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MINUTES OF THE 257TH MEETING
OF THE WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA
DECEMBER 3, 2025

CALL TO ORDER AND ROLL CALL: Vice Chairman Comes 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: Kelly Hepler attended in-person. Chad Comes, Peggy Dixon, Rodney Freeman, Leo Holzbauer, and Jim Hutmacher attended remotely. William Larson was absent.

Department of Agriculture and Natural Resources (DANR): Mark Mayer, Director of the Office of Water and Acting Chief Engineer, Ron Duvall, Amanda Dewell, Adam Mathiowetz, Kim Drennon, and Tyler Jensen, Water Rights Program.

Attorney General's Office: Emily Greco, Water Rights Program counsel, and David McVey, Board counsel.

Legislative Oversight Committee: Representative Nicole Uhre-Balk and Senator Jim Mehlhaff.

Court Reporter: Cheri Wittler, Precision Reporting.

Five-Year Review of Fully Appropriated Aquifers – Tulare: Western Spink-Hitchcock Aquifer and Tulare: East James Aquifer: Chase Bixler, Reed Bixler, Jacob Bixler, and Zane Bixler, Hitchcock, SD.

Consider Water Permit Application No. 8972-3, Cheryl E and Erik L Nelson: Cody Honeywell, counsel for applicant, Pierre, SD.

Other: Bob Mercer, Keloland News.

APPROVE FINAL AGENDA: Motion by Hepler, seconded by Freeman, to approve the final agenda. The motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

APPROVE OCTOBER 1, 2025, BOARD MINUTES: Motion by Freman, seconded by

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Holzbauer, to approve the minutes from the October 1, 2025, Water Management Board meeting. The motion carried unanimously.

MARCH 4-5, 2025, MEETING LOCATION: Motion by Freeman, seconded by Holzbauer to hold the March 4-5, 2025, Board meeting in the Matthew Environmental Training Center, 523 East Capitol, Pierre. The motion carried unanimously.

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

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Mr. McVey stated that there was no new pending litigation.

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 subject to a seven-year review was included in the packet the Board members received prior to the meeting.

Amanda Dewell reported that certain entities such as water distribution systems, municipalities, rural water systems, and sanitary districts can reserve water for future needs. SDCL 46-5-38.1 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.

Two future use permits for the City of Rapid City were up for review. The Water Rights Program sent letters to city inquiring whether it had a continued need to retain the future use permits for an additional seven years. The City of Rapid City submitted a letter requesting to retain the future use permits, as the area is experiencing continued growth.

The Board packet included a letter received from the City of Rapid City requesting to retain the future use permits, the Acting Chief Engineer's recommendations, and the Affidavits of Publication showing that the hearing was public noticed.

No petitions in opposition or comments were received in response to the public notices.

The Acting Chief Engineer recommended that the Board allow the following future use permits to remain in effect for an additional seven years for the amounts shown in the table. The next seven-year review for these permits is 2032.

| No. | Name | Amount Remaining in Reserve (ac-ft) | Source |
|--------|--------------------|--|---------------------------------|
| 439-2 | City of Rapid City | 3,367 | Minnelusa & Madison Aquifers |
| 1088-2 | City of Rapid City | 4,830 | Rapid Creek |

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Motion by Hepler, seconded Hutmacher, to accept the Acting Chief Engineer's recommendation that the City of Rapid City's future use permits remain in effect for an additional seven years for the amounts shown in the table. A roll call vote was taken, and the motion carried unanimously.

UNOPPOSED NEW WATER PERMITS ISSUED ON THE CHIEF ENGINEER'S RECOMMENDATION: Prior to the meeting, the Board received a copy of the table listing the unopposed new water permits issued by the Acting Chief Engineer. (See attachment)

Ms. Dewell reported that pursuant to South Dakota Codified Law, the acting Chief Engineer may issue permits under authority delegated by the Board. Thirteen permits have been issued by the acting Chief Engineer since the October 2025 Water Management Board meeting. No petitions in opposition or public comments were received regarding any of these permits.

No board action was necessary.

Vice Chairman Comes called a recess at 9:30 a.m. He called the meeting back to order at 9:45 a.m.

Ron Duvall noted that Senator Jim Mehlhaff and Representative Nicole Uhre-Balk were present. Vice Chairman Comes thanked the members of the Legislative Oversight Committee for attending and participating in the meeting.

FIVE-YEAR REVIEW OF FULLY APPROPRIATED AQUIFERS – TULARE: WESTERN SPINK-HITCHCOCK AQUIFER AND TULARE: EAST JAMES AQUIFER: Mr. Duvall reported that in 2014 the State Legislature created a process where applications can be submitted when the Water Management Board determines that an aquifer is fully appropriated. To date, the only two aquifers that are deemed fully appropriated and affected by this legislation are the Tulare: Western Spink-Hitchcock Aquifer and the Tulare: East James Aquifer. The aquifers are located in an area between Redfield and Huron, extending to the eastern side of Hand County. The Tulare: East James Aquifer is on the east side of the James River and the Tulare: Western Spink-Hitchcock Aquifer is on the west side of the James River.

In 2015 the Water Management Board implemented that legislation. A notice was published indicating that the Board had determined these two aquifers to be fully appropriated. The notice provided a 30-day window for interested people to submit applications in the event that water was found to be available at some future date. In response to the public notice, 28 applications were filed for the Western Spink-Hitchcock Management Unit, and 14 applications were filed for the East James Management Unit. At their May 2015 meeting the Water Management Board prioritized those applications by using a random drawing process prioritizing them 1 through 28 and 1 through 14 for the two separate aquifers. The legislation also requires that the Water Management Board review the two aquifers every five years to determine whether water is available for appropriation. The first five-year review was done in 2020.

Mr. Duvall noted that Kim Drennon, an engineer with the Water Rights Program, would discuss

the second five-year review. He stated that personal notice was provided for 27 applications for the Tulare: Western Spink-Hitchcock Aquifer and 14 applications for the Tulare: East James Aquifer. There are now 27 applications, rather than 28, for the Tulare: Western Spink-Hitchcock Aquifer because during the first five-year review, one of the applicants chose not to continue having their application held. The personal notice stated that within 30 days the applicants were required to indicate whether they wanted to remain eligible for any water that the Water Management Board may determine is available. All of the applicants indicated that they wanted to keep their applications in this held status for today's review.

Notice was published in the Aberdeen News, Aberdeen Insider, the Redfield Press, Huron Daily Plainsman for both aquifers and in the Miller Press because the Western Spink-Hitchcock extends into Hand County. The notice was also posted on the DANR website. Affidavits of Publication, which were included in the Board packet, were received from all of the newspapers.

Kim Drennon provided a PowerPoint presentation discussing her reports for the five-year review of water availability in the Western Spink-Hitchcock Management unit of the Tulare Aquifer and the East James Management Unit of the Tulare Aquifer.

The two reports and the presentation are available on the South Dakota Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Ms. Drennon's conclusions on the five-year review of the Tulare: Western Spink-Hitchcock Aquifer are as follows:

1. The estimated average annual recharge to the Tulare: Western Spink-Hitchcock aquifer is 0.83 inches per year, based on a model run in 1984.
2. The estimated aerial extent of the Tulare: Western Spink-Hitchcock aquifer is approximately 260,000 acres.
3. Assuming the 0.83 inches per year recharge applies to the entire area of the aquifer, recharge to the Tulare: Western Spink-Hitchcock aquifer is approximately 18,000 acre-feet per year.
4. The estimated average annual withdrawal from the Tulare: Western Spink-Hitchcock aquifer is 12,153 acre-feet per year.
5. There are 27 water permit applications on hold in the Tulare: Western Spink-Hitchcock aquifer proposing to irrigate a combined total of 5,214 acres.
6. Assuming they irrigate at the average rate other irrigators in the aquifer have reported over the period of record of 2015 through 2024, the 27 held permits would withdraw an estimated average of 2,276 acre-feet per year. Assuming they irrigate at the maximum rate reported over the period of record of 2015 through 2024, the 27 held permits would withdraw an estimated 3,773 acre-feet per year.
7. Based on the hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available in this aquifer for the 27 held applications.
8. The Tulare: Western Spink-Hitchcock aquifer has areas which fluctuate between confined and unconfined depending on water use and climactic conditions.
9. Water level fluctuations above the top of the formation (changes in artesian head pressure

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- for confined areas) do not represent changes in storage in that part of the aquifer, so changes in storage in the aquifer cannot be directly calculated from those values.
10. A heavily used aquifer may induce more recharge than a little-used aquifer.
 11. The only available model estimate of recharge was done during a period of time when the aquifer was less used than it is now.
 12. It is not possible to know the amount of water recharge to the aquifer based on direct observation well measurements, and a model of the aquifer is the only way to know how much water is recharging to the aquifer.
 13. The creation and maintenance of a new model of the Tulare: Western Spink-Hitchcock aquifer to estimate the amount of unappropriated water available is highly recommended.
 14. If the 27 held permits are approved, the aquifer should once again be considered fully appropriated until better information is available, including the observation well network response to further development.

Ms. Drennon's conclusions on the five-year review of the Tulare: East James Aquifer are as follows:

1. The estimated average annual recharge to the Tulare: East James aquifer is 6,800 acre-feet per year, based on a model run in 1984.
2. The estimated average annual withdrawal from the Tulare: East James aquifer is 8,182 acre-feet per year.
3. Based on the hydrologic budget, there is not unappropriated water available in the Tulare: East James aquifer.
4. Based on observation well analysis, there may be unappropriated water available in the Tulare: East James aquifer, but the amount cannot be quantified with available information.
5. The creation and maintenance of a new model of the Tulare: East James aquifer to estimate the amount of unappropriated water available is highly recommended.

Ms. Drennon stated that there are 27 held permits in the Western Spink-Hitchcock Management Unit that propose to irrigate 5,214 acres. If they irrigate at the average rate that the other water users in the aquifer are irrigating, approximately 2,300 acre-feet per year would be withdrawn.

In the East James Management Unit there are 14 held permits that propose to irrigate 1,893 acres. If they irrigate at the same average rate as the other water users in the aquifer they would withdraw approximately 860 acre-feet per year.

Ms. Drennon stated that according to the hydrologic budget unappropriated water is certainly available in the Western Spink-Hitchcock Management Unit, and the observation wells indicate that recharge to the aquifer exceeds withdrawals. However, because the aquifer has fluctuated from unconfined conditions to confined conditions, the recharge rate to the aquifer cannot be directly measured from observation well analysis and must be assessed using a new computer model taking into account newer precipitation and withdrawal information. The Tulare: Western Spink-Hitchcock Aquifer has 1,400,000 acre-feet in storage with a recharge of 18,000 acre-feet per year and withdrawals of 12,000 acre-feet per year. The Tulare: East James Aquifer has

608,000 acre-feet in storage with a recharge of 6,800 acre-feet per year and withdrawals of 8,100 acre-feet per year.

The court reporter administered the oath to Adam Mathiowetz.

In response to questions from Mr. Hepler regarding modeling, Mr. Mathiowetz stated that one consultant contacted him, and discussion took place regarding modeling for each individual management unit as well as the combined system and what the outcomes would be with a goal of three to four years of work from the consultant. They discussed a cost of \$125,000 up to \$500,000, depending on what was required and how detailed it should be. The consultant felt the timeline of four years was generous.

Mr. Mathiowetz noted that there is another consultant that has done modeling in other states on smaller aquifers at a cost of approximately \$300,000, but they were looking for very specific information which is less than what the department would likely request.

Mr. Helper asked if the department has the budget to do the modeling.

Mark Mayer, Acting Chief Engineer, stated that the department doesn't normally have this type of work budgeted. It would have to be built into the budget and then go through the process for approval by the legislature.

Vice Chairman Comes said during her presentation Ms. Drennon made a comment that water is available but, because it is confined, the aquifer needs to be modeled. He asked if that comment was regarding only one of the two aquifers? He also expressed concern that the estimated withdrawal from the Tulare: East James aquifer is larger than the estimated recharge.

Ms. Drennon answered that it is applicable to both aquifers. Ms. Drennon stated that the information on withdrawals is obtained from irrigation reporting. These are sometimes narrative reports from the irrigators, and they're doing really good if they're plus or minus five percent, but she believes the irrigation reports are probably more accurately plus or minus 10 or 20 percent. She stated that, in general, when you get a model of an aquifer like this, you can be confident in the first significant figure, and not necessarily as confident in the second significant figure. It's difficult to say what the uncertainty of Kuiper's model is, especially since he was working with different information than what is now available. Ms. Drennon noted that she believes those two numbers (recharge and withdrawals from the Tulare: East James aquifer) are the same as far as an environmental model goes.

Mr. Holzbauer stated that there is more recharge than withdrawals. He asked what happens to that extra water that is recharged and not withdrawn.

Ms. Drennon answered that she believes most of the natural discharge from this aquifer goes down the James River or is withdrawn by plants during evapotranspiration.

Mr. Duvall noted that there were people in attendance at the meeting that may want to address the

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Board. He stated that the public notice for today's hearing indicated that the Board could take any of the following actions: 1) determine that additional water is available for appropriation, 2) determine that no additional water is available for appropriation, or 3) defer action for further study.

Mr. Duvall stated that if the Board doesn't want to make a decision at this hearing, it can defer action and indicate what else is needed for the Board to make a decision at a future meeting.

If the Board determines that no additional water is available for appropriation it ends consideration of the matter until the next five-year review in 2030. The applicants would be notified of the Board's decision. They would need to submit 10 percent of what the normal application fee was for their applications to continue being held until the next five-year review.

If the Board determines that additional water is available for appropriation for some of the applications, the applicants would be notified of the Board's decision. They would be asked whether they wanted to proceed with their applications. If the applicant isn't interested in proceeding, the Water Rights Program's intent would be to provide notice of hearing for the Board to consider withdrawal of their applications. Upon withdrawal of the applications, if that was their desire, the application fee would be refunded. If the applicant wants to proceed with their applications, the applications will be processed for Board consideration like any other application would. A staff report would be prepared, a recommendation with proposed qualifications would be made, and public notices would be published in the newspapers, which would allow for anyone to contest the applications or file comments. The applicant would also have the option of opposing the recommendation if there were qualifications that the applicant didn't agree with.

Vice Chairman Comes asked if the recommendation of the Chief Engineer is to accomplish this study. Mr. Duvall said he does not know that the Water Rights Program is recommending that. It is certainly an option, but the reality of finding the funds available to do that would be difficult in today's climate.

Vice Chairman said one of Ms. Drennon's slides has a bullet point that indicates that a new model of the aquifer is necessary to know how much more water is available. Mr. Duvall stated that the original models were done in 1984 and the ability to do a better model now is probably significant to get a revised number. The Tulare: Western Spink-Hitchcock Aquifer, as things are right now with the existing study that was done, the recharge estimate based on that study is 18,000 acre-feet. Ms. Drennon's revised numbers based on her methodology for figuring out the average use for each irrigator and how many acres they actually applied that number to is 12,000 acre-feet. So, at this time the budget for the Tulare: Western Spink-Hitchcock Aquifer indicates there is water available for appropriation regardless of a new model. A new model might help get a better number for the 18,000 acre-feet, but as things stand now, it is indicating there is water available.

The existing model indicates that for the Tulare: East James Aquifer water is not available. The observation well records show that there are more wells now in the Tulare: East James Aquifer that have gone confined and the aquifer is full at the current usage.

Mr. Duvall noted that for the Madison Formation in the Black Hills there are 20-year term limits applied to those permits. The statute gives the Board the authority to place term limits on permits, so if the Board decides to proceed with more applications a term limit could potentially be a qualification on the permit.

Mr. Hepler stated that what Mr. Duvall just explained is helpful because it is a matter of a risk analysis, basically of how much the Board is willing to bet that the water is really there, so the Board could appropriate water to all 27 applicants with term limit qualifications.

Mr. Freeman said placing term limits on permits puts the irrigators in a bad position.

Mr. Duvall said it would be a business decision for the irrigators because the term limit would have to be long enough that the irrigator would be able to recover the cost of putting in an irrigation system. He said he believes that if the term limit was for 20 years, at any point during that timeframe, the Board would have the ability to modify the qualification or remove it.

Mr. Duvall said if the Water Rights Program processes the applications and recommends certain qualifications, the applicants have the ability to contest the acting Chief Engineer's recommendations.

Vice Chairman Comes said this five-year review process is not a contest case process to there is not an opportunity to provide competing analysis by the applicants.

David McVey asked if the Board wanted to go into Executive Session to discuss this matter in the context of any legalities the Board is concerned about.

Mr. Hutmacher stated that he is hesitant about granting water permits with term limits then having to revoke them five or seven years from now. He said if the Board is going to put restrictions on the permit, it should make sure the irrigation systems are low flow, low pressure systems so more acres can be irrigated. He said that it would be like the Board is telling the permit holders how to run their business.

Vice Chairman Comes said he shares Mr. Hutmacher's concern, and he understands the appropriate dilemma for accomplishing the modeling. However, he believes trying to secure the funding to accomplish the modeling is a reasonable course to pursue. It appears that the timeline of three to four years for modeling could be accomplished and ready for the next five-year review of the aquifers, but if there is unappropriated water, he also wants to put it to beneficial use and not make folks have to wait another five years or more.

Mr. Hepler requested that the Board hear comments from members of the audience.

Reed Bixler stated that Bixler Farms has pending applications and has patiently gone through the process and has waited for 10 years for the aquifer to be reviewed. Now there is information that says water is available. The Board needs to make a decision on the applications rather than waiting another five or 10 years. There is obviously water available that needs to be appropriated.

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Vice Chairman Comes requested action from the Board. Discussion took place among the Board members regarding the two aquifers, the amount of water available in the Tulare: Western Spink-Hitchcock Aquifer, and the held applications.

Mr. Hutmacher suggested appropriating two-thirds of the amount of water available in the Western Spink-Hitchcock Unit and the budget does not indicate water is available in the East James Unit. Vice Chairman Comes expressed support for Mr. Hutmacher's proposal.

Motion by Freeman, seconded by Hutmacher, that the Board determines that no water is available for appropriation at this time subject to further review of the Tulare: East James Aquifer in five years. A roll call vote was taken, and the motion carried unanimously.

Motion by Freeman, seconded by Hutmacher, that the Board determines that water is available for appropriation from the Tulare: Western Spink-Hitchcock Aquifer, and that the Board will consider the held applications as they are presented during future Board meetings.

Ron Duvall stated that, based on the Board's discussion and motion on the Tulare: Western Spink-Hitchcock Aquifer, his understanding is that the Water Rights Program will determine what two-thirds of the water available is, staff will review the 27 applications and determine how many of those applications get processed, and whatever difference there is after that is all determined up to the two-thirds number if there are new applications submitted then staff could be recommending approval. If the two-thirds number is reached, the acting Chief Engineer would recommend deferral of any other applications that are submitted. These applications would remain in deferred status for further study as the five-year reviews are done.

Discussion took place regarding adding the two-thirds amount to the motion.

Mr. McVey stated that there is no legal requirement that the Board includes the two-thirds amount in the motion.

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

RECONSIDER DEFERRED WATER PERMIT APPLICATION NOS. 8721-3 AND 8722-3 HURON BROTHERS AND RECONSIDER DEFERRED WATER PERMIT APPLICATION NOS. 8749-3, 8750-3, 8751-3, AND 8752-3, VAN BUSKIRK FARMS LLP: Ms. Drennon reported that these two sets of applications were presented to the Board in December 2023. At the time the Tulare: Western Spink-Hitchcock Aquifer was fully appropriated which is related to these applications because the applications propose to withdraw water from the Niobrara Aquifer in places where the best information available showed that the Niobrara Aquifer comes into contact with the formerly fully appropriated Tulare: Western Spink-Hitchcock Aquifer. At the time it was not known if the applications could be approved because if a well is placed in a bedrock aquifer that is touching the glacial aquifer above it, it could be withdrawing water from the glacial aquifer.

The Board's motion in December 2023 was to defer the applications for up to two years to allow

time for the applicants 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 would induce recharge from the Tulare: Western Spink-Hitchcock Aquifer.

Ms. Drennon stated that neither of these applicants submitted information to the Water Rights Program regarding any new findings about the hydrology and geology in the area.

Mr. Duvall stated that the two applicants were provided with public notice of today's hearing. The Water Rights Program sent both applicants a letter prior to the public notice asking them if they had an interest in keeping the applications in deferred status, and no response from either applicant was received. Mr. Duvall also had a conversation with the Van Buskirk's, and they verbally indicated that if water was going to be found available from the Tulare: Western Spink-Hitchcock Aquifer they were not concerned about maintaining their applications in a deferred status because they are more interested in the other aquifer.

Mr. Duvall noted that the Water Rights Program has not had contact with Huron Colony.

The acting Chief Engineer recommended denial of all six applications.

Motion by Hutmacher, seconded by Freeman, to deny deferred Application Nos. 8721-3 and 8722-3, Huron Hutterian Brethren, Inc. A roll call vote was taken, and the motion carried unanimously.

Motion by Hutmacher, seconded by Dixon, to deny deferred Application Nos. 8749-3, 8750-3, 8751-3, and 8752-3, Van Buskirk Farms LLP. A roll call vote was taken, and the motion carried unanimously.

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.

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Low Flow Qualification

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

CONSIDER WATER PERMIT APPLICATION NO. 9872-3, CHERYL E. AND ERIK L. NELSON: Mr. Duvall reported that in March 2024 the Board held a contested case hearing on an earlier water permit application submitted by this applicant. Two Inyan Kara wells were used for geothermal heating, and fish and wildlife recreation-type uses. The discharge from those flowing wells went south, to Nelson Lake. The application was contested because other property owners around the lake were concerned with rising lake levels and increased flooding of their land. During the contested case hearing, testimony was provided stating that rather than discharge toward Nelson Lake the applicant's intent was to construct works to divert the water to the north to Okobojo Creek. That satisfied the petitioners' concerns. The Water Management Board approved the application. Since that time the applicant decided that diverting the water to the north to Okobojo Creek was not going to work, so they changed plans. The applicant decided not to use the water for geothermal heating, substantially reducing the amount of water that was needed under the original permit, and they would be willing to reduce the amount of water needed for fish and wildlife recreation purposes to minimize the amount of water that would flow to Nelson Lake.

Mr. Duvall stated that when the Water Rights Program learned that the applicant was no longer going to divert the water to the north, the applicant was informed that the permit should be brought back to the Board for consideration since the conditions have changed or the applicant should apply for a new permit. Before the Board is a new application for a substantially reduced amount of water. They will no longer use the water for geothermal purposes. There is a recommended qualification that any flow that would be going from either of these wells toward Nelson Lake can be no more than a combined 10 gpm.

Mr. Duvall contacted the petitioners in the first case and explained the situation and the recommended qualification. They appeared to be satisfied and thanked Mr. Duvall for contacting them. They did not file a petition to intervene in this new application, nor did they file any comments.

Tyler Jensen with the Water Rights Program presented his report on the application.

Water Permit Application No. 8972-3 proposes appropriate up to 72.4 acre-feet of water annually at a maximum combined pump rate of 0.10 cubic feet of water per second (cfs) (45 gallons per minute) from two existing wells (Well No. 2 & Well No. 4) completed into the Inyan Kara Aquifer. Both wells are approximately 2,120 feet deep and are located southeast of Gettysburg, SD in Sully County. Water from Well No. 4 will be diverted at a rate of up to 40 gallons per minute (gpm) to a large slough and from Well No. 2 at a rate of up to 5 gpm to a pond for recreational and fish and wildlife purposes. This application is intended to replace existing Water Permit No. 8787-3 and does not authorize any increase in the appropriation authorized by Water Permit No. 8787-3.

The Inyan Kara Aquifer is a Cretaceous-aged sandstone aquifer underlying approximately 23,000,000 acres west of the Missouri River and 6,400,000 acres east of the Missouri River within South Dakota. In South Dakota the Inyan Kara Aquifer is primarily under confined conditions, except for the outcrops in the Back Hills where the aquifer is found to be unconfined.

The submitted well completion report shows that the top of aquifer material is 1,855 feet below ground surface and a total well depth of 2,122 feet below ground surface. The submitted well completion report also indicates that the aquifer material is confined by a layer of Morrison Shale, which is similar to other nearby well completion reports and test hole completed into the Inyan Kara Aquifer.

Recharge to the Inyan Kara Aquifer is estimated to be 14,406 acre-feet per year from precipitation in the Black Hills. Additionally, 16,000 acre-feet per year is estimated to recharge from underlying aquifers.

The estimated average annual withdrawal from the Inyan Kara Aquifer is approximately 13,688 acre-feet.

The applicant intends to replace Water Permit No. 8787-3, which has a much greater appropriation of 225 acre-feet per year, which has already been accounted for in the withdrawal. The application is expected to decrease the overall annual withdrawal rate from the Inyan Kara Aquifer.

The Water Rights Program monitors nine observation wells completed into the Inyan Kara Aquifer. The closest observation well to the diversion point is ED-85B, which is located approximately 64 miles northwest of the proposed diversion point in eastern South Dakota. The other eight observation wells are located more than 170 miles west of the diversion point in the Black Hills of South Dakota.

The water levels of those eight observation wells in the Black Hills have a stable to rising trend. The water levels in Observation Well ED-85B started relatively stable in 1985, but then slowly declined in 1999 until approximately 2015, and then started stabilizing again.

There are numerous wells completed into the Inyan Kara Aquifer that are uncontrolled flowing wells and/or have corroded or inadequate casing. The decline in head for ED-85B is likely due to development of Inyan Kara wells and uncontrolled flowing wells in the area of the observation well.

The closest water permits not held by the applicant to the proposed diversion point is Water Right No. 8334-3, which is held by the Gettysburg Country Club for irrigation use. The diversion point for this water right is located approximately 12 miles northwest of the proposed application site.

There are numerous domestic wells on file with the Water Rights Program that are completed into the Inyan Kara Aquifer. The closest domestic well on file not held by the applicant is

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approximately 4.6 south of the proposed site. There could be other domestic wells completed into the Inyan Kara Aquifer that are not on file with the Water Rights Program.

Water Permit No. 8787-3 has reported diverting water at a higher diversion rate than this application and has done so for a number of years, even before Water Permit 8787-3 was obtained, without complaints of unlawful impairment. Since this application intends to replace Water Permit No. 8787-3, with a lower diversion rate the potential of unlawful impairment will also be reduced.

Mr. Jensen provided the following conclusions:

1. Water Permit Application No. 8972-3 proposes to appropriate up to 72.4 acre-feet of water at a maximum pump rate of 0.10 cfs from two existing wells completed into the Inyan Kara aquifer. Water from Well No. 4 will be diverted at a rate of up to 40 gpm to a large slough and from Well No. 2 at a rate of up to 5 gpm to a pond for recreational and fish and wildlife purposes 11 miles southeast of Gettysburg, SD.
2. This application is intended to replace existing Water Permit No. 8787-3 and, as such, does not authorize any increase in the appropriation authorized by Water Permit No. 8787-3. If this application is approved, Water Permit No. 8787-3 can be canceled.
3. Based on observation well data and the hydrologic budget, there is a reasonable probability that unappropriated water is available from the Inyan Kara aquifer to supply the proposed appropriation. Furthermore, this application will be a replacement for existing Water Permit No. 8787-3, which authorizes a larger annual appropriation than this application would if approved.
4. There is a reasonable probability that the diversion by Water Permit Application No. 8972-3 will not unlawfully impair adequate wells for existing water rights/permits and domestic uses.
5. If this application is approved, any future replacement wells or new wells must meet the adequate well definition and cannot be constructed using the alternative well construction standard in ARDS 74:02:04:36.

The acting Chief Engineer recommended approval of Water Permit Application No. 8972-3 with the following qualifications:

1. The wells approved under Water Permit No. 8972-3 are 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.
2. The wells approved under Permit No. 8972-3 must be valved and the flow reduced to the amount needed or to a minimum not to exceed five gallons per minute when not being

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used. If any of the wells are abandoned or the permit cancelled, the wells must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.

3. If the slough receiving flow from well No. 4 is spilling water to the Fischer-Nelson Waterfowl Production Area, the flow from well No. 4 must be reduced to a minimum not to exceed five gallons per minute.
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
5. Water Permit No. 8972-3 authorizes a total annual diversion of up to 72.4 acre-feet of water from the Inyan Kara aquifer.

Mr. Jensen stated that the applicant seeking approval of No. 8972-3 constitutes the abandonment of Water Permit No. 8787-3, which will be scheduled for cancellation consideration by the Water Management Board.

Motion by Hepler, seconded by Freeman, to approve Water Permit Application No. 8972-3, Cheryl Nelson and Eric Nelson, subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

CONSIDER AMENDMENT AND CANCELLATION OF WATER PERMIT NO. 8787-3, CHERYL E. NELSON: Motion by Hutmacher, seconded by Dixon to amend and cancel Water Permit No. 8787-3.

Amanda Dewell requested that the board hear the staff presentation on this matter.

Ms. Dewell reported that there is a qualification on Water Permit No. 8787-3 that requires that if the permit is cancelled the wells must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04. Water Permit Application No. 8972-3, which the Board just approved, will use the same wells, so this qualification needs to be removed from No. 8787-3 before cancellation.

Ms. Dewell requested that the Board amend No. 8787-3 to remove Qualification No. 2 requiring plugging those wells.

Motion by Hutmacher, seconded by Dixon, to cancel Water Permit No. 8787-3 with removal of Qualification No. 2.

Mr. McVey stated that there was a pending motion before the Board. He suggested Mr. Hutmacher either withdraw the pending motion or vote to deny it and make a new motion.

Hutmacher withdrew his motions and Dixon withdrew her second.

Mr. Duvall said he would prefer a motion to remove the qualification and then cancel the permit.

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Motion by Freeman, seconded by Dixon to amend Water Permit No. 8787-3 by removing Qualification No. 2. A roll call vote was taken, and the motion carried unanimously.

Motion by Hutmacher, seconded by Freeman, to cancel Water Permit No. 8787-3. A roll call vote was taken, and the motion carried.

ANNUAL REVIEW OF OPEN MEETING LAWS IN ACCORDANCE WITH SDCL 1-25-13:
Prior to the meeting the board members were provided with a copy of the brochure “Conducting the Public's Business in Public” revised in 2025 as published on the Attorney General’s website <https://atg.sd.gov/docs/July%202025OpenMeetingsLaw.pdf>.

David McVey, Assistant Attorney General, explained the open meeting laws.

Vice Chairman Comes attested that the Board received the annual review of the open meeting laws

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

A court reporter was present, and a transcript of the proceedings may be obtained by contacting Cheri Wittler, Precision Reporting, PO Box 232, Onida, SD, telephone number 605-258-2678.

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 March 4, 2026.

Water Management Board

