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MINUTES OF THE 254TH MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
MAY 7, 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, Chad Comes, Peggy Dixon, Rodney Freeman, Leo Holzbauer, and William Larson.

Department of Agriculture and Natural Resources (DANR): Mark Mayer, Director of the Office of Water and Acting Chief Engineer, Ron Duvall, Amanda Dewell, Kim Drennon, Brittan Hullinger, and Austin Settje, Water Rights Program.

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

Court Reporter: Carla Bachand, Capital Reporting Services.

Consider Future Use Water Permit Application No. 2881-2, Western Dakota Regional Water System: Executive Director Kristin Conzet and Talbot Wieszorek, attorney.

Other: Kelly Hepler, pending Water Management Board member.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

APPROVE MARCH 5, 2025, BOARD MINUTES: Motion by Freeman, seconded by Comes, to approve the minutes from the March 5, 2025, Water Management Board meeting. The motion carried unanimously.

SET JULY 9-10, 2025, MEETING LOCATION: The July 9-10 Board meeting will be at the Matthew Environmental Training Center, 523 East Capitol, Pierre.

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

UPDATE ON DANR ACTIVITIES: Mark Mayer, Director of the Office of Water and Acting Chief Engineer, welcomed Kelly Hepler, pending future Water Management Board member, who is being appointed by the Governor to fill the vacancy left by Tim Bjork. Mr. Mayer noted that after Mr. Hepler's paperwork is processed, he will officially be a member of the Board.

Mr. Hepler introduced himself and discussed his background and employment history. He was most recently the Secretary of the Department of Game, Fish and Parks, and he retired in 2020.

Mr. Mayer reported on activities of the Office of Water. He noted that the vacant Chief Engineer position has been advertised since March. There has been one applicant who was not qualified for the position. Mr. Mayer will continue as Acting Chief Engineer until the position is filled.

Mr. Mayer asked for Board member input regarding receiving the meeting packets electronically rather than a hard copy. Mr. Duvall will send an email to each Board member asking for their preference on receiving the packet.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: David McVey reported that the Supreme Court has not made a decision regarding the McCook Lake Recreation Area Association's declaratory ruling request and the Dakota Bay water permit.

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

SEVEN YEAR REVIEW OF FUTURE USE PERMITS: A table listing the future use permits for a seven-year review was included in the packet the Board members received prior to the meeting.

Amanda Dewell stated that 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.

Ms. Dewell reported that there were five future use permits for review. The Water Rights Program contacted each of the entities inquiring whether they wanted to retain the future use permits for an additional seven years. 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 Petitions in opposition were received in response to the public notices.

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The Acting Chief Engineer recommended that the Board allow the following future use permits to remain in effect for an additional seven years, to be reviewed in 2032, as listed below.

| No. | Name | Amount Remaining in Reserve | Source |
|---------|-------------------|--------------------------------|----------------------------|
| 3574A-3 | Clay RWS | 1,000 AF | Missouri River |
| 4798-3 | City of Parker | 340 AF | Parker Centerville Aquifer |
| 4817-3 | South Lincoln RWS | 1,448 AF | Dakota Aquifer |
| 4860-3 | City of Hoven | 410 AF | Bowdle Aquifer |
| 6512-3 | City of Madison | 387 AF | Howard Aquifer |

Motion by Holzbauer, seconded by Comes, to accept the Acting Chief Engineer's recommendation that the five future use permits remain in effect for another seven years for the amounts shown in the table. A roll call vote was taken, and the motion carried unanimously.

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

Amanda Dewell stated that the 24 water rights and water permits listed in the table were scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The department received no comments or letters in response to the notices of cancellation.

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

| Number | Original Owner | Present Owner(s) and Other Persons Notified | Reason |
|--------|----------------|--|--------|
|--------|----------------|--|--------|

DIVISION I WATER RIGHTS/PERMITS

| | | | |
|----------|-------------------------|-----|------------------------|
| RT 791-1 | Craig & Joyclyn Mollman | N/A | Abandonment/Forfeiture |
|----------|-------------------------|-----|------------------------|

DIVISION III WATER RIGHTS/PERMITS

| | | | |
|-----------|---|---------------|------------------------|
| RT 3001-3 | Nancy Roda | Vern Roda | Abandonment/Forfeiture |
| RT 3190-3 | Dennis Sanger | Daelyn Sanger | Abandonment/Forfeiture |
| RT 2205-3 | Buisker Family Trust c/o Randy Buisker | N/A | Abandonment/Forfeiture |
| RT 1132-3 | City of Miller c/o Finance Officer | N/A | Abandonment/Forfeiture |
| RT 2718-3 | City of Miller c/o Finance Officer | N/A | Abandonment/Forfeiture |

| | | | |
|------------------|--|------------------------|---|
| VRT 825-3 | City of Miller c/o Finance Officer | N/A | Abandonment/Forfeiture |
| RT 7310-3 | Klein Land & Cattle c/o Gayle Klein | N/A | Abandonment/Forfeiture |
| RT 2036-3 | Todd Mcelhany | James & Joan Mcelhany | Abandonment/Forfeiture |
| PE 7647-3 | Jared Higman | Heikes Family Farm LLC | Abandonment |
| PE 8375-3 | Maxon Conkey | N/A | Non-Construction |
| PE 7518-3 | Jerry Runia | N/A | Non-Construction/Failure to place to beneficial use |
| PE 8222-3 | Southeast Farmers Co Op c/o Larry Bork | N/A | Non-Construction |
| PE 6961-3 | Norman Kramer | N/A | Non-Construction/Failure to place to beneficial use |
| PE 8172-3 | Chris Lamb | N/A | Non-Construction |
| RT 2506-3 | James Reiners | N/A | Abandonment/Forfeiture |
| RT 2269-3 | Travis Wiese | N/A | Abandonment/Forfeiture |
| PE 8148-3 | Troi D Andernacht | N/A | Non-Construction |
| PE 8052-3 | Dennis Wolff | N/A | Non-Construction |
| RT 2603-3 | Dana Dennert | N/A | Abandonment/Forfeiture |
| RT 5545-3 | University of South Dakota c/o Nate Steele | N/A | Abandonment/Forfeiture |
| PE 7905-3 | Huron Hutterian Brethren c/o Joey Waldner | N/A | Non-Construction |
| PE 8624-3 | Mark Johnson | N/A | Non-Construction/Failure to place to beneficial use |
| RT 7171-3 | Willow Run Management Co c/o Barry Anderson | N/A | Abandonment/Forfeiture |

Motion by Freeman, seconded by Larson, to accept the Acting Chief Engineer's recommendations for cancellation of the 24 water rights and water permits for the reasons listed in the table. A roll call vote was taken, and the motion carried unanimously.

CONSIDER FUTURE USE WATER PERMIT APPLICATION NO. 2881-2, WESTERN DAKOTA REGIONAL WATER SYSTEM: Brittan Hullinger reported that Application No. 2881-2 for the Western Dakota Regional Water System (WDRWS) is for a future use water permit to reserve 20,765 acre-feet of water annually from the natural flows of the Missouri River.

On December 2, 2024, the Board moved to present Future Use Permit Application No. 2881-2 to the South Dakota Legislature for approval because the future use permit application was for a reservation of water exceeding 10,000 acre-feet annually.

On March 10, 2025, Senate Joint Resolution No. 501 was signed providing legislative approval for the future use application and returning the application to the Water Management Board for final action.

The potential area for future diversion is mapped in the report to the Chief Engineer and is the general area between Chantier Creek and Farm Island. The water is to be reserved as a future water supply for 19 counties west of the Missouri River in South Dakota.

The public interest of the proposed future use reservation is to supply water to rural and municipal water systems as populations grow and during extended droughts. Numerous investigations were done over the past few years that evaluate current capabilities of water systems and the future needs.

The data used to evaluate water availability of the natural flows of the Missouri River at Oahe Dam is from a 2001 US Geological Survey study that modeled different outflows using 100 years of historical inflow data. One of the outflow alternatives provides a realistic description of flows in the absence of flow regulation by the reservoirs.

While this application proposes to use only natural flows of the Missouri River, the normal effects of the reservoirs are that they tend to reduce flooding events and low flow periods. However, looking at hydrographs of flows modeled in the absence of regulation there is ample flow available in the Missouri River year-round even at the 90% exceedance probabilities, meaning that nine out of 10 years that flow was equaled or exceeded.

Since the report for this application was written, there are currently 250 active water rights appropriating water from the natural flows of the Missouri River authorizing a total diversion rate of approximately 1,219 cfs from the river, where 1,032 cfs is primarily authorized for irrigation use and 187 cfs is authorized for a non-irrigation use. There are currently 20 future use permits reserving 365,201 acre-feet of water annually from the Missouri River. If this application is approved, future use permits would reserve a total of 385,966 acre-feet per year.

By making conservative assumptions about the amount of pumping occurring at any given time, if all existing future use permits become fully developed, water is available year-round from the Missouri River for this future use permit.

When a future use permit requests to put their reserved water to beneficial use, a new water permit is issued, which includes a pump rate and the requested annual volume for that water permit is subtracted from the volume of water reserved by the future use permit. Therefore, any active pumping of water reserved by future use permits is included in the 1,219 cfs previously mentioned.

Ms. Hullinger stated that no one contested the application in response to the public notice, and the Acting Chief Engineer is recommending approval with qualifications.

Mr. Duvall noted that Kristin Conzet, Western Dakota Regional Water System Executive Director, and Talbot Wieszczorek, legal counsel, were present to answer questions.

There were no questions

Motion by Comes, seconded by Freeman, to approve Future Use Water Permit No. 2881-2, Western Dakota Regional Water System for 20,765 acre-feet of water annually from the Missouri River. A roll call vote was taken, and the motion carried unanimously.

REQUEST TO RESCIND ONE-YEAR SUSPENSION OF WATER PERMIT No. 8408-3:
Amanda Dewell reported that Water Right No. 6278-3 authorized diversion of 0.11 cfs (50 gpm) from one well for irrigation of 15 acres of golf greens at the Royview Golf Course. Permit No. 8408-3 increased that diversion rate for a total of 90 gpm. Both Water Right No. 6278-3 and Water Permit No. 8408-3 were held by Robert Novatny at the time of the department mailing the irrigation questionnaires for the 2024 season.

On March 5, 2025, Permit No. 8408-3 was suspended effective April 4, 2025, by the Board for a period of one year for failure to submit the 2024 irrigation questionnaire. Corresponding Water Right No. 6278-3 was amended to make the return of future questionnaires mandatory. Questionnaires, notices, and various other correspondence were sent to Mr. Novatny, who signed for the Certified Letter that was sent after the March meeting, but no attempts were made by him to respond.

After the suspension took effect, Ms. Dewell was contacted by Thomas Satrang, who is a representative of the Royview Country Club. He reported that a group of investors purchased the golf course from Mr. Novatny in the spring of 2024, and that Mr. Novatny never indicated that there were water rights for the golf course, that water rights needed to be transferred, and Mr. Novatny did not pass along any of the correspondence regarding last year's irrigation questionnaires. Mr. Satrang promptly completed the 2024 irrigation questionnaires and filed Notice of Transfer of Ownership paperwork for both Water Permit No. 8408-3 and Water Right No. 6278-3. He also submitted a letter explaining the situation and requesting that the one-year suspension be lifted. Ms. Dewell noted that a copy of the letter was emailed to the Board.

Motion by Freeman, seconded by Larson, to rescind the suspension of Water Permit No. 8408-3. A roll call vote was taken, and the motion carried unanimously.

VALIDATION OF VESTED CLAIM NO. 1548-3, FAULKTON DAM: Ms. Dewell reported that Recognized Vested Water Right Claim 1548-3 is held by the South Dakota Department of Game, Fish, and Parks for 220 acre-feet of water annually to fill Lake Faulkton for public recreation purposes. Lake Faulkton is located approximately two miles west of Faulkton, 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. 1548-3 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 Lake Faulkton, the spillway elevation had not yet been determined. In October 2024 the Water Rights Program conducted a survey of Faulkton Dam, which determined a spillway elevation of 1,597.4 feet mean sea level (NAVD 88).

The Acting Chief Engineer recommended that the Board validate the recognized claim for sufficient water annually to maintain the water level to the spillway elevation of 1597.4 feet mean sea level (NAVD 88) with the vested water right maintaining a priority date of January 1, 1936.

Motion by Comes, seconded by Dixon, to approve validation of Recognized Vested Water Right Claim No. 1548-3 for sufficient water annually to maintain the water level of Faulkton Dam's spillway elevation of 1597.4 feet mean sea level (NAVD 88) with the vested water right maintaining a priority date of January 1, 1936. A roll call vote was taken, and the motion carried unanimously.

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

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

Well Interference Qualification

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

Well Construction Rule Qualification

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

Irrigation Water Use Questionnaire Qualification

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

Low Flow Qualification

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

CONSIDER DEFERRAL RECOMMENDATION FOR WATER PERMIT APPLICATION NO. 8924-3, RICKY MILLER: Ron Duvall stated that included in the Board packet were a copy of the report on the application prepared by Kim Drennon, the Acting Chief Engineer's recommendation of deferral, and the Affidavit of Publication, which includes the public notice scheduling the hearing.

Water Permit Application No. 8924-3 proposes to appropriate 1.89 cubic feet of water per second (cfs) from one well to be completed into the Niobrara Aquifer for irrigation of 160 acres located approximately 13 miles north of Huron, SD.

Mr. Duvall stated that the Niobrara Aquifer underlies a significant area of eastern South Dakota, including all of Beadle County. In Beadle and Spink Counties there are two fully appropriated aquifers, the Tulare: East James Aquifer and the Tulare: Western Spink Hitchcock Aquifer. There are places where the Niobrara Aquifer is in direct contact with these fully appropriated aquifers, and there is no confining layer between those aquifers, such as the Pierre Shale, which does exist in places. A confining layer would prevent water, or at least greatly reduce the ability of water, from moving from one aquifer to another aquifer.

In regard to Water Permit Application No. 8924-3, based on the information the Water Rights Program has available, there is no confining layer between the Niobrara Aquifer and the Tulare: Western Spink Hitchcock Aquifer. That information is based on the well completion report filed with the application. Bedrock mapping of the aquifer has been done, and the lithologic log information is also available. Since there is no confining layer in this location, like the Pierre Shale, pumping of water from the Niobrara Aquifer could induce inflow from the Tulare: Western Spink Hitchcock Aquifer into the Niobrara Aquifer.

Mr. Duvall reiterated that the Tulare: Western Spink Hitchcock Aquifer is fully appropriated, and there are several applications for water from this aquifer that are being held at this time that would one day like to be approved. He noted that there are six other applications from the Niobrara Aquifer in this same general location, which the Water Management Board has deferred for the same reasons he is discussing today.

The Acting Chief Engineer recommended deferral of Application No. 8924-3 for up to two years for further study and to allow time for the applicant to retain a hydrogeologist or other qualified consultant to conduct a suitable aquifer performance test with analysis to determine if pumping from the Niobrara Aquifer in this area will induce recharge from the fully appropriated Tulare: Western Spink Hitchcock Aquifer. Mr. Duvall noted that inducing inflow from a fully appropriated aquifer presents beneficial use and public interest concerns for consideration by the Water Management Board.

The recommendation also includes a note that the consultant should consult with the Water Rights Program regarding the requirements for a suitable aquifer performance test. The recommendation also noted that the water quality in the Niobrara Aquifer may not be suitable for irrigation due to the high sodium adsorption ratio.

In Summary, Mr. Duvall stated that the Water Rights Program does not know if there is a connection between the aquifers, but if there is it raises concerns, and that is the reason the Acting Chief Engineer is recommending deferral pending completion of an aquifer performance test.

In response to a question from Mr. Comes, Mr. Duvall stated that an aquifer performance test is required, and the Water Rights Program is suggesting that a soil/water compatibility analysis be

completed. He noted that years ago, when the Department of Environment and Natural Resources was separate from the Department of Agriculture, a soil/water compatibility permit that was handled by the Department of Agriculture would need to be approved before the Department of Environment and Natural Resources could proceed with a water permit application and put the water to use. Those statutes were repealed long ago.

Chairman Hutmacher said his biggest fear is that the Niobrara Aquifer is lying beneath there, and it is going to be the lowest point, so it could drain the whole aquifer if you started pumping out of the Niobrara, the gravel has no capacity above there.

Motion by Freeman, seconded by Larson, to defer Water Permit Application No. 8924-3 for up to two years to allow time for the applicant to retain a hydrogeologist or other qualified consultant to conduct an aquifer performance test with analysis to determine if pumping from the Niobrara aquifer in this area will induce recharge from the Tulare: Western Spink Hitchcock Aquifer. A roll call vote was taken, and the motion carried unanimously.

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

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

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

Approved July 9, 2025.

Water Management Board

WATER MANAGEMENT BOARD MEETING

May 7, 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 |
|--------|----------------------------------|-------------|--------|-----------|----------------|---|--------------------|
| 2041-1 | Rodney Benson | Saint Onge | LA | 0.34 cfs | WDS/RWS | 1 well – Madison | wi, wcr, 3 special |
| 2042-1 | Broken Bridge Ranch LLC | Sturgis | MD | No Add'l | IRR (90 acres) | Belle Fourche River | lf, iq, 1 special |
| 2883-2 | Rapid Valley Sanitary District | Rapid City | PE | 69.3 AF | Transfer Use | Rapid Creek | 7 special |
| 2884-2 | Rapid Valley Sanitary District | Rapid City | PE | 109.69 AF | Transfer Use | Rapid Creek | 7 special |
| 2885-2 | Rapid Valley Sanitary District | Rapid City | PE | 147.8 AF | Transfer Use | Rapid Creek | 7 special |
| 8864-3 | Big Sioux Community Water System | Egan | LK | 300 AF | RWS | 1 well – Big Sioux Northern Skunk Creek | wi, wcr, 2 special |
| 8913-3 | Dennis Wolff | Long Lake | MP | 2.2 cfs | IRR (157 ac) | 4 wells – McPherson Mgmt Unit | wi, wcr, iq |
| 8914-3 | Todd Heine | Vermillion | CL | 1.11 cfs | IRR (54 acres) | 1 well – Missouri Elk Point | wi, iq, 1 special |
| 8915-3 | Joe Arthur | South Shore | CD | 1.67 cfs | IRR (160 ac) | 2 wells – Antelope Valley | wi, wcr, iq |
| 8916-3 | City of Sioux Falls | Sioux Falls | MA | 0.024 AF | Municipal | 1 well – Big Sioux Southern Skunk Creek | wi, wcr, 3 special |
| 8917-3 | Bon Homme Hutterian Brethren | Tabor | BH | 1.67 cfs | IRR (60 acres) | Missouri River | iq, 1 special |
| 8918-3 | Plainview Dairy, LLC. | Toronto | DU | 1.33 cfs | COM | 2 wells – Big Sioux Brookings | wi, wcr, 4 special |
| 8920-3 | Ralph & Lucille Marquardt | Yankton | CL | No Add'l | IRR (140 ac) | 1 well – Missouri Elk Point | wi, iq |
| 8921-3 | Brian Curry | Elk Point | UN | 1.78 cfs | IRR (160 ac) | 1 well – Missouri Elk Point | wi, wcr, iq |

Future Use Reviews

| No. | Name | Address | County | Amount Remaining in Reserve | Use | Source | Qualifications |
|---------|-------------------|-----------|--------|-----------------------------|-----|----------------------------|----------------|
| 3574A-3 | Clay RWS | Wakonda | CL | 1,000 AF | RWS | Missouri River | 2 special |
| 4798-3 | City of Parker | Parker | TU | 340 AF | MUN | Parker Centerville Aquifer | 1 special |
| 4817-3 | South Lincoln RWS | Beresford | LN | 1,448 AF | RWS | Dakota Aquifer | 2 special |
| 4860-3 | City of Hoven | Hoven | PT | 410 AF | MUN | Bowdle Aquifer | 1 special |
| 6512-3 | City of Madison | Madison | LK | 387 AF | MUN | Howard Aquifer | 4 special |