

WATER PERMIT NO. 8696-3

Name of Applicant: Upland Hutterian Brethren Inc.

Address: 24221 412th Ave, Artesian SD 57304 Phone: 605 770-2620

Amount of Water Claimed: 0.09 cfs Total Acres: NA

Source of Water Supply: groundwater (Well #1)

Water to be used for: domestic County: Sanborn

Type of Waste Disposal System:

Location: 10 miles southwest of Artesian

PRIORITY Date Received: 12-30-22 Application/License Fee: \$XX

Corrected Application Received: Period of Annual Use: January 1 – December 31

Remarks:

Diversion Point: NE 1/4 NE 1/4 Sec 25-T105N-R60W

Land to be Irrigated: NA

Depth of Well: 175 feet deep

Well Driller:

Remarks:

Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 1-3-23

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

				⊗ well #1	
			25		

SOUTH DAKOTA
WATER PERMIT NO. 8696-3

Date of first receipt of application December 30, 2022.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 8696-3 to Upland Hutterian Brethren, Inc., c/o Clarence Wurtz, 24221 412th Avenue, Artesian SD 57314 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. 8696-3 appropriates up to 16.8 acre-feet of water annually at a maximum pump rate of 0.09 cubic feet of water per second (cfs) from one well completed into the Codell Aquifer (175 feet deep) located in the NE 1/4 NE 1/4 Section 25 to supply water for domestic uses located in the NE 1/4 Section 25; all in T105N-R60W.
2. The water appropriated shall be used for the purpose of domestic 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 of approval of Permit No. 8696-3 is March 20, 2023.
5. The date from which applicant may claim right is December 30, 2022.
6. One-fifth of the construction is to be completed on or before September 20, 2025.
7. All construction is to be completed on or before March 20, 2028.
8. Water is to be put to beneficial use on or before March 20, 2032.
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. 8696-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Codell aquifer.
3. Water Permit No. 8696-3 appropriates up to 16.8 acre-feet of water annually.

WATER MANAGEMENT BOARD

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

MAY 11 2023
date



DEC 30 2022

OFFICE OF
WATER

PAID

DEC 30 2022

Ck# 36503

Rec't#

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8696-3</u> (office use only) Hydrologic Unit <u>10160011</u>
	Basin <u>James River</u>
	Newspaper <u>Sanborn Weekly Journal</u> <u>796-4221</u> (Thurs) <u>Plainsman 353-7414</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 UPLAND HUTTERIAN BROTHERS, INC.
Mailing Address 24221 412TH AVENUE, ARTESIAN SD 57314
(Address) (City) (State) (Zip Code)
Phone (605) 996-7105 Mobile (605) 770-2620 Email clarence@uplandhb.com
- Amount of water claimed 0.09 *CFS or 16.8 **GPM and 16.8 ***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 CODELL AQUIFER
- Location of point of diversion 1 WELL IN NE1/4 OF NE1/4 SECTION 25 T105N R60W County SANBORN
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☒ Yes ☐ No
If "Yes," where will water be used? NE1/4 SECTION 25 T105N R60W
(example - NW1/4 section 12-T104N-R53W)
- County or counties where water will be used SANBORN
- 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)

SEE ATTACHED LETTER

I, Clarence Wurtz, 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 _____ Have test holes been drilled ☐ Yes ☐ No Drilled by _____
(if yes, please provide copies of logs)

b) If existing wells, how many 1 Provide copy of log(s), if available. Drilled by PULLMAN

For either Existing or Proposed Wells:

c) Well Depth (required) 175 Depth to Top of Water Bearing Material 125 Depth to Water from Surface 73

d) Distance to nearest domestic well on applicant's property 575' Property owned by others 6000'

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) WASTEWATER TREATMENT POND

b) System Capacity (gallons) UNKNOWN, EST. 3 MILLION GALLONS Year Constructed EST. 1978

c) Connected to the City of _____ Sanitary System

3. Dugout Information

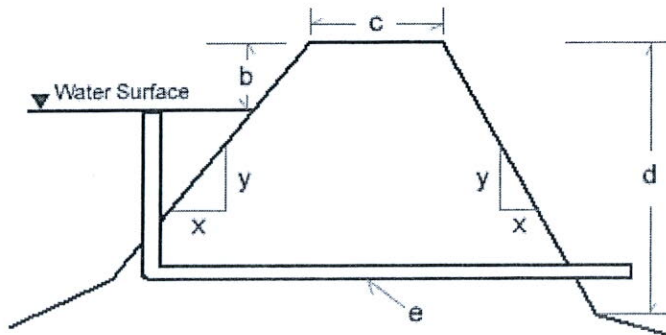
a) Surface Dimensions _____ Depth _____

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

UPLAND HBI DIVERSION POINT WELLS



1 inch = 1,000 feet

Mitchell, So. Dak.

WELL REPORT

Sanborn County
NE 4-25-105-60

Spring Valley Farm
OWNER

May 12, 1978

DATE

CASING LOG

Depth	ft.	DESCRIPTION	ft.
175	ft.	6" PVC Plastic pipe to	175 ft.
Flows	gpm		
Pumps	45 gpm	pipe to	ft.
Head	73 ft.	pipe to	ft.
50 Ft. Slotted & bottom Perforations	ft.	pipe to	ft.

REMARKS

Dug 12 3/4" Hole

6,000# Concrete Sand

Rig No. 12

Jeraine Pullman
DM Foreman

Pressure

2 days

Drilling Time



Mr. Spring Valley Farm

P. O. 57301

Phone 996-1123

Tenant 539-1361

Tenant P. O.

Location NE 4-25-105-60-Sanborn County

Size 6" PLASTIC

Completed May 12, 1978

By Jeraine Pullman

FOREMAN

Rig. No. 12

Contract April 12, 1978

By

Drill

Well Report

Drill Log Enclosed

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date December 30, 2022

RECEIVED OF Upland Hutterian Brethen Inc. 24221 412th Avenue Artesian SD 57314

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

Fee for Application for Permit No. <u>8696-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>100.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8696-3</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>300.00</u>

By Eric Gronlund
Chief Engineer
vm



531386881

B0205-3791 01/14/2022 10:32AM Rec'd by SD SOS

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

2022
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:

NS007068
BUSINESS ID

UPLAND 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

24221 412TH AVE
ARTESIAN, SD 57314-6009

Mailing Address

24221 412TH AVE
ARTESIAN, SD 57314-6009

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 **JEFFREY T. SVEEN**

Actual Street Address in this State

415 S MAIN ST 400 CAPITOL BLDG
ABERDEEN, SD 57401-4364

Mailing Address in this State

PO BOX 490
ABERDEEN, SD 57402-0490

5. The names and addresses of its principal officers.

Title	Name	Address
President	MARK WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
Vice President	CLARENCE WURTZ JR	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
Treasurer	CLARENCE WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
Secretary	CLARENCE WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009

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

Name	Address
KENNY WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
MARK WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
TIM WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
CLARENCE WURTZ	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009
PAUL WIPF	24221 412TH AVENUE, ARTESIAN, SD, 57314-6009



CLARENCE WIPF JR

24221 412TH AVENUE, ARTESIAN, SD, 57314-6009

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).

01/14/2022

Dated

Email (Optional)

CLARENCE WURTZ

Signature of an Authorized Person

CLARENCE WURTZ

Printed Name

B0205-3792 01/14/2022 10:32AM Rec'd by SD SOS



DAKOTA ENVIRONMENTAL, INC.

Engineers...Hydrogeologists...Geologists...Remedial Specialists

December 27, 2022

Eric Gronlund
South Dakota DENR Water Rights
523 East Capitol
Pierre, SD 57501

Re: Upland HBI, Sanborn County, SD
DEC Project No. 22021

Dear Mr. Gronlund:

The following is provided as a description of the proposed applications.

Upland HBI proposes to obtain Water Rights Permits for seven existing wells split between three systems used to supply various existing uses on their property, at the locations described on the application forms and map.

The first application is made for well #1, which supplies drinking and domestic use water to the housing development. Wastewater from this system reports to a domestic wastewater pond. Application is made for the pump rate in this well and an annual usage of 16.8 acre feet.

The second application is made for five existing wells which supply water to various animal confinements located in section 25. All wastewater from these confinements reports to a common animal waste management storage pond system located in section 36. The wells are located as follows:

- #2: NE1/4 of NE1/4 Section 25, T105N R60W
- #3: SE1/4 of NW1/4 Section 25, T105N R60W
- #4: SE1/4 of NW1/4 Section 25, T105N R60W
- #5: SW1/4 of SE1/4 Section 25, T105N R60W
- #6: SW1/4 of SE1/4 Section 25, T105N R60W

RECEIVED

DEC 30 2022

OFFICE OF
WATER

Well #2 was drilled into the Dakota Formation in 1978, though a log of this well has not been located. It is used to supply water to the portion of the swine confinement located nearby. Application has been made for the installed pump rate (55gpm) and an annual use of 15 acre feet.

Well #3 is a Dakota Formation well used as the main supply for a group of swine barns near its location. Application has been made for the installed pump rate (55gpm) and an annual use of 31.25 acre feet. The well log provided for this well lists a legal location that is believed to be incorrect, as review and process of elimination with the owner indicates that this log could not represent any other well drilled to similar depth at the indicated date.

Well #4 is a Dakota Formation well that serves as a backup for well #3. It is not used concurrently with well #3 and is believed to have plugged screens. It has a 55gpm pump in

place, though since it is not used concurrently, no additional withdraw rate or annual use is included for this well.

Well #5 is a Dakota Formation well that is used as a backup supply for the group of nearby swine barns. This well is also believed to be mostly plugged and is not used concurrently with well #6, which is the primary supply for this group of barns. A 55gpm pump is in place, which is not included in the withdraw rate or annual use.

Well #6 is drilled into the Codell Formation and is the primary well for the group of nearby swine barns. Application has been made for a 55gpm pump rate and an annual use of 13 acre feet.

Individual copies of Form 2A are included for each well for which a log was located.

In summary, this application requests 110 gpm withdraw rate and 46.25 acre feet annual use from the Dakota Aquifer, as well as 55 gpm and 13 acre feet annual use from the Codell Aquifer, for a total of 165 gpm and 59.25 acre feet. This includes the combined pump rate of wells 2, 3, and 6, and the total annual usage.

The third application is made for well #7, which is a Dakota Formation well drilled in 2017 which has been unused until the construction of two swine barns in section 36. These barns will be supplied by well #7 and will utilize their own containment system independent of any other animal confinements. Application is made for the installed pump rate of 55gpm and an annual use of 24.9 acre feet.

We hope you will find the enclosed information adequate for review of this application. As always, please feel free to contact us if you have any questions or require additional information.

Sincerely,



Brian Friedrichsen, PE
Senior Engineer

Schlaak, Karen

From: Gronlund, Eric
Sent: Tuesday, December 27, 2022 8:12 AM
To: Schlaak, Karen
Subject: FW: [EXT] upland HBI

Background email on HBI applications.

From: Gronlund, Eric
Sent: Thursday, December 30, 2021 3:45 PM
To: Brian Friedrichsen <brian@dakotaenv.com>
Cc: Mathiowetz, Adam (DENR) <Adam.Mathiowetz@state.sd.us>
Subject: RE: [EXT] upland HBI

Upon closer review of the completion report for Well No. 6, Water Rights believe it is actually in the Codell. That likely simplifies things a little.

From: Brian Friedrichsen <brian@dakotaenv.com>
Sent: Thursday, December 30, 2021 2:12 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Re: [EXT] upland HBI

Eric,

attached is a scan with the copies of the well logs corresponding to the map I sent the other day. The only one we can't find a log for is #2.

The log for #3 says it should be in the next section south, but it must be wrong. The owners claim that the #3 location would be the only match for that date and depth.

I did some digging around in the sanborn county study, as well as the hanson/davison study. Also looked at some other area logs. There isn't much that shows up for outwash above the bedrock, and it appears the codell is the first source, in the range of depth of the shallower wells in this packet. Not sure about #6, where they call it pleistocene unknown. That well is the primary supply for those two barns, but they also don't have a very high demand.

In any case, see if any of this sheds any light on any of it.

Thanks,

Brian

On Thu, Dec 30, 2021 at 11:16 AM Brian Friedrichsen <brian@dakotaenv.com> wrote:

Eric,

OK. I have not had a chance to look into this any further since I sent that info. I've intended to look over the studies to see if the units could be identified, just haven't got that far yet.

Brian

On Thu, Dec 30, 2021 at 10:54 AM Gronlund, Eric <Eric.Gronlund@state.sd.us> wrote:

Brian – I spoke with our lead groundwater engineer. The only red flag from a water availability standpoint is Well No. 6 that is identified as PS:U aquifer. Often times little is known about PS:U for the purpose of determining recharge which is a key component on whether there is a reasonable probability there is unappropriated water available. Eric

From: Gronlund, Eric
Sent: Tuesday, December 28, 2021 4:48 PM
To: Brian Friedrichsen <brian@dakotaenv.com>
Cc: Schlaak, Karen <Karen.Schlaak@state.sd.us>
Subject: RE: [EXT] upland HBI

Brian: There are a variety of ways to apply but the following seems to be the clearest path to follow.

First, I note that your email deals with volumes and not pump rate. Please remember water rights are administered based on peak pump rate and not average. Each application needs to specify a peak pump rate and an annual volume. You are wish to provide for a contingency to insure Upland is not under-permitted. Saying that my guess is since these are existing wells that Upland representative are not aware of the pumps placed in the wells. In may be a situation where the company that works on their wells may need to be contacted to get the pump rating.

The determining factor on whether a water permit is needed is whether reasonable domestic use (RDU) is exceeded. Reasonable domestic use is defined as the use of 25,920 gpd or less as necessary for domestic purposes, with a maximum pumping rate of 25 gpm.

1. Apply for Well No. 1 which is the well used by the Upland's residents. A permit is only required if RDU is exceeded. The calculated annual volume with contingency is 22,500 gpd which is under the 25,920 gpd. So the determining factor on whether a water right permit is required for Well No. 1 is whether the peak pump rate exceeds 25 gpm.
2. Apply for Well Nos. 2 – 6 all on one application. Based on your calculation RDU is exceeded so a permit is required. Based on your email wastewater from the confinement facilities served by these wells all goes to the same lagoon – so there is a connection here that leads me to a conclusion that this is part of one water use system. Since difference water sources are involved the application should specify the diversion rate and annual volume from each source. Note on the application that Well No. 2 does act as a back up to Well No. 1 which supplies the residents of the colony. Any additional sheet of paper to explain all this may be needed.
3. Well No. 7. This is located some distance away from the other colony facilities and you state it will have a separate wastewater handling system. Whether a water permit will be required is dependent on if either criteria of RDE is exceeded. Your email does not specific a pump rate or annual volume estimate for the yet to be built swine finishing barns.

Hope this helps. Eric

From: Brian Friedrichsen <brian@dakotaenv.com>
Sent: Tuesday, December 28, 2021 11:54 AM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: [EXT] upland HBI

Eric,

attached is the map we discussed yesterday. I have marked the well locations on the map, the narrative to match is below.

Well #1 - this is a 175' deep well (assume Codell?) drilled in 1978. It supplies the houses. Estimating 75 gallons per person per day x 200 persons max is 15000 gallons per day. Add another 50% for contingency and its 22500.

Well #2 - this is a deep well into the dakota, was drilled about the same time as #1, but haven't been able to locate a log yet. It serves the hog confinement northeast of it, as well as the barns in the yard that housed the dairy (currently unoccupied, they have quit the dairy business). Going through the animal numbers, still including the dairy, estimate around 18000 gallons per day. Without the dairy it would drop to around 13500. This well is also plumbed into the distribution system for #1 to serve as an emergency backup, but the connection is closed during normal operation.

Well #3 - this well is the primary well for the group of swine barns to the immediate south. It is a dakota well. At max population of these barns, estimate around 29000 gallons per day.

Well #4 - this is an older dakota well also serving the same group of barns as #4. I'm told it is rarely used as they believe the screens are mostly plugged. 3 and 4 serve only this group of barns.

Well #5 - This is a dakota well, serves as a backup well to the swine barns to the immediate east. Also one that they believe the screens are mostly plugged.

Well #6 - a 140' deep well (log states pleistocene series - unknown) that is the primary for this group of barns. Estimated demand for the animals in these barns is around 12000 gallons per day. These two wells do not connect to any other use.

Well #7 - A dakota well drilled in 2017 but unused until now. It is the intended supply for two new swine finishing barns drawn in red to the southeast. We estimate the use for these two barns at 24000 gallons per day if all swine were at max weight at the same time, which isn't actually realistic.

As far as wastewater goes, the houses have a lagoon system, while the animal populations served by wells 2-6 all use the large pond to the east of well #7 for storage. The new barns served by well #7 are self contained and will not use the pond system.

Please take a look, give me a call with any questions, and let me know your thoughts for the best way to assemble an application (or applications?) for this outfit might be.

Thanks,

--

Brian Friedrichsen

Dakota Environmental

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Brian Friedrichsen

Dakota Environmental

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Brian Friedrichsen

Dakota Environmental



**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. 8696-3, Upland Hutterian Brethren, Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 8696-3, Upland Hutterian Brethren, Inc., c/o Clarence Wurtz, 24221 412th Avenue, Artesian SD 57314.

The Chief Engineer is recommending APPROVAL of Application No. 8696-3 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. 8696-3 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Codell aquifer.
3. Water Permit No. 8696-3 appropriates up to 16.8 acre-feet of water annually.

See report on application for additional information.

Eric Gronlund, Chief Engineer
February 28, 2023

Report to the Chief Engineer
Water Permit Application No. 8696-3
Upland Hutterian Brethren Inc.
February 26, 2023

Water Permit Application No. 8696-3 for Upland Hutterian Brethren Inc., c/o Clarence Wurtz, proposes to appropriate up to 16.8 acre-feet of water annually from the Codell aquifer. The diversion point is one well (175 feet deep) with a maximum diversion rate of 0.09 cubic feet per second (cfs) located in the NE ¼ NE ¼ Section 25-T105N-R60W for domestic use. The facilities for domestic use are located in Sanborn County approximately 10 miles south of Artesian, SD.

The applicant has also applied (Water Permit Application Nos. 8697-3) to appropriate water for commercial use from one other well completed into the Codell aquifer for up to 13 acre-feet of water at a diversion rate of 0.12 cfs and four wells completed into the Dakota aquifer in the vicinity of the wellsite for this application. Water Permit Application Nos. 8697-3 is being reviewed in a separate report.

Aquifer: Codell

Hydrogeology

The permeable and saturated portions of the Codell Sandstone make up the Codell aquifer. The Codell Sandstone is a member of the Cretaceous aged Carlile Shale (Tomhave and Schulz, 2004). The Codell Sandstone underlies approximately 7,750 square miles (4,960,000 acres) of South Dakota east of the Missouri River with an estimated 9,895,700 acre-feet of recoverable water in storage (Hedges et al, 1982). In eastern South Dakota, the Carlile Shale can directly underlie the Niobrara Formation or directly underlie glacial deposits where the Niobrara Formation is absent (Tomhave and Schulz, 2004).

The Carlile Shale underlies all of Sanborn County with the Codell Sandstone underling approximately 560 square miles (358,400 acres) of the county with an estimated amount of recoverable water in storage of approximately 716,800 acre-feet (Steece and Howells, 1965 and Hedges et al, 1982). In Sanborn County, the Codell consists of a light gray, moderately hard, medium sandstone and has an average thickness of 45 feet (Steece and Howells, 1965).

A well completion report was submitted with this application. The well was drilled in May of 1978 with a reported water level of 73 feet (ft). The drillers log reports encountering the Codell at 125 to 170 ft below grade. The Codell well completion report for Application No. 8697-3 completed in June 2017 is located approximately 0.7 miles to the south of the wellsite for this application. This well completion report indicates that the Codell was encountered at 120 ft below grade to the total well depth of 140 ft and static water level was 85 ft below grade. These well completion reports, along with other well completion reports in the area, indicate that the aquifer is under confined conditions in the vicinity of the well site for this application (Water Rights, 2023a, SDGS, 2023). The June 2017 well completion report also indicates that 55 ft of artesian head pressure was available in the aquifer at the time the well was completed.

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

Pursuant to SDCL 46-2A-9, “A permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant’s proposed use, that the diversion point 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 as defined by SDCL 46-2-9 and 46-2-11.” This report section will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within this portion of the Codell aquifer.

Water Availability

Water Permit Application Nos. 8696-3 proposes to appropriate water from the Codell aquifer for domestic use. The probability of unappropriated water being available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires, “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and the application is for a water distribution system defined in SDCL 46-1-6 (17), the Board need not consider the recharge/withdrawal issue. Although, this application is for a water distribution system as defined in SDCL 46-1-6 (17), the Codell aquifer is not older and stratigraphically lower than the Greenhorn Formation and therefore, the withdrawal/recharge issue must be considered.

Observation Wells

In determining the availability of unappropriated water for a permit application, Administrative Rule 74:02:05:07 requires the Water Management Board to rely on the record of observation well measurements, in addition to other data, to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated annual recharge.

The Water Rights Program monitors 22 observation wells completed into the Codell aquifer (Water Rights, 2023c). The nearest observation wells to the well site for this application are observation wells HS-79C, DN-79C, MR-79C, and SA-77A. Observation well HS-79C is located approximately 9.7 miles to the southeast and the hydrograph for this well is shown in Figure 1. Observation well DN-79C is located 11.2 miles to the southwest and the hydrograph for this well is shown in Figure 2. Observation well MR-79C is located 12.7 miles to the southwest and the hydrograph for this well is shown in Figure 3. Observation well SA-77A is located 13.3 miles to the southwest and the hydrograph for this well is shown in Figure 4.

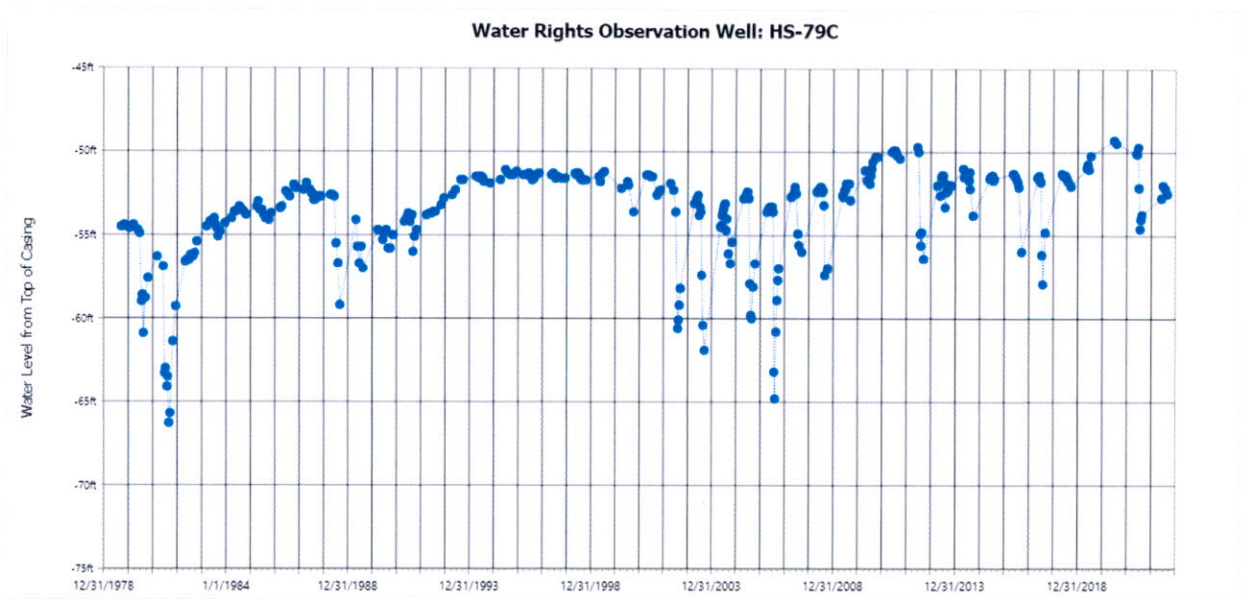


Figure 1: Hydrograph for observation well HS-79C (Water Rights, 2023c)

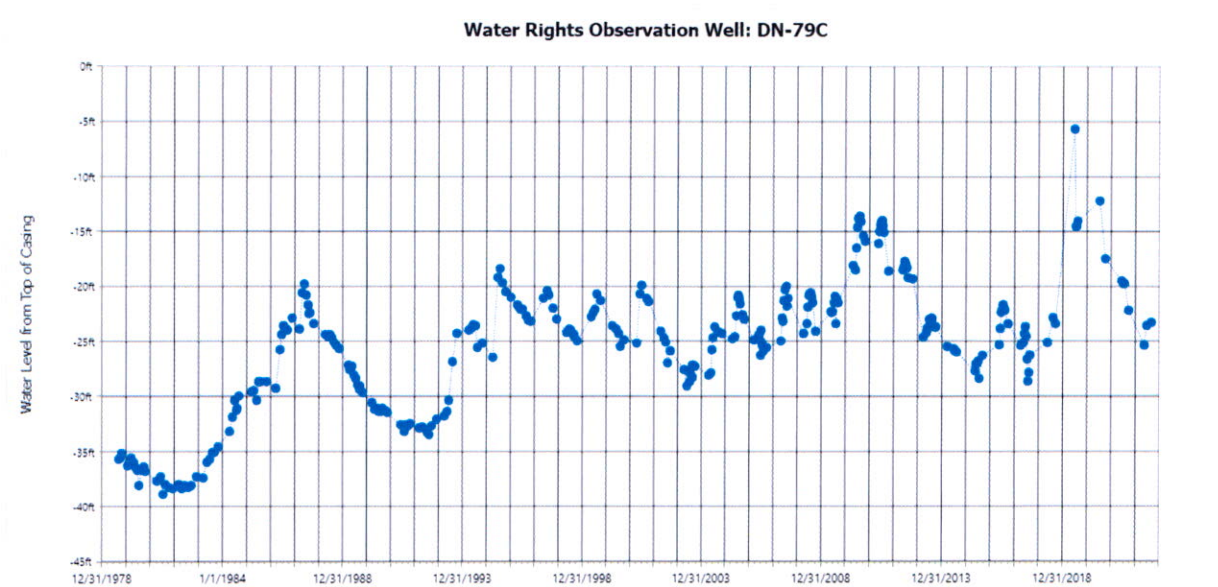


Figure 2: Hydrograph for observation well DN-79C (Water Rights, 2023c)

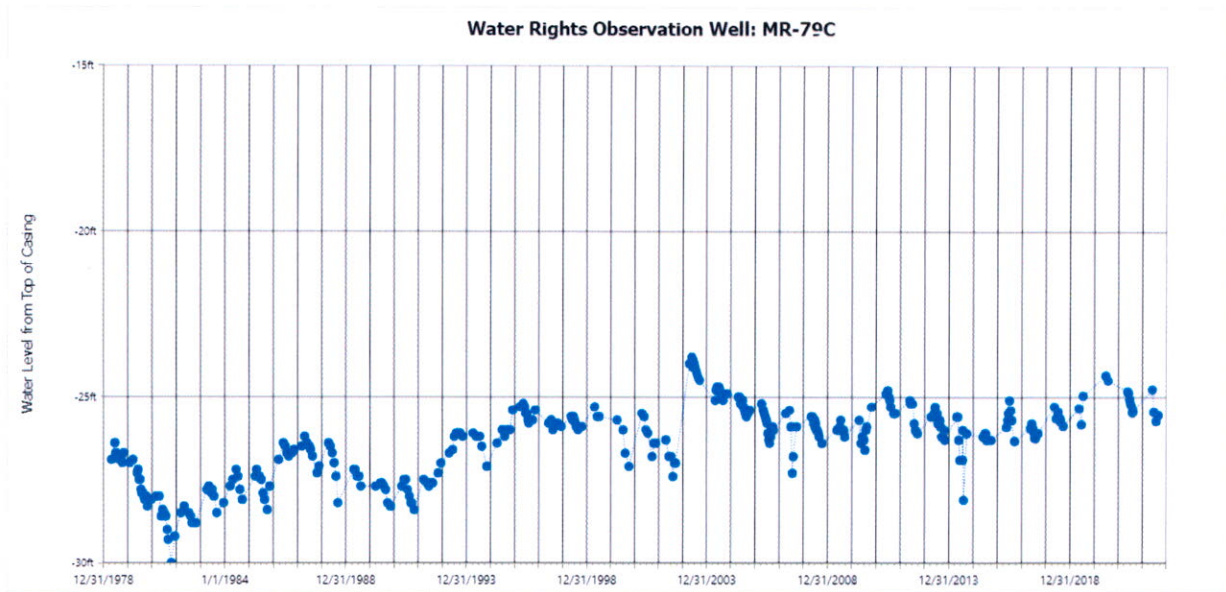


Figure 3: Hydrograph for observation well MR-79C (Water Rights, 2023c)

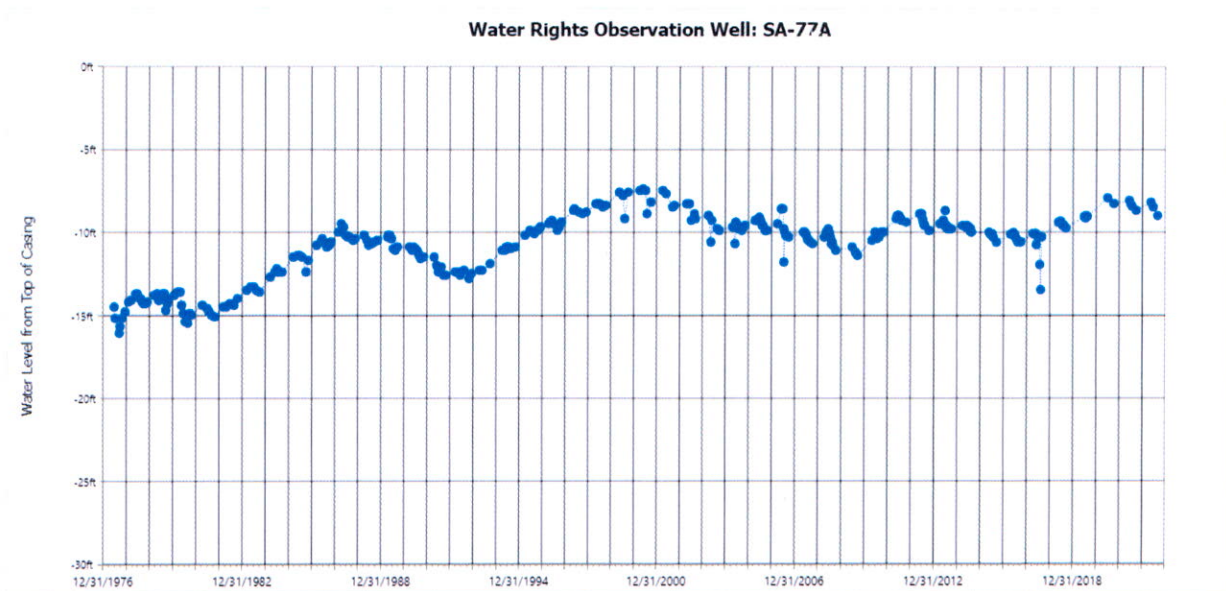


Figure 4: Hydrograph for observation well SA-77A (Water Rights, 2023c)

Generally, the observation wells in the Codell aquifer show a slightly increasing to stable water level since the start of their periods of record (Water Rights, 2023c). Within that trend, the response of water levels to climatic conditions can be noted, although the magnitude of the response to climatic condition varies due to localized conditions within the aquifer (Water Rights, 2023c). Several observation wells that are in close proximity to irrigation wells show localized seasonal dips in measured water levels during the irrigation season in response to pumping (Water Rights, 2023c). This is representative of the artesian head pressure of the aquifer in the area responding to seasonal irrigation pumping. However, water levels recover after the end of the

irrigation season when pumping ends. Water levels in the observation wells monitoring the aquifer generally rise during wet periods and decline to stable levels during drier periods. This type of behavior, along with aquifer recovery following the irrigation season, is indicative that climatic conditions, and therefore the effects of recharge to and natural discharge from the aquifer, govern the long-term fluctuations in water levels in the aquifer instead of pumping. Since recharge to and natural discharge from an aquifer can be captured for pumping, there is a reasonable probability that unappropriated water is available from the Codell aquifer for the proposed appropriation.

Hydrologic Budget

Recharge

Recharge to the Codell aquifer is likely by groundwater inflow from hydrologically connected aquifers (both glacial and bedrock) where the connected aquifer has a higher water level elevation than the Codell in the area of the connection. Another source of recharge is infiltration of precipitation through overlaying glacial till where the aquifer is ground surface. There is no estimate of recharge to the Codell aquifer in South Dakota (Hedges et al, 1985). However, of the Codell aquifer in South Dakota, Hedges, et al. (1985) noted the Codell aquifer had such high storage and low use it was unlikely that withdrawals are approaching or exceeding recharge and there was no evidence of significant head loss in the aquifer to suggest that use is exceeding recharge at that time. As documented in the observation well section of this report, the additional years of observation well data collected since Hedges, et al. (1985) still show no evidence of long-term head loss in the aquifer (Water Rights, 2023c).

Discharge

Discharge from the Codell aquifer is likely from groundwater outflow to hydrologically connected aquifers (both glacial and bedrock) where the connected aquifer has a lower water level elevation than the Codell in the area of the connection and by withdrawals from domestic (wells not requiring a water permit) and appropriative wells. Due to the relatively low diversion rate of domestic wells, the development of rural water systems over a large portion of the area where the Codell is the upmost aquifer available, and the availability of shallower aquifers over a large extent of the Codell; withdrawals from domestic wells are assumed to be a negligible portion of the hydrologic budget. There are 50 water rights/permits currently authorized to appropriate water from the Codell aquifer and one pending application - Application No. 8697-3 (Water Rights, 2023b).

Currently, there are six water right/permits for irrigation from the Codell aquifer. All of these irrigation water right/permits have relatively new priority dates, with the oldest being in 2013 (Water Rights, 2023b). These six water rights/permits are summarized in Table 1. Since Water Permit No. 8592-3 is not yet constructed and Permit No. 8553-3 has only one year of data and both of these water permits are for turf irrigation, average annual use for these permits will be estimated at 2 feet per acre per year, which is 44.2 acre-feet per year. Therefore, irrigation use from the Codell is estimated at 186.1 acre-feet per year.

Table 1: Average Reported Irrigation Use per Codell Irrigation Permit (Water Rights, 2023e)

Permit No	Status	Name/Business	Priority Date	Rate (cfs)	Acres	Average (acre-feet)	Years Reporting
7469-3	LICENSE	WILLIAM CHENOWETH	10/18/2012	0.61	230	13.7	10
7830-3	LICENSE	TOM BARES	04/15/2013	1	92	30.3	10
7978-3	LICENSE	CHAD OR RITA SVATOS	02/28/2014	1.78	140	80.8	9
8404-3	LICENSE	JAMES & JASON KOKES	01/28/2013	1.67	96	17.1	9*
Total				5.06	558	141.9	
8553-3**	PERMIT	LAKE PLATTE GOLF COURSE	09/07/2021	0.33	40	18.7	1
8592-3**	PERMIT	DAKOTA TRAILS GOLF COURSE	02/10/2022	0.08	2.1	0.0	not constructed

*includes reported use from Water Permit No. 7664-3 which was incorporated into 8404-3, **Use calculated separately due to data limitations-see text for further discussion

There are 44 non-irrigation water rights/permits currently authorized to appropriate water from the Codell aquifer. The non-irrigation permits are required to report their annual use; however, they are all new enough to still be in their development phase. Therefore, average annual use for these permits will be estimated by either annual use limit or diversion rate. Historically, average water use by non-irrigation appropriations limited solely by instantaneous diversion rate have been less than 60% of full time pumping at the maximum permitted diversion rate. For water rights/permits limited to an annual volume, full use of that volume is assumed for estimation of average annual withdrawal. Of the non-irrigation water rights, 12 permit holders purchase their water from another system, but maintain their water rights for standby/backup purposes. Therefore, water use for these 12 water rights is estimated to be negligible to the hydrologic budget. Ten water right/permits are limited by annual volume with a total authorized annual volume of 469.6 acre-feet per year (Water Rights, 2023b). Water Right No. 6544-3 authorizes the maintenance of the water level of a 10 acre-foot lake (surface area approximately 5.3 acres) in Armour, SD, when creek flows are not sufficient to maintain the water level year (Water Rights, 2023b). Evaporation for the area of South Dakota is 45 inches per year (NOAA, 1982) and average precipitation is 23.65 inches (US Climate Data, 2023), therefore it is conservatively estimated that average water use from the Codell aquifer to refill the lake annually is 9.5 acre-feet. The remaining 21 water rights/permits are limited by diversion rate and estimated annual use is approximately 1,460 acre-feet per year (Water Rights, 2023b). A review of Water Right No. 6891-3 authorized to appropriate water from the Niobrara aquifer indicates the wells are actually completed into the Codell aquifer, average estimated water use for this water right is 26.1 acre-feet per year. Water Permit Application Nos. 8696-3 and 8697-3 propose to appropriate a total of 29.8 acre-feet per year. Therefore, the total estimated non-irrigation use is 1,995 acre-feet per year.

Water Availability Summary

Total appropriative use from the Codell aquifer in South Dakota is estimated at 2,181 acre-feet (irrigation: 186.1 acre-feet, non-irrigation: 1,995 acre-feet, and applications: 29.8 acre-feet). There is no recharge estimate for the Codell aquifer. However, dividing annual use across the area of the aquifer in South Dakota (4,960,000 acres) indicates that the average recharge to the aquifer needed to support estimated annual appropriations (including pending applications) is 0.005 inches per acre per year. Compared to other recharge rates to aquifers in South Dakota east of the Missouri River (Hedges et al, 1985), it is reasonable to assume the Codell aquifer in South Dakota receives

an annual average recharge of at least this much. This is supported by the long term slightly increasing, to stable trend, in the water level in the Codell observation wells.

Potential for Unlawful Impairment

The Codell well for Application No. 8697-3 also by this applicant is located approximately 0.7 miles to the south of the wellsite for this application. The nearest water right/permit to the well that this application proposes to utilize (not belonging to the applicant) is Water Right Nos. 5477-3 (Artesian-Letcher School District), 5480-3 (Cortrust Bank NA), and 5731-3 (St. Charles Catholic Church) all located approximately 9.1 miles to the north-northeast of the diversion points for this application (Water Rights, 2023b). Given that the applicant also has an application in for a Codell well for commercial use, if this application is approved, it is in the applicant's interest to manage withdrawals from the Codell aquifer so as to not impact their other Codell well. There are other domestic/stock wells on file with the Water Rights Program not under the name of Upland Colony located within approximately two miles of the well site for this application; however, the nearest Codell wells on file are under the name Upland Colony. Additionally, this well has likely been in operation for a number of years without reports of unlawful impairment.

The Water Management Board recognizes that putting water to beneficial use requires a certain amount of drawdown to occur. The Board has developed rules to allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure for domestic use. The Water Management Board defined an "adversely impacted domestic well" in ARSD 74:02:04:20(7) as:

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

The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use during the issuance of Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills. The Board adopted the Findings of Facts and Conclusions of Law that noted the reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, "general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable..." (Water Rights, 1995). Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered as an unlawful impairment, it would also conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to install or lower pumps depending on the specific characteristics of the Codell aquifer at their location. A review of the complaints on file with the Water Rights Program indicate that there is not a history of unlawful impairment occurring with Codell aquifer wells in Sanborn County (Water Rights, 2023d). When considering the statutes (SDCL 46-1-4 and 46-6-6.1), rule (ARSD 74:02:04:20(7)), the amount of artesian head pressure at the well sites for this application, and the lack of well interference complaints from the Codell aquifer in the area, lack of complaints from the previous years of pumping from this well, any

drawdown created from the proposed diversion is not expected to cause an unlawful impairment on existing water right/permit holders or domestic users with adequate wells. Therefore, there is a reasonable probability that any interference from the proposed appropriation will not impose unlawful impairments on existing users with adequate wells.

Conclusions

1. Water Permit Application No. 8696-3 for Upland Hutterian Brethren Inc proposes to appropriate up to 16.8 acre-feet of water annually from the Codell aquifer with a maximum diversion rate of 0.09 cfs located in the NE ¼ NE ¼ Section 25-T105N-R60W for domestic use.
2. Based on the hydrologic budget and observation well data, there is a reasonable probability that water is available from the Codell aquifer to meet the water use proposed by this application.
3. There is a reasonable probability that, based on the available information for the area, that this application will not unlawfully impair existing water rights/permits with adequate wells or domestic users with adequate wells.



Whitney Kilts
Natural Resource Engineer III
SDDANR-Water Rights Program

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

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

March 2, 2023

Upland Hutterian Brethren Inc.
c/o Clarence Wurtz
24221 412th Ave
Artesian SD 57314

Dear Mr. Wurtz:

Water Permit Application Nos. 8696-3, 8697-3, 8698-3 for domestic and 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 Sanborn Weekly Journal printed at Woonsocket SD (Ph # 605 796-4221) and the Plainsman printed at Huron SD (Ph # 605 353-7414). 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 publisher has 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 applications.

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.

Email: Brian Friedrichsen, Dakota Environmental Inc

NOTICE OF APPLICATION NOS. 8696-3, 8697-3 and 8698-3 to Appropriate Water

Notice is given that Upland Hutterian Brethren, Inc, c/o Clarence Wurtz, 24221 412th Ave, Artesian SD 57314 has filed the following applications for a water permit. Application No. 8696-3 proposes to appropriate up to 16.8 acre-feet of water annually at a maximum pump rate of 0.09 cubic feet of water per second (cfs) from one well completed into the Codell Aquifer (175 feet deep) located in the NE 1/4 NE 1/4 Section 25 to supply water for domestic uses located in the NE 1/4 Section 25; all in T105N-R60W.

Application No. 8697-3 proposes to appropriate up to 46.25 acre feet of water annually at a maximum pump rate of 0.25 cfs from four wells (two wells are backup supply) completed into the Dakota Aquifer (560 to 602 feet deep) and up to 13 acre feet of water annually at a maximum pump rate of 0.12 cfs from one well completed into the Codell Aquifer (140 feet deep) all located in the NE 1/4 NE 1/4, SE 1/4 NW 1/4, SW 1/4 SE 1/4 Section 25 to supply water for commercial use in swine confinement facilities located in the N 1/2, SE 1/4 Section 25; all in T105N-R60W. The five wells combined will appropriate a total of 59.25 acre-feet of water annually at a maximum pump rate of 0.37 cfs.

Application No. 8698-3 proposes to appropriate up to 24.9 acre-feet of water annually at a maximum pump rate of 0.12 cfs from one well completed into the Dakota Aquifer (512 feet deep) located in the NW 1/4 SW 1/4 Section 36 to supply water for commercial use in swine confinement facilities located in the S 1/2 Section 36; all in T105N-R60W. The facilities for Application Nos. 8696-3, 8697-3 and 8698-3 are all located approximately 10 miles southwest of Artesian SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of the Applications listed above 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 recommendations with qualifications, the applications, and staff reports 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 the applications or recommendations shall allege that the applications, 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 applications, or other matter concerning the applications 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 applications with BOTH the applicant and Chief Engineer. A petition opposing the applications 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 recommendations, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 20, 2023.

The petition shall include a statement describing the unique injury upon approval of the applications on the petitioner, the petitioner's reasons for opposing the applications, 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 applications 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 20, 2023.

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

Published once at the total approximate cost of_

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, March 2, 2023 1:04 PM
To: Carrie Howard
Subject: 8696-3, Upland Htttn Brethren
Attachments: 8696-3public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on March 9, 2023.

Upland Hutterian Brethren, Inc., c/o Clarence Wurtz, 24221 412th Ave, Artesian SD 57314 (605 770-2620) 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: Thursday, March 2, 2023 1:05 PM
To: Ruby Crandall
Subject: 8696-3, Upland Htttn Brethren
Attachments: 8696-3public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on March 10, 2023.

Upland Hutterian Brethren, Inc., c/o Clarence Wurtz, 24221 412th Ave, Artesian SD 57314 (605 770-2620) 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>



AFFIDAVIT OF PUBLICATION

State of South Dakota

SS

County of Sanborn

Carrie Howard of said county, being, first duly sworn, on oath, says: That she is the publisher of the Sanborn Weekly, a weekly newspaper, published in the City of Woonsocket, in said County of Sanborn, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Sanborn and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the

Notice of Application to Appropriate Water -
Upland

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 successive week(s) to wit:

Mar. 9, 20 23 _____, 20 _____
_____, 20 _____, 20 _____
_____, 20 _____, 20 _____
_____, 20 _____, 20 _____

That was full amount of the fee charged for publication of the attached public notice insures to the sole benefit of the publisher; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whatsoever; that the fees charged for the publication thereof are: \$ 53.96

Signed: Carrie Howard

Subscribed and sworn before me this 22nd day of March, 20 23

John E. Egan

Notary public in and for the County of Sanborn, South Dakota

My Commission expires August 9th, 20 28

RECEIVED

APR 03 2023

OFFICE OF
WATER



NOTICE OF APPLI- CATION Nos. 8696-3, 8697-3 and 8698-3 to Appropriate Water

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of the Applications listed above 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 recommendations with qualifications, the applications, and staff reports 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.

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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 recommendations, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 20, 2023.

The petition shall include a statement describing the unique injury upon approval of the applications on the petitioner, the petitioner's reasons for opposing the applications, 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 applications 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 20, 2023.

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

Published once on March 9, 2023, at the total approximate cost of \$54.50 and may be viewed free of charge at www.sdpublicnotices.com.

Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402

RECEIVED

MAR 27 2023

OFFICE OF
WATER

Legal Notice Number: 1878

I, Cadee Schelske, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Upland Hutterian Brethren – Water No. 8696-3, 8697-3, 8698-3 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 03/10/2023. That the full amount of the fee charged for the publishing \$55.04 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

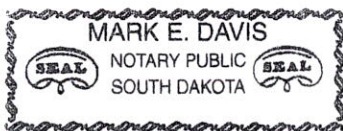
Cadee Schelske

Subscribed and sworn to me before this date 3/16/23.

[Signature]

Notary Public, South Dakota

My Term Expires 12/27/2024



F. P. 03-10-23

**NOTICE OF
APPLICATION NOS.
8696-3, 8697-3
and 8698-3 to
Appropriate Water**

Notice is given that Upland Hutterian Brethren, Inc. c/o Clarence Wurtz, 24221 412th Ave, Artesian SD 57314 has filed the following applications for a water permit. Application No. 8696-3 proposes to appropriate up to 16.8 acre-feet of water annually at a maximum pump rate of 0.09 cubic feet of water per second (cfs) from one well completed into the Codell Aquifer (175 feet deep) located in the NE 1/4 NE 1/4 Section 25 to supply water for domestic uses located in the NE 1/4 Section 25; all in T105N-R60W.

Application No. 8697-3 proposes to appropriate up to 46.25 acre feet of water annually at a maximum pump rate of 0.25 cfs from four wells (two wells are backup supply) completed into the Dakota Aquifer (560 to 602 feet deep) and up to 13 acre feet of water annually at a maximum pump rate of 0.12 cfs from one well completed into the Codell Aquifer (140 feet deep) all located in the NE 1/4 NE 1/4, SE 1/4 NW 1/4, SW 1/4 SE 1/4 Section 25 to supply water for commercial use in swine confinement facilities located in the N 1/2, SE 1/4 Section 25; all in T105N-R60W. The five wells combined will appropriate a total of 59.25 acre-feet of water annually at a maximum pump rate of 0.37 cfs.

Application No. 8698-3 proposes to appropriate up to 24.9 acre-feet of water annually at a maximum pump rate of 0.12 cfs from one well completed into the Dakota Aquifer (512 feet deep) located in the NW 1/4 SW 1/4 Section 36 to supply water for commercial use in swine confinement facilities located in the S 1/2 Section 36; all in T105N-R60W. The facilities for Application Nos. 8696-3, 8697-3 and 8698-3 are all located approximately 10 miles southwest of Artesian SD.

tions, 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 applications 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 20, 2023.

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

No. 1878 (adv.)
Published once at the total approximate cost of \$55.04 and may be viewed free of charge at www.sdpublicnotices.com.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of the Applications listed above 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 recommendations with qualifications, the applications, and staff reports 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 the applications or recommendations shall allege that the applications, 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 applications, or other matter concerning the applications 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 applications with BOTH the applicant and Chief Engineer. A petition opposing the applications 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 recommendations, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 20, 2023.

The petition shall include a statement describing the unique injury upon approval of the applications on the petitioner, the petitioner's reasons for opposing the applica-

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, March 2, 2023 1:13 PM
To: clarence@uplandhb.com
Cc: Brian Friedrichsen
Subject: Water Permit Applications
Attachments: 0109.pdf; 0104.pdf; 8696-3_rec.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>





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Comment

Concerning Application for a Water Right Permit

Application No. 8696-3 **Name of Applicant** Upland Hutterite Bretheran /Clarence Wurtz

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

Note. Filing a comment does NOT make the commenter a party of record to, or a participant in, any hearing that may be held concerning this application. Your comment will be provided to the Water Management Board and become part of the public record.

Comments concerning this application:

1. I am concerned that these wells have not been and are not monitored and that the amount of water used is NOT reported. Furthermore, I am concerned that these large permits will cause our domestic wells to greatly diminish and ultimately fail. We have NO opportunity for rural water, which would be a great benefit for domestic uses. Since the Hutterite colony has about 150 - 200 persons, their domestic water need is high. THEY should perhaps need to function as a municipality and rural water should be extended to them. Since several of these wells are for commercial use, ie, swine facility, rural water would be a great benefit to them !!
2. My husband and I have farmed and ranched in this area for generations, and although, we are just a small operation, we feel our water supply is threatened by further expansion of Hutterite wells, as we need to draw from the SAME aquifer.
3. I am very disappointed to learn that this permit is for old existing wells that have been in use for several years and not reported, not monitored!! Again, why hasn't the Hutterite been following regulations????
4. I am concerned that the maximum allowable amount of water for this permit is extremely excessive.

Commenter's name and address:

First Name: Kathi **Last Name:** Baade

Address: 41160 241st Street

City: Artesian **State:** SD **Zip:** 57314

Note. This comment needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above, send to "Attention - Water Rights Program" or send via email to DANRmail@state.sd.us.

Application No. 8696-3

Commenter's Name

Any additional comments:



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

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Commenter's Name _____

Any additional comments:



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Comment

Concerning Application for a Water Right Permit

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Comments concerning this application:

I am concerned of domestic and livestock quantity and quality of water; not only of my wells but those of my neighbors.

There is NO available Rural Water in my immediate area. Therefore, my livestock, my neighbors, and myself are dependent on well water. To my understanding from conversations with SDDANR office personnel; Eric, Whitney and Ron the 7 wells in the 3 permit applications are in use and have been for some time now. It is an "after the fact" that Upland Hutterian Brethren Inc., is now going through the permit application process.

The amount of water that will be permitted seems excessive. As per my conversation with Eric this is an maximum amount of usage. An annual usage report is to be filed and this of course has not been done because the wells have not yet been permitted. A Simple/Easy solution to the reporting process would be to install meters on the wells.

Drinking, Domestic, and Livestock water is my #1 concern. As a beef producer with a small cow herd (130 head) water is essential to my livelihood.

Out of necessity I had to haul water to a pasture for two months waiting for the well driller. Filling the haul tanks and the 10 mile round trip took 3 hours daily. Those were hours that needed to be spent on other ranch duties. If my wells and the wells of my neighbors are depleted even more due to the usage being proposed in this application, my fear would be hauling water would become a necessity and one that we are incapable of sustaining.

As I have served on the Sanborn County Conservation Board of Supervisors for more than 25 years, we have always had livestock water quantity and quality on the top of our resource concerns. Our district and many others have the same concerns.

I understand the permits are currently in process; and you will be reviewing the annual water usage reports as they are required and should be documented accordingly. I appreciate you reading my concerns and appreciate your management responsibilities of water activities.

Respectfully Submitted,
Judy Fredrichs

Commenter's name and address:

First Name: Judy **Last Name:** Fredrichs

Address: 41354 240th Street

City: Artesian **State:** SD **Zip:** 57314

Note. This comment needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above, send to "Attention - Water Rights Program" or send via email to DANRmail@state.sd.us.

Application No. 8696-3

Commenter's Name Judy Fredrichs

Any additional comments:



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Comment

Concerning Application for a Water Right Permit

Application No. 8696-3 **Name of Applicant** Upland Hutterian Brethren Inc., c/o Clarence Wurtz

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First Name: Judy **Last Name:** Fredrichs

Address: 41354 240th Street

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Application No. 8696-3

Commenter's Name Judy Fredrichs

Any additional comments:



DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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

MAY 11 2023

Upland Hutterian Brethren Inc.
c/o Clarence Wurtz
24221 412th Avenue
Artesian SD 57314

Dear Mr. Wurtz:

Enclosed are Water Permit Nos. 8696-3, 8697-3, 8698-3 authorizing construction of your water diversion systems and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

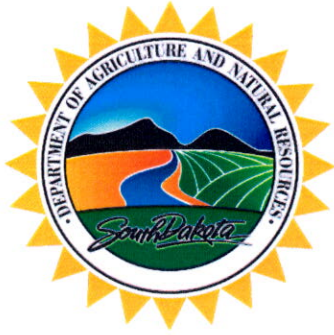
Form 10's, *Notice of Completion of Works and Application of Water to Beneficial Use*, are enclosed. Please return the completed forms after you have finished the systems and have put the water to beneficial use. An investigation can then be scheduled so the water licenses may be issued, thus completing 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 Gonlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
on DANR Website**

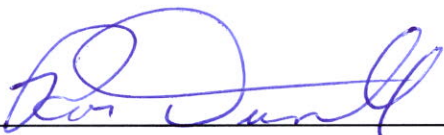
Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the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

Application No.: 8696-3

Name of Applicant: Upland Hutterian Brethren Inc., c/o Clarence Wurtz

Date of Posting: 3/6/2023

Date of Removal: 5/11/2023



Ron Duvall, Water Rights Permitting Administrator

5/12/23

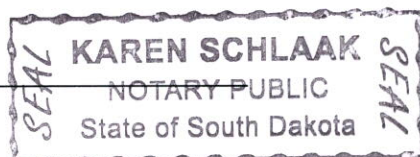
Date

Subscribed and sworn to before me, a notary public, this 12th day of May, 2023.



Notary Public - South Dakota
My commission expires: 4/1/2025

(SEAL)





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

May 23, 2025

NOTICE OF HEARING

TO: Upland Hutterian Brethren, 24221 412th Avenue, Artesian SD 57314

FROM: Ron Duvall, Engineer III
for Mark Mayer, PE
Director of Office of Water

SUBJECT: Violation of Permit Qualification to Report Annual Water Use

Our records indicate your 2024 annual water use has not been submitted for Permit Nos. 8696-3, 8697-3, and 8698-3. The request to report water use for 2024 was dated January 3, 2025. Two follow-up attempts to get the required water use report have gone unanswered. The Water Management Board has directed owners of water permits who have not submitted the 2024 water use reporting be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit Nos. 8696-3, 8697-3, and 8698-3 qualification:

"The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Codell and Dakota Aquifer."

The hearing will be held on **Wednesday, July 9, 2025, at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit Nos. 8696-3, 8697-3, and 8698-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the water use report(s) is (are) received in this office before the **July 9, 2025**, hearing, you will no longer be in violation of your permit and your name will be removed from the Board agenda. You may submit your water use report by providing the information to Rachel Rodriguez at (605) 773-3352 or via email at rachel.rodriguez@state.sd.us. You may also submit the water use report via mail using the address in the NOTE at the bottom of this Notice.

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

RE: [EXT] Well Report - Message (HTML)

File

Message

Help

Acrobat

Tell me what you want to do

Delete

Archive

Respond

Share to Teams

All Apps

Quick Steps

Move

Tags

Editing

Immersive

Zoom

Reply with Scheduling Poll

Translate Message

Viva Insights

Delete

Teams

Apps

Quick Steps

Zoom

Find Time

Translator

Add-in

RE: [EXT] Well Report

RR

Rodriguez, Rachel

To Eshop

General - Anyone

Reply

Reply All

Forward

Tue 06/24/2025 10:31 AM

Excellent! These permits have been removed from the board meeting.

Thank you,

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

