

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

IN THE MATTER OF WATER PERMIT APPLICATION NO. 8987-3, VIC UTECH	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
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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.

The Applicant, Vic Utech, was represented by Stacy R. Hegge and Marcus Hluchy of Gunderson, Palmer, Nelson, and Ashmore, LLP. Petitioners in Opposition, the Spring Creek/Cow Creek Sanitary District (the 'District'), were represented by James E. Moore of Woods Fuller Law Firm. 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 September 19, 2025, Vic Utech applied to the Board for a permit that would allow him to appropriate an additional 2.45 acre-feet of water from an existing irrigation well for a commercial use. The existing well and the proposed site to be served by the well are both located in the southeast quarter of Section 34, Township 113 North, Range 80 West of the Fifth Principal Meridian in Sully County, approximately 12 miles northwest of Pierre. (Exhibit 1.)

2. Upon review, Water Rights concluded that Utech's application was complete, and it assigned Utech's application number 8987-3.

3. Utech is a Pierre-based developer and is in the process of building out an expansive residential and recreational development near the county line for Hughes and Sully Counties. The 217-acre development—called "Codger's Castaway"—is situated just off a peninsula on Lake Oahe, near the unincorporated community of Cow Creek. The plans for the Codger's Castaway project contemplate a mix of residential and recreational uses.

4. Utech intends to use the water sourced from this well to supply a 213-site RV and camper park that is being constructed as part of the broader Codger's Castaway development.

5. Austin Settje, a natural-resources engineer employed by Water Rights, (Exhibit 2), reviewed the application, which is part of the administrative record admitted in evidence as Exhibit 1. Settje prepared a hydrologic budget for the Grey Goose aquifer, which supplies the well. To do so, he analyzed the annual recharge rate for the aquifer and compared that figure to the reported annual water usage by existing rightsholders who draw water from the aquifer. Settje also reviewed hydrographs prepared for the observation wells used to monitor the water levels for the Grey Goose aquifer and observed that those hydrographs showed generally stable water levels over the reporting period. Finally, Settje prepared a map of the rightsholders authorized to draw water from the aquifer within roughly two miles of the well. On this basis, Settje determined that there was a reasonable probability that unappropriated water was available for Utech's proposed use and that any additional drawdown was not likely to unlawfully impair existing water rights. Settje's conclusions are set forth in a December 19, 2025, report submitted to the chief engineer, which was introduced in evidence as Exhibit 102.

6. In his report, Settje did not purport to analyze whether the proposed water use was in the public interest or whether it constituted a beneficial use. Rather, as Settje later testified at the hearing, his review was limited to the “technical aspects” of the proposed water use.

7. Pursuant to SDCL § 46-2A-2, Mark Mayer, the then-acting chief engineer for Water Rights, reviewed Settje’s report. He concluded: (i) That there was a reasonable probability that unappropriated water was available for Utech’s proposed use, (ii) that the proposed use could be developed without unlawfully impairing existing water uses or rights, (iii) that the proposed use was a beneficial use, and (iv) that the proposed use was in the public interest. Mayer’s recommendation is part of Exhibit 102.

8. On the basis of his review, Mayer recommended that Utech’s application be approved, subject to two conditions: (i) That Utech “control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights” and (ii) that Utech report annually the amount of water withdrawn.

9. In accordance with SDCL § 46-2A-4, Water Rights published notice of the application and the chief engineer’s recommendation concerning the application. The notice invited interested parties to file petitions opposing the application or recommendation of the chief engineer on or before January 26, 2026, at which point a hearing would be scheduled and the Board would consider the application.

10. On January 23, 2026, the District submitted a petition opposing Utech’s application and the chief engineer’s recommendation and requested a contested case hearing on the application.

11. The District is a political subdivision of the State of South Dakota and is governed by a board of trustees. The District was legally constituted in its present form

on July 1, 2020, by order of Hughes County and Sully County. (Exhibit 219.) The District's territorial limits include Utech's Codger's Castaway development, including the proposed RV park.

12. The Board set a hearing on the petition for May 6 and 7, 2026. On April 21, 2026, the Board entered a scheduling order in the contested case, which provided that each party would submit witness lists, copies of the exhibits, and prehearing briefs by April 29, 2026.

13. Utech and the District timely submitted prehearing briefs in support of their respective positions. In his prehearing brief, Utech asserted that the District lacked standing to submit a petition, as (i) the District had not alleged an injury "that is unique from any injury suffered by the public in general" and (ii) the injury that was alleged did not relate to a matter that is within the regulatory authority of the Board. SDCL § 46-2A-4(4)(a), (b). The District then submitted a response to Utech's prehearing brief, which challenged his standing analysis.

14. At the outset of the hearing, the Board heard argument concerning the District's standing to file a petition and participate in the hearing. The Board treated Utech's arguments concerning lack of standing as a motion to dismiss the District's petition. After hearing arguments from both sides and from Water Rights, the Board denied the motion.

15. The Board then proceeded to hear evidence concerning the merits of the application. During the hearing, the Board heard testimony from four witnesses: (i) Austin Settje, the engineer who reviewed Utech's application and prepared a report recommending that it be approved; (ii) Adam Mathiowetz, the newly appointed acting chief engineer for Water Rights; (iii) Utech; and (iv) Todd Schneider, a member of the District's board of trustees. The Board did not limit the time for direct or cross-

examination of any of the witnesses.

16. SDCL § 46-2A-9 sets out four elements that must be satisfied before a permit may be issued. As to the first element, which is whether there is a reasonable probability that there is unappropriated water available for Utech's proposed use, Water Rights presented expert testimony from Austin Settje, who testified that the Grey Goose aquifer recharges at a rate of 1,670 to 8,907 acre feet per year; that the amount of recharge exceeds pumping from existing rightsholders; and that the aquifer experienced stable to rising water levels over the reporting period. He concluded that there was a reasonable probability that unappropriated water was available to support the proposed use contemplated by Utech's permit application. The Board finds that Settje's testimony on these points was credible and supported by the evidence.

17. The District did not present contrary expert or lay-witness testimony on the subject of water availability. Based on Settje's undisputed testimony, the Board therefore finds that there is a reasonable probability that unappropriated water is available from the Grey Goose aquifer to support the proposed use that is contemplated by Utech's permit application.

18. On the second factor in § 46-2A-9, whether the proposed use can be developed without unlawful impairment of existing water rights, Water Rights again presented expert testimony from Austin Settje. Settje testified that any drawdown caused by Utech's proposed use was not expected to unlawfully impair nearby adequate wells. The Board finds that Settje's testimony on these points was credible and supported by the evidence.

19. The District did not present contrary expert or lay-witness testimony on the subject of existing water rights. Based on Settje's undisputed testimony, the Board finds that the proposed use likely can be developed without unlawfully impairing

existing rights.

20. With respect to the third and fourth elements of SDCL § 46-2A-9, whether the proposed use is a beneficial use and in the public interest, the District relied on the testimony of Todd Schneider. Schneider, a member of the District's board of trustees, testified that, in December 2022, the District enacted Ordinance 7, which was admitted in evidence as Exhibit 206. This ordinance requires "[e]very owner" of a "building or other structure[] used for human occupancy, employment, recreation, or for other purposes," to connect "directly" to the District main line. Schneider further testified that, in November 2024, the District adopted Resolution 2024-5, which was admitted in evidence as Exhibit 201. This resolution requires all premises where water or sanitary-sewer service are "intended to be installed" within the District to "be directly connected to the public water and wastewater collection and treatment system of the District." The point of adopting this resolution was to ensure that there was clarity among the District's residents that they must connect their water and sewer systems to the District.

21. Schneider also testified that the development of Codger's Castaway, including the planned RV park, would effectively double the population served by the District. In response, the District—in reliance on local regulations that gave it the exclusive right to service Codger's Castaway—invested in substantial improvements to its water system, as documented in Exhibit 214. The District invested more than \$7 million in infrastructure improvements, much of which was funded using loans from the state, as documented in Exhibits 202 through 205, which were admitted in evidence. Each resolution approving the loan agreements with the State required that the District "not establish, authorize or grant a franchise for the operation off any other utility supplying like products or services in competition therewith, or permit any person, firm

or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the Sanitary District.” (See, e.g., Exhibit 202 ¶ 10.3.) The District planned to use tiered surcharges charged to its users to repay the loans. The Board finds that Schneider’s testimony was credible and supported by the evidence.

22. Water Rights offered no evidence to refute Schneider’s testimony. Settje testified that his analysis revolved around the “technical aspects” of the proposed use and did not address beneficial-use status or the public interest. Adam Mathiowetz, its acting chief engineer, (see Exhibit 3), testified to his understanding of the scope of review the Board has used when determining whether the use of water is in the public interest. But he explained that he did not consider local rules and regulations when forming his opinion about whether the proposed use was in the public interest or qualified as a beneficial use. He also acknowledged that he could not say whether local rules and regulations should be considered, as that was outside his purview.

23. Utech testified, in general, to the benefits of his planned RV park. He explained that the RV park and the broader Codger’s Castaway project would likely draw additional visitors to the area, which would increase spending at other area businesses, bring visitors to nearby state parks, and provide seasonal employment opportunities. However, his testimony did not address the impact of the District’s resolutions and ordinances on his water sourcing.

24. Utech filed a petition with the District in early 2023 asking that the proposed RV park be excluded from the District. (Exhibit 210.) The District considered and denied the petition. (Exhibit 209.) Utech filed a notice of appeal to circuit court from the District’s denial. (Exhibit 211.) The appeal was later dismissed for failure to prosecute. (Exhibit 212.)

25. Because the testimony establishes that Utech’s proposed development is

within the District's territory and must be connected to the District for water and sewer, Utech's permit application, if granted, would conflict with and allow Utech to circumvent the District's ordinances and resolutions. The Board therefore finds that the proposed use is not in the public interest. And because the beneficial-use standard incorporates the public interest, the Board also finds that the proposed use does not qualify as a beneficial use.

26. For a third-party petitioner, like the District, to participate in these proceedings, three criteria must be satisfied: (i) The petitioner must assert an injury "that is unique from any injury suffered by the public in general," (ii) that injury must concern a matter that is within the regulatory authority of the Board, and (iii) the petitioner must have filed its petition within 10 days of the published notice. SDCL § 46-2A-4(4).

27. The Board has identified two injuries that are unique from any injury suffered by the public in general, either of which would suffice to support standing.

28. First, Utech's permit, if granted, would circumvent its published resolutions and ordinances, which would otherwise require Utech to connect to the District's existing water system.

29. Second, the District stands to suffer a pocketbook injury if the permit is granted.

30. The injuries asserted by the District concern matters within the regulatory authority of the Board and the Board's duty of general supervision of the waters of the state. SDCL §§ 46-2-9 and 46-2-11.

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

B. OBJECTIONS TO FINDINGS OF FACT/CONCLUSIONS OF LAW

The District filed Proposed Findings of Fact, and the Applicant filed certain objections to the proposed findings of fact and conclusions of law. In compliance with SDCL § 1-26-25, the Applicant's objections to the proposed findings of fact and conclusions of law are accepted, modified, or rejected as follows:

1. Utech objects to Proposed Finding Paragraph 7 to the extent that it states or implies that then-acting Chief Engineer Mark Mayer solely referenced Engineer Austin Settje's report to justify Mr. Mayer's conclusions and did not perform any independent analysis of his own.

The language of findings number 7 has been revised as set forth above.

2. Utech objects to Proposed Finding Paragraph 11 to the extent that that the referenced date of "July 6, 2020" is not consistent with the dates set forth in Exhibit 219.

The language of finding number 11 has been revised accordingly.

3. Utech objects to Proposed Finding Paragraphs 21 and 26 (now 20 and 25 respectively) and Proposed Conclusion Paragraphs 7, 9, 15, 18-22, and 24, and to the proposed Findings and Conclusions generally "to the extent they are inconsistent with the following authority and argument." (*Argument redacted*. The issues herein were already litigated in the hearing, and an oral decision was made on the record. The written argument stated in the objection would be more properly heard as an argument on appeal).

Utech's objection is noted.

4. Utech objects to proposed conclusion of law 1 and 5-10 and states that the District had no standing to participate in the contested case.

Utech's objection is noted.

5. Utech objects to proposed conclusion number 8, that the District will suffer a

“pocketbook injury” if the permit is granted.

Utech’s objection is noted.

6. Utech objects to proposed conclusion numbers 9, 16, and 17. (*Argument redacted*. The issues herein were already litigated in the hearing, and an oral decision was made on the record. The written argument stated in the objection would be more properly heard as an argument on appeal).

Utech’s objections are noted.

7. Utech objects to proposed conclusion number 23, Utech objects to the extent that it does not include the entire definition of “beneficial use” under SDCL 46-1-6(3). The District is inappropriately collapsing the third and fourth factors of SDCL 46-2A-9, rather than treating them as intertwined, yet distinct, factors.

Utech’s objections are noted.(See revised conclusions of law 11 and 12.)

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 the subject matter and the parties to this proceeding, pursuant to SDCL Chapter 46-2A. Subject to the findings made on the four elements set forth in SDCL § 46-2A-9, the Board has the authority to grant Utech’s application, to deny the application, or to grant the application upon reasonable qualifications.
2. Utech’s application was complete and in compliance with ARSD 74:02:01:06.
3. Notice of the application and of the acting chief engineer’s recommendation was timely and properly made under SDCL §§ 46-2A-2 and 46-2A-4.
4. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.

5. The District filed a timely petition to oppose Utech's application and participate in these proceedings.

6. The Board concludes that the District may participate in the proceedings as they have the requirements set forth in SDCL § 46-2A-4(4).

7. The one-day hearing held on May 6, 2026, was a contested-case hearing under South Dakota law and was conducted according to the procedures in SDCL Chapter 1-26. The rules of evidence were followed during the hearing, as provided in SDCL § 1-26-19(1). All parties to this proceeding were afforded a full and fair opportunity to be heard.

8. At the hearing, Utech had the burden of proving: (i) That there was a "reasonable probability" that unappropriated water was available to serve his proposed use, (ii) that the proposed use could be served "without unlawful impairment of existing domestic water uses and water rights," (iii) that the proposed use was a "beneficial use," and (iv) that issuance of the permit "is in the public interest as it pertains to matters of public interest within the regulatory authority of the [Board] as defined by [SDCL] §§ 46-2-9 and 46-2-11." SDCL § 46-2A-9.

9. The acting Chief Engineer recommended that the Board approve the permit application. However, the judgment of the chief engineer is not binding on the Board. Instead, the Board is entitled to exercise its independent judgment in reaching a decision.

10. The Board concludes that there is a reasonable probability that there is unappropriated water available for Utech's proposed use and that proposed use would not impair existing domestic uses and water rights.

11. The Board concludes that Utech's proposed use is not a beneficial use. The South Dakota Supreme Court has explained that the third and fourth elements set forth

in § 46-2A-9 “are intertwined.” *Matter of McCook Lake Recreation Area*, 26 N.W.3d 711, 728 (S.D. 2025). “Beneficial use” is broadly defined by statute as “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). The latter half of this statutory definition “requires that the use must be in the public interest to be deemed a ‘beneficial use.’” *In re Water Right Claim No. 1927-2*, 524 N.W.2d 855, 859 (S.D. 1994).

12. The Board concludes that Utech’s proposed use is not in the public interest. The term “public interest” is not defined by statute, except to clarify that the public interest in question must pertain to matters “within the regulatory authority of the [Board] as defined by §§ 46-2-9 and 46-2-11.” The clearest expressions of the public interest are sources of published law, like the constitution, statutes, and judicial decisions. *See, e.g., Two Eagle v. Avel Ecare, LLC*, 17 N.W.3d 242, 249 (S.D. 2025); *Sturzenbecher v. Sioux County Ranch, LLC*, 20 N.W.3d 419, 428 (S.D. 2025); *Dahl v. Combined Ins. Co.*, 621 N.W.2d 163, 166 (S.D. 2001). Local ordinances and resolutions are also sources of public policy, albeit on a smaller scale. *See, e.g., ESI/Emp. Sols., LP v. City of Dallas*, No. 19-00570, 2019 WL 5684668, at *5 (E.D. Tex. Oct. 31, 2019) (recognizing that a local ordinance, as “a product of deliberation and vote by elected officials at public meetings,” can fairly be said to reflect the “public will”).

13. Any of the preceding conclusions of law that should have been stated as findings of fact should be recharacterized as necessary.

FINAL DECISION

14. Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8987-3 is **DENIED**.

Dated this 8th day of July 2026.

BY THE BOARD:

William Larson, Chairman
South Dakota Water Management Board