

WATER PERMIT NO. 798B-2

Name of Applicant: **The Nature Conservancy**

Address: **1101 West River Parkway, Suite 200**

Phone: **612-331-0717**

Amount of Water Claimed: **No Add'l**

Total Acres: **N/A**

Source of Water Supply: **Surface**

Water to be used for: **Stock Watering**

County: **Custer**

Type of Waste Disposal System:

Location: **Approx. 12 miles southeast of Hermosa**

PRIORITY Date Received: **April 29, 2025**

Application/License Fee: **\$300.00**

Corrected Application Received: **05-05-25**

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

Remarks: **Amending 798A-2 to add stock watering**

Diversion Point: **SW 1/4 NE 1/4 Sec 13, NE 1/4
NW 1/4 Sec 18 and NW 1/4 SE 1/4 Sec 29; all in
T4S-R9E**

Land to be Irrigated:

Depth of Well:

Well Driller:

Remarks:

Type of Map: **aerial**

Reviewed and the Number Assigned on: **05-05-25**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 798B-2

Date of first receipt of application April 29, 2025.

Date of return to applicant for corrections, amendments or changes April 29, 2025.

Date of receipt of corrected application May 5, 2025.

The Acting Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 798B-2 to The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415, 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. 798B-2 amends Water Right No. 798A-2 to include stock watering as beneficial use. Water Right No. 798A-2 authorizes impoundment of up to 1,319 acre-feet of water annually from Dry Creek in a storage dam located in the SW 1/4 NE 1/4 Section 13-T4S-R8E with additional diversion points in the NE 1/4 NW 1/4 Section 18; NW 1/4 SE 1/4 Section 29; to irrigate 542.5 acres in portions of Sections 18, 19, 20, and 29; all in T4S-R9E. This permit amends Water Right No. 798A-2 to include stock watering with no increase to the 4.0 cfs diversion rate authorized by No. 798A-2. Water for stock watering will be provided to an area surrounding the dam at a straight-line distance of up to six miles. This site is located approximately twelve miles southeast of Hermosa SD.
2. The water appropriated shall be used for the purpose of domestic 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. 798B-2 is August 11, 2025.
5. The date from which applicant may claim right is May 1, 1963.
6. One-fifth of the construction is to be completed on or before February 11, 2028.
7. All construction is to be completed on or before August 11, 2030.
8. Water is to be put to beneficial use on or before August 11, 2034.
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. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be bypassed.

WATER MANAGEMENT BOARD

By: _____

Mark Mayer

Mark Mayer, PE
Director of Office of Water
Department of Agriculture and Natural Resources

9/10/25

_____ date



FORM 2: Application for uses other than irrigation
(type or print)

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**Water Rights
Program**

Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>798B-2</u> Hydrologic Unit <u>10120109</u>
	Basin <u>Cheyenne</u>
	Newspaper <u>Custer County Chronicle</u>
	<u>Rapid City Journal</u> (office use only)

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. <u>798A-2</u>		

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

This application seeks to formally add stock watering to the existing license as a permitted use

1. Name to Appear on Water Permit The Nature Conservancy

Mailing Address 1101 West River Parkway Suite 200 Minneapolis MN 55415
(Address) (City) (State) (Zip Code)

Phone (612) 331-0717 Mobile _____ Email _____

2. Amount of water claimed _____ *CFS or No add'l **GPM and No add'l ***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)

3. Source of water supply A dam on Dry Creek (1319 acre feet storage capacity)

4. Location of point of diversion SW1/4 NE1/4 Section 13-T4S-R8E NE 1/4 NW 1/4 Section 18 and NW1/4 SE1/4 Section all in T4S-R9E County Custer
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? Please see the attached Exhibit A; additionally: SE1/4 NE1/4 Section 26 T4S R8E; and N1/2, and SE1/4 of Section 36 T4S R8E

5. County or counties where water will be used Custer

6. Annual period during which water is to be used Jan 1 - Dec 31

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)

This amendment seeks to amend water license No. 798A-2 to add stock watering as an appropriative use. The combined use for stock watering and irrigation (as currently permitted) will not exceed the current permitted rate of diversion of 4.0 cfs. Water shall be diverted from the existing dam and licensed points of diversion to stock tanks, where stock will be watered, located throughout the pastures owned by applicant. The water will be utilized in the real property identified in Exhibit A, and the SE1/4 NE1/4 Section 26 T4S R8E; and N1/2 and SE1/4 Section 36 T4S R8E.

I, [Signature] Attorney, 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)

Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- Drill Hole Diameter _____ Depth _____
- Casing Type _____ Diameter _____ Thickness _____
- Screen Type _____ Diameter _____ Thickness _____
- Gravel Pack Thickness _____ Length of Gravel Pack _____
- Depth to Top of Water Bearing Material _____
- Depth to Water (ground surface to water level) _____
- Distance to nearest existing domestic well: _____

On applicants property _____ On property owned by others _____

2. Dugout Information:

- Surface Dimensions _____ Depth _____
- Depth to water (ground surface to water level) _____

3. 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.

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

(Full description in WL # 798-2)

b) Freeboard 2.2'

c) Crest Width 25'

Crest Length _____

d) Height 18-50'

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

g) X & Y Slope

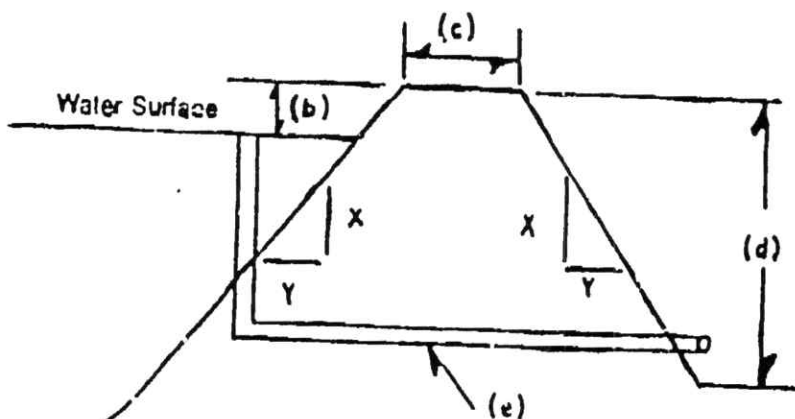
Upstream 2:1

Downstream 1.5:1

h) Surface Area of Impoundment 7.461 high water mark

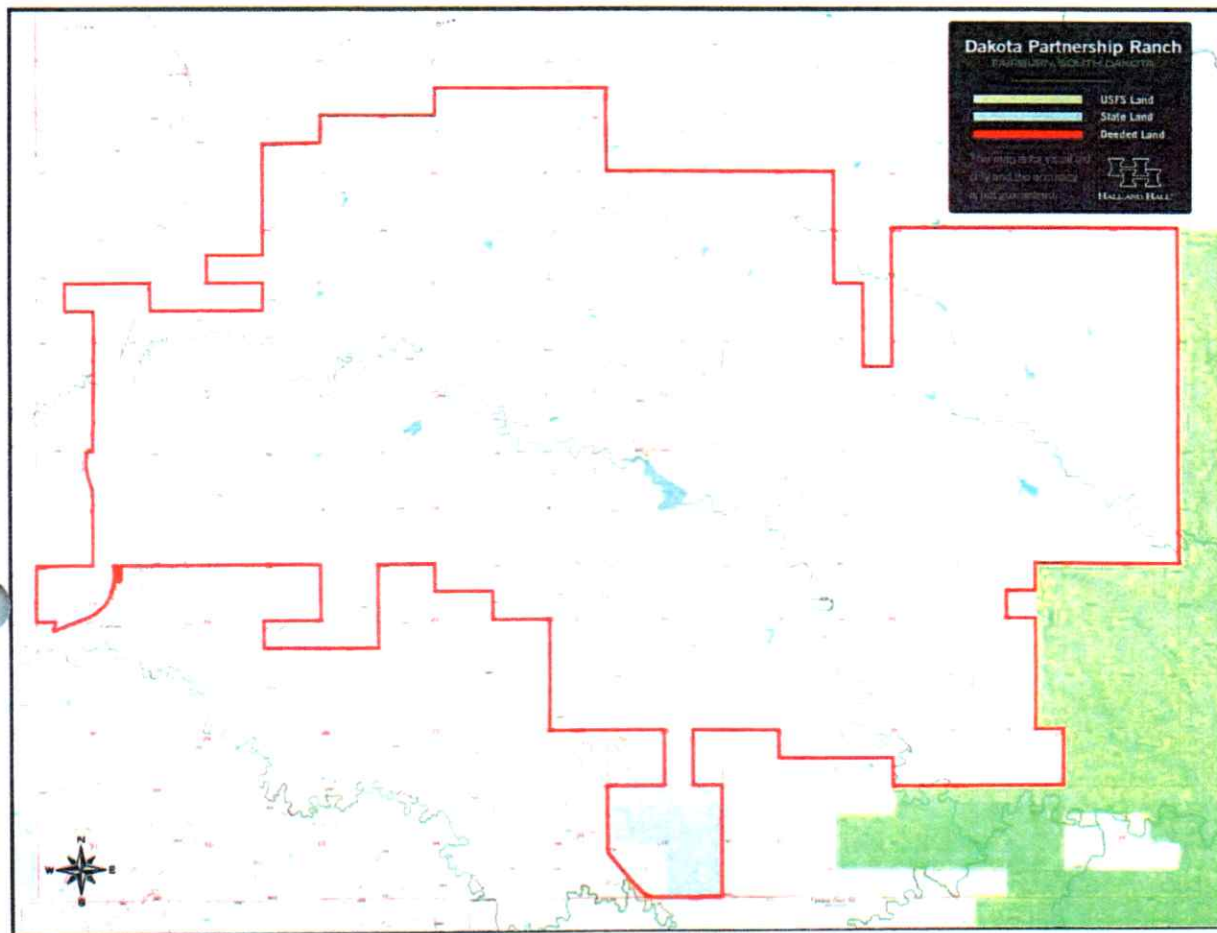
i) Storage 1319 Acres F...

j) Drainage Area Above Dam _____ Acres



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EXHIBIT A
PROPERTY MAP
Page 3





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LEGAL DESCRIPTION

DESCRIPTION 1:

Township 3 South of Range 8 East of the Black Hills Meridian, Custer County, South Dakota:

Section 26: S1/2S1/2

Section 27: S1/2SE1/4

Section 33: S1/2, S1/2N1/2, N1/2NE1/4

Section 34: All

Section 35: All

Section 36: S1/2

Township 3 South of Range 9 East of the Black Hills Meridian, Custer County, South Dakota:

Section 31: S1/2

Township 4 South of Range 8 East of the Black Hills Meridian, Custer County, South Dakota:

Section 1: All

Section 2: All

Section 3: All

Section 4: All

Section 5: S1/2S1/2, SE1/4NE1/4

Section 6: SE1/4, EXCEPTING therefrom that portion of the NE1/4SE1/4 lying East of the railroad right-of-way

Section 7: E1/2, EXCEPTING therefrom any highway rights of way.

Section 8: All

Section 9: All

Section 10: All

Section 11: All

Section 12: All

Section 13: All

Section 14: All

Section 15: All

Section 16: All

Section 17: All

Section 18: E1/2, and that portion of the E1/2NW1/4 lying east of the Railroad Right-of-Way

Section 19: Government Lots 1 and 2 and the E1/2NW1/4 lying North of the Town of Fairburn; Outlot A in the Town of Fairburn; and that portion of the S1/2NW1/4 and of the N1/2SW1/4 shown on the plat of the Town of Fairburn as Station Grounds and as Ware House Lots 1 through 19 which was conveyed by metes and bounds in deed recorded September 28, 1971, in Deed Book 26, Page 399, as follows: Beginning at the most westerly corner of Lot 1 of Ware House Lots as shown on the recorded plat of the Town of Fairburn; thence Southeasterly along the Southwesterly line of said Lot 1 a distance of 125 feet, more or less, to a point distant 50 feet northwesterly, measured at right angles, from the center line of the main track of the Chicago and North Western Railway Company, as said main track is now located; thence northeasterly parallel with said main track center line to a point on the east line of the Northwest Quarter of said Section 19; thence northerly along said East line to a point distant 400 feet northwesterly, measured at right angles, from the northeasterly extension of the center line of the tangent segment of the main track of the Fremont, Elkhorn and Missouri Valley Railroad Company (now the Chicago and North Western Railway Company), as said main track center line was originally located and established across said Section 19, thence southwesterly parallel with said original main track center line, and the northeasterly extension of the tangent segment thereof, to a point on the East and West Quarter line of said Section 19; thence Southwesterly along a straight line to the point of beginning; and the N1/2NE1/4, EXCEPTING therefrom Lot 1 of Dakota Partnership Subdivision and Dedicated Right-of-Way, as shown on plat filed in Plat Book 12, Page 603.

Section 21: NE1/4, N1/2S1/2

Section 22: N1/2NE1/4

Section 23: N1/2, SE1/4

Section 24: ALL

Section 25: N1/2, W1/2SE1/4

Section 26: N1/2NE1/4 and SW1/4NE1/4

Section 36: SW1/4, EXCEPTING therefrom Lot 1 of Katsch Subdivision, as shown on plat filed in Plat Book 11, Page 543 and EXCEPTING therefrom any highway rights-of-way of record.

EXCEPTING therefrom any railroad rights-of-way of record.

Township 4 South of Range 9 East of the Black Hills Meridian, Custer County, South Dakota:

Section 3: All

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Section 4: All
Section 5: E1/2, W1/2SW1/4
Section 6: All
Section 7: All
Section 8: S1/2, NE1/4, S1/2NW1/4, NW1/4NW1/4
Section 9: All
Section 10: All
Section 15: All
Section 16: All
Section 17: All
Section 18: All
Section 19: All
Section 20: All
Section 21: W1/2, W1/2SE1/4, NW1/4NE1/4
Section 28: W1/2, SE1/4, W1/2NE1/4
Section 29: E1/2, NW1/4, N1/2SW1/4
Section 30: N1/2, N1/2SE1/4

Outlot A in the Town of Fairburn, located in the S1/2NE1/4 of Section 19, Township 4 South, Range 8 East, Black Hills Meridian, Custer County, South Dakota.

DESCRIPTION 2:

Township 4 South of Range 8 East of the Black Hills Meridian, Custer County, South Dakota:

Section 5: NE1/4SE1/4

Section 7: that portion of the SE1/4SW1/4 lying East of the railroad right-of-way, EXCEPTING therefrom any highway rights-of-way.



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MAY 05 2025

OFFICE OF
WATER

April 30, 2025

506 Sixth Street
Post Office Box 8045
Rapid City, South Dakota 57709
Main: (605) 342-1078
Fax: (605) 342-9503

www.gpna.com

Matthew E. Naasz
Email: mnaasz@gpna.com
Direct Dial: (605) 719-3424

Ron Duvall
Water Rights Program
South Dakota Department of Agriculture & Natural Resources
523 E. Capitol Ave.
Pierre, SD 57501-3182
Ron.Duvall@state.sd.us

Re: The Nature Conservancy / Water Rights due diligence
GPNA File No. 17370.0002

Dear Mr. Duvall:

Enclosed please find the water permit application of The Nature Conservancy. Also enclosed is this firm's check in the amount of \$300 for the fee to amend and licensing inspection.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Naasz', with a stylized flourish extending to the right.

Matthew E. Naasz

MEN:aa
Enclosures

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date May 5th, 2025

RECEIVED OF The Nature Conservancy C/O Matthew Naasz 1101 West River Parkway Suite 200 Minneapolis MN 55412

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

Fee for Application for Permit No. <u>798B-2</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>100.00</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>798B-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>300.00</u>

By

Mark Mayer
Chief Engineer



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**RECOMMENDATION OF ACTING CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 798B-2, The Nature Conservancy**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Acting Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 798B-2, The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415.

The Acting Chief Engineer is recommending APPROVAL of Application No. 798B-2 because 1) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 2) the proposed use is a beneficial use and 3) 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:

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

See report on application for additional information.

Mark Mayer, PE
Director of Office of Water
July 10, 2025

NOTE. This amendment of Water Right No. 798A-2 is to add stock watering as a use. Since stock watering is a domestic use, it takes precedence over appropriative rights pursuant to SDCL 46-1-5(1). However, since the storage dam is also used for an appropriative irrigation water use as authorized by No. Water Right No. 798A-2, the above qualification is included to be consistent with No. 798A-2.

Report to the Chief Engineer on
Water Permit Application No. 798B-2
The Nature Conservancy
July 07, 2025

Water Permit Application No. 798B-2 proposes to amend Water Right No. 798A-2 to include stock watering as a beneficial use. Water Right No. 798A-2 authorizes impoundment of up to 1,319 acre-feet of water annually from Dry Creek in a storage dam located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13-T4S-R8E with additional diversion points in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 18, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 to irrigate 542.5 acres in portions of Sections 18, 19, 20, and 29; all in T4S-R9E. No increase to the 4.0 cubic feet per second (cfs) maximum diversion rate authorized under Water Right No. 798A-2 is proposed. Water for stock watering will be provided to an area surrounding the dam (SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13-T4S-R8E) at a straight-line distance of up to six miles. The dam is located in Custer County approximately 12 miles southeast of Hermosa, SD or approximately five miles east of Fairburn, SD.

Water Source: Dry Creek

South Dakota Codified Laws (SDCL) and Administrative Rule of South Dakota (ARSD)

SDCL 46-2A-12

An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.

ARSD Chapter 74:02:08 Safety of Dams

ARSD Chapter 74:02:08 provides the minimum design standards for dams that are 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier or has an impounding capacity at maximum water storage elevation of 50 acre-feet or more. A barrier is not considered a dam for the purpose of this chapter if the height does not exceed 6 feet regardless of storage capacity or if the storage capacity at maximum water storage elevation does not exceed 15 acre-feet regardless of height.

Water Source and Existing Permit Information

The dam for this application is located on Dry Creek in Custer County. Dry Creek is located in the Cheyenne River Basin with its headwaters in central Custer County in the eastern edge of the Black Hills. Dry Creek flows in a generally eastern direction from its headwaters with several unnamed tributaries discharging into the creek before it eventually confluent with French Creek in eastern Custer County. The confluence of Dry Creek and French Creek is approximately 9.24 stream miles below the dam for this application. The National Hydrography Dataset classifies Dry Creek as an intermittent stream (USGS, 2025). An intermittent stream is defined by the United State Geological Survey (USGS) as a stream that flows only when it receives water from rainfall runoff or springs, or from some surface source such as melting snow (USGS, 2013). The USGS

StreamStats Program was used to delineate the watershed upstream of the dam. The approximate watershed area is 43.4 square miles (27,776 acres) (USGS, 2019).

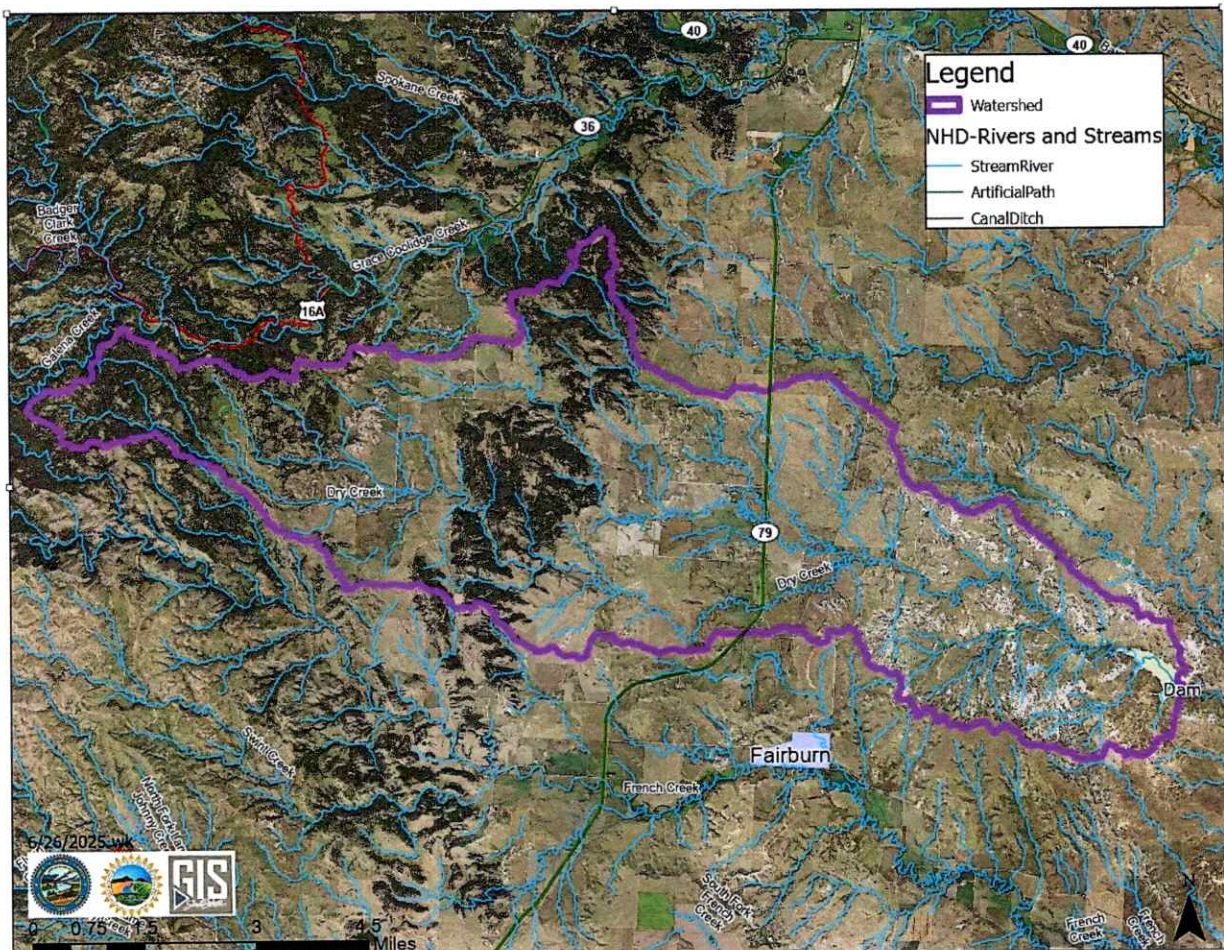


Figure 1: Watershed upstream of the dam (USGS, 2019)

The original water right that was incorporated into Water Right No. 798A-2 has not been receiving an annual irrigation questionnaire since 1986 since it is a gravity-fed water spreading system dependent on intermittent runoff (Water Rights, 2025a). No estimate of average annual irrigation use is available due to the method of irrigation not lending itself to measurement. However, no increase to the 4.0 cfs maximum diversion rate is being proposed under this application.

Existing Users

In general stock watering taking in a rangeland setting is less water intensive than irrigation. There are no water rights/permits on Dry Creek between the dam and the confluence of Dry Creek and French Creek (Water Rights, 2025a). Based on the information provided with this application, the land adjacent to the creek for several stream miles below the dam belongs to the applicant. So, impacts to domestic users of Dry Creek below the dam as a result of this application are unlikely. Additionally, the dam has been in place for several decades for irrigation use without

a history of complaints (Water Rights, 2025c). Given these considerations this application, if approved, is not expected to unlawfully impair existing appropriative users. Regardless, this amendment is to add stock watering which is a domestic use of water taking precedence over appropriative uses pursuant to SDCL 46-1-5(1). However, since irrigation is also an authorized use from the dam, a low flow bypass requirement for downstream domestic use could be included as a qualification on this permit to remain consistent with Water Right No. 798A-2.

Safety of Dams

The existing storage dam located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13-T4S-R8E for this application falls under the regulation of the South Dakota Safety of Dam Rules. It is on the National Inventory of Dams (NID) as the Triple 7 Ranch Dam inventory number SD02338 (Water Rights, 2025b). No modification or alteration of this dam is being proposed as part of this application. The diversion dams listed as diversion points for Water Right No. 798A-2 are not listed on the National Inventory of Dams and may be too small to be considered as dams under the Safety of Dams rules.

The NID lists the estimated normal pool storage (primary spillway crest) as 1,319 acre-feet, the estimated maximum pool as 2,000 acre-feet, estimated maximum discharge of 2,900 cfs, a height of 32 ft (height is from the 1975 licensing inspection), and a construction year of 1963 (Water Rights, 2025b). Sufficient design information for this dam is not available to verify the estimated maximum discharge for this dam. Under the State's Safety of Dams Rules, this dam was classified as an intermediate sized dam and at the time the dam was inventoried a downstream hazard classification of low hazard (category 3) was assigned to the dam. A low hazard, intermediate sized dam is required to be able to handle the 100-year, 24 hour frequency storm. The USGS StreamStats Program estimates the peak flow from a 100-year frequency event at 1,320 cfs (USGS, 2019). Since this dam is low hazard and was constructed prior to October 27, 1986, it is exempt from the spillway requirements of the Safety of Dams Rules, unless the dam fails or is reclassified for downstream hazard.

The 2023 Farm Service Agency aerial imagery was used to examine the area downstream of the dam for new development that might change the hazard classification of the dam. Approximately 2.8 miles downstream of the dam is a ranchstead along the creek, which based on the property map submitted with the application belongs to the applicant. DSS-WISE Web was used to run a simplified breach analysis for the dam using a top of dam total and complete failure scenario, 1/3 arc-second elevation data (10 meter), and no antecedent flooding conditions (NCCHE, 2025). The analysis indicated that under this dam failure scenario some of the lower ranchstead agricultural outbuildings could be impacted in this dam breach scenario. The Safety of Dams Rules define a low hazard (category 3) dam as a "dam whose failure may cause limited damage to agricultural lands or county and township roads or minimum economic loss." ARSD 74:02:08:05 goes on to indicate this can include occasional structures. The Water Rights Program has historically classified dams that can, as a result of a dam failure, inundate downstream agriculture buildings belonging to the owner, with no overnight occupancy, as low hazard. Based on this basic low-level analysis, no change in hazard classification is currently recommended for this dam. Should a dam failure occur, actual conditions will vary from this analysis and so the degree of actual flooding would vary. However, future downstream development or a future more detailed breach analysis, could change this conclusion. The Safety of Dams Rules require that

should the downstream hazard classification of a low hazard (category 3) be changed to a significant (category 2) or high hazard (category 1), the spillway capacity must be upgraded to comply with the new classification.

Conclusions

1. Water Permit Application No. 798B-2 proposes to amend Water Right No. 798A-2 to include stock watering as a beneficial use with no increase to the 4.0 cfs maximum diversion rate. Water for stock watering will be provided to an area surrounding the dam (SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13-T4S-R8E) at a straight-line distance of up to six miles.
2. Water Right No. 798A-2 authorizes impoundment of up to 1,319 acre-feet of water annually from Dry Creek in a storage dam located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13-T4S-R8E with additional diversion points in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 18, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 to irrigate 542.5 acres in portions of Sections 18, 19, 20, and 29; all in T4S-R9E.
3. Pursuant to SDCL 46-2A-12, an amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.
4. This application, if approved, is not expected to unlawfully impair existing appropriative or domestic users. The amendment is to add stock watering which is a domestic use of water taking precedence over appropriative uses pursuant to SDCL 46-1-5(1). However, since irrigation is also an authorized use from the dam, a low flow bypass requirement for downstream domestic use could be included as a qualification on this permit to remain consistent with Water Right No. 798A-2.
5. No modification or alteration to the dam in existing dam authorized by Water Right No. 798A-2 in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13-T4S-R8E is proposed as part of this application. If at some point in the future the dam is to be altered, modified, reconstructed, or removed the work will need to be done in compliance with the South Dakota Safety of Dams Rules ARSD Chapter 74:02:08.



Whitney Kilts
SDDANR- Water Rights Program

References

- National Center for Computational Hydroscience and Engineering (NCCHE). 2025. DSS-WISE Web. The University of Mississippi. < <https://dsswiseweb.ncche.olemiss.edu/> >. Accessed June 17, 2025.
- United States Geological Survey (USGS). 2013. Water Basics Glossary. < https://water.usgs.gov/water-basics_glossary.html >. Accessed June 26, 2025.
- USGS. 2019. The StreamStats program, <<https://streamstats.usgs.gov/ss/> >. Accessed June 18, 2025.
- USGS. 2025. The National Hydrology Dataset. The National Map Viewer. <<https://apps.nationalmap.gov/viewer/>>. Accessed June 2025.
- Water Rights. 2025a. Water Right/Permit Files. SD DANR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights. 2025b. Safety of Dams Files. SD DANR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights. 2025c. County Complaint Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Rodriguez, Rachel

From: Duvall, Ron
Sent: Tuesday, April 29, 2025 4:38 PM
To: Matthew Naasz
Cc: Anna Applegate; Rodriguez, Rachel
Subject: RE: [EXT] The Nature Conservancy

Thanks Matt, the fee to amend is \$100.00 and there will be another \$200.00 for a licensing inspection at some point in the future so \$300.00 total.

Ron

From: Matthew Naasz <mnaasz@gpna.com>
Sent: Tuesday, April 29, 2025 3:29 PM
To: Duvall, Ron <Ron.Duvall@state.sd.us>
Cc: Anna Applegate <aapplegate@gpna.com>
Subject: [EXT] The Nature Conservancy

Ron,

Attached please find the water permit application of The Nature Conservancy. We will forward the requisite fees via mail. Please let me know if there are any questions.

Thank you,

Matt



Matthew E. Naasz

Attorney

Phone: (605) 719-3424 | Fax: (605) 342-9503

506 Sixth Street | P.O. Box 8045 | Rapid City, SD 57709

Gunderson | Palmer | Nelson | Ashmore | LLP • www.gpna.com

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From: Anna Applegate <aapplegate@gpna.com>
Sent: Tuesday, April 29, 2025 2:26 PM
To: Matthew Naasz <mnaasz@gpna.com>
Subject: FW: The Nature Conservancy



**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 NEWSPAPERS RIGHT AWAY.**

July 22, 2025

The Nature Conservancy
c/o Matthew E. Naasz
1101 West River Parkway, Suite 200
Minneapolis MN 55415

Dear Mr. Naasz:

Water Permit Application No. 798B-2 for domestic use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Custer County Chronicle printed at Custer SD (Ph # 605 673-2217) and the Rapid City Journal printed at Rapid City SD (see attachment for contact number). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Acting 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 newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notice. The newspapers have 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 Acting 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. 798B-2 to Amend Water Right No. 798A-2

Notice is given that The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415, proposes to amend Water Right No. 798A-2 to include stock watering as beneficial use. Water Right No. 798A-2 authorizes impoundment of up to 1,319 acre-feet of water annually from Dry Creek in a storage dam located in the SW 1/4 NE 1/4 Section 13-T4S-R8E with additional diversion points in the NE 1/4 NW 1/4 Section 18; NW 1/4 SE 1/4 Section 29; to irrigate 542.5 acres in portions of Sections 18, 19, 20, and 29; all in T4S-R9E. This application proposes to amend Water Right No. 798A-2 to include stock watering with no increase to the 4.0 cfs diversion rate authorized by No. 798A-2. Water for stock watering will be provided to an area surrounding the dam at a straight-line distance of up to six miles. This site is located approximately twelve miles southeast of Hermosa SD.

Pursuant to SDCL 46-2A-2, the Acting Chief Engineer recommends APPROVAL of Application No. 798B-2 because 1) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 2) the proposed use is a beneficial use and 3) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Acting 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 Acting Chief Engineer. A petition opposing the application shall be filed on a form provided by the Acting Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Acting Chief Engineer. The Acting 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 Acting 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 August 11, 2025.

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 Acting Chief Engineer. The comment shall be filed on a form provided by the Acting Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Acting 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 August 11, 2025.

If the applicant does not contest the recommendation of the Acting Chief Engineer and no petition to oppose the application is received, the Acting 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

From: Rodriguez, Rachel
Sent: Tuesday, July 22, 2025 9:01 AM
To: Jason Ferguson
Subject: 798B-2 The Nature Conservancy - Public Notice
Attachments: 798B-2 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on July 30, 2025.

The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415, 612-331-0717, 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



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Tuesday, July 22, 2025 9:02 AM
To: RCY Legals
Subject: 798B-2 The Nature Conservancy - Public Notice
Attachments: 798B-2 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on July 29, 2025.

The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415, 612-331-0717, 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





Column Software PBC
PO Box 208098
Dallas, TX 75320-8098
help.column.us

Bill to
The Nature Conservancy

Invoice number CFC1A06D-0047
Notice ID v8MURVvVcCjtWOH6ROOQ
Publisher The Rapid City Journal
Date of issue Jul 22, 2025
Date due Aug 22, 2025
Amount due \$85.68

Description	Qty	Unit price	Amount
07/29/2025: General Legal Notice	1	85.68	85.68

=== Notes ===

Notice Name: 798B-2 The Nature Conservancy - Public Notice
Order Number: COL-SD-2958

=== How to pay this invoice ===

Column Software PBC accepts online payment via credit or debit card, or ACH bank transfers. Please click here to pay online:
<https://www.column.us/invoices/DjXteKnCvxPWmUF3Kknm/pay>

Net Subtotal \$85.68

Tax 0.00

Amount due \$85.68

Please note that, once paid, the merchant name on your billing statements will be Column Software PBC.

Select organizations may also pay via check. Checks will result in processing delays and should not be used if your notice requires upfront payment. Please pay the exact amount due, write your invoice number CFC1A06D-0047 on the memo, include a printed copy of your Invoice PDF, make the check payable to Column Software PBC, and mail to the address above.

Pay here: <https://www.column.us/invoices/DjXteKnCvxPWmUF3Kknm/pay>

Questions? Visit help.column.us

Affidavit of Publication

State of South Dakota)

)ss.

County of Custer)

Jerry Lee Lenander of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

The Nature Conservancy
Notice of Application
No. 798B-2

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for one successive week(s), on which said newspaper was regularly published, to wit:

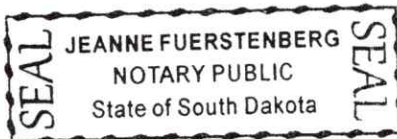
June 30, 2025; _____;
_____; _____;
_____; _____;
_____; _____;
_____; _____;

the full amount of the fees for the publication of the annexed notice is \$ 47.09

Subscribed and sworn to me before this 30th

of June 30, 20 25;

Jeanne Fuerstenberg
NOTARY PUBLIC
MY COMMISSION EXPIRES: NOV 30 2027



NOTICE OF APPLICATION NO. 798B-2 TO AMEND WATER RIGHT NO. 798A-2

Notice is given that The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415, proposes to amend Water Right No. 798A-2 to include stock watering as beneficial use. Water Right No. 798A-2 authorizes impoundment of up to 1,319

acre-feet of water annually from Dry Creek in a storage dam located in the SW 1/4 NE 1/4 Section 13-T4S-R8E with additional diversion points in the NE 1/4 NW 1/4 Section 18; NW 1/4 SE 1/4 Section 29; to irrigate 542.5 acres in portions of Sections 18, 19, 20, and 29; all in T4S-R9E. This application proposes to amend Water Right No. 798A-2 to include stock watering with no increase to the 4.0 cfs diversion rate authorized by No. 798A-2. Water for stock watering will be provided to an area surrounding the dam at a straight-line distance of up to six miles. This site is located approximately twelve miles southeast of Hermosa SD.

Pursuant to SDCL 46-2A-2, the Acting Chief Engineer recommends APPROVAL of Application No. 798B-2 because 1) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 2) the proposed use is a beneficial use and 3) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Acting 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.

RECEIVED

AUG 11 2025

OFFICE OF
WATER

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 Acting Chief Engineer. A petition opposing the application shall be filed on a form provided by the Acting Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Acting Chief Engineer. The Acting 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 Acting 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 August 11, 2025.

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 Acting Chief Engineer. The comment shall be filed on a form provided by the Acting Chief Engineer and is available online at

<https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Acting 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 August 11, 2025.

If the applicant does not contest the recommendation of the Acting Chief Engineer and no petition to oppose the application is received, the Acting 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 \$47.09 and may be viewed free of charge at www.sdpublishnotices.com.

AFFIDAVIT OF PUBLICATION

Department of Agriculture and Natural Resources
523 E Capitol Avenue
Pierre South Dakota 57501

State of Florida, County of Orange, ss:

I, Edmar Corachia, of lawful age, being duly sworn upon oath depose and say that I am an agent of Column Software, PBC, duly appointed and authorized agent of the Publisher 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 on the following dates.

Publication Dates:

- Jul 29, 2025

NOTICE ID: v8MURVvVcCJtWOH6ROOQ

NOTICE NAME: 798B-2 The Nature Conservancy - Public Notice

TOTAL AD COST: \$85.68

Edmar Corachia

Agent

VERIFICATION

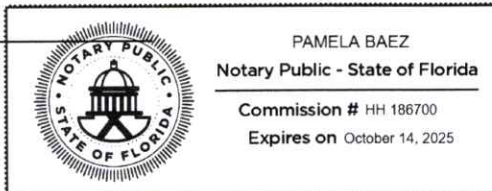
State of Florida
County of Orange

Signed or attested before me on this: 07/29/2025



Notary Public

Notarized remotely online using communication technology via Proof.



**NOTICE OF APPLICATION NO.
798B-2 to Amend Water Right
No. 798A-2**

Notice is given that The Nature Conservancy, 1101 West River Parkway, Suite 200, Minneapolis MN 55415, proposes to amend Water Right No. 798A-2 to include stock watering as beneficial use. Water Right No. 798A-2 authorizes impoundment of up to 1,319 acre-feet of water annually from Dry Creek in a storage dam located in the SW 1/4 NE 1/4 Section 13-T4S-R8E with additional diversion points in the NE 1/4 NW 1/4 Section 18; NW 1/4 SE 1/4 Section 29; to irrigate 542.5 acres in portions of Sections 18, 19, 20, and 29; all in T4S-R9E. This application proposes to amend Water Right No. 798A-2 to include stock watering with no increase to the 4.0 cfs diversion rate authorized by No. 798A-2. Water for stock watering will be provided to an area surrounding the dam at a straight-line distance of up to six miles. This site is located approximately twelve miles southeast of Hermosa SD.

Pursuant to SDCL 46-2A-2, the Acting Chief Engineer recommends APPROVAL of Application No. 798B-2 because 1) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 2) the proposed use is a beneficial use and 3) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Acting 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 Acting Chief Engineer. A petition opposing the application shall be filed on a form provided by the Acting Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Acting Chief Engineer. The Acting 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 Acting 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 August 11, 2025.

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If the applicant does not contest the recommendation of the Acting Chief Engineer and no petition to oppose the application is received, the Acting 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 July 29, 2025 for a total approximate cost of \$85.68 and may be viewed for free at www.sd-publicnotices.com)
Legal No: COL-SD-2958

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, July 23, 2025 10:52 AM
To: Matthew Naasz
Cc: Anna Applegate
Subject: 798B-2 The Nature Conservancy - Public Notice
Attachments: 798B-2 Rec.pdf; 798B-2 Ltr.pdf; 798B-2 PubNotice.pdf; Invoice_RapidCityJournal.pdf; Re: [EXT] 798B-2 The Nature Conservancy - Public Notice

Good morning,

Attached is a copy of the report, acting 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. I have also attached the email from the Rapid City Journal. Once you open the email, open the invoices PDF and you will be able to click on the link to view and pay for the notice. 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

SEP 10 2025

The Nature Conservancy
c/o Matthew E. Naasz
1101 West River Parkway, Suite 200
Minneapolis MN 55415

Dear Mr. Naasz:

Enclosed is Water Permit No. 798B-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,

Mark Mayer, PE
Director of Office of Water

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.: 798B-2

Name of Applicant: The Nature Conservancy

Date of Posting: 7/28/2025

Date of Removal: 9/10/2025



Ron Duvall, Engineer III

9/10/2025

Date

Subscribed and sworn to before me, a notary public, this 10th day of Sept, 2025.



Notary Public - South Dakota
My commission expires **May 16, 2029**



(SEAL)