

WATER PERMIT NO. 8570-3

Name of Applicant: Windy Ridge Hutterian Brethren Inc.

Address: 1030 Hillcrest Dr, Garden City SD 57236 Phone: 605 233-0251

Amount of Water Claimed: 0.11 cfs (55 AF) Total Acres: NA

Source of Water Supply: groundwater (one well)

Water to be used for: commercial County: Clark

Type of Waste Disposal System:

Location: 6 miles north of Garden City

PRIORITY Date Received: 12-14-21 Application/License Fee: \$ 700

Corrected Application Received: Period of Annual Use: Jan 1 – Dec 31

Remarks: Swine feeding operation

Diversion Point: NE 1/4 SE 1/4 Sec 5-T118N-
R56W

Facility Located: NW 1/4 SE 1/4 Sec 5-T118N-
R56W

Depth of Well: 440

Well Driller:

Remarks:

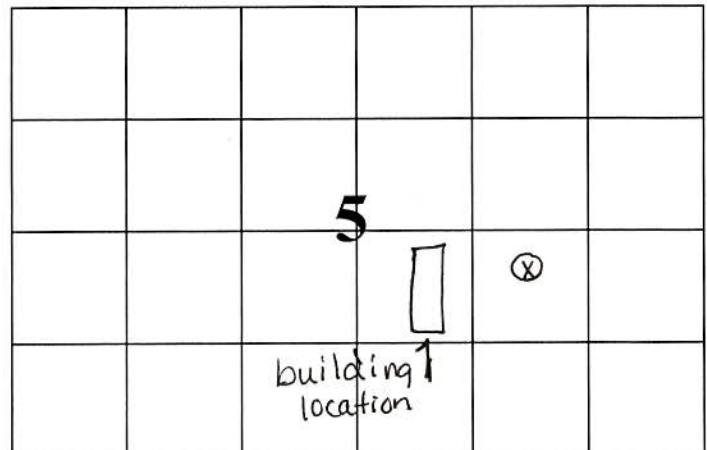
Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 12-14-21

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



SOUTH DAKOTA
WATER PERMIT NO. 8570-3

Date of first receipt of application December 14, 2021.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 8570-3 to Windy Ridge Hutterian Brethren Inc, c/o George Waldner, 1030 Hillcrest Drive, Garden City SD 57236 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. 8570-3 appropriates 55 acre-feet of water annually at a maximum pump rate of 0.11 cubic feet of water per second from one well to be completed into the Altamont Aquifer (approximately 440 feet deep) located in the NE 1/4 SE 1/4 Section 5 for commercial use in a swine facility located in the NW 1/4 SE 1/4 Section 5; all in T118N-R56W. This site is located approximately 6 miles north of Garden City 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: January 1 – December 31.
4. The date from which applicant may claim right is December 14, 2021.
5. The date of approval of Permit No. 8570-3 is April 12, 2022.
6. One-fifth of the construction is to be completed on or before October 12, 2024.
7. All construction is to be completed on or before April 12, 2027.
8. Water is to be put to beneficial use on or before April 12, 2031.
9. 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 Water Permit No. 8570-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Water Permit No. 8570-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.
3. Water Permit No. 8570-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:

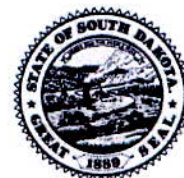
(continued)

- a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Altamont aquifer.
5. Water Permit No. 8570-3 authorizes a total annual diversion of 55 acre-feet of water from the Altamont aquifer.

WATER MANAGEMENT BOARD

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

JUN 01 2022
date



DEC 14 2021

PAID

DEC 14 2021

Ck# 4127

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8570-3</u> (office use only) Hydrologic Unit <u>10160010</u>	WATER RIGHTS PROGRAM
	Basin <u>James River</u>	
	Newspaper <u>Clark County Courier</u>	
	<u>Public Opinion</u>	

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.)

- Name to Appear on Water Permit WINDY RIDGE HUTTERIAN BRETHREN, INC.
 Mailing Address 1030 HILLCREST DRIVE GARDEN CITY SD 57236
 (Address) (City) (State) (Zip Code)
 Phone (605) 532-5700 Mobile (605) 233-0251 Email johnw_hillcrest@itctel.com
- Amount of water claimed 0.11 *CFS or 50 **GPM and 55 ***AF or _____ Gallons
 Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use
- Source of water supply ALTAMONT 2 AQUIFER
- Location of point of diversion 1 WELL IN NE 1/4 OF SE 1/4 OF SECTION 5 T118N R56W County CLARK
 (example - 3 wells in SW 1/4 NE 1/4 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? NW 1/4 OF SE 1/4 OF SECTION 5 T118N R56W
 (example - NW 1/4 section 12-T104N-R53W)
- County or counties where water will be used CLARK
- Annual period during which water is to be used JANUARY 1 - DECEMBER 31
- 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)

APPLICATION IS MADE TO SUPPLY STOCK WATER FOR PROPOSED SWINE CONFINED ANIMAL FEEDING OPERATION (DNR PERMIT APPLICATION # SDG-100597)

I, George Walker, Sec, 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.

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 1 Have test holes been drilled ☒ Yes ☐ No Drilled by PULLMAN
(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) 440 Depth to Top of Water Bearing Material 380 Depth to Water from Surface 200

d) Distance to nearest domestic well on applicant's property NONE Property owned by others 975' - STOCK WELL
NEAREST RESIDENCE > 1 MILE

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) SEPTIC TANK/DRAIN FIELD FOR BARN OFFICE

b) System Capacity (gallons) 1500 Year Constructed PROPOSED

c) Connected to the City of Sanitary System

3. Dugout Information

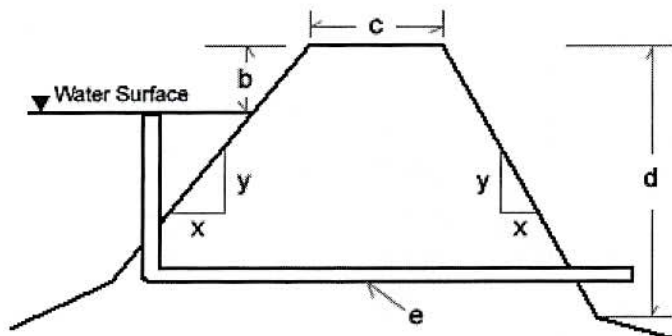
a) Surface Dimensions Depth

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

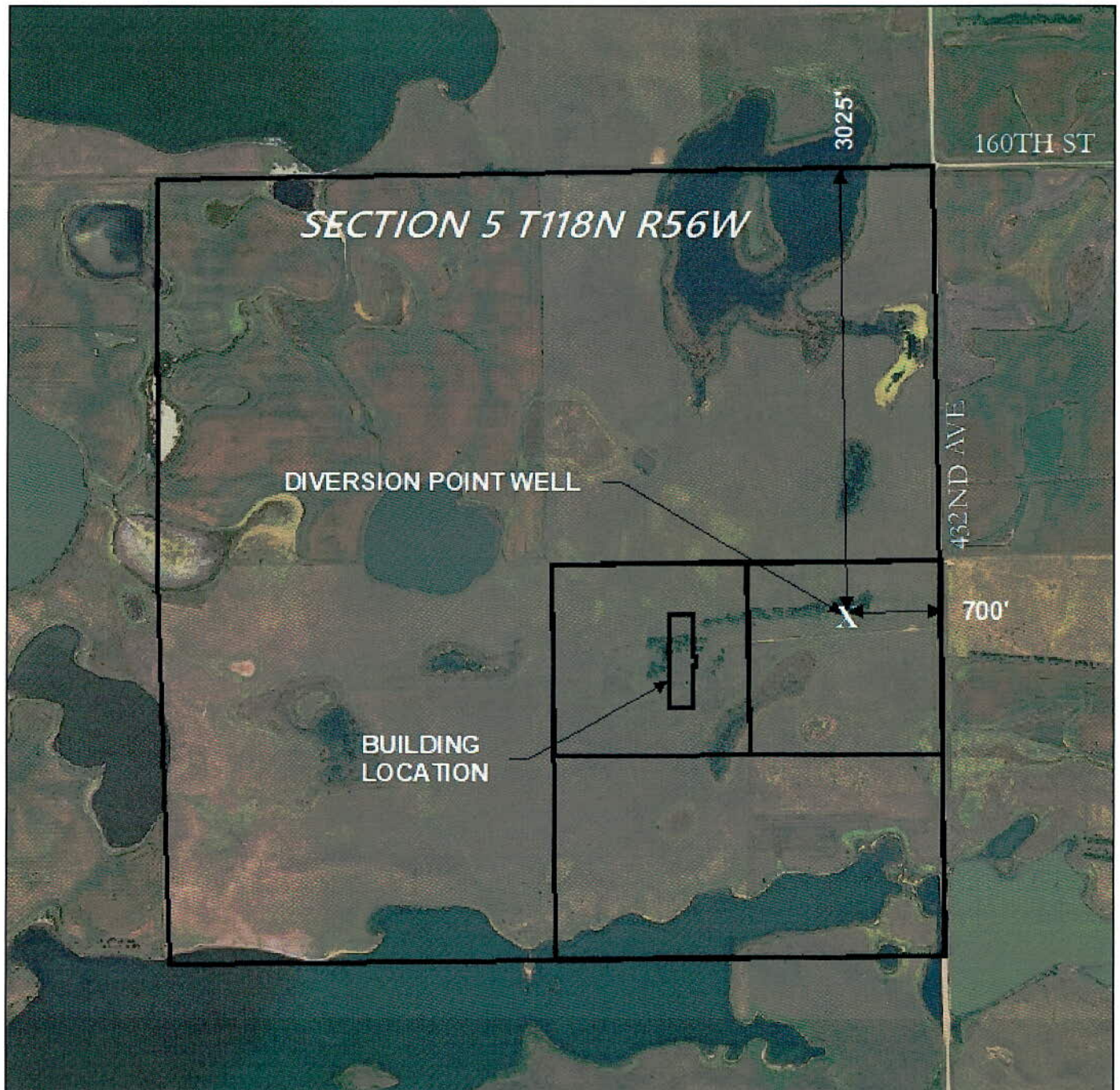
Downstream

h) Surface Area of Impoundment

i) Storage Acre Feet

j) Drainage Area Above Dam Acres

WINDY RIDGE HBI DIVERSION POINT WELL



1 inch = 1,000 feet

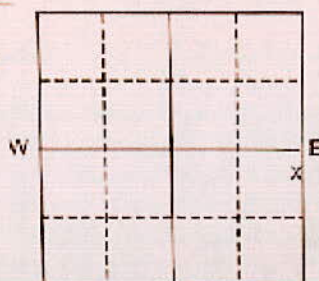
SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location NE 1/4 SE 1/4 Sec 5 Twp 118 Rg 56County Clark

North

Please mark well location with an "X"



Well Completion Date

December 3, 2021

1 Mile

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.):
ft. from _____ (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Forward

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPE WEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
21.0 LB/FT	5.00 IN	0.0 FT	200.0 FT	8.75 IN
17.0 LB/FT	5.00 IN	200.0 FT	400.0 FT	8.75 IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
DF Grout	45	Lb/gal	0.0 FT	390.0 FT
		Lb/gal	FT	FT

Describe grouting procedure line _____

SCREEN:

☐ Perforated pipe ☒ Manufactured
 Diameter 5.00 Inches Length 40.0 Feet
Material PVCSlot Size 025 Set From 400.0 Feet to 440.0 Feet

Other information _____

WAS A PACKER OR SEAL USED?

☒ Yes ☐ NoIf so, what material? Sand PackedDescribe packer(s) and location
@390-440

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? chlorine Tabs☐ No, Why Not? _____Lab to which water
quality sample sent for analysis _____Well Owner Hillcrest ColonyBusiness Name EarnestAddress: 1004 Hillcrest DrCity, State, Zip: Garden City SD 57236

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Yellow Clay	0	40
Blue Clay	40	100
Gravel	100	160
Blue Clay	160	380
Sand	380	440

STATIC WATER LEVEL

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: Well @200ft
☐ Bailed
☐ Other

Pumping Level Below Land Surface

_____ Ft. After _____ Hrs. pumped 100.0 GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

This well was drilled under license # 440 and this report is true and accurate.Drilling firm: Pullman Well Drilling

Signature of Licensee Representative: _____

Signature of Well Owner or Equitable Property Holder: _____

Date: _____



531183451

B0171-4746 02/25/2021 8:48AM Rec'd by SD SOS

Secretary of State
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

2021
FILING YEAR

ANNUAL REPORT

Domestic Nonprofit Corporation
SDCL 47-24-6, 59-11-24

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Filing Fee: \$10

Total Fee: \$10

1. Business ID and Name:

CH177871
BUSINESS ID

Windy Ridge Hutterian Brethren, Inc.
BUSINESS NAME

2. The jurisdiction under whose law it is formed South Dakota

3. The address of the principal executive office (business address):

Actual Street Address

**1030 HILLCREST DRIVE
GARDEN CITY, SD 57236-9711**

Mailing Address

**1030 HILLCREST DRIVE
GARDEN CITY, SD 57236-9711**

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, (b) a commercial registered agent, or (c) an office holder.

(a) The South Dakota Noncommercial Registered Agent's name

Name **SIEGEL, BARNETT & SCHUTZ, L.L.P.**

Actual Street Address in this State

**415 SOUTH MAIN STREET 400 CAPITOL BUILDING
PO BOX 490
ABERDEEN, SD 57402-0490**

Mailing Address in this State

**415 SOUTH MAIN STREET 400 CAPITOL BUILDING
PO BOX 490
ABERDEEN, SD 57402-0490**

5. The names and addresses of its principal officers.

Title	Name	Address
President	MARK WALDNER	1030 HILLCREST DRIVE, GARDEN CITY, SD, 57236-9711
Secretary	GEORGIE WALDNER	1030 HILLCREST DRIVE, GARDEN CITY, SD, 57236-9711
Treasurer	GEORGIE WALDNER	1030 HILLCREST DRIVE, GARDEN CITY, SD, 57236-9711

6. The names and addresses of its directors (governors).

Name	Address
MARK WALDNER	1030 HILLCREST LANE, GARDEN CITY, SD, 57236-9711
GEORGIE WALDNER	1030 HILLCREST LANE, GARDEN CITY, SD, 57236-9711
BEN WALDNER	1030 HILLCREST LANE, GARDEN CITY, SD, 57236-9711

7. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.



No person may execute this report knowing it is false in any material respect. Any violation may be subject to a civil and/or criminal penalty (SDCL 47-1A-129; 22-39-36).

02/25/2021

Dated

Email (Optional)

GEORGIE WALDNER

Signature of an Authorized Person

GEORGIE WALDNER

Printed Name

B0171-4747 02/25/2021 8:48AM Rec'd by SD SOS

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Agriculture and Natural Resources

Date December 14, 2021

RECEIVED OF Windy Ridge Hutterian Brethren Inc. 1030 Hillcrest Drive Garden City SD 57236

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

Fee for Application for Permit No. <u>8570-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>500.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8570-3</u>	\$ <u>200.00</u>
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law) TOTAL	\$ <u>700.00</u>

By Eric Gronlund
Chief Engineer
EM



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8570-3, Windy Ridge Hutterian Brethren Inc.**

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. 8570-3, Windy Ridge Hutterian Brethren Inc., 1030 Hillcrest Dr, Garden City, SD 57236.

The Chief Engineer is recommending APPROVAL of Application No. 8570-3 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well approved under Water Permit No. 8570-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Water Permit No. 8570-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.
3. Water Permit No. 8570-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions

(continued)

4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Altamont aquifer.
5. Water Permit No. 8570-3 authorizes a total annual diversion of 55 acre-feet of water from the Altamont aquifer.

See report on application for additional information.

A handwritten signature in blue ink, appearing to read "Eric Gronlund".

Eric Gronlund, Chief Engineer

February 14, 2022

**Report to the Chief Engineer on
Water Permit Application No. 8570-3**

Windy Ridge Hutterian Brethren Inc
03 February 2022

Water Permit Application No. 8570-3 seeks to appropriate 55 acre-feet of water annually (ac-ft/yr) at a maximum instantaneous withdrawal rate of 0.11 cubic feet of water per second (cfs) from one well to be completed into the Altamont aquifer (approximately 440 feet deep) located in the NE ¼ SE ¼ Section 5 for commercial use in a swine facility located in the NW ¼ SE ¼ Section 5; all in T118N-R56W. This site is located approximately 6 miles north of Garden City, South Dakota.

Aquifer: Altamont (A)

Hydrogeologic Characteristics

The Altamont aquifer is composed of multiple bodies of sand and gravel outwash deposited on or near the bedrock and below or near the Prairie Coteau during the Quaternary geological period. Hedges et al. [1] estimated that the Altamont aquifer underlies approximately 1,672,800 acres in Beadle, Brookings, Brown, Clark, Codington, Day, Deuel, Grant, Hamlin, Kingsbury, Marshall, Roberts, and Spink Counties and stores approximately 7,197,360 ac-ft of recoverable water. Hedges et al. [1] estimated the area of Altamont aquifer in Clark County was 537,200 acres. Hamilton [2] mapped three layers of Altamont outwash in Clark County, which were differentiated by the elevations of the layers. Hamilton estimated Altamont 1 ranged from 1,450 to 1,500 feet above NGVD29¹, Altamont 2 ranged from 1,360 to 1,500 feet, and Altamont 3 ranged from 1,260 to 1,360 feet. In general, the Altamont aquifer is managed as a single aquifer [3]. However, due to the amount of data available in Clark County, the three layers of the aquifer as identified by Hamilton [2] in Clark County could be considered to be three separate aquifers. Hamilton [2] estimated that the Altamont 2 underlies 630 square miles (403,200 acres) in Clark County.

The applicant submitted a well completion report for one well completed on December 3, 2021, in the NE ¼ SE ¼ Section 5 T118N-R56W. The driller encountered gravel from 100 to 160 feet below grade, blue clay from 160 to 380 feet, and sand from 380 to 440 feet. The driller placed 40 feet of screen at the bottom of the well. The driller did not indicate what the static water level was at the time the well was completed but did indicate that he pumped it with air at 200 feet below grade at 100 gallons per minute (0.22 cfs), so the static water level must have been higher than 200 feet below grade. The land surface elevation at the location of that well is approximately 1,810 feet above NGVD29, so the water-producing sand ranges from 1,370 to 1,430 feet above NGVD29. Based on the elevation of the water-producing sand, this well is completed into the Altamont 2 as defined by Hamilton [2]. Since the water level in the well rises above the water-producing sand, the well for this application is under confined conditions.

¹ The National Geodetic Vertical Datum of 1929, or NGVD29, is what is commonly called “mean sea level” in many texts. This datum is not actually the mean sea level, so it was renamed in 1973 [15].

Applicable South Dakota Codified Law (SDCL)

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued 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 domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, 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 the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The applicant is not a water distribution system as defined in SDCL 46-1-6(17). The Altamont aquifer is younger and stratigraphically higher than the Greenhorn Formation. Therefore, it is necessary to find that recharge exceeds withdrawals to approve this application.

Availability of Water

Hydrologic Budget

Recharge

Recharge to the Altamont aquifer is likely by infiltration of precipitation where the aquifer is at or near land surface and by groundwater inflow from glacial till when the hydraulic head of the glacial till is higher than the hydraulic head of the Altamont aquifer. There is not a recharge estimate available for the whole Altamont aquifer. Hamilton [2] indicates the recharge rate of the Altamont aquifer in Clark County is approximately 1.5 to 1.6 inches per year, and estimated that the recharge to the Altamont 2 and 3 aquifers combined is approximately 54,000 ac-ft/yr, and the recharge to the Altamont 1 is 9,000 ac-ft/yr [2, p. 10]. Hedges, Allen, and Holly [4] used observation well levels to calculate recharge to unconfined portions of mostly confined aquifers and estimated that the recharge rate to unconfined portions of the Altamont aquifer was 2.2 inches per year, but they did not delineate the area they considered to be unconfined. For buried and confined aquifers, Hedges, Allen, and Holly [4] recommend using a recharge rate ranging between 0.15 and 0.6 inches per year, for water management purposes. Most of the Altamont aquifer is under buried, confined conditions, so without additional information, the Hedges, Allen, and Holly [4] recharge rates are appropriate to use as a more conservative estimate of recharge in the aquifer. Table 1 shows estimated total recharge for the various recharge rates mentioned. The minimum recharge to the entire Altamont aquifer in Clark County is approximately 6,715 ac-ft/yr and the maximum recharge estimate to the Altamont 2 and 3 aquifers in Clark County is approximately 54,000 ac-ft/yr.

Table 1: Recharge estimates for the Altamont aquifer in Clark County [1] [2] [4]

Reference	Recharge Rate (in/yr)	Altamont Area (acres)	Estimated Total Recharge (ac-ft/yr)
Hamilton [2] Altamont 2 & 3	1.60	403,200	54,000
Hedges, Allen, and Holly [4] With Hedges et al. [1] Area	0.15	537,200	6,715
Hedges, Allen, and Holly [4] With Hedges et al. [1] Area	0.60	537,200	26,680

Discharge

Discharge from the Altamont aquifer is likely by seepage to surface water features in contact with the aquifer, when the hydraulic head of the Altamont aquifer is higher than the stage of the surface water features, discharge to higher aquifers when the hydraulic head of the Altamont aquifer is higher than the aquifers it contacts, and by domestic and appropriative well withdrawals. Due to the prevalence of rural water systems and presence of stratigraphically higher aquifers over most of its areal extent, domestic well withdrawals are estimated to be a negligible amount of the hydrologic budget. There are 81 water rights/permits currently authorized to withdraw from the Altamont aquifer and two future use permits reserving water from the Altamont aquifer in all of South Dakota. Future Use Permit No. 4052-3 reserves 869 ac-ft/yr for the Town of Henry and Future Use Permit No. 4045B-3 reserves 12 ac-ft/yr for the Town of Wallace. Both towns purchase their water from another water distribution system [5] [3] but, as long as they hold their future use permits, they must be considered in the hydrologic budget.

Of the 81 water rights/permits authorized to withdraw, 55 are for irrigation, 12 are for commercial use, 11 are for municipal use, and 3 are for industrial use. All irrigation water rights/permits in the Altamont aquifer are required to report their withdrawals annually, although two are new enough that their withdrawals are not represented in any irrigation reports. The average annual reported irrigation use in the period of record from 1979 to 2020 is 2,416 ac-ft/yr [6].

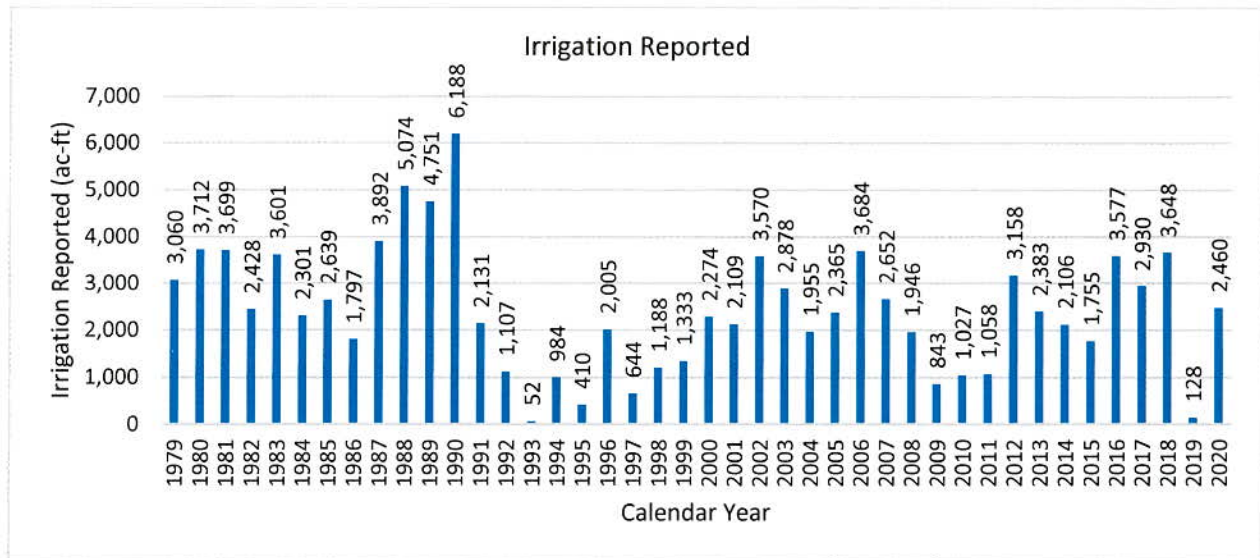


Figure 1: Irrigation reported in the Altamont aquifer from 1979 through 2020 [6]

Of the non-irrigation water rights/permits, Water Right Nos. 451-3, 1490-3, 1651-3, 1913-3, 4049-3, 4054A-3, 4320-3, 4861-3 are municipal water rights/permits that purchase their water from another water distribution system and are assumed to withdraw a negligible amount of water [5]. There are 5 non-irrigation water rights/permits that are required to report their annual withdrawals [3]. All of them are new enough that they may not have fully developed their permits [6], so they are assumed to appropriate the full amount listed on their permit for a total withdrawal of 566 ac-ft/yr. Table 2 shows non-irrigation water rights/permits required to report and their reported withdrawal for each year of record [6].

Table 2: Non-irrigation water rights/permits required to report [3] [6]

Permit No.	8309-3	8349-3	8376-3	8414-3	8504-3	Total
Name	Otter Tail Power Company	Riverview, LLP	Husky Farms, LLC	Geronimo Energy	Redstone Farms, RE LLC	
Priority Date	09/18/2017	04/16/2018	09/17/2018	11/12/2019	03/25/2021	
Annual Appropriation (ac-ft)	12.0	399.0	77.0	1.0	77.0	566.0
Max. CFS	0.220	1.330	0.267	0.011	0.133	1.961
Year	Annual Report (ac-ft)					
2017	0.0	N/A	N/A	N/A	N/A	0.0
2018	0.0	0.0	N/A	N/A	N/A	0.0
2019	0.0	0.0	9.3	N/A	N/A	9.3
2020	0.0	11.3	44.1	0.2	N/A	55.6

There is one water right, Water Right No. 1718A-3, which has an annual volume limit of 81 ac-ft/yr listed on its permit, but no requirement to report its annual withdrawals. It is assumed to withdraw the full appropriation on its permit. There are 12 other non-irrigation water rights/permits authorized to withdraw that are not on standby, not required to report their withdrawals, and do not have an annual volume limit listed in their permit. They appropriate a

total of 4,043 cfs and are assumed to pump at their maximum licensed/permitted withdrawal rate 60% of the time, for an estimated annual withdrawal of 1,757 ac-ft/yr. Based on Water Rights Staff experience, this is likely to be an overestimate.

Summary of Hydrologic Budget

Estimates of recharge to the Altamont aquifer in Clark County, South Dakota range from approximately 6,715 ac-ft/yr to 54,000 ac-ft/yr. Table 3 shows a summary of appropriations discussed in the Discharge section which is for the Altamont aquifer throughout all of South Dakota. The estimated average annual withdrawal of all water rights/permits currently authorized to withdraw from the Altamont aquifer is 5,188 ac-ft/yr [3] [7] [6]. There are two future use permits reserving a total of 881 ac-ft/yr, for a total annual appropriation of 6,069 ac-ft/yr [3]. This application seeks to appropriate 55 ac-ft/yr. Even the bottom end of the estimated average annual recharge range to the Altamont aquifer in just Clark County exceeds total estimated average annual withdrawals from the Altamont aquifer in South Dakota. Therefore, based on the statewide hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 3: Summary of withdrawals/appropriations in the Altamont aquifer [3] [7] [6]

Type	Number	Est. Avg. Use (ac-ft/yr)
Irrigation, Reporting	53	2,417
Irrigation, too new to report	2	367
Standby	8	0
Non-Irrigation, reporting	5	566
Non-irrigation, non-reporting, volume limited by permit	1	81
All others authorized to withdraw	12	1,757
Subtotal, authorized to withdraw	81	5,188
Future Use	2	881
Total	83	6,069

Observation Wells

Administrative Rule of South Dakota (ARSD) 74:02:05:07 requires the Water Management Board to rely upon the record of observation wells in addition to other information in order to determine that recharge to the aquifer exceeds withdrawals. The Water Rights Program maintains 31 wells completed into the Altamont aquifer throughout South Dakota. The nearest observation well to this application completed into the Altamont aquifer is CK-78I, located approximately 12 miles southwest of this application. The next nearest observation well completed into the Altamont aquifer is CK-87A, located approximately 14 miles southwest of this application. Data for Observation Wells CK-78I and 87A are shown in Figure 2. Observation Wells CK-78I and CK-87A have suspect readings due to the presence of an orange sludge, which is believed to be an iron-oxidizing bacteria [8]. The presence of this sludge makes obtaining consistently accurate readings difficult. The measurements from CK-78I are not likely to be representative of the aquifer. Observation Well CK-87A may be representative of the portion of the Altamont aquifer that it is completed into. However, the readings are still suspect, especially after 2001 where the water levels rise in a similar pattern to a recharge curve if recharge curves

happened over decades. The only water right which is known by the Water Rights Program to have ceased withdrawals is the one held by the City of Clark, which started purchasing its water from another water distribution system in late 1998 [9], so the rise in water levels in Observation Well CK-87A is unlikely to be related to that. The nearest observation wells completed into the Altamont aquifer that appear to be functioning correctly are CK-78A, CK-76C, and CK-76D, all located approximately 17 miles west of this application. Data from those three observation wells is shown in Figure 3. In general, water levels rise when annual precipitation is higher than average and decline when annual precipitation is lower than average. Seasonal declines also occur due to seasonal pumping, but water levels generally increase after seasonal pumping ceases. Water levels following climate patterns means that the influence of natural fluctuations greatly outweighs the influence of withdrawals, and natural discharge is occurring in the aquifer. The Water Management Board considers natural discharge to be available for appropriation. Therefore, based on observation well water levels, there is reasonable probability unappropriated water is available for this application.

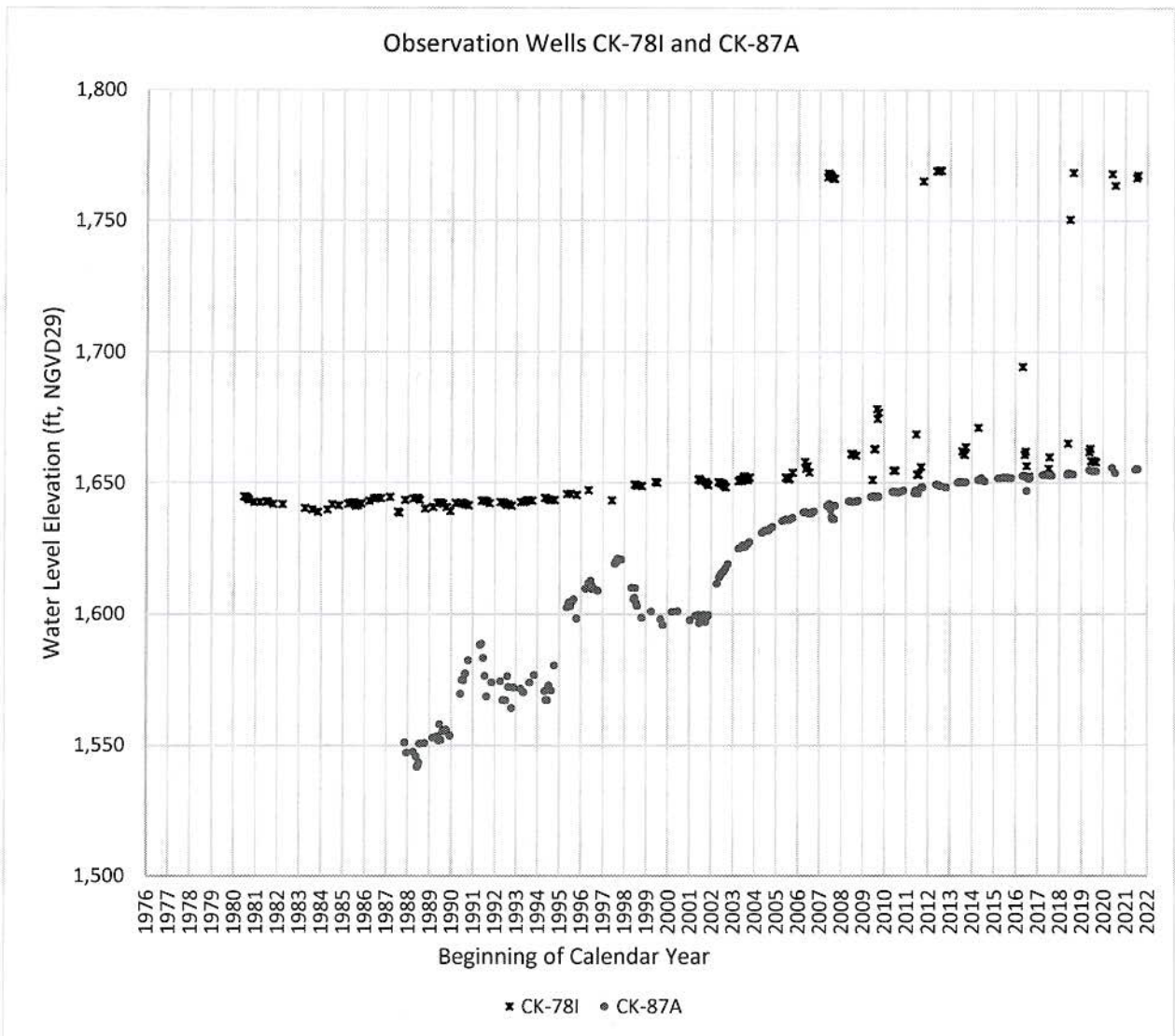


Figure 2: Water level elevations in Observation Wells CK-78I and CK-87A [8]

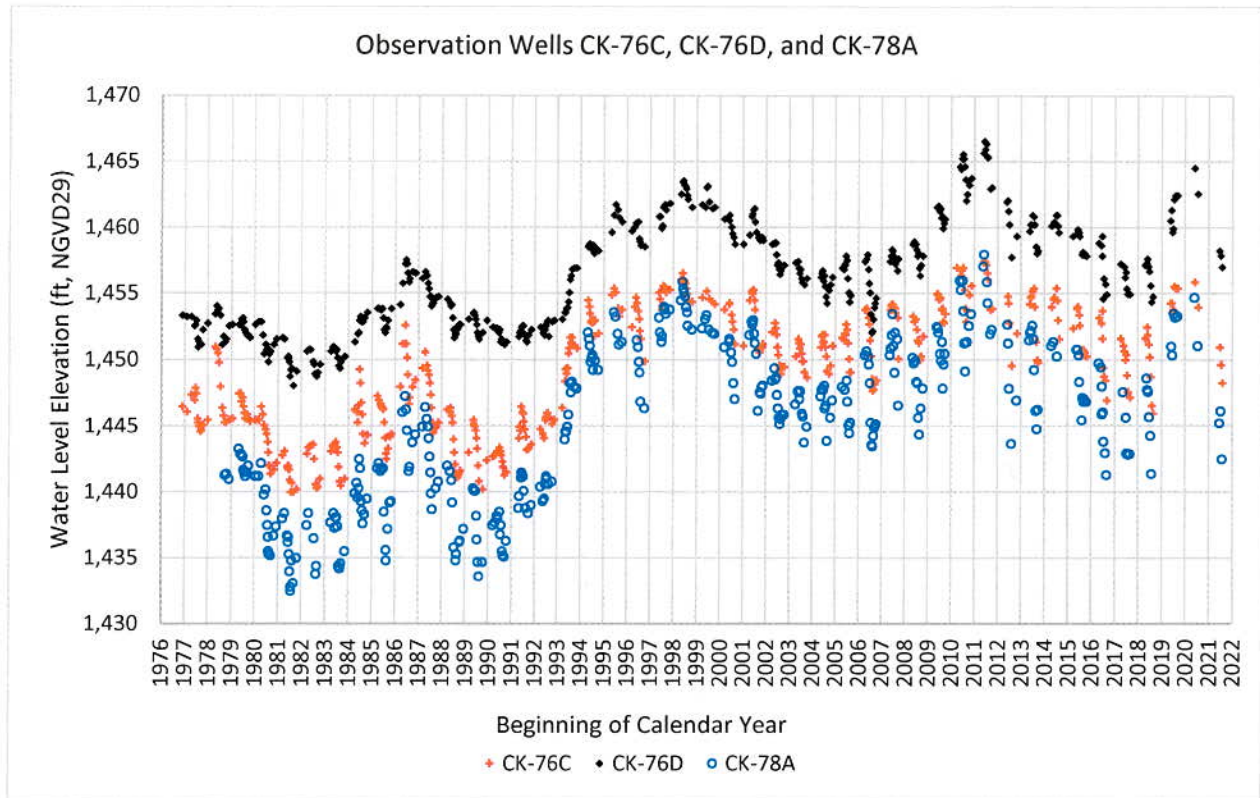


Figure 3: Water level elevations in Observation Wells CK-76C, CK-76D, and CK-78A [8]

Possibility of Unlawful Impairment of Existing Water Rights

The nearest water right/permit to this application is Water Right No. 4054A-3, held by the Town of Wallace, located approximately 5 miles northeast of this application. The Town of Wallace currently supplied its water from a rural water system [5]. The next nearest water right/permits to this application are Water Right Nos. 4127-3 and 4498-3, which are held by the Town of Garden City and located approximately 7 miles south of this application. The nearest domestic well on file with the Water Rights Program to this application that is likely completed into the Altamont aquifer is located approximately 1.7 miles southwest of this application [10].

The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) defines an adequate well 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

Exact drawdown behavior in an aquifer cannot be known without an aquifer performance test. In the hearing for Water Permit Application No. 2313-2 for Coca-Cola Bottling Company, the Water Management Board determined that to put the waters of the state to maximum beneficial use, hydraulic head would not be protected as a means of water delivery [11]. Some drawdown is likely to occur, so nearby water right owners may need to lower their pumps to access needed water. This application seeks to withdraw up to 55 acre-feet per year, which is equivalent to 0.076 cfs on average. Hamilton [2] indicates that most of the Altamont 2 has a transmissivity of 50,000 gallons per foot per day. Using a numerical solution for the Theis [12] [13] equation and assuming the storage coefficient in the aquifer is 0.00001 (an extremely low value for unconsolidated aquifers), drawdown in the aquifer after approximately 30 years would be 1.2 feet a quarter of a mile from the application and 0.95 feet 1.7 miles from the application. The Theis [12] equation does not account for recharge to the aquifer, or several other real-world conditions. In the area of this application, transmissivity is much higher than 50,000 gallons per foot per day, and perhaps up to 200,000 gallons per foot per day [2], so drawdown in the aquifer is likely to be less than those values. However, out of an abundance of caution, the applicant should control their withdrawals so that nearby water users with adequate wells completed into the Altamont aquifer can withdraw the water they need for reasonable domestic use. In 1980 and 1983, Water Rights Staff investigated whether irrigation wells in northwestern Clark County could be causing unlawful impairment of another water right and some dugouts that may be connected to the Altamont aquifer and concluded that no unlawful impairment occurred [14]. Other than that, there have been no complaints of well interference in Clark County [14]. Based on the lack of substantiated complaints of well interference, the high transmissivity of the aquifer, and the relatively low pump rate requested, there is reasonable probability this application can be developed without unlawful impairment of existing water rights or domestic users.

Conclusions

1. Water Permit Application No. 8570-3 seeks to appropriate 55 ac-ft/yr at a maximum instantaneous withdrawal rate of 0.11 cfs from one well to be completed into the Altamont aquifer located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5 for commercial use in an animal feeding operation located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5; all in T118N-R56W.
2. Based on the hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available for this application.
3. There is reasonable probability this application can be developed without unlawful impairment of existing water rights.



Kimberly C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

References

- [1] L. S. Hedges, S. L. Burch, D. L. Iles, R. A. Barari and R. A. Schoon, "Evaluation of ground-water resources eastern South Dakota and upper Big Sioux River, South Dakota and Iowa, Tasks 1-4," U.S. Army Corps of Engineers, Omaha, Nebraska, 1982.
- [2] L. J. Hamilton, "Geology and water resources of Clark County, South Dakota part II: water resources," SD DANR Geological Survey Program, Vermillion, SD, 1986. Bulletin 29.
- [3] SD DANR Water Rights Program, "Water right permit file database," SD DANR Water Rights Program, Pierre, South Dakota, 2021.
- [4] L. S. Hedges, J. Allen and D. E. Holly, "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, Omaha, Nebraska, 1985.
- [5] Drinking Water Program, "Your Water System Information," SD DENR Drinking Water Program, 9 February 2021. [Online]. Available: <https://denr.sd.gov/des/dw/sysinfo.aspx>. [Accessed 9 February 2021].
- [6] SD DANR Water Rights Program, "Non-Irrigation Yearly Reports," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2021.
- [7] SD DANR Water Rights Program, "Irrigation questionnaire summaries," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, SD, 2021.
- [8] SD DANR Water Rights Program, "Observation wells," Pierre, South Dakota, 2022.
- [9] B. Friedeman, Interviewee, *Environmental Scientist II, SD DANR Drinking Water Program*. [Interview]. 8 February 2022.
- [10] SD DANR Water Rights Program, "Well completion reports," Pierre, South Dakota, 2022.
- [11] South Dakota Water Management Board. *On the Matter of Water Permit Application No. 2313-2 for Coca Cola Bottling Company*, 1995.
- [12] C. V. Theis, "The relation between the lowering of the piezometric surface and the rate and duration of discharge of a well using ground water storage," *Ground Water Notes No. 5*, pp. 1-9, August 1952.

- [13] Y. Gao, P. Hsieh and S. Alexander, "Using excel for aquifer test," [Online]. Available: https://d32ogoqmya1dw8.cloudfront.net/files/NAGTWorkshops/hydrogeo/activities/Excel__Aquifer_Test.pdf. [Accessed 3 August 2021].
- [14] SD Water Rights Program, "County files," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2022.
- [15] N. N. G. Survey, "National Geodetic Vertical Datum of 1929," National Geodetic Survey, 12 July 2018. [Online]. Available: <https://geodesy.noaa.gov/datums/vertical/national-geodetic-vertical-datum-1929.shtml>. [Accessed 3 February 2022].

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, February 16, 2022 1:58 PM
To: johnw_hillcrest@itctel.com
Cc: Brian Friedrichsen (brian@dakotaenv.com)
Subject: Water Permit Application No. 8570-3
Attachments: 2558.pdf

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

Karen Schlaak

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



NOTICE OF APPLICATION NO. 8570-3 to Appropriate Water

Notice is given that Windy Ridge Hutterian Brethren Inc., c/o George Waldner, 1030 Hillcrest Dr, Garden City SD 57236 has filed an application for a water permit to appropriate 55 acre-feet of water annually at a maximum pump rate of 0.11 cubic feet of water per second from one well to be completed into the Altamont Aquifer (approximately 440 feet deep) located in the NE 1/4 SE 1/4 Section 5 for commercial use in a swine facility located in the NW 1/4 SE 1/4 Section 5; all in T118N-R56W. This site is located approximately 6 miles north of Garden City SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8570-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

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

opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 7, 2022.

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

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by March 7, 2022.

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

Published once at the
total approximate cost of \$41.66.
2-23-1t

Affidavit of Publication

State of South Dakota

§

County of Clark

William J. Krikac of said county, being first duly sworn, on oath says that he is the publisher of the **Clark County Courier**, a weekly newspaper printed and published in Clark in said County of Clark and has a full and personal knowledge of all the facts therein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

Windy Ridge Hutterian Brethren Inc.

a printed copy of which taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for

One

successive week(s), on the day of each week on which said newspaper was regularly published, to wit:

February 23, 2022

that the full amount of the fees for the publication of the annexed notice is

\$41.66

William J. Krikac

Subscribed and sworn to before me this

24th day of February, 2022

Karli Paulson

Notary Public
Clark County, South Dakota

My Commission expires: 02/09/2028



RECEIVED

FEB 28 2022

WATER RIGHTS
PROGRAM

LOCALiQ

Aberdeen News
Watertown Public Opinion

PO Box 630567 Cincinnati, OH 45263-0567

PROOF OF PUBLICATION

Schlaak
Windy Ridge Hutterian Brethren
1030 Hillcrest DR
Garden City SD 57236-2108

RECEIVED

MAR 07 2022

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA, COUNTY OF CODINGTON

The Watertown Public Opinion is, and during all the times hereafter mentioned was, a daily legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4, as amended, published at Watertown, Codington County, South Dakota, by Watertown Public Opinion; that the notice, order or advertisement, a printed copy of which is attached, was published in said newspaper in the issue dated:

02/23/2022

and that the fees charged are legal.
Sworn to and subscribed before on 02/23/2022

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$48.12

Order No: 6935036

Customer No: 717747

of Copies:

1

PO #:

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

SARAH BERTELSEN
Notary Public
State of Wisconsin

NOTICE OF
APPLICATION NO. 8570-3
to Appropriate Water

Notice is given that Windy Ridge Hutterian Brethren Inc., c/o George Waldner, 1030 Hillcrest Dr, Garden City SD 57236 has filed an application for a water permit to appropriate 55 acre-feet of water annually at a maximum pump rate of 0.11 cubic feet of water per second from one well to be completed into the Altamont Aquifer (approximately 440 feet deep) located in the NE 1/4 SE 1/4 Section 5 for commercial use in a swine facility located in the NW 1/4 SE 1/4 Section 5; all in T118N-R56W. This site is located approximately 6 miles north of Garden City SD. Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8570-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

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

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 7, 2022.

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

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

<https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by March 7, 2022.

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

Published once at the total approximate cost of \$43.12.
Feb. 23, 2022

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, February 16, 2022 10:56 AM
To: Watertown Public Opinon (legals@thepublicopinion.com)
Subject: 8570-3, Windy Ridge Hutterian Brethren
Attachments: 8570-3public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on February 23, 2022.

Windy Ridge Hutterian Brethren, Inc, c/o Geroge Waldner, 1030 Hillcrest Drive, Garden City SD 57236 (605 233-0251) has been notified to contact you to authorize publication and arrange for payment.

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

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

Karen Schlaak

DANR - Water Rights Program

(605) 773-3352

Website: <https://danr.sd.gov>



Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, February 16, 2022 10:56 AM
To: 'courier@itctel.com'
Subject: 8570-3, Windy Ridge Hutterian Brethren
Attachments: 8570-3public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on February 23, 2022.

Windy Ridge Hutterian Brethren, Inc, c/o Geroge Waldner, 1030 Hillcrest Drive, Garden City SD 57236 (605 233-0251) has been notified to contact you to authorize publication and arrange for payment.

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

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

Karen Schlaak

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





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

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

February 16, 2022

Windy Ridge Hutterian Brethren, Inc.
c/o George Waldner
1030 Hillcrest Dr
Garden City SD 57236

Dear Mr. Waldner:

Water Permit Application No. 8570-3 for commercial use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Clark County Courier printed at Clark SD (Ph # 605 532-3654) and the Public Opinion printed at Watertown SD (Ph # 605 886-6901). You will need to contact the newspapers 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 newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notice. The newspapers have also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
(605) 773-3352

enclosures

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

NOTICE OF APPLICATION NO. 8570-3 to Appropriate Water

Notice is given that Windy Ridge Hutterian Brethren Inc., c/o George Waldner, 1030 Hillcrest Dr, Garden City SD 57236 has filed an application for a water permit to appropriate 55 acre-feet of water annually at a maximum pump rate of 0.11 cubic feet of water per second from one well to be completed into the Altamont Aquifer (approximately 440 feet deep) located in the NE 1/4 SE 1/4 Section 5 for commercial use in a swine facility located in the NW 1/4 SE 1/4 Section 5; all in T118N-R56W. This site is located approximately 6 miles north of Garden City SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8570-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 7, 2022.

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

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by March 7, 2022.

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

Published once at the total approximate cost of



RECEIVED

MAR 10 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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

Petition

Opposing Application for a Water Right Permit

Application No. 8570-3 Name of Applicant Windy Ridge Hutterian Brethren

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The well was drilled before application
was submitted

List the reasons for your opposition to this application:

I ~~do~~ don't know if well was drilled to
State Specifications - like a test well?
Why do they get to receive this right
if they do not follow rules!

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Sandra Last Name: Roush

Mailing Address: 118 5th St E Unit 412

City: Northfield State: MN Zip: 55057

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 8570-3

Petitioner's Name Windy Ridge

Any additional description of the unique injury or reasons for opposing this application:

The proposed operation is to be constructed on a hill that is adjacent to a fishery. A 200 acre Waterfowl Production Area extends into the Slough that is a fishery. In contacting State and Federal Conservation personnel, none of them can do anything about the issue because part of W.P.A. is owned by State and part Federal. I have never seen such Bureaucratic dancing survive in over 20 years in the private sector.

The request for the Hi-Cap wells is now in Pierre for approval by Sept. 3, by the S.D. Dept. of Agriculture and Natural Resources. The CAFO (Commercial Agriculture Factory Operation) is said to be safe because it will have a pit for the animal waste. I have personally seen in winters with deep snow, the valve is opened because tractors can't get through the snow to spread the waste. The waste pits are constructed with concrete that with time crack and leak.

Assurances that the environment will be protected is not supported by their past behavior: Picking rocks off their field and depositing them on the land of an adjoining land owner; violating the required 35 foot distance from cultivated ground to the center of a roadway; cutting a Shelter Belt down that had an Eagle's nest- (stopped before they reached the tree that had the nest).

The biggest concern is the aquifer. A lot of area wells are there because of the high cost of Rural Water (\$50 per foot) from the Rural Water Line to the residence. Hi-Cap wells have lowered the water table and has resulted in contaminants seeping into aquifers. Study Aquifers. The damage is catastrophic and has pushed some states to LEGISLATIVELY eliminate and or make it very difficult for CAFO's to drill Hi-Cap wells.

Cap wells.
 It's about time we know if we're drilling
 for oil - or just for water.
 It's time to get to work on this
 right now!

[illegible]



RECEIVED
MAR 10 2022
WATER RIGHTS
PROGRAM

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

Petition

Opposing Application for a Water Right Permit

Application No. 8570 - 3 Name of Applicant Windy Ridge Hutterian Brethren
The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The well was drilled before
the application was submitted

List the reasons for your opposition to this application:

Because the well is already dug -
I just need to know if it ~~is~~ was done to
state specifications & guidelines?

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Daniel Last Name: Roush
Mailing Address: 118 5th St. E Northfield MN 55057
City: Northfield State: MN Zip: 55057

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 8570-3

Petitioner's Name Windy Ridge

Any additional description of the unique injury or reasons for opposing this application:

The proposed operation is to be constructed on a hill that is adjacent to a fishery. A 200 acre Waterfowl Production Area extends into the Slough that is a fishery. In contacting State and Federal Conservation personnel, none of them can do anything about the issue because part of W.P.A. is owned by State and part Federal. I have never seen such Bureaucratic dancing survive in over 20 years in the private sector.

The request for the Hi-Cap wells is now in Pierre for approval by Sept. 3, by the S.D. Dept. of Agriculture and Natural Resources. The CAFO (Commercial Agriculture Factory Operation) is said to be safe because it will have a pit for the animal waste. I have personally seen in winters with deep snow, the valve is opened because tractors can't get through the snow to spread the waste. The waste pits are constructed with concrete that with time crack and leak.

Assurances that the environment will be protected is not supported by their past behavior: Picking rocks off their field and depositing them on the land of an adjoining land owner; violating the required 35 foot distance from cultivated ground to the center of a roadway; cutting a Shelter Belt down that had an Eagle's nest- (stopped before they reached the tree that had the nest).

The biggest concern is the aquifer. A lot of area wells are there because of the high cost of Rural Water (\$50 per foot) from the Rural Water Line to the residence. Hi-Cap wells have lowered the water table and has resulted in contaminants seeping into aquifers. Study Aquifers. The damage is catastrophic and has pushed some states to LEGISLATIVELY eliminate and or make it very difficult for CAFO's to drill Hi-Cap wells.



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/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED
MAR 29 2022
WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 29, 2022

Hand Delivered

Rodney Freeman, Pre-Hearing Chairman
DANR – Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: *In the Matter of the Water Permit Application No. 8570-3, Windy Ridge
Hutterian Brethren*

Dear Chairman Freeman:

Enclosed please find a copy of the Chief Engineer's Motion to Dismiss Petitions
in Opposition and Certificate of Service in the above-entitled matter.

Respectfully,

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

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall (by hand-delivery) ✓
David McVey (by hand-delivery)
Sandra Roush (by U.S. mail)
Daniel Roush (by U.S. mail)

RECEIVED

MAR 29 2022

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	CHIEF ENGINEER'S
APPLICATION NO. 8570-3, WINDY)	MOTION TO DISMISS
RIDGE HUTTERIAN BRETHREN)	PETITIONS IN OPPOSITION
)	

Pending before the Board is a Water Permit Application No. 8570-3 by Windy Ridge Hutterian Brethren. The application seeks appropriation 55 acre-feet of water from the Altamont aquifer at a maximum instantaneous diversion rate of 0.11 cubic feet per second for commercial use in a swine facility. The proposed point of diversion is located in Clark County, approximately six miles north of Garden City, South Dakota. The Chief Engineer is recommending approval of the application. Pursuant to the provisions of SDCL § 46-2A-4, the matter was publicly noticed on February 23, 2022. In response to the notice, Water Rights received timely petitions in opposition to the project from Sandra Roush and from Daniel Roush. Though the petitions are timely, they fail to meet the requirements set forth in SDCL § 46-2A-4. Accordingly, the Chief Engineer moves to dismiss the petitions.

In 2021, the Legislature amended SDCL § 46-2A-4 to clarify and streamline the water right permitting process. In so doing, the Legislature provided for the submission of comments from any member of the public regarding a potential appropriation but restricted those individuals who may require and participate in a hearing to those who have alleged a unique

personal injury *and* that injury must fall within the regulatory authority of the Board. South Dakota Codified Law, section 46-2A-4 provides in pertinent part, as follows:

a person may only participate in the hearing if:

- (a) The person alleges that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general;
- (b) The person's injury concerns a matter either within the regulatory authority found in § 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by §§ 46-2-9 and 46-2-11, or both[.]

The Legislature imposed these restrictions believing that the review by the Water Rights staff, the Chief Engineer, and the Board protects the general public's interests. Furthermore, the Legislature was attempting to clarify and simplify the process and save the Board from receiving evidence and entertaining arguments regarding issues for which it does not have the authority to remedy.

Here, petitioners allege potential injuries which are not personally unique. Additionally, several of the alleged injuries do not fall within the regulatory authority of the Board. The petitions, attached hereto as Exhibit A and B, both generally provide that the unique injury suffered by petitioners is that "[t]he well was drilled before the application was submitted." Exhibits A and B. The additional description of the unique injury presented in each petition is identical. Those descriptions provide as follows:

The proposed operation is to be constructed on a hill that is adjacent to a fishery. A 200-acre Waterfowl Production Area extends in the Slough that is a fishery. In contacting State and Federal Conservation personnel, none of them can do anything about the issue because part of W.P.A. is owned by State and part Federal. I have never seen such Bureaucratic dancing survive in over 20 years in the private sector.

The request for the Hi-Cap wells is now in Pierre for approval by Sept. 3, by the S.D. Dept. of Agriculture and Natural Resources. The CAFO (Commercial Agriculture Factory Operation) is said to be safe because it will have a pit for the animal waste. I have personally seen in winters with deep snow, the valve is opened because tractors can't get through the snow to spread the waste. The waste pits are constructed with concrete that with time crack and leak.

Assurances that the environment will be protected is not supported by their past behavior. Picking rocks off their field and depositing them on the land of an adjoining landowner; violating the required 35-foot distance from cultivated ground to the center of a roadway; cutting a Shelter Belt down that had an Eagle's nest- (stopped before they reached the tree that had the nest).

The biggest concern is the aquifer. A lot of area wells are there because of the high cost of Rural Water (\$50 per foot) from the Rural Water Line to the residence. Hi-Cap wells have lowered the water table and has resulted in contaminants seeping into aquifers. Study Aquifers. The damage is catastrophic and has pushed some states to LEGISLATIVELY eliminate and or make it very difficult for CAFO's to drill Hi-Cap wells."

First, allegations regarding the time of the construction of the well*, the use of high-capacity wells, the siting of a CAFO, the method of project's waste disposal, the applicant's past actions or general concerns regarding the availability of unappropriated water or other general concerns regarding the

* There are circumstances under which it is permissible to drill a well without a permit. For instance, in this case, a permit was not required as the well was drilled for domestic and stock purposes (under 18gpm). The applicant is legally allowed to use the well for the purposes identified in Application No. 8570-3 as long as the use does not exceed reasonable domestic use [SDCL 46-1-6(7) and ARSD 74:02:01:01(1) and (7)]. The well, however, may not be used at the proposed pump rate until a permit is obtained.

aquifer are not potential injuries which would uniquely affect petitioners. See *Cable v. Union Co. Bd. of Commissioners*, 2009 S.D. 59, ¶ 26, 769 N.W.2d 817, 827. Rather, the effects of these potential injuries would be felt by the public in general and in the same manner or degree which petitioners may be affected. Moreover, because concerns regarding well construction, water diversions, and aquifers are shared by the general public, the Legislature has required the Chief Engineer and Water Rights staff to review an application for an appropriation to determine the availability of water and to protect existing rights. As such, petitioners have not demonstrated that they meet the standing requirements set forth in § 46-2A-4 to pursue an evidentiary hearing before the Board.

Furthermore, the alleged potential injuries regarding the siting of the CAFO, the method of project's waste disposal, and the applicant's past actions are not within the regulatory authority of the Board. Siting of a CAFO is controlled by local authorities. Methods of waste disposal are governed by permits issued by the Secretary of South Dakota Department of Agriculture and Natural Resources. See

<https://danr.sd.gov/Agriculture/Livestock/FeedlotPermit/default.aspx>.

Likewise, while other environmental permits have regulations prohibiting "bad actors", there are no such prohibitions with regard to the permitting process for a water appropriation.

Given that the alleged potential injuries set forth by petitioners are not unique to them and, in some instances, not within the regulatory authority of the Board, the Chief Engineer moves for the dismissal of the petitions. Additionally, since the hearing on the issuance of the permit is only required because of these two petitions, the Chief Engineer further requests an order authorizing the Chief Engineer to issue the permit rather than scheduling the permit for a full hearing before the Board.

Respectfully submitted this 29th day of March, 2022.



Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

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

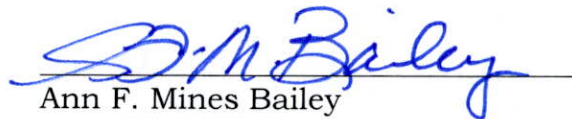
IN THE MATTER OF WATER PERMIT)	
APPLICATION NO. 8570-3, WINDY)	CERTIFICATE OF SERVICE
RIDGE HUTTERIAN BRETHREN)	
)	

The undersigned hereby certifies that true and correct copies of the Chief Engineer's Motion to Dismiss Petitions in Opposition, in the above matter, were served by U.S. mail, first class, postage prepaid, upon the following on this 29th day of March 2022:

Sandra Roush
118 5th Street E., Unit 412
Northfield, MN 55057

Daniel Roush
118 5th Street E.
Northfield, MN 55057

And on the same date the original was hand-delivered to Ron Duvall, DANR – Water Management Board, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; a copy was hand-delivered to Rodney Freeman, Pre-Hearing Chairman, DANR – Water Management Board, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; and a copy was hand-delivered to David McVey, Assistant Attorney General, Counsel for Water Management Board, Office of the Attorney General, 1302 East Highway 14, Suite 1, Pierre, SD 57501-8501.



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



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/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED

APR 01 2022

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 31, 2022

Rodney Freeman, Pre-Hearing Chairman
DANR - Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: *In the Matter of the Water Permit Application No. 8570-3, Windy Ridge
Hutterian Brethren*

Dear Chairman Freeman:

Upon review of the submissions, I filed on March 29, 2022, I discovered that I had inadvertently failed to serve the Applicant. Additionally, the exhibits referenced in the motion were not attached. My apologies. Enclosed please find an amended copy of the Chief Engineer's Motion to Dismiss Petitions in Opposition and Certificate of Service in the above-entitled matter.

Respectfully,


Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall (by inter-office mail) ✓
David McVey (by inter-office mail)
Sandra Roush (by U.S. mail)
Daniel Roush (by U.S. mail)
Windy Ridge Hutterian Brethren (by U.S. mail)

RECEIVED

APR 01 2022

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	AMENDED
APPLICATION NO. 8570-3, WINDY)	CHIEF ENGINEER'S
RIDGE HUTTERIAN BRETHREN)	MOTION TO DISMISS
)	PETITIONS IN OPPOSITION

Pending before the Board is a Water Permit Application No. 8570-3 by Windy Ridge Hutterian Brethren. The application seeks appropriation 55 acre-feet of water from the Altamont aquifer at a maximum instantaneous diversion rate of 0.11 cubic feet per second for commercial use in a swine facility. The proposed point of diversion is located in Clark County, approximately six miles north of Garden City, South Dakota. The Chief Engineer is recommending approval of the application. Pursuant to the provisions of SDCL § 46-2A-4, the matter was publicly noticed on February 23, 2022. In response to the notice, Water Rights received timely petitions in opposition to the project from Sandra Roush and from Daniel Roush. Though the petitions are timely, they fail to meet the requirements set forth in SDCL § 46-2A-4. Accordingly, the Chief Engineer moves to dismiss the petitions.

In 2021, the Legislature amended SDCL § 46-2A-4 to clarify and streamline the water right permitting process. In so doing, the Legislature provided for the submission of comments from any member of the public regarding a potential appropriation but restricted those individuals who may require and participate in a hearing to those who have alleged a unique

personal injury *and* that injury must fall within the regulatory authority of the Board. South Dakota Codified Law, section 46-2A-4 provides in pertinent part, as follows:

a person may only participate in the hearing if:

- (a) The person alleges that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general; [and]
- (b) The person's injury concerns a matter either within the regulatory authority found in § 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by §§ 46-2-9 and 46-2-11, or both[.]

The Legislature imposed these restrictions believing that the review by the Water Rights staff, the Chief Engineer, and the Board protects the general public's interests. Furthermore, the Legislature was attempting to clarify and simplify the process and save the Board from receiving evidence and entertaining arguments regarding issues for which it does not have the authority to remedy.

Here, petitioners allege potential injuries which are not personally unique. Additionally, several of the alleged injuries do not fall within the regulatory authority of the Board. The petitions, attached hereto as Exhibit A and B, both generally provide that the unique injury suffered by petitioners is that "[t]he well was drilled before the application was submitted." Exhibits A and B. The additional description of the unique injury presented in each petition is identical. Those descriptions provide as follows:

The proposed operation is to be constructed on a hill that is adjacent to a fishery. A 200-acre Waterfowl Production Area extends in the Slough that is a fishery. In contacting State and Federal Conservation personnel, none of them can do anything about the issue because part of W.P.A. is owned by State and part Federal. I have never seen such Bureaucratic dancing survive in over 20 years in the private sector.

The request for the Hi-Cap wells is now in Pierre for approval by Sept. 3, by the S.D. Dept. of Agriculture and Natural Resources. The CAFO (Commercial Agriculture Factory Operation) is said to be safe because it will have a pit for the animal waste. I have personally seen in winters with deep snow, the valve is opened because tractors can't get through the snow to spread the waste. The waste pits are constructed with concrete that with time crack and leak.

Assurances that the environment will be protected is not supported by their past behavior. Picking rocks off their field and depositing them on the land of an adjoining landowner; violating the required 35-foot distance from cultivated ground to the center of a roadway; cutting a Shelter Belt down that had an Eagle's nest- (stopped before they reached the tree that had the nest).

The biggest concern is the aquifer. A lot of area wells are there because of the high cost of Rural Water (\$50 per foot) from the Rural Water Line to the residence. Hi-Cap wells have lowered the water table and has resulted in contaminants seeping into aquifers. Study Aquifers. The damage is catastrophic and has pushed some states to LEGISLATIVELY eliminate and or make it very difficult for CAFO's to drill Hi-Cap wells.

Exhibit A and B.

First, allegations regarding the time of the construction of the well*, the use of high-capacity wells, the siting of a CAFO, the method of project's waste disposal, the applicant's past actions, general concerns regarding the availability of unappropriated water, or other general concerns regarding the

* There are circumstances under which it is permissible to drill a well without a permit. For instance, in this case, a permit was not required as the well was drilled for domestic and stock purposes (under 18gpm). The applicant is legally allowed to use the well for the purposes identified in Application No. 8570-3 as long as the use does not exceed reasonable domestic use [SDCL 46-1-6(7) and ARSD 74:02:01:01(1) and (7)]. The well, however, may not be used at the proposed pump rate until a permit is obtained.

aquifer are not potential injuries which would uniquely affect petitioners. See *Cable v. Union Co. Bd. of Commissioners*, 2009 S.D. 59, ¶ 26, 769 N.W.2d 817, 827. Rather, the effects of these potential injuries would be felt by the public in general and in the same manner or degree which petitioners may be affected. Moreover, because concerns regarding well construction, water diversions, and aquifers are shared by the general public, the Legislature has required the Chief Engineer and Water Rights staff to review an application for an appropriation to determine the availability of water and to protect existing rights and water sources. As such, petitioners have not demonstrated that they meet the standing requirements set forth in § 46-2A-4 to pursue an evidentiary hearing before the Board.

Furthermore, the alleged potential injuries regarding the siting of the CAFO, the method of project's waste disposal, and the applicant's past actions are not within the regulatory authority of the Board. Siting of a CAFO is controlled by local authorities. Methods of waste disposal are governed by permits issued by the Secretary of South Dakota Department of Agriculture and Natural Resources. See

<https://danr.sd.gov/Agriculture/Livestock/FeedlotPermit/default.aspx>.

Likewise, while other environmental permits have regulations prohibiting "bad actors", there are no such prohibitions with regard to the permitting process for a water appropriation.

Given that the alleged potential injuries set forth by petitioners are not unique to them and, in some instances, not within the regulatory authority of the Board, the Chief Engineer moves for the dismissal of the petitions. Additionally, since the hearing on the issuance of the permit is only required because of these two petitions, the Chief Engineer further requests an order authorizing the Chief Engineer to issue the permit rather than scheduling the permit for a full hearing before the Board.

Respectfully submitted this 31st day of March, 2022.



Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us



RECEIVED

MAR 10 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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

Petition

Opposing Application for a Water Right Permit

Application No. 8570 - 3 Name of Applicant Windy Ridge Hutterian Brethren

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The well was drilled before
the application was submitted

List the reasons for your opposition to this application:

Because the well is already dug -
I just need to know if it was done to
state specifications & guidelines?

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Daniel Last Name: Roush

Mailing Address: 48 5th St E Northfield MN 55057

City: Northfield State: MN Zip: 55057

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

EXHIBIT

A

Application No. 8570-3

Petitioner's Name Windy Ridge

Any additional description of the unique injury or reasons for opposing this application:

The proposed operation is to be constructed on a hill that is adjacent to a fishery. A 200 acre Waterfowl Production Area extends into the Slough that is a fishery. In contacting State and Federal Conservation personnel, none of them can do anything about the issue because part of W.P.A. is owned by State and part Federal. I have never seen such Bureaucratic dancing survive in over 20 years in the private sector.

The request for the Hi-Cap wells is now in Pierre for approval by Sept. 3, by the S.D. Dept. of Agriculture and Natural Resources. The CAFO (Commercial Agriculture Factory Operation) is said to be safe because it will have a pit for the animal waste. I have personally seen in winters with deep snow, the valve is opened because tractors can't get through the snow to spread the waste. The waste pits are constructed with concrete that with time crack and leak.

Assurances that the environment will be protected is not supported by their past behavior. Picking rocks off their field and depositing them on the land of an adjoining land owner; violating the required 35 foot distance from cultivated ground to the center of a roadway; cutting a Shelter Belt down that had an Eagle's nest- (stopped before they reached the tree that had the nest).

The biggest concern is the aquifer. A lot of area wells are there because of the high cost of Rural Water (\$50 per foot) from the Rural Water Line to the residence. Hi-Cap wells have lowered the water table and has resulted in contaminants seeping into aquifers. Study Aquifers. The damage is catastrophic and has pushed some states to LEGISLATIVELY eliminate and or make it very difficult for CAFO's to drill Hi-Cap wells.



Mr. Dan Roush
118 5th St E Apt 412
Northfield, MN 55057

SAINT PAUL MN 550

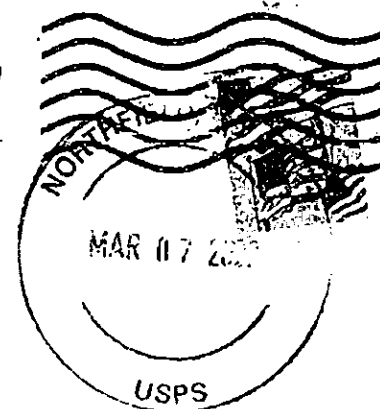
7 MAR 2022 PM 4 L

RECEIVED

MAR 10 2022

WATER RIGHTS
PROGRAM

DEPARTMENT OF AGRICULTURE & NATURAL
RESOURCES
JO FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SD 57501-3182



57501-339299





RECEIVED

MAR 10 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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

Petition

Opposing Application for a Water Right Permit

Application No. 8570-3 Name of Applicant Windy Ridge Hutterian Brethren

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The well was drilled before application
was submitted

List the reasons for your opposition to this application:

I ~~do~~ don't know if well was drilled to
State specifications - like a test well?
Why do they get to receive this right
if they do not follow rules!

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Sandra Last Name: Roush

Mailing Address: 118 5th St E Unit 412

City: Northfield State: MN Zip: 55057

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

EXHIBIT

B

Application No. 8570-3

Petitioner's Name Windy Ridge

Any additional description of the unique injury or reasons for opposing this application:

The proposed operation is to be constructed on a hill that is adjacent to a fishery. A 200 acre Waterfowl Production Area extends into the Slough that is a fishery. In contacting State and Federal Conservation personnel, none of them can do anything about the issue because part of W.P.A. is owned by State and part Federal. I have never seen such Bureaucratic dancing survive in over 20 years in the private sector.

The request for the Hi-Cap wells is now in Pierre for approval by Sept. 3, by the S.D. Dept. of Agriculture and Natural Resources. The CAFO (Commercial Agriculture Factory Operation) is said to be safe because it will have a pit for the animal waste. I have personally seen in winters with deep snow, the valve is opened because tractors can't get through the snow to spread the waste. The waste pits are constructed with concrete that with time crack and leak.

Assurances that the environment will be protected is not supported by their past behavior: Picking rocks off their field and depositing them on the land of an adjoining land owner; violating the required 35 foot distance from cultivated ground to the center of a roadway; cutting a Shelter Belt down that had an Eagle's nest- (stopped before they reached the tree that had the nest).

The biggest concern is the aquifer. A lot of area wells are there because of the high cost of Rural Water (\$50 per foot) from the Rural Water Line to the residence. Hi-Cap wells have lowered the water table and has resulted in contaminants seeping into aquifers. Study Aquifers. The damage is catastrophic and has pushed some states to LEGISLATIVELY eliminate and or make it very difficult for CAFO's to drill Hi-Cap wells.

[Faint, illegible handwritten text]

[Faint, illegible handwritten text]



Ms. Sandra Roush
118 5th St E Apt 412
Northfield, MN 55057

SAINT PAUL MN 550

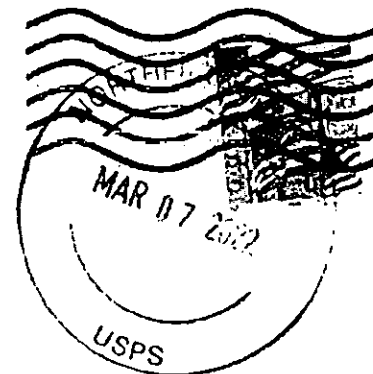
7 MAR 2022 PM 4 L

RECEIVED

MAR 10 2022

WATER RIGHTS
PROGRAM

DEPARTMENT OF AGRICULTURE & NATURAL
RESOURCES
JO FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SD 57501-3182



57501-339295



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

IN THE MATTER OF WATER PERMIT)	
APPLICATION NO. 8570-3, WINDY)	CERTIFICATE OF SERVICE
RIDGE HUTTERIAN BRETHREN)	
)	

The undersigned hereby certifies that true and correct copies of the Amended Chief Engineer's Motion to Dismiss Petitions in Opposition, in the above matter, were served by U.S. mail, first class, postage prepaid, upon the following on this 31st day of March 2022:

Sandra Roush
118 5th Street E., Unit 412
Northfield, MN 55057

Daniel Roush
118 5th Street E.
Northfield, MN 55057

Windy Ridge Hutterian Brethren, Inc.
1030 Hillcrest Drive
Garden City, SD 57236

And on the same date the original was mailed interoffice to Ron Duvall, DANR – Water Management Board, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; a copy was mailed interoffice to Rodney Freeman, Pre-Hearing Chairman, DANR – Water Management Board, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501; and a copy was hand-delivered to David McVey, Assistant Attorney General, Counsel for Water Management Board, Office of the Attorney General, 1302 East Highway 14, Suite 1, Pierre, SD 57501-8501.


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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

April 6, 2022

NOTICE OF HEARING

TO: Sandra Roush Daniel Roush Windy Ridge Hutterian
118 5th Street E., Unit 412 118 5th Street E. Brethren Inc.
Northfield, MN 55057 Northfield, MN 55057 1030 Hillcrest Drive
Garden City, SD 57236

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

David M. McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Notice of Hearing to Consider Chief Engineer's Motion to Dismiss Petitions

Windy Ridge Hutterian Brethren Inc. filed Application No. 8570-3 for a water permit to appropriate 55 acre-feet of water annually at a maximum pump rate of 0.11 cubic feet of water per second from one well to be completed into the Altamont Aquifer (approximately 440 feet deep) located in the NE 1/4 SE 1/4 Section 5 for commercial use in a swine facility located in the NW 1/4 SE 1/4 Section 5; all in T118N-R56W.

In response to the public notice published in the Clark County Courier and Aberdeen American New on February 23, 2022, two petitions postmarked March 7, 2022, were filed by Daniel and Sandra Roush opposing the water permit application. On March 31, 2022, an amended Chief Engineer's motion to dismiss the Roush petitions was submitted by Ann F. Mines Bailey and served on the Windy Ridge Hutterian Brethren Inc., Daniel and Sandra Roush, Pre-hearing Chairman Rodney Freeman, and David M. McVey, Assistant Attorney General as legal counsel for the Water Management Board.

This notice schedules a hearing before Pre-hearing Chairman Rodney Freeman to consider the Chief Engineer's Motion to Dismiss Petitions in Opposition to Water Permit Application No. 8570-3. The hearing to consider dismissal of the petitions in opposition will be held at 9:00 AM (Central Time) on April 12, 2022, via teleconference by calling 605-679-7263 and entering the Conference ID 484124806#.

The Pre-hearing Chairman has jurisdiction to consider this matter pursuant to South Dakota Codified Law (SDCL) 1-41-15.3 and 46-2-24. Decisions of the Pre-hearing Chairman may be appealed to the Water Management Board pursuant to provisions of SDCL 46-2-24.

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated April 6, 2022, concerning the Chief Engineer's motion, submitted March 31, 2022, to dismiss petitions in opposition was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on April 6, 2022.

Sandra Roush
118 5th Street E., Unit 412
Northfield, MN 55057

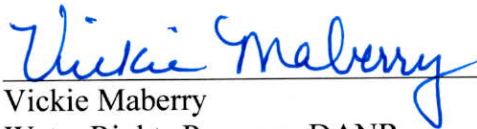
Daniel Roush
118 5th Street E.
Northfield, MN 55057

Windy Ridge Hutterian
Brethren Inc.
1030 Hillcrest Drive
Garden City, SD 57236

Above also Sent Inter-office to:

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

David M. McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



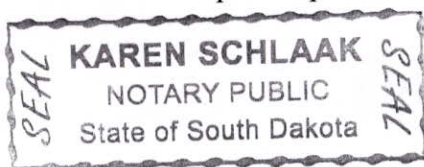
Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of April, 2022.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

April 13, 2022

NOTICE OF ENTRY OF ORDER

TO: Sandra Roush Daniel Roush Windy Ridge Hutterian
118 5th Street E., Unit 412 118 5th Street E. Brethren Inc.
Northfield, MN 55057 Northfield, MN 55057 1030 Hillcrest Drive
Garden City, SD 57236

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

David M. McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Pre-hearing Chairman's Order on Motion by Chief Engineer to Dismiss Petitions

Enclosed is Pre-hearing Chairman Rodney Freeman's order concerning the Chief Engineer's motion to dismiss petitions concerning Water Permit Application No. 8570-3, Windy Ridge Hutterian Brethren Inc. Based on the order, the Chief Engineer's motion to dismiss Sandra and Daniel Roush's petitions in opposition to Application No. 8570-3 is granted.

Pursuant to the Order and South Dakota Codified Law 46-2-24, the decision of the Pre-hearing Chairman may be appealed to the South Dakota Water Management Board. Any appeal of the decision shall be filed with the pre-hearing Chairman within ten days of the date of the pre-hearing chairman's ruling. To file an appeal with the pre-hearing chairman, mail to:

Pre-hearing Chairman Rodney Freeman
SD DANR Water Management Board
523 E Capitol Ave
Pierre SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 8570-3, WINDY	)	MOTION TO DISMISS PETITIONS IN
RIDGE HUTTERIAN BRETHREN	)	OPPOSITION
	)	

WHEREAS, pending before the Water Management Board (the "Board") is Water Permit Application No. 8570-3 by the Windy Ridge Hutterian Brethern; and

WHEREEAS, the Chief Engineer is recommending approval of the application;
and

WHEREAS, public notice regarding the matter was made on February 23, 2022 in compliance with SDCL §46-2A-4; and

WHEREAS, on March 10, 2022, the Water Rights Program ("Water Rights") received timely Petitions in Opposition to the project from Sandra Roush and Daniel Roush; and

WHEREAS, on March 29, 2022, the Chief Engineer, by and through Counsel, filed a motion to dismiss the Petitions in Opposition and the Motion was served on Petitioners by U.S. Mail, First Class, on that same day; and

WHEREAS, in his Motion to Dismiss, the Chief Engineer asserts that the allegations set forth in the Petitions in Opposition do not meet the requirements set forth in SDCL §46-2A-4 to be considered a valid petition in opposition, and therefore must be

dismissed. The Chief Engineer further requests an Order authorizing the Chief Engineer to issue the permit rather than scheduling the permit for a full hearing before the Board.

WHEREAS, on April 12, 2022 at 9:00 A.M., a hearing was held with Pre-Hearing Chair, Rodney Freeman, present were Petitioners Sandra Roush and Daniel Roush, the Applicant, Ann F. Mines-Bailey on behalf of the Chief Engineer and David M. McVey, Counsel to the Water Management Board. The Hearing was held to determine whether the allegations set forth in the Petitions in Opposition meet the requirements set forth in SDCL §46-2A-4, or in the alternative whether they should be dismissed for failure to comply with the statutory requirements.

DISCUSSION

SDCL §46-2A-4 contains two subsections that are specifically relevant to the matter before the Pre-Hearing officer:

Subdivision (4) requires an applicant to provide notice informing the public that an individual may only participate in the Hearing if:

- (a) The person alleges that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general;
- (b) The person's injury concerns a matter either within the regulatory authority found in § 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by §§ 46-2-9 and 46-2-11, or both; and
- (c) The person files a petition to oppose the application with the chief engineer and applicant within ten days of the published notice."

Subdivision (5) makes reference to the above and states that any petition in opposition to an application must contain:

- (a) A statement describing the unique injury upon approval of the application on the petitioner;

- (b) The reasons for the petitioner's opposition to the application; and
- (c) The name and mailing address of the petitioner or the petitioner's legal counsel.

In their Petitions in Opposition, petitioners allege potential injuries which are not personally unique and moreover, several of the alleged injuries do not fall within the regulatory authority of the Board. Petitioners' arguments on these points are set out more fully in their Petitions in Opposition and are addressed in the Chief Engineer's Motion to Dismiss the Petitions in Opposition.

On oral argument. Petitioners raised additional issues including disposition of hog carcasses, lack of access to Applicant's property to "see what they are doing," concerns about drainage, and potential impact on their existing well from the Applicant's Hi-Cap well, along with other miscellaneous issues. The first three issues, along with the miscellaneous issues, are not within the regulatory authority of the Board. As to the last issue regarding impact to their existing well, the Chief Engineer recommended approval of the Application pursuant to SDCL § 46-2A-9 finding, *inter alia*, that "1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights." (See The Recommendation of the Chief Engineer.) In other words, the Chief Engineer is aware that the well to be approved under application Water Permit No. 8570-3 will be located near domestic wells and other wells which may obtain water from the same aquifer, and nevertheless recommends approval of the Application subject to certain conditions. Having said that, this question is mooted by the fact that the Petitioners do not know which aquifer into which their well

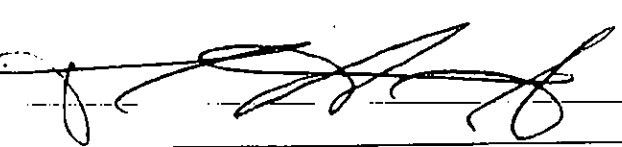
is drilled, and further it was not stated whether the well at issue is a legal, permitted well. If it is a legal, permitted well, it was considered in the Chief Engineer's analysis, if it not a legal well, the Board cannot consider it in relation to the requirements set forth in SDCL § 46-2A-9.

Based on the foregoing, the potential injuries alleged by the Petitioners would be felt by the public in general and in the same manner or degree which petitioners may be affected. Moreover, the concerns regarding well construction, water diversions, and aquifers are shared by the general public. As such, petitioners have not demonstrated that they meet the standing requirements set forth in § 46-2A-4(4) and (5) to pursue and participate in an evidentiary hearing before the Board.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion to dismiss the Petitions in Opposition to Application 8570-3 is GRANTED.
2. This Decision of the of the Pre-Hearing Chairman may be appealed to the Board pursuant to SDCL § 46-2-24.
3. Upon expiration of the time to appeal as set forth in SDCL §46-2-24, the Chief Engineer is authorized to issue the permit without further need for an evidentiary hearing.

Dated this 12th day of April, 2022.



Rodney Freeman, Jr.
Pre-Hearing Chairman
South Dakota Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated April 13, 2022, and Pre-hearing Chairman Freeman's Order granting the Chief Engineer's motion to dismiss petitions in opposition was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on April 13, 2022.

Sandra Roush
118 5th Street E., Unit 412
Northfield, MN 55057

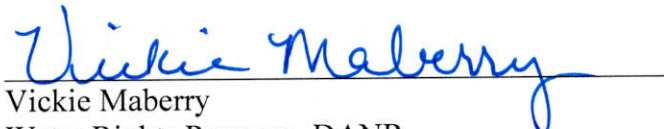
Daniel Roush
118 5th Street E.
Northfield, MN 55057

Windy Ridge Hutterian
Brethren Inc.
1030 Hillcrest Drive
Garden City, SD 57236

Above also Sent Inter-office to:

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

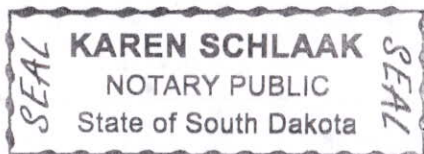
David M. McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of April, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



APR 14 2022

WATER RIGHTS
PROGRAMSTATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 8570-3, WINDY	)	MOTION TO DISMISS PETITIONS IN
RIDGE HUTTERIAN BRETHREN	)	OPPOSITION
	)	

WHEREAS, pending before the Water Management Board (the "Board") is Water Permit Application No. 8570-3 by the Windy Ridge Hutterian Brethern; and

WHEREEAS, the Chief Engineer is recommending approval of the application;
and

WIHEREAS, public notice regarding the matter was made on February 23, 2022 in compliance with SDCL §46-2A-4; and

WHEREAS, on March 10, 2022, the Water Rights Program ("Water Rights") received timely Petitions in Opposition to the project from Sandra Roush and Daniel Roush; and

WHEREAS, on March 29, 2022, the Chief Engineer, by and through Counsel, filed a motion to dismiss the Petitions in Opposition and the Motion was served on Petitioners by U.S. Mail, First Class, on that same day; and

WIHEREAS, in his Motion to Dismiss, the Chief Engineer asserts that the allegations set forth in the Petitions in Opposition do not meet the requirements set forth in SDCL §46-2A-4 to be considered a valid petition in opposition, and therefore must be

dismissed. The Chief Engineer further requests an Order authorizing the Chief Engineer to issue the permit rather than scheduling the permit for a full hearing before the Board.

WHEREAS, on April 12, 2022 at 9:00 A.M., a hearing was held with Pre-Hearing Chair, Rodney Freeman, present were Petitioners Sandra Roush and Daniel Roush, the Applicant, Ann F. Mines-Bailey on behalf of the Chief Engineer and David M. McVey, Counsel to the Water Management Board. The Hearing was held to determine whether the allegations set forth in the Petitions in Opposition meet the requirements set forth in SDCL §46-2A-4, or in the alternative whether they should be dismissed for failure to comply with the statutory requirements.

DISCUSSION

SDCL §46-2A-4 contains two subsections that are specifically relevant to the matter before the Pre-Hearing officer:

Subdivision (4) requires an applicant to provide notice informing the public that an individual may only participate in the Hearing if:

- (a) The person alleges that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general;
- (b) The person's injury concerns a matter either within the regulatory authority found in § 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by §§ 46-2-9 and 46-2-11, or both; and
- (c) The person files a petition to oppose the application with the chief engineer and applicant within ten days of the published notice."

Subdivision (5) makes reference to the above and states that any petition in opposition to an application must contain:

- (a) A statement describing the unique injury upon approval of the application on the petitioner;

- (b) The reasons for the petitioner's opposition to the application; and
- (c) The name and mailing address of the petitioner or the petitioner's legal counsel.

In their Petitions in Opposition, petitioners allege potential injuries which are not personally unique and moreover, several of the alleged injuries do not fall within the regulatory authority of the Board. Petitioners' arguments on these points are set out more fully in their Petitions in Opposition and are addressed in the Chief Engineer's Motion to Dismiss the Petitions in Opposition.

On oral argument. Petitioners raised additional issues including disposition of hog carcasses, lack of access to Applicant's property to "see what they are doing," concerns about drainage, and potential impact on their existing well from the Applicant's Ili-Cap well, along with other miscellaneous issues. The first three issues, along with the miscellaneous issues, are not within the regulatory authority of the Board. As to the last issue regarding impact to their existing well, the Chief Engineer recommended approval of the Application pursuant to SDCL § 46-2A-9 finding, *inter alia*, that "1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights." (See The Recommendation of the Chief Engineer.) In other words, the Chief Engineer is aware that the well to be approved under application Water Permit No. 8570-3 will be located near domestic wells and other wells which may obtain water from the same aquifer, and nevertheless recommends approval of the Application subject to certain conditions. Having said that, this question is mooted by the fact that the Petitioners do not know which aquifer into which their well

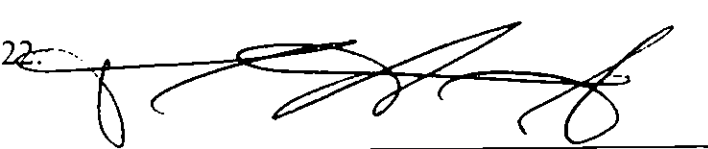
is drilled, and further it was not stated whether the well at issue is a legal, permitted well. If it is a legal, permitted well, it was considered in the Chief Engineer's analysis, if it not a legal well, the Board cannot consider it in relation to the requirements set forth in SDCL § 46-2A-9.

Based on the foregoing, the potential injuries alleged by the Petitioners would be felt by the public in general and in the same manner or degree which petitioners may be affected. Moreover, the concerns regarding well construction, water diversions, and aquifers are shared by the general public. As such, petitioners have not demonstrated that they meet the standing requirements set forth in § 46-2A-4(4) and (5) to pursue and participate in an evidentiary hearing before the Board.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion to dismiss the Petitions in Opposition to Application 8570-3 is GRANTED.
2. This Decision of the of the Pre-Hearing Chairman may be appealed to the Board pursuant to SDCL § 46-2-24.
3. Upon expiration of the time to appeal as set forth in SDCL §46-2-24, the Chief Engineer is authorized to issue the permit without further need for an evidentiary hearing.

Dated this 12th day of April, 2022:



Rodney Freeman, Jr.
Pre-Hearing Chairman
South Dakota Water Management Board



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

JUN 01 2022

Windy Ridge Hutterian Brethren Inc.
c/o George Waldner
1030 Hillcrest Drive
Garden City SD 57236

Dear Mr. Waldner:

Enclosed is Water Permit No. 8570-3 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

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

Sincerely,

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

enclosures

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 8570-3

I have this day, October 14, 2024, made a thorough examination of the water use system constructed by Widy Ridge Hutterian Brethren Inc, 1030 Hillcrest Dr, Garden City 57236 of Permit No. 8570-3, bearing the priority of December 14, 2021 authorizing the diversion of 0.11 cu. ft. per second of the waters of the Altamont Aquifer for commercial swine purposes, in Clark County.

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Pullman Well Drilling
- 2) No. of Wells 1
- 3) Depth(s) 440 feet
- 4) Well log is available Y

Casing:

- 1) Diameter 5 inches
- 2) Length 400 feet
- 3) Type Plastic

Screen:

- 1) Type PVC
- 2) Length 40 feet
- 3) Static water level 200 feet

Pump:

- 1) Make Submersible
- 2) Model Unknown
- 3) Size Unknown
- 4) Capacity 10 GPM

Motor:

- 1) Make Unknown
- 2) Model No. Unknown
- 3) Horsepower rating 7 1/2 hp

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

- 1) Type PVC
- 2) Size 2 inches
- 3) Length 1000 feet

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Y
- 2) Exceptions to compliance are: None

E. Condition and Location:

1. The system is in new condition with the point(s) of diversion located as follows: WELL LOCATION From the NE corner Sec 5 T118N R56W, 2980 ft S & 710 ft W, Lat 45.05672 Long -97.57838 (NE ¼ SE ¼).
2. The works are capable of diverting and conveying to the place of use 0.023 cu. ft. per second of water which is to be used for commercial swine use.

the license should be issued for 16.13 acre-feet and 0.023 cfs (10 gpm)

3. All structures, wells and lands on map Y

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

FSA maps and the ArcGIS program were used to construct the attached map.

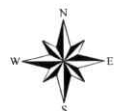
The address in the permit materials is current.

John Waldner (605/233-0251) is the contact person for the permit, and I talked to him on the phone.



Darrell DeBoer
Water Rights Inspector
DENR, Water Rights Program

Date report completed: October 21, 2024



0 500 1,000 2,000 3,000 4,000 Feet

RECEIVED

MAR 26 2025

NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USEOFFICE OF
WATER

Date

3-25-25

TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

FROM:

John Waldner

(name)

1030 Hillcrest Drive

(address)

Gardencity SD 57236

(city, state, zip)

605-233-0251

(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 8570-3 states that the water use system is to be constructed by

April 12, 2027

(date)

, and water is to be put to beneficial use by April 12, 2031

(date)

The water use system was completed on

12-20-24

(date)

Applying the water to beneficial use was completed on

1-10-25

(date)

You may schedule an investigation so that the water license may be issued.

John Waldner

(signature)





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

APR 07 2025

Windy Ridge Hutterian Brethren Inc
c/o John Waldner
1030 Hillcrest Dr
Garden City, SD 57236

No. 8570-3

Dear Mr. Waldner:

Enclosed is Water License No. 8570-3. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

For your information SDCL 46-6-27 requires that if in the future, the owner of an existing well, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

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

Sincerely,

Mark Mayer, PE
Director of Office of Water
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 8570-3

(1) Windy Ridge Hutterian Brethren Inc, c/o George Waldner, 1030 Hillcrest Dr, Garden City, SD 57236, made Application No. 8570-3, December 14, 2021, for a water permit to divert 55 acre-feet of water annually at a maximum rate of 0.11 cubic feet of water per second from groundwater, one well (Altamont Aquifer), Clark County, South Dakota for commercial use purposes in a swine facility. Permit No. 8570-3, with a priority date of December 14, 2021, was approved April 12, 2022, and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before April 12, 2027, and for the application to beneficial use of water on or before April 12, 2031.

The permit holder submitted a Notice of Completion of Works and Application of Water to Beneficial Use form on March 26, 2025. The Notice stated the diversion system was completed on December 20, 2024 and the water was placed to beneficial use on January 10, 2025.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert up to 16.13 acre-feet of water annually at a maximum rate of 0.023 cubic feet of water per second for beneficial use. The location of the diversion point is:

- 2,980 feet S & 710 feet W from the NE corner Section 5, T118N, R56W (NE ¼ SE ¼)
(Latitude 45.05672 and Longitude -97.57838)

(3) The water is to be used during the following described annual period: January 1 – December 31.

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

(5) Pursuant to South Dakota Water Law 46-5-30.1 Windy Ridge Hutterian Brethren Inc, the holder and/or owner of Water Right No. 8570-3 is issued a license to appropriate water, the right to use 0.023 cubic feet of water per second from groundwater, one well (Altamont Aquifer), with a priority date of December 14, 2021, from the location specified in (2) of this license for commercial use purposes in a swine facility.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 8570-3 and subject to the following qualifications:

1. The well approved under Water Permit No. 8570-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. Water Permit No. 8570-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.

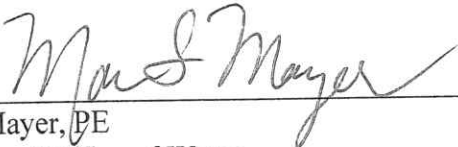
continued

3. Water Permit No. 8570-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:

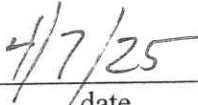
- a) Chapter 74:54:01 Ground Water Quality Standards,
- b) Chapter 74:54:02 Ground Water Discharge Permit,
- c) Chapter 74:51:01 Surface Water Quality Standards,
- d) Chapter 74:51:02 Uses Assigned to Lakes,
- e) Chapter 74:51:03 Uses Assigned to Streams, and
- f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions

4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Altamont Aquifer.

5. Water Permit No. 8570-3 authorizes a total annual diversion of 55 acre feet of water from the Altamont Aquifer. *(The total annual diversion from the Altamont Aquifer authorized under Water Right 8570-3 has been reduced to 16.13 acre-feet of water, based on the system as developed.)*



Mark Mayer, PE
Director of Office of Water



date

