

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 253RD MEETING
OF THE WATER MANAGEMENT BOARD
REMOTE CONNECTION MEETING
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
MARCH 5, 2025

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, Chad Comes, and Peggy Dixon participated remotely. Leo Holzbauer and William Larson were absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, Amanda Dewell, Whitney Kilts, Nakaila Steen, Kim Drennon, Tyler Jensen, Brittan Hullinger, Austin Settje, and Miranda Smith, Water Rights Program.

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

Legislative Oversight Committee Members: Representative Nicole Uhre-Balk.

Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 8864-3, Big Sioux Community Water System: Ryan Cwach, attorney for petitioner.

ADOPT FINAL AGENDA: Motion by Freeman, seconded by Comes, 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.

ADOPT DECEMBER 4 AND 11, 2024, BOARD MINUTES: Motion by Freeman, seconded by Comes, to adopt the minutes for the December 4, 2024, and December 11, 2024, Water Management Board meetings. A roll call vote was taken, and the motion carried with Comes, Freeman, and Hutmacher voting aye. Dixon abstained.

SET MAY 7-8, 2025, MEETING DATES AND LOCATION: The next meeting is set for May 7-8, 2025, at the Matthew Training Center in Pierre.

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

UPDATE ON DANR ACTIVITIES: Eric Gronlund, Chief Engineer, Water Rights Program, welcomed new Legislative Oversight Committee member, Representative Nicole Uhre-Balk.

Mr. Gronlund reported that former Board member, Tim Bjork passed away. Mr. Bjork was a member of the Water Management Board for 17 years.

Mr. Gronlund provided a brief update on 2025 legislation pertinent to the Board.

Senate Joint Resolution (SJR) 501 is for legislative approval of a Future Use Water Permit Application No. 2881-2 by the Western Dakota Regional Water System seeking to reserve 20,765 acre-feet of water annually from the Missouri River. Since this is an appropriation of water greater than 10,000 acre-feet, it requires legislative approval. The Water Management Board acted on this application at its December 2024 meeting for the purpose of presenting it to the Legislature. SJR has made it through the Senate site entirely. It had its hearing before House Agriculture and Natural Resources on March 4 and passed on an 11 to 2 vote, and it is on the March 5 House of Representatives docket. If approved by the House, the matter will come back before the Water Management Board for final action at its May 2025, meeting.

House Bill 1026 which would provide approximately \$13,000,000 from the general fund for rehabilitation of the Richmond Lake dam northwest of Aberdeen. Richmond Dam is a high hazard dam owned by the Office of School and Public Lands and has a population at risk of 1,790 individuals if failure were to occur. The dam's spillway is at its end of life, and it only has the capacity to pass 56 percent of the 0.5 probable maximum flood event. It also has severe seepage issues. Rehabilitation of that dam will be an entire replacement of the spillway with a Labyrinth design and a cut-off wall to address the seepage issues.

The total estimated cost for this project is between \$20,000,000 and \$27,000,000. The \$13,000,000 provided by this bill is accompanied by \$9,650,000 previously appropriated by the Legislature and a \$2,940,000 FEMA High Hazard Potential Dam Grant, hopefully to get this project across the finish line. The Bill is now awaiting Governor Rhoden's signature.

Mr. Gronlund noted that Whitney Kilts, Water Rights staff, has been involved in this project, and DANR is the state-sponsoring agency for the FEMA grant.

Mr. Gronlund showed a photo of a Labyrinth spillway design.

Mr. Gronlund reported that Miranda Smith was recently hired as a Program Assistant, along with Natural Resources Technician, Kevin Peery, and Summer Intern, Jacob Mayer.

Mr. Gronlund announced that he is retiring after being employed with DANR since February 21, 1984.

The Board thanked Mr. Gronlund his years of service to the State and the Water Management Board.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: David McVey reported that the McCook Lake appeal is still pending.

ADMINISTER OATH TO DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES STAFF: Rachel Rodriguez, Notary Public of South Dakota, administered the oath to staff who intended to testify during the meeting.

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

State law requires 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 to retain the future use permit.

Amanda Dewell reported that there were three Future Use Permits included in the Board packet; however, the public notice that was provided to one of the newspapers for South Lincoln Rural Water System was not published. Therefore, the review of Future Use Permit No. 4817-3 will be postponed until the May 2025 Board meeting.

Ms. Dewell stated that Water Rights Program contacted East Dakota Water Development District and the City of Tyndall inquiring whether the entities wanted to retain the future use permits. The letters received from the entities requesting to retain their future use permits, the Chief Engineer's recommendations, and the Affidavits of Publication showing that the hearing was public noticed were included in the Board packet. No letters in opposition were received in response to the public notices.

The Chief Engineer recommended 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
3574-3	East Dakota Water Development District	91,500 AF	Missouri River
4839A-3	City of Tyndall	410 AF	Choteau Tyndall

Motion by Freeman, seconded by Dixon, that Future Use Permit No. 3574-3 for East Dakota Water Development District remain in effect for 91,500 acre-feet. A roll call vote was taken, and the motion carried unanimously.

Motion by Freeman, seconded by Dixon, that Future Use Permit No. 4839A-3 for the City of Tyndall remain in effect for 410 acre-feet. A roll call vote was taken, and the motion carried unanimously.

IRRIGATION QUESTIONNAIRE VIOLATIONS FOR FAILURE TO REPORT 2024 WATER USE: Ms. Dewell presented the report on irrigation questionnaire violations.

On October 23, 2024, 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; online, which is the preferred method, by mail, or by fax.

On January 14, 2025, 225 notices were mailed by first class mail to those irrigators who had not returned the 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 at least 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 recommended that the Board take the following action for permits with irrigation questionnaires not received by March 5, 2025:

Suspend the following permits/rights for one year (effective April 4, 2025) unless the questionnaires are received prior to the effective date.

Violation 1

Water Permit No. 8001-3	Todd Block
Water Permit No. 8002-3	Todd Block
Water Permit No. 8408-3	Robert A Novotny
Water Right No. 842-1	Robert Phelps Jr

Water Right No. 3168-3	Larry Ryken
Water Right No. 4467-3	Layna Saathoff
Water Right No. 1523-2	Saddle Butte Angus, c/o Larry May
Water Permit No. 2378-2	Saddle Butte Angus, c/o Larry May
Water Right No. 8192-3	Stop Drop Lock Inc, c/o Karl Schenk
Water Right No. 6267-3	Selby Community Golf Course

Suspend the following permits/rights for three years (effective April 4, 2025) unless the questionnaires are received prior to the effective date.

Violation 2

Water Right No. 881-2	Ryan Edwards
Water Right No. 1994-3	Albert Hattum
Water Permit No. 8253-3	Makens Oak Tree LLP, c/o Michael Makens
Water Right No. 2954-3	Lane Tekrony

Amend the following permit/right to include the mandatory irrigation questionnaire qualification (effective March 5, 2025)

Violation A

Water Right No. 1091-3	Walter Heine
Water Right No. 2036-3	James & Joan McElhany
Water Right No. 3484-3	Charlotte Nichols, c/o Philip Nichols
Water Right No. 6278-3	Robert A Novotny
Water Right No. 2282-3	John or Byran Uecker

Motion by Freeman, seconded by Dixon, to suspend for one year those permits listed under Violation 1 effective April 4, 2025; to suspend for three years those permits listed under Violation 2 effective April 4, 2025; unless the questionnaires for the permits/rights subject to Violation 1 and 2 are submitted prior to the April 4, 2025 effective date; and to add the qualification to the permits listed under Violation A, effective March 5, 2025. A roll call vote was taken, and the motion carried unanimously.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 8864-3, BIG SIOUX COMMUNITY WATER SYSTEM: David McVey stated that this matter came before the Board on December 4, 2024, and the water permit was granted by the Board subject to the qualifications of the Chief Engineer.

Ms. Verleger, on behalf of the Water Rights Program, filed proposed Findings of Fact and Conclusions of Law.

The petitioner in opposition also filed proposed Findings of Fact and Conclusions of Law. Subsequent to the filing of those documents, the petitioner in opposition also filed objections to

the Proposed Findings of Fact and Conclusions of Law filed by the Water Rights Program. The objections were not timely. Objections were due on January 21, 2025, and the petitioner's objections were received on January 22, 2025.

Mr. McVey stated that in preparation of the final Findings of Fact and Conclusions of Law, the objections of the petitioner were not considered; however, their original proposed alternative Findings of Fact and Conclusions of Law were considered. Each of the petitioner's Findings were considered, as required by SDCL 1-26-25. They were considered in paragraphs 1 and 2 of Section B of the Findings included in the Board packet. Mr. McVey said the petitioner's proposed findings were either noted and not adopted, determined to be duplicative of the Water Rights Program's proposed findings, or they were adopted and included in the final Findings.

Mr. McVey stated that the final Findings of Fact represent 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 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 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.

Chairman Hutmacher requested Board action.

Mr. Freeman asked if the Board needs to reject the Findings of the petitioner based upon the Findings set forth in paragraph B of the final Findings.

Mr. McVey stated that he does not believe that is necessary because the statute requires that in the Findings of Fact each proposed alternative needs to be addressed. He said each of those are addressed in paragraph B in the final Findings of Fact and Conclusions of Law, so approving the final Findings as written should be adequate for statutory compliance.

Motion by Freeman, seconded by Comes, to adopt the final Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Application No. 8864-3, Big Sioux Community Water System. A roll call vote was taken, and the motion carried with Comes, Freeman, and Hutmacher voting aye. Dixon abstained.

APPOINTMENT OF RAPID VALLEY WATER MASTER: Nakaila Steen, Water Rights Program, reported that the Rapid Valley Conservancy District has requested that Kevin Ham be appointed as the water master for the 2025 irrigation season for the Rapid Creek area.

Motion by Freeman, seconded by Dixon, to appoint Kevin Ham as the Rapid Valley Water Master for the 2025 irrigation season. A roll call vote was taken, and the motion carried unanimously.

ADJOURN: Motion by Freeman, seconded by Comes, to adjourn. The motion carried unanimously.

Approved May 7, 2025.

Water Management Board

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	Irrigation	2 wells – Veblen	wi, iq, 1 special
8883-3	Van Winkle Dairy LP, Kevin Van Winkle	Canistota	MC	117.6 AF	COM	3 wells – Cretaceous aged undifferentiated sandstone	wi, wcr, 4 special
8894-3	Nathan Skelley and Nicole Bell	Hartford	MA	0.32 cfs	Irrigation	1 well – Sioux Quartzite	wi, iq, 1 special
8899-3	Matt Fenske	Brookings	BG	18 AF	DOM/FWP	1 well – Howard	wi, 3 special
8900-3	Finley Farms LLLP	Oakes ND	BN	No Add'l	Irrigation	1 well – Middle James: Columbia	wi, iq
8901-3	Robert Maeschen	Ethan	DN	0.62 cfs	Irrigation	1 well – Niobrara	wi, wcr, iq
8902-3	Althoff Aggregates LLC	Waubay	DA	191 AF	IND	Coteau Lake/Surface Runoff	wi, 3 special
8904-3	Ace Ready Mix – Chris Klein	Sioux Falls	LN	13.5 AF	IND	Stormwater runoff	1 special
8905-3	High Country Properties LLC	Mitchell	JE	137.7 AF	FWP	Surface runoff	lf, 2 special
8906-3	Carper Ag LLC	Rutland	LK	0.63 cfs	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 (continued)	Tabor	BH	105 AF	COM	5 existing wells – Dakota	wi, 6 special
8909-3	Tim Neugebauer	Ethan	DN	2.22 cfs	Irrigation	1 well – Niobrara	wi, wcr, iq
8910-3	Nels Sorensen	Vermillion	CL	No Add'l	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	Missouri River	2 special
4817-3	South Lincoln RWS	Beresford	LN	1,448 AF	Future	Dakota	2 special
4839A-3	City of Tyndall	Tyndall	BH	410 AF	Future	Choteau Tyndall	4 special