

WATER PERMIT NO. 8308-3

Name of Applicant: Tom Hummel

Address: 47812 330th St, Jefferson SD 57038 Phone: 605 966-5521

Amount of Water Claimed: 1.11 cfs Total Acres: 40 acres

Source of Water Supply: groundwater (1 existing well)

Water to be used for: irrigation County: Union

Type of Waste Disposal System:

Location: 5 miles west of Jefferson

PRIORITY Date Received: 8-28-17

Application/License Fee: \$ 700

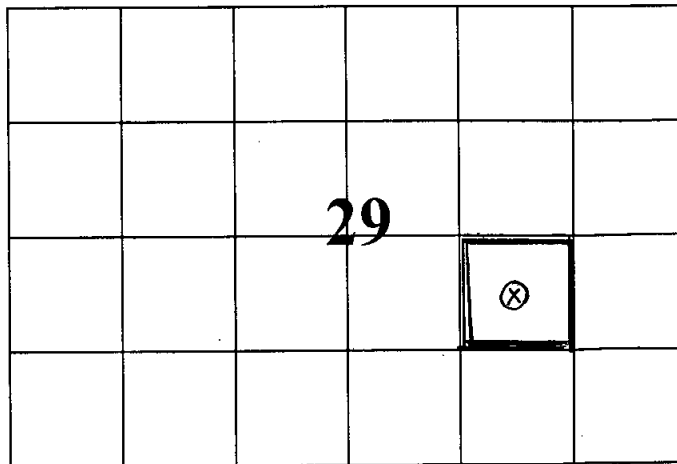
Corrected Application Received:

Period of Annual Use: April 1 - October 31

Remarks: Existing irrigation system

Diversion Point: NE 1/4 SE 1/4 Sec 29-T90N-
R49W

Land to be Irrigated: NE 1/4 SE 1/4 Sec 29-T90N-
R49W



Depth of Well: 100 feet deep

Well Driller: Hammond-Wetmore Drilling

Remarks:

Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 8-28-17

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 8308-3 FOR IRRIGATION

Date of first receipt of application August 28, 2017.

The Water Management Board approved Water Permit No. 8308-3 on July 12, 2018 for Tom Hummel, 47812 330th St, Jefferson SD 57038 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. 8308-3 appropriates 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri:Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Permit No. 8307-3.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – October 31.
3. The date from which applicant may claim right is August 28, 2017.
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. The well approved under Permit No. 8308-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. 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

SEP 12 2018
date



RECEIVED

AUG 28 2017

WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8308-3</u> (office use only) Hydrologic Unit <u>10170101</u>
	Basin <u>Missouri River</u>
	Newspaper <u>Leader-Courier, Elk Point</u>
	<u>Press & Dakotan, Yankton</u>

Application For Permit To Appropriate Water For Irrigation

Type of Application: ☒ New ☐ Vested Right ☐ Amendment/Correction to Permit No. _____
(Use predates Mar 2, 1955)Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)
_____1. Name to Appear on Irrigation Permit TOM HUMMEL

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

Mailing Address 47812 330th ST (Address) JEFFERSON (City) SD (State) 57038 (Zip Code)Phone 605-966-5521 Mobile _____ Email _____2. Amount of water claimed 1.11 *CFS or 500 **GPM _____ ***AF Total Acreage 840
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)3. Source of water supply GROUND WATER - 20 hp - LOW Pressure.4. Location of point of diversion Center NE 1/4 SE 1/4 Section 29 - T90N - R49W
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)* Windshield wipe / Sandy Soil, Condensation County UNION5. County or counties where water will be used UNION6. Annual period during which water is to be used APR 1 thru Oct 31st7. 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
<u>SAME AS ABOVE</u>	<u>40</u>		
<u>NE 1/4 SE 1/4 Sec 29 - T90N - R49W</u>			

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

Requesting diversion rate greater than statutory limit.I, TOM HUMMEL 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.

See App. Completion/Report on File

Form 2A
(Complete required and applicable portions only)

Supplemental Information

(type or print)

ATTN: Eric Gronlund.

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 DICK HAMMOND.
(if yes, please provide copies of logs)

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

For either Existing or Proposed Wells:

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

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

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) ____ Year Constructed ____

c) Connected to the City of ____ Sanitary System

3. Dugout Information

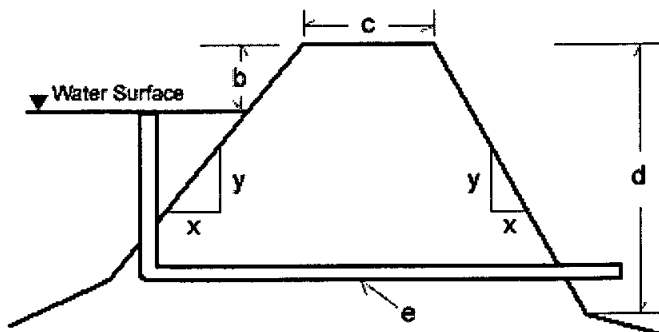
a) Surface Dimensions ____ Depth ____

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

4. Water Storage Dams

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

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



b) Freeboard ____

c) Crest Width ____

Crest Length ____

d) Height ____

e) Primary Outlet Capacity ____

If pipe, diameter ____

f) Secondary Spillway Capacity ____

Spillway Width ____

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

Upstream ____

Downstream ____

h) Surface Area of Impoundment ____

i) Storage ____ Acre Feet

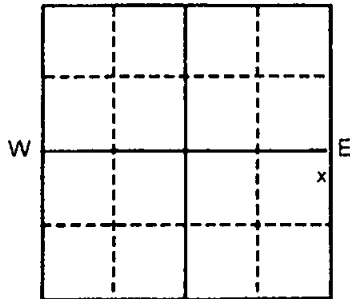
j) Drainage Area Above Dam ____ Acres

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location ne 1/4 se 1/4 Sec 29 Twp 90n Rg 49wCounty Union

North

Please mark well
location with an "X"

Well Completion Date

7/2/12

1 Mile

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

1,500.0 ft. from septic tank (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Direct rotary

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	16.00 IN	0.0 FT	70.0 FT	20.00 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
bentonite	35	Lb/gal	0.0 Ft	62.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
tremie method

SCREEN:

☐ Perforated pipe ☒ Manufactured
Diameter 16.00 Inches Length 20.0 FeetMaterial pvcSlot Size .060 Set From 70.0 Feet to 90.0 Feet

Other information

WAS A PACKER OR SEAL USED?

☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How?

☒ No, Why Not? NA
 Lab to which water
quality sample sent for analysis
Well Owner: Tom Hummell

Business Name:

Address: 47812 320th StreetCity, State, Zip: Jefferson SD 57038

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Silt, clayey, brown (alluvium)	0	7
Sand, fine, silty	7	55
Sand, coarse	55	65
gravel, medium, some sand beds	65	91
claystone, white, silty (dakota fm)	91	100

STATIC WATER LEVEL

22.0 FEET

If flowing: closed in pressure

PSI

GPM flow through

Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced flow rate

GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe: air lift development, 2 hours
☐ Bailed

☒ Other

Pumping Level Below Land Surface

29.0 Ft. After 2.0 Hrs. pumped 600.0 GPM Ft. After Hrs. pumped GPMIf pump installed, pump rate: 450.0 GPM

REMARKS

RECEIVED

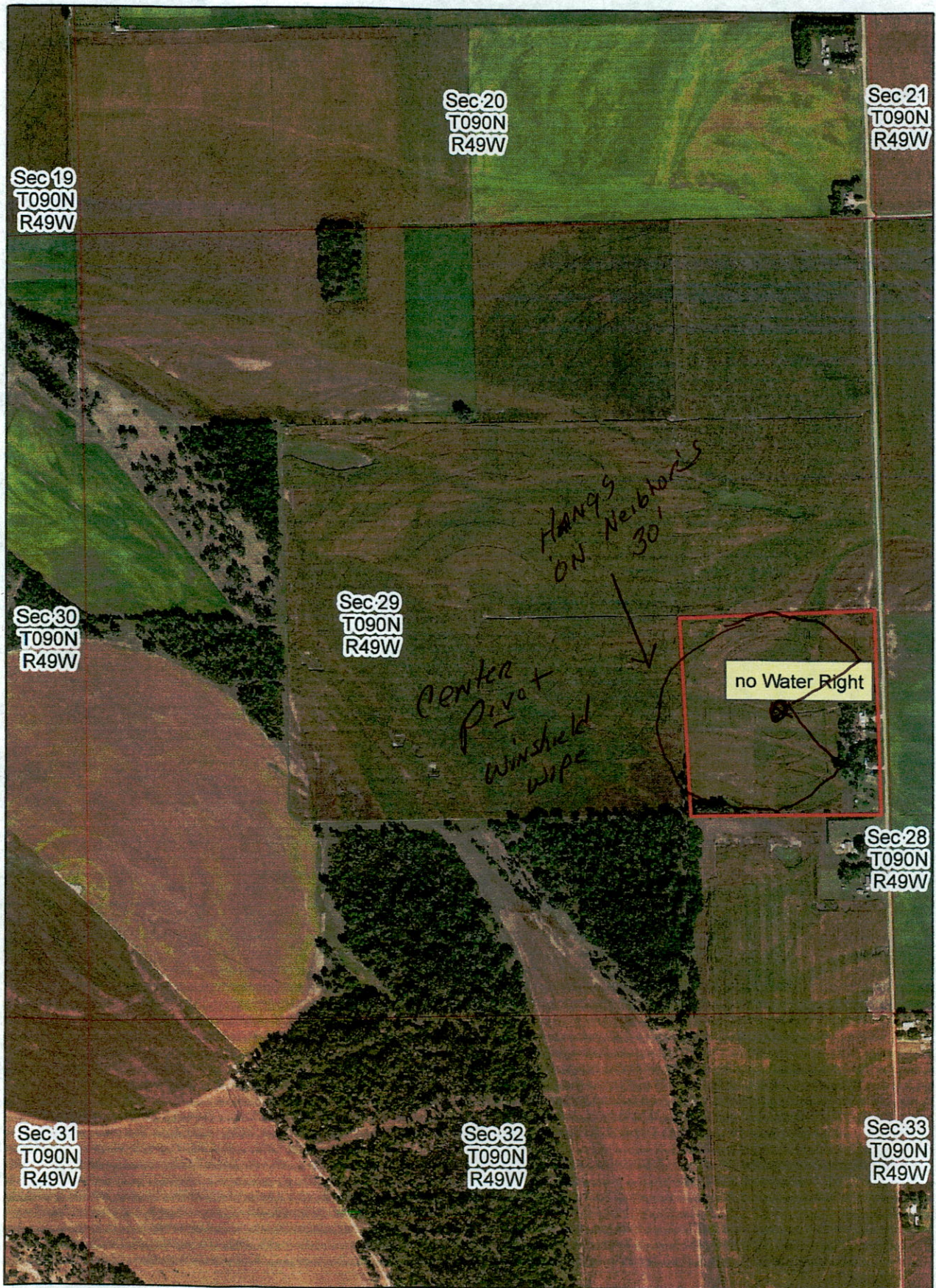
FEB - 1 2013

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

Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

Date: 12-12-12



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date August 28, 20 17

RECEIVED OF Hummel Structure Moving & Farms 47812 330th Street Jefferson, SD 57038

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

Fee for Application for Permit No. <u>8308-3</u> to Appropriate Water, to construct and to put water to beneficial use	800	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8308-3</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	700	00

No. **08325**

By Jeanne Goodman *25m*
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

July 20, 2017

Thomas Hummel
47812 330th St
Jefferson SD 57038

Dear Mr. Hummel:

The Department of Environment and Natural Resources (DENR) received information alleging the irrigation system located in the NE 1/4 SE 1/4 Section 29-T90N-R49W had end gun overspray occurring on neighboring property. The Union County Register of Deeds indicates you are the owner of this parcel. Enclosed is a general vicinity map.

Prior to contacting the Register of Deeds, the DENR database maintained for water permits was reviewed and we are unable to find that a water permit was obtained for irrigation of this property. Google Map confirms that there is an irrigation system in place on this quarter-quarter section. Water in South Dakota is property of the people of this state, and as such, the state water law requires a permit to use water anytime it is put to a beneficial use beyond typical domestic use.

A water permit must be obtained to have a continuing right to irrigate this land. Enclosed is an application form and instruction sheet to apply for a water permit for irrigation. The completed forms with the application fee and map are to be returned to the: Water Rights Program, 523 E Capitol, Pierre SD 57501. Please file the application as soon as possible but no later than September 1, 2017, to insure there is time to process and consider the application for a possible water right permit prior to your preparation for the 2018 irrigation season.

As Chief Engineer, if a water permit is not in place prior to the 2018 irrigation season I am prepared to issue an order pursuant to South Dakota Codified Law 46-2-18 to discontinue the use of water to which the user has no legal right. Refusal to comply with the order may result in DENR filing an action with a court of proper jurisdiction to issue a temporary restraining order or injunction to effectuate the provisions of the order.

For the remainder of the 2017 irrigation season and upon obtaining a water permit you must maintain the end gun stops to shut off the end guns when the pivot nears a road or neighboring property. Water users are not allowed to waste water or operate an irrigation system in violation of state water law, which includes end gun overspray upon lands, including roadways, not authorized by the water right. Application of water to a roadway or unauthorized lands is a waste and unreasonable use of water pursuant to SDCL 46-1-4.

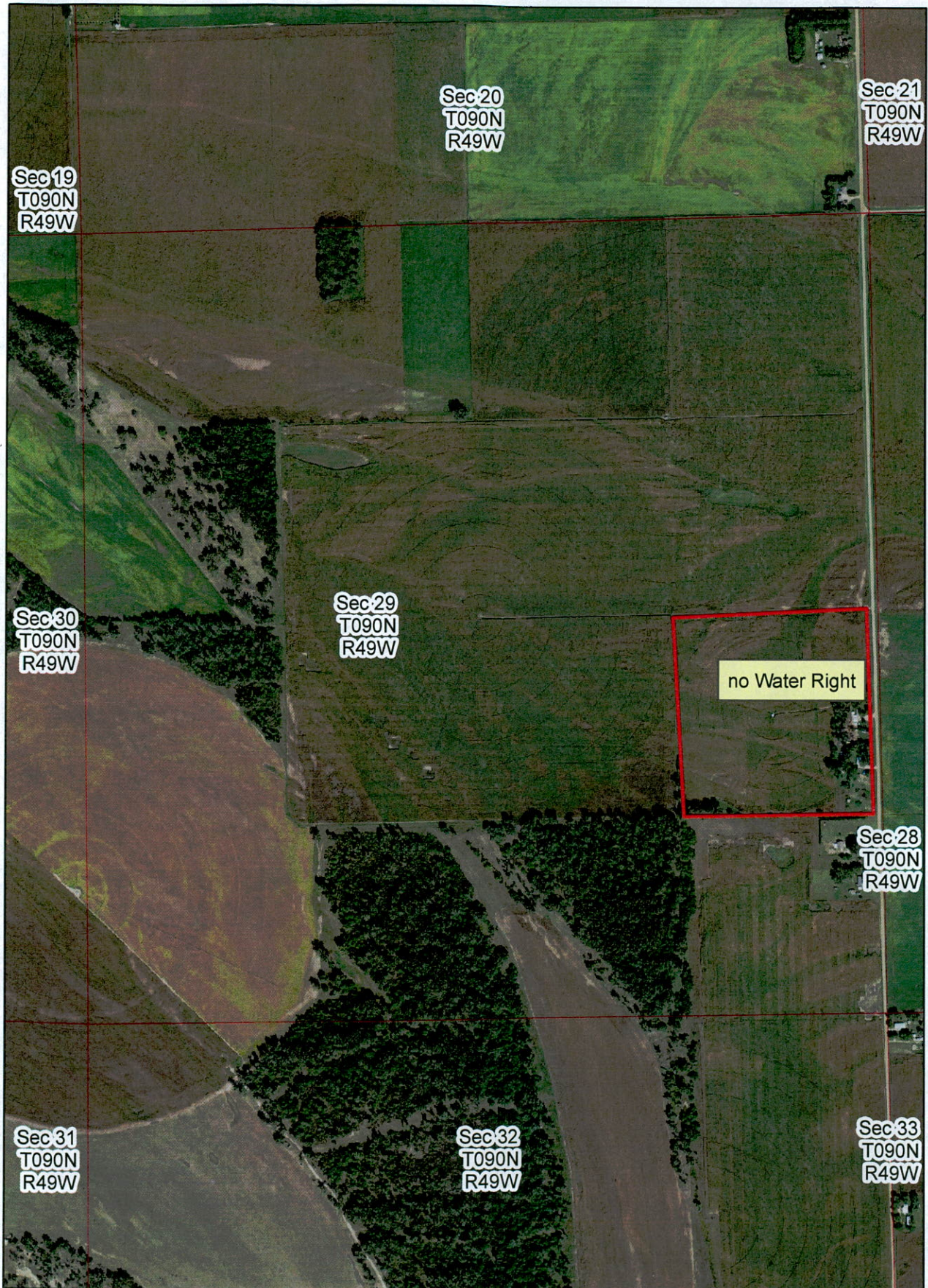
If you believe you have an existing permit or if help is needed completing the application forms, please contact Eric Gronlund (605) 773-3352 or eric.gronlund@state.sd.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Goodman". The signature is fluid and cursive, with the first name "Jeanne" written in a larger, more prominent script than the last name "Goodman".

Jeanne Goodman, Chief Engineer
Water Rights Program

enclosures





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

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

October 24, 2017

Tom Hummel
47812 330th St
Jefferson SD 57038

Dear Mr. Hummel:

Water Permit Application No. 8308-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Leader-Courier printed at Elk Point SD (Ph # 605-356-2632) and the Press & Dakotan printed at Yankton SD (Ph # 605-665-7811). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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

NOTICE OF APPLICATION NO. 8308-3 to Appropriate Water

Notice is given that Tom Hummel, 47812 330th St, Jefferson SD 57038 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri:Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Application No. 8307-3 filed by Rodney Ballinger.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8308-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 13, 2017.

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

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

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of_____.

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, October 26, 2017 7:53 AM
To: 'Tera Schmidt'
Subject: 8308-3, Tom Hummel
Attachments: 8308-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on November 2, 2017.

Tom Hummel, 47812 330th St, Jefferson SD 57038 (605 966-5521) has been notified to contact you to authorize publication and arrange for payment.

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

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

Karen Schlaak

SD DENR, Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, October 26, 2017 7:53 AM
To: G5 (leader1@iw.net)
Subject: 8308-3, Tom Hummel
Attachments: 8308-3public.short.docx; FORM8.FRM.doc

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

Karen Schlaak

SD DENR, Water Rights Program
(605) 773-3352



AFFIDAVIT OF PUBLICATION

State of South Dakota)

:ss

County of Union)

Bruce L. Odson,

the publisher of the Leader-Courier, deposes and says that

The Leader-Courier

is a legal weekly newspaper of a general circulation, printed and published in Elk Point, County of Union, State of South Dakota, and has been such legal newspaper during the time hereinafter mentioned, and that affiant is and was during all the time hereinafter mentioned in charge of the advertising department thereof, and has personal knowledge of all the facts stated in this affidavit: and that the notice and advertisement headed:

Notice of Application No. 8308-3

a printed copy of which is hereunto attached and made a part hereof, was printed and published in the said newspaper at least once in

each week for 1 successive weeks; that said newspaper at the time of the first publication of said notice hereinafter stated, had, and still has, a bona fide circulation of over two hundred paid copies weekly, and had been published in the said County of Union for more than one year immediately prior to the date of the said publication of said notice, and that said newspaper during said times, was, and is, printed in part in an office maintained at said city of Elk Point, the said place of publication; that the first publication of said notice in said newspaper was

on Thursday, the 2 day of November, 2017

and that the succeeding publications were

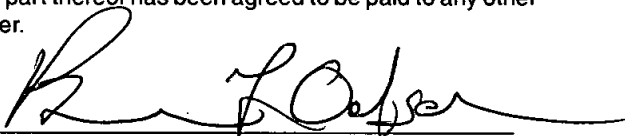
on Thursday, the _____ day of _____, _____

on Thursday, the _____ day of _____, _____

on Thursday, the _____ day of _____, _____

that the fees for the printing and publishing of said notice and advertisement in said newspaper as aforesaid were

\$ 28.58, that the full amount of the fee charged insures to the benefit of the publisher of the 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 other person whomsoever.

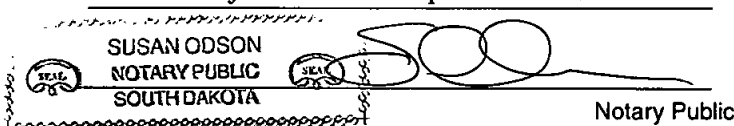


Subscribed and sworn to before me

this 2 day of November, 2017

My commission expires 7-12-23

SUSAN ODSON
NOTARY PUBLIC
SOUTH DAKOTA



Notary Public

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8308-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Publish Nov. 2, 2017
Published once at the total approximate cost of \$28.58
44-1-93

RECEIVED

NOV 06 2017

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

RECEIVED

NOV 06 2017

WATER RIGHTS
PROGRAM

TOM HUMMEL
47812 330TH ST
JEFFERSON SD 57038

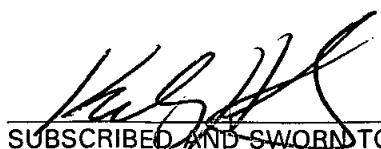
STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

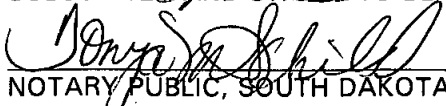
KELLY HERTZ, BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT (S)HE IS THE MANAGING EDITOR OF YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID
COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED
11 + 2 NOTICE OF APPLICATIO

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 2nd DAY OF November, 2017
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$28.09 ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS
BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF
HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 11/02/2017

FILED ON: 11/02/2017


SUBSCRIBED AND SWORN TO BEFORE ME THIS 2nd DAY OF November, 2017


NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 08/19/2021

Ad text : 11 + 2

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Notice is given that Tom Hummel, 47812 330th St, Jefferson SD 57038 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri:Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Application No. 8307-3 filed by Rodney Ballinger.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8308-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineers recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 13, 2017.

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

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

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
Published once at the total approximate cost of \$28.09.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

October 24, 2017

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Dear Ms. Faulk:

Please find enclosed the staff report, recommendations and publication notice for water permit applications filed by Rodney Ballinger and Tom Hummel in Union County. Public notice is to be published in the Elk Point Leader-Courier and Yankton Press & Dakotan.

This information is being sent as you early in the year contacted DENR regarding overspray of the Ballinger irrigation system on to the roadway and overspray from the Hummel irrigation system on to your property.

Please let me know if you have questions.

Sincerely,

A handwritten signature in cursive script that reads 'Eric Gronlund'.

Eric Gronlund
Water Rights Program
(605) 773-3352
Eric.gronlund@state.sd.us

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

November 2, 2017

Tom Hummel
47812 330th Street
Jefferson SD 57038

Dear Mr. Hummel:

The water permit application you filed for irrigation of the NE ¼ SE ¼ Section 29-T90N-R49W is currently out for public notice. To date, DENR has received three petitions contesting approval of the water permit application. The final date to file a petition to intervene is November 13, 2017.

The petitions that have been filed are enclosed.

After the period to petition to intervene has past, DENR will send notice of hearing to all parties scheduling the application for hearing before the Water Management Board. This is a seven member citizen board to regulate and control the development, conservation and allocation of the right to use water of the state.

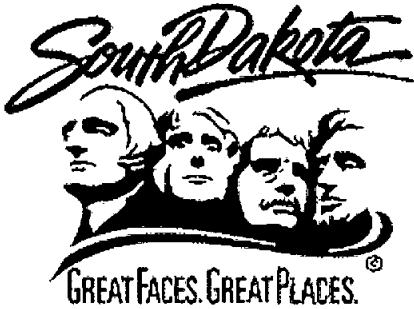
Please let me if you have questions regarding the hearing process.

Sincerely,

A handwritten signature in cursive script that reads "Eric Gronlund".

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

enclosures



DEPARTMENT of ENVIRONMENT
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8308-3, Tom Hummel**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8308-3, Tom Hummel, 47812 330th Street, Jefferson SD 57038.

The Chief Engineer is recommending APPROVAL of Application No. 8308-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under Permit No. 8308-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
October 23, 2017

NOTE: This irrigation system was developed prior to getting the required water right permit. DENR became aware of the irrigation as a result of a complaint alleging end gun overspray on to neighboring property. Be mindful that water users are not allowed to waste water or operate an irrigation system in violation of state water law, which includes

end gun overspray upon lands, including neighboring property and roadways, not authorized by the water right permit. Application of water to a roadway or unauthorized lands is a waste and unreasonable use of water pursuant to SDCL 46-1-4. The end gun stops must be maintained to shut off when the pivot nears a road or neighboring property that is not authorized.

The water permit does include the irrigation system extending into the neighboring property in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29-T90N-R49W owned by Rodney Ballinger. Mr. Ballinger has an application pending that includes this area. You must have Mr. Ballinger's consent for the pivot to extend on to his property

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8307-3
RODNEY BALLINGER
AND
WATER PERMIT APPLICATION NO. 8308-3
TOM HUMMEL
OCTOBER 19, 2017

Water Permit Application No. 8307-3 proposes to authorize the irrigation of 231 acres located in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T90N-R49W at a maximum diversion rate of 2.0 cubic feet of water per second (cfs) from an existing well 115 feet deep completed into the Missouri: Elk Point aquifer. The well is located in the approximate center of the NE $\frac{1}{4}$ Sec. 29 T90N-R49W all in Union County approximately 5 miles west of Jefferson, SD.

Water Permit Application No. 8308-3 proposes to authorize the irrigation of 40 acres located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T90N-R49W at a maximum diversion rate of 1.11 cubic feet of water per second (cfs) from an existing well 100 feet deep completed into the Missouri: Elk Point aquifer. The well is located in the approximate center of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T90N-R49W all in Union County approximately 5 miles west of Jefferson, SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into the neighboring property in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ that is included in Application No. 8307-3.

AQUIFER: Missouri: Elk Point (M: EP)

Aquifer Characteristics:

The Elk Point management unit of the Missouri aquifer is an alluvium mantled outwash aquifer with materials ranging from fine sand to very coarse gravel (Niehus, 1994; Stephens, 1967). The Missouri: Elk Point aquifer primarily underlies the flood plain of the Missouri River in Clay, Union, and Yankton Counties. There are locations where the aquifer can be overlain by till primarily near the edge of the flood plain (Niehus, 1994; Bugliosi, 1986; Stephens, 1967). The aquifer underlies approximately 219,100 acres and contains an estimated 3,287,100 acre-feet (ac-ft) of recoverable water in storage (Hedges et. al, 1982). The groundwater movement in the aquifer is generally southeast and towards the Missouri River (Stephens, 1967). The Missouri: Elk Point aquifer is hydraulically connected to the Lower James Missouri and the Lower Vermillion Missouri aquifers along its northern edge, portions of the aquifer overlie and can be hydraulically connected to the Dakota aquifer, and the aquifer is hydraulically connected to the Vermillion, Big Sioux, and Missouri Rivers (Niehus, 1994; Bugliosi, 1986; Stephens, 1967). The Missouri: Elk Point aquifer is predominantly under unconfined conditions (Water Rights, 2017a and 2017c).

The well completion report on file for Application No. 8308-3 indicates the static water level at the time of completion, July 2012, was 22 feet below ground surface. Aquifer material was encountered from 7 feet to the total depth of the well and included fine and coarse sand, and

medium gravel. The bottom nine feet of the well were completed into claystone that indicates the top of the Dakota Formation.

South Dakota Codified Law (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

WATER AVAILABILITY:

These applications propose to appropriate water from the Missouri: Elk Point aquifer. The probability of unappropriated water being available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this case, the aquifer is not stratigraphically lower than the Greenhorn Formation and the applicants are not water distribution systems.

Recharge and Discharge:

The Missouri: Elk Point aquifer is recharged through infiltration of precipitation, groundwater inflow from other aquifers, and streamflow losses from rivers and streams (Bugliosi, 1986). Hedges and others (1985) estimated a recharge rate to the aquifer of approximately 3.8 inches per year based on observation well analysis. Stonesifer (2013) estimated an additional 22,600 ac-ft/yr. recharge to the aquifer was induced by pumping. Hedges and other's (1985) and Stonesifer's (2013) recharge volumes combined is approximately 92,000 ac-ft/yr.

Discharge from the aquifer occurs through well withdrawals, outflow to the Missouri and Big Sioux Rivers when the stage of the rivers is lower than the water table of the aquifer, evapotranspiration where the aquifer is near land surface, and in areas where the Missouri: Elk Point directly overlies and is hydraulically connected to the Dakota aquifer, there is discharge to the Dakota aquifer when the water table of the Missouri: Elk Point aquifer is higher than the water level of the Dakota aquifer (Niehus, 1994). Stonesifer's (2013) hydrologic budget stated there was an average annual pumpage of approximately 81,108 ac-ft/yr. from the Missouri: Elk Point aquifer at that time. Therefore, there was approximately 10,856 ac-ft/yr. of unappropriated water available for development (Stonesifer, 2013). Stonesifer (2013) also stated it is likely more recharge could be induced to the Missouri: Elk Point aquifer from the Missouri, James, and Vermillion Rivers.

The probability of unappropriated water being available for this proposed appropriation can be evaluated by considering water permits that have been issued since June 24, 2013, along with the analysis of water availability of Stonesifer (2013). The water permits that have been approved or

reinstated since Stonesifer's (2013) analysis of water availability was concluded are listed in Table 1. There are also two deferred applications (Nos. 5749-3 and 5750-3) seeking to withdraw water from the Missouri: Elk Point aquifer (Water Rights, 2017b). Water Right No. 8237-3 was originally issued as a permit for no additional diversion rate and to irrigate 51 acres using the well and diversion rate authorized by Water Right No. 7075-3. Water Right No. 7075-3 authorized the irrigation of 232 acres at a maximum diversion rate of 1.78 cfs. Water Right No. 7075-3 was subsequently incorporated into Water Right No. 8237-3, which is now licensed for a diversion rate of 1.78 cfs for the irrigation of 283 acres. Water Right No. 8288-3 was originally issued as a permit for no additional diversion rate and to irrigate 13 acres using the well and diversion rate authorized by Water Right No. 7493-3. Water Right No. 7493-3 authorized the irrigation of 84 acres at a maximum diversion rate of 1.78 cfs. Water Right No. 7493-3 was subsequently incorporated into Water Right No. 8288-3, which is now licensed for a diversion rate of 1.78 cfs for the irrigation of 97 acres.

The estimated average annual use by the irrigation permits listed in Table 1 can be calculated using a method described by Stonesifer (2013). Stonesifer (2013) calculated the average ratio of pumpage to appropriation for developed appropriations (13.7%) and applied that to the new appropriations. Kilts (2016) updated the calculations and determined the average ratio of pumpage to appropriation for developed permits is 13.8%. All of the irrigation permits and the application listed in Table 1 have appropriated or proposed to appropriate two ac-ft per acre for a total of 8,579.38 ac-ft/yr. Applying the 13.8% to the appropriated volume of the irrigation permits shown in Table 1, the irrigation permits and application, if approved, are estimated to pump 1,184 ac-ft/yr. Using that methodology, Application No. 8307-3 is estimated to pump approximately 64 ac-ft/yr. and Application No. 8303-3 is estimated to pump approximately 11 ac-ft/yr. on average.

Table 1- Water permits approved or reinstated and current applications since the Stonesifer's (2013) water availability analysis for the Missouri: Elk Point aquifer (Water Rights, 2017b)

PERMIT NO.	NAME	COUNTY	STATUS	USE	CFS	ACRES	AC-FT
7848-3	MISSOURI VALLEY FARMS INC	UN	PE	IRR	3.04	213	
7856-3	MIKE & STEVE ALLARD	UN	PE	IRR	1.78	129.3	
7895-3	TODD HANSON	UN	PE	IRR	1.89	180	
7898-3	JAMES ORR	CL	LC	IRR	1.56	132	
7899-3	JUSTIN ORR	CL	LC	IRR	1.56	97	
7904-3	CRAIG S MCINERNEY	UN	PE	IRR	1.78	160	
7933-3	DOUGLAS G BYE	CL	PE	IRR	0.89	90	
7936-3	DONALD JOHNSON	YA	PE	IRR	1.39	83	
7938-3	RUSSELL M HALL	UN	PE	IRR	0	53	
7941-3	JOSEPH F CHICOINE	UN	PE	IRR	1	37.69	
7074A-3**	CALVIN HANSON	CL	PE	IRR	1.78	162	
7951-3	ALLEN PACE	UN	PE	IRR	1.78	150	
7955-3	KARL M SCHENK	YA	PE	IRR	1.78	140	
7971-3	BARRY VAN OSDEL	YA	PE	IRR	1.11	68	
7980-3	FRANCIS HEINE	CL	PE	IRR	0	5	
7987-3	FRANCIS M ARMSTRONG LIVING TRUST	CL	PE	IRR	1.78	102	
8010-3	RYAN RUSHER	YA	PE	IRR	0.1	2.5	
8016-3	AMELIA BERTRAND TRUST	UN	PE	IRR	1.67	66	
8022-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	1.91	134	
8023-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	4.14	290	
8024-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	3.36	235.2	
8025-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	3.82	267.2	
8029-3	DAKOTA DUNES COMM IMPROVEMENT DISTRICT	UN	PE	IRR	0.78	17.8	
8031-3	DAKOTA PROTEIN CONVERSION INC	CL	PE	COM	0.22		
8040-3	HEINE ELECTRIC & IRRIGATION INC	CL	PE	IRR/COM	0.33	3	
8069-3	CIMPLS LLC	YA	PE	COM	0.44		452
7009A-3**	ROGER D HANSON	YA	PE	IRR	1.78	120	
8079-3	MELVIN & LARRY DONNELLY	UN	PE	IRR	1.78	160	
8080-3	LARRY & MELVIN DONNELLY	UN	PE	IRR	1.78	160	
8147-3	DOUG LAFLEUR	UN	PE	COM/LCO	1		160
8175-3	GAYVILLE-VOLIN SCHOOL DISTRICT 63-1	YA	PE	IRR	0.058	4	
8176-3	CALVIN & MARY HANSON	CL	LC	IRR	1.113	31	
8177-3	D A OLSON & SONS	CL	LC	IRR	1.23	62	
8181-3	MARC T BERNARD	UN	PE	IRR	0.89	40	
8192-3	STOP DROP LOCK INC	YA	PE	IRR	2.22	152	
8202-3	GERALD BENJAMIN	UN	PE	IRR	1.89	132	
8204-3	DOUGLAS BYE	CL	PE	IRR	0.89	70	
8211-3	TIMBER8 LLC	UN	PE	IRR	1.78	96	
8212-3	CITY OF YANKTON	YA	PE	MUN	20.12		6,050
8237-3*	CALVIN HANSON	CL	LC*	IRR	no add'l	51	
8248-3	LARRY DONNELLY	UN	PE	IRR	0	133	
8250-3	STEVE SCHMIDT	YA	PE	IRR	0	63	
8287-3	DAN & SCOTT HANSON	UN	PE	IRR	2.22	170	
8288-3***	FRANKLIN ORR	CL	LC***	IRR	no add'l	13	
8304-3	Don Schell Family LLP	CL	APP	IRR	no add'l	15	
IRR= Irrigation, COM= Commercial, MUN= Municipal, LCO= Livestock Confinement Operation							
CL= Clay, UN= Union, YA= Yankton, *= License incorporates Permit No. 7075-3 for 1.78 cfs and 232 acres,							
= reinstated permits, *= License incorporates Permit No. 7493-3 for 1.78 cfs and 84 acres							

Historically, non-irrigation use has been estimated by assuming pumping for 60% of the time for permits limited by only diversion rate and full volume pumping for permits limited by volume. Therefore, Water Permit No. 8031-3 is expected to pump approximately 95 ac-ft. Water Permit Nos. 8069-3 and 8147-3 are limited by qualifications on their respective permits to pump at maximum a combined volume 612 ac-ft/yr. Water Permit No. 8212-3 was approved June 21, 2016, with a qualification on the permit requiring annual reporting to the Chief Engineer of the volume of water pumped from the Missouri: Elk Point aquifer (Water Rights, 2017b). Since the permit is relatively new and no pumpage volume report has been filed, it is most appropriate to assume pumping under Water Permit No. 8212-3 is the full appropriated volume of 6,050 ac-ft/yr. If the deferred applications were approved, the estimated volume of pumpage under those applications would be approximately 50 ac-ft/yr.

The total estimated water use, considering the pre-2013 analysis water use (81,108 ac-ft/yr.), plus post-2013 analysis expected water use (7,941 ac-ft/yr.) and the potential use by the two deferred applications (50 ac-ft/yr.) is approximately 89,099 ac-ft/yr. The difference between Stonesifer's (2013) estimated annual recharge and the estimated annual withdrawals is approximately 2,901 ac-ft/yr. These applications are expected to use approximately 75 ac-ft/yr. It should be noted that increased withdrawals from the Missouri: Elk Point aquifer, especially near the Missouri River, will induce more recharge to the aquifer from the river. Therefore, there is a reasonable probability that unappropriated water is available for this proposed appropriation.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program monitors 37 observation wells completed into the Elk Point management unit of the Missouri aquifer (Water Rights, 2017a). There are five observation wells within approximately three miles of the well these applications propose to use that are completed into the Missouri: Elk Point aquifer. The locations of observation wells and the wells these applications propose to use are shown in Figure 1. Observation well UN-99A is within one-quarter of a mile, UN-770 is approximately 2.5 miles north, and UN-78B, UN-77P and UN-77R are approximately 3.0 miles from the well sites these applications propose to use (Water Rights, 2017a). Figures 2 through 6 show the hydrographs for these observation wells, respectively.

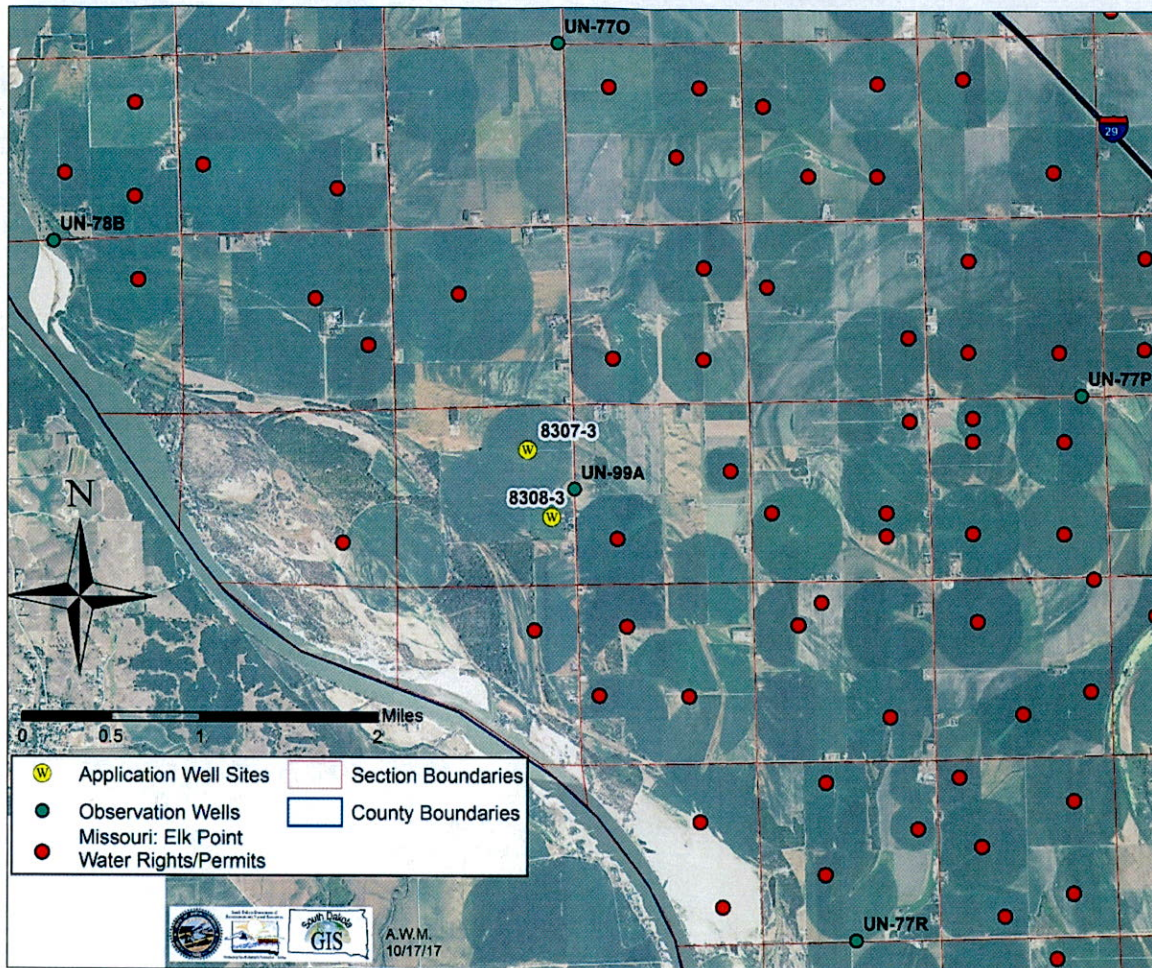


Figure 1- Map of the observation wells and water right/permit wells completed into the Missouri: Elk Point aquifer in the vicinity of the wells for Application Nos. 8307-3 and 8308-3 proposes to use (Water Rights, 2017a)

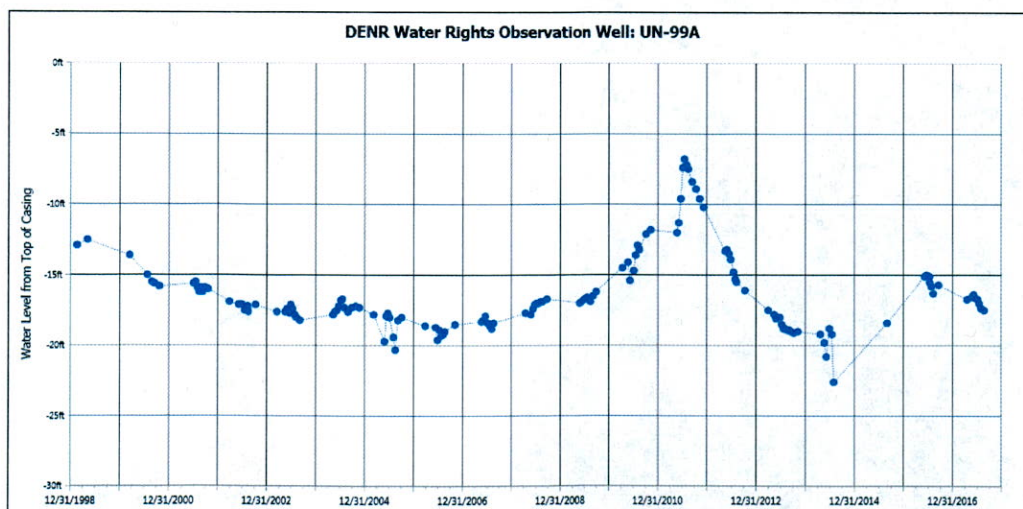


Figure 2- Hydrograph for observation well UN-99A (Water Rights, 2017a)

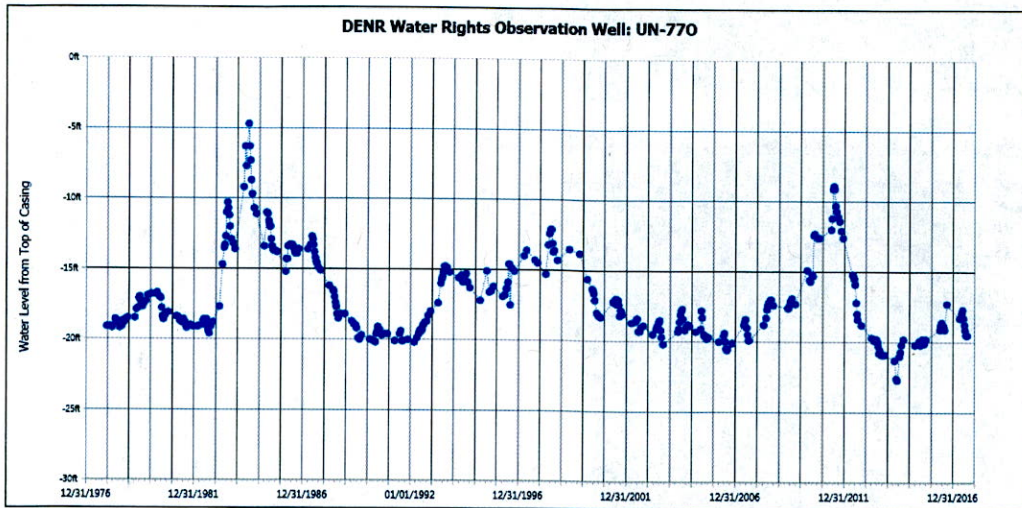


Figure 3- Hydrograph for observation well UN-770 (Water Rights, 2017a)

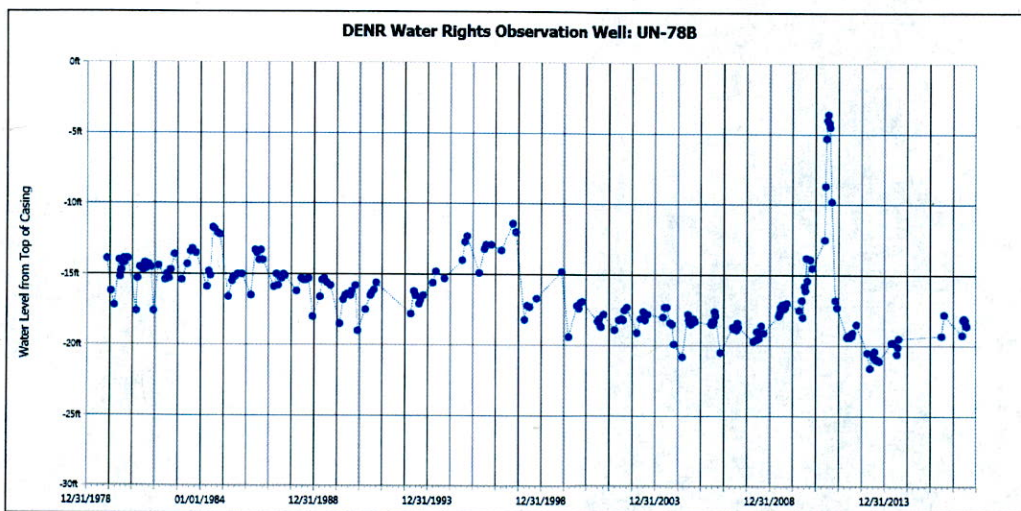


Figure 4- Hydrograph for observation well UN-78B (Water Rights, 2017a)

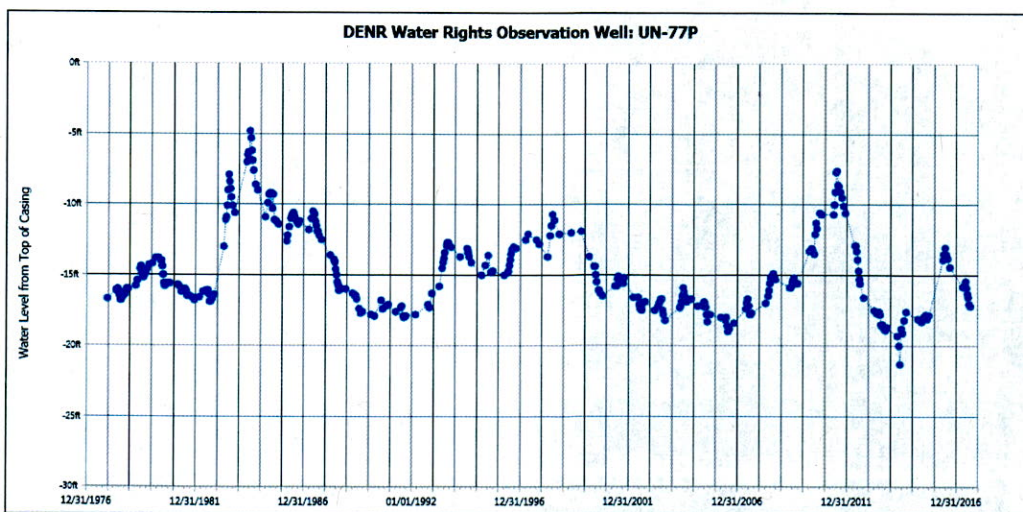


Figure 5- Hydrograph for observation well UN-77P (Water Rights, 2017a)

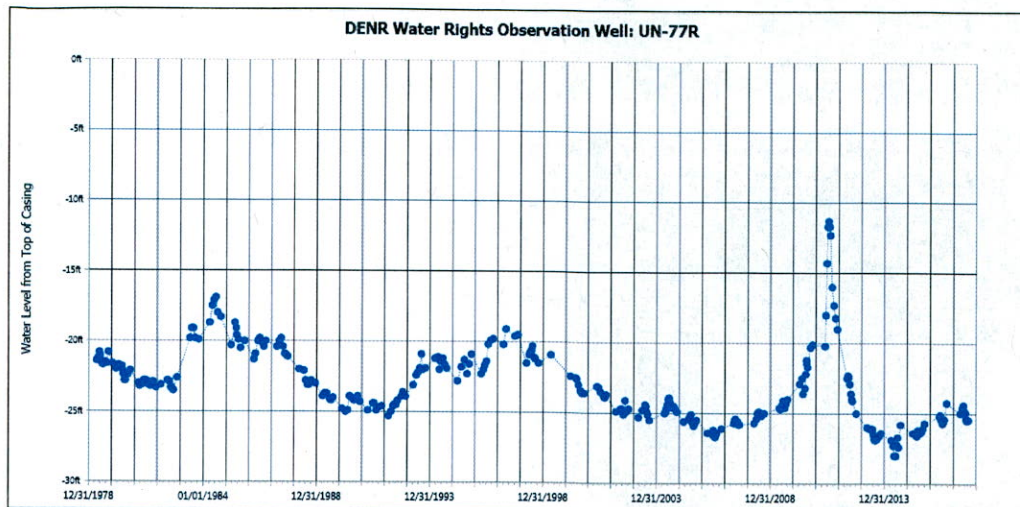


Figure 6- Hydrograph for observation well UN-77R (Water Rights, 2017a)

The hydrographs shown in Figures 2 through 6 are representative of the hydrographs for the other observation wells completed into the Missouri: Elk Point aquifer (Water Rights, 2017a). These hydrographs show the Missouri: Elk Point aquifer is responsive to climatic conditions with rising water levels during wetter periods when recharge exceeds discharge plus withdrawals and declining water levels during drier periods when discharge plus withdrawals exceeds recharge. The observation wells completed into the Missouri: Elk Point aquifer especially those in close proximity to the river, like the wells in proximity of these applications show the hydraulic connection between the management unit and the Missouri River. This is specifically shown by the large peak in the hydrographs in 2011 that occurred in the exact same timeframe and very similar magnitude as the flooding of the Missouri River that occurred at the same time. The observation wells that have a long enough period of record document the lowering of the water table in the aquifer in response to decreased flooding that resulted from the completion of the Gavins Point Dam (Stephens, 1967). The hydrographs of the observation wells also document the entrenchment of the Missouri River below the Gavins Point Dam (Goodman, 2007; Iles, 1979).

The impacts of well withdrawals on the water level are masked by climatic effects and by the effects of the hydraulic connection between the aquifer and the Missouri River. Thus, recharge to and natural discharge from the aquifer still dominate the system. Recognizing natural discharge can be captured for pumping, there is a reasonable probability that unappropriated water is available for this proposed appropriation.

EXISTING WATER RIGHTS:

There are 609 water rights/permits appropriating water and five future use permits reserving water from the Missouri: Elk Point aquifer along with two deferred applications (Water Rights, 2017b). The water rights/permits authorized to withdraw water from the Missouri: Elk Point aquifer in the vicinity of the area these applications propose to irrigate are shown in Figure 7 and listed in Table 2.

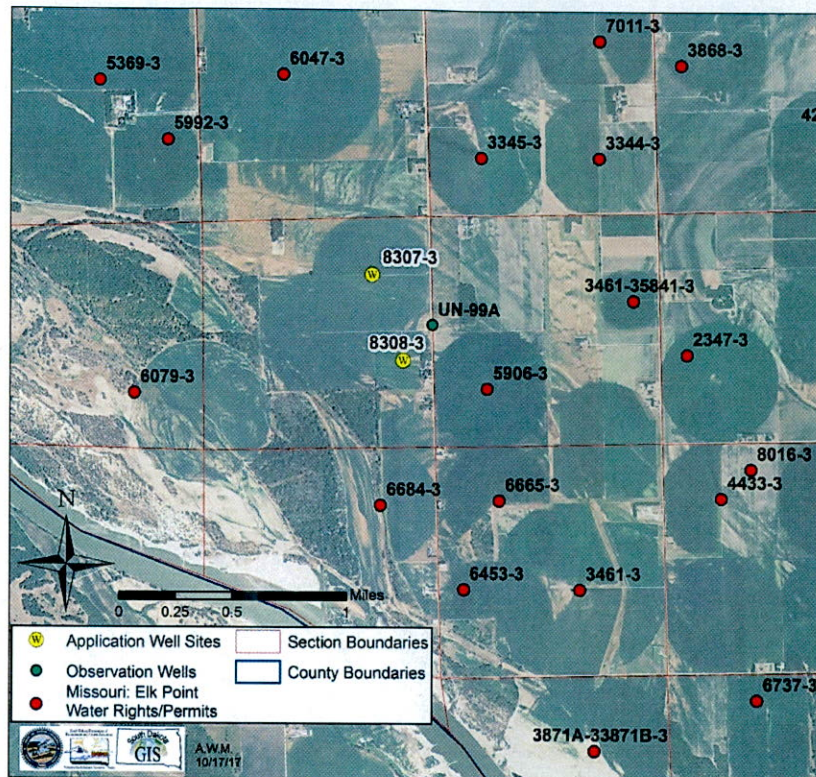


Figure 7- Map of the vicinity of Application Nos. 8307-3 and 8308-3 including Missouri: Elk Point aquifer water rights/permits (Water Rights, 2017b) and observation wells (Water Rights, 2017a)

Table 2- Water rights/permits in the vicinity of the well authorized by Water Permit No. 8287-3 as shown in Figure 4

Permit No.	Name	Status	Use	CFS	Acres
2347-3	Merlyn Karpen	LC	IRR	1.8	126
3344-3	Robert Corio	LC	IRR	1.9	133
3345-3	Stanley N Donnelly	LC	IRR	1.85	130
3461-3	Roger Dailey	LC	IRR	5.55	433
3868-3	Carol Ann Hagen	LC	IRR	2.14	150
3871A-3	Dan & David Trudeau	LC	IRR	2.01	159
3871B-3	Lieber Land Holdings LLC	LC	IRR	1.54	122
4433-3	Roger Dailey	LC	IRR	1.89	133
5369-3	Alfred Allard	LC	IRR	3.79	320
5841-3	Michael & Mary Schmitz	LC	IRR	0.56	39
5906-3	Virgil Mollet Jr	LC	IRR	1.78	136
5992-3	Mike & Steve Allard	LC	IRR	1.23	86
6047-3	Mike & Steve Allard	LC	IRR	2.89	305
6079-3	Joseph & John Trudeau	LC	IRR	2.67	95
6453-3	Dan & David Trudeau	PE	IRR	0.89	37
6665-3	Eugene Mollet Sr	LC	IRR	1.63	91
6684-3	George Norton	LC	IRR	1.33	58
6737-3	Michael Schmitz	PE	IRR	1.33	120
7011-3	Mike & Steve Allard	PE	IRR	1.89	130
8016-3	Amelia Bertrand Trust	PE	IRR	1.67	66
LC= Water Rights, PE= Water Permit, IRR= Irrigation					

Drawdown from pumping wells completed into the Missouri: Elk Point aquifer is typically not significant very far from the pumping well. This is due to the large saturated thickness and hydraulic conductivity of the aquifer. In many places within the Missouri: Elk Point aquifer there is in excess of 100 feet of saturated aquifer thickness (Water Rights, 2017a and 2017c). Examination of all of the hydrographs of observation wells completed into the Missouri: Elk Point aquifer show no signs of being significantly impacted by drawdown caused by pumping despite most of the observation wells being located within two miles of several irrigation wells. Precise drawdown cannot be quantified without aquifer testing. However, pumping under this application, if approved, is not expected to adversely impact nearby adequate wells.

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

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet”

In the past the Water Management Board has recognized to place water to maximum beneficial use, a certain amount of drawdown may occur. Furthermore, there is no history of well interference complaints from the Missouri: Elk Point aquifer. When all of that is considered, adequate wells as defined in ARSD 74:02:20(6) are not expected to be adversely or unlawfully impaired if this proposed appropriation is approved.

SDCL 46-5-6:

Pursuant to SDCL 46-5-6, the diversion rate for an irrigation appropriation cannot be in excess of one cfs for every 70 acres, or “the equivalent thereof.” The statute does provide that: “The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land.” Water Permit Application No. 8308-3 proposes to divert water at a maximum rate of 1.11 cfs for the irrigation of 40 acres or at a rate of 1.94 cfs per 70 acres. The applicant did not provide a reason for the request. The pivot makes a partial or “windshield wipe” type of rotation. This type of center pivot orientation is known to often require a diversion rate in excess of the statutory limit. This reason has been accepted by the Water Management Board previously as reasonable for the request of diversion rate in excess of the statutory limit.

CONCLUSIONS:

1. Application No. 8307-3 proposes to divert water from the Missouri: Elk Point aquifer for the irrigation of 231 acres in Union County using an existing well at a maximum diversion rate of 2.0 cfs.
2. Application No. 8308-3 proposes to divert water from the Missouri: Elk Point aquifer for the irrigation of 40 acres in Union County using an existing well at a maximum diversion rate of 1.11 cfs. This diversion rate is in excess of the statutory limit of 1 cfs per 70 acres.

3. Based on the observation well data and a comparison of recharge to and discharge from the aquifer, there is a reasonable probability unappropriated water is available for these proposed appropriations.
4. There is a reasonable probability water can be pumped from these proposed appropriations without adversely or unlawfully impacting existing appropriative or domestic users.
5. Application No. 8308-3 has requested a diversion rate in excess of the statutory limit of one cfs per 70 acres. The orientation of the center pivot requires the requested diversion rate. This reason has been accepted by the Water Management Board in the past as reasonable for the request of diversion rate in excess of 1 cfs per 70 acres.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

REFERENCES:

- Bugliosi, E.F. 1986. Water Resources of Yankton County, South Dakota. Water-Resources Investigations Report 84-4241. U.S. Geological Survey. Huron, South Dakota.
- Goodman, J.A. 2007. Report on Water Permit Application No. 6869-3 for Lewis and Clark RWS: SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Hedges, L.S., Allen, J. and Holly, D.E. 1985. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River South Dakota and Iowa. Task 7: Ground Water Recharge. U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S., S.L. Burch, D.L. Iles, R.A. Barari, and R.A. Schoon. 1982. Evaluation of Ground-water Resources in Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa. Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report; U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Iles, D.L. 1979. Ground-water Study for Southern Union County. Open File Report UR-28. SD DENR-Geological Survey. Vermillion, South Dakota.
- Kilts, W. 2016. Report to the Chief Engineer Water Permit Application No. 8202-3 Gerald Benjamin. February 20, 2015. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, South Dakota.
- Niehus, C.A. 1994. Water Resources of Lincoln and Union Counties, South Dakota. U.S. Geological Survey Water-Resources Investigations Report 93-4195. U.S. Geological Survey. Rapid City, South Dakota.
- Stephens, J.C. 1967. Geology and Hydrogeology of Clay County, South Dakota, Part II: Water Resources. South Dakota DENR-Geological Survey Bulletin 19, 62 p. Vermillion, South Dakota.
- Stonesifer, J.R. 2013. Water Availability of the Missouri: Elk Point Aquifer. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017a. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017c. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

RECEIVED

NOV 02 2017

WATER RIGHTS
PROGRAM

10.29.17

Dear Jeanne

I am writing to contest the approval of water rights for Tom Hummel.

Mr Hummel has run his pivot into my fence and damaged my property two times. I have pictures on my phone and also the Union County Sheriff has pictures and a copy of my complaint.

Mr Hummel refuses to comply with my request to not spray water on my property. He has removed the end gun resulting in a heavy overspray.

I put up a pole to keep his pivot off my property and he ran into the pole and damaged the fence.

Day Reese
3316 478th Ave
Jefferson S.D. 57038

RECEIVED

NOV 02 2017

WATER RIGHTS
PROGRAM

10-27-17

Dear Jeanne.

I am writing to you to contest the approval of water rights for Tom Hummel application 10 8308-3.

My reasons are many. Mr Hummel continued to overspray my property after repeated requests by me and the Sheriff's department that he stop.

Mr Hummel has damaged my fence and cut trees without my permission.

Mr Hummel removed the endgun and continues to overspray my ground. He informed both me and the Sheriff that he will continue to do this no matter what we say.

Mr Hummel has illegally pumped water from the aquifer since 2014.

I humbly request that his rights be denied since he will not comply to the requests.

I was forced to put a pole up to keep his pivot from coming onto my ground.

Thank you for your cooperation in mailing
me the information as Mr Hummel has not
published his request for application in the
paper as of this writing.

Anna Gault
Civil Bend Township Clerk
33183 478th Ave
Jefferson SD
57038

RECEIVED

NOV 02 2017

WATER RIGHTS
PROGRAM

To Whom it may concern

10-29-17

This letter is to voice my concerns concerning Tom Hummel receiving his water rights. On two separate occasions when Tom was illegally irrigating his field behind our property located at 33163 478th Jefferson, he ran the irrigation through our fence line & never notified us that he did so, the first time we were out of town & luckily my in-laws saw it as we have cows within that fence line. By his doing so he also damaged one of our trees that is close to 100 years old. After the first time we put a phone pole in as a corner post to help prevent a second occurrence. He then proceeded to run it through the fence line a second time. We have reinforced the corner phone pole to hopefully deter him from doing it a third time. While we were reinforcing the corner phone pole

01/11/14 14:55

01/11/14 14:55

STATION 11111111
MANHATTAN

Tom drove through his field + proceeded to verbally attack my husband because we posted "No Trespassing" signs and told my husband that "Two can play that game". Both incidents have been reported to the Union County Sheriff and they have pictures on file.

In conclusion, I feel that Tom Hummel is not responsible enough to monitor his irrigation, he has no regard for other people's property.

Thank you for your time in this matter

Beth Reese
33163 478th
Jefferson, SD

57038

712-251-8896



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

November 15, 2017

NOTICE OF HEARING

TO: Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8308-3, Tom Hummel

Three petitions opposing Water Permit Application No. 8308-3 were filed in response to the Notice of Application published in the Leader-Courier and Press & Dakotan. This notice schedules a hearing on Application No. 8308-3 before the South Dakota Water Management Board.

Water Permit Application No. 8308-3 proposes to appropriate 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri:Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Application No. 8307-3 filed by Rodney Ballinger.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8308-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 8308-3 at 10:30 AM (Central Time) on Thursday, March 8, 2018, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

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 the application after it reaches a conclusion based on the facts presented at the public hearing.

The March 8, 2018, 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 or support the application. The request for an automatic delay must be filed by February 23, 2018. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and persons notice will be provided to all petitioners regarding the time, date and location.

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

Contact Eric Gronlund at the above Chief Engineer's address to request the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavits of publication and the petitions filed in the matter of Water Permit Application No. 8308-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

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 direct mail to you, and the applicable date to give notice to the Chief Engineer is November 27, 2017. 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; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosures

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on November 15, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated November 15, 2017, regarding notice of hearing for Water Right Permit Application No. 8293-3, as addressed below:

Tom Hummel
47812 330th Street
Jefferson SD 57038

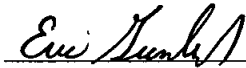
Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



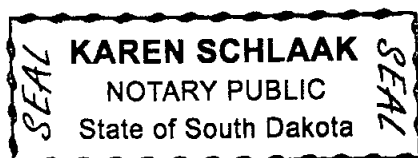
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15 day of November, 2017



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8307-3
RODNEY BALLINGER
AND
WATER PERMIT APPLICATION NO. 8308-3
TOM HUMMEL
OCTOBER 19, 2017

Water Permit Application No. 8307-3 proposes to authorize the irrigation of 231 acres located in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T90N-R49W at a maximum diversion rate of 2.0 cubic feet of water per second (cfs) from an existing well 115 feet deep completed into the Missouri: Elk Point aquifer. The well is located in the approximate center of the NE $\frac{1}{4}$ Sec. 29 T90N-R49W all in Union County approximately 5 miles west of Jefferson, SD.

Water Permit Application No. 8308-3 proposes to authorize the irrigation of 40 acres located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T90N-R49W at a maximum diversion rate of 1.11 cubic feet of water per second (cfs) from an existing well 100 feet deep completed into the Missouri: Elk Point aquifer. The well is located in the approximate center of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T90N-R49W all in Union County approximately 5 miles west of Jefferson, SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into the neighboring property in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ that is included in Application No. 8307-3.

AQUIFER: Missouri: Elk Point (M: EP)

Aquifer Characteristics:

The Elk Point management unit of the Missouri aquifer is an alluvium mantled outwash aquifer with materials ranging from fine sand to very coarse gravel (Niehus, 1994; Stephens, 1967). The Missouri: Elk Point aquifer primarily underlies the flood plain of the Missouri River in Clay, Union, and Yankton Counties. There are locations where the aquifer can be overlain by till primarily near the edge of the flood plain (Niehus, 1994; Bugliosi, 1986; Stephens, 1967). The aquifer underlies approximately 219,100 acres and contains an estimated 3,287,100 acre-feet (ac-ft) of recoverable water in storage (Hedges et. al, 1982). The groundwater movement in the aquifer is generally southeast and towards the Missouri River (Stephens, 1967). The Missouri: Elk Point aquifer is hydraulically connected to the Lower James Missouri and the Lower Vermillion Missouri aquifers along its northern edge, portions of the aquifer overlie and can be hydraulically connected to the Dakota aquifer, and the aquifer is hydraulically connected to the Vermillion, Big Sioux, and Missouri Rivers (Niehus, 1994; Bugliosi, 1986; Stephens, 1967). The Missouri: Elk Point aquifer is predominantly under unconfined conditions (Water Rights, 2017a and 2017c).

The well completion report on file for Application No. 8308-3 indicates the static water level at the time of completion, July 2012, was 22 feet below ground surface. Aquifer material was encountered from 7 feet to the total depth of the well and included fine and coarse sand, and

medium gravel. The bottom nine feet of the well were completed into claystone that indicates the top of the Dakota Formation.

South Dakota Codified Law (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

WATER AVAILABILITY:

These applications propose to appropriate water from the Missouri: Elk Point aquifer. The probability of unappropriated water being available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this case, the aquifer is not stratigraphically lower than the Greenhorn Formation and the applicants are not water distribution systems.

Recharge and Discharge:

The Missouri: Elk Point aquifer is recharged through infiltration of precipitation, groundwater inflow from other aquifers, and streamflow losses from rivers and streams (Bugliosi, 1986). Hedges and others (1985) estimated a recharge rate to the aquifer of approximately 3.8 inches per year based on observation well analysis. Stonesifer (2013) estimated an additional 22,600 ac-ft/yr. recharge to the aquifer was induced by pumping. Hedges and other's (1985) and Stonesifer's (2013) recharge volumes combined is approximately 92,000 ac-ft/yr.

Discharge from the aquifer occurs through well withdrawals, outflow to the Missouri and Big Sioux Rivers when the stage of the rivers is lower than the water table of the aquifer, evapotranspiration where the aquifer is near land surface, and in areas where the Missouri: Elk Point directly overlies and is hydraulically connected to the Dakota aquifer, there is discharge to the Dakota aquifer when the water table of the Missouri: Elk Point aquifer is higher than the water level of the Dakota aquifer (Niehus, 1994). Stonesifer's (2013) hydrologic budget stated there was an average annual pumpage of approximately 81,108 ac-ft/yr. from the Missouri: Elk Point aquifer at that time. Therefore, there was approximately 10,856 ac-ft/yr. of unappropriated water available for development (Stonesifer, 2013). Stonesifer (2013) also stated it is likely more recharge could be induced to the Missouri: Elk Point aquifer from the Missouri, James, and Vermillion Rivers.

The probability of unappropriated water being available for this proposed appropriation can be evaluated by considering water permits that have been issued since June 24, 2013, along with the analysis of water availability of Stonesifer (2013). The water permits that have been approved or

reinstated since Stonesifer's (2013) analysis of water availability was concluded are listed in Table 1. There are also two deferred applications (Nos. 5749-3 and 5750-3) seeking to withdraw water from the Missouri: Elk Point aquifer (Water Rights, 2017b). Water Right No. 8237-3 was originally issued as a permit for no additional diversion rate and to irrigate 51 acres using the well and diversion rate authorized by Water Right No. 7075-3. Water Right No. 7075-3 authorized the irrigation of 232 acres at a maximum diversion rate of 1.78 cfs. Water Right No. 7075-3 was subsequently incorporated into Water Right No. 8237-3, which is now licensed for a diversion rate of 1.78 cfs for the irrigation of 283 acres. Water Right No. 8288-3 was originally issued as a permit for no additional diversion rate and to irrigate 13 acres using the well and diversion rate authorized by Water Right No. 7493-3. Water Right No. 7493-3 authorized the irrigation of 84 acres at a maximum diversion rate of 1.78 cfs. Water Right No. 7493-3 was subsequently incorporated into Water Right No. 8288-3, which is now licensed for a diversion rate of 1.78 cfs for the irrigation of 97 acres.

The estimated average annual use by the irrigation permits listed in Table 1 can be calculated using a method described by Stonesifer (2013). Stonesifer (2013) calculated the average ratio of pumpage to appropriation for developed appropriations (13.7%) and applied that to the new appropriations. Kilts (2016) updated the calculations and determined the average ratio of pumpage to appropriation for developed permits is 13.8%. All of the irrigation permits and the application listed in Table 1 have appropriated or proposed to appropriate two ac-ft per acre for a total of 8,579.38 ac-ft/yr. Applying the 13.8% to the appropriated volume of the irrigation permits shown in Table 1, the irrigation permits and application, if approved, are estimated to pump 1,184 ac-ft/yr. Using that methodology, Application No. 8307-3 is estimated to pump approximately 64 ac-ft/yr. and Application No. 8303-3 is estimated to pump approximately 11 ac-ft/yr. on average.

Table 1- Water permits approved or reinstated and current applications since the Stonesifer's (2013) water availability analysis for the Missouri: Elk Point aquifer (Water Rights, 2017b)

PERMIT NO.	NAME	COUNTY	STATUS	USE	CFS	ACRES	AC-FT
7848-3	MISSOURI VALLEY FARMS INC	UN	PE	IRR	3.04	213	
7856-3	MIKE & STEVE ALLARD	UN	PE	IRR	1.78	129.3	
7895-3	TODD HANSON	UN	PE	IRR	1.89	180	
7898-3	JAMES ORR	CL	LC	IRR	1.56	132	
7899-3	JUSTIN ORR	CL	LC	IRR	1.56	97	
7904-3	CRAIG S MCINERNEY	UN	PE	IRR	1.78	160	
7933-3	DOUGLAS G BYE	CL	PE	IRR	0.89	90	
7936-3	DONALD JOHNSON	YA	PE	IRR	1.39	83	
7938-3	RUSSELL M HALL	UN	PE	IRR	0	53	
7941-3	JOSEPH F CHICOINE	UN	PE	IRR	1	37.69	
7074A-3**	CALVIN HANSON	CL	PE	IRR	1.78	162	
7951-3	ALLEN PACE	UN	PE	IRR	1.78	150	
7955-3	KARL M SCHENK	YA	PE	IRR	1.78	140	
7971-3	BARRY VAN OSDEL	YA	PE	IRR	1.11	68	
7980-3	FRANCIS HEINE	CL	PE	IRR	0	5	
7987-3	FRANCIS M ARMSTRONG LIVING TRUST	CL	PE	IRR	1.78	102	
8010-3	RYAN RUSHER	YA	PE	IRR	0.1	2.5	
8016-3	AMELIA BERTRAND TRUST	UN	PE	IRR	1.67	66	
8022-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	1.91	134	
8023-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	4.14	290	
8024-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	3.36	235.2	
8025-3	REDWOOD SOUTH DAKOTA HOLDINGS LLP	CL	PE	IRR	3.82	267.2	
8029-3	DAKOTA DUNES COMM IMPROVEMENT DISTRICT	UN	PE	IRR	0.78	17.8	
8031-3	DAKOTA PROTEIN CONVERSION INC	CL	PE	COM	0.22		
8040-3	HEINE ELECTRIC & IRRIGATION INC	CL	PE	IRR/COM	0.33	3	
8069-3	CIMPLS LLC	YA	PE	COM	0.44		452
7009A-3**	ROGER D HANSON	YA	PE	IRR	1.78	120	
8079-3	MELVIN & LARRY DONNELLY	UN	PE	IRR	1.78	160	
8080-3	LARRY & MELVIN DONNELLY	UN	PE	IRR	1.78	160	
8147-3	DOUG LAFLEUR	UN	PE	COM/LCO	1		160
8175-3	GAYVILLE-VOLIN SCHOOL DISTRICT 63-1	YA	PE	IRR	0.058	4	
8176-3	CALVIN & MARY HANSON	CL	LC	IRR	1.113	31	
8177-3	D A OLSON & SONS	CL	LC	IRR	1.23	62	
8181-3	MARC T BERNARD	UN	PE	IRR	0.89	40	
8192-3	STOP DROP LOCK INC	YA	PE	IRR	2.22	152	
8202-3	GERALD BENJAMIN	UN	PE	IRR	1.89	132	
8204-3	DOUGLAS BYE	CL	PE	IRR	0.89	70	
8211-3	TIMBER8 LLC	UN	PE	IRR	1.78	96	
8212-3	CITY OF YANKTON	YA	PE	MUN	20.12		6,050
8237-3*	CALVIN HANSON	CL	LC*	IRR	no add'l	51	
8248-3	LARRY DONNELLY	UN	PE	IRR	0	133	
8250-3	STEVE SCHMIDT	YA	PE	IRR	0	63	
8287-3	DAN & SCOTT HANSON	UN	PE	IRR	2.22	170	
8288-3***	FRANKLIN ORR	CL	LC***	IRR	no add'l	13	
8304-3	Don Schell Family LLP	CL	APP	IRR	no add'l	15	
IRR= Irrigation, COM= Commercial, MUN= Municipal, LCO= Livestock Confinement Operation							
CL= Clay, UN= Union, YA= Yankton, *= License incorporates Permit No. 7075-3 for 1.78 cfs and 232 acres, **= reinstated permits, ***= License incorporates Permit No. 7493-3 for 1.78 cfs and 84 acres							

Historically, non-irrigation use has been estimated by assuming pumping for 60% of the time for permits limited by only diversion rate and full volume pumping for permits limited by volume. Therefore, Water Permit No. 8031-3 is expected to pump approximately 95 ac-ft. Water Permit Nos. 8069-3 and 8147-3 are limited by qualifications on their respective permits to pump at maximum a combined volume 612 ac-ft/yr. Water Permit No. 8212-3 was approved June 21, 2016, with a qualification on the permit requiring annual reporting to the Chief Engineer of the volume of water pumped from the Missouri: Elk Point aquifer (Water Rights, 2017b). Since the permit is relatively new and no pumpage volume report has been filed, it is most appropriate to assume pumping under Water Permit No. 8212-3 is the full appropriated volume of 6,050 ac-ft/yr. If the deferred applications were approved, the estimated volume of pumpage under those applications would be approximately 50 ac-ft/yr.

The total estimated water use, considering the pre-2013 analysis water use (81,108 ac-ft/yr.), plus post-2013 analysis expected water use (7,941 ac-ft/yr.) and the potential use by the two deferred applications (50 ac-ft/yr.) is approximately 89,099 ac-ft/yr. The difference between Stonesifer's (2013) estimated annual recharge and the estimated annual withdrawals is approximately 2,901 ac-ft/yr. These applications are expected to use approximately 75 ac-ft/yr. It should be noted that increased withdrawals from the Missouri: Elk Point aquifer, especially near the Missouri River, will induce more recharge to the aquifer from the river. Therefore, there is a reasonable probability that unappropriated water is available for this proposed appropriation.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program monitors 37 observation wells completed into the Elk Point management unit of the Missouri aquifer (Water Rights, 2017a). There are five observation wells within approximately three miles of the well these applications propose to use that are completed into the Missouri: Elk Point aquifer. The locations of observation wells and the wells these applications propose to use are shown in Figure 1. Observation well UN-99A is within one-quarter of a mile, UN-770 is approximately 2.5 miles north, and UN-78B, UN-77P and UN-77R are approximately 3.0 miles from the well sites these applications propose to use (Water Rights, 2017a). Figures 2 through 6 show the hydrographs for these observation wells, respectively.

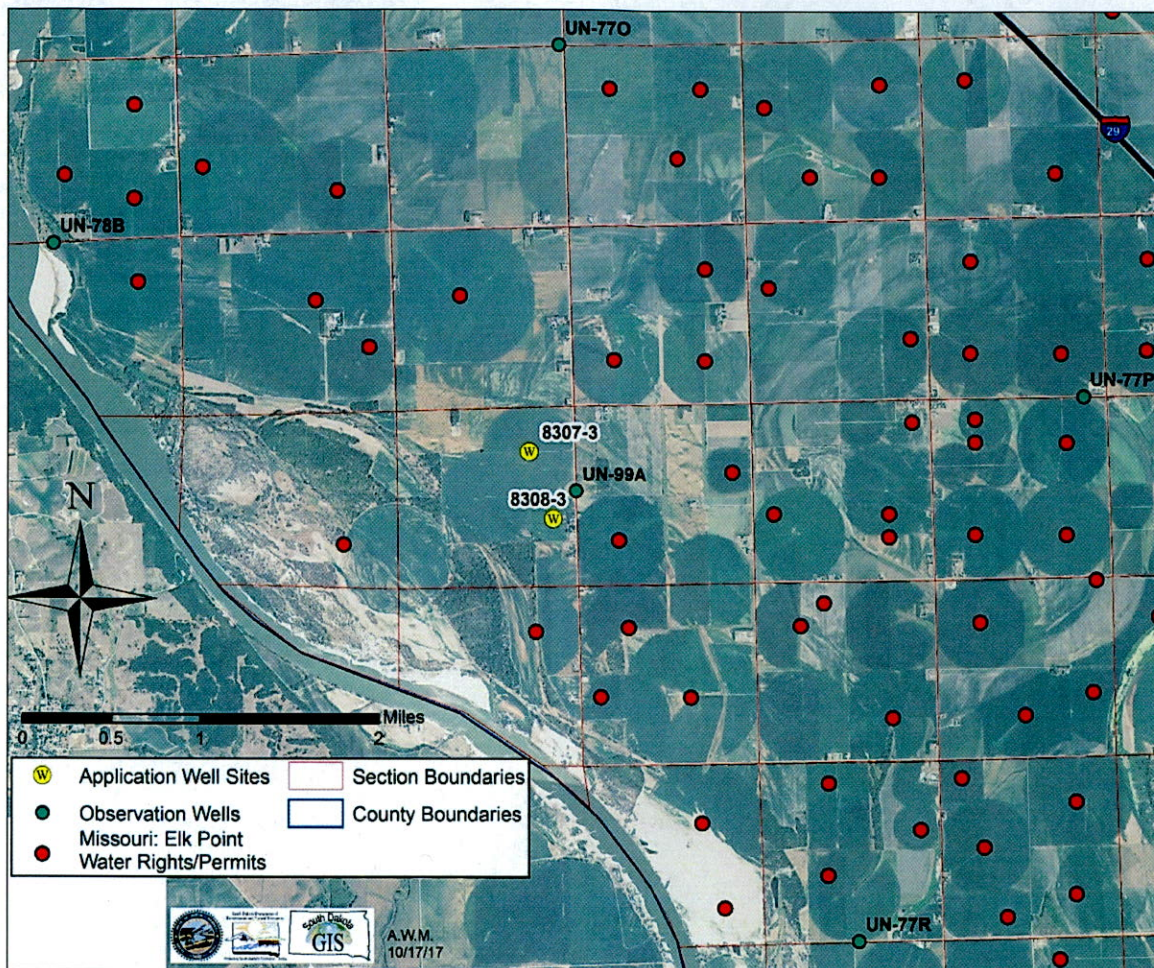


Figure 1- Map of the observation wells and water right/permit wells completed into the Missouri: Elk Point aquifer in the vicinity of the wells for Application Nos. 8307-3 and 8308-3 proposes to use (Water Rights, 2017a)

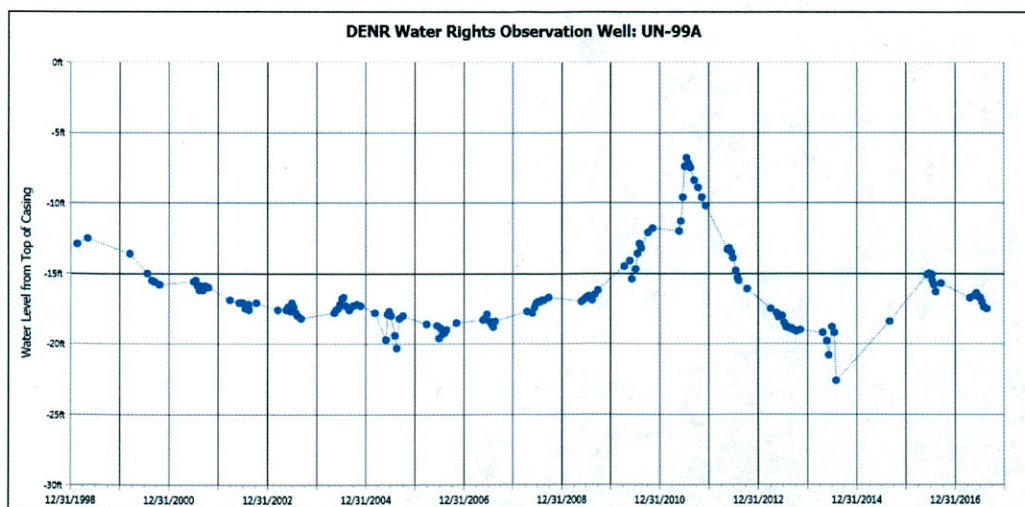


Figure 2- Hydrograph for observation well UN-99A (Water Rights, 2017a)

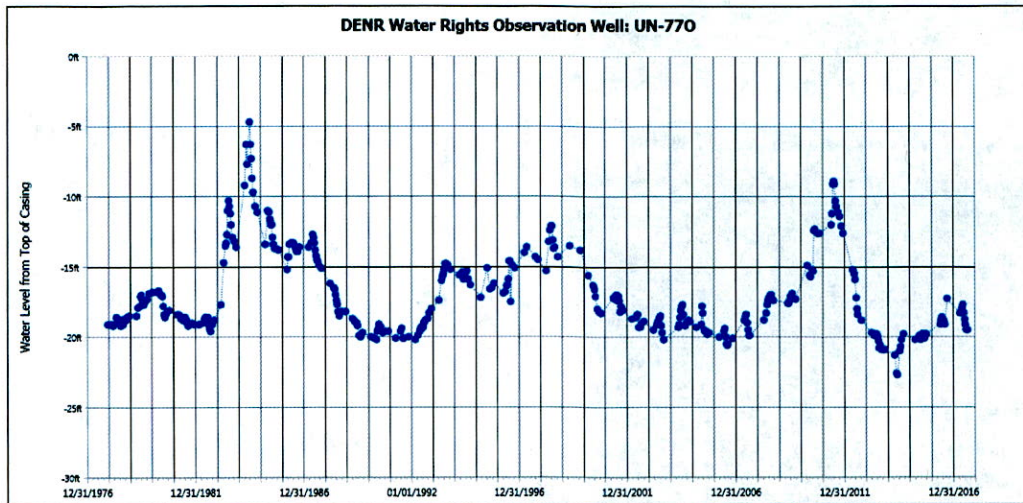


Figure 3- Hydrograph for observation well UN-77O (Water Rights, 2017a)

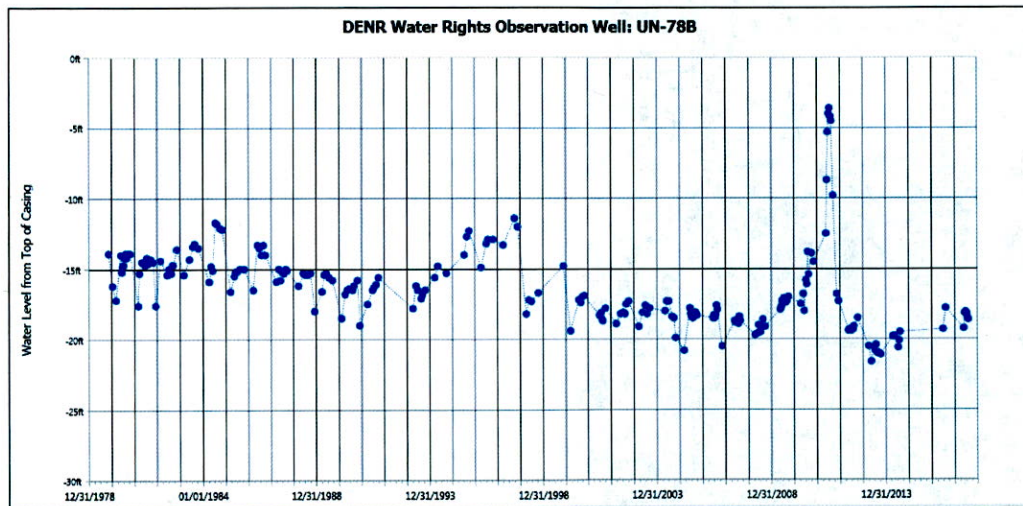


Figure 4- Hydrograph for observation well UN-78B (Water Rights, 2017a)

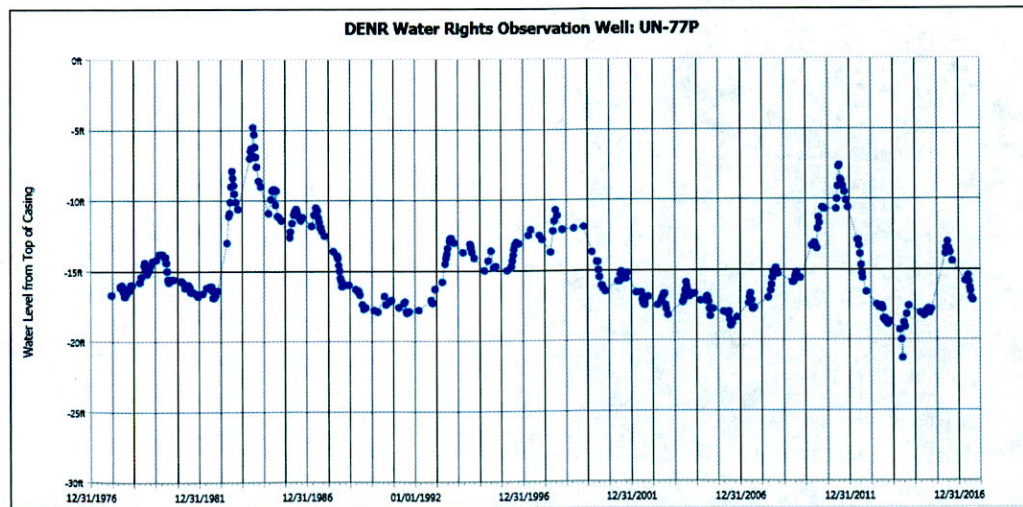


Figure 5- Hydrograph for observation well UN-77P (Water Rights, 2017a)

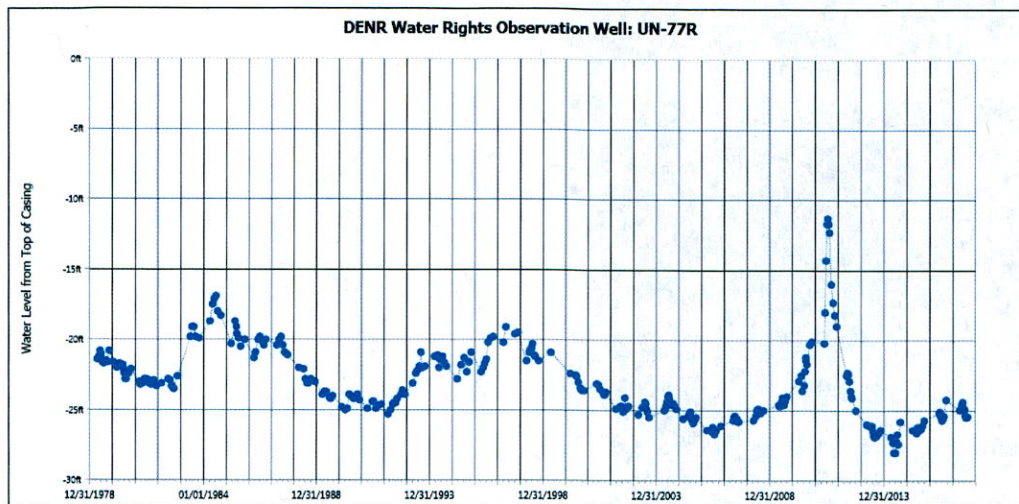


Figure 6- Hydrograph for observation well UN-77R (Water Rights, 2017a)

The hydrographs shown in Figures 2 through 6 are representative of the hydrographs for the other observation wells completed into the Missouri: Elk Point aquifer (Water Rights, 2017a). These hydrographs show the Missouri: Elk Point aquifer is responsive to climatic conditions with rising water levels during wetter periods when recharge exceeds discharge plus withdrawals and declining water levels during drier periods when discharge plus withdrawals exceeds recharge. The observation wells completed into the Missouri: Elk Point aquifer especially those in close proximity to the river, like the wells in proximity of these applications show the hydraulic connection between the management unit and the Missouri River. This is specifically shown by the large peak in the hydrographs in 2011 that occurred in the exact same timeframe and very similar magnitude as the flooding of the Missouri River that occurred at the same time. The observation wells that have a long enough period of record document the lowering of the water table in the aquifer in response to decreased flooding that resulted from the completion of the Gavins Point Dam (Stephens, 1967). The hydrographs of the observation wells also document the entrenchment of the Missouri River below the Gavins Point Dam (Goodman, 2007; Iles, 1979).

The impacts of well withdrawals on the water level are masked by climatic effects and by the effects of the hydraulic connection between the aquifer and the Missouri River. Thus, recharge to and natural discharge from the aquifer still dominate the system. Recognizing natural discharge can be captured for pumping, there is a reasonable probability that unappropriated water is available for this proposed appropriation.

EXISTING WATER RIGHTS:

There are 609 water rights/permits appropriating water and five future use permits reserving water from the Missouri: Elk Point aquifer along with two deferred applications (Water Rights, 2017b). The water rights/permits authorized to withdraw water from the Missouri: Elk Point aquifer in the vicinity of the area these applications propose to irrigate are shown in Figure 7 and listed in Table 2.

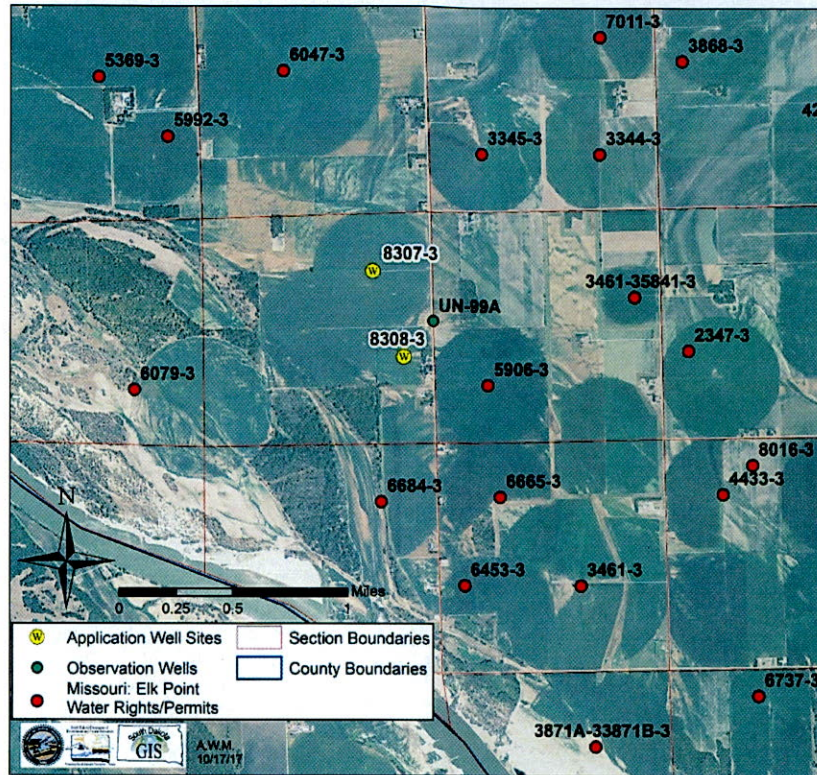


Figure 7- Map of the vicinity of Application Nos. 8307-3 and 8308-3 including Missouri: Elk Point aquifer water rights/permits (Water Rights, 2017b) and observation wells (Water Rights, 2017a)

Table 2- Water rights/permits in the vicinity of the well authorized by Water Permit No. 8287-3 as shown in Figure 4

Permit No.	Name	Status	Use	CFS	Acres
2347-3	Merlyn Karpen	LC	IRR	1.8	126
3344-3	Robert Corio	LC	IRR	1.9	133
3345-3	Stanley N Donnelly	LC	IRR	1.85	130
3461-3	Roger Dailey	LC	IRR	5.55	433
3868-3	Carol Ann Hagen	LC	IRR	2.14	150
3871A-3	Dan & David Trudeau	LC	IRR	2.01	159
3871B-3	Lieber Land Holdings LLC	LC	IRR	1.54	122
4433-3	Roger Dailey	LC	IRR	1.89	133
5369-3	Alfred Allard	LC	IRR	3.79	320
5841-3	Michael & Mary Schmitz	LC	IRR	0.56	39
5906-3	Virgil Mollet Jr	LC	IRR	1.78	136
5992-3	Mike & Steve Allard	LC	IRR	1.23	86
6047-3	Mike & Steve Allard	LC	IRR	2.89	305
6079-3	Joseph & John Trudeau	LC	IRR	2.67	95
6453-3	Dan & David Trudeau	PE	IRR	0.89	37
6665-3	Eugene Mollet Sr	LC	IRR	1.63	91
6684-3	George Norton	LC	IRR	1.33	58
6737-3	Michael Schmitz	PE	IRR	1.33	120
7011-3	Mike & Steve Allard	PE	IRR	1.89	130
8016-3	Amelia Bertrand Trust	PE	IRR	1.67	66
LC= Water Rights, PE= Water Permit, IRR= Irrigation					

Drawdown from pumping wells completed into the Missouri: Elk Point aquifer is typically not significant very far from the pumping well. This is due to the large saturated thickness and hydraulic conductivity of the aquifer. In many places within the Missouri: Elk Point aquifer there is in excess of 100 feet of saturated aquifer thickness (Water Rights, 2017a and 2017c). Examination of all of the hydrographs of observation wells completed into the Missouri: Elk Point aquifer show no signs of being significantly impacted by drawdown caused by pumping despite most of the observation wells being located within two miles of several irrigation wells. Precise drawdown cannot be quantified without aquifer testing. However, pumping under this application, if approved, is not expected to adversely impact nearby adequate wells.

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

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet”

In the past the Water Management Board has recognized to place water to maximum beneficial use, a certain amount of drawdown may occur. Furthermore, there is no history of well interference complaints from the Missouri: Elk Point aquifer. When all of that is considered, adequate wells as defined in ARSD 74:02:20(6) are not expected to be adversely or unlawfully impaired if this proposed appropriation is approved.

SDCL 46-5-6:

Pursuant to SDCL 46-5-6, the diversion rate for an irrigation appropriation cannot be in excess of one cfs for every 70 acres, or “the equivalent thereof.” The statute does provide that: “The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land.” Water Permit Application No. 8308-3 proposes to divert water at a maximum rate of 1.11 cfs for the irrigation of 40 acres or at a rate of 1.94 cfs per 70 acres. The applicant did not provide a reason for the request. The pivot makes a partial or “windshield wipe” type of rotation. This type of center pivot orientation is known to often require a diversion rate in excess of the statutory limit. This reason has been accepted by the Water Management Board previously as reasonable for the request of diversion rate in excess of the statutory limit.

CONCLUSIONS:

1. Application No. 8307-3 proposes to divert water from the Missouri: Elk Point aquifer for the irrigation of 231 acres in Union County using an existing well at a maximum diversion rate of 2.0 cfs.
2. Application No. 8308-3 proposes to divert water from the Missouri: Elk Point aquifer for the irrigation of 40 acres in Union County using an existing well at a maximum diversion rate of 1.11 cfs. This diversion rate is in excess of the statutory limit of 1 cfs per 70 acres.

3. Based on the observation well data and a comparison of recharge to and discharge from the aquifer, there is a reasonable probability unappropriated water is available for these proposed appropriations.
4. There is a reasonable probability water can be pumped from these proposed appropriations without adversely or unlawfully impacting existing appropriative or domestic users.
5. Application No. 8308-3 has requested a diversion rate in excess of the statutory limit of one cfs per 70 acres. The orientation of the center pivot requires the requested diversion rate. This reason has been accepted by the Water Management Board in the past as reasonable for the request of diversion rate in excess of 1 cfs per 70 acres.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

REFERENCES:

- Bugliosi, E.F. 1986. Water Resources of Yankton County, South Dakota. Water-Resources Investigations Report 84-4241. U.S. Geological Survey. Huron, South Dakota.
- Goodman, J.A. 2007. Report on Water Permit Application No. 6869-3 for Lewis and Clark RWS: SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Hedges, L.S., Allen, J. and Holly, D.E. 1985. Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River South Dakota and Iowa. Task 7: Ground Water Recharge. U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S., S.L. Burch, D.L. Iles, R.A. Barari, and R.A. Schoon. 1982. Evaluation of Ground-water Resources in Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa. Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report; U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Iles, D.L. 1979. Ground-water Study for Southern Union County. Open File Report UR-28. SD DENR-Geological Survey. Vermillion, South Dakota.
- Kilts, W. 2016. Report to the Chief Engineer Water Permit Application No. 8202-3 Gerald Benjamin. February 20, 2015. SD DENR-Water Rights Program. Joe Foss Bldg., Pierre, South Dakota.
- Niehus, C.A. 1994. Water Resources of Lincoln and Union Counties, South Dakota. U.S. Geological Survey Water-Resources Investigations Report 93-4195. U.S. Geological Survey. Rapid City, South Dakota.
- Stephens, J.C. 1967. Geology and Hydrogeology of Clay County, South Dakota, Part II: Water Resources. South Dakota DENR-Geological Survey Bulletin 19, 62 p. Vermillion, South Dakota.
- Stonesifer, J.R. 2013. Water Availability of the Missouri: Elk Point Aquifer. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017a. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017c. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8308-3, Tom Hummel**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8308-3, Tom Hummel, 47812 330th Street, Jefferson SD 57038.

The Chief Engineer is recommending APPROVAL of Application No. 8308-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under Permit No. 8308-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
October 23, 2017

NOTE: This irrigation system was developed prior to getting the required water right permit. DENR became aware of the irrigation as a result of a complaint alleging end gun overspray on to neighboring property. Be mindful that water users are not allowed to waste water or operate an irrigation system in violation of state water law, which includes

Recommendation
Application No. 8308-3
Page 2

end gun overspray upon lands, including neighboring property and roadways, not authorized by the water right permit. Application of water to a roadway or unauthorized lands is a waste and unreasonable use of water pursuant to SDCL 46-1-4. The end gun stops must be maintained to shut off when the pivot nears a road or neighboring property that is not authorized.

The water permit does include the irrigation system extending into the neighboring property in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29-T90N-R49W owned by Rodney Ballinger. Mr. Ballinger has an application pending that includes this area. You must have Mr. Ballinger's consent for the pivot to extend on to his property

AFFIDAVIT OF PUBLICATION

State of South Dakota)
:ss
County of Union)

Bruce L. Odson,
the publisher of the Leader-Courier, deposes and says that

The Leader-Courier

is a legal weekly newspaper of a general circulation, printed and published in Elk Point, County of Union, State of South Dakota, and has been such legal newspaper during the time hereinafter mentioned, and that affiant is and was during all the time hereinafter mentioned in charge of the advertising department thereof, and has personal knowledge of all the facts stated in this affidavit, and that the notice and advertisement headed:

Notice of Application No. 8308-3

a printed copy of which is hereunto attached and made a part hereof, was printed and published in the said newspaper at least once in

each week for 1 successive weeks; that said newspaper at the time of the first publication of said notice hereinafter stated, had, and still has, a bona fide circulation of over two hundred paid copies weekly, and had been published in the said County of Union for more than one year immediately prior to the date of the said publication of said notice, and that said newspaper during said times, was, and is, printed in part in an office maintained at said city of Elk Point, the said place of publication; that the first publication of said notice in said newspaper was

on Thursday, the 2 day of November, 2017

and that the succeeding publications were

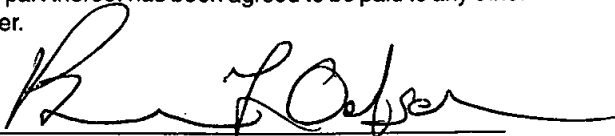
on Thursday, the _____ day of _____, _____

on Thursday, the _____ day of _____, _____

on Thursday, the _____ day of _____, _____

that the fees for the printing and publishing of said notice and advertisement in said newspaper as aforesaid were

\$ 28.58, that the full amount of the fee charged insures to the benefit of the publisher of the 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 other person whomsoever.



Subscribed and sworn to before me

this 2 day of November, 2017

My commission expires 7-12-23

SUSAN ODSON
NOTARY PUBLIC
SOUTH DAKOTA

Notary Public

NOTICE OF APPLICATION NO. 8308-3 TO APPROPRIATE WATER

Notice is given that Tom Hummel, 47812 330th St, Jefferson SD 57038 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Application No. 8307-3 filed by Rodney Ballinger.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8308-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications; the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 13, 2017.

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

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Publish Nov. 2, 2017. Published once at the total approximate cost of \$28.58 44-1-93

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NOV 06 2017

WATER RIGHTS
PROGRAM

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WATER RIGHTS
PROGRAM

TOM HUMMEL
47812 330TH ST
JEFFERSON SD 57038

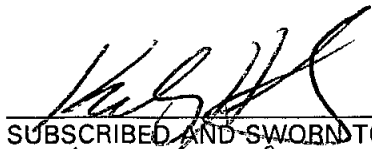
STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ, BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT (S)HE IS THE MANAGING EDITOR OF YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID
COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED
11 + 2 NOTICE OF APPLICATIO

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 2nd DAY OF November, 2017
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$28.09 ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS
BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF
HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 11/02/2017

FILED ON: 11/02/2017



SUBSCRIBED AND SWORN TO BEFORE ME THIS 2nd DAY OF November, 2017



NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 08/19/2021

NOTICE OF APPLICATION NO. 8308-3 to Appropriate Water

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8308-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineers recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
Published once at the total approximate cost of \$28.09.

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NOV 02 2017

WATER RIGHTS
PROGRAM

10 29 17

Dear Jeanne

I am writing to contest the approval of water rights for Tom Hummel.

Mr Hummel has run his pivot into my fence and damaged my property two times. I have pictures on my phone and also the Union County Sheriff has pictures and a copy of my complaint.

Mr Hummel refuses to comply with my request to not spray water on my property. He has removed the end gun resulting in a heavy overspray.

I put up a pole to keep his pivot off my property and he ran into the pole and damaged the fence.

Larry Reese
33169 478th Ave
Jefferson S.D. 57038

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NOV 02 2017

WATER RIGHTS
PROGRAM

10-27-17

Dear Jeanne,

I am writing to you to contest the approval of water rights for Tom Hummel application 10 8308-3.

My reasons are many. Mr Hummel continued to overspray my property after repeated requests by me and the Sheriff's department that he stop.

Mr Hummel has damaged my fence and cut trees without my permission.

Mr Hummel removed the endgun and continues to overspray my ground. He informed both me and the Sheriff that he will continue to do this no matter what we say.

Mr Hummel has illegally pumped water from the aquifer since 2014.

I humbly request that his rights be denied since he will not comply to the requests.

I was forced to put a pole up to keep his pivot from coming onto my ground.

RECEIVED
MAY 10 1939
Thank you for your cooperation in mailing
me the information as Mr Hummel has not
published his request for application in the
paper as of this writing.

Anna Gault
Curl Bend Township Clerk
33183 475th Ave
Jefferson 51

57038

RECEIVED

NOV 02 2017

WATER RIGHTS
PROGRAM

10-29-17

To Whom it may concern

This letter is to voice my concerns concerning Tom Hummel receiving his water rights. On two separate occasions when Tom was illegally irrigating his field behind our property located at 33163 478th Jefferson, he ran the irrigation through our fence line & never notified us that he did so, the first time we were out of town & luckily my in-laws saw it as we have cows within that fence line. By his doing so he also damaged one of our trees that is close to 100 years old. After the first time we put a phone pole in as a corner post to help prevent a second occurrence. He then proceeded to run it through the fence line a second time. We have reinforced the corner phone pole to hopefully deter him from doing it a third time. While we were reinforcing the corner phone pole

11 11 11

Tom drove through his field
+ proceeded to verbally attack
my husband because we posted
"No Trespassing" signs and told
my husband that "Two can
play that game". Both incidents
have been reported to the Union
County Sheriff and they have
pictures on files. In conclusion
I feel that Tom Hummel is not responsible
enough to monitor his
irrigations, he has no
regard for other people's
property.

Thank you for your
time in this matter

Beth Reese
H 33163 478th
Jefferson, SD
57038
712-251-8896



Summary of South Dakota Water Laws and Rules

Prepared by Water Rights Program

May 2013

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov/wr>

The following is a summary of South Dakota water laws and rules. This summary is provided as a service of the Water Rights Program, Department of Environment and Natural Resources for the purpose of introducing the public to the water rights laws of South Dakota. The actual text of the laws and rules may be viewed at <http://denr.sd.gov/des/wr/laws.aspx>.

PLEASE NOTE: This summary is not a substitute for the South Dakota Codified Laws or Administrative Rules of South Dakota and is not intended to serve as legal advice. In the event there is a difference in interpretation between this document and South Dakota Codified Law and/or Administrative Rule, the law and/or rule controls.

ADMINISTRATIVE OVERVIEW

- 1) Water in South Dakota is owned by the people of the state and not by private individuals. The right to use water may be obtained under State Law.

Reference: SDCL 46-1-1, 46-1-3, and 46-5-5.

- 2) South Dakota water rights are administered by a system commonly called the "Doctrine of Prior Appropriation." This means the first in time (senior priority) is the first in right, except for individual domestic use. Priority is established based on the date of filing the application. Uses of water developed prior to or under development as of March 2, 1955 (surface water) or February 28, 1955 (ground water) may qualify for a vested water right depending on the type of use involved.

Reference: SDCL 46-1-9, 46-2A-9, 46-2A-12, 46-4-1, 46-4-2, 46-5-4, 46-5-7, 46-5-8, 46-5-34, 46-5-34.1, and 46-6-3.

- 3) Domestic use of water takes precedence over appropriative rights.

Reference: SDCL 46-1-5, 46-1-6(7), and 46-1-6(14).

- 4) The seven member Water Management Board regulates water use, approves and denies permits, validates vested rights, cancels water right permits or rights, establishes ordinary high and low water marks for lakes as well as setting lake outlet elevations.

Reference: SDCL 1-40-15, 43-17-21, 43-17-23 thru 43-17-25, 43-17-28, 46-2-9, 46-2-11, 46-2A-7, 46-2A-8, 46-2A-16, 46-4-2, and 46-5-8.1.

DOMESTIC WATER USE – no permit needed

- 1) The following domestic uses do not require a water right permit:

- a. Domestic use of water from other than a common water distribution system that does not exceed 25,920 gallons per day (which is 18 gpm pumped 24 hours per day) or a peak diversion rate of 25 gallons per minute (gpm) for:

1. Individual farm or ranch use including livestock water;
2. Individual household use for drinking, washing, sanitary, culinary, and other ordinary household purposes; and
3. Irrigation of a noncommercial family garden, trees, lawn, shrubbery, or orchard that is no larger in area than one acre. Lawn, tree, and garden watering within a city, town, or from other common water distribution systems is covered by the system water right.

Note: Drip irrigation systems for noncommercial purposes and not exceeding 18 gpm do not need to be permitted even if the irrigated area exceeds one acre.

- b. Water use from other than a common water distribution system that does not exceed 18 gallons per minute (gpm) for:
 1. Schools, parks and other public recreation areas;
 2. Geothermal heating or cooling of a single household. Most heat pump installations for household heating and cooling should not require more than 5 to 10 gpm; and
 3. Noncommercial on-farm alcohol production.

Reference: SDCL 46-1-6(7), 46-5-50 thru 46-5-52. Water Management Board Rules 74:02:01:01 and 74:02:01:03.

WATER RIGHT PERMITTING

- 1) Except for the previously described domestic water uses and water distribution systems (e.g. towns, rural water systems, subdivisions, and mobile home parks) that do not pump more than 18 gpm, all uses of water require a water right permit pursuant to procedures in SDCL Chapter 46-2A. Water uses supplied from a water distribution system do not need a separate permit. Examples of uses which require a permit are:
 - a. Cities, towns, rural water systems, mobile home parks, subdivisions, and other common water distribution systems that pump more than 18 gpm. Those systems not pumping more than 18 gpm that may expand and increase pumping above 18 gpm, should obtain a water right permit to establish a priority date.

Note: Certain water distribution systems that do not pump more than 18 gpm may still be subject to compliance with Safe Drinking Water Standards. SDCL Chapter 34A-3A. Water Management Board Rules Chapter 74:04:05.
 - b. Domestic use for farm, ranch, household, and livestock use from other than a common water distribution system in excess of either 25,920 gallons per day (18 gpm continuously for a day) or 25 gpm (peak rate).
 - c. Any well that is allowed to flow more than 18 gpm.
 - d. Any dam or dugout on a dry draw or nonnavigable watercourse impounding more than 25 acre feet.
 - e. Any dam constructed for any purpose on a stream considered navigable.
 - f. Irrigation of more than one acre.
 - g. Commercial use, even less than 18 gpm, when supplied from other than a common water distribution system to a truckstop, tourist attraction, eating, drinking, or lodging establishment, commercial campground and any other business. An existing business without a water right has no right to the use of water. The commercial user without a water right is not entitled to receive protection in the event of well

interference by a new or future user who has a water right. The new user with a water right will have the senior priority over an existing user without a water right.

- h. Industrial, manufacturing, gravel washing and mining uses when supplied by other than a common water distribution system. Temporary water permits may be issued for temporary, short term projects. See Temporary Water Permitting.
- i. Geothermal use of any amount of water from other than a common water distribution system, for businesses, churches, schools, or any other building, except for individual homes using 18 gpm or less.
- j. Any use by a school, park, rest area or other public recreation area in excess of 18 gpm when supplied by other than a common water distribution system.
- k. Any use by a hospital, nursing home or church when supplied by other than a common water distribution system.

Fees for permit applications are set by SDCL 46-2-13(2).

Depending on the type of use involved a person who applied water to a beneficial use for works constructed prior to or under construction as of March 2, 1955 (surface water) or February 28, 1955 (ground water), may qualify for a vested right pursuant to SDCL 46-1-9 or 46-6-1, if that vested water right has not been forfeited or abandoned. Vested water right claims may be filed or the chief engineer may require vested water right claims to be filed pursuant to SDCL 46-5-49 or 46-6-2.

Reference: SDCL 46-1-3, 46-1-6(3), 46-1-9, 46-1-15, 46-5-1.1, 46-5-6.2 thru 46-5-6.8, 46-5-8.2, 46-5-9, 46-5-10, 46-5-49 and 46-6-2. Water Management Board Rules ARSD 74:02:01:03.

2) Criteria for granting a water right permit as set forth in SDCL 46-2A-9:

- a. Water must be available for the proposed use.

The water source, whether surface or ground water, needs to be capable of supporting the proposed water use. For ground water, the average annual use from the water source may not exceed the average estimated annual recharge with some limited exceptions – please refer to “WELLS, Ground Water Management” for additional details.

- b. The proposed diversion can be developed without unlawful impairment of existing rights.

Existing rights, including domestic uses of water, may not be unlawfully impaired regardless of whether the proposed source is surface or ground water. In order for a well to be protected it must meet the definition of an “adequate” well – please refer to “WELLS, Well Construction” for additional details.

- c. The use of water must be a beneficial use.

Beneficial use is the use of water that is reasonable and useful and beneficial to the owner and consistent with the best utilization of water supplies. In general, beneficial uses of water include, but are not limited to: 1) domestic, 2) municipal, 3) rural water system, 4) irrigation, 5) suburban housing, 6) commercial, 7) industrial, 8) recreation, 9) fish and wildlife, and 10) institutional.

- d. The use of water must be in the public interest.

Public interest is not specifically defined in water rights law and is a determination made by the Board based on testimony at the time of hearing. In making a public interest determination, the Board may recognize that some issues are within the jurisdiction of local, state and federal entities.

WATER RIGHT PERMIT ADMINISTRATION

- 1) After approval of a water right permit, the permit owner has five years to complete any construction. The owner then has an additional four years to put the water to beneficial use.

A water right permit may be amended to extend the time for completion of construction or the time to put the water to beneficial use. The extension may be granted on account of delays due to physical or engineering difficulties, due to operation of law, or due to exigent circumstances identified by the Water Management Board. An application to amend a permit to extend the time for construction or the time to put the water to use needs to be made prior to expiration of the time period to be extended.

Reference: SDCL 46-2A-1(2), 46-2A-8, and 46-5-26.

- 2) An existing water right permit or right may be amended. Amendment examples are: to change the use of water, to change place of use, to extend time for construction beyond five years, to change diversion points or to add diversion points. An amendment can not be granted to increase the rate of diversion or volume of water appropriated under the original permit or if an existing water right will be impaired. An application to increase the rate of diversion or volume of water will be treated as a new application and will be assigned a new priority date.

The location of an existing diversion point may be moved or additional diversion points may be added without application or publication, if:

- a. The water source remains unchanged;
- b. No additional water is appropriated;
- c. If for irrigation purposes, no new land is irrigated; and
- d. The Chief Engineer makes a finding that the potential for interference with existing diversions is not increased.

Reference: SDCL 46-2A-1(2), 46-2A-12, 46-5-13.1, 46-5-30.4, and 46-5-31.

- 3) Notice of any sale, grant, lease, conveyance or other transfer of an application, permit, or license to appropriate water must be filed with the Chief Engineer of the Water Rights Program within 90 days. No assignment is binding, except upon the parties thereto, unless filed for record in the Water Rights Program.

Reference: SDCL 46-5-30.3 and 46-5-32.

- 4) Water right permits can be cancelled for nonconstruction. However, the Board may reinstate any water right permit with a priority date after March 31, 1977, within three years after expiration of the original construction period if unappropriated water is available. A new priority date is assigned to a reinstated permit. A water right permit or right can be lost for any of the following three reasons:

- a. Abandonment - The water right permit or right owner has no intent to use water and abandons its use. Once a water right permit or right is abandoned, it can not be reclaimed under the original permit or right.

- b. Forfeiture - Occurs by operation of law if water is not used for a three year period without legal excuse. A "legal excuse" would include, generally, the lack of water, but may include other reasons. Once a water right permit or right is forfeited, it can not be reclaimed under the original permit or right.
- c. A third violation of a condition of a water right permit or right.

Reference: SDCL 46-1-12, 46-2A-8.1, 46-5-36, 46-5-37, and 46-5-37.1. Water Management Board rules ARSD 74:02:01:36 thru 74:02:01:41.

FUTURE USE PERMITTING

- 1) The following entities may reserve water for expected future needs pursuant to procedures in SDCL 46-2A:
 - a. State institution;
 - b. Municipality as defined in SDCL 9-1-1;
 - c. The South Dakota conservancy district or water development districts as defined in SDCL 46A-2-4;
 - d. Water user district as defined in SDCL 46A-9-2;
 - e. Nonprofit rural water supply company as defined in SDCL 10-36A-1;
 - f. Sanitary district as defined in SDCL Chapter 34A-5;
 - g. Irrigation district as defined in SDCL 46A-4; or
 - h. Water project district as defined in SDCL Chapter 46A-18.

Approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specific priority date. A future use permit does not grant authority to construct works or put the water to beneficial use. An additional application is required to construct works and put reserved water to beneficial use. The fee for a future use application is 10% of the usual fee for an application to construct works and put water to beneficial use.

Future use permits are subject to review by the Water Management Board every seven years. If the future use permit is allowed to remain in effect after the seven year review, an additional 10% fee is required.

Reference: SDCL 46-2-13(2), 46-5-38, and 46-5-38.1.

FLOOD CONTROL PERMITTING

- 1) Flood control permits are required pursuant to SDCL 46-2A for facilities constructed on a watercourse to control flooding. Emergency facilities may be constructed without a permit. However, the Chief Engineer of the Water Rights Program must be promptly notified. Flood control permits are not required for flood control facilities constructed on dry draws.

Reference: SDCL 46-2A-11, 46-5-47, and 46-5-48.

TEMPORARY WATER PERMITTING

- 1) Temporary water permits may be issued by the Chief Engineer when limited amounts of public water are needed on a temporary basis. For example, permission may be granted to use water for highway and other construction projects and exploration drilling. A temporary permit is not valid after December 31 of the year in which the permit was issued and, under certain circumstances, a temporary permit may be rescinded. In

addition, a temporary permit is temporary permission to use public water and does not grant any right of priority for the temporary use.

Temporary permits may be granted to use water from either public or privately owned sources of water. Approval of a temporary permit does not grant trespass rights to access the water. Water may be obtained from municipalities and other permitted water distribution systems without a temporary permit.

Reference: SDCL 46-5-40.1. Water Management Board Rules ARSD 74:02:01:32 thru 74:02:01:34.02.

WELLS

1) Ground Water Management

- a. An adversely impacted domestic well is a well in which the pump intake is at least 20 feet below the top of the aquifer or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water from the well owner's needs.

Reference: Water Management Board Rules ARSD 74:02:04:20(7)

- b. South Dakota water laws do not allow the "mining" of ground water. "Mining" occurs when the average quantity of water pumped annually from a ground water aquifer exceeds the estimated average annual recharge to the aquifer. There are a few areas in South Dakota where additional water right permits are not being approved for this reason. A limited exception to "no mining" is made by SDCL 46-6-3.1 for water distribution systems. The Water Rights Program maintains more than 1,500 observation wells to monitor ground water levels.

Reference: SDCL 46-2-14 and 46-6-3.1.

- c. South Dakota water law does not protect artesian head pressure as a means of diversion. In other words, a well owner is not necessarily guaranteed that water from a flowing well or from a pump placement that relies on head pressure will always be available. A pump must be capable of being placed 20 feet into the aquifer or set as near to the bottom of the aquifer as practical if the aquifer is less than 20 feet thick.

2) Well Construction

- a. All wells must be completed in accordance with South Dakota Well Construction Standards. A well driller must be licensed to drill water wells in South Dakota. The driller is required by law to file a copy of a well completion report with the Water Rights Program within 30 days of completion of each well.

Reference: 46-2A-13, 46-6-9, and 46-6-11. Water Management Board Rules ARSD Chapter 74:02:04

- b. Any person who performs work for compensation in the repair of wells or as a well pump installer must obtain either a well driller's license or a well pump installer's license.

Reference: 46-2A-13 and 46-6-9.2.

- c. An adequate well is defined as a well constructed to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet.

Reference: Water Management Board Rules ARSD 74:02:04:20(6)

3) Well Owner Responsibilities

- a. The owner or equitable property holder is responsible for the well from the time the licensed well driller successfully completes the well in compliance with the Well Construction Standards ARSD Chapter 74:02:04. The owner shall keep the well capped or covered, in good repair, and in a sanitary condition.

Reference: Water Management Board Rules ARSD 74:02:04:74

- b. All flowing wells must be controlled by the owner to produce only the amount of water needed and to prevent waste of water.

Reference: SDCL 46-2-18, 46-6-10, 46-6-14, 46-6-20, 46-6-21, 46-6-29, and 46-6-30. Water Management Board Rules ARSD 74:02:04:74.

- c. When the owner of an existing well constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Other abandoned wells must also be plugged. If an old well is not to be abandoned or will be used, the well must still be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

Reference: SDCL 46-6-18 and 46-6-27.

DAMS OR DUGOUTS

- 1) Dams or dugouts of any size on a navigable watercourse or storing greater than 25 acre feet of water located on a dry draw or on a nonnavigable watercourse require a water right permit.

Reference: SDCL 46-4-1 and Water Management Board Rules ARSD 74:02:01:03.

- 2) Dams or dugouts storing 25 acre feet or less of water located on a dry draw or on a nonnavigable watercourse can be constructed without a water right permit provided a location notice is filed. However, the dam may not be constructed if it changes the course of the water, interferes with water rights, or wrongfully floods land owned by others.

Reference: SDCL 46-4-1.1, 46-4-3 and 46-5-2.

- 3) The owner of a dam or dugout storing 25 acre feet or less on a dry draw must file a location notice with the county Register of Deeds and the Water Management Board to avail the owner of the rights provided in SDCL Chapter 46-4 including establishment of a priority date. The \$50.00 filing fee is set by SDCL 46-2-13(1).

Reference: SDCL 46-4-3 thru 46-4-6.

- 4) The Board may not enforce limitations on domestic use of water from dry draw dams except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse.

Reference: SDCL 46-2-22

- 5) Water Management Board Safety of Dams Rules Chapter 74:02:08 apply to dams that are 25 feet or more in height (top of dam) or that store 50 acre-feet or more of water (maximum storage to top of dam.)

Reference: Water Management Board Safety of Dams Rule ARSD 74:02:08:01(7).

- 6) Beaver dams - No person owning land through which a watercourse passes may prohibit the removal of obstructions built by beavers in a watercourse, if the beavers have obstructed or interfered with the flow of water through the watercourse in a manner that floods land belonging to others or impairs existing water rights.

Reference: SDCL 46-5-1.2.

ORDINARY HIGH/LOW WATER MARKS AND LAKE OUTLET ELEVATIONS

- 1) The Water Management Board establishes ordinary high water marks (OHWM), ordinary low water marks (OLWM) and lake outlet elevations for public lakes.

State law provides that all navigable rivers and lakes are public highways within 50 feet landward from the water's nearest edge, provided that the outer boundary of such public highway may not expand beyond the OHWM and may not contract within the OLWM. Thus, the public has the right to use a strip of land up to 50 feet wide below the OHWM beginning at the water's edge or the OLWM. Further, while the public may use the 50 foot strip of land for only "public" purposes, the private adjoining landowner may use the land for any purpose not inconsistent with the rights of the public.

The meander line is a survey line and is usually not a property line nor is the title of an adjacent landowner limited to the meander line, except when the land title conveyance clearly states that the meander line is the property line. Subject to the preceding exception, the meander line defines neither the boundary of a lake or stream nor the extent of land area owned by the adjacent landowner. The meander line was established during early government surveys and used to determine the acres of land subject to sale.

Reference: SDCL 43-17-1 thru 43-17-4, and 43-17-20 thru 43-17-30.

Procedure for Hearings before the Water Management Board January 2008

The Water Management Board's function is to regulate and control the development, conservation, and allocation of the use of water according to the principles of beneficial use and priority of appropriation. In this role, the Water Management Board conducts contested case hearings on water right permit applications. The Board is a citizen board consisting of seven members appointed by the Governor. They are from varying backgrounds and locations around the state. The Board has meetings approximately every two months.

This document is intended to acquaint participants in hearings of general procedures before the Board. South Dakota codified laws (SDCL) and administrative rules (ARSD) govern water rights. The laws and rules may be downloaded at DENR's website at <http://www.state.sd.us/denr/denr.html>. Laws of interest include SDCL Chapters 46-1, 46-2, 46-2A, 46-4, 46-5 and 46-6. Administrative rules to review are ARSD 74:02:01.

Contested case hearings are conducted pursuant to procedures outlined in SDCL ch. 1-26. Only parties of record can participate in the hearing by presenting testimony, calling witnesses or cross-examining witnesses. The rules of civil procedures followed in South Dakota courts are generally followed in evidentiary proceedings before the Board. Parties include the applicant, the Department of Environment and Natural Resources and those individuals that have filed a petition to intervene as set forth in the public notice.

An individual may represent himself in a contested case before the Board or may be represented by legal counsel. Attorneys that intend to participate in the hearing must mail a Notice of Appearance to all other parties. Non-resident attorneys must be able to demonstrate compliance with the requirements set forth SDCL 16-18-2 to practice in South Dakota.

Burden of Proof

The applicant for a permit issued by the Water Management Board has the burden of proving that he is entitled to the permit. The applicant must therefore be prepared to present the permit application and the proposed operation to the Board at a contested case hearing. Petitioning Interveners must be prepared to present testimony and exhibits demonstrating why the permit should not be granted. Do not rely on the Department of Environment and Natural Resources (DENR) to carry the burden of proof. Although DENR makes a recommendation to the Board, this recommendation is in no way binding upon the Board. While a DENR expert will present their report and be subject to questioning by the Board and parties on the application, DENR is not an advocate for your position.

SDCL 46-2A-9 sets forth the four criteria that must be present in order to approve an application. They are:

- 1) A reasonable probability that unappropriated water is available for the proposed use;
- 2) The proposed diversion will not unlawfully impair existing rights;
- 3) The use is a beneficial use; and
- 4) The use is in the public interest.

Procedure

You or your legal counsel need to be at the hearing to present your position in a contested case hearing.

The Board Chairman runs the hearing. Address all questions and objections to the Chairman for a ruling. In some instances the Board will appoint a hearing officer to preside over prehearing conferences, prehearing motions and conduct the evidentiary hearing. An attorney from the Attorney General's office is seated with the Board to provide them legal advice. In addition, the Water Rights Program is represented by legal counsel. This is a legal proceeding so expect to swear an oath or affirmation to tell the truth when you approach the podium.

The following procedure is commonly followed:

1. Opening statements (parties may waive their opening statement)
 - a. Applicant
 - b. DENR – DENR will present a brief description of the application
 - c. Petitioning Interveners
2. Evidentiary hearing
 - a. DENR – staff present their report and the Chief Engineer's recommendation
 - b. Applicant (applicant's opportunity to present testimony and call witnesses)
 - c. Petitioning Interveners (opportunity to present testimony and call witnesses)

Be prepared to explain your position on the application. The applicant needs to state what the proposed project is, the location of the project, timelines for the completed project, the beneficial uses for which the water is to be used, its benefits and why the permit is in the public interest. An opponent to the application needs to explain your opposition to the appropriation of water, where you live in proximity to the project, the adverse impact of the project, why the permit is not in the public interest and other relevant matters.

Parties may call witnesses on their behalf. The Board oftentimes hears testimony from technical experts, neighbors or other witnesses regarding the proposal. Written endorsements are subject to the hearsay rule at the time of the hearing since the author can not be cross-examined. Therefore, written comments will usually be allowed only if there is no objection from any other party.

Upon the conclusion of any witness's testimony, all parties will be afforded an opportunity in an orderly manner to cross-examine the witness regarding their testimony. Cross-examination is your opportunity to ask questions of the witness related to their direct testimony; it is not the appropriate time for you to provide your testimony. In addition, Board members may ask questions of the witness.

3. Rebuttal – parties are afforded an opportunity to present testimony rebutting a prior witness's testimony. Witnesses are again subject to cross-examination but only related to their rebuttal testimony.
4. Closing arguments (summation of your position)
 - a. Applicant
 - b. DENR
 - c. Petitioning Interveners

5. Board decision.

The Board's decision-making process normally occurs in public in front of all concerned and on the record. Normally, the Board limits discussion to its members but may call on witnesses, lawyers or parties to clarify a point. In some instances the Board may recess for deliberation. Upon making a verbal decision, the Board will direct either the prevailing party or Water Rights Program's staff attorney to prepare proposed findings of fact, conclusions of laws and final decision. The non prevailing parties are given the opportunity to submit objections and their own proposed finding of fact conclusions of law and final decision. These proposals will be considered and ruled upon at the Board's next meeting. The findings are a record of the facts considered by the Board. In the event the Board's decision is appealed to court, the findings reflect the facts considered by the Board to arrive at a decision. The non-prevailing party may waive their rights to findings if they are satisfied the Board addressed their concerns or have no intention of appealing the decision.

Although hearings may sometimes be considered informal, it is evidentiary hearing. Lawyers cannot testify or answer factual questions, cross-examination is allowed, copies of exhibits must be available for opposing counsel or parties.

Ex-parte Communication

It is improper for any party to a pending application or contested case proceeding to contact Board members prior to the hearing. To do so is ex-parte communication with the likely result being the Board member excusing himself from the proceeding. The Board is very careful to avoid even the appearance of discussing a contested case hearing that will come before it. Situations do arise where a party requests to have a Board ruling on a motion prior to the evidentiary hearing. If an applicant or party has an issue he wishes to raise prior to the hearing, please contact the Water Rights Program and they will put you in contact with either the Board's attorney or the Water Rights Program's attorney.

Exhibits

Exhibits are pictures, maps or documents you wish the Board to consider in conjunction with your testimony. Used effectively, exhibits greatly increase the interest and knowledge of the Board. Please have all exhibits you intend to present marked in advance of the hearing [example – Applicant Exhibit 1, 2 and 3 or Intervener (name) Exhibit 1, 2 and 3]. Provide enough copies of each exhibit for the Board, Water Rights Program, opposing counsel and other parties. The exchange of exhibits by parties prior to the hearing is encouraged. Be aware that someone may object to admission of an exhibit. The Board Chairman will rule whether the exhibit is admissible. All exhibits become part of the record and will not be returned.

Transcript

A court reporter is present at all contested case hearings. A party wishing to have a transcript of the hearing should make arrangements with the court reporter. DENR will tape the proceeding and will prepare minutes of the hearing.

Appeal of Board's Decision

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days from when the signed findings of fact, conclusions of law and final decision are mailed to parties. The notice of appeal must be in accordance with procedures established in SDCL 1-26-31.

The best advice is to come to the hearing prepared! If you have questions regarding the hearing process, please contact Eric Gronlund, Water Rights Program at (605) 773-3352.

PLEASE NOTE: This document is provided as a service of the Department of Environment and Natural Resources for the purpose of introducing the public to the procedure for hearings before the Water Management Board. It is not intended to reflect all procedures that may apply to the hearing or as legal advice. In the event there is a difference in interpretation between this document and the South Dakota Codified Law and/or Administrative Rule, the law and/or rule controls.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 19, 2018

NOTICE

TO: Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Change in Date and Time of Hearing on Water Permit Application No. 8308-3, Tom Hummel

Notice of Hearing was sent to parties of record on November 15, 2017, scheduling a March 8, 2018, hearing before the Water Management Board on Water Permit Application No. 8308-3 filed by Tom Hummel. This notice reschedules the hearing to March 7, 2018, due to changes to the Board agenda.

Water Permit Application No. 8308-3 proposes to appropriate 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri:Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Application No. 8307-3 filed by Rodney Ballinger.

The Water Management Board will now consider Application No. 8308-3 at 9:00 AM (Central Time) on Wednesday, March 7, 2018, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there are additional changes to the hearing time or date.

Applicable provisions of the notice of hearing sent November 15, 2017, still apply at the hearing.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on January 19, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated January 19, 2018, regarding scheduling for Water Right Permit Application No. 8308-3, as addressed below:

Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



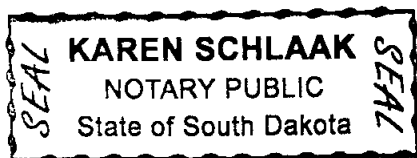
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of January, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



RECEIVED

JAN 29 2018

WATER RIGHTS
PROGRAM

Jan 27 2018

Dear Cranna

This change in the hearing causes a scheduling conflict for me and the Reese's. We very much need to attend this hearing.

Can you please postpone this meeting until the next scheduled meeting in May?

We will be traveling for 4 1/2 hrs to get to Pierre, so we would greatly appreciate it if it can be rescheduled.

Please let me know if this is possible.

Thank You
Anna Faulk

Ph # 712 898 1569

e-mail annafaulk111@evertet.net



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 7, 2018

denr.sd.gov

NOTICE

TO: Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 8308-3, Tom Hummel

Petitions of opposition were filed in response to the public notice for Water Permit Application No. 8308-3 filed by Tom Hummel. A notice of hearing was sent to parties of record on November 15, 2017, scheduling a hearing before the Water Management Board. In response to this notice, petitioner Anna Faulk filed a request for an automatic delay of the March hearing date on Application No. 8308-3. Petitioner Falk's request is enclosed. Therefore, the hearing on Application No. 8308-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on March 7, 2018.

The hearing to consider Application No. 8308-3 is tentatively scheduled for the Water Management Board meeting to be held May 2 - 3, 2018, in Pierre. The Board will formalize its next meeting date at their March 7th meeting. Future notice of the time and place of the hearing for Application No. 8308-3 will be provided to all parties of record.

The submitted application, DENR staff report and recommendation and petitions received in response to the public notice can be found on-line at DENR's One-Stop Contested Case Proceedings site at <http://denr.sd.gov/contested.aspx>. Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8308-3, Tom Hummel.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing process.

c: Ann Mines Bailey, Assistant Attorney General

enclosure

CERTIFICATION

I hereby certify that on February 7, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 7, 2018, regarding automatic delay of the hearing for Water Right Permit Application No. 8308-3, as addressed below:

Tom Hummel
47812 330th Street
Jefferson SD 57038

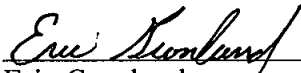
Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

Sent Inter-office to:

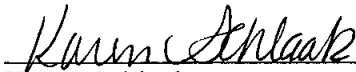
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



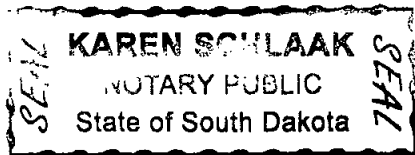
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of February, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

April 4, 2018

denr.sd.gov

NOTICE

TO: Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8308-3, Tom Hummel

Water Permit Application No. 8308-3 proposes to appropriate 1.11 cubic feet of water per second (cfs) from one well completed into the Missouri:Elk Point Aquifer (100 feet deep) located in the NE 1/4 SE 1/4 Section 29 for irrigation of 40 acres located in the NE 1/4 SE 1/4 Section 29; all in T90N-R49W which is approximately five miles west of Jefferson SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres. The pivot extends into neighboring property in the NW 1/4 SE 1/4 Section 29 that is included in Application No. 8307-3 filed by Rodney Ballinger.

Petitions of opposition to Water Permit Application No. 8308-3 were filed in response to the public notice. The March 7, 2018, hearing was postponed and this notice reschedules the hearing on Application No. 8308-3 for May 2, 2018.

The Water Management Board will now conduct a hearing to consider Application No. 8308-3 at 2:30 PM (Central Time) on Wednesday, May 2, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the public notice of hearing published in the Elk Point Leader-Courier and Yankton Daily Press and Dakota on November 2, 2017, and the Notice of Hearing dated November 15, 2017, still apply.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on April 4, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 4, 2018, regarding scheduling for Water Right Permit Application No. 8308-3, as addressed below:

Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

Sent Inter-office to:

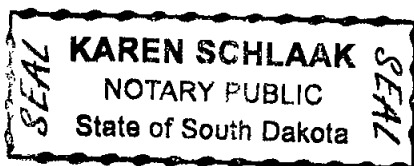
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Eric Gronlund
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of April, 2018

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2019





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

May 7, 2018

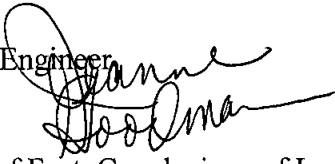
NOTICE

TO: Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

FROM: Jeanne Goodman, Chief Engineer,
Water Rights Program 

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed counsel for the Water Rights Program to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 8308-3.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 1:00 PM, on Thursday, July 12, 2018, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior issues on the agenda. Notice will be provided if there is a change in the hearing date or time.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to each Board member and parties of record by June 12, 2018. Written objections or comments in support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision are to be mailed to each Board member, the Board attorney, Water Rights Program counsel and other parties of record by June 22, 2018. A mailing list is enclosed. Board counsel requests that the draft findings or alternative findings be provided in both a PDF format and a WORD format file via email to steven.blair@state.sd.us.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision may be made on July 12, 2018. The evidentiary hearing was completed May 2, 2018. No additional testimony will be received on July 12, 2018.

If you have questions about the findings process, please contact Ann Mines-Bailey at (605) 773-3215.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General
Steven Blair, Assistant Attorney General

WATER MANAGEMENT BOARD MEMBERS

Chad Comes
116 W Center
Madison SD 57042

Leo Holzbauer-**Secretary**
PO Box 64
Delmont SD 57330

Rodney Freeman Jr-**Pre Hearing Officer**
PO Box 176
Huron SD 57350

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Tim Bjork-**Vice Chairman**
223 Enchantment Road
Rapid City SD 57701

Jim Hutmacher-**Chairman**
802 E 7th Street
Oacoma SD 57365

Board Attorney

Kirsten Jasper, Assistant Attorney General
Natural Resources Section
Office of Attorney General
George S Mickelson Criminal Justice Center
1302 E Hwy 14 Suite 1
Pierre, SD 57501

Water Rights Program

Dept of Environment and Natural Resources
Jeanne Goodman, Chief Engineer
Water Rights Program
523 East Capitol Ave
Pierre, SD 57501

Staff Attorney

Ann Mines-Bailey
Office of Attorney General
Natural Resources Section
George Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on May 7, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 7, 2018, regarding preparation of findings of fact, conclusions of law and final decision on Water Right Permit Application No. 8308-3, as addressed below:

Tom Hummel
47812 330th Street
Jefferson SD 57038

Gary Reese
33169 478th Avenue
Jefferson SD 57038

Anna Faulk
33183 478th Avenue
Jefferson SD 57038

Beth Reese
33163 478th Avenue
Jefferson SD 57038

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



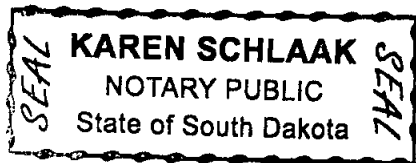
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of May, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUN 13 2018

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 12, 2018

Jim Hutmacher
802 E. 7th Street
Oacoma, SD 57365

Re: *In the Matter of Water Application No. 8308-3*

Dear Mr. Hutmacher:

Enclosed please find the Proposed Findings of Fact, Conclusions of Law and Final Decision on behalf of DENR Water Rights Program in the above-entitled matter, as well as a certificate of service.

A copy is also being mailed to all interested parties.

Respectfully,

A handwritten signature in black ink, appearing to read "Ann Mines Bailey".

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

AFM/cmm
Enclosures

cc: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR'S
APPLICATION NO. 8308-3, TOM	)	PROPOSED FINDINGS OF FACT,
HUMMEL	)	CONCLUSIONS OF LAW, AND
	)	FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on May 2, 2018. Board members Tim Bjork, Rodney Freeman, Peggy Dixon, Chad Comes, and Jim Hutmacher were present at the hearing and heard the evidence presented. Applicant Tom Hummel appeared on his own behalf. Intervenor Anna Faulk also appeared at the hearing and was not represented by counsel. Ann F. Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. On August 28, 2017, DENR received Water Permit Application No. 8308-3 on behalf of Tom Hummel seeking the appropriation of water for irrigation of 40 acres located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T90N-R49W. The application proposes a diversion from an existing well completed into the Missouri: Elk Point Aquifer and located in NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T90N-R49W in Union County with a diversion rate of 1.11 cubic feet of water per

second (cfs). The application is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

2. The Chief Engineer recommended approval of the application subject to the permit including four specified qualifications. Those qualifications are as follows:

1. The well approved under Permit No. 8308-1 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

3. Notice of the application and hearing was timely advertised in The Leader-Courier and the Yankton Daily Press and Dakotan on November 2, 2017.

4. DENR received timely petitions in opposition to the application on behalf of Beth Reese, Anna Faulk, and Gary Reese on November 2, 2017.

5. The matter was initially scheduled to be heard by the Water Management Board on March 8, 2018; however, an automatic delay was requested by Anna Faulk.

6. Water Permit Application No. 8308-3 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 that

there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

7. In considering water availability this Board must examine whether the quantity of the average water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

8. The Missouri: Elk Point Aquifer underlies the flood plain of the Missouri River in Clay, Union, and Yankton Counties.

9. The Missouri: Elk Point Aquifer is an alluvium mantled outwash aquifer. In many places, the saturated thickness of the aquifer is in excess of 100 feet. The Aquifer is mainly unconfined in nature and is a highly transmissive aquifer.

10. The Missouri: Elk Point receives recharge through infiltration of precipitation, groundwater inflow from other aquifers, and streamflow losses from rivers and streams. It is hydrologically connected to the Lower James Missouri and the Lower Vermillion Missouri Aquifers.

11. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Missouri: Elk Point Aquifer, and reviewed the information obtained from observations wells

completed into the aquifer, as well as current water right/permit files and well completion reports for the aquifer.

12. Mr. Mathiowetz testified that recharge studies have demonstrated the Aquifer is recharged at a rate of 3.8 inches per year. A subsequent recharge study concluded that the Aquifer receives at least 92,000 ac-ft per year in recharge.

13. Mr. Mathiowetz further testified that withdrawals from the aquifer occur mainly through well withdrawals for irrigation, domestic, municipal, commercial, institutional, industrial and rural water uses. At the time of hearing, well withdrawals from this Aquifer totaled approximately 89,163 acre-feet per year.

14. DENR monitors thirty-seven observation wells which are completed into the Missouri: Elk Point Aquifer. The observation well data demonstrates that climatic conditions dominate the water levels in this aquifer and mask the results of pumping. Over the period of record, average annual recharge has exceeded average annual withdrawal.

15. Mr. Mathiowetz concluded that there is a reasonable probability that unappropriated water is available in the Missouri: Elk Point Aquifer to support the proposed appropriation.

16. Mr. Mathiowetz also examined whether there would be an unlawful impairment to existing water rights in the Missouri: Elk Point Aquifer.

17. In the Missouri: Elk Point Aquifer, there are approximately 609 existing water appropriations and five future use permits.

18. The nearest domestic well on file is within one to two miles from the proposed point of diversion.

19. Mr. Mathiowetz opined that there is a reasonable probability that the application could be developed without unlawfully impairing existing water rights. This opinion is based in part on the lack of history of complaints in this Aquifer. Mr. Mathiowetz also testified that his opinion is also based upon the characteristics of the Aquifer. He stated that the unconfined nature of the Aquifer combined with its high transmissivity rate and saturated thickness would significantly reduce the drawdown effect on nearby water rights.

20. The Board also received the testimony of Eric Gronlund. Mr. Gronlund, a natural resources engineer with the Water Rights Program, oversees the administrative aspects of the Water Rights Program. Among his many duties, Mr. Gronlund is the contact person for the public when filing complaints and submitting applications.

21. Mr. Gronlund testified he received a call from Anna Faulk on July 19, 2017, regarding end gun overspray resulting from irrigation by Mr. Hummel.

22. Upon receiving the call, Mr. Gronlund reviewed the water permits in the area to verify Mr. Hummel's permit. Mr. Gronlund determined that Mr. Hummel had not been issued a water permit.

23. On July 20, 2017, a letter was sent to Mr. Hummel informing him of his obligation to obtain a water permit before placing water to beneficial use and providing the information necessary to apply for the water permit.

24. Mr. Gronlund additionally testified that when Water Rights receives a complaint regarding overspray, the first step is to contact the permit holder and send a letter informing them of the complaint and reminding them to be sure that their end gun stops are functioning properly. The next step is the issuance of an order by the Chief Engineer. If there is a failure to comply with the Chief Engineer's order the permit holder is brought before the Water Management Board.

25. The Board also received the testimony of the Applicant, Mr. Hummel. Mr. Hummel testified that he initially did not know that he needed a permit to irrigate.

26. Mr. Hummel testified that the soil at the location is light loam and sandy and that irrigation is necessary.

27. Mr. Hummel admitted that his system does result in overspray onto Mr. Ballinger's property, which is located to the north and west of Mr. Hummel's property. Mr. Hummel went on to testify and provide documentation that Mr. Ballinger approves of Mr. Hummel's overspray on Mr. Ballinger's property.

28. Mr. Hummel further testified that his pivot does not enter onto the Reeses' property nor Ms. Faulk's property.

29. Mr. Hummel further testified that he removed the end gun off his pivot approximately one year ago. According to his testimony, Mr. Hummel removed the end gun at the request of the Faulks as they placed a pole on the edge of their property in such a manner that Mr. Hummel's irrigating equipment could not function with the end gun mounted at the end of the overhang.

30. Anna Faulk also testified. Ms. Faulk stated that she was opposing Mr. Hummel's application because of ongoing problems that she has had since he began irrigating approximately four years ago. Ms. Faulk presented pictures demonstrating that the pivot extends approximately 20 inches onto her property when it makes its rotation. She further testified that Mr. Hummel has removed trees on her property in order to allow the pivot rotation. She additionally testified that she erected a pole 12 inches on her side of the property line to prevent Mr. Hummel's irrigating equipment from entering onto her land and to prevent the overspray.

31. The Board finds Mr. Mathiowetz to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits which he prepared and/or relied upon.

32. The Board further finds the testimony of Ms. Faulk to be credible that Mr. Hummel has previously oversprayed onto Ms. Faulk's property and

only ceased doing so when he was physically obstructed by the pole erected by Ms. Faulk.

33. Mr. Hummel's overspray constitutes the waste of water.

34. The Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

35. The Board further finds that granting this application would not result in withdrawals from the aquifer exceeding average estimated recharge to the Aquifer.

36. The Board further finds that the proposed use of the water for irrigation constitutes beneficial use.

37. The Board further finds that placing the water to this beneficial use is in the public interest.

38. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9.

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether “according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

7. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

8. The Board further concludes that it is not probable that withdrawals from the Aquifer would exceed recharge to the Aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.

10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

11. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 6-1-6(3). The Board finds that appropriating water for irrigation is in the public interest.

12. Overspray of water during irrigation constitutes a waste of water which is in violation of the laws of the State of South Dakota. SDCL § 46-1-4.

13. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8308-3 is granted with the following qualifications:

1. The well approved under Permit No. 8308-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Should Mr. Hummel engage in the waste of water by failing to control the overspray, he should be brought before the Board for potential suspension of his permit and/or the imposition of a fine.

Dated this ____ day of July 2018.

BY THE BOARD:

Jim Hutmacher, Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 8308-3, TOM	)	CERTIFICATE OF SERVICE
HUMMEL	)	
	)	

The undersigned hereby certifies that on the 12th day of June 2018,
true and correct copies of DENR'S Proposed Findings of Fact, Conclusions of
Law and Final Decision in the above-entitled matter, were mailed by U.S. mail,
first class, postage prepaid, to:

Tom Hummell
47812 330th St.
Jefferson, SD 57038

Gary Reese
33169 478th Ave.
Jefferson, SD 57038

Anna Faulk
33183 478th Ave.
Jefferson, SD 57038

Beth Reese
33163 478th Ave.
Jefferson, SD 57038

Rodney Freeman
PO Box 176
Huron, SD 57530

Chad Comes
116 W Center
Madison, SD 57042

Leo Holzbauer
PO Box 64
Delmont, SD 57330

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57701

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

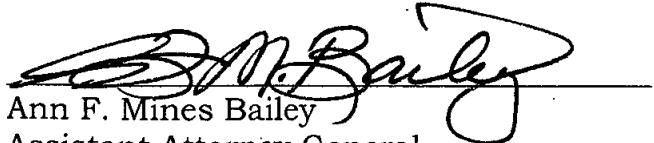
Tim Bjork
223 Enchantment Dr.
Rapid City, SD 57701

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Jeanne Goodman, Chief Engineer
523 E. Capitol Ave.
Pierre, SD 57501

And hand-delivered and sent by electronic mail to:

Steve Blair
Assistant Attorney General
Natural Resources Section
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Steven.Blair@state.sd.us



Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215
Counsel for Water Rights Program, DENR

pld_AFM Tom Hummel – COS (cm)



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUL 05 2018

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

July 3, 2018

Jeanne Goodman
DENR – Water Rights Program
523 East Capitol Avenue
Pierre, SD 57501-3181

Re: *In the Matter of Water Application No. 8308-3, Tom Hummel*

Dear Chief Engineer Goodman:

As counsel for the Water Management Board, I have prepared the enclosed proposed Findings of Fact, Conclusions of Law, and Final Order in the above referenced matter. I am submitting the proposed to you for filing in the Department's file. The Board will consider these proposed findings and conclusions at its July 11, 2018, board meeting. It is within the Board's discretion whether oral arguments by the parties will be afforded prior to consideration of the matter. The proposed findings and conclusions are being served upon those parties included on the service list for this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB".

Steven R. Blair
Assistant Attorney General

SRB/cmm
Enclosures

cc w/enc: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
APPLICATION NO. 8308-3,	)	CONCLUSIONS OF LAW, AND
TOM HUMMEL	)	FINAL DECISION

This matter came before the South Dakota Water Management Board (Board) for hearing on May 2, 2018. Board members Tim Bjork, Chad Comes, Peggy Dixon, Rodney Freeman, and Chairman Jim Hutmacher were present at the hearing and heard the evidence presented. Applicant Tom Hummel appeared in person and without legal counsel. Intervenor Anna Faulk also appeared in person and without legal counsel. Ann F. Mines Bailey represented the Department of Environment and Natural Resources Water Rights Program and the Chief Engineer (DENR).

On June 12, 2018, counsel for DENR submitted proposed Findings of Fact, Conclusions of Law, and Final Decision to be considered by the Board in this matter. Mr. Hummel was directed to file by June 22, 2018, any objections to DENR's proposed findings and conclusions, or to file any proposed alternate findings of fact and conclusions of law that he desired the Board to consider. Mr. Hummel did not submit any objections or proposed findings and conclusions. No other party submitted objections to DENR's proposed findings and conclusions or proposed alternative findings of fact and conclusions of law.

After having heard the testimony presented, considered all records, documents, exhibits, and pleadings on file, and otherwise being fully informed as to all matters pertinent thereto, the Board hereby makes and enters the following:

FINDINGS OF FACT

1. On August 28, 2017, DENR received Water Permit Application No. 8308-3 on behalf of Tom Hummel seeking the appropriation of water for the purposes of irrigation of 40 acres located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T90N-R49W in Union County, South Dakota.

2. The application proposed a diversion from an existing well completed into the Elk Point management unit of the Missouri Aquifer ("Missouri: Elk Point"), at the location indicated above, with a diversion rate of 1.11 cubic feet of water per second (cfs). The application requested a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

3. Upon review, the Chief Engineer recommended approval of the application finding: 1) there is a reasonable probability unappropriated water is available for the 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) the application is in the public interest subject to three specified qualifications. Those qualifications are as follows:

1. The well approved under Permit No. 8308-1 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Notice of the application and hearing was timely advertised in The Leader-Courier and the Yankton Daily Press and Dakotan on November 2, 2017.
5. DENR received timely petitions in opposition to the application on behalf of Beth Reese, Anna Faulk, and Gary Reese on November 2, 2017.
6. The matter was initially scheduled to be heard by the Water Management Board on March 8, 2018; however, an automatic delay was requested by Anna Faulk.
7. Water Permit Application No. 8308-3 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.
8. In considering water availability this Board must examine whether, if this permit were granted, the quantity of the average water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source.

9. The Missouri: Elk Point Aquifer underlies the flood plain of the Missouri River in Clay, Union, and Yankton Counties.

10. The Missouri: Elk Point Aquifer is an alluvium mantled outwash aquifer. In many places, the saturated thickness of the aquifer is in excess of 100 feet. The Aquifer is mainly unconfined in nature and is a highly transmissive aquifer.

11. The Missouri: Elk Point receives recharge through infiltration of precipitation, groundwater inflow from other aquifers, and streamflow losses from rivers and streams. It is hydrologically connected to the Lower James Missouri, the Lower Vermillion Missouri, and the Dakota Aquifers, as well as the Vermillion, Big Sioux, and Missouri Rivers.

12. The Missouri: Elk Point Aquifer underlies approximately 219,100 acres and contains an estimated 3,287,100 acre-feet of recoverable water in storage.

13. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Missouri: Elk Point Aquifer, and reviewed the information obtained from observations wells completed into the aquifer, as well as current water right/permit files and well completion reports for the aquifer.

14. Mr. Mathiowetz testified that recharge studies based upon observation well analysis have demonstrated the Aquifer is recharged at a rate of 3.8 inches per year. A combination of recharge studies led to the conclusion that the Aquifer receives at least 92,000 ac-ft per year in recharge.

15. Mr. Mathiowetz further testified that withdrawals from the aquifer occur mainly through well withdrawals for irrigation, domestic, municipal, commercial, institutional, industrial, and rural water uses. At the time of hearing, well withdrawals from this Aquifer totaled approximately 89,163 acre-feet per year.

16. DENR monitors thirty-seven observation wells that are completed into the Missouri: Elk Point Aquifer. The observation well data demonstrates that climatic conditions dominate the water levels in this aquifer and mask the results of pumping. Over the period of record, average annual recharge has exceeded average annual withdrawal.

17. Mr. Mathiowetz concluded that there is a reasonable probability that unappropriated water is available in the Missouri: Elk Point Aquifer to support the proposed appropriation.

18. Mr. Mathiowetz also examined whether there would be an unlawful impairment to existing water rights in the Missouri: Elk Point Aquifer.

19. In the Missouri: Elk Point Aquifer, there are approximately 609 existing water appropriations and five future use permits.

20. The nearest domestic well on file is within one to two miles from the proposed point of diversion.

21. Mr. Mathiowetz opined a reasonable probability exists that the application could be developed without unlawfully impairing existing water rights. This opinion is based in part on the lack of history of complaints in

this Aquifer. Mr. Mathiowetz's opinion is also based upon the characteristics of the Aquifer; the unconfined nature of the Aquifer combined with its high transmissivity rate and saturated thickness, which would significantly reduce the drawdown effect on nearby water rights.

22. Eric Gronlund, a natural resources engineer with the Water Rights Program, oversees the administrative aspects of the Water Rights Program. Mr. Gronlund is the contact person for the public when filing complaints and submitting applications.

23. Mr. Gronlund testified he received a call from Anna Faulk on July 19, 2017, regarding end gun overspray resulting from irrigation by Mr. Hummel.

24. Upon receiving the call, Mr. Gronlund reviewed the water permits in the area to verify Mr. Hummel's permit. Mr. Gronlund determined that Mr. Hummel did not hold a water permit.

25. On July 20, 2017, a letter was sent to Mr. Hummel informing him of his obligation to obtain a water permit before placing water to beneficial use and providing the information necessary to apply for the water permit.

26. Mr. Gronlund additionally testified that when the Water Rights Program receives a complaint regarding overspray they first contact the permit holder and send a letter informing the permit holder of the complaint and reminding the permit holder to be sure the end gun stops on their irrigation equipment are functioning properly. The next step, if the complaint

is not resolved, is the issuance of an order by the Chief Engineer directed to the permit holder. If there is a failure to comply with the Chief Engineer's order, the permit holder is then brought before the Water Management Board.

27. The Board also received the testimony of the Applicant, Mr. Hummel. Mr. Hummel stated that initially he did not know that he needed a permit to use ground water for irrigation purposes.

28. Mr. Hummel testified that the soil at the location is light loam and sandy and that irrigation is necessary.

29. Mr. Hummel admitted that his irrigation system does result in overspray onto Mr. Ballinger's property, which is located to the north and west of Mr. Hummel's property. Mr. Hummel provided documentation that Mr. Ballinger approves of Mr. Hummel's overspray on Mr. Ballinger's property.

30. Mr. Hummel further testified that his irrigation pivot does not enter onto the Reeses' property nor Ms. Faulk's property.

31. Mr. Hummel stated that he removed the end gun off his irrigation pivot approximately one year ago. Mr. Hummel removed the end gun because the Faulks placed a pole on the edge of their property in such a manner that Mr. Hummel's irrigating equipment could not function with the end gun mounted at the end of the overhang.

32. Anna Faulk, Intervenor, testified that she opposed Mr. Hummel's application because of ongoing problems she has had since he began irrigating approximately four years ago. Ms. Faulk presented pictures

demonstrating that Mr. Hummel's irrigation pivot extends approximately 20 inches onto her property when it makes its rotation. Ms. Faulk further testified that Mr. Hummel has removed trees on her property in order to allow the pivot rotation. Ms. Faulk stated that she erected a pole 12 inches on her side of the property line to prevent Mr. Hummel's irrigating equipment from entering onto her land and to prevent the overspray.

33. The Board finds Mr. Mathiowetz to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits which he prepared and/or relied upon.

34. The Board further finds the testimony of Ms. Faulk to be credible that Mr. Hummel has previously oversprayed onto Ms. Faulk's property and only ceased doing so when he was physically obstructed by the pole erected by Ms. Faulk.

35. The Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

36. The Board further finds that granting this application would not result in withdrawals from the aquifer exceeding average estimated recharge to the Aquifer.

37. The Board further finds that the proposed use of the water for irrigation constitutes beneficial use.

38. The Board further finds that placing the water to this beneficial use is in the public interest.

39. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation as found in SDCL Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL 46-2A-4.

3. The Chief Engineer recommended granting this application. This recommendation is not binding on the Board. SDCL 46-2A-4(8).

4. SDCL § 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest."

5. The applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9. The permit must be denied if an applicant does not meet its burden of proof on any one factor.

6. The Board concludes that Tom Hummel has satisfied each of the factors set forth in SDCL 46-2A-9.

7. The first factor for consideration under SDCL 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL 46-6-3.1 pertaining to recharge/withdrawal: whether "according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average, estimated annual recharge of water to the groundwater source."

8. The Board concludes there is a reasonable probability that unappropriated water is available to fulfill the amount requested by the Application.

9. The Board further concludes it is not probable that withdrawals from the Aquifer would exceed recharge to the Aquifer in violation of SDCL 46-6-3.1 if this application were granted.

10. The second requirement of SDCL 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing rights.

11. The third element in SDCL 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL 46-1-6(3). The proposed use for irrigation purposes is a beneficial use.

12. The fourth requirement of SDCL 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL 46-1-6(3). The Board concludes that appropriating water for irrigation is in the public interest.

13. Overspray of water during irrigation constitutes a waste of water which is a violation of the laws of the State of South Dakota. The water resources of the State shall be put to their "beneficial use to the fullest extent," however, the use of a water right in this State does not "extend to the waste or unreasonable use" of water. SDCL 46-1-4. Mr. Hummel's overspray constitutes the waste of water.

14. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8308-3 is granted with the following qualifications:

1. The well approved under Permit No. 8308-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with

an annual volume not to exceed 2 acre feet of water per acre per year.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Further, as a term of the permit, Mr. Hummel is specifically admonished that he must not engage in the waste of water as prohibited by SDCL 46-1-4, either by failing to control overspray or in any other manner. Should Mr. Hummel engage in the waste of water, the Chief Engineer is instructed to investigate the situation and institute any necessary enforcement proceeding before the Board. Should the Board find that any term of this permit has been violated the Board may suspend the permit, and the Board may seek any other remedy allowed for by law, including the imposition of a monetary fine.

Dated this ____ day of July 2018.

BY THE BOARD:

Jim Hutmacher, Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 8308-3,	)	CERTIFICATE OF SERVICE
TOM HUMMEL	)	

The undersigned hereby certifies that a true and correct copy of the Board's proposed Findings of Fact, Conclusions of Law, and Final Decision, to be entered in the above captioned matter, were served by United States Mail, first class, postage prepaid upon the following:

Tom Hummell
47812 330th St.
Jefferson, SD 57038

Gary Reese
33169 478th Ave.
Jefferson, SD 57038

Anna Faulk
33183 478th Ave.
Jefferson, SD 57038

Beth Reese
33163 478th Ave.
Jefferson, SD 57038

Rodney Freeman
PO Box 176
Huron, SD 57530

Chad Comes
116 W Center
Madison, SD 57042

Leo Holzbauer
PO Box 64
Delmont, SD 57330

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57701

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

Tim Bjork
223 Enchantment Dr.
Rapid City, SD 57701

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Jeanne Goodman, Chief Engineer
523 E. Capitol Ave.
Pierre, SD 57501

And hand-delivered to:

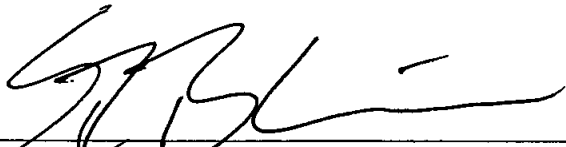
Ann F. Mines Bailey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

*Counsel for Water Rights Program,
DENR*

Kirsten Jasper
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

Counsel for Water Management Board

On this 3rd day of July 2018.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Management Board

pld_SRB Tom Hummel – Findings of Fact, Conclusions of Law and Final Decision COS (cm)



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUL 18 2018

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

July 17, 2018

Tom Hummell
47812 330th St.
Jefferson, SD 57038

Gary Reese
33169 478th Ave.
Jefferson, SD 57038

Anna Faulk
33183 478th Ave.
Jefferson, SD 57038

Beth Reese
33163 478th Ave.
Jefferson, SD 57038

Re: *In the Matter of Water Application No. 8308-3*

Dear Ladies and Gentlemen:

Enclosed please find the Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision on behalf of DENR Water Rights Program in the above-entitled matter, as well as a certificate of service.

Respectfully,

A handwritten signature in cursive script, appearing to read "Ann Mines Bailey".

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

AFM/cmm
Enclosure

cc: Jeanne Goodman, Chief Engineer

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	NOTICE OF ENTRY OF FINDINGS
APPLICATION NO. 8308-3, TOM	)	OF FACT, CONCLUSIONS OF LAW,
HUMMEL	)	AND FINAL DECISION
	)	

TO: Tom Hummel, 47812 330th Street, Jefferson, SD 57308; Anna Faulk, 33183 478th Avenue, Jefferson, SD 57038; Gary Reese, 33169 478th Avenue, Jefferson, SD 57038; Beth Reese, 33163 478th Avenue, Jefferson, SD 57038:

NOTICE IS HEREBY GIVEN that on the 12th day of July 2018, the South Dakota Water Management Board entered its Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter, a copy of which is attached hereto and incorporated herein as if fully set out.

Dated this 17th day of July 2018.


Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
APPLICATION NO. 8308-3,	)	CONCLUSIONS OF LAW, AND
TOM HUMMEL	)	FINAL DECISION

This matter came before the South Dakota Water Management Board (Board) for hearing on May 2, 2018. Board members Tim Bjork, Chad Comes, Peggy Dixon, Rodney Freeman, and Chairman Jim Hutmacher were present at the hearing and heard the evidence presented. Applicant Tom Hummel appeared in person and without legal counsel. Intervenor Anna Faulk also appeared in person and without legal counsel. Ann F. Mines Bailey represented the Department of Environment and Natural Resources Water Rights Program and the Chief Engineer (DENR).

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After having heard the testimony presented, considered all records, documents, exhibits, and pleadings on file, and otherwise being fully informed as to all matters pertinent thereto, the Board hereby makes and enters the following:

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2. The application proposed a diversion from an existing well completed into the Elk Point management unit of the Missouri Aquifer ("Missouri: Elk Point"), at the location indicated above, with a diversion rate of 1.11 cubic feet of water per second (cfs). The application requested a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

3. Upon review, the Chief Engineer recommended approval of the application finding: 1) there is a reasonable probability unappropriated water is available for the 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) the application is in the public interest subject to three specified qualifications. Those qualifications are as follows:

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3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Notice of the application and hearing was timely advertised in The Leader-Courier and the Yankton Daily Press and Dakotan on November 2, 2017.
5. DENR received timely petitions in opposition to the application on behalf of Beth Reese, Anna Faulk, and Gary Reese on November 2, 2017.
6. The matter was initially scheduled to be heard by the Water Management Board on March 8, 2018; however, an automatic delay was requested by Anna Faulk.
7. Water Permit Application No. 8308-3 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.
8. In considering water availability this Board must examine whether, if this permit were granted, the quantity of the average water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source.

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23. Mr. Gronlund testified he received a call from Anna Faulk on July 19, 2017, regarding end gun overspray resulting from irrigation by Mr. Hummel.

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is not resolved, is the issuance of an order by the Chief Engineer directed to the permit holder. If there is a failure to comply with the Chief Engineer's order, the permit holder is then brought before the Water Management Board.

27. The Board also received the testimony of the Applicant, Mr. Hummel. Mr. Hummel stated that initially he did not know that he needed a permit to use ground water for irrigation purposes.

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32. Anna Faulk, Intervenor, testified that she opposed Mr. Hummel's application because of ongoing problems she has had since he began irrigating approximately four years ago. Ms. Faulk presented pictures

demonstrating that Mr. Hummel's irrigation pivot extends approximately 20 inches onto her property when it makes its rotation. Ms. Faulk further testified that Mr. Hummel has removed trees on her property in order to allow the pivot rotation. Ms. Faulk stated that she erected a pole 12 inches on her side of the property line to prevent Mr. Hummel's irrigating equipment from entering onto her land and to prevent the overspray.

33. The Board finds Mr. Mathiowetz to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits which he prepared and/or relied upon.

34. The Board further finds the testimony of Ms. Faulk to be credible that Mr. Hummel has previously oversprayed onto Ms. Faulk's property and only ceased doing so when he was physically obstructed by the pole erected by Ms. Faulk.

35. The Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

36. The Board further finds that granting this application would not result in withdrawals from the aquifer exceeding average estimated recharge to the Aquifer.

37. The Board further finds that the proposed use of the water for irrigation constitutes beneficial use.

38. The Board further finds that placing the water to this beneficial use is in the public interest.

39. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation as found in SDCL Title 46.
2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL 46-2A-4.
3. The Chief Engineer recommended granting this application. This recommendation is not binding on the Board. SDCL 46-2A-4(8).
4. SDCL § 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest."
5. The applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9. The permit must be denied if an applicant does not meet its burden of proof on any one factor.
6. The Board concludes that Tom Hummel has satisfied each of the factors set forth in SDCL 46-2A-9.

7. The first factor for consideration under SDCL 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL 46-6-3.1 pertaining to recharge/withdrawal: whether "according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average, estimated annual recharge of water to the groundwater source."

8. The Board concludes there is a reasonable probability that unappropriated water is available to fulfill the amount requested by the Application.

9. The Board further concludes it is not probable that withdrawals from the Aquifer would exceed recharge to the Aquifer in violation of SDCL 46-6-3.1 if this application were granted.

10. The second requirement of SDCL 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing rights.

11. The third element in SDCL 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL 46-1-6(3). The proposed use for irrigation purposes is a beneficial use.

12. The fourth requirement of SDCL 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL 46-1-6(3). The Board concludes that appropriating water for irrigation is in the public interest.

13. Overspray of water during irrigation constitutes a waste of water which is a violation of the laws of the State of South Dakota. The water resources of the State shall be put to their "beneficial use to the fullest extent," however, the use of a water right in this State does not "extend to the waste or unreasonable use" of water. SDCL 46-1-4. Mr. Hummel's overspray constitutes the waste of water.

14. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8308-3 is granted with the following qualifications:

1. The well approved under Permit No. 8308-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 8308-3 authorizes a maximum diversion rate of 1.11 cfs for the irrigation of 40 acres with

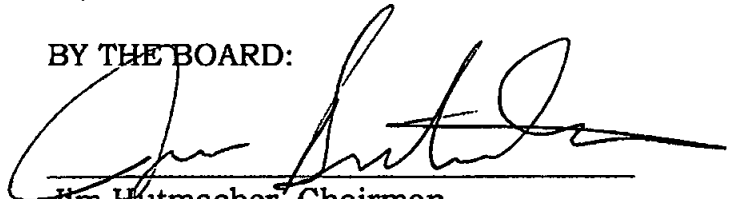
an annual volume not to exceed 2 acre feet of water per acre per year.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Further, as a term of the permit, Mr. Hummel is specifically admonished that he must not engage in the waste of water as prohibited by SDCL 46-1-4, either by failing to control overspray or in any other manner. Should Mr. Hummel engage in the waste of water, the Chief Engineer is instructed to investigate the situation and institute any necessary enforcement proceeding before the Board. Should the Board find that any term of this permit has been violated the Board may suspend the permit, and the Board may seek any other remedy allowed for by law, including the imposition of a monetary fine.

Dated this 12th day of July 2018.

BY THE BOARD:



Jim Hutmacher, Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 8308-3, TOM	)	CERTIFICATE OF SERVICE
HUMMEL	)	
	)	

The undersigned hereby certifies that on the 17th day of July 2018, true and correct copies of DENR'S Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Tom Hummell
47812 330th St.
Jefferson, SD 57038

Gary Reese
33169 478th Ave.
Jefferson, SD 57038

Anna Faulk
33183 478th Ave.
Jefferson, SD 57038

Beth Reese
33163 478th Ave.
Jefferson, SD 57038

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 E. Capitol Ave.
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

SEP 12 2018

Tom Hummel
47812 330th St
Jefferson SD 58038

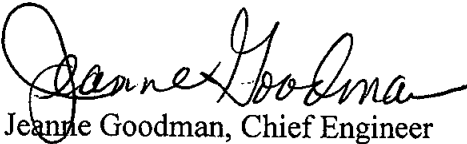
Dear Mr. Hummel:

Enclosed is Water Permit No. 8308-3 authorizing your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

An informational sheet *?Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,



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

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

No. 8308-3

August 18, 2021

Tom Hummel
47812 330th St
Jefferson SD 57038

Dear Mr. Hummel:

Water Permit No. 8308-3 held in your name appropriates water from one well to irrigate the NE 1/4 SE 1/4 Section 29, T90N, R49W in Union County. The Department of Agriculture and Natural Resources (DANR) has received information alleging this irrigation system ran onto neighboring property while in operation.

A water right holder is not allowed to operate an irrigation system in violation of state water law, which includes applying water to land not authorized by the water right. In addition, this constitutes a waste of water which is prohibited.

Your application for Water Permit No. 8308-3 was heard by the Water Management Board in 2018, because it was contested. Testimony during the contested case hearing indicated you allowed the irrigation system, which wasn't permitted at the time, to apply water to neighboring property. The Board took note and approved the water permit with the following excerpt from the Findings of Fact, Conclusions of Law and Final Decision adopted by the Water Management Board on July 12, 2018:

"Further, as a term of the permit, Mr. Hummel is specifically admonished that he must not engage in the waste of water as prohibited by SDCL 46-1-4, either by failing to control overspray or in any other manner. Should Mr. Hummel engage in the waste of water, the Chief Engineer is instructed to investigate the situation and institute any necessary enforcement proceeding before the Board. Should the Board find that any term of this permit has been violated the Board may suspend the permit, and the Board may seek any other remedy allowed for by law, including imposition of a monetary fine."

Please take immediate steps to ensure your irrigation system is functioning properly and applies water only to authorized acres and not on another landowner's property. As directed by the Water Management Board, continued irrigation in an unauthorized manner will result in DANR taking enforcement action including one or more of the following:

- A formal order to discontinue water use,
- Possible civil fine,
- Bringing the violation before the Water Management Board resulting in possible suspension of the water permit.

Give the Board's previous admonishment to you during the contested case hearing on your application, you may want to avoid appearing before the Board again.

If you have any questions, please contact me at (605) 773-3352.

Sincerely,

A handwritten signature in blue ink, reading "Eric Gronlund". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Eric Gronlund, Chief Engineer
Water Rights Program, DANR