothermal use, 2 for institutional use, and one for recreation [8]. Estimated withdrawals for irrigation use are shown in Table 2. When there were more than 10 years of irrigation reports available, the average reported irrigation was used to estimate irrigation withdrawals. When there were less than 10 years of irrigation reports available, withdrawals are assumed to equal 2 acre-feet per acre although actual usage is likely less for non-turf irrigation. Non-irrigation withdrawals from permit holders with irrigation as a permitted use are assumed to withdraw at their maximum instantaneous diversion rate 60% of the time. In the case of Water Right No. 1885-1, that would have caused the total estimated withdrawal to exceed the rate they were physically capable of withdrawing, so their total estimated withdrawal is 100% of their maximum instantaneous diversion rate.

Table 1: Future Use Permits from the Madison aquifer [8]

Permit No.	Name/Business	County	Use	Priority Date	Amount Reserved (ac-ft/yr)
369-1	City of Belle Fourche	LA	MUN	12/10/1958	620
2086-2	City of Rapid City	PE	MUN	05/18/1989	4,075
439-2	City of Rapid City	PE	MUN	09/22/1956	3,367
1872-1	City of Spearfish	LA	MUN	11/13/2006	2,704
2560-2	Fall River Water Users District	FR	RWS	05/16/2005	358
2560A-2	Fall River Water Users District	FR	RWS	05/16/2005	0
2560B-2	Fall River Water Users District	FR	RWS	05/16/2005	0
2580-2	Southern Black Hills Water System	FR	RWS	03/02/2006	1,474
1833-2	Weston Heights Home Owners	MD	RWS	02/18/1983	211
1995-1	Black Hawk Water User District	MD	RWS	04/15/2020	1,300
Total					14,109
FR – Fall River, LA – Lawrence, MD – Meade, PE – Pennington					
MUN – Municipal, RWS – Rural Water System					

Water Right/Permit Nos. 1096-1, 1096A-1, 1496-1, and 1670-1 are all authorized to withdraw from the same well and one dam. Water Right Nos. 1096-1, 1096A-1, 1670-1 authorize diversion of water for irrigation use and Water Right No. 1096A-1 and Water Permit No. 1496-1 authorize diversion of water for rural water system use. Documentation in the administrative file for Water Right No. 1670-1 indicates that the well is not valved such that it can be shut off when not in use for the beneficial uses listed on the permits. A letter dated September 9, 1998 indicates that when the water for that well is not being used for the beneficial uses described in the permits, it is used for fish and wildlife propagation. The person writing the letter indicated they would prefer the Water Management Board not order the well to be shut off when not used for irrigation or rural water system withdrawals. It is likely the well continues to flow uncontrolled; thus, at the flow rate listed in Water Right No. 1096A-1 of 1.33 cfs, that well withdraws approximately 964 ac-ft/yr from the Madison aquifer.

Water Right No. 1650-1 does not require the water right holder to report annual withdrawals and allocates no acreage. It provides supplemental water supply from a flowing well for Water Right No. 1231-1. Water Right No. 1231-1 permits a 110 acre-ft dam to provide water for a

# Revised Report on Water Permit App. No. 2016-1

commercial livestock operation and irrigation of 134 acres. Water Right No. 1650-1 allows for direct irrigation from a Madison aquifer well of up to 2 acre-ft per acre for the land permitted by Water Right No. 1231-1. Kilts estimated that Water Right No. 1650-1 withdraws 55.9 ac-ft/yr [12].

There are 37 water rights/permits that have a volume limit listed in their permit or have had their total withdrawal limited by a subsequent water right/permit held by the same person/entity. While many of those water rights/permits are required to report their withdrawals, they may develop their permits further to withdraw up to the limit on their permit, so the volume limit listed on their permits is assumed to be their total appropriation. The total volume limit listed by such permits is 21,011 ac-ft/yr.

Table 2: Permits with irrigation listed as one beneficial use, or are connected to an irrigation permit [8] [13]

Permit No.	Name/Business	Diversion rate (cfs)	Acres Licensed/ Permitted	Average Report (ac-ft/yr)	Years of Irrigation Reports	Estimated average irrigation (ac-ft/yr)	Est. Non-irr. Use (ac-ft/yr)	Total Est. Withdrawal (ac-ft/yr)
2773-2	Arrowhead Country Club	1.110	100.00	0	4	200.0	0.0	200.0
1096-1	Bar Bar V Livestock LLC	1.880	216.00	65.3	29	*	*	*963.5
1670-1		3.610	253.00	47.5	24	*	*	*
1635-1	Black Hills National Cemetery	0.820	54.50	94.8	26	94.8	356.4	451.2
1452-1	Black Hills State College	3.330	25.44	20.3	33	20.3	1,447.5	1,467.8
1096A-1	Butte Meade Sanitary Dist	1.330	0.00	N/A	0	*	*	
2458-2	City of Rapid City	0.800	107.00	104.4	21	104.4	0.0	104.4
2002-1	City of Spearfish	1.330	40.00	0.0	1	80.0	0.0	80.0
2313-2	Coca-Cola Bottling	0.330	3.00	7.3	27	7.3	143.4	150.7
1899-1	Davis Ranches Inc	1.430	100.00	0.0	13	0.0	0.0	0.0
2673-2	Diocese of Rapid City	0.120	7.00	8.0	9	14.0	0.0	14.0
1009-1	Donald F/Ann J Brady	0.780	53.73	30.4	40	30.4	0.0	30.4
1185-1		0.380	22.52	110.3	40	110.3	***	110.3
2286-2	Donald Konechne	0.100	38.50	10.2	28	10.2	0.0	10.2
1707A-1	Elkhorn Ridge @ Frawley Ranches LLC	3.705	100.00	0.0	4	0.0	1,610.5	1,610.5
1707E-1		0.000	0.00	9.1	15	9.1	**	9.1
1931-1		0.170	3.30	3.2	9	6.6	73.9	80.5
1650-1	Foothill Land & Cattle LLC	0.890	0.00	N/A	0	*	*	*55.9
1945-1	Frawley Ranches LLC	1.110	265.00	50.7	8	530.0	0.0	530.0
1858-1	Glencoe Camp Resort II LLC	0.860	34.00	0.0	16	0.0	373.8	373.8
2593-2	Hart Ranch Development	0.490	72.50	19.9	15	19.9	213.0	232.9
1911-2	Hart Ranch Development Co	0.880	124.00	120.1	28	120.1	382.5	502.6
1725-2	Janice R Crowser	1.070	75.10	1.0	23	1.0	0.0	1.0
2012-1	Jesse Horstmann	0.500	43.50	N/A	0	87.0	0.0	87.0
1923-1	Jim Montieth	0.110	3.00	1.0	10	6.0	47.8	53.8
858-2	John & Heidi McBride	9.360	655.75	6.7	38	6.7	0.0	6.7
1885-1	John T & Veronica Widdoss	0.110	22.00	16.8	5	44.0	35.7	79.7
1223-1	Montana Dakota Land LLC	0.670	263.00	195.4	40	195.4	0.0	195.4
1960-1	One Diamond Inc	1.280	150.00	148.9	6	300.0	556.4	856.4
1363-1	Spearfish Canyon Cntry Cl	0.900	80.10	63.3	35	63.3	0.0	63.3
2106-2	Stuart Rice	0.080	2.80	0.8	30	0.8	34.8	35.6
1842-1	Tom C Davis	0.440	330.00	0.0	17	0.0	0.0	0.0
2741-2	Tubbs Land & Cattle LLC	3.340	567.00	149.5	3	1,134.0	0.0	1,134.0
419-2	Wind Cave National Park	0.150	6.00	N/A	0	12.0	65.2	77.2
Total		43.465	3,817.74	1,285.1		3,207.8	5,340.8	9,568.1

\* Discussed in text. \*\*gives additional time to develop 1707A-1. \*\*\* Reports all use types in irrigation report

There are 89 non-irrigation water rights/permits that do not have a volume limit listed in their permit and are not discussed above. They are estimated to withdraw up to their maximum instantaneous diversion rate 60% of the time, for a total estimated withdrawal of 16,897 ac-ft/yr.

Based on Water Rights Staff experience, this estimate is likely to be higher than the actual withdrawals by those water rights/permits.

In addition to the potential withdrawals by future use permits described above, five other applications are deferred, held in abeyance, or pending review. Water Permit Application No. 2585-2 for Southern Black Hills Water System seeks to appropriate 1,600 ac-ft/yr but is deferred for further study. Water Permit Application No. 2685-2 for Powertech, Inc is held in abeyance pending federal permitting and seeks to appropriate 889 ac-ft/yr. Pending Water Permit Application No. 2013-1 seeks to appropriate 2.22 cfs to irrigate 460 acres, for a maximum possible withdrawal of 920 ac-ft/yr. Water Permit Application No. 2020-1 seeks to appropriate 240 ac-ft/yr, and Water Permit Application No. 2848-2 seeks to appropriate 720 ac-ft/yr.

### Summary of Statewide Hydrologic Budget

The best available estimate of recharge to the Madison aquifer in South Dakota is approximately 137,000 ac-ft/yr. The estimated withdrawals as described in the Statewide Discharge section are summarized in Table 3. The total estimated withdrawal, including withdrawals reserved for future use and held, or deferred applications is approximately 65,954 ac-ft/yr. This application may withdraw up to 1,600 ac-ft/yr, if approved. Therefore, based on the statewide hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 3: Summary of withdrawals from Madison aquifer rounded to the nearest 1 acre-foot.

Type	Count	Est. Rate (ac-ft/yr)
Irrigation (Table 2)	34	9,568
Volume limit	37	21,011
Diversión Rate limit	89	16,897
<i>Subtotal (authorized to withdraw)</i>	160	47,476
Future use (Table 1)	10	14,109
Deferred/held/pending	5	4,369
<b>Grand total</b>	175	65,954

### *Local Hydrologic Budgets*

Two studies were conducted that performed local hydrologic budgets on the Madison and Minnelusa aquifers in the area of this application. Carter, et al. [11] divided the whole Black Hills into nine subareas which were delineated to minimize flow across subarea boundaries. Long and Putnam [14] studied the area around Rapid City. The hydrologic budget areas for those two studies are shown in Figure 1 [11] [14].

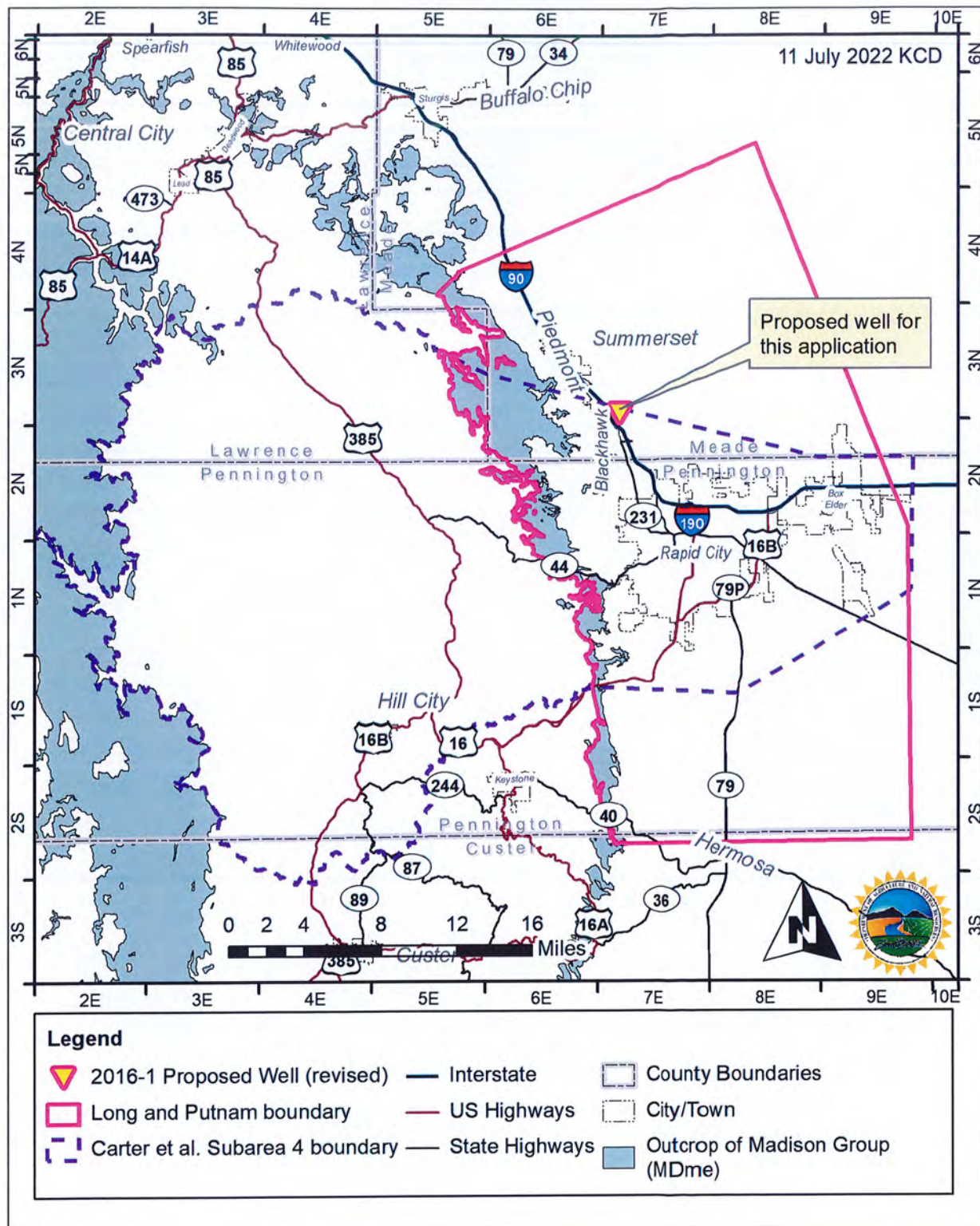


Figure 1: Local hydrologic budget boundaries [11] [14] [4]



Carter, et al. [11]

Carter, et al. [11] divided the area around the Black Hills into nine subareas and used streamflow, precipitation, spring flow, estimated ground water flow, and well withdrawal data from 1987 to 1996 for the hydrologic budgets. This application is in Subarea 4 of their report. The boundaries of the Carter et al. [11] subareas were designed to minimize flow across subarea boundaries. Carter et al. [11] estimated the total recharge to the Madison and Minnelusa aquifers in Subarea 4 was 39.3 cfs. Assuming 55% of the recharge goes to the Madison aquifer, the estimated recharge in Subarea 4 is 21.6 cfs, or approximately 15,600 ac-ft/yr [5] [11]. Carter, et al. [11] do not provide values for the recharge area of the Madison and Minnelusa formations for each subarea in their report, so it is possible the proportion of recharge area to those two aquifers is different within each subarea. Following the same methods as the Statewide Discharge section, withdrawals from Carter et al. [11] Subarea 4 are shown in Table 4. The total estimated appropriation including water reserved for future use is approximately 26,738 ac-ft/yr [8] [13]. This application may withdraw up to 1,600 ac-ft/yr, if approved. It is possible that after Carter, et al. [11] performed their study, withdrawals from Subarea 4 may have induced recharge into the subarea from other areas of the aquifer or from the Minnelusa aquifer. Based on Water Rights Staff experience, it is also likely that some withdrawal estimates are higher than the true value, especially for withdrawals estimated to pump at 60% of their maximum permitted rate. Therefore, based on the local hydrologic budget in combination with other information available, there is reasonable probability unappropriated water is available for this application.

Table 4: Madison withdrawals estimated within Carter et al. [11] Subarea 4 [8] [13] rounded to the nearest 1 acre-foot.

Type	Count	Est. Rate (ac-ft/yr)
Irrigation	8	1,250
Volume limit	9	10,345
Diversion rate limit	26	5,469
<i>Subtotal (authorized to withdraw)</i>	43	17,065
Future use	4	8,953
Pending/deferred/held	1	720
<b>Grand total</b>	<b>48</b>	<b>26,738</b>

Long and Putnam [14]

Long and Putnam [14] analyzed groundwater flow of the Madison and Minnelusa aquifers in the area near Rapid City, including the area for this application. One product of that analysis was a hydrologic budget for water years 1988 through 1997. Long and Putnam estimated that in their study area, streamflow recharge was 38.8 cfs, precipitation recharge as 16.1 cfs, and groundwater inflow from the Deadwood aquifer was 6.3 cfs, for a total of 61.2 cfs flowing into the Madison and Minnelusa aquifers. Assuming 55% of that value goes to the Madison aquifer, recharge to the Madison aquifer in the area of the Long and Putnam study is 33.7 cfs, equivalent to approximately 24,400 ac-ft/yr. The estimated withdrawal from the Madison aquifer in the Long and Putnam study area, including appropriations reserved for future use and other pending applications is 29,203 ac-ft/yr. This application seeks to appropriate up to 1,600 ac-ft/yr. Observation well data suggests that hydraulic head in the Madison aquifer remains relatively stable in nearby observation wells, so it is possible the potentiometric surface of the aquifer

changed after the Long and Putnam study was completed. Based on Water Rights Staff experience, it is also likely that annual withdrawals estimated by assuming the permit holder withdraws at 60% of their maximum licensed/permitted rate is higher than the true value. Therefore, based on the local hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 5: Madison withdrawals estimated within Long and Putnam study area rounded to the nearest 1 acre-foot.

Type	Count	Est. Rate (ac-ft/yr)
Irrigation	8	1,250
Volume Limit	15	11,814
Diversion rate limit	37	6,466
<i>Subtotal (authorized to withdraw)</i>	60	19,530
Future Use	4	8,953
Pending/Deferred/held	1	720
<b>Grand total</b>	65	29,203

### Observation Wells

Administrative Rule of South Dakota 74:02:05:07 requires that the Water Management Board rely upon the record of observation wells, in addition to other information, to determine that recharge exceeds withdrawals to approve an application. The Water Rights Program maintains 25 observation wells completed into the Madison aquifer [15]. The nearest observation well to this application is PE-95C, located approximately 3.7 miles southwest of this application [15]. Figure 2 shows water levels measured from the top of the casing in PE-95C [15]. In general, water levels rise during periods of higher-than-average rainfall and decline during periods of lower-than-average rainfall. This means that recharge and natural discharge are the dominant effects in the aquifer and natural discharge is available for capture. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available for this application.

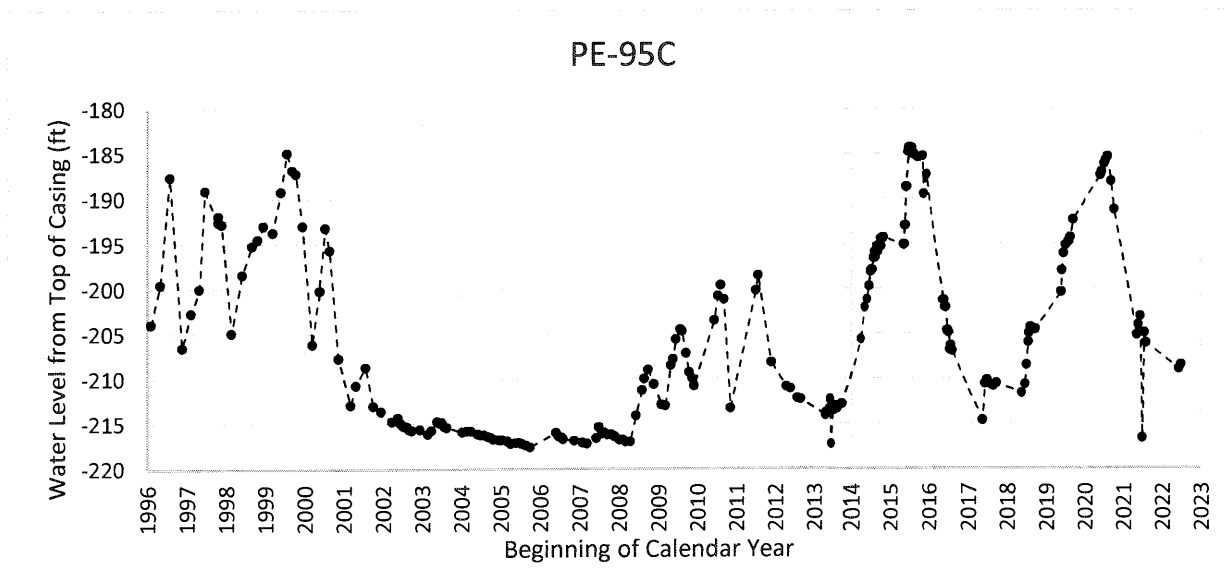


Figure 2: Water levels in Observation Well PE-95C [15]

### **Possibility of Unlawful Impairment of Existing Water Rights/Permits**

The nearest water right/permit to this application that is completed into the Madison aquifer is Water Right No. 1674-1, as described in the Hydrogeologic Characteristics section, located approximately 0.7 miles southwest of the proposed well for this application. The nearest domestic well completed into the Madison aquifer on file with the Water Rights Program is located approximately 2.5 miles southeast of this application. This application also is within the area of Future Use Permit No. 1995-1 held by Black Hawk Water User District reserving water from the Madison aquifer. 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 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*

In the hearing for Water Permit Application No. 2313-2 for Coca-Cola Bottling Company, the Water Management Board determined that to put the waters of the state to maximum beneficial use, hydraulic head would not be protected as a means of water delivery [16]. Some drawdown from this application is likely to occur and nearby well owners may need to lower their pumps or install pumps to access the water in the aquifer. Exact aquifer behavior cannot be known without an aquifer performance test. Long and Putnam [14] provide an estimated transmissivity of 5,000 square feet per day for the Madison aquifer near this application and a minimum estimated storage coefficient of  $1.4 \times 10^{-5}$ . Using those values, a radius of 0.7 miles for the distance to the nearest Madison aquifer well, an average withdrawal rate equal to the maximum requested volume of 1,600 ac-ft/yr, the drawdown to the nearest appropriative well can be estimated with the Theis [17] [18] equation to be approximately 40 feet below the normal hydraulic head after an arbitrarily chosen time period of 27 years ( $10^5$  days). The applicant must control their withdrawals so that nearby water rights/permits and adequate domestic wells are able to withdraw necessary water. There is no record of well interference complaints from the Madison aquifer in Meade County [19]. Observation wells completed into this aquifer near larger appropriative wells show limited drawdown when the large appropriative wells are in use [15]. Given the lack of well interference complaints in this aquifer in Meade County, limited drawdown shown in observation wells completed near larger appropriations, and the abundance of hydraulic head in the aquifer in the area of this application, there is reasonable probability this application can be developed without unlawful impairment of existing water rights.

### *Springs*

The nearest large springs to this application are City Springs, located approximately 6 miles south of the proposed well for this application [20]. Upon considering the deferral of Water Permit Application No. 2585-2 for Southern Black Hills Water System, the Water Management Board adopted a conclusion of law stating in part, "... The only protection South Dakota law

provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria" [21]. Given the distance between the proposed well site and the nearest springs, there is reasonable probability this application can be developed without noticeably impacting flow from the springs.

### Conclusions

1. Water Permit Application No. 2016-1 seeks to appropriate 1,600 ac-ft/yr at a maximum instantaneous diversion rate of 2.67 cfs from one well to be completed into the Madison Aquifer located in the NW ¼ SW ¼ Section 32 T3N-R7E, Black Hills Meridian for a water distribution system for the Meade County Water Line project serving users in Meade and Pennington Counties.
2. Based on the hydrologic budgets 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 and domestic uses.
4. There is reasonable probability this application can be developed without noticeably impacting flow from springs in the Black Hills.
5. This application is subject to a 20-year term limit.



Kimberly C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

### References

- [1] M. D. Fahrenbach, F. V. Steece, J. F. Sawyer, K. A. McCormick, G. L. McGillivray, L. D. Schulz and J. A. Redden, "South Dakota Stratigraphic Correlation Chart," SD DANR Geological Survey Program, Vermillion, South Dakota, 2010. Oil and Gas Investigation 3.
- [2] J. E. Martin, J. F. Sawyer, M. D. Fahrenbach, D. W. Tomhave and L. D. Schulz, "Geologic Map of South Dakota," SD DANR Geological Survey Program, Vermillion, South Dakota, 2004. General Map 10.
- [3] J. S. Downey, "Geohydrology of the Madison and associated aquifers in Parts of Montana, North Dakota, South Dakota, and Wyoming," United States Geological Survey, Alexandria, Virginia, 1984. Professional Paper 1273-G.
- [4] J. M. Carter, D. G. Driscoll, J. E. Williamson and V. A. Lindquist, "Atlas of water resources in the Black Hills area, South Dakota," United States Geological Survey, 2002. Hydrologic Atlas 747.
- [5] J. M. Carter, D. G. Driscoll and G. R. Hamade, "Estimated recharge to the Madison and Minnelusa aquifers in the Black Hills Area, South Dakota and Wyoming, Water Years

- 1931-98," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 00-4278.
- [6] SD DANR Water Rights Program, "Well-completion report database," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, 2022.
- [7] P. H. Rahn and J. P. Gries, "Large springs in the Black Hills, South Dakota and Wyoming," SD DENR Geological Survey Program, Vermillion, South Dakota, 1973. Report of Investigations 107.
- [8] Woodward-Clyde Consultants, "Well-field hydrology technical report for the ETSI coal slurry pipeline project," United States Department of Interior Bureau of Land Management, 1981.
- [9] J. M. Carter, D. G. Driscoll, G. R. Hamade and G. J. Jarrell, "Hydrologic budgets for the Madison and Minnelusa aquifers, Black Hills of South Dakota and Wyoming, Water Years 1987-96," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 01-4119.
- [10] SD DANR Water Rights Program, "Water right permit file database," SD DANR Water Rights Program, Pierre, South Dakota, 2022.
- [11] W. K. Kilts, "Report to the Chief Engineer on Water Permit Application No. 1987-1," DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2019.
- [12] SD DANR Water Rights Program, "Irrigation reports," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [13] South Dakota Water Management Board. *On the Matter of Water Permit Application No. 2313-2 for Coca Cola Bottling Company*, 1995.
- [14] SD DANR Water Rights Program, "County Files," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [15] SD DANR Water Rights Program, "Observation wells," Pierre, South Dakota, 2022.
- [16] C. A. Naus, D. G. Driscoll and J. M. Carter, "Geochemistry of the Madison and Minnelusa aquifers in the Black Hills area, South Dakota," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 01-4129.
- [17] South Dakota Water Management Board. *Finding of Facts, Conclusions of Law, and Final Decision on the Matter of Water Permit Application No. 2585-2*, 1997.

Corrected References for Revised Report dated 11 July 2022

Ref #	Reference
1	M. D. Fahrenbach, F. V. Steece, J. F. Sawyer, K. A. McCormick, G. L. McGillivray, L. D. Schulz and J. A. Redden, "South Dakota Stratigraphic Correlation Chart," SD DANR Geological Survey Program, Vermillion, South Dakota, 2010. Oil and Gas Investigation 3.
2	J. E. Martin, J. F. Sawyer, M. D. Fahrenbach, D. W. Tomhave and L. D. Schulz, "Geologic Map of South Dakota," SD DANR Geological Survey Program, Vermillion, South Dakota, 2004. General Map 10.
3	J. S. Downey, "Geohydrology of the Madison and associated aquifers in Parts of Montana, North Dakota, South Dakota, and Wyoming," United States Geological Survey, Alexandria, Virginia, 1984. Professional Paper 1273-G.
4	J. M. Carter, D. G. Driscoll, J. E. Williamson and V. A. Lindquist, "Atlas of water resources in the Black Hills area, South Dakota," United States Geological Survey, 2002. Hydrologic Atlas 747.
5	J. M. Carter, D. G. Driscoll and G. R. Hamade, "Estimated recharge to the Madison and Minnelusa aquifers in the Black Hills Area, South Dakota and Wyoming, Water Years 1931-98," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 00-4278.
6	SD DANR Water Rights Program, "Well-completion report database," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, 2022.
7	P. H. Rahn and J. P. Gries, "Large springs in the Black Hills, South Dakota and Wyoming," SD DENR Geological Survey Program, Vermillion, South Dakota, 1973. Report of Investigations 107.
8	SD DANR Water Rights Program, "Water right permit file database," SD DANR Water Rights Program, Pierre, South Dakota, 2022.
9	Intermap, "IFSAR 5-meter Digital Elevation Model," Not published, Pierre, South Dakota, 2008.
10	Woodward-Clyde Consultants, "Well-field hydrology technical report for the ETSI coal slurry pipeline project," United States Department of Interior Bureau of Land Management, 1981.
11	J. M. Carter, D. G. Driscoll, G. R. Hamade and G. J. Jarrell, "Hydrologic budgets for the Madison and Minnelusa aquifers, Black Hills of South Dakota and Wyoming, Water Years 1987-96," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 01-4119.
12	W. K. Kilts, "Report to the Chief Engineer on Water Permit Application No. 1987-1," DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2019.
13	SD Water Rights, "Irrigation reports," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2021.
14	A. J. Long and L. D. Putnam, "Flow-system analysis of the Madison and Minnelusa aquifers in the Rapid City area, South Dakota - Conceptual model," United States Geological Survey, Rapid City, South Dakota, 2002. Water-Resources Investigations Report 02-4185.
15	SD DANR Water Rights Program, "Observation wells," Pierre, South Dakota, 2022.



Corrected References for Revised Report dated 11 July 2022

Ref #	Reference
16	South Dakota Water Management Board. <i>On the Matter of Water Permit Application No. 2313-2 for Coca Cola Bottling Company</i> , 1995.
17	C. V. Theis, "The relation between the lowering of the piezometric surface and the rate and duration of discharge of a well using ground water storage," <i>Ground Water Notes</i> No. 5, pp. 1-9, August 1952.
18	Y. Gao, P. Hsieh and S. Alexander, "Using excel for aquifer test," [Online]. Available: <a href="https://d32ogoqmya1dw8.cloudfront.net/files/NAGTWorkshops/hydrogeo/activities/Excel__Aquifer_Test.pdf">https://d32ogoqmya1dw8.cloudfront.net/files/NAGTWorkshops/hydrogeo/activities/Excel__Aquifer_Test.pdf</a> . [Accessed 3 August 2021].
19	SD DANR Water Rights Program, "County Files," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
20	C. A. Naus, D. G. Driscoll and J. M. Carter, "Geochemistry of the Madison and Minnelusa aquifers in the Black Hills area, South Dakota," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 01-4129.
21	South Dakota Water Management Board. <i>Finding of Facts, Conclusions of Law, and Final Decision on the Matter of Water Permit Application No. 2585-2</i> , 1997.

On Page 1 of the Revised Report dated 11 July 2022, the reference denoted as [5] should be [14].



Kimberly C. Drennon, E.I. – Natural Resources Engineer II  
DANR Water Rights Program

Signed 21 September 2022



**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. 2016-1 Name of Applicant South Dakota Ellsworth Development Authority (SDEDA)

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.**

Introducing a competing water utility will erode Black Hawk Water User District (BHWUD) growth, which could potentially negatively impact not only BHWUD, but the communities it serves, including Black Hawk, Piedmont and Summerset.

**List the reasons for your opposition to this application.**

It is not in the public interest to have two separate utilities constructing wells and other water supply infrastructure in close proximity to each other for several reasons, including, but not limited to, the following:

- 1) Allowing a second water utility move into the service area of an existing water utility and utilize the same raw water source, located within the boundaries of BHWUD's future use permit, is not an efficient use of South Dakota's limited water resources.
- 2) Introducing a competing water utility will erode BHWUD growth, for which investments have already been made, including water distribution lines on Peaceful Pines and Norman Avenue, and water storage facilities on Marvel Mountain, thereby potentially eroding the financial capacity for growth of BHWUD.
- 3) When the federal government provides funding for rural water associations, language within the enabling regulations (7 U.S.C. 1926 (b)) indicates that the service provided by the water utility receiving the loan "shall not be curtailed or limited by inclusion of the area served by association within the boundaries of any municipal corporation or other public body...." This language is intended to protect the utility's ability to repay the loan by not allowing a municipality or other public body to provide the same service within the utility's existing boundaries. While BHWUD does not currently have a federal loan that would provide protection under section 1926(b), the rationale for such protection applies here. BHWUD currently has multiple SRF loans totaling millions of dollars; timely repayment of these loans could potentially be negatively impacted by a competing water distribution system operating in the same area.

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

First Name: Matthew Last Name: Naasz

Mailing Address: Gunderson, Palmer, Nelson and Ashmore, LLP, 506 6th St.

City: Rapid City State: SD Zip: 57701

Optional contact information. Phone: (605) 342-1078 Email: mnaasz@gpna.com

**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. 2016-1

Petitioner's Name Black Hawk Water User District

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

Please refer to the enclosed letter to South Dakota Ellsworth Development Authority , dated June 3, 2022.



BLACK HAWK WATER USER DISTRICT  
5513 OAK STREET  
PO BOX 476  
BLACK HAWK, SD 57718

*Serving Black Hawk since 1949*

Phone 605-787-5777  
Email: [office@bhwud.com](mailto:office@bhwud.com)

COPY

June 3, 2022

John Wetstein  
South Dakota Ellsworth Development Authority  
PO Box 477  
Rapid City, SD 57709

RECEIVED

JUN 06 2022

OFFICE OF  
WATER

RE: Petition to Intervene  
Water Permit Application #2016-1  
Proposed Madison Aquifer Well near Black Hawk  
Meade County, South Dakota

Dear Mr. Wetstein:

Black Hawk Water User District (BHWUD) has provided potable water services to communities and individual users in the vicinity of Black Hawk, SD since 1949. BHWUD has carefully developed plans for the design and construction of future infrastructure to ensure that BHWUD can continue to provide safe and high-quality water to the area both now and in the future. That planning has included developing plans for infrastructure including potable water storage facilities, potable water distribution piping systems, and future well locations, as well as reserving future water supplies from the Madison aquifer with Future Use Permit #1995-1. BHWUD has three wells that are completed in the Madison aquifer: Well #4, Well #5 (the Anderson Well), and Well 6. The locations of these three wells, the future use permit area, and the proposed location of the South Dakota Ellsworth Development Authority (SDEDA) well are shown on Figure 1.

The well location proposed by SDEDA in Water Permit Application #2016-1 (WPA #2016-1) is not only within the BHWUD Future Use Permit area, it is approximately 3,600 feet east of the Anderson Well, and approximately 2,400 feet west of a planned future well location.

BHWUD has met with SDEDA officials and officials from the South Dakota Department of Agriculture and Natural Resources (DANR) regarding WPA #2016-1. SDEDA has indicated that one of the primary reasons for SDEDA seeking a Madison aquifer source is to replace an existing raw water source that has been impacted by per- and polyfluoroalkyl substances (PFAS). SDEDA has indicated that the impacted raw water source provides potable water to 50 residences (hereinafter referred to as the PFAS-impacted homes), and this portion of the project will be funded by the federal government.

BHWUD has a significant amount of existing infrastructure in the area of WPA #2016-1, including water distribution piping along Norman Avenue, which represents a good start in the infrastructure needed to supply



the PFAS-impacted homes. Furthermore, BHWUD has the existing capacity to supply the 50 PFAS-impacted homes (and more). BHWUD has offered to provide water to the PFAS-impacted homes and to SDEDA for other planned users. Representatives from SDEDA have rejected BHWUD's offer to use existing water supply capacity to serve the PFAS-impacted homes.

BHWUD contends that having a second water utility move into the service area of an existing water utility and utilize the same raw water source, located within the boundaries of BHWUD's future use permit, is not an efficient use of South Dakota's limited water resources. BHWUD has been an integral part and, indeed, a significant driver of the population growth of the region. We have established relationships and protocols with the communities of Summerset, Piedmont and Black Hawk, as well as with numerous housing developments, to ensure that investment in the BHWUD infrastructure remains compatible with the population growth of the area. These communities have expressed their support for BHWUD and its offer to partner with SDEDA to serve the PFAS-impacted homes, rather than allow SDEDA to develop a new well and water utility within the service area of BHWUD.

Introducing a competing water utility will erode BHWUD growth, for which investments have already been made, including water distribution lines on Peaceful Pines and Norman Avenue, and water storage facilities on Marvel Mountain, thereby potentially eroding the financial capacity for growth of BHWUD. When the federal government provides funding for rural water associations, language within the enabling regulations (7 U.S.C. 1926 (b)) indicates that the service provided by the water utility receiving the loan "shall not be curtailed or limited by inclusion of the area served by association within the boundaries of any municipal corporation or other public body...." This language is intended to protect the utility's ability to repay the loan by not allowing a municipality or other public body to provide the same service within the utility's existing boundaries. While BHWUD does not currently have a federal loan that would provide protection under section 1926(b), the rationale for such protection applies here. BHWUD currently has multiple SRF loans totaling millions of dollars; timely repayment of these loans could potentially be negatively impacted by a competing water distribution system operating in the same area. BHWUD has invested funds on water infrastructure in this area, with the investment-backed expectation of growth in the area to be served. Introducing a competing water utility into the area already served by BHWUD would erode BHWUD's ability to continue expansion of its operations in the area where it has already invested resources. This injury is unique to BHWUD, as BHWUD has already invested time, energy and resources in developing its water distribution system in the area proposed to be developed by SDEDA.

BHWUD understands SDEDA's desire to serve high quality potable water to the families impacted by the PFAS contamination. However, it would be more efficient to use the existing infrastructure and capacity of a proven utility that has served the area for 73 years, rather than to construct another competing utility within the service area of BHWUD. It is requested that SDEDA reconsider partnering with BHWUD to meet the goal of providing water to the PFAS-impacted homes. Partnering with BHWUD would reduce the capitol costs

Mr. John Wetstein, SDEDA  
June 3, 2022  
Page 3 of 3

associated with serving water to the PFAS-impacted homes, and would likely get the water to the homes faster than constructing a new well and completely new water distribution system.

BHWUD does not believe it is in the public interest to have two separate utilities constructing wells and other water supply infrastructure in close proximity to each other. For this reason, by copy of this letter to the Chief Engineer of the DANR Water Rights Program, we are petitioning against approval of WPA #2016-1 because developing a new well and other water supply infrastructure within the boundaries of an already established water user district is not in the public interest.

BHWUD would welcome the opportunity to further discuss options for supplying water to SDEDA, or other potential partnering strategies, to facilitate the timely provision of water to the 50 PFAS-impacted homes.. If you have any questions, or are willing to discuss this topic further, please contact BHWUD at [office@bhwud.com](mailto:office@bhwud.com), or call Manager Ken LeBon at 605-787-5777.

Sincerely:

**BLACK HAWK WATER USER DISTRICT**



Ken LeBon,  
Manager



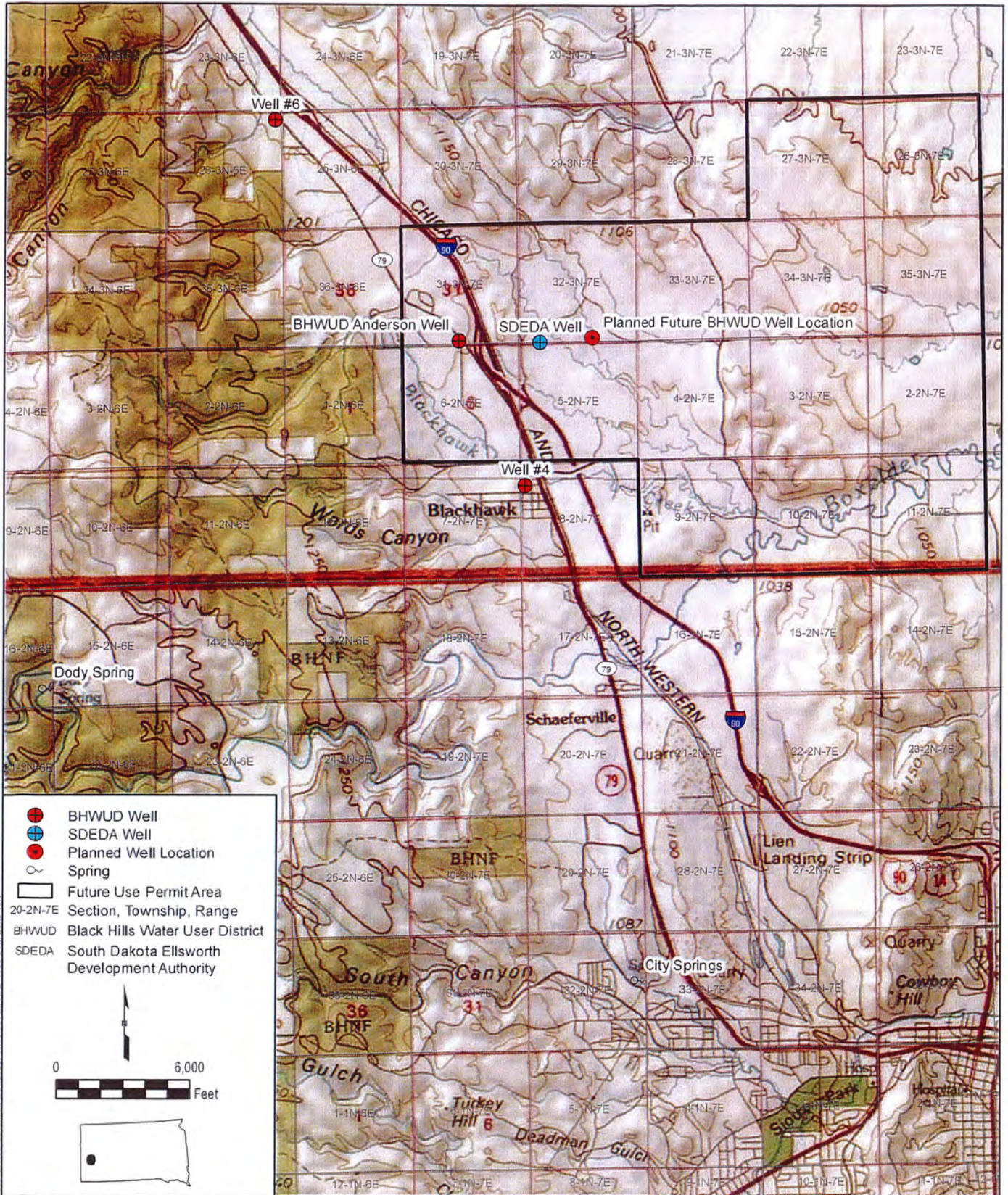
Brian Peterson  
President

Attachments:

Figure 1. BHWUD Madison Aquifer Wells and Future Use Permit Area near Proposed SDEDA Well

✓ pc: Chief Engineer, Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501





Service Layer Credits: Copyright (c) 2014 Esri  
 Copyright © 2013 National Geographic Society, i-cubed



Prepared By:  
**LRE Water**  
 Innovative Water Resource Solutions  
 South Dakota Office  
 Sioux Falls, South Dakota  
 (605) 310-1721

**BLACK HAWK WATER USER DISTRICT**  
 WELL NO. 6 LOCATION  
 BLACKHAWK, SOUTH DAKOTA

BHWUD MADISON AQUIFER WELLS AND  
 FUTURE USE PERMIT AREA NEAR PROPOSED SDEDA WELL

FILE: 5501BHW01\_01f.MXD

DATE: 5/31/2022

FIGURE: 1





RECEIVED

MAY 31 2022

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. 2016-1 Name of Applicant South Dakota Ellsworth Development Authority

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:

1. Does South Dakota Ellsworth Development Authority own the land on the NW 1/4 NW 1/4 section 5-T2N-R7E?
2. You should tell the truth that the bulk of the water is going to Dream Design projects.
3. Water should not be taken from 3 communities and given to another 16 miles away for expansion.
4. Blackhawk water company should control the water in the area.
5. South Dakota Ellsworth Development Authority has no business in being involved in the water business. This is a real reach in there authority.
6. Section line law is being abused in this application.

#### Commenter's name and address:

First Name: Thomas Last Name: Norman

Address: PO Box 767

City: Blackhawk State: SD Zip: 57718

**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).

## Duvall, Ron

---

**From:** no-reply@caspio.com  
**Sent:** Monday, June 6, 2022 3:08 PM  
**To:** Duvall, Ron; Gronlund, Eric  
**Subject:** [EXT] Comment on 2016-1, South Dakota Ellsworth Development Authority, c/o John Wetstein

**Comment On:**

No. 2016-1, South Dakota Ellsworth Development Authority, c/o John Wetstein

**Comment Deadline Date:**

06/06/2022

**Date Comment Filed:**

06/06/2022 15:07:34

**Commenter Info:**

Robert Borgmeyer  
8730 Sheridan Lake Road  
Rapid City SD, 57702

**Comment:**

this is a slightly modified retyping of the email I sent three hours ago to Eric Grunland... Regarding 2016-1 Dear Chief Engineer 1. Selador Ranches Inc is a South Dakota famiy ranch corporation since circa 1979 and is in good standing. 2. In addition to other ranch holdings Selador owns 2,740 deeded acres between Interstate 90 and Haines Avenue; some of which is in Pennington County, where your published notice stated was the location of this project; and the remainder is in Meade County where according to your maps the Madison well will be, as well as a major part of any distribution pipeline, rumored to be fourteen inches in diameter will go 3. the documents mention this being a "water distribution" system, although it is unclear whether the application is just for the well site,,,,and any distribution network, which does not appear to be addressed at all in the EAD engineer's submission. 4. our new Wibur well and our pipeline therefrom are located approximately two miles east of the well site on the applicant's map at approxiimately 3600 feet. 5. There are approximately five open section lines which traverse our 2,740 deeded acres. 6 Under south dakota law since 1889, section lines are public highways available for both personal and entity usage. Selador has already been to the S D Supreme Court on a section line case and the Court reversed the Trial court and ruled that in fact the section lilne was open. 7. Since 1972 I have personally been involved in dozens of section line and related access transactions. 8. to the best of my recollection, none of them authorized ultimately the use of a section line for a utility and thus preserving the aforementioned public highway availability. 9. Since DANR evidenced reluctance to accept my earlier submisstion, I suggest that the documents generated by Eric and/or Kim state therein the specific mechanism for any comments. 10, Therefore, until Selador benefits from a detailed discussion about the water permit and the elements thereof, Selador Ranches Inc. hereby joins with any of our neighbors by hereby petitioning against approval. bob borgmeyer president Selador ranches Inc





DEPARTMENT OF THE AIR FORCE  
AIR FORCE CIVIL ENGINEER CENTER  
JOINT BASE SAN ANTONIO LACKLAND TEXAS



Ms. Judy Lopez  
Director, Environmental Management  
2261 Hughes Ave, Suite 155  
JBSA Lackland AFB, Texas 78236-9853

RECEIVED

AUG 11 2022

OFFICE OF  
WATER

Mr. William Larson, Chair  
Water Management Board  
South Dakota Department of Agriculture and Natural Resources  
523 E Capitol Ave  
Pierre, SD 57501

Dear Mr. Larson,

The purpose of this letter is to communicate U.S. Air Force support for the South Dakota Ellsworth Development Authority's (SDEDA's) March 1, 2022 application for a water rights permit to support a community water system in the vicinity of Ellsworth Air Force Base (AFB) (Water Permit Application No. 2016-1). SDEDA is implementing an Air Force environmental restoration decision, which is discussed further below.

The Air Force has determined that releases from historic firefighting activities on Ellsworth AFB are a likely contributor to the presence of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in shallow groundwater that is used as a drinking water source for residences near Ellsworth. The Air Force has also determined that it has authority under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Defense Environmental Restoration Program statute (DERP) to provide a response to the PFOS/PFOA impacts that includes the provision of alternate drinking water supplies to prevent exposure to PFOS/PFOA at levels above those recommended in two May 2016 U.S. Environmental Protection Agency (EPA) Lifetime Health Advisories (HAs).

The Air Force completed an Engineering Evaluation and Cost Analysis (EE/CA) in 2020 to identify response alternatives, costs, and estimated times for implementation of response alternatives for drinking water wells with PFOS/PFOA concentrations above the 2016 EPA Lifetime HAs. An Action Memorandum was subsequently signed in January 2021 to document the chosen alternatives and numerous meetings were held to discuss implementation options with the City of Box Elder between 2018 and 2021. However, talks fell through after the Air Force determined that its restoration work funds cannot be used to pay for some of the engineering requirements (e.g., fire flow) that the City of Box Elder required to expand their municipal system. Additionally, the City of Box Elder currently requires residences to be annexed into the City to receive city services and a majority of the impacted residences stated their refusal to annex. If the City of Box Elder were to relax their annexation requirements, their policy is to charge double the "in-town" rate for the water, which impacted residents also would oppose. The Air Force also met with the City of Rapid City, who chose not to participate. Note: Ellsworth AFB is in the planning zone of influence of only two municipalities (Rapid City and



Box Elder). Rapid Valley Water District, approximately 5 miles south of Ellsworth AFB, initiated a meeting with the Air Force to express their willingness to help; however, they required the Base's water rights in return, which is not viable for national security reasons. The Air Force did not contact the Black Hawk Water User District, which submitted a petition on June 6, 2022 opposing SDEDA's water permit application, because the system is located over 10 miles from the impacted areas and is not a government entity. The EE/CA; however, was publicly available and Black Hawk Water User District did not contact the Air Force about it or the water system project during the public comment period.

After being unable to work out a support arrangement with the existing municipal systems close to Ellsworth, the Air Force obtained the services of SDEDA in 2021 to design a water system to provide alternate drinking water to private individuals and control human exposure to PFOS/PFOA above the 2016 EPA Lifetime HAs. SDEDA, created by the State legislature in 2009, collaborates with municipal governments, business leaders, and the Air Force on projects mutually beneficial to Ellsworth AFB and the local community. SDEDA collaborated with the Air Force and City of Box Elder to build the Regional Wastewater Treatment Plant, which treats wastewater from both the City of Box Elder and Ellsworth AFB. As an existing utility provider in the local community, SDEDA is well-suited to build and operate a community water system.

The Air Force and SDEDA are in the process of entering into a new agreement where the Air Force will provide partial funding to SDEDA to build the community water system and connect PFOS/PFOA impacted residents to the system. Please note that the Air Force is only providing the funding necessary to install a new well into the Madison Aquifer and provide water to PFOS/PFOA impacted residents. SDEDA is upsizing the system and is obtaining funding from other sources to supplement the funding provided by the Air Force.

The Air Force decision and process comply with applicable law and regulations, which include CERCLA (42 U.S.C. §§ 9601-9675), the DERP statute (10 U.S.C. §§ 2701-2711), the National Oil and Hazardous Substances Pollution Control Contingency Plan (NCP, 40 C.F.R. Part 300), Executive Order 12,580, Department of Defense Manual 4715.20, and Department of the Air Force Instruction 32-7020.

In summary, the Air Force supports the water rights application so SDEDA can implement the Air Force's restoration decision. Additionally, the Air Force trusts SDEDA to do what is in the best interest of both Ellsworth AFB and the surrounding community. If there are any questions regarding this information, please feel free to contact the Offutt Section Chief, Ms. Kate Need at (402) 232-3019/[katherine.need.1@us.af.mil](mailto:katherine.need.1@us.af.mil) or the Ellsworth AFB RPM, Ms. Rita Krebs at (605) 385-2688/[rita.krebs.1@us.af.mil](mailto:rita.krebs.1@us.af.mil).

Sincerely

LOPEZ.JUDY.M  
.1291747988

Digitally signed by  
LOPEZ.JUDY.M.1291747988  
Date: 2022.08.10 13:34:54  
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JUDY M. LOPEZ, P.E., DAF  
Director, Environmental Management

cc:

Mr. Glen Kane, South Dakota Ellsworth Development Authority

Ms. Scott Landguth, South Dakota Ellsworth Development Authority

NOTICE OF HEARING on Application No. 2016-1 to Appropriate Water

Notice is given that South Dakota Ellsworth Development Authority, c/o Glen Kane, Managing Director and John Wetstein, Project Engineer, PO Box 477, Rapid City SD 57709 has filed an application for a water permit to appropriate up to 1,600 acre-feet of water annually at a maximum pump rate of 2.67 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,500 feet deep) to supply the Meade County Water Line Project, a water distribution system serving users in Meade and Pennington Counties. At the request of the applicant, the proposed well location has been changed from Section 5-T2N-R7E to the NW 1/4 SW 1/4 Section 32-T3N-R7E. The well site is located approximately one-half mile east of Summerset SD.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 2016-1 with a priority date of June 13, 2022, and with a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available for the applicant’s proposed use, 2) existing domestic water use and water rights will not be unlawfully impaired, 3) the proposed use 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.

The Water Management Board will consider this application at 9:45 AM (Central Time) on October 5, 2022, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

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

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an

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

The October 5, 2022, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by September 6, 2022. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

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

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at an approximate cost of \_\_\_\_\_.

\*\*\* Proof of Publication \*\*\*

STATE OF SOUTH DAKOTA)

County of Pennington)

SS:

RECEIVED

AUG 29 2022

S.D. DANR - GROUND WATER

OFFICE OF  
WATER

523 E CAPITOL AVE

PIERRE SD 57501

ORDER NUMBER 49624

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

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

in said newspaper once each day for 1

successive day, the first publication there of being on the

24 day of August, 20 22.

Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 08/24/2022

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FILED ON: 8/24/2022

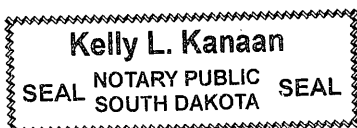
Subscribed and sworn to before me this

24th day of August, 20 22.

Kelly L. Kanaan Notary Public

My commission expires

Jan 17, 20 25





#### NOTICE OF APPLICATION

NO. 2016-1 to Appropriate Water Notice is given that South Dakota Ellsworth Development Authority, c/o Glen Kane, Managing Director and John Weststein, Project Engineer, PO Box 477, Rapid City SD 57709 has filed an application for a water permit to appropriate up to 1,600 acre-feet of water annually at a maximum pump rate of 2.67 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,500 feet deep) to supply the Meade County Water Line Project, a water distribution system serving users in Meade and Pennington Counties. At the request of the applicant, the proposed well location has been changed from Section 5-T2N-R7E to the NW 1/4 SW 1/4 Section 32-T3N-R7E. The well site is located approximately one-half mile east of Summerset SD.

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 2016-1 with a priority date of June 13, 2022, and with a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) existing domestic water use and water rights will not be unlawfully impaired, 3) the proposed use 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.

The Water Management Board will consider this application at 9:45 AM (Central Time) on October 5, 2022, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave.,

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

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Published on August 23, 2022 for a total approximate cost of \$140.52 and may be viewed for free at [www.sdpublicnotices.com](http://www.sdpublicnotices.com). L49624



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Published August 24, 2022 at the approximate cost of \$74.16 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).






**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

September 14, 2022

**NOTICE OF HEARING**

TO: Kent Hagg  
Acting City Attorney for  
Town of Hermosa  
Hagg & Hagg, LLP  
P.O. Box 750  
Rapid City, SD 57709-0750

FROM: Ron Duvall, Water Rights Permitting Administrator  
SD DANR, Water Rights Program 

SUBJECT: Notice of Hearing to Consider the Matter of the Town of Hermosa's Noncompliance  
with its Surface Water Discharge Permit.

Pursuant to the request for hearing filed by Mr. Hagg on behalf of the Town of Hermosa pursuant to SDCL § 34A-2-56, notice is hereby provided that the Water Management Board will conduct a hearing to determine whether the Town of Hermosa violated the conditions of its Surface Water Discharge Permit as alleged in the Notice of Violation dated July 28, 2022. The hearing will be conducted under the authority and jurisdiction granted the Board by SDCL chs. 1-41 and 34A-2, and any applicable administrative rule of South Dakota. The hearing will take place at **1:00 PM (Central Time), on Wednesday, October 5, 2022**, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time of hearing is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

This hearing is an adversarial proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. As a legal entity, the Town of Hermosa is required to be represented by legal counsel in this proceeding. Additionally, the parties have the right to introduce evidence, to call witnesses, and to cross-examine all witnesses. 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.

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Pontious, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Pontious@state.sd.us](mailto:Brian.Pontious@state.sd.us) as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

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."

# CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated September 14, 2022, regarding the Matter of the Town of Hermosa's Noncompliance with its Surface Water Discharge Permit 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 September 14, 2022.

Kent Hagg  
Acting City Attorney for Town  
of Hermosa  
Hagg & Hagg, LLP  
P.O. Box 750  
Rapid City, SD 57709-0750

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General  
Counsel for DANR, Surface Water Quality Program  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

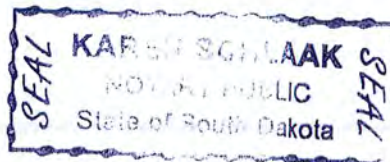
David McVey, Assistant Attorney General  
Counsel for Water Management Board  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

Kelli Buscher  
Surface Water Quality Program, DANR

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 14<sup>th</sup> day of September, 2022.

Karen Schlaak  
Notary Public  
My Commission expires April 1, 2025



**STATE OF SOUTH DAKOTA**  
**SECRETARY OF THE**  
**DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES**

<b>IN THE MATTER OF THE TOWN</b>	)	<b>NOTICE OF VIOLATION</b>
<b>OF HERMOSA'S NONCOMPLIANCE</b>	)	<b>AND</b>
<b>WITH ITS SURFACE WATER</b>	)	<b>ORDER</b>
<b>DISCHARGE PERMIT</b>	)	

TO:   The Honorable Dan Holsworth  
      President, Town of Hermosa  
      PO Box 298  
      Hermosa, SD 57744-0298

The Secretary of the Department of Agriculture and Natural Resources ("Secretary"), pursuant to South Dakota Codified Laws ("SDCL") § 34A-2-53, hereby gives NOTICE that the Town of Hermosa, PO Box 298, Hermosa, SD 57744-0298, has violated its Surface Water Discharge Permit (SD0022349), the South Dakota Water Pollution Control Act (SDCL Chapter 34A-2), and the Administrative Rules of South Dakota ("ARSD") Article 74:52 as specified below:

The FACTS alleged to constitute this violation are as follows:

1.    The Town of Hermosa ("Town") owns and operates a wastewater treatment facility, located in Section 32, Township 2 South, Range 8 East, in Custer County, South Dakota. The wastewater treatment facility is designed for total retention of wastewater. The treated wastewater is land applied to nearby agriculture property.
2.    The town is a "person" within the meaning of SDCL § 34A-2-2(3) and 33 United States Code ("U.S.C.") §1362(5).



3. The effluent discharged or released by the wastewater treatment facility constitutes “pollutants” as defined by SDCL § 34A-2-2(5) and 33 U.S.C. 1362(6).
4. An emergency discharge of pollutants from the Town’s wastewater treatment facility or runoff from the land application process could enter Battle Creek. Battle Creek constitutes “waters of the state” pursuant to SDCL § 34A-2-2(12).
5. The discharge of pollutants by any person into waters of the state except as authorized by a National Pollutant Discharge System (NPDES) permit or by a state permit issued by an authorized state program, is unlawful under 33 U.S.C. 1311 (a).
6. The US Environmental Protection Agency (“EPA”) approved the South Dakota Surface Water Discharge Program on December 30, 1993, at which time the state assumed administrative authority over the discharges of pollutants into waters of the state and navigable waters.
7. The discharge of pollutants by any person into waters of the state, except authorized by a state Surface Water Discharge Permit, is unlawful under SDCL § 34A-2-36.
8. The Secretary issued Surface Water Discharge Permit Number SD0022349 (“Permit”) to the Town on June 19, 2020, and the Permit became effective on July 1, 2020. The Permit prohibits a discharge to waters of the state except in accordance with the emergency release provision of Section 3.1 of the Permit.
9. Section 3.4 of the Permit authorizes the Town to land apply wastewater to the Town’s land application site. The Permit states the act of land applying treated wastewater is not considered a discharge.

10. Section 5.1 of the Permit states:

***Duty to Comply** The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and the federal Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application (a violation of a condition of this permit is subject to SDCL Section 34A-2-75)*

11. The Town's land application of wastewater to its land application site is authorized only if the Town complies with the conditions specified in the Permit.
12. Section 3.4 of the Permit contains the land application monitoring requirements and states:

*All land application of wastewater shall be monitored for the following parameters at the frequency and with the type of measurement indicated. Monitoring is only required during months when land application is occurring. The permittee shall report the land application monitoring results in accordance with Section 4.1-Reporting of Monitoring Results. See Appendix B – Land Application Monitoring Summary Form.*

<i>Effluent Limits and Self-Monitoring Requirements Ordinal 002R</i>			
<i>Effluent Parameter<sup>1</sup></i>	<i>Frequency</i>	<i>Reporting Values<sup>2</sup></i>	<i>Sample Type<sup>3</sup></i>
Rate of Land Application, MGD	Weekly	Actual Value <sup>2</sup>	Instantaneous
Duration of Land Application, days	Monthly	Monthly Total	Calculate
Total Flow Land Applied, million gallons	Monthly	Monthly Total <sup>3</sup>	Calculate
pH, standard units	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Instantaneous <sup>4,5</sup>
Water Temperature, °C	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Instantaneous <sup>4,6</sup>
<i>E. coli</i> , no./100 mL <sup>7</sup>	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab

Effluent Limits and Self-Monitoring Requirements - Ordinal 002R 4.1			
Effluent Parameter	Frequency	Reporting Values <sup>1</sup>	Sample Type <sup>2</sup>
Sodium Absorption Ratio (SAR), ratio <sup>8</sup>	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Conductivity, µmhos/cm	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Kjeldahl Nitrogen, mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Ammonia-Nitrogen (as N), mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Nitrates (as N), mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Nitrites (as N), mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Sulfates, mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Chlorides, mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Phosphorus (as P), mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab
Total Dissolved Solids (TDS), mg/L	Monthly <sup>3</sup>	Actual Value <sup>2</sup>	Grab

<sup>1</sup> See Section 1.0 - Definitions.

<sup>2</sup> A minimum of one sample per month shall be taken for the duration of land application activities. Samples shall be taken from the irrigation wetwell and shall be representative of the land applied water. The permittee always has the option of collecting additional samples if appropriate.

<sup>3</sup> The date and time of the start and termination of each land application event shall also be reported in the comments section of the Land Application Monitoring Summary Form.

<sup>4</sup> The pH and temperature of the effluent shall be determined when ammonia samples are collected.

<sup>5</sup> The pH shall be taken within 15 minutes of sample collection with a pH meter. The pH meter must be capable of simultaneous calibration to two points on the pH scale

that bracket the expected pH and are approximately three standard units apart. The pH meter must read to 0.01 standard units and be equipped with temperature compensation adjustment. Readings shall be reported to the nearest 0.1 standard units.

<sup>6</sup> The water temperature of the effluent shall be taken as a field measurement. Measurement shall be made with a mercury-filled, or dial type thermometer, or a thermistor. Readings shall be reported to the nearest whole degree Celsius.

<sup>7</sup> An E. coli limit of 126 per 100 milliliters applies to the water used for irrigation. During irrigation, if an E. coli sample result is greater than 126 per 100 milliliters, irrigation must be stopped immediately and SDDENR shall be notified within 24 hours. To begin irrigating again, a sample taken from the irrigation pond must yield E. coli results of 126 per 100 milliliters or less.

<sup>8</sup> The sodium absorption ratio is calculated using the Gapon equation: 
$$SAR = \frac{Na}{\sqrt{\frac{Ca+Mg}{2}}}$$

13. Section 4.1 of the Town's Permit requires the Town to report monitoring results to the South Dakota Department of Agriculture and Natural Resources ("Department").

Subsection 4.1.2 states:

*Land application monitoring results obtained from **Outfall 002R** shall be summarized for each month, and reported on separate **Land Application Monitoring Summary Forms** (Appendix B).*

14. Subsection 4.1.3 states:

*All reports must be submitted **no later than the 28<sup>th</sup> day of the month** following the completed reporting period.*

15. Since January 2019, the Town has land applied wastewater in the following months, at a minimum:

- a. April 2019;
- b. November 2019;
- c. June 2020;
- d. November 2020;
- e. August 2021;

- f. September 2021;
  - g. November 2021; and
  - h. January 2022.
16. The Town submitted a Land Application Monitoring Summary Form for the November 2019 land application of wastewater. The Town did not submit the Land Application Monitoring Summary Forms for the April 2019, June 2020, November 2020, August 2021, September 2021, November 2021, and January 2022 land application as required by Section 4.1 of the Permit.
  17. On February 3, 2022, the Department conducted an inspection of the Town's wastewater treatment facility.
  18. On March 11, 2022, the Department sent the Town a report detailing the findings of the Surface Water Discharge Compliance Inspection conducted on February 3, 2022. The inspection report included a warning letter noting the Town's failure to submit the required reports and stated the Town could be subject to an enforcement action, including fines of up to \$10,000 per day per violation.
  19. The Town's failures to submit its Land Application Monitoring Summary Forms are violations of Sections 4.1 and 5.1 of the Permit.
  20. Section 3.4 of the Permit requires the Town to sample the wastewater at least once during any month the Town is land applying wastewater.



21. The Town submitted the wastewater sample results from the April 2019, June 2020, November 2020, and August 2021 land application of wastewater on March 11, 2022, via email, in response to the Department's March 4, 2022 warning letter.
22. According to the sample data submitted on March 11, 2022, the Town also land applied wastewater in August 2021, September 2021, November 2021, and January 2022.
23. The sample results can be found in Attachment A. These sample results were not submitted on the Land Application Monitoring Summary Form; so the amount of wastewater land applied is not known.
24. In the March 11, 2022, email submission of sample results to the Department, Gail Boddicker, the Town Finance Officer, stated:

*It looks like there may not have been samples taken for November 2021 and January 2022.*

25. The Town's failure to properly sample the land applied wastewater is a violation of Sections 3.4 and 5.1 of the Permit.
26. Subsection 3.4.4 of the Permit states:

*Escherichia coli (E. coli) shall not exceed a concentration of 126 per 100 milliliters in any one sample. This is based on the immersion recreation 30-day geometric mean limit for E. coli and the permit writer's judgment. It is included here due to the potential for human contact with irrigation water. If any E. coli sample is greater than 126 per 100 milliliters, the land application shall be terminated immediately until a safe sample is collected.*

27. The lab results submitted to the Department show the land application of wastewater since at least April 2019 have exceeded the *E. coli* limit of 126 per 100 mL in Subsection 3.4.4. Sample results are as follows:

- a. The March 28, 2019 *E. coli* sample result was 197,000 per 100 mL.
  - b. The November 8, 2019 *E. coli* sample result was 13,800 per 100 mL.
  - c. The June 18, 2020 *E. coli* sample result was 452 per 100 mL.
  - d. The November 8, 2020 *E. coli* sample result was 1,990 per 100 mL.
  - e. The July 30, 2021 *E. coli* sample result was greater than 2,420 per 100 mL.
  - f. The September 7, 2021, *E. coli* sample result was 517 per 100 mL.
28. The March 11, 2022, warning letter that accompanied the February 3, 2022, Surface Water Discharge Compliance Inspection also noted the *E. coli* violations and stated the Town was required to comply with the *E. coli* limit of 126 per mL.
29. The Town's failure to comply with the *E. coli* limit during land application is a violation of Subsection 3.4.4 and Section 5.1 of the Permit.
30. Section 4.2 of the Permit requires the Town to notify the Secretary within 24 hours from the time the Town becomes aware of effluent violations.
31. The town failed to report its *E. coli* violations to the Department verbally or in writing as required by Section 4.2 of the Permit.
32. The Town's failures to properly report its violations constitute violations of Sections 4.2 and 5.1 of the Permit.
33. Section 3.4 of the Permit contains the Town's additional conditions the Town must meet during any land application of wastewater. Subsection 3.4.2 of the Permit states:

*To prevent ground saturation and runoff, no application is permitted during periods of heavy or prolonged rainfall, snow cover or when the ground is*

*frozen. No land application shall take place between November 1 and March 31, unless prior written approval is granted by SDDENR.*

34. On October 28, 2019, Chuck Ferguson, the Hermosa Public Works Director, called the Department to request permission to land apply wastewater in November, past the November 1<sup>st</sup> deadline in the Permit. Mr. Ferguson stated the land application was necessary because the property owner had not yet harvested the crop on the land application field. The Department provided written approval of this request on October 29, 2019, extending the Town's deadline for land application to November 15, 2019.
35. The Town began land applying wastewater on November 8, 2019. The wastewater ran all night and was stopped the following day. The Town resumed land application on November 18, 2019, until 7:30 AM on November 19, 2019.
36. The Town's land application of wastewater on November 18, 2019, and November 19, 2019, was conducted in violation of the Department's written approval and Sections 3.4 and 5.1 of the Permit.
37. On October 21, 2020, Chuck Ferguson contacted the Department regarding land application. Mr. Ferguson stated he had not yet been able to land apply wastewater due to the precipitation received in the area. Kyle Doerr with the Department asked Mr. Ferguson to call back next week if he needed permission to land apply wastewater past the November 1<sup>st</sup> deadline. The Town did not request or receive permission from the Department to land apply wastewater past the November 1, 2020, deadline.
38. As noted above, on November 8, 2020, the Town collected a sample of the wastewater the Town was land applying. The Town's land application of wastewater after November 1<sup>st</sup>

without written approval from the Department is a violation of Sections 3.4 and 5.1 of the Permit.

39. On October 28, 2021, Chuck Ferguson contacted the Department. The Town had not been able to land apply wastewater yet as the crop was still on the land application field. Mr. Ferguson requested permission to extend the deadline for the land application of wastewater into November. The Department provided written approval of this request on October 28, 2021, extending the Town's deadline for land application to November 6, 2021.
40. On January 11, 2022, Chuck Ferguson called to notify the Department the Town's wastewater lagoons were full and he would need to again begin land applying the wastewater. The Department provided written approval of this request on January 12, 2022.
41. Section 3.8 of the Town's Permit authorizes the Secretary to require the Town to develop a capacity, management, operation, and maintenance ("CMOM") program to address, reduce, or eliminate the frequency of sanitary sewer overflows or emergency discharges.
42. The February 3, 2022, Surface Water Discharge Compliance Inspection noted that the Town's wastewater treatment facility was designed for a population of 400 people and the current population served is 438 people. The inspection noted that the population served is exceeding the design population.
43. The Department issued a warning letter on February 11, 2022, requiring the Town to develop a CMOM program due to the frequent number of land application events between November 1<sup>st</sup> and March 31<sup>st</sup>.

44. The February 11, 2022, warning letter also stated that the Department will not approve any further land application events until a CMOM program is approved.
45. On February 28, 2022, the Town submitted a CMOM program to the Department for review.
46. The Town requested permission from the Department to land apply wastewater on March 2, 2022. Chuck Ferguson stated the lagoons were full again and they needed to land apply wastewater.
47. The Department's March 4, 2022, warning letter denied the Town's request to land apply wastewater.
48. The March 4, 2022, warning letter also denied approval of the submitted CMOM program. The submitted CMOM did not meet the requirements of Section 3.8 of the Town's permit.
49. The Town's failures to comply with the Permit's specified limits and conditions constitute violations of 34A-2-36 and of ARSD Article 74:52.

## ORDER

WHEREFORE, as a result of these FACTS and VIOLATIONS, and pursuant to SDCL § 34A-2-53, the Secretary of the South Dakota Department of Agriculture and Natural Resources hereby ORDERS that the following corrective actions be taken by the town of Hermosa:

1. The Town of Hermosa must comply with its Surface Water Discharge Permit.
2. Land application of treated domestic wastewater shall occur only between April 1 – October 31. The Department will not approve land application between November 1 – March 31.
3. The Town must request permission to land apply prior to any land application of wastewater. The Town must submit the sample results of a representative sample of the lagoon water with the request to land apply. The Town shall not land apply wastewater until permission is granted from the Department.
4. The Town shall submit an updated Land Application Best Management Plan by **October 1, 2022**. Once approved, the Town must comply with the approved plan. Failure to comply with the plan will be a violation of this order.
5. The Town must continue its efforts to upgrade the wastewater collection and treatment systems. Starting **October 1, 2022**, the Town shall submit a quarterly progress report on any upgrades to the wastewater collection and treatment system.
6. The Town shall not add any chemical treatment to the wastewater system without written approval by the Department.

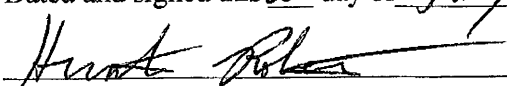
NOTICE IS HEREBY GIVEN that this Order is effective thirty days from its issuance, unless the town of Hermosa submits a written request for a hearing regarding the allegations and Order. The written request must be filed before the expiration of thirty days, by delivery to: Secretary Roberts,

Department of Agriculture and Natural Resources, 523 East Capitol Ave., Pierre, SD 57501-3182.

NOTICE IS ALSO GIVEN THAT, should the town of Hermosa fail to request a hearing within that time, the allegations stated herein shall be deemed fact and the Order shall be immediately effective.

NOTICE IS ALSO HEREBY GIVEN that these violations, as well as a failure to comply with the provisions of this Order, may subject the Town of Hermosa to injunctive legal action pursuant to SDCL § 34A-2-73, and to legal action for civil penalties and for damages to the natural resources pursuant to SDCL § 34A-2-75.

This Notice and Order does not constitute a waiver or election by the state to forego civil or criminal action to seek penalties or other relief as the State may deem appropriate under the provisions of SDCL ch. 34A-2. This Notice and Order further does not constitute a modification or amendment of the terms and conditions of the Permit, which remains in full force and effect.

Dated and signed this 28<sup>th</sup> day of July, 2022  
  
\_\_\_\_\_

Hunter Roberts, Secretary  
Department of Agriculture and Natural Resource

**ATTACHMENT A**

**LABORATORY SAMPLE RESULTS**

**FOR**

**THE TOWN OF HERMOSA'S**

**SURFACE WATER DISCHARGE PERMIT**





**MIDCONTINENT**  
TESTING LABORATORIES, INC.

Page 1 of 1

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709  
(605) 348-0111 -- www.thechemistrylab.com

Sample Site: Lagoon  
Sampled: 03/28/19 at 11:30 AM  
by Chuck Ferguson  
Sample Matrix: Water

Lab ID#: 20190328911  
Received: 03/28/19 at 12:25 PM  
by Steve Ristau  
Account: 8471  
Town of Hermosa

CHUCK FERGUSON  
TOWN OF HERMOSA  
PO BOX 298  
HERMOSA, SD 57744

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst/Date
<b>Physical Properties</b>							
Electrical Conductivity	1950	µmhos/cm	1	0.237	5.00	SM 2510B	JAM 03/29/19
Total Dissolved Solids	1100	mg/L	100ml	21.0	50.0	SM 2540 C	TMN 03/29/19
<b>Non-Metallics</b>							
Chloride (Cl <sup>-</sup> )	169	mg/L	5	1.02	2.50	SM 4500-Cl E	BLL 03/28/19
Nitrogen, Ammonia (NH <sub>3</sub> )	50.3	mg/L	100	0.255	5.00	SM 4500-NH <sub>3</sub> D	TMS 04/02/19
Nitrogen, Nitrate (NO <sub>3</sub> )	< 0.050	mg/L	1	0.017	0.050	SM 4500-NO <sub>3</sub> F	BLL 03/29/19
Nitrogen, Nitrite (NO <sub>2</sub> )	< 0.050	mg/L	1	0.004	0.050	SM 4500-NO <sub>2</sub> B	BLL 03/29/19
Phosphorus (P) Total	5.45	mg/L	100	0.299	1.00	SM 4500-P E	KDS 04/01/19
Sodium Adsorption Ratio	1.19	Ratio	1			Calculation	SCR 04/01/19
Sulfate (SO <sub>4</sub> )	294	mg/L	5	1.49	5.00	SM 4500-SO <sub>4</sub> E	BLL 03/29/19
Nitrogen, Kjeldahl (TKN)	52.1	mg/L	20	1.17	10.0	EPA 351.2	GRT 04/05/19
<b>Metals - Dissolved</b>							
Calcium (Ca)	166	mg/L	5	0.200	5.00	SM 3111 B	TMS 03/29/19
Magnesium (Mg)	69.1	mg/L	2	0.052	1.00	SM 3111 B	TMS 03/29/19
Sodium (Na)	72.5	mg/L	3	0.133	1.50	SM 3111 B	TMS 03/29/19
<b>Bacteria</b>							
E. coli	197000	MPN/100 mL	1	1.00	1.00	SM 9223 Quanti-Tray®	SCR 03/29/19
<b>Field Test</b>							
Field pH	7.80	S.U.	1			Field pH	JMH 03/29/19
Field Temperature	39.0	°F	1			Field Temp.	JMH 03/29/19

Approved By:

*Steve Ristau*

Approved On: 4/8/2019 3:32:46 PM



**MIDCONTINENT**  
TESTING LABORATORIES, INC.

Page 1 of 1

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709  
(605) 348-0111 - www.thechemistrylab.com

Sample Site: Lagoon  
Sampled: 11/08/19 at 03:00 PM  
by Chuck Ferguson  
Sample Matrix: Water

Lab ID#: 20191108815  
Received: 11/08/19 at 03:41 PM  
by Sarah Ahlers  
Account: 8471  
Town of Hermosa

CHUCK FERGUSON  
TOWN OF HERMOSA  
PO BOX 298  
HERMOSA, SD 57744

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst	Date
<b>Physical Properties</b>								
Electrical Conductivity	2720	µmhos/cm	1	0.237	5.00	SM 2510B	JAM	11/12/19
Total Dissolved Solids	2290	mg/L	100ml	21.0	50.0	SM 2540 C	TMN	11/11/19
<b>Non-Metals</b>								
Chloride (Cl-)	114	mg/L	4	0.817	2.00	SM 4500-Cl E	BLL	11/11/19
Nitrogen, Ammonia (NH3)	21.6	mg/L	50	0.208	2.50	SM 4500-NH3 D	JAM	11/12/19
Nitrogen, Nitrate (NO3)	0.053	mg/L	1	0.009	0.050	SM 4500-NO3 F	BLL	11/11/19
Nitrogen, Nitrite (NO2)	< 0.050	mg/L	1	0.004	0.050	SM 4500-NO2 B	BLL	11/11/19
Phosphorus (P) Total	2.15	mg/L	10	0.067	0.100	SM 4500-P E	KDS	11/12/19
Sodium Adsorption Ratio	0.925	Ratio	1			Calculation	SCR	11/12/19
Sulfate (SO4)	1240	mg/L	20	5.84	20.0	SM 4500-SO4 E	BLL	11/11/19
Nitrogen, Kjeldahl (TKN)	29.4	mg/L	10	0.586	5.00	EPA 351.2	GRT	11/14/19
<b>Metals - Dissolved</b>								
Calcium (Ca)	298	mg/L	12	0.480	12.0	SM 3111 B	TMS	11/11/19
Magnesium (Mg)	184	mg/L	7	0.182	3.50	SM 3111 B	TMS	11/11/19
Sodium (Na)	82.5	mg/L	4	0.486	2.00	SM 3111 B	TMS	11/11/19
<b>Bacteria</b>								
E. coli	13800	MPN/100 mL	100	100	100	SM 9223 Quanti-Tray®	JMH	11/08/19
<b>Field Test</b>								
Field pH	8.15	S.U.	1			Field pH	JMH	11/11/19
Field Temperature	14.0	°C	1			Field Temp.	JMH	11/11/19

Approved By:

*Steve Disten*

Approved On: 11/15/2019 9:16:24 AM



**MIDCONTINENT**  
TESTING LABORATORIES, INC.

Page 1 of 1

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709  
(605) 348-0111 - www.thechemistrylab.com

Sample Site: Lagoon  
Sampled: 06/18/20 at 01:00 PM  
by Chuck Ferguson  
Sample Matrix: Water

Lab ID#: 20200618920  
Received: 06/18/20 at 01:30 PM  
by Jennifer Hill  
Account: 8471  
Town of Hermosa

CHUCK FERGUSON  
TOWN OF HERMOSA  
PO BOX 298  
HERMOSA, SD 57744

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst/Date
<b>Physical Properties</b>							
Electrical Conductivity	2820	µmhos/cm	1	0.237	5.00	SM 2510B	JAM 06/22/20
pH	7.73	S.U.	1			SM 4500-H+ B	JAM 06/22/20
Total Dissolved Solids	2390	mg/L	100ml	14.7	50.0	SM 2540 C	JNG 06/18/20
<b>Non-Metallics</b>							
Chloride (Cl-)	115	mg/L	5	1.38	2.50	SM 4500-Cl E	BLL 06/22/20
Nitrogen, Ammonia (NH3)	15.9	mg/L	100	0.262	5.00	SM 4500-NH3 D	TMS 06/24/20
Nitrogen, Nitrate (NO3)	< 0.050	mg/L	1	0.009	0.050	SM 4500-NO3 F	BLL 06/22/20
Nitrogen, Nitrite (NO2)	< 0.050	mg/L	1	0.005	0.050	SM 4500-NO2 B	BLL 06/18/20
Phosphorus (P) Total	2.36	mg/L	10	0.031	0.100	SM 4500-P E	SAA 06/23/20
Sodium Adsorption Ratio	0.910	Ratio	1			Calculation	SCR 06/25/20
Sulfate (SO4)	1250	mg/L	20	10.2	200	SM 4500-SO4 E	BLL 06/22/20
Nitrogen, Kjeldahl (TKN)	26.4	mg/L	1	0.062	0.500	EPA 351.2	GRT 06/28/20
<b>Metals - Dissolved</b>							
Calcium (Ca)	323	mg/L	11	1.08	11.0	SM 3111 B	TMS 06/19/20
Magnesium (Mg)	214	mg/L	7	0.698	3.50	SM 3111 B	TMS 06/19/20
Sodium (Na)	85.9	mg/L	3	0.410	1.50	SM 3111 B	TMS 06/19/20
<b>Bacteria</b>							
E. coli	452	MPN/100 mL	20	20.0	20.0	SM 9223 Quanti-Tray®	JMH 06/18/20
<b>Field Test</b>							
Field Temperature	23.3	°C	1			Field Temp.	JMH 06/19/20

Approved By:

*Steve Disten*

Approved On: 6/26/2020 4:47:37 PM



**MIDCONTINENT**  
TESTING LABORATORIES, INC.

Page 1 of 1

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709  
(605) 348-0111 - www.thichemistrylab.com

Sample Site: Lagoon  
Sampled: 11/08/20 at 12:00 AM  
by Chuck Ferguson  
Sample Matrix: Water

Lab ID#: 20201108907  
Received: 11/09/20 at 03:20 PM  
by Dean Aurand  
Account: 8471  
Town of Hermosa

CHUCK FERGUSON  
TOWN OF HERMOSA  
PO BOX 298  
HERMOSA, SD 57744

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst/Date
<b>Physical Properties</b>							
Electrical Conductivity	2440	µmhos/cm	1	0.153	5.00	SM 2510B	JAM 11/10/20
pH	7.64	S.U.	1			SM 4500-H+ B	JAM 11/10/20
Total Dissolved Solids	1750	mg/L	100ml	14.7	50.0	SM 2540 C	JNG 11/10/20
<b>Non-Metals</b>							
Chloride (Cl <sup>-</sup> )	123	mg/L	5	1.38	2.50	SM 4500-Cl E	BLL 11/11/20
Nitrogen, Ammonia (NH <sub>3</sub> )	22.9	mg/L	10	0.404	2.00	EPA M350.1	JNG 11/12/20
Nitrogen, Nitrate (NO <sub>3</sub> )	< 0.050	mg/L	1	0.002	0.050	SM 4500-NO <sub>3</sub> -F	BLL 11/10/20
Nitrogen, Nitrite (NO <sub>2</sub> )	< 0.050	mg/L	1	0.005	0.050	SM 4500-NO <sub>2</sub> -B	BLL 11/10/20
Phosphorus (P) Total	3.60	mg/L	10	0.031	0.100	SM 4500-P E	SAA 11/24/20
Sodium Adsorption Ratio	1.20	Ratio	1			Calculation	SCR 11/11/20
Sulfate (SO <sub>4</sub> )	957	mg/L	20	10.2	200	SM 4500-SO <sub>4</sub> -E	BLL 11/11/20
Nitrogen, Kjeldahl (TKN)	34.7	mg/L	10	0.622	5.00	EPA 351.2	GRT 11/24/20
<b>Metals - Dissolved</b>							
Calcium (Ca)	201	mg/L	9	0.887	9.00	SM 3111 B	TMS 11/10/20
Magnesium (Mg)	147	mg/L	8	0.598	3.00	SM 3111 B	TMS 11/10/20
Sodium (Na)	92.1	mg/L	3	0.410	1.50	SM 3111 B	TMS 11/10/20
<b>Bacteria</b>							
E. coli	1990	MPN/100-mL	10	10.0	10.0	SM 9223 Quanti-Tray®	JMH 11/11/20
<b>Field Test</b>							
Field Temperature	13.6	°C	1			Field Temp.	DVA 11/09/20

Approved By:

*Steve Disten*

Approved On: 11/25/2020 3:40:20 PM



**MIDCONTINENT**  
TESTING LABORATORIES, INC.

Page 1 of 1

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709  
(605) 348-0111 - www.thechemistrylab.com

Sample Site: Lagoon  
Sampled: 07/30/21 at 09:00 AM  
by Chuck Ferguson  
Sample Matrix: Water

Lab ID#: 20210730918  
Received: 07/30/21 at 09:31 AM  
by Jennifer Hill  
Account: 8471  
Town of Hermosa

CHUCK FERGUSON  
TOWN OF HERMOSA  
PO BOX 298  
HERMOSA, SD 57744

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst/Date
<b>Physical Properties</b>							
Electrical Conductivity	2120	umhos/cm	1	0.153	5.00	SM 2510B	JAM 08/02/21
Total Dissolved Solids	1560	mg/L	100ml	13.0	50.0	SM 2540 C	JNG 08/02/21
<b>Non-Metallics</b>							
Chloride (Cl-)	110	mg/L	5	0.928	2.50	SM 4500-Cl E	BLL 08/02/21
Nitrogen, Ammonia (NH3)	13.2	mg/L	5	0.202	1.00	EPA M350.1	JNG 08/06/21
Nitrogen, Nitrate (NO3)	< 0.050	mg/L	1	0.008	0.050	SM 4500-NO3 F	BLL 08/02/21
Nitrogen, Nitrite (NO2)	< 0.050	mg/L	1	0.005	0.050	SM 4500-NO2 B	BLL 08/02/21
Phosphorus (P) Total	3.47	mg/L	10	0.038	0.100	SM 4500-P E	SAA 08/10/21
Sodium Adsorption Ratio	1.15	Ratio	1			Calculation	SCR 08/03/21
Sulfate (SO4)	690	mg/L	20	9.66	200	SM 4500-SO4 E	BLL 08/02/21
Nitrogen, Kjeldahl (TKN)	20.9	mg/L	10	0.448	5.00	EPA 351.2	GRT 08/10/21
Total Nitrogen	20.9	mg/L	1			SM 4500-N	SCR 08/12/21
<b>Metals - Dissolved</b>							
Calcium (Ca)	200	mg/L	4	0.280	4.00	SM 3111 B	GRT 08/02/21
Magnesium (Mg)	125	mg/L	3	0.108	1.50	SM 3111 B	GRT 08/02/21
Sodium (Na)	83.9	mg/L	3	0.059	1.50	SM 3111 B	GRT 08/02/21
<b>Bacteria</b>							
E. coli	> 2420	MPN/100 mL	1	1.00	1.00	SM 9223 Quanti-Tray®	JMH 07/31/21
<b>Field Test</b>							
Field pH	8.42	S.U.	1			Field pH	JMH 08/02/21
Field Temperature	19.6	°C	1			Field Temp.	JMH 08/02/21

Approved By:

*Steve Disten*

Approved On: 8/12/2021 10:49:42 AM



**MIDCONTINENT**  
TESTING LABORATORIES, INC.

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2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709  
(605) 348-0111 — www.thechemistrylab.com

Sample Site: Lagoon  
Sampled: 09/07/21 at 12:00 AM  
Sample Matrix: Water

Lab ID#: 20210908901  
Received: 09/07/21 at 01:30 PM  
by Jennifer Hill  
Account: 8471  
Town of Hermosa

CHUCK FERGUSON  
TOWN OF HERMOSA  
PO BOX 298  
HERMOSA, SD 57744

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst	Date
<b>Physical Properties</b>								
Electrical Conductivity	2150	µmhos/cm	1	0.153	5.00	SM 2510B	JAM	09/09/21
Total Dissolved Solids	1660	mg/L	100ml	13.0	50.0	SM 2540 C	JNG	09/09/21
<b>Non-Metals</b>								
Chloride (Cl <sup>-</sup> )	120	mg/L	5	0.928	2.50	SM 4500-Cl E	BLL	09/09/21
Nitrogen, Ammonia (NH <sub>3</sub> )	10.7	mg/L	20	0.808	4.00	EPA M350.1	JNG	09/19/21
Nitrogen, Nitrate (NO <sub>3</sub> )	< 0.050	mg/L	1	0.009	0.050	SM 4500-NO <sub>3</sub> F	BLL	09/09/21
Nitrogen, Nitrite (NO <sub>2</sub> )	0.068	mg/L	1	0.005	0.050	SM 4500-NO <sub>2</sub> B	BLL	09/09/21
Phosphorus (P) Total	4.11	mg/L	10	0.038	0.100	SM 4500-P E	SAA	09/18/21
Sodium Adsorption Ratio	1.36	Ratio	1			Calculation	SCR	09/18/21
Sulfate (SO <sub>4</sub> )	804	mg/L	20	9.86	200	SM 4500-SO <sub>4</sub> E	BLL	09/09/21
Nitrogen, Kjeldahl (TKN)	23.5	mg/L	10	0.448	5.00	EPA 351.2	GRT	09/21/21
Total Nitrogen	23.6	mg/L	1			SM 4500-N	SCR	09/27/21
<b>Metals - Dissolved</b>								
Calcium (Ca)	209	mg/L	9	0.560	8.00	SM 3111 B	GRT	09/10/21
Magnesium (Mg)	122	mg/L	3	0.108	1.50	SM 3111 B	GRT	09/10/21
Sodium (Na)	100	mg/L	3	0.059	1.50	SM 3111 B	GRT	09/10/21
<b>Bacteria</b>								
E. coli	517	MPN/100 mL	1	1.00	1.00	SM 9223 Quanti-Tray®	JMH	09/08/21
<b>Field Test</b>								
Field pH	9.00	S.U.	1			Field pH	DVA	09/07/21
Field Temperature	28.5	°C	1			Field Temp.	GAM	09/07/21

Approved By:

*Steve Disten*

Approved On: 9/22/2021 9:57:17 AM

Hagg & Hagg, LLP  
Attorneys at Law

Brian D. Hagg

P.O. Box 750  
Rapid City, SD 57709-0750

writer's e-mail: [kenth@haggandhagg.com](mailto:kenth@haggandhagg.com)

Kent R. Hagg\*  
\*Also licensed to practice in Nebraska

Telephone 605-348-6521

August 25, 2022

Mr. Hunter Roberts, Secretary  
Department of Agriculture and Natural Resources  
Joe Foss Building  
523 E. Capitol Ave.  
Pierre, SD 57501-3182

Re: *Town of Hermosa/Request for Hearing*

Dear Secretary Roberts:

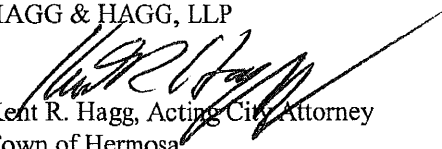
Please be advised that this law firm represents the Town of Hermosa as its City Attorney. Be further advised that the Town of Hermosa is formally requesting a hearing with regard to the Notice of Violation, Order of Compliance and Settlement Agreement issued by your office July 28, 2022. My client objects to the imposition of the penalty and will assert affirmative defenses to the same pursuant to SDCL §34A-10-10, Affirmative defense of no reasonable alternative-Burden of proof and weight of evidence. As per the above-referenced Notice of Violation, this request for hearing is provided to SDDANR within thirty days of issuance. We ask that a hearing date be scheduled accordingly. The Town does not wish to be adversarial; however, by requesting a hearing, I anticipate that further communications regarding said hearing will be with Assistant Attorney General, Ann Mines-Bailey.

The intent of this letter is also to foster and facilitate discussion between the Town of Hermosa and SDDANR which I have been directed to initiate. At its August 16, 2022 regular meeting, the Town Board of Hermosa appointed me acting City Attorney while Mitch Johnson is recovering from open heart surgery. Until said appointment, the scope of my representation of the Town of Hermosa was limited to seeking a variance for the Hwy 79 sewer line extension and certain matters related to Tax Increment Finance Districts. Upon appointment as City Attorney, I have had the opportunity to develop a better understanding of other issues between the Town of Hermosa and SDDANR. I was not aware of the July 28, 2022 Notice of Violation until just before the August 16 meeting. I believe I now have a better understanding and prospective as to SDDANR's position, and quite frankly, likely frustration, which may have contributed to the Town's perception that it has been treated unfairly in other matters.

I have been further directed to work with SDDANR to achieve a credible plan of action based on a comprehensive approach to the major issues between SDDANR and the Town. I look forward to discussing these matters with your good offices soon. It is my full intention to utilize the time between now and any scheduled hearing to achieve a settlement agreeable to both parties.

Respectfully,

HAGG & HAGG, LLP

  
Kent R. Hagg, Acting City Attorney  
Town of Hermosa

KRH/mfl

cc: Town of Hermosa  
Ann Mines-Bailey, Asst. Atty General  
Mike Boeglin, US EPA - Region 8  
Al Garcia, US EPA - Region 8