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MINUTES OF THE 235TH MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
MARCH 2, 2022

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

Chairman Bjork announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following attended the meeting:

Board Members: Tim Bjork, Jim Hutmacher, Rodney Freeman, Peggy Dixon, and Bill Larson attended remotely. Leo Holzbauer attended in person. Chad Comes was absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Genny McMath, Nakaila Steen, and Mark Rath, Water Rights Program.

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

Court Reporter: Carla Bachand, Capital Reporting Services.

Water Permit Application No. 2014A-3: Chad Schroeder, city of Huron Parks and Recreation Department.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT DECEMBER 8, 2021, BOARD MINUTES: Motion by Freeman, seconded by Dixon, to approve the minutes of the December 8, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

MAY 4-5, 2022, MEETING LOCATION: The May 4-5, 2022, meeting will be in Pierre.

Mr. Larson noted that he may not be available for the May meeting.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Ms. Jasper reported that Powertech has filed a notice of appeal regarding the board's order denying the motion to amend the procedural order to resume the evidentiary hearing. The appeal is currently pending.

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

APPOINTMENT OF RAPID VALLEY WATER MASTER: Nakaila Steen, DANR Water Rights Program, reported the Rapid Valley Conservancy District has requested that Kevin Ham be appointed as the water master for the 2022 irrigation season for the Rapid Creek area. Mr. Ham has been water master since 2005.

Motion by Freeman, seconded by Larson, to appoint Kevin Ham as the Rapid Valley watermaster for the 2022 irrigation season. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE PERMIT SEVEN YEAR REVIEWS: State law requires that future use permits be reviewed by the Water Management Board every seven years, and that the permit holder demonstrate a reasonable need for the future use permit.

The city of Vermillion submitted a letter requesting Future Use Permit No. 6237-3 be allowed to remain in effect for 1,900 acre-feet annually.

No petitions to intervene were submitted.

The Chief Engineer recommended that the future use permit for the city of Vermillion be allowed to remain in effect for an additional seven years.

Motion by Larson, seconded by Dixon, to allow the Future Use Permit No. 6237-3 for the city of Vermillion to remain in effect for 1,900 acre-feet annually for an additional seven years. A roll call vote was taken, and the motion carried unanimously.

IRRIGATION QUESTIONNAIRE VIOLATIONS FOR FAILURE TO REPORT 2021 WATERUSE: Genny McMath, Water Rights Program, presented her report on irrigation questionnaire violations.

On October 22, 2021, 3,873 irrigation questionnaires were mailed by first class mail to 1,960 irrigators for reporting water use for 2021. The permit holders were given until December 3, 2021, to return the forms. The cover letter included examples of how questionnaires could be completed and returned. The three options for returning the irrigation forms are online, by mail, by fax or by calling the department. Returning the forms online is the preferred method.

In January 2022, approximately 225 notices were mailed to those irrigators who had not returned the irrigation questionnaires by the deadline. Additional questionnaire forms were included with the mailing, and all notices were sent by Certified Mail.

The January 20, 2022, notice advised permit holders that the board may take one or more of the following actions pursuant to SDCL 46-1-12 and SDCL 46-1-14:

The permit(s) could be suspended for:

1. A period of up to one year (first violation); or
2. A period of up to three years (second violation – includes one previous suspension).

The permit(s) could be canceled for a third violation (includes at least two previous suspensions).

Permit(s) without a reporting qualification could be amended to include the mandatory irrigation questionnaire qualification.

Postpone any action or take no action.

The Water Rights Program recommended that the board take the following action for permits with irrigation questionnaires not received by March 2, 2022:

Suspend the following permits/rights for one year (effective April 4, 2022)

Violation 1

| | |
|---------|----------------------------|
| 6947-3 | Joel Adler |
| 2647-2 | Cody Burull |
| 2701-2 | Cody Burull |
| 6263-3 | Cedar Grove Colony |
| 8041-3 | Cedar Grove Colony |
| 881-2 | Ryan Edwards |
| 6316-3 | Howard Athletic Club, Inc. |
| 2851-3 | David Huber |
| 4955-3 | David Huber |
| 4400A-3 | Huron Colony |
| 5651-3 | Huron Colony |
| 2390A-3 | Huron Colony |
| 3268A-3 | Huron Colony |
| 6431-3 | Huron Colony |
| 7395-2 | Huron Colony |
| 7370-3 | Huron Colony |
| 7367-3 | Huron Colony |
| 7366-3 | Huron Colony |
| 7365-3 | Huron Colony |
| 7905-3 | Huron Colony |
| 7906-3 | Huron Colony |
| 7906A-3 | Huron Colony |
| 7369A-3 | Huron Colony |
| 7369B-3 | Huron Colony |
| 7369C-3 | Huron Colony |

Water Management Board
March 2, 2022, Meeting Minutes

| | |
|--------|-------------------------|
| 7286-3 | Brian Kozak |
| 7543-3 | Brian Kozak |
| 5664-3 | Pat Mentele |
| 8326-3 | Jerry D. Nelsen |
| 7005-3 | Randall Enterprise, LLC |
| 7236-3 | David Ulvestad |
| 7237-3 | David Ulvestad |
| 2497-2 | Marty Vanderploeg |
| 8265-3 | Wiskota Farm |
| 516-1 | Lawrence Woodward |
| 517-1 | Lawrence Woodward |

Suspend the following permits/rights for three years (effective April 4, 2022)

Violation 2

| | |
|--------|--------------------|
| 1350-3 | Scott Jensen, Mgr. |
| 6042-3 | Scott Jensen, Mgr. |
| 410B-2 | Kathi Koester |

Amend the following permits/rights to include the mandatory irrigation questionnaire qualification (effective March 2, 2022)

Violation A

| | |
|--------|----------------|
| 1397-2 | Cody Burull |
| 3487-3 | Dave Hanson |
| 2460-3 | Ryan Patterson |
| 2072-3 | David Ulvestad |
| 2126-3 | David Ulvestad |
| 3204-3 | David Ulvestad |

In response to a question from Chairman Bjork, Ms. McMath stated that every year the suspension list includes many of the the same permit holders who fail to submit irrigation questionnaires.

Motion by Freeman, seconded by Larson, to suspend for one year those permits listed under Violation 1, to suspend for three years those permits listed under Violation 2, and to add the qualification to those permits listed under Violation A, all to be effective April 4, 2022.

Ms. McMath noted that the permits listed under Violation A be effective today.

Motion by Freeman, seconded by Larson, to amend the previous motion to add the qualification to the permits listed under Violation A be effective March 2, 2022. A roll call vote was taken, and the motion carried unanimously.

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

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

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

Well Interference Qualification

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

Well Construction Rule Qualification No. 1

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

Well Construction Rule Qualification No. 2

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

Irrigation Water Use Questionnaire Qualification

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

Low Flow Qualification

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

CONSIDER WATER PERMIT APPLICATION NO. 2049A-3, PARKS AND RECREATION, CITY OF HURON: Mark Rath, Water Rights Program reported that this application is uncontested.

Chad Schroeder, city of Huron, was present remotely.

Application No. 2049A-3 proposes to amend Water Right No. 2049-3, which authorizes 2.0 cubic feet of water per second (cfs) from the James River for municipal and recreation use. Water Right No. 2049-3 also authorizes an additional storage of 90 acre feet of water annually in Ravine Lake by installation of splash boards to raise the level of Ravine Lake one foot. The water right has a priority date of February 13, 1974. This site is located in Beadle County on the east side of Huron SD.

This application requests to change the period of annual use from April 1 through June 30 to April 1 through October 31. No additional water appropriation is authorized by this application.

For Water Right No. 2049-3, the diversion rate is already included in the 300 cfs limit that the board has placed on appropriations from the James River from the North Dakota border to the Yankton-Hutchinson County line and the 200 cfs limit diversion rate between the North Dakota border and the USGS gaging station at the Fourth Street Dam in Huron.

Mr. Rath stated that the request for extension of the period use may have the potential of adversely affecting existing rights' ability to divert water during dry periods. If this application is approved, the water permit should contain the qualification that this permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer, and diversions under this permit during the period from July 1 through October 31 are subject to existing water rights with priority dates predating October 4, 2021, and any written orders issued by the Chief Engineer.. It should also contain the qualification that the permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station at Huron, SD, after pumping.

The Chief Engineer recommended approval of Application No. 2049A-3 with the following qualifications:

1. This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer.
2. Diversions under this permit during the period from July 1 through October 31 are subject to existing water rights with priority dates predating October 4, 2021, and any written orders issued by the Chief Engineer.
3. This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the gage at Huron SD, after pumping.
4. Approval of this Permit does not increase the additional storage of 90 acre-feet annually in Ravine Lake authorized by Water Right No. 2049-3.
5. Water Right No. 2049-3 and Water Permit No. 2049A-3 authorize a, combined, total annual diversion of 361 acre feet of water from the James River.
6. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the James River.

Motion by Freeman, seconded by Hutmacher, to approve Water Permit Application No. 2049A-3, City of Huron subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

CONSIDER WATER PERMIT APPLICATION NOS. 8565-3, 8566-3, AND 8567-3, DUSTIN HAASE: In response to questions from Ms. Mines Bailey, Nakaila Steen, Natural Resources Engineer with the Water Rights Program, testified that she reviews water permit applications for water availability and the potential for unlawful impairment of adequate wells, performs fieldwork measuring the observation wells and lake levels, and she is the department representative on the

Western States Water Council.

Ms. Steen wrote the technical report analyzing water availability and unlawful impairment for Water Permit Application Nos. 8565-3, 8566-3, and 8567-3. .

Water Permit Application No. 8565-3 proposes to appropriate 1.11 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 210 feet deep) for the irrigation of 124 acres.

Water Permit Application No. 8566-3 proposes to appropriate 1.78 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 236 feet deep) for the irrigation of 132 acres.

Water Permit Application No. 8567-3 proposes to appropriate 2.22 cfs from one well to be completed into the Pleistocene Series: Unknown aquifer (approximately 210 feet deep) for the irrigation of 226 acres.

The three proposed diversion points are located in Turner County approximately three miles west of Parker, SD.

On page 10 of the report under “Hydrologic Budget Summary” the third sentence states, “The average annual withdrawal rate is 472.1 acre-feet based on the water rights/permits authorized to appropriate water from this glacial outwash deposit...” Ms. Steen noted that 472.1 acre-feet should be changed to 70.4 acre-feet. If these three applications are approved, 472.1 acre-feet would be correct.

The Pleistocene Series: Unknown is a generic name used by the Water Rights Program for a category of sand and gravel outwash deposits that were deposited by glacial movement during the Pleistocene geologic time that are not part of a previously mapped aquifer. The aquifer consists of fine sand and gravel, and the areal extent is approximately 11,700 acres for this discontinuous outwash deposit. The thickness of the aquifer ranges between 14 and 43 feet over the extent of the aquifer.

This aquifer is expected to be confined at the proposed diversion points, based on the test hole completion reports submitted with the application as well as the nearby well completion reports and lithologic logs on file.

In the nearest observation well, TU-82C located approximately one mile from these proposed diversion points, the artesian head pressure has ranged from 90 to 100 feet over the period of record.

When reviewing the applications, Ms. Steen reviewed for water availability and the potential for unlawful impairment. The availability of unappropriated water is determined by compiling a hydrologic budget comparing annual withdrawal rates and recharge to an aquifer as well as analyzing the observation well data to see how an aquifer reacts to climatic conditions and local pumping.

A study specific to recharge for the Pleistocene Series: Unknown aquifer has not been completed at this time, but its primary mechanical mechanisms for recharge are through the infiltration of precipitation and from ground water inflow from hydrologically connected and adjacent aquifers, which is probably the underlying Niobrara aquifer at this location.

Recharge was estimated using a range from Hedges' 1985 recommended recharge rate of 0.15 to 0.60 inches per year for use by management and development programs. When you multiply this recharge rate by the areal extent 11,700 acres, the average annual recharge rate ranges between 146 to 585 acre-feet per year. Recharge to the outwash deposit is estimated to fall in the middle of this range, which is approximately 365.5 acre-feet per year. When estimating recharge using the non-aquifer specific recharge rate, it is prudent to assume the mid-range when there is not sufficient evidence available to support using the lower or higher end or a recharge rate range. Typically, overburden material can help one lean toward the lower or higher end, but the overburden material for the three proposed diversion points ranges from thick clay deposits to thinner sand deposits, which would not prevent all water from permeating through, but it also would not allow water to flow through without resistance, so also supporting the middle range value.

There are four observation wells completed into this glacial outwash deposit of the Pleistocene Series: Unknown aquifer. Ms. Steen looked at data from all four observation wells, but three of the wells were completed into aquifer in 2016, so the period of record for water level readings in these three wells is limited, therefore, an emphasis was placed on the one remaining observation well, TU-82C, which has a period of water level readings from 1982 to present.

The hydrograph for TU-82C shows the trend of the water levels over the period of record is generally stable, but from 1993 to 2002, a slight decline is noted. The cause of this slight decline is not known at this time; however, this outwash deposit may be attempting to equilibrate due to pumping from it and from adjacent and hydrologically connected aquifers that had increasing development during that period. In 2002, the city of Marion, who holds water rights within this outwash deposit, was connected to a rural water system, and there is actually a slight increasing trend from 2002 until present day. This slight decline from 1993 to 2002 is of concern due to the limited areal extent of this outwash deposit and the lack of other observation well data to show whether the water levels of TU-82C should be considered as stable or slightly declining.

Discharge from this outwash deposit is primarily through well withdrawals and outflow through the adjacent till. Currently, there are four water rights/permits authorized to divert water from this glacial outwash deposit, which includes Water Permit No. 7495-3, which was initially coded as withdrawing from Niobrara aquifer, but through Ms. Steen's analysis it was determined to be withdrawing from the same outwash deposit of the Pleistocene Series: Unknown aquifer.

The estimated average annual withdrawal rate from the outwash deposit based on the current level of development is approximately 70.4 acre-feet per year. For the four water rights, two are authorized for irrigation use and two are authorized for non-irrigation use. The two non-irrigation permits are held by the city of Marion, which connected to a rural water system in 2002 and likely maintains their wells for standby purposes only, and as such, they are estimated to withdraw zero acre-feet per year from this outwash deposit. The two irrigation permits are required to report annual withdrawals every year and began pumping in 2014 and 2015. While it is a limited

number of reporting years, on average, 70.4 acre-feet per year was withdrawn.

Assuming the applicant for these three water permits will apply 10 inches of water per authorized acre each year, the average annual withdrawal, if these three permit applications were approved, is expected to be approximately 402 acre-feet per year.

Based on the review of all the information and on the observation well data for TU-82C, Ms. Steen concluded the amount of unappropriated water available in this outwash deposit of the Pleistocene Series: Unknown aquifer cannot be determined with certainty. However, based on the hydrologic budget, there is a reasonable probability that up to 295 acre-feet of unappropriated water is available from this glacial outwash deposit of the Pleistocene Series: Unknown aquifer for the proposed appropriations.

Given this, there is a reasonable probability there is sufficient unappropriated water available to support 350 new irrigable acres proposed by Water Permit Application Nos. 8565-3, 8566-3, and 8567-3, but not the entire 482 acres requested by the three applications based on the current information available. The amount of available water was discussed with Mr. Haase, and he worked with the Water Rights Program to determine which 350 acres he would like to proceed with out of the three applications.

Ms. Steen discussed the map on page 4 of the report which shows the location of the proposed diversion points for the three applications with the approximate areal extent of the Pleistocene Series: Unknown aquifer boundary, bedrock contour lines, and the Pleistocene Series: Unknown aquifer observation wells and water rights/permits. The closest water right to the proposed diversion points is Water Permit No. 7495-3 held by Dennis Herlyn, which is located approximately one quarter to one mile southeast of the proposed diversion points. Observation Well TU-82C is approximately one mile southwest of the proposed diversion points and the three observation wells completed in 2016 are located between two and four miles southeast of the proposed diversion points.

There are domestic wells on file with the Water Rights Program that are completed into the Pleistocene Series: Unknown aquifer, with the closest domestic well on file located approximately two miles northwest of the proposed diversion points. There could potentially be other domestic wells completed into the Pleistocene Series: Unknown aquifer near the proposed diversion points that are not on file with the Water Rights Program.

A well owner with an adequate well is afforded certain legal protections that are not available to well owners with inadequate wells. Additionally, for a water permit application to be approved, the well needs to be adequate. There are some exceptions with Dakota and Inyan Kara wells. The definition of adequate well is a well that must be capable of allowing the inlet of a pump to be placed 20 feet into the saturated aquifer formation material if it is at least 20 feet thick when the well is constructed, and if not, the pump needs to be placed as near to the bottom of the aquifer as possible.

Unlawful impairment was investigated under the assumption that all three permit applications would be approved. There is a reasonable probability that any interference from the proposed appropriations will not impose unlawful impairments on existing users with adequate wells.

While the closest water right is located approximately one quarter mile to one mile from the proposed diversion points, Ms. Steen based her opinion on the saturated aquifer thickness, the available artesian head pressure, and the lack of well interference complaints in the Pleistocene Series: Unknown aquifer.

The saturated thickness at the proposed diversion points varies between 30 and 40 feet thick, which is generally sufficient thickness for a well to be placed into the saturated material.

The available artesian head pressure shows that, even with the nearest water right being approximately one mile away, pumping and drawdown for that well is not seen on the hydrograph, so by having significant artesian head pressure there is a reasonable probability that the proposed appropriations will not impair nearby wells.

The Chief Engineer recommended approval of Application No. 8565-3 with the following qualifications:

1. The well approved under Water Permit No. 8565-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8565-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

The Chief Engineer recommended deferral of Application No. 8566-3 because at this time it is not possible to conclude that unappropriated water is available to support this application in addition to Water Permit Application Nos. 8565-3 and 8567-3. The deferral of Application No. 8566-3 is for up to two years at which time the application will be brought back before the Water Management Board for consideration. At that time, the Board will reconsider the application based on the additional period of record. The applicant can request the application be brought before the Board prior to expiration of the two-year deferral period if they can show unappropriated water is available.

The Chief Engineer recommended approval of Application No. 8567-3 with the following qualifications:

1. The well approved under Water Permit No. 8567-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8567-3 shall be constructed by a licensed well driller and

construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

The board members had no questions of Ms. Steen.

Motion by Hutmacher, seconded by Freeman, to approve Water Permit Nos. 8565-3 and 8567-3, Dustin Haase, subject to the qualifications set forth by the chief engineer, and to defer Water Permit Application No. 8566-3, Dustin Haase, for up to two years. A roll call vote was taken, and the motion carried unanimously.

CONSIDER CANCELLATION OF WATER PERMIT NO. 7148-3, JASON FRERICHS:

Ann Mines Bailey, assistant Attorney General, appeared on behalf of the Chief Engineer and the Water Rights Program.

Jason Frerichs, applicant, appeared pro se.

Ms. Mines Bailey offered Exhibit 1, the administrative file for Water Permit 7148-3, Jason Frerichs. The administrative file contains the application, the report and recommendation, the permit, the investigative report, and the correspondence between Mr. Frerichs and the department.

Chairman Bjork admitted the exhibit into the record.

Responding to questions from Ms. Mines Bailey, Mark Rath testified that he had been administered the oath earlier in the day. Mr. Rath is a staff engineer with the Water Rights Program. He is responsible for issues dealing with river, lake, and stream appropriations.

The department's water rights inspector, Darrel DeBoer, based in Brookings submitted an inspection report in August 2022 stating that he had done a field visit on August 18, 2022, and had a telephone conversation with Mr. Frerichs on August 20, 2022. In the report, Mr. DeBoer stated that there was no construction completed, as was reported on the annual irrigation questionnaires, and that in discussions with Mr. Frerichs, Mr. Frerichs had stated that he is interested in finding the right irrigation system to move forward.

Water Permit No. 7148-3 is an irrigation permit to irrigate 60 acres from a single well at 1.44 cfs from the Revillo aquifer and is located approximately one mile northwest of the town of Wilmot in southern Roberts County. The permit was approved September 18, 2009.

Under South Dakota law, any construction necessary to put water to beneficial use is to be completed within five years of approval of the permit; therefore, the construction should have been completed by September 18, 2014. The law provides water to be put to beneficial use within four years after construction, so the deadline for placing water to beneficial use was September 18, 2018. Those deadlines are listed on the permit, and Mr. Frerichs received a copy of the permit.

Mr. Rath testified regarding Exhibit 13, the report of examination works and an application of water for beneficial use for Water Permit No. 7148-3. It was completed by Darrel DeBoer. The document is included in the administrative file.

Ms. Mines Bailey offered Exhibit 13. Chairman Bjork admitted the exhibit into the record.

Ms. Mines Bailey noted that the board received copies of the exhibits.

When Mr. Rath reviewed Mr. DeBoer's field site report, his understanding of Mr. DeBoer's conclusions was that the irrigation project permitted under Permit No. 7148-3 had not been completed. Mr. DeBoer's report indicated that during a phone conversation Mr. Frerichs said he was still interested in completing the irrigation project if he can find the right system.

Mr. Rath stated that he reviewed the irrigation questionnaires that were submitted for Water Permit No. 7148-3.

Ms. Mines Bailey offered the following:

Exhibit 2, the 2010 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 3, the 2011 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 4, the 2012 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 5, the 2013 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 6, the 2014 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 7, the 2015 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 8, the 2016 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 9, the 2017 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 10, the 2018 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 11, the 2019 irrigation questionnaire for Water Permit No. 7148-3
Exhibit 12, the 2020 irrigation questionnaire for Water Permit No. 7148-3

Chairman Bjork admitted the Exhibits 2 through 12 into the record.

In response to questions from Ms. Mines Bailey, Mr. Rath provided the following testimony.

Exhibit 2 - The 2010 irrigation questionnaire indicates that there was no irrigation that year. The reason given was sufficient moisture. It appears that the original irrigation questionnaire was not returned, but Kent Frerichs, who is the permit holder's father, called the department with the information contained on the irrigation questionnaire. The information states "Jason's system is operational, however, due to excess moisture in the area there was no need to irrigation in 2010."

Exhibit 3 - The 2011 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was, "Work in progress to set up pump and pivot and still plan to use in the near future."

Exhibit 4 - The 2012 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was "system not constructed" and the comment section stated, "Still working on

developing the irrigation equipment and still plan to irrigate in the near future.”

Exhibit 5 - The 2013 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Planning still in progress for irrigation.”

Exhibit 6 - The 2014 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “other” and the comment section stated, “Still working on developing an irrigating system.” This questionnaire was received by the Water Rights Program on November 6, 2014, which was after the September 18, 2014, construction deadline.

Exhibit 7 - The 2015 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still working on the system (illegible) getting as well as good yet.”

Exhibit 8 - The 2016 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “other” and the comment section stated, “Working on plans to develop a system. Still plan to use the permit. Thank you.”

Exhibit 9 - The 2017 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still working on pump and system.”

Exhibit 10 - The 2018 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still plan to build a small pivot.” This questionnaire was received by the Water Rights Program on November 30, 2018, which was after the September 18, 2018, deadline to place water to beneficial use.

Exhibit 11 - The 2019 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and there was nothing in the comment section.

Exhibit 12 - The 2020 irrigation questionnaire reflects that no irrigation occurred that year. The reason listed was “system not constructed” and the comment section stated, “Still plan to build a system to irrigate.”

Mr. Rath stated that he spoke to Mr. Frerichs on the telephone on August 24, 2021, as a follow-up to the inspection that Darrell DeBoer did for the permit. Mr. Rath informed Mr. Frerichs that, since the system had not been constructed and put to beneficial use within the timeframe, the water permit would be scheduled for cancellation. Mr. Frerichs indicated that he had faithfully submitted the irrigation questionnaires each year, as required, and that he still planned to build a system. Mr. Frerichs was upset that the water permit would be considered for cancellation. Late the next day Mr. Frerichs left a voice message for Mr. Rath. Mr. Rath returned the call on August 26, 2021. During the discussion, Mr. Frerichs said the well was in place and he had a big gun and pipe, and that he could be irrigating with it. He asked Mr. Rath if that would be a consideration, and Mr. Rath responded that the water permit would still be scheduled for cancellation, and that Mr. Frerichs could make his argument to the board.

Mr. Rath testified that there are several other irrigation permits in the area that have similar topography to Mr. Frerichs' land. The majority of the other permit holders were irrigating during the 2014 and 2020 time period. There were some years that the other irrigators indicated there was sufficient moisture.

Responding to questions from Mr. Frerichs, Mr. Rath testified that he believes there is one water permit in the area that is junior to Water Permit No. 7148-3. No permit applications have been denied for irrigation from the Reville aquifer because of Water Permit No. 7148-3 being senior to any other permits.

Jason Frerichs was administered the oath by the court reporter.

Mr. Frerichs testified that he is a farmer from Wilmot, South Dakota and he holds Water Permit No. 7148-3. Mr. Frerichs purchased this piece of property in 2009. The property already had a well on it.

Mr. Frerichs said he had provided Mr. Duvall with an exhibit prior to the hearing. Ms. Jasper stated that the document is already included in Exhibit 1, the administrative file. Ms. Mines Bailey asked that Mr. Frerichs provide foundation for the exhibit.

In response to questions from Ms. Mines Bailey, Mr. Frerichs said the exhibit has two pictures on the second page of the document, and he took the pictures in August of 2021. The first is a picture of pipe located at Mr. Frerichs' farm operation, which is located 1.5 miles from the well. The second picture is an electric powered pump.

Ms. Mines Bailey requested that Mr. Frerichs' exhibit be marked separately as Exhibit A.

Mr. Frerichs offered Exhibit A. Chairman Bjork admitted the exhibit into the record.

Mr. Frerichs testified that the well is already in operation. He still wants to perform better testing on the well because it has been a hinderance to him to be able to have electricity or an additional generator at the well to power the pump. He also has a vast supply of pipe, as shown in Exhibit A. Mr. Frerichs also has a traveling gun, but it is a big decision to decide whether to use that traveling gun as opposed to using a small pivot system. He has not purchased a small pivot system yet. He is still exploring the options to use a pivot or maybe some other type of better traveling gun to reduce the number of trips across the field. Mr. Frerichs said it is his intent to utilize this existing well and irrigate on those acres. This ground is probably some of the heaviest ground that needs irrigation the least in the vicinity. He doesn't dispute anything else that has been shared as far as why other systems have been used, but it certainly is a separate case. If he found a mechanical pump that could be used so as not to have to use the existing electrical pump, that certainly would be a much better option.

Mr. Frerichs said he should have looked at his permit a little better and reviewed the statutes even more to know that he had to test pump and set up the system. He said even though he had all of the system capabilities located on his farm and dedicated for this facility, he didn't perform the test pump nor have any staff come out and witness that and check off that it is in operation. He said the only time he heard from the department was when they were asking if he had developed it

and then the cancellation notice.

Mr. Frerichs asked for an extension so he can perform a test pump and establish the system this summer. He said he would have to use a generator to power the electrical pump.

Ms. Mines Bailey had no questions of Mr. Frerichs.

Chairman Bjork requested questions from the board.

In response to questions from Mr. Hutmacher, Mr. Frerichs stated that he would like the timeframe to get this system up and running to be one year, but it could be accomplished this summer. The other problem is that the well is located in a low spot, so he will have to build a road to get there. Mr. Frerichs said in the past he has looked at a center pivot system, but the cost of operating it is going to be very difficult to justify. That is the reason he has fallen back on the idea of using a gun then perhaps changing crop systems. At this time, it is a corn/soybean rotation. He could utilize the gun he has now or get a better traveling gun to have it cover more area.

In response to questions from Mr. Holzbauer, Mr. Frerichs stated that he applied for the water permit in 2009. From 2009 to 2018, there certainly were times that irrigation could have been used, but it was a matter of justifying whether he wanted to run down the crop. Mr. Frerichs stated that he wouldn't say there was no need to irrigate, it was just a matter of justifying and setting up the pipe and the existing motor he has requires a lot of work to get established with the generator. The pump itself is existing and Mr. Frerichs bought a new motor that can also be used on another system he has.

Mr. Holzbauer stated that Mr. Frerichs has been submitting yearly irrigation questionnaires, but he has not shown the need for the water permit.

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

In response to questions from Ms. Mines Bailey, Mr. Gronlund testified that he recommended cancellation of Water Permit No. 7148-3 based on the statutory water rights law on water permitting regarding constructing and placing water to beneficial use. In the past, the board has not taken financial considerations into account when making a determination. If that were the case, a water right could not be cancelled in South Dakota. There is a statute that allows for the filing of an extension of time, but the extension of time needs to be filed prior to the expiration of the construction date on the permit.

Mr. Gronlund testified that the Water Rights Program recently processed a water permit from the Reville aquifer, so in preparation for the hearing on cancellation of Water Permit No. 7148-3, he reviewed that recent report. Based solely on the hydrologic budget, there is unappropriated water available.

Mr. Gronlund said he is sympathetic to Mr. Frerichs' situation, but he is charged with following the water rights law, and that is why staff brought this matter before the board. Mr. Gronlund said he is concerned that if the Water Management Board goes beyond what the statutes provide in allowing an extension of time to construct and put to beneficial use, we would have difficulty

Water Management Board
March 2, 2022, Meeting Minutes

bringing forth cancellations in the future.

Mr. Frerichs had no questions from Mr. Gronlund.

Ms. Mines Bailey and Mr. Frerichs offered closing arguments.

Motion by Larson, seconded by Dixon, to cancel Water Permit No. 7148-3 for non-construction. A roll call vote was taken, and the motion carried with Dixon, Holzbauer, Hutmacher, Larson, and Bjork voting aye. Due to technical issues with the computer, Freeman was not heard.

Proposed Findings of Fact and Conclusions of Law are due by April 11, 2022, and objections are due by April 22, 2022.

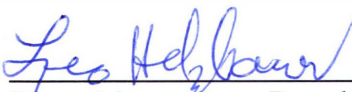
Chairman Bjork granted Mr. Holzbauer permission to sign the minutes of the December 2021 meeting on his behalf.

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

A court reporter was present for the hearing 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 Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Approved May 4, 2022.



Water Management Board

WATER MANAGEMENT BOARD MEETING

March 2, 2022

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

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

| No. | Name | Address | County | Amount | Use | Source | Qualifications |
|--------|---------------------------------------|--------------|--------|-----------|--------------------------|---|------------------------|
| 2009-1 | Kent P Wilsey | Owanka | MD | 0.167 cfs | commercial | 1 well-Quaternary Terrace | wi, wcr, 2 special |
| 2011-1 | Meadow Crest Sanitary Dist | Deadwood | LA | 0.089 cfs | wds | 2 wells-Deadwood & Madison | wi, 5 special |
| 2830-2 | Weinreis Brothers | Scottsbluff | FR | 0.33 cfs | commercial | 2 wells-Inyan Kara | wi, wcr, 4 special |
| 2831-2 | Hell Canyon Horse Camp & RV Resort | Custer | CU | 0.07 cfs | commercial & domestic | 1 well-Crystalline Rock | wi, 2 special |
| 2832-2 | Reel Simple LLC | Rapid City | PE | 0.044 cfs | wds | 1 well-Inyan Kara | wi, 2 special |
| 2835-2 | Blake Burnham | Winner | TR | 2.07 cfs | 145 acres | dugout | iq, 2 special |
| 8547-3 | L & E Holdings LLC | Sioux Falls | MA | 0.10 cfs | 11.39 acres | 1 well-Sioux Quartzite | wi, wcr, iq |
| 8549-3 | James Orris Living Trust | Clark | CL | 3.78 cfs | 350 acres | 3 wells-Altamont | wi, wcr, iq |
| 8551-3 | Mill Valley LLC | Sioux Falls | GT | 0.17 cfs | commercial | 1 well-Greenhorn Formation | wi, wcr, 4 special |
| 8553-3 | Lake Platte Golf Course | Platte | CM | 0.33 cfs | 40 acres | 1 well-Codell Aquifer | wi, wcr, iq, 2 special |
| 8554-3 | Ferdy Zirbel | Ortley | GT | 1.78 cfs | 130 acres | 2 wells-Big Sioux:North | wi, wcr, iq |
| 8555-3 | Jon Miller | Sioux Falls | TU | 2.22 cfs | 320 acres | 1 well-Upper Vermillion Missouri:West | wi, wcr, iq |
| 8556-3 | Bradley Jongeling | Estelline | HM | 1.33 cfs | 120 acres | 2 wells-Big Sioux:Brookings | wi, wcr, iq |
| 8557-3 | Buzz Wilson LLC | Marion | TU | 1.78 cfs | 160 acres | 1 well-Parker Centerville | wi, wcr, iq |
| 8558-3 | Allthatisleft | Fontana CA | TU | 1.78 cfs | 140 acres | 1 well-Parker Centerville | wi, wcr, iq |
| 8559-3 | TR Golf LLC | Dakota Dunes | UN | 3.11 cfs | recreation | Big Sioux River | 3 special |
| 8560-3 | TR Golf LLC | Dakota Dunes | UN | 0.12 cfs | 65 acres | 2 wells-Dakota & Missouri:Elk Point | wi, iq |
| 8561-3 | Blaine Nagel | Springfield | BH | 1.33 cfs | 65 acres | 1 well-Niobrara | wi, wcr, iq, 1 special |
| 8562-3 | Riverview LLP | Morris MN | CK | 1.45 cfs | commercial | 1 well-Dakota | wi, wcr, 5 special |
| 8564-3 | David R Hansen | Wilmot | RB | 0.03 cfs | 11 add'l acres | 1 well-Revilla Aquifer | wi, iq |
| 8568-3 | James Barger | Utica | YA | 0.22 cfs | 30 add'l acres | 1 well-Lower James Miss:Scotland | wi, iq |
| 8569-3 | L. G. Everist Inc | Sioux Falls | MA | 1.44 cfs | industrial | dewatering Ode Pit | 3 special |
| 8571-3 | Maxwell Colony | Scotland | YA | 2.22 cfs | 121 acres | 1 well-Lower James Miss:Scotland | wi, wcr, iq |
| 8573-3 | MGJR LLC | Ft. Pierre | HU | no add'l | 110 acres | 1 well-Gray Goose | wi, wcr, iq |
| 8580-3 | Dale & Jon Bunkers | Chester | LA | 1.78 cfs | 130 acres | 2 wells-Big Sioux Northern Skunk Creek | wi, wcr, iq, 1 special |

Future Use Reviews

| No. | Name | Address | County | Amount Remaining in Reserve | Use | Source | Qualifications |
|--------|--------------------|------------|--------|-----------------------------|-----------|----------------------------|----------------|
| 6237-3 | City of Vermillion | Vermillion | CL | 1,900 AF | municipal | Missouri:Elk Point Aquifer | none |