

WATER PERMIT NO. 5887A-3

Name of Applicant: Koch Fertilizer LLC

Address: 4111 E 37th St N, Wichita KS 67220

Phone: 316 249-5586

Amount of Water Claimed: 0.22 cfs

Total Acres: NA

Source of Water Supply: groundwater (one existing well)

Water to be used for: commercial and industrial

County: Beadle

Type of Waste Disposal System:

Location: within Wolsey City limits

PRIORITY

Date Received: 3-3-21

Application/License Fee: \$ 100

Corrected Application Received:

Period of Annual Use: January 1 – December 31

Remarks: Amends Water Right No. 5887-3 to include year round annual use, adding industrial use, include an acre-feet amount and clarifies the location of the well and facility

Diversion Point: ²⁴
SW 1/4 NW 1/4 Sec 14-T111N-
R64W

Facility location: ²⁴
NW 1/4 SW 1/4 Sec 14-T111N-
R64W

Depth of Well: ⁴
1,230 feet deep

Well Driller:

Remarks:

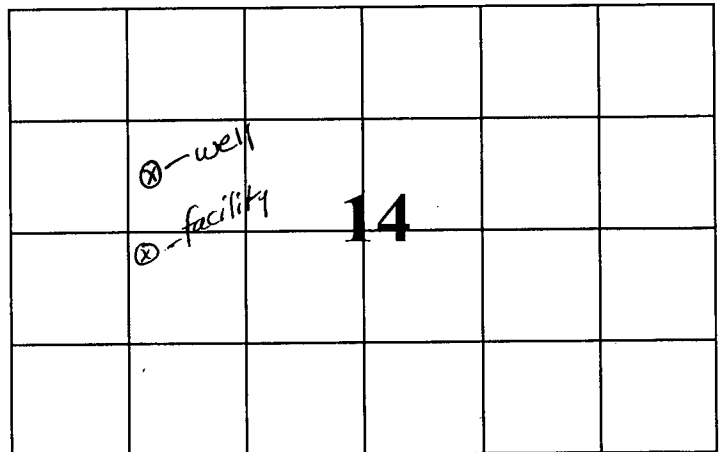
Type of Map:

Prepared by:

Reviewed and the Number Assigned on: 3-3-21

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



SOUTH DAKOTA
WATER PERMIT NO. 5887A-3

Date of first receipt of application March 3, 2021.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 5887A-3 to Koch Fertilizer LLC, c/o Clint Buss, 4111 E 37th St North, Wichita KS 67220 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. 5887A-3 amends Water Right No. 5887-3. Water Right No. 5887-3 authorizes 0.22 cubic feet of water per second (cfs) from one well completed into the Dakota Aquifer (1,240 feet deep) located in the SW 1/4 NW 1/4 Section 24-T111N-R64W for commercial use during the months of April through September. This permit authorizes changing the period of annual use to January through December, adds industrial use and includes a limitation of 9.2 acre-feet of water annually from the existing well. The existing well is located in the SW 1/4 NW 1/4 Section 24 with the facility located in the NW 1/4 SW 1/4 Section 24; all in T111N-R64W. This permit does not increase the authorized diversion rate of 0.22 cfs. This site is located within the city limits of Wolsey SD.
2. The water appropriated shall be used for the purpose of commercial and industrial 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. 5887A-3 is May 17, 2021.
5. The date from which applicant may claim right is September 22, 1995 (established by No. 5887-3).
6. One-fifth of the construction is to be completed on or before November 17, 2023.
7. All construction is to be completed on or before May 17, 2026.
8. Water is to be put to beneficial use on or before May 17, 2030.
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 well approved under Water Permit No. 5887A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well approved under this permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If the well is abandoned or the permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.

(continued)

3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota aquifer.
4. Water Permit No. 5887A-3 authorizes a total annual diversion of 9.2 acre-feet of water from the Dakota aquifer.
5. Any future replacement well shall meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. Replacement wells may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.

WATER MANAGEMENT BOARD

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

JUN 17 2021

date



RECEIVED

MAR 03 2021

SD EForm - 1585LD V5

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

PAID

MAR - 3 2021

Ck# 107493

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	(office use only)	
	No. <u>5887A-3</u>	Hydrologic Unit <u>10160006</u>
	Basin <u>James River</u>	
	Newspaper <u>Plainsman</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 _____	

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>5887-3</u>		

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

Change the annual period during which water is used to: January 1 through December 31Updated phone and email contact information1. Name to Appear on Water Permit Koch Fertilizer, LLCMailing Address 4111 East 37th Street North Wichita KS 67220
(Address) (City) (State) (Zip Code)Phone (316) 828-8705 Mobile (316) 249-5586 Email brooke.setchell@kochind.com2. Amount of water claimed 0.22 *CFS or 100 **GPM and 9.2 ***AF or 3 Million 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 Aquifer - Dakota Formation (DKOT)4. Location of point of diversion NW 1/4 SW 1/4 Section 24 T111N-R64W County Beadle
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ NoIf "Yes," where will water be used? _____
(example - NW1/4 section 12-T104N-R53W)5. County or counties where water will be used Beadle6. Annual period during which water is to be used January 1 Through December 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)

As identified above, this application seeks to amend permit # 5887-3 to allow withdraw from the existing well for the annual period of January 1 through December 31 and to change permit contact information. No changes are being sought for the volume of water authorized to be used or the place or purpose of the water use. As described in more detail in the original application dated September 22, 1995, the purpose of the water withdrawal is for commercial use.

I, Clint Buss Operations Leader - Terminals, 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.

2015-10

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)

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 ____ Provide copy of log(s), if available. Drilled by ____

For either Existing or Proposed Wells:

c) Well Depth (**required**) ____ 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)

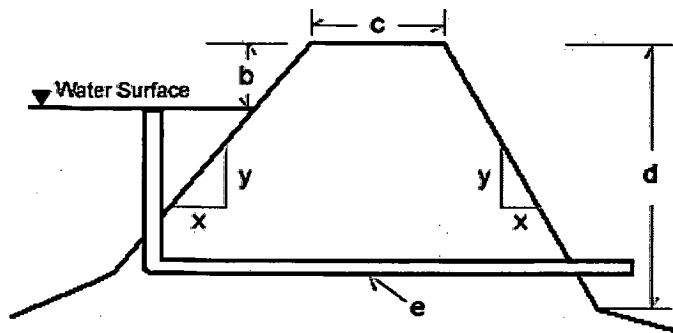
Upstream ____

Downstream ____

h) Surface Area of Impoundment ____

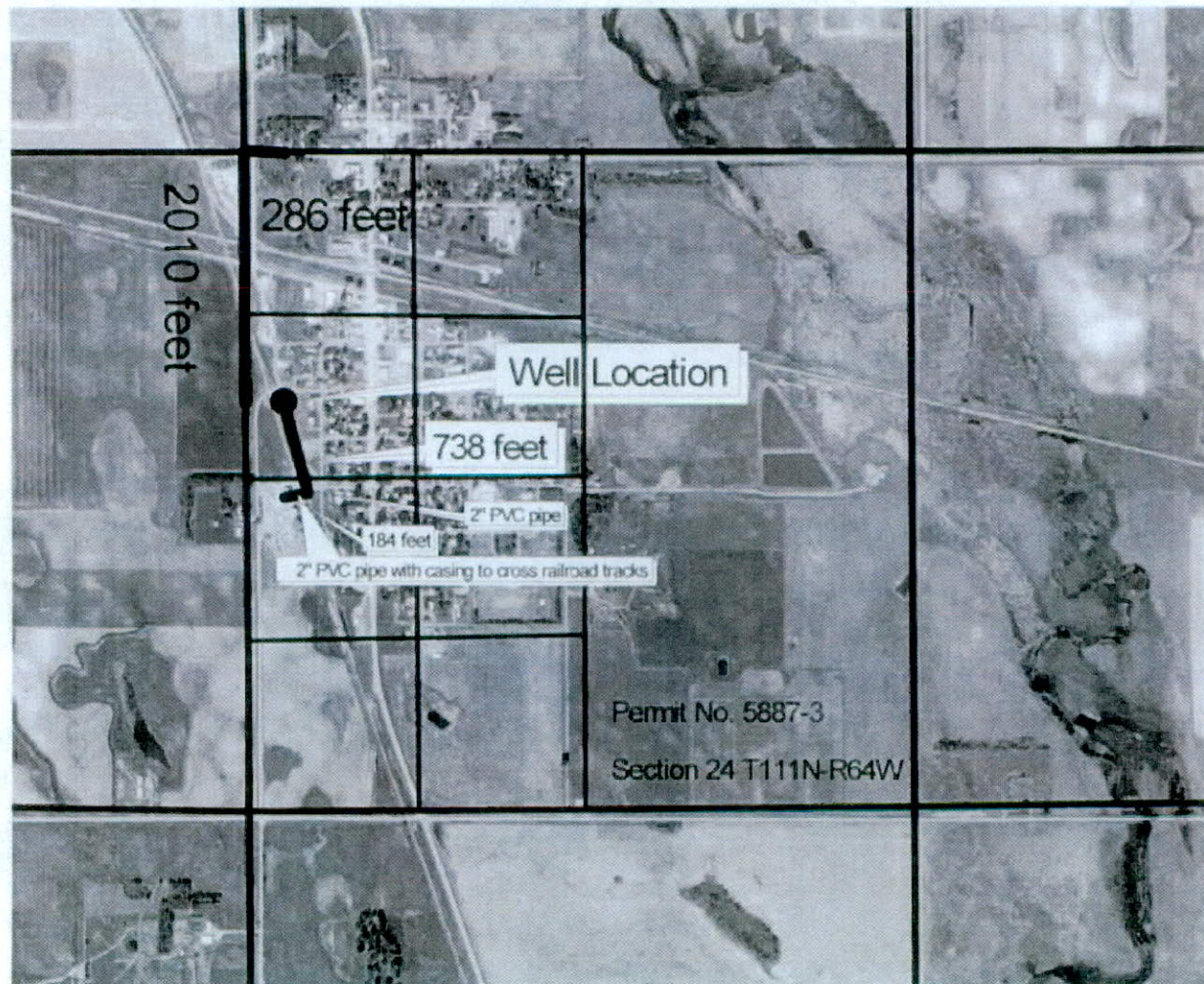
i) Storage ____ Acre Feet

j) Drainage Area Above Dam ____ Acres



07-92

Date:



Stacy J. Johnson 6-8-00

Stacy J. Johnson
Natural Resources Engineer
SD DENR Water Rights Program

5887-3



KOCH FERTILIZER, LLC

March 1, 2021

Via FedEx

South Dakota Department of Environment & Natural Resources
Water Rights Program
523 E. Capital Ave
Pierre, SD 57501-3182
(605) 773-3352

**RE: Permit to Appropriate Water – Amendment to Permit
Koch Fertilizer, LLC – Wolsey Terminal
Wolsey, South Dakota**

To whom it may concern:

Enclosed is the completed Application for Permit to Appropriate Water (Form 2) for an amendment to the annual water usage and contact information for the Koch Fertilizer, LLC Wolsey Terminal located at 400 SW Section Line Road in Wolsey, South Dakota.

If you have any questions or need additional information, please contact James VanBlaricon, Environmental Specialist at (316) 828-6226.

Sincerely,

A handwritten signature in black ink, appearing to be 'Clint Buss'.

Clint Buss
Operations Leader - Terminals

Enclosure: Form 2 – Application for Permit to Appropriate Water within the State of South Dakota
Check 107493 for Fee for Permit Amendment

316.828.5500 Tel
316.828.5787 Fax

P.O. Box 2985
Wichita, Kansas 67201-2985

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date March 3, 2021

RECEIVED OF Koch Ag & Energy LLC PO Box 2985 Wichita KS 67201

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

Fee for Application for Permit No. <u>5887A-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$100.00
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. _____	\$
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	\$100.00

By *Eric Gronlund*
Chief Engineer
um

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, April 28, 2021 1:36 PM
To: brooke.setchell@kochind.com
Subject: Water Permit Application No. 5887A-3
Attachments: 1129.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 you today.

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 5887A-3, Koch Fertilizer LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 5887A-3, Koch Fertilizer LLC, 4111 East 37th Street North, Wichita KS 67220.

The Chief Engineer is recommending APPROVAL of Application No. 5887A-3 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and, 3) it is in the public interest with the following qualifications:

1. The well approved under Water Permit No. 5887A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well approved under this permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If the well is abandoned or the permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota aquifer.
4. Water Permit No. 5887A-3 authorizes a total annual diversion of 9.2 acre-feet of water from the Dakota aquifer.
5. Any future replacement well shall meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. Replacement wells may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.

See report on application for additional information.

Eric Gronlund, Chief Engineer
April 28, 2021

REPORT ON WATER PERMIT APPLICATION NO. 5887A-3

Koch Fertilizer LLC

April 28, 2021

Koch Fertilizer LLC has filed Water Permit Application No. 5887A-3 to amend Water Right No. 5887-3. This application proposes to change the period of annual use to January through December, add industrial use, and include an appropriation limit of 9.2 acre-feet of water annually from the existing well used for Water Right No. 5887-3.

Water Right No. 5887-3 authorizes the maximum instantaneous rate of 0.22 cubic feet per second (cfs) (100 gpm) of water for the months of April through September from one well completed into the Dakota aquifer (1,240 feet deep) located in the SW ¼ NW ¼ Section 24-T111N-R64W for commercial use. This site is located in the City of Wolsey, South Dakota.

Aquifer: Dakota (DKOT)

Hydrogeology

The Dakota Formation is composed of light-brown to reddish-brown, fine-to-medium grained friable quartz, minor feldspar sandstone with interbeds of gray to dark-gray shale, thin discontinuous beds of lignite, gray silty clay with siderite pellets, medium-to coarse-grained quartz sandstone (Schoon, 1971).

The areal extent and recoverable water of the Dakota aquifer in Beadle County, SD was estimated by Hedges, Burch, Iles, Barari, & Schoon (1982) to be 800,000 acres and 18,000,000 acre-feet, respectively. The well completion report included with the application indicated yellow clay from ground surface to 30 feet, blue clay from 30 to 105 feet, shale from 105 to 815 feet, fair sand from 815 to 873 feet, shale streaks and sand from 873 to 1055 feet, fair to good sand from 1055 to 1235 feet, and shale from 1235 to 1240 feet with the well being valved indicating the water level was above ground level at the time of completion.

South Dakota Codified Law 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a 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 rights, and that the proposed use is a beneficial use and in the public interest. This application is not requesting additional water; as such, this report will focus on the potential for unlawful impairment of existing rights within the Dakota aquifer. However, review of water availability was done for thoroughness.

Water Availability

Prior to this application, the estimated average annual water use of Water Right No. 5887-3 was calculated by assuming the applicant would pump at the maximum permitted diversion rate (0.22 cfs) 60 percent of the time this equates to 95.58 acre-feet per year (ac-ft/yr). Water Permit

Application No. 5887A-3 would limit the annual appropriation to 9.2 ac-ft/yr resulting in a large reduction to the estimated average annual water usage. Therefore, this application will be limited to less than 10 percent of the standard estimated usage calculated by the Water Rights Program.

Observation Well Data

In determining the availability of unappropriated water for a permit application, Administrative Rule of South Dakota (ARSD) 74:02:05:07 requires the Water Management Board to rely on the record of observation well measurements, in addition to other data, to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer.

The DENR-Water Rights Program monitors 46 observation wells completed into the Dakota aquifer (Water Rights, 2021c). Observation wells provide data on how the aquifer reacts to regional climatic conditions and local pumping. The nearest observation well that can be used for analysis is HD-87A (approximately 16 miles southwest) (Figure 1). Over the period of record observation well, HD-87A has had a decline in hydraulic head of approximately 22 feet (Water Rights, 2021c).

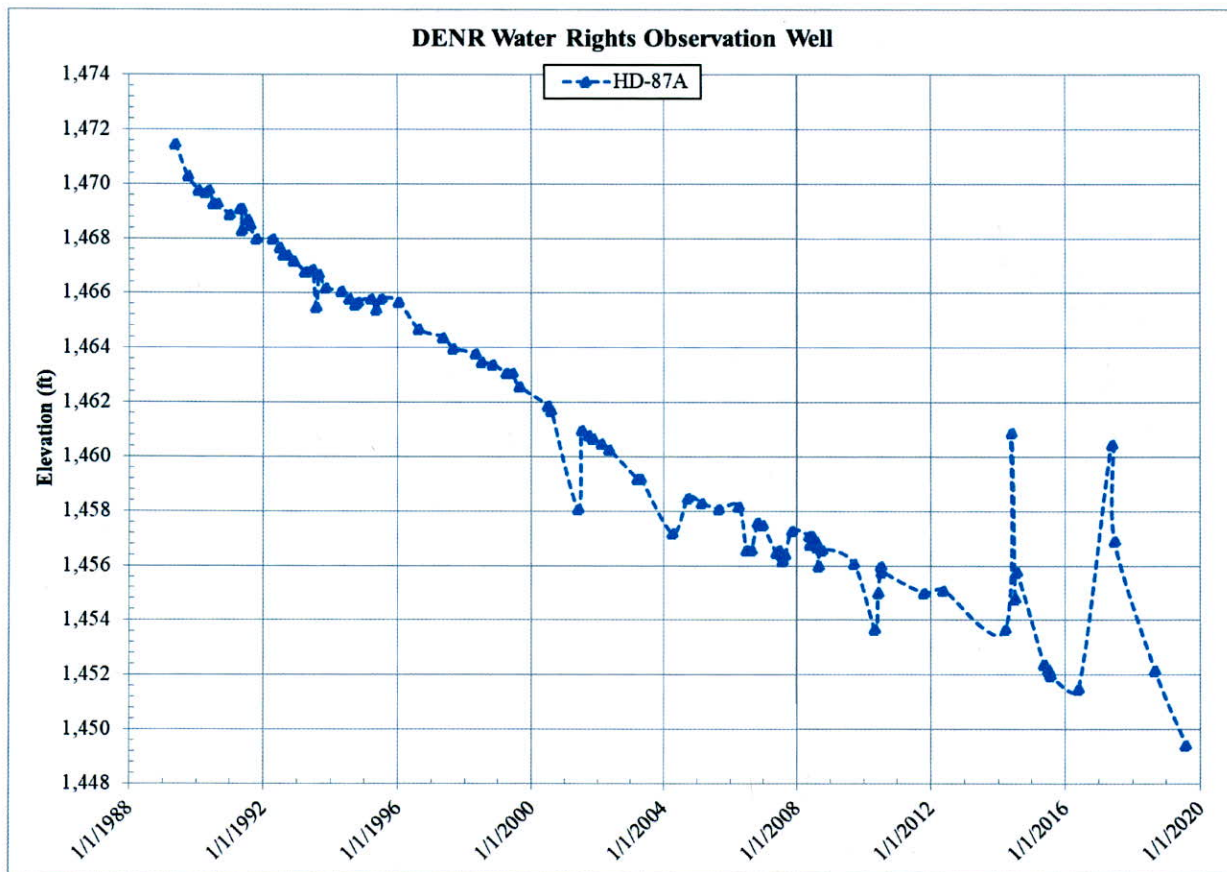


Figure 1: Hydrograph for Observation Well HD-87A (approximately 16 miles southwest) (Water Rights, 2021c).

appropriation pursuant to SDCL 46-6-3.1 (Water Rights, 1987). Observation well data indicates that there is a reasonable probability unappropriated water is available from the Dakota aquifer (Water Rights, 2021c). By allowing unappropriated water to go to beneficial withdrawals, the pressure in the uncontrolled flowing wells is lowered, thus reducing the amount of water flowing to waste.

Potential For Unlawful Impairment Of Existing Water Rights

Currently, there are 241 water rights/permits appropriating water from the Dakota aquifer (Water Rights, 2021a). There are 2 water rights/permits completed into the Dakota aquifer within approximately 9 miles of the proposed diversion point, with the nearest two being Water Rights Nos. 508-3 and 645-3 for the City of Wolsey, located approximately 0.25 miles to the north of the proposed diversion point (Figure 3). The City of Wolsey is served by Mid-Dakota Rural Water, and the Dakota aquifer wells are used as a backup water supply (DANR, 2021).

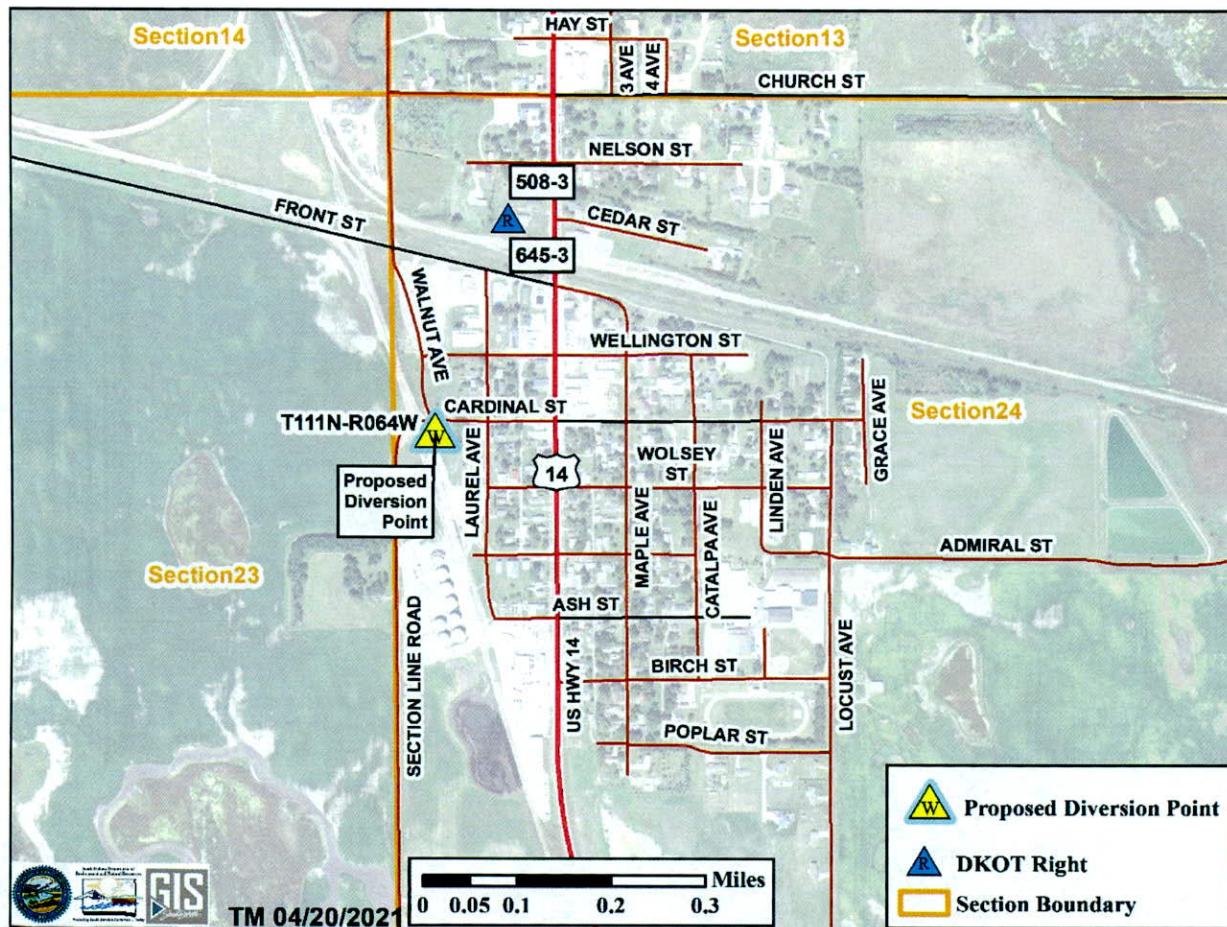


Figure 3: Map showing the proposed diversion point and nearby water rights/permits completed into the Dakota aquifer (DKOT) (Water Rights, 2021a).

The Dakota aquifer is confined in this area, so drawdown from pumping the aquifer can extend over a fairly large area. In the vicinity of the proposed diversion points, the Dakota aquifer is confined and is expected to be at or above ground surface at the proposed diversion point (South

Dakota Geological Survey, 2021; Water Rights, 2021a; Water Rights, 2021b). Considering that the City of Wolsey uses their wells for standby purposes and the next nearest water right/permit completed into the Dakota aquifer is approximately 9 miles, and Water Right No. 5887-3 has been in place since 1996 with no complaints of well interference and is limited to an annual volume much less than the average annual volume previously estimated, there is a reasonable probability that drawdown created from the proposed diversion will not unlawfully impair nearby adequate wells.

An adequate well has been defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) 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.”

SDCL 46-6-6.1 does not protect artesian head pressure as a means of delivery, and in the past, the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur (Water Rights, 1995). Given the artesian head pressure of the Dakota aquifer, the fact that the City of Wolsey uses their wells for standby purposes and the next nearest water right/permit completed into the Dakota aquifer is approximately 9 miles from the proposed diversion point, that the diversion point for Water Right No. 5887-3 has been in place since 1996 with no complaints of well interference, and the fact that if this application is approved will reduce the average annual volume to 9.2 ac-ft/yr from an estimated average annual volume of 98.74 ac-ft/yr, well interference from this proposed diversion is not expected to unlawfully impair nearby adequate wells. Therefore, there is a reasonable probability that any interference created by pumping for this proposed appropriation will not be unlawful.

Special Consideration: Declining Hydraulic Head

As the Dakota aquifer is a confined aquifer, the hydraulic head causes the water within the aquifer to rise above the top of the aquifer. In the late 1800s, wells began being completed into the Dakota aquifer, and a decline in the aquifer's hydraulic head occurred whenever a flowing well was drilled and not properly controlled. These uncontrolled wells create a release of pressure contained within the aquifer. This decline has caused some concern on whether the Dakota aquifer withdrawals have exceeded the recharge to the aquifer. The Water Management Board has previously and carefully considered the declining hydraulic head in the Dakota aquifer. In the deliberation and approval of Water Permit No. 5136-3, for Farmland Industries Inc, the Water Management Board approved the findings of facts and conclusions of law containing the following summarized points (Water Rights, 1987):

- The estimated average annual recharge to the Dakota aquifer is not likely to be quantified in the near future.
- Determination of whether the withdrawals exceed the estimated average annual recharge cannot be determined solely by a decline in the hydraulic head.

- SDCL 46-6-6.1 does not require the artesian head to be protected; however, the Board must consider the effect of a limitation or loss of artesian head as one of the factors under the public interest determination.
- The decline in the hydraulic head in the Dakota aquifer has been primarily due to water being discharged through uncontrolled flowing wells.
- "Water discharged from uncontrollable flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1."
- That it is in the public interest to appropriate water rather than allow the water to be discharged by uncontrollable flowing wells.
- That it is not in the public interest to deny a water permit application when the effects of the withdrawal will not be measurable and will not have a significant effect upon the decline or stabilization of the hydraulic head in the Dakota aquifer.

Special Consideration: Well Construction

The alternative well construction method for certain Dakota aquifer wells (ARSD 74:02:04:35) is not permitted for any well with uses other than reasonable domestic use and non-commercial livestock use. Any new or replacement well constructed for this application, if it is approved, must be constructed to meet the definition of an adequate well as set forth in ARSD 74:02:04:20(6) and using the construction method required by ARSD 74:02:04:28.

Conclusions

1. Water Right No. 5887-3 authorizes the maximum instantaneous rate of 0.22 cubic feet per second (cfs) (100 gpm) of water for the months of April through September from one well completed into the Dakota aquifer (1,240 feet deep) located in the SW ¼ NW ¼ Section 24-T111N-R64W for commercial use. This site is located in the City of Wolsey, South Dakota.
2. Water Permit Application No. 5887A-3 seeks to amend Water Right No. 5887-3. This application proposes to change the period of annual use to January through December, add industrial use, and include an annual appropriation of 9.2 acre-feet of water from the existing well used for Water Right No. 5887-3.
3. There is a reasonable probability that the diversion proposed by this application will not unlawfully impact adequate wells for existing water rights and domestic use.
4. Any new or replacement well constructed for this application, if it is approved, must be constructed to meet the definition of an adequate well as set forth in ARSD 74:02:04:20(6) and using the construction method required by ARSD 74:02:04:28.



Timothy Magstadt

Natural Resources Engineer II

SD DANR – Water Rights Program

References

- DANR. (2021, February 3). *Drinking Water System Information*. Retrieved from South Dakota DENR: <https://denr.sd.gov/des/dw/sysinfo.aspx#C>
- Hedges, L. S., Burch, S. L., Iles, D. L., Barari, R. A., & Schoon, R. A. (1982). *Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa*. Department of Water and Natural Resources, Office of Geological Survey.
- Schoon, R. A. (1971). *Geology and Hydrology of the Dakota Formation in South Dakota; Report of Investigations No. 104*. Vermillion, South Dakota: South Dakota Geological Survey.
- South Dakota Geological Survey. (2021). *Lithologic Logs Database*. Akeley-Lawrence Science Center, Vermillion, SD. SD DENR-Geological Survey.
- Water Rights. (1987). *Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 5136-3, Farmland Industries Inc of Huron, SD*. DENR-Water Rights Program file for Water Right No. 2313-2. Pierre, SD.
- Water Rights. (1995). *Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of the Black Hills*. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. (2021a). *Water Right/Permit Files*. Joe Foss Bldg., Pierre, South Dakota.: SD DENR-Water Rights Program.
- Water Rights. (2021b). *Well Completion Report Files*. Joe Foss Bldg., Pierre, South Dakota.: SD DENR-Water Rights Program.
- Water Rights. (2021c). *Observation Well Database*. Joe Foss Bldg., Pierre, South Dakota.: SD DENR-Water Rights Program.

Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402

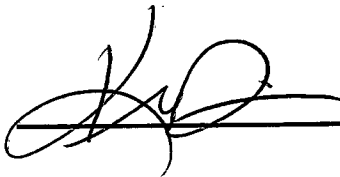
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JUN 01 2021

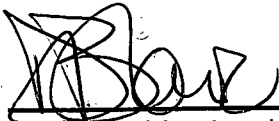
WATER RIGHTS
PROGRAM

Legal Notice Number: 0853

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: SN ENVIRONMENTAL & NATURAL- KOCH, was published for one day, in said newspaper and not in any supplement of the said newspaper, the publication was on - 5/5/21. That the full amount of the fee charged for the publishing \$ 33.86 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.



Subscribed and sworn to me before this date 5/26/21.



Notary Public, South Dakota

My Term Expires 03/11/2022

NOTICE OF
APPLICATION NO.

5887A-3

TO AMEND WATER
RIGHT NO. 5887-3

Notice is given that Koch Fertilizer LLC, c/o Clint Bass, 4111 East 37th St North, Wichita KS 67220 has filed an application to amend Water Right No. 5887-3. Water Right No. 5887-3 authorizes 0.22 cubic feet of water per second (cfs) from one well completed into the Dakota Aquifer (1,240 feet deep) located in the SW 1/4 NW 1/4 Section 24-T11N-R64W for commercial use during the months of April through September. This application proposes change the period of annual use to January through December, add Industrial use and include a limitation of 9.2 acre-feet of water annually from the existing well. The existing well is located in the SW 1/4 NW 1/4 Section 24 with the facility located in the NW 1/4 SW 1/4 Section 24; all in T11N-R64W. This application, if approved, does not increase the authorized diversion rate of 0.22 cfs. This site is located within the city limits of Wolsey SD.

Pursuant to SDCL 45-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5887A-3 with qualifications because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.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 or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by May 17, 2021.

The petition may be informal but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

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.

No. 0853 (adv.)
Published once at the total approximate cost of \$33.86

RECEIVED

JUN 01 2021

WATER RIGHTS
PROGRAM

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, April 28, 2021 1:30 PM
To: 'rcrandall@plainsman.com'
Subject: 5887A-3, Koch Fertilizer LLC
Attachments: 5887A-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on May 5, 2021

Koch Fertilizer LLC, c/o Clint Bass, 4111 E 37th St North, Wichita KS 67220 (316 828-8705) 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

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

April 28, 2021

Koch Fertilizer LLC
c/o Clint Bass
4111 East 37 St N
Wichita KS 67220

Dear Mr. Bass

Water Permit Application No. 5887A-3 for commercial and industrial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Plainsman printed at Huron SD (Ph # 605 353-7414). 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. 5887A-3
TO AMEND WATER RIGHT NO. 5887-3

Notice is given that Koch Fertilizer LLC, c/o Clint Bass, 4111 East 37th St North, Wichita KS 67220 has filed an application to amend Water Right No. 5887-3. Water Right No. 5887-3 authorizes 0.22 cubic feet of water per second (cfs) from one well completed into the Dakota Aquifer (1,240 feet deep) located in the SW 1/4 NW 1/4 Section 24-T111N-R64W for commercial use during the months of April through September. This application proposes change the period of annual use to January through December, add industrial use and include a limitation of 9.2 acre-feet of water annually from the existing well. The existing well is located in the SW 1/4 NW 1/4 Section 24 with the facility located in the NW 1/4 SW 1/4 Section 24; all in T111N-R64W. This application, if approved, does not increase the authorized diversion rate of 0.22 cfs. This site is located within the city limits of Wolsey SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5887A-3 with qualifications because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use, and 3) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.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 or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by May 17, 2021.

The petition may be informal but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

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__



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

JUN 17 2021

Koch Fertilizer
c/o Clint Buss
4111 E 37th St North
Wichita KS 67220

Dear Mr. Buss:

Enclosed is Water Permit No. 5887A-3 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

RECEIVED

JUL 09 2021

WATER RIGHTS
PROGRAM

KOCH FERTILIZER, LLC

July 8, 2021

Via FedEx

South Dakota Department of Agriculture and Natural Resources
Water Rights Program
523 E. Capital Ave
Pierre, SD 57501-3181

**RE: Notice of Completion of Works and Application of Water to Beneficial Use
Koch Fertilizer, LLC – Wolsey Terminal
Wolsey, South Dakota**

To whom it may concern:

Enclosed is the completed Notice of Completion of Works and Application of Water to Beneficial Use (Form 10) for Water Permit 5887A-3 for the Koch Fertilizer, LLC Wolsey Terminal located at 400 SW Section Line Road in Wolsey, South Dakota.

If you have any questions or need additional information, please contact James VanBlaricon, Environmental Specialist at (316) 828-6226.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Clint Buss'.

Clint Buss
Koch Fertilizer, LLC
Operations Leader - Terminals

Enclosure: Form 10 – Notice of Completion of Works and Application of Water to Beneficial Use

RECEIVED

JUL 09 2021

WATER RIGHTS
PROGRAM

Form 10

NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USEDate July 9, 2021TO: Water Rights Program, DANR
523 E. Capitol
Pierre, SD 57501-3181FROM: Koch Fertilizer, LLC, Clint Buss, Operations Leader - Terminals

(name)

4111 E. 37th St. North

(address)

Wichita, KS 67220

(city, state, zip)

(316) 828-6703

(phone)

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

Water Permit No. 5887A-3 states that the water use system is to be constructed by
May 17, 2026 and water is to be put to beneficial use by May 17, 2030
(date) (date)

The water use system was completed on September 22, 1995 (established by No. 5887-3)
(date)

Applying the water to beneficial use was completed on September 22, 1995
(date)

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



(signature)





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

July 12, 2021

5887A-3

Clint Buss
Koch Fertilizer LLC
4111 E 37th St N
Wichita KS 67220

Dear Mr. Buss:

I am writing to acknowledge receipt of the "Notice of Completion of Works" form that you sent in to let us know that you are completed with the water use system authorized under Water Permit No. 5887A-3.

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

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

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

5887-3/5887A-3



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 15, 2023

5887-3
5887A-3

Wilbur-Ellis LLC
c/o Shawn Wetterau
345 California St 27th Floor
San Francisco CA 94104

Dear Mr. Wetterau:

I have received your "Notice of Transfer of Ownership" form and the required fees for Water Right No. 5887A-3. Enclosed is a copy of the Right and receipt of payment for your records.

Water Right No. 5887A-3 previously owned by Koch Fertilizer is now listed under Wilbur-Ellis LLC. I have also updated your contact information in our system.

For your information SDCL 46-6-27 requires that if in the future, the owner of an existing well, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

As a reminder, so long as you use the water beneficially, as stated in the Water Permit, State Water Laws provide that you have a continuing right to use the water. Should the water not be put to beneficial use for a period longer than 3 consecutive years, without legal excuse, the Permit will be subject to cancellation.

If you have any questions, please contact me.

Sincerely,

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 5887A-3

(1) Koch Fertilizer LLC; 4111 E 37th St, North Wichita KS 67220, made Application No. 5887A-3, March 31, 2021, for a water permit to amend Water Right No. 5887-3 for the addition of industrial use, an extension of annual use from January through December, and the inclusion of a limitation of 9.2 ac-ft of water annually, from the existing well. Permit No. 5887A-3, with a priority date of September 22, 1995 (established by Right No. 5887-3) was approved May 17, 2021, and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 17, 2026, and for the application to beneficial use of water on or before May 17, 20230.

Water Right No. 5887-3 authorized the diversion of 0.22 cubic feet of water per second from groundwater, one well (Dakota Aquifer), for commercial use. The applicable portions of Water Right No. 5887-3 are now incorporated into Right No. 5887A-3.

(2) It is certified that the permit holders have complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 0.22 cubic feet of water per second for beneficial use. The location of the diversion point is:

- 2,010 ft S & 286 ft E of the NW corner of Section 24, T111N, R64W (SW $\frac{1}{4}$ NW $\frac{1}{4}$)
(Latitude 44.40887 Longitude -98.47759)

(3) The permit holders have complied with the provisions of South Dakota State Law relating to the application of water to beneficial use.

(4) Pursuant to South Dakota Water Law 46-5-30.1 Koch Fertilizer LLC, the holders and/or owners of Water Right No. 5887A-3 is issued a license to appropriate water, the right to use 0.22 cubic feet of water per second from groundwater, one well (Dakota Aquifer), with a priority date of September 22, 1995, from the location specified in (2) of this license for commercial and industrial purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 5887A-3 and subject to the following qualifications:

1. The well approved under Water Permit No. 5887-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Water Right, shall control their withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well approved under Permit No. 5887-3 shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If the well is abandoned, or the Water Right cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
3. The Water Right holder shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota Aquifer.

continued

4. Water Right No. 5887A-3 authorizes a total annual diversion of 9.2 acre-feet of water from the Dakota Aquifer.
5. Any future replacement well shall meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. Replacement wells may not be constructed using alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.

Eric Gronlund

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

AUG 15 2023
date



Received 8/14/23

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

Mail to: SD DANR, Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 5887A-3

Date: 8-14-2023

I/We request that Water Right/Permit No. 5887A-3 formerly owned by:
Koch Fertilizer be transferred to:

New Owner Name: Wilbur-Ellis LLC
Address: 345 California Street, 27th Floor mobile: 4064039545
City, State, Zip San Francisco, CA, 94104 email: swetterau@wilburellis.com

Title to the following described land(s)/property has been transferred as described above:

Parcel 1: 260' OF E 200' EXC THEREFROM THE N 90' THERE OF IN SE4 WOL LAND
Parcel 2: LOT A OF LARSEN'S ADDN A SUBD OF SW4 WOL LANDS & OUTLOTS #1
Parcel 3: LOT B OF LARSEN'S ADDN A SUBD OF SW4 WOL LANDS & OUTLOTS #1
Parcel 4: PLAT OF LOT 3 OF LARSEN ESTATES IN SW4 24-111-64 TOWN OF WOLSEY

☒ I understand that the validity of Water Right/Permit No. 5887A-3 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Wilbur-Ellis LLC, the new owner, certify that the above information is true and correct.

Shawn Wetterau
Shawn Wetterau (Aug 14, 2023 08:10 MDT)
(signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five-year construction period has expired. Once a water permit is developed, an inspection is conducted to issue a water right license for the project as developed. A water permit/right may be cancelled for one or more of the following reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three-year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Agriculture and Natural Resources

Date August 15, 2023

RECEIVED OF Wilbur-Ellis LLC c/o Shawn Wetterau 345 California St (Floor 27) San Francisco CA 94104

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$ _____
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. _____	\$ _____
Fee for Filing Transfer Form <u>5887A-3</u>	<u>\$50.00</u>
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>\$50.00</u>

By Eric Gronlund
Chief Engineer
EM