

WATER PERMIT NO. 8783-3

Name of Applicant: **Dave & Stacey Marlow**

Address: **38928 US Hwy 212, Redfield SD 57469**

Phone: **605-460-1344 or 605-460-1944**

Amount of Water Claimed: **0.022 cfs** Total Acres: **N/A**

Source of Water Supply: **Groundwater**

Water to be used for: **Commercial** County: **Spink**

Type of Waste Disposal System:

Location: **Approx. 1/2 mile north of Redfield SD**

PRIORITY Date Received: **7-21-2023**

Application/License Fee: **\$50.00**

Corrected Application Received:

Period of Annual Use: **April 1 – October 30**

Remarks: **The well runs 4 toilets, 1 urinal, 6 sinks**

Diversion Point: **NW 1/4 NE 1/4 Section 3-T116N-R64W**

			*		
			3		

Land to be Irrigated: **N/A**

Depth of Well: **Unknown**

Well Driller:

Remarks:

Type of Map: **aerial**

Reviewed and the Number Assigned on: **7-27-23**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
VESTED WATER RIGHT NO. 8783-3**

Date of first receipt of claim July 21, 2023.

The Water Management Board validated Vested Water Right Claim No. 8783-3 on December 6, 2023 for Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57469 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 8783-3 appropriates up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second from one well completed into the Dakota Aquifer located in Outlot A of the NE 1/4 (Lot 2) Section 3-T116N-R64W for commercial use at a Drive In Movie Theatre. This site is located approximately 1/2 mile north of Redfield SD.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: April 1 – September 30.
4. The priority date of the Vested Water Right is August 1, 1953.
5. The water use system has been constructed and water has been applied to beneficial use.
6. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The vested water right holder shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota aquifer.
2. Vested Water Right No. 8783-3 authorizes a total annual diversion of up to 2.3 acre-feet of water.

WATER MANAGEMENT BOARD

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

JAN 03 2024
date



JUL 21 2023

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8783-3</u> (office use only) Hydrologic Unit <u>10160009</u>
	Basin <u>Turtle</u>
	Newspaper <u>Redfield Press</u> <u>Huron Plainsman</u>

PAID

JUL 21 2023

Ck# 990
Rec't# 7/21/23

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 Dave + Stacey Marlow
Mailing Address 38928 US Hwy 212 Redfield SD 57469
605-460-1344 (Address) (City) (State) (Zip Code)
605-460-1946 Mobile Email 63Ford@nrc.tv.com
- Amount of water claimed 0.022 *CFS or 10 **GPM and 2.3 ***AF or 768,600 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 ground water - 1 well 7 (NW 1/4 NE 1/4)
- Location of point of diversion Outlet "A" in NE 1/4 3-116-64 Except lot 1 County Spink
(example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)
If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No
If "Yes," where will water be used? _____
(example - NW 1/4 section 12-T104N-R53W)
- County or counties where water will be used Spink
- Annual period during which water is to be used April - September ³⁰
- 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)

The well runs 4 toilet
1 urinal
6 Sinks

I, Stacey Marlow, 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 _____

For either Existing or Proposed Wells:

c) Well Depth (required) _____ *Believed to be the Dakota Formation - Dep. unknown*
Depth to Top of Water Bearing Material _____ Depth to Water from Surface _____

d) Distance to nearest domestic well on applicant's property none Property owned by others unknown

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) _____ Year Constructed _____

c) Connected to the City of no 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)

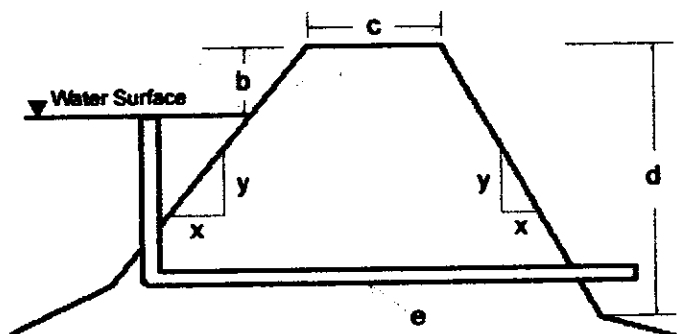
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres



Affidavit of Water Use

Form 2B
(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit is needed to document historical water use, primarily with vested right claims.

Affidavit Of Construction Of Water Use System And Application Of Water To Beneficial Use

Name of Applicant (Same as Form 2) _____

Mailing Address _____
(Address) (City) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

Date of Recording _____ Recording Date _____

B. Date of start of construction of water supply system July 1953

C. Date that water was first applied to beneficial use August 1953

D. Name of owner of original water supply system Souix Drive In

E. Amount of water originally applied to beneficial use _____

F. Present use of water - amount of water now being used approximately 4200 gal. a day

Date that this water was first used August 1953

G. Chronological History of Water Use

The Drive In Movie Theatre opened August 1953 and has been open every year. 70 years

I, Dave + Storey Marlow the applicant, certify that I have read the foregoing and that the matters therein are true.

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein are true.

Storey Marlow 7-18, 2023
Dave Marlow 7-18, 2023



Township: 117N 64W
Section: 34
QQ Sect: NWSE

Township: 117N 64W
Section: 34
QQ Sect: NESE

Township: 117N 64W
Section: 35
QQ Sect: NWSW

Township: 117N 64W
Section: 35
QQ Sect: NESW

Township: 117N
Section: 35
QQ Sect: NW

117N 64W

117N 64W
Section: 34

117N 64W
Section: 35

Township: 117N 64W
Section: 34
QQ Sect: SESW

Township: 117N 64W
Section: 34
QQ Sect: SWSE

Township: 117N 64W
Section: 34
QQ Sect: SESE

Township: 117N 64W
Section: 35
QQ Sect: SWSW

Township: 117N 64W
Section: 35
QQ Sect: SESW

Township: 117N
Section: 35
QQ Sect: SW

172 ST

Township: 116N 64W
Section: 03
QQ Sect: NWNW

Township: 116N 64W
Section: 03
QQ Sect: NENW

Township: 116N 64W
Section: 03
QQ Sect: NWNE

Township: 116N 64W
Section: 03
QQ Sect: NENE

Township: 116N 64W
Section: 03
QQ Sect: NWN

281

Well

CENTER DR

116N 64W

116N 64W
Section: 03

Township: 116N 64W
Section: 03
QQ Sect: SWNW

Township: 116N 64W
Section: 03
QQ Sect: SENW

Township: 116N 64W
Section: 03
QQ Sect: SWNE

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QQ Sect: SENE

Township: 116N 64W
Section: 03
QQ Sect: SWN

116N 64W
Section: 04

Township: 116N 64W
Section: 03
QQ Sect: NWSW

Township: 116N 64W
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QQ Sect: NESW

Township: 116N 64W
Section: 03
QQ Sect: NWSE

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Section: 03
QQ Sect: NESE

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Section: 03
QQ Sect: NWS

Redfield

Township: 116N 64W
Section: 04
QQ Sect: SESE

Township: 116N 64W
Section: 03
QQ Sect: SWSW

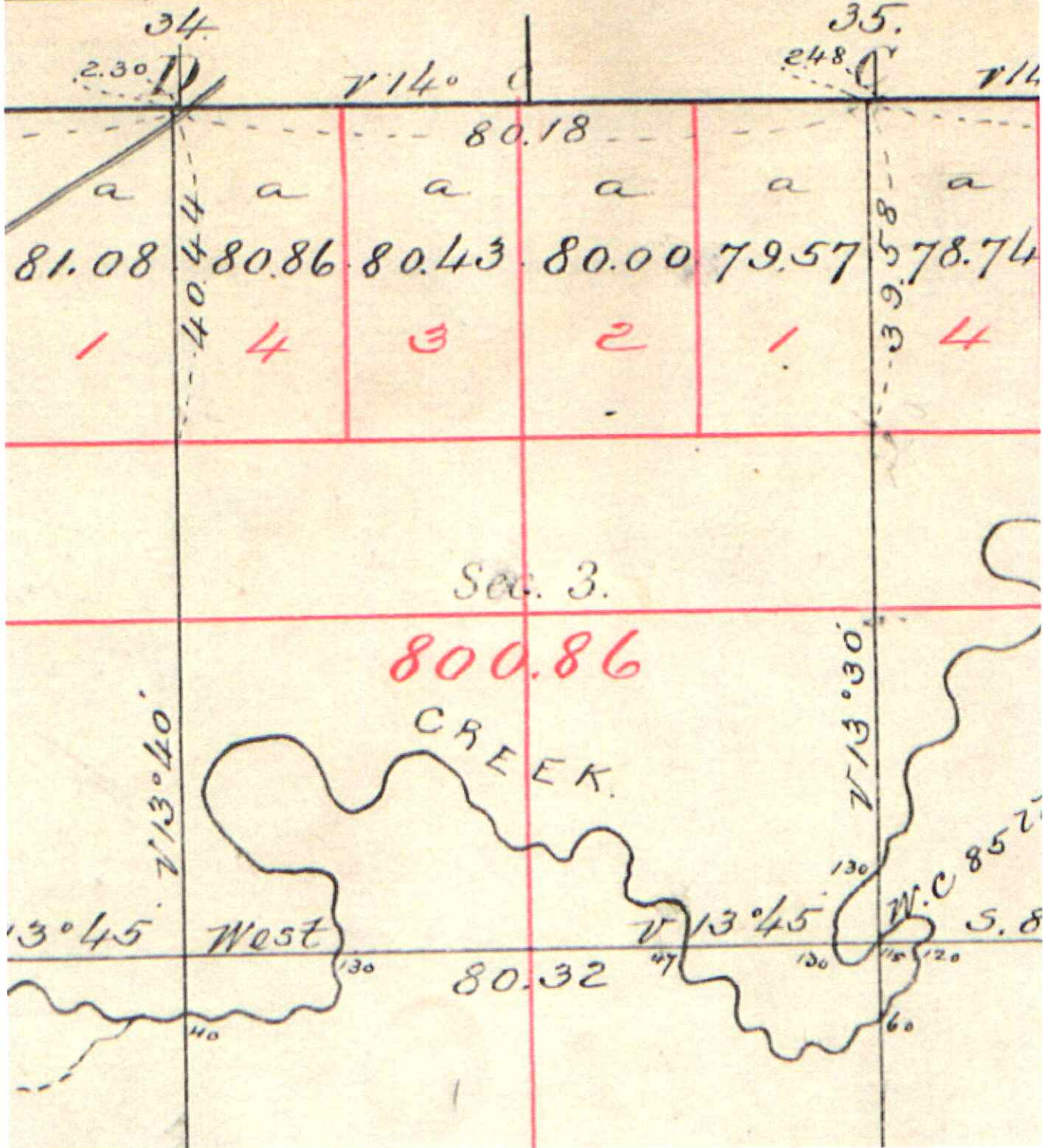
Township: 116N 64W
Section: 03
QQ Sect: SESW

Township: 116N 64W
Section: 03
QQ Sect: SWSE

Township: 116N 64W
Section: 03
QQ Sect: SESE

Township: 116N 64W
Section: 03
QQ Sect: SWS

64 West of the 5th



RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date July 21, 2023

RECEIVED OF Pheasant City Drive in LLC/Dave/Stacy Marlow 38928 US Hwy 212 Redfield SD 57469

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

Fee for Application for Permit No. <u>Vested Water Right 8783-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>50.00</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. _____	\$ _____
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>50.00</u>

By Eric Gronlund
Chief Engineer
zm



531594140

ANNUAL REPORT

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

Domestic Limited Liability Company
SDCL 47-34A-211; 59-11-24, 24.1

2023
FILING YEAR

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

Filing Fee: \$50

Total Fee: \$50

1. Business ID and Name:

DL037118
BUSINESS ID

Pheasant City Drive In, LLC
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

38928 US HWY 212
REDFIELD, SD 57469

Mailing Address

38928 US HWY 212
REDFIELD, SD 57469

4. The South Dakota Registered Agent's Name:

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

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

Name **DAVID MARLOW**

Actual Street Address in this State

38924 US HWY 212
REDFIELD, SD 57469

Mailing Address in this State

5. If the LLC is manager-managed, list the names and addresses of its Managers. SDCL 59-11-24. If the LLC is member-managed, this section may be left blank.

6. 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 criminal penalty (SDCL 22-39-36).

11/03/2022

Dated

Email (Optional)

Stacey L Marlow

Signature of an Authorized Person

Stacey L Marlow

Printed Name



**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 VALIDATION OF VESTED
WATER RIGHT APPLICATION NO. 8783-3, Dave and Stacey Marlow**

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 Vested Water Right Application No. 8783-3, Dave and Stacey Marlow, US Hwy 212, Redfield SD 57469.

The Chief Engineer is recommending VALIDATION of Application No. 8783-3 for up to 2.3 acre feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second because 1) water has been appropriated as described for commercial use with a priority date of August 1, 1953, 2) the use has been developed without unlawful impairment of existing rights, 3) the 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 vested water right holder shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota aquifer.
2. Vested Water Right No. 8783-3 authorizes a total annual diversion of up to 2.3 acre-feet of water.

See report on application for additional information.

Eric Gronlund, Chief Engineer
September 21, 2023

Report to the Chief Engineer

Vested Water Right Application No. 8783-3

Dave & Stacy Marlow

14 September 2023

Vested Right Application No. 8783-3 seeks validation of a vested water right for an appropriation of up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second (cfs) from one well completed into the Dakota aquifer located in Outlet A of the NE ¼ (Lot 2) of Section 3, T116N-R64W. The water is for commercial use at a drive-in movie theater called Pheasant City Drive-In Theatre during April 1 through September 30 of the year and has a claimed priority date of August 1, 1953. This site is located in Spink County, approximately ½ mile north of Redfield, South Dakota.

The Affidavit of Construction of Water Use System and Application of Water To Beneficial Use states the date of start of construction of water supply was July 1953 and water was first placed to beneficial use in August 1953. The original name was the Sioux Drive In according to the affidavit.

Aquifer: Dakota Aquifer (DKOT)

South Dakota Codified Law (SDCL):

SDCL 46-6-1

According to SDCL 46-6-1, the term 'vested right' as used in this report means: (1) the beneficial uses of groundwater under diversions and applications of water before February 28, 1955; and (2) the right to take and use groundwater for beneficial purposes if an owner or lawful agent was engaged in the construction of works for the actual application of water to a beneficial use on February 28, 1955, if the works are completed and water is actually applied for such use within a reasonable time after that date.

Description of Aquifer:

The Dakota aquifer is a bedrock aquifer which was deposited in the mid to late Cretaceous age (Fahrenbach et al., 2010), underlying approximately 66,500 square miles of the total 77,047 miles that constitute South Dakota (Schoon, 1971) including the entirety of Spink County (Hamilton and Howells, 1996). The aquifer consists of interbedded tan to white sandstone and dark-colored shale, with very fine to coarse quartz sand (Hamilton and Howells, 1996). Most formations that overlie the Dakota aquifer are nearly impermeable shales that yield little or no water. Formations that underlie the Dakota aquifer can vary in Spink County from Precambrian crystalline rocks, and in parts of western Spink County, the Skull Creek shale and the Inyan Kara Group (Hamilton and Howells, 1996; Fahrenbach et al., 2010). The thickness of the aquifer in Spink County is generally 200 to 300 feet thick but may be less in the southeastern corner of the county (Hamilton and Howells, 1996).

Potentiometric head contour maps illustrate the surface where water rises in a well, or above the well in the case of a flowing well. Potentiometric maps can indicate the direction that water travels through the aquifer, which for Spink County can be seen in Figure 1. Water moves generally westward (Bredehoeft, 1983). However, local conditions in Spink County show some flow from the east due to large withdrawals, which can create basins in the potentiometric surface (Hamilton and Howells, 1996). Note that the data for the potentiometric surface shown in Figure 1 was collected in 1980 to 1989 time period and would not reflect the shift of several large users in the area (including the City of Redfield) from using Dakota wells as their water source to using rural water systems as their primary water source in the very late 1980's and early 1990s (Water Rights, 2023c; McIntire, 2023).

There is no well completion report submitted with this vested right application. The well is presumably completed into the Dakota aquifer due to lower head pressure in the well compared to the higher head pressure found for wells completed into the Inyan Kara and other aquifers found in this area are typically non-flowing. Nearby well completion reports state that near the area of this application, water bearing material of the Dakota aquifer is located at a depth ranging from 826 to 960 feet (Water Rights, 2023d). The Dakota aquifer at this location is confined and flows at land surface at this time, at a rate of approximately 10 gallons/minute (gpm) according to the application.

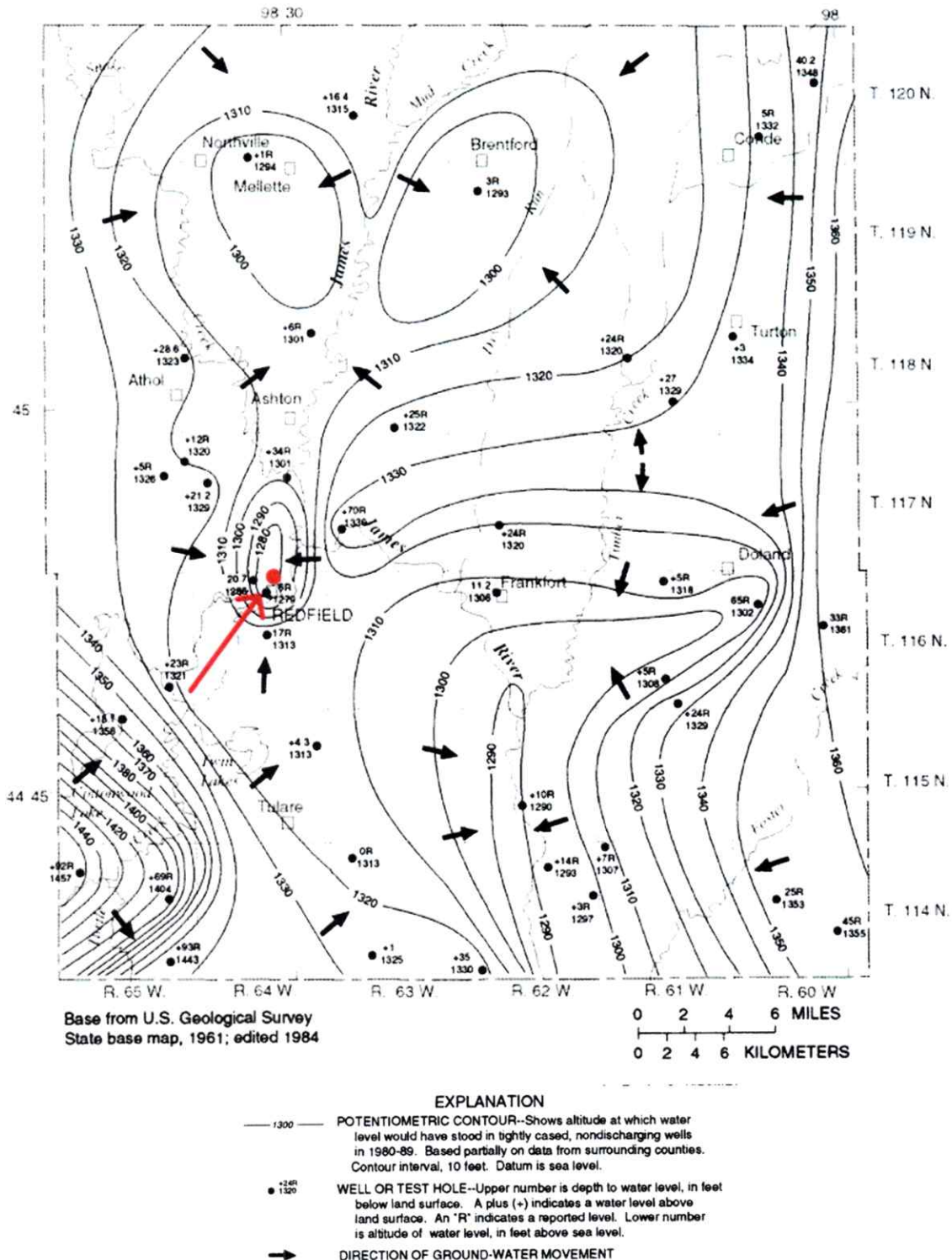


Figure 1. Potentiometric contours of the Dakota aquifer using data from the years 1980 to 1989 (Hamilton and Howells, 1996). Development of the aquifer reduced the artesian head, creating a depression in the potentiometric surface near Redfield, SD (Hamilton and Howells, 1996). This depression can also be seen in potentiometric maps made by Bredehoeft et al. (1983) (Figure 2). The red dot indicates the approximate location of the well for this application.

Declining Artesian Head Pressure in Dakota Aquifer:

The long-term decline of artesian head pressure in the Dakota aquifer over large areas of South Dakota has been a point of concern since the early 1900's. Investigations of the Dakota aquifer led to the conclusion that the decrease in artesian head pressure is indicative of withdrawals exceeding recharge. The Water Management Board has considered this issue several times and has found that declines in artesian head pressure do not automatically indicate that withdrawals have exceeded recharge to the Dakota aquifer (Water Rights, 1987).

The Water Management Board concluded that a determination cannot be made that withdrawals are exceeding recharge based solely on a decline in artesian head pressure. In theory, head pressure in the Dakota aquifer is stabilizing from discharges (e.g., uncontrolled flowing wells and natural discharge) and withdrawals (Water Rights, 1987).

In the Findings of Fact and Conclusions of Law for Application No. 5136-3, the Water Management Board concluded that "the primary reason for declines in the Dakota formation head pressure is due to water being discharged without beneficial use through uncontrolled flowing wells" (Water Rights, 1987). The Water Management Board further concluded:

"When defining withdrawal for the purpose of interpreting the meaning of withdrawal pursuant to SDCL 46-6-3.1, there is a difference between withdrawal of water for beneficial use and water discharged without beneficial use through uncontrolled flowing wells. Water discharged from uncontrolled flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1."

Ultimately, the position of the Water Management Board has been to optimize the development of the Dakota aquifer for beneficial use.

Observation Well Analysis:

Since the well for Vested Water Right Application No. 8783-3 has been in use since August of 1953, its effect on local water levels in the Dakota aquifer has already been accounted for. Water levels for nearby observation wells illustrate recent water level trends for the Dakota aquifer. The nearest Dakota aquifer observation wells monitored by the Water Rights Program are ED-85A (located approximately 39 miles northwest), HD-87A (located approximately 42 miles southwest), and BL-83A (located approximately 88 miles southwest). Figure 2 shows the approximate location of the nearest observation wells and the approximate location of the well for this vested right application as seen on one of the Bredehoeft et al. (1983) potentiometric maps of the Dakota aquifer. Dakota aquifer observation well trends differ greatly at various locations.

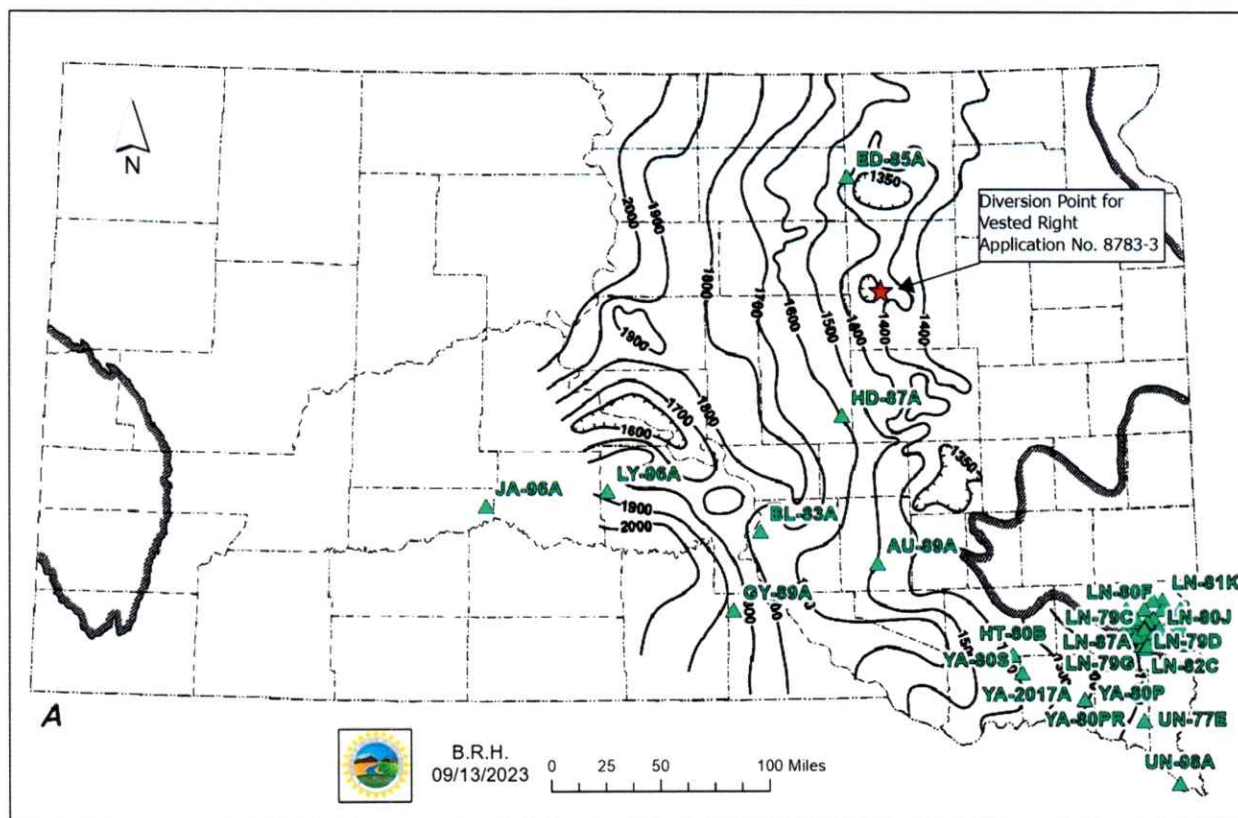


Figure 2. The potentiometric surface in the Dakota aquifer in South Dakota in 1915, after 34 years of development, as interpreted from well data (modified from Bredehoeft et al., 1983). The green triangles represent the approximate locations of observation wells completed into the Dakota aquifer. The red star represents the approximate location of the well for this vested right application.

Hydrographs for observation wells BL-83A and HD-87A (Figures 3 and 4) show a trend of decreasing water levels due to declining artesian head pressure but the water level is still above the aquifer materials. However, a decline in water levels in a confined aquifer does not necessarily indicate a significant decrease of water stored within the aquifer.

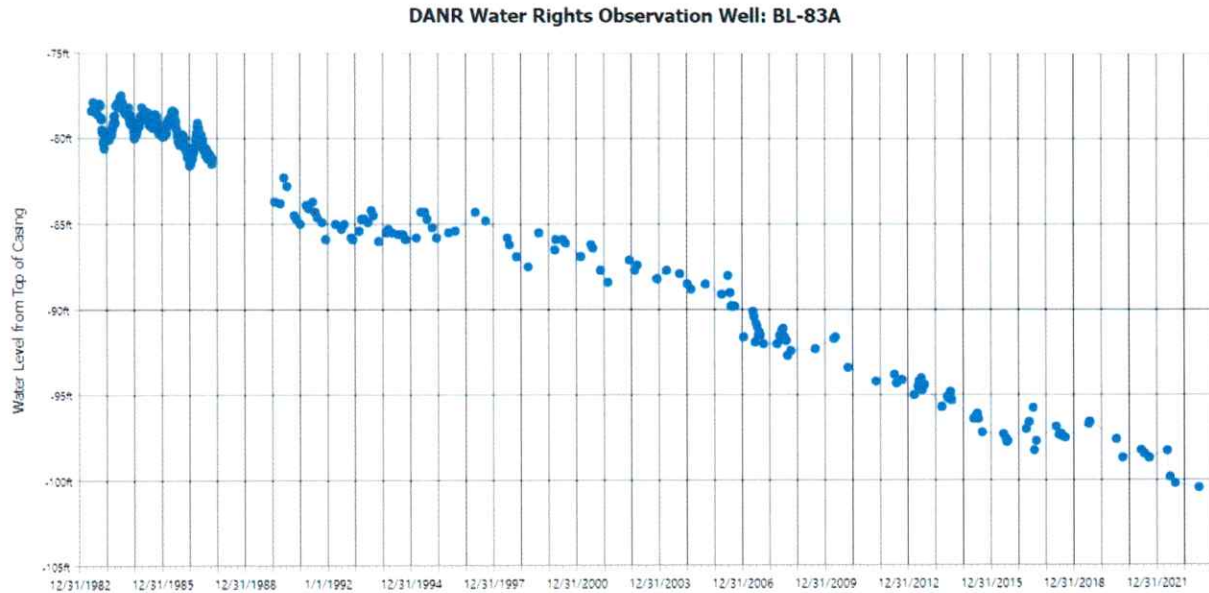


Figure 3. Hydrograph for observation well BL-83A (Water Rights, 2023b).

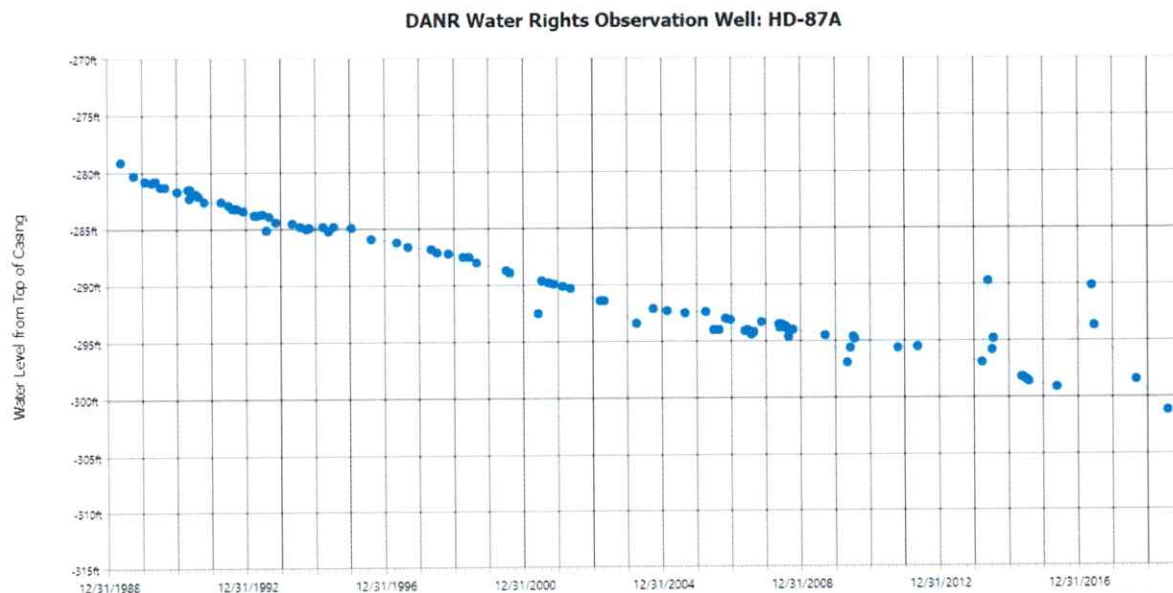


Figure 4. Hydrograph for observation well HD-87A (Water Rights, 2023b).

The hydrograph for observation well ED-85A (Figure 5) shows a trend in water level that has been increasing from 1991 to 2017 and recently appears to be stabilizing. An aquifer pumping test at observation well ED-85A is the cause for the drawdown in hydraulic head that occurred in 2018 (Steen, 2023).

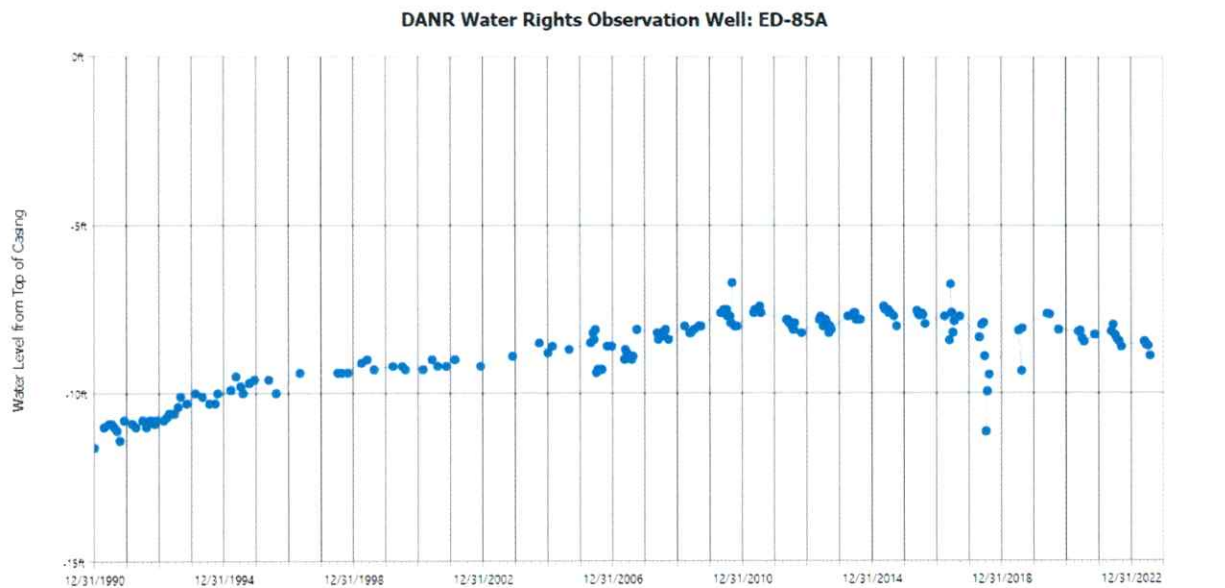


Figure 5. Hydrograph for observation well ED-85A (Water Rights, 2023b).

Dakota aquifer observation wells in Union and Lincoln County show stabilizing water level trends. The potentiometric surface mapped by Bredehoeft et al. (1983) shows head pressure contours in that region which match what has been historically expected for the aquifer and has likely been less affected by pumping or loss of artesian head pressure through other discharges as described previously (Bredehoeft et al., 1983) (Figure 2). Also, the natural discharge area to the Missouri River lowers the pressure in the Dakota aquifer in the southeastern corner of the state and thus the decline in head pressure is less pronounced (Schoon, 1971).

Uncontrolled flowing wells have likely been a cause for decreasing head pressure in the aquifer (Schoon, 1971; Water Rights, 1987). Investigation of the Spink County complaint files revealed multiple instances of uncontrolled flowing wells complaints (Water Rights, 2023e). Often, small diameter wells with flows of 5 gallons per minute or less were allowed to flow especially in winter to prevent freezing (Water Rights, 2023e).

Discharge from uncontrolled flowing wells is likely to continue until artesian head pressure becomes low enough for them to stop flowing. The Water Management Board has previously made the decision to allow beneficial pumping in order to reduce the amount of water which is being wasted by the uncontrolled flowing wells.

Hydrologic Budget Analysis:

The criteria set forth in SDCL 46-2A-9 regarding the availability of unappropriated water does not apply to the validation of a vested water right. However, for the Water Management Board and Chief Engineer's information, the hydrologic budget for the Dakota aquifer and the potential for unlawful impairment of existing water rights are included in this report.

Recharge

Subsurface inflow to the Dakota aquifer comes primarily from fractures in the confining layers above and below the aquifer (Bredehoeft, 1983; Hamilton and Howells, 1996), particularly from higher pressure aquifers that underlie the Dakota aquifer like the Madison Group limestones and the Inyan Kara Group (Bredehoeft, 1983; Hamilton and Howells, 1996). Outcrops of the Newcastle sandstone, an equivalent and hydrologically connected sandstone, in the Black Hills absorb precipitation, but this is less likely to recharge eastern South Dakota (Bredehoeft, 1983).

Quantitative recharge rates to the Dakota aquifer are approximate estimates and it is unknown what the true recharge rate to the aquifer is. Many estimations are found for regional study areas. Bredehoeft et al. (1983) estimates approximately 79.4 cfs or 57,500 acre-feet/year of recharge to the Dakota aquifer in South Dakota. However, the Bredehoeft et al. (1983) may be an underestimation due to comparison of the Inyan Kara and Madison aquifers recharge rates in other studies that have changed significantly since the Bredehoeft study (Steen, 2023).

Discharge

Discharge from the Dakota aquifer in South Dakota occurs through outflow to overlying or adjacent aquifers where the Dakota aquifer has a higher potentiometric surface, well withdrawals, uncontrolled flowing wells, and outflow through corroded well casings (Bredehoeft, 1983; Water Rights, 2023c; Water Rights, 2023d). In South Dakota, the Missouri River between Vermillion, SD and Sioux City, IA, is also a site of natural discharge (Schoon, 1971).

Currently, there are 259 water rights/permits appropriating water from the Dakota aquifer within South Dakota (Water Rights, 2023c) and two pending applications (including this application). There are an additional seven future use permits which reserve water from the Dakota aquifer in South Dakota (Water Rights, 2023c). For the purpose of estimating average annual withdrawals, the full amount of water that is reserved by these permits will be included in the hydrologic budget. The amount of reserved water for the future use permit holders is approximately 4,287 acre-feet per year.

Of the 259 Dakota aquifer water rights/permits, 21 are primarily for irrigation use. Irrigation water rights/permits have been typically required to report their annual usage on an irrigation questionnaire since 1979. For those irrigation water rights/permits that do report, average use was calculated for each of their respective periods of record and summed. Water Rights Nos. 394-3 and 762-3 are not required to submit an irrigation questionnaire, and assuming an application rate of 1 foot of water per acre per year, they collectively authorize 31.2 acre-feet/year. Water Permits Nos. 8423-3, 8510-3, 8727-3, 8560-3 have recently been issued and

annual pumping is not averaged. This is because there is too short a period of record or the well has yet to be constructed. These permits are for turf irrigation, and an application rate of 2 acre-feet/year per permitted acre will be assumed. Pending Water Permit Application No. 8781-3, if approved, will appropriate 91 acre-feet/year assuming an application rate of 2 acre-feet/year per permitted acre. The average annual appropriative irrigation use from the Dakota aquifer is approximately 764.4 acre-feet/year not including Pending Water Permit Application No. 8781-3, if approved.

Of the 259 Dakota aquifer water rights/permits, 238 are primarily for non-irrigation use. Historically, average water use by non-irrigation appropriations limited by an instantaneous diversion rate have been assumed to be pumping 60% of the time at their respective permitted diversion rate. Water rights/permits limited by an annual volume are assumed to withdraw their entire respective annual volume limitation. Water rights/permits that are authorized to withdraw from one or more aquifers are assumed to be withdrawing their entire appropriated volume from the Dakota aquifer unless a specific volume is authorized from the Dakota aquifer, in which it is assumed that they are withdrawing their full specified volume. Municipal water rights/permits that are connected to a rural water system likely maintain their wells for standby purposes and have been estimated to be zero acre-feet/year. These are standard methods used by the DANR Water Rights Program for estimating annual withdrawals by non-irrigation appropriations from an aquifer (Water Rights, 2023c). There are 6 non-irrigation water rights/permits which are required to report their respective annual use from the Dakota aquifer, but this reported volume is often less than the estimated volume methods for non-irrigation appropriations, and thus the estimated values will be used in this analysis (Water Rights, 2023c and 2023f). Collectively, the annual appropriative non-irrigation use from the Dakota aquifer in South Dakota is approximately 22,674.3 acre-feet/year.

There are domestic wells completed into the Dakota aquifer that do not require a water right/permit, so the withdrawal amount for domestic use is unknown. Due to relatively low diversion rates and the availability of rural water, withdrawals from domestic wells are not considered to be a significant portion of the hydrologic budget.

Hydrologic Budget Summary:

The estimated average annual withdrawal rate from the Dakota aquifer is approximately 27,819 acre-feet/year (Table 1).

Table 1. Estimated use from the Dakota aquifer (Water Rights, 2023a and 2023c)

Type of Water Right/Permit	Estimated Use (acre-feet/year)
Future Use	4,287
Non-Irrigation	22,674.3
Irrigation	764.4
Pending Application No. 8781-3	91
Vested Right Application No. 8783-3	2.3
Total	27,819

Schoon (1971) estimates the storage capacity of the Dakota aquifer to be 1.1 billion acre-feet. A reliable recharge rate for the Dakota aquifer in South Dakota is not known, thus while the aquifer is likely to provide water for the foreseeable future, it is not entirely clear whether withdrawals exceed recharge to the Dakota aquifer. Using the Bredehoeft et al. (1983) recharge estimate of 57,500 acre-feet/year, there is water available for appropriation in the Dakota aquifer. For Vested Water Right Application No. 8783-3, the availability of water is not a criterion for whether it is validated and therefore, water availability is not a concern.

Potential for Unlawful Impairment of Existing Water Rights:

Nearby Water Rights/Permits

There are currently 259 water rights/permits authorized to appropriate water from the Dakota aquifer, plus one other pending application for the city of Harrisburg. The closest existing water rights to the well site for this application are Water Right No. 5331-3 held by the South Dakota Development Center (located approximately ¼ mile east) and Water Right No. 4976-3 held by the City of Redfield (two diversion points located approximately 1.5 miles southeast. Municipal Water Right No. 4976-3 has been connected to a RWS and is likely keeping the wells for standby purposes. Institutional Water Right No. 5331-3 authorizes a diversion rate of 0.9 cfs. Figure 6 shows the location of the well for this application relative to the nearby water rights. Regardless, if validated, Vested Water Right No. 8783-3 will be senior to these nearby water rights.

There are domestic wells on file with the DANR Water Rights Program that are completed into the Dakota aquifer, with the closest domestic well on file (not held by the applicant) approximately 0.03 miles west of the existing well site for this application. There could potentially be other domestic wells completed into the Dakota aquifer near the location of the existing well for this application that are not on file with the DANR Water Rights Program.

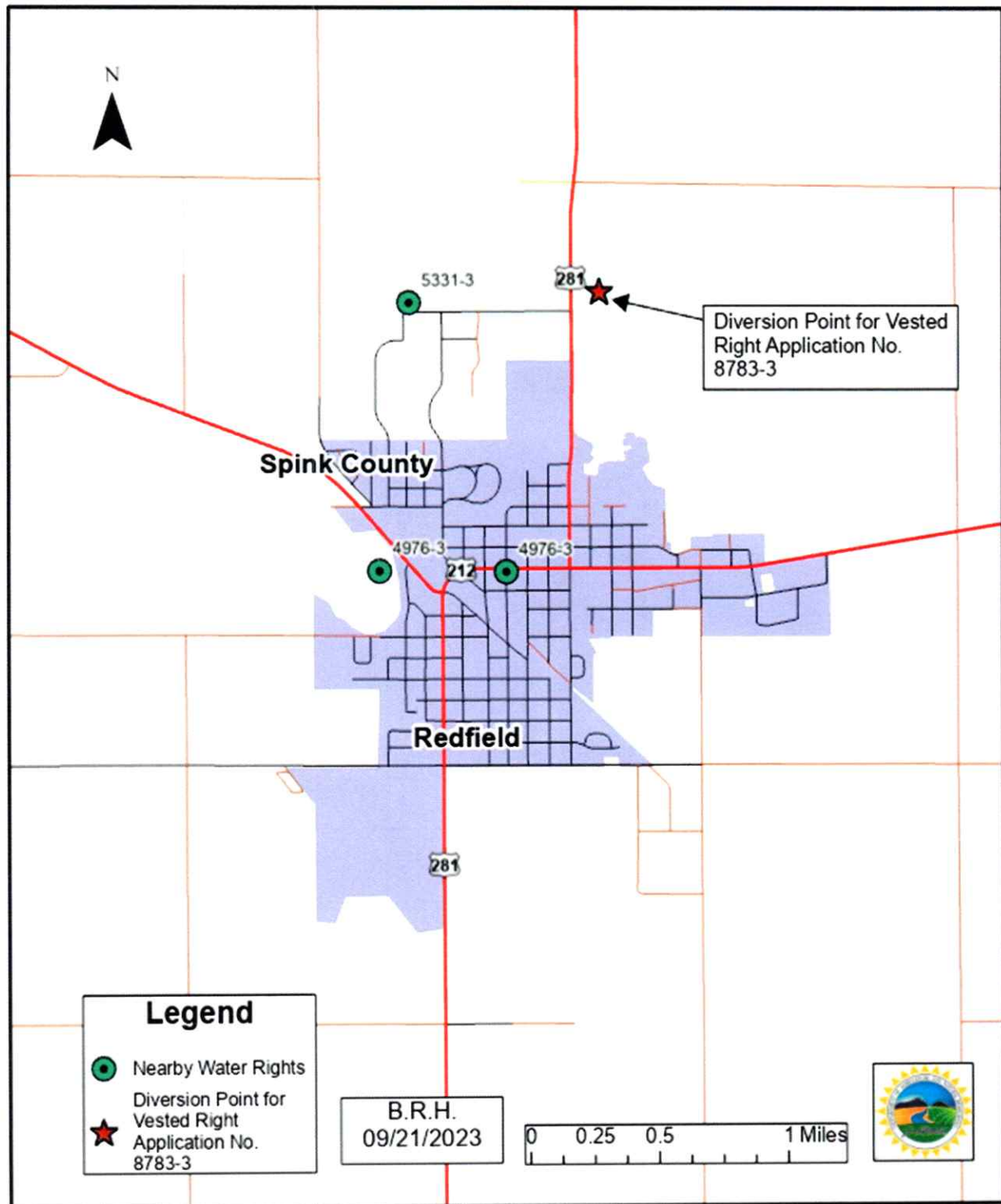


Figure 6. Map of well location for Vested Water Right Application No. 8783-3 and nearby existing water rights.

The Dakota aquifer is confined at the existing well site due to the fact that it is currently flowing. Drawdown created by pumping a well generally does not extend far from the pumped well in an unconfined aquifer. However, in a confined aquifer, drawdown from pumping or allowing to flow at land surface could extend a distance from the diversion point. The exact drawdown behavior of the existing well for this application cannot be known without an aquifer performance test. That being said, the Dakota aquifer has been historically impacted by pumping and primarily by uncontrolled wells, causing the artesian head pressure to decline.

Near the existing well site, the Dakota aquifer has a saturated aquifer thickness ranging from approximately 40 to 160 feet (Water Rights, 2023d). This would generally allow for enough thickness for a pump to be placed 20 feet below the top of the aquifer, which is required for the well to be considered adequate under ARSD 74:02:04:20(6). In Spink County, there are no complaints on file with the DANR Water Rights Program regarding well interference for adequate wells completed into the Dakota aquifer. There are, however, complaints concerning uncontrolled flowing wells (Water Rights, 2023e). Any drawdown as a result of the diversion for this application has not unlawfully impaired nearby adequate wells and is not expected to in the future if Vested Water Permit Application No. 8783-3 is validated since it has been in operation from 1953 to present.

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 Dakota aquifer at their location. The well for this application may be in a location where the Dakota aquifer has formed a basin of low artesian head pressure where delivery of water via head pressure is not reliable.

Special Consideration of Well Construction:

Requirements for wells (ARSD Sections 74:02:04:20 to 74:02:04:76), apply to all wells constructed, rehabilitated, or rebuilt after July 16, 1992. The well listed with this vested right application appears to be in accordance with "Slim Hole" standards, which do not comply with present well construction standards for this use of water. All wells, except for monitoring wells, need to be adequate as is explicitly stated in ARSD 74:02:04:23.01:

"Except for monitoring wells, all wells shall be constructed to comply with the definition of an adequate well in subdivision 74:02:04:20(6)."

There are alternative well construction requirements for certain Dakota aquifer wells, as listed in ARSD 74:02:04:35, but the rule indirectly states that they cannot be used for permitted wells. Any future additional or replacement well for Vested Right Application No. 8783-3 must meet the adequate well construction standards as defined in ARSD 74:02:04:20, specifically defined in 74:02:04:20(6):

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

This well was constructed in 1953 in a manner that does not allow for a pump to be placed with the casing. So, water production is dependent on the well flowing at ground surface. SDCL 46-6-6.1 provides rules and regulations for minimum construction standards for all wells in South Dakota based upon the ability of a well to produce water independent of artesian pressure. The Water Management Board has adopted well construction standards defining an adequate well as a well that allows the inlet to the pump being capable of being placed not less than 20 feet into the saturated aquifer or formation material. The well under this vested water right claim does not meet the definition of an adequate well. Therefore, reliance on flow at the ground surface may not be protected from junior appropriator diversions.

Conclusions:

1. The affidavit filed with this application indicates that water has been used for these purposes since August of 1953 and this application can be validated as a vested right.
2. Vested Right Application No. 8783-3 proposes to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cfs. The well is for commercial use at a drive-in movie theater and is located in Outlet A of the NE $\frac{1}{4}$ (Lot 2) of Section 3, T116N-R64W.
3. Any replacement or additional wells for Vested Water Right No. 8783-3, if validated, must meet adequate well standards as defined in ARSD 74:02:04:20.
4. Water availability and the potential unlawful impairment of existing rights is not a consideration when validating vested water right claims but is provided in this report for the benefit of the Chief Engineer and the Water Management Board.



Brittan R. Hullinger
Natural Resources Engineer I
SD DANR, Water Rights Program



Adam Mathiowetz, PE
Natural Resources Engineer IV
SD DANR, Water Rights Program

References

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- Water Rights. 2023d. Well Completion Reports. SD DANR-Water Rights Program. Joe Foss Bldg. Pierre, SD.
- Water Rights, 2023e. County Files. SD DANR-Water Rights Program. Joe Foss Bldg. Pierre, SD.
- Water Rights, 2023f. "1994-2022 Non-Irrigation Yearly Reports" SD DANR- Water Rights Program. Joe Foss Building. Pierre, SD.



**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.**

October 16, 2023

Dave & Stacey Marlow
38928 US Hwy 212
Redfield SD 57469

Dear Mr. Marlow:

Water Permit Application No. 8783-3 for commercial use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Redfield Press printed in Redfield SD (Ph # 605 472-0822) and the Huron Plainsman printed in 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 publishers have been instructed to publish your notice. The newspapers have also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

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 October 25, 2023. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 8783-3 to Validate a Vested Water Right Claim to Appropriate Water

Notice is given that Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57469 has filed an application to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second from one well completed into the Dakota Aquifer located in Outlot A of the NE 1/4 (Lot 2) Section 3-T116N-R64W for commercial use at a Drive In Movie Theatre. This site is located approximately 1/2 mile north of Redfield SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that “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 Chief Engineer’s recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board.” In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 8783-3_ because 1) water has been appropriated as described for No. 8783-3, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, 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. 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.

The Water Management Board will consider this application at 9:30 AM (Central Time) on December 6, 2023, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any person who intends to participate in the hearing 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 November 6, 2023.

The petition shall be in writing and 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by November 6, 2023. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

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 November 6, 2023.

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at an approximate cost of_____.

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Monday, October 16, 2023 11:38 AM
To: rcrandall@plainsman.com
Subject: 8783-3 Dave & Stacey Marlow - Public Notice
Attachments: 8783-3 public.wmb_final.docx; FORM8.FRM.doc

Attached is a notice to be published on October 25, 2023.

Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57469, (605-460-1344) have been notified to contact you to authorize publication and arrange for payment.

I am requesting that you please send the affidavit or Publication form via email or mail ASAP to the Water Rights Program, 523 E Capitol Ave, Pierre SD 57501. It would be greatly appreciated.

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: Monday, October 16, 2023 11:36 AM
To: Redfield Office
Subject: FW: 8783-3 Dave & Stacey Marlow - Public Notice
Attachments: 8783-3 public.wmb_final.docx; FORM8.FRM.doc

Oops, forgot to add the publish date, please publish on October 25, 2023.

Thank you,

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



From: Rodriguez, Rachel
Sent: Monday, October 16, 2023 11:35 AM
To: Redfield Office <office@redfieldpress.com>
Subject: 8783-3 Dave & Stacey Marlow - Public Notice

Attached is a notice to be published on

Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57469, (605-460-1344) 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: 2248

I, Kim Davis, 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: Dave Marlow - Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 10/25/2023. That the full amount of the fee charged for the \$81.54 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.

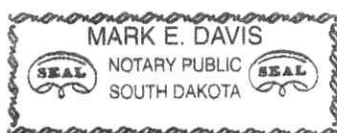


Subscribed and sworn to me before this date 10/25/23.



Notary Public, South Dakota

My Term Expires 12/27/2024



RECEIVED
NOV 03 2023
OFFICE OF
WATER

**NOTICE OF HEARING
on Application
No. 8783-3 to Validate
a Vested Water
Right Claim to
Appropriate Water**

Notice is given that Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57460 has filed an application to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second from one well completed into the Dakota Aquifer located in Outlot A of the NE 1/4 (Lot 2) Section 3-T16N-R64W for commercial use at a Drive In Movie Theatre. This site is located approximately 1/2 mile north of Redfield SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "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 Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends **VALIDATION** of Vested Water Right Application No. 8783-3 because 1) water has been appropriated as described for No. 8783-3, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, 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. 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.

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Any person who intends to participate in the hearing 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 November 6, 2023.

The petition shall be in writing and shall include a statement describing the unique injury upon approval of the application, on the petitioner, or 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

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email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

No. 2248 (adv.) Published one time at the total approximate cost of \$81.54 and may be viewed free of charge at www.sdpublicationnotices.com.

RECEIVED

OCT 30 2023

OFFICE OF
WATER

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, Cindy Crook, being duly sworn on oath, say that THE REDFIELD PRESS is a weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS. I, Cindy Crook, am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

#7114 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on October 25th, That Sixty-Eight and 38/100 dollars insures to the benefit of the publisher of THE REDFIELD PRESS, 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 whomsoever.

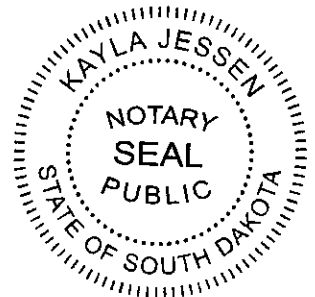
Cindy Crook

Subscribed and sworn to before me this 25th, day of October, 2023

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



Notice of Hearing

#7114

NOTICE OF HEARING on Application No. 8783-3 to Validate a Vested Water Right Claim to Appropriate Water

Notice is given that Dave and Stacey Marlow, 38928 US Hwy 212, Redfield SD 57469 has filed an application to validate a vested water right claim to appropriate up to 2.3 acre-feet of water annually at a maximum diversion rate of 0.022 cubic feet of water per second from one well completed into the Dakota Aquifer located in Outlot A of the NE 1/4 (Lot 2) Section 3-T116N-R64W for commercial use at a Drive In Movie Theatre. This site is located approximately 1/2 mile north of Redfield SD.

South Dakota Codified Law (SDCL) 46-2A-4(10) provides that "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 Chief Engineer's recommendation and

no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 8783-3 because 1) water has been appropriated as described for No. 8783-3; 2) the use has been developed without unlawful impairment of existing rights; 3) it is a beneficial use of water; 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. 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.

The Water Management Board will consider this application at 9:30 AM (Central Time) on December 6, 2023, in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any person who intends to participate in the hearing 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 46-2-8 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 November 6, 2023.

The petition shall be in writing and 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. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The December hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose the application. The request for an automatic delay must be filed by November 6, 2023. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

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 November 6, 2023.

Notice is given to individuals with disabilities that the hearing is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices

must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is November 6, 2023. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00, or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

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Published once at the total approximate cost of \$68.38 and may be viewed free of charge at www.sdpublicnotices.com. (Oct. 25).

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Monday, October 16, 2023 11:47 AM
To: '63ford@nrctv.com'
Subject: 8783-3 Dave & Stacey Marlow - Public Notice
Attachments: 8783-3 Rec.pdf; 8783-3 Ltr.pdf; 8783-3 Pub Notice.pdf

Good morning,

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.

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





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

JAN 08 2024

Dave and Stacey Marlow
38928 US Hwy 212
Redfield SD 57469

Dear Mr. & Mrs. Marlow:

Enclosed is Water Permit No. 8783-3 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.: 8783-3

Name of Applicant: Dave and Stacey Marlow

Date of Posting: 10/24/2023

Date of Removal: 1/8/2024

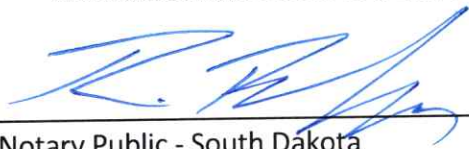


Ron Duvall, Engineer III

1/8/2024

Date

Subscribed and sworn to before me, a notary public, this 8th day of January, 2024.



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

(SEAL)

