

WATER PERMIT NO. 2038-1

Name of Applicant: **Black Hills Experience, LLC.**

Address: **437 N Main Street, Spearfish SD 57783**

Phone: **605-323-9650**

Amount of Water Claimed: **0.111 cfs**

Total Acres: **N/A**

Source of Water Supply: **Groundwater**

Water to be used for: **Commerical**

County: **Butte**

Type of Waste Disposal System:

Location: **Approx. 5 miles north of Spearfish Sd**

PRIORITY Date Received: **07-15-24**

Application/License Fee: **\$700.00**

Corrected Application Received: **07-16-24**

Period of Annual Use: **January 1 – December 31**

Remarks: **Submitted in response to a letter w/application – based on well completion report**

Diversion Point: **NE 1/4 SW 1/4 Sec 5-T7N-R2E**

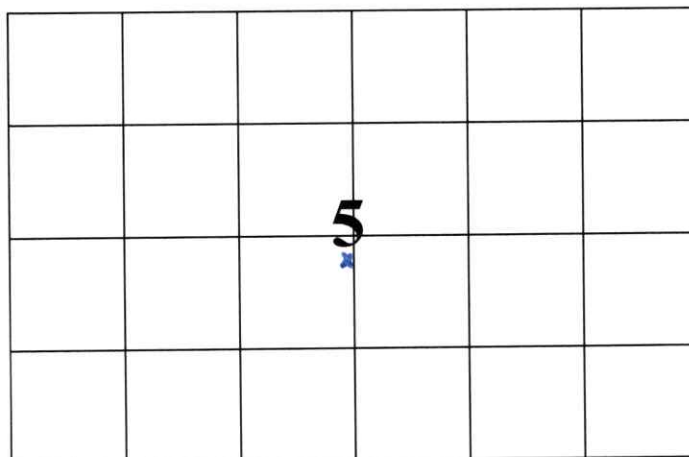
Land to be Irrigated: **N/A**

Depth of Well: **2000**

Well Driller: **Water System Drilling**

Remarks:

Type of Map: **aerial**



Reviewed and the Number Assigned on: **07-16-24**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
WATER PERMIT NO. 2038-1**

Date of first receipt of application July 15, 2024.

Date of return to applicant for corrections, amendments or changes July 16, 2024.

Date of receipt of corrected application July 16, 2024.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2038-1 to Black Hills Experience LLC., 437 N Main Street, Spearfish SD 57783, authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2038-1 appropriates up to 12 acre-feet of water annually at a maximum pump rate of 0.111 cubic feet of water per second from one well completed into the Madison Aquifer (2,000 feet deep) located in the NE 1/4 SW 1/4 Section 5-T7N-R2E, for commercial use at a camping property. This site is located approximately five miles north of Spearfish SD.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 2038-1 is October 7, 2024.
5. The date from which applicant may claim right is July 15, 2024.
6. One-fifth of the construction is to be completed on or before April 7, 2027.
7. All construction is to be completed on or before October 7, 2029.
8. Water is to be put to beneficial use on or before October 7, 2033.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2038-1 is issued for a twenty-year term. Pursuant to SDCL 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2038-1 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The well is located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Permit 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.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

(continued)

4. Water Permit No. 2038-1 appropriates up to 12 acre-feet of water annually.

WATER MANAGEMENT BOARD

By: *Eric Gronlund*

Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

OCT 22 2024

date



Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2038-1</u> Hydrologic Unit <u>10120203</u> Basin <u>Belle Fourche</u> Newspaper <u>Spearfish Black Hills Pioneer</u> (office use only)
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PAID

JUL 15 2024

Ck# 3122

Rec't# _____

Application for Permit to Appropriate Water in South Dakota

Check use(s) of water:

☐ Municipal	☐ Water Distribution System	☐ Recreational	☐ Institutional
☐ Rural Water System	☒ Commercial	☐ Fish & Wildlife	☐ Geothermal
☐ Domestic (over 18 gpm)	☐ Industrial	☐ Other _____	

Type of Application: (check one)

☒ New	☐ Vested Right (Use predates Mar 2, 1955)	☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____		
☐ Amendment/Correction to Permit No. _____		

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

- Name to Appear on Water Permit Black Hills Experience LLC
Mailing Address 437 N Main St Spearfish SD 57783
(Address) (City) (State) (Zip Code)
Phone _____ Mobile 605.323.9650 Email rachel@rosegrouppintl.com
- Amount of water claimed 0.111 *CFS or 50 **GPM and 12 ***AF or _____ Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use
- Source of water supply well
- Location of point of diversion n/a NE 1/4 SW 1/4 Sec 5 - T7N - R2E County Butte
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☐ No
If "Yes," where will water be used? _____
(example - NW1/4 section 12-T104N-R53W)
- County or counties where water will be used Butte
- Annual period during which water is to be used year round; higher use in summer
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Shortgrass Resort is a small camping property with 8 units & a commercial kitchen.

I, Rachel Headley member, the applicant, certify under
Name of Person Title (if applicable)
penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

2021-08

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Also, attach map and any other technical information. (see instructions)

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Supplemental Information

(type or print)

1. Well Information (check one or both as applicable)

☒ Drilling new well(s) ☐ Using existing well(s)

a) If new wells, how many 1 Have test holes been drilled? ☐ Yes ☒ No Drilled by _____
(if yes, please provide copies of logs)

b) If existing wells, how many 0 Provide copy of log(s), if available. Drilled by Water System Drilling Inc

For either existing or proposed wells:

c) Well Depth (required) 200 ft Depth to Top of Water Bearing Material _____ Depth to Water from Surface _____

d) Distance to nearest domestic well on applicant's property 0 Property owned by others unknown

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) _____

b) System Capacity (gallons) _____ Year Constructed _____

c) Connected to the City of _____ Sanitary System

3. Dugout Information

a) Surface Dimensions _____ Depth _____

b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

g) X & Y Slope (e.g. 3 to 1 is a typical slope)

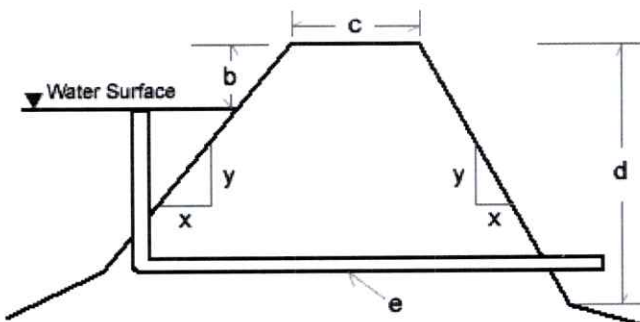
Upstream _____

Downstream _____

h) Area of Impoundment _____

i) Storage _____ Acre Feet

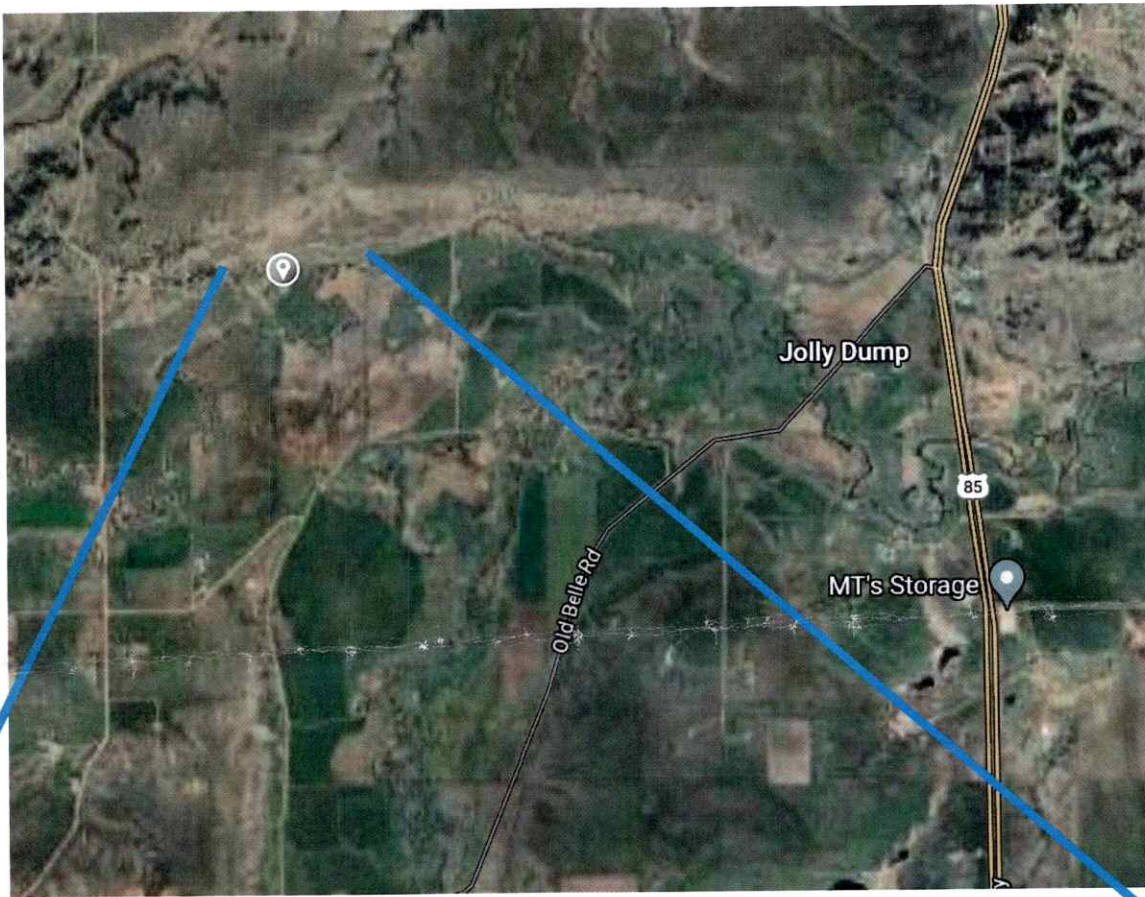
j) Drainage Area Above Dam _____ Acres



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Property Location: 44.597203, -103.900157

◆ Well Location

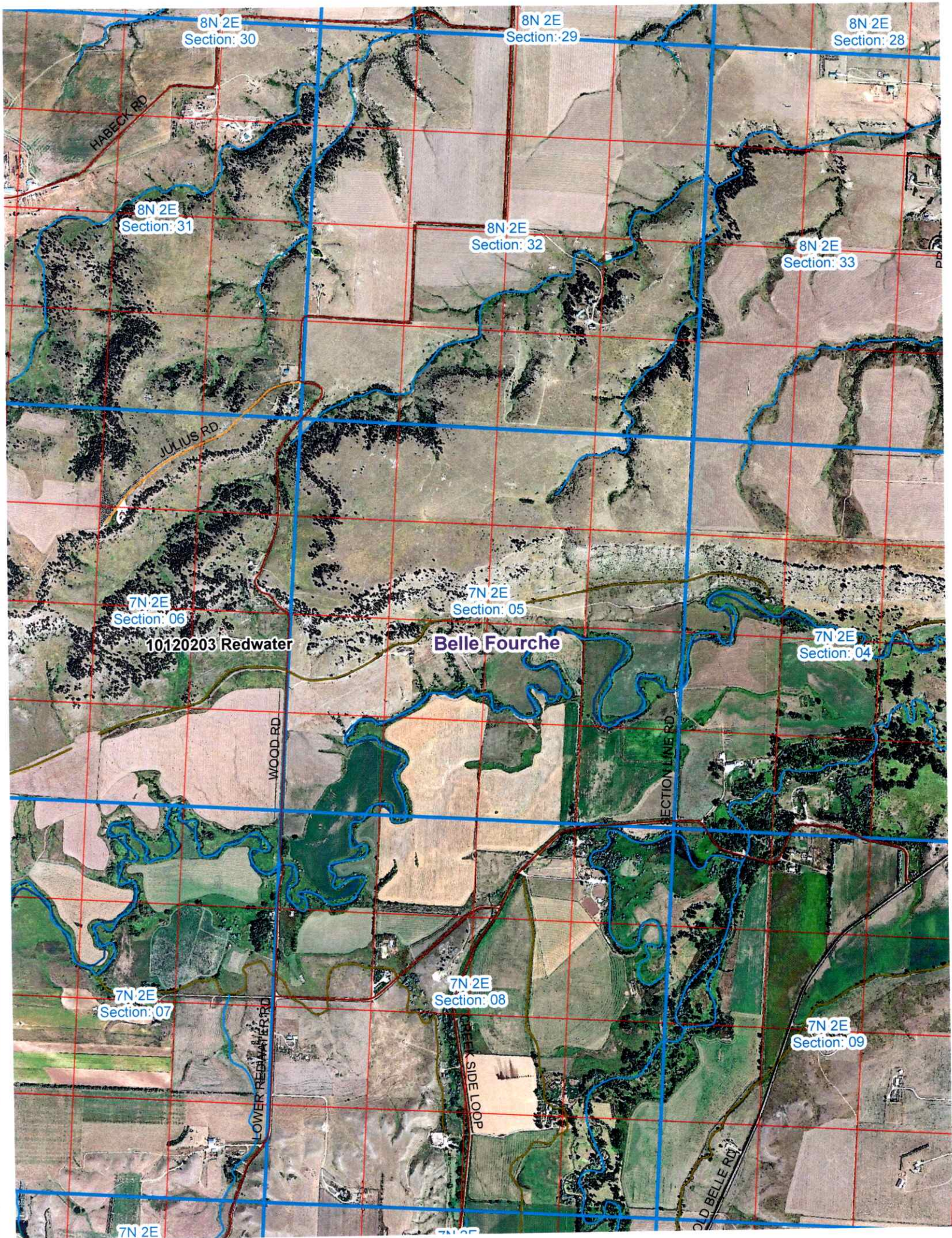
● Facility locations

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8N 2E
Section: 30

8N 2E
Section: 29

8N 2E
Section: 28

8N 2E
Section: 31

8N 2E
Section: 32

8N 2E
Section: 33

7N 2E
Section: 06

7N 2E
Section: 05

7N 2E
Section: 04

10120203 Redwater

Belle Fourche

7N 2E
Section: 07

7N 2E
Section: 08

7N 2E
Section: 09

7N 2E

7N 2E

HABECK RD

JULIUS RD

WOOD RD

SECTION LINE RD

LOWER REDWATER RD

STEEL SIDE LOOP

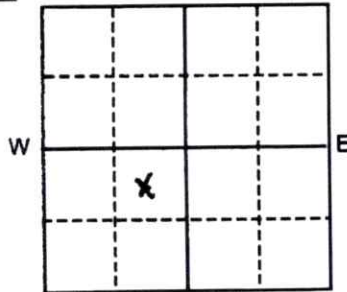
OLD BELLE RD

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location NE 1/4 SW 1/4 Sec 5 Twp 7N Rg 2ECounty LAWRENCE

North

Please mark well
location with an "X"

Well Completion Date

6/14/2024

1 Mile

Well Owner: JARED CAPPBusiness Name: BLACK HILLS EXPERIENCEAddress: 19343 SHORT GRASS LANECity, State, Zip: SPEARISH SD 57783

WELL LOG:

DEPTH

FORMATION	FROM	TO
<u>ALLUVIAL</u>	<u>0</u>	<u>170</u>
<u>SPEARISH</u>	<u>170</u>	<u>1104</u>
<u>MINNEKATA</u>	<u>1104</u>	<u>1152</u>
<u>OPECHE</u>	<u>1152</u>	<u>1268</u>
<u>MINNEKATA</u>	<u>1268</u>	<u>1780</u>
<u>MARSHALL</u>	<u>1780</u>	<u>2000'</u>

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.):

900' ft. from SEPTIC SYSTEM (identify source)

PROPOSED USE:

☐ Domestic/Stock ☐ Municipal ☒ Business ☐ Test holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:

MUD ROTARY

CASING DATA:

☒ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>65</u> LB/FT	<u>16</u> IN	<u>0</u> FT	<u>40</u> FT	<u>22"</u> IN
<u>40.5</u> LB/FT	<u>10.35</u> IN	<u>10</u> FT	<u>167'</u> FT	<u>14.75"</u> IN
<u>23</u> LB/FT	<u>7"</u> IN	<u>0</u> FT	<u>1830</u> FT	<u>9.85</u> IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Premium G</u>	<u>110</u>	<u>14.8</u> Lb/gal	<u>0</u> Ft	<u>167'</u> Ft
<u>Premium G/AB</u>	<u>525</u>	<u>14.6</u> Lb/gal	<u>0</u> Ft	<u>1830'</u> Ft

Describe grouting procedure

PRESSURE GROUT THRU CASING

SCREEN:

☒ Perforated pipe ☐ ManufacturedDiameter 7/8 Inches Length _____ Feet

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? CL2 TABLETS☐ No, Why Not?Lab to which water
quality sample sent for analysis MID CONTINENT LABSRAPID CITYDRILLED MARSHALL WITH FRESH CHLORINATED
WATER ALSO.

STATIC WATER LEVEL

FEET

If flowing: closed in pressure 148 PSIGPM flow 760 through METER 6" Inch pipeControlled by ☒ Valve ☒ Reducers ☐ Other PRESSURE FRANCHISE

Reduced flow rate _____ GPM

Can well be completely shut in? YESWELL TEST DATA: Flow

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JUN 14 2024

☐ Pumped Describe:☐ Bailed☐ Other

Pumping Level Below Land Surface

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_____ Ft. After _____ Hrs. pumped _____ GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: NO PUMP GPM

REMARKS

WATER IS hooked up to DISTRIBUTION SYSTEM
FOR RESTAURANT plus 8 CAMP SITES.This well was drilled under license # 698 and this
report is true and accurate.Drilling firm: WATER SYSTEM DRILL INC

Signature of License Representative:

SCOTT A REMISE

Signature of Well Owner or Equitable Property Holder:

Date: 1 JUN 24

Estimated well use at Shortgrass Resort

50 gpm
360 Total daily minutes
18000 *Total gallons per day*

210 Days open per year
3,780,000 *Total gallons per year*

11.6 Acre-feet per year

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JUL 15 2024

OFFICE OF
WATER

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date July 16th, 2024

RECEIVED OF Pangea Design Group for Black Hills Experience LLC

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>2038-1</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>500.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2038-1</u>	\$ <u>200.00</u>
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law) TOTAL	\$ <u>700.00</u>

By Eric Gronlund
Chief Engineer

SK



531991736

B0280-8770 09/06/2023 12:52PM Rec'd by SD SOS

Secretary of State
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

2023
FILING YEAR

ANNUAL REPORT

Domestic Limited Liability Company
SDCL 47-34A-211; 59-11-24, 24.1

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Filing Fee: \$50

Total Fee: \$50

1. Business ID and Name:

DL190585
BUSINESS ID

Black Hills Experience LLC
BUSINESS NAME

2. The jurisdiction under whose law it is formed South Dakota

3. The address of the principal executive office (business address):

Actual Street Address

**437 N MAIN STREET
SPEARFISH, SD 57783**

Mailing Address

**437 N MAIN STREET
SPEARFISH, SD 57783**

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, or (b) a commercial registered agent.

(a) The South Dakota Noncommercial Registered Agent's name

Name **Rachel MK Headley**

Actual Street Address in this State

**221 UPPER VALLEY RD
SPEARFISH, SD 57783**

Mailing Address in this State

**221 UPPER VALLEY RD
SPEARFISH, SD 57783**

5. If the LLC is manager-managed, list the names and addresses of its Managers. SDCL 59-11-24. If the LLC is member-managed, this section may be left blank.

6. 43-2A-1. "Agricultural land" defined.

For purposes of this chapter, the term "agricultural land" means land capable of use in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any royalty interest, any oil, gas, or other mineral interest, or any lease, right-of-way, option, or easement relating thereto, or any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use

Does the entity own any Agricultural land? (Required)

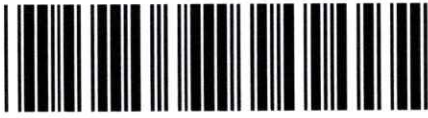
No

If the answer is yes, please answer below

"Foreign Beneficial Owner" Foreign government, a government, or the state-controlled enterprise of a government, other than the United States, its states, or its territories. A natural person who is not a United States Citizen. An entity registered outside the United States or its territories.

Does the entity have any foreign beneficial owners/interests?

N/A



7. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a criminal penalty (SDCL 22-39-36).

09/06/2023

Dated

Email (Optional)

Rachel Headley

Signature of an Authorized Person

Rachel Headley

Printed Name

B0280-8771 09/06/2023 12:52PM Rec'd by SD SOS

Rodriguez, Rachel

From: Rachel Headley <rachel@rosegrouptl.com>
Sent: Tuesday, July 16, 2024 12:12 PM
To: Rodriguez, Rachel
Subject: Re: [EXT] Water Permit Application

Whoops, sorry Rachel. It's in Butte County.

~~~~~

**Dr. Rachel MK Headley**  
CEO, [Rose Group Int'l](#)  
437 N. Main Street  
Spearfish, SD 57783

D: +1 605.644.7721  
M: +1 605.323.9650

Driving your company forward.

On Tue, Jul 16, 2024 at 10:59 AM Rodriguez, Rachel <[Rachel.Rodriguez@state.sd.us](mailto:Rachel.Rodriguez@state.sd.us)> wrote:

Good Afternoon Rachel,

I am in receipt of your water permit application. Everything looks good, I just need to know the county where the well is located, it was left blank.

Once I receive your response, I can begin processing your application.

Thank you,

Rachel Rodriguez

DANR | Program Assistant

[Rachel.Rodriguez@state.sd.us](mailto:Rachel.Rodriguez@state.sd.us)



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 2038-1, Black Hills Experience, LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 2038-1, Black Hills Experience, LLC, 437 N Main Street, Spearfish SD 57783.

The Chief Engineer is recommending APPROVAL of Application No. 2038-1 with a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2038-1 is issued for a twenty-year term. Pursuant to SDCL 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2038-1 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The well is located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits 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.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.
4. Water Permit No. 2038-1 appropriates up to 12 acre-feet of water annually.

See report on application for additional information.

Eric Gronlund, Chief Engineer  
September 13, 2024

**Report to the Chief Engineer on  
Water Permit Application No. 2038-1**  
Black Hills Experience, LLC  
3 September 2024

Water Permit Application No. 2038-1 proposes to appropriate up to 12 acre-feet of water per year (ac-ft/yr) at a maximum diversion rate of 0.111 cubic feet of water per second (cfs), equivalent to approximately 50 gallons per minute (gpm) from one well completed into the Madison aquifer in the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 5-T7N-R2E Black Hills Meridian for commercial use at a camping property (Shortgrass Resort). This site is located approximately five miles north of Spearfish, South Dakota, in Butte County just north of the Butte-Lawrence County border.

**Aquifer: Madison Limestone (MDSN)**

*Hydrogeologic Characteristics*

The Madison Group in South Dakota is a Lower Mississippian and Upper Devonian aged group of formations that in the Black Hills consists of the Englewood and Pahasapa Limestone formations [1]. The Pahasapa Limestone is a “white, light-gray to tan, fine- to medium-grained limestone and dolomite containing brown to gray chert” [2]. The Englewood Limestone is a “pink to lavender to light-gray, thin- to medium-bedded, fine- to medium-grained, argillaceous, dolomitic limestone” [2]. The Madison aquifer consists of the permeable and porous portions of the Madison Group that are sufficiently saturated to deliver useful quantities of water. The Madison aquifer extends over more than 210,000 square miles in Montana, Wyoming, North Dakota, South Dakota, and Nebraska [3] although, it may not be suitable as a source of water in all of those areas due to extreme depth to the aquifer and poor water quality far from the outcrops [4]. It crops out in the Black Hills and is buried elsewhere in South Dakota [3]. The Madison aquifer may be hydrologically connected to the underlying Deadwood aquifer. It is also hydrologically connected to the overlying Minnelusa aquifer [5]. The Minnelusa aquifer overlies the Madison unconformably [1], which means there was a period of erosion or weathering between when the Madison Group and the Minnelusa Formation were deposited. Transmissivity in the Madison aquifer mainly comes from secondary porosity features such as solution cavities, faults, and fractures [5]. Because most of the transmissivity in the Madison aquifer comes from secondary porosity features, aquifer characteristics in the Madison aquifer vary greatly from location to location [5].

The applicant submitted a well completion report for one well completed on June 4, 2024, in the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 5 T7N-R2E. The driller reported encountering the Madison aquifer from 1,780 feet to 2,000 feet below grade. The driller placed casing from ground surface to 1,830 feet below grade and left an open hole below that. The driller indicated a closed in pressure of 148 psi at the time the well was completed, which is equivalent to a static water level of approximately 340 feet above the top of the casing. The elevation of the land at the location of the well is approximately 3,300 feet above NAVD88 [6]. The mapped elevation of the top of the Madison aquifer is approximately 1,500 above NGVD29 [7] and the mapped elevation of the potentiometric surface of the Madison aquifer, when interpolated between the lines is 3,580 feet above NGVD29, although the density of potentiometric surface data points is very low in the

area of this application [8]. The difference between NAVD88 and NGVD29 is negligible for the purposes of aquifer determination for the Madison aquifer. Based on the driller's report, the elevation of the top of the Madison aquifer is 1,513 feet above NAVD88 and the elevation of the potentiometric surface as determined from the static water level is 3,633 feet above NAVD88. That means there is over 2,100 feet of artesian head pressure above the top of the Madison aquifer at this location. The differences between mapped Madison aquifer surface and potentiometric surface and those encountered by the driller are minimal enough that the aquifer and potentiometric surface are consistent with the mapped data of the Madison aquifer.

**Applicable South Dakota Codified Law (SDCL)**

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued 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 domestic water uses and water 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 (from here on, "Board"). This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, no application to appropriate groundwater may be approved if, 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 the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The Madison aquifer is older and stratigraphically lower than the Greenhorn Formation, but this application is not for a water distribution system as defined in SDCL 46-1-6(17). Therefore, the Board must consider the balance of recharge and withdrawals if they approve this application.

Pursuant to SDCL 46-2A-20:

*Notwithstanding §§ 46-1-14 and 46-2A-7, no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the Water Management Board determines, based upon the evidence presented at a hearing that:*

*(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and*

*(2) The information, whether provided by the applicant or by other means, shows that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs.*

This application proposes to withdraw water from the Madison aquifer in one of the counties listed above. Therefore, in addition to the other requirements, the Board must consider the effect this application may have on nearby Madison aquifer wells and springs and this application is subject to a 20-year term limit.

### **Availability of Water**

#### *Statewide Hydrologic Budget*

#### Statewide Recharge

The Madison aquifer receives recharge from infiltration of precipitation and streamflow on the outcrop area and may also receive inflow from the underlying Deadwood aquifer [9]. There are several reports available estimating recharge to the Madison aquifer which have been referenced by Water Rights Staff in previous reports to the Chief Engineer.

Woodward-Clyde Consultants [10] estimated recharge to the outcrop of the Madison aquifer in the Black Hills as part of an environmental impact statement for the ETSI Coal Slurry Pipeline Project. The upper-bound estimate of recharge in the Woodward-Clyde Consultants report is approximately 400,000 ac-ft/yr, assuming almost all of the precipitation that falls on the outcrop infiltrates into the aquifer [10]. Woodward-Clyde Consultants produced a lower-bound recharge estimate of 140,000 ac-ft/yr based on the Rahn and Gries [11] report [10]. However, the Rahn and Gries report estimated recharge for all Paleozoic limestone in the Black Hills, which includes the Madison Group, the Minnelusa Formation, and the Minnekahta Formation [11]. Rahn and Gries [11, p. 15] reported that 146.14cfs was their minimum estimated recharge rate for the Paleozoic limestone from infiltration of precipitation, which converts to approximately 106,000 ac-ft/yr for all Paleozoic formations. The Woodward-Clyde Consultants report did not acknowledge the fact that the Rahn and Gries [11] report estimated minimum recharge for a larger group of formations than the Woodward-Clyde Consultants report covers, and therefore was likely to overestimate recharge to the Madison aquifer under the assumptions made [10].

Carter, Driscoll, and Hamade [9] analyzed streamflow and precipitation data from water years 1931 to 1998 in the Black Hills area in South Dakota and Wyoming to determine the average annual recharge to the Madison and Minnelusa aquifers. They estimated a combined average annual recharge to both aquifers to be 344 cfs, or approximately 249,000 ac-ft/yr, not including possible flow from the Deadwood aquifer [9]. Carter, Driscoll, and Hamade [9] estimated that approximately 55% of the recharge goes to the Madison aquifer, so the total estimated average recharge to the Madison aquifer from the outcrop in the Black Hills is 137,000 ac-ft/yr, not including possible inflow from adjacent aquifers or from the Madison aquifer outside of the Black Hills of South Dakota and Wyoming. The Carter, Driscoll, and Hamade [9] report uses more years of data, more recent data, and better assumptions than the Woodward-Clyde Consultants [10] and Rahn and Gries [11] reports. Therefore, the best estimate of recharge to the Madison aquifer is based on the Carter, Driscoll, and Hamade [9] report.

#### Statewide Discharge

Discharge from the Madison aquifer in South Dakota is mainly by outflow to other aquifers when the hydraulic head in the Madison aquifer is higher than the other aquifers, outflow to

springs and seeps, and withdrawals by domestic and appropriative wells [12]. Due to the presence of overlying aquifers and water distribution systems in many areas of the aquifer, domestic well withdrawals are a negligible portion of the hydrologic budget of the Madison aquifer. There are 173 water rights/permits currently authorized to withdraw from the Madison aquifer, and 12 future use water rights/permits reserving water from the Madison aquifer. Table 1 shows the future use permits reserving water from the Madison aquifer [13].

Table 1: Future Use Permits from the Madison aquifer [13]

| Permit No.                                                                                                                                      | Name/Business                     | County | Use      | Priority Date | Amount Reserved (ac-ft/yr) |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--------|----------|---------------|----------------------------|
| 2028-1                                                                                                                                          | Bear Butte Valley Water, Inc      | MD     | RWS, WDS | 03/23/2023    | 440                        |
| 369-1                                                                                                                                           | City of Belle Fourche             | LA     | MUN      | 12/10/1958    | 620                        |
| 2086-2                                                                                                                                          | City of Rapid City                | PE     | MUN      | 05/18/1989    | 4,075                      |
| 2086A-2                                                                                                                                         | City of Rapid City                | PE     | MUN      | 05/18/1989    | 0                          |
| 439-2*                                                                                                                                          | City of Rapid City                | PE     | MUN      | 09/22/1956    | 3,367                      |
| 1872-1                                                                                                                                          | City of Spearfish                 | LA     | MUN      | 11/13/2006    | 2,704                      |
| 2560-2                                                                                                                                          | Fall River Water Users District   | FR     | RWS      | 05/16/2005    | 358                        |
| 2560A-2                                                                                                                                         | Fall River Water Users District   | FR     | RWS      | 05/16/2005    | 0                          |
| 2560B-2                                                                                                                                         | Fall River Water Users District   | FR     | RWS      | 05/16/2005    | 0                          |
| 2580-2                                                                                                                                          | Southern Black Hills Water System | FR     | RWS      | 03/02/2006    | 1,474                      |
| 1833-2                                                                                                                                          | Weston Heights Home Owners        | MD     | RWS      | 02/18/1983    | 211                        |
| 1995-1                                                                                                                                          | Black Hawk Water User District    | MD     | RWS      | 04/15/2020    | 1,300                      |
| Total                                                                                                                                           |                                   |        |          |               | 14,549                     |
| FR – Fall River, LA – Lawrence, MD – Meade, PE – Pennington                                                                                     |                                   |        |          |               |                            |
| MUN – Municipal, RWS – Rural Water System, WDS – Water Distribution System                                                                      |                                   |        |          |               |                            |
| * This permit reserves water from multiple aquifers but is assumed to withdraw solely from the Madison for estimation of the hydrologic budget. |                                   |        |          |               |                            |

Of the 173 active water rights/permits, 107 are primarily for some type of water distribution system (rural water system, municipal, etc), 32 primarily for irrigation, 14 primarily for commercial use, 11 primarily for industrial use, 4 primarily for domestic use, 2 for geothermal use, 2 for institutional use, and one primarily for recreation [13]. There are 35 water rights/permits which have irrigation listed as one of the uses in their permit. Estimated withdrawals for irrigation use are shown in Table 2. When there were more than 10 years of irrigation reports available, the average reported irrigation was used to estimate irrigation withdrawals. When there were fewer than 10 years of irrigation reports available, withdrawals are assumed to equal two acre-feet per acre, although actual usage is likely less for non-turf irrigation. Non-irrigation withdrawals from permit holders with irrigation also being a permitted use are assumed to withdraw at their maximum instantaneous diversion rate 60% of the time. In the case of Water Right No. 1885-1, that would have caused the total estimated withdrawal to exceed the rate they were physically capable of withdrawing, so their total estimated withdrawal is 100% of their maximum instantaneous diversion rate.

# Report on Water Permit App. No. 2038-1

Table 2: Permits with irrigation listed as one beneficial use, or are connected to an irrigation permit [13] [14]

| Permit No. | Name/Business                       | Diversion rate (cfs) | Acres Licensed/ Permitted | Average Report (ac-ft/yr) | Years of Irrigation Reports | Estimated average irrigation (ac-ft/yr) | Est. Non-irr. Use (ac-ft/yr) | Total Est. Withdrawal (ac-ft/yr) |
|------------|-------------------------------------|----------------------|---------------------------|---------------------------|-----------------------------|-----------------------------------------|------------------------------|----------------------------------|
| 2773-2     | Arrowhead Country Club              | 1.110                | 100.0                     | 0.0                       | 6                           | 200.0                                   | 0.0                          | 200.0                            |
| 1635-1     | Black Hills National Cemetery       | 0.820                | 54.5                      | 94.7                      | 28                          | 94.7                                    | 356.4                        | 451.1                            |
| 1452-1     | Black Hills State College           | 3.330                | 25.4                      | 20.1                      | 35                          | 20.1                                    | 1,447.5                      | 1,467.6                          |
| 1670-1     | Buddy L, Peggy A, Kami S Ireland    | 3.610                | 253.0                     | 43.9                      | 26                          | *                                       | *                            | *                                |
| 1096A-1    | Butte Meade Sanitary Dist           | 1.330                | 0.0                       | N/A                       | 0                           | *                                       | *                            | 963.5                            |
| 2458-2     | City of Rapid City                  | 0.800                | 107.0                     | 104.6                     | 23                          | 104.6                                   | 0.0                          | 104.6                            |
| 2002-1     | City of Spearfish                   | 1.330                | 40.0                      | 0.0                       | 3                           | 80.0                                    | 0.0                          | 80.0                             |
| 2313-2     | Coca-Cola Bottling                  | 0.330                | 3.0                       | 7.1                       | 29                          | 7.1                                     | 143.4                        | 150.6                            |
| 1899-1     | Davis Ranches Inc                   | 1.430                | 100.0                     | 0.0                       | 15                          | 0.0                                     | 0.0                          | 0.0                              |
| 1650-1     | Dennis L Miller                     | 0.890                | 0.0                       | 85.4                      | 1                           | *                                       | *                            | 55.9                             |
| 2673-2     | Diocese of Rapid City               | 0.120                | 7.0                       | 8.2                       | 11                          | 8.2                                     | 0.0                          | 8.2                              |
| 1009-1     | Donald F/Ann J Brady                | 0.780                | 53.7                      | 29.0                      | 42                          | 29.0                                    | 0.0                          | 29.0                             |
| 1185-1     |                                     | 0.380                | 22.5                      | 115.0                     | 42                          | 115.0                                   | ***                          | 115.0                            |
| 2286-2     | Donald Konechne                     | 0.100                | 38.5                      | 9.8                       | 30                          | 9.8                                     | 0.0                          | 9.8                              |
| 1707A-1    | Elkhorn Ridge @ Frawley Ranches LLC | 3.705                | 100.0                     | 0.0                       | 4                           | 0.0                                     | 1,610.5                      | 1,610.5                          |
| 1707E-1**  |                                     | 0.000                | 0.0                       | 14.2                      | 17                          | 14.2                                    | 0                            | 14.2                             |
| 1931-1     |                                     | 0.170                | 3.3                       | 3.0                       | 11                          | 3.0                                     | 73.9                         | 76.9                             |
| 1945-1     | Frawley Ranches LLC                 | 1.110                | 265.0                     | 53.4                      | 10                          | 53.4                                    | 0.0                          | 53.4                             |
| 1858-1     | Glencoe Camp Resort II LLC          | 0.860                | 34.0                      | 0.0                       | 18                          | 0.0                                     | 373.8                        | 373.8                            |
| 2593-2     | Hart Ranch Development              | 0.490                | 72.5                      | 29.8                      | 17                          | 29.8                                    | 213.0                        | 242.8                            |
| 1911-2     | Hart Ranch Development Co           | 0.880                | 124.0                     | 118.0                     | 30                          | 118.0                                   | 382.5                        | 500.5                            |
| 1725-2     | Janice R Crowser                    | 1.070                | 75.1                      | 0.9                       | 25                          | 0.9                                     | 0.0                          | 0.9                              |
| 2012-1     | Jesse Horstmann                     | 0.500                | 43.5                      | 0.0                       | 2                           | 87.0                                    | 0.0                          | 87.0                             |
| 858-2      | John & Heidi McBride                | 9.360                | 655.8                     | 6.4                       | 40                          | 6.4                                     | 0.0                          | 6.4                              |
| 1885-1     | John T & Veronica Widdoss           | 0.110                | 22.0                      | 18.5                      | 7                           | 44.0                                    | 35.7                         | 79.7                             |
| 1960-1     | One Diamond Inc                     | 1.280                | 150.0                     | 130.1                     | 8                           | 300.0                                   | 29.0                         | 329.0                            |
| 1223-1     | P & L Water and Hay LLP             | 0.670                | 263.0                     | 186.1                     | 42                          | 186.1                                   | 0.0                          | 186.1                            |
| 1923-1     | Roger and Jean Ranschau             | 0.110                | 3.0                       | 0.8                       | 12                          | 0.8                                     | 47.8                         | 48.6                             |
| 2013-1     | Santa Maria Land and Cattle Corp.   | 2.220                | 460.0                     | 0.0                       | 1                           | 920.0                                   | 0.0                          | 920.0                            |
| 1363-1     | Spearfish Canyon Country Club       | 0.900                | 80.1                      | 66.4                      | 37                          | 66.4                                    | 0.0                          | 66.4                             |
| 2106-2     | Stuart Rice                         | 0.080                | 2.8                       | 0.8                       | 32                          | 0.8                                     | 34.8                         | 35.6                             |
| 1842-1     | Tom C Davis                         | 0.440                | 330.0                     | 0.0                       | 19                          | 0.0                                     | 0.0                          | 0.0                              |
| 2741-2     | Tubbs Land & Cattle LLC             | 3.340                | 567.0                     | 267.7                     | 5                           | 1,134.0                                 | 0.0                          | 1,134.0                          |
| 2879-2     | Weinreis Brothers                   | 0.500                | 75.0                      | N/A                       | 0                           | 150.0                                   | 0.0                          | 150.0                            |
| 419-2      | Wind Cave National Park             | 0.150                | 6.0                       | N/A                       | 0                           | 12.0                                    | 65.2                         | 77.2                             |
| Total      |                                     | 44.305               | 4,136.7                   | 1,414.0                   | 627                         | 4,272.1                                 | 5,353.0                      | 10,355.7                         |

\* Discussed in text. \*\*gives additional time to develop 1707A-1. \*\*\* Reports all use types in irrigation report

Water Right/Permit Nos. 1096A-1, 1496-1, and 1670-1 are all authorized to withdraw from the same well and one dam. Water Right Nos. 1096A-1, 1670-1 authorize diversion of water for irrigation use and Water Right No. 1096A-1 and Water Permit No. 1496-1 authorize diversion of water for rural water system use. Documentation in the administrative file for Water Right No. 1670-1 indicates that the well is not valved such that it can be shut off when not in use for the beneficial uses listed on the permits [13]. A letter dated September 9, 1998, indicates that when

the water for that well is not being used for the beneficial uses described in the permits, it is used for fish and wildlife propagation [13]. The person writing the letter indicated they would prefer the Board not order the well to be shut off when not used for irrigation or rural water system withdrawals. It is likely the well continues to flow uncontrolled; thus, at the flow rate listed in Water Right No. 1096A-1 of 1.33 cfs, that well withdraws approximately 964 ac-ft/yr from the Madison aquifer.

Water Right No. 1650-1 does not require the water right holder to report annual withdrawals and allocates no acreage [13]. It provides supplemental water supply from a flowing well for Water Right No. 1231-1. Water Right No. 1231-1 permits a 110 acre-ft dam to provide water for a commercial livestock operation and irrigation of 134 acres. Water Right No. 1650-1 allows for direct irrigation from a Madison aquifer well of up to 2 acre-ft per acre for the land permitted by Water Right No. 1231-1. Kilts estimated that Water Right No. 1650-1 withdraws 55.9 ac-ft/yr [15]. This water right was transferred to a new owner in 2021. For the 2023 irrigation season, the owner reported using 81.07 ac-ft of water for irrigation. As this is the only year this owner has reported, the value of 55.9 ac-ft/yr will be used as their average until more years of reporting can establish an average.

There are 7 water rights/permits for water distribution systems that have indicated to the DANR Drinking Water Program [16] that they do not produce water from their own wells and are purchasing water from another system, so they are assumed to withdraw a negligible amount of water.

There are 49 water rights/permits that have a volume limit listed in their permit or have had their total withdrawal limited by a subsequent water right/permit held by the same person/entity [13]. While many of those water rights/permits are required to report their withdrawals, they may develop their permits further to withdraw up to the limit on their permit, so the volume limit listed on their permits is assumed to be their total appropriation. The total volume limit listed by such permits is 28,115 ac-ft/yr.

There are 82 non-irrigation water rights/permits that do not have a volume limit listed in their permit and are not discussed above [13]. They are estimated to withdraw their maximum instantaneous diversion rate 60% of the time, for a total estimated withdrawal of 15,279 ac-ft/yr. Based on Water Rights Staff experience, this estimate is likely to be higher than the actual withdrawals by those water rights/permits.

In addition to the potential withdrawals by future use permits described above, four other applications are deferred, held in abeyance, or pending review. Water Permit Application No. 2585-2 for Southern Black Hills Water System proposes to appropriate 1,600 ac-ft/yr, but is deferred for further study. Water Permit Application No. 2685-2 for Powertech, Inc is held in abeyance pending federal permitting and proposes to appropriate 889 ac-ft/yr. Water Permit Application Nos. 2037-1 and 2880-2 are estimated to withdraw 40 and 49 ac-ft/yr, respectively, and are pending approval following the public notice process.

Summary of Statewide Hydrologic Budget

The best available estimate of recharge to the Madison aquifer in South Dakota is approximately 137,000 ac-ft/yr. The estimated withdrawals as described in the Statewide Discharge section are summarized in Table 3. The total estimated withdrawal, including withdrawals reserved for future use and held, or deferred applications is approximately 70,876 ac-ft/yr. This application proposes to appropriate 12 ac-ft/yr. Therefore, based on the statewide hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 3: Summary of estimated appropriations

| Use Type               | Count      | Estimated Use/Appropriation (ac-ft/yr) |
|------------------------|------------|----------------------------------------|
| Irrigation             | 35         | 10,356                                 |
| Standby                | 7          | 0                                      |
| Volume Limit           | 49         | 28,115                                 |
| Sixty Percent Estimate | 82         | 15,279                                 |
| <i>Subtotal</i>        | <i>173</i> | <i>53,749</i>                          |
| Future Use             | 12         | 14,549                                 |
| Pending                | 4          | 2,578                                  |
| <b>Grand Total</b>     | <b>189</b> | <b>70,876</b>                          |

*Local Hydrologic Budgets*

While the statewide hydrologic budget is used as the basis for determination of availability of water, other studies exist which have focused on smaller areas of the Black Hills. This section will address estimated withdrawals within those areas for the information of the Chief Engineer and the Board.

Carter, et al. [12]

Carter, et al [12] used streamflow, precipitation, spring flow, estimated ground water flow, and well withdrawal data from 1987 to 1996 for the hydrologic budgets. This application is in Subarea 1 of their report. The boundaries of the Carter et al. [12] subareas were designed to minimize flow across subarea boundaries. Carter et al. [12] estimated the total recharge to the Madison and Minnelusa aquifers in Subarea 1 was 130.7 cfs. Assuming 55% of the recharge goes to the Madison aquifer, the estimated recharge to the Madison aquifer in Subarea 1 is 71.9 cfs, or approximately 52,100 ac-ft/yr [9] [12]. Carter, et al. [12] do not provide values for the recharge area of the Madison and Minnelusa formations for each subarea in their report, so it is possible the proportion of recharge area to those two aquifers is different within each subarea. There are 36 water rights/permits authorized to withdraw from Subarea 1 and two future use permits reserving water from Subarea 1. Additionally, Water Permit Application No. 2037-1 proposes to appropriate up to 40 ac-ft/yr from Subarea 1. Domestic well withdrawals are negligible on the scale of this hydrologic budget. Using the same methods as described in the Statewide Discharge section, the total estimated withdrawal from Subarea 1 is 19,692 ac-ft/yr as compared to the estimated recharge of 52,100 ac-ft/yr. This application proposes to withdraw up to 12 ac-ft/yr, if approved. Therefore, based on the local hydrologic budget in combination with

other information available, there is reasonable probability unappropriated water is available for this application.

*Observation Wells*

Administrative Rule of South Dakota 74:02:05:07 requires that the Board rely upon the record of observation wells, in addition to other information, to determine that recharge exceeds withdrawals to approve an application. The Water Rights Program maintains 25 observation wells completed into the Madison aquifer [17]. The nearest observation well to this application that is completed into the Madison aquifer is LA-87A, which is located approximately 7.6 miles southwest of the well for this application. Figure 1 shows water elevations in that observation well over the period of record of 1988 through 2024 [17]. The fluctuations in this well represents the general behavior of the Madison aquifer. In general, water levels rise during periods of higher-than-average rainfall and decline during periods of lower-than-average rainfall [18]. This means that recharge and natural discharge are the dominant effects in the aquifer and natural discharge is available for capture. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available for this application.

Water level elevations for DANR Observation Well LA-87A

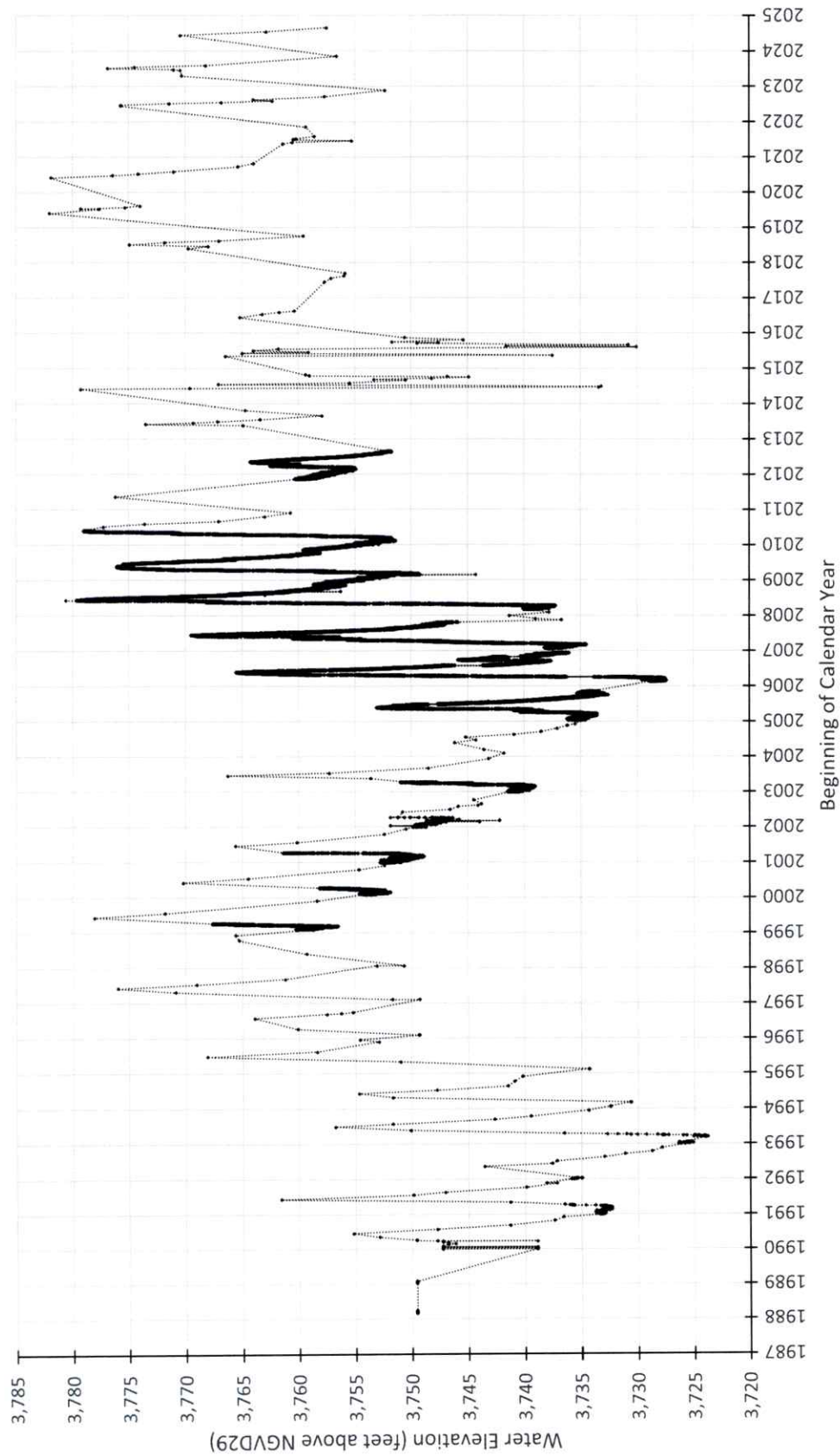


Figure 1: Madison aquifer observation well water elevations near this application [17]

**Possibility of Unlawful Impairment of Existing Water Rights**

The nearest water right or permit to this application is Water Right No. 1311-1, located approximately 1.7 miles northeast of this application [13]. The nearest domestic well completion report on file with the Water Rights Program likely to be completed into the same aquifer is located approximately 1 mile west of this application [19]. The location of well completion reports in the DANR well completion reports database is the location provided by the well driller. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) defines an adequate well as:

*...a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet*

Precise drawdown effects caused by a well cannot be known without an aquifer performance test that includes an observation well at the location of concern. Madison aquifer characteristics vary greatly from location to location. In the area of this application, the Madison aquifer is under confined conditions and drawdown may extend further from a well in confined conditions than an identical well in unconfined conditions. If the well does not meet the definition of an adversely impacted adequate well (ARSD 74:02:04:20(7)), the Board has not historically considered it an unlawful impairment of existing water rights. There is no record of well interference complaints in Lawrence or Butte Counties in the Madison aquifer [20]. Observation wells completed into this aquifer near larger appropriative wells show limited drawdown when the large appropriative wells are in use [17]. Given the lack of well interference complaints in Lawrence and Butte Counties, the significant amount of artesian head pressure above the top of the aquifer (greater than 2,100 feet), and limited drawdown shown in observation wells completed near large appropriations, there is reasonable probability this application can be developed without unlawful impairment of existing water rights. However, out of an abundance of caution, the applicant should control withdrawals so that adequate domestic wells and senior water rights are able to access needed water.

**Impact to Springs**

The nearest major artesian spring to this application is the Old Spearfish Hatchery, located approximately 4 miles south of the well for this application [21]. Upon considering the deferral of Water Permit Application No. 2585-2 for Southern Black Hills Water System, the Board adopted a conclusion of law stating in part, "... The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria" [22]. Given the distance between the proposed well

site and the nearest springs and the relatively small diversion rate, there is reasonable probability this application can be developed without noticeably impacting flow from the spring.

#### Conclusions

1. Water Permit Application No. 2038-1 proposes to appropriate up to 12 ac-ft/yr.
2. Based on the hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available for this application.
3. There is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits or domestic uses.
4. There is reasonable probability this application can be developed without noticeably impacting flow from springs.
5. This application is subject to the 20-year term limitation.



Kimberly C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

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**NOTE: TO BE SURE OF PUBLICATION ON  
THE CORRECT DATES, CONTACT  
THE NEWSPAPER RIGHT AWAY.**

September 17, 2024

Black Hills Experience, LLC.  
c/o Rachel Headley  
437 N Main Street  
Spearfish SD 57783

Dear Ms. Headley:

Water Permit Application No. 2038-1 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Black Hills Pioneer printed in Spearfish SD (Ph # 605 642-2761). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

**Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment.** Early contact with the paper can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

*Rachel Rodriguez*

Rachel Rodriguez  
Water Rights Program  
(605) 773-3352

enclosures

**NOTE:** If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

NOTICE OF APPLICATION NO. 2038-1 to Appropriate Water

Notice is given that Black Hills Experience, LLC., 437 N Main Street, Spearfish SD 57783, has filed an application for a water permit to appropriate 12 acre-feet of water annually at a maximum pump rate of 0.111 cubic feet of water per second from one well completed into the Madison Aquifer (2,000 feet deep) located in the NE 1/4 SW 1/4 Section 5-T7N-R2E for commercial use at a camping property (Shortgrass Resort). This site is located approximately five miles north of Spearfish SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2038-1 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation 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 October 7, 2024.

The petition 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.

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 October 7, 2024.

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 recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of\_

## Rodriguez, Rachel

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**From:** Rodriguez, Rachel  
**Sent:** Tuesday, September 17, 2024 8:23 AM  
**To:** legals@bhpioneer.com  
**Subject:** 2038-1 Black Hills Experience LLC - Public Notice  
**Attachments:** 2038-1 public.short\_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 26, 2024.

Black Hills Experience, LLC., c/o Rachel Headley, 437 N Main Street, Spearfish SD 57783, 605-323-9650, has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol Ave, Pierre SD 57501.

Let me know if you have questions. **Please acknowledge receipt of this email.**

Thank you,

Rachel Rodriguez  
DANR | Program Assistant  
Rachel.Rodriguez@state.sd.us



# Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF LAWRENCE:

Letitia Lister of said County and State being first duly sworn, on her oath says: That the BLACK HILLS PIONEER is a legal daily newspaper of general circulation, printed and published in the City of Spearfish, in said County and State by Letitia Lister, and has been such a newspaper during the times hereinafter mentioned; and that said newspaper has a bonafide circulation of at least 200 copies weekly, and has been published within said County in the English language for at least one year prior to the first publication of the notice herein mentioned, and is printed in whole or in part in an office maintained at the place of publication; and that I, Letitia Lister, the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

Notice Of Application  
No. 2038-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 26<sup>th</sup> day of Sept., 2024, and the last publication on the \_\_\_\_\_ day of \_\_\_\_\_, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 38.82, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

  
Subscribed and sworn to before me this 6<sup>th</sup> day of Oct., 2024



Notary Public, Lawrence County, South Dakota  
My commission expires: 7-18-2025

**NOTICE OF  
APPLICATION  
NO. 2038-1 to  
Appropriate Water**

Notice is given that Black Hills Experience, LLC., 437 N Main Street, Spearfish SD 57783, has filed an application for a water permit to appropriate 12 acre-feet of water annually at a maximum pump rate of 0.111 cubic feet of water per second from one well completed into the Madison Aquifer (2,000 feet deep) located in the NE 1/4 SW 1/4 Section

5-T7N-R2E for commercial use at a camping property (Shortgrass Resort). This site is located approximately five miles north of Spearfish SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2038-1 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation 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 October 7, 2024.

The petition 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.

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 October 7, 2024.

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 recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$40.27 and can be viewed free of charge at [www.sd-publicnotices.com](http://www.sd-publicnotices.com).

**#128  
Sep 26**

## Rodriguez, Rachel

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**From:** Rodriguez, Rachel  
**Sent:** Tuesday, September 17, 2024 12:48 PM  
**To:** rachel@rosegrouptl.com  
**Subject:** 2038-1 Black Hills Experience LLC - Public Notice  
**Attachments:** 2038-1 Rec.pdf; 2038-1 Ltr.pdf; 2038-1 PubNotice.pdf

Good afternoon,

Attached is a copy of the report, chief engineer's recommendation, and information regarding the public notice for your water permit application. As stated in the letter, **please contact the paper(s) as soon as possible to authorize publication and arrange for payment.** This information is also being mailed to you today.

Let me know if you have questions. Please acknowledge receipt of this email.

Thank you,

Rachel Rodriguez  
DANR | Program Assistant  
Rachel.Rodriguez@state.sd.us





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

OCT 22 2024

Black Hills Experience LLC.  
c/o Rachel Headley  
437 N Main Street  
Spearfish SD 57783

Dear Ms. Headley:

Enclosed is Water Permit No. 2038-1 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Eric Gronlund, Chief Engineer  
Water Rights Program  
(605) 773-3352

enclosures



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

STATE OF SOUTH DAKOTA       )  
                                              ) SS  
COUNTY OF HUGHES            )

**Affidavit of Public Notice  
Posting on DANR Website**

Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the application is contested, the posting is moved to the DANR contested case website at <https://danr.sd.gov/public/ContestedCase.aspx> until final action is taken on the application pursuant to SDCL § 46-2A-4.

**Application No.:** 2038-1

**Name of Applicant:** Black Hills Experience, LLC, c/o Rachel Headley

**Date of Posting:** 9/23/2024

**Date of Removal:** 10/22/2024

  
\_\_\_\_\_  
Ron Duvall, Engineer III

10/22/2024

\_\_\_\_\_  
Date

Subscribed and sworn to before me, a notary public, this 22<sup>nd</sup> day of Oct, 2024.

  
\_\_\_\_\_  
Notary Public - South Dakota  
My commission expires: Rachel Rodriguez  
My Commission Expires  
May 16, 2029

(SEAL)



**NOTICE OF COMPLETION OF WORKS AND  
APPLICATION OF WATER TO BENEFICIAL USE**

Date 10/29/2024

TO: Water Rights Program, DANR  
523 E. Capitol  
Pierre, SD 57501-3181

FROM: Black Hills Experience LLC  
(name)  
437 N Main Street  
(address)  
Spearfish SD 57783 605.323.9680  
(city, state, zip) (phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 2038-1 states that the water use system is to be constructed by  
10/7/2029, and water is to be put to beneficial use by 10/7/2033.  
(date) (date)

The water use system was completed on 7/15/2024.  
(date)

Applying the water to beneficial use was completed on 7/15/2024.  
(date)

You may schedule an investigation so that the water license may be issued.

[Signature]  
(signature)

7-98

**RECEIVED**

DEC 09 2024

OFFICE OF  
WATER



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

December 10, 2024

2038-1

Black Hills Experience  
c/o Rachel Headley  
437 N Main St  
Spearfish SD 57783

Dear Ms. Headley:

I am writing to acknowledge receipt of the "Notice of Completion of Works" form that you sent in to let us know that you are completed with your water use system authorized by Water Permit No. 2038-1.

The system is now ready for inspection. Inspections are done on a county-by-county basis as staff time permits. You have done everything you need to do and the intervening time between the completion of your project and the staff inspection has no bearing on your water permit.

Someone from our office will contact you prior to the inspection to set up a time that is convenient for you. If you have any questions, please contact me.

Sincerely,

Amanda Dewell  
Permitting Administrator  
Water Rights Program  
(605) 773-3352  
email: Amanda.Dewell@state.sd.us