

WATER PERMIT NO. 8268A-3

Name of Applicant: **Lenny D Peterson**

Address: **19111 Maple Avenue, Hitchcock SD 57348**

Phone: **605-354-4602**

Amount of Water Claimed: **N/A**

Total Acres: **N/A**

Source of Water Supply: **Surface**

Water to be used for: **Irrigation**

County: **Spink**

Type of Waste Disposal System:

Location: **Approx. 6 miles northwest of Tulare**

PRIORITY Date Received: **01-16-24**

Application/License Fee: **\$100.00**

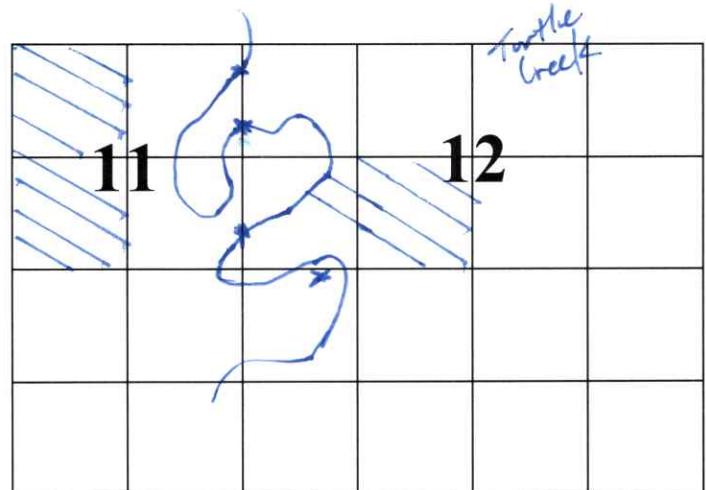
Corrected Application Received: **01-23-24**

Period of Annual Use: **May 1 – August 31**

Remarks: **Amendment to Permit No. 8268-3 – request to remove the June 1st deadline qualification.**

Diversion Point: **Between NE 1/4 NW 1/4 Sec 11**
and S 1/2 SW 1/4 Sec 13; all in T115N-R65W

Land to be Irrigated: **W 1/3 Sec 11 and S 1/2 Sec**
12; all in T115N-R65W



Depth of Well:

Well Driller:

Remarks:

Type of Map:

Reviewed and the Number Assigned on: **01-24-24**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 8268A-3

Date of first receipt of application January 16, 2024.

Date of return to applicant for corrections, amendments or changes January 16, 2024.

Date of receipt of corrected application January 23, 2024.

The Water Management Board approved Water Permit No. 8268A-3 on May 8, 2024, for Lenny D Peterson, 19111 Maple Avenue, Hitchcock SD 57348, subject to the following limitations, conditions and qualifications:

1. Water Permit No. 8268A-3 amends the qualifications attached to Water Right No. 8268-3 as listed below. Water Right No. 8268-3 appropriates 2.67 cubic feet of water per second from Turtle Creek in the SW 1/4 NE 1/4 Section 11 to irrigate 270 acres in the W 1/2, W 1/2 NE 1/4, W 1/2 SE 1/4 Section 11; all in T115N-R65W. This site is located approximately 6 miles northwest of Tulare SD.
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: May 1 – August 31.
3. The date from which applicant may claim right is March 1, 2017, as assigned to Water Right No. 8268-3.
4. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 and this Permit is subject to all of the following:
 - a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under Water Right No. 8268-3 and this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) Water Right No. 8268-3 and this Permit do not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE 1/4 NE 1/4 of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d) Water Right No. 8268-3 and this Permit authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam located in the NW 1/4 NE 1/4 Section 9-T116N-R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 and this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Right No. 8268-3 and this Permit for the purpose of inspecting works and determining if the irrigation system is operating.

(continued)

4. Water Right No. 8268-3 and this Permit are approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

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

MAY 17 2024
date



FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to:

SD DANR, Water Rights
523 E Capitol Ave
Pierre, SD 57501-3182

ph. (605) 773-3352

No. 8268A-3 Hydrologic Unit 10160009
Basin James River
Newspaper Redfield Press
Plainsman (office use only)

RECEIVED

JAN 16 2024

**OFFICE OF
WATER**

Application for Permit to Appropriate Water for Irrigation

Type of Application: ☐ New ☐ Vested Right ☒ Amendment/Correction to Permit No. 8268-3
(Use predates Mar 2, 1955)

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

Requesting to drop the June 1st deadline.

1. Name to Appear on Irrigation Permit Lenny D Peterson

Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.

Mailing Address 19111 maple ave hitchcock sd 57348
(Address) (City) (State) (Zip Code)

Phone 605-266-2793 Mobile 605-354-4602 Email kpeterson@venturecomm.net

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

3. Source of water supply _____

4. Location of point of diversion _____
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

County _____

5. County or counties where water will be used _____

6. Annual period during which water is to be used _____

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

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

I, Lenny Peterson owner, the applicant, certify under
Name of Person Title (if applicable)

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

2021-08

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

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable)

☐ Drilling new well(s) ☐ Using existing well(s)

a) If new wells, how many _____ Have test holes been drilled? ☐ Yes ☐ No Drilled by _____
(if yes, please provide copies of logs)

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

For either existing or proposed wells:

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

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

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) _____ Year Constructed _____

c) Connected to the City of _____ Sanitary System

3. Dugout Information

a) Surface Dimensions _____ Depth _____

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

4. Water Storage Dams

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

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

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

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

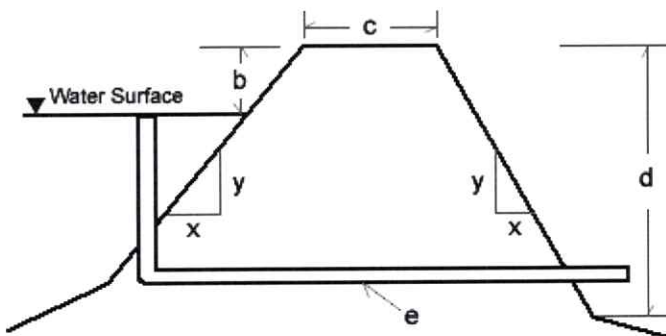
Upstream _____

Downstream _____

h) Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres





TURTLE CREEK STREAM FLOW ANALYSIS

SPINK COUNTY, SD

NOVEMBER 2023

Prepared for:
Lenny Peterson

Prepared by:

Bartlett & West
2921 E 57th Street
Sioux Falls, SD 57108
21322.P00



Driving Community and Industry Forward, Together.

TURTLE CREEK STREAM FLOW ANALYSIS

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TURTLE CREEK STREAM FLOW ANALYSIS

1.0 Introduction

Dennis Odens while employed at Banner Associates Inc. entered into a service agreement with Lenny Peterson in April of 2017 to complete a stream flow analysis on Turtle Creek for an irrigation water rights permit application. A report was written that summarized the investigation and recommendations regarding the stream flow in Turtle Creek from May 21, 2012, through May 16, 2017. In early 2020 Lenny Peterson (Client) asked Dennis Odens to update the data, computations, and report to include the 2019 irrigation season. Dennis Odens updated the data again in 2022 while employed by Bartlett & West and now again in fall of 2023. This report and analysis now include data from May 21, 2012, through October, 2023.

1.1 Background

In August of 2016, the Client applied for a water rights permit to irrigate approximately 405 acres of his land in Spink County. This first request included the construction of a small earthen dam to create instream storage. A pump would then be placed in the water storage to divert approximately 5.34 cubic feet per second (cfs) of water for crop irrigation. Following presentation to staff and obtaining the staff report which recommended denial of the permit, the application was withdrawn.

In April of 2017 a new application was presented that would pump water from Turtle Creek at a reduced rate of 2.67 cfs without instream storage. This water would be used to irrigate a total of approximately 450 acres rather than the original 405 acre request with an annual volume limit of 300 acre-feet.

The staff at SD Department of Environment and Natural Resources (SDDENR) considers four things when making a decision regarding a permit as follows:

1. There is reasonable probability that there is unappropriated water available for the applicants 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.

The state has on record all water right applications for Turtle Creek and has determined that in the downstream reach of Turtle Creek there are 5 existing water rights permits appropriating 4.67 cfs of water for irrigation and 2 existing water rights authorizing storage of up to 1568 acre- feet annually for municipal use.

This report will address item 1 to determine if there is reasonable probability that there is unappropriated water available for use. This would mean that present day flows must be greater than 4.67 cfs existing water rights plus 2.67 cfs of the requested water right or a total flow of 7.34 cfs during the irrigation period.



2.0 Evaluation

Historical data is analyzed to statistically show what the flows have been. US Geological Survey (USGS) operated a stream flow gaging station west of Tulare, SD on Turtle Creek from 1952 to 1990. This gaging station location is approximately 4 river miles upstream of the proposed diversion. The analysis of this data is presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from 3 to 6.5 cfs. The graph indicates in May the median flow varies from 0.5 to 3 cfs and in June and July the median flow rates are less than 0.5 cfs.

Another gaging station was operated by USGS on Turtle Creek in Redfield, SD between 1945 and 1970. The drainage area for this gaging station is 30% greater than the upstream gaging station therefore an increase in flow is expected. The analysis of this data is also presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from 3 to 16 cfs. The graph indicates in May the median flow varies from 1 to 8 cfs and in June it ranges from 1 to 5 cfs and in July the median flow rates range from 0.25 to 3 cfs.

Lenny Peterson, by observation, believes that the stream flows have increased due to climatological changes and that the present-day stream flows are not accurately represented by the USGS historical data. SDDANR has a water quality gaging station at the bridge where the USGS gaging station was decommissioned. This gaging station is equipped with a sonar unit that reads the distance down to the water surface approximately every 15 minutes. The state of South Dakota has now developed a rating curve for this site thus the data is now being converted to flow and real time data is available for flow monitoring.

Under a contract with Banner, the bridge design data was obtained from SD Department of Transportation (SDDOT) and then a bridge hydraulics study was completed to model the stream flow utilizing HEC-RAS, a program developed by the Corps of Engineers for stream hydraulic analysis. A Banner survey crew gathered information to develop a steam profile approximately 600' upstream and downstream of the bridge and collected cross section data for modeling purposes. The bridge dimensions were also measured for field verification purposes. The actual field measurements were used to model the stream flow. The model was then calibrated to the hydraulic information provided by the SDDOT with the bridge design. The model comparison results are shown in Table 1 - Bridge Model Calibration.

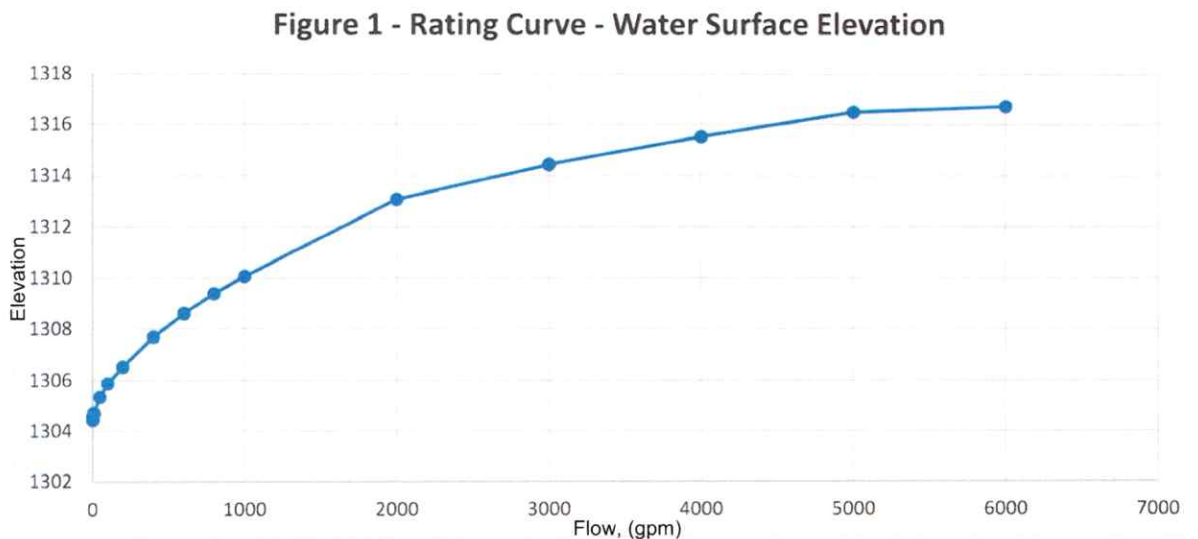
Table 1 - Bridge Model Calibration

	Bridge Design Records	Modeled Bridge Data
CFS	6,000	6,000
Bridge Waterway Opening Area (sq. ft.)	1538	1500
Velocity (ft./sec)	3.9	4.0
Water Surface Elevation (ft.)	1316.57	1316.59



The survey information showed that the stream channel was slightly higher than depicted in the original plans, thus it is reasonable to see that the bridge waterway opening is slightly smaller which in turn increases the velocity and raises the water surface elevation. Based on this data comparison, it is our opinion that the model can be used to accurately predict the water surface elevation for various flows.

With the calibrated model, various stream flows were input into the model to develop a rating curve for this site. The rating curve developed is as shown in Figure 1 – Rating Curve.



A trend line was developed for this curve to determine a statistical equation that could be used to convert the water quality data to flow in cfs.

A Bartlett & West survey crew was on site November 14, 2022, to obtain the actual elevation of the sonar unit. The elevation of the bottom of the sensor of the sonar unit was established as 1325.59.

Once the sonar elevation was known all reading could be converted to elevations. The Raw data included readings approximately every 15 minutes in a continuous record. This data was reduced by removing the winter months of Mid November to the end of February from the data set being analyzed.

Once the data was prepared, the average or mean value was calculated for each month of record. Then when that analysis was completed, each monthly data set was ranked from low flow to peak flow. The median flow was determined where 50% of the reading were above the median flow and 50% of the values were below the median flow. The summary of this analysis is presented in Table 2

– Turtle Creek Flow information 2012 through 2023.



Table 2 - Turtle Creek Flow information 2012 through 2023

(Based on Water Quality Monitoring Station WQM 172 (460172))

Irrigation Season									
Average Flow (cfs)	March	April	May	June	July	August	September	Annual Precip.	Normal Precip.
2012	N/A	N/A	12.038	5.940	2.115	0.117	0.507	14.64	21.75
2013	7.637	24.548	39.189	190.173	70.846	7.109	3.207	21.9	21.75
2014	122.792	59.963	49.596	48.099	6.677	2.100	0.950	17.78	21.75
2015	5.527	1.167	33.643	82.047	93.072	18.811	4.717	21.18	21.75
2016	57.852	32.906	56.660	59.919	3.433	0.746	0.601	20.59	21.75
2017	21.935	9.412	24.940	0.152	0.224	0.002	0.236	15.22	21.75
2018	68.364	40.505	15.247	62.487	391.157	25.280	6.281	17.94	21.75
2019	20333.670	1003.233	676.170	240.926	150.627	594.224	388.650	30.35	21.75
2020	N/A	315.711	154.555	229.625	390.352	55.200	12.818	15.2	21.75
2021	N/A	66.628	17.281	6.318	4.659	3.497	1.134	19.26	21.75
2022	N/A	6.371	55.841	12.085	138.946	10.023	1.742	21.13	21.75
2023	N/A	159.710	76.410	12.730	16.730	93.130	18.290	20.58	21.75
Monthly Average Flow (CFS)		156.378	100.964	79.208	105.737	67.520	36.594		

Irrigation Season									
Median Flow (cfs)	March	April	May	June	July	August	September	Annual Precip.	Normal Precip.
2012	N/A	N/A	11.606	5.449	2.037	0.518	0.220	14.64	21.75
2013	7.716	19.973	12.476	154.060	71.294	5.155	2.859	21.9	21.75
2014	209.439	57.391	53.694	50.119	4.058	2.037	0.761	17.78	21.75
2015	3.803	1.034	8.803	36.293	82.142	11.183	4.058	21.18	21.75
2016	56.455	19.973	39.347	44.987	2.642	0.421	0.421	20.59	21.75
2017	21.679	9.181	1.338	0.000	0.000	0.000	0.000	15.22	21.75
2018	64.155	29.867	11.183	0.636	234.085	19.420	6.375	17.94	21.75
2019	223.938	891.430	470.630	167.120	143.840	422.490	318.430	30.35	21.75
2020	N/A	256.850	129.390	119.180	177.040	42.750	12.300	15.2	21.75
2021	N/A	65.460	13.200	5.750	4.480	2.920	0.960	19.26	21.75
2022	N/A	4.740	32.120	11.730	110.460	6.320	1.800	21.13	21.75
2023	N/A	153.280	80.920	11.260	18.400	93.610	14.790	20.58	21.75
Monthly Median		29.867	22.660	24.012	44.847	5.738	2.330		

Flow must be greater than 7.34 cfs and are Highlighted in yellow

Flow available for Irrigation Purposes

Available Median Flow (cfs)	March	April	May	June	July	August	September	Annual Precip.	Normal Precip.
2012	N/A	N/A	4.266	0.000	0.000	0.000	0.000	14.64	21.75
2013	0.376	12.633	5.136	146.720	63.954	0.000	0.000	21.9	21.75
2014	202.099	50.051	46.354	42.779	0.000	0.000	0.000	17.78	21.75
2015	0.000	0.000	1.463	28.953	74.802	3.843	0.000	21.18	21.75
2016	49.115	12.633	32.007	37.647	0.000	0.000	0.000	20.59	21.75
2017	14.339	1.841	0.000	0.000	0.000	0.000	0.000	15.22	21.75
2018	56.815	22.527	3.843	0.000	226.745	12.080	0.000	17.94	21.75
2019	216.598	884.090	463.290	159.780	136.500	415.150	311.090	30.35	21.75
2020	N/A	249.510	122.050	111.840	169.700	35.410	4.960	15.2	21.75
2021	N/A	58.120	5.860	0.000	0.000	0.000	0.000	19.26	21.75
2022	N/A	0.000	24.780	4.390	103.120	0.000	0.000	21.13	21.75
2023	N/A	145.940	73.580	3.920	11.060	86.270	7.450	20.58	21.75
Monthly Median		22.527	15.320	16.672	37.507	0.000	0.000		

Water Available for Irrigation
 No irrigation 17 months of 48 months
 Months you would not have been able to irrigate at your present rate of 2.67 cfs. (plus 2)
 Months you would not have been able to irrigate at your original ask rate of 5.34 cfs. (plus 5)

This data represents 48 months in the irrigation season

Of those 48 months stream flow was available for an irrigation rate of:

5.34 cfs For 25 months
 2.67 cfs For 30 months

The general growing season for small grain is 3 months and corn 4 is months. The corn variety planted plays a big factor or variable in the assessment. Generally, corn planted in early May with 115-day maturity will be denting by the end of August. Thus, for this report the critical irrigation season is May through August. The total data through the irrigation season was analyzed for each year. The median flow during the irrigation season of May through August is shown in Table 3.

Table 3 - Median Irrigation Season Flow (cfs) May thru August

Year	Median flow Annual Irrigation Season (May – Aug.)
2012	2.4
2013	21.6
2014	25.3
2015	40.1
2016	9.2
2017	3.03
2018	34.01
2019	268.42
2020	126.81
2021	5.48
2022	19.56
2023	26.63

This data indicates that of the 12 years' worth of data collected and analyzed there is only three years (highlighted) where the median flow in the stream during the irrigation season was less than the 7.34 cfs senior water rights currently permitted.

3.0 Recommendation

The summary tables (Table 2) show that May through August has adequate water to meet the irrigation demands for the existing and requested water rights of 7.34 cfs. When analyzing the past 12 years of data for the period of May through August which is considered the critical irrigation period there are only 3 years (2012, 2017 and 2021) that the median flow was less than 7.34 cfs for all but the month of May. In my opinion irrigation would be allowed anytime the water flowing through Turtle Creek exceeds 7.34 cfs without detriment to the pre-existing water rights. The water surface elevation of 1304.63 is the modeled water surface elevation for 8 cfs at the bridge site.

An evaluation was completed to view how much water was available in the stream flow above the 7.34 cfs senior water rights. There are 48 months of data shown in Table 2 and of the 48 months there are 31 months where mean flow would have allowed irrigation and 25 months where the median flow available exceeded the original request of 5.34 cfs.



When the water surface elevation is above 1304.63 at the bridge west of Tulare on Turtle Creek, there is reasonable probability that there is unappropriated water available for the applicants proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is a beneficial use, and it is in the public interest to increase the agricultural production from the land being irrigated.

Flow data indicates there is reasonable probability that there is unappropriated water available for irrigation purposes to meet the original request of 5.34 cfs. With this report we hereby request an amendment to the current irrigation permit to allow a withdrawal rate of 5.34 cfs from Turtle Creek with an annual limit of 600 ac. ft. to irrigate 865 acres. This assumes an application rate of 8-inches of water per acre annually. The irrigation would be planned with two irrigation pump systems that would each pump approximately 2.67 cfs. One system irrigating the agricultural land on the east side of the creek and the other system irrigating the agricultural land on the west side of the creek. Thus Bartlett & West recommends amending the irrigation permit as follows:

Pumping rate total = 5.34 cfs

Acres irrigated = 865 acres (tillable land of the 960 acres owned)

Annual volume limit = 600 ac.-ft.

The means to establish a location and method for measuring flow is beyond the scope of this report, but a simple method may be measuring the depth of flow through a box culvert that exists on Turtle Creek between the Tulare Bridge and Redfield. A box culvert would have a defined waterway opening that would yield an accurate way of measuring flow.



SOUTH DAKOTA
WATER PERMIT NO. 8268-3 FOR IRRIGATION

Date of first receipt of application March 1, 2017.

The Water Management Board approved Water Permit No. 8268-3 on December 7, 2017 for Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 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. 8268-3 appropriates 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W.
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.
3. The date from which applicant may claim right is March 1, 2017.
4. One-fifth of the construction is to be completed on or before June 7, 2020.
5. All construction is to be completed on or before December 7, 2022.
6. Water is to be put to beneficial use on or before December 7, 2026.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:
 - a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
 - d) Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW 1/4 NE 1/4 Section 9, T116N, R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: _____

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

DEC 29 2017

date



RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date January 23, 2024

RECEIVED OF Lenny Peterson 19111 Maple Ave., Hitchcock SD 57348

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

Fee for Application for Permit No. <u>8268A-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
EG

Rodriguez, Rachel

From: Gronlund, Eric
Sent: Friday, January 19, 2024 1:01 PM
To: Rodriguez, Rachel; Rath, Mark
Cc: Hullinger, Brittan
Subject: FW: [EXT] updated map for new permit

FYI – Peterson check should be on the way.

Mark – confirmed that S ½ Section 12 was not developed and they have lost right to it under 8268-3.

From: kpeterson@venturecomm.net <kpeterson@venturecomm.net>
Sent: Friday, January 19, 2024 12:06 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Re: [EXT] updated map for new permit

Yes that is correct, Eric We mailed the check Wednesday. Please let us know if you don't received it

Thank you!

On 2024-01-19 10:29, Gronlund, Eric wrote:

Karen – this is intended for Lenny and/or Jake

I assume the fee for the two applications is in the mail but letting you know the check(s) has not been received yet.

Also please confirm again that the acreage proposed in the S ½ of Section 12, T115N, R65W was not developed under Permit No. 8268-3 and the time to complete construction of works is past and you realize the license can only be issued for the acres developed by December 7, 2022. Only irrigation in the W ½ Section 11 was developed by this date. Correct?

Thanks - Eric

From: kpeterson@venturecomm.net <kpeterson@venturecomm.net>
Sent: Tuesday, January 16, 2024 7:18 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: [EXT] updated map for new permit

Rodriguez, Rachel

From: Gronlund, Eric
Sent: Friday, January 19, 2024 1:01 PM
To: Rodriguez, Rachel; Rath, Mark
Cc: Hullinger, Brittan
Subject: FW: [EXT] updated map for new permit

FYI – Peterson check should be on the way.

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Sent: Friday, January 19, 2024 12:06 PM
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Subject: Re: [EXT] updated map for new permit

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Thanks - Eric

From: kpeterson@venturecomm.net <kpeterson@venturecomm.net>
Sent: Tuesday, January 16, 2024 7:18 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: [EXT] updated map for new permit

Hi Eric, here is the updated map that shows the acres to be irrigated more clearly. Let us know if you need anything else answered.

Thank you,

Lenny Peterson

Rodriguez, Rachel

From: Rath, Mark
Sent: Wednesday, January 17, 2024 7:24 AM
To: Gronlund, Eric; Rodriguez, Rachel; Dewell, Amanda
Cc: Hullinger, Brittan
Subject: RE: [EXT] FW: Map for Irrigation
Attachments: New Irrigation Permit - Map.pdf

The E1/2 of 11 was not covered in the original permit. I'm pretty sure the pivots on the W1/2 of 11 were constructed, but the one in the S1/2 of 12 was not based on what Lennie told us last spring.



Mark D Rath
Department of Agriculture and Natural Resources
Water Rights Program
523 E Capitol Avenue, Pierre, SD 57501
Telephone (605) 773-3352

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Tuesday, January 16, 2024 4:43 PM
To: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Cc: Rath, Mark <Mark.Rath@state.sd.us>; Hullinger, Brittan <Brittan.Hullinger@state.sd.us>
Subject: FW: [EXT] FW: Map for Irrigation

Documentation for Lenny Peterson's application to amend Permit No. 8268-3

From: kpeterston@venturecomm.net <kpeterston@venturecomm.net>
Sent: Tuesday, January 16, 2024 1:50 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Re: [EXT] FW: Map for Irrigation

Hey Eric, as per our conversation we would like to amend the 8268-3 permit to drop the June 1st deadline and instead use the bypass flow set by Dennis Oddens report at the monitoring station. All other requirements for irrigation would remain the same.

Also we will be sending a revised map for our new application.

Thank you!

Lenny Peterson

On 2024-01-16 10:19, Gronlund, Eric wrote:

Rodriguez, Rachel

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Sent: Tuesday, January 16, 2024 4:43 PM
To: Rodriguez, Rachel; Dewell, Amanda
Cc: Rath, Mark; Hullinger, Brittan
Subject: FW: [EXT] FW: Map for Irrigation
Attachments: New Irrigation Permit - Map.pdf

Documentation for Lenny Peterson's application to amend Permit No. 8268-3

From: kpeterson@venturecomm.net <kpeterson@venturecomm.net>
Sent: Tuesday, January 16, 2024 1:50 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Re: [EXT] FW: Map for Irrigation

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Also we will be sending a revised map for our new application.

Thank you!

Lenny Peterson

On 2024-01-16 10:19, Gronlund, Eric wrote:

The prior permit (No. 8268-3) was for the W ½ Section 11 and S ½ Section 12. The map states 230 acres to be irrigated in the E ½ Section 11. Just so Water Rights understands that this is for entirely new acres (and not acres not developed under the original water permit). Is that correct?

Attached is your original application and the issued Water Permit No. 8268-3.

The application you submitted on-line is bare bones and needs to be completed. Issues I see at first glance are as follows (Rachel or Amanda) can add to what I missed.

- For the type of application the amendment/correction box is checked. Isn't this a "new" permit.
- Item No. 2 amount of water claimed – Permit No. 8268-3 authorized 2.67 cfs (1,200 gpm). Is this the pump rate currently developed? With this new application, will the pump rate stay the developed amount or is a greater pump rate requested since you are irrigating more acres. If so, under Item No. 2 the pump rate greater than what is currently developed needs to be included.

- Item No. 2 – the map indicates 230 acres will be irrigated in the E ½ Section 11. Therefore, 230 acres should be inserted here.
- Item No. 3 – assume Turtle Creek is the water source. Is that correct?
- Item No. 4 – Water Permit No. 8268-3 has the location of the diversion point between NE ¼ NW ¼ Section 11 and S ½ SW ¼ Section 12. Is that still correct.
- Item No. 5 - Spink County
- Item No. 6 – Period of use -- Water Permit No. 8268-3 is May 1 – August 31. Is that the same for this application?
- Item No. 7 – Breakdown of acres – the map states 230 acres in the E ½ Section 11 but outlines the entire 320 acres half section. Presume that is because Turtle Creek winds through the area. A good faith effort needs to be made to breakdown the planned acres to be irrigation by 40 acre parcel (quarter-quarter section).

The application filing fee for 230 acres is \$950. The \$200 licensing fee for 8268-3 (which originated with withdrawal of Application No. 8229-3) will still apply if the diversion point is the same since these will all be incorporated into one water license upon developed (if approved).

With the application are you also requesting amendment to the qualification on Permit No. 8268-3 regarding deleting June 1st shut-off and replacing with a flow bypass amount at the Watershed Protection Program's gaging station.

Eric

From: kpeterston@venturecomm.net <kpeterston@venturecomm.net>
Sent: Monday, January 15, 2024 3:14 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Fwd: [EXT] Map for Irrigation

Hey Eric, please see attached map for the new irrigation permit that I have applied for. The diversion point for the new project would be the same as existing permit 8268-3. Please reach out with any questions.

Thank you,

Lenny Peterson

----- Original Message -----

Subject: Map for Irrigation
Date: 2024-01-15 15:07



**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. 8268A-3, Lenny Peterson**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8268A-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVE removal of the June 1st shutoff qualification from Water Right No. 8268-3 and replace with the following amended qualifications because, 1) the proposed amendment does not appropriate any additional water or increase the number of irrigated acres, 2) the amendment can be completed without unlawful impairment of existing domestic water uses and water rights, 3) the permitted use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications, as amended, to be attached to No. 8268-3 and this application, if approved:

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 and this Permit is subject to all the following:
 - a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under Water Right No. 8268-3 and this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) Water Right No. 8268-3 and this Permit do not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE ¼ NE ¼ of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d) Water Right No. 8268-3 and this Permit authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9-T116N-R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 and this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.

(continued)

3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Right No. 8268-3 and this Permit for the purpose of inspecting works and determining if the irrigation system is operating.
4. Water Right No. 8268-3 and this Permit are approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.



Eric Gronlund, Chief Engineer

March 1, 2024

**REPORT ON WATER PERMIT APPLICATION NO. 8268A-3
TO AMEND WATER RIGHT NO. 8268-3
AND WATER PERMIT APPLICATION NO. 8825-3
LENNY PETERSON
February 12, 2024**

Application No. 8268A-3 requests to amend Water Right No. 8268-3 to remove the permit qualification not authorizing diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer. Water Right No. 8268-3 appropriates 2.67 cubic feet of water per second (cfs) from Turtle Creek from a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 to irrigate 270 acres in the W $\frac{1}{2}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11; all in T115N-R65W. Application No. 8268A-3 does not seek to appropriate additional water or irrigate more acres than authorized by Water Right No. 8268-3. All other permit qualifications on Water Right No. 8268-3 remain unchanged and would be included on Water Permit No. 8268A-3, if approved.

Application No. 8825-3, proposes to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11 to irrigate 230 acres located in the E $\frac{1}{2}$ Section 11; all in T115N-R65W. The location for these two irrigation projects is approximately 6.5 miles southwest of Redfield, SD in Spink County.

South Dakota Codified Law (SDCL) 46-2A-2

South Dakota Codified Law SDCL 46-2A-2 states that:

“The chief engineer shall recommend in writing approval, disapproval, or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board.”

SDCL 46-2A-9

In the case of Application No. 8825-3 for a new appropriation of water, there are four criteria in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. These criteria are: 1) there is reasonable probability that there is unappropriated water available for the applicant’s proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board.

This report will analyze the available information to present to the Chief Engineer on the first two criteria that the Chief Engineer needs to consider for granting a new water permit, before making an official recommendation to the Water Management Board.

SDCL 46-2A-12 & 46-5-30.4

In the case of Application No. 8268A-3 the criteria for granting an amendment are different than the criteria for a new appropriation. SDCL 46-2A-12 states:

“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.”

SDCL 46-5-30.4 states:

“Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.”

These criteria must be met before an amendment to Water Right No. 8268-3 can be approved.

Review of Application No. 8268A-3 Amendment Change Request and Water Permit Application No. 8825-3

Figure 1 is an area map showing irrigated land covered by Water Right No. 8268-3, which Water Permit Application No. 8268A-3 proposes to amend by removal of the condition for a June 1st shutoff unless written orders have been issued by the Chief Engineer. In addition, the land proposed for development by Application No. 8825-3 is shown on this figure.

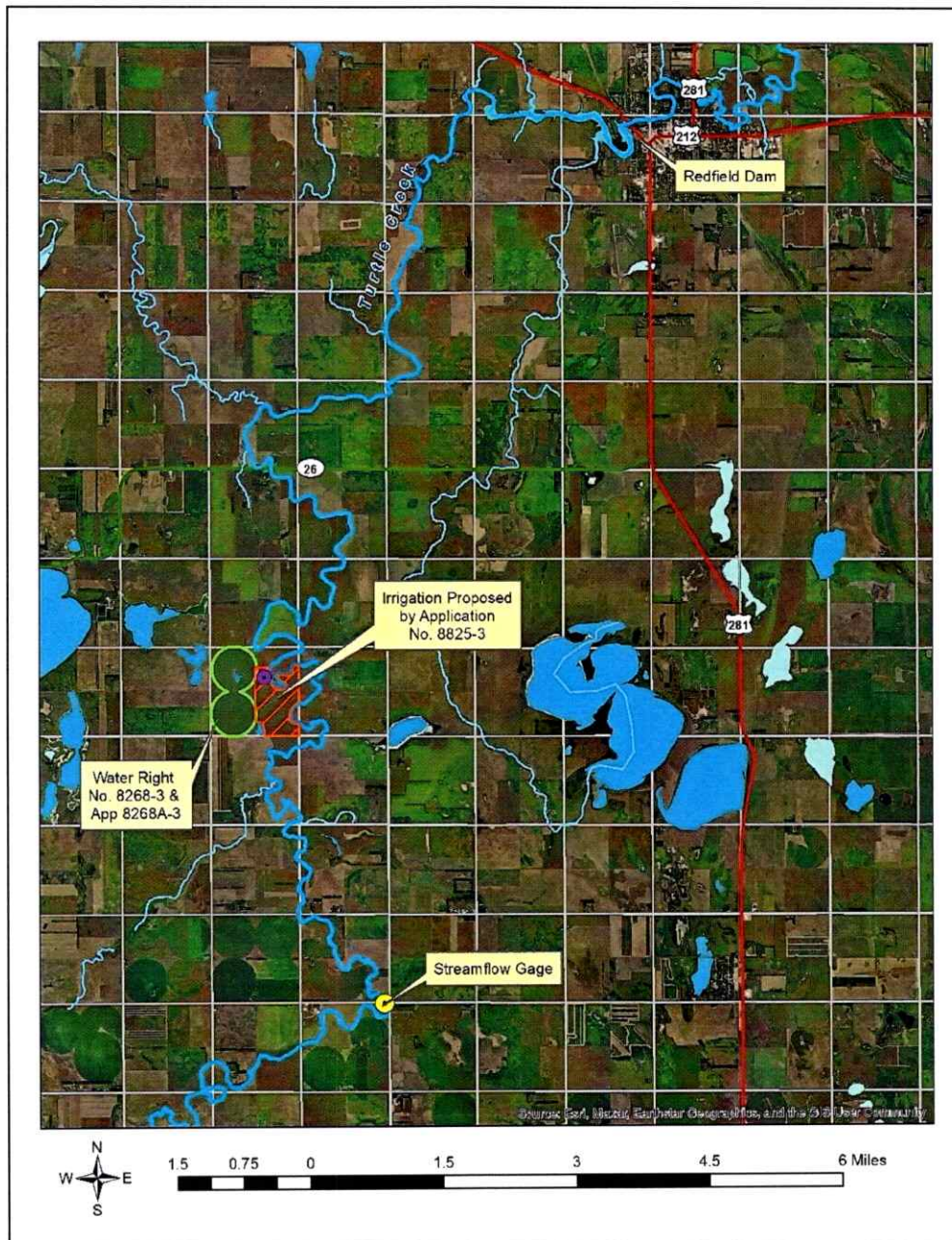


Figure 1. Area Map for Water Permit Application Nos. 8268A-3 and 8825-3 (Water Rights, 2024).

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. It is a seasonal stream with heavier flows in the spring due to snow runoff and thunderstorm or rain events. As the summer progresses, however, the amount of water decreases, and the creek becomes a less reliable water source. The Turtle Creek watershed upstream of the proposed project drains approximately 1,140 square miles (USGS, 2019).

Water Permit No. 8268-3 was originally approved to divert 2.67 cubic feet of water per second for the irrigation of 450 acres with qualifications one of which does not authorize diversion of water after June 1st of each year, and another that water must be flowing over the spillway of the Redfield dam. A water license was issued based on an on-site license inspection completed January 25th, 2024. The inspection found only 270 of the 450 permitted acres were developed at the diversion rate of 2.67 cfs. Application No. 8268A-3 is requesting the Water Management Board remove the following qualification from Water Permit No. 8268-3:

“Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer (Water Rights, 2024).”

Application No. 8825-3 proposes to appropriate and pump from Turtle Creek at a rate of 1.33 cfs to irrigate 270 acres from Turtle Creek. This will be an increase in the Turtle Creek diversion rate and irrigated acres from the amount developed under Water Permit No. 8268-3.

Review of Existing Water Rights

In the downstream reach of Turtle Creek from the proposed location of Water Permit Application No. 8825-3 to the Turtle Creek confluence with the James River there are seven existing water rights/permits appropriating 7.34 cfs for irrigation and two existing water rights authorizing storage of up to 1,568 acre-feet annually for municipal use (Table 1).

WR No.	Name	Use	Priority	Amount
96A-3	Jerad Jungwirth	Irrigation	February 11, 1953	1.68 cfs
96B-3	Janet Kegler	Irrigation	February 11, 1953	0.32 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Dustin or Dawn Schmidt	Irrigation	February 11, 1957	1.35 cfs
8268-3	Lenny Peterson	Irrigation	March 1, 2017	2.67 cfs

Table 1. Turtle Creek water rights located in Spink County SD (Water Rights, 2024).

Consulting Engineer Analysis and Conclusions

The applicant provided a stream analysis report on Turtle Creek completed by Dennis G. Odens, P.E. of Bartlett & West to support his request for the new permit and amendment change (Odens, 2023). Mr. Odens stated anecdotally the applicant believes streamflow has increased due to climatological changes and that the present-day stream flows are not accurately represented by USGS historical streamflow data on Turtle Creek. In the report, Mr. Odens analyzed historical stream gaging data from a discontinued USGS gage, called Turtle Creek west of Tulare SD, which operated between 1953-1989. He compared these data to the data collected between 2012-2023 at a SD DANR operated stream gage, WQM-172, located at the same site as the discontinued USGS gage (Odens, 2023; SD DANR, 2024). In performing the analysis, Mr. Odens used the raw stream stage data from the WQM-172 site, collected stream channel characteristics and created his own flow rating table. Rating tables are used to convert measured stream stage levels to flow values. The report concluded that the median stream flow during the months of May through August measured at the SD DANR gage over the past 12 years is significantly greater than what was measured by the USGS Turtle Creek gage, at the same location, for the 36 years the gage was operated. The report concluded that when flow bypassing the Turtle Creek stream gage, WQM-172, exceeded 7.34 cfs, water use authorized by Water Permit No. 8268-3 could be allowed without detriment to existing rights.

The report also considered whether Turtle Creek could support additional irrigation by doubling the diversion rate currently authorized by No. 8268-3 from the existing 2.67 cfs to 5.34 cfs. Based upon his analysis, Mr. Odens concluded there is reasonable probability that there is unappropriated water available for additional irrigation (Odens, 2023).

Review of the Proposed Requests

On December 7, 2017, Water Management Board approved Water Permit Application No. 8268-3 with qualifications (Water Rights, 2024a). In their Findings of Fact, Conclusion of Law, and Final Decision for the permit, the Board concluded:

“The proposed diversion can be developed as proposed without unlawful impairment to existing rights with the qualification recommended by the Chief Engineer, particularly that the applicant shall not irrigate after June 1 unless the Chief Engineer issues a written order authorizing an extension and that irrigation under this permit is not permissible unless water is discharging across the entire length of the spillway weir at Redfield dam.”

At the time of the hearing on Water Permit No. 8268-3, the SD DANR streamflow monitoring gage, WQM-172 was in place and collecting flow data, but flow information was not available realtime. Since then, WQM-172 has been upgraded and realtime streamflow data is available online through National Weather Service’s NWPS website (NWPS, 2024). Because there is now

publicly accessible realtime streamflow monitoring available, it is reasonable to replace the automatic June 1st shutoff qualification with a flow bypass qualification.

There are currently nine existing water rights/permits appropriating water from Turtle Creek downstream of the proposed diversion location for Application No. 8825-3. Not including Water Right No. 8268-3, Water Rights/Permits Nos. 23-3, 18-3, 96B-3, and 408-3 are routinely used each year. Assuming that not all water rights/permits will pump at the same time, SD DANR has historically estimated that 50% of permitted diversion rates will be pumping at any given time (Beck, 2007). To calculate a bypass qualification, the permitted diversion rates for Water Rights/Permits Nos. 23-3, 18-3, 96B-3, and 408-3 were summed, and then divided in half, making the assumed downstream use at any given time to be 1.5 cfs during the irrigation season.

Since Turtle Creek pools in Redfield Dam before the water reaches downstream users, an approximate evaporation rate for the irrigation season was calculated, and direct precipitation was subtracted from that value. Evaporation for each month was calculated with average monthly pan evaporation data in feet for Redfield, South Dakota (Poudyal, 2006). A pan to lake coefficient of 0.7 was applied. Average precipitation for May, June, July, and August from 1985-2023 was subtracted from monthly evaporation rates (NOAA, 2024). The area of Redfield Dam is approximately 310 acres (Water Rights, 2023), and for each month of the irrigation season, average monthly evaporation (acre-feet/month) was calculated. This was converted to cubic feet per second of continuous evaporation per month. Taking the average of the four months of the irrigation season, the estimated evaporation rate is 1.5 cfs of continuous evaporation at any given time during the irrigation season.

Water Right No. 8268-3 and Water Permit No. 8825-3, if approved, will assume to pump a total of 4 cfs at any given time during the irrigation season. The assumption that a user is only pumping 50% of the time will not be applied because they are the upstream most junior appropriator.

Summing the estimated use at any given time of the downstream rights (1.5 cfs), the estimated evaporation rate at any given time during the irrigation season (1.5 cfs), the diversion rate for Water Right No. 8268-3 (2.67 cfs), and the diversion rate for Water Permit Application No. 8825-3 (1.33 cfs), the gage at WQM-172 should be required to be bypassing at least 7.0 cfs. If the WQM-172 gage is less than 7 cfs but there is flow over the entire Redfield Dam spillway, the permit holder can request permission from the Chief Engineer to be allowed to continue to pump. The drainage area upstream of the WQM-172 gage is 1,125 sq-mi. The drainage area upstream of the Redfield Dam spillway is 1,482 sq-mi which is an additional 357 sq-mi. Any inflow from the Turtle Creek watershed below the WQM-172 gage will contribute to additional flow over the Redfield Dam spillway.

In addition, the qualification on Water Right No. 8268-3 which only allows diversion of water when water is spilling over the Redfield Dam should remain on Water Permit No. 8268A-3, and also be placed on Water Permit No. 8825-3, if approved. This qualification states that:

“The permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T116N-R64W, in Spink County when pumping is occurring (Water Rights, 2024).”

Daily data is available from both the USGS streamflow gage on Turtle Creek which operated from 1953 to 1989, as well as from the WQM-172 for the years 2012 to 2023. Daily flow from these sites is the daily mean value calculated from the instantaneous streamflow data (USGS, 2024). A comparison was made between the median daily flow collected at the USGS gage for the years 1953 to 1989 and median daily flow collected at the SD DANR WQM-172 gage for the years 2012 to 2023 (Figure 2)

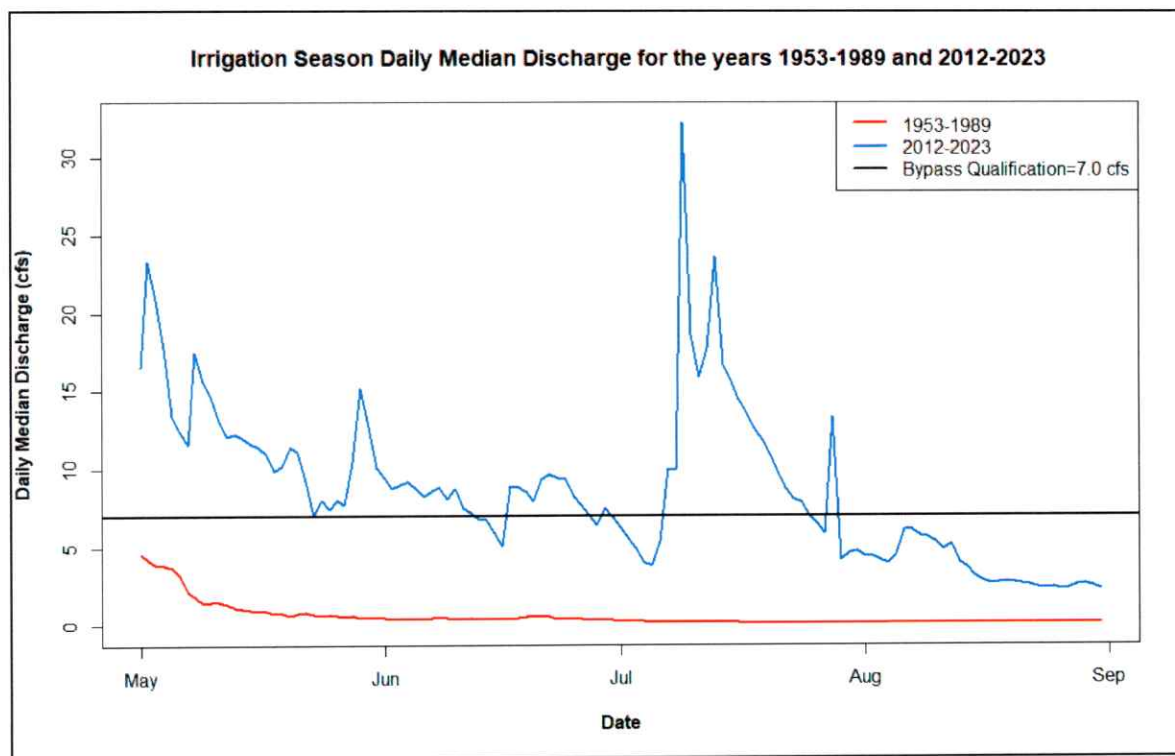


Figure 2. Comparison of median daily flows collected at stream gaging site on Turtle Creek west of Tulare SD from 1953-1989 by the USGS versus median daily flows collected from 2012-2023 by the SD DANR streamgage (USGS, 2024; SD DANR, 2024).

As Figure 2 shows, the flows measured at this site since 2012 show a significant increase in median daily flow for the requested irrigation period, May through August, compared to the flows collected by the USGS gage during the years 1953-1989. However, due to climate variability historically experienced over the northern plains, this trend of greater flow cannot be guaranteed in the future.

The available data were also analyzed by taking the percentage of days in each month of the irrigation season where the average daily flow was greater than 7.0 cfs. The four graphs below illustrate those percentages for irrigation months of May, June, July, and August (Figures 3 to 6) for all years from the USGS gage and the WQM-172 gage. It is worth mentioning that there are gaps in the yearly data from 1956-1966, 1982-1985, and 1989-2012. Based on available data, Figures 3 through 6 show that there is reasonable probability that there will be water available for this appropriation at times during the irrigation season.

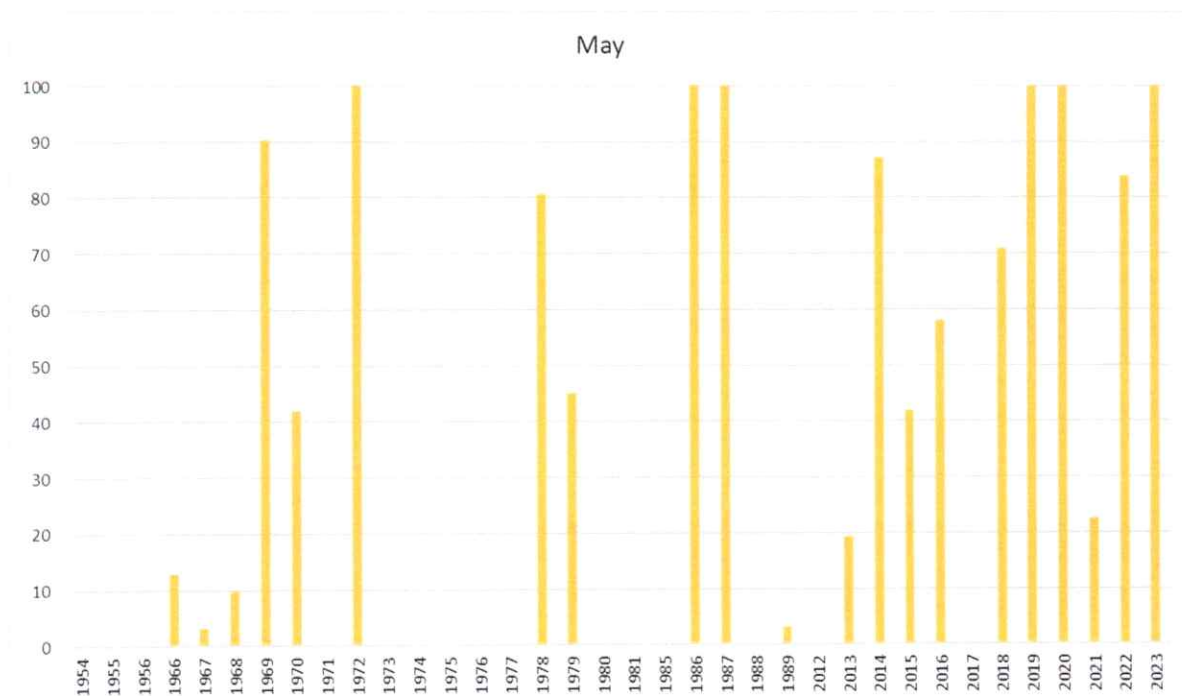


Figure 3. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of May. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

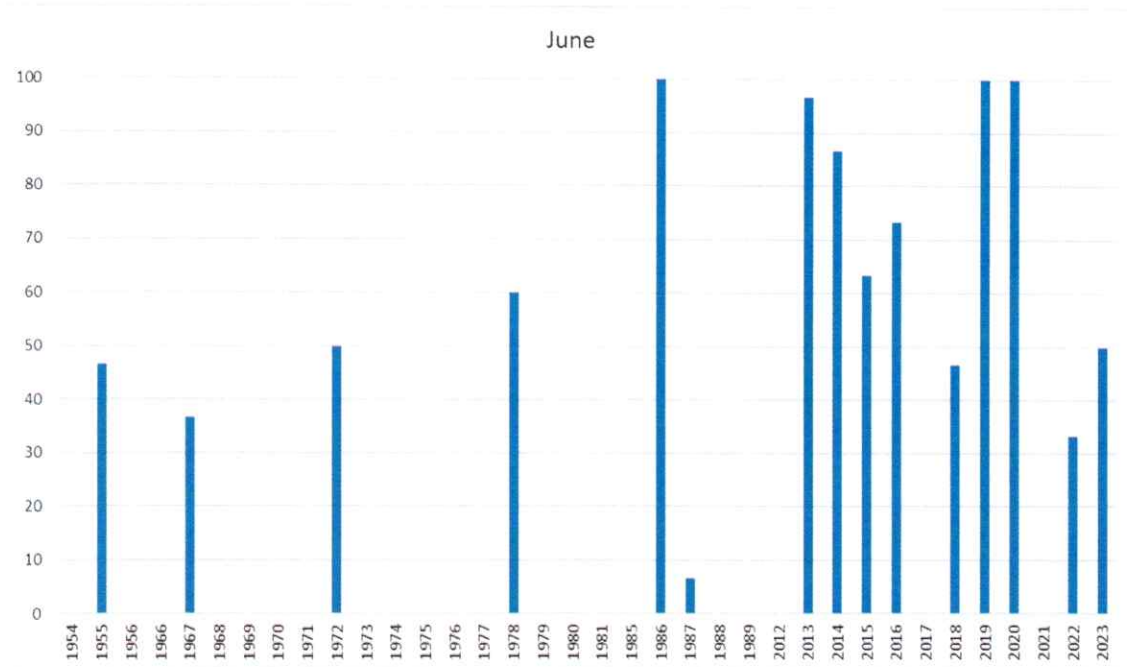


Figure 4. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of June. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

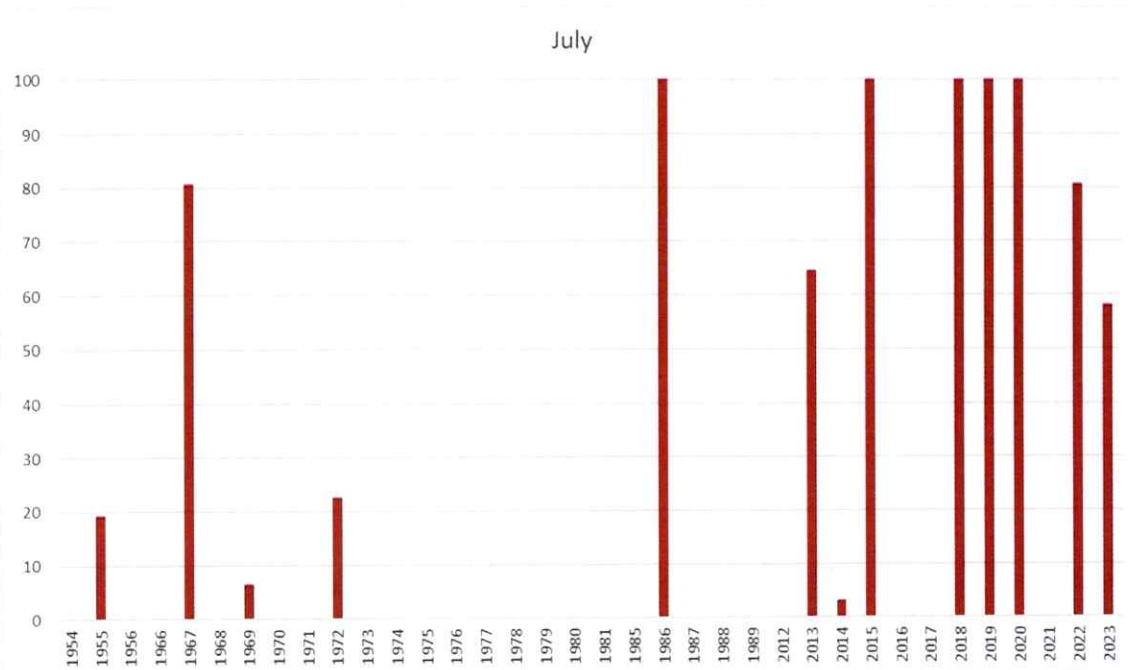


Figure 5. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of July. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

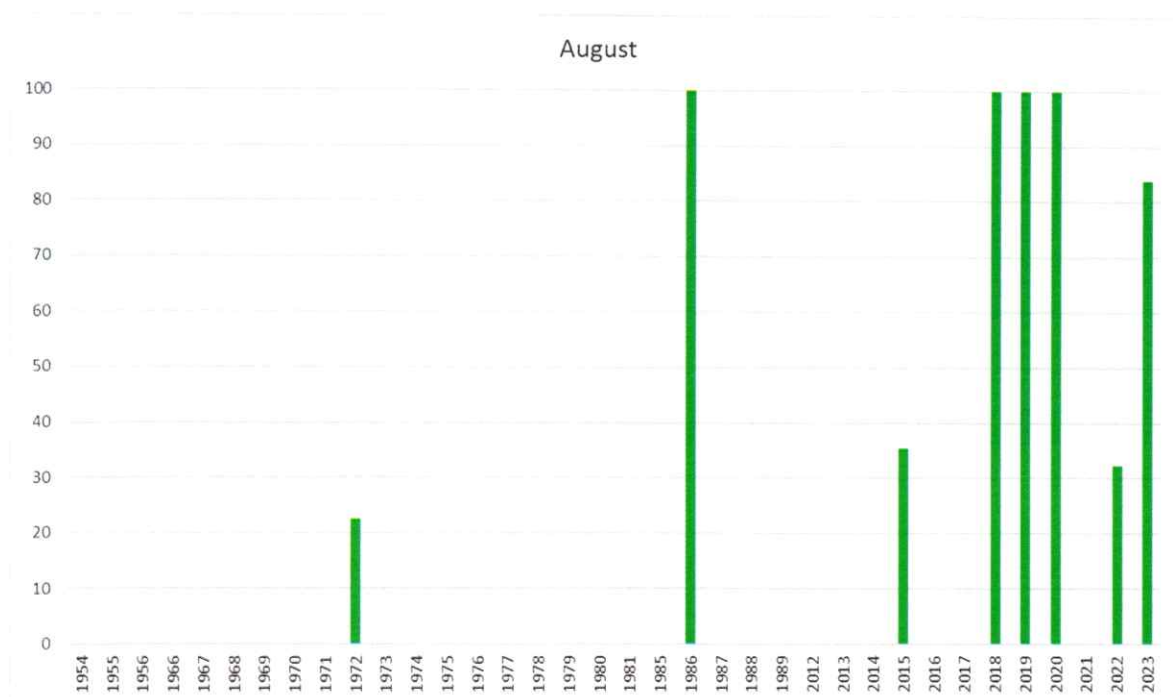


Figure 6. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of August. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

Historic streamflow data often does not follow an easily recognized trend, and often there is not enough data to discern the trend of streamflow over time to forecast the behavior of streamflow in the future. The Water Rights Program uses the best information available to determine if there is a reasonable probability that water will be available at the time of proposed appropriation. Planners of stream use should be prepared for the possibility that future flow in Turtle Creek could be different than what was experienced in the recent past.

Recommendations

Water Permit Application No. 8268A-3 proposes to amend Water Right No. 8268-3 by removing the June 1st automatic shutoff qualification and Application No. 8825-3 proposes to divert 1.33 cfs from Turtle Creek to irrigate 230 acres. If both applications are approved, they should contain a form of the following qualifications:

- Diversion of water from Turtle Creek authorized by this water permit is subject to all of the following qualifications.
 - a. Flow as needed for domestic use, including livestock watering, and prior water rights must be bypassed.
 - b. Diversion of water under this permit is subject to senior water rights and written orders, including shut-off orders, issued by the Chief Engineer.
 - c. The water permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172

located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T115N-R56W, unless written orders have been authorized by the Chief Engineer.

- d. The water permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam, located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T116N-R64W, Spink County, when pumping is occurring.
- The Water Management Board retains jurisdiction of the water permit in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.
 - Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this water permit for the purpose of inspecting works and determining if the irrigation system is operating.
 - This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Conclusions

1. Application No. 8268A-3 is a request to amend Water Right No. 8268-3 to remove the permit qualification not authorizing diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
2. Application No. 8825-3, proposes to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11 to irrigate 230 acres.
3. There is a reasonable probability that at times there will be unappropriated water available for the additional irrigation proposed by Application No. 8825-3 and existing domestic water uses and water rights will not be unlawfully impaired if Application Nos 8268A-3 and 8825-3 are approved with some form of the following qualifications:
 - Diversion of water from Turtle Creek authorized by this water permit is subject to all of the following qualifications:
 - a. Flow as needed for domestic use, including livestock water and prior water rights must be bypassed.
 - b. Diversion of water under this water permit is subject to senior water rights and written orders, including shut-off orders, issued by the Chief Engineer.
 - c. The water permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36 T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d. The water permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam, located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 T116N-R64W, Spink County, when pumping is occurring.

- The Water Management Board retains jurisdiction of this water permit in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.
- Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this water permit for the purpose of inspecting works and determining if the irrigation system is operating.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.



Mark D. Rath
Natural Resources Engineer III
SD DANR, Water Rights Program



Brittan R. Hullinger
Natural Resources Engineer I
SD DANR, Water Rights Program

References

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

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

March 26, 2024

Lenny D. Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Water Permit Application Nos. 8268A-3 and 8825-3 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. Both notices have been sent to the Redfield Press printed in Redfield SD (Ph # 605 472-0822) and the Plainsman printed in Huron SD (Ph # 605 353-7414). You will need to contact the newspapers and authorize publication of these notices. For your information, a copy both notices, the recommendation of the Chief Engineer and report on the applications are enclosed. Please review the notices prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your Notices and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notices. The newspapers have also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
(605) 773-3352

enclosures

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

NOTICE OF HEARING on Application No. 8268A-3 to Amend Water Permit No. 8268-3

Notice is given that Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348 has filed an application for a water permit to amend Water Right No. 8268-3 to remove this permit qualification: "Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer." Water Right No. 8268-3 appropriates 2.67 cubic feet of water per second from Turtle Creek in the SW 1/4 NE 1/4 Section 11 to irrigate 270 acres in the W 1/2, W 1/2 NE 1/4, W 1/2 SE 1/4 Section 11; all in T115N-R65W. This site is located approximately 6 miles northwest of Tulare SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "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 Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that the Water Management Board APPROVE removal of the June 1st shutoff qualification from Water Right No. 8268-3 and replace with the following amended qualifications because, 1) the proposed amendment does not appropriate any additional water or increase the number of irrigated acres, 2) the amendment can be completed without unlawful impairment of existing domestic water uses and water rights, 3) the permitted use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications, as amended, to be attached to No. 8268-3 and this application, if approved:

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 and this Permit is subject to all the following:
 - a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under Water Right No. 8268-3 and this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) Water Right No. 8268-3 and this Permit do not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE 1/4 NE 1/4 of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d) Water Right No. 8268-3 and this Permit authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW 1/4 NE 1/4 Section 9-T116N-R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 and this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Right No. 8268-3 and this Permit for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Right No. 8268-3 and this Permit are approved subject to the irrigation water use questionnaire being submitted each year.

The Water Management Board will consider this application at 10:45 AM (Central Time) on May 8, 2024, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any person who intends to participate in the hearing 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 April 15, 2024.

The petition shall be in writing and 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The May 8, 2024, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by April 15, 2024. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

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 April 15, 2024.

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 15, 2024. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right

the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at an approximate cost of_____.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 26, 2024

City of Redfield
c/o Adam Hanson, Finance Officer
626 Main Street
Redfield SD 57469-1127

Dear Mr. Hanson,

Lenny Peterson has filed water right permit applications with the state of South Dakota for irrigation use from Turtle Creek. Enclosed is a copy of the public notice, report, and recommendations regarding Application Nos. 8268A-3 and 8825-3. Both notices will be published on April 3, 2024 in the Redfield Press and Plainsman newspapers.

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
(605) 773-3352

enclosures

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Tuesday, March 26, 2024 9:58 AM
To: Ruby Crandall
Subject: 8268A-3 Lenny Peterson - Public Notice
Attachments: 8268A-3 public.wmb_final.docx; FORM8.FRM.doc

Attached is a notice to be published on April 3, 2024.

Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348, 605-354-4602 has been notified to contact you to authorize publication and arrange for payment.

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

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

Thank you,

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



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Tuesday, March 26, 2024 9:56 AM
To: Redfield Office
Subject: 8268A-3 Lenny Peterson - Public Notice
Attachments: 8268A-3 public.wmb_final.docx; FORM8.FRM.doc

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

Thank you,

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



Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402
Legal Notice Number: 2518

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Lenny Peterson – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 04/3/2024. That the full amount of the fee charged for the \$101.93 of Public Hearings to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

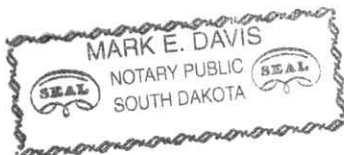


Subscribed and sworn to me before this date 4/24/24.



Notary Public, South Dakota

My Term Expires 12/27/2024



RECEIVED

MAY 03 2024

OFFICE OF
WATER

**NOTICE OF HEARING
on Application
No. 8268A-3 to
Amend Water Permit
No. 8268-3**

Notice is given that Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348 has filed an application for a water permit to amend Water Right No. 8268-3 to remove this permit qualification: "Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer." Water Right No. 8268-3 appropriates 2.67 cubic feet of water per second from Turtle Creek in the SW 1/4 NE 1/4 Section 11 to irrigate 270 acres in the W 1/2, W 1/2 NE 1/4, W 1/2 SE 1/4 Section 11; all in T115N-R65W. This site is located approximately 6 miles northwest of Tulare SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "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 Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that the Water Management Board APPROVE removal of the June 1st shutoff qualification from Water Right No. 8268-3 and replace with the following amended qualifications because, 1) the proposed amendment does not appropriate any additional water or increase the number of irrigated acres, 2) the amendment can be completed without unlawful impairment of existing domestic water uses and water rights,

3) the permitted use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications, as amended, to be attached

to No. 8268-3 and this application, if approved:

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 and this Permit is subject to all the following:

a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

b) Diversion of water under Water Right No. 8268-3 and this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

c) Water Right No. 8268-3 and this Permit do not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DNR streamflow gage WQM-172 located in the NE 1/4 NE 1/4 of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.

d) Water Right No. 8268-3 and this Permit authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW 1/4 NE 1/4 Section 9-T116N-R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 and this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Right No. 8268-3

and this Permit for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Right No. 8268-3 and this Permit are approved subject to the irrigation water use questionnaire being submitted each year.

The Water Management Board will consider this application at 10:45 AM (Central Time) on May 8, 2024, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any person who intends to participate in the hearing 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 April 15, 2024.

The petition shall be in writing and 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing

in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 15, 2024. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1,

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

The May 8, 2024, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by April 15, 2024. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

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46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

No. 2518 (adv.) Published one time at the total approximate cost of \$101.93 and may be viewed free of charge at www.sdpublicnotices.com.

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Cindy Crook, being duly sworn on oath, say that THE REDFIELD PRESS is a weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS. I, Cindy Crook, am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

#7342 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on April 3rd. That Eighty-Nine and 53/100 dollars insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Cindy Crook

Subscribed and sworn to before me this 3rd, day of April, 2024

Kayla Jessen

Notary Public, South Dakota



My commission expires 09/26/2024

Notice of Hearing

#7342

NOTICE OF HEARING on Application No. 8268A-3 to Amend Water Permit No. 8268-3

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4. Water Right No. 8268-3 and this Permit are approved subject to the irrigation water use questionnaire being submitted each year.

The Water Management Board will consider this application at 10:45 AM (Central Time) on May 8, 2024, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any person who intends to participate in the hearing 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 petition 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 April 15, 2024.

The petition shall be in writing and 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The May 8, 2024, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by April 15, 2024. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

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 April 15, 2024.

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 15, 2024. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Tuesday, March 26, 2024 11:23 AM
To: kpeterson@venturecomm.net
Subject: 8825-3 Lenny Peterson - Public Notice
Attachments: Recoms & Report.pdf; Letter.pdf; 8268A-3 PubNotice.pdf; 8825-3 PubNotice.pdf

Good morning,

Attached are copies of the report, chief engineer's recommendations, and information regarding the public notices for your water permit applications. As stated in the letter, **please contact the papers as soon as possible to authorize both publications and arrange for payment.** This information is also being mailed to you today.

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

Thank you,

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





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

MAY 17 2024

8268-3
8268A-3

Lenny D Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Enclosed is Water License No. 8268A-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.

So 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.

Sincerely,

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

NOTE: The applicable portions of Water Right No. 8268-3 have been incorporated into Water Right No. 8268A-3.

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 8268A-3

(1) Lenny D Peterson, 19111 Maple Ave, Hitchcock SD 57348, made Application No. 8268A-3, January 16, 2024, for a water permit to amend Water Right No. 8268-3, removing the qualification "Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer." Permit Application No. 8268A-3 was approved by the Water Management Board on May 8, 2024.

Water Right No. 8268-3 authorized the diversion of 2.67 cubic feet of water per second from Turtle Creek for the irrigation of 270 acres. The applicable portions of Water Right No. 8268-3 have been incorporated into this license.

(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 2.67 cubic feet of water per second for beneficial use. The location of the diversion point is:

- 1,965 ft W & 1,945 ft S of the NE corner of Section 11, T115N, R65W (SW $\frac{1}{4}$ NE $\frac{1}{4}$)
(Latitude 44.78766 & Longitude -98.61241)

(3) The amount of 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: May 1 – August 31.

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

Section 11, T115N, R58W, Spink County			
NW $\frac{1}{4}$ NE $\frac{1}{4}$	2.5 acres	NE $\frac{1}{4}$ SW $\frac{1}{4}$	34.5 acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	2.5 acres	NW $\frac{1}{4}$ SW $\frac{1}{4}$	31 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	35 acres	SW $\frac{1}{4}$ SW $\frac{1}{4}$	31 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	30 acres	SE $\frac{1}{4}$ SW $\frac{1}{4}$	34.5 acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$	30 acres	NW $\frac{1}{4}$ SE $\frac{1}{4}$	2 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	35 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$	2 acres
TOTAL: 270 acres			

(5) Pursuant to South Dakota Water Law 46-5-30.1 Lenny D Peterson, the holder and/or owner of Water Right No. 8268A-3 is issued a license to appropriate water, the right to use 2.67 cubic feet of water per second from Turtle Creek, with a priority date of March 1, 2017, 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. 8268A-3 and subject to the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 & this permit is subject to all of the following: *(The applicable portions of Water Right No. 8268-3 have been incorporated into Water Right No. 8268A-3. All diversion authority is now held by Water Right No. 8268A-3.)*

continued

- a) Flows as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under Water Right No. 8268-3 and this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) Water Right No. 8268-3 and this permit do not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d) Water Right No. 8268-3 and this permit authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam, located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9-T116N-R64W, Spink County, when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 and this permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.
 3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon lands authorized by Water Right No. 8268-3 and this permit for the purpose of inspecting works and determining if the irrigation system is operating.
 4. Water Right No. 8268-3 and this permit are 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

MAY 17 2024

date





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
Posting on DANR Website**

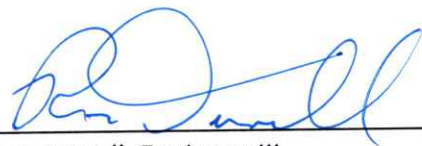
Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the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

Application No.: 8268A-3

Name of Applicant: Lenny Peterson

Date of Posting: 4/2/2024

Date of Removal: 5/17/2024



Ron Duvall, Engineer III

5/17/2024

Date

Subscribed and sworn to before me, a notary public, this 17th day of May, 2024.



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



(SEAL)