



DANR
SOUTH DAKOTA

**WATER MANAGEMENT BOARD
Remote Conference Meeting on
March 5, 2025**

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>

March 5, 2025

- 9:30 AM Call to Order
 Roll Call
 Adopt Final Agenda
 Conflicts Disclosures and Requests for State Board Waivers
 Adopt December 4 and 11, 2024 Board Minutes
 Set May 7 - 8, 2025 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
 Seven Year Review of Future Use Permits – Amanda Dewell
 Irrigation Questionnaire Violations for Failure to Report 2024 Water Use – Amanda Dewell
 Consider Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 8864-3, Big Sioux Community Water System
- 9:45 AM Appointment of Rapid Valley Water Master – Nakaila Steen

ADJOURN

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

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

DRAFT

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 252ND MEETING
OF THE WATER MANAGEMENT BOARD
REMOTE CONNECTION MEETING
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
DECEMBER 11, 2024

CALL TO ORDER AND ROLL CALL: Chairman Hutmacher called the meeting to order at 9:00 a.m. Central Time. The roll was called, and a quorum was present.

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

The following attended the meeting:

Board Members: Jim Hutmacher, Rodney Freeman, Leo Holzbauer, Chad Comes, Peggy Dixon and William Larson.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, and Amanda Dewell, Water Rights Program.

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

Legislative Oversight Committee Members: Senator Randy Deibert.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

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

ADOPT EXCERPT OF DECEMBER 4, 2024, BOARD MEETING MINUTES CONCERNING FUTURE USE WATER PERMIT APPLICATION NO. 2881-2, WESTERN DAKOTA REGIONAL WATER SYSTEM: Motion by Freeman, seconded by Comes to adopt the excerpt of the December 4, 2024, Board meeting minutes concerning Future Use Water Permit Application No. 2881-2, Western Dakota Regional Water System.

Ms. Dixon did not attend the December 4, 2024, meeting. She requested staff provide a brief background on this matter.

Water Management Board
Excerpt of December 4, 2024, Meeting Minutes

SDCL 46-5-20.1 states that any application for appropriation of water in excess of 10,000 acre-feet annually shall be presented by the Water Management Board to the Legislature for approval prior to the Board's acting up on the application. Western Dakota Regional Water System applied for a Future Use Permit in the amount of 20,765 acre-feet of water annually, as a future water supply for western South Dakota.

Mr. Duvall stated that at the December 4 Board meeting, the only decision to be made by the Water Management Board was to send this application to the Legislature for consideration. Along with presenting the application to the Legislature, an excerpt of the minutes of the meeting in which the Board made the decision to send the application to the 2025 Legislature for approval would also be sent to the Legislature.

A roll call vote was taken, and the motion carried with Comes, Freeman, Holzbauer, Larson, and Hutmacher voting aye. Dixon abstained.

ADJOURN: Chairman Hutmacher declared the meeting adjourned at 9:08 a.m.

Approved March 5, 2025.

Water Management Board

DRAFT

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 251ST MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
DECEMBER 4, 2024

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

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

The following attended the meeting:

BOARD MEMBERS: Jim Hutmacher, Rodney Freeman, and Leo Holzbauer participated in person. Chad Comes and William Larson participated remotely. Peggy Dixon was absent.

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Amanda Dewell, Brittan Hullinger, Adam Mathiowetz, Kim Drennon, Austin Settje, Tyler Jensen, Water Rights Program; Mark Mayer, Director, Office of Water; and Andy Bruels, Director, Division of Technical and Financial Assistance.

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: Senator Randy Diebert.

FUTURE USE WATER PERMIT APPLICATION NO. 2881-2, WESTERN DAKOTA REGIONAL WATER SYSTEM: Cheryl Chapman, Rapid City; Jay Gilbertson, Brookings.

WATER PERMIT APPLICATION NO. 8864-3, BIG SIOUX COMMUNITY WATER SYSTEM: Reed Mahlke, Brookings; Jodi Johanson, Egan; Jeff Carruthers, Egan; Betty Strom, Sioux Falls; Shelly Bacon, Lyons, NE; Linda Rippentrop and Daryl Rippentrop, Dell Rapids; Holly Lapka, Leola; Ryan Cwach, Yankton; Brian Jorde, Omaha, NE; Rita Brown, Chester.

OTHERS: Jeremy Hawks, Pierre; Albert Keller, Lemmon.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

Water Management Board
December 4, 2024, Meeting Minutes

ADOPT OCTOBER 2, 2024, BOARD MINUTES: Motion by Freeman, seconded by Comes, to adopt the minutes of the October 2, 2024, Water Management Board meeting. The motion carried unanimously.

SET MARCH 5-6, 2025, MEETING DATES AND LOCATION: The March 5-6, 2025, 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 McCook Lake matters are still pending before the Supreme Court.

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

FUTURE USE REVIEW: A table listing the future use permits up for a seven-year review was included in the packet the Board members received prior to the meeting. Certain entities such as water distribution systems, municipalities and rural water systems can reserve water for future use needs. State law requires that future use permits be reviewed by the Water Management Board every seven years, and it requires the permit holder to demonstrate a reasonable need for the future use permit.

Amanda Dewell reported that the Water Rights Program contacted the City of Rapid City inquiring whether the city wanted to retain the future use permit. The letter received from the city requested to retain the future use permit, the Chief Engineer's recommendation, and the Affidavits of Publication showing that the hearing was public noticed were included in the Board packet. No letters in opposition were received in response to the public notice.

The Chief Engineer recommends that the Board allow the following Future Use Permits to remain in effect for an additional seven years, as listed below.

No.	Name	Amount Remaining in Reserve	Source
2086-2, 2086A-2	City of Rapid City	4,075	Madison aquifer

Motion by Freeman, seconded by Holzbauer, that Future Use Permit Nos. 2086-2, 2086A-2, City of Rapid City, remain in effect for 4,075 acre-feet annually. 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.)

Water Management Board
December 4, 2024, Meeting Minutes

Ron Duvall stated that, by law, the Board is required to receive any comments received regarding unopposed new water permit applications. A comment regarding Water Permit Application No. 8886-3, Pronghorn Land, LLC, was electronically submitted to the department.

Mr. Duvall noted that since the application was not contested, the permit was issued to impound 98.7 acre-feet of water from runoff and flow from Willow Creek for a dam to be used for recreation and fish and wildlife propagation. The site is in McPherson County located six miles northeast of Leola. The application indicated that the impoundment will be used as a wetland mitigation bank and that there was a project prospectus that was approved by the Natural Resources Conservation Service (NRCS).

Based on the report on the application, the Chief Engineer recommended approval because unappropriated water is available, there would be no unlawful impairment of existing water uses and rights, it is a beneficial use of water, and in the public interest.

During the public notice timeframe, the department received public comments from Jason Fauth, Leola, expressing concern that this impoundment will affect the runoff in the areas of his pastureland and dugouts as well as cattle producers in the area. Mr. Duvall noted that Mr. Fauth's domestic use does take precedence over appropriative rights. If there were to be a situation where there was limited amount of runoff and there is runoff coming down not bypassing this structure water could be required to be bypassed to satisfy domestic use because it takes preference over appropriative rights.

In his comments, Mr. Fauth mentioned that the local NRCS and US Fish and Wildlife offices did not believe the impoundment was a good idea; however, the application states that there was a project prospectus that was approved by NRCS.

Mr. Duvall said in his comments Mr. Fauth stated that the notice was published in newspapers 40 miles away from the impoundment area. Mr. Duvall stated that the notice is required to be published in a daily newspaper, so it was in the Aberdeen American News. The public notice is also required to be published in a weekly newspaper. Counties select weekly newspapers, and sometimes there are more than one weekly newspaper, which is the case for McPherson County. The notice is typically published in the local newspaper with the largest circulation; however, there are situations where the proximity of an application is such that it makes sense to not use the newspaper with the largest circulation because it is closer to another city. In this case it was much closer to Leola, but it was published in the Eureka newspaper when it should have been published in the Leola newspaper. Mr. Duvall stated that the public notice still met the legal requirement of using an official newspaper in the county.

No Board action was necessary.

CONSIDER VALIDATION OF RECOGNIZED VESTED WATER RIGHT CLAIM NO. 1068-2, SD GAME, FISH & PARKS FOR NEW WALL LAKE: Ms. Dewell reported that Recognized Vested Water Claim No. 1068-2 is held by the South Dakota Department of Game, Fish, and Parks for 75 acre-feet of water annually in New Wall Lake, which is located approximately two

Water Management Board
December 4, 2024, Meeting Minutes

miles southwest of Wall, SD.

In 1988, the Water Rights Program issued public notices in all counties where vested water right claims were located. In response to the public notices, the chief engineer at the time opposed validation of Claim No. 1068-2 and nearly all of Game, Fish and Parks' vested water right claims in order to include an outlet or spillway elevation, to correct the amount of water claimed, or to add any amendments or qualifications necessary to clarify the vested right claims.

In the case of New Wall Lake, the primary spillway elevation had not been determined. In September 2024 the Water Rights Program conducted a survey of New Wall Lake Dam, which determined a primary spillway elevation of 2,747.9 feet mean sea level (fmsl) (NGVD-88).

The Chief Engineer recommended that the Board validate Recognized Vested Water Right Claim No. 1068-2 for sufficient water annually to maintain the water level to the spillway elevation of 2,747.9 fmsl (NGVD-88) with the vested water right retaining a priority date of January 1, 1946.

Motion by Freeman, seconded by Comes, to approve validation of Recognized Vested Water Right Claim No. 1068-2 for sufficient water annually to maintain the water level of New Wall Lake Dam's primary spillway elevation of 2,747.9 fmsl (NGVD-88) with the vested water right retaining a priority date of January 1, 1946. The motion carried unanimously.

CONSIDER FUTURE USE WATER PERMIT APPLICATION NO. 2881-2, WESTERN DAKOTA REGIONAL WATER SYSTEM: CONSIDER FUTURE USE WATER PERMIT APPLICATION NO. 2881-2, WESTERN DAKOTA REGIONAL WATER SYSTEM: Ron Duvall reported that an application was received from the Western Dakota Regional Water System to reserve 20,765 acre-feet of water from the Missouri River as a future water supply for western South Dakota.

The packet the Board received prior to the meeting included the application, report, the Chief Engineer's recommendation, and the 17 Affidavits of Publication. The application identified 19 counties, and there are 17 affidavits because some of the counties use the same newspaper.

SDCL 46-5-20.1 states, "Any application for appropriation of water, pursuant to this chapter, in excess of 10,000 acre-feet annually shall be presented by the Water Management Board to the Legislature for approval prior to the Board's acting up on the application and all powers of eminent domain shall be denied any common carrier appropriating over ten thousand acre-feet of water per annum which has not obtained such prior legislative approval. Legislative approval does not mandate approval by the Water Management Board and does not constitute an issuance of a water permit. This section does not apply to applications by the South Dakota Conservancy District or applications for the approval of water permits for energy industry use."

Mr. Duvall noted that since this application is for more than 10,000 acre-feet of water, and since the applicant is a regional water system and not a conservancy district or energy industry user, the application must be presented to the legislature for approval prior to the Water Management Board acting upon it.

Water Management Board December 4, 2024, Meeting Minutes

The application was public noticed and included the Chief Engineer's recommendation, but it did not provide a date of hearing for final action since that date is dependent on legislative action to approve the future use application. The notice provided an opportunity for anyone to file a petition in opposition or file a comment concerning this application. No petitions or comments were received in response to the public notice.

Mr. Duvall presented the application and Chief Engineer's recommendation.

Western Dakota Regional Water System has filed Application No. 2881-2 for a future use water permit. Application No. 2881-2 proposes to appropriate and reserve 20,765 acre-feet of water annually for future use from the natural flows of the Missouri River. The area reserved for future diversion from the Missouri River may be anywhere in Stanley County or Hughes County with a general location along the Missouri River beginning near Chantier Creek, which is above Oahe Dam, and ending between La Framboise Island and Farm Island. The water is to be reserved as a future water supply for serving municipal and rural water system uses in Stanley, Lyman, Jones, Tripp, Haakon, Jackson, Butte, Meade, Pennington, Custer, Fall River, Oglala Lakota, Mellette, Lawrence, Perkins, Harding, Gregory, Todd, and Bennett Counties; all in South Dakota.

Western Dakota Regional Water System projected what the needs are, and the amount of water being requested, 20,765 acre-feet, is in addition to 52,545 acre-feet that has already been reserved by other entities west river; Rapid City, Rapid Valley Sanitary District, Box Elder, West Dakota Water Development District, and West River Water Development District. The total, if this application is approved, is 73,310 acre-feet reserved out of the Missouri River.

The Chief Engineer recommended that the application be approved with qualifications following legislative action because there is a reasonable probability that unappropriated water is available for the applicant's proposed use, Western Dakota Regional Water System has demonstrated a reasonable need to reserve water in the amount of 20,765 acre-feet of water annually, the proposed use is a beneficial use, and it is in the public interest.

Once the Board decides by majority vote to present this application to the legislature, the application, the report prepared by the Water Rights staff, the recommendation of the Chief Engineer, the public notice, and an excerpt of the Water Management Board meeting minutes for this matter will be provided to the legislature. If the legislature approves the application, it will then be scheduled for hearing before the Water Management Board.

Besides Mr. Duvall, Brittan Hullinger, author of the technical report, Cheryl Chapman, Western Dakota Regional Water System, and Cory Chorne, AE2S, were available to answer questions from the Board.

Chairman Hutmacher asked if a future use permit can be transferred to another entity without going through the application process. Mr. Duvall stated that it is possible to transfer ownership, but the amount of water and the use of the water cannot be changed without going through the application process.

Water Management Board December 4, 2024, Meeting Minutes

Mr. Freeman asked if the Corps of Engineers plays a part in this. Mr. Duvall stated he does not believe the Corps of Engineers has been involved on the free-flowing sections of the river.

Mr. Holzbauer asked if the future use permit applies only to the natural flow of the river. Mr. Duvall answered the water appropriated will be from natural flows.

Mr. Holzbauer asked a question regarding the future use permit for the suspended Oahe Irrigation Project.

Mr. Gronlund stated that Future Use Permit No. US594-3 was for a large quantity of water reserved for the Oahe Project, which is a defunded project. However, the future use permit remains in place. Years ago, the Water Rights Program looked into cancelling the future use permit, but upon advice from counsel at that time, due to the old Oahe Master Contract and the promises that were made to the State of South Dakota as part of the Pick Sloan plan, it was better to let it remain in place so no action has taken place concerning Future Use Permit No. US594-3.

Mr. Comes said the report talks about the Run of the River alternative the USGS analyzed in 2001. He asked if that is the section where the report intended to ignore the impact of the reservoirs.

Mr. Duvall answered that the focus was on the natural flows of the river and the intent was to mimic that or to try to determine what that natural flow of the Run of the River would be.

Mr. Comes asked if that has been the Water Rights Program's typical analysis process when considering the other proposed large withdrawals from the Missouri River.

Mr. Duvall said he doesn't believe that was addressed years ago for some of these very old future use reservations before the Corps of Engineers really became an issue.

Mr. Comes said it is interesting because it talks about the Run of the River and ignoring the reservoirs, however, the diversion points don't obviously ignore the reservoir and the reservoir water surface elevations.

Mr. Duvall said the water is running down the river, even the water in the reservoirs. There is flow that is moving through and the excess water is stored by the reservoirs. There is a natural flow component that is constantly moving through the system.

Ms. Verleger stated that the issue is that the Corps of Engineers believes that all the water behind the dams is stored water and it's under the Corps of Engineers' control and they get to charge users to take the water out of storage. North Dakota and South Dakota's position specifically has been that states are allowed the natural flow that would be there if the dams weren't sitting on top of the river blocking access. That is essentially the argument the states have had with the Corps of Engineers for the last 13 to 15 years. Ms. Verleger said she believes the language in the report is meant to make clear that the state is appropriating natural flows and not taking stored water in the reservoir.

Water Management Board
December 4, 2024, Meeting Minutes

Motion by Comes, seconded by Larson, to present Future Use Water Permit Application No. 2881-2, Western Dakota Regional Water System, to the South Dakota Legislature for approval. The motion carried unanimously.

CONSIDER SETTING A SPECIAL REMOTE CONFERENCE BOARD MEETING IN DECEMBER 2024, TO ADOPT AN EXCERPT OF THE DECEMBER 4, 2024, MEETING MINUTES TO BE PROVIDED TO THE SD LEGISLATURE CONCERNING APPLICATION NO. 2881-2 AND CONDUCT ANY OTHER NEEDED BUSINESS: The Board will hold a remote meeting at 9:00 a.m. Central Time on December 11, 2024, to adopt the minutes for Future Use Permit Application No. 2881-2, Western Dakota Regional Water System.

CONSIDER ADOPTING JAMES RIVER WATER MANAGEMENT RECOMMENDATIONS: Brittan Hullinger reported that the Board packet included the finalized report on reexamining James River Management and the affidavits of publication of the display notice in newspapers.

The draft report for the reexamination of James River management was presented at the Water Management Board meeting on October 2, 2024. The draft report was open for public comment until November 20, 2024. Public notice was published in all counties along the James River, and notification provided to all James River water right holders.

The final report was signed on November 21, 2024, and the report ultimately recommended removing the flow thresholds on the river and opening appropriations to be handled on a case-by-case basis, with new qualifications determined for new users that would protect existing water rights and domestic uses.

Since the draft report was open for comment and brought before the Board on October 2nd, the only true change was for the Board to include in their motion a five-year review on the James River to determine if this management plan needed to be modified at that time.

The Water Rights Program received one call with inquiries about the proposed management changes. The person calling wanted to make sure they understood the proposed changes, particularly when shutoff orders for new users would occur based on the river flows. The person was considering applying for another irrigation permit and weighing that against the likelihood of getting shutoff during dry years when irrigation is necessary.

Since October 2, 2024, the Bureau of Reclamation is currently in a planning phase where they are evaluating removal of the James Diversion Dam and the Spink County Dam, which are both north of Huron by 15 and 21 miles, respectively. Possible outcomes include the full removal of the dams to leaving them in place and fixing them. While irrigators have been benefactors of the head that the dams provide, there is no legal obligation of the Bureau of Reclamation to continue impounding water. Correspondence with Bureau of Reclamation on the possible outcomes for these structures as a response to the proposed management changes on the river occurred after November 20, 2024, which was the end of the public commenting period, however, DANR wanted to bring the Bureau of Reclamation correspondence to the Board's attention.

Water Management Board
December 4, 2024, Meeting Minutes

Ms. Hullinger stated that the following reasons should be considered by the Water Management Board to approve appropriations in excess of either the 300 cfs threshold above the Yankton-Hutchinson County line or the 200 cfs threshold for the reach of river between the North Dakota-South Dakota state line, and the USGS gaging station at Huron:

- Managing surface water appropriations on an application-by-application basis is consistent with how every other watercourse is managed in South Dakota. It also allows for the inclusion of new data and any new research that may be available at the time the application is filed.
- There is precedent of the Water Management Board allowing appropriations in excess of 200 or 300 cfs with the appropriate qualifications to protect existing water rights and domestic use.
- There has been a 30-year increase in stream flows in the James River, both in low, normal, and high flow years, whether due to natural or changes in land-use practices, or both.
- Conservative measures were taken to analyze the availability of water in three stretches of the James River with existing permitted water use included in the analysis.
- South Dakota Codified Law 46-1-2, 46-1-4 and 46-1-14 dictate that water should be placed to beneficial use to the fullest extent possible while protecting the public interest.
- The public interest can be protected from unlawful impairment by including appropriate qualifications on new permits.

The proposed qualifications for new appropriations on the James River between the North Dakota-South Dakota border and the Yankton-Hutchinson County Line are listed below.

1. The permit does not authorize diversions from the James River any time when there is less than 50 cfs bypassing the nearest downstream USGS gaging station at Ashton, at Huron, or near Scotland.
2. The permit does not authorize diversion of water from the James River after July 15th of each calendar year when there is less than 100 cfs bypassing the USGS gaging stations at Ashton or Huron after pumping unless written orders have been issued by the Chief Engineer.
3. This permit does not authorize diversion of water from the James River after August 10th of each year unless written orders have been issued by the Chief Engineer.
4. Diversions under the permit are subject to senior water rights and any written orders

Water Management Board
December 4, 2024, Meeting Minutes

issued by the Chief Engineer.

5. The permit is subject to the irrigation water use questionnaire being submitted each year if irrigation is the proposed use.
6. The Water Management Board retains jurisdiction in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

Motion by Freeman, seconded by Larson, to revise the 1965 decision of the Water Resources Commission as follows:

The qualifications, including the pertinent stream segment specific qualifications, listed in the Recommended Action section of the Report to the Water Management Board on Reexamining James River Management dated November 21, 2024, must be applied to any permit to appropriate water from the James River resulting in excess of either the 300 cfs threshold above the Yankton-Hutchinson County line, or the 200 cfs threshold for the reach of the river between the North Dakota-South Dakota border and the USGS gaging station at Huron SD, or both; and that the SD Department of Agriculture and Natural Resources Water Rights Program conduct a review every five years for Board consideration to determine whether any modifications are needed to the James River Management Plan.

Chairman Hutmacher requested comments from the audience. There were none.

Mr. Freeman said he believes the water situation on the James River is different than it was in 1965, and he is whole-heartedly in favor of the recommended changes.

There were no comments from other Board members.

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

CONSIDER WATER PERMIT APPLICATION NOS. 8821-3, 8822-3, 8823-3, 8824-3, JIM OR COLLIN KLEBSCH, WATER PERMIT APPLICATION NO. 8835-3, NICK AND SCOTT BEBO, WATER PERMIT APPLICATION NOS. 8859-3, 8860-3, 8861-3, 8862-3, AND 8863-3, NICK & SCOTT BEBO, AND WATER PERMIT APPLICATION NOS. 8867-3, 8868-3, 8869-3, 8870-3, JIM OR COLLIN KLEBSCH: Ms. Hullinger reported that there are currently 14 deferred permit applications pending action of the Board to adopt, deny, or continue to be deferred after the investigation on water availability in the James River was complete.

Due to the adoption of the management changes, the Chief Engineer recommended approval of deferred Application Nos. 8821-3, 8822-3, 8823-3, 8824-3, 8867-3, 8868-3, 8869-3, and 8870-3 for Jim or Colin Klebsch to irrigate a total of 1,162 acres at a total maximum diversion rate of 18.03 cubic feet of water per second (cfs), and approval of deferred Application Nos. 8835-3, 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3 for Nick and Scott Bebo to irrigate a total of 1,441

Water Management Board
December 4, 2024, Meeting Minutes

acres at a total maximum diversion rate of 16.35 cfs. The location of the proposed diversion points is between three and six miles northeast of Redfield in Spink County.

The Chief Engineer recommended approval of the applications with the qualifications adopted by the Board during the James River Water Management presentation.

Motion by Freeman, seconded by Larson, to approve Water Permit Application Nos. 8821-3, 8822-3, 8823-3, and 8824-3, Jim or Colin Klebsch, subject to the qualifications set forth by the Chief Engineer. Motion carried.

Motion by Freeman, seconded by Larson, to approve Water Permit Application No. 8835-3, Nick and Scott Bebo, subject to the qualifications set forth by the Chief Engineer. Motion carried.

Motion by Freeman, seconded by Larson, to approve Water Permit Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3, Nick and Scott Bebo, subject to the qualifications set forth by the Chief Engineer. Motion carried.

Motion by Freeman, seconded by Larson, to approve Water Permit Application Nos. 8867-3, 8868-3, 8869-3, and 8870-3, Jim or Colin Klebsch, subject to the qualifications set forth by the Chief Engineer. Motion carried.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications 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 NO. 8864-3, BIG SIOUX COMMUNITY

Water Management Board
December 4, 2024, Meeting Minutes

WATER SYSTEM: Chairman Hutmacher opened the hearing.

Appearances

Jennifer Verleger, Assistant Attorney General, representing the Chief Engineer and the Water Rights Program.

Reed Mahlke, attorney for Big Sioux Community Water System.

Brian Jorde and Ryan Cwach, attorneys for petitioner.

Ms. Verleger stated that included in the Board packet were the report on the application, the Chief Engineer's recommendation, the affidavits of publication, the notice of hearing, and the petition in opposition to the application.

Ms. Verleger noted that MeLisa Elijah submitted a comment regarding the application, and Rita Brown submitted a petition opposing the application.

Ms. Verleger stated that the application is for 300 acre-feet of water from the Big Sioux: Northern Skunk Creek aquifer for rural water system use. This is an application to use water that has previously been appropriated and reserved under Future Use Permit Nos. 6834-3 and 6834A-3.

Ms. Verleger stated that the main statutes for future use permits are SDCL 46-2A-10, which is the statute that future use permits are initially granted under, SDCL 46-5-38, which lists the type of entities entitled to a future use permit, and SDCL 46-5-38.1, which discusses how applications to use the reserved water come before the Water Management as well as the seven-year review period.

The Chief Engineer recommended approval of the application, which would allocate the remaining 300 acre-feet of water appropriated by Future Use Permit Nos. 6834-3 and 6834A-3 with the following qualifications:

1. The well approved under Water Permit No. 8864-3 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. The well authorized by Permit No. 8864-3 must be constructed by a licensed well driller and construction of the well and installation of the pump must 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. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Northern Skunk Creek Management Unit of the Big Sioux Aquifer.

Water Management Board
December 4, 2024, Meeting Minutes

4. Water Permit No. 8864-3 authorizes a total annual diversion of up to 300 acre-feet of water.

Ms. Verleger called Adam Mathiowetz who was previously administered the oath by the court reporter.

Exhibit 100 is Mr. Mathiowetz's curriculum vitae.

Ms. Verleger offered Exhibit 100. The exhibit was admitted into the record.

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

Exhibit 101 is the technical report on Water Permit Application No. 8864-3, which Mr. Mathiowetz co-authored with Austin Settje, staff engineer. Mr. Mathiowetz provided significant input on the technical aspects and writing, as is required of his position.

Ms. Verleger offered Exhibit 101. The exhibit was admitted into the record.

The parties stipulated to admission of all exhibits going forward in the hearing.

Mr. Mathiowetz pointed out the following corrections to the report: page 5, paragraph 2, line 5, "six" should be "five," page 6, Table 3, in the row starting with 8387-3 there should be a double asterisk after 300 in the last column, and in the bottom row of the table the reference to Table 3 should be "Table 4." Mr. Mathiowetz stated that none of the corrections to the report alter his conclusion of the analysis.

Mr. Mathiowetz explained that a future use permit is a permit that certain entities, such as municipalities and rural water distribution systems, can obtain to reserve a volume of water from a designated water source that can be used in the future, upon receiving an additional permit to place the water to beneficial use.

Mr. Mathiowetz testified regarding the technical report.

Water Permit Application No. 8864-3 proposes to construct and place to beneficial use 300 acre-feet of water annually at a maximum instantaneous diversion rate of 0.67 cubic feet of water per second (cfs) from one well approximately 77.5 feet deep to be completed into the Big Sioux: Northern Skunk Creek aquifer for rural water system use. Water service will be provided to the

Water Management Board
December 4, 2024, Meeting Minutes

Dakota Ethanol facility. This water was appropriated and reserved by Future Use Permit Nos. 6834-3 and 6834A-3. If this application is approved, there will be zero acre-feet remaining in Future Use Permit Nos. 6834-3 and 6834A-3. The proposed well site is in Lake County approximately seven miles south of Wentworth.

Ms. Verleger offered Exhibit 102, which is a map of the area. The exhibit was admitted into the record.

Mr. Mathiowetz testified that Exhibit 102 shows the approximate aquifer boundaries, water rights/permits, and future use areas within approximately 3.5 miles of Application No. 8864-3. The map also shows the location of the petitioner's irrigation water right.

The Big Sioux: Northern Skunk Creek aquifer is a management unit of the larger Big Sioux aquifer. The Northern Skunk Creek management unit is in Lake and Moody Counties and is a glacial outwash composed primarily of medium to coarse sand and gravel with certain areas containing fine sands. It has been delineated a few times through its history, first in 1982 and most recently in 1986. The 1986 delineation determined the areal extent to be approximately 30,720 acres and that delineation can be seen in Figure 1 on page 2 of the report. There is an unconfined portion, which is the area not covered by the green hash marks in Figure 1. That unconfined portion is 27,250 acres in extent from the 1986 mapping by Hansen.

Mr. Mathiowetz stated that an unconfined aquifer means that the top of the saturated aquifer is the static water level which is at air pressure. This means the saturated portion of the aquifer below the physical top of the aquifer materials. A confined aquifer is where the static water level rises above the physical top of the aquifer materials.

The Big Sioux: Northern Skunk Creek aquifer has an average saturated thickness of approximately 39 feet with a documented maximum thickness of 73 feet. Near the fringes there are places where the saturated thickness is as little as five feet. Mr. Mathiowetz stated that in this area the saturated thickness ranges from five to 50 feet, depending on the exact location and if the aquifer is fully penetrated. The very thin spot might not be full penetration of the aquifer. Saturated thickness allows determination of how much water can move to the well but also is a quantifier that is used for determining the adequacy of a well under the adequate well definitions. It is the availability of water to get into the well, not in terms of the whole aquifer, but as in what can get to a well, in addition to the adequate well definition that is a basis used to make decisions regarding unlawful impairment.

Specific well logs show that in this location the aquifer is technically confined. There are intermingling clay layers of different thicknesses, some greater than 10 feet; however, when reviewing the local well completion reports and the observation well data, the observation well data shows that even with localized pumping the aquifer is behaving in a manner that a standard unconfined aquifer would behave, and therefore, while technically confined locally, should be considered to be an unconfined aquifer. Mr. Mathiowetz stated that unconfined aquifers typically have drawdown cones around the pumping well that do not extend far, especially when compared to a confined aquifer.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Mathiowetz stated that when the Water Rights Program reviews applications it primarily looks at the hydrologic budget and the observation well data to determine availability of unappropriated water. Because this permit is to place to beneficial use water already reserved and accounted for by the future use permit, staff were not required to determine availability of unappropriated water. However, availability of unappropriated water was determined for the application to provide information to the Chief Engineer and the Water Management Board regarding any decisions or questions they may have about the status of the aquifer.

For the hydrologic budget the Water Rights Program reviews the irrigation questionnaires, estimated use by non-irrigation users, and future use permit reservations.

Mr. Mathiowetz said recharge is water entering the aquifer. The estimated average annual recharge to the unconfined portions of the Big Sioux: Northern Skunk Creek aquifer is 8,674 acre-feet per year. This does not account for recharge entering through the entirely confined portions of the aquifer.

Withdrawal is the deliberate removal of water from an aquifer. The estimated average annual withdrawal rate from the Big Sioux: Northern Skunk Creek aquifer is 10,257.4 acre-feet per year. This withdrawal amount was determined by adding the amount of reserved water (Table 2) which is 2,118 acre-feet per year, the non-irrigation permits (Table 3) which is 7,189.4 acre-feet per year, and the average reported irrigation from 2013 to 2022 (Table 5) which is 950 acre-feet per year.

Mr. Mathiowetz stated that temporary use permits issued pursuant to SDCL 46-5-39 are not included in the hydrologic budget because these permits are allowed to pump the undeveloped portion of a future use reservation which is accounted for in the hydrologic budget. These permits are tracked to ensure that their average use is less than what has been reserved for future use.

Future use permits are permits for entities such as water distribution systems, municipalities and rural water systems to reserve water for future use. Mr. Mathiowetz stated that reserved water is water not currently being put to use. When an applicant receives approval to use water being reserved by a future use permit, the future use amount would be minus that amount and non-irrigation estimate would go up by the same amount, and the overall hydrologic budget would stay the same.

There are currently five future use permits reserving 2,118 acre-feet of water from the Big Sioux: Northern Skunk Creek aquifer (Table 2). Big Sioux Community Water System holds three future use permits totaling 660 acre-feet of water reserved for future use. Application No. 8864-3 proposes to place to beneficial use the remaining 300 acre-feet of the 660 acre-feet of reserved water in the three future use permits.

Table 5 shows the reported historic withdrawal rate from the Big Sioux: Northern Skunk Creek aquifer irrigation water rights/permits. The table shows the year, the number of permits reporting, and the reported pumping by all the permits. The bottom four lines in the table are the minimum reported, the maximum reported, an average from across the entire period of record (1979-2022),

Water Management Board
December 4, 2024, Meeting Minutes

and an average across the last 10 years (2013-2022). The 10-year time period is chosen because the standard climatic cycle in South Dakota is approximately 10 years between wet and dry, and it is also a reasonable number to use as a basis for an average.

Table 3 shows the estimated annual withdrawal rate for the non-irrigation Big Sioux: Northern Skunk Creek aquifer water rights/permits. In this table there are two methods of determining the estimated average annual use. For those permits that are only limited by diversion rate, those that do not have any value in the "Authorized Annual Volume (acre-feet)" column, the Water Rights Program assumes pumping at 60 percent of full-time pumping at their maximum diversion rate. That is the standard practice that was developed over time with the best information available, and it has been reasonable for most non-irrigation users, but it is also a known over-estimate that allows the Water Rights Program to be conservative in its approach. For those permits that do have a value in that column, which is their permitted value as permitted through the Water Rights Program and the Water Management Board, staff assumes full development of that permitted volume for this average to be conservative. Not all permits have a maximum volume listed because, with older permits, it was not the practice of the Water Rights Program in the past to use assigned volumes. It has more recently become standard practice for almost every non-irrigation application to have a permitted volume.

Mr. Mathiowetz stated that there are 11 permit holders that are required to report their annual use. Not all permit holders are required to report their actual annual use due to past practice of the Water Rights Program and Water Management Board.

Table 4 shows reported annual withdrawal rate for the Big Sioux: Northern Skunk Creek aquifer non-irrigation water rights/permits required to report their annual usage. Mr. Mathiowetz noted that Chester Sanitary District has not reported since 2018 because the district has connected to rural water. The district maintains their wells on standby and maintains their water right, but the Water Rights Program has assumed that the district will pump zero acre-feet per year.

Table 3 shows an annual estimated use of 7,189.4 acre-feet. If, for the specific permits within Table 4, you were to replace their estimates with the actual average non-irrigation withdrawals it becomes 5,432.8 acre-feet, which is approximately 1,700 acre-feet less than the Water Rights Program's more conservative estimate.

Based on the hydrologic budget, the estimated average annual withdrawal rate from the aquifer exceeds the estimated average annual recharge rate to the Big Sioux: Northern Skunk Creek aquifer. However, Water Permit Application No. 8864-3 is not appropriating new water. This application is to place water to beneficial use water previously reserved by Future Use Permit Nos. 6834-3 and 6834A-3.

Mr. Mathiowetz stated that the Water Rights Program did not do the more in-depth analysis using the data in Table 4 of the report because standard practice has been to assume full development of permits that have a permitted volume as well as acknowledge that there is an over-estimate using the 60 percent for certain users as a likely maximum. When staff looks at hydrologic budgets in certain situations there is a much larger recharge and therefore, the extra detail is unnecessary, but

Water Management Board
December 4, 2024, Meeting Minutes

the Water Rights Program also looks at the reported numbers in acknowledgement that the estimate of the actual usage is less than the pumping 60 percent of the time estimation method.

The Water Rights Program currently maintains eight observation wells completed into the Big Sioux: Northern Skunk Creek aquifer. In preparing the report, all eight observation wells were considered. The report contains hydrographs for the four observation wells closest to the applicant's site (Figures 2, 3, 4, and 5).

Ms. Verleger offered Exhibit 103, which shows combined hydrographs for Observation Wells LK-79A, LK-79C, LK-79D, and LK-79E. The exhibit was admitted into the record.

The overall observation well data shows the aquifer has generally stable conditions while still showing the precipitation cycles that happen in South Dakota, and they line up with known precipitation history, and while that can be clearly seen without seeing a significant downward trend that can't be tied to any specific nearby pumping, the observation well data shows that at current appropriation there is unappropriated water available, and that recharge is exceeding withdrawal from the aquifer.

Mr. Mathiowetz stated that as part of the analysis the location of the 35 water rights and permits and the six temporary use water use permits was considered. The closest water right permit in the aquifer is Water Right No. 2987-3 held by Larry Alverson. The closest domestic well on file with the Water Rights Program is approximately one-half mile northeast of the application. There could potentially be other domestic wells in the aquifer in this area that are not on file. Domestic well locations are based on the information provided by the well driller at the time of well completion.

In this area the Big Sioux: Northern Skunk Creek aquifer is locally confined but, based on the available information, it will behave like an unconfined aquifer. In a confined aquifer, drawdown from the pumping well tends to extend quite a bit further than in an unconfined aquifer, so in an unconfined aquifer or aquifer that is behaving like an unconfined aquifer, the drawdown cone from a pumping well does not extend as far. At this location within approximately one mile, based on the available well completion reports, observation well data, and lithologic logs from the state Geological Survey, the saturated thickness appears to range from five to 50 feet. However, that five feet thickness, based on other logs nearby to that, is not likely a full penetration of the aquifer. There is a reasonable chance that there is further saturated thickness underneath it. Saturated thickness is an indicator of the ability to get water into the well, and if there is five feet of saturated thickness there is less ability than if there is 15 feet of saturated thickness, assuming the same aquifer material and well construction.

Mr. Mathiowetz stated that ARSD 74:02:04:20(6) defines an adequate well as a well constructed such that the inlet to the pump can be placed at least 20 feet into the saturated aquifer or, if the aquifer is less than 20 feet thick, as near to the bottom as possible. ARSD 74:02:04:20(7) defines an adversely impacted domestic well as a well in which the pump intake is 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,

Water Management Board
December 4, 2024, Meeting Minutes

is as near the bottom of the aquifer as 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.

Mr. Mathiowetz stated that having five feet of saturated thickness makes it a very thin aquifer. Situations can occur in thin aquifers where pumping from a thicker part, such as a 50-foot thick part, of an unconfined aquifer could cause drawdown, impacting adequate wells in the thinner part of the aquifer, particularly those with less than 20 feet of saturated thickness. Under such conditions, an unlawful impairment of senior water rights or adequate domestic wells may occur. It is likely to only occur in areas where there is less than 20 feet of saturated thickness.

There are no complaints on file with the Water Rights Program regarding well interference for adequate wells in the Big Sioux: Northern Skunk Creek aquifer in either Lake or Moody Counties. Because of the likelihood that the aquifer will act as an unconfined aquifer and the lack of well interference complaints from the Big Sioux: Northern Skunk Creek aquifer, the proposed diversion is not expected to cause an unlawful impairment on existing water right/permit holders or domestic users with adequate wells. Mr. Mathiowetz noted that the petitioner's well is farther away from the applicant's well than several other appropriators and domestic wells in the area, so the primary concern regarding unlawful impairment would be closer users.

Mr. Mathiowetz stated that he did not reach a direct conclusion regarding whether unappropriated water is available because it was not necessary. This application is to place water to beneficial use that has been appropriated and reserved by Future Use Permit Nos. 6834-3 and 6834A-3.

Based on the best available information, Mr. Mathiowetz concluded that development of this proposed diversion would not unlawfully impair adequate wells for existing water rights and permits and domestic users.

Mr. Mathiowetz stated that he reviewed the petition in opposition. His understanding is that the petitioner has concerns regarding water availability and drawdown affecting the ability to irrigate the petitioner's cropland, and that approval of this application would exacerbate some issues the petitioner has had in the past. Mr. Mathiowetz stated that the petition did not affect his analysis or consideration of the availability of unappropriated water or unlawful impairment of existing water rights. The availability of water is determined on an aquifer scale. Regarding unlawful impairment, Mr. Mathiowetz concluded that with the number of appropriated wells in between the proposed site and the petitioner's site, if it was going to be an issue there should be other issues in between first.

The Chief Engineer recommended approval of this application with the standard qualifications for ground water permit applications.

Mr. Mahlke had no questions of Mr. Mathiowetz.

In response to questions from Mr. Jorde, Mr. Mathiowetz stated that he does not recall Ms. Brown's petition stating that her wells are pumping air and not water, no complaints regarding this

Water Management Board
December 4, 2024, Meeting Minutes

aquifer have been filed with the Water Rights Program. Regarding Conclusion Number 4 on page 18 of the report which states that if this application is approved, a qualification requiring the applicant to control their well withdrawals, so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights, should be included, Mr. Mathiowetz stated that the details of the methods of that protection would be up to the Chief Engineer. The broad details would involve the Water Rights Program being told about it and then starting a technical investigation. The details of that would be dependent on the exact nature of the complaint. Mr. Mathiowetz stated that in his experience there has not ever been a situation where an approved application has been revoked or the volume has been decreased based on the potential of future complaints.

Mr. Jorde asked how in his analysis Mr. Mathiowetz differentiates an unlawful impairment from an impairment, and if Ms. Brown were to testify that there are periods of time where she is pumping air and not water, but she may not have previously filed a formal complaint that she has experienced this, would Mr. Mathiowetz agree that would be an impairment upon Ms. Brown's water rights?

Ms. Verleger objected to the question because it is calling for a legal conclusion. Chairman Hutmacher sustained the objection.

Mr. Jorde stated that throughout his testimony Mr. Mathiowetz when he was responding to questions about unlawful impairment, he made opinions that there would not be an unlawful impairment. Mr. Jorde asked Mr. Mathiowetz since he is able to make an opinion that something that isn't an unlawful impairment, then is he also able to make an opinion regarding what is an unlawful impairment. Mr. Mathiowetz stated that the basis would be starting with the adversely impacted domestic well rule, then it is going to be a matter of the specific details that are given to the Water Rights Program, such as when someone's well has been pumping air. The details of a well pumping air are then provided to the Chief Engineer. Without an actual situation, it would be impossible for Mr. Mathiowetz to make a determination regarding unlawful impairment because the Chief Engineer may have a more solid plan in mind. Mr. Jorde asked if in order for Mr. Mathiowetz to conclude or opine that there isn't or would not be an unlawful impairment, he is basing that on the fact that he does not have any complaints on file. Mr. Mathiowetz stated that he is basing that on the administrative rules and statutes that are in place protecting users, the observation well data that is available in close proximity to all of these users, and the fact that there are no complaints on file.

Mr. Jorde asked if Exhibit 102 is a zoomed in detail of Figure 1 on page 2 of the report. Mr. Mathiowetz answered that Exhibit 102 is more comparable to Figure 6 and is a zoomed out version of Figure 6 with added details.

Regarding Figure 1, Mr. Jorde asked if any Minnehaha County users draw from the same aquifer. Mr. Mathiowetz answered not that he is aware of based on the Water Rights Program standard mapping and where there are permits for other uses. Mr. Jorde asked if this aquifer serves other users that aren't found in the counties shown in Figure 1. Mr. Mathiowetz stated that all of the users that currently appropriate water are within Moody and Lake Counties. They have gone

Water Management Board
December 4, 2024, Meeting Minutes

through the permitting process. There may be domestic users in Minnehaha County on the south side in the green area shown in Figure 1, but they would be domestic users only. Mr. Mathiowetz stated that getting into the determination of that was not done for this application. There isn't a well delineated map to work from for any portion that may be in Minnehaha County, but also this map in Figure 1 is an approximation. It was created in 1986, and further data been acquired since then as can be seen by the fact that LK-79E is located just outside the map's boundary.

Mr. Jorde asked if Mr. Mathiowetz is familiar with the phrase "Protecting tomorrow today?" Mr. Mathiowetz said he is aware of the phrase.

Mr. Jorde stated that in order to feel comfortable that the people of South Dakota are protected tomorrow today, if we don't have a good idea of the limits of this aquifer, how can we feel comfortable that future uses of developing counties like Moody, Lake, and Minnehaha aren't going to have to draw more water from this aquifer in the future?

Ms. Verleger objected to the question because it calls for speculation. Chairman Hutmacher sustained the motion.

Mr. Jorde asked Mr. Mathiowetz if it is true that his opinion hinges on the underlying analysis that there is enough water in this aquifer in terms of the withdrawal versus the recharge ratio.

Mr. Mathiowetz answered that the amount of water this application proposes to use has already been accounted for. The water was previously appropriated, and this application is a review of the potential for unlawful impairment. The availability of water was provided for information. The discussion of existing water use in the report is known by the Water Rights Program as a broad over-estimate. It is a conservative approach that the Water Rights Program has done and continues to do. The actual reported average is notably less, and the users that report don't have to report on all of their permits under the qualifications for their permits so the estimated use in lieu of reporting is very likely an over-estimate.

Mr. Jorde asked Mr. Mathiowetz if in the analysis he factors in the likely future use of users who have yet to apply for water from this aquifer or who have yet to draw down from already allocated water.

Mr. Mathiowetz answered that those are two distinctly different considerations. Those who have yet to apply for a permit in any form, such as a new application to irrigate land is not considered in the analysis because there is no way to account for that. The future use permits are accounted for in the analysis as part of the hydrologic budget.

Mr. Jorde asked if it's true that in his analysis Mr. Mathiowetz does not account for any population growth, future industrial growth, or future irrigators unless they already have an application on file.

Mr. Mathiowetz answered that the only accounting for that would be by those who have applied for future use permits for future development.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Jorde asked if the department has a plan for years from now when the withdrawal rate is in excess of the recharge rate due to natural population increases and developments. Mr. Mathiowetz answered that is not part of his review and not something that he is aware of.

Mr. Jorde asked if it is correct that on page 3 of the report it states, "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 Big Sioux: Northern Skunk Creek aquifer."

Mr. Mathiowetz answered that is what the report states.

Mr. Jorde asked if the report makes a specific conclusion as to the concept of beneficial use and whether this use is or is not beneficial use, and the report also doesn't focus on public interest.

Mr. Mathiowetz answered that those are not technical aspects covered in the report.

Mr. Jorde asked if Mr. Mathiowetz agrees that those are two of the four elements of how the Water Management Board is charged to review such an application.

Mr. Mathiowetz answered that is part of the requirements to obtain a permit.

Mr. Jorde said Mr. Mathiowetz testified that there was no long-term decline. Exhibit 103 shows the blue dots for LK-79A from 1979, and that is clearly at a higher number than it is in 2024. He asked if that would be a long-term decline.

Mr. Mathiowetz answered that, as he discussed during previous testimony, there is one specific decline that is notable. That is approximately 10 feet that occurred in 2001 and 2002 when multiple wells for Big Sioux Community Water System were developed within less than a tenth of a mile of that observation well. After that the water level returned to a stable level following climatic conditions, seasonal precipitation, and seasonal pumping.

Mr. Jorde asked if Mr. Mathiowetz would agree that the blue dots in the bottom right corner of the exhibit and the orange squares are lower than where they started out in 1979.

Mr. Mathiowetz said that is correct.

Mr. Jorde said in the report, Mr. Mathiowetz talks about reported withdrawal rate (Table 4 on page 7) for water users required to report their annual usage to the department. He asked where the instances are where there could be someone or an entity using water that isn't reported.

Mr. Mathiowetz answered that there is a number of permits that are not required to report because they do not have that qualification on their permit.

Mr. Jorde asked how Mr. Mathiowetz allocated for estimating what the actual use of those particular users are.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Mathiowetz stated that for the non-reporting permits one of two methods are used depending on one specific thing. If they are only limited by a diversion rate, which means just a pump rate, they do not have an annual volume, the department assumes that they pump at their permitted diversion rate 60 percent of the time, which would be approximately 13-14 hours per day. For those that have a permitted volume that are not required to report the department assumes at some point they may pump the full volume.

Mr. Jorde asked if “estimated” or “likely” is the best guess based on the available data. Mr. Mathiowetz answered that it is.

Mr. Jorde said Mr. Mathiowetz concluded that although the numbers, the 10,257 acre-feet of withdrawal less the 8,067 acre-feet shows negative 1,600 acre-feet each year, but it is actually closer to 100 acre-feet as a positive.

Mr. Mathiowetz stated that when the estimates are replaced specifically for those permits that report with the reported volumes there would be recharge in excess of withdrawals of 173.2 acre-feet per year.

Mr. Jorde asked if the department has any standards or guidelines for when the ratio of withdrawal to recharge is determined to be very close.

Mr. Mathiowetz said that depends on the specific scenario. The department will look at more detail by using the available data, whether that is irrigation and go on permitted acre per permit or whether the average is used. For the non-irrigation permits it could be a matter of diving further into exactly how they reported the data or possibly talking to the permit holders to get a clearer understanding of their reporting versus the department’s estimates.

Mr. Jorde asked if there is a maximum allocation of the number of acre-feet that can be permitted.

Mr. Mathiowetz said that number would have to be established by the Board. Mr. Jorde asked if someone can still apply for a future use permit from this aquifer, or are future use permits full or limited. Mr. Mathiowetz said people can always apply, it’s a matter of whether the application is approved, deferred, or denied.

Mr. Jorde said page 13 of the report references recent declines on water levels and recent drought conditions and a 10-year climate cycle.

Mr. Mathiowetz stated that in South Dakota the typical wet to dry cycle is roughly 10 years.

Mr. Jorde asked if the department uses any type of software to crunch these numbers, and what data is used for estimating future climate conditions and how that may affect drawdowns in drought years is the future.

Mr. Mathiowetz answered that he did not do any modeling predictions or software simulations of

Water Management Board
December 4, 2024, Meeting Minutes

the future climate as part of the analysis.

Mr. Jorde asked if Mr. Mathiowetz would agree that future climate conditions would be an important factor to consider given the changing climate and the outsized climate events we seem to be experiencing.

Mr. Mathiowetz said it is a factor that could be considered, but he has not given it enough thought to determine whether he feels, in his opinion, that it is a consideration that needs to be done immediately, or tomorrow, or sometime in the future.

Mr. Jorde said on page 18 of the report the last sentence in the first paragraph states, “some existing well owners may need to install or lower pumps depending on the specific characteristics of the of the Big Sioux: Northern Skunk Creek aquifer at their location.” He asked if this statement applies if this application is approved.

Mr. Mathiowetz said that is standard language in recognition that people don’t always put the pump as deep as they need to because they don’t have to. From a practical aspect, if development were to potentially lower drawdown, and someone’s well was not set up and the pump was not placed to be an adequate well, then the pump would need to be lowered. The words “install a pump” is in reference to flowing wells. There are no flowing wells in this aquifer, so the words “install a pump” would not be relevant in this particular situation.

Mr. Jorde asked who pays for the impairment or impact to a well.

Mr. Mathiowetz stated that would not be an impairment. That impact would be a matter of maintenance and operation of the well owner’s well.

Mr. Jorde asked if the existing well owners would potentially have to incur more costs if this application is approved. Mr. Mathiowetz answered that if the well owner’s well does not meet the requirements in the statutes and law to be considered an adequate well, they would need to bring the well into compliance before it could be determined whether it would be impacted or impaired.

Mr. Jorde asked Mr. Mathiowetz if he would agree that if the well doesn’t meet the statutes of an adequate well, then there is a new user and more drawdown taking place which now that affects a perfectly fine well, that well owner would have to pay out of their own pocket to adjust to this application being approved.

Mr. Mathiowetz said if the well owner does not meet the requirements, as laid out in statute and administrative rule, the well owner would need to incur the expense to bring the well into compliance with the statutes and rules.

Mr. Jorde asked Mr. Mathiowetz if he believes that both surface water and ground water should be developed for the greatest public benefit, that all water within the state is the property of the people of the state, and that the people of the state have a paramount interest in the use of all water of the state.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Mathiowetz said he does agree.

Mr. Jorde asked if Mr. Mathiowetz made any opinions in his report of whether the use of water at an ethanol plant is a beneficial use.

Mr. Mathiowetz said that is not a technical subject covered in his report.

Mr. Jorde had no other questions from Mr. Mathiowetz.

Chairman Hutmacher called a recess at noon. He called the hearing back to order at 1:00 p.m.

In response to a question from Ms. Verleger regarding the blue dots at the bottom right on Exhibit 103 showing a decline in the observation well since 1979, Mr. Mathiowetz stated that in this specific case that is not concerning because when reviewing observation well data the Water Rights Program looks at the entire period of record. That is also taken into context in the overall development from the aquifer as well as development of wells near the observation well because those changes, in the basic hydrology of how aquifers and wells work, can affect the water levels. Observation well data needs to be taken in the context of the entire situation around the observation well.

There were no further questions of Mr. Mathiowetz.

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

Exhibit 104 is Mr. Gronlund's Curriculum Vitae. Mr. Gronlund created the Curriculum Vitae, which is up to date.

Ms. Verleger offered Exhibit 104. The exhibit was admitted into the record.

In response to questions from Ms. Verleger, Mr. Gronlund stated that he is employed with the Department of Agriculture and Natural Resources. He has a Bachelor of Science degree in Agricultural Engineering from South Dakota State University and is a registered professional engineer in the state of South Dakota. He is the administrator of the DANR Water Rights Program, and in that capacity, he acts as the Chief Engineer. He has been the Chief Engineer for nearly five years, and he has worked at the department for nearly 41 years. He is a technical advisor to the Water Management Board and makes recommendations on water permit applications to appropriate water. Mr. Gronlund also supervises a staff of approximately 15 employees as well as seasonal employees.

Mr. Gronlund testified that when a water permit application is filed, the Water Rights Program conducts a completeness review. The application is then assigned to a staff engineer to review regarding two technical criteria for granting a water permit and to prepare a report. Mr. Mathiowetz then reviews the report for the purposes of making a recommendation. Once a

Water Management Board
December 4, 2024, Meeting Minutes

recommendation is made, the application is public noticed with an opportunity to file a petition in opposition. When a petition in opposition is filed, a contested case hearing is scheduled before the Water Management Board. In making a recommendation on an application he relies on the staff report. Regarding beneficial use and public interest criteria, Mr. Gronlund looks at past Board decisions and the law.

Exhibit 105 is the Chief Engineer's recommendation for Application No. 8864-3. Mr. Gronlund stated that the recommendation is for approval with four standard qualifications.

The exhibit was admitted into the record.

The beneficial use of the water is rural water system use. Mr. Gronlund stated that the Water Management Board is responsible for the allocation and appropriation of water and on numerous occasions in the past the Board has made determinations that rural water system use is in the public interest.

Mr. Gronlund said he reviewed the petition and comments in this case. His understanding is that Ms. Brown's main concern is water levels and the potential for over-appropriation of water from the North Skunk Creek Management Unit of the Big Sioux aquifer and concerns with the quantity of water for the proposed purpose, which is a rural system but it's to serve an ethanol plant.

Regarding Qualification number 4 in the Chief Engineer's recommendation, Mr. Gronlund stated that permit is limited to a total annual diversion of up to 300 acre-feet of water. Qualification number 3 requires Big Sioux Community Water System to report to the Chief Engineer annually the amount of water withdrawn from the aquifer. In addition to this, after they are developed, all water permits require an inspection, state verification that the system is there and the extent that it is developed, then a water license is issued. South Dakota is a prior appropriation state where first in time is first in right.

Mr. Gronlund said he considers SDCL 46-1-1 the foundational water rights law, where water is the property of the people of the state. SDCL 46-1-4 states that water is to be put to beneficial use to the fullest to which it is capable.

Mr. Gronlund stated that if there are complaints in this case the Water Rights Program will rely significantly on LK-79A, the observation well, which is in close proximity to the Brown water right.

Mr. Mahlke asked if deficiencies were noted regarding Water Permit Application No. 8864-3.

Mr. Gronlund answered he does not believe there were deficiencies regarding the application. When an application is submitted, if there are changes that need to be made staff contacts the applicant and the changes are made. He stated that he does not have the file on the application with him today so he cannot see if that was done.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Mahlke said Mr. Gronlund testified that a rural water system is a beneficial use. He asked if industrial is also a beneficial use.

Mr. Gronlund answered that water rights have been issued for industrial use. Mr. Mahlke asked if Mr. Gronlund believes, based on the application, that this is in the public interest. Mr. Gronlund answered that he does believe it is in the public interest based on past Board decisions.

Mr. Mahlke had no further questions of Mr. Gronlund.

Mr. Jorde asked if the entirety of Mr. Gronlund's public interest opinion is looking at what the Water Management Board has done in the past with other unrelated permits.

Mr. Gronlund answered that is correct, to a large extent. The use also must comply with the water rights law.

Mr. Jorde asked if Mr. Gronlund believes the use is for rural water or for the Dakota Ethanol Plant.

Mr. Gronlund said he believes the type of use is rural water system use.

Mr. Jorde asked if Mr. Gronlund believes that as long as the middleman is a rural water system, it does not matter what the actual end use is.

Mr. Gronlund said the Water Rights Program does not direct a rural water system on who they supply water to.

Mr. Jorde said the application specifically states that the actual use will be for the Dakota Ethanol Plant. He asked if Mr. Gronlund can agree that this is how the water will actually be put to use.

Mr. Gronlund answered that according to the application he is not certain, since it is a rural water system, they are not precluded from supplying another user if they so choose, provided they are within the boundaries defined by the permit.

Mr. Jorde said if we accept that Big Sioux Community Water System put forth an honest and correct application, can Mr. Gronlund agree that the use is for Dakota Ethanol.

Mr. Gronlund said he believes rural water system use is the type of use indicated on the application, but he would like to review the application again to confirm that. He believes in the description of the project is where they would have described the Dakota Ethanol component.

Mr. Jorde said that is what he is trying to understand. He asked if the rural water use box checked on the application Mr. Gronlund automatically declared it a public use, or did he go a step further with how the water is ultimately used.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Gronlund said he did not.

Mr. Jorde asked Mr. Gronlund if he believes it would be wise, given that the applicant themselves specifically stated in the application that is signed by their manager that this water is for Dakota Ethanol, that is the use that has to be put through the beneficial and public interest tests.

Mr. Gronlund answered that he contends that Big Sioux Community Water System is a rural water system, and that is the type of use, and that is how this application was processed under water rights law.

Mr. Jorde said he is trying to understand the analysis. He asked if when Mr. Gronlund is giving recommendations to the Water Management Board, he really doesn't care how the water is used if it is first passing through a rural water system; the analysis is stopped there?

Mr. Gronlund said beneficial use is defined in SDCL 46-1-6(3) as what is useful, reasonable, and beneficial to the appropriator, and in the best of utilization of water in the state, so that is what is applied in making a beneficial use determination. Mr. Gronlund said rural water systems, as he looks at codified laws, are set for transmission and sale of water to rural areas.

Mr. Jorde asked if Mr. Gronlund would agree that there are additional requirements of SDCL 46-1-6(3) that require that at the same time the use has to be consistent with the interest of the public of this state in the best utilization of water supply, so an analysis must include a determination that the use for this ethanol plant is consistent with the interest of the public and is the best utilization of water supplies.

Mr. Gronlund answered that that is what the statute says.

Mr. Jorde said on page 4 of the report that Mr. Gronlund relies upon to come up with his opinions it states, "However, the sole purpose is to supply the Dakota Ethanol facility which is an industrial use."

Mr. Gronlund answered that is correct.

Mr. Jorde said if, in terms of the hierarchy, industrial use is different than domestic use Mr. Gronlund would agree that existing domestic use takes priority over existing industrial use.

Mr. Gronlund stated that domestic use as defined in the statute has its limitations.

Mr. Jorde asked if domestic use deals with water use by an individual, a family or for livestock, and industrial use would be a separate category. Mr. Gronlund said that is correct.

Mr. Jorde asked if Mr. Gronlund would agree that it is in the public interest that domestic users have access to adequate water supplies prior to the industrial users.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Gronlund said he believes that is what SDCL 46-1-5 provides.

Mr. Jorde had no further questions.

Ms. Verleger offered Exhibit 106, the affidavits of publication for this application. The exhibit was admitted into the record.

Ms. Verleger asked if the application is approved, and Big Sioux Community Water System decides not to serve Dakota Ethanol, but wants to change it to some other type of use, is that something that would need to come back before the Water Management Board or is that a change that the rural water system can make administratively.

Mr. Gronlund stated that, based on his opinion, he believes that Big Sioux Community Water System would have the ability to make the change on their own. The public notice states the legal description for rural system use, then goes on to say water service will be provided to the Dakota Ethanol facility and says the location of it. It doesn't say solely to that purpose.

Ms. Verleger asked if the Water Rights Program or the Water Management Board gets involved in telling rural water systems how to distribute the water. Mr. Gronlund said they do not.

Mr. Jorde said in the notice of application in the first paragraph there is a sentence toward the bottom that says, "Water service will be provided to the Dakota Ethanol facility."

Mr. Gronlund said the notice says water "will be;" it doesn't say "solely."

Mr. Jorde said we're not seeing anyone else listed in any application, and the only use that is found anywhere is Dakota Ethanol. Mr. Gronlund said that is correct.

There were no further questions of Mr. Gronlund.

Ms. Verleger had no other witnesses.

Mr. Mahlke called Jeff Carruthers, who was administered the oath by the court reporter.

In response to question from Mr. Mahlke, Mr. Carruthers testified that he has been employed as water operator with the Big Sioux Community Water System for 20 years. The water system operates in Lake, Moody, Pipestone, Minnehaha, and Brookings Counties, including Flandreau, Colman, Trent, Egan, Chester, Wentworth, and several small developments. The water system serves approximately 2800 customers. Big Sioux Community Water has been serving water to Dakota Ethanol for almost 24 years. This additional water is needed to continue supplying water the facility.

Exhibit A is the application for the well.

Water Management Board
December 4, 2024, Meeting Minutes

Mr. Carruthers stated that in the description of this application it states that the use will be for Dakotas Ethanol. He believes the application was completed correctly. Big Sioux Community Water changed the water use from commercial to industrial in response to recommendations for changes to the application that were received from the State prior to submitting the application.

Mr. Carruthers said he had the opportunity to review the recommendations of the Chief Engineer regarding approval of the application.

Mr. Mahlke offered Exhibit A. The exhibit was admitted into the record.

Mr. Mahlke asked Mr. Carruthers if he has any issues or concerns that Big Sioux Community Water will not be able to meet the qualifications set forth by the Chief Engineer. Mr. Carruthers answered that he does not. He said he has been involved in similar qualifications over his years of service.

Mr. Mahlke had no further questions of Mr. Carruthers.

Ms. Verleger had no questions of Mr. Carruthers.

In response to a question from Mr. Jorde, Mr. Carruthers said he believes this water permit is needed to continue to supply water to Dakota Ethanol.

Mr. Jorde asked if Mr. Carruthers would agree that Dakota Ethanol wants this water and that is a desire of theirs.

Mr. Carruthers said he believes Dakota Ethanol wants the water, and in order to be in production they need water.

Mr. Jorde asked if Mr. Carruthers independently knows what Dakota Ethanol intends to use the water for, other than what maybe someone has told him.

Mr. Carruthers said the water system sends the water to Dakota Ethanol, and they use it as needed.

Mr. Jorde asked what the maximum capacity of production is at Dakota Ethanol.

Mr. Mahlke objected to the question because it calls for speculation. Chairman Hutmacher overruled the objection.

Mr. Carruthers answered that the maximum capacity of production at Dakota Ethanol is 110 million gallons of ethanol per year, which is what they are currently producing.

Mr. Jorde asked if it is correct that if Dakota Ethanol is currently producing at capacity, they would not need water for ethanol production.

Mr. Mahlke objected to the question because it calls for speculation. Chairman Hutmacher

Water Management Board
December 4, 2024, Meeting Minutes

sustained the objection.

Mr. Jorde asked if Mr. Carruthers' position that Big Sioux Community Water does not really care how Dakota Ethanol uses the water, they just want to sell it to the facility.

Mr. Carruthers answered that is correct.

Mr. Jorde asked if Mr. Carruthers personally knows what the ethanol facility intends to use the water for.

Mr. Mahlke objected to the question because it calls for speculation. Chairman Hutmacher overruled the objection.

Mr. Carruthers answered that Dakota Ethanol wants to use the water for ethanol production.

Mr. Jorde asked if Mr. Carruthers personally knows that or is it hearsay from someone else.

Mr. Carruthers said he personally knows that.

Mr. Jorde asked if Mr. Carruthers works for Dakota Ethanol or if he is on the Board or a shareholder.

Mr. Carruthers said he does not work for Dakota Ethanol, he is not on the Board, and he is not a shareholder.

Mr. Jorde asked if Mr. Carruthers initially filled out the application for industrial use of the water.

Mr. Carruthers said he initially filled out the application as commercial use, and the State asked him to change it to industrial use. It is his understanding that industrial is the use of water for which Big Sioux Community Water System applied.

Mr. Jorde had no other questions of Mr. Carruthers.

There were no questions from the Board members.

Mr. Mahlke had no other witnesses.

Mr. Jorde called petitioner, Rita Brown, who was administered the oath by the court reporter.

Ms. Brown testified that she lives in Chester, South Dakota, which is in Lake County. She has been a Lake County resident most of her life and she and her husband are retired farmers.

Exhibit 107 is a copy of Ms. Brown's petition opposing the application.

Mr. Jorde offered Exhibit 107. The exhibit was admitted into the record.

Water Management Board December 4, 2024, Meeting Minutes

Mr. Jorde asked Ms. Brown to give the Board an idea of why she filed the petition in opposition.

Ms. Brown testified that part of the reason is because there is a bigger problem on the horizon, and it's called Summit Carbon Solutions. She is greatly concerned about the amount of water that is going to be used for that project. She said part of her inspiration for filing the petition are words found on the department's website – "Protecting Tomorrow Today", and that is her goal for being here. She said she is not here just for today; she's worried about what's going to happen tomorrow in agriculture. She is concerned about the water that could potentially be utilized for the cooling in the carbon capture facility. In the new permit they have submitted to the PUC they've added dust control, so in addition to cooling the transmission lines and the other uses they have for needing water, that's an added thing that isn't even included in figures that she has. Ms. Brown said she is looking at numbers that are in the billions of gallons of water for the number of ethanol plants that would be involved just in South Dakota. If there are 57 in the Midwest, can you imagine how much water that will take.

Mr. Jorde said earlier there were questions of Mr. Carruthers about the capacity of Dakota Ethanol and the fact that they are presently at capacity. He asked Ms. Brown if she has done any analysis of about how many millions of gallons of water a year would be needed for a carbon cooling and capture facility at Dakota Ethanol.

Ms. Brown stated that her calculations are based on the renewable fuels, so she started with how many gallons each ethanol plant produced then multiplied it times three because it takes three gallons of water to produce one gallon of ethanol. Ms. Brown said since then she has learned that in some ethanol plants it takes as much as three and a half million gallons of water, so her numbers are conservative. So, if she added up all of the use including the addition of carbon capture and sequestration, it is over seven billion gallons of water. Ms. Brown said she believes that the seven billion gallons of water will have a cumulative effect on agriculture that will be severe. She is concerned because she is already having a problem on her property. Ms. Brown said they put in a new irrigation system in 2018 and with that, came a new well. With the increased use of water, not just with the ethanol plant even though they are the biggest user of water, and with all the development around the lakes, Ms. Brown said she can start the irrigation system, but during the part of the year it is needed the most, water pressure cannot be maintained so the system keeps shutting down. The crop yields for the last three years have been substantially less because the Browns can't water when they need to. Ms. Brown said she is not the only one who has experienced that problem; she knows of one other person that has. She said she knows that puts the State at a disadvantage because the State has not received complaints, but that is why she is here today. Ms. Brown said she is here to say there is a problem; and it might be small today, but if the water continues to go out at billions of gallons at a time that truly will affect all of us. She asked if everyone will be dry-land farmers, and how is the ethanol facility going to keep their production up.

Mr. Jorde asked if Ms. Brown heard the testimony from the engineers that stated that they don't use forecast of future use as part of the analysis of recommendations on this permit, and is she here, in part, to try to encourage the Board to take a longer-term view of what this potentially

Water Management Board
December 4, 2024, Meeting Minutes

means not only to her, but to all of the users in this aquifer. Ms. Brown said she did hear the testimony of the engineers, and she wants the Board to protect tomorrow today.

Mr. Jorde asked Ms. Brown when she can't access water does she suffer economically with lower yields? Ms. Brown said it affects her in that there are lower yields, and she can't raise the cash rent. If they can't grow a decent crop, then she doesn't know if she can afford to keep the land.

Ms. Jorde asked Ms. Brown if she knew before today that there was a formal written complaint process to bring these complaints to the attention of the Water Management Board.

Ms. Brown answered that someone challenged a water permit in Iowa, and from that time on she knew that she needed to be watching for this kind of thing to happen. Two years ago she had no idea that she could notify the State when she filed this petition in July 2024, bringing these concerns to the forefront. The other user Ms. Brown is aware who had a problem is also within her area and draws from this aquifer.

In response to a question from Mr. Jorde regarding the water necessary to cool carbon capture should a facility be built at Dakota Ethanol, Ms. Brown stated that she is aware that the water needed to do that is approximately 97 million gallons a year, and that is the exact amount that this application is for.

In response to a question from Mr. Jorde regarding beneficial use, Ms. Brown stated that she does not agree that Dakota Ethanol using more water is a beneficial use when looking at the public interest and the best utilization of water supplies. She said eventually there is going to be a problem with water availability, and she questions that producing ethanol is the best use of water.

Exhibit 108 is part of a document entitled, "Water Woes."

In response to questions from Mr. Jorde regarding the exhibit, Ms. Brown stated that she has been researching the water issues relative to Dakota Ethanol since someone showed up on her doorstep three and a half years ago and wanted her to sign an easement to approve them for crossing her property. She said it alarmed her that the route for the pipeline crosses the heart of wellhead protection area, and she is alarmed that someone hasn't stood up and said that can't happen. Ms. Brown said she has spent hundreds of hours researching and doing analysis relative to Dakota Ethanol. Exhibit 108 is a compilation of publicly available information in terms of usage and residential water users around the Dakota Ethanol plant. This part of a document called "Water Woes" that was put together by Bold Nebraska. The numbers and percentages in this document are lower than her predictions are regarding water usage.

Mr. Jorde offered Exhibit 108. Mr. Mahlke and Ms. Verleger objected as to relevance. Chairman Hutmacher sustained the objection, and the exhibit was not admitted into the record.

Mr. Jorde asked Ms. Brown, based on her research, why is the amount of water Dakota Ethanol is utilizing concerning to her. Ms. Brown questioned how it is in the public interest if Dakota Ethanol is using 63 percent of the total water within a 10-mile radius of Brandt Lake, Franklin,

Water Management Board
December 4, 2024, Meeting Minutes

Wentworth, Rutland, and Chester. She does not believe allocating more water for that use is in the public interest or a beneficial use.

Ms. Brown said testimony was given about watching the observation wells and using that to determine whether there is an impact from a new well and the behavior of the aquifer. She said she believes the following came from the report. "Observation wells in close proximity to a high capacity well may indicate what might be expected with surrounding irrigation wells, but the exact drawdown behavior cannot be determined without an aquifer performance test." Ms. Brown said her concern is if we don't really know how much water the aquifer holds, how do we know when we've exceeded that amount. She said other states have figured out ways to determine exactly how much water is in their aquifers, and she wonders if that is something South Dakota should be thinking about.

Mr. Jorde said the report states that some existing well owners may need to install or lower pumps depending on the specific characteristics of the aquifer at their location, in other words, if Dakota Ethanol gets even more water, Ms. Brown may have to incur that cost. He asked Ms. Brown how this is in the public interest or beneficial. Ms. Brown stated that she can't afford to drill another well every other year because Dakota Ethanol has taken more water, and she won't be the only one in this situation. She believes this is just the beginning of a bigger problem.

Mr. Jorde had no further questions of Ms. Brown.

In response to questions from Ms. Verleger, Ms. Brown stated that she has one active well that was drilled in 2018. She does not know the depth of the well or whether the pump in the well has ever been lowered. It is correct that she has never made a complaint to the Water Rights Program. She does not agree that this would be in the public interest. To her public interest means farmers who need to irrigate to produce a good crop to sell the corn to the ethanol plant have sufficient water to irrigate, people that feed livestock have sufficient water, and food. She said there should be a way everyone can have their fair share, but she can't believe that one entity has to take 63 percent of the water that is available. To her beneficial use means growing crops or feeding animals. A cooling compression line does not qualify as a beneficial use. She said if it gets to the point where there is water scarcity, someone is going to have to determine what beneficial use of water is, but she is not the person to do that.

Ms. Verleger had further questions and Mr. Mahlke had no questions of Ms. Brown.

Mr. Jorde asked Ms. Brown if she believes allowing Dakota Ethanol more of the finite water supply as contemplated here is the best utilization of water. Ms. Brown answered that she does not. He asked if she believes that allowing Dakota Ethanol to have even more water would be consistent with the interest of the public. Ms. Brown said she does not. Mr. Jorde asked even though Ms. Brown is a shareholder of Dakota Ethanol, she is still here raising these concerns. Ms. Brown said that is correct. She said her reason for concern is that according to the research she has done the project Dakota Ethanol is proposing will double their water footprint. Ms. Brown requested that the Board deny approval of the application because it does not meet the beneficial use test or the public interest test, more study needs to be done.

Water Management Board
December 4, 2024, Meeting Minutes

There were no further questions of Ms. Brown.

Mr. Mahlke and Mr. Jorde providing closing statements.

Ms. Verleger had no closing statement.

Chairman Hutmacher requested Board action.

Motion by Freeman, seconded by Larson, to approve Water Permit Application No. 8864-3, Big Sioux Community Water System, subject to the qualifications set forth by the Chief Engineer.

Mr. Freeman stated that the Board is required by state law to put the waters of this state to beneficial use. The testimony clearly shows that there is water available and there is not going to be impairment. If there is impairment or suspected impairment, then Ms. Brown and everyone else has an avenue to address the impairment. Mr. Freeman said he believes the Water Rights Program takes those allegations very seriously when a complaint is submitted. He said in South Dakota rural water systems are considered a beneficial use and serve the public interest, and industrial such as ethanol also serves the public interest. Mr. Freeman said he understands Ms. Brown's position entirely, but the Board is required to put the waters of the state to beneficial use.

Mr. Holzbauer said if the application denies somebody else water, the water at ethanol plant will be shut off. He stated that he believes that an ethanol plant is a beneficial use.

There was no further Board discussion.

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

Mr. McVey requested that Ms. Verleger prepare the Findings of Fact and Conclusions of Law by January 10. Alternate proposed findings are due January 21.

CONSIDER WATER PERMIT APPLICATION NO. 8768-3, PLAINVIEW DAIRY, LLC: Kim Drennon presented her report on the application.

Water Permit Application No. 8768-3 proposes to appropriate up to 460 acre-feet of water per year at a maximum diversion rate of 0.84 cubic feet of water per second, which is approximately equivalent to 377 gallons per minute, from up to five wells consisting of either existing wells, new wells, or both, completed into the Toronto aquifer. The water is for commercial use in a dairy operation approximately 20 miles north of Brookings and seven miles east of Estelline.

The Toronto aquifer is a Pleistocene aged sand and gravel outwash, which underlies a very specific area of Brookings and Deuel Counties at a specific elevation. As part of their application, the applicant hired consultant John Dustman of Summit EnviroSolutions to run an aquifer performance test. The data revealed from the aquifer performance test did not provide much clarification on whether unappropriated water would be available from this particular sand and

Water Management Board
December 4, 2024, Meeting Minutes

gravel outwash, so the Water Rights Program contacted the South Dakota Geological Survey for additional technical assistance. This application was submitted in 2023. Over the winter of 2023 and the summer of 2024 South Dakota Geological Survey drilled wells and test holes and did analysis of the aquifer in the area. They delineated the aquifer and found the thickness of the aquifer. Taking their area of the aquifer and multiplying that by the rule of thumb numbers provided in the Corps reports of 0.15 to 0.60 inches per acre per year over the area of the aquifer, that produces an estimated recharge of 244 to 975 acre-feet per year. The average of those two values is 610 acre-feet per year.

There are two water rights that might be hydrologically connected to the Toronto aquifer as defined in the South Dakota Geological Survey's report. For the sake of being on the safe side of the estimates, Mr. Drennon included them in the hydrologic budget. One of those has been irrigating for many years and one of those water permits is relatively new and has only submitted two years of irrigation reports. Based on the two irrigation permits that are in the aquifer, Ms. Drennon estimated an average annual withdrawal of 164 acre-feet per year. Domestic use was estimated to be 10 acre-feet per year. When she subtracted the 174 from the 610 remaining acre-feet, or of total recharge, there is 436 acre-feet is remaining. Based on the best information available, that is the amount of unappropriated water available in the aquifer.

The nearest water right/permit to this application is approximately two miles to the southwest of the various proposed wells and the nearest domestic well is one mile away from the various proposed or existing wells. Given the distance and lack of substantiated complaints of unlawful impairment, Ms. Drennon concluded that there is reasonable probability that this application can be developed without unlawful impairment.

Based on Ms. Drennon's analysis, the Chief Engineer recommended approval of Water Permit Application No. 8768-3, Plainview Dairy, LLC, for 436 acre-feet annually from the Toronto Aquifer with the following qualifications:

1. The wells approved under Water Permit No. 8768-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Permit must control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The proposed wells authorized by Permit No. 8768-3 must be constructed by a licensed well driller and construction of the well and installation of the pump must 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. Water Permit No. 8768-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.
4. Water Permit No. 8768-3 is subject to compliance with all existing and applicable

Water Management Board
December 4, 2024, Meeting Minutes

Water Management Board Rules including but not limited to:

- a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The Permit holder must report to the Chief Engineer annually the amount of water withdrawn from the Toronto aquifer.
6. Water Permit No. 8768-3 authorizes a total annual diversion of up to 436 acre-feet of water from the Toronto aquifer.

Chairman Hutmacher asked Ms. Drennon if she read the comment submitted by Troy Lenning. Ms. Drennon stated that Mr. Lenning does not like the proposed dairy, and he was concerned about new irrigation in the area. Ms. Drennon noted that whether or not he likes the dairy is not part of her review.

Mr. Gronlund stated that if there is public interest or policy issues, an application can be scheduled for Board hearing, and that is what occurred with this application. The applicant requested 460 acre-feet of water annually, and based on the analysis a very conservative approach was taken and came up with the 436 acre-feet per year amount because those two water rights may not be actually located in the aquifer. There has also been substantial controversy regarding the proposed dairy. For these two reasons this application was brought before the Board.

Mr. Gronlund stated that no formal petitions in opposition to the application were received; however, one comment was received.

Mr. Gronlund stated that in his comment letter Mr. Lenning stated that there may have been some influence on where some of the drilling by the South Dakota Geological Survey took place. Mr. Gronlund said when the Geological Survey lays this out the first thing they do is basically a desktop exercise on what would be suitable sites. The Geological Survey then goes out in the field and looks at the area and set flags, partly for the utility locates on it. When they did that, the consultant for Plainview Dairy mentioned that one of those about a mile south southeast of where the proposed dairy would be located they might encounter an upset landowner, and Geological Survey's policy is to move such that they don't upset a landowner and they also don't want to risk their staff having a confrontation with an area landowner. The site was moved about a mile and a half to the northeast. If they had drilled at the original site they would have hit the aquifer, but they did not hit the aquifer where they actually drilled, which provided them basically better information on how to delineate it and, if anything, made it smaller than it otherwise would have been. For one of the other proposed drill sites, there is a water rights observation well already in close proximity, so there was not reason to drill there. The other two sites were primarily due to wet conditions because of the storm event that took place in the area in June 2024.

Water Management Board
December 4, 2024, Meeting Minutes

Chairman Hutmacher requested Board action.

Motion by Freeman, seconded by Holzbauer, to approve Water Permit Application No. 8768-3, Plainview Dairy, LLC for up to 436 acre-feet annually from the Toronto Aquifer subject to the qualifications set forth by the Chief Engineer. Motion carried unanimously.

ADJOURN: Chairman Hutmacher declared the meeting adjourned.

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

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 March 5, 2025.

Water Management Board

WATER MANAGEMENT BOARD MEETING

December 4, 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
2038-1	Black Hills Experience	Spearfish	BU	12 AF	Commercial	1 well – Madison	wi, 3 special
2880-2	Jeremiah & Wendy Walla	Rapid City	PE	0.39 cfs	Irrigation/FWP	1 well – Madison	wi, wcr, iq, 3 special
2882-2	Serenity Cabins, LLC	Rapid City	PE	0.95 AF	COM/DOM	2 wells – Crystalline Rock	wi, 2 special
8587-3	Justin Christianson	Irene	TU	1.78 cfs	Irrigation	1 well – Niobrara	wi, wcr, iq
8856-3	Jensen Rock & Sand, Inc.	Mobridge	DA	1.11 cfs	Commercial	1 well – Coteau Lakes	wi, wcr, 2 special
8866-3	Rolland Hutterian Brethren, Inc.	White	BG	2.11 cfs	Irrigation	2 wells – Rutland	wi, wcr, iq
8884-3	Cronin Farms, Inc.	Gettysburg	PT	4.0 cfs	Irrigation	Missouri River	iq
8885-3	Myron & Kim Bierema	Springfield	BH	No Add'l	Irrigation	1 well – Choteau Tyndall	wi, iq, 1 special
8886-3	Pronghorn Land LLC	Brookings	MP	98.7 AF	REC/FWP	Willow Creek	lf, 2 special
8887-3	Kingbrook RWS	Arlington	KG	1,400 AF	Future Use	Vermillion East Fork	3 special
8888-3	Sean & Fern Hoffman	Bowdle	WL	No Add'l	Irrigation	1 well Bowdle: Edmunds	wi, iq
8889-3	Ronald Jongeling	Castlewood	HM	0.67 cfs	Irrigation	2 wells – Big Sioux:Brookings	wi, iq
8890-3	SD Game, Fish &Parks	Pierre	AU	83 AF	REC/FWP	Enemy Creek	lf, 2 special
8891-3	Kirk Sorensen	Vermillion	CL	No Add'l	Irrigation	1 well – Missouri:Elk Point	wi, iq
8892-3	Kirk Sorensen	Vermillion	CL	No Add'l	Irrigation	1 well – Missouri:Elk Point	wi, iq
8893-3	Brookings-Deuel RWS	Toronto	DU	720 AF	Future Use	Big Sioux: Brookings	3 special
8895-3	David Nystrom	Estelline	DU	117.5 AF	Commercial	2 wells – Big Sioux Brookings	wi, 4 special
8896-3	Jogchum Andringa	Brandt	DU	210.2 AF	Commercial	1 well – Altamont	wi, wcr, 4 special
8897-3	Kyle Jensen	Meckling	YA	2.12 cfs	Irrigation	1 well – Missouri Elk Point	wi, iq, 1 special
8898-3	Good Samaritan Society	Sioux Falls	MA	57 AF	INST/IRR	1 well – Sioux Quartzite	wi, wcr, iq, 1 special

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
2086-2, 2086A-2	City of Rapid City	Rapid City	PE	4,075	Municipal	Madison aquifer	4 special

WATER MANAGEMENT BOARD MEETING

March 5, 2025

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
2040-1	Infinity Properties – Craig Baumiller	Summerset	MD	326 AF	WDS	1 well – Madison	wi, 4 special
8857-3	Jason & Kristy Liebe	Milbank	GT	2.7 cfs, 190 acres	Irrigation	2 wells – Veblen	wi, iq, 1 special
8883-3	Van Winkle Dairy LP, Kevin Van Winkle	Canistota	MC	117.6 AF	Commercial	3 wells – Cretaceous aged undifferentiated sandstone	wi, wcr, 4 special
8894-3	Nathan Skelley and Nicole Bell	Hartford	MA	0.32 cfs, 23 acres	Irrigation	1 well – Sioux Quartzite	wi, iq, 1 special
8899-3	Matt Fenske	Brookings	BG	18 AF	Domestic/Fish & Wildlife	1 well – Howard	wi, 3 special
8900-3	Finley Farms LLLP	Oakes ND	BN	No cfs, 120 acres	Irrigation	1 well – Middle James: Columbia	wi, iq
8901-3	Robert Maeschen	Ethan	DN	0.62 cfs, 73 acres	Irrigation	1 well – Niobrara	wi, wcr, iq
8902-3	Althoff Aggregates LLC	Waubay	DA	191 AF	Industrial	Coteau Lake/Surface Runoff	wi, 3 special
8904-3	Ace Ready Mix – Chris Klein	Sioux Falls	LN	13.5 AF	Industrial	Stormwater runoff	1 special
8905-3	High Country Properties LLC	Mitchell	JE	137.7 AF	Fish & Wildlife	Surface runoff	lf, 2 special
8906-3	Carper Ag LLC	Rutland	LK	0.63 cfs, 52 acres	Irrigation	2 wells – Battle Creek	wi, wcr, iq
8907-3	West Lake LLC	Ipswich	BN	324 AF	DOM/REC/ FWP	3 wells – Middle James Aberdeen	wi, wcr, 3 special
8908-3	Bon Homme HBI	Tabor	BH	105 AF	Commercial	5 existing wells – Dakota	wi, 6 special
8909-3	Tim Neugebauer	Ethan	DN	2.22 cfs, 320 acres	Irrigation	1 well – Niobrara	wi, wcr, iq
8910-3	Nels Sorensen	Vermillion	CL	No cfs, 43 acres	Irrigation	1 well – Lower Vermillion Missouri	wi, iq

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
3574-3	East Dakota Water Dev. Dist.	Brookings	CL	91,500 AF	Future Use	Missouri River	2 special
4817-3	South Lincoln RWS	Beresford	LN	1,448 AF	Future Use	Dakota	2 special
4839A-3	City of Tyndall	Tyndall	BH	410 AF	Future Use	Choteau Tyndall	4 special



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

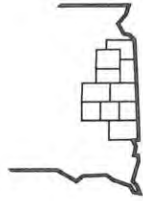
**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 3574-3**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 3574-3, East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006.

The Chief Engineer is recommending that Future Use Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 3574-3, 2) the district has demonstrated a reasonable need for the water reserved by Permit No. 3574-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 3574-3 is subject to payment of the \$ 7,685.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the district after the Board hearing.

Eric Gronlund, Chief Engineer
January 31, 2025



**EAST DAKOTA
WATER
DEVELOPMENT
DISTRICT**

RECEIVED
FEB 03 2025
OFFICE OF
WATER

January 31, 2025

Rachel Rodriguez
Water Rights Program
Department of Agriculture & Natural Resources
523 East Capitol Avenue
Pierre, South Dakota 57501

RE: Future Use Water permit No. 3574-3

Dear Ms. Rodriguez:

The Board of Directors of the East Dakota Water Development District discussed the above referenced Future Use Water Permit at its January 23rd, 2025, meeting, and has decided to seek to retain its current appropriation of the water currently reserved from the Missouri River. The permit, for 91,500 acre-feet on an annual basis, was first obtained in 1977 (albeit for a significantly larger volume), and was intended to hold in reserve sufficient water for use by municipal public water systems, industrial users and rural water systems within the District.

The Board has concluded that the amount of water covered in the current permit is reasonable to meet the needs of the public water suppliers (PWSs) within our area for the foreseeable future. A survey in 2003 of all of the major PWSs within the District found that in 2002, a total of about 14,730,000,000 gallons, or about 45,200 acre-feet, of water were used. The current amount of 91,500 acre-feet of Missouri River water represents approximately twice the volume of water identified in our 2003 survey of PWSs in the District. I would note that during the Board's recent discussion of this permit, I was directed to conduct a re-assessment of water use within the District with an eye toward making adjustments in our future use holdings.

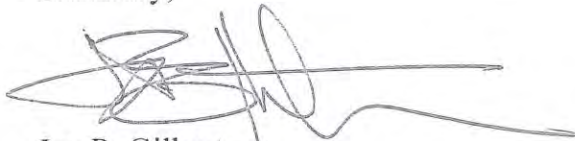
The diversion points identified in the permit remain reasonable, and represent the most likely conduits for delivering water to the District. The District, working in concert with one or more public water suppliers, would be most likely to draw water from the Missouri River in Walworth, Hughes, Clay and Union Counties. The first three represent the points of origin

of the WEB, Mid-Dakota and Lewis and Clark Rural Water Systems, which either extend into the District or serve areas immediately adjacent to it. The proximity of Union County to the southern, and most populated, part of the District also makes it a likely candidate should the need to access the water ultimately develop.

The Board believes that the reasonable need outlined in the original permit to the East Dakota Conservancy Sub-District remains valid. There has been dramatic growth and development in the City of Sioux Falls and along the I-29 corridor since 1977, and this is projected to continue well into the future. In order for this area to continue to grow, access to reliable water sources will be critical. The Board believes that retaining the Future Use Water Permit will provide one assurance of the availability of such water. Further, this action is wholly consistent with the overall mission of water development districts described in South Dakota Codified Laws, Chapters 46A-3A through 46A-3E.

If you have any questions about the Board's intent or rationale regarding Future Use Water Permit 3574-3, please let me know. Otherwise, I look forward to hearing from you regarding the formal review and hearing process in front of the Water Management Board.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay P. Gilbertson', with a long horizontal line extending to the right.

Jay P. Gilbertson
Manager/Treasurer

RECEIVED

FEB 03 2025

OFFICE OF
WATER

AFFIDAVIT OF PUBLICATION

State of Pennsylvania, County of Lancaster, ss:

Samantha Pryor, being first duly sworn, deposes and says: That (s)he is a duly authorized signatory of Column Software, PBC, duly authorized agent of Madison Daily Leader, a newspaper printed and published in the City of Madison, County of Lake, State of South Dakota, and that this affidavit is Page 1 of 2 with the full text of the sworn-to notice set forth on the pages that follow, and the hereto attached.

The advertisement headed

Public Notice 3574-3 Future Use Review
printed copy of which hereunto attached, was printed and published in the said newspaper for 1 successive week(s), once each week and on the same day of the week, on the following dates, to-wit:

PUBLICATION DATES: February 13, 2025

NOTICE ID: tGwGMlvmeF6OiE1CWcjU

PUBLISHER ID: MDL000760

NOTICE NAME: Public Notice 3574-3 Future Use Review

That \$78.46 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publication of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

(Signed) _____

Samantha Pryor

VERIFICATION

State of Pennsylvania
County of Lancaster

Commonwealth of Pennsylvania - Notary Seal
Nicole Burkholder, Notary Public
Lancaster County
My commission expires March 30, 2027
Commission Number 1342120

Subscribed in my presence and sworn to before me on this: 02/13/2025

Nicole Burkholder

Notary Public

Notarized remotely online using communication technology via Proof.

PUBLIC NOTICE

**NOTICE OF HEARING TO
REVIEW FUTURE USE**

WATER PERMIT NO. 3574-3

Notice is given that the Water Management Board will review Future Use Permit No. 3574-3 held by the East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3574-3. This permit was approved 1977 and currently reserves 91,500 acre-feet from the Missouri River. The Missouri River diversion points could be located in Waiworth, Hughes, Clay and/or Union counties. The East Dakota Water Development District includes the counties of Grant, Codington, Hamlin, Deuel, Brookings, Kingsbury, Miner, Lake, Moody, and Minnehaha. The water is reserved for rural water system, municipal and industrial use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3574-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by February 24, 2025.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3574-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26.

This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised.

Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 24, 2025.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 24, 2025.

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 February 24, 2025. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published Feb 13, 2025 at the total approximate cost of \$78.46 and may be viewed free of charge at www.sdpublicnotices.com

Printer's Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF GRANT

} ss.

Holli Seehafer

of said County and State, being first duly sworn, on oath says that the Grant County Review is a legal weekly newspaper of general circulation, printed and published in Milbank, in said County of Grant and State of South Dakota, by Grant County Review, Inc., and has been such newspaper during the times hereinafter mentioned; that said newspaper is a legal newspaper; and that it has a bona fide circulation of more than two hundred copies weekly, and has been published within said County of Grant in the English language and has been admitted to the United States mail under second class mailing privilege, for at least one year next prior to the publication of the Notice herein mentioned, and has been printed wholly in an office maintained at the said place of publication, that I, the undersigned, _____ Owner _____ of said newspaper, in charge of the accounts receivable department thereof, have personal knowledge of all the facts stated in this affidavit; that the advertisement headed Notice of

Hearing to Review Future Use Water Permit
No. 3574-3

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

<u>February 5</u>	<u>20</u>	<u>25</u>	<u>20</u>
	<u>20</u>		<u>20</u>
	<u>20</u>		<u>20</u>

That \$ 66.60 being the full amount of the fee charged for the publication of said Notice, inures to the benefit of the publisher of the Grant County Review; that no agreement or understanding for the division thereof has been made with any person, and that no part has been agreed to be paid to any person whomsoever.

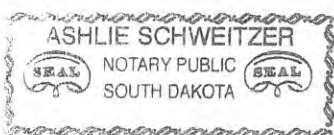
Holli Seehafer

Subscribed and sworn to before me this 5th day of Feb 20 25

Ashlie Schweitzer

Notary Public, Grant County, South Dakota

My Commission Expires:
September 21, 2027



Publication Fee \$ 66.60
Notarial Fee \$ _____
Total \$ 66.60

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3574-3

Notice is given that the Water Management Board will review Future Use Permit No. 3574-3 held by the East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3574-3. This permit was approved 1977 and currently reserves 91,500 acre-feet from the Missouri River. The Missouri River diversion points could be located in Walworth, Hughes, Clay and/or Union counties. The East Dakota Water Development District includes the counties of Grant, Codington, Hamlin, Deuel, Brookings, Kingsbury, Miner, Lake, Moody, and Minnehaha. The water is reserved for rural water system, municipal and industrial use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3574-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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

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FEB 12 2025

OFFICE OF
WATER

cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss

Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by February 18, 2025.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3574-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 18, 2025.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 18, 2025.

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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 February 18, 2025. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at an approximate cost of \$66.60 and can be viewed free of charge at www.sdpublicnotices.com.

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF MOODY) SS

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

*Notice of Hearing to
Renew Future Use
Water Permit
No. 3574-3*

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

2-5-25

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

\$ *65.27*

M. Headrick bookkeeper

Subscribed and sworn to before me this day

February 6, 2025

Kayla Charles
Notary Public, County Moody, South Dakota

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3574-3

Notice is given that the Water Management Board will review Future Use Permit No. 3574-3 held by the East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3574-3. This permit was approved 1977 and currently reserves 91,500 acre-feet from the Missouri River. The Missouri River diversion points could be located in Walworth, Hughes, Clay and/or Union counties. The East Dakota Water Development District includes the counties of Grant, Codington, Hamlin, Deuel, Brookings, Kingsbury, Miner, Lake, Moody, and Minnehaha. The water is reserved for rural water system, municipal and industrial use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3574-3 on March 5, 2025, at 9:30 AM (Central Time),

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

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

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

Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by February 18, 2025.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3574-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

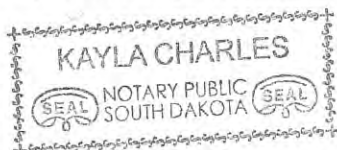
The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 18, 2025.

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

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WATER



County of

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Filed in the office of

on the _____ day of

_____, 20____

Attorney for

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 February 18, 2025.

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 February 18, 2025. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at a cost of \$65.27 and may be viewed free of charge at www.sdpublishnotices.com.

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WATER

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Hamlin) SS

I, LeeAnne Dufek

certify that the attached printed Notice was taken

from the Hamlin County
Republican

printed and published in Castlewood

County of Hamlin and

state of South Dakota. The notice was published

in the newspaper on the following date:

Feb 5, 2025

Cost of Printing \$67.26

LeeAnne Dufek
(Signature)

Owner
(Title)

2-5-2025
(Date Signed)

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3574-3

Notice is given that the Water Management Board will review Future Use Permit No. 3574-3 held by the East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3574-3. This permit was approved 1977 and currently reserves 91,500 acre-feet from the Missouri River. The Missouri River diversion points could be located in Walworth, Hughes, Clay and/or Union counties. The East Dakota Water Development District includes the counties of Grant, Codington, Hamlin, Deuel, Brookings, Kingsbury, Miner, Lake, Moody, and Minnehaha. The water is reserved for rural water system, municipal and industrial use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3574-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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

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Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 18, 2025.

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Published Feb. 5, 2025, at total cost of \$67.26 and may be viewed online at www.sdpublicnotices.com

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 57501

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FEB 10 2025

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WATER

STATE OF SOUTH DAKOTA, COUNTY OF CODINGTON

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

02/06/2025

and that the fees charged are legal.

Sworn to and subscribed before on 02/06/2025

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$77.50

Tax Amount: \$0.00

Payment Cost: \$77.50

Order No: 11001160

Customer No: 812058

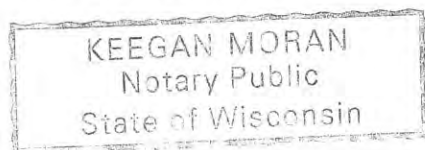
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NOTICE OF HEARING TO REVIEW FUTURE USE
WATER PERMIT
NO. 3574-3

Notice is given that the Water Management Board will review Future Use Permit No. 3574-3 held by the East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3574-3. This permit was approved 1977 and currently reserves 91,500 acre-feet from the Missouri River. The Missouri River diversion points could be located in Walworth, Hughes, Clay and/or Union counties. The East Dakota Water Development District includes the counties of Grant, Codington, Hamlin, Deuel, Brookings, Kingsbury, Miner, Lake, Moody, and Minnehaha. The water is reserved for rural water system, municipal and industrial use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3574-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

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Published on Feb. 6, 2025 at the total approximate cost of \$77.50 and may be viewed free of charge at www.sdpublicnotices.com

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FEB 10 2025

OFFICE OF
WATER

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF DEUEL

Ken Reiste being first duly sworn, on oath says: That he is publisher of the Clear Lake Courier, a weekly newspaper published in the City of Clear Lake, Deuel County, South Dakota; that he has full and personal knowledge of all facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Deuel and State of South Dakota, for at least one year next prior to the first publication of the attached public notice

Notice Of Hearing Review Future Use Water Permit No.3574-3

paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for one successive week(s) to wit:

RECEIVED

FEB 10 2025

February 5, 2025

OFFICE OF
WATER

That the full amount of the fee charged for publication of the attached public notice insures to the sole benefit of the publisher; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$72.42

Ken Reiste
Ken Reiste

Subscribed and sworn to before me

this 5th day of February, 2025

Brenda Schake

Notary Public, South Dakota

My commission expires: 9-21-27

BRENDA SCHAKE



NOTARY PUBLIC
SOUTH DAKOTA



Public notice

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 3574-3

Notice is given that the Water Management Board will review Future Use Permit No. 3574-3 held by the East Dakota Water Development District, c/o Jay Gilbertson, Manager, 132B Airport Drive, Brookings SD 57006 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 3574-3. This permit was approved and currently reserves 91,500 acre-feet from the Missouri River. The Missouri River diversion points could be located in Walworth, Hughes, Clay and/or Union counties. The East Dakota Water Development District includes the counties of Grant, Codington, Hamlin, Deuel, Brookings, Kingsbury, Miner, Lake, Moody, and Minnehaha. The water is reserved for rural water system, municipal and industrial use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 3574-3 REMAIN in EFFECT for 91,500 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 3574-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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Published once at the approximate cost of \$72.42. (52-1/204)

This notice may be viewed free of charge at sdpublicnotices.com maintained pursuant to § 17-2-1.

Mobridge Tribune Affidavit of Publication

STATE OF SOUTH DAKOTA

COUNTY OF WALWORTH

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

**East Dakota Water Dev. District future use
water permit hearing is March 5th**

East Dakota Water Development District

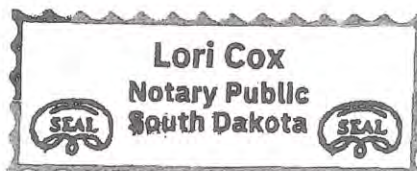
a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive weeks upon the following dates, to-wit:

1- Mobridge Tribune: 2/5/2025

that the full amount of the fees charged for publishing the same to-wit: the sum of \$69.93 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.

Marjorie E. Schaffer
Subscribed and sworn to before me this date of
2/6/2025

Lori Cox
Lori Cox, Notary Public
State of South Dakota
My Commission expires: January 2, 2031



East Dakota Water Dev. District future use water permit hearing is March 5th

NOTICE OF HEARING TO REVIEW FUTURE USE WATER - PERMIT NO. 3574-3

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The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 3574-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 18, 2025.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 18, 2025.

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 February 18, 2025. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$69.93 and can be viewed free of charge at www.sdpublicnotices.com

-020525



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 4817-3**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 4817-3, South Lincoln Rural Water System, 28647 472nd Avenue, Beresford SD 57004.

The Chief Engineer is recommending that Future Use Permit No. 4817-3 REMAIN in EFFECT for 1,448 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4817-3, 2) the system has demonstrated a reasonable need for the water reserved by Permit No. 4817-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 4817-3 is subject to payment of the \$185.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

Eric Gronlund, Chief Engineer
January 29, 2025



January 27, 2025

South Dakota DANR
Water Rights Program
c/o Rachel Rodriguez
523 E Capitol Ave
Pierre, SD 57501

RE: Future Use Water Permit No. 4817-3

Dear Ms. Rodriguez,

South Lincoln Rural Water System (South Lincoln, SLRW) recently received notice of review for its Future Use Water Permit, Permit No. 4817-3. Under this permit, SLRW reserves 1,448 acre-feet for future use. It is South Lincoln's intent to renew the permit in its entirety until such time it is subject to additional review and renewal.

South Lincoln's existing water rights allow for a total withdrawal of 1,048 acre-feet under permits 4300-3, 6490-3, 5116, 5647, and 6300-3. The historic pumped volume from these permits has increased over the past several years from 643 acre-feet in 2017 to 964 acre-feet in 2024.

Recent projections suggest South Lincoln will meet or exceed its historical growth rate over the next decade. The system adds 25 to 40 new household and/or farm users annually and has, since the last permit review in 2017, added bulk users with contracts exceeding 400,000 gallons per day. The historic growth rate and large user inquiries suggest system demand will exceed 3,000 acre-feet by 2035. Such growth will likely require SLRW to convert its future use permit to an active permit and apply for additional future water rights.

Please consider this letter South Lincoln's formal request for the renewal of Permit No. 4817-3 as it is essential to meeting the future water needs of Lincoln, Turner, and Union Counties. The organization is aware the permit is subject to public notice and a hearing before the Water Management Board.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stearns", is written over a light blue horizontal line.

John Stearns
General Manager
South Lincoln Rural Water System, Inc
john.stearns@slrws.com

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF LINCOLN

RECEIVED

FEB 13 2025

OFFICE OF
WATER

TERESA ZOMER

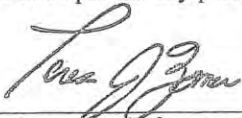
being first duly sworn on his oath says; that the Sioux Valley News is a legal weekly newspaper of general circulation as required by South Dakota Code of Nineteen Hundred Thirty-Nine, and any acts amendatory thereto, printed and published by the Sioux Valley News, Inc., in Canton, in said county and State, and has been such legal newspaper during the time hereinafter mentioned; that he is and during all of said time was publisher of said newspaper and has personal knowledge of the facts stated in this affidavit; that the advertisement headed:

South Lincoln Rural Water Notice of Hearing

a printed copy of which is hereto attached, was printed and published in said newspaper for ONE successive week(s) upon the following dates, to-wit:

February 6, 2025

that the full amount of the fees charged for publishing the same to-wit: the sum of \$77.22 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.



Ascribed and sworn to before me this 6th day of
February, 2025.



Notary Public, South Dakota



My Commission Expires
January 12, 2030

Notice of Hearing

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 4817-3

Notice is given that the Water Management Board will review Future Use Permit No. 4817-3 held by the South Lincoln Rural Water System, 28647 472nd Avenue, Beresford SD 57004 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 4817-3. This permit was approved 1982 and currently reserves 1,448 acre-feet from the Dakota Aquifer located in Section 13 thru 16, 21 thru 28, 33 thru 36; all in T98N-R51W; Section 1 thru 4, 9 thru 16, 21 thru 28, 33 thru 36; all in T97N-R51W; Section 1 thru 4, 9 thru 11, 12 thru 16, 21 thru 28, 33 thru 36; all in T96N-R51W; Section 13 thru 36; all in T98N-R50W; Section 1 thru 36; all in T97N-R50W; Section 1 thru 27, W 1/2 Section 30 and 31, 34 thru 36; all in T96N-R50W; Section 16 thru 21, 28 thru 36, S 1/2 Section 26 and 27; all in T98N-R49W; Section 1 thru 36; all in T97N-R49W; Section 1 thru 36; all in T96N-R49W; S 1/2 Section 31-T98N-R48W; Section 6, 14 thru 23, 26 thru 35; all in T97N-R48W; and Section 2 thru 11, 14 thru 36; all in T96N-R48W. This description does not include areas in and adjacent to the cities of Canton and Beresford. The water is reserved for rural water system use. The permit was last reviewed in 2018.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4817-3 REMAIN in EFFECT for 1,448 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4817-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by February 18, 2025.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 4817-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit

Court and State Supreme Court as provided by law.

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Published in the Sioux Valley News on February 6, 2025, at the total approximate cost of \$77.23 and may be viewed free of charge at www.sdpublicnotices.com.

AFFIDAVIT OF PUBLICATION

John Stearns
South Lincoln Rural Water
28647 472Nd Ave
Beresford SD 57004-6024

STATE OF WISCONSIN, COUNTY OF BROWN

The Argus Leader, a daily newspaper published in the city of Sioux Falls, Minnehaha County, State of South Dakota, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue:

02/06/2025

and that the fees charged are legal.
Sworn to and subscribed before on 02/06/2025

Legal Clerk


Notary, State of WI, County of Brown

5.15.27

My commission expires

Publication Cost:	\$91.20	
Tax Amount:	\$0.00	
Payment Cost:	\$91.20	
Order No:	10989887	# of Copies:
Customer No:	1248743	1
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THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NANCY HEYRMAN
Notary Public
State of Wisconsin

**NOTICE OF HEARING
TO REVIEW FUTURE
USE WATER PERMIT
NO. 4817-3**

Notice is given that the Water Management Board will review Future Use Permit No. 4817-3 held by the South Lincoln Rural Water System, 28647 472nd Avenue, Beresford SD 57004 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 4817-3. This permit was approved 1982 and currently reserves 1,448 acre-feet from the Dakota Aquifer located in Section 13 thru 16, 21 thru 28, 33 thru 36; all in T98N-R51W; Section 1 thru 4, 9 thru 16, 21 thru 28, 33 thru 36; all in T97N-R51W; Section 1 thru 4, 9 thru 11, 12 thru 16, 21 thru 28, 33 thru 36; all in T96N-R51W; Section 13 thru 36; all in T98N-R50W; Section 1 thru 36; all in T97N-R50W; Section 1 thru 27, W 1/2 Section 30 and 31, 34 thru 36; all in T96N-R50W; Section 16 thru 21, 28 thru 36, S 1/2 Section 26 and 27; all in T98N-R49W; Section 1 thru 36; all in T97N-R49W; Section 1 thru 36; all in T96N-R49W; S 1/2 Section 31-T98N-R48W; Section 6, 14 thru 23, 26 thru 35; all in T97N-R48W; and Section 2 thru 11, 14 thru 36; all in T96N-R48W. This description does not include areas in and adjacent to the cities of Canton and Beresford. The water is reserved for rural water system use. The permit was last reviewed in 2018. Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4817-3 REMAIN in EFFECT for 1,448 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications is available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4817-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capital Ave., Pierre SD.

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

before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501" or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by February 18, 2025. The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 4817-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 18, 2025.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 18, 2025.

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Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17."

This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 18, 2025. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board. Published on Feb. 6, 2025 at the total approximate cost of \$91.20 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 FUTURE USE WATER PERMIT
NO. 4839A-3**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Future Use Water Permit No. 4839A-3, City of Tyndall, PO Box 29, Tyndall SD 57066.

The Chief Engineer is recommending that Future Use Permit No. 4839A-3 REMAIN in EFFECT for 410 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 4839A-3, 2) the city has demonstrated a reasonable need for the water reserved by Permit No. 4839A-3, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 4839A-3 is subject to payment of the \$ 95.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the city after the Board hearing.

Eric Gronlund, Chief Engineer
January 22, 2025

City of Tyndall



November 15, 2024

Rachel Rodriguez
DANR
523 East Capitol
Pierre, SD 57501

Dear Ms. Rodriguez,
I am responding to your request regarding the Future Use Permit 4839A-3
reserving 410 acre fee if water annually.

The Tyndall City Council would like to retain the Future Use Water Permit for
future industrial and business expansion.

If you have any questions, please contact me at 605-589-3481.

Sincerely

Tereas Holland
Finance Officer
City of Tyndall

RECEIVED

NOV 20 2024

OFFICE OF
WATER

Affidavit of Publication

State of South Dakota }
County of Bon Homme } SS

.....Being first duly sworn
says that the **Tyndall Tribune & Register** is a legal
weekly newspaper for publication of legal and other official
notices as required by Chapter 298 of the Session
Laws of South Dakota, 1939; that it has bona fide paid
circulation of more than two hundred copies weekly;
that it is published in English language in the City of
Tyndall, Bon Homme County, South Dakota, and has
been admitted to the United States mail under second
class mailing privilege for more than one year prior to
the first publication of the notice herein mentioned, and
that it is printed in an office maintained at the place of
publication at Tyndall, South Dakota, and that dep-
onent is the publisher in charge of the advertising depart-
ment of said newspaper; that the advertisement headed

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

.....20.....20.....
.....20.....20.....
.....20.....20.....
.....20.....20.....

That the full amount of the fee charged for the publica-
tion of said notice,, inures 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 has been agreed
to be paid to any person whomsoever.

Subscribed and sworn to before me this

.....day of, 20.....

Notary Public
South Dakota
Notary Public, South Dakota

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 4839A-3

Notice is given that the Water Man-
agement Board will review Future Use
Permit No. 4839A-3 held by the City of
Tyndall, Teresa Holland, Finance Officer,
PO Box 29, Tyndall SD 57066 for progress
made in the development of the water
reserved by the Permit and future plans
for development of the water reserved
by Permit No. 4839A-3. This permit was
approved 1982 and currently reserves 410
acre-feet from groundwater (less than 160
feet deep) located in Section 21-T94N-
R60W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief
Engineer of the Water Rights Program
recommends that Permit No. 4839A-3
REMAIN in EFFECT for 410 acre-feet an-
nually because 1) the reserved water may
be developed, 2) there is need for the re-
served water 3) the proposed use will be
a beneficial use and 4) it is in the public
interest.

The Water Management Board will
conduct the hearing to review Future Use
Permit No. 4839A-3 on March 5, 2025, at
9:30 AM (Central Time), Floyd Matthew
Training Center, Joe Foss Bldg, 523 E Cap-
itol Ave., Pierre SD.

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

Any person who intends to participate
in the hearing before the Board and pres-
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jury must concern a matter either within
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vided by the Chief Engineer. The petition
form is available online at [https://danr.
sd.gov/public](https://danr.sd.gov/public) or by contacting the Chief
Engineer. The Chief Engineer's address is
"Water Rights Program", Joe Foss Build-
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mailing address is given above. If con-
testing the Chief Engineer's recommen-
dation, the permit owner shall also file a
petition. A petition filed by either an in-
terested person or the permit owner must
be filed by February 10, 2025.

RECEIVED

FEB 03 2025

OFFICE OF
WATER

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 4839A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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Any interested person may file a comment on the future use permit renewal

with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 10, 2025.

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Published once at an approximate cost of \$65.44 and can be viewed free of charge at www.sdpublicnotices.com

(Jan. 29)

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

CITY OF TYNDALL
P.O. BOX 29
TYNDALL SD 57066

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

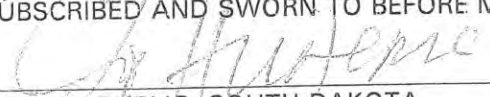
KELLY HERTZ, BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT (S)HE IS THE MANAGING EDITOR OF YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND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

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 29th DAY OF January, 2025
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$61.60 ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS
BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF
HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 01/29/2025

FILED ON: 01/29/25


SUBSCRIBED AND SWORN TO BEFORE ME THIS 29th DAY OF January, 2025


NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 07/15/2028

RECEIVED

IAN 31 2025

OFFICE OF
WATER

NOTICE OF HEARING TO
REVIEW FUTURE USE WATER PERMIT NO. 4839A-3

Notice is given that the Water Management Board will review Future Use Permit No. 4839A-3 held by the City of Tyndall, Teresa Holland, Finance Officer, PO Box 29, Tyndall SD 57066 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 4839A-3. This permit was approved 1982 and currently reserves 410 acre-feet from groundwater (less than 160 feet deep) located in Section 21-T94N-R60W for municipal use.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4839A-3 REMAIN in EFFECT for 410 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 4839A-3 on March 5, 2025, at 9:30 AM (Central Time), Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol Ave., Pierre SD.

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

Any person who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, shall allege that the renewal of the future use permit, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the renewal, or other matter concerning the renewal within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition with BOTH the permit owner and the Chief Engineer. A petition opposing the renewal shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501? or call (605) 773-3352. The permit holder's mailing address is given above. If contesting the Chief Engineer's recommendation, the permit owner shall also file a petition. A petition filed by either an interested person or the permit owner must be filed by February 10, 2025.

The petition shall be in writing and shall include a statement describing the unique injury upon renewal of the future use permit on the petitioner, the reasons for petitioner's opposition to renewal of the future use permit, and the name and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The hearing to review Future Use Permit No. 4839A-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03; and contested case procedures contained in SDCL 1-26. This hearing is an adversary proceeding. The permit owner or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose renewal of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 10, 2025.

Any interested person may file a comment on the future use permit renewal with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by February 10, 2025.

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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 February 10, 2025. However, since this particular matter is a future use permit renewal and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

Published once at the total approximate cost of \$61.28 and can be viewed free of charge at www.sdpublicnotices.com

Published January 29, 2025.

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REPORT ON IRRIGATION QUESTIONNAIRE VIOLATIONS

March 5, 2025

On October 23, 2024, 3,949 irrigation questionnaires were mailed by first class mail to 1,981 irrigators for reporting water use for the 2024 irrigation season. The permit holders were given until December 2, 2024, to return the forms. The cover letter included the three options for how questionnaires could be completed and returned.

Example:

3 easy options to return your irrigation questionnaire(s)	1. Online (preferred method)	2. Mail	3. Fax
	https://danr.sd.gov/iq -- your password is AAAIJI You can opt to be notified by email of successful online submission of your form(s).	Use the enclosed postage paid return envelope	Fax the completed form(s) to 605 773-5286
For assistance contact Amanda Dewell at 605 773-3352 or email: amanda.dewell@state.sd.us			

On January 14, 2025, 225 notices were mailed by first class mail to those irrigators who had not returned their irrigation questionnaires. Additional questionnaire forms were included with the mailing.

The January 14, 2025, notice advised permit holders that the Water Management Board may take one or more of the following actions regarding their permit(s), pursuant to SDCL 46-1-12 and SDCL 46-1-14:

- The permit(s) could be suspended for: a period of up to one year (first violation) or a period of up to three years (second violation – includes one previous suspension).
- The permit(s) could be cancelled (third violation – includes two previous suspensions).
- The permit(s) could be amended to include the mandatory irrigation questionnaire qualification.
- The Board could postpone any action or take no action.

The Water Rights Program recommends the Board take the following actions for those permits with irrigation questionnaires not received by March 5, 2025:

- Suspend the permits/rights (listed on attachment) effective April 4, 2025, unless the questionnaires are returned by April 4, 2025 (5:00 P.M. Central Time):

First Violation – one year suspension

Second Violation – three-year suspension

- Amend the permits/rights (listed on attachment) to include the following qualification, effective immediately:

“This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year.”

Following the hearing, all permit holders will be sent a notice via certified mail informing them of the Board’s action.



Amanda Dewell, Water Rights Program

IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
RT 3157-3	Gary Andersen 30094 463 rd Ave, Centerville SD 57014		CL	Yes	Parker-Centerville Aq	A
PE 7010-3	Gary Andersen 30094 463 rd Ave, Centerville SD 57014		CL	Yes	Parker-Centerville Aq	1
PE 7781-3	Gary Andersen 30094 463 rd Ave, Centerville SD 57014		CL	Yes	Parker-Centerville Aq	1
RT 7454-3	Kelly Barbier (50/50 ownership) 3317 Powderhorn Dr, Rapid City SD 57702 Kirste Schindler (50/50 ownership) 209 Jon Ct, Oacoma SD 57365		CL	Yes	Missouri: Elk Point Aq	1
RT 7475-3	Kelly Barbier (50/50 ownership) 3317 Powderhorn Dr, Rapid City SD 57702 Kirste Schindler (50/50 ownership) 209 Jon Ct, Oacoma SD 57365		CL	Yes	Missouri: Elk Point Aq	1
RT 926-1	Ronald & Mary Ann Berger 19688 Aspen Pl, Whitewood SD 57793		MD	Yes	Whitewood Creek	A
PE 8001-3	Todd Block PO Box 135, Grenville SD 57239		DA	System not constructed	Waubay Lake	1
PE 8002-3	Todd Block PO Box 135, Grenville SD 57239		DA	System not constructed	Coteau Lakes Aq	1
RT 1706-3	Michael M Cook PO Box 42, Ree Heights SD 57371		HD	Last reported irrigation in 1978	Sloughs	1
RT 1707-3	Michael M Cook PO Box 42, Ree Heights SD 57371		HD	Last reported irrigation in 1978	Sloughs	1
RT 1720-3	Michael M Cook PO Box 42, Ree Heights SD 57371		HD	Last reported irrigation in 1978	Sloughs	1
RT 341-3	Bob Creasy 29408 374 th Ave, Geddes SD 57342		CM	Yes	Missouri River	A
RT 385-3	Bob Creasy 29408 374 th Ave, Geddes SD 57342		CM	Yes	Missouri River	A
RT 1251-3	Bob Creasy 29408 374 th Ave, Geddes SD 57342		CM	Yes	Missouri River	A
RT 650A-3	John C Delph Revocable Trust, c/o John Delph PO Box 2416, Point Vedra Beach FL 32004	Bob Creasy 29408 374 th Ave, Geddes SD 57342	CM	Yes	Missouri River	A
RT 2547-3	Jeff Devries 40545 213 th St, Cavour SD 57324		BD	Yes	Floyd: East James Aq	2 (1 st – 2018)

VIOLATIONS

1 = First violation (one year suspension)

2 = Second violation (three year suspension)

A = Amendment to add Mandatory IQ Qualification

IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
RT 2548-3	Jeff Devries 40545 213 th St, Cavour SD 57324		BD	Yes	Floyd: East James Aq	2 (1 st – 2018)
RT 3085-3	Jeff Devries 40545 213 th St, Cavour SD 57324		BD	Yes	Floyd: East James Aq	2 (1 st – 2018)
RT 6381-3	Jeff Devries 40545 213 th St, Cavour SD 57324		BD	Last reported irrigation in 2007	Floyd: East James Aq	2 (1 st – 2018)
RT 6440-3	Jeff Devries 40545 213 th St, Cavour SD 57324		BD	Last reported irrigation in 2007	Floyd: East James Aq	2 (1 st – 2018)
RT 314-3	James Donnelly 47068 322 nd St, Elk Point SD 57025		UN	Yes	Missouri: Elk Point Aq	A
RT 4676-3	James & Robert Donnelly 47068 322 nd St, Elk Point SD 57025		CL	Yes	Missouri: Elk Point Aq	1
RT 881-2	Ryan Edwards 25331 Yellow Eagle Rd, White River SD 57579		MT	Yes	White River	2 (1 st – 2021)
RT 1787-3	Hamad Assam Corp, c/o Samuel Assam 3200 W 49 th St, Sioux Falls SD 57106	Bob Creasy 29408 374 th Ave, Geddes SD 57342	CM	Yes	Missouri River	1
RT 1173-2	Stanley Hanson 30167 303 rd Ave, Winner SD 57580		TR	Yes	Arikaree Aq	A
RT 1994-3	Albert Hattum 21862 West Bend Rd, Harrold SD 57536		HU	Yes	Missouri River	2 (1 st – 2022)
RT 1091-3	Walter Heine PO Box 145, Blunt SD 57522		HU	Last reported irrigation in 1989	Highmore-Blunt Aq	A
RT 6804C-3	Scott Heine 56568 886 th Rd, Harlington NE 67839		CL	Yes	Missouri: Elk Point Aq	1
RT 2381-2	Edward Hill 106 Lakeshore Dr, Valentine NE 69201		TD	Yes	Ogallala Aq	1
RT 565-2	Zebulon & Megan Hoffman 20395 Wilsey Rd, Creighton SD 57790		PE	Yes	Cheyenne River/Dry Draw	A
PE 3268A-3	Huron Colony, c/o Joey Waldner 40068 Huron colony Ln, Huron SD 57350		BD	Yes	Tulare: East James Aq	1
RT 6395-3	Huterville SD Inc, c/o Tom Waldner 14625 401 st Ave, Stratford SD 57474		BN	Yes	Pleistocene Series: Unknown Aq	1
PE 8688-3	Nicholas P Hybertson 28886 463 rd Ave, Centerville SD 57014		TU	Yes	Parker-Centerville Aq	1
RT 1670-1	Buddy, Peggy, and Kami Ireland & Lana Dacar (equal partners w/ rights of survivorship) 18542 Dry Creek Rd, Belle Fourche SD 57717		BU	Yes	Madison Aq	1

VIOLATIONS

1 = First violation (one year suspension)

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IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
RT 1350-3	Scott Jensen 24348 478 th Ave, Dell Rapids SD 57022		MY	Yes	Big Sioux; Moody Aq	1
RT 6042-3	Scott Jensen 24348 478 th Ave, Dell Rapids SD 57022		MA	Yes	Big Sioux River	1
PE 876-1	Gene E Johnson 19610 US HWY 85, Belle Fourche SD 57717		LA	Yes	Minnelusa Aq	1
PE 2822-2	Johnson Land & Cattle LLC, c/o Adam Johnson, 24171 Killdeer Dr, Cody NE 69211		BT	System not constructed	Ogallala Aq	1
RT 1530-2	Dan & Alvin Keszler 30317 289 th St, Clearfield SD 57580		TR	Last reported irrigation in 1992	Sand Creek	1
RT 1411A-1	Clint Krambeck & Barb Cline 10366 Upper Redwater Rd, Spearfish SD 57783		BU	Yes	Lake Creek	1
RT 7114-3	Michael A Koslowski 13329 443 rd Ave, Waubay SD 57273		DA	Yes	Waubay Lake	1
RT 7336-3	Michael A Koslowski 13329 443 rd Ave, Waubay SD 57273		DA	Yes	Waubay Lake	1
RT 7286-3	Brian Kozak 30620 417 th Ave, Tyndall SD 57066		BH	Yes	Niobrara Aq	1
RT 7543-3	Brian Kozak 30620 417 th Ave, Tyndall SD 57066		BH	Yes	Choteau: Tyndall Aq	1
RT 1028-2	Link Realty Holdings LLC, c/o Troy Link PO Box 597, Minong WI 54859		PE	Yes	Cheyenne River/Dry Draws	A
RT 1202-2	Link Realty Holdings LLC, c/o Troy Link PO Box 597, Minong WI 54859		PE	Yes	Cheyenne River	A
RT 616-2	Link SD Ranches LLC, c/o Troy Link PO Box 597, Minong WI 54859		PE	Yes	Cheyenne River	A
RT 2102-2	Livermont Brothers Inc, c/o Dean Livermont 28658 237 th Ave, Martin SD 57551		BT	Yes	Ogallala Aq	1
PE 8253-3	Makens Oak Tree LLP, c/o Michael Makens PO Box 274, Clark SD 57552		CK	System not constructed	Vermillion East Fork: Antelope Lake Aq	2 (1 st – 2019)
PE 2871-2	Kimberly & Deborah Marcus 102 N Ridge Rd, Valentine NE 69212		TD	System not constructed	Ogallala Aq	1
RT 2036-3	James & Joan McElhany 45840 SD HWY 22, Castlewood SD 57223		HM	Last reported irrigation in 1991	Big Sioux: North Aq	A
RT 5735-3	Mark McCloud 33670 183 rd St, Highmore SD 57345		HY	Yes	Tulare: Hyde Aq	1

VIOLATIONS

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IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
PE 8603-3	Mark McCloud 33670 183 rd St, Highmore SD 57345		HY	System not constructed	Tulare: Hyde Aq	1
RT 3484-3	Charlotte Nichols, c/o Philip Nichols 7497 Rolling Meadow Dr, West Chester OH 45069		BG	Yes	Big Sioux: Unnamed Creek Aq	A
RT 6278-3	Robert A Novotny 10035 Cnty Rd 19, Lidgerwood ND 58503		ML	Yes	Prairie Coteau Aq	A
PE 8408-3	Robert A Novotny 10035 Cnty Rd 19, Lidgerwood ND 58503		ML	Yes	Prairie Coteau Aq	1
PE 7630-3	Mark A Nylén PO Box 649, N Sioux City SD 57049		UN	Yes	Missouri: Elk Point Aq	1
PE 2836-2	Lisa O'Rourke-Fulton 29393 272 nd Ave, Valentine NE 69201		TD	Yes	Ogallala Aq	1
PE 8730-3	Jay W Parsons PO Box 177, Viborg SD 57070		TU	Yes	Prairie Coteau Aq	1
RT 842-1	Robert Phelps Jr 16220 Spring Valley Rd, Piedmont SD 57769		MD	Yes	Minnelusa Aq	1
PE 8755-3	C H Rau 12553 309 th Ave, Selby SD 57472		WL	System not constructed	Selby Aq	1
RT 5566-3	Wayne H Reiersen 30048 Reiersen Pl, Pollock SD 57648		CA	Yes	Grand Aq	1
RT 7615-3	Wayne H Reiersen 30048 Reiersen Pl, Pollock SD 57648		CA	Yes	Grand Aq	1
RT 1613-2	Rogers River Ranch, c/o Richard Rogers 4519 Lookout Mtn, Rapid City SD 57702		CU	Yes	Cheyenne River	A
RT 3168-3	Larry Ryken 244 Gavins Point Rd, Yankton SD 57078		CL	Last reported irrigation in 1992	Missouri: Elk Point	1
RT 4467-3	Layna Saathoff 46044 199 th St, Bruce SD 57220		BG	Last reported irrigation in 2005	Big Sioux: Brookings Aq	1
RT 1523-2	Saddle Butte Angus, c/o Larry May 20545 May Rd, Interior SD 57750		JA	Last reported irrigation in 2002	Dry Draw	1
PE 2378-2	Saddle Butte Angus, c/o Larry May 20545 May Rd, Interior SD 57750		JA	No history of irrigation	Dry Draw Dam	1
PE 2013-1	Santa Maria Land & Cattle Corp 10151 SD HWY 34, Belle Fourche SD 57717		BU	System not constructed	Madison Aq	1
RT 4506-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 4855-3	Karl Schenk		YA	Yes	Lower James Missouri Aq	1

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IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
	44352 308 th St, Mission Hills SD 57046					
RT 6838-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 6839-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Missouri: Elk Point Aq	1
RT 6917-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 6918-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 7017-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Missouri: Elk Point Aq	1
RT 7667-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 7668-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 7670-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Missouri: Elk Point Aq	1
RT 7819-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 7842-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Missouri: Elk Point Aq	1
RT 7939-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 7955-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Missouri: Elk Point Aq	1
RT 8192-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Missouri: Elk Point Aq	1
RT 8816-3	Karl Schenk 44352 308 th St, Mission Hills SD 57046		YA	Yes	Lower James Missouri Aq	1
RT 958-1	Travis & Jody Schenk 19757 Red Hill Rd, Spearfish SD 57783		LA	Yes	Crow Creek	A
RT 1869-1	Travis Schenk 19757 Red Hill Rd, Spearfish SD 57783		LA	Yes	Minnelusa Aq	1
PE 8742-3	Larry Schmidt 44819 277 th St, Parker SD 57053		TU	System not constructed	Parker-Centerville Aq	1
RT 6267-3	Selby Community Golf Course 201 S Railway St, Selby SD 57472		WL	Yes	Pleistocene Series: Unknown Aq	1

VIOLATIONS

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IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
RT 4479-3	John, David, and Jennifer Simon 37210 289 th St, Geddes SD 57342		CM	Last reported irrigation in 2009	Missouri: River	1
RT 484B-1	Dale Sprague 16221 Twilight Rd, Mud Butte SD 57758		BU	Yes	Horse Creek	1
RT 5649-3	Spring Creek Golf Course 27062 479 th Ave, Sioux Falls SD 57108		LN	Yes	Big Sioux: South Aq	1
RT 224-3	Kory Standy PO Box 114, Platte SD 57369		CM	Yes	Missouri River	A
RT 1560-3	Kory Standy PO Box 114, Platte SD 57369		CM	Yes	Missouri River	A
RT 2546A-3	Kory Standy PO Box 114, Platte SD 57369		CM	Yes	Missouri River	A
RT 2954-3	Lane Tekrony 47840 180 th St, Clear Lake SD 57226		DU	Yes	Pleistocene Series: Unknown Aq	2 (1 st – 2019)
PE 8803-3	Jeff Thompson 46742 Lyons St, Colton SD 57018		MA	System not constructed	Big Sioux: Middle Skunk Creek Aq	1
RT 1806-3	Ronald Thompson 46840 250 th St, Colton SD 57018	Jeff Thompson 46742 Lyons St, Colton SD 57018	MA	Yes	Big Sioux: Middle Skunk Creek Aq	1
RT 3437-3	Ronald Thompson 46840 250 th St, Colton SD 57018	Jeff Thompson 46742 Lyons St, Colton SD 57018	MA	Yes	Big Sioux: Middle Skunk Creek Aq	1
RT 3004B-3	Stanley Tjeerdsma 40491 311 th St, Avon SD 57315		CM	Out of CRP in 2022	Choteau Creek	A
RT 2282-3	John or Byran Uecker PO Box 573, Wagner SD 57380		CM	Yes	Choteau: West Aq	A
RT 2072-3	Dave & Darwin Ulvestad 46720 201 st St, Bruce SD 57220		BG	Yes	Big Sioux: Brookings Aq	1
RT 2126-3	David Ulvestad 46720 201 st St, Bruce SD 57220		BG	Yes	Big Sioux: Brookings Aq	1
RT 3204-3	David Ulvestad 46720 201 st St, Bruce SD 57220		BG	Yes	Big Sioux: Brookings Aq	1
RT 7236-3	David Ulvestad 46720 201 st St, Bruce SD 57220		BG	Yes	Big Sioux: Brookings Aq	1
RT 7237-3	David Ulvestad 46720 201 st St, Bruce SD 57220		BG	Yes	Big Sioux: Brookings Aq	1
RT 7421-3	Valley View Farms Inc., c/o Nathan Reichling 17716 458 th Ave, Watertown SD 57201		CD	Yes	Big Sioux: North Aq	1
RT 4332-3	Kash Van Dyke 48549 219 th St, Elkton SD 57026		BG	Yes	Big Sioux: Aurora Aq	1

VIOLATIONS

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IRRIGATION QUESTIONNAIRE VIOLATIONS

Number RT/PE	Owner	Renter/Operator	County	Irrigates	Source	Violation
RT 5558A-3	Kash & Trish Van Dyke 48549 219 th St, Elkton SD 57026		BG	Yes	Big Sioux: Aurora Aq	1
RT 1285-3	Cody Warne 3520 Lambeth Pl, Pierre SD 57501		SU	Yes	Cow Creek Aq	A
RT 5227-3	Cody Warne 3520 Lambeth Pl, Pierre SD 57501		SU	Yes	Cow Creek Aq	1
RT 7145-3	Delos Warriner 44147 307 th St, Yankton SD 57078		YA	Yes	Lower James Missouri Aq	1
RT 1736-3	Western Icon Land Development Co Inc. 21316 409 th Ave, Cavour SD 57324		BD	Yes	Floyd: East James Aq	1
RT 3326-3	Western Icon Land Development Co Inc. 21316 409 th Ave, Cavour SD 57324		BD	Yes	Floyd: East James Aq	A
RT 427-1	Curt & Cheryl Westland 11450 Brooker Rd, Belle Fourche SD 57717		BU	Last reported irrigation in 1998	Indian Creek	A
RT 430-1	Leroy Wetz 14164 Wetz Rd, Vale SD 57788		MD	Yes	Belle Fourche River/Dry Creek	A
RT 1508-3B	Agnes Williamson 29408 374 th Ave, Geddes SD 57342	Bob Creasy 29408 374 th Ave, Geddes SD 57342	CM	Yes	Missouri River	A

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

IN THE MATTER OF WATER PERMIT)	FINDINGS OF FACT,
APPLICATION NO. 8864-3,)	CONCLUSIONS OF LAW, AND
BIG SIOUX COMMUNITY)	FINAL DECISION
WATER SYSTEM)	

This matter came before the South Dakota Water Management Board (Board) for hearing on December 4, 2024. Board members James Hutmacher, William Larson, Rodney Freeman, Chad Comes, and Leo Holzbauer attended the hearing and heard the evidence presented. Jennifer L. Verleger represented the Department of Agriculture and Natural Resources (DANR) Water Rights Program and the Chief Engineer. Reed T. Mahlke represented Applicant Big Sioux Community Water System. Ryan D. Cwach and Brian E. Jorde represented Petitioner Rita Brown.

Exhibits 100-107, and Exhibit A were offered without objection and accepted into the record. Exhibit 108 was offered and not received. Having considered the testimony and exhibits presented, the Board enters the following:

A. FINDINGS OF FACT

1. On April 2, 2024, the Water Rights Program received Water Permit Application No. 8864-3 from Jodi Johanson, Manager of the Big Sioux Community Water System.

2. The Application proposes to construct and place to beneficial use up to 300 acre-feet of water annually at a maximum instantaneous diversion rate of 0.67 cubic feet per second (cfs) from one well completed in the Big Sioux: Northern Skunk Creek aquifer located in the NE¹/₄ SW¹/₄ of Section 16, Township 105 North, Range 51 West, Lake County, approximately seven miles south of Wentworth, SD.
3. The proposed water use is rural water system use.
4. The water was previously appropriated and reserved by Future Use Permit Nos. 6834-3 and 6834A-3.
5. The Chief Engineer recommended approval of Application No. 8864-3 with several conditions.
6. Notice of Water Permit Application No. 8864-3 was timely advertised in the Argus Leader and Madison Daily Leader on June 28, 2024. Notice was also posted on DANR's public notices website.
7. MeLisa Elijah submitted a comment on the Application on July 1, 2024. Rita Brown submitted a petition on behalf of the Alan and Rita Brown Trust on July 8, 2024, opposing the Application. All comments and petitions were timely received.
8. A Notice of Hearing was issued July 18, 2024, for a hearing dated October 2, 2024.
9. A request for an automatic delay under SDCL § 46-2A-5 was sent on July 29, 2024.

10. A revised Notice of Hearing was issued October 24, 2024, for a hearing dated December 4, 2024.

11. Water Permit Application No. 8864-3 proposes to place water to beneficial use that has already been reserved under Future Water Use Permit Nos. 6834-3 and 6834A-3.

12. A water permit application requires an analysis pursuant to SDCL § 46-2A-9 to determine whether: 1) there is a reasonable probability that unappropriated water is available for the proposed use, 2) the proposed use would impair existing domestic water uses and water rights, 3) the proposed use would be a beneficial use, and 4) the proposed use is in the public interest pertaining to matters of public interest within the regulatory authority of the Board.

Adam Mathiowetz

13. Austin Settje and Adam Mathiowetz, Natural Resources Engineers with the Water Rights Program, performed a technical review of the Application and prepared a report. Exhibit 101. Mr. Mathiowetz provided expert testimony to the Board regarding the Application's technical review.

14. Because this water use was previously reserved, the water has already been accounted for in the aquifer's hydrologic budget.

15. Mr. Mathiowetz's testimony primarily explained how the hydrologic budget and the observation well data, in combination, indicate there is a reasonable probability that unappropriated water is available even though the

water was previously appropriated by Future Water Use Permit Nos. 6834-3 and 6834A-3.

16. Mr. Mathiowetz's testimony also explained the aquifer characteristics in the area and discussed the impact the permitted use would have on known surrounding wells.

17. The technical review concluded that there is a reasonable probability that unappropriated water is available for the proposed use and that there is a reasonable probability that the proposed use would not impair existing domestic water uses or water rights with adequate wells.

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

Eric Gronlund

19. Eric Gronlund, the Chief Engineer, provided a recommendation to approve the Application with conditions. Exhibit 105. Mr. Gronlund provided expert testimony to the Board regarding the Application's beneficial use and public interest factors.

20. Mr. Gronlund testified that the Applicant's proposed beneficial use is rural water system use. He testified that past Board decisions and actions indicate that rural water system use is in the public interest.

21. Mr. Gronlund also noted that he had reviewed the petition and comment for this matter and that generally the concerns were regarding nearby

water levels, the potential for over-appropriation, and the quantity of water for the proposed purpose.

22. Mr. Gronlund indicated that for permitting purposes, the beneficial use of the permit is to provide water to the rural water system and that the end users the system chooses to serve within its boundaries are its own prerogative.

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

Jeff Carruthers

24. Mr. Jeff Carruthers is a Water Operator for the Big Sioux Community Water System. Mr. Carruthers testified about the geographical service area of the system and general water use of the system.

25. Mr. Carruthers testified that the Big Sioux Community Water System intends to use the water authorized by this application to provide additional water to an ethanol plant (Dakota Ethanol).

26. The Board finds Mr. Carruthers to be a credible witness and that these Findings of Fact are supported by the evidence presented.

Rita Brown

27. Petitioner Rita Brown is a concerned landowner in the area of the proposed application. Ms. Brown is also a shareholder of Dakota Ethanol.

28. Ms. Brown testified that she is concerned about the amount of water being used for ethanol plants in general and the cumulative effect that water use will have on agriculture.

29. Ms. Brown installed a new irrigation system and new well in 2018, and testified that she cannot maintain water pressure in that system throughout the year. Ms. Brown does not know the depth of the well or the pump inlet depth. Ms. Brown testified that she has never made a complaint to DANR or the Water Rights Program regarding problems with her well system.

30. Ms. Brown testified that “public interest,” in her opinion, “means farmers who need to irrigate to produce a good crop to sell to the corn to the ethanol plant have sufficient water to irrigate. It means people that feed livestock have sufficient water. It means food, fuel.”

31. Ms. Brown testified that “beneficial use,” in her opinion, means growing crops and feeding animals. Ms. Brown does not believe cooling a compression line qualifies. Ms. Brown does not believe additional water for the ethanol plant is a beneficial use.

32. Ms. Brown does not believe that serving Dakota Ethanol is the best utilization of water supplies and that allowing them to use more water is not consistent with the interests of the public.

33. The Board finds Ms. Brown to be a credible witness and that these Findings of Fact are supported by the evidence presented.

34. Any finding of fact more properly designated as a conclusion of law will be treated accordingly.

35. The Board finds that the testimony clearly shows that water is available.

36. The Board finds that there will not be impairment.

37. The Board finds that water provided by rural water systems to service connections is a beneficial use of water and is in the public interest.

38. The Board finds that water used for industrial purposes, specifically ethanol plants, is also considered a beneficial use and serves the public interest.

39. Mrs. Brown testified her existing irrigation water well is reliant on the Northern Skunk Creek Aquifer. In the last few years, her existing irrigation water well has had difficulty producing water. Mrs. Brown's crop yields have decreased due to the inability to irrigate consistently out of the aquifer. Mrs. Brown testified that neighboring farmers are also experiencing this issue.

B. PETITIONER'S ALTERNATIVE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Water Rights filed Proposed Findings of Fact and Conclusions of Law and the Petitioner filed proposed alternate findings and conclusions. In compliance with SDCL § 1-26-25, Petitioner's Proposed Findings of Fact and Conclusions of Law are accepted, modified, or rejected as follows:

1. PROPOSED ALTERNATIVE FINDINGS OF FACT (Proposed Findings)

A. Paragraphs 1 through 7, 9, the first sentence of Proposed Finding 10, 13, and 18 of Petitioner's proposed findings are

noted but not incorporated as they are duplicative.

B. Proposed findings 8, 11, 14, 15 through 17, 19 through 22, 24, and 40 are rejected as it is irrelevant.

C. The second sentence of Proposed Finding 10 is rejected as it is inconsistent with the testimony provided.

D. Proposed Findings 12 and 25 are rejected as an incomplete statement of the documentary and testimonial evidence presented at the hearing and is less accurate than the Proposed Findings of Fact submitted by the Water Rights Program.

E. Proposed Finding 23 is accepted and incorporated as Finding 39.

2. PROPOSED ALTERNATIVE CONCLUSIONS OF LAW

A. Proposed Conclusions of Law 26 through 30, 33, 37, and 42 are noted but not incorporated as they are duplicative.

B. Proposed Conclusions 31 and 39 are rejected as irrelevant.

C. Proposed Conclusions 32, 34, 35, 36, 38, 40, and 43 are rejected as they are inconsistent with the documentary and testimonial evidence presented at the hearing.

D. Proposed Conclusions 41 and 44 are rejected as they assume facts not in evidence.

On January 22, 2025, as set forth in the Certificate of Service, Petitioner filed objections to Water Right's proposed Findings of Fact and Conclusions of Law. On December 10, 2024, notice was served on the parties that "Written objections or comments in support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law, and Final Decision are to be mailed counsel for both the Board and the Water Rights Program, and other parties by January 21, 2025." Petitioner's objections to Water Right's proposed Findings of Fact and Conclusions of Law were not timely filed and, as such, are not further addressed herein.

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

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The Application falls within the Board's responsibility over water appropriation and regulation in Title 46.
2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.
3. The Chief Engineer recommended granting the Application with the conditions outlined in his recommended decision. The recommendation, however, is not binding on the Board. SDCL § 46-2A-4(8).

4. The Applicant is required to satisfy each of the factors set forth in SDCL § 46-2A-9.

5. The Board concludes that the Applicant has satisfied each of the factors set forth in SDCL § 46-2A-9.

6. Any conclusion of law more properly designated as a finding of fact will be treated accordingly.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8864-3 is granted with the following qualifications:

1. The well approved under Water Permit No. 8864-3 is located near domestic wells and other wells that 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. The well authorized by Permit No. 8864-3 must be constructed by a licensed well driller and construction of the well and installation of the pump must 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. The Permit holder must report to the Chief Engineer annually the amount of water withdrawn from the Northern Skunk Creek Management Unit of the Big Sioux aquifer.

4. Water Permit No. 8864-3 authorizes a total annual diversion of up to 300 acre-feet of water from the Northern Skunk Creek Management Unit of the Big Sioux aquifer.

Dated this 5th day of March 2025.

BY THE BOARD:

South Dakota Water Management Board

**BEFORE THE DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD**

**IN THE MATTER OF THE
WATER PERMIT APPLICATION
NO. 8864-3 BY
BIG SIOUX COMMUNITY
WATER SYSTEM**

**APP. NO. 8864-3

FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Now this matter having come upon hearing on December 04, 2024, and the Board, after hearing the evidence and testimony, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On April 02, 2024, Big Sioux Community Water System filed Application No. 8864-3 to appropriate water within Hydrologic Unit 10170203 of the Lower Big Sioux Basin, specifically, the Northern Skunk Creek Aquifer.
2. On July 08, 2024, Rita Brown on behalf of the Rita and Alan Brown Trust timely filed a petition opposing Application No. 8864-3.
3. Big Sioux Community Water System is a rural water system. The purpose of rural water systems is primarily to support domestic water uses to domestic users within the territory of the rural water system.
4. Application No. 8864-3 proposes to permit water previously reserved by Future Use Permit Nos. 6834-3 and 6834A-3, for use at the Dakota Ethanol plant in Wentworth, SD
5. Application No. 8864-3 proposes to drill one water well to produce up to 300-acre feet of water from the Northern Skunk Creek Aquifer.
6. Adam Mathiowetz, PE, SD DANR - Water Rights Program testified about the Water Rights Program Report dated June 21, 2024. Mr. Mathiowetz was one of the authors of the report.
7. The Reported reached the following factual conclusions:
 - a. The proposed location of the water well is near several existing domestic water wells.

- b. The Big Sioux Northern Skunk Creek aquifer recharges through the infiltration of precipitation and snowmelt. Previous studies have estimated that the annual recharge rate of Northern Skunk Creek aquifer is 8,674 acre-feet per year.
 - c. The present average annual withdrawal rate from the aquifer exceeds the estimated average annual recharge rate to the aquifer even without considering present temporary use permits that are withdrawing water.
 - d. Observational well data demonstrates a long-term decline in groundwater present in the aquifer. Recent observation well data of LK-79C shows some of the lowest levels ever for the aquifer.
 - e. There are several existing aquifer water rights/permits within less than a mile of the proposed well in Water Permit Application No. 8864-3
 - f. The rural water system is a water distribution system; however, the sole purpose of the permit request is to supply water to Dakota Ethanol facility, which is an industrial use.
8. Mr. Mathiowetz testified that DANR does not consider future likely water use from the aquifer when analyzing whether new permit applications should be requested.
9. Mr. Eric Gronlund is the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources. Based on the report, he made a recommendation that Water Permit Application No. 8864-3 will not result in unlawful impairment to existing domestic water uses and water rights, the proposed use is a beneficial use, and is further in the public interest.
10. Mr. Gronlund further testified that while his recommendation is that (1) the proposed use is a beneficial use and (2) within the public interest, Mr. Gronlund and his team do not conduct any review of analysis of the use or the public interest. Mr. Gronlund testified that the simple consumption of water, regardless of purpose or actual use, is the extent of his analysis on whether it is a beneficial use or within the public interest.
11. The public notice of the application as shown by the affidavit of publication did not indicate the use or public interest.
12. When examined about what foundational or evidentiary basis DANR relied upon to conclude granting Big Sioux's water permit was in fact in the public interest, Mr. Gronlund testified because that this they way DANR has always done things.

13. Jeff Carruthers testified on behalf of the Big Sioux Community Water System. Mr. Carruthers testified that Big Sioux Community Water System has 2,800 customers, including the Dakota Ethanol Plant.
14. Mr. Carruthers testified that the Applicant marked "Industrial" for the use on the Application but subsequently marked "Rural Water System" at the instruction of a DANR employee.
15. Mr. Carruthers further testified that Big Sioux Community Water System did not know Dakota Ethanol's intended use or purpose for the groundwater.
16. The representative was knowledgeable about the Dakota Ethanol plant. He testified that the plant is currently producing at its nameplate capacity of 110 million gallons of ethanol per year with its present water.
17. No evidence was presented that the Dakota Ethanol plant has the legal ability to or is in the process of expanding beyond its current nameplate capacity.
18. Rita Brown is an area landowner with an irrigation well near the proposed well in Water Permit Application No. 8864-3. She is also a shareholder of Dakota Ethanol plant.
19. Mrs. Brown testified that the Dakota Ethanol plant is proposing to construct a carbon capture facility that will connect to a proposed massive Summit carbon pipeline.
20. Mrs. Brown testified that the proposed carbon capture facility is an intensive industrial users of water that require approximately 97,000,000 gallons of new water annually.
21. The apparent use of water to be allocated per this Permit Application is not for ethanol production but for cooling purposes in a proposed but not yet built carbon capture facility.
22. Landowners in the Wentworth area are reliant on irrigation to maximize production of row crops on their lands. This includes the opposing petitioner Rita Brown.
23. Mrs. Brown testified her existing irrigation water well is reliant on the Northern Skunk Creek Aquifer. In the last few years, her existing irrigation water well has had difficulty producing water. Mrs. Brown's crop yields have decreased due to the inability to irrigate consistently out of the aquifer. Mrs. Brown testified that neighboring farmers are also experiencing this issue.
24. Mrs. Brown was not aware that she, or any landowner, could complain about inefficient producing wells to the SD DANR but DANR is on notice now.

25. Mrs. Brown's testimony was uncontroverted.

CONCLUSIONS OF LAW

26. "The people of the state have a paramount interest in the use of all the water of the state."

SDCL 46-1-1.

27. "The state shall determine in what way the water of the state, both surface and underground, should be developed for the greatest public benefit." SDCL 46-1-2.

28. All water within the state is the property of the people of the state." SDCL 46-1-3.

29. The State of South Dakota follows the public trust doctrine which imposes an obligation to preserve water for legitimate public use. The state is a trustee of the water for the public. Parks v. Cooper, 676 N.W.2d 823, 841 (SD 2004).

30. Domestic use of water is the highest priority use of water in the state. SDCL § 46-1-5.

31. A nonprofit rural water system may only obtain a future use permit in contemplation of future needs and showing available future water. SDCL § 46-5-38. For nonprofit rural water systems, future use permits may only be obtained for the treatment, distribution, and sale of water primarily for *domestic purposes* to a rural area." *Id.* (emphasis added). For all other non-domestic purpose customers and uses, a future use permit is not available. *Compare* SDCL § 46-5-38 *with* SDCL § 10-36A-1 (*The statute for future use permits limits nonprofit rural water systems to only be available for domestic purposes while SDCL 10-36A-1 acknowledges that rural water systems can have customers with different uses.*)

32. The future use permit sought to reserve water for an industrial use only.

33. In order to obtain a permit, the applicant must demonstrate by the preponderance of the evidence that:

- a. there is a reasonable probability that unappropriated water is available for the applicant's proposed use;
- b. the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights;
- c. the proposed use is a beneficial use; and
- d. the permit is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. SDCL § 46-2A-9.

34. The evidence presented showed that there is a reasonable probability that unappropriated water is *not available*. The Chief Engineer's Report concluded that the current annual withdrawal rate exceeds the recharge rate of the aquifer.
35. Observational well data of the aquifer shows a long-term decline in the volume of the aquifer. Area landowners with irrigation are already experiencing difficulties irrigating crops and maximizing yields.
36. The Applicant presented no evidence that it would not unlawfully impair domestic purposes of existing domestic water uses and rights.
37. A proposed use is a beneficial use if the use "is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3).
38. No evidence was presented that the ultimate use, carbon capture facility cooling, is consistent with the interests of the public or the best utilization of water supplies.
39. Big Sioux Community Water System presented no evidence that an additional 300-acre feet of water per year to the Dakota Ethanol Plant for purposes of carbon sequestration, or any other purpose, is reasonable, useful, and beneficial to the system. Big Sioux Community Water System itself does not need the water and no information was presented on what the ultimate user Dakota Ethanol's actual proposed use for the water.
40. DANR's witnesses further indicated that their analysis of beneficial use was limited to whether the proposed use used water. The Board is left to speculate on the use.
41. The use of water for carbon capture and sequestration is not a beneficial use. There is no public law or national interest in carbon sequestration and capture. *Compare with In re Water Right Claim No. 1927-2, 524 N.W.2d 855, 858 (1994) (finding that a water permit for waterfowl habitat and other wildlife is a beneficial use as evidenced by treaties, existing state and federal laws).*
42. The public interest within the regulatory authority of the board means (1) "the general supervision of the waters of the state, including measurement, appropriation, and distribution thereof," and (2) to "regulate and control the development, conservation, and allocation of the right to use the waters of the state according to the principals of beneficial use and priority of appropriation established" by state law. SDCL §§ 46-2-9 & 46-2-11.

43. Big Sioux Community Water System presented no evidence that the permit is in the public interest within the regulatory authority of the Water Management Board. Because the ultimate use was not articulated, the Board cannot determine whether the use is in line with the development, conservation, and allocation of water.
44. The use of water for carbon capture and sequestration is not in the public interest. The use of water applies the water to no public purpose and allocates limited groundwater resources to the wasteful use of cooling pipeline infrastructure.

Based on the foregoing findings of fact and conclusions of law, the Board orders as follows:

45. The Future Use Permit was erroneously issued to the applicant because the future use permit was for an industrial use when rural water systems may only obtain a future use permit for a domestic purpose. Therefore, the Board does not have jurisdiction to consider Application No. 8864-3 and it is therefore DENIED;
46. Applicant failed to show by the preponderance of the evince that Application No. 8864-3 meets the criteria of SDCL § 46-2A-9 and it is therefore DENIED;
47. There is no public benefit to the people of South Dakota for the use of limited groundwater resources for wasteful carbon capture and sequestration. The public trust doctrine compels the Board to preserve water for legitimate public uses. As trustees of the water for the public, Application No. 8864-3 is therefore DENIED.

Dated this ____ day of _____ 2025.

South Dakota Water Management Board BY:

James Hutmacher, Chair

ATTEST BY

Leo Holzbauer, Secretary