

WATER PERMIT NO. 2841-2

Name of Applicant: Hwy 79 LLC

Address: 2700 W Main St, Rapid City SD

Phone: 605 431-9291

Amount of Water Claimed: 0.89 cfs

Total Acres: NA

Source of Water Supply: groundwater (one well)

Water to be used for: water distribution system

County: Pennington

Type of Waste Disposal System:

Location: 3 miles south of Rapid City

PRIORITY

Date Received: 2-18-22

Application/License Fee: \$950

Corrected Application Received:

Period of Annual Use: Jan 1 – Dec 31

Remarks:

Diversion Point: NW 1/4 NE 1/4 Sec 32-T1N-R8E
and NE 1/4 SE 1/4 Sec 4-T1S-R8E

Land to be Irrigated: NA

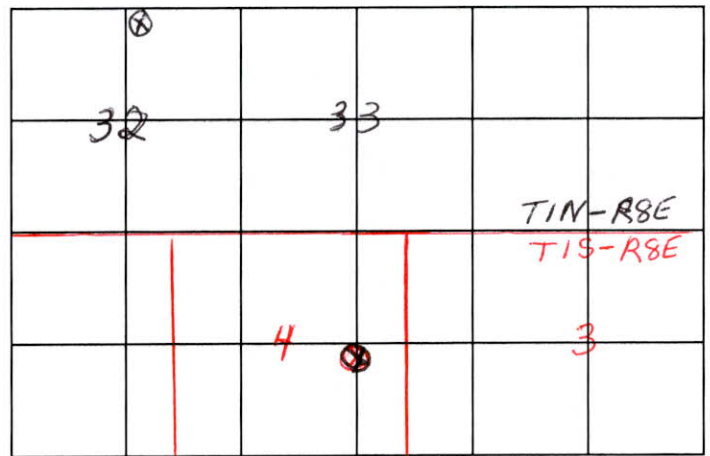
Depth of Well: 1,350 and 708 feet deep

Well Driller:

Remarks:

Type of Map: aerial

Prepared by:



Reviewed and the Number Assigned on: 3-2-22

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 2841-2

Date of first receipt of application February 18, 2022.

Date of return to applicant for corrections, amendments or changes February 22, 2022.

Date of receipt of corrected application February 28, 2022.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2841-2 to HWY 79, LLC c/o Brian Hammerbeck, 2700 W Main St, Rapid City SD 57702 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. 2841-2 appropriates 217.9 acre-feet of water annually at a maximum pump rate of 0.89 cubic feet of water per second from two existing wells completed into the Inyan Kara Aquifer (1,180 and 708 feet deep) located in the NW 1/4 NE 1/4 Section 32-T1N-R8E and NE 1/4 SE 1/4 Section 4-T1S-R8E for a water distribution system to be located in E 1/2 Section 32; W 1/2, SE 1/4 NE 1/4, SE 1/4 Section 33; SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 34; all in T1N-R8E, Lot 4, NW 1/4 SW 1/4 Section 3; N 1/2 SE 1/4, Lots 1 and 2 Section 4; all in T1S-R8E. This site is located approximately 3 miles south of Rapid City SD.
2. The water appropriated shall be used for the purpose of water distribution system 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 from which applicant may claim right is February 18, 2022.
5. The date of approval of Permit No. 2841-2 is May 16, 2022.
6. One-fifth of the construction is to be completed on or before November 16, 2024.
7. All construction is to be completed on or before May 16, 2027.
8. Water is to be put to beneficial use on or before May 16, 2031.
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. The wells approved under Water Permit No. 2841-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals under this Permit shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
3. Water Permit No. 2841-2 authorizes a total annual diversion of up to 217.9 acre-feet of water.

WATER MANAGEMENT BOARD

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

JUN 01 2022

date



PAID

FEB 18 2022

Ck# 080174

Rec't#

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2841-2</u> (office use only) Hydrologic Unit <u>10120110</u>
	Basin <u>Upper Cheyenne</u>
	Newspaper <u>Rapid City Journal</u>

Application For Permit To Appropriate Water Within The State Of 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 Residential | |

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.)

1. Name to Appear on Water Permit 79 HWY, LLC

Mailing Address 2700 W. Main Street Rapid City SD 57702
(Address) (City) (State) (Zip Code)
Phone 605-718-4000 Mobile 605-431-9291 Email pathall@premierrapidcity.com

2. Amount of water claimed 0.89 *CFS or 400 **GPM and 217.9 ***AF or 71,000,000 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)

3. Source of water supply Groundwater NW 1/4 NE 1/4 Sec 32-T1N-R8E

4. Location of point of diversion See Attachment A NE 1/4 SE 1/4 Sec 4-T1S-R8E County Pennington (example - 3 wells in SW 1/4 NE 1/4 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? See Attachment B

(example - NW 1/4 section 12-T104N-R53W)

5. County or counties where water will be used Pennington

6. Annual period during which water is to be used Continuously year round

7. 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)

Residential and commercial development along Highway 79.

Brian Hammerbeck

I, Brian Hammerbeck, VP VP, 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.

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 _____ Have test holes been drilled ☐ Yes ☐ No Drilled by _____
(if yes, please provide copies of logs)

b) If existing wells, how many 2 Provide copy of log(s), if available. Drilled by _____

For either Existing or Proposed Wells:

c) Well Depth (required) 1: 1350' 2: 708' Depth to Top of Water Bearing Material _____ Depth to Water from Surface _____

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

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)

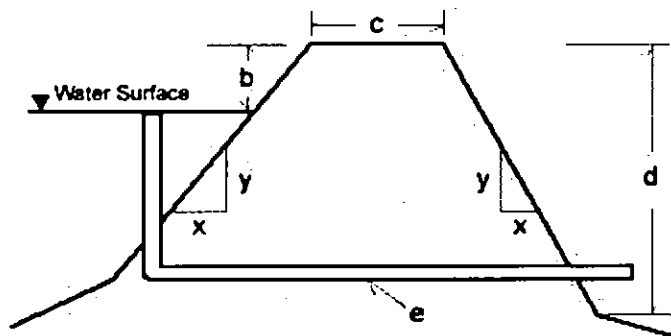
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres



LEGAL DESCRIPTION EXHIBIT A

North Well

LEGAL DESCRIPTION: LOT 1 OF NW1/4NE1/4; E1/2 OF LOT A OF NW1/4NE1/4; E1/2 OF LOT A OF E1/2NW1/4, SECTION 32, T1N, R8E, PENNINGTON COUNTY, SOUTH DAKOTA

South Well

LEGAL DESCRIPTION: E1/2NE1/4SE1/4, SECTION 4, T1S, R8E, PENNINGTON COUNTY, SOUTH DAKOTA.

Area of use:

$E\frac{1}{2}$ Sec 32 - TIN - R8E

$W\frac{1}{2}$, $SE\frac{1}{4}$ $NE\frac{1}{4}$, $SE\frac{1}{4}$ Sec 33 - TIN - R8E

$SW\frac{1}{4}$ $NW\frac{1}{4}$, $W\frac{1}{2}$ $SW\frac{1}{4}$ Sec 34 - TIN - R8E

$NW\frac{1}{4}$ $SW\frac{1}{4}$,

Lot 4, Sec 3 - TIS - R8E

$N\frac{1}{2}$ $SE\frac{1}{4}$, Lots 1 and 2 Sec 4 - TIS - R8E

LEGAL DESCRIPTION EXHIBIT B

LEGAL DESCRIPTION #1: TOWNSHIP ONE NORTH (T1N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM):

SECTION THIRTY-TWO (32): EAST ONE-HALF OF THE EAST ONE-HALF (E1/2E1/2); LOT ONE (1) OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW1/4NE1/4), LOT ONE (1) OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW1/4SE1/4) LOT ONE (1) OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (SW1/4SE1/4), LOT ONE (1) OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER (SW1/4NE1/4) AS SHOWN BY THE PLAT RECORDED IN BOOK 4 OF PLATS ON PAGE 16; EAST ONE-HALF (E1/2) OF LOT A OF THE EAST ONE-HALF OF THE NORTHWEST QUARTER (E1/2NW1/4) AND THE EAST ONE-HALF (E1/2) OF LOT A OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW1/4NE1/4) AS SHOWN BY THE PLAT RECORDED IN BOOK 9 OF HWY PLATS ON PAGE(S) 93 AND 94 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION #2: THE WEST HALF (W1/2) OF SECTION THIRTY-THREE (33), TOWNSHIP ONE NORTH (T1N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION #3: SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4NE1/4) OF SECTION THIRTY-THREE (33), TOWNSHIP ONE NORTH (T1N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION #4: SOUTHEAST QUARTER (SE1/4) OF SECTION THIRTY-THREE (33), TOWNSHIP ONE NORTH (T1N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), PENNINGTON COUNTY, SOUTH DAKOTA.

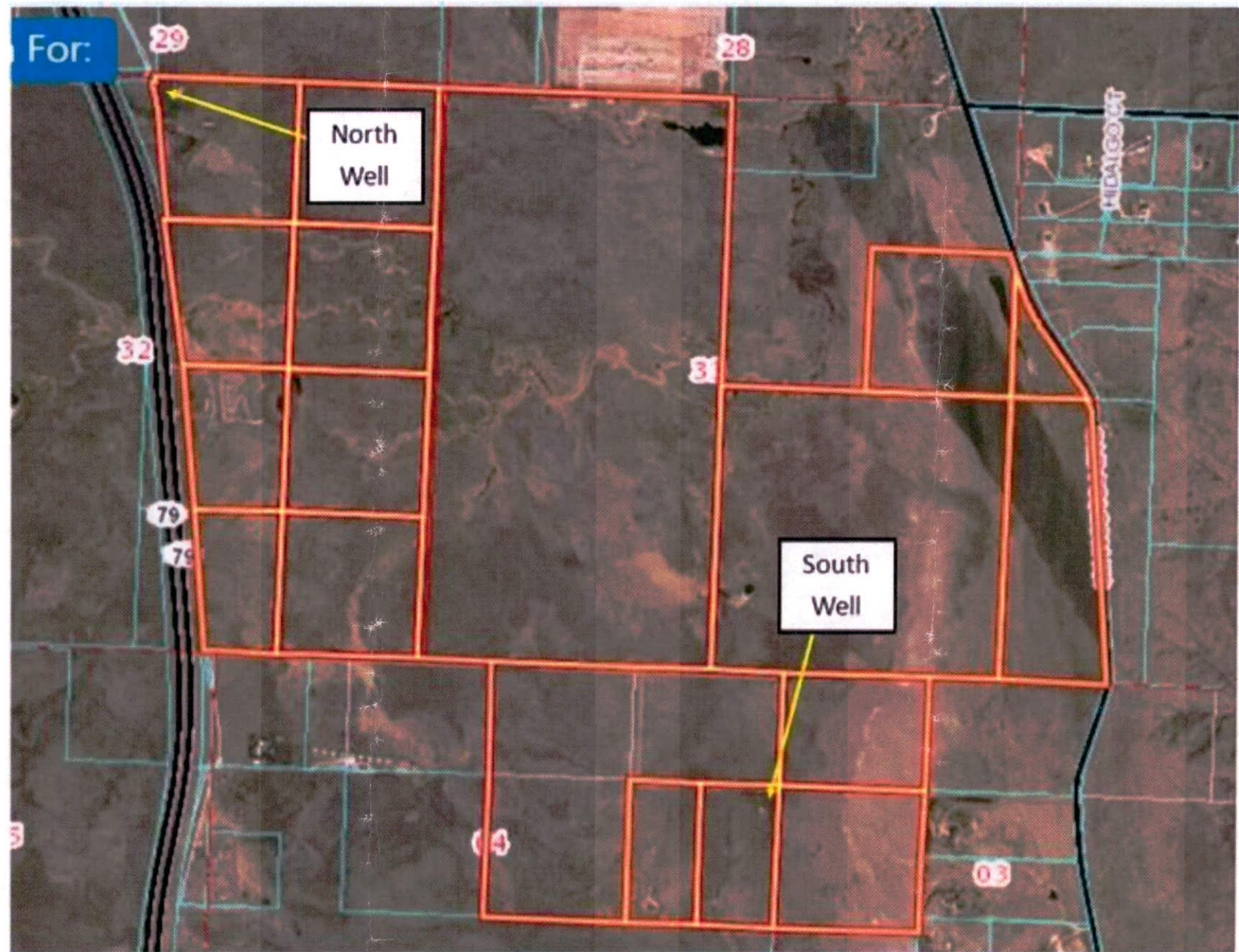
LEGAL DESCRIPTION #5: LOT TWO (2) OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4NW1/4) OF SECTION THIRTY-FOUR (34), TOWNSHIP ONE NORTH (T1N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), AS SHOWN BY THE PLAT RECORDED IN BOOK 9 OF PLATS ON PAGE 59 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA.

LEGAL DESCRIPTION #6: LOT TWO (2) OF THE WEST ONE-HALF OF THE SOUTHWEST QUARTER (W1/2SW1/4) OF SECTION THIRTY-FOUR (34), TOWNSHIP ONE NORTH (T1N), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), AS SHOWN BY THE PLAT RECORDED IN BOOK 9 OF PLATS ON PAGE 59 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA.

LEGAL DESCRIPTION #7: LOT FOUR (4) OF SECTION THREE (3), TOWNSHIP ONE SOUTH (T1S), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), PENNINGTON COUNTY, SOUTH DAKOTA.

LEGAL DESCRIPTION #8: NORTH ONE-HALF OF THE SOUTHEAST QUARTER (N1/2SE1/4) AND LOTS ONE (1) AND TWO (2) IN SECTION FOUR (4), TOWNSHIP ONE SOUTH (T1S), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION #9: THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW1/4SW1/4), SECTION THREE (3), TOWNSHIP ONE SOUTH (T1S), RANGE EIGHT EAST OF THE BLACK HILLS MERIDIAN (R8E BHM), PENNINGTON COUNTY, SOUTH DAKOTA.



1N 8E
Section: 19

1N 8E
Section: 20

1N 8E
Section: 21

1N 8E
Section: 30

1N 8E
Section: 29

1N 8E
Section: 28

1N 8E
Section: 31

1N 8E
Section: 32

1N 8E
Section: 33

1S 8E
Section: 06

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Section: 05

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Section: 04

1S 8E
Section: 03

1S 8E
Section: 07

1S 8E
Section: 08

1S 8E
Section: 09

1S 8E
Section: 10

SIoux DRILLING

Pennington

tentative from Penn ROD
Sec 4 T1S R8E

RAPID CITY, S. D.

-LOG-

FRED MORRIS WATER WELL 1/2 MI. SOUTH RAPID CITY
Started 11/17/54 Comp. 12/5/54

formation	from	to
Soil	0	1
Gray shale (dark)	1	230
Lime shell	230	231
Gray shale	231	590
Black shale	590	658
Dakota sand	658	685
Dakota sand	685	706
Light gray shale	706	708

(with iron pyrites)
(dry)
(fine white water sand)
(Total depth)

8" pipe set @ 18 1/2 ft (pulled)
7" pipe set @ 660 ft
Water @ 45 ft (highly mineralized)
Water @ 685 to 706 ft (soft, good quality)
water fill up 22 ft of surface
test estimated @ 2 1/2 gpm @ 100 ft level
" " " 5 " gpm @ 200 " "
" " " 10 " gpm @ 300 " "
" " " 22 " gpm @ 400 " "

Unable to bail below 400 ft level

E.V. Walker --- Driller
2122 Elm Ave; Rapid City S. Dak.

07-92

Date: 06-18-96

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Agriculture and Natural Resources

Date February 18, 2022

RECEIVED OF Costello Porter Hill Heisterkamp Bushness & Carpenter LLP PO Box 290 Rapid City SD 57709

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

Fee for Application for Permit No. <u>2841-2</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>750.00</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>2841-2</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>950.00</u>

By Eric Gronlund
Chief Engineer
vm

RECEIVED

FEB 18 2022

WATER RIGHTS
PROGRAM

COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP

ATTORNEYS AT LAW

KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
DONALD A. PORTER
JOSEPH R. LUX
HEATHER LAMMERS BOWARD
JESS M. PEKARSKI

Available at Spearfish office
115 N. 7th Street, Suite 3
Spearfish, SD 57783

• Also admitted in North Dakota
• Also admitted in Wyoming
• Also admitted in Nebraska

200 SECURITY BUILDING
704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

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Fax (605) 343-4262

PHILLIP R. STILES
JONATHAN P. MCCOY
MICHAEL E. STEVEN
KRISTEN E. BASHAM
RIEGER WEDER
GARRETT J. KEEGAN

J.M. COSTELLO
1923-2007

WILLIAM G. PORTER
1926-2004

February 16, 2022

DENR - Water Rights
523 East Capitol Avenue
Pierre, SD 57501

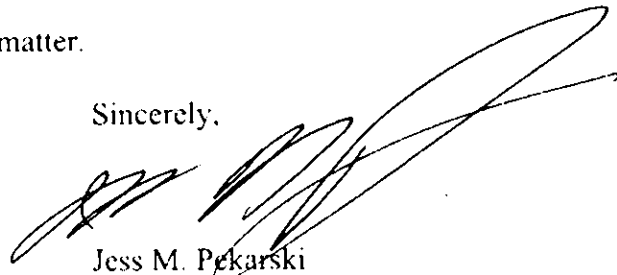
Re: 79 HWY, LLC
Our File No. 222056

Dear DENR:

Enclosed for filing please find the original of the Application for Permit to Appropriate Water within the State of South Dakota of 79 HWY, LLC. Also enclosed is our office check in the amount of \$950 for the filing fees. Upon issuance of the Water Permit, please mail the same to my office at the above address.

Thank you for your assistance in this matter.

Sincerely,



Jess M. Pekarski

JMP/rjw
cc/client

Enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 22, 2022

Costello, Porter, Hill, Heisterkamp,
Bushnell & Carpenter LLP
Jess M Pekarski
PO Box 290
Rapid City SD 57709

RE: 79 HWY LLC

Dear Mr. Pekarski:

Thank you for submitting the *Application for a Permit to Appropriate Water* for a water distribution system in Pennington County. In order to complete the application, the following is required.

- A review of the Secretary of State's corporation website does not find 79 HWY LLC listed. DANR will need a statement of authority that the person signing the application has the authority to act on behalf of 79 HWY LLC on all matters involving the water permit application.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

enclosure

Schlaak, Karen

From: Chloe Adkins <cadkins@costelloporter.com>
Sent: Monday, February 28, 2022 3:16 PM
To: Schlaak, Karen
Cc: Jess Pekarski
Subject: [EXT] Hwy 79, LLC Application
Attachments: Hwy 79, LLC Certificate of Good Standing.pdf; 2022 Revised Well Application Sheet.pdf

Hello,

We recently received your letter regarding proof of authority to act for the *Application for a Permit to Appropriate Water* for 79 HWY, LLC. In that regard, the name was mixed up and has been rectified in the attached application. Sorry for the mix up with the name. Please find with the corrected application the Certificate of Good Standing for Hwy 79, LLC from the Secretary of State. If there is anything else needed for the permit please do not hesitate to contact me.

Thank you,
Chloe Adkins



ATTORNEYS AT LAW SINCE 1889

Chloe B. Adkins

Assistant to Jess M. Pekarski

704 St. Joseph St | P.O. Box 290 | Rapid City, SD 57709-0290

Main (605) 343-2410 | Fax (605) 343-4262

cadkins@costelloporter.com

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OFFICE OF THE SECRETARY OF STATE
STEVEN J. BARNETT, SECRETARY OF STATE
JASON LUTZ, DEPUTY SECRETARY OF STATE

Filing Information

Name: **Hwy 79 LLC**

General Information

SOS Business ID DL154367
Filing Type: Limited Liability Company - Domestic
09/25/2018
Status: Good Standing
Duration Term: Perpetual
Managed By: Member-Managed

Registered Agent Address
Brian Hammerbeck
2700 WEST MAIN STREET
RAPID CITY, SD 57702

Principal Address
2700 W MAIN ST
RAPID CITY, SD 57702

The following document(s) was/were filed in this office on the date(s) indicated below:

Date Filed	Filing Description	Image #
07/19/2021	2021 Annual Report	B0186-6916
07/14/2020	2020 Annual Report	B0146-1392
07/03/2019	2019 Annual Report	B0104-3547
09/25/2018	Initial Filing	B0076-2633



**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. 2841-2, HWY 79, 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. 2841-2, HWY 79, LLC, 2700 W Main St, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 2841-2 because 1) 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. The wells approved under Water Permit No. 2841-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals under this Permit shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
3. Water Permit No. 2841-2 authorizes a total annual diversion of up to 217.9 acre-feet of water.

See report on application for additional information.

Eric Gronlund, Chief Engineer
April 25, 2022

**Report to the Chief Engineer on
Water Permit Application No. 2841-2**

HWY 79, I.I.C
4 April 2022

Water Permit Application No. 2841-2 seeks to appropriate 217.9 acre-feet of water annually (ac-ft/yr) at a maximum diversion rate of 0.89 cubic feet of water per second (cfs) from two existing wells completed into the Inyan Kara aquifer (1,180 and 708 feet deep) located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32-T1N-R8E and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4-T1S-R8E for a water distribution system to be located in E $\frac{1}{2}$ Section 32; W $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ Section 33; SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 34; all in T1N-R8E; Lot 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3; N $\frac{1}{2}$ SE $\frac{1}{4}$, Lots 1 and 2 Section 4; all in T1S-R8E. This site is located approximately 3 miles south of Rapid City, South Dakota.

Aquifer: Inyan Kara (INKR)

Hydrogeologic Characteristics

The Inyan Kara aquifer is a regional-scale bedrock aquifer that underlies most of the northern great plains in the United States and Canada and is composed of the permeable and saturated portions of the Inyan Kara Group of sediments deposited during the early Cretaceous period [1] [2]. The Inyan Kara Group consists of the Fall River and the Lakota Formations. The Fall River Formation is a "Variegated brown, red, and gray to purple, calcareous, well-sorted, fine-grained sandstone, siltstone, and shale containing mica" [1]. The Lakota Formation is a "yellow, brown, red-brown, and gray to black claystone, silty pebble conglomerate, and massive-to-thin-bedded, cross-bedded sandstone" [1]. The Inyan Kara aquifer underlies approximately 23,000,000 acres of South Dakota west of the Missouri River and also extends east of the Missouri River [3]. In South Dakota, the Inyan Kara aquifer is under water table conditions where it outcrops around the Black Hills but is otherwise under confined conditions [4] [5]. Most of the Inyan Kara aquifer is overlain by the Skull Creek Shale, which behaves as a relatively impermeable barrier between the Inyan Kara and the Dakota aquifers [6]. Where the Skull Creek Shale is not present, the Inyan Kara aquifer discharges into the Dakota aquifer [6]. Below most of the Inyan Kara aquifer, the Morrison Shale behaves as a relatively impermeable barrier between the Inyan Kara aquifer and the aquifers below it [6]. In general, the Inyan Kara aquifer flows radially out from the Black Hills and eastward across South Dakota [7] [4].

The applicant submitted two well completion reports for this application. The north well was completed on May 17, 1996 and is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32 T1N-R8E. The driller indicated encountering yellow sandstone from 1,060 feet to 1,100 feet below grade and grey shale from 1,100 to 1,350 feet below grade. The driller perforated the casing from 1,076 to 1,091 feet below grade to act as a screen. The static water level in the north well at the time of completion was 162 feet below grade. The south well was completed on December 5, 1954 and is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4 T1S-R8E. The driller reported encountering "dry" Dakota Sandstone from 658 to 685 feet below grade and "fine white water sand" from 685 to 706 feet below grade, and light grey shale from 706 to 708 feet below grade. The well was cased down to 660 feet and an open hole below the casing. The static water level at the time the south well was completed was 22 feet below the surface. Based on the elevations of the formation and static water levels, these wells are likely to be completed into the Inyan Kara 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. 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 Inyan Kara aquifer is older and stratigraphically lower than the Greenhorn Formation and the applicant's proposed use is to supply a water distribution system as defined in SDCL 46-1-6(17). Therefore, it is not necessary to find that recharge exceeds withdrawals to approve this application. However, a statewide and local hydrologic budget will be provided for the information of the Chief Engineer and the Water Management Board.

Availability of Water

Statewide Hydrologic Budget

Statewide Recharge

Recharge to the Inyan Kara aquifer is by infiltration of precipitation and streamflow over the outcrop and groundwater inflow from aquifers in contact with the Inyan Kara aquifer when hydraulic head in the Inyan Kara aquifer is less than the hydraulic head of the aquifers with which it contacts [8]. There is no estimate of the total recharge to the Inyan Kara aquifer available from a single report. Driscoll and Carter [9] estimated that the recharge to the Inyan Kara outcrop in the Black Hills area of South Dakota is 11,600 ac-ft/yr. Bredehoeft, Neuzil, and Milly [10] attempted to model flows between the Madison Group, Inyan Kara aquifer, Dakota/Newcastle aquifer, and confining shale units, but the model is based on dated information when newer information is available that could change the results. Their model estimated that approximately 16,000 ac-ft/yr flows from the Madison Group to the Inyan Kara aquifer [10], which is the only available estimate of recharge to the Inyan Kara aquifer from lower aquifers.

Statewide Discharge

Discharge from the Inyan Kara aquifer is by evapotranspiration on the outcrops when the hydraulic head and formation of the aquifer is near land surface, seepage to surface water features when hydraulic head of the aquifer is above the stage of the surface water features the aquifer is hydrologically connected to, groundwater outflow to aquifers in contact with the Inyan Kara aquifer, uncontrolled flowing wells, and domestic and appropriative well withdrawals [8]

[9] [11]. The Water Rights Program considers the outflow from uncontrolled flowing wells and the outflow from natural discharge to be available for appropriation.

Due to the low withdrawal rate and prevalence of water distribution systems, domestic well withdrawals are estimated to be negligible for the hydrologic budget. There are 207 water rights/permits currently authorized to withdraw from the Inyan Kara aquifer, one future use permit, No. 1780-2, reserving 142 ac-ft/yr from the aquifer, and one application, No. 2686-2, which seeks to withdraw up to 274 ac-ft/yr and is held in abeyance until federal permits are approved [11].

Of the 207 water rights/permits authorized to withdraw water, 96 are primarily for some type of water distribution system (such as a rural water system, suburban housing development, or municipal use, etc.), 55 are for commercial use, 18 for domestic use, 17 for irrigation, 10 for industrial use, 5 for fish and wildlife propagation, 3 for geothermal use, 2 for recreation, and 1 for institutional use [11]. Ten of the 17 irrigation water rights/permits are required to report their withdrawals and are old enough to have reported their withdrawals in an irrigation questionnaire [11]. Figure 1 shows a graph of reported irrigation over the entire period of record (1982-2020) [12]. Average irrigation reported over the period of record (1982-2020) was approximately 80 ac-ft/yr [12]. However, irrigation practices have changed, so an average over the period of record may not be an accurate method to predict future withdrawals. The average irrigation over the last ten years of record (2011-2020) was approximately 131 ac-ft/yr [12]. There are seven irrigation permits, accounting for 196 acres, where the permit either does not require an annual report or the permit is too new to have reported irrigation [11]. Water Right No. 466-1 allows for irrigation via ditches of 434 acres from a flowing well at 1.5 cfs and is assumed to withdraw 1,087 ac-ft/yr, which is the amount the well can deliver if it flows uncontrolled at its maximum instantaneous diversion rate [11]. Assuming the other six water rights/permits that do not report irrigation or are too new to have reported apply 12 inches per acre per year, those permits are estimated to withdraw a total of 1,282 ac-ft/yr. The total estimated withdrawal for irrigation is 1,413 ac-ft/yr, using the 2011 through 2020 average withdrawal rate for reporting permits.

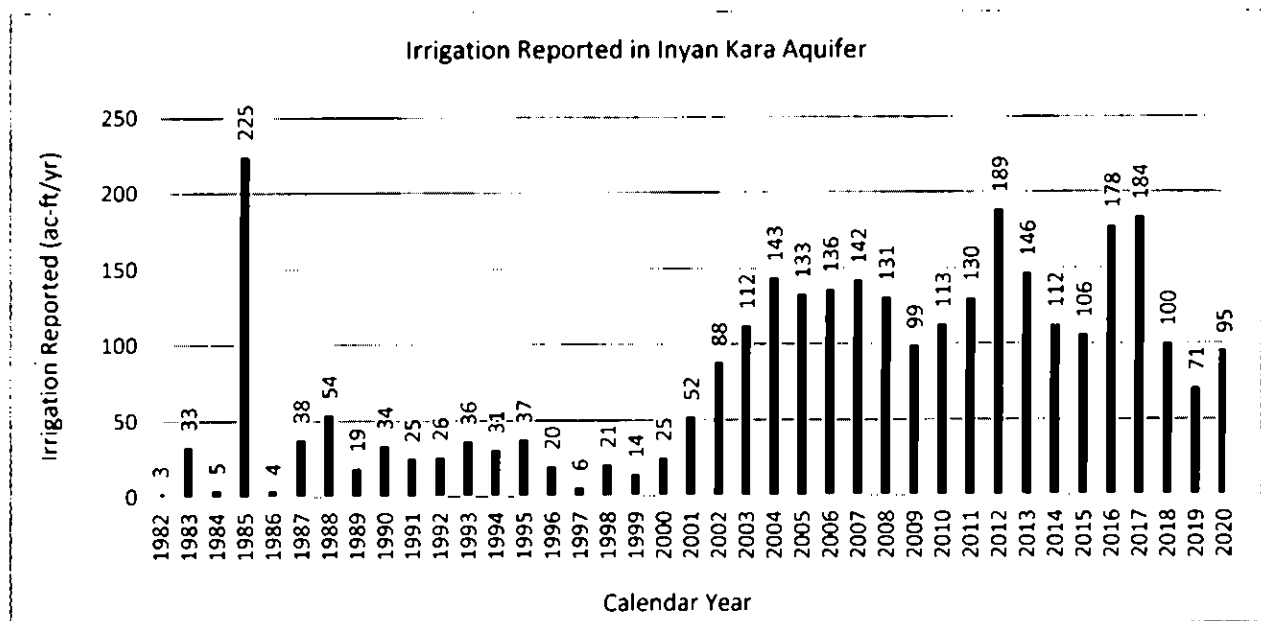


Figure 1: Irrigation reported in the Inyan Kara aquifer [12]

Of the non-irrigation withdrawals, 18 municipal water rights/permits are only maintained for emergency use [13] [14] [15] [16]. Those water rights/permits are assumed to withdraw a negligible amount of water.

There are 37 non-irrigation water rights/permits required to report, although some are new enough that their average reported use continues to increase with each new year of reports, which means they are still developing the full use of their permit [11] [17]. For water rights/permits that are still developing their permit, if there is a maximum volume of withdrawal specified in their permit, that volume is assumed to be their estimated annual withdrawal. If those permits do not have a volume specified on their permit, they are assumed to pump at their maximum instantaneous diversion rate 60% of the time. For non-irrigation permits required to report that have fully developed their permit, the estimated withdrawal is their average annually reported withdrawal rate. One water right permit holder, Wink Cattle Company, reported withdrawals of 24 ac-ft in 2018, 15.9 ac-ft in 2019, and 25.5 ac-ft in 2020 [17] [18]. Representative Wink indicated to Water Rights staff that the meter reading in his latest non-irrigation questionnaire response was for the entire time the well for his water rights had been in operation and he also reported that the meter reading for his well was over 106 million gallons on November 6, 2021 [18]. His earliest water right/permit was approved in 2006 [11], so his average annual withdrawal is approximately 21.7 ac-ft/yr for the 15 years Wink Cattle Company has had a water right/permit. There are 14 water rights/permits which report their water production to the Drinking Water Program and the Inyan Kara aquifer is their only source of water, so their reported production is assumed to be their withdrawal [14]. Appendix Table 2 (pg. 12) shows the non-irrigation water rights/permits required to report their withdrawals and those reported to the Drinking Water Program when the Inyan Kara aquifer is their only source of water. The total estimated withdrawal for non-irrigation water rights/permits that report withdrawals is 3,757 ac-ft/yr.

There are five non-irrigation water rights/permits not required to report that have a volume limit specified in their permit [11]. Those water rights/permits are assumed to withdraw their full specified volume, for a total withdrawal of 193 ac-ft/yr.

Concentrated animal feeding operations (CAFOs) large enough to require a *General Water Pollution Control Permit for Concentrated Animal Feeding Operations* (General Permit) that do not report their annual withdrawals are estimated to withdraw water based on the number of animals permitted to those facilities [19] [20]. There are 14 CAFOs that are large enough to require a General Permit that are not required to report their withdrawals under their water right/permit. In the cases where the estimated animal water requirements are greater than the amount of water allowed by the water right/permit, the water rights/permits are assumed to withdraw at the maximum amount of water licensed/permitted. Appendix Table 3 (pg. 13) shows the estimated withdrawals for CAFOs not required to report. The total estimated withdrawal for CAFO water rights/permits not required to report their withdrawals is 1,089 ac-ft/yr.

Finally, there are 102 non-irrigation water rights/permits that do not match any of the descriptions above [11]. They are conservatively assumed to withdraw at their maximum instantaneous diversion rate 60% of the time, for a withdrawal of 6,373 ac-ft/yr. This is likely to be an overestimate, based on Water Rights Staff experience.

The total estimated annual withdrawal of all water rights/permits currently authorized to withdraw is 12,826 ac-ft/yr. Including the application held in abeyance, and the future use permit, the total estimated appropriation from the Inyan Kara aquifer is 13,242 ac-ft/yr.

Balance of Statewide Hydrologic Budget

The estimated recharge to the Inyan Kara aquifer in South Dakota is approximately 27,600 ac-ft/yr [9] [10]. Table 1 (pg. 5) summarizes the withdrawals discussed in the Statewide Discharge section of this report. The total estimated appropriation including one application held in abeyance, and one future use permit is 13,242 ac-ft/yr. This application, if approved, may withdraw up to 217.9 ac-ft/yr. Therefore, based on the hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 1: Summary of withdrawals and appropriations

Type	No. Permits	Est. Withdrawal (ac-ft/yr)
Irrigation, Reporting	10	131
Irrigation, not reporting	7	1,282
Standby	18	0
Non-irrigation, reporting	49	3,757
Non-irrigation, not reporting, volume limited	5	193
CAFO, non-reporting, limited by diversion rate	14	1,089
All others, limited by max. diversion rate	102	6,373
<i>Subtotal (currently permitted to withdraw)</i>	205	12,826
Held in abeyance	1	274
Pending	0	0
Future use	1	142
Grand Total	207	13,242

Local Hydrologic Budget

This application is near the outcrop of the Inyan Kara group in the Black Hills and within the study area boundaries of the Black Hills Hydrology Study, so it is appropriate to analyze whether estimated recharge is likely to exceed estimated withdrawals for a local area near the outcrop of the formation. Recharge and withdrawal boundaries were drawn based on the Inyan Kara potentiometric surface map in order to minimize groundwater flow across the northern and southern boundary lines (see Appendix Figure 4, pg. 14). Recharge in the local budget area is mostly by infiltration of precipitation on the outcrop. Some recharge may also occur by infiltration from stream flow where Rapid and Box Elder Creeks cross the outcrop. The area of the outcrop in the local hydrologic budget is approximately 10,700 acres. The average annual precipitation in the local recharge area is approximately 18.2 inches per year [21]. Driscoll and Carter [9] used a yield-efficiency algorithm to estimate total yield for various aquifers in the Black Hills. The total yield is the portion of precipitation which goes to groundwater recharge and streamflow or runoff [9]. With an average annual precipitation of 17.84 inches per year for the whole Inyan Kara outcrop, Driscoll and Carter [9] estimated an annual yield of 0.79 inches. By applying a recharge factor of 0.8, Driscoll and Carter [9] estimated recharge from

precipitation to the Inyan Kara aquifer to be approximately 0.63 inches per year. By assuming average annual recharge is proportional to average annual precipitation, recharge for the local area can be estimated to be 0.64 inches per year, or approximately 571 ac-ft/yr over the 10,700 acres of area.

There are 30 water rights/permits authorized to withdraw within the local hydrologic budget boundaries. Following the same methods as the Statewide Discharge section, the estimated average annual withdrawal for all Inyan Kara water rights/permits in the local hydrologic budget boundaries is 731 ac-ft/yr.

The potentiometric surface in the Inyan Kara aquifer may have changed since Strobel et al. [7] mapped it. If it has changed, it may mean groundwater is flowing from the rest of the Inyan Kara aquifer into the area mapped in Appendix Figure 4. If that is true, a source of recharge to the local hydrologic budget cannot be quantified with the information currently available. Since the statewide hydrologic budget and record of observation wells indicate there is reasonable probability unappropriated water is available, it is likely to be true that the potentiometric surface of the Inyan Kara aquifer has changed in the area of the local hydrologic budget. Based on that information, and the likelihood that estimates for water right/permit holders not required to report their withdrawals are higher than actual withdrawals, there is uncertainty in the recharge and withdrawal estimates. This uncertainty means it is not possible to make conclusions on the availability of water for this application based on the local hydrologic budget.

Observation Wells

Administrative Rule of South Dakota (ARSD) 74:02:05:07 requires that the Water Management Board rely upon the record of observation well data in addition to other information to determine that recharge to an aquifer exceeds withdrawals. The Water Rights Program maintains nine observation wells completed into the Inyan Kara aquifer [4]. Eight of those nine are located in or around the Black Hills [4]. The nearest Water Rights observation well to this application that is completed into the Inyan Kara aquifer is Observation Well PE-95B, located approximately 1.9 miles north of the north well for this application and 3.6 miles northwest of the south well for this application [4]. Figure 2 and Figure 3 (pp. 7-8) show observation well water levels for all Water Rights Program observation wells completed into the Inyan Kara aquifer in or around the Black Hills [4]. In general, water levels show a level trend, except Observation Well PE-95B, which has a slightly increasing trend and FR-95C which had an increasing trend from 1995 to approximately 2005 and has remained approximately level since. Observation Wells MD-99A, MD-89A, and PE-95E show fluctuations during the year due to seasonal withdrawals. Observation Well MD-99A may flow at land surface when pressure in the aquifer is high enough and has had some problems with leakage, so some readings from that well may not be reflective of the aquifer [4]. All the observation wells are under confined conditions [4], which means that the water level in the well represents the hydraulic head in the aquifer, not the amount of water in the aquifer. Since the hydraulic head has remained mostly level over time even as appropriations from the Inyan Kara aquifer increase, it is likely the Inyan Kara aquifer is either inducing recharge from aquifers that underly it and are in contact with it, withdrawal rates have been overestimated, or the recharge rates have been underestimated, or any combination of the three, which means withdrawals are less than recharge to the aquifer. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available for this application.

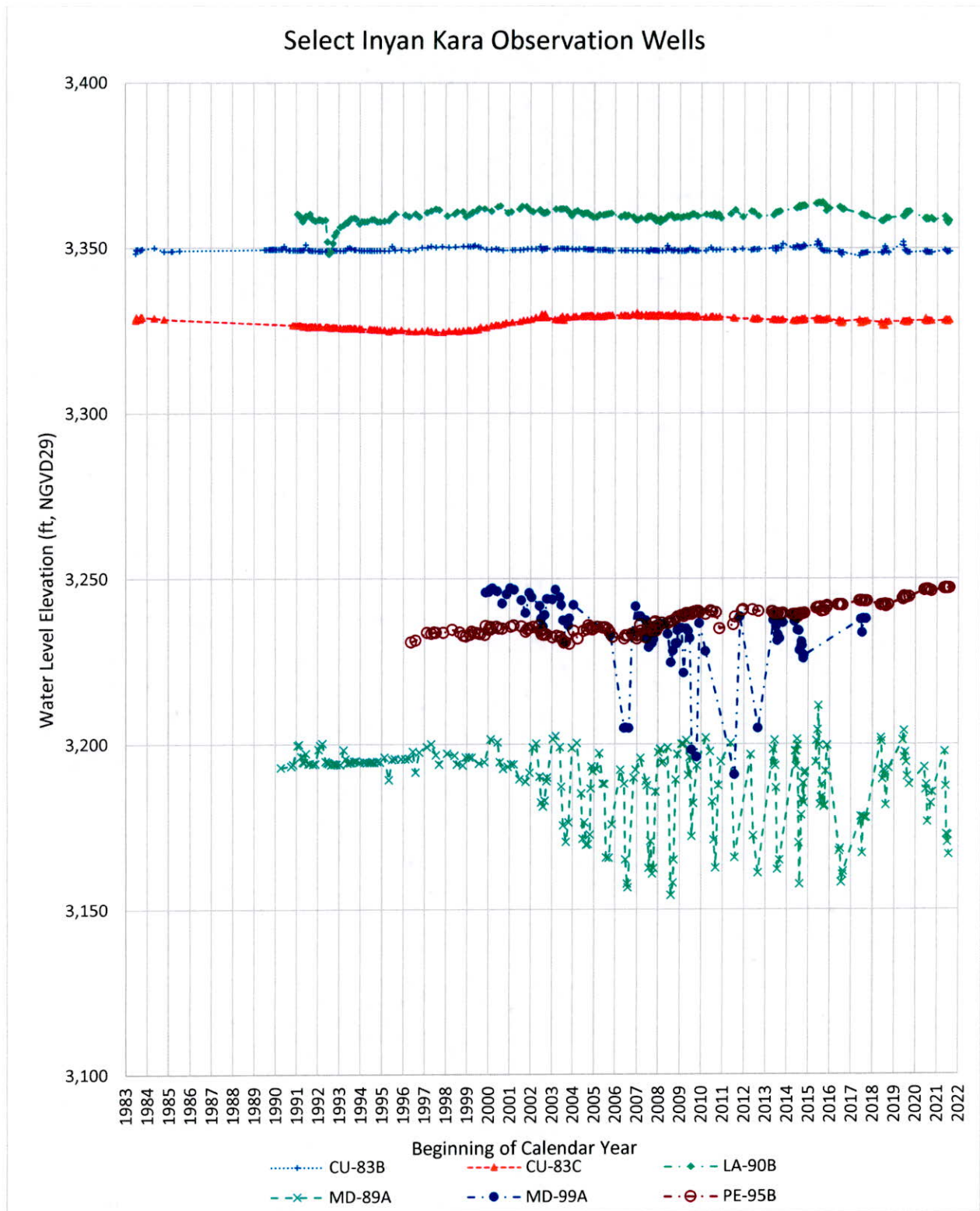


Figure 2: Inyan Kara observation wells with water level elevations between 3,400 feet and 3,100 feet above NGVD29.

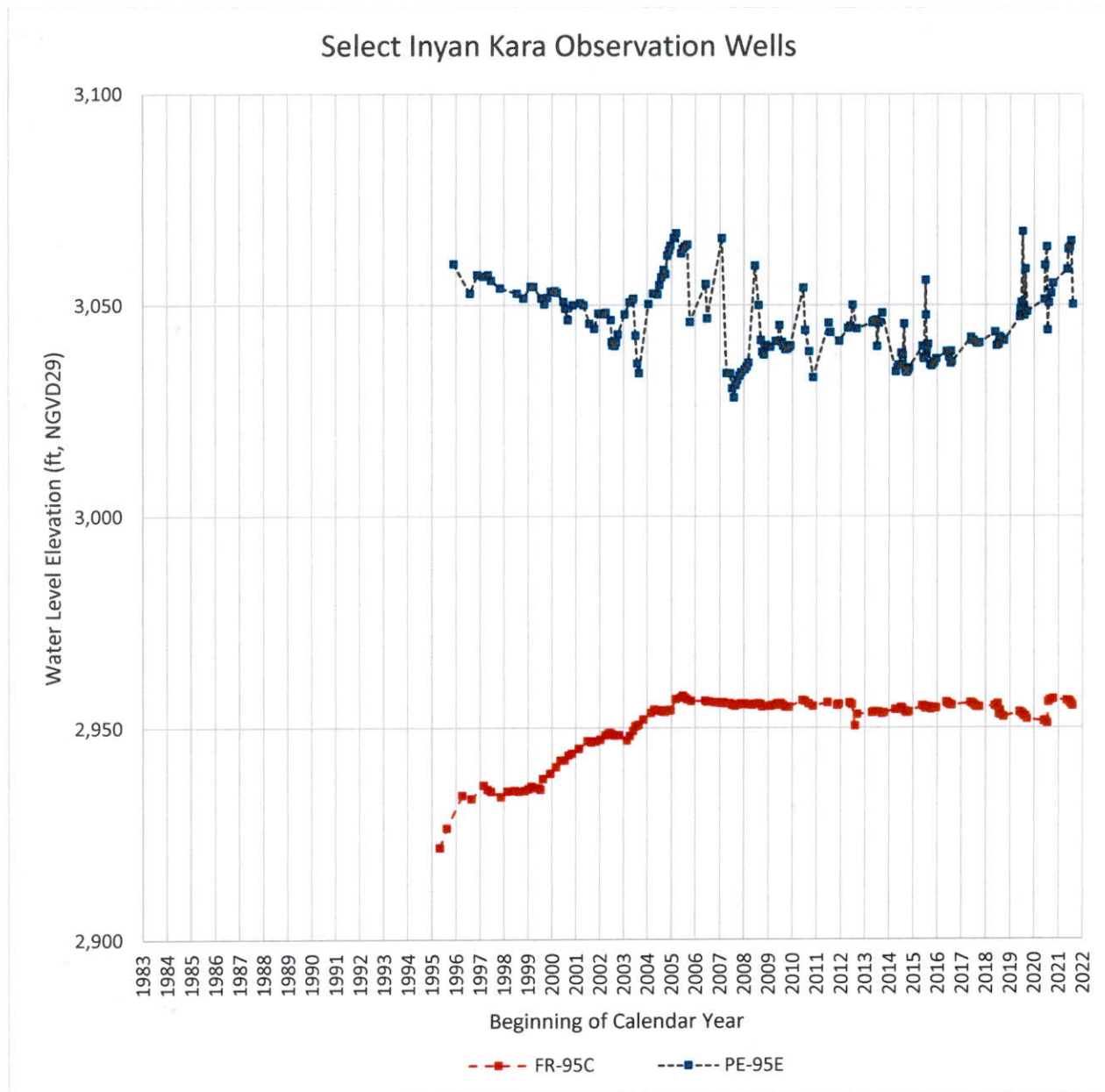


Figure 3: Inyan Kara observation wells with water level elevations between 3,100 and 2,900 feet above NGVD29

Possibility of Unlawful Impairment of Existing Water Rights

The nearest water right/permit to this application that withdraws from the Inyan Kara aquifer is Water Right No. 2376-2, located approximately 0.4 miles northwest of the north well for this application and 2.0 miles northwest of the south well for this application [11]. There are several domestic wells on file with the Water Rights Program that could be completed into the Inyan Kara aquifer near this application [5]. 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 an adequate domestic well is impacted, the water right/permit causes the

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

Some drawdown from pumping for this application is likely to occur. In order to place the waters of the state to maximum beneficial use, the Water Management Board determined in the hearing on Water Permit Application No. 2313-2 for the Coca-Cola Bottling Company that hydraulic head in an aquifer is not protected as a means of water delivery [22]. Therefore, nearby well owners may be required to lower their pumps. There were 898 feet of hydraulic head above the Inyan Kara aquifer when the north well was completed on May 17, 1996, and 663 feet of hydraulic head above the aquifer when the south well was completed on December 5, 1954. There are no complaints on file regarding well interference in Pennington County [23]. Therefore, based on the level of hydraulic head in the aquifer and lack of complaints of well interference, there is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits or domestic wells.

Special Consideration: Adequate Wells Required

The Well Construction Standards (ARSD 74:02:04:36) allow for alternative construction of certain Inyan Kara wells for domestic use which are not adequate wells under ARSD 74:02:04:20(6). Both wells for this application are likely to be adequate wells based on the thickness of formation encountered and casing information. Because this application is for an appropriative use, any additional wells completed to meet the requested diversion rate must be adequate wells and **cannot** be constructed using the alternative construction method described in ARSD 74:02:04:36.

Conclusions

1. Water Permit Application No. 2832-2 seeks to appropriate 217.9 ac-ft/yr at a maximum diversion rate of 0.89 cfs from two existing wells completed into the Inyan Kara aquifer located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32-T1N-R8E and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4-T1S-R8E for a water distribution system to be located in E $\frac{1}{2}$ Section 32; W $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ Section 33; SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 34; all in T1N-R8E; Lot 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3; N $\frac{1}{2}$ SE $\frac{1}{4}$, Lots 1 and 2 Section 4; all in T1S-R8E.
2. Based on the statewide 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 wells.



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References

- [1] J. E. Martin, J. F. Sawyer, M. D. Fahrenbach, D. W. Tomhave and L. D. Schulz, "Geologic Map of South Dakota," SD DANR Geological Survey Program, Vermillion, South Dakota, 2004.
- [2] J. S. Downey, "Geohydrology of bedrock aquifers in the northern Great Plains in parts of Montana, North Dakota, South Dakota, and Wyoming," United States Geological Survey, Denver, Colorado, 1986.
- [3] J. C. Allen, D. L. Iles and A. K. Petres, "Analysis of groundwater and streamflow data Western Dakotas region of South Dakota: Tasks 3A.B.C. and 4A.B.: Groundwater resource inventory," U.S. Army Corps of Engineers, Omaha, Nebraska, 1985.
- [4] SD DANR Water Rights Program, "Observation wells," Pierre, South Dakota, 2021.
- [5] SD DANR Water Rights Program, "Well completion reports," Pierre, South Dakota, 2021.
- [6] R. A. Schoon, "Geology and Hydrology of the Dakota Formation in South Dakota," SD DANR Geological Survey Program, Vermillion, South Dakota, 1971.
- [7] M. L. Strobel, J. M. Galloway, G. R. Hamade and G. J. Jarrell, "Potentiometric surface of the Inyan Kara aquifer in the Black Hills Area, South Dakota," United States Geological Survey, Rapid City, South Dakota, 2000.
- [8] J. R. Keene, "Ground-water resources of the western half of Fall River County, S.D.," SD DANR Geological Survey Program, Vermillion, South Dakota, 1973.
- [9] D. G. Driscoll and J. M. Carter, "Hydrologic Conditions and Budgets for the Black Hills of South Dakota, through Water Year 1998," United States Geological Survey, Rapid City, South Dakota, 2001.
- [10] J. D. Bredehoeft, C. E. Neuzil and P. C. D. Milly, "Regional Flow in the Dakota Aquifer: a Study of the Role of Confining Layers," United States Geological Survey, Alexandria, Virginia, 1983.

- [11] SD DANR Water Rights Program, "Water right permit file database," SD DANR Water Rights Program, Pierre, South Dakota, 2021.
- [12] SD DANR Water Rights Program, "Irrigation questionnaire summaries," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, SD, 2021.
- [13] B. Friedeman, Interviewee, *Environmental Scientist II, SD DANR Drinking Water Program*. [Interview]. 6 February 2020.
- [14] SD DANR Drinking Water Program, "Drinking Water Reports," SD DANR Drinking Water Program, Joe Foss Bldg., Pierre, South Dakota, 2021.
- [15] K. Cain, Interviewee, *Water Distribution Sytem Operator for City of Edgemont*. [Interview]. 21 December 2021.
- [16] B. Kaufman, Interviewee, *City Engineer for City of Box Elder*. [Interview]. 16 December 2021.
- [17] SD DANR Water Rights Program, "Non-Irrigation Yearly Reports," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2021.
- [18] D. Wink, Interviewee, *Water right permit holder for Wink Cattle Company*. [Interview]. 6 November 2021.
- [19] SD DANR Livestock Services Program, "Animal Table," SD DANR Livestock Services Program, Joe Foss Bldg., Pierre, South Dakota. Unpublished, 2021.
- [20] Ag-Info Centre, "Farm water supply requirements," Government of Alberta - Agriculture and Forestry, Edmonton, Alberta, Canada, 2009.
- [21] J. M. Carter, D. G. Driscoll and G. R. Hamade, "Estimated Recharge to the Madison and Minnelusa aquifers in the Black Hills Area, South Dakota and Wyoming, Water Years 1931-98," U.S. Geological Survey, Rapid City, South Dakota, 2001.
- [22] *On the Matter of Water Permit Application No. 2313-2 for Coca Cola Bottling Company*, 1995.
- [23] SD DANR Water Rights Program, "County Files," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2021.

Report on Water Permit App. No. 2841-2

Appendix

Table 2: Non-irrigation permits that are required to report or report through the Drinking Water Program [17] [14] [18] [11]

Permit No:	Status:	Name/Business:	County:	Type of Use:	Priority:	Max. CFS	Est. Use (ac-ft/yr)
8299-3	Permit	Aberdeen Energy LLC	Edmunds	Industrial	09/28/2018	1.330	968.0 ^y
8197-3	Permit	Aberdeen Farm LLC	Brown	Commercial	01/29/2016	0.160	72.1 ^y
1793-1	License	Autumn Meadows Sanitary District	Meade	Suburban Housing Development	05/13/2003	0.170	2.2 ^o
1903-1	License	Castle Rock Group	Butte	Domestic	05/19/2009	0.110	15.5 ^a
716-1	License	City of Newell	Butte	Municipal	09/27/1963	0.440	77.3 ^o
731-1	License		Butte	Municipal	06/10/1964	0.440	
1906-1	License	City of Sturgis	Meade	Municipal	08/21/2009	0.222	2.2 ^a
1958-1	License		Meade	Municipal	04/11/2016	0.088	
2596-2	License	City of Wall	Pennington	Municipal	07/24/2006	0.600	145.6 ^a
1983-1	Permit	Continental Resources	Harding	Industrial	07/10/2018	0.500	360.0 ^y
1597-1	License	Crooked Oaks Canyon HOA	Meade	Suburban Housing Development	03/22/1994	0.100	3.4 ^o
1846-1	License	Dennis or Anna Mae Beckham	Meade	Suburban Housing Development, Domestic	05/26/2005	0.100	2.4 ^a
1996-1	Permit	Dylan Gingras	Meade	Suburban Housing Development	04/14/2020	0.133	48.0 ^y
1920-1	License	Elk Valley Ranchettes HOA	Meade	Suburban Housing Development	01/24/2011	0.100	7.3 ^a
2635-2	License	Fall River Water Users District	Fall River	Suburban Housing Development, Domestic	07/17/2008	0.100	2.6 ^a
2819-2	Permit		Fall River	Rural Water System	06/01/2021	0.090	24.6 ^y
1826-1	License	Golden Valley Water Company LLC	Meade	Suburban Housing Development	09/01/2004	0.267	15.9 ^a
2601-2	License	Grandview Land LLC	Pennington	Suburban Housing Development	09/01/2006	0.330	1.4 ^a
1837-1	License	Guy Mann	Meade	Suburban Housing Development	02/28/2005	0.220	1.2 ^a
2448-2	License	Heartland Country Ranchettes	Custer	Suburban Housing Development	10/04/2000	0.089	6.7 ^o
1645-2	License	Hermosa Water Users Assn	Custer	Rural Water System	08/17/1978	0.600	158.0 ^a
1861-1	License	Horseshoe Acres HOA	Meade	Suburban Housing Development	04/20/2006	0.170	10.0 ^o
2538-2	Permit	JRRK Properties LLC	Pennington	Suburban Housing Development	08/30/2004	0.244	12.8 ^a
1278-2	License	Lakeside Water Users District	Pennington	Rural Water System	07/21/1975	0.500	57.2 ^o
1656-1	License	Lofty Pines HOA	Meade	Suburban Housing Development	01/02/1998	0.085	2.2 ^o
1989-1	Permit	Luff Exploration Company	Harding	Industrial	04/09/2019	0.100	58.8 ^y
2622-2	License	Owanka Rural Water Association Inc	Pennington	Rural Water System	10/09/2007	0.390	16.7 ^a
2268-2	License	Prairie Acres LLC	Pennington	Suburban Housing Development	03/09/1993	0.220	23.5 ^o
1999-1	Permit	Rafter Properties LLC	Meade	Suburban Housing Development	07/23/2020	0.170	74.0 ^y
2832-2	Permit	Reel Simple LLC	Pennington	Water Distribution System	11/08/2021	0.044	10.0 ^y
2543-2	License	Southern Black Hills Water System	Pennington	Suburban Housing Development	09/30/2004	0.190	13.0 ^a
2752-2	Permit		Custer	Rural Water System	04/25/2016	0.330	170.0 ^y
2752A-2	Permit		Custer	Rural Water System	04/25/2016	0.000	0.0 ^y
794-2	License	Town of Buffalo Gap	Custer	Municipal	03/11/1963	0.190	10.6 ^o
2550-2	License	Town of Hermosa	Custer	Municipal	01/25/2005	0.220	45.8 ^a
744b-2	License		Custer	Municipal	12/29/1961	0.150	0.0 ^a
660-2	License	Town of New Underwood	Pennington	Municipal	03/03/1961	0.450	62.8 ^o
1947-2	License		Pennington	Municipal	06/03/1981	0.410	
366-1	License	Town of Nisland	Butte	Municipal	01/01/1939	0.150	19.5 ^o
1968-1	Permit	Venekamps LLC	Meade	Suburban Housing Development	04/27/2017	0.110	29.0 ^y
1874-1	License	Viewfield Rural Water Assoc Inc	Meade	Rural Water System	01/03/2007	0.212	36.7 ^a
1898-1	License		Meade	Rural Water System	11/14/2007	0.394	
8420-3	Permit	Vogel Farms PTR	Faulk	Geothermal	01/28/2020	0.120	88.7 ^y
2830-2	Permit	Weinreis Bros	Fall River	Commercial	10/04/2021	0.330	160.0 ^y
2464-2	License	West River Lyman Jones Rural Water System	Pennington	Rural Water System	07/26/2001	0.760	433.6 ^a
2465-2	License		Pennington	Rural Water System	07/26/2001	1.000	
2797-2	Permit		Pennington	Rural Water System	04/01/2019	1.000	
2778-2	Permit	Western Construction Inc	Pennington	Commercial, Industrial	11/13/2017	0.170	31.0 ^y
1855-1	License	Wink Cattle Co	Meade	Commercial, Domestic	01/26/2006	0.087	21.7 ^a
1975-1	Permit		Meade	Commercial, Domestic	02/20/2018	0.069	
1975A-1	Permit		Meade	Commercial, Domestic	12/03/2018	0.000	
Total						14.454	
A – Average, D – Drinking Water Reports, V – Volume limit on permit							

A - Average, D - Drinking Water Reports, V - Volume limit on permit

Report on Water Permit App. No. 2841-2

Table 3: Withdrawals estimated for CAFO permitted water right permit holders that are not required to report their withdrawals [11] [19] [20]

Permit No:	Status:	Name/Business:	Use Type	County:	Priority Date:	Max. CFS	Livestock needs (ac-ft/yr)	Est. Use (ac-ft/yr)
6091-3	Permit	Brentwood Colony	COM	Faulk	07/13/1998	0.100	34	34
4965-3	License	Dakota Feeding Company LLC	COM	Sully	06/21/1983	0.330	168	168
6128-3	License	Deerfield Httn Brethren	DOM, COM	Edmunds	03/03/1999	0.270	45	45
5890-3	License	Evergreen Colony	DOM	Faulk	11/14/1995	0.140	28	28
2178-2	License	Fall River Feed Yard LLC	COM	Fall River	05/14/1991	0.620	280	280
6376-3	License	LDL Cattle Company	COM	Edmunds	12/26/2002	0.220	112	112
6377-3	License		COM	Edmunds	12/26/2002	0.270		
7098-3	License	Mike & Jessie Fuller	DOM, COM	Sully	02/19/2009	0.040	54	29
6619-3	Permit	P J Werdel & Sons	COM	Hand	03/14/2005	0.330	112	112
7209-3	License	Paul Oberlitner	COM	Potter	10/19/2010	0.040	62	29
6011-3	License	Plainview Colony Httn	COM	Edmunds	07/07/1997	0.220	30	30
6257-3	Permit	Thunderbird Colony	DOM	Faulk	04/05/2001	0.200	77	77
6851-3	License	Todd Cowan	COM	Hyde	04/25/2007	0.150	99	99
7034-3	License	Vogel & Sautner Farms	COM	Potter	05/19/2008	0.123	45	45
Total							1,147	1,089
COM – Commercial, DOM – Domestic								

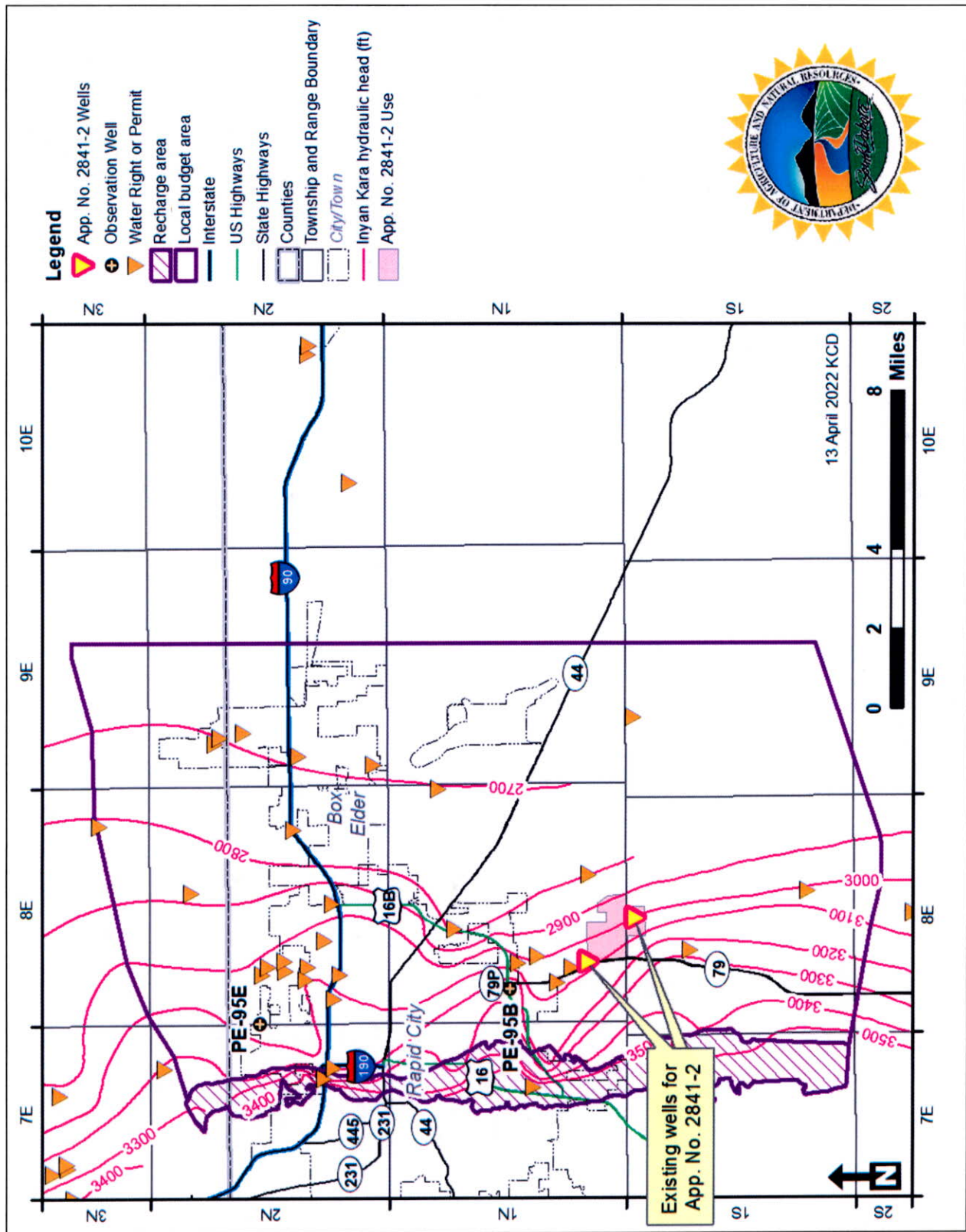


Figure 4: Local hydrologic budget area, hydraulic head [7], water rights/permits [11] and observation wells [4] completed in Inyan Kara aquifer.

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, April 27, 2022 3:36 PM
To: 'pathall@premierrapidcity.com'
Subject: Water Permit Application No. 2841-2, HWY 79 LLC
Attachments: 3332.pdf

Attached is a copy of the report, chief engineer recommendation and information regarding the public notice for your water permit application. As stated in the letter, please contact the paper as soon as possible to authorize publication and arrange for payment. This information is being mailed to HWY 79 LLC, c/o Brian Hammerbeck today.

Karen Schlaak

DANR - Water Rights Program

(605) 773-3352

Website: <https://danr.sd.gov>



*** Proof of Publication ***

STATE OF SOUTH DAKOTA)

County of Pennington)

SS:

S.D. DANR - Ground Water
GROUND WATER PROGRAM
523 E CAPITOL AVE
PIERRE SD 57501

ORDER NUMBER 45923

RECEIVED

MAY 09 2022

WATER RIGHTS
PROGRAM

The undersigned, being duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared

in said newspaper once each week for one
successive week, the first publication there of being on the
5 day of May, 20 22
Karika Carnichael

Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 05/05/2022

TOTAL AD COST: 72.54

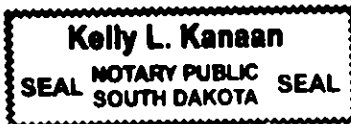
FILED ON: 5/5/2022

Subscribed and sworn to before me this

5th day of May, 20 22
Kelly L. Kanan Notary Public

My commission expires

Jan 17, 20 25



May 5 L45923

NOTICE OF APPLICATION

NO. 2841-2 to Appropriate Water
Notice is given that HWY 79 LLC, c/o Brian Hammerbeck, 2700 W Main, Rapid City SD 57702 has filed an application for a water permit to appropriate 217.9 acre-feet of water annually at a maximum pump rate of 0.89 cubic feet of water per second from two existing wells completed into the Inyan Kara Aquifer (1,180 and 708 feet deep) located in the NW 1/4 NE 1/4 Section 32-T1N-R8E and NE 1/4 SE 1/4 Section 4-T1S-R8E for a water distribution system to be located in E 1/2 Section 32; W 1/2 SE 1/4 NE 1/4, SE 1/4 Section 33; SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 34; all in T1N-R8E, Lot 4, NW 1/4 SW 1/4 Section 3; N 1/2 SE 1/4, Lots 1 and 2 Section 4; all in T1S-R8E. This site is located approximately 3 miles south of Rapid City SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2841-2 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 May 16, 2022.

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 May 16, 2022.

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 \$72.54)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

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

April 27, 2022

Hwy 79 LLC
c/o Brian Hammerbeck
2700 W Main
Rapid City SD 57702

Dear Mr. Hammerbeck:

Water Permit Application No. 2841-2 for a water distribution system use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Rapid City Journal printed at Rapid City SD (Ph # 605 394-8336). 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,

Karen Schlaak

Karen Schlaak
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. 2841-2 to Appropriate Water

Notice is given that HWY 79 LLC, c/o Brian Hammerbeck, 2700 W Main, Rapid City SD 57702 has filed an application for a water permit to appropriate 217.9 acre-feet of water annually at a maximum pump rate of 0.89 cubic feet of water per second from two existing wells completed into the Inyan Kara Aquifer (1,180 and 708 feet deep) located in the NW 1/4 NE 1/4 Section 32-T1N-R8E and NE 1/4 SE 1/4 Section 4-T1S-R8E for a water distribution system to be located in E 1/2 Section 32; W 1/2, SE 1/4 NE 1/4, SE 1/4 Section 33; SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 34; all in T1N-R8E, Lot 4, NW 1/4 SW 1/4 Section 3; N 1/2 SE 1/4, Lots 1 and 2 Section 4; all in T1S-R8E. This site is located approximately 3 miles south of Rapid City SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2841-2 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 May 16, 2022.

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 May 16, 2022.

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_

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, April 27, 2022 8:18 AM
To: RCY Legals (legals@rapidcityjournal.com)
Subject: 2841-2, HWY 79 LLC
Attachments: 2841-2public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on May 5, 2022.

HWY 79 LLC, c/o Brian Hammerbeck, 2700 W Main, Rapid City SD 57702 (605 431-9291) 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, Pierre SD 57501.

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

Karen Schlaak
DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

JUN 01 2022

HWY 79, LLC
c/o Brian Hammerbeck
2700 W Main St
Rapid City SD 57702

Dear Mr. Hammerbeck:

Enclosed is Water Permit No. 2841-2 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

June 11, 2024

NOTICE OF HEARING

TO: Hwy 79 LLC, c/o Patrick Hall, 2700 W Main Street, Rapid City SD 57702

FROM: Ron Duvall, Engineer III
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Violation of Permit Qualification to Report Annual Water Use

Our records indicate your 2022 and 2023 annual water use has not been submitted for Permit No. 2841-2. The request to report water use for 2023 was dated January 5, 2024 and the 2022 reporting in January 2023. Two follow-up attempts for each year to get the required water use report have gone unanswered. The Water Management Board has directed owners of water permits who have not submitted the annual water use reporting be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No. 2841-2 qualification:

"The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer."

The hearing will be held at **Wednesday, July 10, 2024 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No. 2841-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the water use report(s) is (are) received in this office before the **July 10, 2024** hearing, you will no longer be in violation of your permit and your name will be removed from the Board agenda. You may submit your water use report by providing the information to Rachel Rodriguez at (605) 773-3352 or via email at rachel.rodriguez@state.sd.us. You may also submit the water use report via mail using the address in the NOTE at the bottom of this Notice.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD 57501 or call (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

Rodriguez, Rachel

From: Duvall, Ron
Sent: Wednesday, June 26, 2024 9:29 AM
To: Pat Hall
Cc: Rodriguez, Rachel
Subject: RE: [EXT] WATER MANAGEMENT BOARD HEARING RE - Annual water use reporting for 2022 and 2023

Yes, that is all we need to know. We will remove your permit from the July 10 Water Management Board agenda, there will be no hearing held concerning your permit.

Thank you,

Ron

From: Pat Hall <pathall@premierrapidcity.com>
Sent: Wednesday, June 26, 2024 9:00 AM
To: Duvall, Ron <Ron.Duvall@state.sd.us>
Subject: RE: [EXT] WATER MANAGEMENT BOARD HEARING RE - Annual water use reporting for 2022 and 2023

Good morning!

We have had **no water usage at this point for 2022 and 2023.**

Is this sufficient to meet the requirements?

Thank you,

Pat

From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Wednesday, June 26, 2024 7:49 AM
To: Pat Hall <pathall@premierrapidcity.com>
Subject: WATER MANAGEMENT BOARD HEARING RE - Annual water use reporting for 2022 and 2023

Mr. Hall,

Attached is a copy of the Notice of Hearing mailed to you on June 11, 2024. There is still time to avoid having the Water Management Board suspend the permit for a year if you report your 2022 and 2023 water usage as required by a qualification (see below) on [Water Permit No. 2841-2](#). If the Board does suspend the permit ([see SDCL 46-1-12](#)) and water usage continues despite the suspension, state law also provides for assessment of a civil fine of up to \$500.00 per day for each day of violation ([see SDCL 46-1-11](#)).

2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.

You can report your usage by replying to this email with your water usage amounts for 2022 and 2023. If you need assistance with estimating your water usage, please let me know. I can be reached by responding to this email or calling 605-773-5670.

Thank you,



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**
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523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 23, 2025

NOTICE OF HEARING

TO: Hwy 79 LLC., 2700 W Main Street, Rapid City SD 57702

FROM: Ron Duvall, Engineer III
for Mark Mayer, PE
Director of Office of Water

SUBJECT: Violation of Permit Qualification to Report Annual Water Use

Our records indicate your 2024 annual water use has not been submitted for Permit No. 2841-2. The request to report water use for 2024 was dated January 3, 2025. Two follow-up attempts to get the required water use report have gone unanswered. The Water Management Board has directed owners of water permits who have not submitted the 2024 water use reporting be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No. 2841-2 qualification:

"The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara Aquifer."

The hearing will be held on **Wednesday, July 9, 2025, at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No. 2841-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the water use report(s) is (are) received in this office before the **July 9, 2025**, hearing, you will no longer be in violation of your permit and your name will be removed from the Board agenda. You may submit your water use report by providing the information to Rachel Rodriguez at (605) 773-3352 or via email at rachel.rodriguez@state.sd.us. You may also submit the water use report via mail using the address in the NOTE at the bottom of this Notice.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD 57501 or call (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

July 11, 2025

**NOTICE OF ENTRY OF ORDER REGARDING ONE YEAR SUSPENSION
OF WATER PERMIT**

TO: HWY 79 LLC., c/o Patrick Hall, 2700 W Main Street, Rapid City SD 57702

FROM: *for* Mark Mayer, Acting Chief Engineer
Water Rights Program

SUBJECT: One Year Suspension of Water Permit No. 2841-2

Pursuant to the Notice of Hearing dated and mailed to you on May 23, 2025, the Water Management Board took action on July 9, 2025, and ordered the following:

Effective August 1, 2025, Water Permit No. 2841-2 is suspended for one year for failure to report your 2024 water use. If your 2024 water use is reported prior to August 1, 2025, the suspension will not take effect.

A one-year suspension of Water Permit No. 2841-2 means water may not be pumped for one year beginning on the effective date of suspension which is August 1, 2025. If your 2024 water use is reported prior to August 1, 2025, the one-year suspension will not go into effect.

Following Board action on July 9th, the 2024 water usage by HWY 79 LLC was reported by Mark Anderson to Rachel Rodriguez. Therefore, the suspension will NOT go into effect on August 1, 2025 and water use may continue as needed during 2025. The remainder of this order is for your information as to what could be the results of failing to report your annual water use in a timely manner.

Water Rights staff will conduct unscheduled compliance checks of suspended water permits. Pursuant to South Dakota Codified Law 46-1-11, violation of this suspension will be a Class 2 misdemeanor, subject to a civil fine of up to \$500.00. Each day of noncompliance is deemed a separate violation meaning up to \$500.00 for each day of violation.

If you fail to report prior to August 1, 2025, you may petition the Board to rescind the suspension. To do so, you will need to submit to the Water Rights Program your 2024 water use, a letter including your reason for not reporting within the allotted time, and requesting time on the agenda for the next Water Management Board meeting. The next Water Management Board meeting is scheduled for October 1-2, 2025, in Pierre SD.

Decisions made by the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Please contact Rachel Rodriguez at 605-773-3352 with any questions.

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order, concerning a one-year suspension of Water Permit No. 2841-2, dated July 11, 2025, in the matter of violating the annual water use reporting requirement, was served by U.S. certified mail, upon the following on this 11th day of July 2025.

HWY 79 LLC.
c/o Patrick Hall
2700 W Main Street
Rapid City SD 57702

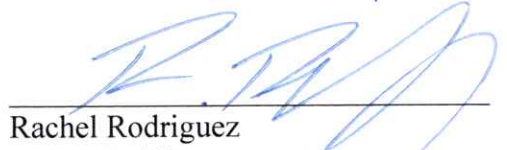
Above sent inter-office to:

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
david.mcvey@state.sd.us


Shannon Konst
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of July, 2025.


Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029



Rodriguez, Rachel

From: Mark Anderson <markandersonwater@gmail.com>
Sent: Wednesday, July 9, 2025 9:44 AM
To: Rodriguez, Rachel
Cc: Kevin Thom
Subject: Re: [EXT] Permit 2841-2 - Hwy 79

Thanks Rachel

The well, as of yet, is not metered but they estimate that no more than 5000 gals were pumped before the casing failure.

Hope this helps.

Thank you again.

Mark

Sent from my iPhone

On Jul 9, 2025, at 8:33 AM, Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us> wrote:

Can you estimate the amount of water used last year? Even a ball park figure would be acceptable.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us
<image001.png>

From: Mark Anderson <markandersonwater@gmail.com>
Sent: Wednesday, July 9, 2025 9:30 AM
To: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>; Kevin Thom <kevin.thom3331@gmail.com>
Subject: Re: [EXT] Permit 2841-2 - Hwy 79

Hi Rachel

I just got some information on the well from the owners. The well was used only minimally until a problem developed with the casing. So the well is under repair and shut down as we speak. There are plans to use the well as intended under the permit.

Thanks for your assistance.

Mark

Sent from my iPhone

On Jul 9, 2025, at 6:50 AM, Rodriguez, Rachel
<Rachel.Rodriguez@state.sd.us> wrote:

Good Morning Mark,

Unfortunately, no I have not received a response by anyone. You are correct, today it will be presented to the water management board for a decision on the action to suspend. If you have an estimate, that will suffice. However, we would need it before the meeting starts which is 9:30 am.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us
<image001.png>

From: Mark Anderson <markandersonwater@gmail.com>
Sent: Wednesday, July 9, 2025 7:17 AM
To: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>
Subject: Fwd: [EXT] Permit 2841-2 - Hwy 79

Good morning Rachel,
Just following up. Did you get a response on this water right usage? I went to Canada for a while but back now.
I think time is running short now correct?
Thanks,
Mark

----- Forwarded message -----

From: Mark Anderson <markandersonwater@gmail.com>
Date: Mon, Jun 23, 2025 at 12:18 PM
Subject: Re: Permit 2841-2 - Hwy 79
To: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>
Cc: Kevin Thom <kevin.thom3331@gmail.com>, Doug Bell <belldoug161@gmail.com>

Hi Rachel,
Thanks for this information. I was not involved with this water right or project but will look into it and get back to you very soon.
Thanks,
Mark

On Mon, Jun 23, 2025 at 10:04 AM Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us> wrote:

Good Morning Mark,

I'm still missing annual water use for Permit 2841-2, Hwy 79 LLC.

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HWY 79 LLC

C/O PATRICK HALL

2700 W MAIN STREET

RAPID CITY SD 57702

7021 1970 0000 9489 7943

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HWY 79 LLC
C/O PATRICK HALL
2700 W MAIN STREET
RAPID CITY SD 57702



9590 9402 6392 0303 3267 06

2. Article Number (Transfer from *PSN*)
7021 1970 0000 9489 7943

COMPLETE THIS SECTION ON DELIVERY**A. Signature****X**

John D'Gorman ☐ Agent
☐ Addressee

B. Received by (Printed Name)

John D'Gorman

C. Date of Delivery

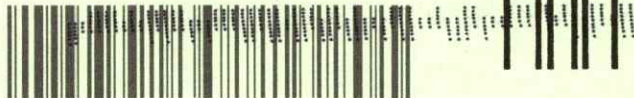
7/21/25

- D. Is delivery address different from item 1?** ☐ Yes
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3. Service Type

- | | |
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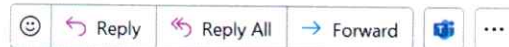


RE: [EXT] Permit 2841-2 - Hwy 79



Rodriguez, Rachel

To Mark Anderson
Cc Doug Bell; Kevin Thom



Fri 07/25/2025 8:33 AM

General - Anyone

Good morning,

Thank you for reporting the 2024 water use. Water Permit 2841-2 is now in compliance and the one-year suspension will not go into effect.

Thinking ahead for next year, is there someone in particular I should send the annual reporting letter to?

Thank you,

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

