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MINUTES OF THE 250TH MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
JULY 10, 2024

CALL TO ORDER AND ROLL CALL: Vice 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 attended in person. William Larson, Tim Bjork, Chad Comes, and Peggy Dixon attended remotely.

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

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

Court Reporter: Carla Bachand, Capital Reporting Services.

Legislative Oversight Committee Members: Representative Mike Weisgram.

Other: Albert Keller, Lemmon, SD.

ANNUAL ELECTION OF OFFICERS: Motion by Freeman, seconded by Comes, to elect Jim Hutmacher as chairman, Peggy Dixon as vice chair, and Leo Holzbauer as secretary. A roll call vote was taken, and the motion carried unanimously.

APPOINTMENT OF PREHEARING OFFICER: Chairman Hutmacher appointed Rodney Freeman as the prehearing chairman and William Larson as the alternate prehearing chairman.

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

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT MAY 8, 2024, BOARD MINUTES: Motion by Bjork, seconded by Larson, to approve the minutes of the May 8, 2024, Water Management Board meeting. Motion carried unanimously.

SET OCTOBER 2 - 3, 2024, MEETING DATES AND LOCATION: The October 2 - 3 Board meeting will be at the Matthew Environmental 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, introduced Shannon Konst, new senior secretary for the Water Rights Program, and Austin Settje, new engineer for the Water Rights Program.

Mr. Gronlund discussed the Water Rights activities regarding flooding, monitoring dams, and the USGS gaging stations.

South Dakota received a \$2,900,000 grant from FEMA for high hazard dams, which will be used toward the Richmond Dam project northwest of Aberdeen. The South Dakota Legislature has already appropriated \$9,650,000 for this project. The project is anticipated to cost approximately \$20,000,000.

Mr. Gronlund noted that the table of unopposed new water permit applications issued based on the Chief Engineer recommendations, which was included in the Board packet, should not have included No. 8754-3, Lewis and Clark RWS, and No. 8787-3, Cheryl E. Nelson. Both applications were addressed by the Water Management Board at its May meeting.

Chairman Hutmacher talked about silting in the Lake Wanalain Dam marina and flooding at the Chamberlain golf course due to what he believes is silting in the Missouri River near old Highway 16.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: David McVey reported that on July 2, 2024, the First Circuit Court issued a memorandum decision regarding the appeal of the Water Management Board's Order regarding the petition for a declaratory ruling and Water Permit No. 8744-3. The court affirmed the Board's decisions and stated that the Board correctly determined that no water right permit is required for Dakota Bay canal construction and properly allowed the intervention of Dakota Bay and the Chief Engineer and did not require disqualification of legal counsel. According to the Board's determinations, the declaratory ruling is affirmed. The court further found that the Water Management Board correctly determined Dakota Bay's water use proposed under Application No. 8744-3 is beneficial and in the public interest, the subpoenas were properly quashed, and the determinations in Application No. 8744-3 were affirmed.

Mr. McVey stated that this essentially means that all the Board's Orders were affirmed by the Circuit Court, but they can still be appealed to the state Supreme Court. The court directed Dakota Bay to file an Order that is consistent with court's memorandum decision, but an Order has not yet been filed.

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

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

Amanda Dewell reported that 13 water rights and water permits were scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The department received no comments or letters in response to the notices of cancellation.

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

Number	Original Owner	Present Owner(s) and Other Persons Notified	Reason
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DIVISION I WATER RIGHTS/PERMITS

RT 683-1	Murray Water Co	Mark Job	Abandonment/Forfeiture
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DIVISION III WATER RIGHTS/PERMITS

RT 2989A-3	Palmer Reinicke	Terwilliger & Sons Inc c/o Dale Terwilliger	Abandonment/Forfeiture
RT 3053-3	Brett Binger		Abandonment
RT 3749-3	Larry Jorgenson		Abandonment
RT 4687-3A	James L Sutton Jr		Abandonment/Forfeiture
RT 4687-3B	James L Sutton Jr		Abandonment/Forfeiture
RT 5439-3	Ross Ritchie	Estelline Grain Co-Op c/o Jennifer Loban	Abandonment/Forfeiture
PE 7322-3	Redhawk LLC c/o Duane Potts		Abandonment
PE 7833-3	Billy Boyer		BU/Abandonment
PE 7857-3	Casey & April Johnston		Non-Construction
PE 8043-3	Robert P Walsh		Non-Construction
PE 8072-3	Jesse & Tanya VanDestroet		Abandonment
PE 8423-3	City of Platte c/o Shauna Meyerink		Non-Construction

Motion by Freeman, seconded by Dixon, to accept the Chief Engineer’s recommendations for cancellation of the 13 water rights and water permits for the reasons listed in the table. A roll call vote was taken, and the motion carried unanimously.

CONSIDER VALIDATION OF RECOGNIZED VESTED WATER RIGHT CLAIM NO. 1069-2, SD GAME, FISH & PARKS FOR CANYON LAKE: Mr. Gronlund reported that there was not a process or public notice associated with entities filing for vested water rights for uses pre-1955.

In 1983, the State Legislature set forth a process for validating recognized vested water right claims.

In 1988, the Water Rights Program published notices in all counties where the recognized vested water right claims were located. The public notice provided the opportunity for anyone to file a petition to oppose a claim. Outlet elevations for these dams were not available so John Hatch, the former Chief Engineer, opposed validation of all Game, Fish, and Parks vested water right claims to include better quantification of the water for the vested water right claims. Over time, when repairs are done by Game, Fish and Parks where they surveyed an outlet elevation, the Water Rights Program brings the vested water right claim back to the Board for validation.

Canyon Lake dam is owned by the City of Rapid City, but the vested water right claim is held by Game, Fish, and Parks for the impoundment of water. The city provided the Water Rights Program with as built plans for the dam reconstruction, which includes the spillway elevation; therefore, validation of the vested right claim can now proceed.

The Chief Engineer recommended validation of recognized Vested Water Right Claim No. 1069-2 for sufficient water to maintain the water level in Canyon Lake's spillway elevation of 3,360.0 feet mean sea level (fmsl) with a priority date of January 1, 1935.

Motion by Comes, seconded by Bjork, to validate recognized Vested Water Right Claim No. 1069-2 for sufficient water to maintain the water level to Canyon Lake's spillway elevation of 3360.0 fmsl with a January 1, 1935, priority date. 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 are listed below:

Well Interference Qualification

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

Well Construction Rule Qualification

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

Irrigation Water Use Questionnaire Qualification

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

Low Flow Qualification

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

CONSIDER WATER PERMIT APPLICATION NOS. 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: Ron Duvall stated included in the Board packet were the applications, the Chief Engineer's recommendations, and the Affidavits of Publication. The reports were prepared by Brittan Hullinger.

Nick and Scott Bebo submitted water right permit Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3 for water from the James River in the total amount of 9.7 cfs to irrigate a total of 975 acres.

Jim or Collin Klebsch submitted water right permit Application Nos. 8867-3, 8868-3, 8869-3, and 8870-3 for water from the James River in the total amount of 9.57 cfs to irrigate a total of 612 acres.

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

Mr. Duvall noted that all nine of the applications were public noticed, and in response to the public notice, no petitions in opposition were received. The Bebo's and the Klebsch's are not contesting the Chief Engineer's recommendations.

In 1965, the Water Rights Commission, the predecessor to the Water Management Board, set appropriative limits of 300 cfs from the James River, and of that, no more than 200 cfs can be appropriated from Huron to the North Dakota border. Currently, the amount of water that is appropriated by existing permits from the James River is right at these limits.

Mr. Duvall noted that rather than recommend denial of the applications, the Water Rights Program believes that now is a good time to look at the flow limits that were set in 1965.

Mr. Duvall stated that since the 1990s there has been a notable trend of increasing stream flows in the James River.

The Water Rights Program intends to present the results of the hydrologic analysis to the Board in December 2024.

Motion by Larson, seconded by Bjork, to defer Water Permit Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3, Nick and Scott Bebo. A roll call vote was taken, and the motion carried unanimously.

Motion by Bjork, seconded by Dixon, to defer Water Permit Application Nos. 8867-3, 8868-3, 8869-3, and 8870-3, Jim or Collin Klebsch. A roll call vote was taken, and the motion carried

unanimously.

Board member Larson left the meeting at 10:10 a.m. due to a prior commitment.

CONSIDER MODIFICATION OF QUALIFICATION NO. 4 ON WATER PERMIT NO.

3053A-3, BRETT BINGER: Amanda Dewell reported that Water Permit No. 3053A-3 amended Water Right No. 3053-3 by transferring 130 of the irrigated acres and the point of diversion to a new location. Water Permit No. 3053A-3 was approved in January 2015. Qualification No. 4 was placed on the permit mandating that the original well approved under Water Right No. 3053-3 be plugged.

During the Water Rights staff inspection for the purpose of licensing the new permit, it was found that Mr. Binger was using the original well for livestock watering and he requested to continue use of that well for this purpose.

The Chief Engineer recommended modifying Qualification No. 4 on Water Permit No. 3053A-3 to read as follows:

1. The original well authorized by Water Right No. 3053-3 located in the center of the S ½ Section 19, T115N-R64W must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04, if the well is abandoned.

Motion by Freeman, seconded by Holzbauer, to modify Qualification No. 4 on Water Permit No. 3053A-3, as presented. A roll call vote was taken, and the motion carried unanimously.

CONSIDER PERMIT APPLICATION NO. 8842-3, GREG & EVETTE RIHANEK: Jennifer Verleger, Assistant Attorney General on behalf of the Water Rights Program, stated that this is the hearing for Water Permit No. 8842-3. The application was contested by Clyde Olsen. No other comments were received. Neither the applicant nor the petitioner was present.

The Chief Engineer recommended approval of the application with three qualifications.

Ms. Verleger offered Exhibit 100, pages 133-160 of the pdf version of the Board packet. The exhibit includes the Chief Engineer's recommendation, the technical report, the Affidavit of Publication, Clyde Olsen's petition in opposition, and the notice of hearing.

The exhibit was admitted into the record.

Nakaila Steen, engineer with the Water Rights Program, presented her report on the application.

Water Permit Application No. 8842-3 was filed by Greg and Evette Rihanek proposing to divert water at a rate of 1.45 cfs, or 651 gpm, from one well already completed into the Dakota Aquifer for the irrigation of 120 acres. The water from the well will be diverted into a dugout and pumped from the dugout to irrigate. The site is in Aurora County approximately five miles northeast of Plankinton, SD. This location is approximately eight miles southeast of the petitioner's Dakota Aquifer well.

No water well or test hole completion report were submitted with the application. However, using geophysical log information, lithologic logs on file nearby, and the water levels from various aquifers measured in existing wells, South Dakota Geological Survey and Water Rights Program staff were able to come to the determination that the existing well proposed to be used is likely completed in the Dakota Aquifer.

Review of the hydrologic budget and observation well data for the Dakota Aquifer indicated that there is a reasonable probability unappropriated water is available for this proposed appropriation, and when considering the saturated thickness of the aquifer in Aurora County artesian head pressure seen in nearby observation wells and appropriative user's wells and the lack of well interference complaints for wells completed into the aquifer in Aurora County, there is a reasonable probability that the potential for unlawful impairment is unlikely for existing water right holders and domestic uses.

In response to questions from Mr. McVey, Ms. Steen stated that she reviewed the petition in opposition. Ms. Steen believes the petitioner's concerns pre-dated her back when there were concerns of drawdown in the Niobrara Aquifer in this area in the 1980s. The petitioner has three Niobrara wells and one Dakota Aquifer well on file with the Water Rights Program. The Niobrara Aquifer exists approximately 200 feet deep in this area, and the Dakota Aquifer is approximately 600 feet deep in this area. Ms. Steen believes the petitioner was concerned about unlawful impairment and drawdown. Nothing in Mr. Olsen's petition changed Ms. Steen's position in her recommendation.

There were no other questions of Ms. Steen.

Motion by Comes, seconded by Holzbauer, to approve Water Permit Application No. 8842-3, Greg and Evette Rihaneck, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

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

A court reporter was present, and a transcript of the proceedings may be 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 October 2, 2024.

WATER MANAGEMENT BOARD MEETING

July 10, 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
2035-1	Dan Heck	Belle Fourche	BU	200 AF	FWP	Sourdough Flats	1 special
2036-1	Action for the Betterment of Our Community	Sturgis	MD	0.46 AF	WDS/COM	1 well – Minnelusa	wi, 2 special
8789-3	Dennis Larson	Blunt	HU	48 AF	FWP	1 well – Inyan Kara	wi, wcr, 1 special
8832-3	Jesse & Tanya Van De Stroet	Fairview	CL	No Add'l	Irrigation	1 well -Upper Vermillion Missouri	wi, iq, 1 special
8833-3	Jesse & Tanya Van De Stroet	Fairview	CL	No Add'l	Irrigation	1 well – Upper Vermillion Missouri	wi, iq, 1 special
8834-3	Smit Family Trust	Hurley	CL	No Add'l	Irrigation	1 well – Upper Vermillion Missouri: South	wi, iq, 1 special
8839-3	Greenwood Hutterian Brethren Inc.	Delmont	DG	1.78 cfs	Irrigation	Dam and sand pit	iq, 2 special
8840-3	Robert Huber Farm	Herreid	CA	3.56 cfs	Irrigation	1 well – Grand	wi, wcr, iq
8843-3	Mikota Holdings, LLC	Grand Rapids	TU	1.78 cfs	Irrigation	1 well – Upper Vermillion Missouri: South	wi, wcr, iq
8844-3	GrowMark DBA Century FS	Yankton	YA	0.67 cfs	IND/COM	1 well – Missouri: Elk Point	wi, wcr, 2 special
8845-3	Dan Reppe	Conde	CK	No Add'l	Irrigation	1 well – Altamont	wi, iq
8846-3	Anthony or Kimberly Folk	Corona	GT	2.00 cfs	Irrigation	2 wells - Wilmot	wi, wcr, iq
8871-3	Gray Goose Irrigation District	Warner	HU	No Add'l	Irrigation	Missouri River	iq