

DO NOT LICENSE
THIS IS A
TEMPORARY
WATER PERMIT

WATER PERMIT NO. 8427-3

Name of Applicant: L. G. Everist, Inc.

Address: 350 S Main Ave, Suite 400, Sioux Falls SD 57104

Phone: 605 929-4017

Amount of Water Claimed: 3.56 cfs – 589 AF

Total Acres: NA

Source of Water Supply: pond/dugout

Water to be used for: commercial

County: Minnehaha

Type of Waste Disposal System:

Location: 6 miles west I -29 near Sioux Falls

PRIORITY

Date Received: 5-14-20

Application/License Fee: (\$ 1,250

Corrected Application Received:

Period of Annual Use: March 1 – November 30

Remarks: sand and gravel wash process

Diversion Point: NE 1/4 SW 1/4 Sec 6-T101N-R50W

Land to be Irrigated: NA

Depth of Well:

Well Driller:

Remarks:

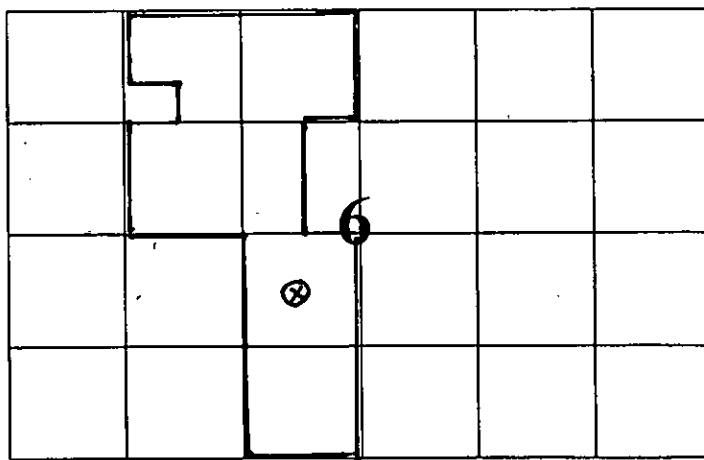
Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 5-14-20

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8427-3</u> (office use only) Hydrologic Unit <u>10170203</u>
	Basin <u>Sioux River</u>
	Newspaper <u>Argus Leader</u>

PAID
MAY 14 2020
Ck# 233670
RECEIVED
MAY 14 2020
Dakota
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

☐ Municipal	☐ Water Distribution System	☐ Recreational	☐ Institutional
☐ Rural Water System	☒ Commercial	☐ Fish & Wildlife	☐ Geothermal
☐ Domestic (over 18 gpm)	☐ Industrial	☐ Other _____	

Type of Application: (check one)

☒ New	☐ Vested Right (Use predates Mar 2, 1955)	☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____		
☐ Amendment/Correction to Permit No. _____		

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

1. Name to Appear on Water Permit L. G. Everist, Inc.

Mailing Address 350 S Main Ave, Suite 400 Sioux Falls SD 57104
(Address) (City) (State) (Zip Code)
Phone 605-330-6570 Mobile 605-929-4017 Email cmklein@lgeverist.com

2. Amount of water claimed 3.56 *CFS or 1,600 **GPM and 589 ***AF or 192,000,000 Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use)

3. Source of water supply Groundwater from pond/dugout

4. Location of point of diversion NE 1/4 SW 1/4 Sec 6 - T10N - R50W County Minnehaha
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No

If "Yes," where will water be used? _____

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

5. County or counties where water will be used Minnehaha

6. Annual period during which water is to be used March - November 30

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

Water is used to wash/process sand & gravel into construction aggregate. Water source is a pond that has been created, through previous extraction of sand & gravel - average depth of water is 10'. Pump is used to pump water to the processing plant for washing the aggregate, where it is then diverted to a settling pond before being recycled to the water pond.

I, Chris Klein Mine Planning/Regulatory Mgr, 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.

SOUTH DAKOTA
TEMPORARY USE WATER PERMIT NO. 8427-3

Date of first receipt of application May 14, 2020.

The Chief Engineer, on behalf of the Water Management Board, issues Temporary Use Water Permit No. 8427-3 to L.G. Everist Inc, 350 S Main Ave, Suite 400, Sioux Falls SD 57104 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. Temporary Use Water Permit No. 8427-3 appropriates 589 acre-feet of water annually at a maximum pump rate of 3.56 cubic feet of water per second from a pond/dugout located in the NE 1/4 SW 1/4 Section 6-T101N-R50W. The pond/dugout water is for commercial use in an existing sand and gravel operation including an aggregate wash plant located in portions of the E 1/2 SW 1/4, NW 1/4 Section 6-T101N-R50W. Water is recycled by discharging to a settling pond and then diverted back to the pond for reuse. This operation is located approximately 6 miles west of 1-29 near Sioux Falls SD.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: March 1 – November 30.
4. The date of approval of Permit No. 8427-3 is August 3, 2020.
5. The date from which applicant may claim right is May 14, 2020.
6. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The city of Sioux Falls has priority right to this water under future use withdrawal permits. Permit No. 8427-3 is issued as a temporary use permit pursuant to SDCL 46-5-39 and is subject to this prior right if or when the city of Sioux Falls develops their reserve water supply. Permit No. 8427-3 may be subject to cancellation when the water reserved under the future use permit is put to beneficial use. The Chief Engineer must provide the permit holder six months' notice prior to cancellation of this temporary use permit.
2. The dugout/pond approved under Permit No. 8427-3 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.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the dugout/pond.

WATER MANAGEMENT BOARD

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

AUG 31 2020

date



Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☐ Drilling new well(s) ☐ Using existing well(s)

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

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

For either Existing or Proposed Wells:

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

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

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) ____ Year Constructed ____

c) Connected to the City of ____ Sanitary System

3. Dugout Information

a) Surface Dimensions 500' X 300' Depth 10'

b) Depth to water (ground surface to water level) 3'

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)

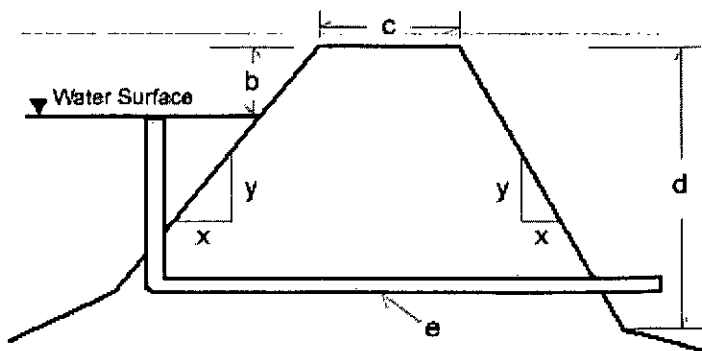
Upstream ____

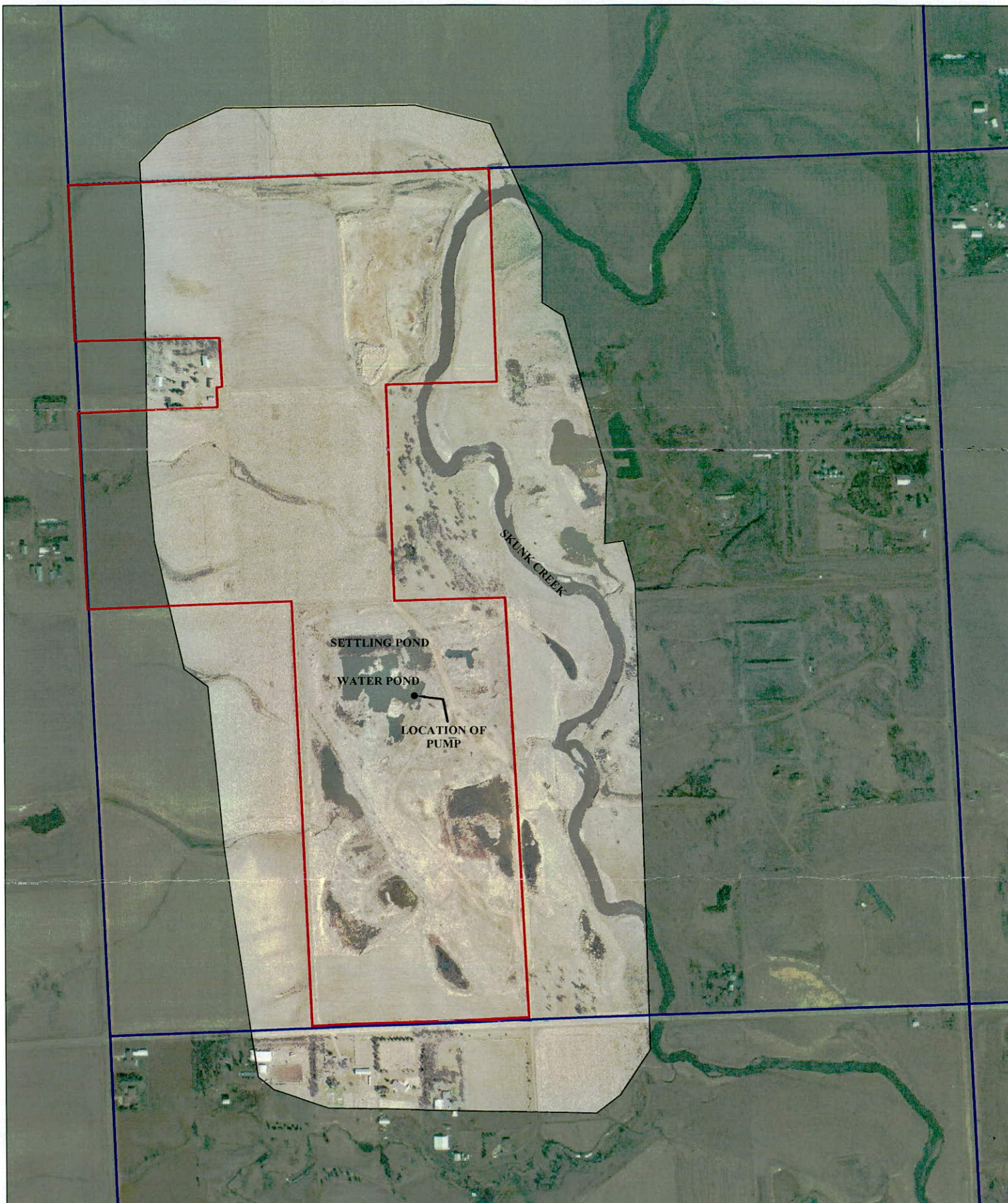
Downstream ____

h) Surface Area of Impoundment ____

i) Storage ____ Acre Feet

j) Drainage Area Above Dam ____ Acres





PROPERTY BOUNDARY —
SECTION LINE —

LEGAL DESCRIPTION: NW 1/4 SEC 6, T10N - R50W
MINNEHAHA COUNTY

SIOUX FALLS, SD - MEYER-REYNOLDS PIT WATER RIGHT
LOCATION OF PUMP



L. G. EVERIST, INC.
We Deliver Solutions!
SIOUX FALLS, SD

DRAWN BY: C. KLEIN

SCALE: NTS

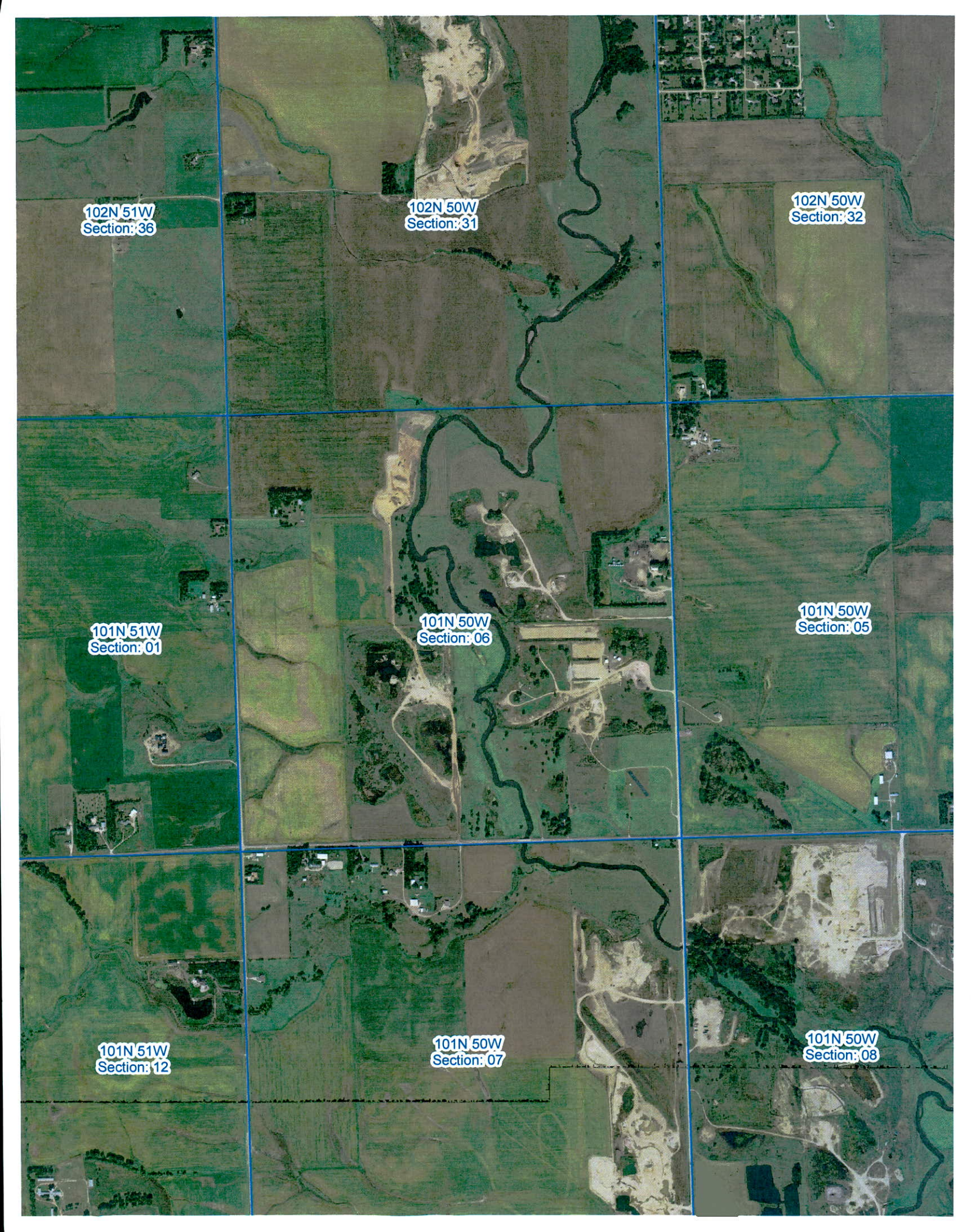
DATE: 04/20/2020

DRAWING NO.

1

REV.



An aerial photograph of a rural landscape, likely in the United States, showing a river winding through a grid of agricultural sections. The river is a prominent feature, flowing from the top right towards the bottom right. The land is divided into sections by blue lines. Various features are visible, including fields, some buildings, and a small cluster of trees. The overall color palette is dominated by greens and browns.

102N 51W
Section: 36

102N 50W
Section: 31

102N 50W
Section: 32

101N 51W
Section: 01

101N 50W
Section: 06

101N 50W
Section: 05

101N 51W
Section: 12

101N 50W
Section: 07

101N 50W
Section: 08

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Environment and Natural Resources

Date May 14, 2020

RECEIVED OF L. G. Everist, Inc. 350 S Main Ave Suite 400 Sioux Falls SD 57104

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

Fee for Application for Permit No. <u>8427-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$1050.00
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>8427-3</u>	\$200.00
Fee for Filing Transfer Form _____	\$
Fee for _____	\$
Fee for Issuing New Well Driller's License No. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law)	TOTAL
	\$1250.00

By Eric Gronlund
Chief Engineer




DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8427-3, L. G. Everist**

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. 8427-3, L. G. Everist, c/o Chris Klein, 350 S Main Ave, Suite 400, Sioux Falls SD 57104.

The Chief Engineer is recommending APPROVAL of Application No. 8427-3 as a TEMPORARY USE PERMIT pursuant to SDCL 46-5-39 because 1) water is available to be appropriated as a temporary use permit until the city of Sioux Falls, holder of a future use permit from the Southern Skunk Creek management unit of the Big Sioux Aquifer fully develops water reserved from their future use permit, 2) the proposed diversion can be developed as a temporary use permit 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 city of Sioux Falls has priority right to this water under future use withdrawal permits. Permit No. 8427-3 is issued as a temporary use permit pursuant to SDCL 46-5-39 and is subject to this prior right if or when the city of Sioux Falls develops their reserve water supply. Permit No. 8427-3 may be subject to cancellation when the water reserved under the future use permit is put to beneficial use. The Chief Engineer must provide the permit holder six months' notice prior to cancellation of this temporary use permit.
2. The dugout/pond approved under Permit No. 8427-3 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.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the dugout/pond.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
July 13, 2020

Note: The pond completed into the water table is not considered an adequate well and therefore will not be afforded protection under water rights law should fluctuation in the water levels occur.

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8427-3
L.G. EVEREST INCORPORATED
C/O CHRIS KLEIN
JULY 10, 2020

Water Permit Application No. 8427-3 proposes to appropriate up to 589 acre-feet/year of water from the Southern Skunk Creek management unit of the Big Sioux aquifer. The applicant intends to divert water from a pond/dugout located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 6-T101N-R50W, at a maximum diversion rate of 3.56 cubic feet per second (cfs). The water is for commercial use in an existing sand and gravel operation located approximately 6 miles west of I-29 near Sioux Falls, South Dakota.

AQUIFER: Big Sioux: Southern Skunk Creek (BS: SSC)

Aquifer Characteristics:

The Skunk Creek aquifer is a portion of the Big Sioux aquifer system that ranges from central Lake County, near the City of Madison, to the confluence of the Skunk Creek and the Big Sioux River in Minnehaha County, within the City of Sioux Falls. Hedges et al. (1982) divided it into three aquifer management units named the Northern Skunk Creek, the Middle Skunk Creek, and the Southern Skunk Creek (Figure 1). This proposed diversion point for this application resides within the Southern Skunk Creek management unit. This unit underlies approximately 15 square miles (9,700 acres) adjoining Skunk Creek and its flood plain (Hedges et al., 1982). This aquifer is a surficial glacial outwash deposit that consists of primarily sand and gravel with minor amounts of silt and clay (Ohland, 1990). It is primarily an unconfined aquifer and is hydraulically connected to Skunk Creek and the underlying Wall Lake aquifer (Lindgren and Niehus, 1992). Iles and Frykman (1986) estimated the saturated thickness ranges between 4 to 74 feet with the ground water flow generally in a southeast direction.

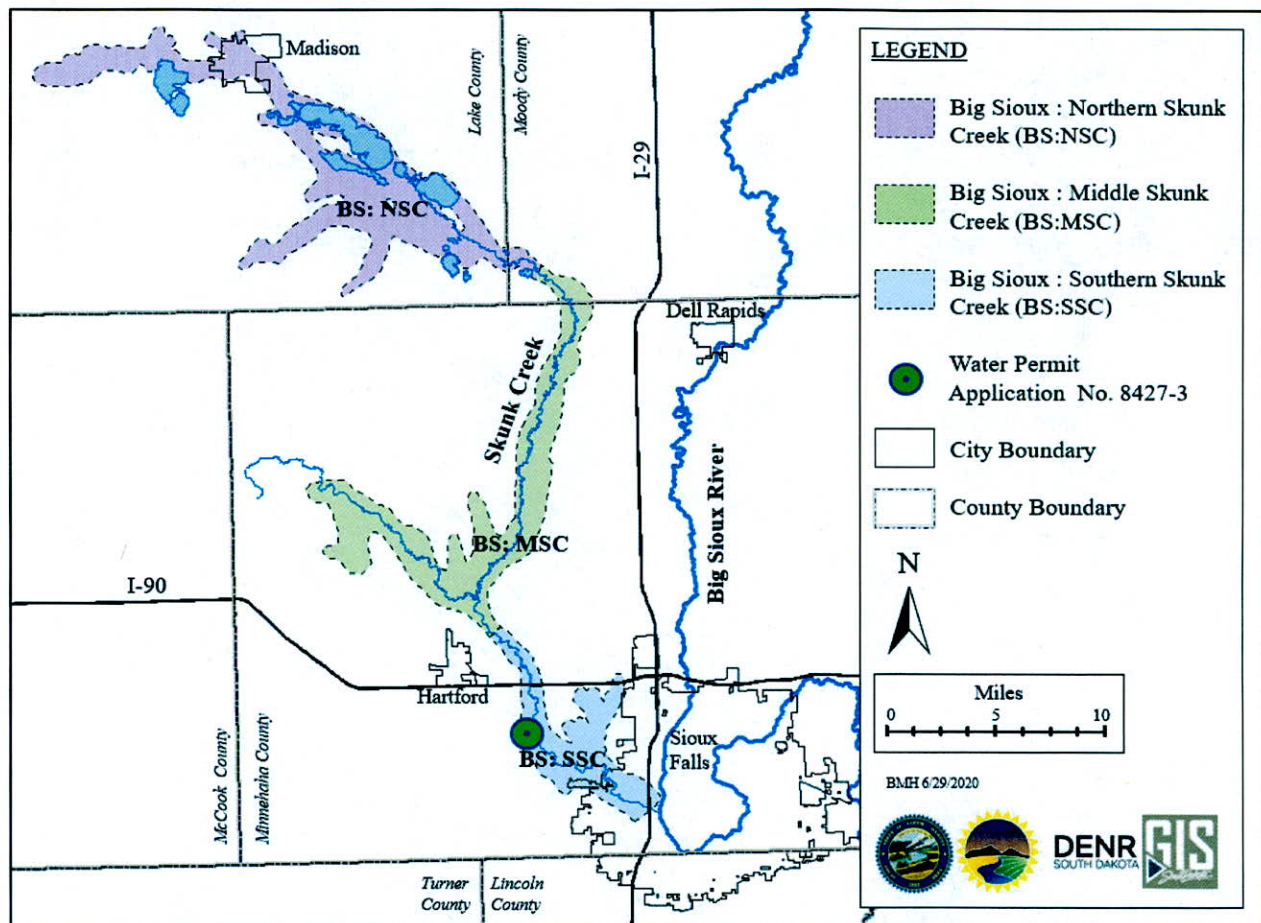


Figure 1. Water Permit Application Number 8427-3 shown within the Big Sioux: Southern Skunk Creek aquifer management unit (modified from: Hedges et al., 1982).

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 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 water availability and potential for unlawful impairment of existing water rights within the Big Sioux: Southern Skunk Creek aquifer.

WATER AVAILABILITY:

Water Permit Application No. 8427-3 proposes to appropriate water from the Big Sioux: Southern Skunk Creek aquifer. The probability of unappropriated water being available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source..." 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 balance of recharge to and withdrawal

from the aquifer. For this application, a water distribution system is not involved, and the aquifer is not older or lower than the Greenhorn Formation, therefore the balance of recharge and withdrawal must be considered.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board 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 three observation wells completed into the Big Sioux: Southern Skunk Creek aquifer (Water Rights, 2020a). Figure 2 shows their locations in relation to Water Permit Application Number 8427-3. Figures 3 through 5 are the hydrographs of these three observation wells.

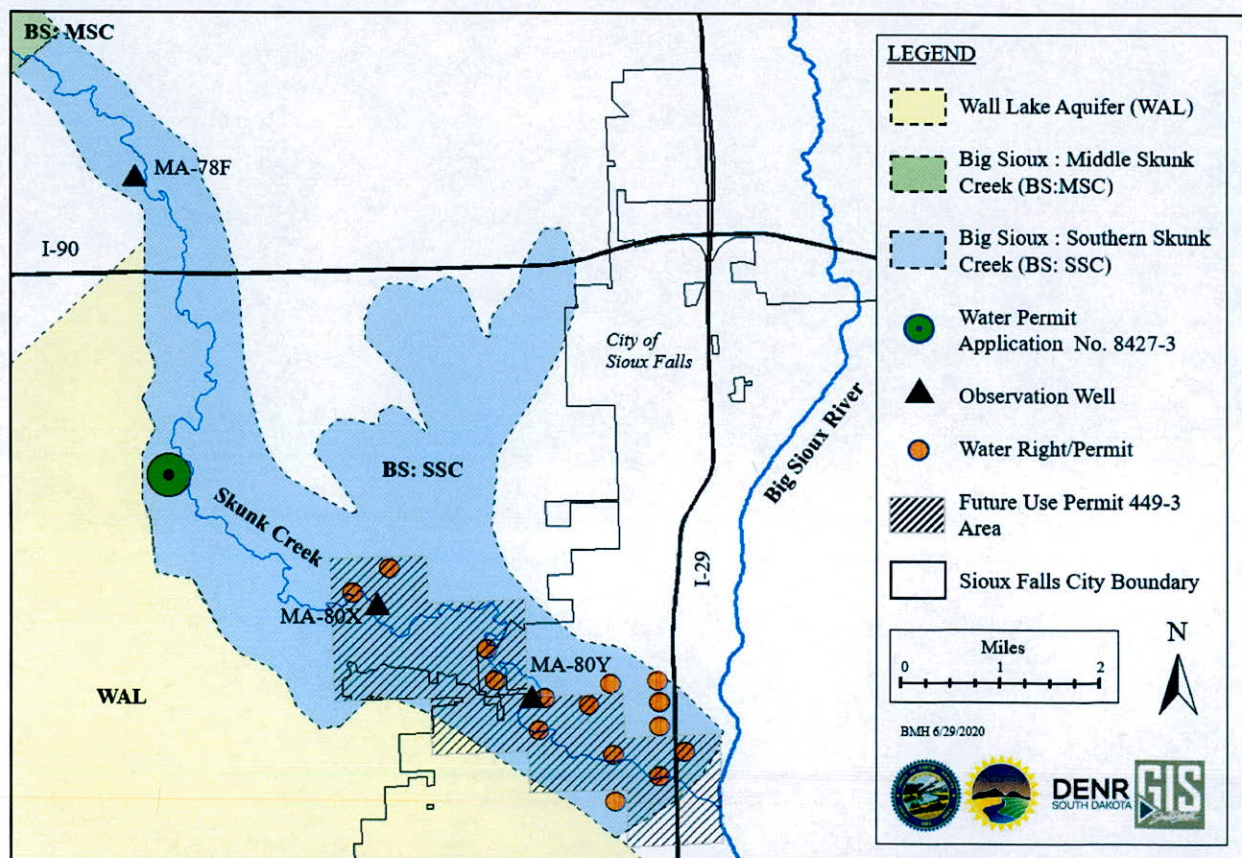


Figure 2. Existing Big Sioux: Southern Skunk Creek aquifer water rights/permits and observation wells in the vicinity of Water Permit Application Number 8427-3 (modified from Hedges, et al., 1982, Water Rights 2020a and 2020b).

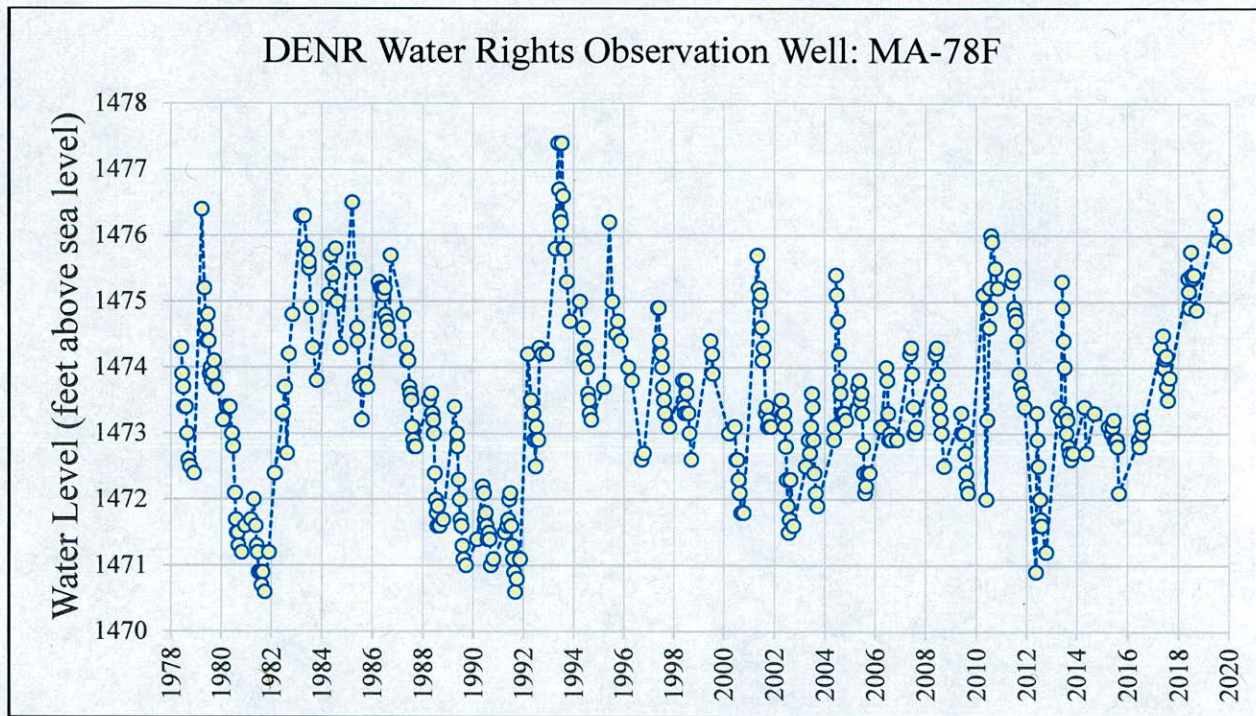


Figure 3. Hydrograph for observation well MA-78F. It is approximately 3.1 miles north of the proposed well location for Water Permit Application No. 8427-3 (Water Rights, 2020a).

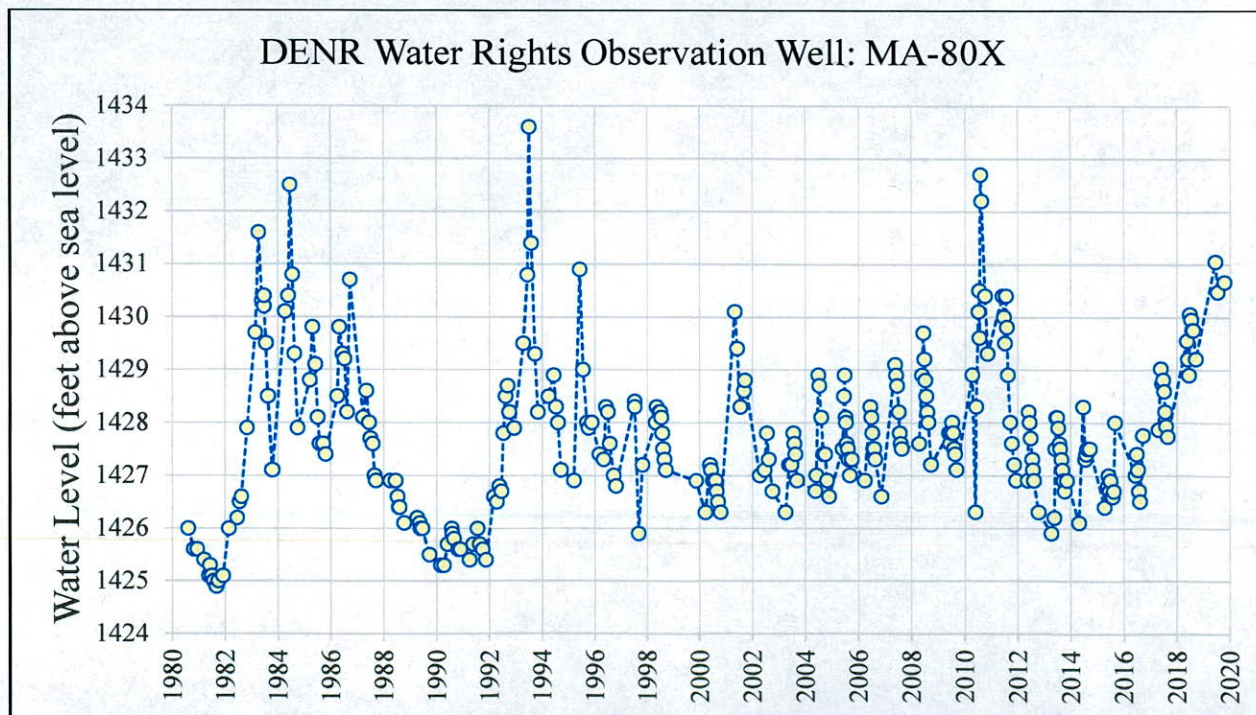


Figure 4. Hydrograph for observation well MA-80X, located approximately 2.5 miles southeast of the proposed well location for Water Permit Application No. 8427-3 (Water Rights, 2020a).

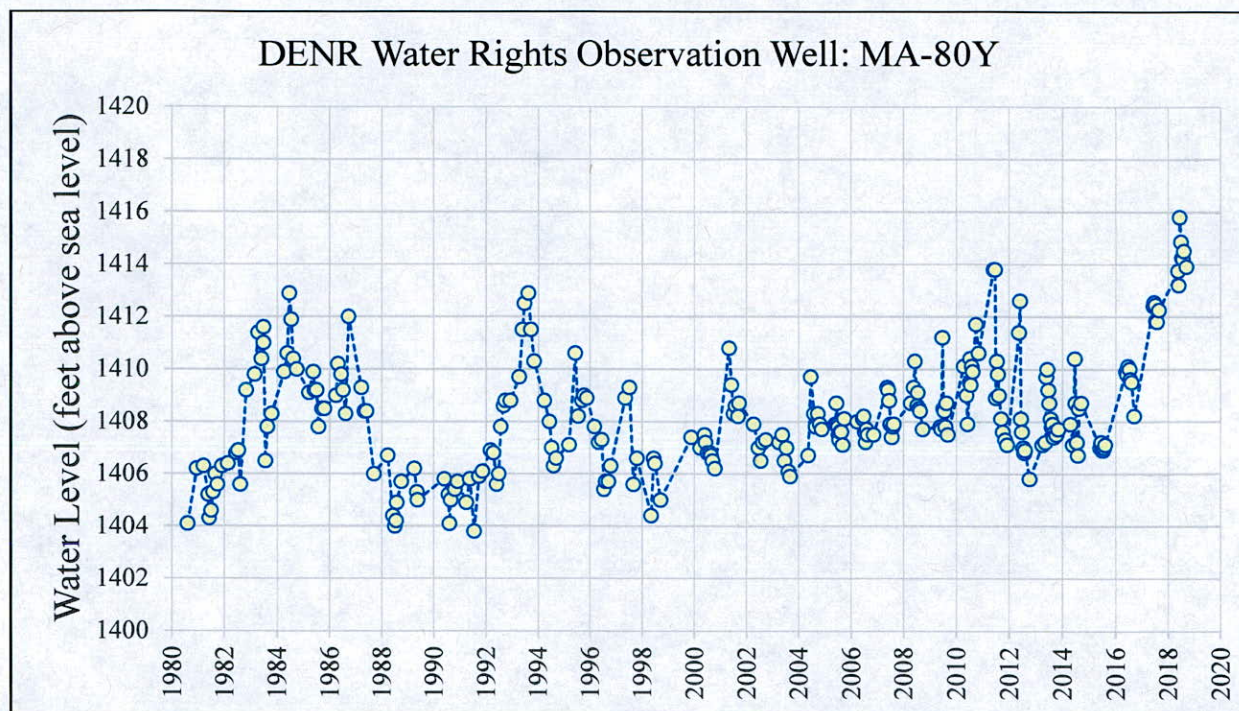


Figure 5. Hydrograph for observation well MA-80Y, located approximately 4.4 miles southeast of the proposed well location for Water Permit Application No. 8427-3 (Water Rights, 2020a).

The data points utilized to construct the hydrographs are measurements of the static water level converted to an elevation. The observation wells show that water levels have been rising or stable over the period of record. Figures 3 through 5 demonstrate that the aquifer responds in a consistent pattern to climatic precipitation changes by rising during wet periods and declining during drier periods. The hydrographs show the water levels readily recover from recharge events, (e.g. snowmelt, precipitation, etc.) that occur throughout the year. This indicates that climatic conditions rather than pumping dominate the water level in the aquifer. Since the observation well hydrographs show recharge to and natural discharge from the aquifer exceed withdrawals, there is reasonable probability that water is available for this proposed appropriation.

Hydrologic Budget:

Recharge:

Recharge is by infiltration from precipitation where the aquifer is exposed along the flood plain of Skunk Creek and from seepage from the underlying Wall Lake aquifer (Ohland, 1990; Lindgren and Niehus, 1992). Hedges, et al. (1982) estimated the area of the Southern Skunk Creek aquifer to be 9,700 acres (15 mi²) and, when applying a specific yield of 0.15 over an average saturated thickness of 22 feet, contains approximately 32,010 acre-feet of recoverable water in storage. Observation well data was then utilized (Hedges et al, 1985) to estimate a recharge rate of 2.7 inches/year for the aquifer. This value, when multiplied by the area of the aquifer, yields an annual recharge rate of 2,183 acre-feet/year for this management unit. A hydrologic model was developed by the United States Geologic Survey (USGS) to predict a sustainable yield of the aquifer (Barari,

et al., 1989). This model estimated that a sustainable yield of 3.6 million gallons per day (4,033 acre-feet/year) could be maintained under normal climactic conditions.

Discharge:

Discharge from the Big Sioux: South Skunk Creek aquifer is through well withdrawal, evapotranspiration where the aquifer is at or near the land surface, seepage to Skunk Creek and, leakage to adjacent aquifers (Lindgren and Niehus, 1992). Currently, there are 16 water rights/permits and 1 future use permit appropriating water from the Big Sioux: Southern Skunk Creek aquifer (Water Rights, 2020b). Thirteen are for non-irrigation use and are comprised of eight commercial (COM), three industrial (IND), and two suburban housing developments (SHD) water rights (Table 1). In order to estimate annual volume withdrawal, Use designations are calculated differently. For non-irrigation water rights/permits (COM, IND and SHD), withdrawals are either assumed to pump 60 percent of the time at their authorized diversion rate if limited only by diversion rate or, will pump their full permitted appropriation if limited by an annual volume. All permits in Table 2 are assumed to pump 60 percent of their authorized diversion rate. No discharge values have been established for evapotranspiration or leakage to adjacent aquifers.

Table 1. Estimated Annual Pumping for Non-Irrigation Appropriations in Big Sioux: Southern Skunk Creek aquifer (Water Rights, 2020b).

Permit Number	Name	County	Status ^a	Use ^a	CFS	Estimated Volume ^b (acre-feet/year)
4463-3	Pine Knoll, Inc.	Minnehaha	LC	COM	0.02	8.7
746A-3	CHS Inc.		LC	IND	0.33	143.4
2304-3	Weeg Trailer Park		LC	COM	0.02	8.7
4159-3	Don Weeg		LC	COM	0.67	291.2
4913-3	Tower Tourist Camp		LC	COM	0.07	30.4
5142-3	Magellan Pipeline Co., Inc.		LC	IND	0.13	56.5
5210-3	Pinecrest, Inc.		LC	SHD	0.22	95.6
5346-3	Magellan Pipeline Co., Inc.		LC	IND	0.223	96.9
5713-3	Pinecrest, Inc.		LC	SHD	0.83	360.8
5729-3	Holiday Mobile Park		LC	COM	0.33	143.4
5916-3	Gay Hiebret		LC	COM	0.46	200.0
6116-3	Falls Homes		LC	COM	0.011	4.8
6276-3	Dakota Aggregate Resource		LC	COM	0.6	260.8
					Total:	1701.2
a - LC: Licensed Water Right; COM: Commercial; IND: Industrial; SHD: Suburban Housing Development						
b - These permits are all assumed to pump at 60% of their volume						

Future Use (FU) Permit 449-3 is held by the City of Sioux Falls and reserves 5,430 acre-feet/year. Because it has the second oldest priority date of the water rights in the Southern Skunk Creek management unit, subsequent water rights should be informed that their appropriation is junior to the reserved amount specified in FU 449-3.

Table 2. Reported historic irrigation use from the Big Sioux: South Skunk Creek (Water Rights, 1979-2019).

Year	Number of Permits Reporting	Appropriation	Pumpage
		(acre-feet/year)	(acre-feet/year)
1979	3	1,125.0	37.79
1980	3	1,125.0	0.00
1981	3	1,125.0	49.13
1982	4	1,275.0	196.00
1983	5	1,375.4	132.23
1984	5	1,375.4	229.00
1985	4	1,275.0	99.30
1986	4	1,275.0	89.00
1987	4	1,275.0	420.00
1988	4	1,275.0	156.10
1989	4	1,275.0	78.50
1990	5	1,351.0	256.00
1991	5	1,351.0	192.80
1992	4	1,186.0	35.43
1993	4	1,186.0	22.50
1994	4	1,040.5	40.54
1995	3	895.0	88.40
1996	3	895.0	331.44
1997	3	895.0	199.00
1998	3	895.0	207.72
1999	3	895.0	194.83
2000	3	895.0	204.96
2001	3	895.0	191.40
2002	3	895.0	207.39
2003	3	895.0	177.10
2004	3	490.0	261.17
2005	3	490.0	243.28
2006	3	490.0	266.26
2007	3	490.0	204.24
2008	3	490.0	201.63
2009	3	490.0	139.51
2010	3	490.0	96.23
2011	3	490.0	140.72
2012	3	490.0	228.95
2013	3	490.0	211.23
2014	3	490.0	148.55
2015	3	490.0	174.58
2016	3	490.0	181.01
2017	3	490.0	172.16
2018	3	490.0	92.40
2019	3	490.0	63.50
Maximum:	5	1,375.4	420.00
Minimum:	3	490.0	0.00
Average:	3.4	872.8	162.49

The estimated water use volume by irrigation water rights/permits (IRR) is the average reported pumpage determined from annual irrigation questionnaire summaries. Historic irrigation water use developed from these summaries is displayed in Table 2. The average annual appropriation for irrigation is 872.8 acre-feet, however, the average annual reported pumping is 162.5 acre-feet (Water Rights, 1979-2019). Many domestic wells have been completed into the Big Sioux: Southern Skunk Creek aquifer (Water Rights 2020c), but domestic users are not required to report their annual water usage and are generally not considered a significant portion of the hydrologic budget because of their low diversion rate and the availability of rural water systems.

Water Balance:

The Big Sioux: Southern Skunk Creek aquifer estimated average annual withdrawal rate is 1,863.7 acre-feet/year (irrigation: 162.5 acre-feet/year, non-irrigation: 1,701.2 acre-feet/year). Annual water availability for this aquifer is a range 2,183 acre-feet/year (Hedges et al., 1982) to 4,033 acre-feet/year (Barari, et al., 1989). The request of this application for an appropriation of 589 acre-feet/year exceeds the low end of the water availability range as estimated by the annual recharge for this aquifer. Additionally, Future Use Permit 449-3 reserves 5,430 acre-feet/year which exceeds the upper value estimated by the USGS as a sustainable yield for the aquifer. Therefore, unappropriated water is not available. However, temporary use permits can be issued to place water reserved by future use permits to beneficial use until the future use permit is developed. The actual water use under this application, if approved, will be from losses during the processing of sand and gravel as well as from evaporation. The consumptive use of water will likely be much less than the requested 589 acre-feet/year.

SDCL 46-5-39 and SDCL 46-5-40

Pursuant to SDCL 46-5-39, temporary appropriation may be authorized from an unused portion of a future use permit. As per SDCL 45-5-40, the temporary use permit would be effective until the future use permit holder sought to use the water that had been appropriated by the temporary permit. The temporary use permit holder would be given six months notice of the permit cancellation. Based on SDCL 46-5-39, the hydrologic budget for the aquifer, and the observation well data, this application can be approved as a temporary permit.

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS

Currently, there are 16 water rights/permits and 1 future use permit appropriating water from the Big Sioux: Southern Skunk Creek aquifer (Water Rights, 2020b). Because the aquifer is under water table conditions and the distance between this application and the closest water right is over 2 miles (Figure 2), interference from pumping is not expected to be a concern with existing appropriative users.

Conditions may occur where withdrawal from the aquifer exceeds recharge to the aquifer. A decline of water levels during an extended drought coupled with the cumulative impact of well withdrawals may result in reduced yields of wells completed into thinner portions of the Big Sioux: Southern Skunk Creek aquifer. If the saturated thickness is reduced to the extent that water rights/permits can no longer pump at their developed or historically established diversion rates, that may be considered an adverse impact and could require this application, if approved, and other

water rights/permits with newer priority dates to cease pumping in favor of water rights/permits with older priority dates.

To protect domestic well users, the Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

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

Nearby adequate wells are not expected to be adversely impacted as defined in ARSD 74:02:04:20(7). Nevertheless, if this application is approved, the water permit should include a qualification that the well owner should control their withdrawals so there is not a reduction of water for adequate domestic wells or for adequate wells having prior water rights. There are two complaints on file with the DENR regarding the Southern Skunk Creek management unit (Water Rights, 2020d). Both alleged that nearby pumping had caused dewatering of their wells. However, this was not substantiated by the investigation for either case. When considering the unconfined nature of the aquifer, the lack of substantiated well interference due to pumping, and the distant proximity of the nearest water right, there is reasonable probability that the proposed diversion can be developed without unlawfully impairing existing appropriative or domestic water users with adequate wells.

CONCLUSIONS:

1. Water Permit Application Number 8427-3 proposes to appropriate up to 589 acre-feet/year of water, at a maximum diversion rate of 3.56 cfs, from the Big Sioux: Southern Skunk Creek aquifer. The proposed diversion point is a pond/dugout located within the NE ¼ SW ¼ Sec. 6-T101N-R50W. The water is for commercial use in an existing sand and gravel operation.
2. The actual water use under this application, if approved, will be from losses during the processing of sand and gravel as well as from evaporation. The consumptive use of water will likely be much less than the requested 589 acre-feet/year.
3. Based on the estimated average annual withdrawal and future use reservation as compared to the range of estimated average annual recharge, there is not a reasonable probability unappropriated water is available for this application.
4. Pursuant to SDCL 46-5-39 and SDCL 46-5-40, a temporary use permit allows water reserved by a future use permit to be put to beneficial use until the future use permit holder seeks to utilize the reserved water.

5. Based on the hydrologic budget for the aquifer and observation well data, water reserved for Future Use Permit 449-3 is available to be put to beneficial use pursuant to SDCL 45-5-39 and 45-5-40 for this application.
6. There is reasonable probability this application can be developed without unlawful impairment of existing rights/permits or domestic well users with adequate wells.



Blaise M. Hansen
SD DENR – Water Rights Program

Reviewed by:



Adam Mathiowetz, PE
SD DENR – Water Rights Program

REFERENCES:

- Barari, A., Iles, D.L. and Cowman, T.C., 1989. *Assessment of Water Resources and Conceptual Evaluation of a Regional Water Supply System for Southeastern South Dakota*, South Dakota Geologic Survey, Open-File Report 60-UR, Vermillion, South Dakota.
- Hedges, L.S., Burch, S.L., Iles, D.L., Barari, R.A., and Schoon, R.A. 1982. *Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 2: Extent of Aquifers*, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S., Allen, J., Holly, D.E., 1985. *Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 7: Ground Water Recharge*, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.

- Iles, D.L. and Frykman, L.J., 1991. *Hydrogeology of the Southern Skunk Creek Management Unit of the Big Sioux Aquifer*, South Dakota Geologic Survey, Open-File Report 63-UR, Vermillion, South Dakota.
- Lindgren, R.J. and Niehus, C.A., 1992. *Water Resources of Minnehaha County, South Dakota*. Water Resources Investigations Report 91-4101. U.S. Geological Survey, Huron, SD.
- Ohland, G.L., 1990. *Appraisal of the Water Resources of the Skunk Creek Aquifer in Minnehaha County, South Dakota*, Water Resources Investigations Report 87-4156. U.S. Geological Survey, Huron, SD.
- Water Rights, 1979-2019. *1979-2018 Irrigation Summaries by Aquifer*, SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights, 2020a. *Observation Well Database*, SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights, 2020b. *Water Right/Permit Database*, SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights, 2020c. *Well Completion Database*, SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights, 2020d. *Minnehaha County Files*, SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, July 13, 2020 11:15 AM
To: 'cmklein@lgeverist.com'
Subject: Application No. 8427-3
Attachments: Application No. 8427-3.pdf

Chris,

Attached is the report, chief engineer recommendation and letter with instructions regarding the public notice for Application No. 8427-3, L. G. Everist. As stated in the letter is it important that you contact the Argus Leader to authorize publication and arrange for payment. This same information is being mailed today.

Karen Schlaak

Water Rights Program
(605) 773-3352



Argus Leader

P.O. Box 677349, Dallas, TX 75267-7349

RECEIVED

AUG 03 2020

WATER RIGHTS
PROGRAM

L. G. EVERIST, INC.
350 S MAIN AVE, SUITE 400
SIOUX FALLS, SD 57104

Account No.: 6053306570

Ad No.: 0004282095

PO #: 8427-3

Lines : 119

Ad Total: \$77.40

This is not an invoice

of Affidavits 1

Account No.: 6053306570
Ad No.: 0004282095

Argus Leader AFFIDAVIT OF PUBLICATION

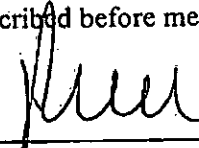
STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA

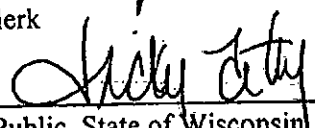
I being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Wednesday, July 22, 2020

Sworn to and subscribed before me this 22 day of July, 2020.



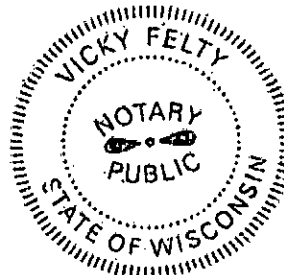
Legal Clerk



Notary Public, State of Wisconsin, County of Brown

9-19-21

My Commission expires



NOTICE OF
APPLICATION NO. 8427-3
to Appropriate Water

Notice is given that L. G. Everist Inc., c/o Chris Klein, 350 S Main Ave, Suite 400, Sioux Falls SD 57104 has filed an application for a water permit to appropriate 587 acre-feet of water annually at a maximum pump rate of 3.56 cubic feet of water per second from a pond/dugout located in the NE 1/4 SW 1/4 Section 6-T101N-R50W. The pond/dugout water is for commercial use in an existing sand and gravel operation including an aggregate wash plant located in portions of the E 1/2 SW 1/4, NW 1/4 Section 6-T101N-R50W. Water is recycled by discharging to a settling pond and then diverted back to the pond for reuse. This operation is located approximately 6 miles west of I-29 near Sioux Falls SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 8427-3 as a TEMPORARY USE PERMIT pursuant to SDCL 46-5-39 because 1) water is available to be appropriated as a temporary use permit until the city of Sioux Falls, holder of a future use permit from the Southern Skunk Creek management unit of the Big Sioux Aquifer fully develops water reserved from their future use permit, 2) the proposed diversion can be developed as a temporary use permit without unlawful impairment of existing rights, 3) the proposed use is a beneficial use 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 Ron Duval 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 August 3, 2020.

The petition may be informal but must include a statement describing the petitioner's interest in the ap-

plication, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition. Published once at the total approximate cost of \$77.40.
4782095 July 22, 2020

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, July 13, 2020 11:09 AM
To: 'legals@argusleader.com'
Subject: 8427-3, L. G. Everist Inc
Attachments: 8427-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on July 22, 2020.

L. G. Everist Inc., c/o Chris Klein, 350 S Main, Suite 400, Sioux Falls SD 57104 (605 330-6570) 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
Water Rights Program
(605) 773-3352





DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

July 13, 2020

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

L. G. Everist Inc
c/o Chris Klein
350 S Main Ave, Suite 400
Sioux Falls SD 57104

Dear Mr. Klein:

Water Permit Application No. 8427-3 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Argus Leader printed at Sioux Falls SD (Ph # 605 331-2200). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Karen Schlaak
Water Rights Program
(605) 773-3352

enclosures

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

NOTICE OF APPLICATION NO. 8427-3 to Appropriate Water

Notice is given that L. G. Everist Inc., c/o Chris Klein, 350 S Main Ave, Suite 400, Sioux Falls SD 57104 has filed an application for a water permit to appropriate 589 acre-feet of water annually at a maximum pump rate of 3.56 cubic feet of water per second from a pond/dugout located in the NE 1/4 SW 1/4 Section 6-T101N-R50W. The pond/dugout water is for commercial use in an existing sand and gravel operation including an aggregate wash plant located in portions of the E 1/2 SW 1/4, NW 1/4 Section 6-T101N-R50W. Water is recycled by discharging to a settling pond and then diverted back to the pond for reuse. This operation is located approximately 6 miles west of 1-29 near Sioux Falls SD.

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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 August 3, 2020.

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.

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Published once at the total approximate cost of



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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

AUG 31 2020

L. G Everist Inc
c/o Chris Klein
350 S Main Ave, Suite 400
Sioux Falls SD 57104

Dear Mr. Klein:

Enclosed is Temporary Water Permit No. 8427-2 authorizing the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

This is a TEMPORARY PERMIT and is subject to the City of Sioux Falls prior right when they develop water reserved by their future use permit.

Sincerely,

A handwritten signature in blue ink that reads "Eric Gronlund".

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

enclosure

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 8427-3

I have this day, August 3, 2021, made a thorough examination of the water use system constructed by L G Everest, 150 S Main Ave, Suite 400, Sioux Falls, SD 57104 of Permit No. 8427-3, bearing the priority of May 14, 2020 authorizing the diversion of 3.56 cu. ft. per second of the waters of a pond/dugout for commercial use purposes, in Minnehaha County.

F. Comments or other permit(s) associated with the project:

During an August 3, 2021 visit to the gravel pit site, this inspector did not witness any water washing activity. Mr. Chris Klein told this inspector that a portable, rented gravel washing system had been used in the past but that the 1,500 gpm-pump had been returned to the rental company. The Everest company intends to continue use of the site in the future.

The company's telephone number is 605/334-5000 while Chris Klein's direct number is 605/330-6570 (office) & 605/929-4017 (cell).



Darrell W DeBoer
Water Rights Inspector
DANR, Water Rights Program

Date report completed: August 5, 2021