DANR
SOUTH DAKOTA

WATER MANAGEMENT BOARD
Meeting on July 10, 2024

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

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

Scheduled times are based on Central Time and are estimated start times.
Agenda items may be delayed due to prior scheduled items.
Live audio of the meeting is available at https://www.sd.net

July 10, 2024

9:30 AM Call to Order
Roll Call
Annual Election of Officers
Appointment of Prehearing Officer
Adopt Final Agenda
Conflicts Disclosures and Requests for State Board Waivers
Adopt May 8, 2024 Board Minutes
Set October 2 - 3, 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

Cancellation Considerations – Amanda Dewell

Consider Validation of Recognized Vested Water Right Claim No. 1069-2, SD Game, Fish & Parks for Canyon Lake – Eric Gronlund

Consider Water Permit Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3, Nick & Scott Bebo – Ron Duvall

Consider Water Permit Application Nos. 8867-3, 8868-3, 8869-3, 8870-3, Jim or Collin Klebsch – Ron Duvall

Consider Modification of Qualification No. 4 on Water Permit No. 3053A-3, Brett Binger – Amanda Dewell

10:00 AM Consider Permit Application No. 8842-3, Greg & Evette Rihanek – Nakaila Steen

LUNCH
Continue any prior agenda items not yet completed.
ADJOURN

WATER MANAGEMENT BOARD
Meeting on July 10, 2024

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 as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

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

MINUTES OF THE 249TH MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
MAY 8, 2024

CALL TO ORDER AND ROLL CALL: Vice Chair Jim Hutmacher called the meeting to order at 9:30 a.m. Central Time. A quorum was present.

Vice Chair Hutmacher announced that 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, and Leo Holzbauer attended in person. Tim Bjork, Chad Comes, and Peggy Dixon attended remotely. William Larson was absent.

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

Attorney General's Office: David McVey, board counsel; Jennifer Verleger, Water Rights Program counsel.

Court Reporter: Carla Bachand, Capital Reporting Services.

Legislative Oversight Committee Members: Representative Mike Weisgram and Senator Randy Deibert.

Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 8787-3, Cheryl E Nelson: Cody Honeywell, Pierre, Shar Eliason, Gettysburg, Dianna Archer, Sturgis, Gary Schumacher, DeSmet.

Consider Future Use Water Permit Application No. 8754-3, Lewis and Clark Regional Water System: Troy Larson. Lewis & Clark RWS, John Taylor, Sioux Falls, and Leslie Murpey, Banner Associates.

Water Permit Application Nos. 8825-3 and 8268-3, Lenny Peterson: Todd Wilkinson, DeSmet, Ryan Vogel, Aberdeen, Rob Roeber, Redfield, Lenny Peterson, Hitchcock, Frank Schwartz, Adam Hansen, Chad Moore, City of Redfield.

Water Permit Application Nos. 8594A and 8817, Merlin Vannorsdel: Scott and Merlin

Vannorsdel, Viborg.

Other: Albert Keller, Lemmon.

ADOPT FINAL AGENDA: Motion by Freeman, seconded by Holzbauer, to adopt the agenda. Motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

APPROVE MARCH 6, 2024, MINUTES: Ms. Dixon pointed out that on page 7 in the fourth paragraph under Consider Water Permit Application No. 8803-3, the words "per year" should be added at the end of the second to last sentence.

Motion by Freeman, seconded by Comes, to amend the minutes by adding "per year" as discussed. Motion carried unanimously.

Motion by Bjork, seconded by Dixon, to approve the amended minutes of the March 6, 2024, Water Management Board meeting. Motion carried unanimously.

SET JULY 10-11, 2024, MEETING LOCATION: The July 10-11 board meeting will be at the Matthew Environmental Training Center in Pierre.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: None.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: David McVey reported that the two Water Management Board decisions on McCook Lake Recreation Area Association's declaratory ruling request and Dakota Bay's water permit application were appealed to the First Judicial Circuit Court. Both matters have been fully briefed, and oral arguments were held on April 9, 2024. There has been no decision rendered yet.

UPDATE ON DANR ACTIVITIES: Eric Gronlund, Chief Engineer, Water Rights Program, reported that the Water Rights Program has received many water permit applications. Staff is conducting the spring lake survey measuring water levels in several lakes, seasonal observation well readers are being hired, and staff is monitoring the US Geological Survey gaging stations and checking the drought monitor on a weekly basis.

Mark Rath was the recipient of the 2024 Governor's Award for Excellence in Leadership.

Mr. Gronlund announced that Vickie Maberry, senior secretary with the Water Rights Program, will retire on May 24, 2024, and Mark Rath, engineer with the Water Rights Program, will be retiring on June 8, 2024. Mr. Rath has agreed to be a seasonal water rights inspector for the Water Rights Program.

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: A table listing the proposed cancellations, the notices of cancellation, and the Chief Engineer's recommendations were included in the packet the board members received prior to the meeting.

Amanda Dewell stated that 11 water rights and water permits were scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The department received no comments or letters in response to the notices of cancellation.

The Chief Engineer recommended cancellation of the following water rights and water permits for the reasons listed.

Number	Original Owner	Present Owner(s) and Other Persons Notified	Reason
DIVISION I WATER RIGHTS/PERMITS			
RT 1384-1	Meade School Dist 46-1	Same	Abandonment
DIVISION III WATER RIGHTS/PERMITS			
PE 2464-3	John R Talsma	Same	Abandonment/Forfeiture
PE 6888-3	Coulson Land Co c/o Thomas Coulson	Same	Abandonment/Forfeiture
PE 7356-3	Mark Baxter	Same	Abandonment/Forfeiture
PE 7535-3	Donald Benson	James Benson	Non-Construction
PE 7603-3	Michael D Stevens	Same	Non-Construction
PE 7616-3	Wayne Reierson (renter)	Forrest & Ruth Borr (owners)	Non-Construction
PE 7695-3	Three J Farm Partnership c/o Janet Perry	Same	Non-Construction
PE 8096-3	Jeffrey Aman	Same	Non-Construction
PE 8097-3	Jeffrey Aman	Same	Non-Construction
RT 8188-3	Jensen Rock & Sand Inc (renter)	Gary Althoff (owner)	Abandonment

Motion by Freeman, seconded by Holzbauer, to accept the Chief Engineer's recommendations for cancellation of the 11 water rights and water permits for the reasons listed in the table. 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. 8787-3, CHERYL E. NELSON: David McVey reported that there was no opposition to the proposed Findings of Fact and Conclusions of Law and Final Decision.

Motion by Freeman, seconded by Dixon, to approve the Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 8787-3, Cheryle E. Nelson. A roll call vote was taken, and the motion carried unanimously.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: Prior to the meeting, the board received a copy of the table listing the unopposed new water permits issued by the Chief Engineer. See attachment.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification
The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification
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. 8821-3, 8822-3, 8823-3, 8824-3, JIM OR COLLIN KLEBSCH AND WATER PERMIT APPLICATION NO. 8835-3, NICK AND SCOTT BEBO: Brittan Hullinger, engineer with the Water Rights Program, presented her report on the applications.

Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 are five new applications that were submitted to appropriate water from the James River. The applications were filed by two landowners, Klebsch and Bebo, for a total of 15.11 cubic feet of water per second (cfs) for the irrigation of 1,016 total acres. The proposed diversion locations for the five permits are close together, all located three to five miles northeast of Redfield, SD.

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton. Approximately 475 of its total 710 miles are in South Dakota, and its elevation decreases about 460 feet over the distance of 710 miles, which gives the river

only 0.7 feet per mile of elevation change. This is extremely flat, and travel times on the James River are measured in weeks, rather than hours or days. The James River has periodic extremely low flows and cannot be considered a reliable source of water.

The USGS published a study in 2022 called "Assessment of Streamflow Trends in the Eastern Dakotas for Water Years 1960-2019." The report found that streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States.

In 2020, the USGS James River gage at Columbia was measured above flood stage for more than 518 consecutive days. Since then, the National Weather Service has updated its flood severity categories to reflect flow changes to the James River. The Water Rights Program conducted its own review and found the same significantly increasing trends.

Figures 1 through 3 in both reports show the minimum daily flow, median daily flow, and the maximum daily flow for the irrigation months for each year that data is available. Figures 5 through 7 show the median monthly flow for each of the irrigation months, for three different timeframes. While the minimum, median, and maximum streamflow during irrigation months have all generally increased, there are still years where flow in the river is low and unreliable.

In 1965, the Water Rights Commission placed maximum appropriation limits over sections of the James River. A 300 cfs appropriation restriction applies from the North Dakota/South Dakota border to the Yankton/Hutchinson County line. Of this restriction, there is a 200 cfs appropriation limit from the North Dakota/South Dakota border to the USGS gaging station in Huron. The Water Management Board has maintained these limits for almost 60 years. Current appropriations from the James River are very close to these limits.

Future Use Permit No. 8512-3, held by the City of Aberdeen, reserves 8.5 cfs. When a water source is otherwise fully appropriated, state law provides for a temporary use water permit to put water to beneficial use. If any of the five applications were approved as a temporary use water permit, there is currently no process which allows those to become regular water rights and retain the same priority date. This is problematic if water becomes available through permit cancellations, or if the maximum appropriation limits change on the James River.

Ms. Hullinger stated that due to the changing streamflow conditions and the recent influx of new applications on the James River, the Water Rights Program would like to take the opportunity to re-evaluate the limits on the James River and determine if new qualifications could be made to allow issuance of new permits while still protecting existing water rights and domestic use.

Mr. Gronlund stated the applications are requesting 15.11 cfs from the James River for the irrigation of 1,061 acres. Currently, appropriations on the James River are within approximately 1 cfs of the appropriative limits. There is a statute that allows for temporary use water permits to be issued in the interim, but even with that, there would not be enough water to satisfy these applications.

Mr. Gronlund reported that in 1965 the Water Rights Commission set two appropriative limits on

the James River. When the Water Rights Commission set the limits, they had another add-on that says after those limits are reached, the decision could be made for several hundred additional cfs to be approved with a July 1 cut-off date. Staff was not aware of the July 1 cut-off date until the recent review. In reviewing the minutes from the July 14, 1965, Water Rights Commission meeting, staff learned that the period used to make the determination of the flow records, was from 1950-1963, and it was the monthly average summertime gaging station; basically 13 years of record. The Water Rights Program has dramatically more records on the James River than what was available when the 1965 decision was made.

Mr. Gronlund noted that the James River is the only river or stream course in South Dakota that has this type of set threshold appropriative limit. Figures 5, 6, and 7 in the reports show the 50th percentile flows over a period of record at USGS gaging stations at Ashton, SD, Huron, SD, and Scotland, SD. There has been significantly more flow in the James River over the past 30 years than when the current appropriative thresholds were put in place.

Mr. Gronlund recommended deferral of all five applications until the fall/winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cfs appropriation limit on the James River should be retained or modified and, if modified, to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

No petitions in opposition to these five applications were received.

Motion by Holzbauer, seconded by Bjork, to defer Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, Jim or Collin Klebsch, and Water Permit Application No. 8835-3, Nick and Scott Bebo. A roll call vote was taken, and the motion carried unanimously.

<u>CONSIDER FUTURE USE WATER PERMIT APPLICATION NO. 8754-3, LEWIS AND CLARK REGIONAL WATER SYSTEM</u>: Mr. Gronlund stated that Troy Larson, Executive Director of Lewis and Clark Regional Water System, John Taylor, attorney, and Leslie Murphey, engineer with Banner Associates, were participating remotely.

SDCL 46-5-20.1 requires that any appropriation more than 10,000 acre-feet annually shall be presented by the Water Management Board to the Legislature for approval prior to the board acting upon the application.

The application was first brought before the board in July 2023, and at that time, the board passed a motion to present the application to the State Legislature for approval. The 2024 South Dakota Legislature adopted Senate Joint Resolution 502 providing legislative approval for a future use permit application by Lewis and Clark Regional Water System.

Adam Mathiowetz, senior groundwater engineer with the Water Rights Program, presented his report on the application.

Future Use Water Permit Application No. 8754-3 proposes to appropriate and reserve for future use 19,121 acre-feet of water annually from the Missouri: Elk Point aquifer near the Missouri

River in Clay County, three miles southeast of Vermillion. This area is also known as Mulberry Bend. The water is reserved for future water supplies for a rural water system.

The Missouri: Elk Point aquifer is a glacial sand and gravel aquifer underlying the flood plain of the Missouri River from east of Yankton to the southeastern corner of the state at North Sioux City. It is a very large and well-used aquifer. In general, the aquifer is unconfined, but there are locally confined conditions, particularly in the northwest and along the bluff coming out of the flood plain.

At the future use site, the top of aquifer material can typically be found within five feet of land surface and may have a total thickness of up to 120 feet. The static water level is typically between 15 and 25 feet below land surface.

When considering water availability, Mr. Mathiowetz considered the observation well data as well as a hydrologic budget. The department maintains 36 observation wells completed into the Missouri: Elk Point aquifer. Figure 2 on page 4 of the report shows six hydrographs for nearby observation wells and the Missouri River gage at Maskell, Nebraska, within 10 miles of the Lewis and Clark Regional Water System future use area. The aquifer and the river gage respond similarly. The aquifer responds to changes in climatic conditions, lowering during drier times and rising during wetter times, and especially rising very rapidly in result to flooding (2011 and 2019 data).

Recharge to the aquifer is primarily from precipitation and groundwater inflow from the Lower Vermillion Missouri, Lower James Missouri, and Big Sioux aquifers. There have been several studies and reviews of recharge to the aquifer. Most recently, the SD Geological Survey conducted a study regarding the induced recharge from the river into the aquifer as a result of pumping at Lewis and Clark Regional Water System's well sites. During that time, the Geological Survey observed that over a 365-day model run, 84.6 percent of the water that would be pumped from the water system's wells would be river water and thus, induced recharge into the aquifer.

The estimated recharge rate to the Missouri: Elk Point aquifer, 3.8 inches per acre per year, was first estimated based on precipitation and inflow from the hydrologically connected aquifers. When the induced recharge is included , primarily from Lewis and Clark Regional Water System, that greatly increases the water availability in the aquifer. Estimates on recharge to the aquifer when the induced recharge is included would be 130,770.2 acre-feet per year if this application were approved and put into beneficial use.

Since the time this application was first presented to the board, 11 new applications for water from the Missouri: Elk Point aquifer have been filed with the Water Rights Program. Several of the applications have been approved as permits and have priority dates junior to this application. The City of Vermillion holds a future use permit for 1,900 acre-feet per year, and there are also several Lewis & Clark future use permits where all the water has been put to beneficial use.

As part of the review for the hydrologic budget with the Missouri: Elk Point aquifer, the Water Rights Program reviewed for irrigation, the application rate per permitted acre, because it was determined that that is, in general, the most accurate method, but it is extremely time-consuming,

especially on an aquifer of this scale with several hundred permits. At the time the report was written, Mr. Mathiowetz determined that the application rate per permitted acre for cropland, corn, beans, etc. was 0.331 feet per year or 3.97 inches, and for turf, such as a turf business or golf courses, it was 0.908 feet per year or 10.9 inches. At the time of the report, there were 82,306 acres authorized for irrigation plus 80 acres that were pending. Of that, 809.6 acres plus 10 pending acres were for turf irrigation.

There are a significant number of domestic wells completed into the aquifer; however, there is a high likelihood that several of them are being served by rural water systems due to the proliferation of rural water systems in the area.

At the time the report was written, the balance of the hydrologic budget had a recharge of 130,770.2 acre-feet per year. The withdrawals, including the pending applications at that time, were 118,276 acre-feet per year.

The potential for unlawful impairment is not reviewed for future use applications because it is not required by statute and because the well location is not known, so the Water Rights Program cannot estimate any effects of drawdown on nearby wells.

The Chief Engineer recommended approval of Application No. 8754-3 with the following qualifications:

1. Future Use Permit No. 8754-3 reserves 19,121 acre-feet of water annually from the Missouri: Elk Point aquifer.

2. Future Use Permit No. 8754-3 is approved with the stipulation that this Permit is subject to review by the Water Management Board as to accomplishment in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.

3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted prior to construction of facilities pursuant to SDCL 46-5-38.1.

Troy Larson thanked the board and Water Rights staff and requested board approval of the future use permit application.

Motion by Comes, seconded by Freeman, to approve Future User Water Permit Application No. 8754-3, Lewis and Clark Regional Water System, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

<u>RECONSIDER DEFERRED WATER PERMIT APPLICATION NO. 8566-3, DUSTIN HAASE</u>: Ms. Verleger noted that Mr. Haase was not present.

This application was presented to the Water Management Board in March 2022, and the board deferred the application for up to two years. The Chief Engineer is recommending further deferral of the application for up to another five years to collect more data, but with the caveat that Mr. Haase can request that the application be brought back before the board anytime if he feels that he can meet the burden of proof that unappropriated water is available. Ms. Verleger stated that Mr. Haase did protest the Chief Engineer's recommendation based solely on the fact that he would like it reviewed again in 2025, rather than waiting the full five years.

Ms. Verleger offered Exhibit 100, which includes the Chief Engineer's recommendation, the technical report, Mr. Haase's petition in opposition, and the notice of hearing.

The exhibit was admitted into the record.

Whitney Kilts, engineer with the Water Rights Program, presented her report on deferred Application No. 8566-3.

Water Permit Application No. 8566-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well completed into the Pleistocene Series: Unknown aquifer to irrigate 132 acres in Turner County, approximately three miles west of Parker, SD.

This application was initially reviewed in early 2022 alongside two other applications filed by the applicant (Water Permit Nos. 8565-3 and 8567-3) also requesting to irrigate out of the same aquifer. Water Permit Nos. 8565-3 and 8567-3 were approved, and this application was deferred for a period of two years. The two years of deferral have passed, and the application is up for review by the board once again.

The published groundwater studies, with the most recent being published in 2015, that include this area in Turner County, do not identify a sand and gravel aquifer overlaying the bedrock in this area. Information on this aquifer started becoming available with the submittal of water permit applications, with the biggest amount of information available starting in 2014 from an aquifer performance test associated with a water permit application. The understanding of this aquifer has grown over the review of several water permit applications from 2014 to 2022 as well as observation wells monitored by the Water Rights Program since 2016.

Ms. Kilts stated that to bring this information together into a cohesive understanding of the aquifer, a detailed review of the available information for this application was done. This resulted in a smaller aquifer extent of 2,624 acres, shown in red in Figure 7 in the report. Available information indicates the sands and gravels of this aquifer are confined to a relatively narrow valley in the bedrock.

The recharge rate to this aquifer, extent as shown in Figure 7 in the report, required to balance estimated average annual withdrawals including this application is 2.36 inches per acre per year. Initially, in 2022, this was reviewed as a confined aquifer. A 1985 study of aquifers and recharge by Hedges concluded that, for a confined aquifer, the general range for average annual recharge is 0.15 to 0.60 inches per acre per year. In the re-review of this aquifer, it was noted that certain locations of the aquifer have several characteristics of a buried, unconfined aquifer. From the

1985 Hedges study, the generalized range of recharge to a buried, unconfined aquifer is 0.9 to 3.2 inches per acre per year with an average of 2.0 inches per acre per year.

Ms. Kilts stated that in both instances, the confined aquifer range, as well as the average of the buried, unconfined aquifer range, fall below the estimated amount of recharge that would be needed to balance average annual recharge and average annual withdrawals for current appropriations, including this application. When the Water Rights Program encounters these instances of using generalized recharge range to look at the hydrologic budget, the observation well data is heavily relied upon to indicate where the balance is between the range of recharge and withdrawals from the aquifer

The observation well data for this aquifer is shown in Figure 10 in the report. The observation wells for this aquifer have a relatively short period of record. There are only two years of data at the current level of appropriative development, including Water Permit Application Nos. 8565-3 and 8567-3 issued in 2022. Water levels in the observation wells have been decreasing since 2021. With the short period of record, as well as the behavior of water levels, there is not a long enough period to see how the aquifer has responded, historically, to climatic conditions. At this time the current observation well data does not show that water is available for appropriation.

If this application were approved, in the short term, it would be unlikely to unlawfully impair existing water permit holders and domestic users. The nearest water permit is held by the applicant, who would be incentivized to manage withdrawals so as not to impact himself. In the long-term, if average annual withdrawals exceed average annual recharge to the aquifer, there could be issues as the water levels decrease over time to the point where pumping could impact existing users.

In response to a question from Vice Chair Hutmacher, Ms. Kilts stated that recharge to the aquifer is from infiltration and precipitation, and water could be coming into this aquifer from the Niobrara aquifer.

Mr. Gronlund recommended that the application be deferred for the following reasons:

- The recharge rate needed to support the estimated average annual withdrawals, including this application, exceeds the estimated average annual recharge rate for a buried, unconfined aquifer.
- The period of record for observation wells completed into this aquifer contains only two years of readings at the current level of development. Those two years show declines in water levels. Without a greater period of record, it cannot be determined if the water level declines are seasonal fluctuations due to the recent climatic conditions, due to recent development in the aquifer, or both.

Mr. Gronlund recommended deferral for up to five years to collect more observation well data to determine whether water is available for appropriation. After that time, a review will take place, and the application will be brought back before the Water Management Board for consideration. The applicant can request the application be brought before the board prior to five years, but the burden of proof is on the applicant to show that unappropriated water is available.

Motion by Freeman, seconded by Bjork, to defer Water Permit Application No. 8566-3, Dustin Haase, for up to five years. A roll call vote was taken, and the motion carried unanimously.

CONSIDER APPEAL, IF ANY, OF PRE-HEARING CHAIR'S ORDER GRANTING THE CHIEF ENGINEER'S MOTION TO DISMISS ROBERT ROEBER PETITION IN OPPOSITION TO WATER PERMIT APPLICATION NO. 8825-3 AND DENYING APPLICANT'S MOTION TO DISMISS AS MOOT: Mr. McVey stated that no appeal was filed.

CONSIDER WATER PERMIT APPLICATION NOS. 8825-3 AND 8268A-3, LENNY PETERSON

Appearances
Todd Wilkinson, attorney from DeSmet, represented the applicant, Lenny Peterson.

Ryan Vogel, attorney from Aberdeen, represented the City of Redfield.

Jennifer Verleger, Assistant Attorney General, represented the Water Rights Program.

Ms. Verleger stated that one report was completed for both applications. Water Permit Application No. 8268A-3 is uncontested. Two petitions in opposition to Water Permit Application No. 8825-3 were received by the Water Rights Program. The first petition was submitted by Robert Roeber, which was dismissed by the prehearing chair. The second petition was submitted by the City of Redfield. The City of Redfield does not oppose the application, provided that the Water Management Board adopts the Chief Engineer's recommended qualifications.

Ms. Verleger offered Exhibit 100, which includes the Chief Engineer's recommendation for both water permit applications, the technical report for both applications, the Affidavit of Publication, the Notice of Hearing, the City of Redfield's petition in opposition, and Mr. Roeber's petition in opposition, which has been dismissed.

The exhibit was admitted into the record.

Todd Wilkinson stated that a stipulation was reached between the applicant and the City of Redfield. The stipulation basically states that the City of Redfield will not stand in opposition of the application, provided that the permit is issued in accordance with the Chief Engineer's recommendations. The request for a delay of the hearing has been withdrawn.

Mr. Wilkinson offered Exhibit A, the stipulation between the applicant and the City of Redfield regarding Water Permit Application No. 8825-3, Lenny Peterson.

The exhibit was admitted into the record.

Vice Chair Hutmacher noted that the board is not bound by the stipulation, but the board will take it under consideration.

Brittan Hullinger presented her report on Water Permit Application Nos. 8268A-3 and 8825-3.

Water Right No. 8268-3 was originally approved on December 7, 2017, to divert 2.67 cfs for the irrigation of 450 acres with two qualifications; that the Water Right does not authorize diversion of water after June 1 of each year unless orders have been issued by the Chief Engineer, and that water must be flowing over the spillway of the Redfield Dam.

An on-site licensing inspection was completed January 25, 2024. The inspection found that only 270 of the 450 permitted acres were developed at the diversion rate of 2.67 cfs.

Application No. 8268A-3 proposes to amend Water Right No. 8268-3 to remove the permit qualification not authorizing diversion of water from Turtle Creek after June 1, unless written orders have been issued by the Chief Engineer. All other permit qualifications on Water Right No. 8268-3 would remain unchanged. The amendment of Application No. 8268A-3 does not seek to appropriate additional water or irrigate more acres than authorized by Water Right No. 8268-3.

Application No. 8825-3 proposes to appropriate 1.33 cubic feet of water per second from Turtle Creek at a diversion point that is adjacent to the diversion point for Water Right No. 8268-3, to irrigate 230 acres. The location for both irrigation projects is approximately 6.5 miles southwest of Redfield.

Turtle Creek is a prairie stream that headwaters in Beadle, Hand, and Faulk counties, and flows to the northeast before discharging into the James River, east of Redfield. It is a seasonal stream with heavier flows in the spring due to snow runoff and thunderstorm or rain events. As the summer progresses, the creek becomes a less reliable water source.

Submitted with Application No. 8268A-3 was a report completed by Dennis G. Odens, P.E. of Bartlett & West to support the new permit and amendment applications. In the report, Mr. Odens stated anecdotally that the applicant believes streamflow has increased due to climatological changes. Odens then analyzed historical stream gaging data from a discontinued USGS gage called Turtle Creek west of Tulare, SD, which operated between 1953 to1989. He compared that data to data collected from 2012 to 2023 at an active DANR stream gage, called WQM-172, which is located at the same site as the discontinued USGS gage. Mr. Odens concluded that there is a reasonable probability that unappropriated water is available from Turtle Creek for existing and requested water rights during the irrigation season and that median stream flows from the past 12 years are generally greater than median stream flows from the discontinued USGS gage.

Since the approval of Water Permit No. 8268-3, the WQM-172 gage has been upgraded and real-time streamflow data is available online through the National Weather Service. The location of the WQM-172 gage is upstream of the diversion points and can be seen on Figure 1 of the report. Because there is real-time streamflow data available since 2017, it is reasonable to replace the June 1 cutoff date with a flow bypass qualification.

There are currently nine existing water rights or permits appropriating water from Turtle Creek downstream of the proposed diversion point for Water Permit Application No. 8825-3. The Water Rights Program has historically estimated that 50 percent of permitted diversion rates will be

pumping at any given time. This makes the estimated downstream use, at any given time, to be 1.5 cfs during the irrigation season. Since Turtle Creek pools in Redfield Dam before water spills over to reach downstream users, evaporation loss was also calculated, and direct precipitation subtracted from that value. Taking the average of the four months of the irrigation season, the estimated evaporation rate is 1.5 cfs of continuous evaporation at any given time during the irrigation season.

Water Right No. 8268-3 and Water Permit Application No. 8825-3, if approved, will be assumed to pump a total of 4 cfs at any given time during the irrigation season. Overall, the WQM-172 gage should be required to bypass at least 7 cfs.

To see if there was a reasonable probability that water would be available, the Water Rights Program performed its own analysis of Turtle Creek streamflow. Comparing the median daily flows of Turtle Creek from the discontinued USGS gage to the median daily flows from the WQM-172 gage, there does appear to be a significant increase in flow during the irrigation season, which is shown in Figure 2 in the report. The Water Rights Program also analyzed the percentage of days where streamflow exceeded 7 cfs for the months of May, June, July, and August, for all the years that data was available (Figures 3 through 6 in the report).

Staff concluded that there is a reasonable probability that water is available for appropriation at times during the irrigation season. While there does appear to be increased flow on the creek compared to data from 1953 to 1989, there is the possibility that future flow will be different than what was experienced in the recent past.

Water Permit Application No. 8268A-3 proposes to amend Water Right No. 8268-3 by removing the June 1 shutoff date. Application No. 8825-3 proposes to divert 1.33 cfs from Turtle Creek to irrigate 230 acres. Ms. Hullinger discussed recommended qualifications for the two applications if they are approved.

If the WQM-172 gage is flowing less than 7 cfs but there is flow over the entire Redfield Dam spillway, the permit holder can request permission from the Chief Engineer to pump. The drainage area upstream of the Redfield Dam is 357 square-miles greater than the drainage area upstream of the WQM-172 gage. Any inflow from the Turtle Creek watershed below the WQM-172 gage will contribute to additional flow over the spillway.

Mr. Gronlund reported that the application for Water Right No. 8268-3 submitted to the Water Rights Program in 2017, was contested. There were several petitioners, most notably, the City of Redfield. The contested case hearing was considered by the Water Management Board in October 2017, and findings were adopted in December 2017. Much of the discussion at the time of the hearing focused on there not being real-time gaging stations to check instantaneous flows. At the time, Mr. Peterson advocated for a stage level mark on a nearby bridge. DANR opposed that idea because there was fence in that location. Debris could be caught in the fence or high flows could change the configuration of where the mark would be.

After taking the information into consideration, the Water Management Board approved the application with the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

   b) Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

   c) Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.

   d) Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

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

Mr. Gronlund stated that the irrigation questionnaires for this permit indicate that Mr. Peterson developed the system within the construction period, and irrigation took place in 2022 and 2023. In both of those years, Mr. Peterson contacted the Water Rights Program requesting authorization to continue pumping, and that was granted because water was spilling over the entire Redfield Dam spillway. That caused Mr. Peterson to contact Mr. Odens with Bartlett & West to perform an engineering analysis, which was provided to the Water Rights Program. Following that analysis, Water Permit Application Nos. 8268A-3 and 8825-3 were filed.

Mr. Gronlund recommended approval of Application No. 8268A-3 removing the June 1st shutoff qualification and replacing with the following amended qualifications:

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 and this Permit is subject to all the following:

   a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

b) Diversion of water under Water Right No. 8268-3 and this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c) Water Right No. 8268-3 and this Permit do not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE ¼ NE ¼ of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
d) Water Right No. 8268-3 and this Permit authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9-T116N-R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 and this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Right No. 8268-3 and this Permit for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Right No. 8268-3 and this Permit are approved subject to the irrigation water use questionnaire being submitted each year.

Mr. Gronlund recommended approval of Water Permit Application 8825-3 with the following qualifications:

1. Diversion of water from Turtle Creek authorized by this Permit is subject to all the following:

   a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b) Diversion of water under this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c) This Permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE ¼ NE ¼ of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
   d) This Permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9-T116N-R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this Permit for the purpose of inspecting works and determining if the irrigation system is operating.

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

Mr. Gronlund noted that this is not necessarily going to be a reliable source of water. Mr. Peterson will have to watch the gaging station and watch the flow going over the dam.

Mr. Wilkinson stated that the applicant is in full agreement with the Chief Engineer's recommendation and qualifications.

Mr. Vogel stated that the City of Redfield agrees with the Chief Engineer's recommendation and qualifications and has no issues with approval of the applications.

Motion by Freeman, seconded by Comes to approve Water Permit Application No. 8825-3, Lenny Peterson, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 8268A-3, Lenny Peterson, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

CONSIDER WATER PERMIT APPLICATION NOS. 8594A-3 AND 8817-3, MERLIN VANNORSDEL

Appearances
Jennifer Verleger, Assistant Attorney General, represented the Water Rights Program.

Scott and Merlin Vannorsdel appeared pro se.

Ms. Verleger stated that the Chief Engineer recommended approval, with conditions, for Water Permit Application 8594A-3, which is an application to relocate the diversion point and irrigated acres approved by Permit No. 8594-3.

Water Permit Application No. 8817-3 proposes to add 91 acres to the irrigated area to be authorized by Water Permit Application No. 8594A-3. The Chief Engineer recommended deferral of this application and notes that there are two senior applications in the area that the Water Management Board deferred in March 2024.

The staff prepared a combined technical report covering both applications. Application No. 8594A-3 was not contested, and no comments were received. Application No. 8817-3, for the additional 91 acres, was contested by the applicant, and no other comments were received.

Ms. Verleger offered Exhibit 100. which includes the Chief Engineer's recommendation for both

applications, the technical report on both applications, the Affidavits of Publication, the Notices of hearing, and Merlin Vannorsdel's petition opposing the Chief Engineer's recommendation for deferral of Water Permit Application No. 8817-3.

The exhibit was admitted into the record.

Adam Mathiowetz, senior groundwater engineer with the Water Rights Program, presented his report on the applications.

Water Permit Application No. 8594A-3 proposes to amend Water Permit No. 8594-3 to change the location of the diversion point and acres to be irrigated. Water Permit No. 8594-3 currently authorizes a maximum instantaneous diversion rate of 2.22 cfs from one well in the NE ¼ Section 29 to be completed into the West Management Unit of the Upper Vermillion Missouri aquifer for the irrigation of 156 acres located in the NE ¼ Section 29; all in T97N-R53W.

Application No. 8594A- 3 proposes to change the location of the well and the acres to be irrigated, still to be completed into the West Management Unit of the Upper Vermillion Missouri aquifer, to the E 1/4 quarter corner of Section 21 for the irrigation of 156 acres located in the E ½ Section 21 all in T97N-R53W. This proposed amendment does not authorize any increase in the number of acres to be irrigated, and no increase in the diversion rate or volume of water to be appropriated from the Upper Vermillion Missouri: West aquifer.

Water Permit Application No. 8817-3 proposes to add 91 acres to the irrigated area authorized by Water Permit Application No. 8594A-3, and to use the same well.

The Upper Vermillion Missouri: West is a management unit of the Upper Vermillion Missouri. The aquifer is a Quaternary aged glacial aquifer running in a northwest to southeast bedrock channel. The aquifer had previously been considered as the Upper Vermillion Missouri aquifer in 2012 and again in 2014 by former staff engineer, Ken Buhler. In 2012, all applications from the Upper Vermillion Missouri aquifer were deferred for further study until a study was completed by the South Dakota Geological Survey. In 2014, Buhler, using the results from that South Dakota Geological Survey study, re-delineated the Upper Vermillion Missouri aquifer and divided it into three management units: North, South, and West. Water Permit No. 8594-3, and Application Nos. 8594A-3 and 8817-3 is in the West management unit. At the proposed well location for the applicant, the aquifer is confined as it is throughout most of the 2014 Buhler delineation.

Recharge to the to the Upper Vermillion Missouri: West occurs primarily through leakage from fractures in the underlying Sioux Quartzite, outflow from hydrologically connected aquifers such as the Niobrara, and any direct infiltration of precipitation where this aquifer may be at land surface, which would be along Turkey Ridge Creek.

Mr. Mathiowetz stated that there is no specific study of recharge rate to the aquifer, so the Water Rights Program relies on the Hedges et al 1985 Corps of Engineers study where they determined a range of 0.15 to 0.6 inches per acre per year as a reasonable recharge rate to a confined aquifer. Over the Buhler 2014 aerial extent, that comes to a range of 245 to 980 acre-feet per year.

In 2014, Buhler also performed a flow-net analysis to calculate what he called groundwater outflow, using January 2014 observation well measurements and a cross-sectional area that was determined by the South Dakota Geological Survey as part of their study. Buhler estimated hydraulic conductivity using reported aquifer pumping data from various well completion reports. Buhler used the two observation wells closest to the outflow area of the aquifer, known as TU-77Z and TU-77T. TU-77Z was destroyed by road construction in 2018. Figure 1 on page 2 of Appendix 1 in the report shows the location of the observation wells. Buhler's aquifer delineation from 2014 is the red area on Figure 1.

Mr. Mathiowetz stated that Buhler's groundwater outflow is technically groundwater intra-flow because it does not cross the outflow boundary of the aquifer, but it can be used as an analog for recharge to provide an idea of likely scale to recharge. At the time Buhler calculated outflow using that one data point, he calculated an outflow of 2,681 acre-feet per year; however, he did not account for any of the down-gradient permits, that would have been below TU-77T, at that time. When you subtract those, the estimated outflow comes to 2,657 acre-feet per year.

Mr. Mathiowetz re-calculated outflow from the aquifer using all available data, typically using the first reading of the year in May. For the two observation wells Buhler used, TU-77Z and TU-77T, and the observation wells that are currently available, TU-77S and TU-77T, he determined an average groundwater outflow of 3,179 acre-feet per year for the first one and 2,438 acre-feet per year for the second one. When subtracting the withdrawals down gradient of TU-77T, those become 3,062 and 2,329 acre-feet per year. However, when considering the 2023 observation well data, there has been a very steep decline in the hydrograph for both TU-77S and TU-77T. This change reduced the calculated outflow to 500 acre-feet per year for 2023, which is shown on Figure 5 on page 7 of the appendix. This decline in water level for TU-77S may have been tied to nearby pumping for Water Permit No. 8555-3, as well as drought conditions, but there is decline in both observation wells. In TU-77T, while there are permits in close proximity, for the most part, they were not actively pumping at that time.

Mr. Mathiowetz stated that it would be prudent to continue monitoring these observation wells to ensure that the 2023 data was accurate and to attempt to discern any cause of the significant recent decline. A comparison of the groundwater outflow and withdrawals from an aquifer needs to be taken in the context of the year-to-year changes in weather, total withdrawals, and the location of the withdrawals in relation to the observation wells the data is taken from. It is important, especially the proximity, when you consider a confined aquifer such as the Upper Vermillion Missouri:West because nearby pumping can have a significant impact on water levels and thus, change the calculations for groundwater outflow because they are reliant on the differences in water level elevation between two observation wells. However, the groundwater outflow calculations do show that the Hedges rate is likely to be on the low side.

Discharges from the Upper Vermillion Missouri:West aquifer are primarily through well withdrawals and natural outflow, but there may also be evapotranspiration in areas where the aquifer may be at or near land surface along Turkey Ridge Creek.

At the time Mr. Mathiowetz wrote the report, there were 14 water rights and permits; however, the

City of Viborg's permit was on standby and not actively used. The average reported irrigation over the entire period of record the Water Rights Program maintained from 1979 to 2022 was 32 acre-feet per year with a 10-year recent average, 2013 to 2022, of 196.2 acre-feet per year. As part of preparation for the hearing, Mr. Mathiowetz reviewed the 2023 irrigation questionnaire data. The 2014 to 2023 average reported is 256.4 acre-feet per year. He calculated an average application rate per permitted acre per water right that had been reported as constructed. The application rate was 4.6 inches per year across the 10-year period of 2013 to 2022. If you apply that 4.6 inches per acre to the number of permitted acres at that time the report was completed, that comes to 577 acre-feet per year. The estimated non-irrigation use, at the time of the report, was 557 acre-feet per year. That is a total of 1,134 acre-feet per year, estimated average annual withdrawals. The table showing that data is on page 12 of the appendix. The table also contains the estimated use for two other pending applications. The appendix is a report written for Application No. 8797-3, which was deferred by the Water Management Board at the March 2024 meeting.

Mr. Mathiowetz also reviewed the observation well data available for the aquifer. The hydrographs for these wells are shown in Figure 7 on page 13 of the appendix. The recent decline started in 2020 and continued through 2023, with some recovery between irrigation seasons. TU-77S, which is the most upgradient observation, well had a 20 plus foot decline below its previous record low, which is 40 feet below its record high from 2019. That is also the observation well that is nearest to high-rate pumping by appropriative permits. TU-77T, the most down-gradient well, had an approximate decline of 15 feet from the record high in 2019 and five feet below the previous record low. The more significant decline shown in TU-77S may be from local pumping, drought conditions, increasing demand in the general local area, or a combination of any of those factors. Continued monitoring is required to determine which combination is likely to have caused the decline.

When reviewing the groundwater outflow, which is shown as a calculation chart on page 7 of the appendix, and the observation well hydrographs, page 13, it is necessary to consider these calculations in the context of climate, aquifer withdrawals, and the location of the observation wells to pumping wells. There are several new permits that have yet to be developed and are within their respective construction periods.

When considering the potential for unlawful impairment for this application, direct impacts caused by drawdown created by pumping were considered. Page 5 of the specific report for these applications shows that the nearest water right is held by Vannorsdel's Inc. and is located a half mile south of the proposed well site. The next nearest is held by Allen Vannorsdel and the next nearest after that is held by James D. Bondesen. The last two are approximately 1.1 mile away from the well location proposed by these applications. The nearest domestic wells on file with the Water Rights Program are 0.3 miles southwest and drilled for the applicant in 2005. The next nearest two are one-half mile north and a half-mile east, respectively, of the proposed well site. Domestic well locations the Water Rights Program has are based on the locations provided by the well driller at the time of well completion. The Water Rights Program does not have records for all wells drilled in South Dakota because it was not required during the entire history of well-drilling in the state, so there may be other wells in the area that the Water Rights Program is not aware of.

The applicant's well site is confined so drawdown can extend some distance from the pumping well; however, exact drawdown cannot be known without aquifer testing at that site. In the past the Water Management Board and the Water Rights Program have recognized that some drawdown is required for a well to pump. ARSD 74:02:04:20(7) states that a well must be constructed such that the pump in the well can be placed 20 feet into the saturated aquifer or as deep into the aquifer as possible if 20 feet of saturated thickness is not available.

A complaint was filed in July 2022 for a well completed into this aquifer, regarding potential well interference. That site is three miles northwest of the applicant's proposed well site and 1.4 miles south of Observation Well TU-77S. The complaint stated the well had ceased providing water for the well owner's cattle. No well completion report was found for the well. The well owner stated the well was 7 to 15 years old and was believed to be 160 feet deep with a pump setting of 60 feet. A review of the hydrograph for TU-77S showed the static water level at the time was approximately 40 feet below top of casing. That observation well has approximately the same surface elevation as the well owner's non-pumping well. The nearest appropriative pumping well was approximately 1.3 miles northeast of the non-pumping well. The non-pumping well was also noted to be near the mapped edge of the aquifer. Using that information, the Water Rights Program determined that was not a substantiated complaint of well interference and that it was likely an issue regarding the pump being placed too high in the well.

Mr. Mathiowetz stated that the Water Rights Program has not received any further complaints regarding this issue.

While there has been notable decline in the observation wells completed into this aquifer, there has been no measured dewatering of the saturated aquifer material. Some well owners who have placed their pumps above or not sufficiently deep enough into the saturated aquifer material may need to lower their pumps if there is nearby pumping. Mr. Mathiowetz stated that when considering the statutes and rules, the amount of artesian head pressure at the proposed well site, which is more than 20 feet above the top of the saturated aquifer, and the lack of substantiated well interference complaints, there is a reasonable probability this application will not cause unlawful impairment of existing water rights or permits with appropriative wells or adequate domestic wells. However, due to the uncertainty surrounding the sudden lowering of water levels in the two observation wells, there may be a concern of cumulative impact of all appropriative pumping causing a general lowering of water levels. Under such conditions, an unlawful impairment of senior water rights or adequate domestic wells may occur.

Mr. Mathiowetz stated that because Application No. 8594A-3 is a location transfer rather than a new permit, it falls under review of SDCL 46-2A-12, which states that an amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest. Therefore, water availability does not need to be considered for the location transfer and change in diversion point.

Water Permit Application No. 8817-3 is for an additional 91 acres, so it is a new water permit application that falls under SDCL 46-2A-9, which states that 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.

Mr. Mathiowetz stated that considering that two senior water permit applications from this aquifer were deferred by the Water Management Board at the March 2024 meeting for concerns regarding water availability, his review of Application No. 8817-3 concluded that because there were existing concerns, those concerns would carry forward to this application. Based on that information, the Chief Engineer's recommendation was for approval of Application No. 8594A-3 and deferral of Application No. 8817-3.

In response to questions from Ms. Verleger, Mr. Mathiowetz stated that he reviewed the petition in opposition of Application No. 8817-3. The petition was not considered during his analysis because it had not yet been submitted. He said nothing in the petition impacts the technical analysis because when he considers water availability from an aquifer, which was the concern with Application No. 8817-3, he looks at the availability of unappropriated water based on hydrologic budget, and observation well data, as well as diving deeper into the hydrologic budget, likely pumping by undeveloped permits since the number of undeveloped permits relative to developed permits is almost a one-to-one ratio. Mr. Mathiowetz stated that the efficiency of the type of irrigation system would not affect his analysis of whether unappropriated water is available.

Scott Vannorsdel stated that the permit was originally for 156 acres pumping 800 gpm. The new system, 360 Rain Machine, is an autonomous irrigation system. It uses half to two-thirds less water than a traditional irrigation system. It will pump 200 gallons per minute. Mr. Vannorsdel said he sees no reason to object to adding the 91 acres using less water than the original permit. He said he does not see the efficiency in denying 91 acres using less water. It applies a 15-inch band of water directly at the root zone. A traditional pivot system of 156 acres puts on 0.60 inches of water at 800 gpm.

Ms. Verleger objected stating that this is the time for Ms. Vannorsdel to ask questions of Mr. Mathiowetz regarding the technical report, and Mr. Vannorsdel can present his case afterwards.

Vice Chair Hutmacher sustained the objection.

Mr. Vannorsdel asked why using less water than a traditional irrigation system be denied? Mr. Mathiowetz answered that when he reviewed the submitted petition, the map on the petition showed more efficiency per pass; nowhere in the petition did it show that there would be fewer passes or how many more passes per year. When the Water Rights Program looks at the hydrologic budget, staff considers acre-feet per year and total volume. The implication would be that there would be less, but that is not a guarantee. Mr. Mathiowetz said the information he has available is for per pass math. He also noted that the math provided in the petition is not technically correct. The petition states it is 0.60 inches of water per acre for the center pivot. When the math is completed, it is actually 1.1 inches of water per acre. Mr. Mathiowetz said this

does not affect his analysis in any manner.

Regarding Water Permit Application No. 8594A-3 Mr. Gronlund stated that SDCL 46-5-34 allows for the severing of one parcel of land and simultaneously transferring and becoming appurtenant to other lands. The recommendation for this application was for approval because this is considered an amendment to Permit No. 8594-3. The guiding two statutes regarding amendment are SDCL 46-2A-12 and 46-5-30.4, and the criteria is that there cannot be an unlawful impairment of existing rights. The board does not have to find whether there is a reasonable probability of unappropriated water available and this permit, if approved, would retain the original priority date established under Water Permit No. 8594-3. Mr. Gronlund recommended approval of the application with the following qualifications:

1. The well approved under Water Permit No. 8594A-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 8594A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

Mr. Gronlund stated that Water Permit Application No. 8817-3 is a new application for the irrigation of 91 additional acres, therefore, SDCL 46-2A-9 applies. The statutes states that there must be a reasonable probability that unappropriated water is available. Currently, based on the hydrologic budget and the observation well data, the Water Rights Program is not confident that that criteria can be met. The application can be approved if the diversion can be developed without unlawful impairment of existing domestic water uses and water rights. Mr. Gronlund said he does not necessarily believe there would be unlawful impairment. The proposed use must be a beneficial use and in the public interest. Mr. Gronlund stated that the Water Management Board fully recognizes that irrigation in the general sense is a beneficial use and in the public interest.

Mr. Gronlund reiterated that the Water Rights Program cannot conclude that unappropriated water is available. He recommended deferral of the application for up to two years to allow for additional monitoring of water levels in observation wells completed into the Upper Vermillion Missouri:West aquifer and time for recently issued water permits to be developed. Mr. Gronlund noted that there are two other applications that are currently deferred that would be senior to this application.

Scott Vannorsdel said this is not a traditional irrigation system. The new system uses substantially less water. Application No. 8817-3 is just requesting that the board allow adding 91 acres.

Vice Chairman Hutmacher stated that the board has no proof that unappropriated water is

available for Mr. Vannorsdel to use, and it will take new water to run this system, whether its 800 gallons per minute or 200 gallons per minute.

Mr. Vannorsdel said he will be using substantially less water.

Vice Chair Hutmacher responded that his understanding is that it is an additional 200 gallons per minute usage of water.

Mr. Vannorsdel said this is not additional water. It hasn't been pumped yet.

Vice Chair Hutmacher said the first permit was for 800 gallons per minute and this new application is for an additional 200 gallons per minute.

Mr. Vannorsdel said he is not using the 800 gallons per minute. He will be using a total of 200 gallons per minute, which is the maximum gallons per minute that will be pumped for 247 acres.

The court reporter stated that Mr. Vannorsdel had not been sworn in.

Mr. Freeman asked Mr. Gronlund if he is understanding correctly that a water permit for 156 acres has been approved, but not developed yet, and the Vannorsdel's want to add another 91 acres to that 156 acres, and it would not be the same amount of water for the combined 91 and 156 acres.

Mr. Gronlund stated that when Water Permit No. 8594-3 was originally applied for in 2022, the Vannorsdel's were probably considering a standard center pivot irrigation system., which would have been the 800 gallons per minute (1.78 cfs) for irrigation of 156 acres. There is new technology being used as far as efficiencies with precision agriculture taking place. Mr. Gronlund said he believes the Vannorsdel's are trying to take advantage of that new technology, but this additional 91 acres is considered new acreage. South Dakota law does not necessarily reward the permit holder for efficiencies to their system.

Mr. Gronlund stated that at this time it has not been determined whether unappropriated water is available.

Mr. Gronlund answered questions from the board. He reminded the board that there are two other deferred applications that are senior to this application.

Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 8594A-3, Merlin Vannorsdel, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

Motion by Freeman, seconded by Comes, to defer Water Permit No. 8817-3 , Merlin Vannorsdel, for up to two years. A roll call vote was taken, and the motion carried with Bjork, Comes, Freeman, Holzbauer, and Hutmacher voting aye. Dixon cast the only dissenting vote.

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

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

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

Approved July 10, 2024.

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Water Management Board

DRAFT

WATER MANAGEMENT BOARD MEETING
May 8, 2024

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

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
2034-1	City of Sturgis	Sturgis	MD	500 AF	Mun/WDS	1 well – Madison	wi, wcr, 3 special
2873-2	Joseph Kuhlman	Caputa	PE	4.45 cfs	Irrigation	Dam – Rapid Creek	iq, 4 special
8650-3	Marquardt Farms General Partnership	Yankton	CL	0.22 cfs	Irrigation	1 well – Missouri: Elk Point	wi, iq
8807-3	Daric D. Bossman Limited Partnership	Sarasota	TU	1.78 cfs	Irrigation	1 well – Upper Vermillion Missouri: North	wi, wcr, iq
8808-3	Justin Vyn Irrevocable Trust	Sioux Falls	BG	2.22 cfs	Irrigation	1 well – Big Sioux: Aurora	wi, wcr, iq
8809-3	Darbi D. Bossman Limited Partnership	Sarasota	TU	1.78 cfs	Irrigation	1 well – Upper Vermillion Missouri: North	wi, wcr, iq
8810-3	Spring Valley Colony	Wessington Springs	JE	3.56 cfs	Irrigation	1 well – Crow Creek	wi, wcr, iq
8812-3	Olive Toews	Yale	BD	1.55 cfs	Irrigation	1 well – Floyd East James	wi, wcr, iq
8813-3	Jeffrey Albrecht	DeSmet	KG	No Add'l	Irrigation	Add'l Acres	wi, iq, 1 special
8814-3	Craig Arthur	Watertown	GT	1.44 cfs	Irrigation	1 well – Wilmot	wi, wcr, iq
8815-3	Charles Dupraz Trust	Aurora	BG	1.78 cfs	Irrigation	2 wells – Rutland	wi, wcr, iq
8816-3	Karl M Schenk	Mission Hill	YA	0.44 cfs	Irrigation	1 well – Lower James: Miss	wi, iq
8818-3	BLT 1 Family Limited Partnership	Warner	HU	0.44 cfs	Irrigation	1 well – Grey Goose	wi, iq, 1 special
8819-3	Alita Guthmiller	Menno	HT	1.78 cfs	Irrigation	1 well – Lower James Miss	wi, wcr, iq
8820-3	Nineteen Flags, LLC	Sioux Falls	MA	2.5 cfs	Irrigation	Slip Up Creek	iq, 3 special
8826-3	Swenson Brothers	Woonsocket	SA	0.54 cfs	Irrigation	1 well – Pleistocene Series Unk	wi, iq, 1 special
8827-3	Heine Farms	Yankton	YA	1.78 cfs	Irrigation	1 well – Missouri: Elk Point	wi, wcr, iq
8828-3	Robert P Walsh	Elk Point	CL	3.56 cfs	Irrigation	1 well – Dakota	wi, wcr, iq
8829-3	Nick Berndt	Herreid	HM	0.66 cfs	Irrigation	1 well – Grand	wi, wcr, iq
8830-3	Kyle Jensen	Meckling	CL	1.56 cfs	Irrigation	1 well – Missouri: Elk Point	wi, wcr, iq, 1 special
8831-3	Allen Fugere	Estelline	HM	1.78 cfs	Irrigation	2 wells – Big Sioux: Brookings	wi, wcr, iq
8836-3	Kirk Sorensen	Vermillion	CL	2.22 cfs	Irrigation	1 well – Missouri: Elk Point	wi, wcr, iq

CANCELLATIONS – July 10, 2024

Number RT/PE	Original Owner	Present Owner(s) & Other Persons Notified	County	Amount C.F.S.	Use	Reason	Source	Date Notified	Letters

DIVISION I WATER RIGHT

RT 683-1	Murray Water Co	Mark Job	MD	0.08	SHD	A/F	Groundwater, 1 well OPCH	5-30-24	

DIVISION III WATER PERMITS/RIGHTS

RT 2989A-3	Palmer Reinicke	Terwilliger & Sons Inc c/o Dale Terwilliger	LK	0.3	IRR	A/F	Groundwater, 2 wells (VEF)	5-30-24	
RT 3053-3	Brett Binger		SP	0.1	IRR	A	Groundwater, 1 well (T:WSH)	6-10-24	
RT 3749-3	Larry Jorgenson		MY	0.42	IRR	A	Groundwater, 1 well (BS:M)	5-30-24	
RT 4687-3A	James L Sutton Jr		SU	17.9	IRR	A/F	Missouri River	6-5-24	
RT 4687-3B	James L Sutton Jr		SU	21.8	IRR	A/F	Missouri River	6-5-24	
RT 5439-3	Ross Ritchie	Estelline Grain Co-Op c/o Jennifer Loban	HM	0.67	IRR	A/F	Groundwater, 1 well (BS:B)	5-30-24	
PE 7322-3	Redhawk LLC c/o Duane Potts		YA	-	IRR	A	Groundwater, 1 well (M:EP)	6-5-24	
PE 7833-3	Billy Boyer		UN	1.44	IRR	BU/A	Groundwater, 2 wells (BS:S)	6-5-24	
PE 7857-3	Casey & April Johnston		CD	1.33	IRR	N/C	Groundwater, 1 well (BS:N)	5-30-24	
PE 8043-3	Robert P Walsh		CL	4.23	IRR	N/C	Groundwater, 2 wells (DKOT)	5-30-24	
PE 8072-3	Jesse & Tanya VanDestroet		CL	1.0	IRR	A	Groundwater, 1 well (UVM:S)	6-10-24	
PE 8423-3	City of Platte c/o Shauna Meyerink		CM	0.33	IRR	N/C	Groundwater, 1 well (DKOT)	5-30-24	

ABBREVIATIONS			PAGE 1
N/C = NON-CONSTRUCTION	**A/F = ABANDONMENT OR FORFEITURE**	**A = ABANDONMENT**	**F = FORFEITURE**
FU = FUTURE USE PERMIT	**VR = VESTED WATER RIGHT**	**PE = WATER PERMIT**	**RT = WATER RIGHT**
IRR = IRRIGATION	**SHD = SUBURBAN HOUSING DEVELOPMENT**	**COM = COMMERCIAL**	**MUN = MUNICIPAL**
BU = FAILURE TO PUT TO BENEFICIAL USE	**FWP = FISH & WILDLIFE PROPAGATION**	**DOM = DOMESTIC**	**IND = INDUSTRIAL**

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally deposited a true and correct NOTICE OF CANCELLATION dated May 30, 2024, into the United States Mail in Pierre, South Dakota, first class postage prepaid to the following Water Permit and Right holders on May 30, 2024.

Vested Water Right No. 442-1
Dan Heck, PO Box 607, Belle Fourche SD 57717

Water Right No. 683-1
Mark Job, 2250 Glennridge Ct, Sturgis SD 57785

Water Right No. 2989A-3
Terwilliger & Sons Inc, c/o dale Terwilliger, 401 Lake St, Winfred SD 57076

Water Right No. 3749-3
Larry Jorgenson, 24048 477th Ave, Trent SD 57065

Water Right No. 5439-3
Estelline Grain Co-Op, c/o Jennifer Loban, 109 State Ave E, Estelline SD 57234

Water Permit No. 7857-3
Casey & April Johnston, 3324 Sioux Conifer Rd, Watertown SD 57201

Water Permit No. 8043-3
Robert P Walsh, 47844 County Rd 1B, Elk Point SD 57025

Water Permit No. 8423-3
City of Platte, c/o Shauna Meyerink, PO Box 236, Platte SD 57369

Shannon Konst

Shannon Konst
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of May, 2024.

Rachel Rodriguez Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY Seal PUBLIC STATE OF SOUTH DAKOTA

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally deposited a true and correct NOTICE OF CANCELLATION dated June 5, 2024, into the United States Mail in Pierre, South Dakota, first class postage prepaid to the following Water Permit and Right holders on June 5, 2024.

Water Permit No. 7322-3
Redhawk LLC, c/o Duane Potts, 1105 W 10th St Apt 3, Yankton SD 57078

Water Permit No. 7833-3
Bill Boyer, 4162 Birch Ave, Hawarden IA 51023

Water Right Nos. 4687-3A & 4687-3B
James L Sutton Jr, PO Box 33, Onida SD 57564

Shannon Konst
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of June, 2024.

Rachel Rodriguez Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY Seal PUBLIC STATE OF SOUTH DAKOTA

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally deposited a true and correct NOTICE OF CANCELLATION dated June 10, 2024, into the United States Mail in Pierre, South Dakota, first class postage prepaid to the following Water Permit and Right holders on June 10, 2024.

Water Right No. 3053-3
Brett Binger, 38270 182nd St, Tulare SD 57476

Water Permit No. 8072-3
Jesse & Tanya VanDestroet, PO Box 107, Fairview SD 57027

Shannon Konst
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of June, 2024.

Rachel Rodriguez Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY Seal PUBLIC STATE OF SOUTH DAKOTA

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 30, 2024

NOTICE OF CANCELLATION

TO: City of Platte, c/o Shauna Meyerink, PO Box 236, Platte SD 57369

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

SUBJECT: Cancellation of Water Permit No. 8423-3

Water Permit No. 8423-3 authorizes the irrigation of 42 acres of golf course located in the NE ¼ SE ¼ & W ½ SE ¼ (Lots 1-15, Outlot F) Section 16; all in T99N-R68W, Charles Mix County, at a rate of 0.33 cfs from one well. In a telephone conversation between Water Rights Program staff, you confirmed that due to the high cost associated with the project, the City of Platte had decided not to pursue construction of the well and irrigation system. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8423-3 due to non-construction, or abandonment, or both.

The Water Management Board will consider cancellation of Water Permit No. 8423-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8423-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 8423-3, CITY OF PLATTE

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 Water Permit No. 8423-3.

After receiving the 2023 Irrigation Questionnaire, Water Rights Program staff followed up on the submission with a phone call to confirm that the City of Platte no longer intended to construction the water distribution system authorized under Permit No. 8423-3. It was confirmed that due to the high cost associated with development, the City was agreeable to cancellation of Permit No. 8423-3.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

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

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
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May 30, 2024

NOTICE OF CANCELLATION

TO: Robert P Walsh, 47844 County Rd 1B, Elk Point SD 57025

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

SUBJECT: Cancellation of Water Permit No. 8043-3

Water Permit No. 8043-3 authorized the diversion of 4.23 cfs from two wells for the irrigation of 391.9 acres located within E ½ NE ¼, E ½ SE ¼ Section 7 & W ½ Section 8; all in T95N-R51W, Clay County. Permit No. 8043-3 was approved November 10, 2014, and issued to the applicant, with all construction to be completed on or before November 10, 2019, and water put to beneficial use on or before November 10, 2023. Since the system was not constructed within the allotted timeframe, you submitted a new permit application (Application No. 8828-3). The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8043-3 due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 8043-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8043-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
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PIERRE SD 57501-3182
danr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 8043-3, ROBERT P WALSH

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 Water Permit No. 8043-3.

Construction of the irrigation system authorized under Permit No. 8043-3 was to be completed on or before November 10, 2019. Mr. Walsh was made aware that the time for construction had passed and submitted a new permit application (Application No. 8828-3).

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

Cancellation of the Water Permit No. 8043-3 does not affect Water Permit No. 8828-3.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
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PIERRE SD 57501-3182
danr.sd.gov

May 30, 2024

NOTICE OF CANCELLATION

TO: Casey & April Johnston, 3324 Sioux Conifer Rd, Watertown SD 57201

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

SUBJECT: Cancellation of Water Permit No. 7857-3

Water Permit No. 7857-3 authorizes the diversion of 1.33 cfs from one well for the irrigation of 74 acres in the S ½ NW ¼ Section 13, T117N, R53W, Codington County. Permit No. 7857-3 was approved September 16, 2013, and issued to the applicant, with all construction to be completed on or before September 16, 2018, and water to be put to beneficial use on or before September 16, 2022. In a telephone conversation with Water Rights Program staff, you confirmed that the system had not been developed due to the inability to locate water and were agreeable to the cancellation of Permit No. 7857-3. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7857-3, due to non-construction.

The Water Management Board will consider cancellation of Water Permit No. 7857-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7857-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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PIERRE SD 57501-3182
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7857-3, CASEY & APRIL JOHNSTON

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 Water Permit No. 7857-3.

Construction of the irrigation system authorized under Permit No. 7857-3 was to be completed on or before September 16, 2018, with water being put to beneficial use on or before September 16, 2022. In a telephone conversation with Water Rights Program staff, Ms. Johnston confirmed that the system had not been constructed due to difficulty locating water.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

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

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 30, 2024

NOTICE OF CANCELLATION

TO: Estelline Grain Co-Op, c/o Jennifer Loban, 109 State Ave E, Estelline SD 57234

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

SUBJECT: Cancellation of Water Right No. 5439-3

Water Right No. 5439-3 authorizes the diversion of 0.67 cfs from one well for the irrigation of 3.6 acres located within the SE ¼ SE ¼ Section 23, T113N-R51W, Hamlin County. Mr. Ritchie passed away in 2005 and ownership of the property was unknown until recently when Water Rights Program staff found that Estelline Grain Co-Op now owns the land. You were able to locate the well site and confirm that no irrigation had taken place since the Co-Op had been in ownership. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 5439-3 due to abandonment, or forfeiture, or both.

The Water Management Board will consider cancellation of Water Right No. 5439-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 5439-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
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PIERRE SD 57501-3182
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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 5439-3, ROSS RITCHIE

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 Water Right No. 5439-3.

After Mr. Ritchie passed away in 2005, ownership of Water Right No. 5439-3 was left undetermined. Water Rights Program staff recently found that the Estelline Grain Co-Op had taken ownership of the property. Co-Op staff was able to identify the well site and verify that irrigation was no longer taking place on the property.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

Cancellation of the water permit does not prohibit a new application for commercial use of water in the future.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 30, 2024

NOTICE OF CANCELLATION

TO: Larry Jorgenson, 24048 477th Ave, Trent SD 57065

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

SUBJECT: Cancellation of Water Right No. 3749-3

Water Right No. 3749-3 authorizes the diversion of 0.42 cubic feet of water per second from one well for the irrigation of 30 acres located within the W ½ SW ¼ Section 13, T105N, R49W. In a telephone conversation with Water Rights Program staff, you were able to confirm that the well authorized by Water Right No. 3749-3 had been capped and irrigation from that source had ceased. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 3749-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 3749-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3749-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 3749-3, LARRY JORGENSON

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 Water Right No. 3749-3.

In a telephone conversation with Water Rights Program staff, Mr. Jorgenson was able to confirm that the well authorized under Water Right No. 3749-3 had been capped by Lacey Well Drilling and that diversion for the purpose of irrigation was no longer taking place.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

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

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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May 30, 2024

NOTICE OF CANCELLATION

TO: Terwilliger & Sons Inc, c/o Dale Terwilliger, 401 Lake St, Winfred SD 57076

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

SUBJECT: Cancellation of Water Right No. 2989A-3

Water Right No. 2989A-3 authorizes the irrigation of 21 acres located within the S ½ NE ¼ Section 19, T107N, R54W, Lake County, at a rate of 0.3 cfs from two wells. In a telephone conversation with Water Rights Program staff, you confirmed ownership of the acres authorized by Water Right No. 2989A-3, as well as the absence of irrigation. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 2989A-3 due to abandonment, or forfeiture, or both.

The Water Management Board will consider cancellation of Water Right No. 2989A-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 2989A-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 2989A-3, PALMER REINICKE

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 Water Right No. 2989A-3.

In April 2024, Water Rights Program staff wrote to Mr. Reinicke regarding the end of Water Right No. 2989A-3's enrollment in CRP. After the letter was returned as "undeliverable", it was found that Mr. Reinicke had passed away and the property had been sold to Terwilliger & Sons Inc. Staff contacted Dale Terwilliger, who confirmed ownership of the property and said that there were no plans to irrigate. Mr. Terwilliger was agreeable to the cancellation of water Right No. 2989A-3.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

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

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May 30, 2024

NOTICE OF CANCELLATION

TO: Mark Job, 2250 Glennridge Ct, Sturgis SD 57785

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

SUBJECT: Cancellation of Water Right No. 683-1

Water Right No. 683-1 authorizes the diversion of 0.08 cubic feet of water per second from one well (NE ¼ NE ¼ Section 17, T5N, R5E) for a suburban housing water distribution system. In 2020, Water Rights Program staff was contacted by a representative of Murray Water Company, for the purpose of reporting the sale of the well site and adjacent property. It was reported that Murray Water Company had no further interest in the well site or water right. After receiving a letter from the Water Rights Program, you called to confirm ownership of the well site. You were also able to confirm that the well is now being used for domestic use and does not divert more than 18 gallons of water per minute. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 683-1, due to abandonment, or forfeiture, or both.

The Water Management Board will consider cancellation of Water Right No. 683-1 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 683-1 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 10, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 10, 2024.

Prior to June 10, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 10, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 683-1, MURRAY WATER COMPANY

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Right No. 683-1.

Murray Water Company contacted the Water Rights Program to inform staff that the well site for Water Right no. 683-1 had been sold to Mr. and Mrs. Job in 2020. Murray Water Company had no further interest in the well site or the water right. Mr. Job called the Water Rights Program in response to a letter sent to determine ownership. Mr. Job confirmed that diversion from the well did not exceed 18 gpm and was limited to watering of the front lawn and flower garden. It was determined that this use falls within a reasonable domestic use and the water right could be cancelled. Mr. Job was agreeable to the cancellation.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
May 30, 2024

Note:

Cancellation of the water permit does not prohibit use of water for domestic uses or use within a water distribution system not exceeding 18 gallons per minute.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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June 5, 2024

NOTICE OF CANCELLATION

TO: James L Sutton Jr, PO Box 33, Onida SD 57564

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

SUBJECT: Cancellation of Water Right No. 4687-3A

Water Right No. 4687-3A authorizes the diversion of 17.9 cubic feet of water per second from the Missouri River for the irrigation of 1,253 acres located within Sections 30 & 31, T116N-R79W, and Sections 25 & 36, T116N-R80W, Sully County, South Dakota. One March 6, 2024, the Water Management Board moved to suspend Water Right No. 4687-3A for a period of one year, for failure to submit the 2023 Irrigation Questionnaire. In response to the Notice, informing you of the pending suspension, you submitted the questionnaire with a note that irrigation was no longer taking place and would not be resumed in the future. Water Rights Program staff has attempted to contact you to discuss scheduling of cancellation. To date, no response has been received. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4687-3A, due to abandonment, or forfeiture, or both.

The Water Management Board will consider cancellation of Water Right No. 4687-3A at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 4687-3A based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 17, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 17, 2024.

Prior to June 17, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 17, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 4687-3A, JAMES L SUTTON JR

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 Water Right No. 4687-3A.

On March 6, 2024, the Water Management Board moved to suspend Water Right No. 4687-3A for a period of one year, for failure to submit the 2023 Irrigation Questionnaire. In response to the Notice, informing Mr. Sutton of the pending suspension, the questionnaire was returned. On the questionnaire was the comment "We no longer irrigate and will not in the future." Water Rights Program staff has attempted to contact Mr. Sutton to discuss the comment and schedule the water right for cancellation. No response has been received from Mr. Sutton.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
June 5, 2024

Note:

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

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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June 5, 2024

NOTICE OF CANCELLATION

TO: James L Sutton Jr, PO Box 33, Onida SD 57564

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

SUBJECT: Cancellation of Water Right No. 4687-3B

Water Right No. 4687-3B authorizes the diversion of 21.8 cubic feet of water per second from the Missouri River for the irrigation of 1,523 acres located within portions of Section 4 & 5, T115N-R79W, and Sections 28, 29, 32 & 33, T116N-R79W, Sully County, South Dakota. One March 6, 2024, the Water Management Board moved to amend Water Right No. 4687-3B to include a qualification making the return of future questionnaires mandatory. In response to the Notice, informing you of the amendment, you submitted the questionnaire with a note that irrigation was no longer taking place and would not be resumed in the future. Water Rights Program staff has attempted to contact you to discuss scheduling of cancellation. To date, no response has been received. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right No. 4687-3B, due to abandonment, or forfeiture, or both.

The Water Management Board will consider cancellation of Water Right No. 4687-3B at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 4687-3B based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 17, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 17, 2024.

Prior to June 17, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 17, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 4687-3B, JAMES L SUTTON JR

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 Water Right No. 4687-3B.

On March 6, 2024, the Water Management Board moved to amend Water Right No. 4687-3B, adding a qualification making the return of future questionnaires mandatory. In response to the Notice, informing Mr. Sutton of the amendment, the questionnaire was returned. On the questionnaire was the comment "We no longer irrigate and will not in the future." Water Rights Program staff has attempted to contact Mr. Sutton to discuss the comment and schedule the water right for cancellation. No response has been received from Mr. Sutton.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
June 5, 2024

Note:

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

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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June 5, 2024

NOTICE OF CANCELLATION

TO: Bill Boyer, 4162 Birch Ave, Hawarden IA 51023

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

SUBJECT: Cancellation of Water Permit No. 7833-3

Water Permit No. 7833-3 authorized the diversion of 1.44 cubic feet of water per second from two wells for the irrigation of 80 acres located in the SE ¼ Section 26, T96N-R48W, Union County, South Dakota. In July 2023, Water Rights Program staff made an inspection of the irrigation system for the purpose of licensing. The inspection found the system was diverting waters from Pattee Creek, rather than the authorized wells. Shortly after being contacted by staff, you submitted a new application (Permit No. 8788-3) for appropriations from Pattee Creek, which was approved in November 2023. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7833-3 due to abandonment, or failure to put water to beneficial use, or both.

The Water Management Board will consider cancellation of Water Permit No. 7833-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7833-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 17, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 17, 2024.

Prior to June 17, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 17, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7833-3, BILL BOYER

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 Water Permit No. 7833-3.

An on-site inspection conducted by Water Rights Program staff found that the irrigation system authorized under Permit No. 7833-3 was appropriating water from Pattee Creek, rather than the two authorized wells. After being contacted by staff, Mr. Boyer submitted a new permit application for the surface water source. Permit No. 8788-3 was approved in November 2023. Mr. Boyer understands that the time to construct additional works for diversion from the wells has passed and is agreeable to the cancellation of Permit No. 7833-3.

The Chief Engineer is recommending cancellation of the above water permit due to abandonment, or failure to put water to beneficial use, or both.

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
June 5, 2024

Notes:

Cancellation of the water permit does not prohibit a new application for this project in the future.
Cancellation of Water Permit No. 7833-3 does not affect Water Permit No. 8788-3 from Pattee Creek.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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June 5, 2024

NOTICE OF CANCELLATION

TO: Redhawk LLC, c/o Duane Potts, 1105 W 10th St Apt 3, Yankton SD 57078

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

SUBJECT: Cancellation of Water Permit No. 7322-3

Water Permit No. 7322-3 authorizes the irrigation of 37 acres located in the SE ¼ SW ¼ & SW ¼ SE ¼ Section 11, T93N-R55W, Yankton County, South Dakota. Permit No. 7322-3 was obtained to add an additional 37 acres, with no increase in diversion, to what was already authorized under Permit No. 7194-3, held by John Yaggie. In a recent telephone conversation with Water Rights Program staff, you confirmed that the system authorized by Permit No. 7322-3 had been dismantled and you were agreeable to the cancellation of the permit. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 7322-3 due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 7322-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 7322-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 17, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 17, 2024.

Prior to June 17, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 17, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 7322-3, REDHAWK LLC

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 Water Permit No. 7322-3.

Water Permit No. 7322-3, held by Redhawk LLC, authorized the addition of 37 acres to be irrigated with the diversion authority held by Permit No. 7194-3, John Yaggie. A recent inspection, for the purpose of licensing the irrigation system, found that the system authorized under Permit No. 7322-3 had been removed. In a follow up telephone conversation between Mr. Potts, representative of Redhawk LLC, and Water Rights Program staff, it was confirmed that the pivot had been dismantled and there was no desire to resume the irrigation of those acres. Mr. Potts was agreeable to the cancellation of Permit No. 7322-3.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
June 5, 2024

Note:

Cancellation of the water permit does not prohibit a new application for this project in the future. Cancellation of Permit No. 7322-3 has no bearing on Permit No. 7194-3, held by John Yaggie, or other existing permits/rights held by Redhawk LLC or Rudolph Hill Farm LLLP.

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June 10, 2024

NOTICE OF CANCELLATION

TO: Brett Binger, 38270 182nd St, Tulare SD 57476

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

SUBJECT: Cancellation of Water Right No. 3053-3

Water Right No. 3053-3 authorized the diversion of 1.88 cubic feet of water per second from one well (Tulare: Western Spink Hitchcock), for the irrigation of 152 acres located within the E ½ SW ¼ and W ½ SE ¼ Section 19, T115N-R64W, Spink County. In 2014, Water Right No. 3053-3 was amended to transfer irrigated acres and the point of diversion to other land. Permit No. 3053A-3 transferred the diversion point, 1.78 cfs and 130 irrigated acres to the NW ¼ Section 32, T115N-R63W, leaving 22 acres and 0.1 cfs under Water Right No. 3053-3. The Chief Engineer of the Water Rights Program is recommending cancellation of the remaining portion of Water Right No. 3053-3 due to abandonment.

The Water Management Board will consider cancellation of Water Right No. 3053-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 3053-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water right. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 21, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 21, 2024.

Prior to June 21, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 21, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 3053-3, BRETT BINGER

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 Water Right No. 3053-3.

Water Right No. 3053-3 was amended in 2014 to transfer the diversion point, 1.78 cfs of the 1.88 cfs diversion authority, and 130 of the 152 irrigated acres to other lands, under Permit No. 3053A-3. In doing so, 22 acres and 0.1 cfs were left under Water Right No. 3053-3.

The Chief Engineer is recommending cancellation of the remaining portions of Water Right No. 3053-3 due to abandonment.

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
June 10, 2024

Note:

Cancellation of this water right does not have any bearing on Water Permit No. 3053A-3.

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June 10, 2024

NOTICE OF CANCELLATION

TO: Jesse & Tanya VanDestroet, PO Box 107, Fairview SD 57027

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

SUBJECT: Cancellation of Water Permit No. 8072-3

Water Permit No. 8072-3 authorizes the diversion of 1.0 cubic feet of water per second from one well for the irrigation of 40 acres located within the N ½ NW ¼ Section 2, T94N-R52W, Clay County. A recent inspection, conducted by Water Rights Program staff for the purpose of licensing, found that the irrigation system was no longer in place. You confirmed that the system had been destroyed and removed, and that irrigation would not be resumed under Permit No. 8072-3. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 8072-3, due to abandonment.

The Water Management Board will consider cancellation of Water Permit No. 8072-3 at **9:30 am, Wednesday, July 10, 2024 (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD *(the agenda time is an estimate, and the actual time of hearing may be later).*

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 8072-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by June 21, 2024. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained.

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

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

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by June 21, 2024.

Prior to June 21, 2024, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 21, 2024.

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RECOMMENDATION OF CHIEF ENGINEER

FOR WATER PERMIT NO. 8072-3, JESSE & TANYA VANDESTROET

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 Water Permit No. 8072-3.

A recent on-site inspection, conducted for the purpose of licensing, found that the irrigation system authorized under Permit No. 8072-3 had been destroyed and removed. Mr. VanDestroet confirmed that irrigation would not be resumed and was agreeable to cancellation of the permit.

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

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
June 10, 2024

Note:

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

WATER MANAGEMENT BOARD MEETING
July 10, 2024

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

Water Permit Applications to be Considered as Scheduled

No.	Name	Address	County	Amount	Use	Source	Qualifications
8842-3	Greg & Evette Rihanek	Plankinton	AU	1.45 cfs	Irrigation	1 well – Dakota	wi, iq, 1 special
8859-3	Nick & Scott Bebo	Redfield	SP	3.0 cfs	Irrigation	James River	Deferral
8860-3	Nick & Scott Bebo	Redfield	SP	2.6 cfs	Irrigation	James River	Deferral
8861-3	Nick & Scott Bebo	Redfield	SP	2.2 cfs	Irrigation	James River	Deferral
8862-3	Nick & Scott Bebo	Redfield	SP	1.10 cfs	Irrigation	James River	Deferral
8863-3	Nick & Scott Bebo	Redfield	SP	0.80 cfs	Irrigation	James River	Deferral
8867-3	Jim or Collin Klebsch	Redfield	SP	1.14 cfs	Irrigation	James River	Deferral
8868-3	Jim or Collin Klebsch	Redfield	SP	1.14 cfs	Irrigation	James River	Deferral
8869-3	Jim or Collin Klebsch	Redfield	SP	2.57 cfs	Irrigation	James River	Deferral
8870-3	Jim or Collin Klebsch	Redfield	SP	3.42 cfs	Irrigation	James River	Deferral

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

No.	Name	Address	County	Amount	Use	Source	Qualifications
2035-1	Dan Heck	Belle Fourche	BU	200 AF	FWP	Sourdough Flats	1 special
2036-1	Action for the Betterment of Our Community	Sturgis	MD	0.46 AF	WDS/COM	1 well – Minnelusa	wi, 2 special
8754-3	Lewis & Clark RW System	Tea	CL	19,121 AF	RWS	Future Use	3 special
8787-3	Cheryl E. Nelson	Gettysburg	SU	225 AF	REC/FWP	2 wells – Inyan Kara	wi, 3 special
8789-3	Dennis Larson	Blunt	HU	48 AF	FWP	1 well – Inyan Kara	wi, wcr, 1 special
8832-3	Jesse & Tanya Van De Stroet	Fairview	CL	No Add'l	Irrigation	1 well -Upper Vermillion Missouri	wi, iq, 1 special
8833-3	Jesse & Tanya Van De Stroet	Fairview	CL	No Add'l	Irrigation	1 well – Upper Vermillion Missouri	wi, iq, 1 special
8834-3	Smit Family Trust	Hurley	CL	No Add'l	Irrigation	1 well – Upper Vermillion Missouri: South	wi, iq, 1 special
8839-3	Greenwood Hutterian Brethren Inc.	Delmont	DG	1.78 cfs	Irrigation	Dam and sand pit	iq, 2 special

(continued)

No.	Name	Address	County	Amount	Use	Source	Qualifications
8840-3	Robert Huber Farm	Herreid	CA	3.56 cfs	Irrigation	1 well – Grand	wi, wcr, iq
8843-3	Mikota Holdings, LLC	Grand Rapids	TU	1.78 cfs	Irrigation	1 well – Upper Vermillion	wi, wcr, iq
8844-3	GrowMark DBA Century FS	Yankton	YA	0.67 cfs	IND/COM	Missouri: South 1 well – Missouri: Elk Point	wi, wcr, 2 special
8845-3	Dan Reppe	Conde	CK	No Add'l	Irrigation	1 well – Altamont	wi, iq
8846-3	Anthony or Kimberly Folk	Corona	GT	2.00 cfs	Irrigation	2 wells - Wilmot	wi, wcr, iq
8871-3	Gray Goose Irrigation District	Warner	HU	No Add'l	Irrigation	Missouri River	iq

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May 30, 2024

NOTICE OF HEARING

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

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

SUBJECT: Validation of Recognized Vested Water Right Claim No. 1069-2, Department of Game, Fish, and Parks for Canyon Lake

A Notice of Intent to validate recognized Vested Water Right Claim No. 1069-2 for Canyon Lake was published in the Rapid City Journal on June 23 and 30, 1988. The Notice was published to validate the claim for sufficient water to fill Canyon Lake annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is lower. The Chief Engineer petitioned opposing the 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. The City of Rapid City provided "as built" plans for the past Canyon Lake Dam reconstruction which includes the spillway elevation. Therefore, validation of the vested right claim can now proceed.

Enclosed is the recommendation for the Water Management Board to validate the recognized Vested Water Right Claim No. 1069-2 for sufficient water annually to maintain the water to the spillway elevation of 3360.0 feet mean sea level (NGVD 29).

The Water Management Board will consider validation of Claim No. 1069-2 at 9:30 AM (Central Time) on Wednesday July 10, 2024, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501. 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. 1069-2 will still apply at this hearing.

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

enclosure

cc: Jennifer Verleger, Assistant Attorney General
Roger Hall, City Engineer, City of Rapid City, 300 6th Street, Rapid City SD 57701

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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RECOMMENDATION OF CHIEF ENGINEER ON VALIDATION OF RECOGNIZED VESTED WATER RIGHT CLAIM NO. 1069-2, DEPARTMENT OF GAME, FISH, AND PARKS, CANYON LAKE

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. 1069-2, Department of Game, Fish, and Parks, c/o Secretary Kevin Robling, 523 E Capitol Ave, Pierre SD 57501.

The Chief Engineer of the Water Rights Program recommends VALIDATION of recognized Vester Water Right Claim No. 1069-2 for sufficient water to maintain the water level to Canyon Lake's spillway elevation of 3360.0 feet mean sea level (NGVD 29). The vested water right will retain a priority date of January 1, 1935.

This recommendation is based on the "as built" plans and specifications for the past reconstruction of the Canyon Lake dam, which included the surveyed spillway elevation.

Eric Gronlund

Eric Gronlund, Chief Engineer
May 30, 2024

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally mailed a true and correct NOTICE OF HEARING & RECOMENDATION dated May 30, 2024, via Inter-Office Mail to the following parties.

Kevin Robling, Secretary
South Dakota Department of Game, Fish, and Parks
Joe Foss Building

Jennifer Verleger, Assistant Attorney General
1302 Easy Highway 14, Suite 1
Pierre SD 57501

David McVey, Assistant Attorney General
1302 Easy Highway 14, Suite 1
Pierre SD 57501

The above was also deposited into the United States Mail in Pierre, South Dakota, first class postage prepaid to the following parties.

City of Rapid City
c/o Roger Hall, City Engineer
300 6th Street, Rapid City SD 57701

Shannon Konst

Shannon Konst
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of May, 2024.

Rachel Rodriguez Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY Seal PUBLIC STATE OF SOUTH DAKOTA

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8859-3, Nick and Scott Bebo

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. 8859-3, Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8859-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8859-3
Nick & Scott Bebo
29 May 2024

Application No. 8859-3 proposes to appropriate 3.0 cubic feet of water per second (cfs) from the James River located in the NE ¼ SW ¼ of Section 34 for the irrigation of 305 acres located in the N ½ of Section 27, all in T117N-R63W. The site is located in Spink County, approximately six miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota

(Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are currently five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for the five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8859-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.

- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8860-3, Nick and Scott Bebo

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. 8860-3, Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8860-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8860-3
Nick & Scott Bebo
11 June 2024

Application No. 8860-3 proposes to appropriate 2.6 cubic feet of water per second (cfs) from the James River located in the NW ¼ NE ¼ of Section 12 for the irrigation of 260 acres located in the NE ¼, E ½ SE ¼, SW ¼ SE ¼ of Section 12, all in T117N-R64W. The site is located in Spink County, approximately six miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota

(Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8860-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.

- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8861-3, Nick and Scott Bebo

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. 8861-3, Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8861-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8861-3
Nick & Scott Bebo
11 June 2024

Application No. 8861-3 proposes to appropriate 2.2 cubic feet of water per second (cfs) from the James River located in the NE ¼ SW ¼ of Section 34 for the irrigation of 220 acres located in the S ½ NW ¼, SW ¼ of Section 34, all in T117N-R63W. This site is located in Spink County, approximately five and one-half miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota

(Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8861-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.

- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

BHullinger

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8862-3, Nick and Scott Bebo

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. 8862-3, Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8862-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8862-3
Nick & Scott Bebo
12 June 2024

Application No. 8862-3 proposes to appropriate 1.10 cubic feet of water per second (cfs) from the James River located in the SE ¼ SE ¼ of Section 20 for the irrigation of 110 acres located in the SE ¼ of Section 20, all in T117N-R63W. The site is located in Spink County, approximately five miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota

(Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8862-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.

- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8863-3, Nick and Scott Bebo

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. 8863-3, Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8863-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8863-3
Nick & Scott Bebo
12 June 2024

Application No. 8863-3 proposes to appropriate 0.80 cubic feet of water per second (cfs) from the James River located in the SE ¼ NE ¼ of Section 29 for the irrigation of 80 acres located in the E ½ NE ¼ of Section 32, all in T117N-R63W. This site is located in Spink County, approximately five miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota

(Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are ~~currently~~ five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8863-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.

- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

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Pierre SD 57501

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

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

06/12/2024

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.
Sworn to and subscribed before on 06/12/2024

Legal Clerk

Amy Kokott
Notary, State of WI, County of Brown

6/30/2025
My commission expires

Publication Cost:	$106.79	
Tax Amount:	$0.00	
Payment Cost:	$106.79	
Order No:	10252071	# of Copies:
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THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

AMY KOKOTT
Notary Public
State of Wisconsin

NOTICE OF HEARING on Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, 8863-3 to Appropriate Water

Notice is given that Nick & Scott Bebo, 17061 390th Avenue, Redfield SD 57469 has filed five applications to appropriate water from the James River for irrigation purposes.

Application No. 8859-3 proposes to appropriate 3.0 cubic feet of water per second from the James River located in the NE 1/4 SW 1/4 Section 34 for irrigation of 305 acres located in the N 1/2 Section 27; all in T117N-R63W. This site is located approximately six miles northeast of Redfield SD.

Application No. 8860-3 proposes to appropriate 2.6 cubic feet of water per second from the James River located in the NW 1/4 NE 1/4 Section 12 for irrigation of 260 acres located in the NE 1/4, E 1/2 SE 1/4, SW 1/4 SE 1/4 Section 12; all in T117N-R64W. This site is located approximately six miles northeast of Redfield SD.

Application No. 8861-3 proposes to appropriate 2.2 cubic feet of water per second from the James River located in the NE 1/4 SW 1/4 Section 34 for irrigation of 220 acres located in the S 1/2 NW 1/4, SW 1/4 Section 34; all in T117N-R63W. This site is located approximately five and one-half miles northeast of Redfield SD.

Application No. 8862-3 proposes to appropriate 1.10 cubic feet of water per second from the James River located in the SE 1/4 SE 1/4 Section 20 for irrigation of 110 acres located in the SE 1/4 Section 20; all in T117N-R63W. This site is located approximately five miles northeast of Redfield SD.

Application No. 8863-3 proposes to appropriate 0.80 cubic feet of water per second from the James River located in the SE 1/4 NE 1/4 Section 29 for irrigation of 80 acres located in the E 1/2 NE 1/4 Section 32; all in T117N-R63W. This site is located approximately five miles northeast 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 these 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 recom-

mends DEFERRAL of Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, 8863-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The Chief Engineer's recommendations with qualifications, the applications, and staff reports are available at https://danr.sd.gov/public or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider these applications at 9:30 AM (Central Time) on July 10, 2024, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications 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 June 24, 2024.

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

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

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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

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Published June 12, 2024 at the total approximate cost of $106.79 and may be viewed free of charge at www.sdpublicnotices.com
10252071

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:

#7444 NOTICE OF HEARING
was printed and published in said newspaper in 1 issue, to wit: The first publication being made on June 12th, That Eighty-Four and 63/100 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 12th, day of June, 2024

Kayla Jessen

Notary Public, South Dakota

KAYLA JESSEN NOTARY SEAL PUBLIC STATE OF SOUTH DAKOTA

My commission expires 09/26/2024

Notice of Hearing

#7444

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Published one time at the total approximate cost of $84.63 and may be viewed free of charge at www.sdpublicnotices.com.(June 12)

Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402
Legal Notice Number: 2630

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: Nick & Scott Bebo – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 06/12/2024. That the full amount of the fee charged for the $96.83 Public Hearings 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 6/12/24.

Notary Public, South Dakota

My Term Expires 12/27/2024

MARK E. DAVIS
NOTARY PUBLIC
SOUTH DAKOTA
SEAL

RECEIVED
JUN 14 2024
OFFICE OF WATER

F. P. 06-12-24

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No. 2630 (adv.)

Published one time at the total approximate cost of $96.83 and may be viewed free of charge at 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. 8867-3, Jim or Collin Klebsch

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. 8867-3, Jim or Collin Klebsch, 38701 170th Street, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8867-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8867-3
Jim or Colin Klebsch
12 June 2024

Application No. 8867-3 proposes to appropriate 1.56 cubic feet of water per second (cfs) from the James River located in the SW ¼ SE ¼ of Section 13 for the irrigation of 80 acres located in the NE ¼ of Section 24, all in T117N-R64W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located in Spink County, approximately four and one-half miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

SDCL 46-5-6

"In the issuance of permits to appropriate water for irrigation or in the adjudication of rights to the use of water for such purpose, the amount allowed may not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time each year. The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land. The above rate of one cubic foot per second for each seventy acres does not apply in cases of flood water at such times when the flow of the stream is much in excess of the total recorded and approved rights on the stream."

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota (Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8867-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.
    - Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
    - If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8868-3, Jim or Collin Klebsch

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. 8868-3, Jim or Collin Klebsch, 38701 170th Street, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8868-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8868-3
Jim or Colin Klebsch
12 June 2024

Application No. 8868-3 proposes to appropriate 1.56 cubic feet of water per second (cfs) from the James River located in the SW ¼ SE ¼ of Section 13 for the irrigation of 80 acres located in the S ½ SE ¼ of Section 24, all in T117N-R64W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located in Spink County, approximately four and one-half miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

SDCL 46-5-6

"In the issuance of permits to appropriate water for irrigation or in the adjudication of rights to the use of water for such purpose, the amount allowed may not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time each year. The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land. The above rate of one cubic foot per second for each seventy acres does not apply in cases of flood water at such times when the flow of the stream is much in excess of the total recorded and approved rights on the stream."

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota (Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8868-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.
    - Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
    - If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

BHullinger

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8869-3, Jim or Collin Klebsch

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. 8869-3, Jim or Collin Klebsch, 38701 170th Street, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8869-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8869-3
Jim or Colin Klebsch
12 June 2024

Application No. 8869-3 proposes to appropriate 2.57 cubic feet of water per second (cfs) from the James River located in the E ½ SE ¼ of Section 11 for the irrigation of 180 acres located in the E ½ NE ¼, NE ¼ SE ¼ of Section 14, the N ½ NW ¼ of Section 13, the SW ¼ SW ¼ of Section 12, the SE ¼ SE ¼ of Section 11, all in T117N-R64W. The site is located in Spink County, approximately five miles north of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota (Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8869-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed on water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:

- Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.
- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

BHullinger

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8870-3, Jim or Collin Klebsch

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. 8870-3, Jim or Collin Klebsch, 38701 170th Street, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8870-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
June 3, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8870-3
Jim or Colin Klebsch
12 June 2024

Application No. 8870-3 proposes to appropriate 3.88 cubic feet of water per second (cfs) from the James River located in the NE ¼ SE ¼ of Section 11 for the irrigation of 272 acres located in the W ½ of Section 2, all in T117N-R64W. The site is located in Spink County, approximately five and one-half miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

"It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water."

SDCL 46-2A-2

"Within sixty days of receipt of a completed application, the chief engineer shall recommend in writing approval, disapproval or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board."

SDCL 46-2A-9

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

Background

The James River originates in North Dakota and flows south across South Dakota, emptying into the Missouri River east of Yankton, SD. The river is approximately 710 miles long, with 475 miles in South Dakota (Hullinger and Rath, 2024). The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500 James River near Scotland.

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board (WMB), placed maximum appropriation limits over sections of the James River in South Dakota

(Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line, where 298.92 cfs is currently appropriated or reserved. Of the 300 cfs restriction, a 200 cfs appropriation limit was placed from the North Dakota border to the USGS gaging station in Huron, SD, where 199.19 cfs is currently appropriated or reserved (Water Rights, 2024). The WMB has adopted these appropriation limits.

In 2007, standardized qualifications were adopted on the James River to address times when water availability is scarce. These qualifications are (1) James River permits do not authorize diversion of water after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and (2) James River permits do not authorize diversion of water when there is less than 20 cfs bypassing the closest USGS streamgage monitored by the WMB.

Since the 1990's, there has been an increasing streamflow trend in the James River. Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Hullinger and Rath, 2024). Three different flow statistics for USGS gage James River at Huron, SD were tested to give an overall impression of streamflow from 1944 to 2023 during the irrigation season (Hullinger and Rath, 2024). For the annual minimum flow, annual median flow, and annual maximum flow, the data show a significant rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

There are five pending applications with earlier priority dates, Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3 (Water Rights, 2024). The staff engineer report written for those five pending applications did a preliminary review of the current qualifications and the changing streamflow conditions of the James River (Hullinger and Rath, 2024). That report concluded that a more thorough review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. These applications were deferred by the Water Management Board at the May 8, 2024 meeting, as recommended by the Chief Engineer. The Chief Engineer recommended deferral until the Fall/Winter 2024 Water Management Board meeting to allow for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. Consequently, any new applications requesting water from the James River should also be deferred to allow for completion of the hydrologic analysis.

Conclusions

1. Due to the Water Management Board decision to defer prior James River Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, and 8835-3, Water Permit Application No. 8870-3 should be deferred until a more thorough review is completed on the current appropriation limit restrictions and bypass limits placed on water permits issued from the James River.
2. Upon completing an analysis, a recommendation may be made to:
    - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.

- Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
- If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.

BHullinger

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

References

Hullinger, B.R. and Rath, M.D. 2024. Report on Water Permit Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8835-3. SD DANR Water Rights Program. Joe Foss Building. Pierre, South Dakota.

Water Rights. 2024. Water Right/Permit Files. SD DANR, Water Rights Program. Joe Foss Building. Pierre, South Dakota

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:

#7445 NOTICE OF HEARING
was printed and published in said newspaper in 1 issue, to wit: The first publication being made on June 12th, That Eighty-Four and 63/100 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 12th, day of June, 2024

Kayla Jessen

Notary Public, South Dakota

KAYLA JESSEN NOTARY SEAL PUBLIC STATE OF SOUTH DAKOTA

My commission expires 09/26/2024

Notice of Hearing

#7445

NOTICE OF HEARING on Application Nos. 8867-3, 8868-3, 8869-3, 8870-3 to Appropriate Water

Notice is given that Jim or Collin Klebsch, 38701 170th Street, Redfield SD 57469 has filed four applications to appropriate water from the James River for irrigation purposes.

Application No. 8867-3 proposes to appropriate 1.56 cubic feet of water per second from the James River located in the SW 1/4 SE 1/4 Section 13 for irrigation of 80 acres located in the NE 1/4 Section 24; all in T117N-R64W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located approximately four and one-half miles northeast of Redfield SD.

Application No. 8868-3 proposes to appropriate 1.56 cubic feet of water per second from the James River located in the SW 1/4 SE 1/4 Section 13 for irrigation of 80 acres located in the S 1/2 SE 1/4 Section 24; all in T117N-R64W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. This site is located approximately four and one-half miles northeast of Redfield SD.

Application No. 8869-3 proposes to appropriate 2.57 cubic feet of water per second from the James River located in the E 1/2 SE 1/4 Section 11 for irrigation of 180 acres located in the E 1/2 NE 1/4, NE 1/4 SE 1/4 Section 14, N 1/2 NW 1/4 Section 13; SW 1/4 SW 1/4 Section 12; SE 1/4 SE 1/4 Section 11; all in T117N-R64W. This site is located approximately five miles north of Redfield SD.

Application No. 8870-3 proposes to appropriate 3.68 cubic feet of water per second from the James River located in the NE 1/4 SE 1/4 Section 11 for irrigation of 272 acres located in the W 1/2 Section 2; all in T117N-R64W. This site is located approximately five and one-half miles northeast 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 these 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. 8867-3, 8868-3, 8869-3, 8870-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The Chief Engineer's recommendations with qualifications, the applications, and staff reports are available at https://danr.sd.gov/public or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider these applications at 9:30 AM (Central Time) on July 10, 2024, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications 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 June 24, 2024.

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 July 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 an application. The request for an automatic delay must be filed by June 24, 2024. 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 an application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at https://danr.sd.gov/public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 24, 2024.

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 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 June 24, 2024. 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.

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LOCALiQ
Aberdeen News
Watertown Public Opinion

PO Box 630567 Cincinnati, OH 45263-0567

AFFIDAVIT OF PUBLICATION

Water Rights Program
Water Rights Program
523 E Capitol Ave
Pierre SD 57469

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

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

06/12/2024

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.
Sworn to and subscribed before on 06/12/2024

Legal Clerk

Keegan Moran
Notary, State of WI, County of Brown

2-14-28
My commission expires

Publication Cost:	$105.63	
Tax Amount:	$0.00	
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Order No:	10252441	# of Copies:
Customer No:	1409248	1
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THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

KEEGAN MORAN
Notary Public
State of Wisconsin

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The Water Management Board will consider these applications at 9:30 AM (Central Time) on July 10, 2024, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing.

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This is a Notice of Hearing, service is being provided by publication, and the applicable date to give

notice to the Chief Engineer is June 24, 2024. 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.

Published June 12, 2024 at the total approximate cost of $105.63 and may be viewed free of charge at www.sdpublicnotices.com.

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 10, 2024

NOTICE OF HEARING

TO: Brett Binger, 38270 182nd St, Tulare SD 57476

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

SUBJECT: Notice Scheduling Hearing Regarding the Request to Modify Qualification No. 4 on Water Permit No. 3053A-3, Brett Binger

Water Permit No. 3053A-3 amended Water Right No. 3053-3 by transferring a portion of the irrigated acres and the point of diversion to other land. Water Right No. 3053-3 appropriated 1.88 cubic feet of water per second from one well (Tulare: Western Spink Hitchcock Aquifer), located in the center of the S ½ Section 19, to irrigate 152 acres located in the E ½ SW ¼ & W ½ SE ¼ Section 19; all in T115N-R64W. The amendment allowed for the transfer of the diversion point and 130 acres to the NW ¼ Section 32, T115N-R63W. Qualification No. 4 placed on Permit No. 3053A-3 required plugging of the original well located in the center of the S ½ Section 19, T115N-R64W.

You have requested the modification of Qualification No. 4 to not require plugging of the well since the well is still in use for livestock watering.

As Chief Engineer, I am recommending the modification of Qualification No. 4 on Water Permit No. 3053A-3 to read as follows:

4. The original well authorized by Water Right No. 3053-3 located in the center of the S1/2 Section 19, T115N-R64W must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04, if the well is abandoned.

The Water Management Board will conduct a hearing to consider modifying Qualification No. 4 on Water Permit No. 3053A-3 at **9:30 AM, on Wednesday July 10, 2024 (Central Time)** in the Floyd Mathew Training Center, Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 *(the agenda time is an estimate, and 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) modify the qualification as recommended, 2) delay action, or 3) take no action on Water Permit No. 3053A-3 based upon facts presented at the public hearing.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-14; 46-2-5, 46-2-9, 46-2-11; and Board Rules ARSD 74:02:01:14. This is a contested case 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.

Prior to June 21, 2024, 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 modification to qualification No. 4; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds $2,500.00. If you choose to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) by June 21, 2024.

Questions regarding the hearing process may be directed to Amanda Dewell, Permitting Administrator, Water Rights Program, at (605) 773.3352 or Amanda.Dewell@state.sd.us

Cc: Jennifer Verleger, Assistant Attorney General
Legal Counsel for Chief Engineer

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally deposited a true and correct NOTICE OF HEARING, PERMIT NO. 3053A-3 dated June 10, 2024, into the United States Mail in Pierre, South Dakota, first class postage prepaid to the following parties on June 10, 2024.

Brett Binger
38270 182nd St
Tulare SD 57576

Above also Sent Inter-office to:

Jennifer Verleger, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501

Shannon Konst
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of June, 2024.

Rachel Rodriguez Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY Seal PUBLIC STATE OF SOUTH DAKOTA

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. 8842-3, Greg & Evette Rihanek

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. 8842-3, Greg & Evette Rihanek, 509 E 1st Street, Plankinton SD 57368.

The Chief Engineer is recommending APPROVAL of Application No. 8842-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well approved under Water Permit No. 8842-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals must 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. Any future replacement well must meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. A replacement well may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.

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

See report on application for additional information.

Eric Gronlund, Chief Engineer
April 16, 2024

Report to the Chief Engineer

On Water Permit Application No. 8842-3

Greg & Evette Rihanek

April 17, 2024

Water Permit Application No. 8842-3 proposes to divert water at a maximum instantaneous diversion rate of 1.45 cubic feet per second (cfs) from one well completed into the Dakota aquifer located in the NE ¼ SE ¼ of Section 4 for the irrigation of 120 acres located in the SE ¼ of Section 4; all in T103N-R63W. The water from the well will be directed into a dugout and then pumped from the dugout to irrigate. The site of interest is located in Aurora County approximately five miles northeast of Plankinton, SD.

AQUIFER: Dakota (DKOT)

HYDROGEOLOGY:

The Dakota Formation is defined as the first relatively continuous sandstone below the Greenhorn Limestone, and it extends downward to the top of the Skull Creek Shale in western and central South Dakota (Schoon, 1971). In eastern South Dakota, the Skull Creek Shale is not continuous and when absent, the Dakota Formation directly overlies Precambrian bedrock or the Inyan Kara Group (Schoon, 1971). In western South Dakota, a stratigraphically equivalent formation to the Dakota Formation is the Newcastle Formation, which outcrops in the Black Hills (Bredehoeft, et al., 1983). In South Dakota, the Dakota Formation has been subdivided into three units (Schoon, 1971). The upper unit consists of light brown to reddish-brown, fine to medium grained, friable sandstone, interbedded with gray to dark gray shale. Thin, discontinuous beds of lignite are present in the lower part of the upper unit. The middle unit consists of a gray silty clay with small siderite pellets disseminated throughout. The lower unit consists of medium to coarse grained sandstone (Schoon, 1971).

The Dakota aquifer is comprised of the saturated and permeable portions of the Dakota Formation and is primarily a confined bedrock aquifer throughout most of South Dakota (Schoon, 1971; Water Rights 2024b and 2024d). Schoon (1971) estimated the Dakota Formation underlies 66,500 square miles of South Dakota and has an average thickness of 150 feet. The amount of water stored in the Dakota aquifer can be estimated by assuming 15% porosity for the Dakota Formation (Schoon, 1971), multiplied by the average thickness (150 feet) and the areal extent (66,500 square miles or 42.5 million acres) of the aquifer to calculate approximately 960 million acre-feet of stored water in South Dakota. In Aurora and Jerauld Counties, the Dakota aquifer has an average thickness of approximately 250 feet (Hamilton, 1985).

No water well or test hole completion report was submitted with Water Permit Application No. 8842-3. Using geophysical log information, lithologic logs, and water levels from various aquifers shown in existing wells, South Dakota Geological Survey and Water Rights Program staff determined the existing well proposed to be used is likely completed into the Dakota aquifer (Mathiowetz and Schultz, 2024). Water well completion reports on file with the DANR-Water

Rights Program for wells completed into the Dakota aquifer within approximately three miles of the existing well site have saturated aquifer thicknesses ranging from approximately 40 to 140 feet, with the depth to the top of aquifer materials ranging from approximately 500 to 660 feet below the ground surface, and static water levels at well completion ranging from flowing to 20 feet below the ground surface (Water Rights, 2024d). The Dakota aquifer is expected to be confined at the existing well site based on the well completion reports on file for nearby wells completed into the aquifer, which is supported by the applicant indicating the existing well proposed to be used as flowing (Water Rights, 2024d).

South Dakota Codified Law (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, "A permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the diversion point can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SDCL 46-2-9 and 46-2-11." This report will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within the Dakota aquifer.

WATER AVAILABILITY:

Water Permit Application No. 8842-3 proposes to appropriate water from the Dakota 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 Dakota aquifer is older than and stratigraphically lower than the Greenhorn Formation (Fahrenbach et al., 2010); however, the applicant's proposed use is not for use in a water distribution system as defined by SDCL 46-1-6(17). Therefore, the average annual recharge and average annual withdrawal rates to and from the Dakota aquifer must be considered.

OBSERVATION WELL DATA:

Administrative Rule of South Dakota (ARSD) 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

Observation wells provide data on how the aquifer reacts to regional climatic conditions and local pumping. The DANR-Water Rights Program monitors 46 observation wells completed into the Dakota aquifer (Water Rights, 2024b). The five closest observation wells to the existing well

site are AU-89A (approximately 12 miles southwest), HD-87A (approximately 43 miles northwest), BL-83A (approximately 45 miles east), HT-80B (approximately 55 miles southeast), and GY-89A (approximately 60 miles southwest) (Water Rights, 2024b). The hydrographs for these observation wells are displayed in Figures 1 to 5 (Water Rights, 2024b). The data points utilized to construct the hydrographs are measurements of the static water level in the observation wells from the top of the well casing. Figure 7 displays a map of the locations of nearby observation wells (Water Rights, 2024b).

The hydrographs for the observation wells display stable to slightly downward trending water levels over their respective periods of record (Water Rights, 2024b). While the overall trend in the historic static water level measurements in the Dakota aquifer observation wells is generally slightly downward, observation wells HT-80B (approximately 55 miles southeast) and ED-85A (Figure 6) (approximately 115 miles northwest of the existing well site) completed into the Dakota aquifer have recorded a trend that has been stable to slightly increasing (Water Rights, 2024b). The last water level measurement in observation well HD-87A occurred in August 2019 due to current access issues caused by a dam washout (Water Rights, 2024b).

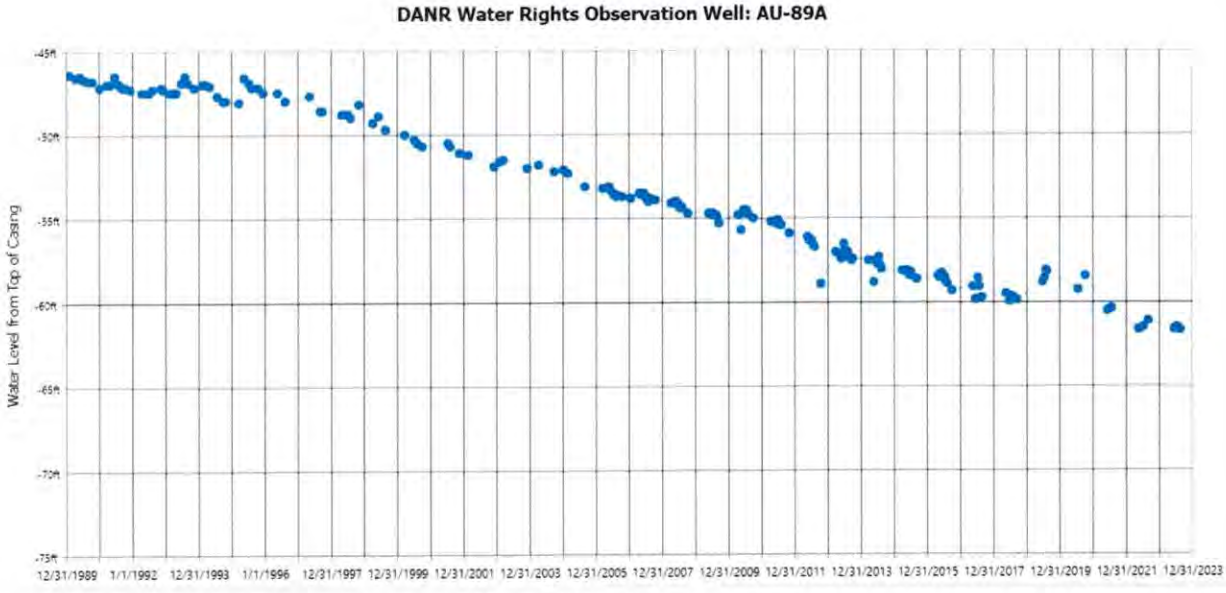

Figure 1. Hydrograph for observation well AU-89A (Water Rights, 2024b)

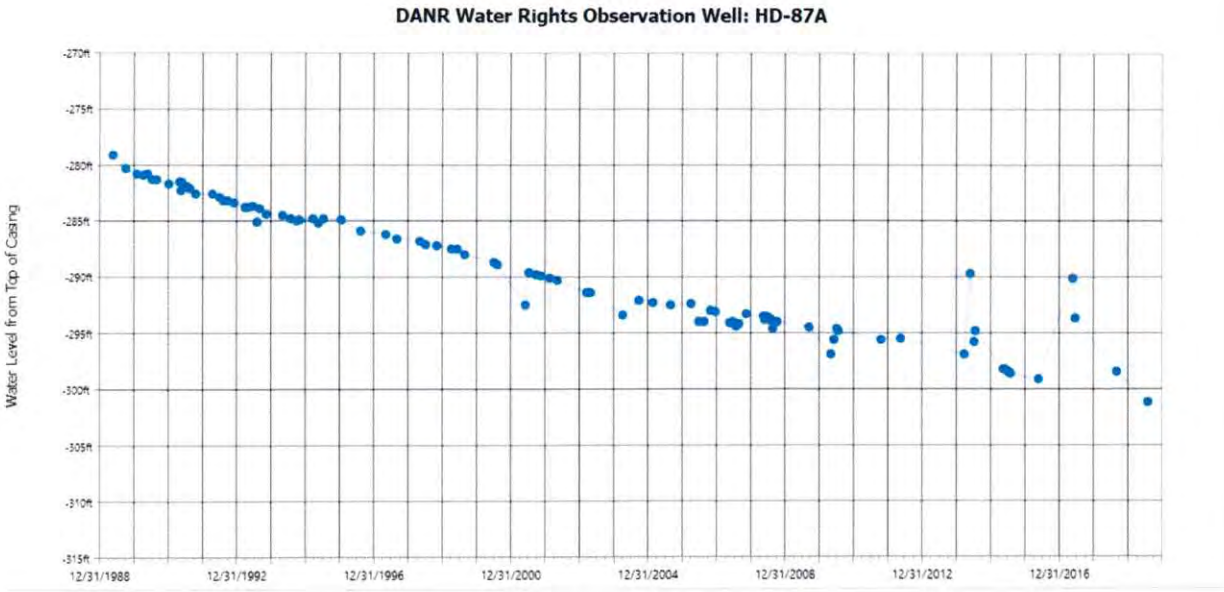

Figure 2. Hydrograph for observation well HD-87A (Water Rights, 2024b)

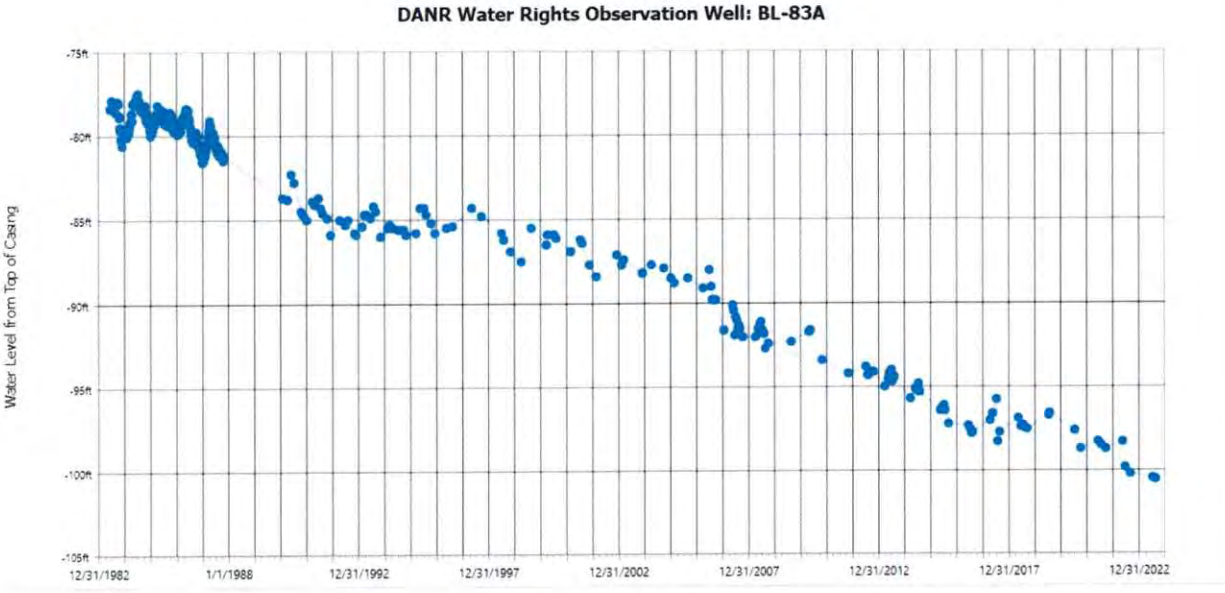

Figure 3. Hydrograph for observation well BL-83A (Water Rights, 2024b)

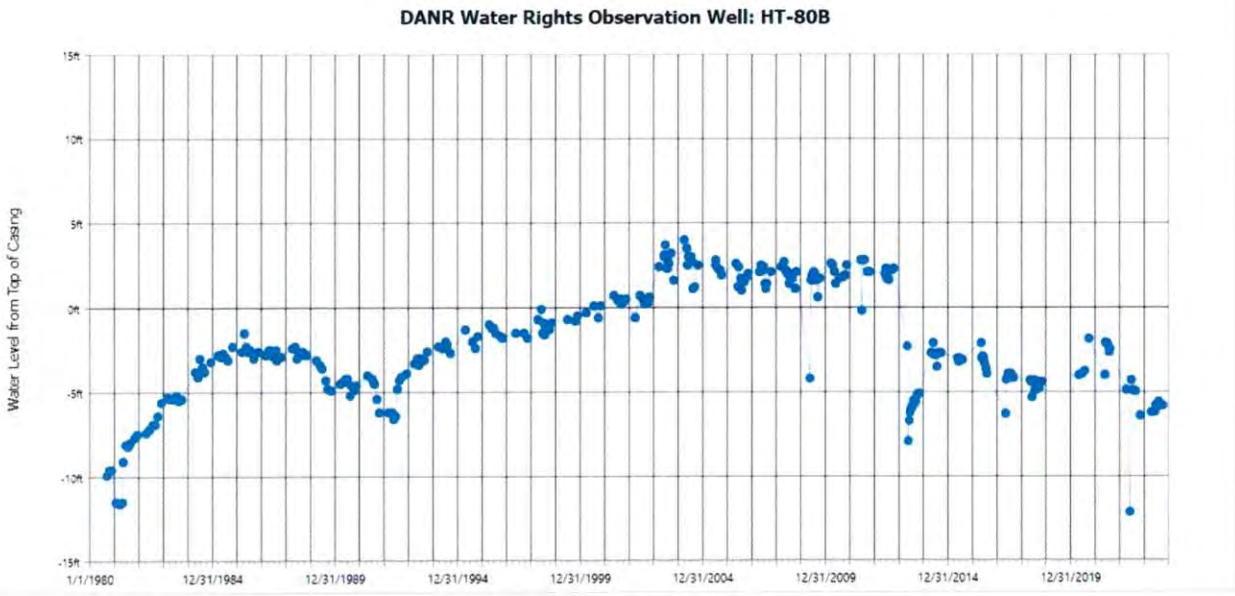

Figure 4. Hydrograph for observation well HT-80B (Water Rights, 2024b)

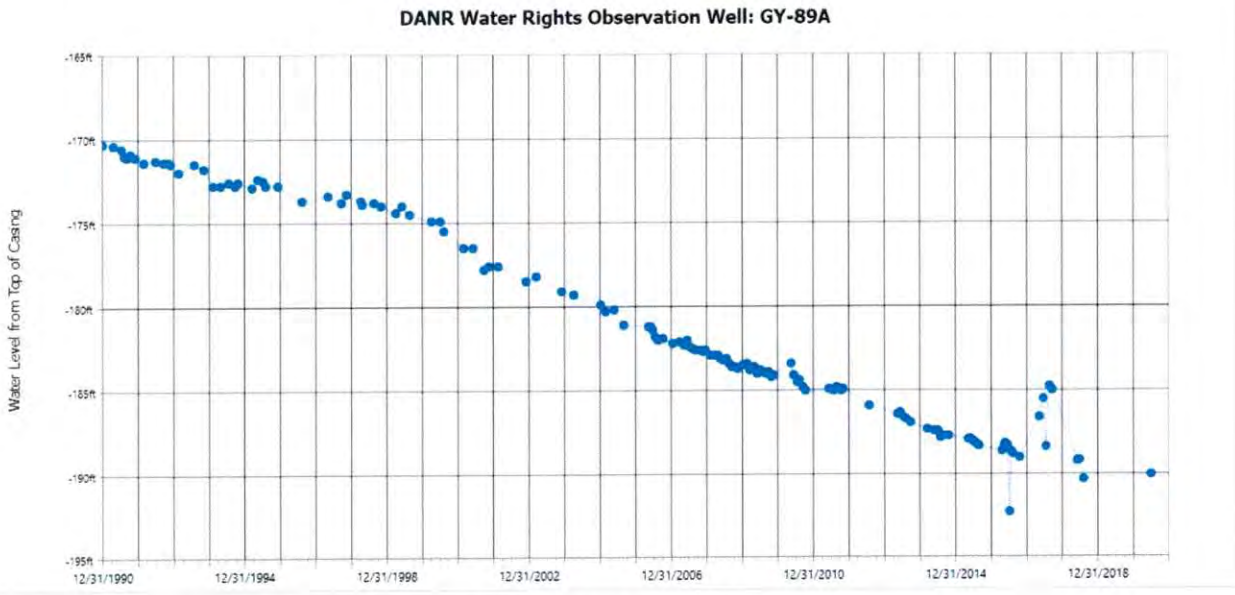

Figure 5. Hydrograph for observation well GY-89A (Water Rights, 2024b)

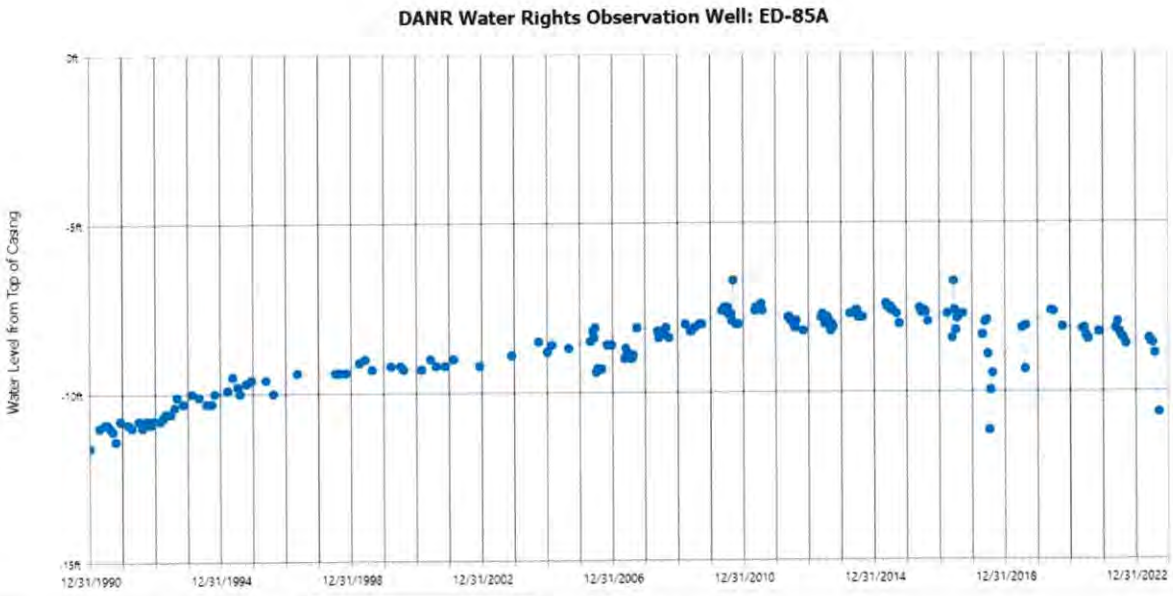

Figure 6. Hydrograph for observation well ED-85A (Water Rights, 2024b)

In addition to the observation well hydrographs, a record of the potentiometric surface is shown through historical accounts. Schoon (1971) developed maps of the potentiometric surface of the Dakota aquifer using data modified from Darton (1909), from the State Engineer's office for the period 1914 to 1915, and from a compilation of many reports over the period of 1936 to 1953. Wells that have been completed into the Dakota aquifer in roughly the past thirty years and within approximately five miles of the existing well site were used to approximate the current potentiometric surface conditions (Table 1) (Water Rights, 2024d).

Table 1. Historic and current approximate water level elevations near the existing well site (Schoon, 1971; Water Rights, 2024d)

Data Source	Year(s)	*Approximate* potentiometric surface in the vicinity of the existing well (fmsl)
Schoon (1971), after Darton	1909	1,500 to 1,550
Schoon (1971), State Engineer's Office	1914-1915	1,400 to 1,450
Schoon (1971)	1936-1953	1,400 to 1,450
Well Logs Database	2003 to Present	1,400 to 1,425

Throughout South Dakota, most of the hydrographs for observation wells completed into the Dakota aquifer, and the potentiometric surface measurements of the Dakota aquifer show a decreasing trend in hydraulic head (Water Rights, 2024b). A decline in water levels in a confined aquifer does not necessarily indicate a significant decrease in water stored in the aquifer, as water levels above the top of the aquifer materials are representative of the hydraulic head (water pressure) inside the aquifer. Additionally, there are uncontrolled, flowing wells discharging water from the Dakota aquifer at ground surface, and it is expected water from the aquifer is also being discharged to other aquifers if wells completed into the Dakota aquifer have experienced casing failure.

Concerns have developed over time about the decline in artesian head pressure of the Dakota aquifer. Schoon (1971) stated, "The fact that withdrawal from the artesian system exceeds recharge is clearly demonstrated by declining pressures." However, the Water Management Board has found that past declines of the potentiometric surface (as shown on Table 1) do not automatically constitute that withdrawals have exceeded recharge (Water Rights, 1987). The Board has concluded that withdrawals exceeding the average annual recharge cannot be determined based solely upon a decline in head pressure, and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges (Water Rights, 1987). Since discharge from uncontrolled flowing wells is likely to continue until water levels in the aquifer decline to being at or below the ground surface and continuing to allow beneficial pumping to occur reduces the amount of water being discharged to waste, the Water Management Board's decision to optimize development of the Dakota aquifer is favorable to issuance of permits to appropriate water for beneficial uses. Therefore, there is a reasonable probability unappropriated water from the Dakota aquifer is available for the proposed appropriation.

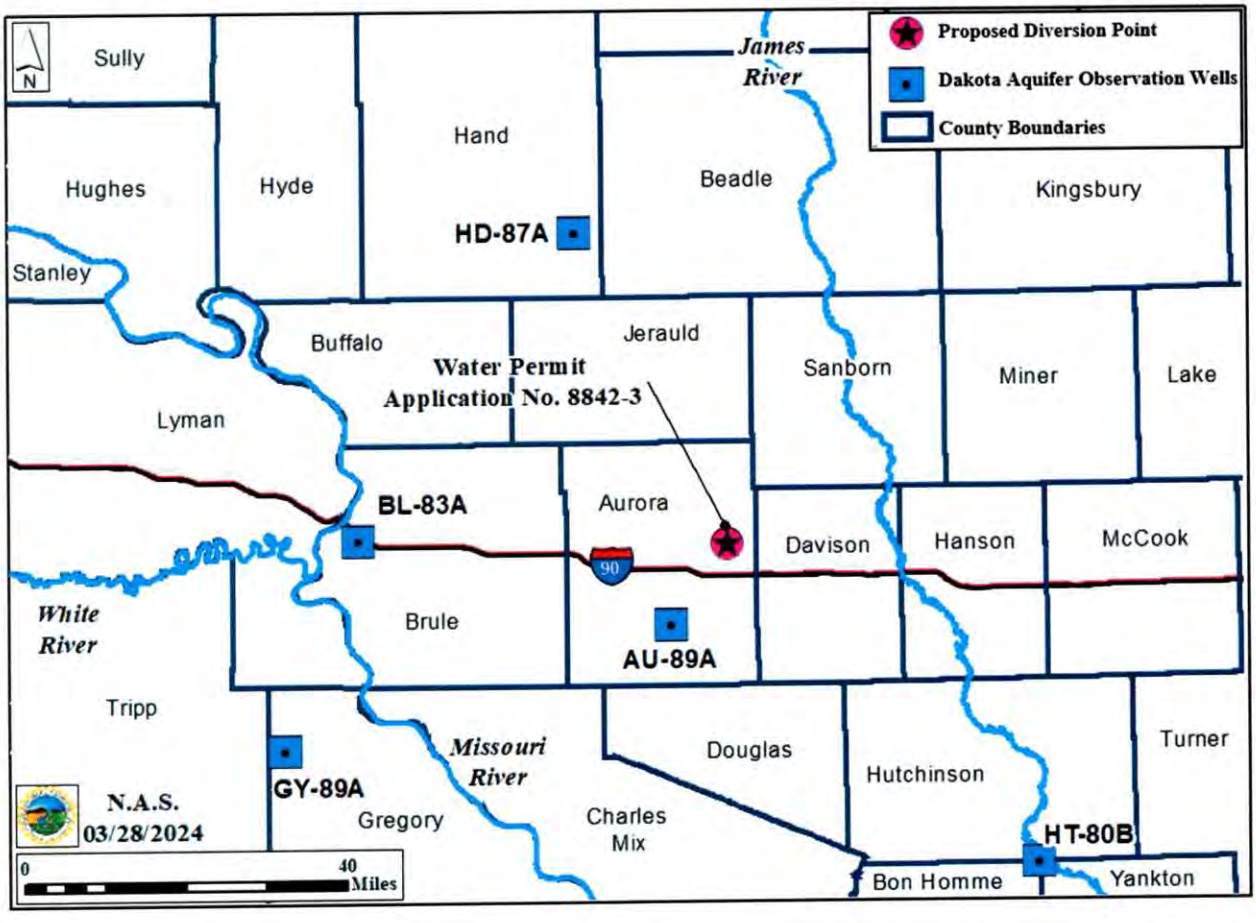

Figure 7. Location of the existing well site for Water Permit Application No. 8842-3 with the Dakota aquifer observation wells within approximately 60 miles (Water Rights, 2024b)

HYDROLOGIC BUDGET:

Recharge

Recharge to the Dakota aquifer in South Dakota occurs through upward leakage from underlying aquifers with higher artesian pressure than the Dakota aquifer, downward seepage from overlying confining layers, and through the infiltration of precipitation on the Newcastle Formation outcrops in the Black Hills (Bredehoeft, et al., 1983; Water Rights, 2024b). Using computer modeling, Bredehoeft, et al. (1983) attempted to match Darton's (1909) potentiometric surface map of the Dakota aquifer to develop a recharge estimate of approximately 79.4 cfs (57,500 acre-feet per year) before well development began. However, many assumptions used in Bredehoeft, et al.'s (1983) recharge estimate were incorrect and outdated. For example, assuming steady-state flow conditions between aquifers is unrealistic of real-world conditions and the recharge estimates used for the Madison and Inyan Kara aquifers in Bredehoeft, et al.'s (1983) analysis are much lower than estimates measured by more recent research (Carter, et al., 2002). While Bredehoeft, et al.'s (1983) estimate can provide a scale of the Dakota aquifer's recharge rate, it cannot be used as an exact value for water management purposes. As the physical properties of aquifers and the locations where adjacent aquifers are in contact with each other are relatively undefined among many other factors, it is unknown whether the true recharge rate of the Dakota aquifer is higher or lower than Bredehoeft et al.'s (1983) estimate.

Discharge

Discharge from the Dakota aquifer in South Dakota occurs through well withdrawals, uncontrolled flowing wells and outflow through corroded well casings, and outflow to overlying adjacent aquifers because of higher artesian pressure in the Dakota aquifer (Bredehoeft, et al., 1983; Water Rights, 2024b and 2024d).

Currently, there are 261 water rights/permits appropriating water from the Dakota aquifer within South Dakota, plus one pending application - Water Permit Application No. 8828-3 requesting to irrigate 352 acres in Clay County (Water Rights, 2024c). Additionally, there are seven future use permits reserving water from the Dakota aquifer (Water Rights, 2024c). For the purpose of estimating average annual withdrawals, the seven future use permits are assumed to be fully developable for a total of 4,287 acre-feet per year (Table 2).

Table 2. Future use permits reserving water from the Dakota aquifer (Water Rights, 2024c)

Future Use Permit Holder	Amount of Reserved Water (acre-ft)
City of Canton (1262C-3, 5219-3)	1,849
City of Lennox (5101-3, 5101A-3)	0*
South Lincoln RWS (4817-3)	1,448
Lincoln RWS (5155-3)	440
City of Harrisburg (8400-3)	550
Total:	**4,287**

RWS: Rural Water System, *The City of Lennox has allocated the water they had reserved

Of the 261 Dakota aquifer water rights/permits, 21 are for irrigation use and 240 are for non-irrigation use (Water Rights, 2024c). Table 3 summarizes the 240 non-irrigation water rights/permits authorized to appropriate water from the Dakota aquifer with the estimated annual use for each water right/permit as determined by their limiting diversion rate or annual volume. The use type determined for each water right/permit was based on the primary use categorized for each water right/permit as some permits have additional uses (Water Rights, 2024c). Historically, average water use by non-irrigation appropriations limited by an instantaneous diversion rate have been assumed to be pumping 60% of full time at the respective permitted diversion rate. Water rights/permits limited by an annual volume are assumed to withdraw their entire respective annual volume limitation. This is a standard method used by the DANR-Water Rights Program for estimating annual withdrawals by non-irrigation appropriations from an aquifer (Water Rights, 2024c).

Several non-irrigation water rights/permits on Table 3 are authorized to withdraw from one or more aquifers, including the Dakota aquifer. For the purpose of estimating average annual withdrawals, the non-irrigation water rights/permits that have a specified volume out of their entire appropriated volume that is authorized only for their Dakota aquifer well(s) are assumed to withdraw their full specified volume permitted only for their Dakota aquifer well(s). The remaining non-irrigation water rights/permits that do not have a certain diversion rate or volume designated for what each well from each aquifer is authorized to divert are assumed to be withdrawing their entire appropriated volume from the Dakota aquifer.

Additionally, there are municipal water rights/permits that are authorized to appropriate water from the Dakota aquifer that are identified as being connected to a rural water system (RWS) and likely maintain their wells for standby purposes (Drinking Water Program, 2024; Water Rights, 2024c); as such, the average annual water use for these water rights has been estimated to be zero acre-feet per year on Table 3. Overall, the average annual withdrawal rate for the Dakota aquifer non-irrigation water rights/permits is approximately 22,459 acre-feet per year (Table 3) (Water Rights, 2024c).

Table 3. Summary of the non-irrigation water rights/permits authorized to appropriate from the Dakota aquifer with estimated annual use determined by their respective diversion rate or annual volume (Drinking Water Program, 2024; Water Rights, 2024c)

Use Type	No. of Water Rights/Permits	Appropriation for Water Rights/Permits limited by Volume (acre-feet/year)	Appropriation for Water Rights/Permits limited by Diversion Rate (cfs)	Total Estimated Use (acre-feet/year)
RWS	6	2,005	2.2	2,961
SHD	7		3.33	1,447
REC	3	3.1	0.45	199
COM	109	2,032	11.48	7,020
DOM	11		1.753	762
FWP	4		2.73	1,187
GEO	2		2.33	1,013
INS	2		1.34	582
IND	7	167	0.84	534
MUN	89	3,274	8.01	6,755
TOTAL:	**240**	**7,481**	**34.46**	**22,459**

RWS: Rural Water System, SHD: Suburban Housing Development, REC: Recreation, COM: Commercial, DOM: Domestic, FWP: Fish & Wildlife Propagation, GEO: Geothermal, INS: Institutional, IND: Industrial, MUN: Municipal

As development of the Dakota aquifer has increased over time, some of the appropriations have been made by rural water systems that are required to report their annual withdrawal rate (Water Rights, 2024c). The withdrawals that are annually reported from the Dakota aquifer by some appropriative users (South Lincoln RWS, Clay RWS, and Lincoln County RWS) are shown in Table 4 (Water Rights, 2024c and 2024f). The reported withdrawals by the RWS users listed on Table 4 are for comparison purposes only to show historically the average annual use has been less than the volume that is estimated on Table 3 (Water Rights, 2024c and 2024f). The reported annual withdrawal rate for two water rights/permits authorized for commercial and domestic use was also included on Table 4. The estimated use calculated on Table 3 for the water rights/permits that are required to report will be used in the analysis.

Table 4. Non-irrigation rural water system water rights/permits required to report their respective annual use from the Dakota aquifer (Water Rights, 2024c and 2024f)

	South Lincoln RWS	**Clay RWS**	**Lincoln County RWS**	**Lakeview Hutterian Brethren**	**Michael J. Slama**
	5647-3, 6300-3, 6490-3, 6778A-3	5997B-3	5156-3	8464-3	8252-3
2003	725				
2004	904				
2005	769				
2006	863	72			
2007	860	126			
2008	863	124	0		
2009	773	119	0		
2010	775	122	0		
2011	785	116	0		
2012	865	186	0		
2013	765	155	0		
2014	739	148	0		
2015	711.5	141	0		
2016	640	163	0		
2017	643	201	0		
2018	503	170	0		
2019	562	162	0		
2020	530	197	0		19.3
2021	588	194.7	0	40	19.3
2022	969	215	0	23.6	19.3
Max	**969**	**215**	**0**	**40**	**19.3**
Min	**503**	**72**	**0**	**23.6**	**19.3**
Avg	**742**	**154**	**0**	**32**	**19.3**
RWS: Rural Water System					

Currently, there are 21 irrigation water rights/permits authorized to appropriate water from the Dakota aquifer, plus one pending irrigation application (Water Rights, 2024c). Irrigation water rights/permits have been typically required to report their annual usage on an irrigation questionnaire (IQ) since 1979. The estimated average annual withdrawal rate for the Dakota aquifer irrigation water rights/permits that have reported over the period of record (1979 to 2022) is approximately 159 acre-feet per year (Water Rights, 2024a). To reflect the current development of irrigation water rights/permits more accurately, the average annual withdrawal rate for irrigation appropriations that have reported from 2013 to 2022 is approximately 233 acre-feet per year (Water Rights, 2024a).

Table 5 displays the average annual withdrawal rate for each irrigation water right/permit based on the reported annual values, with estimated use calculated for water permits that have either not been constructed or only have one year of reporting data. Several of the irrigation water rights/permits from the Dakota aquifer are authorized to irrigate using other water sources in addition to the Dakota aquifer, and the reported withdrawal rate represents total irrigation across all water sources (Water Rights, 2024a and 2024c). The estimated use calculated on Table 5 will be used in this analysis.

Water Right No. 394-3 is not required to submit an irrigation questionnaire and is authorized to irrigate 3.2 acres (Water Rights, 2024c). Generally, irrigators in eastern South Dakota apply less than one foot of water per acre per year. However, to account for the fluctuation in wet and dry cycles from year to year, a one foot of water per acre per year application rate will be used to estimate the annual withdrawal rate for this irrigation water right. Therefore, Water Right No. 394-3 is estimated to withdraw approximately 3.2 acre-feet per year (shown on Table 5) (Water Rights, 2024c).

Additionally, Water Permit Nos. 8423-3, 8510-3, 8560-3, 8727-3, and 8781-3 are authorized to irrigate 192.5 acres of turf and are limited to an annual appropriation that may not exceed two-acre feet annually for each acre of land authorized to be irrigated (Water Rights, 2024c). These water permits have either not been constructed or only have one year of reporting data (Water Rights, 2024a and 2024c). Generally, irrigators in eastern South Dakota apply less than one foot of water per acre per year (Water Rights, 2024a). However, because these permit holders are authorized to irrigate turf, the two foot of water per acre per year application rate will be used to somewhat overestimate the annual withdrawal rate. Therefore, the average annual withdrawal rate for Water Permit Nos. 8423-3, 8510-3, 8560-3, 8727-3, and 8781-3 is approximately 385 acre-feet per year (shown on Table 5).

Water Permit Application No. 8828-3 proposes to crop irrigate 352 acres authorized by Water Permit No. 8043-3. Water Permit No. 8043-3 is subject to cancellation due to non-construction. At this time, Water Permit No. 8043-3 is active and will be included in this analysis (Water Rights, 2024c). The one foot of water per acre per year application rate will be used to estimate the withdrawal rate for the crop irrigation requested by Water Permit Application No. 8828-3 on Table 5.

Overall, the average annual withdrawal rate for the Dakota aquifer irrigation water rights/permits based on the reported annual values (280.8 acre-feet/year) (unless not required to submit IQ or still within construction period (1,132.1 acre-feet/year)) is approximately 1,412.9 acre-feet per year (Table 5) (Water Rights, 2024a and 2024c).

Table 5. Average reported withdrawal rate by the irrigation water rights/permits from the Dakota aquifer (Water Rights, 2024a and 2024c)

Permit No.	Status	Name	Priority Date	Acres	Avg Reported Use (acre-feet/year)	Est. Use for Non- Developed, Non-Reporting, or Limited Data Permits (acre-feet/year)	Comments/Total Estimated Use (acre-feet/year)
1054-3	LC	Rolling Hills Golf Development	01/01/1951	43.84	30.9	N/A	also uses water from surface water
394-3	LC	Kory Standy	01/01/1912	3.2	Does not report	3.2	also for domestic use
4769-3	LC	James Leheska	06/01/1981	130	23.5	N/A	last irrigated in 1993
5703-3	LC	Charles A Long	07/20/1992	2	0.5	N/A	
2328-2	LC	Michael Kirwan	02/21/1995	31	2.6	N/A	last irrigated in 2008
5905-3	LC	City of Groton	12/14/1995	30	66.9	N/A	also permits water from surface water- total water use across all sources
5947-3	LC	Fish Lake Country Club	09/23/1974	33	17.2	N/A	also permits water from surface water- total water use across all sources
5994-3	LC	Robert L Peterson	04/17/1997	3	6.2	N/A	
6110-3	LC	Dakota Dunes Community Improvement District	10/06/1998	11	49.8	N/A	
6527-3	LC	City of Beresford	07/22/2004	37	23.2	N/A	
6575-3	LC	Dakota Alliance Soccer Club	01/19/2005	15	6.2	N/A	
6734-3	LC	Avera Sacred Heart Health Services	06/14/2006	11.9	5.6	N/A	
7123-3	LC	Harrisburg School District	04/02/2009	30	7.7	N/A	
2566A-2	LC	Chamberlain Country Club	08/29/2005	63	9.6	N/A	
7916-3	PE	John H Thompson	10/18/2013	150	30.9	N/A	
8043-3	PE	Robert P Walsh	08/27/2014	391.9	limited data	391.9	*subject to cancellation* due to non-construction since the well was completed in 2021 after expiration of the construction period
8423-3	PE	City of Platte	02/10/2020	42	not constructed	84	not constructed-turf irrigation
8510-3	PE	TR Golf LLC	03/26/2021	30	limited data	60	turf irrigation- 143.3 acre-ft reported in 2022 for 8510-3
8560-3	PE	TR Golf LLC	10/25/2021	65	limited data	130	
8727-3	PE	TR Golf LLC	02/27/2023	10	not yet reporting	20	turf irrigation
8781-3	PE	City of Harrisburg	07/21/2023	45.5	not constructed	91	turf irrigation
8828-3	*pending*	Robert P Walsh	02/01/2024	352	not constructed	352	Water Permit No. 8043-3 subject to cancellation
LC: Licensed Water Right; PE: Water Permit			**TOTAL:**	**1,530**	**280.8**	**1,132.1**	**1,412.9**

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 (Water Rights, 2024d). Since the introduction of rural water systems, many domestic wells are likely no longer in use or are not being used as primary water sources. Due to their 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 for the Dakota aquifer. It is currently unknown how much water is being discharged from the Dakota aquifer through uncontrolled flowing wells. The Water Management Board has previously determined water being discharged through uncontrolled flowing wells is not a beneficial use and does not constitute appropriation pursuant to SDCL 46-6-3.1 (Water Rights, 1987).

Hydrologic Budget Summary

The estimated average annual recharge to the Dakota aquifer has not been accurately quantified. Bredehoeft et al. (1983) estimated a recharge rate of approximately 57,500 acre-feet per year, but several factors make it uncertain if that is a high or low estimate. The estimated average annual withdrawal rate from the Dakota aquifer is approximately 28,279 acre-feet per year (including the estimated use for Water Permit Application No. 8828-3 (pending) and 8842-3, if approved) (including Water Permit No. 8043-3 (subject to cancellation) (Table 6). Based on the hydrologic budget, there is a reasonable probability unappropriated water is available from the Dakota aquifer for the proposed appropriation.

Table 6. Estimated use from Dakota aquifer, including Water Permit No. 8043-3 (subject to cancellation) (Water Rights, 2024a and 2024c)

Type of Water Right/Permit	Estimated Use (acre-feet/year)
Future Use Reservations	4,287
Non-Irrigation	22,459
Irrigation (*Water Permit No. 8043-3 subject to cancellation*) (including pending Water Permit App No. 8828-3)	1,412.9
Application No. 8842-3 (if approved, assuming one acre-foot, per acre, annually, crop irrigation)	120
TOTAL:	**28,279**

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

Currently, there are 261 water rights/permits appropriating water from the Dakota aquifer within South Dakota, plus one pending application (Water Rights, 2024c). The closest water right/permit to the existing well site is Water Right No. 5947-3, which is held by Fish Lake Country Club. The diversion point for Water Right No. 5947-3 is located approximately 2.3 miles southwest of the existing well site for this application (Figure 8) (Table 7) (Water Rights, 2024c).

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) located approximately 3.2 miles north of the existing well site (Water Rights, 2024d). There could potentially be other domestic wells completed into the Dakota aquifer near the well the applicant proposes to use that are not on file with the DANR-Water Rights Program. The location of the domestic wells in the well completion report database maintained by the Water Rights Program is based on the location listed by the driller on the well completion report.

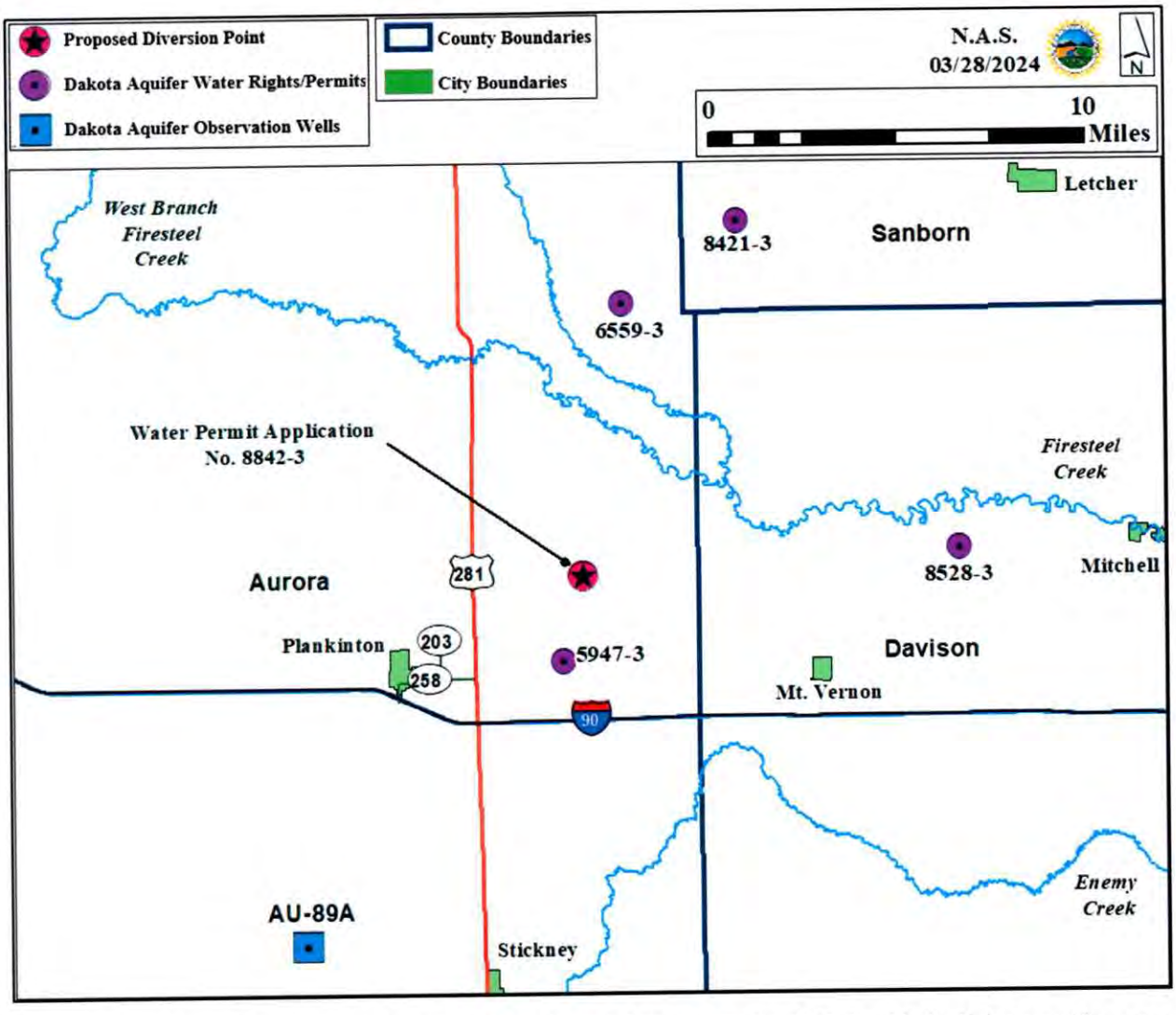

Figure 8. Location of the existing well site for Water Permit Application No. 8842-3, with the Dakota aquifer water rights/permits and observation wells within approximately fifteen miles (Water Rights, 2024b and 2024c)

Table 7. Water rights/permits authorized to withdraw water from the Dakota aquifer within approximately fifteen miles of the existing well site, as shown in Figure 8 (Water Rights, 2024c)

Permit No.	Name	Status	Use	Authorized Diversion Rate (cfs)	Authorized Annual Volume (acre-feet/year)	Acres if IRR
5947-3	Fish Lake Country Club	LC	IRR	0.24		33
6559-3	Dwight Scott	LC	COM, LCO	0.1		
8421-3	Albert J Selland & Sons Feedlot	PE	COM, LCO	0.48	78.5	
8528-3	Bluestem Family Farms LLC	PE	COM, LCO	0.223	130	

LC: Licensed Water Right; PE: Water Permit; COM: Commercial; IRR: Irrigation; LCO: Livestock Confinement Operation

The Dakota aquifer is expected to be confined at the existing well site based on the well completion reports on file for nearby wells completed into the aquifer (Water Rights, 2024d). Since the Dakota aquifer is expected to be confined at the existing well site, drawdown can extend some distance but the exact drawdown behavior of a well cannot be known without an aquifer performance test. However, observation wells completed into the Dakota aquifer near permitted/licensed diversion points can provide some insight on how the aquifer responds to pumping.

Observation well AU-89A (approximately 12 miles southwest of the existing well site) has two high-yield wells (assumed to be a well with an authorized diversion rate greater than 0.2 cfs) within approximately twenty miles of it (Water Rights, 2024b and 2024c). The lithologic log on file for AU-89A noted the well was drilled 780 feet deep below the ground surface, had a casing stick up height of approximately zero feet, and the top of aquifer materials approximately 744 feet below the ground surface (SDGS, 2024). The lowest recorded static water level on the hydrograph (displayed in Figure 1) is approximately 62 feet below the top of the well casing, which indicates there was still approximately 680 feet of artesian head pressure in AU-89A even during drier periods when high-yield wells are expected to be pumping more water and when water levels are generally naturally lower in response to drier conditions (SDGS, 2024; Water Rights, 2024b).

Within approximately three miles of the existing well site, the Dakota aquifer has a saturated aquifer thickness ranging from approximately 40 to 140 feet (Water Rights, 2024d). 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). Any drawdown as a result of the proposed diversion is not expected to unlawfully impair nearby adequate wells. In Aurora County, there are no substantiated complaints on file with the DANR-Water Rights Program regarding well interference for adequate wells completed into the Dakota aquifer (Water Rights, 2024e).

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. However, when considering the statutes (SDCL 46-1-4 and 46-6-6.1), rules (ARSD 74:02:04:20(6) and (7)), the saturated thickness of the Dakota aquifer in Aurora County, the artesian head pressure in observation wells and appropriative user's wells completed into the Dakota aquifer near the existing well site, and the lack of substantiated well interference complaints from the Dakota aquifer in the area, any drawdown created from the proposed diversion is not expected to cause an unlawful impairment on existing water right/permit holders or domestic users with adequate wells. Therefore, there is a reasonable probability that any interference from the proposed appropriation will not impose unlawful impairments on existing users with adequate wells. Water delivery by means of artesian head pressure creating free flowing conditions without use of a pump is not guaranteed and not necessarily protected under SDCL and ARSD.

Special Consideration: Well Construction

It is unknown if the existing well meets the adequate well construction standards as defined in ARSD 74:02:04:20.

An adequate well has been defined in ARSD 74:02:04:20(6) as:

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

The alternative well construction requirements for certain Dakota aquifer wells (74:02:04:35) are not permitted for appropriative uses. Any future replacement wells shall meet the adequate well construction standard as defined in ARSD 74:02:04:20. Replacement wells may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.

CONCLUSIONS:

1. Water Permit Application No. 8842-3 proposes to divert water at a maximum instantaneous diversion rate of 1.45 cfs from one well completed into the Dakota aquifer for the irrigation of 120 acres. The water from the well will be directed into a dugout and then pumped from the dugout to irrigate. The site of interest is located in Aurora County approximately five miles northeast of Plankinton, SD.

2. Based on observation well data and the hydrologic budget, there is a reasonable probability that unappropriated water is available from the Dakota aquifer to supply the proposed appropriation.

3. There is a reasonable probability that the proposed diversion by Water Permit Application No. 8842-3 will not unlawfully impair adequate wells for existing water rights/permits and domestic users.

Nakaila Steen

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

Reviewed by:
Adam M
Adam Mathiowetz, PE
Natural Resources Engineer IV
SD DANR -Water Rights Program

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Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402
Legal Notice Number: 2558

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: Greg Rihanek – Notice of Application was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 04/24/2024. That the full amount of the fee charged for the $44.85 of Public Hearings 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 4/29/24.

Notary Public, South Dakota

My Term Expires 12/27/2024

MARK E. DAVIS
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA

RECEIVED
MAY 03 2024
OFFICE OF WATER

F. P. 04-24-24

NOTICE OF APPLICATION NO. 8842-3 to Appropriate Water

Notice is given that Greg & Evette Rihanek, 509 E 1st Street, Plankinton SD 57368 has filed an application for a water permit to appropriate 1.45 cubic feet of water per second from one well completed into the Dakota Aquifer (depth unknown) located in the NE 1/4 SE 1/4 Section 4 for irrigation of 120 acres located in the SE 1/4 Section 4; all in T103N-R63W. The water from the well will be directed into a dugout and then pumped from the dugout to irrigate. This site is located approximately 5 miles northeast of Plankinton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8842-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at https://danr.sd.gov/public or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at https://danr.sd.gov/public or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by May 6, 2024.

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

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at https://danr.sd.gov/public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by May 6, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

No. 2558 (adv.)

Published one time at the total approximate cost of $44.85 and may be viewed free of charge at www.sdpublicnotices.com.

Form 8

RECEIVED

MAY 02 2024

OFFICE OF WATER

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of AURORA)

I, Gayle A. Van Genderen

certify that the attached printed Notice was taken from the South DAKOTA Mail Newspaper

printed and published in Plankinton, County of AURORA and state of South Dakota. The notice was published in the newspaper on the following date:

April 25, 2024

Cost of Printing $51.77

(Signature)

Publisher

(Title)

4-26-24

(Date Signed)

NOTICE OF APPLICATION NO. 8842-3 to Appropriate Water

Notice is given that Greg & Evette Rihanek, 509 E. 1st Street, Plankinton SD 57368 has filed an application for a water permit to appropriate 1.45 cubic feet of water per second from one well completed into the Dakota Aquifer (depth unknown) located in the NE 1/4 SE 1/4 Section 4 for irrigation of 120 acres located in the SE 1/4 Section 4; all in T103N-R63W. The water from the well will be directed into a dugout and then pumped from the dugout to irrigate. This site is located approximately 5 miles northeast of Plankinton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8842-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and the applicant must be filed by May 6, 2024.

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

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at https://danr.sd.gov/public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by May 6, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

(Published once at the total approximate cost of $51.77.)

water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at https://danr.sd.gov/public or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

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

RECEIVED
MAY 02 2024
OFFICE OF WATER

ACKNOWLEDGEMENT:

State of South Dakota, County of Aurora

On this the 26th day of April, 2024 before me,

Edwin C Fett, the undersigned officer, personally appeared Gayle VanGenderen, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for purposed therein contained.

In Witness whereof, I hereunto set my hand and official seal.

My commission expires: 6/27/24

Notary Public

EDWIN C. FETT
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL
My Commission Expires 06/27/2024

RECEIVED
MAY 03 2024
OFFICE OF WATER

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

4-30-2024

Opposing Application for a Water Right Permit

Application No. 8842-3 **Name of Applicant** Greg & Evette Rihanek

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

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

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

I am a Aurora Co. Farmer & I live N.E. of Plankinton, S.Dak My farm has livestock & 3 houses that my son & Grand son live on my farm & now doing the farming. If our well was drained would affect our cattle & sheep plus 3 family's.

List the reasons for your opposition to this application.

#1- Back in the 1950's a farmer NE of Plankinton dug a well & wanted to irrigart, not enough water didn't work.
#2- Back in 1976 another farmer dug a 21" well to cover his 200 acres of corn. He only drained 9 wells & affected many more in my area. Only 5-6 miles north of where this Well would be dug. We fout this well for 4 yrs. Took a lot damage to homes & animals. Hired a Atty & cost us $20,000.00 to get him shut off. 1981 my neighbor lost 307 fat cattle because some one poisoned them & he went BROKE.
#3 I Due think you don't want me & my neighbors to have to go over something again. Not enough water to irrigation.

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

First Name: Clyde Last Name: Olsen
Mailing Address: 38926 243rd St.
City: Plankinton State: S. Dak Zip: 57368

Optional contact information. Phone: #605-999-4683 Email: None

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. _____

Petitioner's Name _____

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

8842-3

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 10, 2024

NOTICE OF HEARING

TO: Greg & Evette Rihanek
509 E 1st Street
Plankinton SD 57368

Clyde Olsen
38926 243rd Street
Plankinton SD 57368

Jennifer 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 Water Permit Application No. 8842-3, Greg & Evette Rihanek

A petition opposing Water Permit Application No. 8842-3 was received by the Chief Engineer on May 3, 2024, in response to the Notice of Application published in the Huron Plainsman and South Dakota Mail on April 24 and 25, 2024, respectively. This notice schedules a hearing on Application No. 8842-3 before the South Dakota Water Management Board.

Water Permit Application No. 8842-3 appropriates 1.45 cubic feet of water per second one existing well completed into the Dakota Aquifer located in the NE ¼ SE ¼ Section 4, for the irrigation of 120 acres located in the SE ¼ Section 4; all in T103N-R63W, Aurora County. Water from the well will be directed into a dugout and then pumped from the dugout to irrigate.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 8842-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board.

The Water Management Board will conduct a hearing to consider Application No. 8842-3 at 9:45 AM (Central Time), on Wednesday, July 10, 2024, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

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

The July 10, 2024, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition opposing the application. A request for an automatic delay must be filed by **June 20, 2024**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and the petitioner regarding the time, date, and location.

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

Enclosed is a copy of the report, recommendation, and the petition filed in the matter of Water Permit Application No. 8842-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions or comments for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, other pleadings, and comments filed in this matter are posted on DANR's contested case page at https://danr.sd.gov/public/ContestedCase.aspx. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Contact Ron Duvall at the above Chief Engineer's address to request an additional copy of the staff report, recommendation, application, or other information related to the application. 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 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 direct mail to you, and the applicable date to give notice to the Chief Engineer is June 20, 2024. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated June 10, 2024, with attachments regarding Water Permit Application No. 8842-3 – Greg & Evette Rihanek, 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 June 10, 2024.

Greg & Evette Rihanek
509 E 1st Street
Plankinton SD 57368

Clyde Olsen
38926 243rd Street
Plankinton SD 57368

Above also Sent Inter-office to:

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

Shannon Konst
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of June, 2024.

Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY Seal PUBLIC STATE OF SOUTH DAKOTA