

WATER PERMIT NO. 7700-3

Name of Applicant: David W Huber

Address: 28419 431 Ave, Menno SD 57045 Phone: 605 222-5564

Amount of Water Claimed: 2.22 cfs Total Acres: 160

Source of Water Supply: groundwater (one well)

Water to be used for: irrigation County: Hutchinson

Type of Waste Disposal System:

Location: 2 miles north of Menno

PRIORITY Date Received: 2-14-13 Application/License Fee: \$ 1050

Corrected Application Received: Period of Annual Use: April 1 – September 30

Remarks:

Diversion Point: SW 1/4 SW 1/4 Sec 27-T98N-R57W

Land to be Irrigated: SW 1/4 Sec 27-T98N-R57W

Depth of Well: 140 feet deep

Well Driller: Thein Well

Remarks:

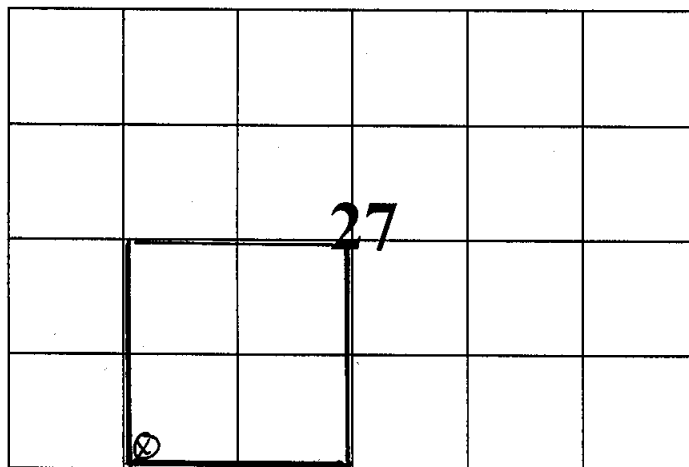
Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 2-21-13

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



FORM 2: Application for irrigation in South Dakota

(type or print)

Mail to:
PMB 2020
DENR - Water Rights
523 E Capitol Ave
Pierre, SD 57501-3182
ph. (605) 773-3352

No. 7700-3 (office use only)
Hydrologic Unit 10160811
Basin James River 605-387-5158
Newspaper Hutchinson Herald Box 506 Menno 57045
605-665-7811
Press & Dakotan 319 Walnut Yorkston 57078

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Application For Permit To Appropriate Water For Irrigation

Type of Application: ☒ New ☐ Vested Right ☐ Amendment/Correction to Permit No. _____
(Use predates Mar 2, 1955)

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

1. Name to Appear on Irrigation Permit David W. Huber

(check one) ☒ Owner ☐ Tenant/lessee ☐ Owner's Legal Agent

(name and complete address if different than above name)

Mailing Address 28419 431 ave. Menno SD 57045
(Address) (City) (State) (Zip Code)

Home Phone 605-387-5384 Cell 605-222-5564 Email skyhawk5346@hotmail.com

2. Amount of water claimed 2.22 *CFS or 1000 **GPM ***AF Total Acreage 160
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply 1 well

4. Location of point of diversion 1 well in the SW corner of the SW 1/4 Section 27 T98N R57W (SW 1/4 SW 1/4)
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

County Hutchinson

5. County or counties where water will be used Hutchinson

6. Annual period during which water is to be used April-September 30

7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
SW 1/4 Section 27 T98N R57W	160		

8. Give a description of the project. (Attach sheet if more space is needed)

Drill 1 well approximately 140' Deep in the Niobrara aquifer and install center pivot irrigation system

I, David W. Huber, the applicant, certify that I have read this application, have examined the attached map, and that the matters stated are true.

SOUTH DAKOTA
WATER PERMIT NO. 7700-3

Date of first receipt of application February 14, 2013.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 7700-3 to David W Huber, 28419 431st Ave, Menno SD 57045 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. 7700-3 appropriates 2.22 cubic feet of water per second from one well to be completed into the Niobrara Aquifer (140 feet deep) located in the SW 1/4 SW 1/4 Section 27 to irrigate 160 acres located in the SW 1/4 Section 27; all in T98N-R57W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – September 30.
3. The date from which applicant may claim right is February 14, 2013.
4. The date of approval of Permit No. 7700-3 is May 13, 2013.
5. One-fifth of the construction is to be completed on or before November 13, 2015.
6. All construction is to be completed on or before May 13, 2018.
7. Water is to be put to beneficial use on or before May 13, 2022.
8. 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 this Permit 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 his 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 authorized by Permit No. 7700-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: 
Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

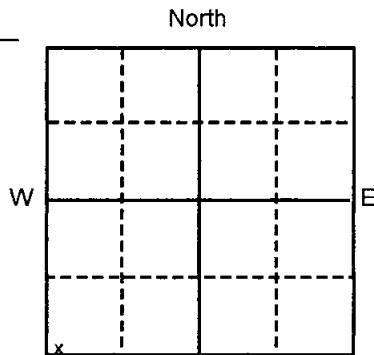
JUN 20 2013

date



SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SW 1/4 SW 1/4 Sec 27 Twp 98 Rg 57WCounty HUTCHINSONPlease mark well
location with an "X"

Well Completion Date

March 21, 2013

1 Mile

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

1,770.0 ft. from SEPTIC TANK (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Reverse Rotary

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	<u>16.00</u> IN	<u>0.0</u> FT	<u>80.0</u> FT	<u>22.00</u> IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Bentonite</u>	<u>20</u>	<u>9.5</u> Lb/gal	<u>0.0</u> Ft	<u>80.0</u> Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
Tremie Method

SCREEN:

☐ Perforated pipe ☒ Manufactured
Diameter 16.00 InchesLength 60.0 FeetMaterial PVCSlot Size .080 Set From 80.0 Feet to 140.0 Feet

Other information

WAS A PACKER OR SEAL USED? ☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How?☒ No, Why Not? Not RequiredLab to which water
quality sample sent for analysisWell Owner: David Huber

Business Name:

Address: 28419 431 AvenueCity, State, Zip: Menno SD 57045

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top Soil	0	2
Brown Silty Sandy Clay	2	28
Fine Gray Sand	28	50
Loose Fine Sand	50	54
Hard Fine Sand	54	65
Coal Very Hard	65	67
Hard Sandy Clay w/ Coal & Glacial Til	67	81
Gray Chalk	81	140

STATIC WATER LEVEL 4.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe:☐ Bailed☐ Other

Pumping Level Below Land Surface

72.0 Ft. After 2.0 Hrs. pumped 850.0 GPM116.0 Ft. After 4.0 Hrs. pumped 950.0 GPM

If pump installed, pump rate: _____ GPM

REMARKS

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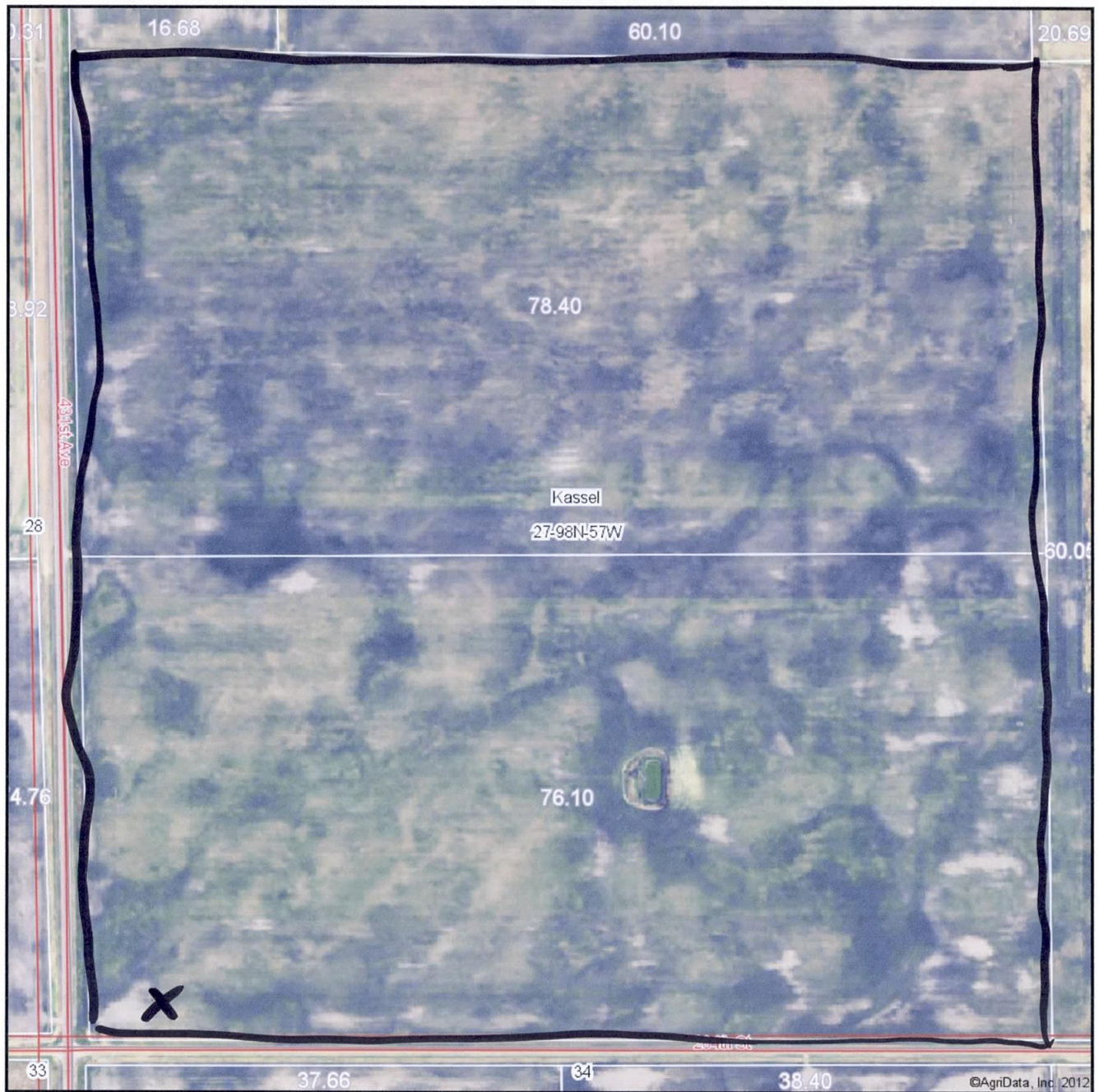
WATER RIGHTS
PROGRAMThis well was drilled under license # 666 and this report is true and accurate.Drilling firm: Hammond-Wetmore Drilling, LLC

Signature of License Representative:

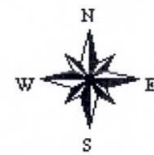
Signature of Well Owner or Equitable Property Holder:

Date: 4/11/13

Aerial Map



Maps provided by:

©AgriData, Inc. 2013
www.AgriDataInc.com**27-98N-57W**
Hutchinson County
South Dakotamap center: 43° 16' 25.97, 97° 34' 25.94
scale: 5015

2/12/2013

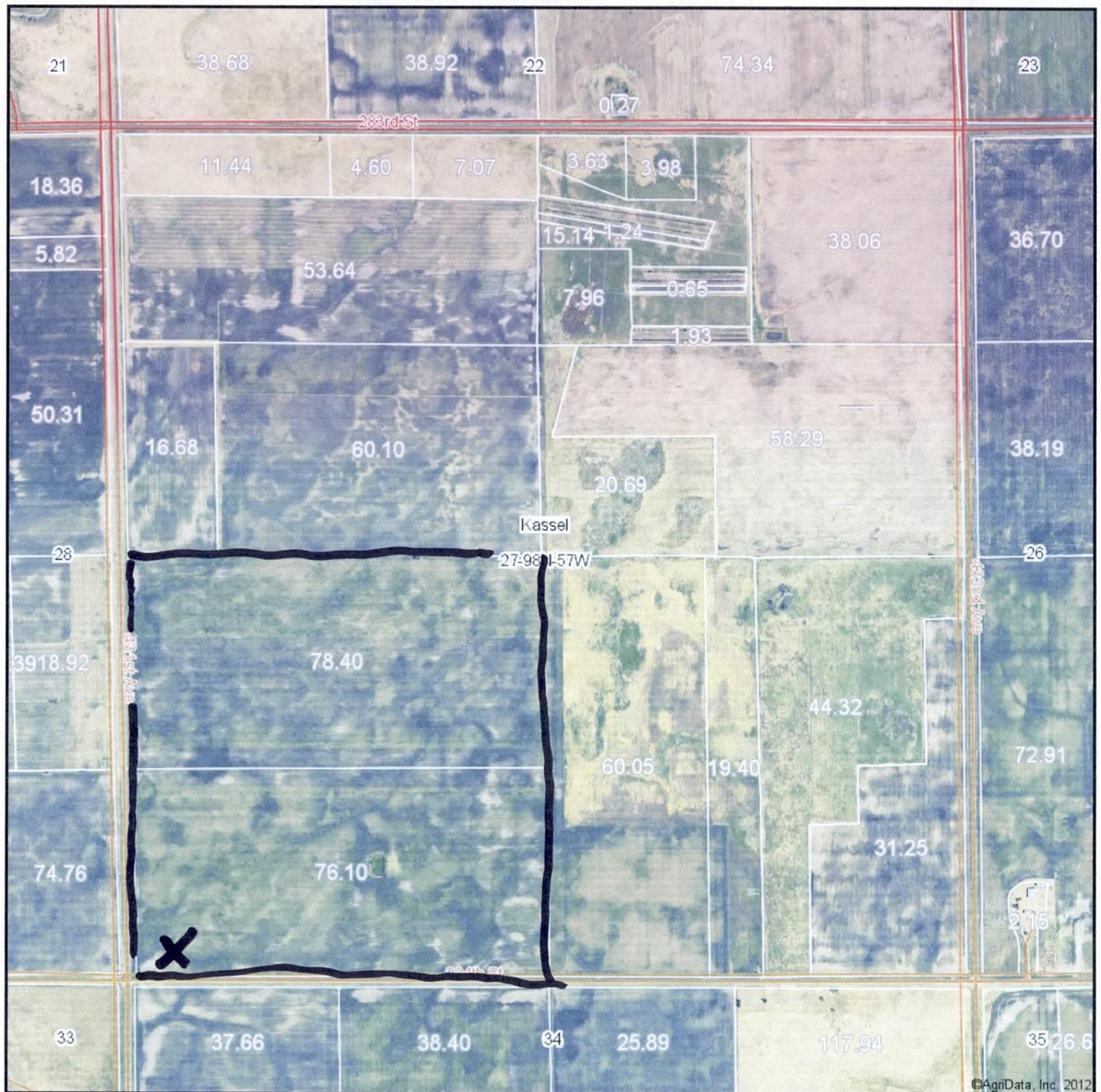
Field borders provided by Farm Service Agency as of 5/21/2008. Aerial photography provided by Aerial Photography Field Office.

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Aerial Map



Maps provided by:



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www.AgriDataInc.com

27-98N-57W
Hutchinson County
South Dakota

map center: 43° 16' 38.96, 97° 34' 7.52
scale: 11701



2/12/2013

Field borders provided by Farm Service Agency as of 5/21/2008. Aerial photography provided by Aerial Photography Field Office.

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THEIN WELL

P.O. BOX 778, 11355 HWY. 71 NE (ACROSS FROM RINGO LAKE)
SPICER, MINNESOTA 56288 • (320) 796-2111
www.theinwell.com • E-mail: theinwell@tds.net

WELLS ~ PUMPS
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Well Log for Dave Huber

Test Hole #1 - 2 miles North of Menno, ¼ mile East, South side of road

Date: 09/17/07

Well Size:

Casing Length:

Screen Length:

Total Well Depth:

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Geological Material	Color	Hardness or Formation	From	To
Dirt	Black		0	3
Clay	Brown		3	22
Clay	Blue		22	45
Clay w/gravel	Blue	Hard	45	57
Sand		Fine	57	58
Clay	Blue		58	59
Sand		Fine	59	62
Clay	Blue		62	63
Sand & gravel			63	66
Clay	Gray		66	95
Chalk			95	164
Shale			164	200

CLARA CITY, MN 56222 (320) 847-3207 • MONTICELLO, MN 55362 (763) 271-4200 • ROCHESTER, MN 55906 (507) 288-5554

MEMBER
NGWA

CERTIFIED MASTER WATER WELL CONTRACTOR
Equal Opportunity Employer

MEMBER
AWWA

**WATER RIGHTS
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WELL LOG SUPPLEMENT

Date: 11/2/12
Name: Dave Huber Phone Number: _____
Address: _____
City: _____ State: _____ Zip: _____

Legal Description: Sect 27
NW 1/4 of the SW 1/4 of Section 27 Township 98N North
Range 57W East [] West [] County

Latitude Degree: 43 Minute: 27 Second: 33.92
Longitude Degree: -97 Minute: 57 Second: 49.46 (NAD 83)

The well is 1202' feet from the (N ☐ S ☒) section line and 1087' feet from the (E ☐ W ☒) section line.

[illegible]

307 S. Robinson Ave. Hartington, NE 68739
Phone: (402)254-2568 Fax: (402)-254-2597
Email: heineelectric@hartel.net



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WATER RIGHTS
PROGRAM

Date: 1/2/12 PROGRAM
Name: Dave Huber Phone Number: _____
Address: _____

City: _____ State: _____ Zip: _____

**Farm - Residential
Sales - Service**

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 2/14, 20 13

RECEIVED OF David Huber 28419 431st Ave Menno SD 57045

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

Fee for Application for Permit No. <u>7700-3</u> to Appropriate Water, to construct and to put water to beneficial use	850	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. <u>7700-3</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	1050	00

No. 06125

By

Julia E. Eide
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7700-3, David W Huber**

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. 7700-3, David W Huber, 28419 431 Avenue, Menno SD 57045.

The Chief Engineer is recommending APPROVAL of Application No. 7700-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Water Permit No. 7700-3 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 his 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 authorized by Permit No. 7700-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 22, 2013

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 7700-3
David W. Huber
MARCH 25, 2013

Water Permit Application No. 7700-3 proposes to appropriate 2.22 cubic feet of water per second (cfs) from one well to be completed into the Niobrara aquifer. The well will be located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27 and will irrigate 160 acres located in the SW $\frac{1}{4}$ Section 27; all in T98N-R57W in Hutchinson County.

AQUIFER: Niobrara (NBRR)

GEOLOGY AND AQUIFER CHARACTERISTICS:

The Niobrara formation is a fractured, calcareous marl and claystone that is referred to as “chalkrock” by local drillers (Lindgren and Hansen, 1990). The aquifer underlies 729 square miles of Hutchinson and Turner Counties, and contains an estimated 6.998 million acre feet of water in storage (Lindgren and Hansen, 1990). There are three noncontiguous portions of the Niobrara in Hutchinson County; these are separated by bedrock channels that contain the Choteau, Lower James-Missouri, and Upper Vermillion-Missouri aquifers (Lindgren and Hansen, 1990). The proposed well is located within Area C of the aquifer as defined by Lindgren and Hansen (1990), a map of this area is included as Figure 1.

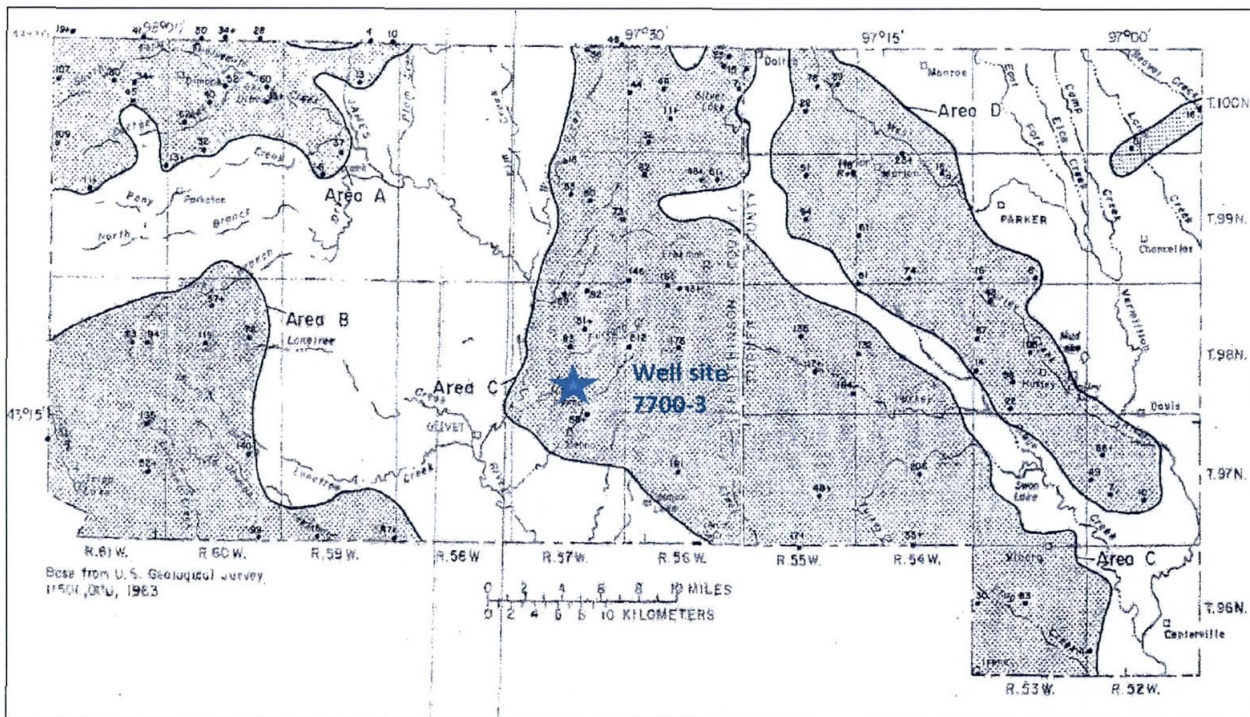


Figure 1. Location of Niobrara aquifer, Area C, as defined by Lindgren and Hansen (1990).

The aquifer within this area generally lies below glacial till or Pierre Shale, and overlies the Carlile Shale or Sioux Quartzite (Lindgren and Hansen, 1990). The aquifer receives recharge through direct infiltration of rainfall on outcrop areas, leakage from till, and possibly from fractures in the Sioux

Quartzite (Lindgren and Hansen, 1990). The aquifer is generally under confined (artesian) conditions, and appears to be under artesian conditions in the area of the proposed well.

Test hole information submitted with Water Right Application No. 7700-3 indicates an aquifer thickness of approximately 65 feet. The top of the aquifer materials are expected to be found at an elevation of approximately 1240 - 1290 feet above mean sea level (fmsl).

SDCL 46-2A-9:

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will review the availability of unappropriated water and existing rights within the Niobrara aquifer, Area C of the aquifer as defined by Lindgren and Hansen (1990).

WATER AVAILABILITY:

The application proposes to appropriate from the Niobrara aquifer in Area C delineated by Lindgren and Hansen (1990). The actual water use, if the application is approved, will most likely be less than 320 acre-feet/year. The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.

Recharge versus Discharge:

Recharge:

Recharge to the Niobrara aquifer in Area C occurs through infiltration of precipitation falling on outcrop areas, leakage from the overlying till, and possibly from fractures in the Sioux Quartzite (Lindgren and Hansen, 1990). Recharge may also be provided by other aquifers in the area, such as the Lower James-Missouri or Turkey Ridge. Estimated recharge rates are not available for the Niobrara aquifer. Hedges and others (1985) stated,

"The Niobrara Formation, Codell Sandstone, Inyan Kara Group, and Madison Group have such high storage and low use that it is unlikely that use is approaching or exceeding recharge. Furthermore, there is no evidence of significant head loss in any of these aquifers over the years that would suggest that use is exceeding recharge."

Discharge:

Discharge from the Niobrara aquifer in Area C is to Wolf Creek, the Lower James-Missouri aquifer, the Upper Vermillion-Missouri aquifer, and possibly the Turkey Ridge Creek aquifer, as well as withdrawal from wells (Lindgren and Hansen, 1990). There are a number of completion reports on file with the SD DENR-Water Rights Program for domestic use wells completed into the Niobrara aquifer (Water Rights, 2013b) and there are currently 19 water rights/permits appropriating water from the Niobrara aquifer in Area C; 10 are in Hutchinson County alone (Water Rights, 2013c). The distribution of these appropriations for Area C of the aquifer and their types are shown in Table 1.

Water Rights/Permits	Number
Commercial	2
Institutional	1
Irrigation	13
Municipal	3

Table 1. Water Rights from the Niobrara aquifer, Area C (Water Rights, 2013c).

From the Niobrara aquifer in Area C, water rights/permits for non-irrigation use that are limited only by diversion rate currently appropriate a total of 2.583 cfs. Water rights/permits for non-irrigation use that are limited by an annual volume currently appropriate a total of 15 ac-ft/yr (Water Rights, 2013b).

The amount of water that can be expected to be withdrawn through water rights/permits authorizing water use for non-irrigation purposes at the current appropriation level can be estimated by assuming:

1. Water rights/permits limited by an annual volume will pump the entire volume appropriated.
2. Water rights/permits limited only by diversion rate will pump at the maximum permitted diversion rate 60 percent of the time.
3. Future use permits can be fully developed.

At the current appropriation amount, the total annual withdrawal from the Niobrara aquifer, Area C by non-irrigation use is expected to total less than 1,137 ac-ft/yr (Water Rights, 2013b). Hutchinson County accounts for less than 749 ac-ft/yr of this. Actual water use for non-irrigation purposes is likely to be less than the current appropriated amounts, due to the cities of Freeman and Irene disconnecting their water supplies from existing wells and tying in to the B-Y Rural Water System (Friedeman, 2013).

Table 2 shows the Niobrara aquifer, Area C's historic irrigation data. The development of this aquifer has been steadily increasing for the last six years, and could continue to increase at this rate. The annual withdrawal due to irrigation use fluctuates, which is probably due mostly to yearly climatic conditions. The average pumpage reported over the 1979 to 2011 period of record was 14.05 ac-ft/yr (Water Rights, 1980-2012). The maximum pumpage reported from the Niobrara aquifer, Area C was in 2011 for 190.91 ac-ft/yr (Water Rights, 1979-2012).

YEAR	NO. OF PERMITS	APPROPRIATION (AC-FT/YR)	PUMPAGE REPORTED (AC-FT/YR)
1979	1	480.0	0.00
1980	1	480.0	0.00
1981	1	480.0	0.00
1982	0	0.0	0.00
1983	1	387.2	0.00
1984	0	0.0	0.00
1985	0	0.0	0.00
1986	1	387.2	0.00
1987	1	387.2	0.00
1988	1	387.2	0.00
1989	1	387.2	0.00
1990	1	387.2	0.00
1991	1	387.2	0.00
1992	1	387.2	0.00
1993	1	387.2	0.00
1994	0	0.0	0.00
1995	1	410.0	29.39
1996	3	326.0	6.63
1997	3	326.0	18.00
1998	3	326.0	0.00
1999	3	326.0	0.00
2000	2	246.0	0.00
2001	2	246.0	0.00
2002	2	246.0	25.19
2003	2	246.0	7.73
2004	2	246.0	0.00
2005	2	246.0	0.00
2006	3	806.0	84.85
2007	2	806.0	23.27
2008	2	806.0	49.50
2009	4	1926.0	28.28
2010	3	1286.0	0.00
2011	4	1926.0	190.91
MIN	0	0.0	0.00
MAX	4	1926.0	190.91
AVE	1.7	474.9	14.05

Table 2. Reported Irrigation from the Niobrara aquifer in Area C (Water Rights, 1980-2011).

The Niobrara is a large resource, and the current average irrigation use of 14.05 ac-ft/yr compared to the non-irrigation use of 1,137 ac-ft/yr is very small. The Niobrara Formation has such high storage and low use that it is unlikely that use is approaching or exceeding recharge. “Furthermore, there is no evidence of significant head loss in any of these aquifers over the years that would suggest that use is exceeding recharge.” (Hedges and others, 1985).

Approval of this application will not cause the average annual withdrawals from the Niobrara aquifer to exceed the average annual recharge to the aquifer.

Since the reporting of the 2011 irrigation questionnaires, five new irrigation permits have been issued for withdrawals from the Niobrara aquifer, Area C. Combined, these permits authorize irrigation of 758 acres at a maximum diversion rate of 10.80 cubic feet per second of water. There is one permit pending approval to irrigate 134 acres at a maximum diversion rate of 1.89 cubic feet per second of water. With the addition of the permits issued in the past year, the permit pending approval, and this application it is still not likely that the average annual withdrawals from the Niobrara aquifer will exceed the average annual recharge to the aquifer.

In addition, there are many completion reports on file with the SD DENR-Water Rights Program in Hutchinson and Turner Counties for domestic wells that appear to be completed into the Niobrara aquifer, Area C (Water Rights, 2013c). The annual withdrawal due to domestic use is not significant to the hydrologic budget of the aquifer.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that “the Water Management Board shall rely upon the record of observation well measurements 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 12 observation wells completed into the Niobrara aquifer in Area C. Two of these observation wells are located within 8 miles of the well site proposed by this application (Water Rights, 2013a). Hydrographs for these wells are shown in Figures 2 and 3.

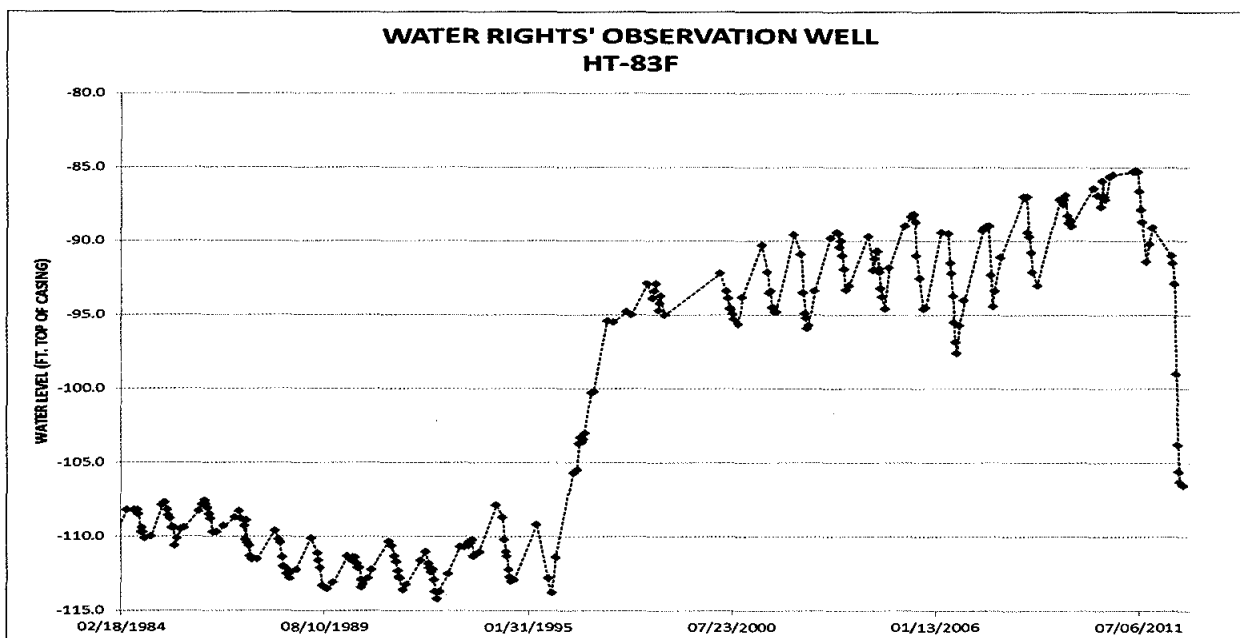


Figure 2. Hydrograph for DENR-Water Rights Observation Well HT-83F completed into the Niobrara aquifer, Area C, approximately 8 miles northeast of the well site proposed by Application No. 7700-3 (Water Rights, 2013b).

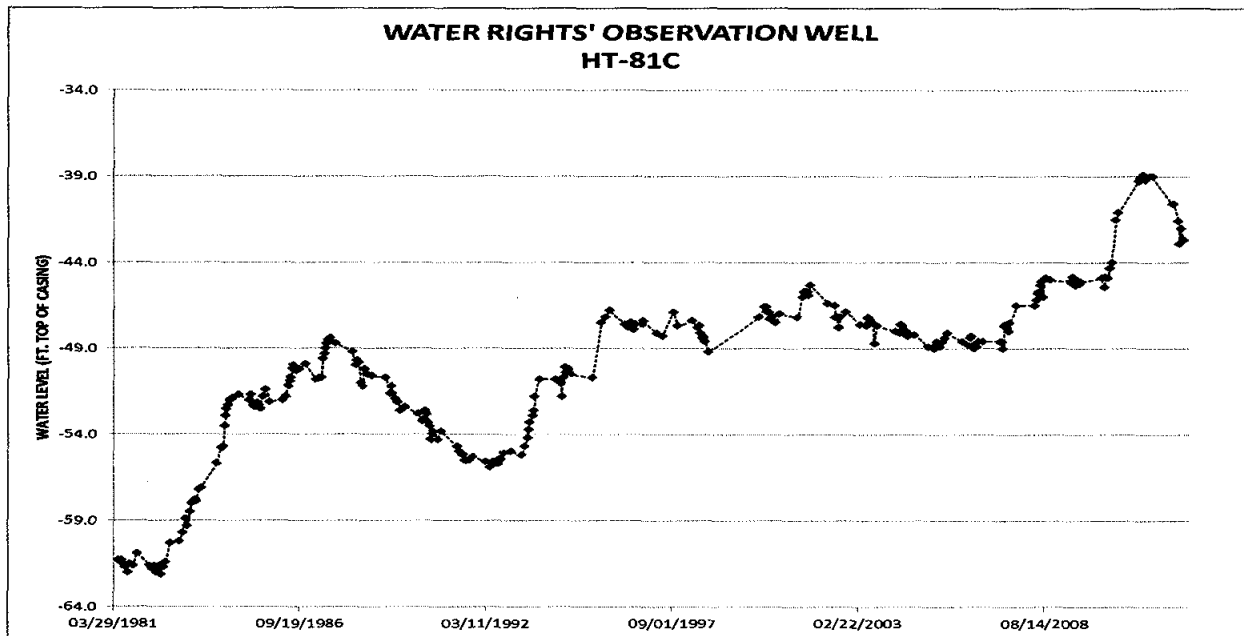


Figure 3. Hydrograph for DENR-Water Rights Observation Well HT-81C completed into the Niobrara aquifer, Area C, approximately 7 miles north of the well site proposed by Application No. 7700-3 (Water Rights, 2013b).

The observation well data shows the aquifer responds well to climatic conditions with rising water levels during wet years and gradually declining water levels during dry years, and that at the current level of development, climatic conditions mask the temporal effects of well withdrawals. The observation well data also documents that the water level in the Niobrara aquifer, Area C, has been rising. Therefore, recharge to and natural discharge from the Niobrara aquifer significantly exceeds pumping. Recognizing that natural discharge from the aquifer can be captured for pumping, the hydrographs document that there is unappropriated water available from the Niobrara aquifer, Area C to support this appropriation.

EXISTING WATER RIGHTS:

The well sites proposed by this application are located approximately two miles east of the James River and 29 miles west of the Vermillion River, in a portion of the Niobrara aquifer that extends up to 13 miles between the Lower James-Missouri aquifer to the west and Upper Vermillion-Missouri aquifer to the east (see Figure 1).

There are currently 19 water rights/permits appropriating water from the Niobrara aquifer in Area C. Within two miles of the proposed well site, there are no water rights/permits and six well completion reports on record with the SD DENR-Water Rights Program for domestic wells that appear to be completed into the Niobrara aquifer, Area C. The domestic wells are shown in Table 3. The nearest domestic well is 1.4 miles from the proposed well site (Water Rights, 2012b; Water Rights, 2013c).

Name	Type	Distance, miles
Ray Mettler	DOM	1.4
Allen Schoenfish	DOM	1.5
Water Fair	DOM	1.5
Gideon C. Mettler	DOM	1.8
Ray Mettler	STK	1.8
LaVern Mensch	DOM	2
DOM = Domestic, STK = Stock Watering		

Table 3. Domestic wells located in the Niobrara aquifer, Area C, within two miles of the well site proposed by Application No. 7700-3 (Water Rights, 2013c).

The amount of drawdown that occurs in a nearby well when a new one is developed is dependent on whether an aquifer is confined or unconfined, as well as other aquifer characteristics. Because the Niobrara aquifer is under confined conditions in this area, and the Niobrara aquifer characteristics are highly variable, it is not possible to quantify the potential effect of the proposed wells without aquifer testing. However, it is likely that drawdown caused by the proposed well will be measurable in nearby wells. There are three domestic wells on file with the DENR – Water Rights Program that could have measureable drawdown as well; these wells vary from 1.4 to 1.5 miles from the proposed well site. With that in mind, a standard permit qualification to most groundwater permits/rights states that:

“The well approved under this permit 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 his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior rights.”

SDCL 46-6-6.1 does not protect artesian head pressure as a means of delivery and the Water Management Board has consistently recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. To balance interests between irrigation use and delivery of water by artesian pressure, the Water Management Board has defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

“a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs”

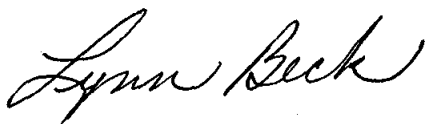
In reality, the assurance of reasonable domestic use provided by SDCL 46-6-6.1 and ARSD 74:02:04:20(7) generally ensures not only that interference will not be adverse to domestic well users but also in existing appropriative rights (i.e. in most cases, the protection afforded to adequate domestic wells by water law, would lead to enforcement of the “standard permit qualification” before there is a reduction of needed water supplies to appropriative rights). Depending on the characteristics of the

Niobrara aquifer at the well site proposed by this application, some existing well owners may need to lower their pumps to accommodate for deeper water levels. In the absence of adequate domestic wells in the area, the phrase in the qualification "...shall control his withdrawals so there is not a reduction of needed water supplies..." may be subject to interpretation.

The characteristics of the Niobrara aquifer are site specific and can vary greatly within a short distance. The aquifer thickness at the proposed well site is 65 feet. When considering SDCL 46-6-6.1 and ARSD 74:02:04:20(7) in combination with observation well measurements, the proposed increase in diversion rate is not likely to lead to significant interference or adversely affect existing wells.

CONCLUSIONS:

1. The application proposes to appropriate water from the Niobrara aquifer, Area C for the irrigation of 160 acres, but the amount of water that actually will be used is expected to be less than 320 acre-feet annually.
2. There is a reasonable probability that unappropriated water is available from the Niobrara aquifer, Area C to supply the proposed diversion.
3. The Niobrara aquifer is under confined (artesian) conditions in this area, and drawdown from pumping could be significant at the production well.
4. There is a reasonable probability that the diversion rates requested by the application can be made without adversely affecting existing water rights and domestic use with the standard "well interference qualification".
5. Water Permit Application No. 7700-3 proposes to divert 2.22 cfs to irrigate 160 acres.



Lynn Beck
Natural Resources Engineer III
SD DENR-Water Rights Program

Approved by



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Friedeman, Barbara. Environmental Scientist, SD DENR-Drinking Water Program. Personal correspondence. 18 March 2013.
- Hedges, L.S., Allen, J., Holly D.E., 1985, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 7: Ground Water Recharge; U.S. Army Corps of Engineers Contract DACW 45-80-C-0185
- Lindgren, Richard J., Hansen, Donald S., 1990, Water Resources of Hutchinson and Turner Counties, South Dakota; U.S. Geological Survey, Huron, SD.
- Water Rights, 1980-2012, Irrigation Questionnaire Summaries 1979-2011, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.
- Water Rights, 2013a, Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.
- Water Rights, 2013b, Water Well Completion Reports, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.
- Water Rights, 2013c, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

RECEIVED

MAY - 6 2013

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

County of Hutchinson)

) ss.

State of South Dakota)

Tim L. Waltner, of said county and state, being duly his oath, deposes and says: That the Hutchinson Herald weekly newspaper of general circulation and a legal as required by law, printed and published in the town in said county and state by Tim L. Waltner, and has newspaper during the time hereinafter mentioned: Waltner, the undersigned, am publisher of said newspaper, in charge of the advertising department thereof, and have knowledge of all the facts stated in this affidavit, and advertisement headed Appropriate Water - David H

a printed copy of which is hereto attached, was printed and published in the said newspaper for one successive week:

The first publication on:
May 1, 2013

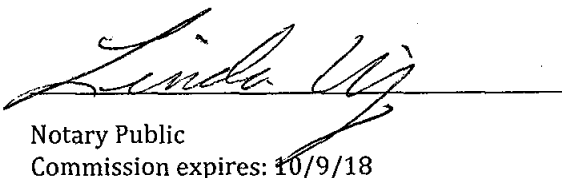
the second publication on:

and the third publication on:

That the full amount of the fees charged for publishing to-wit: The sum of \$27.16 insures solely to the benefit of the publisher of the Hutchinson Herald, that no agreement or understanding for any division thereof has been made with any other person whomsoever, and the amount of \$27.16 for publishing legal notices.



Subscribed and sworn to before me this 1st day of May



Notary Public
Commission expires: 10/9/18

Publication fee: \$27.16
Notary fee:
Total: \$27.16

**NOTICE OF APPLICATION NOS. 7699-3
and 7700-3 to Appropriate Water**

Notice is given that David W. Huber, 28419 431 Ave., Menno, SD 57045, has filed the following applications for a water permit:

Application No. 7699-3 proposes to appropriate 2.22 cubic feet of water per second (cfs) from one well to be completed into the Lower James-Missouri Aquifer (200 feet deep) located in the SE 1/4 NE 1/4 Section 33 for irrigation of 120 acres located in the W 1/2 NE 1/4 SE 1/4 NE 1/4 Section 33; all in T98N-R57W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 7700-3 proposes to appropriate 2.22 cfs from one well to be completed into the Niobrara Aquifer (140 feet deep) located in the SW 1/4 SW 1/4 Section 27 to irrigate 160 acres located in the SW 1/4 Section 27; all in T98N-R57W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7699-3 and 7700-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on these applications, as recommended, unless a petition is filed opposing the applications or the applicant files a petition contesting the Chief Engineer's recommendations. If a petition opposing the applications or

contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider these applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition contesting the Chief Engineer's recommendations. 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 13, 2013.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to these applications. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Printed once at an approximate cost of \$27.16

1-04HH

RECEIVED

MAY - 6 2013

WATER RIGHTS
SECTION

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT HE IS THE MANAGING EDITOR OF, YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID
COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED
Notice of Application Nos. 7699-3 & 7700-3

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 1st DAY OF May 2013
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$31.28 ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND 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 WHOMSOEVER.

PUBLISHED ON: 5/1/2013

FILED ON: 5/2/2013

SUBSCRIBED AND SWORN TO BEFORE ME THIS 2nd DAY OF May 2013

NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 8/19/2015

and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to these applications. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
Published once at the total approximate cost of \$31.28.

NOTICE OF APPLICATION
NOS. 7699-3 and 7700-3 to
Appropriate Water

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Application No. 7700-3 proposes to appropriate 2.22 cfs from one well to be completed into the Niobrara

Aquifer (140 feet deep) located in the SW 1/4 SW 1/4 Section 27 to irrigate 160 acres located in the SW 1/4 Section 27; all in T98N-R57W.

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Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendations. 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 13, 2013.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

April 23, 2013

Hutchinson Herald
PO Box 506
Menno SD 57045

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application Nos. 7699-3 and 7700-3 to Appropriate Water. Please publish the notice once on May 1, 2013. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is David W Huber, 28419 431st Ave, Menno SD 57045 (Ph # 605-387-5384).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

April 23, 2013

Press & Dakotan
319 Walnut
Yankton SD 57078

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The applicant must verify to you that the notice is to be published and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is David W Huber, 28419 431st Ave, Menno SD 57045 (Ph # 605-387-5384).

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Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

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NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATE, CONTACT
THE NEWSPAPER(S) RIGHT AWAY.

April 23, 2013

David W Huber
28419 431st Ave
Menno SD 57045

Dear Mr. Huber:

Water Permit Application Nos. 7699-3 and 7700-3 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Hutchinson Herald printed at Menno SD (Ph # 605-387-5158) and the Press & Dakotan printed at Yankton SD (Ph # 605-665-7811). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and reports on the applications 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(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper(s) has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

cc: Viola Mehlhaf, 28419 431st Ave, Menno SD 57045

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 applications.

Instruction to Newspaper - Publish the Notice on May 1, 2013. The applicant is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF APPLICATION NOS. 7699-3 and 7700-3 to Appropriate Water

Notice is given that David W Huber, 28419 431 Ave, Menno SD 57045 has filed the following applications for a water permit.

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The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to these applications.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of_____.



**DEPARTMENT of ENVIRONMENT
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PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

JUN 20 2013

David W Huber
28419 431st Ave
Menno SD 57045

Dear Mr. Huber:

Enclosed are Water Permit Nos. 7699-3 and 7700-3 authorizing construction of your water diversion systems and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Form 10's, *Notice of Completion of Works and Application of Water to Beneficial Use*, are enclosed. Please return the completed forms after you have finished the systems and have put the water to beneficial use. An investigation can then be scheduled so the water licenses 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,

A handwritten signature in cursive script that reads "Jeanne Goodman".

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



May 16, 2014

David Huber
28419 431st Avenue
Menno SD 57045

Dear Mr. Huber:

I am writing in follow up to our phone conversation regarding your irrigation well in the SW ¼ SW ¼ Section 27, T98N, R57W. This past winter and spring the Water Rights Program has received inquiries regarding uncontrolled flow and the use of the well to maintain the water level in a nearby dam.

You explained that this winter there was an issue with a seal and an electrical issue at the well site that prevented the well from being fully controlled. In our discussion you indicated this has been fixed and the well is capable of being controlled and it is your intention to control the well so flow is not going to waste.

You also confirmed using the well to fill a small dam. The water permit authorizing the diversion of water from this well is specific to irrigation and not for discharge to a dam in order to maintain the water level. You indicated we discussed this possibility a year or two ago and it was your understanding this is allowable. I do not recall that specific conversation but at this point the Water Rights Program must follow water rights law which does not allow for that activity. You stated the pump will be shut off and diversion to the dam will cease. Please be aware that there is the ability to make a domestic use from the well that would include providing water for livestock. This is limited to a maximum pump rate of 25 gallons per minute with a daily use not to exceed 25, 920 gallon per day (equates to 18 gpm run continuously). This provision may allow for limited ability to provide water to the dam but does not include diversion when the dam is full as spilling and that would be considered a waste of water.

Given we have received phone calls regarding this well, it is likely that when a Water Rights Program staff person is in the area this spring or summer they will contact you to line up a on site visit.

Thank you for your cooperation and please feel free to contact me if you have questions.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

File Documentation for Water Permit No. 7700-3

Name of Person: David Huber

Address: 28419 431st St., Menno, SD

County: Hutchinson

Date: May 22, 2014

Telephone: (605) 222-5564 (cell)

RE: Conversation with David Huber regarding test holes on his property.

Comments:

On May 22, 2014, while investigating an unrelated complaint, Mike DeFea and I (Bracken Capen) spoke to David Huber about Water Permit No. 7700-3, including two test holes completed on his property that needed to be plugged and the drilling company that had dug the holes. During the conversation, Mr. Huber expressed his dismay with Heine Electric who he had hired to complete the electrical systems for the well in the southwest corner of Section 27 (Drilled by Thein Well) as well as drill two test holes in the SW ¼ of the same section. According to Mr. Huber, the drilling company had never completed the work on the well, forcing him to install several electrical components himself (despite having paid for the work in full). In addition, the company had agreed to plug the two test holes which it had dug on the property but had to date failed to do so. During our conversation, Mr. Huber expressed his understanding that the State of South Dakota requires the test holes be filled and inquired as to how he would go about performing the work up to South Dakota standards. I told him that I was not an expert in plugging wells but that Ken Buhler was the most knowledgeable person in our office on the subject if Mr. Huber desired to speak to someone about it.



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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denr.sd.gov



June 6, 2014

Earl Neuharth
43033 284th St.
Menno, SD 57045

Dear Mr. Neuharth:

This is in follow up to the complaint inspection done by my staff on May 22, 2014, in your area. Bracken Capen and Mike DeFea met with you and members of your family in response to your complaints regarding discharge from a flowing well owned by David Huber and pumping of that same well to a nearby stock dam.

Enclosed with this letter is the report Mr. Capen and Mr. DeFea prepared following their inspection. Also enclosed is the letter that was sent to Mr. Huber in response to our findings. A copy of these documents has also been sent to Glenn Roth, Hutchinson County State's Attorney.

To summarize, Mr. Huber has been directed that he can only pump his irrigation well in accordance with his water right permit, which allows him to pump from a well located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T98N-R57W for irrigation in the SW $\frac{1}{4}$ of the same section. A temporary permit was issued for a short period to allow testing and discharge to the dam when a problem with the pump arose. Currently, he cannot pump more than reasonable domestic use (18 gallons per minute) to his stock dam. Also, if the well flows, it must be controlled so that it can be shut in when not in use and only allowed to flow a maximum of five gallons per minute to prevent damage from freezing. If the well must flow to prevent damage from freezing, Mr. Huber must either direct the flow to land he owns or in accordance to any local restrictions and requirements.

Thank you for contacting the department with your concerns and for working with Mr. DeFea and Mr. Capen during their inspection. Please contact them or me at (605) 773-3352 if you have any questions on the inspection report or our follow up.

Sincerely,

Jeanne Goodman, P.E.
Chief Engineer
Water Rights Program

cc: Glenn Roth, Hutchinson County State Attorney
David Huber

Enclosures



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



June 6, 2014

7700-3

David Huber
28419 431st St.
Menno, SD 57045

Dear Mr. Huber:

This is in follow up to the complaint inspection done by my staff on May 22, 2014, in your area. Bracken Capen and Mike DeFea met with you in response to complaints regarding discharge from your irrigation well in the SW ¼ SW ¼ of Section 27, T98N-R57W, which flows at the land surface at times, and pumping of that same well to a nearby stock dam.

Enclosed with this letter is the report Mr. Capen and Mr. DeFea prepared following their inspection of the complaints. Also enclosed is the letter that was sent to Mr. Neuharth with the inspection report and our findings. A copy of these documents has also been sent to Glenn Roth, Hutchinson County State's Attorney.

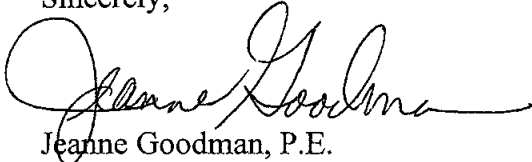
To summarize our findings, you must control your flowing well by shutting it in when it is not in use and only allowing it to flow a maximum of five gallons per minute to avoid damage during freezing conditions. If you need to allow a small flow to avoid damage due to freezing, you must direct the discharge from the well to land you own or within the restrictions and requirements of the local drainage board.

Also, you cannot pump your irrigation well greater than the reasonable domestic use rate of 18 gallons per minute except on the acres for which you are authorized to irrigate. You indicated there is repair work left to do on your well; if you must pump the well during the repair process, you must run the water through your irrigation system only on the acres for which it is authorized.

Allowing your well to flow uncontrolled or pumping water in excess of reasonable domestic use to areas not authorized by your Water Right Permit No. 7700 -3, may result in enforcement by this office. Enforcement can include penalties and/or suspension of your water permit.

Thank you for working with Mr. DeFea and Mr. Capen during their inspection. Please contact them or me at (605) 773-3352 if you have any questions on the inspection report or our follow up.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Goodman". The signature is fluid and cursive, with a large initial "J" and "G".

Jeanne Goodman, P.E.
Chief Engineer
Water Rights Program

cc: Glenn Roth, Hutchinson County State Attorney
Earl Neuharth

Enclosures

Water Rights Program - DENR

Complaint Investigation

Name of Person: Earl Neuharth

Address: 43033 284th St., Menno, SD

County: Hutchinson

Date: May 22, 2014

Telephone: 387-5777, 661-4390 (cell)

RE: Complaint by Earl Neuharth regarding Dave Huber Well

Comments:

On May 22, 2014, Bracken Capen and Mike DeFea went to Menno, SD to investigate a complaint made by Earl Neuharth (43033 284th St., Menno, SD 387-5777, 605-661-4390 (cell)) regarding a well owned by Dave Huber in the SW ¼ SW ¼ Section 27-T98N-R57W (28419 431st Ave., Menno, SD 222-5564 (cell)) approx. two miles north of Menno, SD.

Meeting with Earl Neuharth:

Our first meeting was with Earl Neuharth, Theresa Neuharth and his son Mike Neuharth at Earl's residence. Their explanation of the situation was that water from Dave Huber's well had previously been flowing throughout the winter into a *county* road ditch (north side of 284th St east of 431st Ave), west through culverts under a paved road (431st Ave.), then into the road ditch west of the pavement south along 431st Ave. and into a *township* road ditch flowing west (north and south sides of 284th St. west of 431st Ave). There are no culverts under 284th St. east of 431st Ave. which would allow water to flow freely to the south or north. Neuharth's main concerns were 1) Water from the well seeping under the pavement of 431st Ave. into the ditches could cause damage to the road, and 2) Water from the well flowing to the west through the Neuharth property, could damage or destroy his driveway rendering him no access to his house and other buildings. They explained that due to the water's continuous flow and freezing inside the culvert, this could possibly damage or plug the culvert and possibly take out the driveway leaving no other access to the property.

Although no damage was documented as a result of the water flowing from the well, Mr. Neuharth provided several pictures taken in February and March of 2014 which showed water and ice in the road ditches at various locations along 284th St. and 431st Ave. The photos also showed the progression of ice build-up in the culvert under their driveway. They said the water and ice in the road ditches and ice build-up in the culvert was caused by the continuous flow of water from Dave Huber's well.

Mr. Neuharth expressed fear that if this was allowed to continue, ice might build up in his culvert until flow was blocked and damage was done to the driveway (although this has not occurred). Although the DENR Water Rights Program does allow for a continuous flow during the winter of up to five gallons per minute (gpm) to prevent freezing and damage to the well, Mr. Neuharth believed that the flow rate was approximately 15 gpm at this time.

Included with the photos were several pictures taken on May 15th and May 17th 2014, showing a fiber hose connected to the well. The pictures show the hose connected to the well, going through the culverts under 431st Ave., and across the field in Section 28 into a stock dam. Mr. Neuharth estimated that water had been flowing into the stock dam at approximately 700-800 gpm during the week of 5/12-5/16 in violation of his water permit, which was issued solely for irrigation. No overflow had been observed coming from the stock pond. At the time of the inspection no water was flowing from the well or the hose. No damages from this second complaint have been observed or alleged.

We then left Earl Neuharth's home in separate vehicles to visit the various locations and take more recent pictures of the situation. We visited several locations along 284th St including the well site, culvert locations, and stock dam. We also noticed that the hose running from the well was still connected to the well in Section 27. However, the hose had been folded together several times and wrapped with what looked like duct-tape to prevent water from moving through it in Section 28. The hose was inflated from the well to this section of folded hose but was collapsed from the folding to the stock dam.

At the end of our visit with the Neuharths, they were informed we would review the entire situation with the Chief Engineer, and they would be informed of any development of the investigation.

Meeting with Dave Huber:

We met Dave Huber at his irrigation well for Water Permit No 7700-3 located on Section 27. He first showed us the inside of the well house and pointed out a gauge which was originally connected to what appeared to be a flap valve used to prevent water from draining back into the well. Dave said the gauge broke off the valve, which was the cause of the water flowing from the well to the ditch. The valve and gauge had been removed and were both no longer part of the system. The hose used to deliver water to the stock dam was connected to the well. He also told Bracken and Mike the well/pump still needed to be repaired, but instead of pumping water to the stock dam, he would run it through the irrigation pivot since he was done planting.

Also at the well site, we observed the ditch and ground between the well and the intersection of 284th St. and 431st Ave. was wet. Mr. Huber said this area in the SW ¼ corner of Section 27 is frequently wet due to the very high water table in that area.

We then went to Mr. Huber's home where he showed us a drainage permit dated May 3, 2013. The permit was issued as a Tile Project originating in Section 27-T98N-R57W consisting of 30 feet of 6 inch tile. The permit states the project starts and finishes on the owners property.

We asked Mr. Huber if he had received the letter sent to him by Eric Gronlund regarding the uncontrolled flow of the well as-well-as pumping water from the well to the stock dam which stated the well is specific to irrigation purposes. He stated he did receive the letter. Mr. Huber had explained prior to our visit that he was running the well in order to diagnose a problem in the electrical system. Upon being informed his water permit did not allow him to discharge water into the stock pond, he applied for and obtained a temporary permit to allow pumping/discharge

on Friday 5/16/14. On that Friday, he was unable to properly diagnose or fix the problem with the electrical system. He explained that in the future he would simply run the water through his irrigation system rather than into the stock pond.

Mike DeFea
Natural Resources Engineer II
DENR, Water Rights Program

Bracken Capen
Natural Resources Engineer I
DENR, Water Rights Program



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



June 17, 2014

David Huber
28419 431st Ave.
Menno, SD 57045

Dear Mr. Huber:

This is in follow up to the inspection done by my staff on May 22, 2014, regarding your concern about unplugged test holes on your land. Bracken Capen and Mike DeFea met with you and photographed one test hole you indicated had been left open and unplugged since it was drilled sometime in November 2012.

During our a recent conversation, you expressed an interest in plugging the abandoned test holes yourself. South Dakota water law allows you to plug the test holes provided you do so in accordance with South Dakota well construction standards. South Dakota Well Construction Standard 74:02:04:67 stipulates:

The test holes must be plugged with bentonite grout or cement grout from the bottom of the hole to eight feet below ground surface. Cement grout must be placed from eight feet below ground surface to at least three feet below ground surface. Native material may be used from three feet below ground surface to ground surface. The grout must be placed from the bottom of the hole upward using a "Tremie Pipe". South Dakota Well Construction Standard 74:02:04:53.01 defines bentonite grout as containing a minimum of 20 percent solids by weight and have a minimum slurry density of 9.4 pounds per gallon and must be mixed according to the manufacturer's recommendations. Cement grout must be mixed with no more than six gallons of water per 94 pound sack of cement. Bentonite may be added to the cement grout in quantities not exceeding two pounds per 94 pound sack of cement. Seven gallons of water may be mixed with each 94 pound sack of cement when two pounds of bentonite are added.

Thank you for contacting the department. If you have any questions, please contact Ken Buhler or myself at (605) 773-3352.

Sincerely,

Jeanne Goodman, P.E.
Chief Engineer
Water Rights Program

Enclosures



7700-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 20, 2017

NOTICE

TO: DAVID W HUBER, 28419 431 AVE, MENNO, SD 57045

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2016 Irrigation Questionnaire(s)

Our records indicate your 2016 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3. The request for the Questionnaire was dated October 21, 2016. The Water Management Board has directed that owners of water permits who have not submitted the 2016 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 1, 2017 at 11:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 1, 2017** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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

7700-3



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

January 26, 2017

6708-3
7699-3
7700-3
7814-3

David W Huber
28419 431st Ave
Menno SD 57045

Dear Mr. Huber:

I am writing to acknowledge receipt of your 2016 irrigation questionnaires.

You may disregard the January 20, 2017, "Notice" concerning reporting requirements for Water Permit Nos. 6708-3, 7699-3, 7700-3 and 7814-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

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



7700-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 23, 2020

NOTICE

TO: DAVID W HUBER, 28419 431 AVE, MENNO, SD 57045

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2019 Irrigation Questionnaire(s)

Our records indicate your 2019 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3. The request for the Questionnaire was dated October 18, 2019. The Water Management Board has directed that owners of water permits who have not submitted the 2019 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, February 26, 2020 at 8:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **February 26, 2020** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: GSQDQD**

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



7700-3
DEPARTMENT of ENVIRONMENT
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February 13, 2020

Nos. 6708-3, 7700-3, 7699-3 and 7814-3

David W Huber
28419 431 Ave
Menno SD 57045

Dear Mr. Huber:

I am writing to acknowledge receipt of your 2019 irrigation questionnaires.

You may disregard the January 23, 2020, "Notice" concerning reporting requirements for Water Permit Nos. Nos. 6708-3, 7700-3, 7699-3 and 7814-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Genny McMath'.

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 8, 2022

David Huber
28419 431st Avenue
Menno SD 57045

Dear Mr. Huber:

Last September the Water Rights Program received a complaint that two domestic wells were being adversely impacted by irrigation pumping. These wells are located southwest of Freeman in Hutchinson County where you hold a water right for irrigation. The water source for the domestic wells and area irrigators is the Niobrara aquifer.

At that time, the Water Rights Program contacted several irrigators who willingly cooperated to shut off their irrigation system for a week in an effort to assess whether that provided relief for the domestic well owners. Timely rains and the end of the irrigation season meant many irrigation systems were not operated again.

As we approach another irrigation season, I want to make you aware of water rights law regarding impairment of adequate domestic wells and steps being taken to monitor the aquifer in your area.

Water Rights law states that the use of water for domestic purposes is the highest use of water and takes precedence over all appropriative rights. As such, water rights from groundwater, including yours, are issued with the following qualification.

The well approved under this Permit is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

The Water Management Board in prior rulings has stated that if pumping from a water source appropriated by a water right/permit results in adverse impairment of adequate domestic wells or adequate wells having prior rights, reduction of withdrawals or mitigation may be necessary. The Board has found that state law in giving preference to domestic use over appropriative rights does so without regard to 1) whether lowered ground water levels are due to drought, 2) the location of the domestic wells in the aquifer, or 3) the thickness of the water bearing material; subject to compliance with the minimum requirements for an adequate well as defined by the South Dakota well construction standards.

Based on the well completion reports, the two domestic wells in question meet the adequate well definition. Therefore, if water levels decline in the Niobrara aquifer such that the domestic wells cannot attain their needed water supply, appropriate water right holders may need to limit or cease their withdrawals.

To monitor the Niobrara aquifer's water levels in this area, the Water Rights Program is working in conjunction with the South Dakota Geological Survey to drill additional observation wells into the Niobrara aquifer in your area. Once in place, these observation wells will provide water level readings on how the aquifer fluctuates in response to pumping and climatic conditions.

In addition, your existing Water Permit Nos. 7700-3 and 7814-3 are due for a site visit for the purpose of licensing the permit to reflect the level of development. This spring you may be contacted by Water Rights Program staff to schedule this site visit.

While I am unable to predict the precipitation this upcoming year, we are currently dry in South Dakota. Therefore, I am reaching out to make you aware of this potential situation if the drought continues and the steps being taken to monitor the aquifer.

Please feel free to contact me if you have questions.

Sincerely,



Eric Gronlund, Chief Engineer
Water Rights Program, DANR
605 773-3352
eric.gronlund@state.sd.us

7700-3



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

January 20, 2022

NOTICE

TO: DAVID W HUBER, 28419 431 AVE, MENNO, SD 57045

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

SUBJECT: Reporting Requirement for 2021 Irrigation Questionnaire(s)

Our records indicate your 2021 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3. The request for the Questionnaire was dated October 22, 2021. The Water Management Board has directed that owners of water permits who have not submitted the 2021 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 2, 2022 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 6708-3, 7699-3, 7700-3 & 7814-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 2, 2022** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: AVAZUL**

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

7700-3



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
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danr.sd.gov

February 17, 2022

6708-3
7699-3
7700-3
7814-3

David W Huber
28419 431st Ave
Menno SD 57045

Dear Mr. Huber:

I am writing to acknowledge receipt of your 2021 irrigation questionnaires. All four questionnaires were submitted on-line by Kerry Hofer.

You may disregard the January 20, 2022, "Notice" concerning reporting requirements for Water Permit or Right Nos. 6708-3, 7699-3, 7700-3 & 7814-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

**Report of Examination of Works and/or Application of Water to Beneficial Use
For Permit No. 7700-3**

I have this day, March 2, 2022, made a thorough examination of the water use system constructed by David W Huber, 28419 431 Ave., Menno, SD 57045, holder of Permit No. 7700-3, bearing the priority of February 14, 2013, authorizing the diversion of 2.22 cu. ft. per second of the waters of groundwater (Niobrara Aquifer) for the irrigation of 160 acres located in Hutchinson County.

Inspection contacts: David Huber

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Hammond-Wetmore Drilling, LLC
- 2) No. of Wells: 1
- 3) Depth(s): 140 feet
- 4) Well log is available: Yes

Casing:

- 1) Diameter: 16 inches
- 2) Length: 80 feet
- 3) Type: Plastic

Screen:

- 1) Diameter: 16 inches
- 2) Length: 60 feet
- 3) Type: PVC
- 4) Static water level: 4 feet

Pump:

- 1) Make: Grundfos
- 2) Model: 800S500-2
- 3) Capacity: 1,000 GPM

Motor:

- 1) Make: Unknown
- 2) Model No.: Unknown
- 3) Horsepower rating: 50 hp

B. Works used to transport water to place of use:

- | | | |
|---------------------|--------------------------|--|
| 1) Type: <u>PVC</u> | 2) Size: <u>8</u> inches | 3) Length: <u>1,630</u> feet (<u>pipng from the well to the pivot</u>) |
| 1) Type: <u>PVC</u> | 2) Size: <u>6</u> inches | 3) Length: <u>Unknown</u> feet (<u>pipng to the traveling gun</u>) |

C. Works used to apply water to beneficial use:

Center pivot:

- 1) Make: Valley
- 2) Overall length: 1,296 feet
- 3) Number of towers: 7
- 4) End gun: Yes
- 5) Capacity: 1,000 GPM

Chemigation Equipment:

- 1) Does chemigate: Yes
- 2) Main line check valve: Yes
- 3) Inspection port/air relief: Yes
- 4) Low pressure drain: Yes
- 5) Discharge is 20' from source: Yes
- 6) Interlock type: Electrical
- 7) Injection pump: Positive Displacement
- 8) Injection check valve: Yes
- 9) Injection line check valve or positive displacement pump: Yes

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by: No
- 2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period: Yes
- 3) Exceptions to compliance are: Two acres irrigated in the SE1/4 of Section 27.

E. Condition and Location:

1. The system is currently inoperable due to a tornado and electrical storm, but is in the process of being repaired, with the point(s) of diversion located as follows:
The well is 310 feet east and 70 feet north of the southwest corner of Section 27-T98N-R57W (Latitude 43.27049, Longitude -97.57759 – SW1/4 of the SW1/4).
2. The works are capable of diverting and conveying to the place of use 2.22 cu. ft. per second of water which is to be used for irrigation purposes. Water has been put to beneficial use to the maximum extent as follows:

All in Section 27-T98N-R57W

<u>NW1/4SW1/4</u>	<u>38 acres</u>
<u>NE1/4SW1/4</u>	<u>36 acres</u>
<u>SW1/4SW1/4</u>	<u>37 acres</u>
<u>SE1/4SW1/4</u>	<u>33 acres</u>
<u>NW1/4SE1/4</u>	<u>1 acre</u>
<u>SW1/4SE1/4</u>	<u>1 acre</u>

comprising a total of 146 acres of land and the license should be issued for 2.09 cfs. (Based on 1 cfs for 70 acres)

3. All structures, wells and lands on map: Yes

F. Comments or other permit(s) associated with the project: The irrigation system irrigates one acre in the SW1/4 of the SE1/4 and one acre in the NW1/4 of the SE1/4 of Section 27-T98N-R57W. These parcels are adjacent to the land noted in the permit and they are owned by the same owner as the main irrigated area.

At the time of the inspection, five of the pivot sections and towers were laying on their side due to a tornado. The well shed was also damaged along with the electrical system which was damaged by lightning.

The traveling gun was not onsite since he uses it at another irrigation site too. He will only use the traveling gun along the west side of the field since that is where the piping is set up for it.

This site is at the far end of the electricity supplier's territory, so when he is using their power, he has the variable frequency drive (VFD) set to have the pump produce 800 gpm. He is getting a new electrical generator, which will allow him to have the VFD run the pump at 1,000 gpm, which is what the pump is capable of producing. His electrical source is shut off regularly due to system demands, so he needs the generator to operate when the local electrical source is not available. The pump and motor information was obtained from Heine Electric & Irrigation Inc.

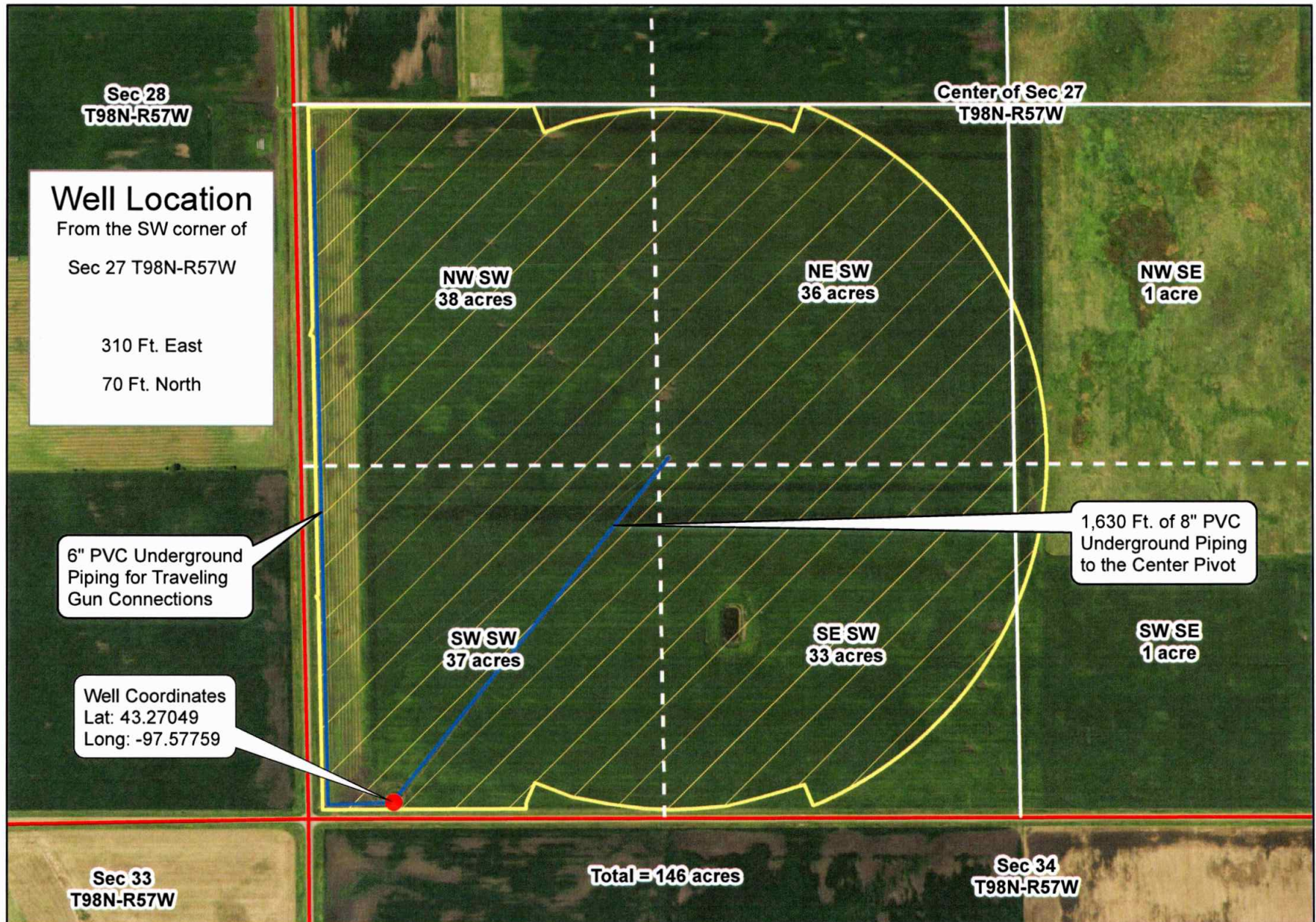
The chemigation equipment was not on site. Mr. Huber stated that the equipment was stored in one of his sheds for the winter. He explained what he had for equipment and noted that the chemicals are injected at the pivot which is about 1,600 feet away from the well.



Keith DeJong
Water Rights Inspector
DANR, Water Rights Program

Date report completed: March 8, 2022

Water Right No. 7700-3



Keith DeJong
Keith DeJong, PE Ret.
March 3, 2022

Licensing of Acreage Outside of Permitted Area

NAME: David W Huber

ADDRESS: 28419 431 Ave, Menno SD 57045

DATE: March 8, 2022 COUNTY: Hutchinson

AUTHORITY

Pursuant to SDCL 46-5-30.5, acreage developed for irrigation outside of the area described on the permit may be licensed provided the following conditions are met:

NO INCREASE IN PERMITTED ACREAGE OR WATER APPROPRIATED:

The acreage developed for irrigation is 146 acres as compared to 160 acres authorized by the permit.

UNPERMITTED ACREAGE:

- **Contiguous to Permitted Acreage**

The permit authorized the irrigation of 160 acres located in the SW ¼ of Sec 27 T98N-R57W. The permit holder developed 2 acres outside the permitted areas in the NW ¼ SE ¼, SW ¼ SE ¼ of Sec 27 T98N-R57W immediately adjacent to the authorized acres.

- **Owned by Same Property Owner**

- Viola Mehlhaf owns all the property irrigated.

- **Developed Prior to Expiration of Construction Period**

Yes all of the irrigation was developed within the construction period.

RECOMMENDED ACTION

Based on the above criteria, it is recommended that the 2 acre area be included in the water license.



Mark D Rath, Natural Resources Engineer
Water Rights Program

The Chief Engineer makes a finding pursuant to SDCL 46-5-30.5 that:

This acreage change does not impair existing water rights and the overall project, as developed, is consistent with the original application. Licensing of the unpermitted acreage may occur without application or publication pursuant to SDCL 46-2A-4.



Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

MAR 14 2022

7700-3

David W Huber
28419 431st Ave
Menno SD 57045

Dear Mr. Huber:

Enclosed is Water License No. 7700-3. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

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 long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

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

enclosures

NOTE: The investigation found your irrigation system capable of diverting 2.22 cubic feet of water per second (cfs) which is equivalent to approximately 1,000 gallons per minute. The statutory limit for 146 acres is 2.09 cfs (equivalent to 936 gpm). Diversion of water under this water license is limited to 2.09 cfs.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 7700-3

(1) David W Huber, 28419 431st Ave., Menno SD 57045 made Application No. 7700-3, February 14, 2013 for a water permit to divert 2.22 cubic feet of water per second from ground water, one well (Niobrara Aquifer), Hutchinson County, South Dakota for irrigation purposes. Permit No. 7700-3, with a priority date of February 14, 2013 was approved May 13, 2013 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 13, 2018 and for the application to beneficial use of said water on or before May 13, 2022.

The investigation of the water use system found two acres developed outside of the permitted area. The Chief Engineer made a finding pursuant to SDCL 46-5-30.5 the acreage change did not impair existing water rights and the overall project, as developed, was consistent with the original application.

(2) It is certified that the permit holder has 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 2.09 cubic feet of water per second for beneficial use. The location of the diversion point is:

- 310 feet east and 70 feet north of the SW corner of Section 27-T98N-R57W (SW $\frac{1}{4}$ SW $\frac{1}{4}$)
Latitude 43.27049, Longitude -97.57759

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 27, T98N, R57W	NW $\frac{1}{4}$ SW $\frac{1}{4}$	38 acres	NW $\frac{1}{4}$ SE $\frac{1}{4}$	1 acre
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	36 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$	1 acre
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	37 acres		
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	33 acres	Total of 146 acres	

(4) Pursuant to South Dakota Water Law 46-5-30.1 David W Huber, 28419 431st Ave., Menno SD 57045 the holder and/or owner of Water Right No. 7700-3 is issued a license to appropriate water, the right to use 2.09 cubic feet of water per second from ground water, one well (Niobrara Aquifer) with a priority date of February 14, 2013, from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 7700-3 and subject to the following qualifications:

- The well approved under this water right 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 his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

continued

- The well authorized by Permit No. 7700-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28. *The well was drilled March 21, 2013, by Hammond Wetmore Drilling LLC. A copy of the well completion report is on file with the Water Rights Program.*
- This Water Right is approved subject to the irrigation water use questionnaire being submitted each year.

Eric Gronlund

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

MAR 14 2022

date





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

July 20, 2022

NOTICE OF SHUTOFF ORDER

TO: David Huber
28419 431st Ave
Menno, SD 57045

FROM:  Eric Gronlund, Chief Engineer
SD DANR, Water Rights Program

SUBJECT: Niobrara Aquifer Shutoff Order for Water Right No. 7700-3

Pursuant to South Dakota Codified Law (SDCL) 46-1-5(1), use of water for domestic purposes is the highest use of water and takes precedence over all appropriative rights. Consequently, your appropriative permit to use groundwater for irrigation was issued with the following qualification.

The wells approved under this Permit 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 his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

We were notified on July 20, 2022, that two domestic wells located southwest of Freeman in Hutchinson county are no longer able to produce water from the Niobrara aquifer. These wells meet the adequate well definition and are afforded protection as domestic water use wells.

As noted in a letter to you dated, February 8, 2022, observation wells have been put into place to monitor water levels in the Niobrara aquifer near these domestic wells. Measurements from these monitoring wells confirm a significant decline in water level in the aquifer since measuring began in late June.

To protect this domestic use of water, the department is issuing you, and other nearby irrigators, shutoff orders. Specifically, your shutoff order pertains to Water Right No. 7700-3 for irrigation of 146 acres located in the SW $\frac{1}{4}$ Section 27; NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27; all in T98N-R57W. Effective immediately, no diversions of water under this Permit will be allowed for the remainder of the 2022 irrigation season unless notified otherwise by the Chief Engineer. This Order is being issued pursuant to SDCL 46-2-18 to ensure compliance with the above permit qualification.

If you have any questions, please contact me at (605) 773-3352. Thank you for your cooperation in this matter.

c: Kerry Hofer, farm manager for Mr. Huber; Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on July 20, 2022, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated July 20, 2022 regarding Notice of Shutoff Order addressed as stated below:

WR No. 7344-3
MICHAEL SCHULTZ
43721 281ST STREET
FREEMAN SD 57029

WR No. 7700-3
DAVID HUBER
28419 431ST AVE
MENNO SD 57045

WR No. 7448-3
ROBERT HECKENLAIBLE
43380 285TH ST
FREEMAN SD 57029

WR No. 7683-3
ROGER GUTHMILLER
28752 435th AVE
MENNO SD 57045

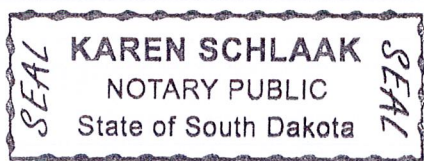
WR No. 7617-3
BRETT GUTHMILLER
28680 435TH AVE
MENNO SD 57045


Vickie Maberry
Senior Secretary-Water Rights

[illegible]

Sworn to, before me, this 20 day of July, 2022.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

July 27, 2022

RESCISSION OF SHUTOFF ORDER

TO: David Huber
28419 431st Avenue
Menno SD 57045

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
SD DANR, Water Rights Program

SUBJECT: Recission of Niobrara Aquifer Shutoff Order for Water Right No. 7700-3

On July 20, 2022, a shutoff order was issued for Water Right No. 7700-3 to protect two adequate domestic wells located southwest of Freeman in Hutchinson County that were no longer able to produce water from the Niobrara aquifer. The domestic well owners rescinded their complaint on July 27th since agreement was reached in which they will be supplied water for the remainder of the 2022 irrigation season or until they are connected to rural water.

Therefore, the shutoff order is rescinded and you may resume irrigation as authorized by Water Right No. 7700-3.

The Water Rights Program intends to continue monitoring the two observation wells installed this spring. If there are additional domestic well complaints, the Water Rights Program will investigate. Please be aware future shutoff orders may be issued, if warranted, to protect the use of water for domestic purposes.

If you have any questions, please contact me at (605) 773-3352. Thank you for your cooperation in this matter.

c: Kerry Hofer
Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated July 27, 2022, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on July 27, 2022.

Michael Schultz 43721 281 st Street Freeman SD 57029	David Huber 28419 431 st Avenue Menno SD 57045
Robert Heckenlaible 43380 285 th Street Freeman SD 57029	Roger Guthmiller 28752 435 th Avenue Menno SD 57045
Brett Guthmiller 28680 435 th Avenue Menno SD 57045	Kerry Hofer Email: khofer@hotmail.com

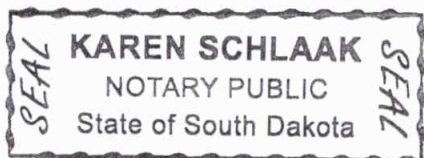
Above also Sent Inter-office to: Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DANR

[illegible]

Sworn to, before me, this 27th day of July, 2022.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2025



7-26-22

RECEIVED

JUL 27 2022

OFFICE OF
WATER

I Dale Mehlhaf of 43465 283rd St. Freeman, SD 57029 and Twyla mehlhaf of 43543 284th. St. Freeman, SD 57029 are rescinding our complaints about the 2 domestic wells in question. Robert Heckenlaible is going to supply water for our needs for the rest of the 2022 irrigation season or until we have rural water hooked up, whichever comes first.

Dale Mehlhaf

7-26-22

Robert Heckenlaible

7-26-22

Twyla Mehlhaf

7-26-2022



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

October 28, 2022

Michael Schultz
43721 281st Street
Freeman SD 57029

Robert Heckenlaible
43380 285th Street
Freeman SD 57029

Roger Guthmiller
28752 435th Avenue
Menno SD 57045

Brett Guthmiller
28680 435th Avenue
Menno SD 57045

David Huber
28419 431st Avenue
Menno SD 57045

Gentlemen:

Hope you all are having a productive harvest! This letter is intended to discuss the past two irrigation seasons regarding drawdown from irrigation pumping adversely impacting two domestic wells in the area.

On July 20, 2022, shutoff orders were issued to water rights holders, including yourself, to protect two adequate domestic wells that were no longer able to produce water from the Niobrara aquifer in your area. The shutoff order was rescinded on July 27, 2022, upon agreement between the domestic well owners and local irrigators in which the domestic well owners were supplied water for the remainder of the 2022 irrigation season. Hauling water was viewed as a short term solution until a long term solution is in place.

The Water Rights Program monitored water levels in these two observation wells throughout the 2022 irrigation season. Attached is a hydrograph that shows water levels in the aquifer from June 22, 2022, through October 26, 2022. Also, attached is a map. Drawdown from irrigation pumping can be seen as well as water level recovery to the area once irrigation pumping ceased. Monitoring of water levels in these observation wells will continue.

A long term solution needs to be in place prior to the 2023 irrigation season or depending on weather and drawdown conditions of the aquifer shutoff orders may again need to be issued to protect the domestic wells. In addition, three pending water applications in the area seek to appropriate water from the Niobrara aquifer. One of the criteria to approve

an application is that the diversion can be developed without unlawful impairment of existing domestic water uses and water rights. Given the potential impact to these two domestic wells, this criteria can not currently be met in order to make a favorable recommendation until this situation is resolved.

The long term solution will take an effort on all your part to be successful. Please let the Water Rights Program know steps being taken and your progress to resolve this situation.

Sincerely,



Eric Gronlund, Chief Engineer

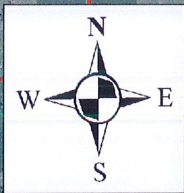
Water Rights Program, DANR

605 773-3352

eric.gronlund@state.sd.us

enclosure

c: Kerry Hofer, 27633 431st Avenue, Freeman SD 57029
Schultz Bros Dairy, c/o John Schultz, 28031 436th Avenue, Freeman SD 57029



98N 57W
Section: 01

98N 56W
Section: 06

7344-3
MICHAEL
SCHULTZ

7344-3
MICHAEL
SCHULTZ

7344-3
MICHAEL
SCHULTZ

HT-2022A

7700-3
DAVID
HUBER

7448-3
ROBERT
HECKENLAIBLE

HT-2022B

6708-3
DAVID
HUBER

6708-3
DAVID
HUBER

7617-3
BRETT
GUTHMILLER

7683-3
ROGER
GUTHMILLER

Menno

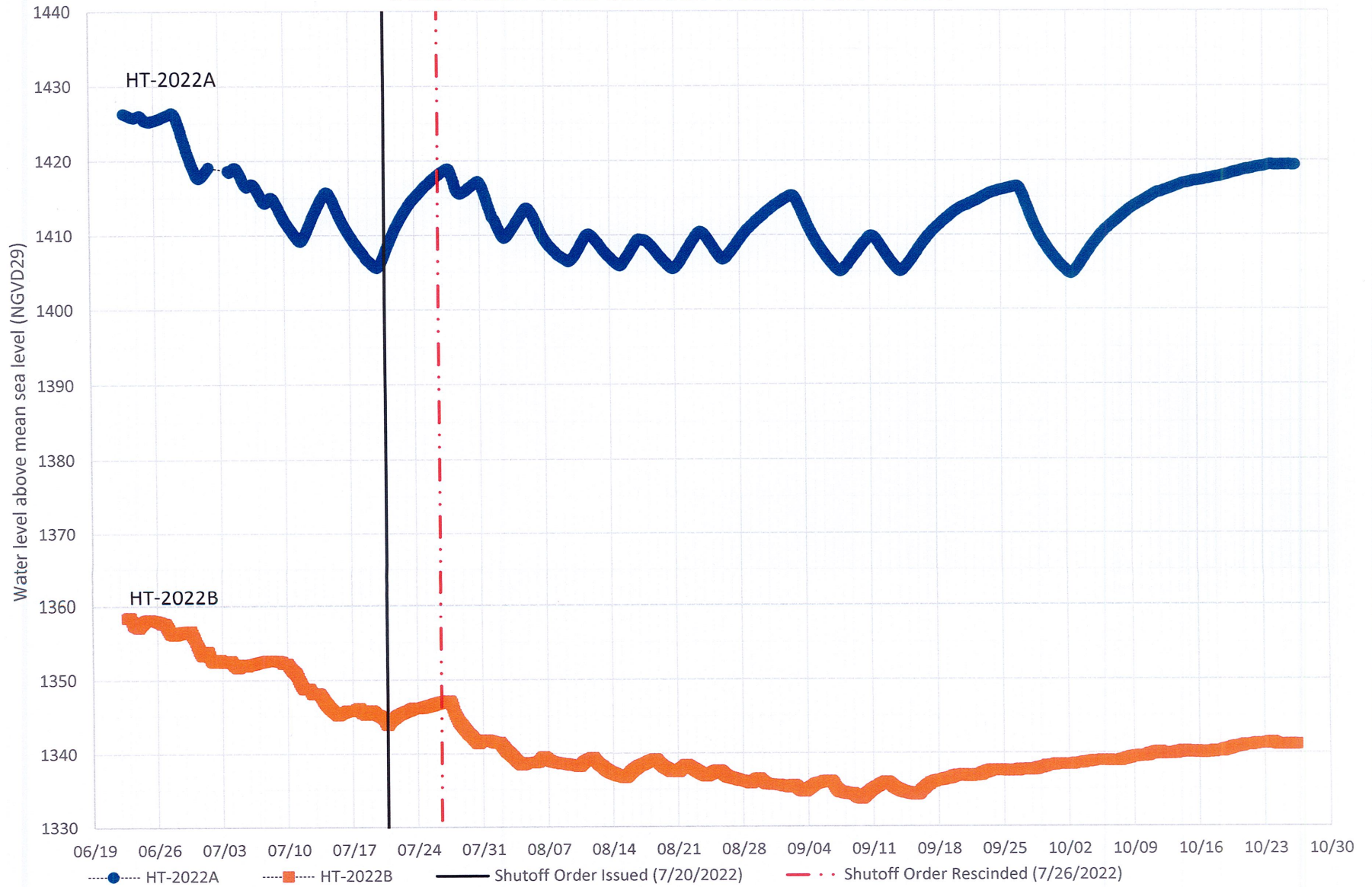
18

0 0.5 1 2 Miles



A.W. Mathiowetz
Oct. 27, 2022

DANR-Water Rights Program Niobrara Aquifer
Observation Wells Between Freeman and Menno





7344-3, 7700-3, 7448-3, 6708-3, 7617-3, 7683-3

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 4, 2023

Michael Schultz
43721 281st Street
Freeman SD 57029

Robert Heckenlaible
43380 285th Street
Freeman SD 57029

Roger Guthmiller
28752 435th Avenue
Menno SD 57045

Brett Guthmiller
28680 435th Avenue
Menno SD 57045

David Huber
28419 431st Avenue
Menno SD 57045

Gentlemen:

The enclosed letter was sent to all of you on October 28, 2022, regarding the progress to resolve the situation that occurred in your area during the past two irrigation seasons when irrigation pumping adversely impacted two domestic wells. To date, I have not received a response.

The Water Rights Program desires to have a solution in place prior to the 2023 irrigation season. If there is not a solution in place it is likely that shut off orders will again need to be issued.

Please let the Water Rights Program know steps being taken to resolve this situation.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program, DANR
605 773-3352
eric.gronlund@state.sd.us

enclosure

c: Kerry Hofer, 27633 431st Avenue, Freeman SD 57029
Schultz Bros Dairy, c/o John Schultz, 28031 436th Avenue, Freeman SD 57029