

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

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8991-3,
CENTURY SWINE RE, LLC

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION

This matter came before the South Dakota Water Management Board for hearing on May 6, 2026. Board members William Larson, Chad Comes, Peggy Dixon, Rodney Freeman, Kelly Hepler, Leo Holzbauer, and James Hutmacher attended the hearing and heard the evidence presented. Applicant Century Swine, LLC ("Century Swine" or "Applicant") and Intervenor PVC Management II, LLC d/b/a Pipestone ("Pipestone") were represented by Paul W. Tschetter. Petitioners Larry Heinz, Cindy Heinz, Garrett Heinz, and Amanda Abarca (collectively "Petitioners") were represented by Connor R. Shaul. The Water Management Board ("Board") was represented by David M. McVey. The Department of Agriculture and Natural Resources Water Rights Program was represented by Emily Greco.

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

A. FINDINGS OF FACT

1. On November 10, 2025, the Department of Agriculture and Natural Resources received Water Rights Permit Application No. 8991-3 on behalf of Century Swine seeking a permit to appropriate water for commercial purposes in Edmunds County (the "Application"). The Application sought 154 acre feet or 50

million gallons per year of groundwater from the Dakota Aquifer. Century Swine and Pipestone intend to use the water appropriated to support a commercial swine facility in Edmunds County, South Dakota located in the Northwest Quarter of Section 9, Township 121 North, Range 71 West.

2. In support of the Application, Century Swine submitted supplemental information with information related to wells drilled by Stretch's Well Service. These three new wells were drilled to a depth of 1,540 feet with water accessed 180 feet from the surface.

3. On January 27, 2026, Mark Mayer as Acting Chief Engineer of the Water Rights Program within the Department of Agriculture and Natural Resources, recommended approval of the Application subject to qualifications, including the following:

- a. Withdrawals must be controlled to not reduce supply for existing domestic wells or prior water rights.
- b. The wells must be constructed by a licensed well driller and be compliant with Administrative Rules of South Dakota.
- c. Century Swine must comply with Pollution Control Permit for concentrated animal feeding operations issued pursuant to South Dakota law.
- d. Century Swine must comply with all existing and applicable Board rules within the Administrative Rules of South Dakota.
- e. Century Swine must report the amount of water withdrawn to the Chief Engineer each year.

4. Notice of the Application was timely advertised in the Edmunds

County Tribune and Aberdeen American News as required by law.

5. The matter was initially scheduled to be heard by the Board during its March 4, 2026, meeting; however, an automatic delay was requested, and the hearing was rescheduled for the next regular Board meeting held in May. Water Permit Application No. 8991-3 is a new water permit application which requires a determination pursuant to SDCL § 43-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

6. On February 17, 2026, the Board received filings from the Petitioners opposing the Application. The Petitioners objected on grounds including uncertainty regarding recharge of the groundwater source, concerns about the long-term sustainability of the proposed use, the risk of impairment to existing domestic wells, and the amount of water requested.

7. Other individuals also filed petitions opposing the Application in compliance with the notice of hearing; however, those individuals did not appear before the Board at the May 6, 2026 hearing on the Application.

8. On March 30, 2026, Pipestone provided the Board and other interested parties with a request to intervene in the contested case related to this Application based upon its status as manager of the swine facility owned by Century Swine where appropriated water pursuant to the Application will be put to use. Pipestone's intervention was granted by the Board on April 15, 2026.

9. Interested parties were permitted to submit information concerning expert witnesses, fact witnesses, and exhibits in advance of the Board hearing.

10. DANR witness, Austin Settje, a natural resources engineer,

reviewed the permit application, which included a well completion report, analyzed the hydrology of the Dakota aquifer, and reviewed the information obtained from test hole reports and the well completion report, as well as current water right/permit files and well completion reports for the aquifer.

11. The Dakota aquifer is comprised of the saturated and permeable portions of the Dakota Formation and is primarily a confined bedrock aquifer throughout most of South Dakota.

12. Mr. Settje testified that recharge of the Dakota aquifer in South Dakota occurs through upward leakage from underlying aquifers with a higher potentiometric surface than the Dakota aquifer, downward seepage through overlying confining layers, and through the infiltration of precipitation on the Newcastle Formation that outcrops in the Black Hills.

13. Mr. Settje testified that the best information available is that the average annual recharge rate of the Dakota aquifer is 57,700 acre-feet per year. Further, the most recent research, as relayed by Mr. Settje, is that the average annual recharge rate of the Dakota aquifer is likely greater than 57,700 acre-feet per year.

14. Mr. Settje testified that discharge from the Dakota aquifer in South Dakota occurs through well withdrawals, uncontrolled flowing wells, outflow through corroded well casings, and outflow to overlying or adjacent aquifers due to a higher potentiometric surface in the Dakota aquifer.

15. Currently, there are seven future use permits reserving 4,287 acre-feet/year of water from the Dakota aquifer. Further, there are 260 active water rights/permits authorized to divert water from the Dakota aquifer. Of these 260 active water rights/permits there are:

- a. 239 active water rights/permits for non-irrigation purposes and the estimated average annual withdrawal rate from the Dakota aquifer is approximately 24,930 acre-feet per year; and
- b. 21 authorized water rights/permits for irrigation purposes and the discharge of these rights/permits have an estimated average annual withdrawal rate from the Dakota aquifer of approximately 357 acre-feet per year.

16. Mr. Settje testified there are 46 observation wells completed into the Dakota aquifer. The three closest observation wells to the well the Applicant provided a well completion report for, are ED-85A (approximately 34 miles east), HD-87 A (approximately 76 miles southeast), and AU-89A (approximately 126 miles southwest).

17. Throughout South Dakota, most of the hydrographs for observation wells completed into the Dakota aquifer, and the potentiometric surface measurements of the Dakota aquifer show a decreasing trend in hydraulic head. A decline in water levels in a confined aquifer does not necessarily indicate a significant decrease in water stored in the aquifer, as water levels above the top of the aquifer materials are representative of the hydraulic head (water pressure) inside the aquifer. Additionally, there are uncontrolled, flowing wells discharging water from the Dakota aquifer at ground surface, and it is expected water from the aquifer is also being discharged to other aquifers if wells completed into the Dakota aquifer have experienced casing failure.

18. Mr. Settje noted that hydrograph data display both declining and stable water levels in the Dakota aquifer in central and north-central South

Dakota. Several other observation wells in the southeast and south-central South Dakota were shown to have water levels that stabilize over time or have recently began stabilizing. The observation wells under the influence of heavy and continuous pumping quickly stabilizes after the pumping starts. There has been a long history, back to the late 1800's, of well development into the Dakota aquifer. Concerns have developed over time about the decline in artesian head pressure of the Dakota aquifer. The Board has concluded and reaffirmed that withdrawals exceeding the average annual recharge cannot be determined solely upon a decline in head pressure, and in theory the Dakota aquifer head is stabilizing relative to withdrawals and discharges. Since discharge from uncontrolled flowing wells is likely to continue until water levels in the aquifer decline to being at or below the ground surface, continuing to allow beneficial pumping to occur reduces the amount of water being discharged to waste.

19. Mr. Settje also testified that the closest Dakota aquifer water right/permit (not held by the Applicant) to the proposed diversion point(s) is Water Permit No. 8666-3, which is held by SFP LLC. The diversion point for Water Permit No. 8666-3 is located approximately 8.8 miles east of the diversion point(s) for this Application.

20. There are domestic wells on file with the DANR-Water Rights Program that are completed into the Dakota aquifer, with the closest domestic wells on file (not held by the Applicant) located approximately 3.8 miles to the southeast and 5.7 miles to the northeast of the proposed diversion point(s). These wells were completed in 1906; however, a somewhat more recent domestic well, completed in 1983, is located approximately 6.6 miles northeast of the diversion point(s). There could potentially be other domestic wells completed into the

Dakota aquifer near the well the Applicant proposes to use that are not on file with the DNR-Water Rights Program. The location of the domestic wells in the well completion report database maintained by the Water Rights Program is based on the location listed by the driller on the well completion report.

21. Mr. Settje testified that based upon the observation well data that demonstrates the aquifer receives recharge, the hydraulic head inside the aquifer, and the amount of water that is discharged to waste from uncontrolled, flowing wells, there is a reasonable probability that unappropriated water is available.

22. The Dakota aquifer is under confined conditions. In a confined aquifer, draw down from a pumping well can extend some distance from the well. Based on the well completion report submitted with Water Permit Application No. 8991-3, there is expected to be at least 185 feet of saturated aquifer thickness at the time of drilling and the artesian head pressure of 1,175 feet above the top of the aquifer materials at the time of drilling. Any draw down as a result of the diversion for this application is not expected to unlawfully impair nearby adequate wells. In the counties of Edmunds, Faulk, Potter, and Walworth; there are no complaints on file with the DNR-Water Rights Program regarding well interference for adequate wells completed into the Dakota aquifer.

23. Based on the foregoing, there is a reasonable probability that the proposed appropriation will not impose unlawful impairment on existing users with adequate wells.

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

25. The Board also received the testimony of Chief Engineer Adam Mathiowetz. Mr. Mathiowetz testified that based upon his review of the report and the best information available, he recommended approval of the application.

26. The Board finds Chief Engineer Mathiowetz to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Mathiowetz's testimony.

27. Nick Fitzgerald testified before the Board as a representative of Century Swine and in support of Applicant's application. Fitzgerald, the Director of Business Development for PVC Management II, LLC dba Pipestone, testified as to the relationship between Pipestone and Century Swine and discussed the planned use of the proposed diverted water. Mr. Fitzgerald discussed the approximately 15,050 head commercial swine facility under construction that would be the user of the proposed diverted water. Fitzgerald discussed the Edmonds County Conditional Use Permit that has been approved for the commercial swine facility, the status of ongoing construction, and the planned use of the proposed diverted water. Fitzgerald also discussed the impact the commercial swine facility would have on the local economy by creating jobs and the broader hog industry by generating demand for feed and other inputs. Fitzgerald explained that Applicant must anticipate the greatest possible use of water in order to ensure adequate available water for the commercial swine facility. As a result, Applicant is seeking approval of an amount of water that is greater than it communicated during the Edmonds County permitting process.

28. The Board finds Nick Fitzgerald to be a credible witness and that these Findings of Fact are supported by the evidence presented including Nick Fitzgerald's testimony.

29. Petitioner Garrett Heinz testified before the Board. Mr. Heinz discussed the history of his family's farm and the location of his cow-calf operation relative to the proposed diversion point(s). Mr. Heinz discussed the relative elevation of his farming operation in relation to the proposed diversion point(s). Mr. Heinz expressed concerns that the approval of the Application would be a detriment to domestic wells.

30. None of the Petitioners provided expert testimony to rebut, oppose, or undermine the opinions expressed by Mr. Settje or Mr. Mathiowetz.

31. The Board finds that there is unappropriated water available to satisfy this application.

32. The Board finds that granting this application would not unlawfully impair existing water rights.

33. The Board further finds that the proposed use of the water for commercial use for a commercial swine facility constitutes a beneficial use.

34. The Board further finds that placing the water to this beneficial use is in the public interest.

35. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

B. OBJECTIONS TO FINDINGS OF FACT

The Applicant filed Proposed Findings of Fact and the Petitioners in Opposition Larry Heinz, Cindy Heinz, Garrett Heinz, and Amanda Abarca ("Petitioners") filed objections and proposed certain alternate findings. In compliance with SDCL § 1-26-25, Petitioner's Objections to the Proposed Findings of Fact are accepted, modified, or rejected as follows:

1. Petitioners propose adding the following language to finding number 2:

"These three new wells, and the well completion report submitted with the Application, are the only site-specific subsurface data in the record for the proposed diversion point."

Petitioners' proposed language is rejected as it is unsupported by the record.

2. Petitioner filed an objection based on a statutory error to proposed finding 6; finding 6 is revised as set forth above.

3. Petitioner requested additional language be added to finding number 7 (now 6). The requested language was added to the revised finding number 6.

4. Petitioners do not object to finding 15 (now 13), but request adding the following language:

Mr. Settje's recharge figure is a statewide aggregate estimate, not a site-specific measurement, and the Report to the Chief Engineer on which Mr. Settje relied expressly qualifies it. The Report attributes the estimate to a 1983 study, states that the estimate "relies on outdated assumptions," and concludes that "the actual recharge rate of the Dakota aquifer could be higher or lower than previously estimated." (Report to the Chief Engineer on Water Permit Application No. 8991-3 (Jan. 27, 2026), at 6). The Report likewise states, in its Recharge discussion, that "it is unknown whether the true recharge rate of the Dakota aquifer is higher or lower than Bredehoeft and others' (1983) estimates," and describes the estimate as merely "the best information available to give a sense of scale." (Id. at 3). Because the sole recharge figure in the record is, by the admission of the agency's own report, uncertain in both directions and built upon outdated assumptions, it does not establish a dependable floor against which the requested appropriation can be measured; and the Applicant offered no estimate of the average estimated annual recharge to the groundwater source in the area of the proposed diversion.

Petitioners' proposed language is rejected. Mr. Settje's testimony was based on the "best information available" which is the Board's expectation of the Water Rights Program.

5. Petitioners do not object to finding 17 (now 15), but request adding the following language:

"These existing and reserved demands, together with the requested appropriation, must be measured against the recharge available in the area of the proposed diversion, not against statewide recharge, and the record contains no such site-specific comparison."

Petitioners' proposed language is rejected. This assertion requires a conclusion of law and is unaddressed in SDCL §46-2A-9.

6. Petitioners do not object to finding 18 (now deleted), but request adding the following language:

"The admitted uncertainty regarding unpermitted domestic withdrawals and discharge from uncontrolled flowing wells weighs against, rather than supports, a finding that unappropriated water is available with reasonable probability."

The Petitioners' request is denied as it is unsupported by the evidence.

7. Petitioners do not object to finding 19 (now 16), but request adding the following language:

"Because the nearest observation well is approximately 34 miles from the proposed diversion point, the record contains no site-specific water-level or hydrograph data adequately near the diversion."

Petitioners' proposed language is rejected as it is unsupported by the record.

8. Petitioners object to proposed finding number 21 (now 18) "to the extent it states the Board's policy preferences as findings of fact and/or implies that the Board's policy preferences relieve the Applicant of the statutory requirements."

Petitioners' objections are noted.

9. Petitioners do not object to finding 25 (now 22), but request adding the following language:

"The absence of complaints on file is not affirmative evidence that the

proposed diversion-which is not yet operating-will not unlawfully impair nearby adequate or domestic wells, particularly given that draw down can extend some distance in a confined aquifer."

Petitioners' proposed language is rejected as it assumes facts not in evidence.

10. Petitioners do not object to proposed finding 26 (now deleted), but request adding the following language:

"If the Application is granted, some existing well owners may need to install or lower pumps depending on the specific characteristics of the Dakota aquifer at their location. Requiring existing well owners to install or lower pumps in order to maintain their existing supply is an impact upon existing water rights and domestic uses, and the Applicant has not established that imposing such impacts is consistent with the prohibition on unlawful impairment under SDCL § 46-2A-9."

Petitioners' proposed language is rejected; it relies on supposition and assumes facts not in evidence.

11. Petitioners object to proposed finding number 27 (now 23 *revised*) and propose the following alternative language:

"The Applicant did not establish, by site-specific evidence, a reasonable probability that interference from the proposed appropriation will not impose unlawful impairment upon existing users with adequate wells, particularly in light of the concession in Finding 26 that existing well owners may need to install or lower pumps."

Petitioners' proposed language is rejected as it is inconsistent with the Board's decision.

12. Petitioners object to proposed finding number 28 (now 24).

Petitioners' objections are noted.

13. Petitioners object to proposed finding number 29 (now 25) "to the extent the finding adopts his opinion that the proposed use is a beneficial use and in the public interest "consistent with the Board's previous decisions," and contend that

such an opinion is conclusory and does not reflect a case-specific analysis of this Application."

Petitioners' objections are noted, and the language has been revised accordingly.

14. Petitioners object to proposed finding number 30 (now 26).

Petitioners' objections are noted, and the language has been revised accordingly.

15. Petitioners do not object to proposed finding 31 (now 27), but request adding the following language:

"A request premised on the "greatest possible use," rather than on the amount of water reasonably required for the facility, and admittedly greater than what was communicated during the Edmunds County permitting process, seeks an appropriation in excess of demonstrated need."

Petitioners' proposal is denied as it is an inaccurate statement of Fitzgerald's testimony as a whole.

Petitioners object to proposed finding 32 (now 28) specifically to "the weight to be given to Mr. Fitzgerald's testimony."

Petitioners' objections are noted.

16. Petitioners do not object to proposed finding 33 (now 29), but request adding the following language:

"Mr. Heinz's testimony presented a site-specific, location- and elevation-based concern regarding impairment of domestic wells, which the Applicant did not rebut with site-specific recharge, draw down, or monitoring data for the area of the proposed diversion."

Petitioners' proposed language is rejected as it is inconsistent with the

decision of the Board.

17. Petitioners do not object to proposed finding 33 (now 30); but request adding the following language:

"The Applicant bears the burden of proof on each factor under SDCL § 46-2A-9, and the absence of expert testimony from Petitioners does not establish that the Applicant carried its burden."

Petitioners' proposed language is rejected as it is unnecessary and noting in the referenced paragraph addresses the burden of proof.

18. Petitioners object to proposed finding 35 (now 31) and propose and alternative finding to read as follows:

"The Applicant failed to establish a reasonable probability that unappropriated water is available to satisfy this Application at the proposed diversion point."

Petitioners' proposed language is rejected as it is inconsistent with the decision of the Board.

19. Petitioners object to proposed finding 36 (now 32) and propose and alternative finding to read as follows:

"The Applicant failed to establish that the proposed diversion can be developed without unlawful impairment of existing water rights and domestic uses, particularly in light of the concession that existing well owners may need to install or lower pumps (Finding 26) and the absence of any nearby observation well."

Petitioners' proposed language is rejected as it is inconsistent with the decision of the Board.

20. Petitioners object to proposed finding 37 (now 33) "to the extent this finding approves an amount of water exceeding the amount reasonably required for the corresponding facility" and proposes the following alternative language:

"Beneficial use extends only to the quantity reasonably necessary for the

proposed purpose, and the record reflects a request for the "greatest possible use" exceeding what was represented during the Edmunds County permitting process (Finding 31)."

Petitioners' proposed language is rejected as it is not an accurate reflection of the testimony given, misstates the law, and is inconsistent with the decision of the Board.

21. Petitioners deny proposed finding 38 (now 34) as conclusory and propose the following alternative:

"The record contains no case-specific analysis demonstrating that placing this water to the proposed use is in the public interest, and an appropriation in excess of demonstrated need (Finding 31), together with the risk of impairment to existing domestic users (Finding 26), weighs against a public-interest finding."

Petitioners' proposed language is rejected as it is not an accurate reflection of the record and is inconsistent with the decision of the Board.

C. CONCLUSIONS OF LAW

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

1. The Board has jurisdiction over this matter. The application falls within the Board's responsibility over water appropriation and regulation in Title 46.
2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.
3. The Chief Engineer recommended granting this application. This

recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The Chief Engineer recommended granting the application. The recommendation, however, is not binding on the Board. SDCL § 46-2A-4(8).

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

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

7. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by §§ 46-2-9 and 46-2-11." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

8. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether "according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

9. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing domestic uses and water rights. The proposed diversion can be developed without unlawful impairment of existing water rights or domestic water uses.

11. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing water rights or domestic water uses.

12. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use. Beneficial use is any use of water within or outside the state that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies. SDCL § 46-1-6(3).

13. The Board finds that the proposed use constitutes a beneficial use.

14. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The "public interest" under SDCL § 46-2A-9 is not defined by statute, but in this case the Board considered how the proposed use of a commercial swine facility would have on the local economy by creating jobs and the broader hog industry by generating demand for feed and other inputs. The Board concludes that the proposed use is in the public interest.

Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8991-3 is **GRANTED** subject to the following permit qualifications:

1. The wells approved under Water Permit No. 8991-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner must control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The proposed wells authorized by Permit No. 8991-3 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 proposed new wells and any future replacement wells must meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. The new wells and any replacement wells may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.
4. Water Permit No. 8991-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL §§ 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.
5. Water Permit No. 8991-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:

- a) Chapter 74:54:01 Ground Water Quality Standards.
- b) Chapter 74:54:02 Ground Water Discharge Permit.
- c) Chapter 74:51:01 Surface Water Quality Standards.
- d) Chapter 74:51:02 Uses Assigned to Lakes.
- e) Chapter 74:51:03 Uses Assigned to Streams.
- f) Chapters 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

6. The Permit holder must report to the Chief Engineer annually the amount of water withdrawn from the Dakota Aquifer.

7. Water Permit No. 8991-3 authorizes a total annual diversion of up to 154 acre-feet of water annually from the Dakota Aquifer.

Dated this 8th day of July 2026.

BY THE BOARD:

William Larson, Chairman
South Dakota Water Management
Board