

WATER PERMIT NO. 8197A-3

Name of Applicant: Mina North LLC

Address: 2625 385th Ave N, Aberdeen SD 57401

Phone: 970 396-8423

Amount of Water Claimed: no add'l

Total Acres: NA

Source of Water Supply: groundwater (two existing wells)

Water to be used for: wds, rws, com, geo

County: Brown

Type of Waste Disposal System:

Location: northeast corner of Mina Lake

PRIORITY

Date Received: 9-14-22

Application/License Fee: \$100

Corrected Application Received: 9-19-22

Period of Annual Use: Jan 1 – Dec 31

Remarks: Changes the use on Water Permit No. 8197-3

Diversion Point: NE 1/4 SW 1/4, SW 1/4 SE 1/4 all
in Sec 7-T123N-R65W

Land to be Irrigated: NA

Depth of Well: 1555 and 1425 feet deep

Well Driller:

Remarks:

Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 9-19-22

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

			7		
		⊗			
			⊗		

**SOUTH DAKOTA
WATER PERMIT NO. 8197A-3**

Date of first receipt of application September 14, 2022.

Date of return to applicant for corrections, amendments or changes September 14, 2022.

Date of receipt of corrected application September 19, 2022.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 8197A-3 to Mina North LLC, c/o Nolan Ulmer, 2625 385th Ave N, Aberdeen SD 57401 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. 8197A-3 changes the use authorized by Water Permit No. 8197-3. Water Permit No. 8197-3 appropriates 72.1 acre-feet of water annually at a maximum, combined, pump rate of 0.16 cubic feet of water per second from two existing wells completed into the Inyan Kara Aquifer (1,555 and 1,425 feet deep) located in the NE 1/4 SW 1/4 and the SW 1/4 SE 1/4 Section 7-T123N-R65W for commercial use in a livestock facility. The commercial use of water for the livestock facility has been abandoned. This permit authorizes changing the use to a water distribution system for a housing development, rural water system, commercial and geothermal uses in portions of the SW 1/4 Section 7-T123N-R65W. No additional water appropriation is authorized by this permit. This site is located on the northeast edge of Mina Lake in Brown County.
2. The water appropriated shall be used for the purpose of water distribution system for a housing development, rural water system, commercial and geothermal uses and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 8197A-3 is November 21, 2022.
5. The date from which applicant may claim right is January 29, 2016 (established by Water Permit No. 8197-3).
6. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The wells approved under Water Permit No. 8197A-3 are located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells approved under this permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If the wells are abandoned, the wells must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.

(continued)

3. Any future replacement wells shall meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. Replacement wells may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
5. Water Permit No. 8197A-3 authorizes a total annual diversion of 72.1 acre-feet of water from the Inyan Kara aquifer.

WATER MANAGEMENT BOARD

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

DEC 08 2022
date



(type or print)

Mail to:

SD DANR, Water Rights
523 E Capitol Ave
Pierre, SD 57501-3182
ph. (605) 773-3352

No. 8197A-3 Hydrologic Unit 10160008
Basin James River
Newspaper American News

(office use only)

PAID

SEP 14 2022

Ck# 1018

Rec't# _____

RECEIVED

SEP 14 2022

**OFFICE OF
WATER****Application for Permit to Appropriate Water in South Dakota****Check use(s) of water:**☐

Municipal

☒

Water Distribution System

☐

Recreational

☐

Institutional

☒

Rural Water System

☒

Commercial

☐

Fish & Wildlife

☒

Geothermal

☒

Domestic (over 18 gpm)

☐

Industrial

☐

Other _____

Type of Application:

(check one)

☐

New

☐

Vested Right (Use predates Mar 2, 1955)

☐

Future Use Reservation

☐

Place to Beneficial Use Water Reserved by Future Use Permit No. _____

☒Amendment/Correction to Permit No. 8197-3

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

This application amends water Permit No. 8197-3 to add types of water use in addition to commercial use with no increase in the 0.16 cfs diversion rate or 72.1 acre-feet annual volume.

1. Name to Appear on Water Permit Mina North LLCMailing Address 2625 385th Ave N Aberdeen SD 57401

(Address)

(City)

(State)

(Zip Code)

Phone _____

Mobile 970-396-8423Email nu@ubinv.net

2. Amount of water claimed no add'l *CFS or **GPM and no add'l ***AF or Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use)

3. Source of water supply Two existing wells - Inyan Kara aquifer4. Location of point of diversion NE1/4 SW1/4, SW1/4 SE1/4: all in sec. 7-T123N-R65W County Brown

(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ NoIf "Yes," where will water be used? portions of SW1/4 Sec 7-T123N-R65W

(example - NW1/4 section 12-T104N-R53W)

5. County or counties where water will be used BROWN6. Annual period during which water is to be used Jan 1 - Dec 31

7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

This application amends No. 8197-3 to supply water to housing development, commercial uses, and geothermal use. water use for the commercial feedlot authorized by No. 8197-3 has been discontinued.

I, 7/14/2022 Nolan Ulmer Member / Manager, the applicant, certify under
Name of Person Title (if applicable)

DocuSigned by:

678A3E04D3CF495

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

2021-08

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

Form 2A

(Complete applicable portions only)

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable)☐ Drilling new well(s) ☒ Using existing well(s)a) If new wells, how many _____ Have test holes been drilled? ☐ Yes ☐ No Drilled by _____
(if yes, please provide copies of logs)b) If existing wells, how many ² _____ Provide copy of log(s), if available. Drilled by _____**For either existing or proposed wells:**

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

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

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) _____ Year Constructed _____

c) Connected to the City of _____ Sanitary System

3. Dugout Information

a) Surface Dimensions _____ Depth _____

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

4. Water Storage Dams

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

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

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

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

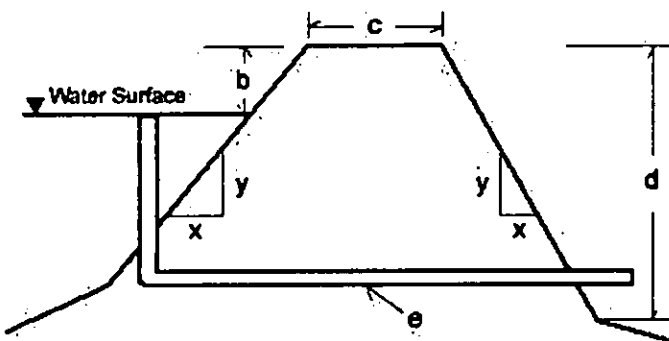
Upstream _____

Downstream _____

h) Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres

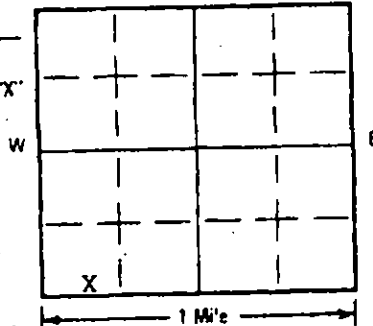


SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location SW 1/4 SW 1/4 Sec 7 Twp 123 Rg 65
County Brown Co.

Please mark well location with an "X"



Well Completion Date

10-1-98

Well Owner: Randy Bauer

Business Name:

Address: 37328-132 ND ST
Mina, SD 57462-9024

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top Soil	0	5
Yellow Clay	5	20
Shale	20	660
Greenhorn	660	680
Shale	680	1040
Dakota Sand	1040	1315
Shale	1315	1415
Lakota Sand	1415	1555

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 300 ft. from Septic (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Rotary

CASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>250</u> LB/FT	<u>5</u> IN	<u>0</u> FT	<u>300</u> FT	<u>8</u> IN
<u>180</u> LB/FT	<u>2</u> IN	<u>0</u> FT	<u>1555</u> FT	<u>4 1/2</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Portland</u>	<u>30</u>	_____ lb./gal	<u>0</u> ft	<u>30</u> ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure

SCREEN: ☒ Perforated pipe ☐ Manufactured

Diameter 2 IN Length 140 FEET

Material PVC

Slot Size 3/8 Set From 1415 Feet to 1555 Feet

Other information

WAS A PACKER OR SEAL USED? ☒ YES ☐ NO

If so, what material? Rubber

Describe packer(s) and location? Above Perf

DISINFECTION: Was well disinfected upon completion?

YES, How:

Laboratory sent to for water quality analysis X NO. Why Not? Flowing well

Pierre, SD

STATIC WATER LEVEL

_____ Feet

If flowing: closed in pressure 120 PSI

GPM flow 100 through 2 inch pipe

Controlled by ☒ Valve ☐ Reducers ☐ Other

Reduced Flowrate 15 GPM

Can well be completely shut in? Yes

WELL TEST DATA:

☐ Pumped

Describe:

☐ Bailed

☐ Other

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

This well was drilled under license # 94

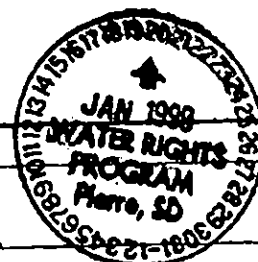
And this report is true and accurate.

Drilling firm Huron Drilling, Inc.

Signature of License Representative

Signature of Well Owner or Equitable Property Holder:

Date: 1-6-99



RECEIVED

JAN 29 2016

WATER RIGHTS PROGRAM

RECEIVED

JAN 29 2016

Independent Drilling Co.
Aberdeen, South Dakota

WELL REPORT

WATER RIGHTS
PROGRAM

Completed well for *Alex Highland* *Aberdeen S.D.* *July 29, 1960*
P. O. *Tucson, Arizona* Depth *1425* ft. *15* Gallons per minute

Purage gal. per min. for hrs. { Clear Sandy Muddy Cloudy } Pumped gal. per min. for hrs. { Clear Sandy Muddy Cloudy }

Water stand. feet from top. Is the water hard? Well located on

8 W quarter Sec. *7* T *123* R *65* Moved to this place on *July 21* 19*60*

Started work on well *July 21* 19*60* Well completed on *July 27* 19*60*

Left last place on *July 28* 19*60*

21 ft. *2 1/2* gal. pipe extending to a total depth of *21* feet

156 ft. *2 1/2* gal. pipe extending to a total depth of *177* feet

1248 ft. *1 1/2* Blk pipe extending to a total depth of *1425* feet

ft. pipe extending to a total depth of feet

ft. pipe extending to a total depth of feet

Cap block *665* ft. *608* Rock at from feet to feet

Rock from *1188* P.O. level to *1388* ft. from *1390* feet to *1415* feet

Tubular sand from feet to feet

perforated *80* ft. at bottom. Also from to and from to

For whom was the last well completed by this machine?

What was the date of its completion? Explain loss of time, if any, between

completion of last well and commencement of this one

What extra charges are there against this well for pipe, fittings and supplies (please itemize)? *84 ft of*

3/4 gal. pipe, 10. 3/4 gal. Elbo. 2. 3/4 gal. union,

0. 3/4 gal. tee 6. 6x 3/4 gal. nipples

At whose request and by whose authority was this furnished?

Please state what casing and gasoline you have on hand after completion of this well

How much gasoline did you have on hand at commencement of this well?

How much gasoline have you received while on this well (give date and number of gallons)?

Date	Amount	gals.	Date	Amount	gals.

Date	Amount	gals.	Date	Amount	gals.

How much gasoline had you on hand at the completion of this well?

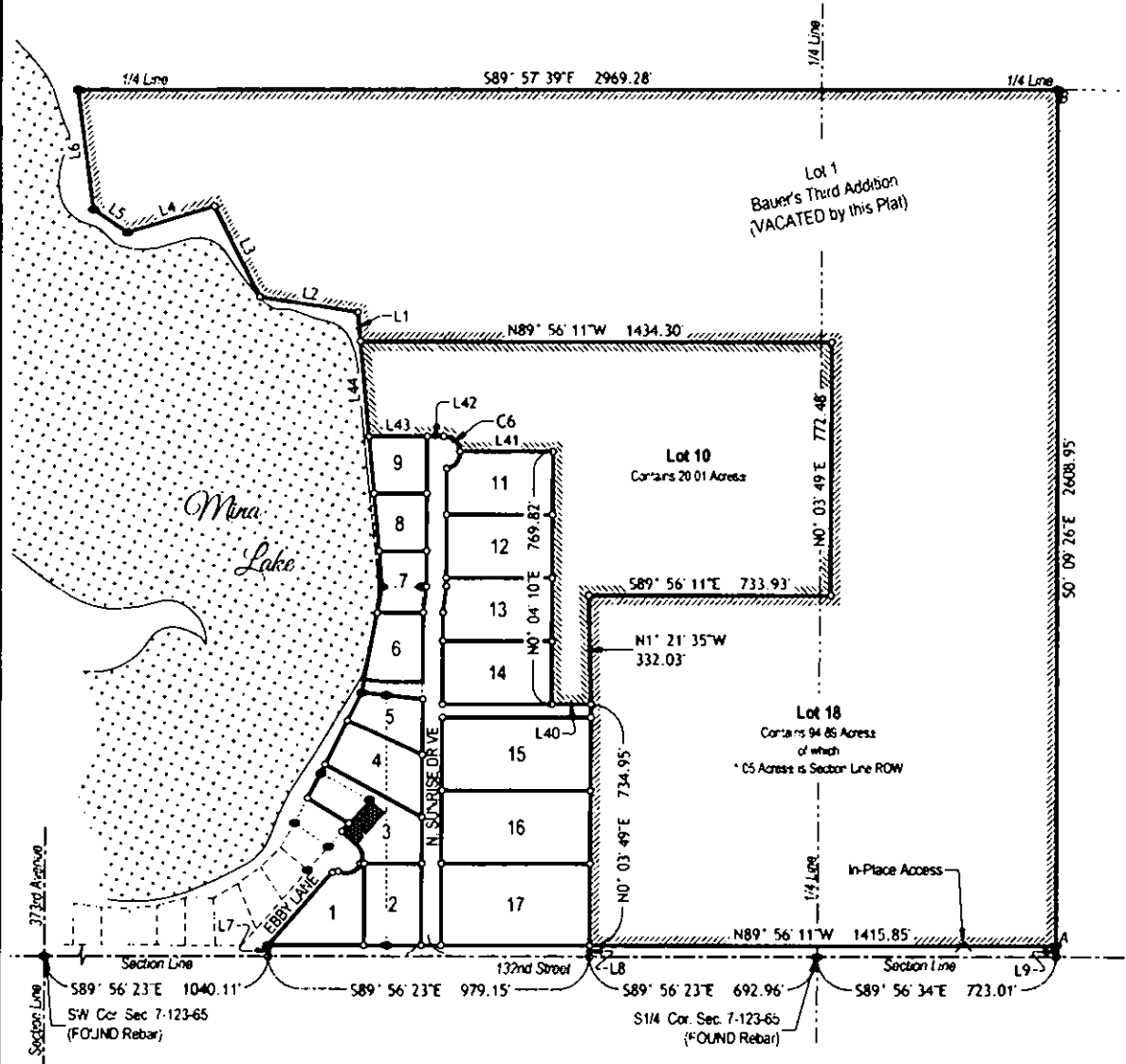
gasoline did you use on this job?

run on this job?

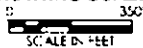
John Strickte
Foreman Rlg No. *Plus Rotor*

PLAT SHOWING BAUER'S FOURTH ADDITION

IN THE S1/2 OF SECTION 7, TOWNSHIP 123 NORTH, RANGE 65 WEST OF THE 5th P.M.,
BROWN COUNTY, SOUTH DAKOTA



DRAWING SCALE



LEGEND

- PIN FOUND (LS 3210)
- PIN FOUND (LS 4423)
- PIN FOUND (REBAR)
- PIN SET w/ CAP LS 11699
- ⊙ CALCULATED CORNER

BASIS OF BEARINGS

STATE PLANE COORDINATE SYSTEM
SOUTH DAKOTA NORTH ZONE (4001)
US SURVEY FEET - NAD 83
DISTANCES SHOWN ARE GROUND
COORDINATES SHOWN ARE GRID

PLAT NOTES

LOTS 1-5, BAUER'S FOURTH ADDITION
CAN BE FOUND ON SHEET 2 OF 7.

LOTS 6-14, BAUER'S FOURTH ADDITION
CAN BE FOUND ON SHEET 3 OF 7

LOTS 15-17, BAUER'S FOURTH ADDITION
CAN BE FOUND ON SHEET 4 OF 7

CURVE TABLE

#	LENGTH	RADIUS	DELTA ANGLE	Ch	CL
C6	75.11'	50.00'	86°03'35"	N46°58'02"W	68.24'

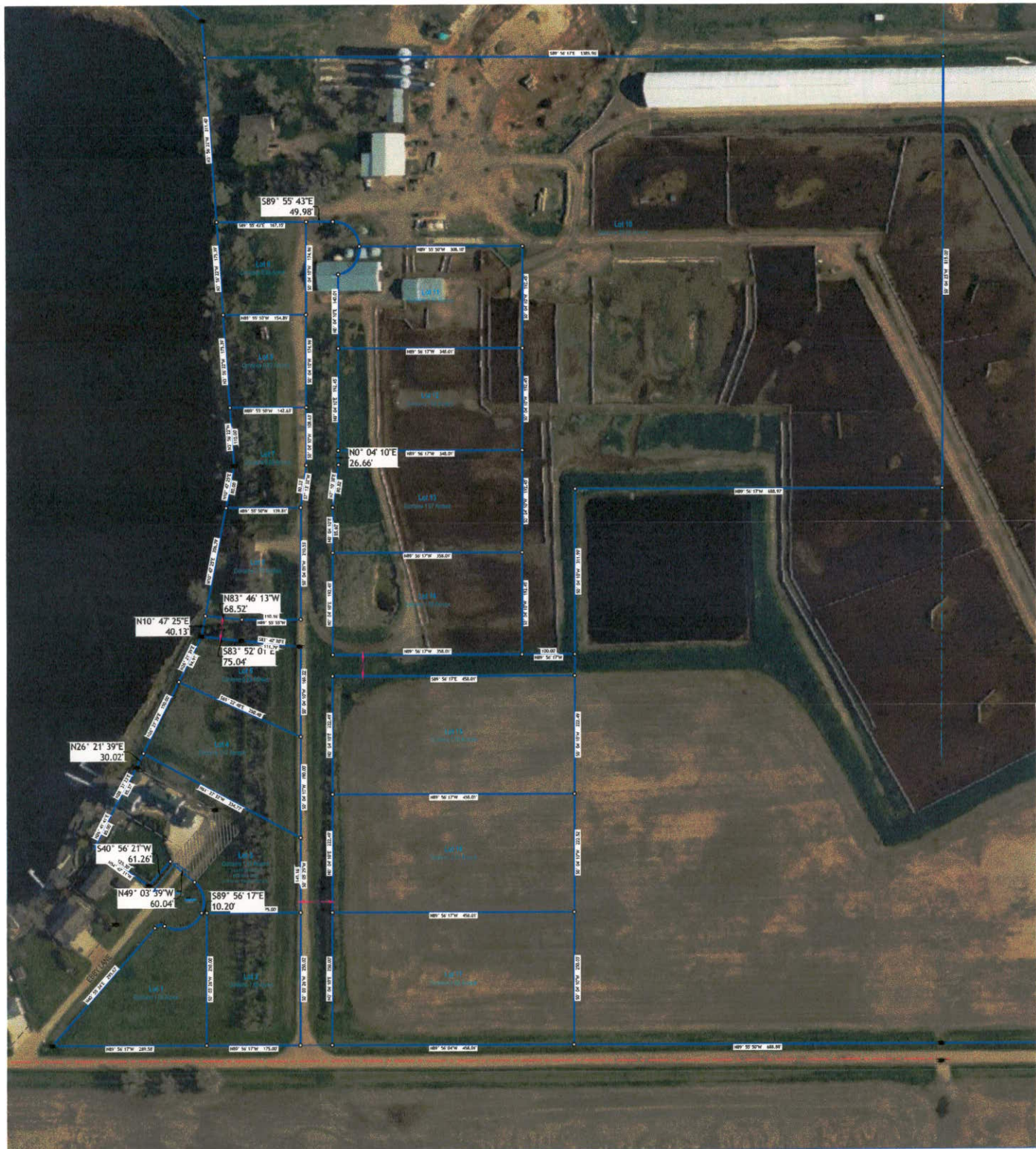
LINE TABLE

#	BEARING	DISTANCE
L1	N5°13'40"W	89.50'
L2	N80°49'18"W	300.37'
L3	N26°19'50"W	308.07'
L4	S73°12'21"W	273.80'
L5	N55°53'30"W	124.92'
L6	N7°21'20"W	368.20'
L7	S0°06'55"W	33.11'
L8	S0°03'49"W	33.12'
L9	S0°09'26"E	33.00'
L40	N89°56'17"W	120.55'
L41	N89°55'50"W	284.00'
L42	N90°00'00"W	49.98'
L43	N89°55'47"W	177.56'
L44	N5°13'40"W	289.32'



Prepared By:
Assurance
LAND SURVEYING

619 14th Avenue S, Faulkton, South Dakota 57438
Phone: 605-290-3090 / Email: zach@assurancelandsurveying.com
Project No. ALS22061 Field Survey Date: 06-07-2022





Mina North LLC Well location

Rogers Well location
red circle.



123N 66W
Section: 01

123N 65W
Section: 06

123N 65W
Section: 05

123N 66W
Section: 12

123N 65W
Section: 07

123N 65W
Section: 08

123N 66W
Section: 13

123N 65W
Section: 18

123N 65W
Section: 17



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

September 14, 2022

Mina North LLC
c/o Nolan Ulmer
2625 385th Ave N
Aberdeen SD 57401

Dear Mr. Ulmer:

Thank you for submitting the *Application for a Permit to Appropriate Water* to change use on Water Permit No. 8197-3. To complete the application, the following is required.

- A review of the Secretary of State's corporation website finds Rodrick L Tobin listed as the Registered Agent for Mina North LLC. Your name is not listed as one of its partners. DANR will need the application to be signed by the registered agent or a statement of authority that the person signing the application has the authority to act on behalf of Mina North LLC on all matters involving the water permit application.
- Also, enclosed is a partially completed Notice of Transfer of Ownership form for Water Permit No 8197-3 to be completed and returned.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

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

enclosures

Schlaak, Karen

From: Nolan Ulmer <nu@ubinv.net>
Sent: Monday, September 19, 2022 8:46 AM
To: Schlaak, Karen
Subject: [EXT] Mina North, LLC well transfer documents
Attachments: Well Transfer.pdf; Operating Agreement (Mina North).pdf

Karen

I have attached all the documents you have ask for please confirm that you have received all documents needed.

Thank you.

Nolan Ulmer
Mina North LLC
Member/Manager
970-396-8423

**LIMITED LIABILITY COMPANY
OPERATING AGREEMENT**

of

MINA NORTH, LLC

a

South Dakota Limited Liability Company

OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made and entered into on May 20, 2022 by the Members ("Members"). In consideration of the covenants and the promises made herein, the Members hereby agree as follows:

SECTION 1: DEFINITIONS

- 1.1 "Agent" means any person who is or was a Member, Officer, employee, or other agent of this LLC.
- 1.2 "Code" means the Internal Revenue Code of 1986, as amended.
- 1.3 "Capital Account" means the amount of a Member's Capital Contribution, as adjusted, including but not limited to increases due to profits or additional contributions and decreases due to losses and distributions.
- 1.4 "Capital Contribution" means any contribution of value, including but not limited to cash, property, assets, etc., by a Member to the capital of the LLC.
- 1.5 "Expenses" means any and all costs, fees, and expenses including but not limited to court costs and attorneys' fees.
- 1.6 "Financial Interest" means a Member's right to share in the profits, losses, incomes, expenses, or other monetary items and to receive distributions and allocations from the LLC.
- 1.7 "Including" means including, but not limited to,
- 1.8 "LLC Interest" or "Interest" means an ownership interest in the LLC, which includes the Financial Interest, the right to vote, the right to participate in management and the right to obtain information concerning the LLC and any other rights granted to a Member under the Articles or this Agreement.
- 1.9 "Member" or "Members" means any person(s) or entity(s) who owns any interest in this LLC. The singular includes the plural (and vice versa).
- 1.10 "Membership Unit" or "Membership Units" means the representation of LLC ownership. The Company may, but is not obligated to, issue Membership Unit certificates to each Member. The Company will record and track Unit ownership on a register kept for that purpose.
- 1.11 "Proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative.
- 1.12 "Property" means any and all assets, in whole or in part, of the LLC, both tangible and intangible.
- 1.13 "Statute" means the South Dakota Limited Liability Company Act, as amended.
- 1.14 "Unit" or "Units" the same as Membership Unit or Membership Units.

SECTION 2: FORMATION

- 2.1 **Formation.** The Member formed Mina North, LLC by filing the Articles of Organization ("Articles") with the Secretary of State.
- 2.2 **Location.** The LLC's principle office is located at 2625 385th Avenue, Aberdeen, South Dakota 57401. The Member may change the principle office location or establish branch or subordinate offices at any time.
- 2.3 **Term.** The LLC will exist until terminated or dissolved as specified in the Articles or this Operating Agreement.
- 2.4 **Registered Agent and Office.** Rodrick L. Tobin will be the LLC's registered agent. The LLC's registered office will be the registered agent's office at 415 S. Main Street, 400 Capitol Bldg., Aberdeen, South Dakota 57401. The Member may change the registered agent and office at any time.

SECTION 3: MEMBERSHIP

- 3.1 **Members.** The following are the Members and the number of Membership Units each of them will own upon signing this Agreement:

Member Name	Units
Nolan Ulmer	100

- 3.2 **Additional Members.** The Members may admit additional persons or entities to the LLC as Members upon the majority consent of the Members. The Members may set membership terms and conditions before admitting new Members. All new Members must sign this Agreement and agree to be bound by its terms.
- 3.3 **Liability to Third Parties.** No Member will be liable for the debts, obligations, or liabilities of the LLC to a third party unless the Member agrees in writing to be liable.
- 3.4 **Authority.** No Member has the authority or power to act for or on behalf of, to bind, or to incur any liability on behalf of the LLC except as provided in this Agreement.
- 3.5 **Withdrawal.** No Member has the right to withdraw from the LLC as a Member except as provided in this Agreement. An unapproved withdrawal will constitute a breach of this Agreement. The Member will be liable to the LLC and the other Members for all monetary damages resulting from or related to the breach.
- 3.6 **Compensation.** No Member may receive compensation for services rendered to the LLC except as expressly permitted by this Agreement or any other written agreement. The LLC will reimburse Members for any expense that is properly an expense of the LLC.

SECTION 4: CAPITAL ACCOUNTS

- 4.1 **Contributions.** Members must contribute to the LLC the agreed Capital Contribution in order to receive their Membership Units.
- 4.2 **Additional Contributions.** Members may be required to contribute additional capital to the LLC upon the affirmative vote of majority of the Units issued and outstanding. Upon such affirmative vote, each Member will contribute to the LLC his or her pro-rata share of the additional contribution, based upon the Members' Capital Accounts.
- 4.3 **Failure to Contribute.** The LLC may take any action it deems necessary if a Member fails to timely provide a required Capital Contribution, including: suing the Member, suspend the Member's LLC voting rights, force the Member to sell that Member's Units to the Company for the price specified in Section 7.4 below, and any other right or remedy available at law or equity.
- 4.4 **Capital Accounts.** The Company will cause to be established and maintained a Capital Account for each Member in accordance with generally accepted accounting principles. Each Member will have only one Capital Account. The Capital Account will transfer to the transferee in any valid Unit transfer as specified in the Code.
- 4.5 **Adjustments to Capital Accounts.** Capital Accounts are subject to the following adjustments:
- a. **Increases.** Each Member's Capital Account will be increased by:
 - i. Capital contributions of cash and/or property at its agreed upon fair market value;
 - ii. All items of LLC income and gain (including income and gain exempt from tax).
 - b. **Decreases.** Each Member's Capital Account will be decreased by:
 - i. Distributions of cash or property at its agreed upon fair market value;
 - ii. All items of LLC deduction and loss (including deductions and loss exempt from tax).
- 4.6 **Advances by Members.** Members may, upon the affirmative vote of majority of the Units, advance money to the LLC. An advance is a loan to the LLC and will bear interest at a rate agreed to in writing by the Member and Company before the advance. An advance is not a Capital Contribution.
- 4.7 **Return of Capital.** Members may not withdraw all or any portion of their Capital Contribution unless approved by an affirmative vote of majority of the Units. The Company will determine the form of property returned to the Member upon such affirmative Capital Contribution withdrawal vote.

SECTION 5: ALLOCATION AND DISTRIBUTIONS

- 5.1 **Determination of Profits and Losses.** Profits and losses will mean net income and net loss as determined by the books and records of the LLC kept in accordance with generally accepted accounting principals and the Code.
- 5.2 **Qualified Income Offset.** Notwithstanding the above, if a Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) or any amendment thereto, or receives an allocation of loss which produces a negative capital account for any Member while any other Member has a positive capital account, then items of LLC income must be specially allocated to such Member such that the deficit Capital Account is eliminated. This paragraph is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1 (b)(2)(ii)(d).
- 5.3 **Minimum Gain Chargeback.** Notwithstanding the above, if there is a net decrease in LLC "minimum gain" during a taxable year, each Member will be specially allocated, before any other allocation, items of income and gain for such LLC taxable year (and, if necessary, subsequent years) in proportion to each Member's share of the net decrease in LLC "minimum gain" as determined in accordance with Treasury Regulation Section 1.704-2(g)(2). This paragraph is intended to comply with the "minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2(1).
- 5.4 **Section 704(c) Allocation.** Notwithstanding the above, to the extent that Code Section 704(c) is applicable to any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed by a Member and which is required to be allocated to such Member for income tax purposes, the item will be allocated to such Member in accordance with Code Section 704(c).
- 5.5 **Distributions.** Distribution of LLC assets and property may be made at such times and in such amounts as the Members determine subject to any restrictions in this Agreement. Distributions will be in proportion to the Member's LLC Interests.

SECTION 6: MANAGEMENT

Management by the Members

- 6.1 **Place of Meeting.** The Members will designate the time and place of any Member meeting and state them in the meeting notice. The Member meeting will be held at the LLC's principle office if the notice does not specify a location.

- 6.2 **Annual Meeting.** The Members will meet annually on the day specified by the Members at the LLC's principle office unless an alternate location is specified in the notice. Any proper business may be transacted at the annual meeting.
- 6.3 **Special Meetings.** A special meeting of the Members may be called at any time by one or more Members holding Interests which, in the aggregate, constitute not less than fifty percent (50%) of the LLC Interests. The special meeting notice must be delivered in accordance with paragraphs 6.4 and 6.5 below.
- 6.4 **Notice.** All Member meetings notices must be given according to paragraph 6.5 below not less than one nor more than 30 days before the meeting date. The notice must specify the place, date, and hour of the meeting and in the case of (i) the annual meeting, the general nature of the business to be transacted, or (ii) a special meeting, those specific matters which are intended to be presented for action by the Members.
- 6.5 **Manner of Notice.** Notice must be given to each Member either personally, by first class mail, email, or other written communication, charges prepaid, addressed to each Member at the address of each Member appearing on the books of the LLC. Notice will be deemed to have been given at the time when delivered personally, deposited in the mail, or sent by email, or other means of written communication.
- 6.6 **Conduct of Meetings.** The Manager will preside over all meetings. The Manager will determine the order of business and meeting procedures.
- 6.7 **Quorum.** The presence, in person or by proxy, of 51% or more of the Membership Units will constitute a quorum at all Member meetings.
- 6.8 **Voting.** Each Member will have the number of votes equal to the number of Membership Units held by such Member. However, if a Member is not entitled to vote on a specific matter, then such Member's number of votes and LLC Interest will not be considered for purposes of determining whether a quorum is present, or whether approval by vote of the Members has been obtained, with respect to such specific matter. An affirmative vote by a majority of the LLC Interests present at a meeting may approve any action, unless a greater or lesser vote is required by this Agreement or Statute.
- 6.9 **Waiver.** The transactions of any Member meeting will be valid as if it had been held after regular call and notice, if a quorum of Members, either before or after the meeting, entitled to vote but not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or any approval of the minutes thereof. Attendance of a person at a meeting will constitute a waiver of notice of such meeting, unless such person objects at the beginning of the meeting.
- 6.10 **Written Consent without a Meeting.** Any action which may be taken at any annual or special Member meeting may be taken without a meeting and without

prior notice, if Members holding a majority of LLC Interests sign written consents setting forth the action so taken.

- 6.11 **Proxies.** Every Member entitled to vote may do so either in person or by written proxy signed by the Member and filed with the LLC. A proxy will be revocable unless the proxy specifically states that it is irrevocable.
- 6.12 **Officers.** The Company initially will have a Manager as the sole officer. The Members, by the affirmative vote of a majority, may name other officers. If the title assigned to a person is one commonly used for officers of a business corporation, the assignment of such title must constitute the delegation of the authority and duties normally associated with that office. Any number of official titles may be held by the same person. Any delegation pursuant to this section may be revoked at any time by the affirmative vote of Members owning a Majority Interest.
- a. **Compensation.** Salaries of Officers employed by the LLC will be determined by the Members or established under employment agreements approved by the Members. No Officer will be prevented from receiving this salary because he or she is also a Member of the LLC. It will not be mandatory that the Officers receive a salary.
- b. **Transactions.** An affirmative vote of Members owning a majority of LLC Interest must approve any transaction of \$10,000 or more.

SECTION 7: TRANSFER AND ASSIGNMENT

- 7.1 **Transfer or Assignment of LLC Interest.** No Member, or his/her personal representative, guardian, conservator, successor, assignee, or attorney-in-fact, may sell, transfer or assign, in whole or in part, his or her LLC Interest at any time without the written consent of a majority of LLC Interests. For purposes of this Agreement, transfer means sale, exchange, assignment, alienation, disposition, gift, devise, pledge, hypothecation, encumbrance, or grant of security interest in the LLC Interest.
- 7.2 **Consent to Transfer.** If a LLC Interest is transferred or assigned without proper consent, the transferee will have no rights in, and may participate in, the management or operation of the business and affairs of the LLC and will not be a LLC Member. Any LLC Interest transfer or assignment without the proper consent will only transfer the Member's Financial Interest, and the transferring Member will remain bound to the terms of this Agreement and must sign the Operating Agreement.
- 7.3 **Determining Value of Interest.** The Members, by unanimous consent, must determine the value of one Membership Unit at any regular or special meeting called for that purpose. That value will be used and controlling until the Members

determine a new value. The initial value of one membership unit is the appraised value of the owned property, less any debt. The Members will determine a value at least annually; however, the most recent valuation will control until the Members determine a new value.

- 7.4 **Voluntary Sale of Membership Interest.** A Member may sell his/her interest only after receiving written consent from Members holding a majority of Membership Units. Upon receipt of such approval, the selling Member must first offer the Membership Units to the Company. If the Company declines to purchase the Units, the selling Member must next offer the Units to the remaining Members pro rata based upon the remaining members LLC ownership. If one or more of the remaining Members declines to purchase his/her pro-rata share, the other Members may purchase the declining Member's pro-rata share. If more than one Member desires to purchase a declining Member's share, the purchasing Members must purchase the declined shares pro-rata. The purchase price between Members will be the value according to Section 7.3 multiplied by the number of Membership Units owned by the selling Member. If the remaining Members choose not to purchase of the selling Member's Membership Units, the selling Member may offer the units for sale to any non-Member.
- 7.5 **Sale Triggering Events.** The death, expulsion, divorce, bankruptcy or dissolution of a Member, or the occurrence of any other event which terminates the Member's continued membership in the LLC will obligate the Member, or his/her personal representative, guardian, conservator or attorney-in-fact, to sell the Member's Membership Units as specified in Paragraph 7.4 above.

SECTION 8: BOOKS AND RECORDS

- 8.1 **Maintenance of Books and Records.** The LLC will establish and maintain books and records in accordance with generally accepted accounting principles and keep the following LLC documents:
- a. A current list of the name and business or residence address of each Member and his or her Capital Contribution and LLC Interest;
 - b. A current list of the name and business or residence address of each Manager, if any;
 - c. A copy of the Articles and this Agreement and any amendments thereto;
 - d. Copies of the LLC's federal, state, and local income tax or information returns, if any, for the past six fiscal years;
 - e. Copies of the financial statements of the LLC, if any, for the past six fiscal years;

- f. Originals or copies of all minutes, actions by written consent, consents to action, and waivers of notice to Members, Member votes, actions and consents; and
 - g. Any other information required to be maintained by the LLC according to South Dakota law.
- 8.2 **Annual Accounting.** Within 90 days after the close of the LLC's fiscal year, the LLC will cause to be prepared and submitted to each Member a balance sheet and income statement for the preceding fiscal year of the LLC in conformity with generally accepted accounting principles and provide to the Members all information necessary for them to complete federal and state tax returns.
- 8.3 **Inspection and Audit Rights.** Each Member has the right, upon reasonable request, for purposes reasonably related to the interest of that Member, to inspect and copy during normal business hours, any of the LLC books and records. Such right may be exercised by the Member or his or her agent or attorney. Members holding a majority of the Membership Units may require a review or audit of the Company books, records, and reports.
- 8.4 **Bank Accounts.** LLC funds must be deposited in the LLC's name in banks determined by the Manager. All checks, drafts, or other orders for payment of money payable to the LLC must be endorsed by the Manager.
- 8.5 **Fiscal Year.** The LLC's fiscal year will end on December 31st.
- 8.6 **Accounting Method.** The Company will use the cash method of accounting for financial reporting purposes in a consistent manner appropriate and adequate for the Company.

SECTION 9: TAXATION

- 9.1 **Tax Year.** The LLC's taxable year will end on December 31st.
- 9.2 **Tax Matters Partner.** The Member will be the Tax Matters Partner as specified in Code Section 6231. The Tax Matters Partner will oversee the LLC tax affairs in the best interests of the LLC and make all elections for federal income tax purposes. The Tax Matters Partner must have all necessary federal and state income and information tax returns prepared and filed on behalf of the LLC. Tax Matters Partner determinations regarding adjustments to the financial reports, books, records, and returns of the LLC, in the absence of fraud or gross negligence, will be final and binding upon the LLC and all of the Members.

SECTION 10: INDEMNIFICATION

- 10.1 **Actions Other Than by the LLC.** The LLC will indemnify and hold harmless any person or Agent who was or is a party, or is threatened to be made a party, to

any Proceeding by reason of the fact that such person is or was an Agent of the Company, against Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such Proceeding, if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of this LLC, and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent will not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonable believed to be in the best interests of this LLC or that the person had reasonable cause to believe that his or her conduct was unlawful.

10.2 Actions by the LLC.

- a. The Company will indemnify any person who is a party, or is threatened to be made a party, to any threatened, pending, or completed action by or in the right of this LLC to procure a judgment in its favor by reason of the fact that the person is or was an Agent of this LLC, against expenses actually and reasonably incurred by that person or Agent in connection with the defense or settlement of that action if that person or Agent acted in good faith, in a manner that person or Agent believed to be in the best interests of this LLC, and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.
- b. No indemnification will be made with respect to any claim, issue or matter as to which that person will have been adjudged to be liable to this LLC in the performance of that person's duty to the LLC, unless the court in which that action was brought may determine upon application that the person is fairly and reasonably entitled to indemnity for the expenses which the court may determine.

10.3 Successful Defense by Agent. To the extent that an Agent of this LLC has been successful on the merits in defense of any Proceeding, the company will indemnify the agent against Expenses.

10.4 Required Approval. Any indemnification under this Section must be made by the LLC only if authorized by an affirmative vote of the Members, who were not parties to the proceeding, holding a majority of the Membership Units.

10.5 Advance of Expenses. The Company may advance expenses incurred in defending any Proceeding before the final disposition of the Proceeding upon receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it will be determined ultimately that the Agent is entitled to be indemnified.

10.6 Other Contractual Rights. Nothing contained in this Section will affect any right to indemnification to which Agents of this LLC or any subsidiary may be

entitled by contract, by vote of the Members, as a matter of law or equity, or otherwise.

- 10.7 **Insurance.** The LLC may purchase and maintain insurance on behalf of any LLC Agent against any liability which might be asserted against or incurred by the Agent in such capacity, or which might arise out of the Agent's status as such, whether or not the LLC would have the power to indemnify the Agent against that liability.
- 10.8 **Amendment to State of Organization's Laws.** In the event that the state of organization's law regarding indemnification of members, managers, directors, officers, employees, and other agents of a LLC, as in effect at the time of adoption of this Agreement, is subsequently amended to in any way that increases the scope of permissible indemnification beyond that set forth herein, the indemnification authorized by this Section will be deemed to be coextensive with the maximum afforded by the state of organization's law as so amended.

SECTION 11: LLC CERTIFICATES

- 11.1 **Issuance of Membership Unit Certificates.** Each Member's LLC Interest may be represented by one or more Membership Unit Certificates. Upon the execution of this Agreement and the payment of any required Capital Contributions, the Company may issue one or more LLC Certificates to the Member certifying that the named Member is the record holder of the LLC Interests. Each Member's LLC Certificate will be held in the corporate book with the Company records unless requested otherwise by the Member.
- 11.2 **Transfer of LLC Certificates.** An LLC Interest which is transferred in accordance with the terms of this Agreement must be transferable on the books of the LLC. However, the transfer of an LLC Interest will not be entered until the previously issued LLC Certificate representing such LLC Interest is surrendered to the LLC and canceled and a replacement LLC Certificate is issued to the assignee of such LLC Interest.
- 11.3 **Lost, Stolen, or Destroyed Certificates.** The LLC will issue a new LLC certificate in place of any LLC Certificate a Member satisfactorily proves has been lost, destroyed, or stolen. If a Member fails to notify the LLC within a reasonable time after it has notice of the loss, destruction, or theft of a LLC Certificate, and a transfer of the LLC Interest represented by the LLC Certificate is registered before receiving such notification, the LLC will have no liability with respect to any claim against the LLC for such transfer or for a new LLC Certificate.

SECTION 12: TERMINATION AND DISSOLUTION

- 12.1 **Dissolution.** The LLC may be dissolved upon a unanimous vote of the Members of the Membership Units. After such a vote, the LLC will execute and file a Statement of Intent to Dissolve.
- 12.2 **Conduct of Business.** After a unanimous vote in favor of dissolution, The Manager will act as liquidator and wind up all LLC business and affairs. However, the LLC will continue to exist until Articles of Dissolution have been filed or until a decree dissolving the LLC has been entered by a court of competent jurisdiction.
- 12.3 **Distribution of Net Proceeds.** Upon the occurrence of any of the events specified above and the completion of the winding up all LLC business and affairs, the assets of the LLC must be promptly liquidated and distributed in the following order:
- a. To the payment of creditors, excluding Members, in the order of priority as provided by law;
 - b. To the payment of loans or advances made by the Members;
 - c. To the Members in proportion to their Capital Accounts after adjustments for all allocations of net profits and net loss. Where the distribution consists both of cash and noncash assets, the cash must be distributed first, in descending order, to the above categories. With respect to the noncash assets, which distribution values are to be based on the fair market value of the noncash asset as determined in good faith by the liquidator, the liquidator may sell the noncash assets and distribute the cash proceeds or distribute the assets in kind, in descending order, to the above categories.
- 12.4 **Termination.** The LLC must be terminated upon the distribution of all assets. The Members will cause the LLC to file Articles of Dissolution, if required, or take any other actions necessary to terminate the LLC.

SECTION 13: AMENDMENTS

- 13.1 **Amendments by Members.** This Agreement may be adopted, amended, altered, or repealed by the vote or written consent of a majority of the LLC Interests at a meeting of the Members at which a quorum is present.

SECTION 14: GENERAL PROVISIONS

- 14.1 **Entire Agreement/Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter of the agreement, and it supersedes all prior understandings and agreements, whether written or

oral, and all prior dealings of the parties with respect to the subject matter hereof. Further, no consent or waiver, express or implied, to or of any breach or default will constitute a consent or waiver to or of any other breach.

- 14.2 **Partition.** Each Member agrees that he or she has no right, and irrevocably waives any and all such rights, to have the assets of the LLC partitioned, or to file a complaint, or institute and maintain any proceeding at law or equity to have the assets of the LLC partitioned.
- 14.3 **Further Actions.** Each of the Members agrees to execute, acknowledge, and deliver such additional documents, and take such further actions, as may reasonably be required from time to time to carry out each of the provisions and the intent of this Agreement, and every agreement or document relating hereto, or entered into in connection herewith.
- 14.4 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance will be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected thereby and will be enforced to the greatest extent permitted by law.
- 14.5 **Successor and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors, legal representatives, and assigns. This Agreement may not be assigned by any party without the express written consent of the other parties.
- 14.6 **Notices.** All notices, requests, demands, and other communications made hereunder will be in writing and will be deemed duly given if delivered or sent by, e-mail, facsimile, or registered or certified mail, postage prepaid, as follows, or to such other address or person as the party may designate by notice to the other party hereunder:

Nolan Ulmer
2625 385th Avenue
Aberdeen, SD 57401

- 14.7 **Attorneys' Fees.** In the event of any litigation, arbitration or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation, arbitration or other dispute will be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with settling or resolving such dispute.
- 14.8 **Construction.** Throughout this Agreement, the masculine, feminine, or neuter genders will be deemed to include the masculine, feminine, and neuter and the singular, the plural, and vice versa. The section headings of this Agreement are

for convenience of reference only and do not form a part hereof and do not in any way modified, interpret, or construe the intentions of the parties.

- 14.9 **Execution and Counterparts.** This Agreement may be executed in several counterparts each of which will be deemed to be an original, and all such counterparts when taken together will constitute one and the same instrument.
- 14.10 **Governing Law.** This agreement will be governed by, and interpreted in accordance with South Dakota law.

SIGNATURES ON FOLLOWING PAGE

CERTIFICATION

We, all members, hereby certify that the foregoing constitutes the Operating Agreement of Mina North, LLC a South Dakota limited liability company, on May 20, 2022.

Mina North, LLC

Member:

By: _____

DocuSigned by:
Nolan Ulmer
67BA3F0473CE495

Nolan Ulmer, Member

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date September 14, 2022

RECEIVED OF Mina North LLC 2625 385th Ave N., Aberdeen SD 57401

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

Fee for Application for Permit No. <u>8197-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>100.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	\$ _____
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	TOTAL
	\$ <u>100.00</u>

By *Eric Gronlund*
Chief Engineer
vm



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8197A-3, Mina North LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8197A-3, Mina North LLC, 2625 385th Ave North, Aberdeen SD 57401.

The Chief Engineer is recommending APPROVAL of Application No. 8197A-3 because 1) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 2) the proposed use is a beneficial use and 3) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The wells approved under Water Permit No. 8197A-3 are located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells approved under this permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If the wells are abandoned, the wells must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
3. Any future replacement wells shall meet the adequate well construction standard as defined in Administrative Rule of South Dakota (ARSD) 74:02:04:20. Replacement wells may not be constructed using the alternative construction requirements that are allowed for domestic use wells outlined in ARSD 74:02:04:35.
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
5. Water Permit No. 8197A-3 authorizes a total annual diversion of 72.1 acre-feet of water from the Inyan Kara aquifer.

See report on application for additional information.

Eric Gronlund, Chief Engineer
October 28, 2022

Report to the Chief Engineer
On Water Permit Application No. 8197A-3

Mina North LLC

C/O Nolan Ulmer

October 18th, 2022

Water Permit Application No. 8197A-3 proposes to change the use authorized by Water Permit No. 8197-3. Water Permit No. 8197-3 appropriates 72.1 acre-feet of water annually at a maximum combined diversion rate of 0.16 cubic feet per second (cfs) from two existing wells completed into the Inyan Kara aquifer (approximately 1,555 and 1,425 feet deep) located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7-T123N-R65W for commercial use in a livestock facility. This application proposes to change the use to a water distribution system for a housing development, rural water system, commercial, and geothermal uses in portions of the SW $\frac{1}{4}$ of Section 7-T123N-R65W. No additional water appropriation is authorized by this application. The site of interest is located near the northeast edge of Mina Lake in Brown County.

AQUIFER: Inyan Kara (INKR)

SDCL 46-2A-12 and 46-5-31

Pursuant to SDCL 46-2A-12, "An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest." Pursuant to SDCL 46-5-31, "Any appropriator of water may use the water for purposes other than for which it was appropriated, or may change the place of diversion, storage, or use, in a manner and under conditions approved by the Water Management Board, except that changes in irrigation permits shall be as prescribed by §§ 46-5-34 to 46-5-36, inclusive." Application No. 8197A-3 seeks to amend Water Permit No. 8197-3 pursuant to SDCL 46-2A-12 to change the type of use from commercial use in a livestock facility to use in a water distribution system for a housing development, rural water system, commercial, and geothermal uses. This change of use is allowed under SDCL 46-5-31.

WATER AVAILABILITY:

Since Water Permit Application No. 8197A-3 proposes to change the use authorization and not change the amount of water being appropriated from the Inyan Kara aquifer, water availability from the aquifer is not relevant for this application.

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

Well completion reports submitted with this application indicate the two existing wells were constructed in 1998 and 1950 respectively. The wells were each constructed in a manner similar to the "Alternative well construction requirements for certain Inyan Kara wells" (i.e., South Dakota Well Construction Standards [ARSD] 74:02:04:36), meaning that only a fraction, if any of the well casing was pressured grouted into the borehole (Buhler, 2016). Effective July 16,

1992, this well construction method was restricted to private and reasonable domestic use wells and for noncommercial livestock watering wells as an alternative to full length pressure grout of the casing (Buhler, 2016). If either of these existing wells is replaced, replacement wells must be constructed in accordance with ARSD 74:02:04:28 (i.e., full length grout). The Inyan Kara aquifer is also under confined conditions at the existing diversion point, so drawdown caused by pumping may be measurable by nearby wells.

Currently, there are 204 water rights/permits authorized to appropriate water from the Inyan Kara aquifer (Water Rights, 2022c). Most of these are located in the Black Hills area of South Dakota, approximately 240 miles west-southwest of this application (Water Rights, 2022c). The closest water right/permit to the existing diversion points is Water Right No. 4176-3 which is held by Mina Lake Sanitary and Water System. The diversion point for Water Right No. 4176-3 is located approximately 1.6 miles southwest of the existing diversion points for this application. It should be noted that the WFB rural water system now supplies water for the Mina water system and Water Right No. 4176-3 is retained on an emergency standby basis (Water Rights, 2022c).

The closest domestic well on file with the DNR-Water Rights Program that is completed into the Inyan Kara aquifer is approximately 0.3 miles southwest of the proposed diversion point (Water Rights, 2022d). There could potentially be other domestic wells completed into the Inyan Kara aquifer near the proposed diversion point that are not on file with the DNR-Water Rights Program.

The Water Management Board recognizes that putting water to beneficial use requires a certain amount of drawdown to occur. The Board has developed rules to allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure for domestic use. The Water Management Board 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.”

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use during the issuance of Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills. The Board adopted the Findings of Facts and Conclusions of Law that noted the reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, “general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable...” (Water Rights, 1995). Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered as an unlawful impairment, it would also conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to install or lower pumps depending on the specific characteristics of the Inyan Kara aquifer at their location. However, when considering the

statutes (SDCL 46-1-4 and 46-6-6.1), rules (ARSD 74:02:04:20(6) and (7)), the lack of well interference complaints for adequate wells completed into the Inyan Kara aquifer in Brown County, and that the wells this application proposes to use have been in place and operating without reported issues, any drawdown created from the proposed diversion is not expected to cause an unlawful impairment on existing water right/permit holders or domestic users with adequate wells (Water Rights, 2022e). Therefore, there is a reasonable probability that any interference from the proposed appropriation will not impose unlawful impairments on existing users with adequate wells.

CONCLUSIONS:

1. Water Permit Application No. 8197A-3 proposes to change the use authorized by Water Permit No. 8197-3 to water distribution system for a housing development, rural water system, commercial, and geothermal uses.
2. Water Permit No. 8197-3 appropriates 72.1 acre-feet of water annually divert water at a maximum, combined, diversion rate of 0.16 cfs from two existing wells completed into the Inyan Kara aquifer for commercial use in a livestock facility.
3. There is a reasonable probability that the proposed diversion by Water Permit Application No. 8197A-3 will not unlawfully impair adequate wells for existing water rights/permits and domestic uses.
4. Any replacement wells must be constructed in accordance with ARSD 74:02:04:28.



Tyler Jensen
Natural Resources Engineer I
SD DANR - Water Rights Program



Adam Mathiowetz, PE
Natural Resources Engineer IV
SD DANR - Water Rights Program

References

- Buhler, K., February 24, 2016. "Report to the Chief Engineer on Water Permit Application No. 8197-3". SD-DANR Water Rights Program, Joe Foss Bldg, Pierre, SD.
- SDGS, 2022. South Dakota Geological Survey Lithologic Logs Database. Accessed August 30, 2022. <http://cf.sddanr.net/lithdb/>.

Water Rights, 1995. Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of the Black Hills. DANR-Water Rights Program file for Water Right No. 2313-2. Pierre, SD.

Water Rights, 2021a. "1979-2022 Irrigation Summaries by Aquifer", SD DANR-Water Rights Program. Joe Foss Building, Pierre, SD.

Water Rights, 2022b. Observation Well Data, SD DANR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2022c. Water Right/Permit Files, SD DANR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2022d. Well Completion Reports, SD DANR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2022e. County Files, SD DANR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, November 1, 2022 11:01 AM
To: 'Nolan Ulmer'
Subject: Water Permit Application No. 8197A-3
Attachments: 4349.pdf

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

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



LOCALiQ

Aberdeen News
Watertown Public Opinion

PO Box 630567 Cincinnati, OH 45263-0567

PROOF OF PUBLICATION

Nolan Ulmer
Mina North LLC
2625 385th AVE N
Aberdeen SD 57401-8489

RECEIVED

NOV 22 2022

**OFFICE OF
WATER**

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

The AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, and has been such a newspaper during the times hereinafter mentioned; and personal knowledge of the facts herein state that the notice hereto annexed was Published in said newspapers in the issue dated:

11/10/2022

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.
Sworn to and subscribed before on 11/10/2022

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$53.44

Order No: 8007057

of Copies:

Customer No: 864334

1

PO #:

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

MARIAH VERHAGEN
Notary Public
State of Wisconsin

NOTICE OF
APPLICATION NO.
8197A-3

Notice is given that Mina North LLC, c/o Nolan Ulmer, 2625 385th Ave N, Aberdeen SD 57401 has filed an application for a water permit to change the use authorized by Water Permit No. 8197-3. Water Permit No. 8197-3 appropriates 72.1 acre-feet of water annually at a maximum, combined, pump rate of 0.16 cubic feet of water per second from two existing wells completed into the Inyan Kara Aquifer (1,555 and 1,425 feet deep) located in the NE 1/4 SW 1/4 and the SW 1/4 SE 1/4 Section 7-T123N-R65W for commercial use in a livestock facility. The commercial use of water for the livestock facility has been abandoned. This application proposes to change the use to a water distribution system for a housing development, rural water system, commercial and geothermal uses in portions of the SW 1/4 Section 7-T123N-R65W. No additional water appropriation is authorized by this application. This site is located on the northeast edge of Mina Lake in Brown County.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8197A-3 with qualifications because 1) existing domestic water uses and water rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

<https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public>

or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by November 21, 2022. The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at

<https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 21, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$53.44 and may be viewed free of charge at www.sdpublishnotices.com

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, November 1, 2022 10:29 AM
To: Aberdeen News Legals (aan-legals@aberdeennews.com)
Subject: 8197A-3, Mina North LLC
Attachments: 8197A-3public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on November 10, 2022.

Mina North LLC, c/o Nolan Ulmer, 2625 385th Ave N, Aberdeen SD 57401 (970-396-8423) has been notified to contact you to authorize publication and arrange for payment.

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

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

Karen Schlaak

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





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

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

November 1, 2022

Mina North LLC
c/o Nolan Ulmer
2625 385th Ave N
Aberdeen SD 57401

Dear Ulmer:

Water Permit Application No. 8197A-3 for a water distribution system, commercial, and geothermal uses has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the American News printed at Aberdeen SD (Ph # 605 225-4100). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
(605) 773-3352

enclosures

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

Instruction to Newspaper - Publish the Notice on November 10, 2022. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 8197A-3

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The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 21, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of_



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

DEC 08 2022

Mina North LLC
c/o Nolan Ulmer
2625 385th Ave N
Aberdeen SD 57401

Dear Mr. Ulmer:

Enclosed is Water Permit No. 8197A-3 authorizing the changes of use on Water Permit No. 8197-3 and the beneficial use of the water, not exceeding the limits as specified in the Water Permit.

We will schedule an inspection so that the Water License may be issued to you, thus completing your acquisition of a Water Right.

Sincerely,

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

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
on DANR Website**

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

Application No.: 8197A-3

Name of Applicant: Mina North LLC, c/o Nolan Ulmer

Date of Posting: 11/7/2022

Date of Removal: 12/8/2022

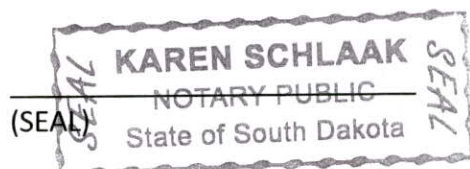
Ron Duvall, Water Rights Permitting Administrator

12/8/22
Date

Subscribed and sworn to before me, a notary public, this 8th day of Dec, 2022.

Notary Public - South Dakota

My commission expires: 4/1/2025





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

June 11, 2024

NOTICE OF HEARING

TO: Mina North, LLC., Nolan Ulmer, 2625 385th Ave. N, Aberdeen SD 57401

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

SUBJECT: Violation of Permit Qualification to Report Annual Water Use

Our records indicate your 2023 annual water use has not been submitted for Permit No. 8197A-3. The request to report water use for 2023 was dated January 5, 2024. Two follow-up attempts to get the required water use report have gone unanswered. The Water Management Board has directed owners of water permits who have not submitted the 2023 water use reporting be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No. 8197A-3 qualification:

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

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

1. Suspend or cancel Permit No. 8197A-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.

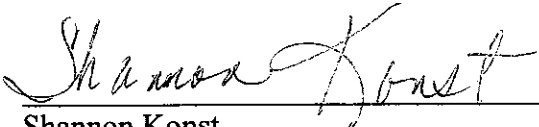
If the water use report(s) is (are) received in this office before the **July 10, 2024** hearing, you will no longer be in violation of your permit and your name will be removed from the Board agenda. You may submit your water use report by providing the information to Rachel Rodriguez at (605) 773-3352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

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

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing, dated June 11, 2024, concerning violation water use reporting qualification in the matter of Water Permit No. 8197A-3 was served by U.S. certified mail, postage prepaid, upon the following on June 11, 2024.

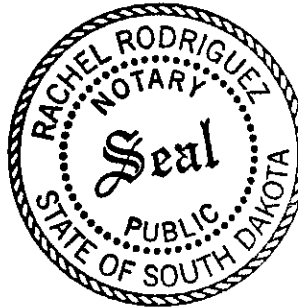
Mina North, LLC.
Nolan Ulmer
2625 385th Ave. N
Aberdeen SD 57401


Shannon Konst
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of June, 2024.


Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029



Rodriguez, Rachel

From: Duvall, Ron
Sent: Thursday, June 27, 2024 10:08 AM
To: nu@ubinv.net
Cc: Rodriguez, Rachel
Subject: RE: 2023 Water Use Reporting

Converted to AF 9.67

Nolan,

Thank you for providing your water use over the phone. Based on the flow rates provided for each well – 3.2 gallons per minute (gpm) and 2.8 gpm, the annual volume used for a continuous use of 6 gpm is 3,153,600 gallons per year. With the reporting of your water use, there is no violation of the permit qualification and the permit has been removed from the Water Management Board's July agenda.

Thank you for getting us this information. Please let me know if you have any questions.

Thank you,

Ron

From: Duvall, Ron
Sent: Tuesday, June 25, 2024 4:40 PM
To: nu@ubinv.net
Cc: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>
Subject: RE: 2023 Water Use Reporting

Thank you for calling about the water usage. Once you complete your timed bucket filling and have an annual volume, please respond to this email with that figure and I will confirm receipt and removal of your permit from the Water Management Board agenda.

Thanks again,

Ron

From: Duvall, Ron
Sent: Tuesday, June 25, 2024 1:38 PM
To: nu@ubinv.net
Subject: 2023 Water Use Reporting

Mr. Ulmer,

Attached is a copy of the Notice of Hearing mailed to you on June 11, 2024. There is still time to avoid having the Water Management Board suspend the permit for a year if you report your 2023 water usage as required by a qualification on [Water Permit No. 8197A-3](#).

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

You can report your usage by replying to this email with your water usage amount.