Instruction to Newspaper – Publish the Notice on October 19 or 20 or 21 or 22 or 23 or 24. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 9061-3 to Appropriate and Reserve Water for Future Use

Notice is given that Dakota Mainstem Regional Water System, 1100 Heritage Drive, Madison SD 57042, has filed an application for a future use water permit to appropriate and reserve 55,230 acre-feet of water annually from natural flows of the Missouri River. The six proposed areas to be reserved for future use development are located in Hughes, Brule, Charles Mix, Yankton, and Union counties, generally following the Missouri River between the Oahe Dam and Sioux City. Site one reserves Sections 25 thru 28 & 34 thru 36; all in T112N-R80W. Site two reserves Sections 5 thru 7, 18 & 19; all in T103N-R71W; Sections 1 & 2, 11 thru 14, and 24; all in T103N-R72W; Section 6-T104N-R70W; Sections 1 thru 4, 9 thru 12, 14 thru 17, 19 thru 22 & 27 thru 33; all in T104N-R71W; Sections 24, 25, 35 & 36; all in T104N-R72W; Sections 31 & 32; all in T105N-R70W; and Sections 35 & 36; all in T105N-R71W. Site three reserves Sections 5, 6 & 8; all in T95N-R65W; Section 1 thru 5; all in T95N-R66W; Sections 31 & 32; all in T96N-R65W; Sections 30 thru 36; all in T96N-R66W; Sections 2 thru 6, 9 thru 11, 13 thru 15, Sections 22 thru 26, and Section 36; all in T96N-R67W. Site four reserves Sections 5 thru 8; all in T93N-R63W; Section 1-T93N-R64W; Section 31-T94W-R63W; Sections 26 thru 28 & 34 thru 36; all in T94N-R64W. Site five reserves Sections 13 & 14, 22 & 23, and 26; all in T93N-R56W. Site six reserves Sections 17 & 18, 20 & 21, and 28; all in T93N-R48W; Sections 4 & 5, 9, 13, 15 & 16, and 22 thru 24; all in T89N-R49W; Sections 30 thru 33; all in T90N-R49W; and Section 24 & 25; all in T90N-R50W. The water is to be reserved as a future water supply, serving municipal and rural water system needs in Roberts, Day, Grant, Codington, Deuel, Hamlin, Clark, Spink, Faulk, Potter, Sully, Hughes, Hyde, Hand, Beadle, Kingsbury, Brookings, Moody, Lake, Miner, Sanborn, Jerauld, Buffalo, Brule, Aurora, Davison, Hanson, McCook, Minnehaha, Lincoln, Turner, Hutchinson, Douglas, Charles Mix, Bon Homme, Yankton, Clay, and Union counties (South Dakota); Knox County (Nebraska); Lac-qui Parle, Chippewa, Renville, Yellow Medicine, Lincoln, Lyon, Redwood, Brown, Pipestone, Murray, Cottonwood, Watonwon, Martin, Jackson, Nobles, and Rock counties (Minnesota); and Lyon, Osceola, Dickinson, Emmet, Sioux, O'Brien, Clay, Palo Alto, Buena Vista, Ida, Sac, Crowford, and Corroll counties (Iowa). If approved, this application does not authorize construction of works or application of water to beneficial use.

South Dakota Codified Law (SDCL) 46-2A-4 provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 9061-3 because l) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) Dakota Mainstem Regional Water System has demonstrated a reasonable need to reserve water in the amount of 55,230 acre-feet of water annually, 3) the proposed use is a beneficial use and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at https://danr.sd.gov/public or contact Amanda Dewell for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:35 AM (Central Time) on December 2, 2026, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD to present Application No. 9061-3 to the Legislature for consideration during the 2026 Legislative Session. The Chief Engineer's recommendation is not final or binding upon the Board or Legislature. Pursuant to SDCL 46-5-20. l, the Board shall present the application to the Legislature for approval prior to the Board acting upon the application. Disapproval of the application by the Legislature constitutes disapproval by the Board and no further action

need be taken by the Board. PLEASE NOTE, the scheduled December 2, 2026, agenda item is for the Board to present the application to the Legislature, NOT to conduct an evidentiary hearing. If approved by the Legislature, the Board will then schedule a time and place to conduct the evidentiary hearing for final consideration of the application. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the evidentiary hearing. No evidence or testimony will be accepted on December 2, 2026.

Any person who intends to participate in the hearing shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at https://danr.sd.gov/public or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by November 3, 2026.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. If the Legislature approves the application, an evidentiary hearing will be scheduled for the Board to consider the application. Notice of this hearing will be provided to the applicant and any person filing a petition opposing the application. This hearing will be an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Upon scheduling the Board's evidentiary hearing, the applicant or any person who has filed a petition to oppose the application may request an automatic delay of the hearing within ten days of the date of the notice scheduling the hearing. Upon receipt of a timely request for an automatic delay, the evidentiary hearing date will be delayed at least 20 days. If delayed, the evidentiary hearing will be rescheduled with personal notice provided to the applicant and all petitioners regarding the new time, date, and location.

The December 2, 2026, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by November 3, 2026. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at https://danr.sd.gov/public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 3, 2026.

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 3, 2026. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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