



**DANR**  
SOUTH DAKOTA

**WATER MANAGEMENT BOARD  
Meeting on December 6, 2023**

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>**

**December 6, 2023**

- 9:30 AM    Call to Order  
              Roll Call  
              Adopt Final Agenda  
              Conflicts Disclosures and Requests for State Board Waivers  
              Adopt October 4, 2023 Board Minutes  
              Set March 6 - 7, 2024 Meeting Dates and Location  
              Public comment period in accordance with SDCL 1-25-1  
              Update on DANR Activities  
              Status and Review of Water Rights Litigation  
  
              Administer Oath to Department of Agriculture and Natural Resources Staff  
  
              Consider Cancellation of a portion of Vested Water Right No. 1635-3, SD Department of  
              Game, Fish and Parks – Mark Rath  
  
              Consider Vested Water Right Claim Application No. 8783-3, Dave and Stacey Marlow –  
              Brittan Hullinger  
  
              Consider Validation of Recognized Vested Water Right Claim No. 1637-3, SD Department of  
              Game, Fish and Parks – Eric Gronlund
- 9:45 AM    Consider Water Permit Application No. 8773-3, Danny Peterson – Kim Drennon  
                    •    Comment filed by Gary Wipf concerning Application No. 8773-3  
  
              Consider Water Permit Application No. 8748-3, Van Buskirk Farms LLP – Kim Drennon  
  
              Consider Deferral Recommendation for Water Permit Application Nos. 8749-3, 8750-3, 8751-  
              3, and 8752-3, Van Buskirk Farms LLP – Eric Gronlund  
  
              Consider Deferral Recommendation for Water Permit Application Nos. 8721-3 and 8722-3,  
              Huron HBI – Eric Gronlund

# **WATER MANAGEMENT BOARD**

## **Meeting on December 6, 2023**

Consider Deferral Recommendation for Water Permit Application No. 8777-3, Poinsett  
Hutterian Brethren Inc. – Eric Gronlund

10:00 AM Consider Withdrawal of Future Use Water Permit Application No. 3980-3, City of Sioux Falls –  
Ron Duvall

### **LUNCH**

Continue any prior agenda items not yet completed.

### **ADJOURN**

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

Notice is given to individuals with disabilities that 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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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.

MINUTES OF THE 246<sup>th</sup> MEETING  
OF THE WATER MANAGEMENT BOARD  
FLOYD MATTHEW TRAINING CENTER  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
OCTOBER 4, 2023

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

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following attended the meeting:

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

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

Attorney General's Office: David McVey, Assistant Attorney General, Board counsel; Charles McGuigan, Deputy Attorney General, Water Rights Program counsel.

Legislative Oversight Committee: Representative Mike Weisgram.

Court Reporter: Carla Bachand, Capital Reporting Services, Pierre, SD.

Others: Bob Mercer, Keloland News, Ann Mines Bailey, Unified Judicial System, John Taylor, counsel for Sonstegard Food Company.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT JULY 12 AND AUGUST 2, 2023, BOARD MEETING MINUTES: Motion by Bjork, seconded by Freeman, to approve the minutes of the July 12 and August 2, 2023, Water Management Board meetings. The motion carried unanimously.

DECEMBER MEETING DATES AND LOCATION: The next meeting is scheduled for December 6 and 7, 2023, in the Matthew Training Center in Pierre.

Vice Chairman Hutmacher noted that he will not be able to attend the December meeting.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: Ann Mines Bailey who was formerly employed as Assistant Attorney General and counsel for the Water Rights

Program, stated that she enjoyed practicing before the Water Management Board. She said water is one of the state's most precious resources and she is grateful that the board members are willing to serve on the Water Management Board. Ms. Mines Bailey said through the years she has appreciated the perspectives and thoughtfulness the board has given when crafting qualifications and conditions and granting permits and denying permits, and she has always appreciated the respect and the patience the board has had with those who have appeared before them. She said it was a pleasure working with the board.

Vice Chairman Hutmacher thanked Ms. Mines Bailey and he wished her good luck in future endeavors. The other board members thanked Ms. Mines Bailey for her time and service.

UPDATE ON DANR ACTIVITIES: Eric Gronlund, Chief Engineer, Water Rights Program, reported that South Dakota is hosting the Association of Western State Engineers October 8-11, 2023, in Custer State Park. That organization is made up of 19 western states that all follow similar prior appropriations water law. The meeting is generally attended by the current and retired chief engineers or state engineers from the various states. There are currently 33 people representing 16 of the western states registered for the meeting.

Mr. Gronlund noted that it was not necessary to issue shut-off orders this irrigation season. Based on flows, streams maintained fairly well. Mr. Gronlund and Mark Rath monitored the USGS gaging stations. The two gaging stations they watched most were the Battle Creek below Hermosa and the Big Sioux River in the Castlewood area. Both of those have bypass qualifications, and it started getting close but shut-off notices were not necessary.

Water permit applications this fall have now started to taper off as the producers are focusing more on the harvest.

Staff are doing lake level surveys, dam inspections, and other field work.

Soon the annual irrigation questionnaire will be mailed to approximately 4,000 irrigation water permit/right holders.

Mr. Gronlund noted that the Water Rights Program is in the process of filling three positions.

In response to a question from Mr. Comes regarding aquifers that are at or near capacity, Mr. Gronlund stated that the observation well readings for this year show that, overall, the aquifers are down a little, but with the moisture received this year, and hopefully next spring, they should rebound.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Mr. McVey reported that there was nothing to report regarding litigation.

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 a



table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

A water right/permit can be cancelled for non-construction, abandonment, or forfeiture due to non-use of water.

Mr. Duvall presented the water rights/permits scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The Water Rights Program received no comments or letters in response to the notices of cancellation.

Division I is all of the area north of the Cheyenne River and Pennington County, Division II is all of the area south of the Cheyenne River including Pennington County, and Division III includes all of the east river area.

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

Number	Original Owner	Present Owner(s) and Other Persons Notified	Reason
<b>DIVISION II WATER PERMIT</b>			
PE 2074-2	Prairie Gardens Inc.	same	Abandonment/Forfeiture
<b>DIVISION III WATER PERMITS AND WATER RIGHTS</b>			
RT 762-3	O.L. Bussmus Farms Inc	E Tjomsland	Abandonment/Forfeiture
RT 1263-3	Eugene Flynn	Bridget Flynn	Abandonment/Forfeiture
RT 1391-3	Gosch Brothers	Willis M Sackreiter	Abandonment/Forfeiture
RT 2187-3	Dale, Kenneth, and Dean Gosch	Eddie, Ronald, and Allen Beren	Abandonment/Forfeiture
RT 2681A-3	Karen Herrold	George Herrold	Abandonment/Forfeiture
RT 2892-3	Watertown MHP, LLC	Larry Schmeling	Abandonment/Forfeiture
RT 3154-3	Kenneth B Mouw	Winifred Nabb	Abandonment/Forfeiture
RT 3240-3	Steve & Lori Sapp	Oscar Sapp	Abandonment/Forfeiture
PE 6663-3	Clark County Hwy Dept	Same	Abandonment/Forfeiture
PE 6850-3	Larry Wagner	Same	Abandonment/Forfeiture
RT 7005-3	Dairy Wise	Randall Enterprise LLC	Abandonment/Forfeiture
PE 8358-3	Sonstegard Food Company	Same	Non-construction

Motion by Freeman, seconded by Holzbauer, to cancel the 13 water rights/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 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 inquiring 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 notices.

The chief engineer recommended that the board allow the following Future Use Permits to remain in effect for an additional seven years, as listed below.

No.	Name	Amount Remaining in Reserve	Source
4673-3	City of Elk Point	378 AF	Missouri River
5875-3	City of Volga	572 AF	Big Sioux Brookings aquifer
2560-2, 2560A-2, 2560B-2	Fall River Water Users District	358 AF	Madison aquifer

Motion by Holzbauer, seconded by Bjork, 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.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 8744-2, DAKOTA BAY: David McVey reported that the Water Rights Program filed proposed Findings of Fact and Conclusions of Law.

On September 11, 2023, John Hines, counsel for the McCook Lake Recreation Area Association, filed objections and alternative Findings of Fact and Conclusions of Law.

Mr. McVey stated that, in compliance with SDCL 1-26-25, the final Findings of Fact, Conclusions of Law and Final Decision, which were prepared by Mr. McVey, address the objections with specificity.

The final Findings of Fact, Conclusions of Law, and Final Decision reject the assertions made by McCook Lake Recreation Area Association and approve Water Permit Application No. 8744-2 with the following qualifications:

1. The well approved under Water Permit No. 8744-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells

- or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Missouri: Elk Point aquifer.
  3. Water Permit No. 8744-3 authorizes a total diversion of up to 28.6 acre-feet of water the first year when use begins and then up to 7.99 acre-feet annually from the Missouri: Elk Point aquifer.

Motion by Bjork, seconded by Freeman, to adopt the final Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 8744-2, Dakota Bay. A roll call vote was taken, and the motion carried with Bjork, Freeman Holzbauer, and Hutmacher voting aye. Comes abstained.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF MCCOOK LAKE RECREATION AREA ASSOCIATION'S PETITION FOR DECLARATORY RULING: David McVey reported that the Water Rights Program filed proposed Findings of Fact and Conclusions of Law.

On September 11, 2023, John Hines, counsel for the McCook Lake Recreation Area Association, filed objections to the Findings of Fact and Conclusions of Law.

In compliance with SDCL 1-26-25, the final Findings of Fact, Conclusions of Law, and Final Decision, which were prepared by Mr. McVey, address the objections with specificity.

The final Findings of Fact, Conclusions of Law, and Final Decision rejects the assertions made by McCook Lake Recreation Area Association regarding Findings of Fact paragraph 1, notes but not adopts the assertions regarding paragraphs 19 and 25; notes but not adopts the assertions regarding Conclusions of Law paragraphs 2 and 3; and the final Findings of Fact, Conclusions of Law, and Final Decision denies the requested relief and declares that Mr. Chicoine's/Dakota Bay's canal is not an appropriation of McCook Lake water and does not require a standard or traditional permit from the board.

Motion by Freeman, seconded by Holzbauer, to adopt the final Findings of Fact, Conclusions of Law, and Final Decision in the matter of McCook Lake Recreation Area Association's petition for declaratory ruling regarding appropriative permits and shoreline alterations. A roll call vote was taken, and the motion carried with Bjork, Freeman, Holzbauer, and Hutmacher voting aye. Comes abstained.

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. 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.

Well Construction Rule Qualification

The wells authorized by Permit No. \_\_\_\_\_ 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.

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 NOS. 8221B-3 AND 8278A-3,

SONSTEGARD FOOD COMPANY: Eric Gronlund reported that Sonstegard Food Company filed applications to extend the length of time allowed for construction of works and the placement of water to beneficial use for Water Permit No. 8221B-3 and Water Permit No. 8278A-3.

SDCL 46-5-26 allows for a permit to be amended by extending the time for completion of construction or for application to beneficial use for a reasonable time, but only on account of delays due to physical or engineering difficulties which could not have been reasonable anticipated, due to operation of law beyond the power of the application to avoid, or due to other exigent circumstances identified by the Water Management Board.

Mr. Gronlund noted that the packet the board received prior to the meeting included a letter from John Taylor, the applicant's counsel, transmitting the two applications as well as explaining the reasons that construction of works was not able to be completed on time, the Chief Engineer's recommendation, and the staff report.

The two applications were reviewed, and the reports were authored by Gaibrielle Lewis who was an intern with the Water Rights Program during the summer.

Water Permit Application No. 8221A-3 appropriated 222.2 acre-feet of water at a maximum diversion rate of 1.11 cfs (500 gpm) from the Vermillion West Fork Aquifer from up to eight wells completed into the aquifer north of Parker, South Dakota in Turner County. The water is for use in an avian production facility.

The date to complete construction of works is September 23, 2024.

Water Permit Application No. 8278-3 also appropriated 222.2 acre-feet of water at a maximum diversion rate of 1.11 cfs from up to two wells in the Montrose Management Unit of the Vermillion East Fork Aquifer two miles northeast of Parker, South Dakota in Turner County. The water is for use in an avian production facility.

The date to complete construction of works was July 12, 2023. Mr. Gronlund asked the board to take note that the extension request was filed on July 5, 2023.

Mr. Gronlund stated that this production facility only needed 222.2 acre-feet of water so there is a qualification that the combined withdrawal from these sources could not exceed 222.2 acre-feet of water.

Sonstegard also has Water Permit No. 8358-3 from a different source for this facility, but they requested cancellation. The board approved cancellation of this water permit earlier in the meeting.

Sonstegard requested a five-year extension of time from the date of the letter requesting the extension, which was June 30, 2023. The Water Rights Program received the application on July 5, 2023. The reasons for the time extension request include litigation surrounding Turner County Planning and Zoning, a federal lawsuit involving the State of California regarding selling products from animals confined in a certain manner that was litigated through the 9<sup>th</sup> Circuit Court of Appeals and the U.S. Supreme Court, the Covid-19 pandemic, and the bird flu outbreak.

Mr. Gronlund stated that in the case of Water Permit No. 8221B-3, since that permit was approved, there have been no other applications filed for that aquifer.

In the case of Water Permit No. 8278A-3, since that permit was approved, one permit has been issued from the Montrose Management Unit of the aquifer, but it is located 33 miles north of this location. Therefore, the Water Rights Program does not see unlawful impairment of existing rights being an issue.

The applications were public noticed as set forth in state law, and no petition or comments were received.

The Chief Engineer recommended approval of both applications if the Water Management Board finds that the criteria in SDCL 46-5-26 have been met. The qualifications will remain the same, except for the qualification referencing Permit No. 8358-3 which has been cancelled.

John Taylor, counsel for Sonstegard Food Company, stated that he was available for questions from the board. He requested board approval of the time extension requests.

There were no questions from the board. Vice Chairman Hutmacher requested board action.

Motion by Freeman, seconded by Bjork, to approve the Application Nos. 8221B-3 and 8278A-3, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

CONSIDER FUTURE USE WATER PERMIT APPLICATION NO. 8778-3, WEB WATER DEVELOPMENT ASSOCIATION, INC.: Mark Rath reported that Future Use Water Permit Application No. 8778-3 proposes to appropriate and reserve for future use 10,000 acre-feet of water annually from the Missouri River near Mobridge, South Dakota.

WEB Water Development Association Inc. (WEB) serves users in 14 counties along the northern portion of eastern South Dakota and three counties in North Dakota.

Currently there are 19 future use permits reserving 355,201 acre-feet annually from the Missouri River. There is one future use permit for approximately 1.1 million acre-feet held by the U.S. Bureau of Reclamation for the suspended Oahe Irrigation Project that is not included in this tally. WEB currently holds Future Use Permit Nos. 2671-3, 3429-3 and 8552-3 from the Missouri River. Fifteen thousand acre-feet has been developed under these permits, and there remains 25,000 acre-feet reserved for future use. WEB provided supporting information identifying the need for the reservation as part of this application.

WEB has proposed \$82,000,000 for a Moratorium Improvements project and a proposed water treatment plant expansion project. WEB intends to install a 49.5-inch diameter raw water line and new treated water main line. The upsized main line would have the capacity to transport 53.3 million gallons of water per day, which equates to 60,000 acre-feet annually.

In response to a question from Mr. Bjork, Mr. Gronlund stated that the statute requires that any amount in excess of 10,000 acre-feet requires legislative approval, and since this application requests 10,000 acre-feet it does not require legislative approval.

In response to a question from Mr. Holzbauer regarding North Dakota, Mr. Gronlund stated that the actual future use permit is for WEB Rural Water System. The primary focus is serving people in South Dakota, but they do have connections in North Dakota. There is a specific statute in state law that allows for water to be appropriated and used out-of-state. He noted that there are a number of rural water systems serve connections outside of South Dakota. Likewise, there are some rural water systems out-of-state that serves users in South Dakota.

Mr. Bjork asked if the state has an overall plan for the use of water from the Missouri River. Mr. Gronlund answered that the DANR Division of Financial and Technical Assistance and the Board of Water and Natural Resources maintain a State Water Plan. Water projects must be included in the State Water Plan in order to receive state funding. He stated that from a water allocation aspect, when someone files an application, the Water Rights Program and the Water Management Board look at the four criteria in state law. The Missouri River is a tremendous resource which is not near being fully appropriated.

Motion by Bjork, seconded by Comes, to approve Future Use Water Permit Application No. 8778-3, WEB Water Development Association, Inc. subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

ADJOURN: Motion by Bjork, seconded by Holzbauer, to adjourn. The motion carried unanimously.

A court reporter was present, and a transcript of the proceedings may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre SD 57501, telephone number (605) 222-4235, or email [pcbachand@pie.midco.net](mailto:pcbachand@pie.midco.net).

Water Management Board  
October 4, 2023, Meeting Minutes

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

Approved December 6, 2023.

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Water Management Board

DRAFT

# WATER MANAGEMENT BOARD MEETING

## October 4, 2023

**Qualifications:**  
 wi - well interference  
 wc -wl 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
2031-1	City of Belle Fourche	Belle Fourche	BU	2.22 cfs	960 AF	1 well – Madison	wi,wc, 3 special
2032-1	Elk Creek Developers, LLC.	Rapid City	MD	0.167 cfs	30 AF	1 well – Inyan Kara	wi, 2 special
2870-2	Town of Keystone	Keystone	PE	0.078 cfs	18.48 AF	1 well – Crystalline Rock	wi, 2 special
2871-2	Kim & Deb Marcus	Crookston NE	TD	1.78 cfs	135 acres	2 wells – Ogallala	wi, wc, iq
8742-3	Larry Schmidt	Parker	TU	1.78 cfs	160 acres	1 well – Parker Centerville	wi, wc, iq, 1 special
8746-3	Mark D. Nelson	Vermillion	CL	1.78 cfs	115.89 acres	1 well – Lower Vermillion Miss	wi, wc, iq, 1 special
8747-3	Mark D. Nelson	Vermillion	CL	1.78 cfs	108.32 acres	1 well – Lower Vermillion Miss	wi, wc, iq, 1 special
8753-3	Dale G. Williams	Estelline	HM	0.67 cfs	20 acres	1 well – Big Sioux Brookings	wi, wc, iq, 1 special
8755-3	C.H. Rau	Selby	WL	4.45 cfs	246 acres	3 wells – Selby	wi, wc, iq, 1 special
8757-3	Chad Heckathorn	Elk Point	UN	0.56 cfs	42 acres	1 well – Missouri Elk Point	wi, iq
8758-3	Marvin Post	Volga	BG	1.34 cfs	247 acres	2 wells – Big Sioux Brookings/Howard	wi, iq
8759-3	Ernest Namminga	Springfield	BH	1.78 cfs	160 acres	1 well – Choteau West	wi, wc, iq
8760-3	Bottolfson Brothers	Vermillion	CL	2.22 cfs	172 acres	1 well – Lower Vermillion Miss	wi, wc, iq
8761-3	Shad Bratberg	Gayville	YA	1.78 cfs	175 acres	1 well – Missouri Elk Point	wi, wc, iq
8762-3	James D. Gunderson	Mission Hill	YA	1.78 cfs	120 acres	1 well – Lower James Miss	wi, wc, iq, 1 special
8764-3	Jonathon Geraets	Dell Rapids	MY	1.78 cfs	140 acres	1 well – Howard	wi, iq
8765-3	Barry Van Osdel	Mission Hill	YA	1.78 cfs	84 acres	1 well – Lower James Miss	wi, wc, iq, 1 special
8766-3	Kenny Chicoine	Jefferson	UN	1.78 cfs	85 acres	1 well – Missouri Elk Point	wi, iq, 1 special
8767-3	Knife River	Sioux Falls	UN	1,200 AF	Industrial	1 open pit – Big Sioux South	wi, 2 special
8769-3	Gordon Beermann	Elk Point	UN	1.78 cfs	120 acres	1 well – Missouri Elk Point	wi, iq, 1 special
8770-3	Sioux River Dairy, Inc.	Watertown	CD	0.278 cfs	56 AF	4 wells – Big Sioux: North	wi, 4 special
8771-3	County Line Dairy, LLC.	Watertown	HM	1.55 cfs	230 AF	3 wells – Big Sioux: North	wi, wc, 4 special
8772-3	Poinsett Hutterian Brethren	Estelline	HM	1.78 cfs	8.5 acres	1 well – Big Sioux Brookings	wi, wc
8775-3	Derrick Skogsberg	Benbrook TX	UN	1.78 cfs	160 acres	1 well – Lower Vermillion Miss	wi, wc, iq
8776-3	Bon Homme Hutterian Brethren	Tabor	BH	4 .0 cfs	280 acres	Missouri River	iq
8779-3	Josh Schmidt	Sioux Falls	CM	1.78 cfs	120 acres	Missouri River	iq, 2 special
8780-3	Dan or Ann Hacecky	Mission Hill	YA	1.78 cfs	100 acres	1 well – Lower James Miss	wi, wc, iq, 1 special



# WATER MANAGEMENT BOARD MEETING

## December 6, 2023

<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
<b>Water Permit Applications, Vested Right Claim and Vested Right Validation to be Considered as Scheduled</b>							
8783-3	Dave and Stacey Marlow	Redfield	SP	0.022 cfs	2.3 AF	1 well – Dakota	2 special (vested)
1637-3	SD Dept GF&P	Pierre	HD	410 AF	Jones Lake	Runoff	Special (validation)
8773-3	Danny Peterson	Hitchcock	SP	2.11 cfs	Irrigation	1 well – Niobrara	wi, wcr, iq, 1 special
8748-3	Van Buskirk Farms LLP	Hitchcock	BD	1.94 cfs	Irrigation	1 well – Niobrara	wi, wcr, iq, 1 special
8749-3	Van Buskirk Farms LLP	Hitchcock	SP	1.94 cfs	Irrigation	1 well – Niobrara	DEFERRAL
8750-3	Van Buskirk Farms LLP	Hitchcock	BD	7.77 cfs	Irrigation	4 wells – Niobrara	DEFERRAL
8751-3	Van Buskirk Farms LLP	Hitchcock	SP	14.00 cfs	Irrigation	4 wells – Niobrara	DEFERRAL
8752-3	Van Buskirk Farms LLP	Hitchcock	BD	1.94 cfs	Irrigation	1 well – Niobrara	DEFERRAL
8721-3	Huron HBI	Huron	BD	5.34 cfs	Irrigation	3 wells - Niobrara	DEFERRAL
8722-3	Huron HBI	Huron	BD	5.34 cfs	Irrigation	3 wells - Niobrara	DEFERRAL
8777-3	Poinsett Hutterian Brethren, Inc.	Estelline	HM	1.67 cfs	Irrigation	1 well – Prairie Coteau	DEFERRAL

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

2872-2	Butler Machinery Company	Fargo ND	PE	3.07 AF	Commercial	1 well – Minnekahta or Minnelusa	wi, wcr, 3 special
8781-3	City of Harrisburg	Harrisburg	LN	0.22 cfs	Irrigation	1 well – Dakota & Retention Pond	wi, wcr, iq, 1 special
8784-3	Chad Fritz	Raymond	CK	0.55 cfs	Irrigation	2 wells – Altamont	wi, iq, 1 special
8785-3	Upland Hutterian Brethren	Artesian	SA	2.15 cfs	Irrigation	Dam - James River	iq, 3 special
8786-3	Randy, Corey & Nikolas Svendsen	Yankton	YA	2.18 cfs	Irrigation	1 well – Lower James Missouri	wi, wcr, iq
8788-3	Bill Boyer	Hawarden IA	LN	1.56 cfs	Irrigation	Pattee Creek	iq, lf, 2 special
8790-3	William D. or Judy Knutson	Centerville	CL	1.78 cfs	Irrigation	1 well - Upper Vermillion Missouri South	wi, wcr, iq, 1 special
8791-3	Dan Goehring	Mound City	CA	3.56 cfs	Irrigation	1 well – Selby	wi, wcr, iq
8792-3	City of Madison	Madison	LK	0.38 cfs	Irrigation	1 well – Howard	wi, iq, 1 special

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8793-3	Brookings Municipal Utilities	Brookings	BG	4,500 AF	Future Use Reservation	Big Sioux Aurora aquifer	4 special
8794-3	Brookings Municipal Utilities	Brookings	BG	2.67 cfs	1,160 AF	1 well – Big Sioux Aurora	wi, wcr, 2 special
8795-3	Brookings Municipal Utilities	Brookings	BG	5.57 cfs	2,426 AF	3 wells – Big Sioux Aurora	wi, 2 special
8796-3	Munkvold Land & Cattle Co. Inc.	Menno	YA	3.78 cfs	Irrigation	1 well - Lower James Missouri	wi, wcr, iq
8799-3	Calvin Hanson	Meckling	CL	2.11 cfs	Irrigation	1 well - Missouri Elk Point	wi, wcr, iq



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

November 9, 2023

**NOTICE OF CANCELLATION**

TO: Secretary Kevin Robling, SD Department of Game, Fish, and Parks, 523 E Capitol Ave, Pierre SD 57501

FROM: Ron Duvall, Natural Resources Engineer  
for Eric Gronlund, Chief Engineer  
Water Rights Program

SUBJECT: Cancellation of a portion of Vested Water Right No. 1635-3

Validated Vested Water Right No. 1635-3 is for sufficient water from local drainage and Turtle Creek to maintain the Twin Lakes water level to the OHWM (ordinary high water mark). In correspondence with the Water Rights Program staff, James Gilkerson confirmed abandonment of the Turtle Creek portion of your vested water right. The Chief Engineer of the Water Rights Program is recommending cancellation of the Turtle Creek portion of Vested Water Right No. 1635-3 and cancellation of conditions in "Attachment A" pertaining to managing Turtle Creek diversions due to either abandonment or forfeiture, or both.

The Water Management Board will consider cancellation of the Turtle Creek portion of Vested Water Right No. 1635-3 at **9:30 am, Wednesday, December 6, 2023 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later)*.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel portions of, 2) delay action on, or 3) take no action on Vested Water Right No. 1635-3 based upon facts presented at the public hearing. Our records show you to be the owner of this vested 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 November 20, 2023. 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 November 20, 2023.

Prior to November 20, 2023, 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 November 20, 2023.

c: James Gilkerson, South Dakota Department of Game, Fish, and Parks

## CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally deposited a true and correct "Notice of Cancellation" dated November 9, 2023, via Inter-Office mail system to the following Water Right holder on November 9, 2023.

**Water Right No. 1635-3**

SD Department of Game, Fish, and Parks  
c/o Secretary Kevin Robling  
523 E Capitol Ave, Pierre SD 57501

Don Small

Ron Duvall  
Natural Resources Engineer-Water Rights

[illegible]

Sworn to, before me, this 9 day of November, 2023.

*R. P. Jones*

Rachel Rodriguez Notary Public  
My Commission expires May 16, 2029







**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER  
FOR VALIDATED VESTED WATER RIGHT NO. 1635-3**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Vested Water Right No. 1635-3.

The Chief Engineer is recommending cancellation of the Turtle Creek portion and applicable conditions (see Attachment A) to the above vested water right due to either abandonment or forfeiture, or both.

Ron Duvall, Natural Resources Engineer  
for Eric Gronlund, Chief Engineer  
November 9, 2023

**Note:**

Cancellation of the Turtle Creek diversion portion of Vested Water Right No. 1635-3 does not affect the remaining portion of the vested right for local runoff to maintain the OHWM of Twin Lakes.

## **ATTACHMENT A – Condition to Vested Water Right No. 1635-3, Twin Lakes**

The Twin Lakes diversion ditch and control structure is owned and managed by the Department of Game, Fish and Parks. The Department is responsible for the operation, maintenance, and security of the diversion ditch control structure located in the NW1/4 of Section 24 T115N-R65W. The lake will fill to an elevation of 1299.6 fmsl, at which point the lake will spill to the southeast into Mud Lake. It is the Department of Game, Fish, and Parks' goal to not allow Twin Lakes to overflow to Mud Lake as a direct result of the Turtle Creek diversion. In order to manage the diversion of Turtle Creek water into Twin Lakes at a level below the 1299.6 fmsl overflow elevation, the following will occur:

- 1) The Department of Game, Fish and Parks will be responsible for determining the elevation of Twin Lakes each fall.
- 2) If at that time, the water elevation of Twin Lakes is at 1295.6 fmsl or lower, the planks in the control structure will be removed to allow water to flow, when available, from Turtle Creek through the diversion ditch to Twin Lakes. The elevation of 1295.6 fmsl is 4 feet below the outlet elevation of 1299.6 fmsl.
- 3) Water level changes in Twin Lakes will be monitored each spring by the Department of Game, Fish and Parks. If the Department determines that the water level is at the elevation of approximately 1298.0 fmsl, the Department will cease the diversion from Turtle Creek.
- 4) When the planks are in the control structure, they will be placed so that the elevation of the top of the planks is at least 1,308.0 fmsl but not more than 1,310.0 fmsl.

# **CANCELLATIONS – December 6, 2023**

Number RT/PE	Present Owner(s) & Other Persons Notified	Previous Owner	County	Amount AC-FT	Use	Reason	Source	Date Notified	Letters
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## **DIVISION III WATER RIGHTS/PERMITS**

<b>VR 1635-3</b>	SD Dept GF&P	same	SP	4,500	REC	A/F	Local Drainage Turtle Creek	11/9/2023	
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### **ABBREVIATIONS**

<b>N/C = NON-CONSTRUCTION</b>	<b>A/F = ABANDONMENT OR FORFEITURE</b>	<b>A = ABANDONMENT</b>	<b>F = FORFEITURE</b>
<b>FU = FUTURE USE PERMIT</b>	<b>VR = VESTED WATER RIGHT</b>	<b>PE = WATER PERMIT</b>	<b>RT = WATER RIGHT</b>
<b>IRR = IRRIGATION</b>	<b>GEO = GEOTHERMAL</b>	<b>COM = COMMERCIAL</b>	<b>MUN = MUNICIPAL</b>
<b>INS = INSTITUTIONAL</b>	<b>GWR = GROUNDWATER REMEDIATION</b>	<b>DOM = DOMESTIC</b>	<b>REC = RECREATIONAL</b>





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**RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED  
WATER RIGHT APPLICATION NO. 8783-3, Dave and Stacey Marlow**

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 Vested Water Right Application No. 8783-3, Dave and Stacey Marlow, US Hwy 212, Redfield SD 57469.

The Chief Engineer is recommending VALIDATION of Application No. 8783-3 for up to 2.3 acre feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second because 1) water has been appropriated as described for commercial use with a priority date of August 1, 1953, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The vested water right holder shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota aquifer.
2. Vested Water Right No. 8783-3 authorizes a total annual diversion of up to 2.3 acre-feet of water.

See report on application for additional information.

Eric Gronlund, Chief Engineer  
September 21, 2023

*Report to the Chief Engineer*  
*Vested Water Right Application No. 8783-3*

*Dave & Stacy Marlow*

*14 September 2023*

Vested Right Application No. 8783-3 seeks validation of a vested water right for an appropriation of up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second (cfs) from one well completed into the Dakota aquifer located in Outlet A of the NE ¼ (Lot 2) of Section 3, T116N-R64W. The water is for commercial use at a drive-in movie theater called Pheasant City Drive-In Theatre during April 1 through September 30 of the year and has a claimed priority date of August 1, 1953. This site is located in Spink County, approximately ½ mile north of Redfield, South Dakota.

The Affidavit of Construction of Water Use System and Application of Water To Beneficial Use states the date of start of construction of water supply was July 1953 and water was first placed to beneficial use in August 1953. The original name was the Sioux Drive In according to the affidavit.

**Aquifer:** Dakota Aquifer (DKOT)

**South Dakota Codified Law (SDCL):**

**SDCL 46-6-1**

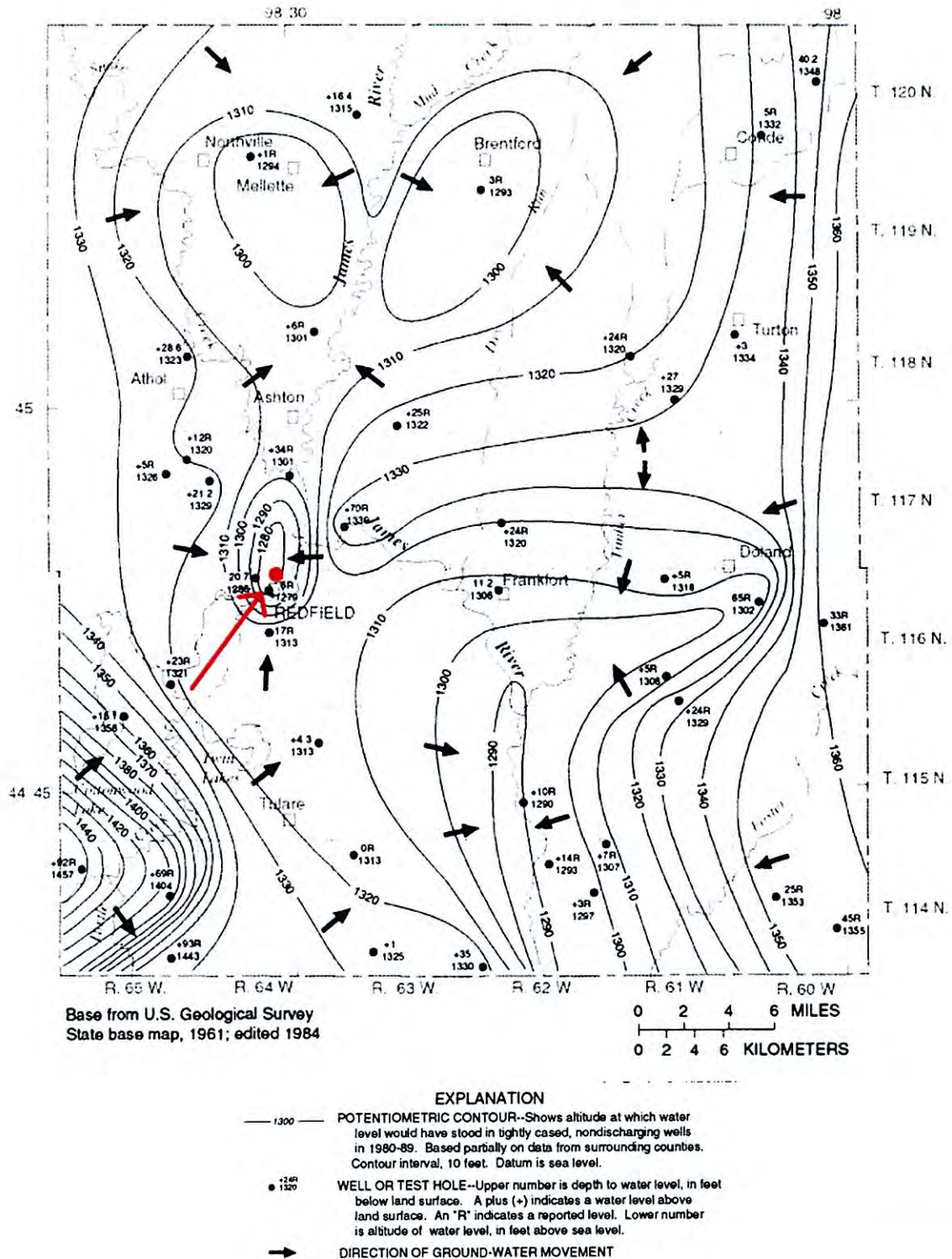
According to SDCL 46-6-1, the term ‘vested right’ as used in this report means: (1) the beneficial uses of groundwater under diversions and applications of water before February 28, 1955; and (2) the right to take and use groundwater for beneficial purposes if an owner or lawful agent was engaged in the construction of works for the actual application of water to a beneficial use on February 28, 1955, if the works are completed and water is actually applied for such use within a reasonable time after that date.

**Description of Aquifer:**

The Dakota aquifer is a bedrock aquifer which was deposited in the mid to late Cretaceous age (Fahrenbach et al., 2010), underlying approximately 66,500 square miles of the total 77,047 miles that constitute South Dakota (Schoon, 1971) including the entirety of Spink County (Hamilton and Howells, 1996). The aquifer consists of interbedded tan to white sandstone and dark-colored shale, with very fine to coarse quartz sand (Hamilton and Howells, 1996). Most formations that overlie the Dakota aquifer are nearly impermeable shales that yield little or no water. Formations that underlie the Dakota aquifer can vary in Spink County from Precambrian crystalline rocks, and in parts of western Spink County, the Skull Creek shale and the Inyan Kara Group (Hamilton and Howells, 1996; Fahrenbach et al., 2010). The thickness of the aquifer in Spink County is generally 200 to 300 feet thick but may be less in the southeastern corner of the county (Hamilton and Howells, 1996).

Potentiometric head contour maps illustrate the surface where water rises in a well, or above the well in the case of a flowing well. Potentiometric maps can indicate the direction that water travels through the aquifer, which for Spink County can be seen in Figure 1. Water moves generally westward (Bredehoeft, 1983). However, local conditions in Spink County show some flow from the east due to large withdrawals, which can create basins in the potentiometric surface (Hamilton and Howells, 1996). Note that the data for the potentiometric surface shown in Figure 1 was collected in 1980 to 1989 time period and would not reflect the shift of several large users in the area (including the City of Redfield) from using Dakota wells as their water source to using rural water systems as their primary water source in the very late 1980's and early 1990s (Water Rights, 2023c; McIntire, 2023).

There is no well completion report submitted with this vested right application. The well is presumably completed into the Dakota aquifer due to lower head pressure in the well compared to the higher head pressure found for wells completed into the Inyan Kara and other aquifers found in this area are typically non-flowing. Nearby well completion reports state that near the area of this application, water bearing material of the Dakota aquifer is located at a depth ranging from 826 to 960 feet (Water Rights, 2023d). The Dakota aquifer at this location is confined and flows at land surface at this time, at a rate of approximately 10 gallons/minute (gpm) according to the application.



**Figure 1.** Potentiometric contours of the Dakota aquifer using data from the years 1980 to 1989 (Hamilton and Howells, 1996). Development of the aquifer reduced the artesian head, creating a depression in the potentiometric surface near Redfield, SD (Hamilton and Howells, 1996). This depression can also be seen in potentiometric maps made by Bredehoeft et al. (1983) (Figure 2). The red dot indicates the approximate location of the well for this application.

### **Declining Artesian Head Pressure in Dakota Aquifer:**

The long-term decline of artesian head pressure in the Dakota aquifer over large areas of South Dakota has been a point of concern since the early 1900's. Investigations of the Dakota aquifer led to the conclusion that the decrease in artesian head pressure is indicative of withdrawals exceeding recharge. The Water Management Board has considered this issue several times and has found that declines in artesian head pressure do not automatically indicate that withdrawals have exceeded recharge to the Dakota aquifer (Water Rights, 1987).

The Water Management Board concluded that a determination cannot be made that withdrawals are exceeding recharge based solely on a decline in artesian head pressure. In theory, head pressure in the Dakota aquifer is stabilizing from discharges (e.g., uncontrolled flowing wells and natural discharge) and withdrawals (Water Rights, 1987).

In the Findings of Fact and Conclusions of Law for Application No. 5136-3, the Water Management Board concluded that "the primary reason for declines in the Dakota formation head pressure is due to water being discharged without beneficial use through uncontrolled flowing wells" (Water Rights, 1987). The Water Management Board further concluded:

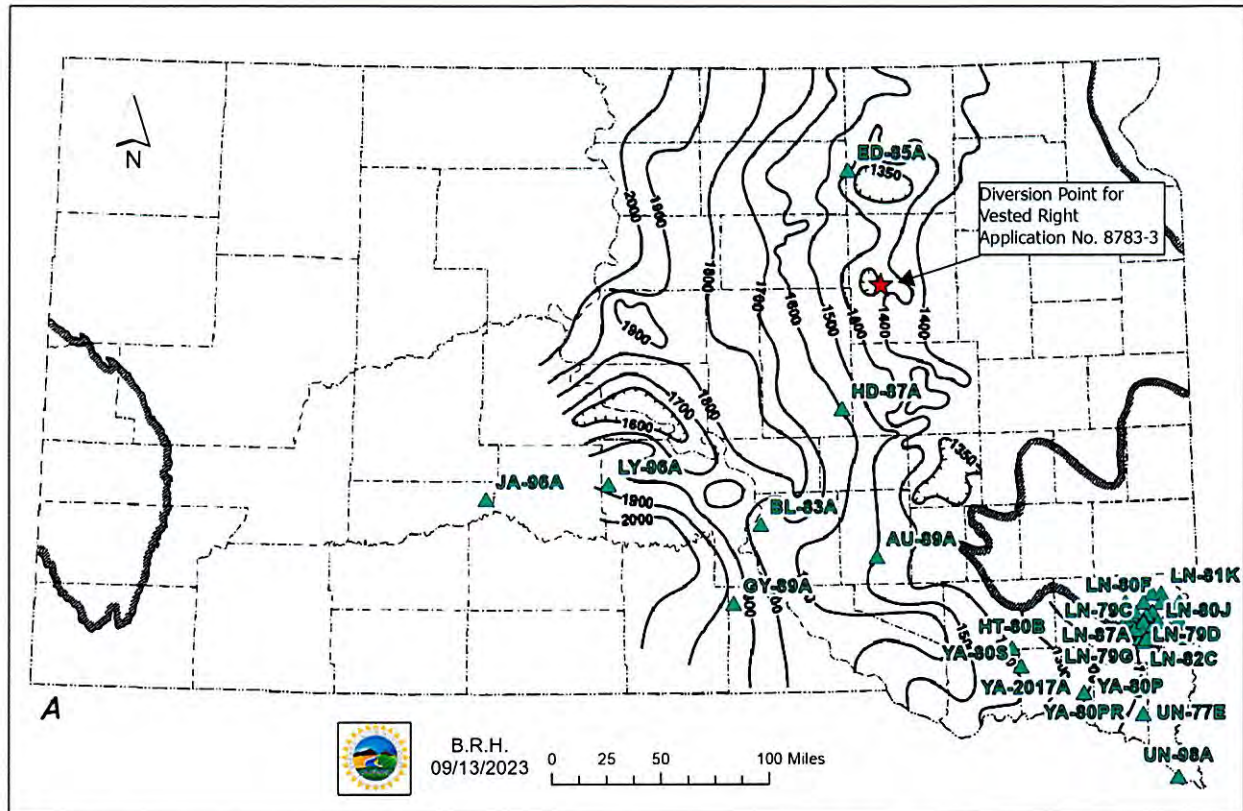
"When defining withdrawal for the purpose of interpreting the meaning of withdrawal pursuant to SDCL 46-6-3.1, there is a difference between withdrawal of water for beneficial use and water discharged without beneficial use through uncontrolled flowing wells. Water discharged from uncontrolled flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1."

Ultimately, the position of the Water Management Board has been to optimize the development of the Dakota aquifer for beneficial use.

### **Observation Well Analysis:**

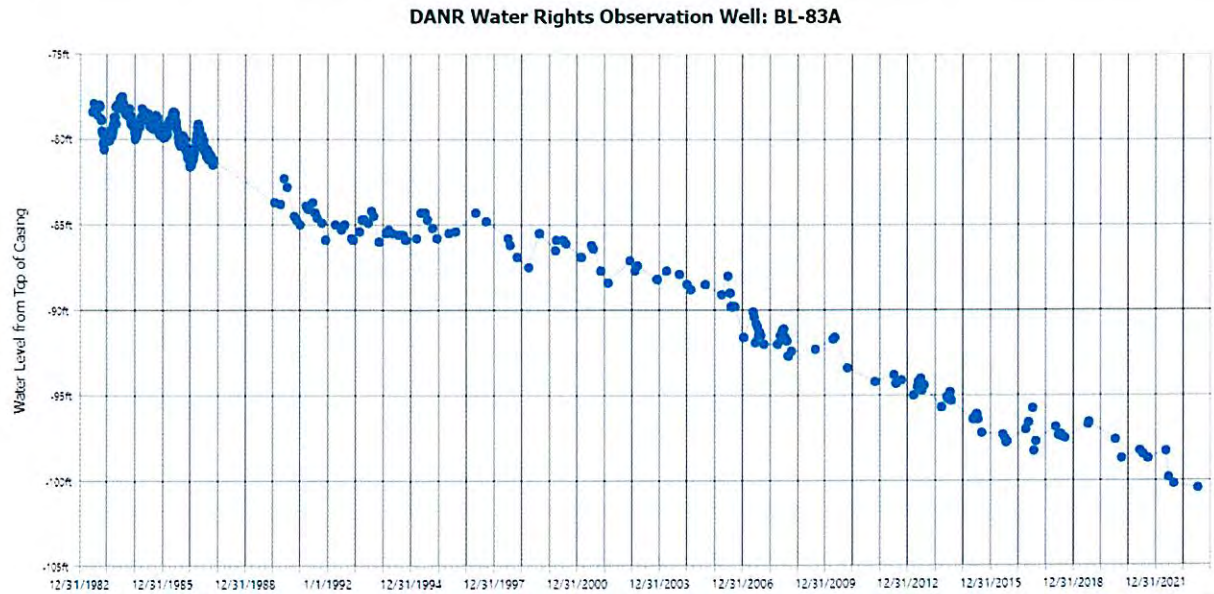
Since the well for Vested Water Right Application No. 8783-3 has been in use since August of 1953, its effect on local water levels in the Dakota aquifer has already been accounted for. Water levels for nearby observation wells illustrate recent water level trends for the Dakota aquifer. The nearest Dakota aquifer observation wells monitored by the Water Rights Program are ED-85A (located approximately 39 miles northwest), HD-87A (located approximately 42 miles southwest), and BL-83A (located approximately 88 miles southwest). Figure 2 shows the approximate location of the nearest observation wells and the approximate location of the well for this vested right application as seen on one of the Bredehoeft et al. (1983) potentiometric maps of the Dakota aquifer. Dakota aquifer observation well trends differ greatly at various locations.



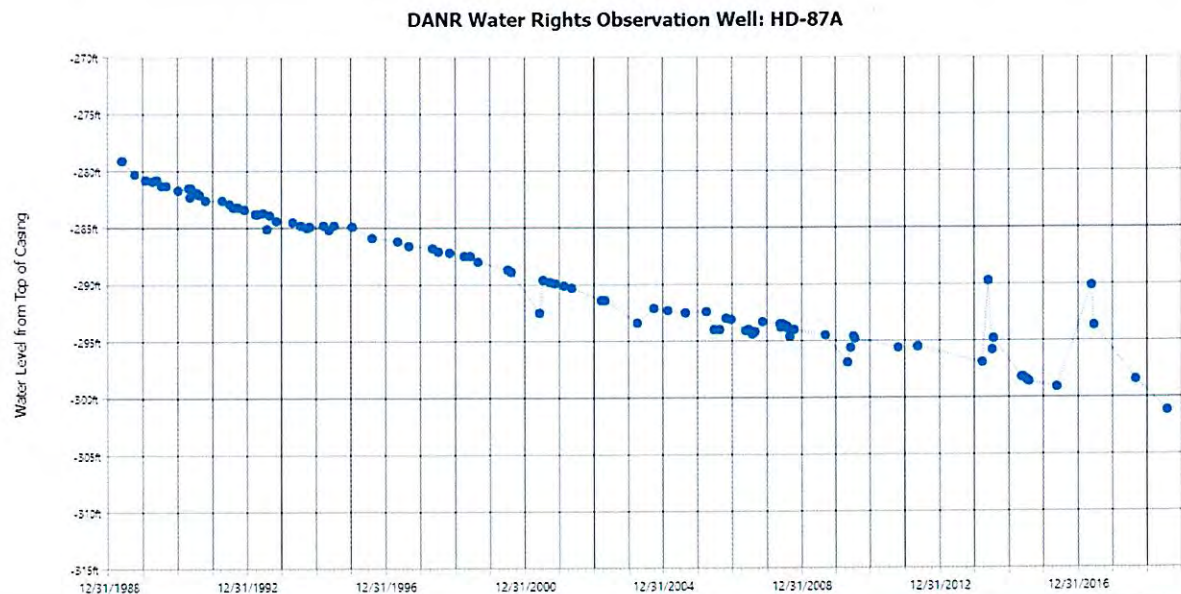


**Figure 2.** The potentiometric surface in the Dakota aquifer in South Dakota in 1915, after 34 years of development, as interpreted from well data (modified from Bredehoeft et al., 1983). The green triangles represent the approximate locations of observation wells completed into the Dakota aquifer. The red star represents the approximate location of the well for this vested right application.

Hydrographs for observation wells BL-83A and HD-87A (Figures 3 and 4) show a trend of decreasing water levels due to declining artesian head pressure but the water level is still above the aquifer materials. However, a decline in water levels in a confined aquifer does not necessarily indicate a significant decrease of water stored within the aquifer.



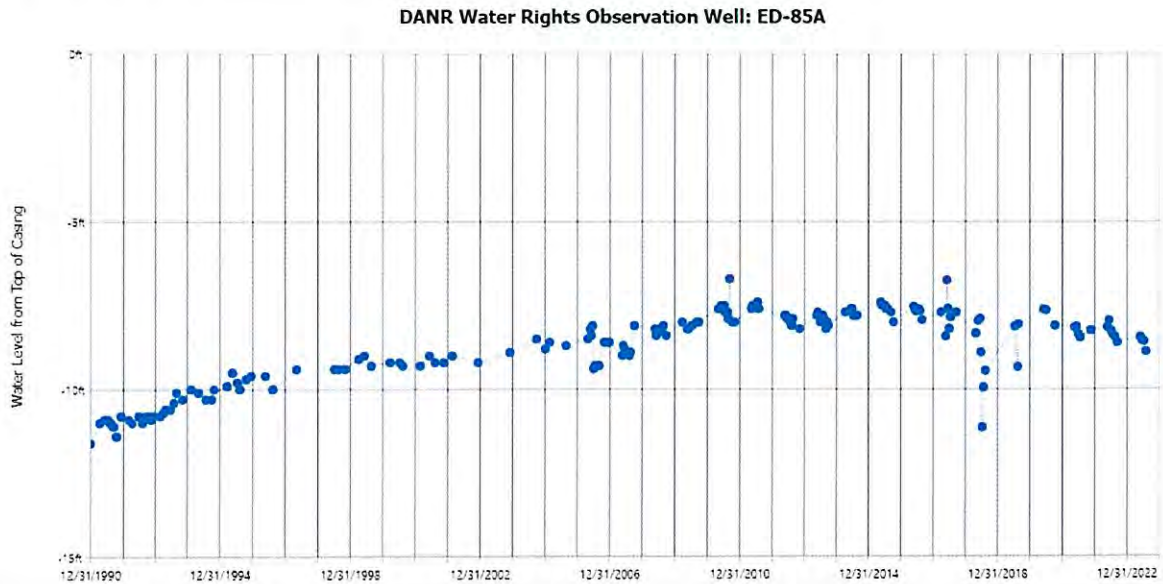
**Figure 3.** Hydrograph for observation well BL-83A (Water Rights, 2023b).



**Figure 4.** Hydrograph for observation well HD-87A (Water Rights, 2023b).



The hydrograph for observation well ED-85A (Figure 5) shows a trend in water level that has been increasing from 1991 to 2017 and recently appears to be stabilizing. An aquifer pumping test at observation well ED-85A is the cause for the drawdown in hydraulic head that occurred in 2018 (Steen, 2023).



**Figure 5.** Hydrograph for observation well ED-85A (Water Rights, 2023b).

Dakota aquifer observation wells in Union and Lincoln County show stabilizing water level trends. The potentiometric surface mapped by Bredehoeft et al. (1983) shows head pressure contours in that region which match what has been historically expected for the aquifer and has likely been less affected by pumping or loss of artesian head pressure through other discharges as described previously (Bredehoeft et al., 1983) (Figure 2). Also, the natural discharge area to the Missouri River lowers the pressure in the Dakota aquifer in the southeastern corner of the state and thus the decline in head pressure is less pronounced (Schoon, 1971).

Uncontrolled flowing wells have likely been a cause for decreasing head pressure in the aquifer (Schoon, 1971; Water Rights, 1987). Investigation of the Spink County complaint files revealed multiple instances of uncontrolled flowing wells complaints (Water Rights, 2023e). Often, small diameter wells with flows of 5 gallons per minute or less were allowed to flow especially in winter to prevent freezing (Water Rights, 2023e).

Discharge from uncontrolled flowing wells is likely to continue until artesian head pressure becomes low enough for them to stop flowing. The Water Management Board has previously made the decision to allow beneficial pumping in order to reduce the amount of water which is being wasted by the uncontrolled flowing wells.



## **Hydrologic Budget Analysis:**

The criteria set forth in SDCL 46-2A-9 regarding the availability of unappropriated water does not apply to the validation of a vested water right. However, for the Water Management Board and Chief Engineer's information, the hydrologic budget for the Dakota aquifer and the potential for unlawful impairment of existing water rights are included in this report.

### **Recharge**

Subsurface inflow to the Dakota aquifer comes primarily from fractures in the confining layers above and below the aquifer (Bredehoeft, 1983; Hamilton and Howells, 1996), particularly from higher pressure aquifers that underlie the Dakota aquifer like the Madison Group limestones and the Inyan Kara Group (Bredehoeft, 1983; Hamilton and Howells, 1996). Outcrops of the Newcastle sandstone, an equivalent and hydrologically connected sandstone, in the Black Hills absorb precipitation, but this is less likely to recharge eastern South Dakota (Bredehoeft, 1983).

Quantitative recharge rates to the Dakota aquifer are approximate estimates and it is unknown what the true recharge rate to the aquifer is. Many estimations are found for regional study areas. Bredehoeft et al. (1983) estimates approximately 79.4 cfs or 57,500 acre-feet/year of recharge to the Dakota aquifer in South Dakota. However, the Bredehoeft et al. (1983) may be an underestimation due to comparison of the Inyan Kara and Madison aquifers recharge rates in other studies that have changed significantly since the Bredehoeft study (Steen, 2023).

### **Discharge**

Discharge from the Dakota aquifer in South Dakota occurs through outflow to overlying or adjacent aquifers where the Dakota aquifer has a higher potentiometric surface, well withdrawals, uncontrolled flowing wells, and outflow through corroded well casings (Bredehoeft, 1983; Water Rights, 2023c; Water Rights, 2023d). In South Dakota, the Missouri River between Vermillion, SD and Sioux City, IA, is also a site of natural discharge (Schoon, 1971).

Currently, there are 259 water rights/permits appropriating water from the Dakota aquifer within South Dakota (Water Rights, 2023c) and two pending applications (including this application). There are an additional seven future use permits which reserve water from the Dakota aquifer in South Dakota (Water Rights, 2023c). For the purpose of estimating average annual withdrawals, the full amount of water that is reserved by these permits will be included in the hydrologic budget. The amount of reserved water for the future use permit holders is approximately 4,287 acre-feet per year.

Of the 259 Dakota aquifer water rights/permits, 21 are primarily for irrigation use. Irrigation water rights/permits have been typically required to report their annual usage on an irrigation questionnaire since 1979. For those irrigation water rights/permits that do report, average use was calculated for each of their respective periods of record and summed. Water Rights Nos. 394-3 and 762-3 are not required to submit an irrigation questionnaire, and assuming an application rate of 1 foot of water per acre per year, they collectively authorize 31.2 acre-feet/year. Water Permits Nos. 8423-3, 8510-3, 8727-3, 8560-3 have recently been issued and

annual pumping is not averaged. This is because there is too short a period of record or the well has yet to be constructed. These permits are for turf irrigation, and an application rate of 2 acre-feet/year per permitted acre will be assumed. Pending Water Permit Application No. 8781-3, if approved, will appropriate 91 acre-feet/year assuming an application rate of 2 acre-feet/year per permitted acre. The average annual appropriative irrigation use from the Dakota aquifer is approximately 764.4 acre-feet/year not including Pending Water Permit Application No. 8781-3, if approved.

Of the 259 Dakota aquifer water rights/permits, 238 are primarily for non-irrigation use. Historically, average water use by non-irrigation appropriations limited by an instantaneous diversion rate have been assumed to be pumping 60% of the time at their respective permitted diversion rate. Water rights/permits limited by an annual volume are assumed to withdraw their entire respective annual volume limitation. Water rights/permits that are authorized to withdraw from one or more aquifers are assumed to be withdrawing their entire appropriated volume from the Dakota aquifer unless a specific volume is authorized from the Dakota aquifer, in which it is assumed that they are withdrawing their full specified volume. Municipal water rights/permits that are connected to a rural water system likely maintain their wells for standby purposes and have been estimated to be zero acre-feet/year. These are standard methods used by the DANR Water Rights Program for estimating annual withdrawals by non-irrigation appropriations from an aquifer (Water Rights, 2023c). There are 6 non-irrigation water rights/permits which are required to report their respective annual use from the Dakota aquifer, but this reported volume is often less than the estimated volume methods for non-irrigation appropriations, and thus the estimated values will be used in this analysis (Water Rights, 2023c and 2023f). Collectively, the annual appropriative non-irrigation use from the Dakota aquifer in South Dakota is approximately 22,674.3 acre-feet/year.

There are domestic wells completed into the Dakota aquifer that do not require a water right/permit, so the withdrawal amount for domestic use is unknown. Due to relatively low diversion rates and the availability of rural water, withdrawals from domestic wells are not considered to be a significant portion of the hydrologic budget.

### Hydrologic Budget Summary:

The estimated average annual withdrawal rate from the Dakota aquifer is approximately 27,819 acre-feet/year (Table 1).

**Table 1.** Estimated use from the Dakota aquifer (Water Rights, 2023a and 2023c)

Type of Water Right/Permit	Estimated Use (acre-feet/year)
Future Use	4,287
Non-Irrigation	22,674.3
Irrigation	764.4
Pending Application No. 8781-3	91
Vested Right Application No. 8783-3	2.3
<b>Total</b>	<b>27,819</b>

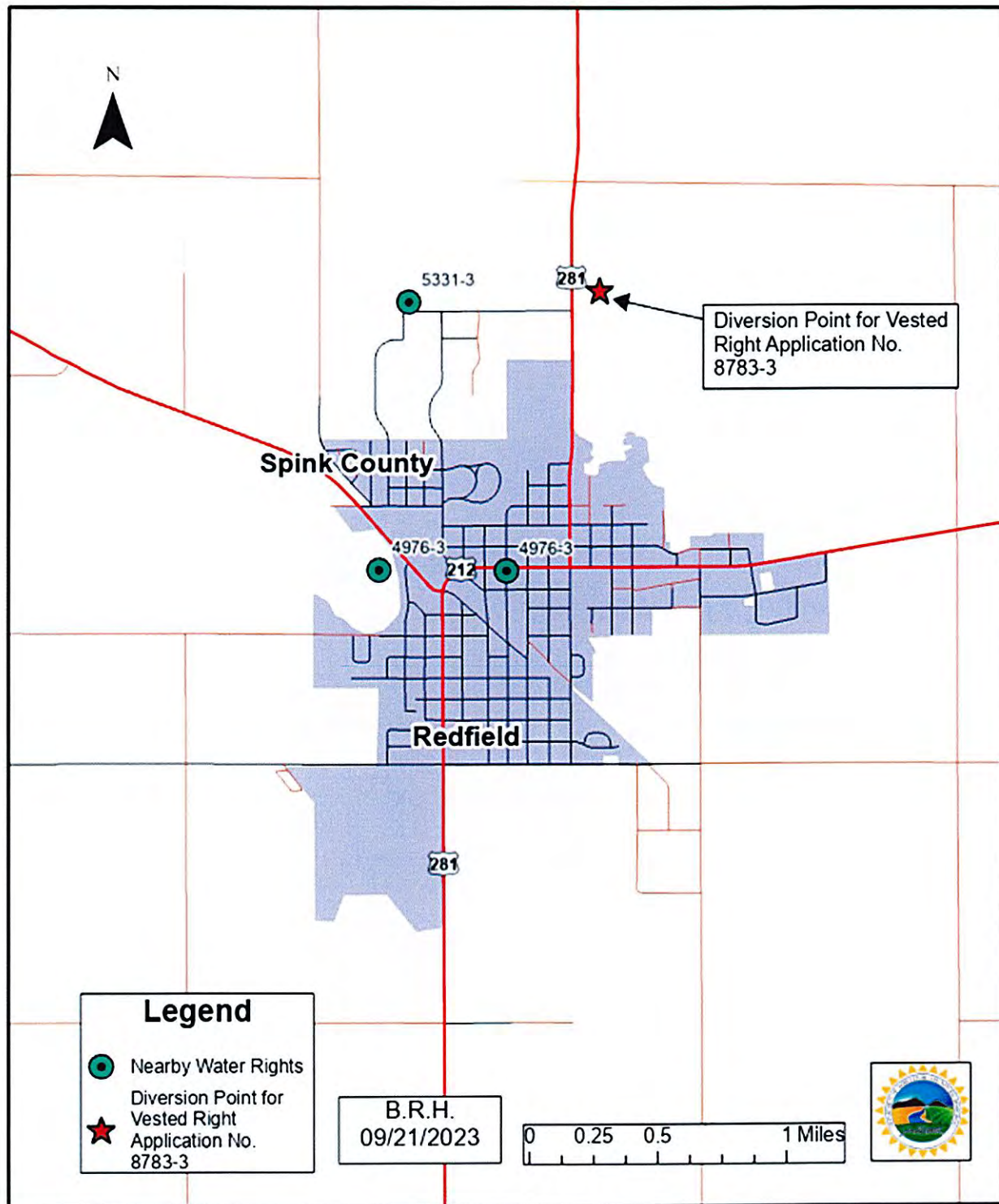
Schoon (1971) estimates the storage capacity of the Dakota aquifer to be 1.1 billion acre-feet. A reliable recharge rate for the Dakota aquifer in South Dakota is not known, thus while the aquifer is likely to provide water for the foreseeable future, it is not entirely clear whether withdrawals exceed recharge to the Dakota aquifer. Using the Bredehoeft et al. (1983) recharge estimate of 57,500 acre-feet/year, there is water available for appropriation in the Dakota aquifer. For Vested Water Right Application No. 8783-3, the availability of water is not a criterion for whether it is validated and therefore, water availability is not a concern.

## **Potential for Unlawful Impairment of Existing Water Rights:**

### **Nearby Water Rights/Permits**

There are currently 259 water rights/permits authorized to appropriate water from the Dakota aquifer, plus one other pending application for the city of Harrisburg. The closest existing water rights to the well site for this application are Water Right No. 5331-3 held by the South Dakota Development Center (located approximately  $\frac{3}{4}$  mile east) and Water Right No. 4976-3 held by the City of Redfield (two diversion points located approximately 1.5 miles southeast. Municipal Water Right No. 4976-3 has been connected to a RWS and is likely keeping the wells for standby purposes. Institutional Water Right No. 5331-3 authorizes a diversion rate of 0.9 cfs. Figure 6 shows the location of the well for this application relative to the nearby water rights. Regardless, if validated, Vested Water Right No. 8783-3 will be senior to these nearby water rights.

There are domestic wells on file with the DANR Water Rights Program that are completed into the Dakota aquifer, with the closest domestic well on file (not held by the applicant) approximately 0.03 miles west of the existing well site for this application. There could potentially be other domestic wells completed into the Dakota aquifer near the location of the existing well for this application that are not on file with the DANR Water Rights Program.



**Figure 6.** Map of well location for Vested Water Right Application No. 8783-3 and nearby existing water rights.

The Dakota aquifer is confined at the existing well site due to the fact that it is currently flowing. Drawdown created by pumping a well generally does not extend far from the pumped well in an unconfined aquifer. However, in a confined aquifer, drawdown from pumping or allowing to flow at land surface could extend a distance from the diversion point. The exact drawdown behavior of the existing well for this application cannot be known without an aquifer performance test. That being said, the Dakota aquifer has been historically impacted by pumping and primarily by uncontrolled wells, causing the artesian head pressure to decline.

Near the existing well site, the Dakota aquifer has a saturated aquifer thickness ranging from approximately 40 to 160 feet (Water Rights, 2023d). This would generally allow for enough thickness for a pump to be placed 20 feet below the top of the aquifer, which is required for the well to be considered adequate under ARSD 74:02:04:20(6). In Spink County, there are no complaints on file with the DANR Water Rights Program regarding well interference for adequate wells completed into the Dakota aquifer. There are, however, complaints concerning uncontrolled flowing wells (Water Rights, 2023e). Any drawdown as a result of the diversion for this application has not unlawfully impaired nearby adequate wells and is not expected to in the future if Vested Water Permit Application No. 8783-3 is validated since it has been in operation from 1953 to present.

The Water Management Board recognizes that putting water to beneficial use requires a certain amount of drawdown to occur. The Board has developed rules to allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure for domestic use. The Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

“A well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs.”

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use during the issuance of Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills. The Board adopted the Findings of Facts and Conclusions of Law that noted the reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, “general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable...” (Water Rights, 1995).

Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered as an unlawful impairment, it would also conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to install or lower pumps depending on the specific characteristics of the Dakota aquifer at their location. The well for this application may be in a location where the Dakota aquifer has formed a basin of low artesian head pressure where delivery of water via head pressure is not reliable.

**Special Consideration of Well Construction:**

Requirements for wells (ARSD Sections 74:02:04:20 to 74:02:04:76), apply to all wells constructed, rehabilitated, or rebuilt after July 16, 1992. The well listed with this vested right application appears to be in accordance with “Slim Hole” standards, which do not comply with present well construction standards for this use of water. All wells, except for monitoring wells, need to be adequate as is explicitly stated in ARSD 74:02:04:23.01:

“Except for monitoring wells, all wells shall be constructed to comply with the definition of an adequate well in subdivision 74:02:04:20(6).”

There are alternative well construction requirements for certain Dakota aquifer wells, as listed in ARSD 74:02:04:35, but the rule indirectly states that they cannot be used for permitted wells. Any future additional or replacement well for Vested Right Application No. 8783-3 must meet the adequate well construction standards as defined in ARSD 74:02:04:20, specifically defined in 74:02:04:20(6):

“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.”

This well was constructed in 1953 in a manner that does not allow for a pump to be placed with the casing. So, water production is dependent on the well flowing at ground surface. SDCL 46-6-6.1 provides rules and regulations for minimum construction standards for all wells in South Dakota based upon the ability of a well to produce water independent of artesian pressure. The Water Management Board has adopted well construction standards defining an adequate well as a well that allows the inlet to the pump being capable of being placed not less than 20 feet into the saturated aquifer or formation material. The well under this vested water right claim does not meet the definition of an adequate well. Therefore, reliance on flow at the ground surface may not be protected from junior appropriator diversions.

**Conclusions:**

1. The affidavit filed with this application indicates that water has been used for these purposes since August of 1953 and this application can be validated as a vested right.
2. Vested Right Application No. 8783-3 proposes to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cfs. The well is for commercial use at a drive-in movie theater and is located in Outlet A of the NE  $\frac{1}{4}$  (Lot 2) of Section 3, T116N-R64W.
3. Any replacement or additional wells for Vested Water Right No. 8783-3, if validated, must meet adequate well standards as defined in ARSD 74:02:04:20.
4. Water availability and the potential unlawful impairment of existing rights is not a consideration when validating vested water right claims but is provided in this report for the benefit of the Chief Engineer and the Water Management Board.



Brittan R. Hullinger  
Natural Resources Engineer I  
SD DANR, Water Rights Program



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



## References

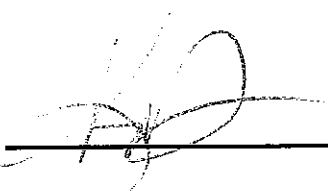
- Bredehoeft, J.D., Neuzil, C.E., and Milly, P.C.D. 1983. Regional Flow in the Dakota Aquifer: A Study of the Role of Confining Layers. Water-Supply Paper 2237. U.S. Geological Survey.
- Fahrenbach, M.D., Steece, F.V., Sawyer, J.F., et al. 2010. South Dakota Stratigraphic Correlation Chart. Oil and Gas Investigations 3. SD DANR- Geological Survey. Vermillion, SD
- Hamilton, L.J. and Howells, L.W. 1996. Water Resources of Spink County, South Dakota. Water-Resources Investigations Report 96-4056. U.S. Geological Survey. Rapid City, SD.
- McIntire, M. 2023. *Personal Communication*. DANR-Drinking Water Program Environmental Scientist. Pierre, SD.
- Schoon, R.A. 1971. Geology and Hydrogeology of the Dakota Formation in South Dakota. South Dakota Geological Survey Report of Investigations No. 104. Vermillion, SD.
- Steen, N. 2023. Report on Water Permit Application No. 8727-3. DANR- Water Rights Program. Joe Foss Building. Pierre, SD.
- Water Rights. 1987. Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 5136-3, Farmland Industries Inc. of Huron, SD. DANR-Water Rights Program file for Water Right No. 5136-3. Pierre, SD.
- Water Rights. 1995. Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of the Black Hills. DANR-Water Rights Program file for Water Right No. 2313-2. Pierre, SD.
- Water Rights. 2023a. “1979-2022 Irrigation Summaries by Aquifer” SD DANR-Water Rights Program. Joe Foss Building. Pierre, SD.
- Water Rights. 2023b. Observation Well Data. SD DANR-Water Rights Program. Joe Foss Bldg. Pierre, SD.
- Water Rights. 2023c. Water Right/Permit Files. SD DANR-Water Rights Program. Joe Foss Bldg. Pierre, SD.
- Water Rights. 2023d. Well Completion Reports. SD DANR-Water Rights Program. Joe Foss Bldg. Pierre, SD.
- Water Rights, 2023e. County Files. SD DANR-Water Rights Program. Joe Foss Bldg. Pierre, SD.
- Water Rights, 2023f. “1994-2022 Non-Irrigation Yearly Reports” SD DANR- Water Rights Program. Joe Foss Building. Pierre, SD.

Proof Of Publication

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

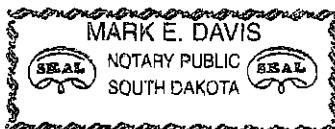
Legal Notice Number: 2248

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Dave Marlow - Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 10/25/2023. That the full amount of the fee charged for the \$81.54 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

  
Subscribed and sworn to me before this date 10/25/23.

  
Notary Public, South Dakota

My Term Expires 12/27/2024



RECEIVED

NOV 03 2023

OFFICE OF  
WATER

**NOTICE OF HEARING  
on Application  
No. 8783-3 to Validate  
a Vested Water  
Right Claim to  
Appropriate Water**

Notice is given that Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57469 has filed an application to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second from one well completed into the Dakota Aquifer located in Outlot A of the NE 1/4 (Lot 2) Section 3-T116N-R64W for commercial use at a Drive In Movie Theatre. This site is located approximately 1/2 mile north of Redfield 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 VALIDATION of Vested Water Right Application No. 8783-3 because 1) water has been appropriated as described for No. 8783-3, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. 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 9:30 AM (Central Time) on December 6, 2023, 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 November 6, 2023.

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 December 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 November 6, 2023. 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 November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by

email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. 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.

No. 2248 (adv.) Published one time at the total approximate cost of \$81.54 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).

RECEIVED

OCT 30 2023

**Affidavit of Publication**

OFFICE OF  
WATER

STATE OF SOUTH DAKOTA,  
County of Spink: ss.

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

#7114 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 25<sup>th</sup>, That Sixty-Eight and 38/100 dollars insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

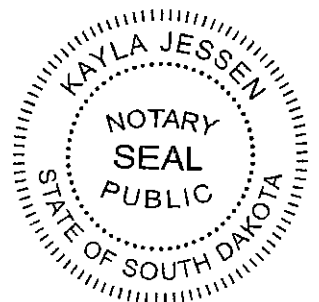
Cindy Crook

Subscribed and sworn to before me this 25<sup>th</sup>, day of October, 2023

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



## Notice of Hearing

#7114

### NOTICE OF HEARING

#### on Application No. 8783-3 to Validate a Vested Water Right Claim to Appropriate Water

Notice is given that Dave and Stacey Martow, 38928 US Hwy 212, Redfield SD 57469 has filed an application to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second from one well completed into the Dakota Aquifer located in Outlot A of the NE 1/4 (Lot 2) Section 3-T16N-R64W for commercial use at a Drive In Movie Theatre. This site is located approximately 1/2 mile north of Redfield 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 VALIDATION of Vested Water Right Application No. 8783-3 because 1) water has been appropriated as described for No. 8783-3, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. 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 9:30 AM (Central Time) on December 6, 2023, 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 November 6, 2023.

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 December 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 November 6, 2023. 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 November 6, 2023.

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Under SDCL 1-26-17(7) notices

must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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

Published once at the total approximate cost of \$68.38 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com). (Oct. 25)



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

October 27, 2023

**NOTICE OF HEARING**

TO: Kevin Robling, Secretary  
South Dakota Department of Game, Fish and Parks  
523 East Capitol Avenue  
Pierre SD 57501

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

SUBJECT: Validation of Recognized Vested Water Right Claim No. 1637-3, Jones Lake

A Notice of Intent to validate recognized Vested Water Right Claim No. 1637-3 for Jones Lake in Hand County was published in the Miller Press on June 8 and 15, 1988. The Notice was published to validate the claim for sufficient water to annually fill Jones Lake to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is lower. The Chief Engineer petitioned opposing validation of all Department of Game, Fish and Parks vested water right claims for dams, to include the spillway elevation, correct the amount of water claimed, and add any amendments and qualifications, necessary to clarify the vested right claim. Recently, Water Rights Program staff were in the Jones Lake area and surveyed the primary spillway crest elevation. Validation of the vested right claim can now proceed.

I am recommending the Water Management Board validate the recognized Vested Water Right Claim No. 1637-3 for sufficient water annually to maintain the water level to the spillway elevation of 1626.39 feet mean sea level (NAVD88). The storage at this elevation is approximately 410 acre feet of water. The recommendation is enclosed.

The Water Management Board will consider validation of Claim No. 1637-3 at 9:30 A.M. (Central Time) on December 6, 2023, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD. The agenda time is an estimate and may be delayed due to prior items on the agenda. Applicable provisions of the published notice of intent to validate Claim No. 1637-3 will still apply at this hearing.

Contact Ron Duvall or myself if you have any questions at (605-773-3352).

Enclosure

c: Charles McGuigan, Deputy Attorney General



# CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated October 27, 2023, with a recommendation regarding validation of Recognized Vested Water Right Claim No. 1637-3, was served upon the following by hand delivery on October 27, 2023.

Kevin Robling, Secretary  
South Dakota Department of Game, Fish and Parks  
523 East Capitol Avenue  
Pierre SD 57501

Above also Sent Inter-office to:

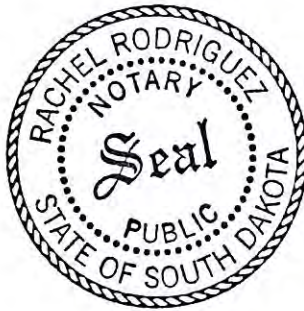
Charles McGuigan, Deputy Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

Vickie Maberry  
Vickie Maberry  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 27 day of October, 2023

R. Rodriguez  
Rachel Rodriguez  
Notary Public  
My Commission expires May 16, 2029





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER ON VALIDATION OF  
RECOGNIZED VESTED WATER RIGHT CLAIM NO. 1637-3 for JONES LAKE,  
DEPARTMENT OF GAME, FISH and PARKS**

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 validation of Recognized Vested Water Right Claim No. 1637-3, Department of Game, Fish and Parks, c/o Kevin Robling, Secretary, 523 E. Capitol Avenue, Pierre, SD.

The Chief Engineer of the Water Rights Program recommends VALIDATION of recognized Vested Water Right Claim No. 1637-3 for sufficient water to maintain the water level to the Jones Lake dam's primary spillway elevation of 1626.39 feet mean sea level (NAVD88). The vested water right will have a priority date of January 1, 1936.

This recommendation is based on the recently surveyed primary spillway elevation.

Eric Gronlund, Chief Engineer  
October 27, 2023





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8773-3, Danny Peterson**

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. 8773-3, Danny Peterson, 38984 189th Street, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8773-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well authorized by Water Permit No. 8773-3 shall be completed into the Niobrara aquifer. The well must not be completed into the Tulare:East James aquifer.
2. The well approved under Water Permit No. 8773-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The well authorized by Permit No. 8773-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer  
August 24, 2023

**NOTE:** It is strongly recommended the applicant complete a soil-water compatibility analysis to determine whether the water is suitable for irrigation or, when used for irrigation, best management practices are followed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.

**Report to the Chief Engineer on  
Water Permit Application No. 8773-3**  
Danny R. Peterson  
2023 August 18

Water Permit Application No. 8773-3 proposes to appropriate 2.11 cubic feet of water per second (cfs) from one well to be completed into the Niobrara aquifer (approximately 210 feet deep) located near the center of the NE ¼ Section 7 for irrigation of 160 acres located in the NE ¼ Section 7; all in T115N-R61W. This site is in Spink County, approximately 8 miles southeast of Frankfort, South Dakota.

**Aquifer: Niobrara (NBRR)**

*Hydrogeologic Characteristics*

The Niobrara aquifer is composed of the permeable and saturated portions of the upper-Cretaceous-aged Niobrara Formation. The Niobrara Formation is a “white to dark-gray argillaceous chalk, marl, and shale [1]” underlying most of South Dakota. Productivity in the Niobrara aquifer is mainly from secondary porosity features such as fractures, faults, and solution cavities [2]. Therefore, its characteristics range greatly from location to location, and it is typically more productive in areas where weathering to the formation has occurred. The Niobrara Formation underlies approximately 29,054 square miles (18,594,560 acres) in South Dakota east of the Missouri River, including all 1,509 square miles (965,760 acres) of Spink County [2]. Some areas of the Niobrara Formation are separated from the main body of the formation by erosional channels. This application is located in the main body. The main body of the Niobrara Formation underlies approximately 27,500 square miles (17,600,000 acres) in South Dakota east of the Missouri River, including all of Spink County [3]. The Niobrara Formation underlies the Cretaceous-aged Pierre Shale and the Quaternary-aged glacial deposits including the Tulare aquifer [4]. The Niobrara Formation directly overlies the Cretaceous-aged Carlile Shale.

The applicant submitted a test hole located in the NE ¼ NE ¼ Section 7 T115N-R61W. The driller reported encountering “good coarse sand” from 25 to 100 feet below grade, shale from 100 to 141 feet below grade and chalk from 141 to 210 feet below grade. The driller placed screen from 77 to 117 feet below grade. The static water level in the well was 21 feet below grade at the time the well was completed (June 12, 2023). Given the screen was placed in the “good coarse sand” from 77 to 100 feet below grade and not in the chalk, this test well is actually completed into the Tulare aquifer, the water level encountered in this well is not representative of the Niobrara aquifer in this location. However, the well does provide a log of the geology in the area. If this application is approved, the well must be completed into the Niobrara aquifer. Based on this test hole and available information on the bedrock in this area, the Pierre Shale separates the Tulare aquifer and the Niobrara aquifer near this application [5] [6].

**Applicable South Dakota Codified Law (SDCL)**

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued if there is reasonable probability that there is unappropriated water available for the applicant’s proposed use, that the proposed diversion can be developed without unlawful impairment of existing domestic water

uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, no application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The applicant is not a water distribution system as defined in SDCL 46-1-6(17) and the Niobrara aquifer is younger and stratigraphically higher than the Greenhorn Formation. Therefore, the Water Management Board must find that recharge to the aquifer exceeds withdrawals to approve this application.

### **Availability of Water**

#### *Hydrologic Budget*

##### Recharge to the Main Body

Recharge to the Niobrara aquifer likely occurs by inflow from aquifers in contact with the Niobrara when the hydraulic head is higher in the other aquifers than in the Niobrara aquifer. No estimate of the recharge to the Niobrara aquifer is available due to the extreme variability of aquifer characteristics across South Dakota. Observation well water levels in the Niobrara aquifer indicate that recharge exceeds withdrawals in the aquifer [7].

##### Discharge from the Main Body

Discharge from the Niobrara aquifer is likely by groundwater outflow to aquifers in contact with the Niobrara aquifer when the hydraulic head in the Niobrara aquifer is higher than that of the other aquifers and by withdrawals from domestic and appropriative wells [4]. There are 31 water rights/permits appropriating water from the main body of the Niobrara aquifer [8] [3]. Of those, 12 are for irrigation, seven are for commercial use, six for municipal use, four for institutional use, and one each for industrial use and fish and wildlife propagation. There are also two water permit applications, Nos. 8721-3 and 8722-3, proposing to appropriate a total of 10.70 cfs to irrigate a total of 960 acres in Beadle County. If those applications are approved, they will have senior priority to this application.

The average irrigation reported in the main body of the Niobrara aquifer over the period of record from 1979 through 2022 is 373 acre-feet per year (ac-ft/yr) [9]. There is one irrigation permit, No. 8678-3, which is too new to have reported any irrigation. That permit is estimated to apply 10 inches of water per acre over its 300 acres, for an estimated annual withdrawal of 250 ac-ft/yr. Using the same method for Water Permit Application Nos. 8721-3 and 8722-3, those permits are estimated to withdraw 800 ac-ft/yr. Figure 1 shows the irrigation reported in the main body of the Niobrara aquifer over the period of record (1979 -2022) [9]. Of the non-irrigation water rights/permits, Water Right Nos. 4278-3, 4121A-3, 4264A-3, and 4264B-3 are held by municipalities that purchase their water from another water distribution system [10] [11], so are



assumed to withdraw a negligible amount of water for the hydrologic budget. There are two non-irrigation water rights/permits required to report their annual withdrawal but are still developing their permits. Those permits are assumed to withdraw the maximum volume limit listed on their permit, for a combined withdrawal of 227 ac-ft/yr. The remaining 13 non-irrigation water rights/permits are assumed to withdraw at their maximum licensed or permitted diversion rate 60% of the time, for an estimated combined average annual withdrawal rate of 705 ac-ft/yr.

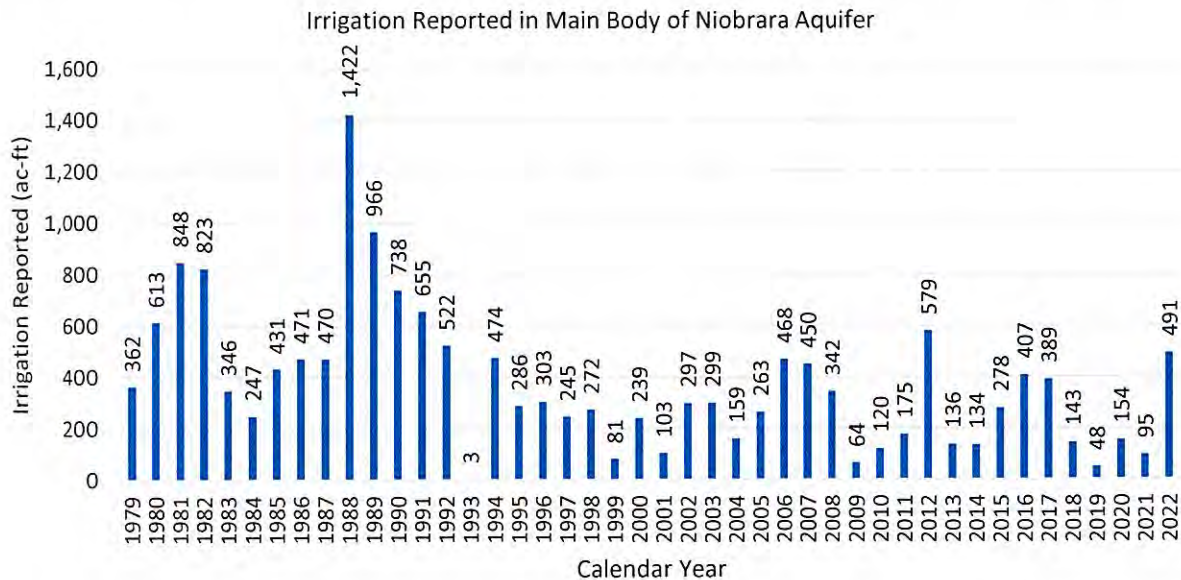


Figure 1: Irrigation reported in the main body of the Niobrara aquifer [6]

#### Summary of Hydrologic Budget of the Main Body

There is no estimate available for the recharge to the Niobrara aquifer due to its highly variable aquifer characteristics. The estimated average annual withdrawal from the main body of the Niobrara aquifer, including pending applications, is 2,355 ac-ft/yr. Using the same method for this application as for other permits and applications not yet reporting irrigation, the estimated average annual withdrawal would be 133 ac-ft/yr, for a total estimated withdrawal of approximately 2,488 ac-ft/yr from the main body of the Niobrara aquifer. By dividing the estimated 2,488 ac-ft/yr of withdrawal by the 17,600,000 acres of the main body of the Niobrara formation, the recharge to the formation would have to exceed 0.0017 inches per acre for recharge to exceed withdrawals. Therefore, based on the hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 1: Summary of estimated withdrawals from the main body of the Niobrara aquifer

Type	Number	Est. Withdrawal (ac-ft/yr)
Irrigation, reporting	11	373
Irrigation, too new to report	1	250
Non-irrigation, Standby	4	0
Non-irrigation, Volume	2	227
Non-irrigation, Sixty percent	13	705
<i>Subtotal, authorized to withdraw</i>	<i>31</i>	<i>1,555</i>
Pending applications senior to this	2	800
<b>Grand total</b>	<b>33</b>	<b>2,355</b>

#### Spink County Hydrologic Budget

Because the Niobrara aquifer has highly variable aquifer characteristics, it is appropriate to consider a more localized hydrologic budget. Lacking distinctive hydrogeological boundaries smaller than the extent of the main body of the aquifer, a hydrologic budget concerning only the area of Spink County is considered. There are no water rights/permits authorized to withdraw from the Niobrara aquifer in Spink County. Dividing the 133 ac-ft/yr of estimated annual use from this application over the 965,760 acres of Niobrara aquifer in Beadle County, the required recharge to exceed withdrawals is 0.0016 inches per acre per year.

#### *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 the availability of unappropriated water. The Water Rights Program maintains 59 observation wells completed into the Niobrara aquifer, 38 of which are completed into the main body of the aquifer [7] [3]. The nearest observation well completed into the Niobrara aquifer to this application is SP-77D, located approximately 10 miles northwest of the proposed well for this application [7]. Figure 2 shows water level elevations in Observation Well SP-77D [7]. Water levels in observation wells completed into the main body of the Niobrara aquifer all have stable or increasing trends. Observation Well SP-77D is representative of the general behavior of the Niobrara aquifer, although at the distance from the proposed well site, it does not reflect changes that would be specific to the area of this application. In general water levels rise during periods of higher-than-average precipitation and decline during periods of lower-than-average precipitation. The fluctuation due to natural influences indicates water is naturally discharged from the Niobrara aquifer. The Water Management Board historically has considered natural discharge to be available for capture. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available in the Niobrara aquifer for this application.

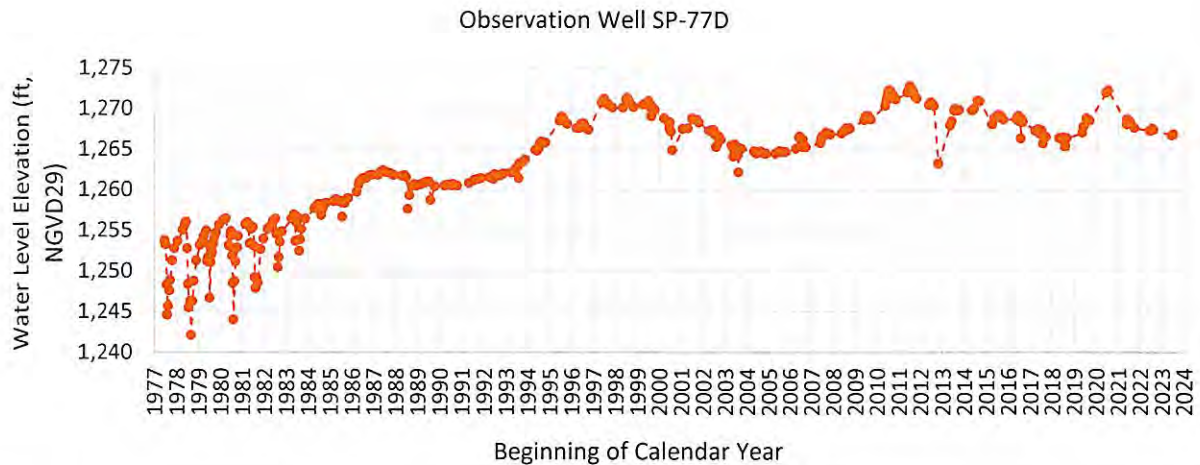


Figure 2: Water level elevations in Observation Well SP-77D [7]

### Possibility of Unlawful Impairment of Existing Water Rights

The nearest water right/permit to this application that is completed into the Niobrara aquifer is Water Permit No. 8678-3, located approximately 14 miles south of the proposed well for this application [8]. There are no wells on file with the Water Rights Program that are likely to be completed into the Niobrara aquifer within three miles of this application, although some may exist that predate requirements to submit well completion reports to the Water Rights Program [12]. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) defines an adequate well as:

*...a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet*

If this application is approved, some drawdown in the aquifer will occur in the proximity of the pumping well. There are no complaints concerning unlawful impairment of existing water rights in the Niobrara aquifer in Spink County [13]. If this application is approved, the applicant should control their withdrawals so that an unlawful impairment of adequate wells does not occur. Based on the distance of the proposed well to the nearest water right, and lack of complaints concerning well interference in the Niobrara aquifer on file in Spink County, there is reasonable probability this application can be developed without unlawful impairment of existing water rights.



**Special Consideration – Suitability for Irrigation**

In a letter to the holder of Cancelled Water Permit No. 1286-3 dated November 27, 1978, Chief Engineer Hatch indicated the permit holder had abandoned use of that irrigation permit because the water was ruining his land [8]. Hamilton and Howells [14] indicate “The large sodium concentration in the Niobrara aquifer makes the water unsuitable for irrigation use.” It is recommended the applicant complete a soil-water compatibility analysis by a qualified soil scientist to determine whether the water is suitable for irrigation, or when used for irrigation, what best management practices are needed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.

**Conclusions**

1. Water Permit Application No. 8773-3 proposes to appropriate 2.11 cfs from one well to be completed into the Niobrara aquifer located near the center of the NE ¼ Section 7 for irrigation of 160 acres located in the NE ¼ Section 7; all in T115N-R61W.
2. Based on the hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available for this application.
3. There is reasonable probability this application can be developed without unlawful impairment of existing rights.



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

**References**

- [1] 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.
- [2] L. S. Hedges, S. L. Burch, D. L. Iles, R. A. Barari and R. A. Schoon, "Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa Tasks 1-4," SD DANR Geological Survey Program, Vermillion, South Dakota, 1982.
- [3] N. Steen and A. Mathiowetz, "Report to the Chief Engineer on Water Permit Application No. 8624-3," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [4] L. W. Howells and J. C. Stephens, "Geology and Water Resources of Beadle County South Dakota Part II: Water Resources," SD DANR Geological Survey Program, Vermillion, South Dakota, 1968. Bulletin 18.

- [5] D. W. Tomhave and L. D. Schulz, "Bedrock geologic map showing configuration of the bedrock surface in South Dakota east of the Missouri River," DANR Geological Survey Program, Vermillion, SD, 2004. General Map 9.
- [6] SD DANR Geological Survey Program, "Lithologic Logs," Vermillion, South Dakota, 2022.
- [7] SD DANR Water Rights Program, "Observation Wells," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [8] SD DANR Water Rights Program, "Water Right Permit Files," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [9] SD DANR Water Rights Program, "Irrigation reports," Joe Foss Bldg., Pierre, South Dakota, 2022.
- [10] SD DANR Drinking Water Program, "Drinking Water Reports," SD DANR Drinking Water Program, Pierre, South Dakota, 2021.
- [11] B. Friedeman, Interviewee, *Environmental Scientist II, SD DANR Drinking Water Program*. [Interview]. 9 February 2021.
- [12] SD DANR Water Rights Program, "Well Completion Reports," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [13] SD DANR Water Rights Program, *County Files*, Pierre, South Dakota: SD DANR Water Rights Program, 2023.
- [14] L. J. Hamilton and L. W. Howells, "Water Resources of Spink County, South Dakota," United States Geological Survey, Rapid City, South Dakota, 1996. Water-Resources Investigations Report 96-4056.



**Gronlund, Eric**

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**From:** Gary Wipf <deerefever8120@gmail.com>  
**Sent:** Wednesday, November 8, 2023 9:48 AM  
**To:** Gronlund, Eric  
**Subject:** [EXT] Dan Peterson water permit

Please regard the petition I sent pertaining to the Dan Peterson water permit application as a comment. Thanks

Gary

Sent from my iPad



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NOV 06 2023

OFFICE OF  
WATER

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. 8773-3 Name of Applicant Danny R. Peterson  
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.**

My farm currently has four irrigation permits in the immediate vicinity of this application. My permits are from the Tulare East James Aquifer. I have concern as this is an unprecedented practice and may cause harm to my farming operation.

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

- This permit is requesting to pull water from an area considered fully appropriated.
- This permit is requesting approval for an unprecedented practice in pulling water from Niobrara Aquifer.
- I have concerns as this practice may have an effect on my current permits water source quality and quantity.
- It was previously thought the water from the Niobrara Aquifer was unfit for farming practices, is this true?
- Will this water, if found to be inadequate for farming, possibly have an effect on the soil quality surrounding this area?

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

First Name: Gary Last Name: Wipf  
Mailing Address: 17801 401<sup>st</sup> Ave  
City: Frankfort State: SD Zip: 57440

**Optional contact information.** Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**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. 8773-3

Petitioner's Name Gary D. Wipf

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

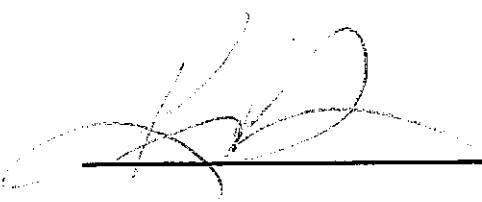
- Who will monitor the well drilling and the water testing?
- What will be done to ensure water source is 100% of the Niobrara Aquifer only?
- Is there enough safe guards in place to protect the shallower aquifer from contamination or leaching of the Niobrara?
- If this permit is approved, monitored, and later found to be a detriment to the shallower aquifer or surrounding permits and soil, what will be done to resolve the matter?

Proof Of Publication

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

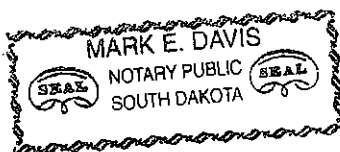
Legal Notice Number: 2244

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Danny Peterson – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 10/25/2023. That the full amount of the fee charged for the \$79.50 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

  
Subscribed and sworn to me before this date 10/25/23.

  
Notary Public, South Dakota

My Term Expires 12/27/2024



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NOV 03 2023

OFFICE OF  
WATER



**NOTICE OF HEARING  
on Application  
No. 8773-3 to  
Appropriate Water**

Notice is given that Danny R. Peterson, 38984 189th Street, Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.11 cubic feet of water per second from one well to be completed into the Niobrara Aquifer (approximately 210 feet deep) located near the center of the NE 1/4 Section 7 for irrigation of 160 acres located in the NE 1/4 Section 7; all in T115N-R61W. This site is located approximately 6 miles southeast of Frankfort 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. 8773-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with the qualifications, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at

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 December 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 November 6, 2023. 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 November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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.

the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:45 AM (Central Time) on December 6, 2023, 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 November 6, 2023.

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

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 November 6, 2023. 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.

No. 2244 (adv.) Published one time at the total approximate cost of \$79.50 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).

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OCT 30 2023

OFFICE OF  
WATER

## Affidavit of Publication

STATE OF SOUTH DAKOTA,  
County of Spink: ss.

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

### #7113 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 25<sup>th</sup>, That Sixty-Eight and 38/100 dollars insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

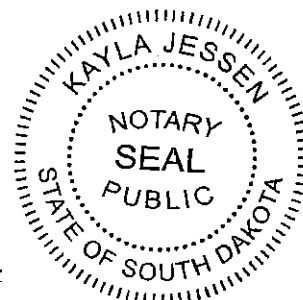
Cindy Crook

Subscribed and sworn to before me this 25<sup>th</sup>, day of October, 2023

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



## Notice of Hearing

#7113

### NOTICE OF HEARING on Application No. 8773-3 to Appropriate Water

Notice is given that Danny R. Peterson, 38984 189th Street, Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.11 cubic feet of water per second from one well to be completed into the Niobrara Aquifer (approximately 210 feet deep) located near the center of the NE 1/4 Section 7 for irrigation of 160 acres located in the NE 1/4 Section 7; all in T115N-R61W. This site is located approximately 8 miles southeast of Frankfort 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. 8773-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duval 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 December 6, 2023, 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 November 6, 2023.

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 December 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 November 6, 2023. 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 November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8748-3, Van Buskirk Farms LLP**

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. 8748-3, Van Buskirk Farms LLP, PO Box 98, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8748-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well authorized by Water Permit No. 8748-3 shall be completed into the Niobrara aquifer. The well must not be completed into the Tulare:Western Spink Hitchcock aquifer.
2. The well approved under Water Permit No. 8748-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The well authorized by Permit No. 8748-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer  
September 5, 2023

**NOTE:** As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation due to the water's high sodium adsorption ratio. The applicant is encouraged to consult with a qualified soil scientist to complete a soil-water compatibility analysis to determine whether the water is suitable for irrigation or, when used for irrigation, best management practices are followed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.





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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8749-3, Van Buskirk Farms LLP**

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. 8749-3, Van Buskirk Farms LLP, PO Box 98, Hitchcock SD 57348.

The Chief Engineer is recommending DEFERRAL of Application No. 8749-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8749-3 is to allow time for Van Buskirk Farms LLP to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

See report for further information.

Eric Gronlund, Chief Engineer  
September 5, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test. To discuss the requirements and recommendations for an aquifer performance test, please contact Adam Mathiowetz at (605) 773-3352.

As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation due the water's high sodium adsorption ratio. If this application proceeds and receives a favorable recommendation, the applicant is encouraged to consult with a qualified soil scientist to complete a soil-water compatibility analysis to determine whether the water is suitable for irrigation or, when used for irrigation, best management practices are followed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8750-3, Van Buskirk Farms LLP**

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. 8750-3, Van Buskirk Farms LLP, PO Box 98, Hitchcock SD 57348.

The Chief Engineer is recommending DEFERRAL of Application No. 8750-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8750-3 is to allow time for Van Buskirk Farms LLP to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

See report for further information.

Eric Gronlund, Chief Engineer  
September 5, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test. To discuss the requirements and recommendations for an aquifer performance test, please contact Adam Mathiowetz at (605) 773-3352.

As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation due the water's high sodium adsorption ratio. If this application proceeds and receives a favorable recommendation, the applicant is encouraged to consult with a qualified soil scientist to complete a soil-water compatibility analysis to determine whether the water is suitable for irrigation or, when used for irrigation, best management practices are followed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.





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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8751-3, Van Buskirk Farms LLP**

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. 8751-3, Van Buskirk Farms LLP, PO Box 98, Hitchcock SD 57348.

The Chief Engineer is recommending DEFERRAL of Application No. 8751-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8751-3 is to allow time for Van Buskirk Farms LLP to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

See report for further information.

Eric Gronlund, Chief Engineer  
September 5, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test. To discuss the requirements and recommendations for an aquifer performance test, please contact Adam Mathiowetz at (605) 773-3352.

As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation due the water's high sodium adsorption ratio. If this application proceeds and receives a favorable recommendation, the applicant is encouraged to consult with a qualified soil scientist to complete a soil-water compatibility analysis to determine whether the water is suitable for irrigation or, when used for irrigation, best management practices are followed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8752-3, Van Buskirk Farms LLP**

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. 8752-3, Van Buskirk Farms LLP, PO Box 98, Hitchcock SD 57348.

The Chief Engineer is recommending DEFERRAL of Application No. 8752-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8752-3 is to allow time for Van Buskirk Farms LLP to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

See report for further information.

Eric Gronlund, Chief Engineer  
September 5, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test. To discuss the requirements and recommendations for an aquifer performance test, please contact Adam Mathiowetz at (605) 773-3352.

As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation due to the water's high sodium adsorption ratio. If this application proceeds and receives a favorable recommendation, the applicant is encouraged to consult with a qualified soil scientist to complete a soil-water compatibility analysis to determine whether the water is suitable for irrigation or, when used for irrigation, best management practices are followed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.

**Report to the Chief Engineer on Water Permit Application Nos.  
8748-3, 8749-3, 8750-3, 8751-3, and 8752-3  
Van Buskirk Farms, LLP  
2023 August 23**

Water Permit Application No. 8748-3 proposes to appropriate 1.94 cubic feet of water per second (cfs) from one well to be completed into the Niobrara aquifer (approximately 207 feet deep) located in the approximate center of the NE  $\frac{1}{4}$  Section 36 for irrigation of 136 acres located in the NE  $\frac{1}{4}$  Section 36; all in T113N-R64W. This application site is in Beadle County approximately 6 miles south-southwest of Hitchcock, South Dakota.

Water Permit Application No. 8749-3 proposes to appropriate 1.94 cfs from one well to be completed into the Niobrara aquifer located in the approximate center of the NW  $\frac{1}{4}$  Section 33 for irrigation of 136 acres located in the NW  $\frac{1}{4}$  Section 33; all in T114N-R63W. This application site is in Spink County approximately 0.8 miles north of Hitchcock.

Water Permit Application No. 8750-3 proposes to appropriate 7.77 cfs from four wells to be completed into the Niobrara aquifer located in the approximate centers of the SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  Section 4 and NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  Section 5 for irrigation of 544 acres located in the S  $\frac{1}{2}$  Section 4 and E  $\frac{1}{2}$  Section 5; all in T113N-R63W. This application site is in Beadle County on the south edge of Hitchcock and approximately 0.5 miles west of Hitchcock.

Water Permit Application No. 8751-3 proposes to appropriate 14.0 cfs from four wells to be completed into the Niobrara aquifer located in the approximate centers of the NW  $\frac{1}{4}$  Section 32, Center of Section 31, SW  $\frac{1}{4}$  Section 30; all in T114N-R63W and the center of the NE  $\frac{1}{4}$  Section 36-T114N-R64W for irrigation of 982 acres located in the NW  $\frac{1}{4}$  Section 32, Section 31, SW  $\frac{1}{4}$  Section 30; all in T114N-R63W and the NE  $\frac{1}{4}$  Section 36-T114N-R64W. This application site is in Spink County between approximately 1.5 and 2.5 miles west-northwest of Hitchcock.

Water Permit Application No. 8752-3 proposes to appropriate 1.94 cfs from one well to be completed into the Niobrara aquifer located in the approximate center of the NE  $\frac{1}{4}$  Section 7 for irrigation of 136 acres located in the NE  $\frac{1}{4}$  Section 7; all in T113N-R63W. This application site is in Beadle County approximately 2 miles west-southwest of Hitchcock.

The locations of the proposed wells for all these applications are mapped in Figure 1. In total, these five applications propose to appropriate 27.59 cfs to irrigate 1,934 acres in Spink and Beadle Counties.



Report on Water Permit App. Nos. 8748-3 through 8752-3

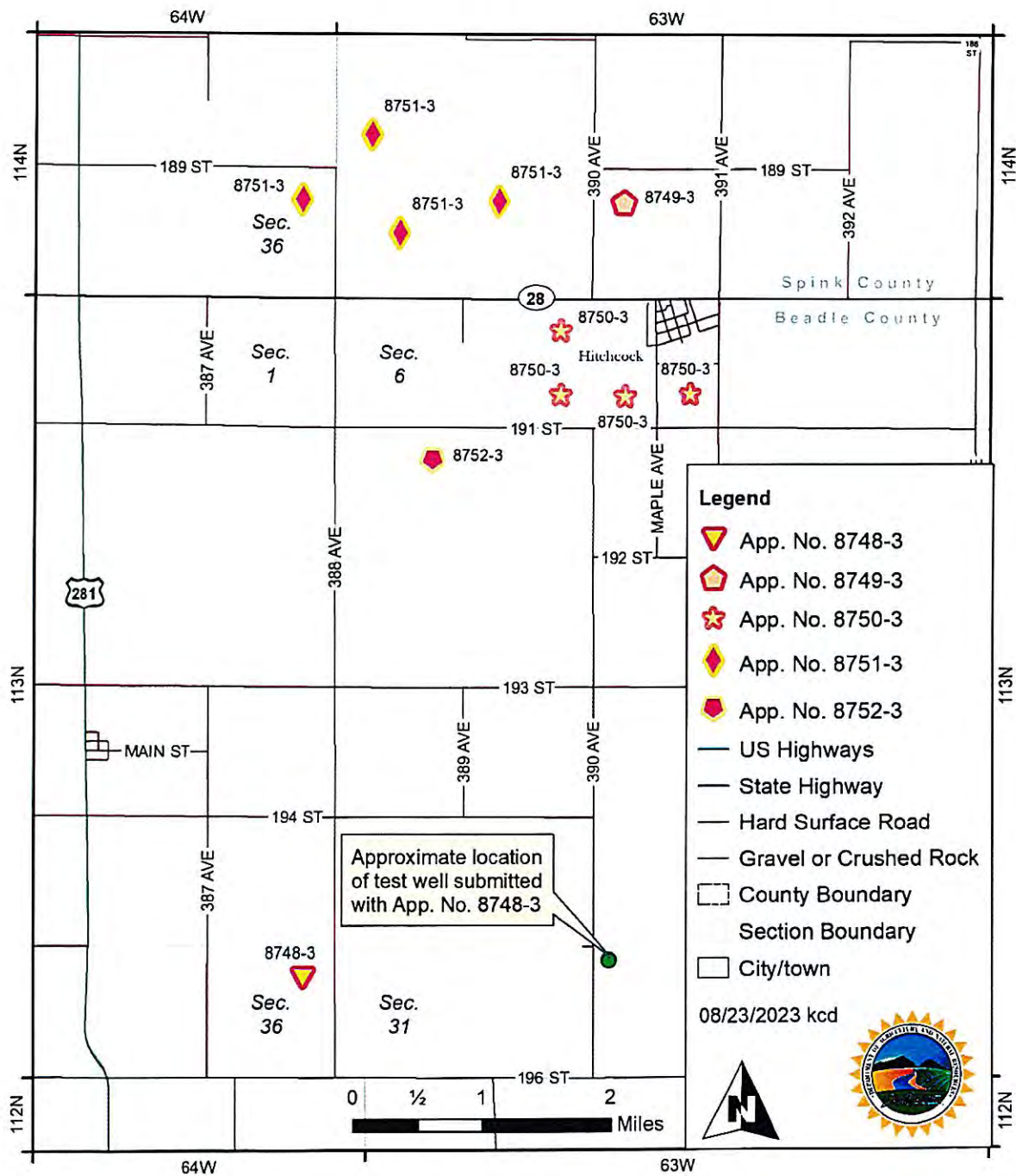


Figure 1: Water permit applications and surrounding area



**Aquifer: Niobrara (NBRR)**

*Hydrogeologic Characteristics*

The Niobrara aquifer is composed of the permeable and saturated portions of the upper-Cretaceous-aged Niobrara Formation. The Niobrara Formation is a “white to dark-gray argillaceous chalk, marl, and shale [1]” underlying most of South Dakota. Productivity in the Niobrara aquifer is mainly from secondary porosity features such as fractures, faults, and solution cavities [2]. Therefore, its characteristics vary greatly from location to location, and it is typically more productive in areas where weathering to the formation has occurred. The Niobrara Formation underlies approximately 29,054 square miles (18,594,560 acres) in South Dakota east of the Missouri River, including all 1,249 square miles (799,360 acres) of Beadle County and all 1,509 square miles (965,760 acres) of Spink County [2]. Some areas of the Niobrara Formation are separated from the main body of the formation by erosional channels. This application is located in the main body. The main body of the Niobrara Formation underlies approximately 27,500 square miles (17,600,000 acres) in South Dakota east of the Missouri River, including all of Spink and Beadle Counties [3]. The Niobrara Formation underlies the Cretaceous-aged Pierre Shale and the Quaternary-aged glacial deposits including the Tulare aquifer [4]. The Niobrara Formation directly overlies the Cretaceous-aged Carlile Shale. There is a lithologic log completed in 1963 in the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 5 T113N-R63W indicating the Tulare: Western Spink Hitchcock aquifer management unit directly overlies and contacts the Niobrara Formation [5]. Another lithologic log completed in 1963 in the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 31 T114N-R63W also indicates the presence the Tulare aquifer directly above the Niobrara Formation [5]. The contact between the Niobrara Formation and the Pierre Shale, and the Niobrara Formation, Pierre Shale, and glacial deposits is unconformable [6], which means there was a period of erosion between the deposition of those three deposits. Erosional periods can cause highly undulating surfaces of the bedrock formations which can be difficult to predict based on the available lithological information. Based on available information, including lithologic logs and bedrock mapped in the area of these applications, it is likely the Tulare aquifer comes into contact with weathered portions of the Niobrara aquifer near most of these applications. Consequently, withdrawals from wells completed into the Niobrara Formation could cause flow to go from the Tulare aquifer to the Niobrara aquifer. The Tulare: Western Spink Hitchcock aquifer management unit is fully appropriated. The only application in this report for which it is not likely the Tulare: Western Spink Hitchcock aquifer directly overlies the Niobrara aquifer is Water Permit Application No. 8748-3, which overlies a mapped area of the Pierre Shale which underlies the Tulare aquifer several miles surrounding that application and acts as a confining layer between the Tulare aquifer and the Niobrara aquifer [7].

The applicant submitted a well completion report for a well completed on March 20, 2023, in the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  Section 33 T114N-R63W. The driller reported encountering “blue clay” from 165 to 195 feet below grade and chalk from 195 to 207 feet below grade. The driller placed screen from 166 to 206 feet below grade. The static water level was 46 feet below grade at the time the well was completed. The applicant also submitted a laboratory analysis report of the water quality in the well. The analysis indicated the water quality was “very poor quality” for irrigation, the salinity hazard was high, and the permeability hazard was extremely high,

including the statement “Depending on the field situation, it may or may not be feasible to use this water for routine irrigation.”

**Applicable South Dakota Codified Law (SDCL)**

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued if there is reasonable probability that there is unappropriated water available for the applicant’s proposed use, that the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, no application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The applicant is not a water distribution system as defined in SDCL 46-1-6(17) and the Niobrara aquifer is younger and stratigraphically higher than the Greenhorn Formation. Therefore, the Water Management Board must find that recharge to the aquifer exceeds withdrawals to approve this application.

**Availability of Water**

*Hydrologic Budget*

Recharge to the Main Body

Recharge to the Niobrara aquifer likely occurs by inflow from aquifers in contact with the Niobrara when the hydraulic head is higher in the other aquifers than in the Niobrara aquifer. No estimate of the recharge to the Niobrara aquifer is available due to the extreme variability of aquifer characteristics across South Dakota. Observation well water levels in the Niobrara aquifer indicate that recharge exceeds withdrawals in the aquifer [8].

Discharge from the Main Body

Discharge from the Niobrara aquifer is likely by groundwater outflow to aquifers in contact with the Niobrara aquifer when the hydraulic head in the Niobrara aquifer is higher than that of the other aquifers and by withdrawals from domestic and appropriative wells [4]. Domestic wells are not a significant source of discharge in the Niobrara aquifer due to the presence of rural water systems and stratigraphically higher (and therefore cheaper to drill) aquifers. There are 31 water rights/permits appropriating water from the main body of the Niobrara aquifer [9] [3]. Of those, 12 are for irrigation, seven are for commercial use, six for municipal use, four for institutional use, and one each for industrial use and fish and wildlife propagation. There are two water permit applications, Nos. 8721-3 and 8722-3 proposing to appropriate a total of 10.70 cfs to irrigate a total of 960 acres in Beadle County, and one water permit application, No. 8773-3, which proposes to appropriate a total of 2.11 cfs to irrigate 160 acres in Spink County. If those applications are approved, they will have senior priority to this application.

The average irrigation reported in the main body of the Niobrara aquifer over the period of record from 1979 through 2022 is 373 acre-feet per year (ac-ft/yr) [10]. There is one irrigation permit, No. 8678-3, which is too new to have reported any irrigation. That permit is estimated to apply 10 inches of water per acre over its 300 acres, for an estimated annual withdrawal of 250 ac-ft/yr. Using the same method for Water Permit Application Nos. 8721-3, 8722-3, and 8773-3 those permits are estimated to withdraw 933 ac-ft/yr. Figure 2 shows the irrigation reported in the main body of the Niobrara aquifer over the period of record (1979 -2022) [10].

Of the non-irrigation water rights/permits, Water Right Nos. 4278-3, 4121A-3, 4264A-3, and 4264B-3 are held by municipalities that purchase their water from another water distribution system [11] [12], so are assumed to withdraw a negligible amount of water for the hydrologic budget. There are two non-irrigation water rights/permits required to report their annual withdrawal but are still developing their permits. Those permits are assumed to withdraw the maximum volume limit listed on their permit, for a combined withdrawal of 227 ac-ft/yr. The remaining 13 non-irrigation water rights/permits are assumed to withdraw at their maximum licensed or permitted diversion rate 60% of the time, for an estimated combined average annual withdrawal rate of 705 ac-ft/yr.

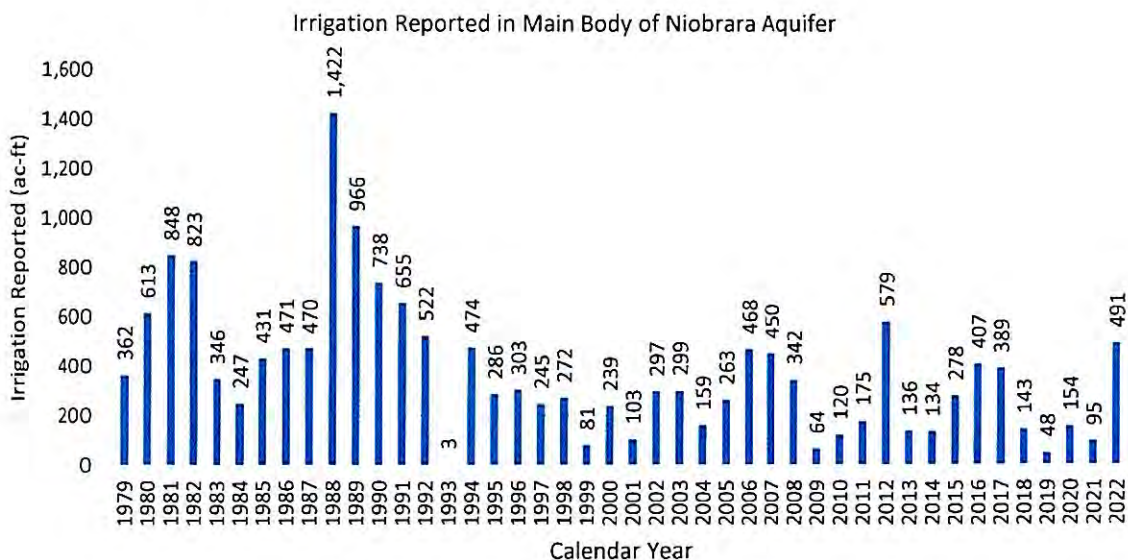


Figure 2: Irrigation reported in the main body of the Niobrara aquifer [5]

#### Summary of Hydrologic Budget of the Main Body

There is no estimate available for the recharge to the Niobrara aquifer due to its highly variable aquifer characteristics. The estimated average annual withdrawal from the main body of the Niobrara aquifer, including pending applications, is 2,488 ac-ft/yr. Using the same method for these applications as for other permits and applications not yet reporting irrigation, the estimated average annual withdrawal would be 1,612 ac-ft/yr, for a total estimated withdrawal of approximately 4,100 ac-ft/yr from the main body of the Niobrara aquifer. By dividing the estimated 4,100 ac-ft/yr of withdrawal by the 17,600,000 acres of the main body of the Niobrara

## Report on Water Permit App. Nos. 8748-3 through 8752-3

Formation, the recharge to the formation would have to exceed 0.003 inches per acre for recharge to exceed withdrawals. Given the very small amount of recharge needed to exceed withdrawals, there is reasonable probability unappropriated water is available in the Niobrara aquifer for this application.

Table 1: Summary of estimated withdrawals from the main body of the Niobrara aquifer

Type	Number	Est. Withdrawal (ac-ft/yr)
Irrigation, reporting	11	373
Irrigation, too new to report	1	250
Non-irrigation, Standby	4	0
Non-irrigation, Volume	2	227
Non-irrigation, Sixty percent	13	705
<i>Subtotal, authorized to withdraw</i>	<i>31</i>	<i>1,555</i>
Pending applications	3	933
<b>Grand total</b>	<b>34</b>	<b>2,488</b>

### Spink and Beadle County Hydrologic Budgets

Because the Niobrara aquifer has highly variable aquifer characteristics, it is appropriate to consider a more localized hydrologic budget. Lacking distinctive hydrogeological boundaries smaller than the extent of the main body of the aquifer, hydrologic budgets concerning only the areas of Spink and Beadle Counties are considered. There are no water rights/permits authorized to withdraw from the Niobrara aquifer in Spink County. Water Permit Application No. 8773-3 is estimated to withdraw 133 ac-ft/yr on average and Water Permit Application Nos. 8749-3 and 8751-3 are estimated to withdraw a total of 932 ac-ft/yr on average, if they are approved. Dividing the 1,065 ac-ft/yr of estimated annual use from these applications over the 965,760 acres of Niobrara aquifer in Spink County, the required recharge to exceed withdrawals is 0.013 inches per acre per year.

In Beadle County, there are four existing water rights/permits authorized to withdraw from the Niobrara aquifer and two pending applications that would be senior to the three applications in this report (Water Permit Application Nos. 8748-3, 8750-3, and 8752-3), which would be in Beadle County if they are approved. Using the same methods as in the statewide section, the estimated withdrawal for water rights permits authorized to withdraw from the Niobrara aquifer in Beadle County is 307 ac-ft/yr. Water Permit Application Nos. 8721-3 and 8722-3 are estimated to withdraw a total of 800 ac-ft/yr, and Water Permit Application Nos. 8748-3, 8750-3, and 8752-3 are estimated to withdraw a combined total of 680 ac-ft/yr for a grand total of 1,787 ac-ft/yr of estimated withdrawals from the Niobrara aquifer in Beadle County. For recharge to exceed withdrawals in Beadle County, the recharge to the Niobrara aquifer would have to exceed 0.03 inches per acre per year.

### 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 the

availability of unappropriated water. The Water Rights Program maintains 59 observation wells completed into the Niobrara aquifer, 38 of which are completed into the main body of the aquifer [8] [3]. The nearest observation well completed into the Niobrara aquifer to this application is BD-2023A, which is located approximately 11 miles east of the eastern-most proposed wells for these applications. The period of record for Observation Well BD-2023A is extremely limited and does not reflect fluctuations in the aquifer through wet and dry periods. The next nearest observation well is SP-77D, located approximately 14 miles north of the proposed wells for these applications [8]. The locations of the two nearest observation wells completed into the Niobrara aquifer, the nearest existing water permit, and senior applications pending approval, and bedrock formations near the Van Buskirk applications are shown in Figure 3 [8] [9] [7]. Figure 4 shows water elevations in those observation wells over their entire periods of record [8]. Water levels in observation wells completed into the main body of the Niobrara aquifer all have stable or increasing trends. Observation Well SP-77D is representative of the general behavior of the Niobrara aquifer, although at the distance from the proposed well sites, it does not reflect changes that would be specific to the area of these applications. In general water levels rise during periods of higher-than-average precipitation and decline during periods of lower-than-average precipitation. The fluctuation due to natural influences indicates water is naturally discharged from the Niobrara aquifer. The Water Management Board historically has considered natural discharge to be available for capture. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available in the Niobrara aquifer for these applications.



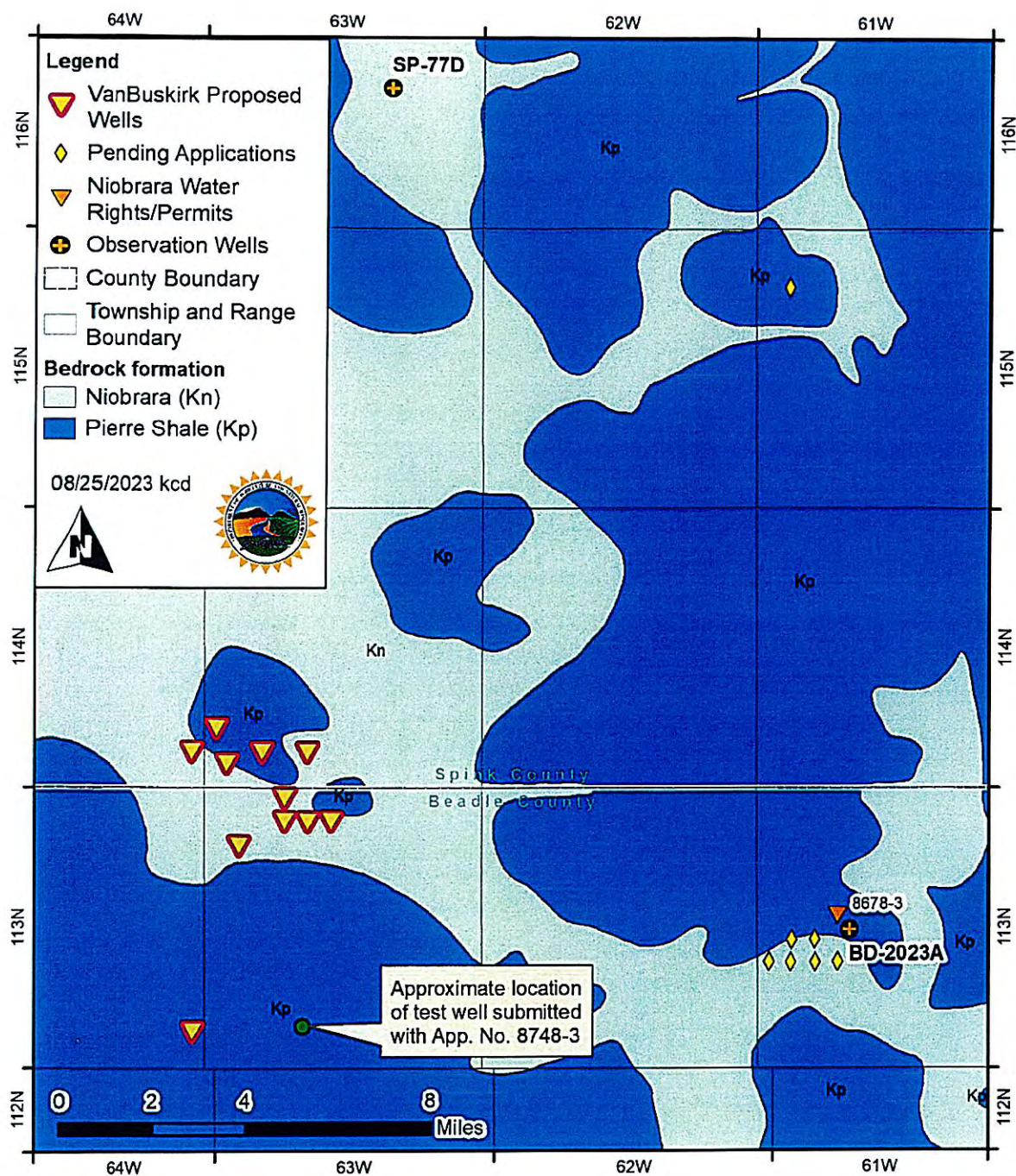


Figure 3: Observation wells [8], Niobrara water rights/permits [9], pending applications senior to the Van Buskirk applications, and bedrock formations [7] near the Van Buskirk applications.



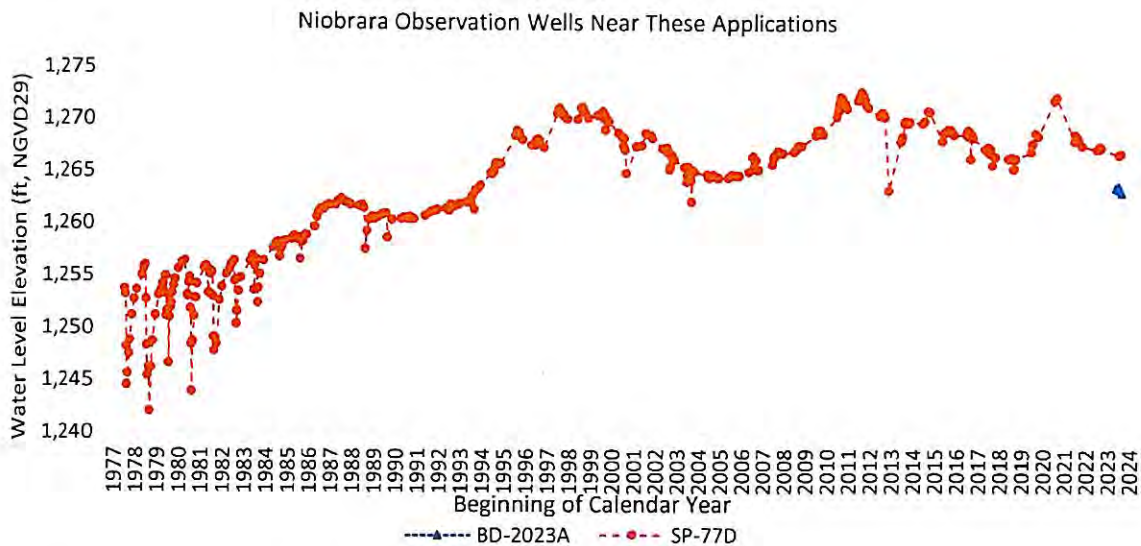


Figure 4: Observation well water elevations in the Niobrara aquifer [8]

#### Possibility of Unlawful Impairment of Existing Water Rights

The nearest water right/permit to all five applications that is completed into the Niobrara aquifer is Water Permit No. 8678-3, located approximately 14 miles south of the proposed well for this application [9]. There are no wells on file with the Water Rights Program that are likely to be completed into the Niobrara aquifer within three miles of all five of these applications [13]. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) defines an adequate well as:

*...a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet*

If these applications are approved, some drawdown in the aquifer will occur in the proximity of the pumping wells. There are no complaints concerning unlawful impairment of existing water rights in the Niobrara aquifer in Spink and Beadle Counties [14]. If these applications are approved, the applicant should control their withdrawals so that an unlawful impairment of adequate wells does not occur. Based on the distance of the proposed wells to the nearest water right, and lack of complaints concerning well interference in the Niobrara aquifer on file in Spink and Beadle Counties, there is reasonable probability these applications can be developed without unlawful impairment of existing domestic uses and water rights in the Niobrara aquifer.

However, if Application Nos. 8749-3, 8750-3, 8751-3, and 8752-3 are developed, they may induce withdrawal from the Tulare: Western Spink Hitchcock aquifer which is a fully appropriated aquifer. Over time induced withdrawals from the Tulare aquifer may create conditions that could be considered an unlawful impairment of existing water rights in the Tulare: Western Spink Hitchcock aquifer.

**Special Consideration – Induction of Water from a Fully Appropriated Management Unit**

As discussed in the Hydrogeologic Characteristics section, the Niobrara aquifer these applications (except No. 8748-3) seek to appropriate water from may directly underly the fully appropriated Tulare: Western Spink Hitchcock aquifer management unit. Consequently, pumping from the Niobrara aquifer may induce inflow from a fully appropriated management unit of the Tulare aquifer. Consequently, this may pose a beneficial use and public interest consideration for the Water Management Board which is beyond the technical review provided in this report. To aid in decision-making by the Board, the applicant should conduct an aquifer performance test monitoring both the Niobrara aquifer and the Tulare: Western Spink Hitchcock aquifer prior to approval of Water Permit Application Nos. 8749-3, 8750-3, 8751-3, and 8752-3 to determine whether pumping from the Niobrara aquifer under the local hydrogeologic conditions will induce inflow from the Tulare: Western Spink Hitchcock aquifer.

**Special Consideration – Suitability for Irrigation**

In a letter to the holder of Cancelled Water Permit No. 1286-3 dated November 27, 1978, then Chief Engineer Hatch indicated the permit holder had abandoned use of that irrigation permit because the water was ruining his land [9]. Hamilton and Howells [15] indicate “The large sodium concentration in the Niobrara aquifer makes the water unsuitable for irrigation use.” It is recommended the applicant complete a soil-water compatibility analysis by a qualified soil scientist to determine whether the water is suitable for irrigation, or when used for irrigation, what best management practices are needed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.

**Conclusions:**

1. Water Permit Application No. 8748-3 proposes to appropriate 1.94 cfs from one well to be completed into the Niobrara aquifer located in the approximate center of the NE  $\frac{1}{4}$  Section 36 for irrigation of 136 acres located in the NE  $\frac{1}{4}$  Section 36; all in T113N-R64W.
2. Water Permit Application No. 8749-3 proposes to appropriate 1.94 cfs from one well to be completed into the Niobrara aquifer located in the approximate center of the NW  $\frac{1}{4}$  Section 33 for irrigation of 136 acres located in the NW  $\frac{1}{4}$  Section 33; all in T114N-R63W.
3. Water Permit Application No. 8750-3 proposes to appropriate 7.77 cfs from four wells to be completed into the Niobrara aquifer located in the approximate centers of the SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  Section 4 and NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  Section 5 for irrigation of 544 acres located in the S  $\frac{1}{2}$  Section 4 and E  $\frac{1}{2}$  Section 5; all in T113N-R63W.
4. Water Permit Application No. 8751-3 proposes to appropriate 14.0 cfs from four wells to be completed into the Niobrara aquifer located in the approximate centers of the NW  $\frac{1}{4}$

Report on Water Permit App. Nos. 8748-3 through 8752-3

- Section 32, Center of Section 31, SW ¼ Section 30; all in T114N-R63W and the center of the NE ¼ Section 36-T114N-R64W for irrigation of 982 acres located in the NW ¼ Section 32, Section 31, SW ¼ Section 30; all in T114N-R63W and the NE ¼ Section 36-T114N-R64W.
5. Water Permit Application No. 8752-3 proposes to appropriate 1.94 cfs from one well to be completed into the Niobrara aquifer located in the approximate center of the NE ¼ Section 7 for irrigation of 136 acres located in the NE ¼ Section 7; all in T113N-R63W.
  6. Based on the hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available for these applications in the Niobrara aquifer.
  7. There is reasonable probability these applications can be developed without unlawful impairment of existing water rights in the Niobrara aquifer.
  8. If these applications are approved, the applicant should follow best management practices as recommended by a qualified soil scientist to prevent damage to the soil from poor water quality in the Niobrara aquifer. The permit may include a qualification requiring regular testing of the soil salinity.
  9. Based on lithologic information available, Application Nos. 8749-3, 8750-3, 8751-3, and 8752-3 should be deferred to allow for an aquifer performance test to determine whether Niobrara aquifer withdrawals potentially impact the Tulare: Western Spink Hitchcock aquifer.
  10. The Niobrara aquifer near the proposed well site for Application No. 8748-3 is overlain by a mapped area of the Pierre shale, which acts as a confining layer between the Niobrara and Tulare aquifers, so it is not likely to cause a noticeable impact to the Tulare aquifer.



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

**References**

- [1] 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.
- [2] L. S. Hedges, S. L. Burch, D. L. Iles, R. A. Barari and R. A. Schoon, "Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa Tasks 1-4," SD DANR Geological Survey Program, Vermillion, South Dakota, 1982.



Report on Water Permit App. Nos. 8748-3 through 8752-3

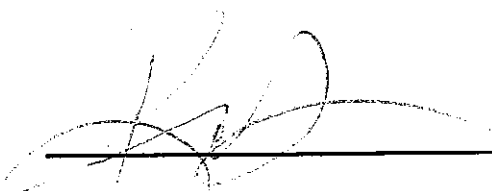
- [3] N. Steen and A. Mathiowetz, "Report to the Chief Engineer on Water Permit Application No. 8624-3," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [4] L. W. Howells and J. C. Stephens, "Geology and Water Resources of Beadle County South Dakota Part II: Water Resources," SD DANR Geological Survey Program, Vermillion, South Dakota, 1968. Bulletin 18.
- [5] SD DANR Geological Survey Program, "Lithologic Logs," Vermillion, South Dakota, 2022.
- [6] Fahrenbach, M. D., 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 Investigations 3.
- [7] D. W. Tomhave and L. D. Schulz, "Bedrock geologic map showing configuration of the bedrock surface in South Dakota east of the Missouri River," DANR Geological Survey Program, Vermillion, SD, 2004. General Map 9.
- [8] SD DANR Water Rights Program, "Observation Wells," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [9] SD DANR Water Rights Program, "Water Right Permit Files," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [10] SD DANR Water Rights Program, "Irrigation reports," Joe Foss Bldg., Pierre, South Dakota, 2022.
- [11] SD DANR Drinking Water Program, "Drinking Water Reports," SD DANR Drinking Water Program, Pierre, South Dakota, 2021.
- [12] B. Friedeman, Interviewee, *Environmental Scientist II*, SD DANR Drinking Water Program. [Interview]. 9 February 2021.
- [13] SD DANR Water Rights Program, "Well Completion Reports," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [14] SD DANR Water Rights Program, *County Files*, Pierre, South Dakota: SD DANR Water Rights Program, 2023.
- [15] L. J. Hamilton and L. W. Howells, "Water Resources of Spink County, South Dakota," United States Geological Survey, Rapid City, South Dakota, 1996. Water-Resources Investigations Report 96-4056.

Proof Of Publication

Huron Plainsman  
49 3<sup>rd</sup> Street SE  
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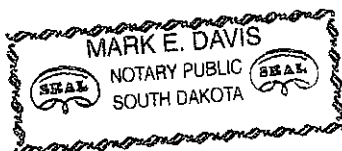
Legal Notice Number: 2249

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: VanBuskirk Farms – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 10/25/2023. That the full amount of the fee charged for the \$79.50 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

  
\_\_\_\_\_  
Subscribed and sworn to me before this date 10/25/23.

  
\_\_\_\_\_  
Notary Public, South Dakota

My Term Expires 12/27/2024



RECEIVED

NOV 03 2023

OFFICE OF  
WRITER



F. P. 10-25-23  
**NOTICE OF HEARING**  
**on Application**  
**No. 8748-3 to**  
**Appropriate Water**

Notice is given that Van Buskirk Farms LLP, c/o Matthew Van Buskirk, PO Box 98, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.94 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate center of the NE 1/4 Section 36 for irrigation of 136 acres located in the NE 1/4 Section 36; all in T113N-R64W. This site is located approximately 6 miles southwest of Hitchcock 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. 8748-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

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 December 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 November 6, 2023. 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 November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@state.sd.us) as soon as possible but no later than

<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 December 6, 2023, 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 November 6, 2023.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application on the

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." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. 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 1-26-26; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

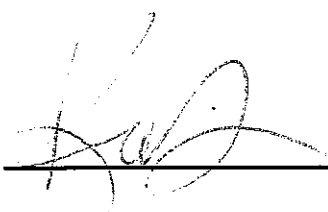
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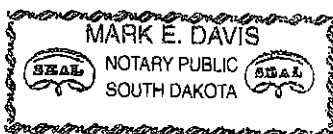
Legal Notice Number: 2247

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: VanBuskirk Farms – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 10/25/2023. That the full amount of the fee charged for the \$95.81 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

  
Subscribed and sworn to me before this date 10/25/23.

  
Notary Public, South Dakota

My Term Expires 12/27/2024



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F. P. 10-25-23

**NOTICE OF HEARING  
on Application Nos.  
8749-3, 8750-3,  
8751-3, 8752-3 to  
Appropriate Water**

Notice is given that Van Buskirk Farms LLP, c/o Matthew Van Buskirk, PO Box 98, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.94 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate center of the NW 1/4 Section 33 for irrigation of 136 acres located in the NW 1/4 Section 33; all in T114N-R63W. This site is located approximately 1 mile north of Hitchcock SD.

Application No. 8750-3 proposes to appropriate 7.77 cubic feet of water per second (cfs) from four wells to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate centers of the SE 1/4, SW 1/4 Section 4 and NE 1/4, SE 1/4 Section 5 for irrigation of 544 acres located in the S 1/2 Section 4 and E 1/2 Section 5; all in T113N-R63W. This site is located approximately 1 mile west of Hitchcock SD.

Application No. 8751-3 proposes to appropriate 14.0 cubic feet of water per second (cfs) from four wells to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate centers of the NW 1/4 Section 32, center of Section 31, SW 1/4 Section 30; all in T114N-R63W and the center of NE 1/4 Section 36 -T114N-R64W for irrigation of 982 acres located in the NW 1/4 Section 32, Section 31, SW 1/4 Section 30; all in T114N-R63W and NE 1/4 Section 36 -T114N-R64W. This site is located approximately 2 miles northwest of Hitchcock SD.

Application No. 8752-3 proposes to appropriate 1.94 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate center of NE 1/4 Section 7 for irrigation of 136 acres located in

aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

The Water Management Board will consider the applications at 9:45 AM (Central Time) on December 6, 2023, 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 applications, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9, for approval or denial of the applications, or other matter concerning the applications within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the applications with BOTH the applicant and Chief Engineer. A petition opposing the applications shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's

proposed to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the applications with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. 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 NE 1/4 Section 7; all in T113N-R63W. This site is located approximately 2 miles southwest of Hitchcock 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 applications 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 the applications, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that the applications 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 DEFERENTIAL of Application Nos. 8749-3, 8750-3, 8751-3, 8752-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application Nos. 8749-3, 8750-3, 8751-3, 8752-3 is to allow time for Van Buskirk Farms LLP to retain a hydrogeologist or other qualified consultant to conduct a suitable

recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by November 6, 2023.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the applications on the petitioner, the petitioner's reasons for opposing the applications, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 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 applications. The request for an automatic delay must be filed by November 6, 2023. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be

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.

No. 2247 (adv.)

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RECEIVED

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OFFICE OF  
WATER

## Affidavit of Publication

STATE OF SOUTH DAKOTA,  
County of Spink: ss.

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

### #7115 NOTICE OF HEARING

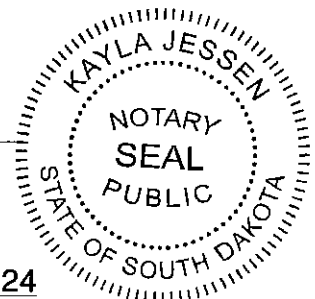
was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 25<sup>th</sup>, That Eighty-Two and 79/100 dollars insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Cindy Crook

Subscribed and sworn to before me this 25<sup>th</sup>, day of October, 2023

Kayla Jessen

Notary Public, South Dakota



My commission expires 09/26/2024

207 feet deep) located in the approximate center of the NW 1/4 Section 33 for irrigation of 136 acres located in the NW 1/4 Section 33; all in T14N-R63W. This site is located approximately 1 mile north of Hitchcock SD.

Application No. 8750-3 proposes to appropriate 7.77 cubic feet of water per second (cfs) from four wells to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate centers of the SE 1/4, SW 1/4 Section 4 and NE 1/4, SE 1/4 Section 5 for irrigation of 544 acres located in the S 1/2 Section 4 and E 1/2 Section 5; all in T13N-R63W. This site is located approximately 1 mile west of Hitchcock SD.

Application No. 8751-3 proposes to appropriate 14.0 cubic feet of water per second (cfs) from four wells to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate centers of the NW 1/4 Section 32, center of Section 31, SW 1/4 Section 30; all in T14N-R63W and the center of NE 1/4 Section 36 -T14N-R64W for irrigation of 982 acres located in the NW 1/4 Section 32, Section 31, SW 1/4 Section 30; all in T14N-R63W and NE 1/4 Section 36 -T14N-R64W. This site is located approximately 2 miles northwest of Hitchcock SD.

Application No. 8752-3 proposes to appropriate 1.94 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately 207 feet deep) located in the approximate center of NE 1/4 Section 7 for irrigation of 136 acres located in the NE 1/4 Section 7; all in T13N-R63W. This site is located approximately 2 miles southwest of Hitchcock 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 applications 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 the applications, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that the applications 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 DEFERRED of Application Nos.

8749-3, 8750-3, 8751-3, 8752-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application Nos. 8749-3, 8750-3, 8751-3, 8752-3 is to allow time for Van Buskirk Farms LLP to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

The Water Management Board will consider the applications at 9:45 AM (Central Time) on December 6, 2023, 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 applications, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the applications, or other matter concerning the applications within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the applications with BOTH the applicant and Chief Engineer. A petition opposing the applications shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by November 6, 2023.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the applications on the

petitioner, the petitioner's reasons for opposing the applications, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 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 applications. The request for an automatic delay must be filed by November 6, 2023. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the applications with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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." This is a Notice of Hearing, service is being provided by publication, and the applicable

date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25:02; 74:02:01:35:01.

Published once at the total approximate cost of \$82.79 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com). (Oct. 25)

## Notice of Hearing

7715

### NOTICE OF HEARING

on Application Nos. 8749-3, 8750-3, 8751-3, 8752-3 to Appropriate Water

Notice is given that Van Buskirk Farms LLP, c/o Matthew Van Buskirk, PO Box 98, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.94 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer (approximately





**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. 8722-3, Huron Hutterian Brethren, Inc.**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8722-3, Huron Hutterian Brethren, Inc., c/o Joey Waldner, 40068 Huron Colony, Huron SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. 8722-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8722-3 is to allow time for Huron Hutterian Brethren Inc. to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: East James aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

See report for further information.

Eric Gronlund, Chief Engineer  
August 21, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test. To discuss the requirements and recommendations for an aquifer performance test, please contact Adam Mathiowetz at (605) 773-3352.

As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation. If this application proceeds and receives a favorable recommendation, it is likely a qualification will be placed on the permit requiring Huron Hutterian Brethren to retain a qualified soil scientist to develop an irrigation management plan to avoid damage to the soil structure from the water's high sodium absorption ratio.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8721-3, Huron Hutterian Brethren, Inc.**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8721-3, Huron Hutterian Brethren, Inc., c/o Joey Waldner, 40068 Huron Colony, Huron SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. 8721-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8721-3 is to allow time for Huron Hutterian Brethren Inc. to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: East James aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

See report for further information.

Eric Gronlund, Chief Engineer  
August 21, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test. To discuss the requirements and recommendations for an aquifer performance test, please contact Adam Mathiowetz at (605) 773-3352.

As noted in the report, the water quality in the Niobrara aquifer may not be suitable for irrigation. If this application proceeds and receives a favorable recommendation, it is likely a qualification will be placed on the permit requiring Huron Hutterian Brethren to retain a qualified soil scientist to develop an irrigation management plan to avoid damage to the soil structure from the water's high sodium absorption ratio.

**Report to the Chief Engineer on  
Water Permit Application Nos. 8721-3 and 8722-3  
Huron Hutterian Brethren, Inc. (HBI)  
25 July 2023**

Water Permit Application No. 8721-3 proposes to appropriate 5.35 cubic feet of water per second (cfs), approximately equivalent to 2,400 gallons per minute (gpm) to irrigate 480 acres in the E ½ and SW ¼ Section 19 from three wells to be completed into the Niobrara aquifer in the approximate centers of the NE ¼, the SE ¼, and the SW ¼ Section 19; all in T113N-R61W, 5<sup>th</sup> Principal Meridian.

Water Permit Application No. 8722-3 proposes to appropriate 5.35 cfs to irrigate 480 acres in the W ½ and SE ¼ Section 20 from three wells to be completed into the Niobrara aquifer in the approximate centers of the NW ¼, the SW ¼, and the SE ¼ Section 20; all in T113N-R61W, 5<sup>th</sup> Principal Meridian.

Both of these applications are located in Beadle County approximately 15 miles north of Huron and 10 miles east of Hitchcock, South Dakota.

**Aquifer: Niobrara (NBRR)**

*Hydrogeologic Characteristics*

The Niobrara aquifer is composed of the permeable and saturated portions of the upper-Cretaceous-aged Niobrara Formation. The Niobrara Formation is a “white to dark-gray argillaceous chalk, marl, and shale [1]” underlying most of South Dakota. Productivity in the Niobrara aquifer is mainly from secondary porosity features such as fractures, faults, and solution cavities [2]. Therefore, its characteristics range greatly from location to location, and it is typically more productive in areas where weathering to the formation has occurred. The Niobrara Formation underlies approximately 29,054 square miles (18,594,560 acres) in South Dakota east of the Missouri River, including all 1,249 square miles (799,360 acres) of Beadle County [2]. Some areas of the Niobrara Formation are separated from the main body of the formation by erosional channels. This application is located in the main body. The main body of the Niobrara Formation underlies approximately 27,500 square miles (17,600,000 acres) in South Dakota east of the Missouri River, including all of Beadle County [3]. The Niobrara Formation underlies the Cretaceous-aged Pierre Shale and the Quaternary-aged glacial deposits including the Tulare aquifer [4]. The Niobrara Formation directly overlies the Cretaceous-aged Carlile Shale.

The Niobrara aquifer exists within the permeable portions of the Niobrara Formation that are sufficiently saturated to deliver useful quantities of water. Howells and Stephens [4] indicate that in Beadle County, the Niobrara aquifer and the Codell Sandstone member of the Carlile Shale are connected enough that they treat them as one aquifer. However, the Water Rights Program and Water Management Board treat those two aquifer materials as separately managed aquifers. In Beadle County, the Niobrara aquifer generally yields “soft, saline” water [4]. The Niobrara aquifer is under confined conditions in most of South Dakota except where it crops out along the Missouri River and around the Black Hills [1]. The Niobrara aquifer directly underlies



the East James management unit of the Tulare aquifer at the locations these applications propose to place wells [5]. The Water Management Board has determined that the Tulare: East James aquifer management unit is fully appropriated. For the most part, there is approximately 15 to 30 feet of till in the bedrock valley separating the Niobrara formation and the Tulare aquifer near these applications. However, there are also likely some areas where the Tulare aquifer has direct contact with the Niobrara formation. A South Dakota Geological Survey (SDGS) lithologic log located in the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 20 T113N-R61W indicates sand is present directly above the Niobrara formation [6]. Lithologic logs located in the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 17 and NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  Section 21 all in T113-R61W indicate the till above the Niobrara formation in that area is very sandy and pebbly [6]. Therefore, the two aquifers are likely to have some degree of hydrological connection in the bedrock valley area, which will depend on the localized characteristics of the clay till. Given that the Niobrara aquifer is highly variable from location to location, it is possible that the Niobrara aquifer in the area of this application has better hydraulic connection to the management units within the Tulare aquifer overlying it than other distant parts of the Niobrara aquifer in Beadle County.

The applicant submitted the same well completion report for a test well completed in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 17 T113N-R61W completed on November 14, 2022 with both applications, shown in Figure 1. The driller reported encountering top soil from 0 to 1 foot below grade, yellow clay from 1 to 20 feet, blue clay from 20 to 115 feet, shale from 115 to 138 feet, and chalk from 138 to 173 feet. The screen was set from 133 to 173 feet, and the static water level at the time of completion was 28 feet below grade, which means the hydraulic head in the aquifer lifts water 110 feet above the formation. This test well is not in the same location as these applications, as shown in Figure 1, so connection between the Niobrara aquifer and Tulare aquifer is not shown in the test well submitted by the applicant.

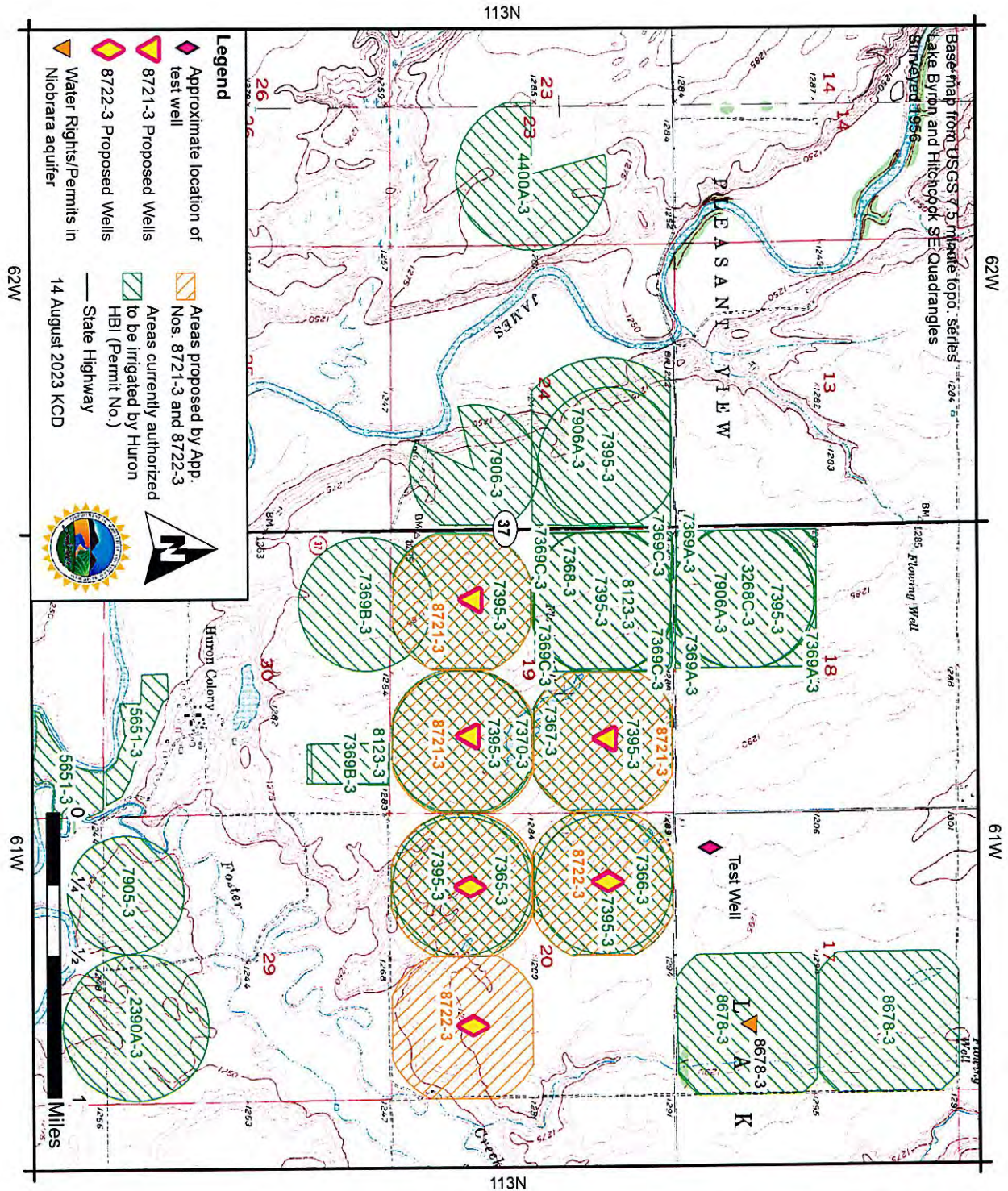


Figure 1: The fields authorized for irrigation by water rights/permits held by Huron HBI and proposed to be irrigated by Application Nos. 8721-3 and 8722-3 [6]



**Applicable South Dakota Codified Law (SDCL)**

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, no application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The applicant is not a water distribution system as defined in SDCL 46-1-6(17) and the Niobrara aquifer is younger and stratigraphically higher than the Greenhorn Formation. Therefore, the Water Management Board must find that recharge to the aquifer exceeds withdrawals to approve this application.

Pursuant to SDCL 46-5-6, the volume of water diverted for irrigation "may not exceed two acre-feet per acre" annually, without an exception granted by the Water Management Board. Five of the six fields proposed to be irrigated under these applications are also permitted to be irrigated by other water right permits from other water sources. If these applications are approved, a qualification should be included that the total amount of water applied to the fields should not exceed two acre-feet per acre, regardless of the source of water.

**Availability of Water**

*Hydrologic Budget*

Recharge to the Main Body

Recharge to the Niobrara aquifer likely occurs by inflow from aquifers in contact with the Niobrara when the hydraulic head is higher in the other aquifers than in the Niobrara aquifer. No estimate of the recharge to the Niobrara aquifer is available due to the extreme variability of aquifer characteristics across South Dakota. Observation well water levels in the Niobrara aquifer indicate that recharge exceeds withdrawals in the aquifer [7].

Discharge from the Main Body

Discharge from the Niobrara aquifer is likely by groundwater outflow to aquifers in contact with the Niobrara aquifer when the hydraulic head in the Niobrara aquifer is higher than that of the other aquifers and by withdrawals from domestic and appropriative wells [4]. There are 31 water rights/permits appropriating water from the main body of the Niobrara aquifer [8] [3]. Of those, 12 are for irrigation, seven are for commercial use, six for municipal use, four for institutional use, and one each for industrial use and fish and wildlife propagation.

The average irrigation reported in the main body of the Niobrara aquifer over the period of record from 1979 through 2022 is 373 acre-feet per year (ac-ft/yr) [9]. There is one irrigation

permit, No. 8678-3, which is too new to have reported any irrigation. That permit is estimated to apply 10 inches of water per acre over its 300 acres, for an estimated annual withdrawal of 250 ac-ft/yr. Figure 2 shows the irrigation reported in the main body of the Niobrara aquifer over that period of record [9]. Of the non-irrigation water rights/permits, Water Right Nos. 4278-3, 4121A-3, 4264A-3, and 4264B-3 are held by municipalities that purchase their water from another water distribution system [10] [11], so are assumed to withdraw a negligible amount of water for the hydrologic budget. There are two non-irrigation water rights/permits required to report their annual withdrawal but are still developing their permits. Those permits are assumed to withdraw the maximum volume limit listed on their permit, for a combined withdrawal of 227 ac-ft/yr. The remaining 13 non-irrigation water rights/permits are assumed to withdraw at their maximum licensed or permitted diversion rate 60% of the time, for an estimated combined average annual withdrawal rate of 705 ac-ft/yr.

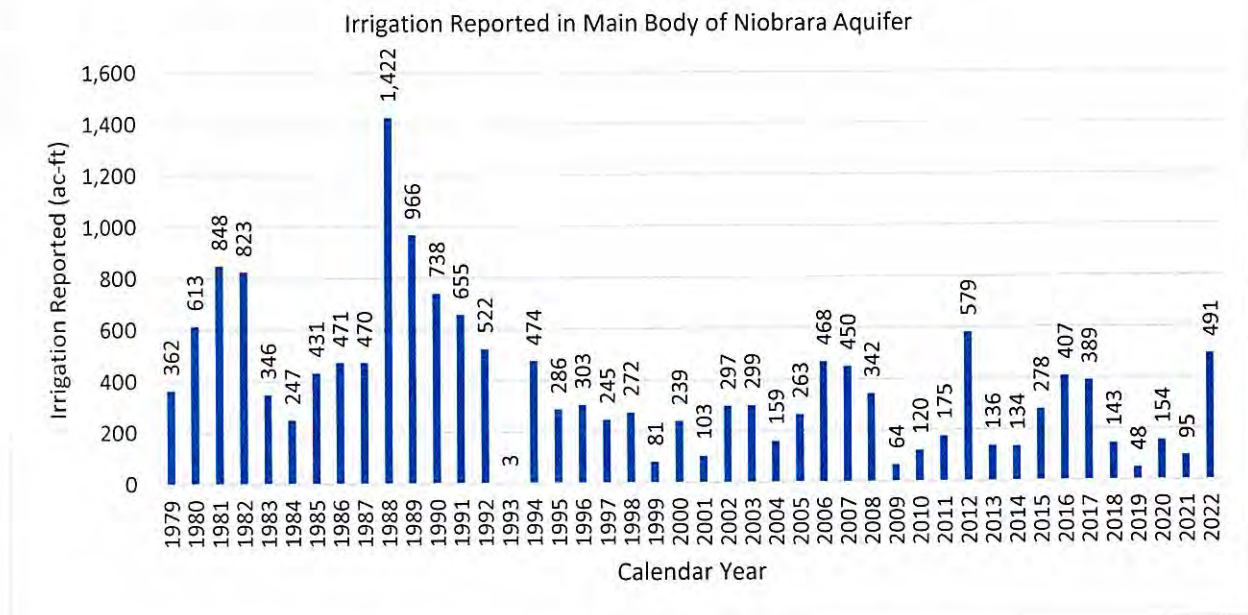


Figure 2: Irrigation reported in the main body of the Niobrara aquifer [6]

#### Summary of Hydrologic Budget of the Main Body

There is no estimate available for the recharge to the Niobrara aquifer due to its highly variable aquifer characteristics. The estimated average annual withdrawal from the main body of the Niobrara aquifer is 1,555 ac-ft/yr. If these applications are approved, they could withdraw up to 1,920 ac-ft/yr, although they are likely to use less. Using the same estimation method as for Water Permit No. 8678-3, these applications are estimated to have a combined average annual withdrawal of 800 ac-ft/yr assuming no water is used from other sources. Including the estimated average withdrawal for this application, the 2,355 ac-ft/yr of estimated withdrawals divides across the main body of the Niobrara aquifer to require 0.0016 inches of water per acre per year for recharge to exceed withdrawals. Therefore, based on the hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 1: Summary of estimated withdrawals from the main body of the Niobrara aquifer

Type	Number	Est. Withdrawal (ac-ft/yr)
Irrigation, reporting	11	373
Irrigation, too new to report	1	250
Non-irrigation, Standby	4	0
Non-irrigation, Volume	2	227
Non-irrigation, Sixty percent	13	705
<b>Total</b>	<b>31</b>	<b>1,555</b>

#### Beadle County Hydrologic Budget

Because the Niobrara aquifer has highly variable aquifer characteristics, it is appropriate to consider a more localized hydrologic budget. Lacking distinctive hydrogeological boundaries smaller than the extent of the main body of the aquifer, a hydrologic budget concerning only the area of Beadle County is considered. There are four water rights/permits authorized to withdraw from the Niobrara aquifer in Beadle County. One is a city which purchases its water from another system [11]. Using the same methods as in the hydrologic budget for the main body of the Niobrara aquifer, the other two are estimated to withdraw a combined total of 57 ac-ft/yr. Water Permit No. 8678-3, which is an irrigation permit too new to report withdrawals, is also authorized to withdraw from the Niobrara aquifer in Beadle County and is estimated to withdraw 250 ac-ft/yr on average. The total estimated average withdrawal of 307 ac-ft/yr plus the estimated average withdrawal from these applications (800 ac-ft/yr) creates an estimated withdrawal of 1,107 ac-ft/yr. Dividing the 1,107 ac-ft/yr over the 799,360 acres of Niobrara aquifer in Beadle County, the required recharge to exceed withdrawals is 0.02 inches per acre per year.

#### *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 the availability of unappropriated water. The Water Rights Program maintains 59 observation wells completed into the Niobrara aquifer, 38 of which are completed into the main body of the aquifer [7] [3]. The nearest observation well completed into the Niobrara aquifer to this application is BD-2023A, located approximately 0.8 miles northeast of the centroid of the wells proposed by Application No. 8722-3 and approximately 1.5 miles east-northeast of the centroid of the wells proposed by Application No. 8721-3. SP-77D is located approximately 20 miles northwest of the proposed wells for these applications [7]. Figure 3 shows the location of the proposed wells for these applications with respect to observation wells near these applications [7]. Figure 4 shows water levels in Observation Wells SP-77D and BD-2023A [7]. Water levels in observation wells completed into the main body of the Niobrara aquifer all have stable or increasing trends. Observation Well SP-77D is representative of the general behavior of the Niobrara aquifer, although at the distance from the proposed well site, it does not reflect changes that would be specific to the area of this application. In general water levels rise during periods of higher-than-average precipitation and decline during periods of lower-than-average precipitation. Observation Well BD-2023A is likely to represent conditions in the Niobrara aquifer near this application, but it has a short period of record. Given that there is likely to be a hydrologic



connection between the Niobrara aquifer and the overlying Tulare aquifer in the area of this application, water levels in Tulare and Niobrara aquifer observation wells are shown in Figure 5 for the period of record from January 1, 2022, through the end of July of 2023. The hydraulic head in the East James management unit of the Tulare aquifer is higher than the hydraulic head of the Niobrara aquifer, indicating water may flow from the East James management unit to the Niobrara aquifer, although the exact amount of flow cannot be determined with the information available. The fluctuation due to natural influences indicates water is naturally discharged from the Niobrara aquifer. The Water Management Board historically has considered natural discharge to be available for capture. However, the inconsistent transmissivity of the Niobrara aquifer and presence of overlying Tulare aquifer means that if a significant decrease in hydraulic head in the Niobrara aquifer occurs in the area of these applications, it could induce flow from the Tulare aquifer. Since the Tulare: East James aquifer is fully appropriated, such an induction could be considered a withdrawal from the fully appropriated aquifer. This may create an artificial discharge of water from the Tulare aquifer which is a fully appropriated aquifer.

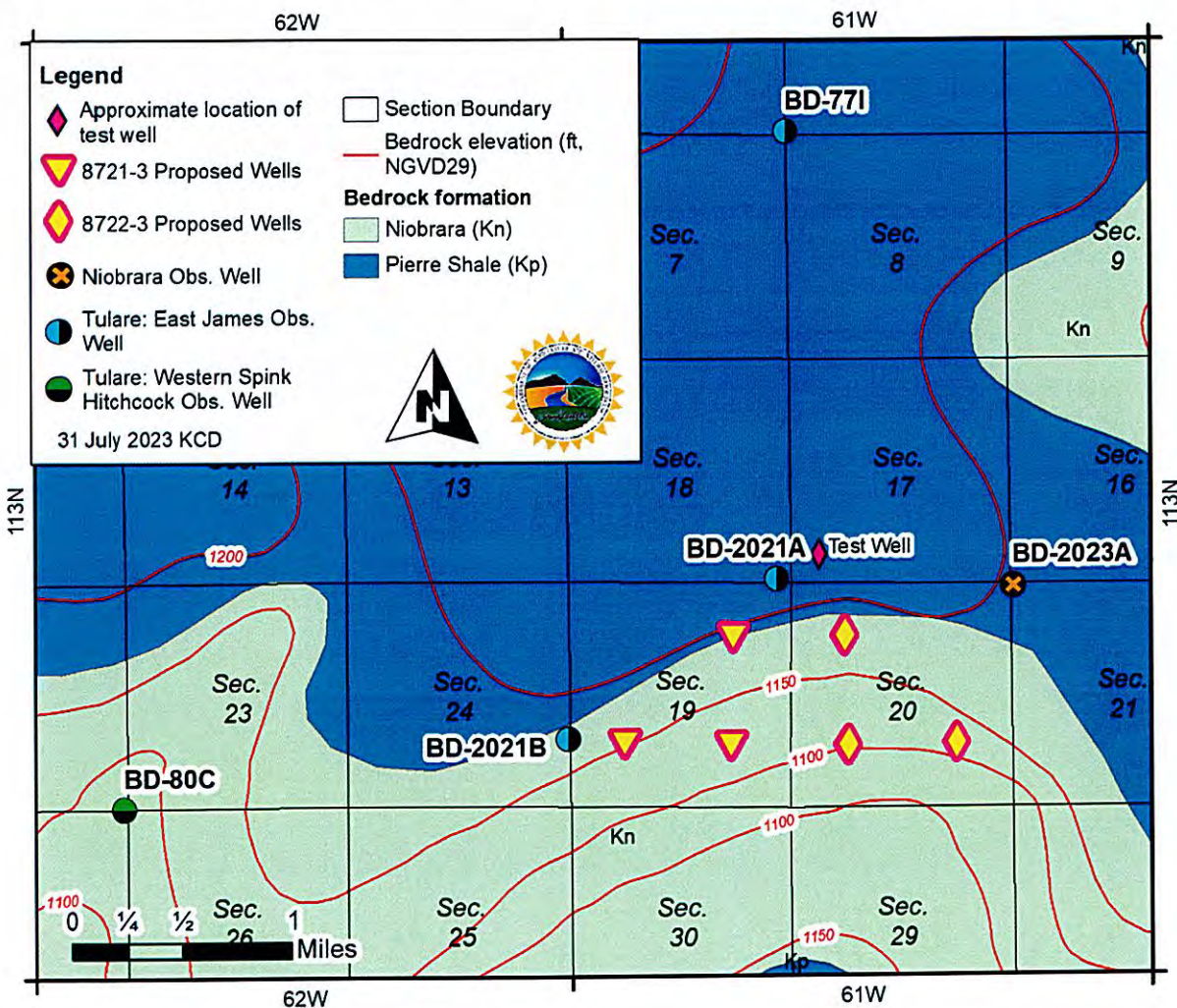


Figure 3: Map of observation wells near these applications and uppermost bedrock formations underlying the project area. [5] [7]



## Report on Water Permit App. Nos. 8721-3 and 8722-3

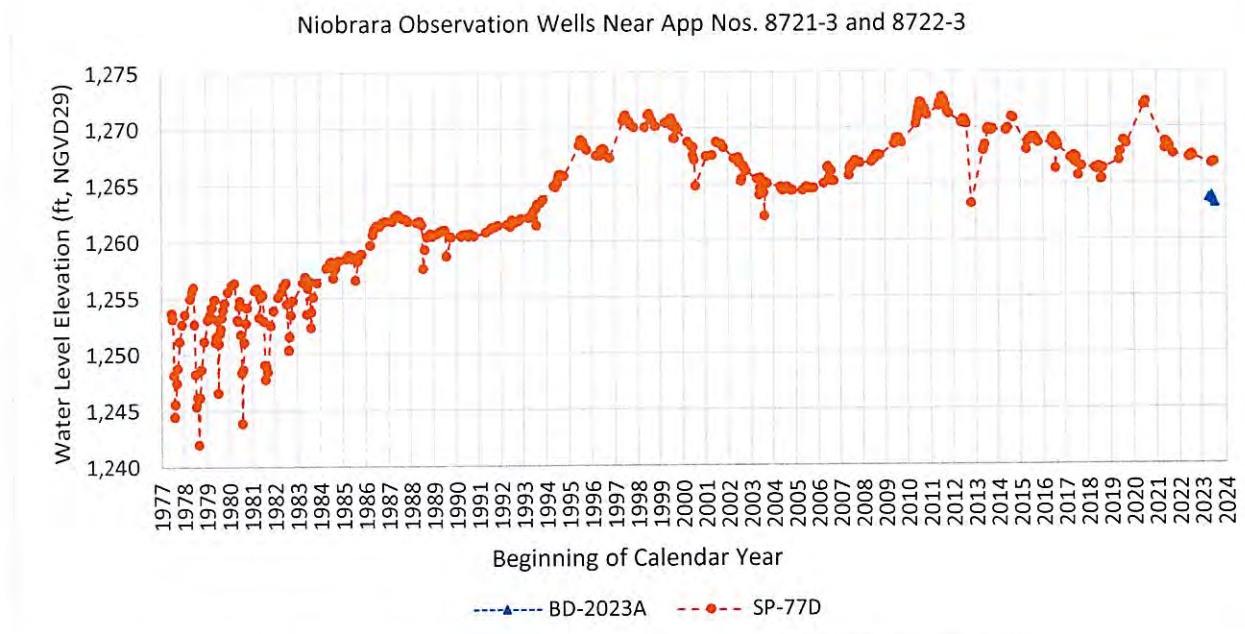


Figure 4: Water level elevations in Observation Wells BD-2023A and SP-77D [7]

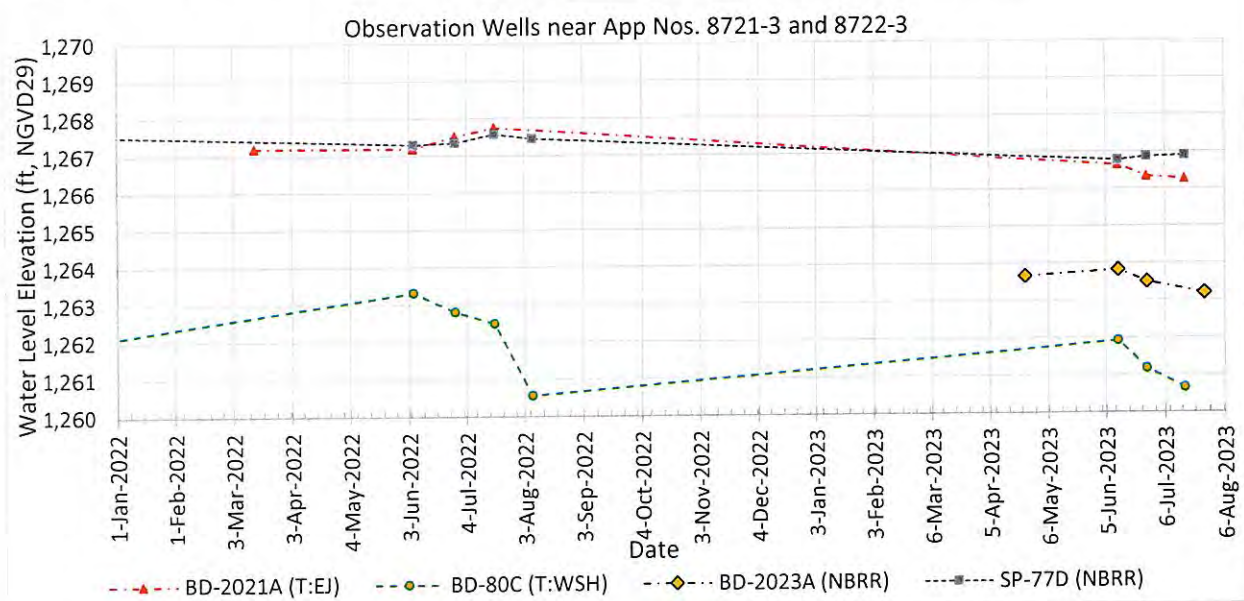


Figure 5: Water level elevations in observation wells from various aquifers near this application from 2022 to the latest measurement in 2023. (T:EJ – Tulare: East James, T:WSH – Tulare: Western Spink Hitchcock, NBRR – Niobrara) [7]

### Possibility of Unlawful Impairment of Existing Water Rights

The nearest water right/permit to this application that is completed into the Niobrara aquifer and not held by the applicant is Water Right No. 5757-3, located approximately 14 miles south of the proposed wells for these applications [8]. The applicant also holds Water Permit No. 8678-3, located approximately 1 mile northeast of Application No. 8722-3 and approximately 2 miles



northeast of Application No. 8721-3. The nearest domestic well on file with the Water Rights Program that is likely to be completed into the Niobrara aquifer and not owned by the applicant is located approximately 1.5 miles southeast of the nearest proposed well for Application No. 8722-3 and approximately 2.5 miles east of the nearest proposed well for Application No. 8721-3 based on the legal description provided by the well driller [12]. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) defines an adequate well as:

*...a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet*

If this application is approved, some drawdown in the aquifer will occur in the proximity of the pumping wells. The hydraulic head in the aquifer lifts water 110 feet above the formation. There are no complaints concerning unlawful impairment of existing water rights in the Niobrara aquifer in Beadle County [13]. If this application is approved, the applicant should control their withdrawals so that an unlawful impairment of adequate wells does not occur. Based on the distance of the proposed well to the nearest domestic well, presence of 110 feet of hydraulic head, and lack of relevant complaints on file in Beadle County, there is reasonable probability this application can be developed without unlawful impairment of existing water rights within the Niobrara aquifer.

**Special Consideration – Induction of Water from a Fully Appropriated Management Unit**

As discussed in the Observation Well and Hydrogeologic Characteristics sections, these applications underly the fully appropriated Tulare aquifer. Hydrogeologic conditions in the vicinity of the proposed well sites are such that pumping under these applications are likely to induce inflow from the Tulare: East James aquifer. Inducing inflow from a fully appropriated aquifer may be a beneficial use and public interest consideration to be made by the Water Management Board beyond the technical review in this report as it could impact the appropriative status of the Tulare: East James aquifer and may eventually constitute an unlawful impairment of existing water rights, if found to be withdrawing from the fully appropriated aquifer. To aid in decision making, the applicant should conduct an aquifer performance test monitoring both the Niobrara aquifer and the Tulare: East James aquifer prior to approval of these applications to determine whether pumping from the Niobrara aquifer under the local hydrogeologic conditions will induce inflow from the Tulare: East James aquifer.

Aside from the potential for unlawful impairment at some future date, these applications also raise the issue whether the proposed use from the Niobrara aquifer in this area is a beneficial use and in the public interest if it is found that diversion of water from the Niobrara aquifer induces

water from a fully appropriated aquifer. Beneficial use is the use of water that is useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies. While irrigation is a beneficial use of water, the use also has be consistent with the interests of the public pursuant to SDCL 46-46-1-6(3). The Water Management Board has general supervision of the water of the state and is to control the development, conservation, and allocation of the right to use the waters of the state according to the principles of beneficial use and priority of appropriation. To aid the Water Management Board in making a decision whether to approve or deny these applications, an aquifer performance test to quantify this hydrologic connection may be warranted.

#### **Special Consideration – Suitability for Irrigation**

The Howells and Stephens [4] report describes water from the Niobrara aquifer in Beadle County as “saline”, and unsuitable for irrigation. It is recommended the applicant complete a soil-water compatibility analysis by a qualified soil scientist to determine whether the water is suitable for irrigation, or when used for irrigation, what best management practices are needed to ensure water is placed to beneficial use in compliance with SDCL 46-2A-9.

#### **Conclusions**

1. Water Permit Application No. 8721-3 proposes to appropriate 5.35 cfs, to irrigate 480 acres in the E ½ and SW ¼ Section 19 from three wells to be completed into the Niobrara aquifer in the approximate centers of the NE ¼, the SE ¼, and the SW ¼ Section 19; all in T113N-R61W, 5<sup>th</sup> P.M.
2. Water Permit Application No. 8722-3 proposes to appropriate 5.35 cfs to irrigate 480 acres in the W ½ and SE ¼ Section 20 from three wells to be completed into the Niobrara aquifer in the approximate centers of the NW ¼, the SW ¼, and the SE ¼ Section 20; all in T113N-R61W, 5<sup>th</sup> P.M.
3. If these applications are approved, a qualification should be included limiting the total amount of water applied to the land to not exceed two acre-feet per acre annually, regardless of the source of water.
4. If these applications are approved, the applicant should follow best management practices as recommended by a qualified soil scientist to prevent damage to the soil from poor water quality in the Niobrara aquifer. The permit may include a qualification requiring regular testing of the soil salinity.
5. Based on the hydrologic budget, there is reasonable probability unappropriated water is available in the Niobrara aquifer for these applications.
6. Based on observation well analysis and lithologic information available, these applications should be deferred to allow for an aquifer performance test to determine the hydrologic connection between the Niobrara aquifer withdrawals potential impact to the Tulare: East James aquifer.
7. There is reasonable probability these applications can be developed without unlawful impairment of existing water rights or domestic users in the Niobrara aquifer, but induced recharge from the fully appropriated Tulare: East James aquifer may be a beneficial use and public interest consideration for the Water Management Board.



Kimberly C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

## References

- [1] 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.
- [2] L. S. Hedges, S. L. Burch, D. L. Iles, R. A. Barari and R. A. Schoon, "Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa Tasks 1-4," SD DANR Geological Survey Program, Vermillion, South Dakota, 1982.
- [3] N. Steen and A. Mathiowetz, "Report to the Chief Engineer on Water Permit Application No. 8624-3," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [4] L. W. Howells and J. C. Stephens, "Geology and Water Resources of Beadle County South Dakota Part II: Water Resources," SD DANR Geological Survey Program, Vermillion, South Dakota, 1968.
- [5] D. W. Tomhave and L. D. Schulz, "Bedrock geologic map showing configuration of the bedrock surface in South Dakota east of the Missouri River," DANR Geological Survey Program, Vermillion, SD, 2004.
- [6] SD DANR Geological Survey Program, "Lithologic Logs," Vermillion, South Dakota, 2022.
- [7] SD DANR Water Rights Program, "Observation Wells," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [8] SD DANR Water Rights Program, "Water Right Permit Files," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [9] SD DANR Water Rights Program, "Irrigation reports," Joe Foss Bldg., Pierre, South Dakota, 2022.
- [10] SD DANR Drinking Water Program, "Drinking Water Reports," SD DANR Drinking Water Program, Pierre, South Dakota, 2021.
- [11] B. Friedeman, Interviewee, *Environmental Scientist II, SD DANR Drinking Water Program*. [Interview]. 9 February 2021.

- [12] SD DANR Water Rights Program, "Well Completion Reports," SD DANR Water Rights Program, Pierre, South Dakota, 2023.
- [13] SD DANR Water Rights Program, *County Files*, Pierre, South Dakota: SD DANR Water Rights Program, 2023.

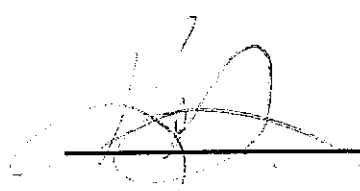


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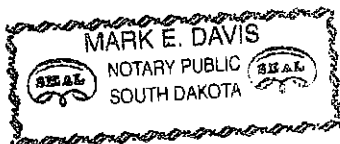
Legal Notice Number: 2246

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Huron HBI – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 10/25/2023. That the full amount of the fee charged for the \$85.62 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

  
\_\_\_\_\_  
Subscribed and sworn to me before this date 10/25/23.

  
\_\_\_\_\_  
Notary Public, South Dakota

My Term Expires 12/27/2024



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OFFICE OF  
WRAP

**NOTICE OF HEARING  
on Application Nos.  
8721-3 and 8722-3 to  
Appropriate Water**

Notice is given that Huron HBI, c/o Joe Waldner, 40068 Huron Colony Lane, Huron SD 57350 has the following applications for a water permit.

Application No. 8721-3 proposes to appropriate 5.34 cubic feet of water per second (cfs) from three wells to be completed into the Niobrara Aquifer (approximately 180 feet deep) located in the centers of the SE 1/4, NE 1/4, and SW 1/4 Section 19 for irrigation of 480 acres located in the E1/2, SW 1/4 Section 19; all in T113N-R61W. This site is located approximately 14 miles north of Huron SD.

Application No. 8722-3 proposes to appropriate 5.34 cfs from three wells to be completed into the Niobrara Aquifer (approximately 180 feet deep) located in the centers of the NW 1/4, SW 1/4, and SE 1/4 Section 20 for irrigation of 480 acres located in the W 1/2, SE 1/4 Section 20; all in T113N-R61W. This site is located approximately 14 miles north of Huron SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the applications 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 the applications, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that the applications present important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application Nos. 8721-3 and 8722-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application Nos. 8721-3 and 8722-3 is to allow time for Huron

Hutterian Brethren Inc. to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the fully appropriated Tulare: East James aquifer. Inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

The Water Management Board will consider this application at 9:45 AM (Central Time) on December 6, 2023, 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 applications, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the applications within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the applications with BOTH the applicant and Chief Engineer. A petition opposing the applications shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/> public or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's

recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by November 6, 2023.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the applications on the petitioner, the petitioner's reasons for opposing the applications, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December 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 applications. The request for an automatic delay must be filed by November 6, 2023. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the applications with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/> public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is water permit applications 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.

No. 2246 (adv.) Published one time at the total approximate cost of \$85.62 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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 8777-3, Poinsett Hutterian Brethren Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8777-3, Poinsett Hutterian Brethren Inc., 46527 189th Street, Estelline SD 57234.

The Chief Engineer is recommending DEFERRAL of Application No. 8777-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8777-3 is to allow time for Poinsett Hutterian Brethren Inc. to delineate the areal extent of the Prairie Coteau aquifer in which the well is located or show a hydrologic connection to a nearby portion of the Prairie Coteau aquifer in which Water Right Nos. 7921-3 and 7988-3 are located. This effort may entail conducting an aquifer performance test.

See report for further information.

Eric Gronlund, Chief Engineer  
August 24, 2023

NOTE: The applicant or their consultant shall consult with the Water Right Program regarding requirements for a suitable aquifer performance test or additional drilling to the northwest of the well site in adjacent sections. To discuss the requirements and recommendations for an aquifer performance test or additional drilling, please contact Adam Mathiowetz at (605) 773-3352.

REPORT TO THE CHIEF ENGINEER  
ON  
WATER PERMIT APPLICATION NO. 8777-3  
FOR  
POINSETT HUTTERIAN BRETHERN INC  
AUGUST 25, 2023

Water Permit Application No. 8777-3 proposes the irrigation of 136 acres from one existing well (approximately 150 feet deep) completed into the Prairie Coteau aquifer at a maximum instantaneous diversion rate of 1.67 cubic feet of water per second (cfs). The well is located in the NE ¼ SW ¼ Section 22 and the land to be irrigated is located in the SW ¼ Section 22, all in T114N-R51W. The site is located approximately 6 miles northwest of Estelline, SD in Hamlin County.

**AQUIFER: Prairie Coteau (PCO)**

**Aquifer Characteristics:**

The Prairie Coteau aquifer has been recognized by the DANR-Water Rights Program as a collection of Quaternary-aged discontinuous buried primarily non-basal and non-surficial glacial outwash deposits between the approximate altitudes of 1,550 to 1,800 feet (NGVD29) on the Prairie Des Coteau in South Dakota (Hansen, 1994; Kume, 1985; SDGS, 2023; Thompson, 2001; Water Rights, 2023c, 2023d, and 2023e). These various outwash deposits are disconnected, lenticular bodies of sand and gravel with widely varying depths, thicknesses, and areal extents. These bodies are collectively known as the Prairie Coteau aquifer due to the hydrogeologic similarities, but each deposit is treated as its own independent aquifer (Water Rights, 2023d).

Cumulatively, the Prairie Coteau aquifer underlies approximately 1,100 square miles of Deuel and Hamlin Counties (Kume, 1985). At any given location, the aquifer is composed of multiple layers of sand and gravel separated by clayey till and enclosed in a thick section of till overlying the bedrock of the area (Kume, 1985). Generally, the various layers are not hydrologically connected. The aquifer is under confined conditions (Kume, 1985; Water Rights, 2023e).

At the applicant's well site, the general elevation of the target portion of the Prairie Coteau aquifer ranges from 1,520 to 1,560 feet (NGVD29). The aquifer is expected to be under confined conditions (Water Rights, 2023e). Based on the test hole completion report submitted with this application the depth to the top of the first layer of aquifer materials is 133 feet below grade. Due to the limited number of wells, test holes, and lithologic borings penetrating this portion of the Prairie Coteau aquifer, it is currently not possible to determine an approximate areal extent for the targeted portion of the Prairie Coteau aquifer (SDGS, 2023; Water Rights, 2023c, 2023d, and 2023e).

**APPLICABLE SOUTH DAKOTA CODIFIED LAW (SDCL):**

Pursuant to SDCL 46-2A-9, "A permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the diversion point can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest



as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SDCL 46-2-9 and 46-2-11.” This report will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within the Prairie Coteau aquifer.

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

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

The Greenhorn Formation is a Cretaceous aged formation (Fahrenbach et al, 2010). The Prairie Coteau aquifer is younger and stratigraphically higher than the Greenhorn Formation. Furthermore, the applicant is not a water distribution system as defined by SDCL 46-1-6(17). Therefore, the balance between recharge to and withdrawals from the Prairie Coteau aquifer must be considered for this application.

#### **Hydrologic Budget:**

Determination of water availability includes a review of water use occurring from the aquifer targeted by a given application. This includes determination of the areal extent of the aquifer. An aquifer performance test was conducted for Water Right No. 7921-3 located approximately 2.6 miles northwest of the applicant’s well site. The aquifer performance test was conducted and analyzed by Dustman of Summit EnviroSolutions (Dustman, 2014). The aquifer performance test was conducted as part of a deferral recommendation for then Application No. 7921-3 to determine aquifer areal extent and availability of water for the application. The aquifer performance test report was reviewed by Water Rights Staff Engineer Capen (2014) and a supplementary report drafted recommending approval of the application. Water Right No. 7921-3 was targeting a deposit of the Prairie Coteau aquifer in the elevation range of 1,500 to 1,550 feet (NGVD29).

The aquifer performance test determined a radius of influence ( $r_0$ ) of approximately 60,000 feet or 11.4 miles. It was noted by Capen (2014) the methods used to determine the aquifer characteristics, transmissivity and storativity, were done using early-time data and therefore not necessarily as reliable or accurate as using late-time data. Early-time data includes the influence of emptying of the well casing to a stable pumping level and local dewatering of the aquifer around the well casing which are not necessarily representative of the aquifer on a larger scale. Furthermore, a secondary review of this aquifer performance test by Drennon (2023) and conducted for this application determined that the  $r_0$  is likely only in one direction, to the northeast of the tested well. This is due to the shape of the drawdown curve (see Figure 1) and the fact that one monitoring well was in

very close proximity to the pumping well and the other more distant monitoring well was located to the northeast of the pumping well.

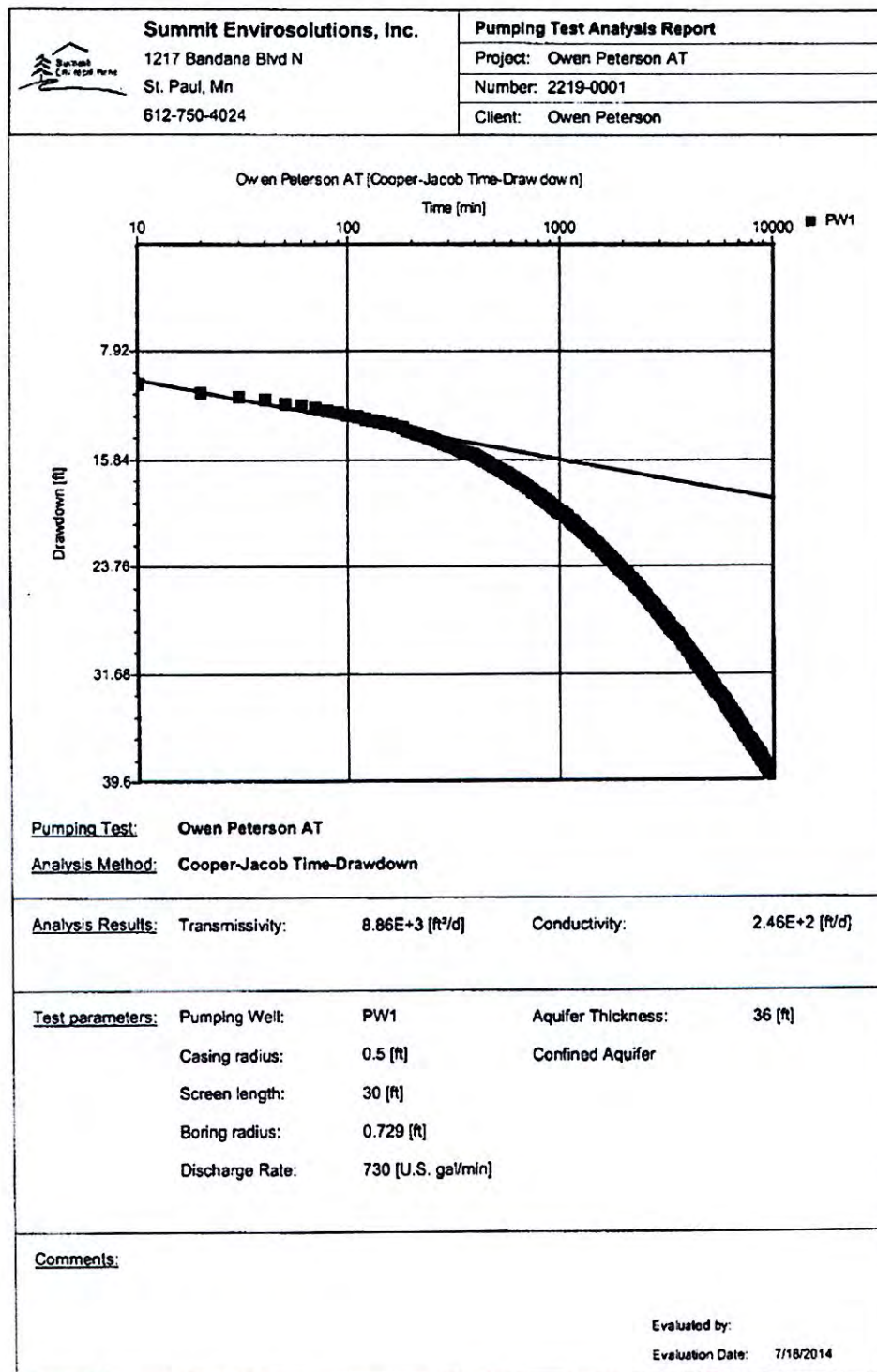


Figure 1- Cooper-Jacob Time-Drawdown curve for the pumping well for Water Right No. 7921-3 aquifer performance test (Dustman, 2014)

On a log time scale, such as the graph in Figure 1, the shape of the drawdown curve should be a straight line if the aquifer is so extensive that no boundary conditions were encountered. However, the shape is a curved line. This is more indicative of a channel deposit. The monitoring wells used for this performance test were 100 feet south and 2 miles northeast of the pumping well. Furthermore, review of various borings including several drilled since completion of the aquifer performance test in the area support that the deposit used by Water Right No. 7921-3 is likely a channel deposit running northeast to southwest of the well for Water Right No. 7921-3 and not necessarily a large areal extent deposit that would include the well site for this application located approximately 2.6 miles southeast of the pumping well for Water Right No. 7921-3 (SDGS, 2023; Water Rights, 2023c, 2023d, and 2023e).

Furthermore, review of the borings with sufficient depth to reach the applicant's targeted aquifer in the area of this application are limited to the applicant's borings on site and a lithologic boring by the SD Geological survey approximately 1.4 miles southeast (SDGS, 2023). There are no other borings of sufficient depth within approximately two miles of the well the applicant proposes to use to determine areal extent of the portion of the Prairie Coteau aquifer in which the well is completed. In short, there is not sufficient information available to determine the areal extent of the portion of the Prairie Coteau aquifer the applicant intends to use. Based on a recharge rate for buried confined aquifers suggest by Hedges and others (1985), 0.15 to 0.6 inches per year, and assuming an application rate of 10 inches per acre per year equating to 113.3 ac-ft/yr, then the portion of the Prairie Coteau aquifer the applicant proposes to use needs to underlie 2,267 to 9,067 acres or 3.5 to 14.2 square miles.

While there is an observation well, HN-2016A, completed into the portion of the Prairie Coteau aquifer Water Right No. 7921-3 uses, located approximately 2.5 miles northwest of the applicant's well site, it is uncertain if that portion of the Prairie Coteau aquifer is hydrologically connected to the portion this application proposes to use. However, the hydrograph for HN-2016A is useful for discussing the likely artesian head pressure available and the reaction to pumping by Water Right Nos. 7921-3 and 7988-3 which are both completed into the same portion of the aquifer as the observation well. The top of the aquifer material in HN-2016A is 199 feet below grade. At the lowest recorded water level, there was approximately 104 feet of artesian head pressure remaining above the top of the aquifer. It is clearly evident that pumping by Water Right Nos. 7921-3 and 7988-3 reduces the artesian head pressure in the aquifer during the irrigation season (Water Rights, 2023b and 2023c). Since 2020, there has been a decline in the water level of the first measurement each year for this observation well. This may be due to abnormally dry to drought conditions persisting in the area for much of 2020, 2021, and 2023, particularly during the primary recharge period of spring through early summer during those years and during a portion of those months in 2022 as well.

Based on the best reasonably available information, this application should be deferred until additional information is available to delineate the aquifer or to show a hydrologic connection to the portion of the Prairie Coteau aquifer that Water Right Nos. 7921-3 and 7988-3 are completed into. Examples of further information could be additional drilling to the northwest of the well site in adjacent sections or an aquifer performance test of sufficient length to demonstrate an  $r_0$  that is sufficiently large enough to support this application.



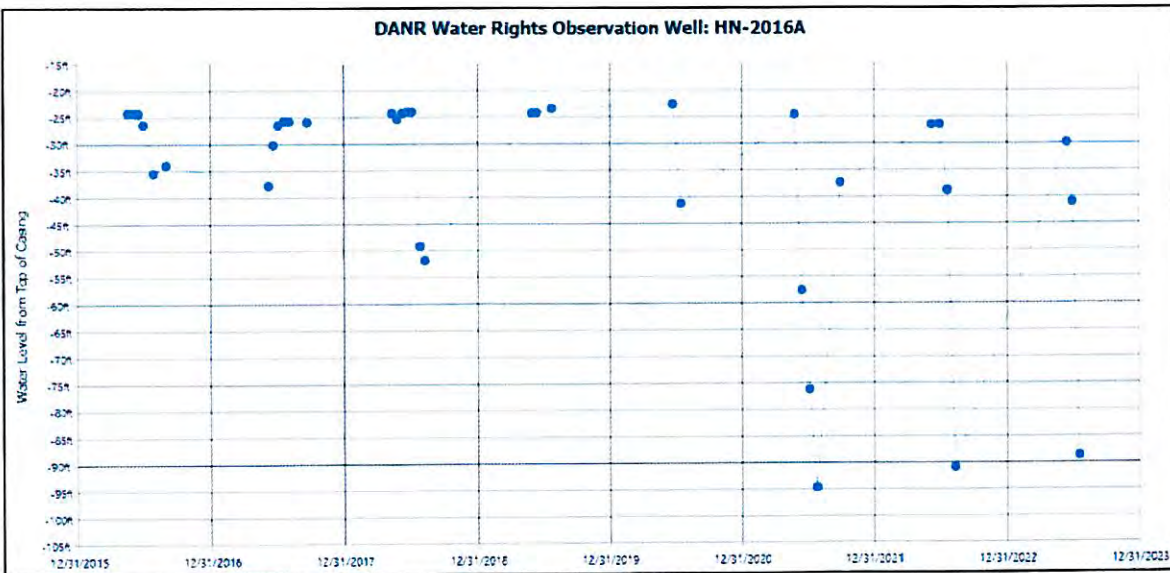


Figure 2- Hydrograph for HN-2016A (Water Rights, 2023c)

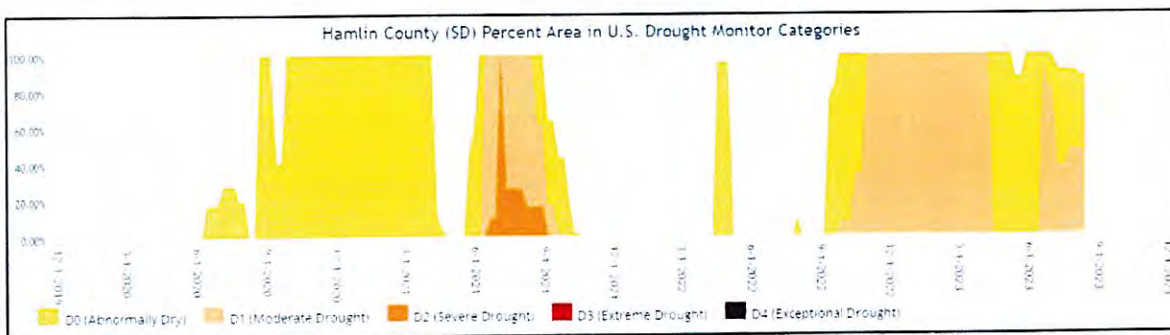


Figure 3- Hamlin County, SD percent of area in U.S. Drought Monitor Categories December 2019 to December 2023 (Drought Monitor, 2023)

### POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

The nearest Prairie Coteau aquifer water rights that may be completed into the same portion of the aquifer as this application are Water Right Nos. 7921-3 and 7988-3, approximately 2.6 miles northwest and 2.2 miles north, respectively (Water Rights, 2023d). However, as previously stated, this application and Water Right Nos. 7921-3 and 7988-3 may not be in the same portion of the Prairie Coteau aquifer. There are no domestic wells on record within two miles that appear to be completed into the Prairie Coteau aquifer at a similar elevation as the applicant's well (Water Rights, 2023e). There may be domestic wells completed into the same portion of the Prairie Coteau aquifer wells as the applicant's well that are not on file with the Water Rights Program.

The Prairie Coteau aquifer is expected to be under confined conditions at the applicant's well site (Water Rights, 2023e). Since the aquifer is confined, drawdown can extend some distance from a well. However, the exact drawdown behavior cannot be determined without an aquifer performance test. The Water Management Board recognizes that putting water to beneficial use requires a certain amount of drawdown to occur. The Board has promulgated rules to allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure



for domestic use. The Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

“A well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs.”

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use during the issuance of Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted the Findings of Fact and Conclusions of Law that noted the reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, “general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable...” (Water Rights, 1995). Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered as an unlawful impairment, it would also conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to install or lower pumps depending on the specific characteristics of the Prairie Coteau aquifer at their location. A review of the Water Rights Program complaint file for Hamlin County shows no complaints of well interference from wells completed into the Prairie Coteau aquifer in the county (Water Rights, 2023a). There have been complaints filed with the Water Rights Program regarding well impairment of Prairie Coteau aquifer wells in other counties (Water Rights, 2023a). Most of these complaints were unsubstantiated and required the lowering of pumps in the owner’s wells. As previously stated, pump placement using artesian head pressure as a means of delivery of water has been determined by the Water Management Board to not be protected. When considering the statutes (SDCL 46-1-4 and 46-6-6.1, rule (ARSD 74:02:04:20(7))), the expected amount of artesian head pressure at the proposed well site for this application (100+ feet), and the lack of well interference complaints in the area of this application from the Prairie Coteau aquifer, there is a reasonable probability that any drawdown created by using this proposed diversion will not cause an unlawful impairment on existing water rights/permits with adequate wells or adequate domestic wells.

#### **CONCLUSIONS:**

1. Water Permit Application No. 8777-3 proposes the irrigation of 136 acres from one existing well (approximately 150 feet deep) completed into the Prairie Coteau aquifer at a maximum instantaneous diversion rate of 1.67 cubic feet of water per second (cfs). The well is located in the NE ¼ SW ¼ Section 22 and the land to be irrigated is located in the SW ¼ Section 22, all in T114N-R51W. The site is located approximately 6 miles northwest of Estelline, SD in Hamlin County.
2. There is not sufficient information available to determine the areal extent of the aquifer this application proposes to use. Thus, there is not sufficient information available to determine if the amount of unappropriated water available is sufficient to satisfy this application.



3. This application should be deferred until further information is available to delineate the aquifer. For example, there could be additional drilling in the area, or an aquifer performance test could be conducted.
4. There is a reasonable probability that use from this proposed diversion will not unlawfully impair existing appropriative or domestic users with adequate wells.



Adam Mathiowetz, PE  
SD DANR-Water Rights Program

**REFERENCES:**

- Capen, B. 2014. Supplemental Report to the Chief Engineer Deferred Water Permit Application No. 7921-3 Owen and Lamont Peterson. SD DANR-Water Rights Program. Pierre, SD.
- Drennon, K.C. August 22, 2023. *Personal Communication*. DANR-Water Rights Program Engineer II. Pierre, SD.
- Dustman, J. 2014. Aquifer Test Report, Owen Peterson Farm. Summit Project No. 2219-0001. Summit Envirosolutions, Inc. St. Paul, MN.
- Fahrenbach, M.D., Steece, F.V., Sawyer, J.F., McCormick, K.A., McGillivray, G.L. and Redden, J.A. 2010. South Dakota Stratigraphic Correlation Chart. Oil and Gas Investigation 3. DANR-Geological Survey Program. Vermillion, SD.
- Hansen, D.S. 1994. Major Aquifers in Codington and Grant Counties, South Dakota. Information Pamphlet No. 47. SD DANR-Geological Survey. Vermillion, SD.
- Hedges, L.S., Allen, J., and Holly, D.E. 1985. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 7: Ground Water Recharge. U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Kume, J. 1985. Water Resources of Deuel and Hamlin Counties, South Dakota. Water-Resource Investigations Report 84-4069. U.S. Geological Survey. Huron, SD.
- SDGS.2023. SD Geological Survey Lithologic Logs Database. Accessed: August 21, 2023. <<http://cf.sddanr.net/lithdb/>>.
- Thompson, R.F. 2001. Water Resources of the Lake Traverse Reservation, South and North Dakota, and Roberts County, South Dakota. Water-Resource Investigations Report 01-4219. U.S. Geological Survey. Rapid City, SD.
- Drought Monitor. 2023. U.S. Drought Monitor Time Series. Accessed August 22, 2023. <<https://droughtmonitor.unl.edu/DmData/TimeSeries.aspx>>.

Water Rights. 2023a. County Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, SD

Water Rights. 2023b. Irrigation Questionnaire Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 2023c. Observation Well Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 2023d. Water Right/Permit Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 2023e. Well Completion Reports. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, SD.

Water Rights. 1995. Water Rights File No. 2313-2 Coca-Cola Bottling Company of the Black Hills. SD DANR-Water Rights Program. Pierre, SD.

# LOCALiQ

Aberdeen News  
Watertown Public Opinion

PO Box 630567 Cincinnati, OH 45263-0567

## **PROOF OF PUBLICATION**

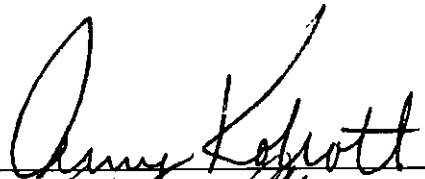
Water Rights Program Levi  
Poinsett Hutterian Brethren Inc  
46527 189Th ST  
Estelline SD 57234-5707

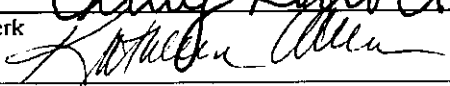
STATE OF SOUTH DAKOTA, COUNTY OF CODINGTON

The Watertown Public Opinion is, and during all the times hereafter mentioned was, a daily legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4, as amended, published at Watertown, Codington County, South Dakota, by Watertown Public Opinion; that the notice, order or advertisement, a printed copy of which is attached, was published in said newspaper in the issue dated:

10/25/2023

and that the fees charged are legal.  
Sworn to and subscribed before on 10/25/2023

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

  
\_\_\_\_\_  
Notary, State of WI, County of Brown

1-7-25

My commission expires

Publication Cost: \$94.32

Order No: 9412305

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PO #: No. 8777-3

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KATHLEEN ALLEN  
Notary Public  
State of Wisconsin



NOTICE OF HEARING on  
Application No. 8777-3 to  
Appropriate Water

Notice is given that Poinsett Hutterian Brethren Inc., c/o Levi Tschetter, 46527 189th Street, Estelline SD 57234 has filed an application for a water permit to appropriate 1.67 cubic feet of water per second from one existing well completed into the Prairie Coteau Aquifer (approximately 150 feet deep) located in the NE 1/4 SW 1/4 Section 22 for irrigation of 136 acres located in the SW 1/4 Section 22; all in T114N-R51W. This site is located approximately 6 miles northwest of Estelline SD.

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

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8777-3 for up to two years for further study pursuant to SDCL 46-2A-2 and 46-2A-7. The deferral of Application No. 8777-3 is to allow time for Poinsett Hutterian Brethren Inc. to delineate the areal extent of the Prairie Coteau aquifer in which the well is located or show a hydrologic connection to a nearby portion of the Prairie Coteau aquifer in which Water Right Nos. 7921-3 and 7988-3 are located. This effort may entail conducting an aquifer performance test.

The Water Management Board will consider this application at 9:45 AM (Central Time) on December 6, 2023, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capital 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 November 6, 2023.

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 December 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 November 6, 2023. 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 November 6, 2023.

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 Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at [Brian.Walsh@state.sd.us](mailto:Brian.Walsh@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." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. 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 10/25/23 at an approximate cost of \$94.32 and may be viewed free of charge.





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WATER

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**PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA )

County of Hamlin ) SS

I, LeeAnne Dutch

October 25, 2023 / **15**

certify that the attached printed Notice was taken

from the Hamlin County  
Republican

printed and published in Castlewood

County of Hamlin and

state of South Dakota. The notice was published

in the newspaper on the following date:

Oct. 25, 2023

Cost of Printing 72.92

LeeAnne Dutch  
(Signature)

Dutch  
(Title)

10-25-2023  
(Date Signed)

**NOTICE OF HEARING ON  
APPLICATION NO. 8777-3  
TO APPROPRIATE WATER**

Notice is given that Poinsett Hutterian Brethren Inc., c/o Levi Tschetter, 46527 189<sup>th</sup> Street, Estelline SD 57234 has filed an application for a water permit to appropriate 1.67 cubic feet of water per second from one existing well completed into the Prairie Coteau Aquifer (approximately 150 feet deep) located in the NE 1/4 SW 1/4 Section 22 for irrigation of 136 acres located in the SW 1/4 Section 22; all in T114N-R51W. This site is located approximately 6 miles northwest of Estelline SD.

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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 December 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 November 6, 2023. 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 November 6, 2023.

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The petition shall be in writing and shall include a statement describing

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Published Oct. 25, 2023, at total cost of \$72.92 and may be viewed online at [www.sdpublicnotices.com](http://www.sdpublicnotices.com)



November 16, 2023

Ron Duvall  
SD Department of Agriculture and Natural Resources  
Water Rights Program  
Joe Foss Building  
523 E. Capitol Ave.  
Pierre, SD 57501

Dear Mr. Duvall:

Subject: Request for Withdrawal of Future Use Water Rights Permit Application No. 3980-3

Dear Mr. Duvall,

I am writing to formally request the withdrawal future use application No. 3980-3, which was submitted on June 3<sup>rd</sup>, 1977. After careful consideration, the City of Sioux Falls has decided not to pursue this permit and will not pursue legislative approval of said application.

Application Details:

- Permit Application Number: No. 3980-3
- Applicant Name: City of Sioux Falls
- Property Address: E1/2 Sec 23, T102N, R49W
- Date of Application: June 3<sup>rd</sup>, 1977

Thank you for your understanding and cooperation in this matter. Please confirm the withdrawal of my application in writing, and if there are any additional steps or forms required to complete this process, kindly inform me, and I will promptly fulfill them.

Sincerely,

Mark Cotter  
Director of Public Works

CC: Chris Myers – Water Superintendent  
Ryan Johnson – Utility Administrator



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

November 17, 2023

**NOTICE OF HEARING**

TO: Mark Cotter, Director of Public Works  
PO Box 7402  
Sioux Falls SD 57117-7402

Jennifer L. Verleger, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501

FROM: Ron Duvall, Engineer III  
SD DANR, Water Rights Program

SUBJECT: Notice of Hearing on Request to Withdraw Future Use Water Permit Application No. 3980-3, City of Sioux Falls

In a letter dated November 16, 2023, the City of Sioux Falls requested withdrawal of Future Use Water Permit Application No. 3980-3. This application was submitted on June 6, 1977, by the City to appropriate and reserve 50,000 acre-feet of water from Slip-up creek located in the E1/2 section 23-T102N-R49W. The Water Resources Commission (predecessor of the current Water Management Board) considered the application and presented it to the Legislature during the Fifty-Fourth Legislative Assembly in 1979. The Legislature took no action on Future Use Permit Application No. 3980-3, and since then, no further action has been taken to seek legislative approval.

Pursuant to the City's request to withdraw Application No. 3980-3, this matter is scheduled for hearing by the Water Management Board at 10:00 AM (Central Time) on Wednesday, December 6, 2023. The time is an estimate and may be delayed due to prior agenda items.

The Board is authorized to: 1) accept withdrawal of Application No. 3980-3, 2) resubmit the application to the Legislature, or 3) defer action on the application after it reaches a conclusion based on the facts presented at the public hearing.

The hearing will be conducted via remote connection. To connect to the meeting in a browser, navigate to <https://www.microsoft.com/microsoft-teams/join-a-meeting> and enter:

Meeting ID: 276 636 563 836

Passcode: 9ZU3TP

Or call 605-679-7263 and enter conference ID 963 727 394#



## **Notice of Hearing – Application No. 3980-3**

November 17, 2023

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. As a legal entity, the city of Sioux Falls is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. Board decisions may be appealed to the Circuit Court and State Supreme Court as provided by law.

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 through 1-26-28; SDCL 46-1-1 through 46-1-9, 46-1-13 through 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 through 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 through 46-5-26, 46-5-30.2 through 46-5-30.4, 46-5-31, 46-5-32 through 46-5-34.1, 46-5-38 through 46-5-39, 46-5-46, 46-5-47, 46-5-49; Board Rules ARSD 74:02:01:01 through 74:02:01:25.

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 § 1-26-17.” This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is November 28, 2023.

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

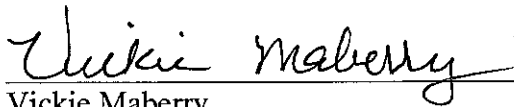
## CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated November 17, 2023, regarding Future Use Water Permit Application No. 3980-3 – City of Sioux Falls, was served upon the following by enclosing the same in envelopes with first class postage prepaid, and depositing said envelopes in the United States mail on November 17, 2023.

Mark Cotter, Director of Public Works  
PO Box 7402  
Sioux Falls SD 57117-7402

Above also Sent Inter-office to:

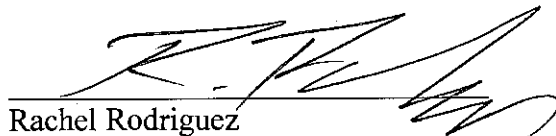
Jennifer L. Verleger, Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre SD 57501-8501



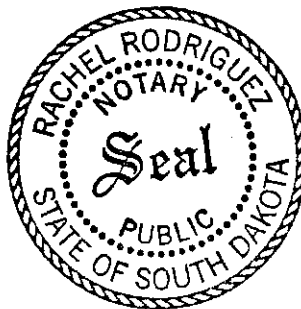
Vickie Maberry  
Water Rights Program, DANR

STATE OF SOUTH DAKOTA   )  
  ) SS  
COUNTY OF HUGHES        )

Sworn to, before me, this 17 day of November, 2023.



Rachel Rodriguez  
Notary Public  
My Commission expires May 16, 2029



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

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IN THE MATTER OF FUTURE USE	)	
WATER PERMIT APPLICATION NO.	)	ORDER
3980-3, City of Sioux Falls	)	
	)	

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On November 16, 2023, the city of Sioux Falls (City) requested that Future Use Water Permit Application No. 3980-3 submitted by the City in June 1977 to appropriate and reserve 50,000 acre-feet of water from Slip-Up Creek be withdrawn. The Water Management Board considered the withdrawal request at a hearing on Wednesday, December 6, 2023. After considering testimony received at the hearing, it is

ORDERED that the withdrawal request concerning Future Use Water Permit Application No. 3980-3 is granted. Application No. 3980-3 is withdrawn, and no further action will be taken on the application.

IT IS FURTHER ORDERED that withdrawal of Application No. 3980-3 does not preclude the City from making another application in the future.

Dated this \_\_\_\_\_ day of December, 2023.

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William Larson, Chair  
Water Management Board