

WATER PERMIT NO. 8774-3

Name of Applicant: **Upland Hutterian Brethren**

Address: **24221 412th Ave, Artesian SD 57314** Phone: **605-770-7240**

Amount of Water Claimed: **1.11 cfs** Total Acres: **136.4**

Source of Water Supply: **Surface**

Water to be used for: **Irrigation** County: **Sanborn**

Type of Waste Disposal System:

Location: **Approx. 8 miles north of Mitchell SD**

PRIORITY Date Received: **6-22-2023**

Application/License Fee: **\$1,050.00**

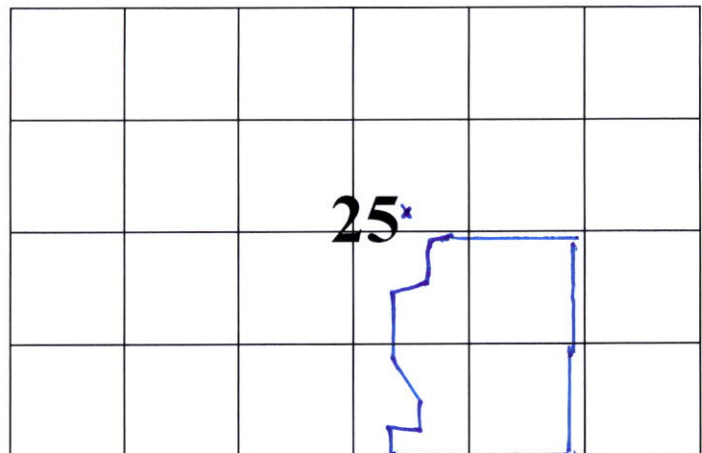
Corrected Application Received: **6-23-2023**

Period of Annual Use: **May 1 – September 30**

Remarks: **Subsurface drip irrigation of 136.4 acres from stock dam.**

Diversion Point: **SW 1/4 NE 1/4 Section 25-
T105N-R60W**

Land to be Irrigated: **SE 1/4 Section 25-T105N-
R60W**



Depth of Well:

Well Driller:

Remarks:

Type of Map: **aerial**

Reviewed and the Number Assigned on: **6-23-2023**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
WATER PERMIT NO. 8774-3**

Date of first receipt of application June 22, 2023.

Date of return to applicant for corrections, amendments or changes June 22, 2023.

Date of receipt of corrected application June 23, 2023.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 8774-3 to Upland Hutterian Brethren, 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. 8774-3 appropriates 1.11 cubic feet of water per second of runoff impounded in a storage dam (estimated storage capacity 66 acre-feet) located in the SE 1/4 NW 1/4 Section 25 for subsurface drip irrigation of 136.4 acres located in the SE 1/4 Section 25; all in T105N-R60W. This site is located approximately 8 miles north of Mitchell SD.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – September 30.
3. The date from which applicant may claim right is June 22, 2023.
4. The date of approval of Permit No. 8774-3 is September 5, 2023.
5. One-fifth of the construction is to be completed on or before March 5, 2026.
6. All construction is to be completed on or before September 5, 2028.
7. Water is to be put to beneficial use on or before September 5, 2032.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Water Permit No. 8774-3 authorizes storage of up to 66 acre-feet of water and sufficient water annually to maintain the water level to the outlet elevation.
1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

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

OCT 10 2023
date



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

RECEIVED

JUN 22 2023

OFFICE OF
WATER

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8774-3</u> (office use only)	Hydrologic Unit <u>10160011</u>
	Basin <u>Lower James</u>	
	Newspaper <u>Woonsocket Sanborn Wkly Journal</u>	
	<u>Huron Plainsman</u>	

Application For Permit To Appropriate Water For Irrigation

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

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

1. Name to Appear on Irrigation Permit Upland Hutterian Brethren
Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.
- Mailing Address 24221 412th AVE Artesian SD 57314
 (Address) (City) (State) (Zip Code)
- Phone 605-996-7105 Mobile 605-770-7240 Email up.kendr@uplandhb.com
2. Amount of water claimed 1.11 *CFS or 500 **GPM ***AF Total Acreage 136.4
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Stock dam
4. Location of point of diversion 25-105-60 (SW 1/4 NE 1/4)
 (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)
- County Sanborn
5. County or counties where water will be used Sanborn
6. Annual period during which water is to be used May through September³⁰
7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
 (Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
<u>25-105N-060W SE 1/4</u>	<u>136.4</u>		

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

Subsurface drip irrigate a 136.4 ac field out of a stock dam.
 Stock dam surface area is 5.48ac with an estimated average depth of 12ft

I, Kenneth Wurtz Jr Farm Manager, 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 ____ Provide copy of log(s), if available. Drilled by ____

For either Existing or Proposed Wells:

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

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

2. Wastewater Disposal System Information

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

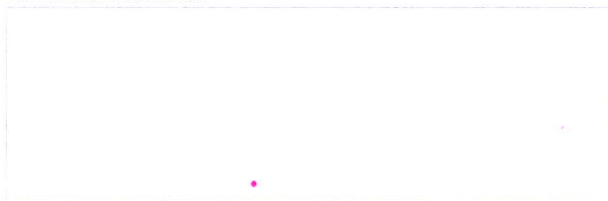
b) System Capacity (gallons) ____ Year Constructed ____

c) Connected to the City of ____ Sanitary System

3. Dugout Informationa) Surface Dimensions 5.48 ac Depth 12'b) Depth to water (ground surface to water level) 11'**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 11'c) Crest Width 25'Crest Length 293'd) Height 52'e) Primary Outlet Capacity PipeIf pipe, diameter 5 Ft 3 in

f) Secondary Spillway Capacity ____

Spillway Width ____

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

Upstream 3 to 1Downstream 3 to 1h) Surface Area of Impoundment 5.48 ac

i) Storage ____ Acre Feet

j) Drainage Area Above Dam 300 Acres

105N 60W
Section: 23

105N 60W
Section: 24

105N 59W
Section: 19

105N 60W
Section: 26

105N 60W
Section: 25

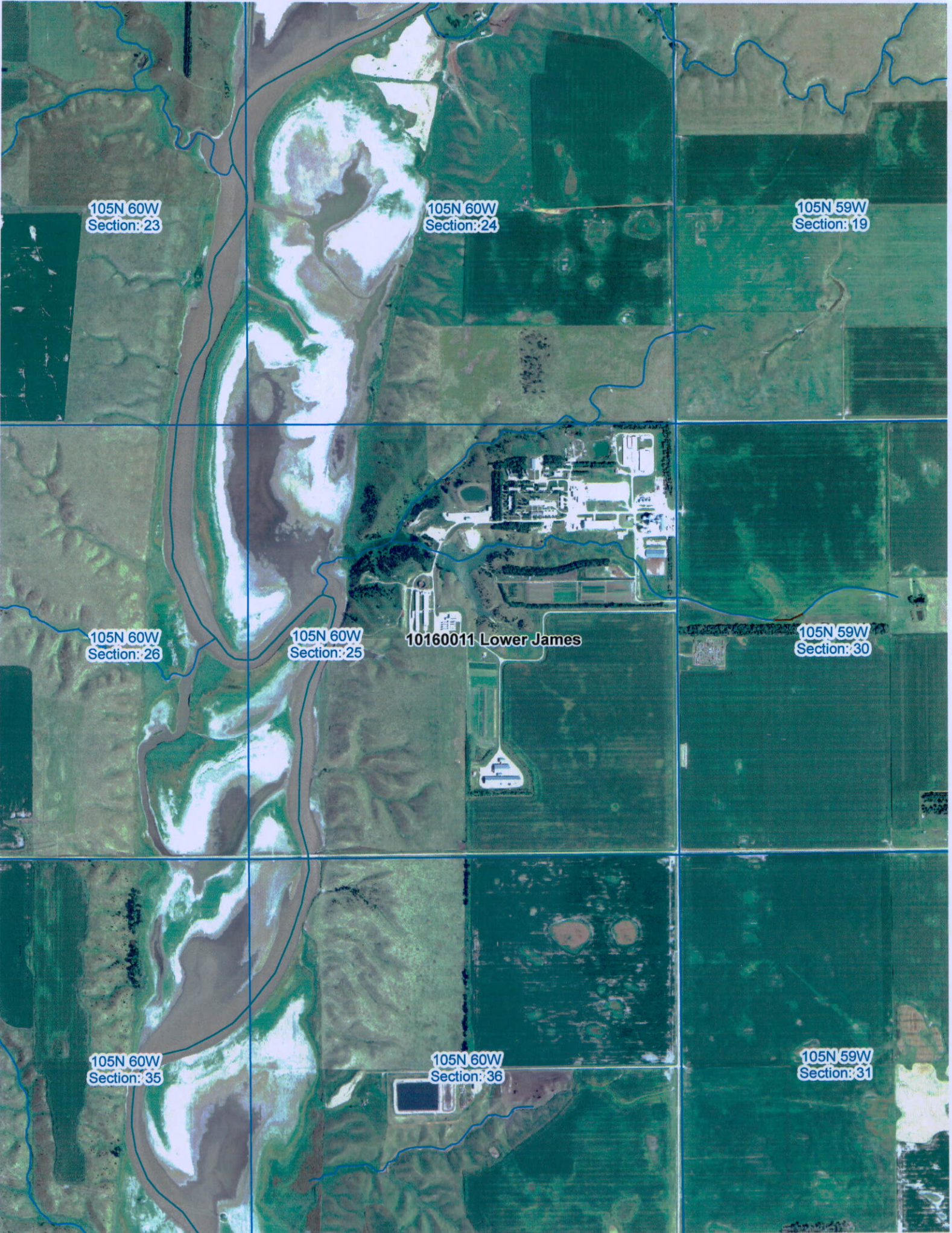
10160011 Lower James

105N 59W
Section: 30

105N 60W
Section: 35

105N 60W
Section: 36

105N 59W
Section: 31



Kenny Wurtz Upland Colony

21 views

Last edit was seconds ago

Add layer + Share Preview

Untitled layer

Individual styles

Phase 1

Water supply/filter location

Needs to tile this section

25 Mil gallon lagoon from so...

new 4800 hd finishing barn

Mainline

Submain

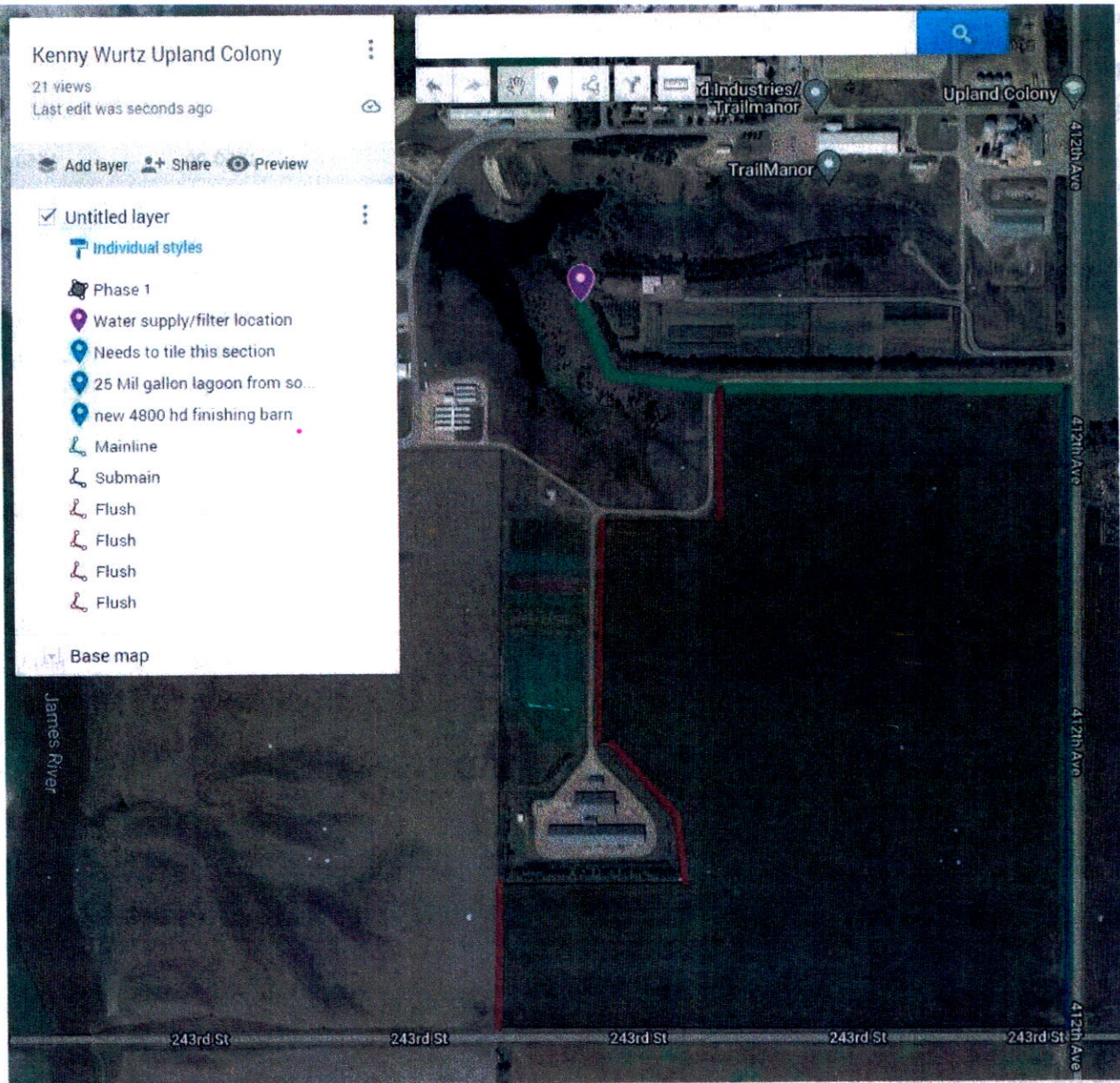
Flush

Flush

Flush

Flush

Base map





FCS OF AMERICA FLCA- MITCHELL SD

(800) 658-3374
401 CABELA DR
P O BOX 1248
MITCHELL, SD 57301

Kenny Wurtz Upland Colony

7 views

Last edit was on May 5

 Add layer  Share  Preview

✓ Untitled layer

Individual styles

Phase 1

 Water supply/filter location

 Needs to tile this section

 25 Mil gallon lagoon from so...

 new 4800 hd finishing barn

 Mainline

 Submain

 Flush

 Flush

 Flush

 Flush

▼ Base map



Hullinger, Brittan

From: up.kenjr@uplandhb.com
Sent: Monday, August 7, 2023 5:13 PM
To: Hullinger, Brittan
Subject: RE: [EXT] Application No. 8774-3

Follow Up Flag: Follow up
Flag Status: Flagged

I talked to my dad and he thought was 1987 when the dam was constructed.

We did some updates to the overflow in 2021/2022. We plugged the old 18" steel overflow and installed a 6'(I think I put 5' on the permit application but I didn't realize it was oval shaped when measuring it from the top) steel culvert and constructed a discharge canal.

We have been Irrigating our 10ish acre garden out of the dam since it was constructed, the last couple years we added underground pipe, improved the intake area, and installed an electric pump. I guess I didn't realize we needed a permit to irrigate out of a private stock dam till I talked to the company that would install the system.

From: Hullinger, Brittan <Brittan.Hullinger@state.sd.us>
Sent: Monday, August 7, 2023 1:37 PM
To: up.kenjr@uplandhb.com
Cc: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Application No. 8774-3

Hello,

I am currently reviewing your request to appropriate water from an existing storage dam located in the SE ¼ NW ¼ of Section 25, T105N-R60W as per Application No. 8774-3.

Some additional information would be much appreciated:

1. Construction date of the dam.
2. Any updates since construction of the dam.

Thanks, and have a great day!

Brittan Hullinger
South Dakota DANR
Water Rights Program

Rodriguez, Rachel

From: Gronlund, Eric
Sent: Friday, June 23, 2023 9:37 AM
To: Van Bockel, Jenny
Cc: Rodriguez, Rachel; Dewell, Amanda
Subject: RE: [EXT] Merchant Email Receipt

Water Rights fees paid by credit card can be sent to Rachel Rodriguez. By and large they will be the fee for a water permit application.

Rachel - if it is determined to be the fee for a notice of transfer of ownership - forward on to Amanda.

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

From: Van Bockel, Jenny <Jenny.VanBockel@state.sd.us>
Sent: Friday, June 23, 2023 9:24 AM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: FW: [EXT] Merchant Email Receipt

Eric,

Should I be sending credit card receipts to Amanda? I had an individual pay for their water permit with a credit card but wasn't sure who I should send them to.

Thanks!

Jenny Van Bockel
Accountant II
DANR
605-773-5671

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

From: Auto-Receipt <noreply@mail.authorize.net>
Sent: Friday, June 23, 2023 9:23 AM
To: Van Bockel, Jenny <Jenny.VanBockel@state.sd.us>; Keiser, Darcy <Darcy.Keiser@state.sd.us>; Weber, Amber <Amber.Weber@state.sd.us>; Bigby, Beth <Beth.Bigby@state.sd.us>
Subject: [EXT] Merchant Email Receipt

===== SECURITY STATEMENT =====

It is not recommended that you ship product(s) or otherwise grant services relying solely upon this e-mail receipt.

===== GENERAL INFORMATION =====

Merchant : DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (1869311) Date/Time : 23-Jun-2023 9:22:38 CDT

===== ORDER INFORMATION =====

Invoice :

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, June 22, 2023 4:50 PM
To: up.kenjr@uplandhb.com
Subject: FW: Application for a Permit to Appropriate Water

Good afternoon,

I am in receipt of your *Application for a Permit to Appropriate Water* for irrigation in Sanborn County. To complete the application, the following is required:

- On Item No. 6, Annual period during which water is to be used. Do you agree with changing "May through September" to May 1- September 30?
- The application/license fee for irrigation of 136.4 acres \$ 1,050.00 (\$850 plus \$200 equals \$1,050.00)

Once I am in receipt of these items, I can begin processing your application.

Thank you,

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



Description : Water Rights Permit Application Fee: Upland Colony Amount : 1076.25 (USD) Payment Method: MasterCard xxxx4055 Transaction Type: Authorization and Capture

===== Line Items =====

===== RESULTS =====

Response : This transaction has been approved.

Auth Code : 54694Z

Transaction ID : 64442212501

Address Verification : Street Address: Match -- First 5 Digits of Zip: Match

==== CUSTOMER BILLING INFORMATION ===

Customer ID :

First Name : Clarence

Last Name : Wartz

Company :

Address :

City :

State/Province :

Zip/Postal Code : 57314

Country :

Phone :

Fax :

E-Mail : up.kenjr@uplandhb.com

==== CUSTOMER SHIPPING INFORMATION ===

First Name :

Last Name :

Company :

Address :

City :

State/Province :

Zip/Postal Code :

Country :

===== ADDITIONAL INFORMATION =====

Tax :

Duty :

Freight :

Tax Exempt :

PO Number :

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date June 23, 2023

RECEIVED OF Upland Hutterian Brethren 24221 412th Ave., Artesian SD 57314

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

Fee for Application for Permit No. <u>8774-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>850.00</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>8774-3</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>1050.00</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. 8774-3, Upland Hutterian Brethren**

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. 8774-3, Upland Hutterian Brethren, 24221 412th Avenue, Artesian SD 57314.

The Chief Engineer is recommending APPROVAL of Application No. 8774-3 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. Water Permit No. 8774-3 authorizes storage of up to 66 acre-feet of water and sufficient water annually to maintain the water level to the outlet elevation.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer
August 16, 2023

Report to the Chief Engineer
Water Permit Application No. 8774-3
Upland Hutterian Brethren
August 7, 2023

Water Permit Application No. 8774-3 proposes to appropriate water at a maximum instantaneous diversion rate of 1.11 cubic feet of water per second (cfs) of runoff from an unnamed tributary of the James River impounded in a storage dam (estimated storage capacity of 66 acre-feet) located in the SE ¼ NW ¼ of Section 25 for the subsurface drip irrigation of 136.4 acres located in the SE ¼ of Section 25, all in T105N-R60W. This site is located in Sanborn County, approximately 8 miles north of Mitchell, South Dakota.

Water Source: Unnamed tributary of the James River

South Dakota Codified Laws (SDCL) and Administrative Rule of South Dakota (ARSD):

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 will address availability of unappropriated water and potential for unlawful impairment to existing rights that are pertinent to this application.

Review of the Water Source:

Water Permit Application No. 8774-3 proposes to appropriate 1.11 cfs from runoff impounded in a storage dam on an unnamed tributary of the James River. This unnamed tributary is located within the James River drainage basin in southeastern Sanborn County. The tributary is approximately 1.5 miles long and generally flows westward to the James River. Like Davison County to the south, smaller tributaries to the James River are typically intermittent, generally flowing only during spring and early summer from rainfall and snowmelt (Hansen, 1983).

Water Availability:

The watershed area above the existing dam location was delineated using NRCS Engineering Tools Watershed Delineation for ArcGIS Pro (USDA-NRCS, 2023a). The elevation data used is an Interferometric synthetic aperture radar (IFSAR) DTM (Digital Terrain Model) dataset with 5-meter grid spacing. A digital terrain model is a bare-earth elevation model made of point data. The data is from Intermap Technologies, Inc. (Intermap Tech. Inc.). The resulting surface area of the watershed was delineated to be 0.88 square miles, or approximately 560.8 acres. A map of the existing dam and storage pond for Application No. 8774-3 and the watershed delineation can be seen in Figure 1.

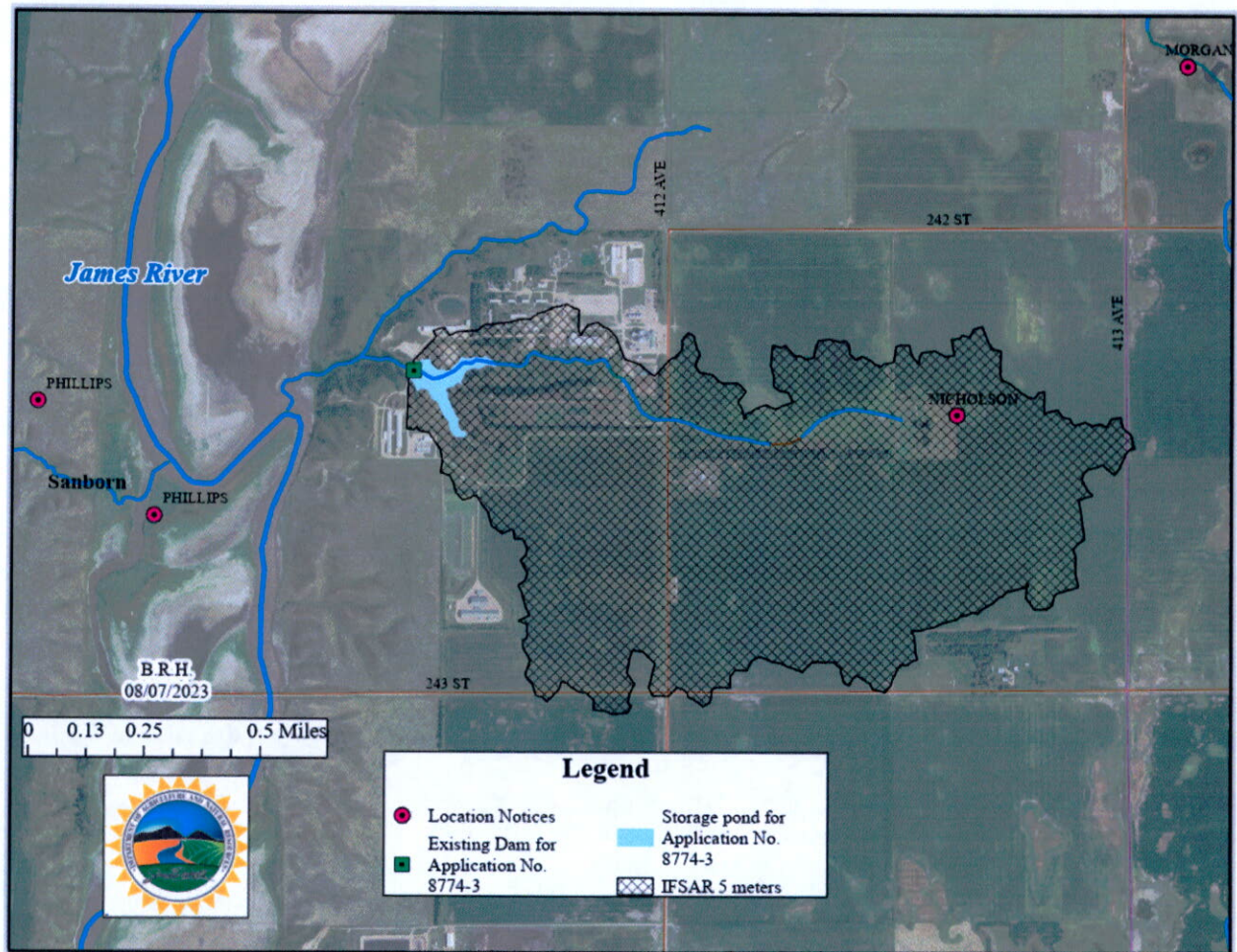


Figure 1: Map of the approximate watershed delineation above the existing dam location made using the IFSAR 5-meter spaced dataset, as well as nearby location notices (Intermap Tech. Inc.; Water Rights, 2023b).

The NRCS annual surface yield method for South Dakota was used to estimate annual surface yield for the drainage area upstream of the dam location (USDA-NRCS, 1984). This NRCS method estimates the volume of runoff which can be expected for a twelve-month period at certain annual probabilities using contributing drainage area, soil cover complex number (runoff curve number, CN), and watershed location on an isogram map (USDA-NRCS, 1984).

The soil cover complex number, or the runoff curve number (CN) is necessary to determine the annual surface yield using the NRCS method (USDA-NRCS, 1984). The determination of the runoff curve number depends on the delineated watershed's soil and cover conditions, represented as hydrologic soil group, cover type, treatment, and hydrologic condition (USDA-NRCS, 1986). The general cover type for the delineated watershed is cultivated without conservation treatment (USDA-NRCS, 1984). Using USDA-NRCS Soil Survey, a shapefile of the delineated watershed using 5-meter IFSAR data was imported to determine hydrologic soil groups for regions of the watershed (Figure 2). Using cover type and hydrologic soil group, a runoff curve number was determined by calculating the weighted average of hydrologic soil groups and their respective curve numbers and rounding to the nearest whole number. This method can be seen on Table 1. Runoff curve numbers range from 40 to 100, and a higher curve number means that more runoff occurs in the watershed (USDA-NRCS, 1986).

The NRCS method is then used to determine the volume of runoff which can be expected for a twelve-month period. For example, an 0.8 probability of occurrence has an 80% chance of occurring each year. The annual surface yields for the drainage area at certain annual probabilities are presented in Table 2.

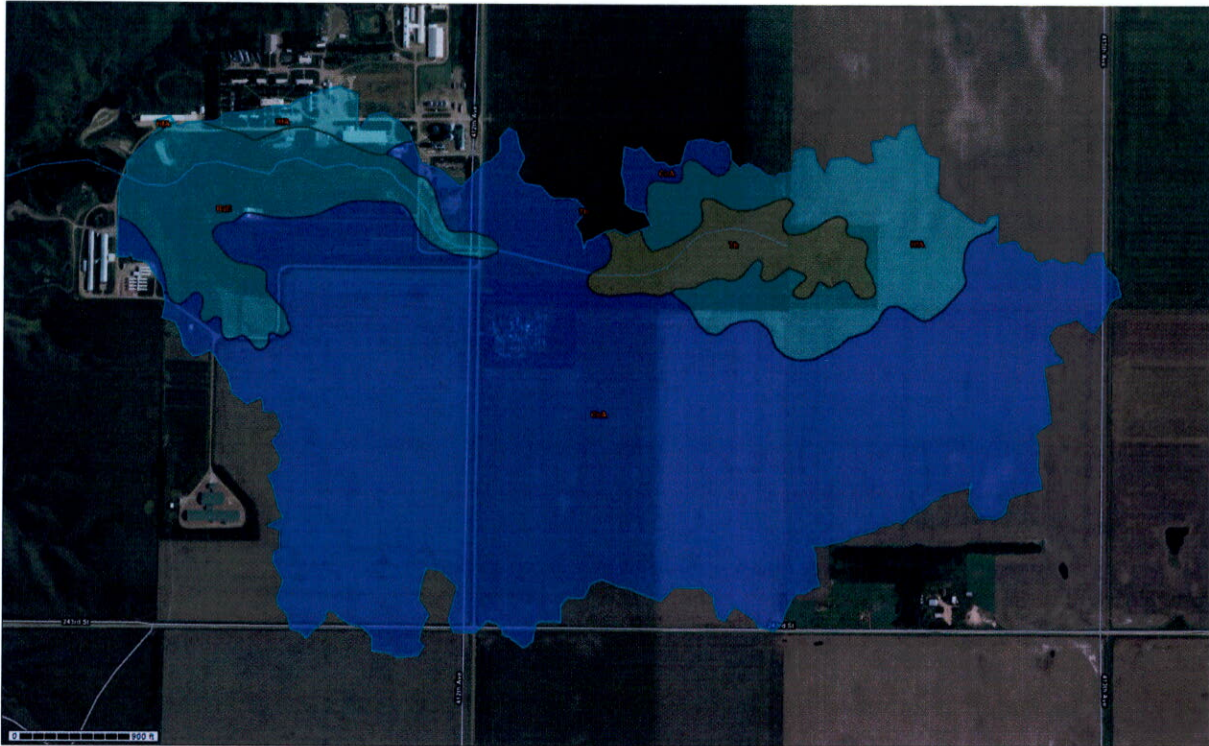


Figure 2: Shapefile of the delineated watershed from 5-meter spaced IFSAR data to determine hydrologic soil groups as determined by soil map units (USDA-NRCS, 2023b).

Table 1: Weighted average of hydrologic soil group ratios for cultivated land without conservation treatment (USDA-NRCS, 1984) to determine curve number.

Soil Group	CN	Map Unit Symbol	Weight	Weighted Values
A	72	BaE	0.096	6.912
B	81	CoA	0.736	59.616
C	88	HfA	0.123	10.824
D	91	Tb	0.046	4.186
			Weighted Average CN	81.538
			CN	82

Table 2: Estimated Total Annual Yield of Surface Runoff (USDA-NRCS, 1984) using an estimated watershed area of approximately 560.8 acres using the 5-meter IFSAR dataset (USDA-NRCS, 2023a; Intermap Tech. Inc.).

Probability of Occurrence	Inches of Annual Yield per Acre	Annual Yield (Acre-feet)
0.8	0.46	21.5
0.5	1	46.7
0.2	2.3	107.5
0.1	3.5	163.6

Normal storage capacity of the pond is estimated to be approximately 66 acre-feet as submitted with Application No. 8774-3. To determine the probability of occurrence for 66 acre-feet of water in the storage pond, the total runoff from Table 2 was plotted against the probability of occurrence, shown in Figure 3. The closer an r square value is to 1, the data is better correlated, and there is more reliability in a trendline. Solving the trendline for a volume of 66 acre-feet results in an estimated annual probability of approximately 40% to go from dry to full normal storage.

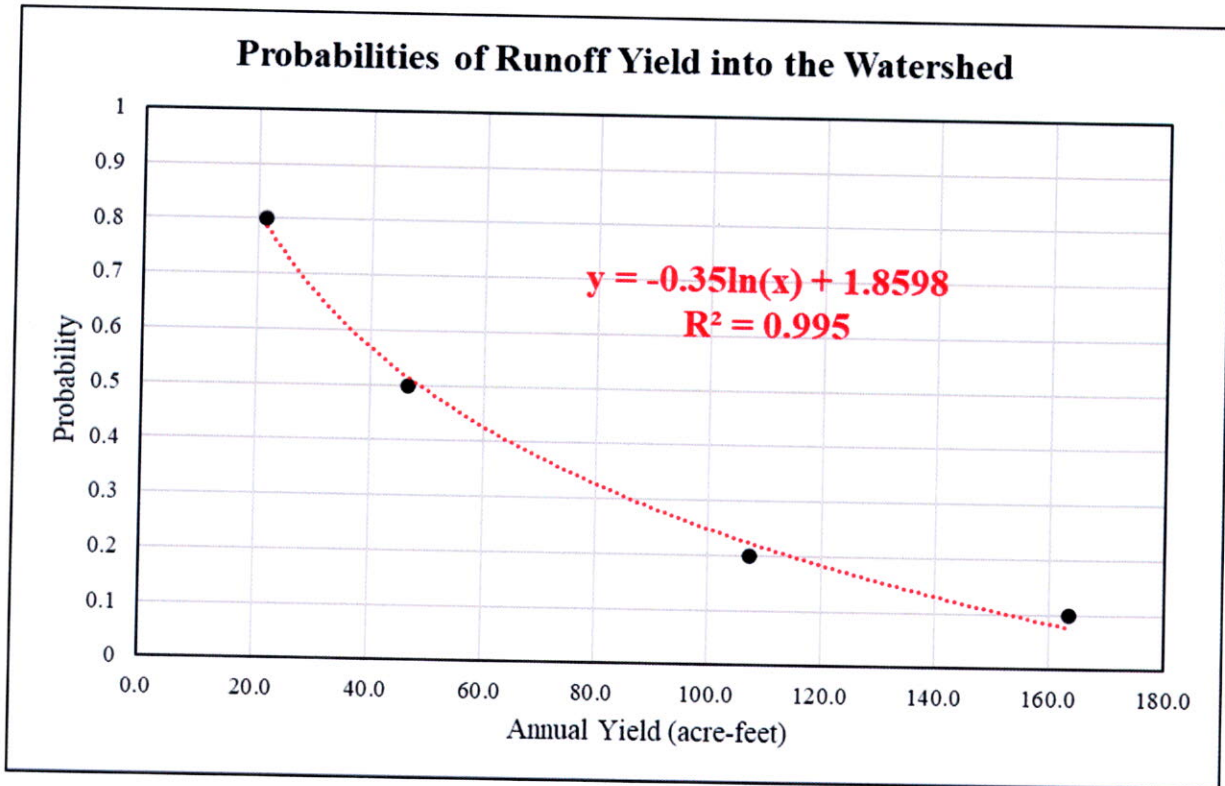


Figure 3: Plot of annual yield for the watershed above the proposed dam against the probability of occurrence. Note that this plot and trendline is only applicable for this specific watershed location and area.

Annual water losses from the reservoir are mainly due to evaporation and seepage. It has been found that evaporation from a shallow lake, wet soil, or other moist natural surfaces is roughly 70% of the evaporation from a Class A pan for the same conditions (Farnsworth and Thompson, 1982). At the location of the storage pond, the estimated average pan evaporation rate for April through October is 49 inches/year, and for November through March is 9.5 inches/year (Poudyal, 2006). This adds up to a pan evaporation annual total of 58.5 inches/year, or approximately 4.9 feet/year. To account for evaporation from natural surfaces, 70% of that rate is approximately 3.4 feet/year.

Average annual precipitation in the Mitchell, South Dakota area (approximately 8 miles north of the storage pond) is 22.83 inches/year or 1.9 feet (U.S. Climate Data, 2023). Net loss between direct precipitation and evaporation is approximately 1.5 feet. Based on the surface area of the impoundment and the estimated net loss between evaporation and direct precipitation, the lost storage in the impoundment dam is approximately 8.2 acre-feet. Estimated loss due to seepage from a dam is not available since this is not known until after years of operation and is typically not measured (Kilts, 2022).

Based on the NRCS annual surface runoff yield estimates, the amount of runoff needed to fill the existing reservoir to the estimated storage capacity (66 acre-feet) from dry has an approximately 40% chance of occurrence annually. This estimate is not a guarantee of what will occur in any given year, but an on average, over time, estimate. The water source may not be a reliable source during multi-year drought periods. Full use of the 66 acre-feet of storage per year would allow for the application of 5.8 inches per acre per year over the proposed number of acres for irrigation.

Existing Uses:

There are no water rights/permits on file to appropriate water from the storage pond for this application or between the pond and the tributary's confluence with the James River. There is a location notice within the delineated watershed above the dam location (Figure 1) (Water Rights, 2023a and 2023b). Since the dam is downstream of the nearby location notice, and the runoff water in the watershed flows northwest, the location notice should not be affected by the water entrapped by the storage pond. Other location notices to the west of the storage pond are also likely not be affected as any runoff water flowing to these locations will be coming from the west. A map of the location of the dam and the nearby location notices can be seen on Figure 1.

Given the lack of water rights/permits within the watershed and the storage pond, and the lack of complaints for appropriative water uses nearby since the dam has been built (Water Rights, 2023c), this application, if approved, is not expected to unlawfully impair existing appropriative uses or downstream domestic uses.

Review of the Dam:

ARSD Chapter 74:02:08 Safety of Dams provides "minimum standards for design, construction, alteration, maintenance, and repair of dams and to prevent loss of life." ARSD 74:02:08:06 provides classification of dams, determined either by the maximum storage capacity or height, whichever gives the larger size category.

An Upland Hutterian Brethren representative indicated the dam was constructed around 1987 and the original 18-inch steel pipe that acted as the primary spillway was plugged in 2022 and replaced with a 6-foot primary outlet. The dam has a height of 52 feet and an estimated normal storage capacity of 66 acre-feet. The South Dakota Safety of Dams Rules apply when the conditions are met under ARSD 74:02:08:01(7):

"an artificial barrier, including appurtenant works, which impounds or diverts water and which is 25 feet or more in height from the natural bed of the stream or watercourse

measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation or has an impounding capacity at maximum water storage elevation of 50 acre-feet or more. A barrier is not considered a dam for the purpose of this chapter if the height does not exceed 6 feet regardless of storage capacity or if the storage capacity at maximum water storage elevation does not exceed 15 acre-feet regardless of height.”

The height of the proposed dam exceeds 6 feet and the maximum storage exceeds 50 acre-feet; therefore, the South Dakota Safety of Dams Rules apply to this structure as stated in the design information submitted with the application. The applicant did not submit plans and specification for review and approval prior to construction of the dam in the late 1980's. It is unknown whether the minimum spillway design flood requirements are met, and therefore any object built or placed below the dam may be at risk during a flood event.

Based on the provided dam height, dam storage, and level of development in the area downstream of the dam site, the dam will be classified as an intermediate-sized, category 3 dam under the ARSD Chapter 74:02:08 Safety of Dams Rules. A category 3 dam is defined as a low hazard dam whose failure may cause limited damage to agricultural lands or county and township roads or minimum economic loss. In the event of failure, the James River and the James River floodplain below the dam should absorb excess water. There does appear to be a small building within 0.1 miles southwest and downstream of the dam but is primarily out of the flood plain in the event of failure.

If in the future the dam is altered, fails and is reconstructed, or removed, the plans and specifications concerning these actions will need to be approved by the Chief Engineer of the Water Rights Program prior to construction. If future development occurs downstream of the dam (between the dam and the James River), it may change the hazard classification of the dam. If the hazard classification does change, then the dam will need to be brought into compliance with the requirements for the new hazard classification. It is the responsibility of the dam owner to monitor and maintain their dam.

Conclusions:

1. Water Permit Application No. 8774-3 proposes to appropriate water at a maximum instantaneous diversion rate of 1.11 cfs of runoff impounded in a storage dam (estimated storage capacity of 66 acre-feet) on an unnamed tributary of the James River located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25 for the subsurface drip irrigation of 136.4 acres located in the SE $\frac{1}{4}$ of Section 25, all in T105N-R60W.
2. The NRCS surface runoff yield method estimates a 40% annual probability for the storage pond to fill completely from dry to a full-service level of 66 acre-feet.
3. Approval of this application is not expected to unlawfully impair existing water rights/permits, location notices, or domestic uses.
4. The dam for Application No. 8774-3 was not reviewed for compliance with South Dakota's Safety of Dams Rules nor approved by the Chief Engineer prior to construction. Therefore, structures built below or in the vicinity of the dam may be at risk of damage in the event of dam failure due to non-compliance with construction standards.



Brittan Hullinger
Natural Resources Engineer I
SD DANR - Water Rights Program

Reviewed by:



Whitney Kilts
Natural Resources Engineer III
SDDANR- Water Rights Program

References

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- Water Rights. 2023b. Location Notices. SD DANR-Water Rights Program. Joe Foss Building. Pierre, South Dakota.
- Water Rights. 2023c. County Files. SD DANR- Water Rights Program. Joe Foss Building. Pierre, South Dakota.



**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 NEWSPAPER RIGHT AWAY.**

August 17, 2023

Upland Hutterian Brethren
c/o Kenneth Wurtz Jr.
24221 412th Avenue
Artesian SD 57314

Dear Mr. Wurtz Jr.:

Water Permit Application No. 8774-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Sanborn Weekly Journal printed in Woonsocket SD (Ph # 605 605-796-4221) and the Huron Plainsman printed in Huron SD (Ph # 605-353-7414). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
(605) 773-3352

enclosures

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

Instruction to Newspaper - Publish the Notice on August 23 or 24, 2023. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 8774-3 to Appropriate Water

Notice is given that Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian SD 57314 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second of runoff impounded in a storage dam (estimated storage capacity 66 acre-feet) located in the SE 1/4 NW 1/4 Section 25 for subsurface drip irrigation of 136.4 acres located in the SE 1/4 Section 25; all in T105N-R60W. This site is located approximately 8 miles north of Mitchell SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8774-3 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 September 5, 2023.

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 September 5, 2023.

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 _

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, August 17, 2023 9:34 AM
To: rcrandall@plainsman.com
Subject: 8774-3 Upland Hutterian Brethren - Public Notice
Attachments: 8774-3 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on August 23, 2023.

Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian SD 57314, (605 770-7240 or 605996-7105) has been notified to contact you to authorize publication and arrange for payment.

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

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

Thank you,

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



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, August 17, 2023 9:32 AM
To: swj4221@icloud.com
Subject: 8774-3 Upland Hutterian Brethren - Public Notice
Attachments: 8774-3 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on August 24, 2023.

Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian SD 57314, (605 770-7240 or 605996-7105) has been notified to contact you to authorize publication and arrange for payment.

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

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

Thank you,

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

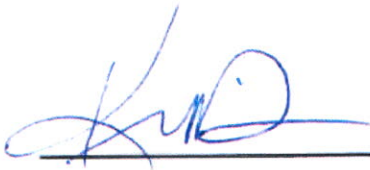


Proof Of Publication

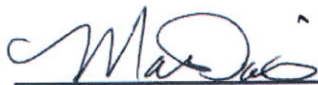
Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402

Legal Notice Number: 2159

I, Kim Davis, being duly sworn on oath say that the Plainsman is a daily paper published in Beadle County South Dakota, and that said newspaper has a bona fide circulation of 100 copies daily; that said newspaper has been published within said county for weeks immediately prior to this date, that said newspaper is printed in whole or in part at an office maintained at said place of publication; that I am a Legal Advertising Agent for said newspaper and know that facts herein state. The annexed notice headed: Brethren – Notice of Water Permit was published for one day, in said newspaper as a supplement of the said newspaper; the publication was on 8/23/2023 and the amount of the fee charged for the \$44.85 insures to the benefit of the public; 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 other than the publisher.

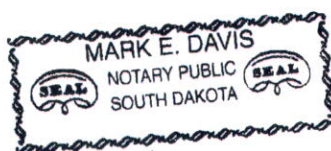


Subscribed and sworn to me before this date 8/24/23



Notary Public, South Dakota

My Term Expires 12/27/2024



2000 - Legals

2000 - Legals

F. P. 08-23-23

NOTICE OF
APPLICATION
NO. 8774-3 to

Appropriate Water

Notice is given that Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian SD 57314 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second of runoff impounded in a storage dam (estimated storage capacity 66 acre-feet) located in the SE 1/4 NW 1/4 Section 25 for subsurface drip irrigation of 136.4 acres located in the SE 1/4 Section 25; all in T105N-R60W. This site is located approximately 8 miles north of Mitchell SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8774-3 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

to the applicant and any person filing a petition. No. 2159 (adv.) Published one time at the total approximate cost of \$44.85 and may be viewed free of charge at www.sdpublicnotices.com.

4121

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 September 5, 2023.

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AFFIDAVIT OF PUBLICATION

State of South Dakota

RECEIVED

SS

SEP 05 2023

County of Sanborn

OFFICE OF
WATER

NOTICE OF APPLICATION NO. 8774-3

to Appropriate Water

Notice is given that Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian, SD 57314 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second of runoff impounded in a storage dam (estimated storage capacity 66 acre-feet) located in the SE 1/4 NW 1/4

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
No. 8774-3

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:

Aug. 24, 2023 _____, 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 whosoever; that the fees charged for the publication thereof are: \$ 41.54

Signed: [Signature]

Subscribed and sworn before me this 31 day of Aug, 2023

[Signature]

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

My Commission expires Aug 11th 2029, 2029



Section 25 for subsurface drip irrigation of 136.4 acres located in the SE 1/4 Section 25; all in T105N-R60W. This site is located approximately eight miles north of Mitchell, S.D.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8774-3 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.

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Published once on August 24, 2023, at the total approximate cost of \$42.00 and may be viewed free of charge at www.sdpublicnotices.com.



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, August 17, 2023 9:44 AM
To: up.kenjr@uplandhb.com
Subject: 8774-3 Upland Hutterian Brethren - Public Notice
Attachments: 8774_rec.pdf; 8774_Ltr.pdf; 8774_PublicNotice.pdf

Attached is a copy of the report, chief engineer's 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 also being mailed to you today.

Thank you,

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





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

OCT 10 2023

Upland Hutterian Brethren
c/o Kenneth Wurtz Jr.
24221 412th Avenue
Artesian SD 57314

Dear Mr. Wurtz:

Enclosed is Water Permit No. 8774-3 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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

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

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

Application No.: 8774-3

Name of Applicant: Upland Hutterian Brethren, c/o Kenneth Wurtz Jr.

Date of Posting: 8/21/2023

Date of Removal: 10/10/2023

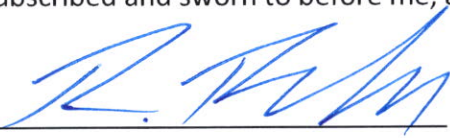


Ron Duvall, Engineer III

10/10/2023

Date

Subscribed and sworn to before me, a notary public, this 10 day of October, 2023.



Notary Public - South Dakota
My commission expires: **Rachel Rodriguez**
My Commission Expires
May 16, 2029

(SEAL)

