

WATER PERMIT NO. 8785-3

Name of Applicant: Upland Hutterian Brethren

Address: 24221 412th Avenue, Artesian SD 57314

Phone: 605-770-7240

Amount of Water Claimed: 2.22 cfs

Total Acres: N/A

Source of Water Supply: Surface

Water to be used for: Stock dam

County: Sanborn

Type of Waste Disposal System:

Location: Approx. 8 miles north of Mitchell SD

PRIORITY Date Received: 7-27-2023

Application/License Fee: \$500.00

Corrected Application Received: 8-1-2023

Period of Annual Use: May 1 – September 1

Remarks: Pump water from James River to supply (when needed) stock dam used in Application No. 8774-3

Diversion Point: SE 1/4 NW 1/4 Section 25-T105N-R60W

Land to be Irrigated: N/A

Depth of Well: N/A

Well Driller: N/A

Remarks:

Type of Map: aerial

			25		

Reviewed and the Number Assigned on: 8-1-2023

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 8785-3

Date of first receipt of application July 27, 2023.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 8785-3 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. 8785-3 appropriates 2.15 cubic feet of water per second from the James River located in the SW 1/4 NW 1/4 Section 25-T105N-R60W. Water will be diverted, as needed, to maintain the water level in an existing dam to the primary spillway elevation. The dam in the SE 1/4 NW 1/4 Section 25 is used for irrigation of 136.4 acres in the SE 1/4 Section 25; all in T105N-R60W by Water Permit Application No. 8774-3. 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 July 27, 2023.
4. The date of approval of Permit No. 8785-3 is October 2, 2023.
5. One-fifth of the construction is to be completed on or before April 2, 2026.
6. All construction is to be completed on or before October 2, 2028.
7. Water is to be put to beneficial use on or before October 2, 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. The permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under the permit are subject to senior water rights and any written orders issued by the Chief Engineer.
2. The permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station near Scotland, SD after pumping.
3. The irrigation intake for this project shall be constructed so that the intake velocities at the intake point do not exceed 0.50 feet per second and the intake is screen 1/4 inch diameter or 3/16 inch slotted stainless steel or corrosion resistant screen to avoid entrainment or impinging fish.
4. 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

NOV 09 2023
date



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

RECEIVED

JUL 27 2023

OFFICE OF
WATER

Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8785-3</u> Hydrologic Unit <u>10160011</u>
	Basin <u>Lower James</u>
	Newspaper <u>Sanborn Weekly Journal</u>
	<u>Plainsman</u> (office use only)

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 _____ Mobile 605-770-7240 Email up.kenjr@uplandhb.com

2. Amount of water claimed 2.5 *CFS or 965 1000 **GPM _____ ***AF Total Acreage _____
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply James River

4. Location of point of diversion 25-105N-060W (SW 1/4 NW 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 1 to September 30

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

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

Pump water from James River to supply (when needed) the stock dam used in permit no. 8774-3

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.

2021-08

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Also, attach map and any other technical information. (see instructions)

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) ____

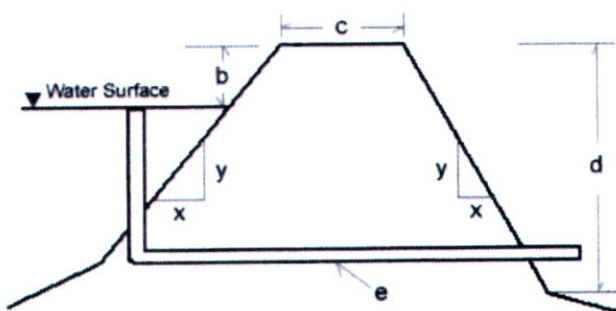
b) System Capacity (gallons) ____ Year Constructed ____

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



RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date August 1, 2023

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

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$ <u>500.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	\$ _____
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>500.00</u>

By Eric Gronlund
Chief Engineer
me



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

File No. 8785-3

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Upland Hutterian Brethren

ADDRESS: 24221 412th Avenue, Artesian South Dakota 57314

DATE: August 29, 2023 **PHONE:** 605-770-7240 **EMAIL:** up.kenjr@uplandhb.com

RE: Amount of water appropriated for Temporary Water Permit Application No. 8785-3

COMMENTS:

Upland Hutterian Brethren has filed a temporary water permit to appropriate 2.22 cubic feet of water per second (cfs) from the James River to fill an existing stock dam in the SE ¼ NW ¼ of Section 25, T105N-R60W. At the time of the application, there is 2.15 cfs available for appropriation from the James River, which has an appropriation limit of 300 cfs.

RECOMMENDED ACTION:

Temporary Water Permit Application No. 8785-3 for the appropriation of 2.22 cfs will be changed to permanent Water Permit Application No. 8785-3 for the appropriation of 2.15 cfs.

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



**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. 8785-3, 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. 8785-3, Upland Hutterian Brethren, 24221 412th Avenue, Artesian SD 57314.

The Chief Engineer is recommending APPROVAL of Application No. 8785-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under the permit are subject to senior water rights and any written orders issued by the Chief Engineer.
2. The permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station near Scotland, SD after pumping.
3. The irrigation intake for this project shall be constructed so that the intake velocities at the intake point do not exceed 0.50 feet per second and the intake is screen 1/4 inch diameter or 3/16 inch slotted stainless steel or corrosion resistant screen to avoid entrainment or impinging fish.
4. 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
September 12, 2023

Report to the Chief Engineer
Water Permit Application No. 8785-3
Upland Hutterian Brethren
August 30th, 2023

Water Permit Application No. 8785-3 proposes to appropriate water at a maximum instantaneous diversion rate of 2.15 cubic feet of water per second (cfs) from the James River with a pump located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T105N-R60W. Water will be diverted to maintain the water level in an existing dam to the primary spillway elevation, which holds an estimated normal storage capacity of 66 acre-feet and is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25. The dam is used for the irrigation of 136.4 acres located in the SE $\frac{1}{4}$ of Section 25, all in T105N-R60W as authorized by pending Water Permit Application No. 8774-3. This site is located in Sanborn County, approximately 8 miles north of Mitchell, South Dakota.

Water Source: James River

South Dakota Codified Law (SDCL):

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, the proposed use is a beneficial use, and the permit is 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 the availability of unappropriated water and potential for unlawful impairment to existing rights that are pertinent to this application.

Review of the Water Source:

The James River Basin includes the James River and covers about 14,000 square miles in South Dakota (Emerson and Niehus, 1994). The headwaters of the James River are located in Wells County, North Dakota with the river flowing southward and entering the Missouri River near Yankton, South Dakota (Emerson and Niehus, 1994). The James River is approximately 747 miles in total length, with approximately 474 of those miles in South Dakota (Emerson and Niehus, 1994). During extended periods of low precipitation, the James River experiences extremely low flows and cannot be considered a reliable source of water (Rath, 2022).

The USGS (United States Geological Survey) operates one of the largest streamgaging systems in the world. In the United States, there are over 11,000 gages (USGS, 2021). Historic and near real-time streamflow (discharge) and gage height (stage) data are available at most of these sites (USGS, 2021). Water Rights staff use streamflow data to help regulate water usage during dry

periods and for performing analysis to determine the likelihood of water availability at a particular location. At select streamgauge sites the USGS offers a statistical package to help analyze the streamflow data.

Water rights authorized for use from the James River are monitored at multiple streamgaging sites in South Dakota but primarily regulated at three USGS streamgages depending on the location of the water right/permit holder. Bypass requirements are set at some of these gages. Figure 1 shows the location of the three James River streamgages that are monitored and are used to regulate James River water right usage by the Water Rights Program and the location of the proposed pump site for Water Permit Application No. 8785-3. For this application, the streamgauge data to be analyzed is USGS streamgauge No. 06478500 James River near Scotland, SD.

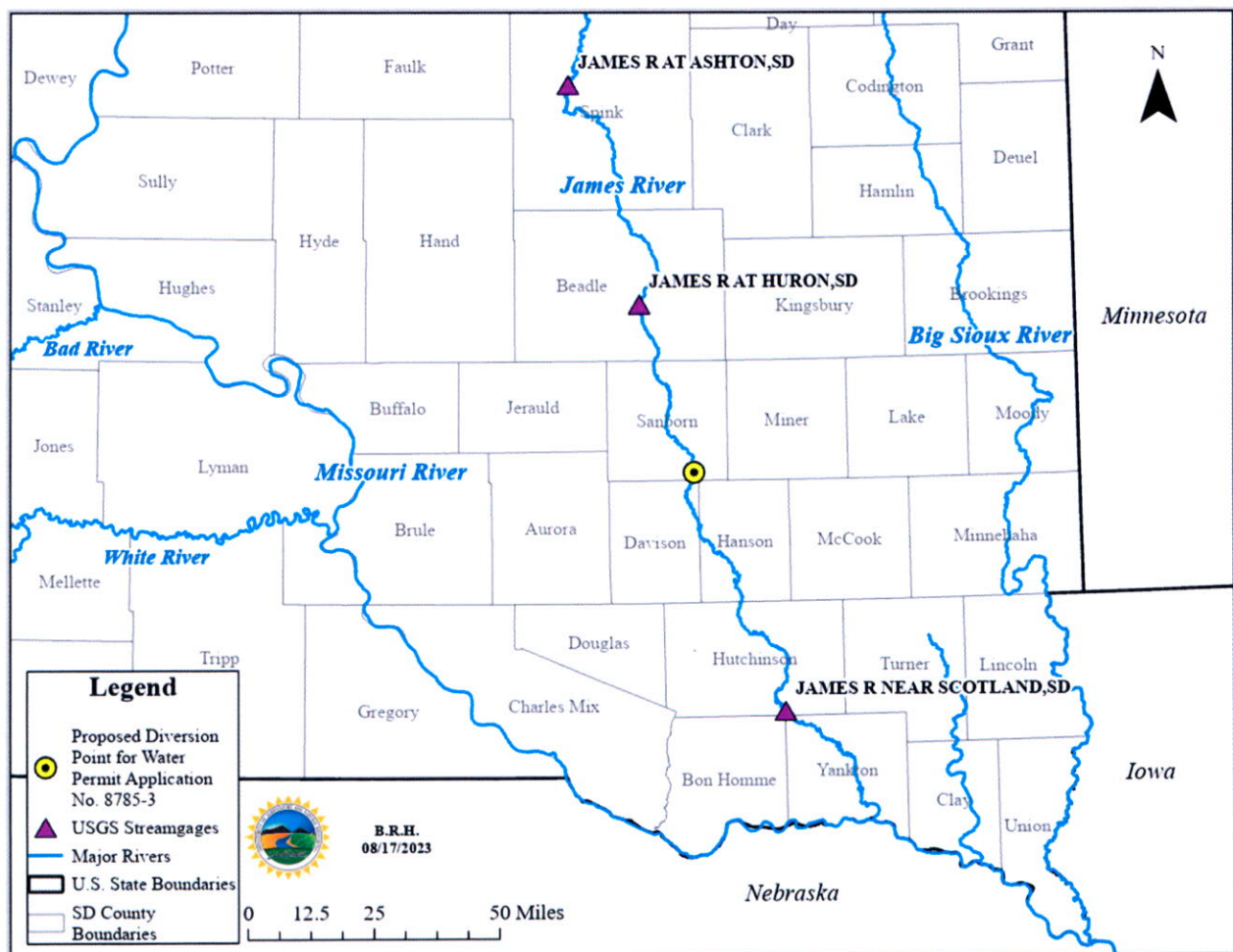


Figure 1: Map showing location of three USGS streamgages on the James River that are monitored by the Water Rights Program, and the location of the proposed pump site for Water Permit Application No. 8785-3.

Statistics for daily water discharge in cubic feet per second (cfs) are available from 1928 to 2022 for streamgage No. 06478500 located near Scotland, SD (USGS, 2023). Available statistics calculations include the daily mean discharge value as well as the 10th, 25th, and 50th percentiles. Percentiles indicate the amount of data that falls at or below that discharge value. For example, the 50th percentile line is equal to or greater than half of the discharge values recorded on this day for all years that measurements were made. The different percentiles show streamflow under various conditions and also the probability that they may occur. For example, a 10th percentile also represents the probability of 1 year out of every 10 that the daily streamflow is at or below the 10th percentile line on the hydrograph. Figure 2 shows plots of historical percentile data from 1928 to 2022 for USGS streamgage No. 06478500 James River near Scotland, SD.

The 50th percentile line represents the median. The mean and median are the two most commonly used measures of central tendency. Water resources data typically contain outliers, which are observations that are considerably higher or lower than the vast majority of the data (Helsel et al., 2020). When looking to characterize typical values of daily flow for the years 1943 through 2022, it is best to calculate median over mean, because the median is resistant to outlying observations (Helsel et al., 2020).

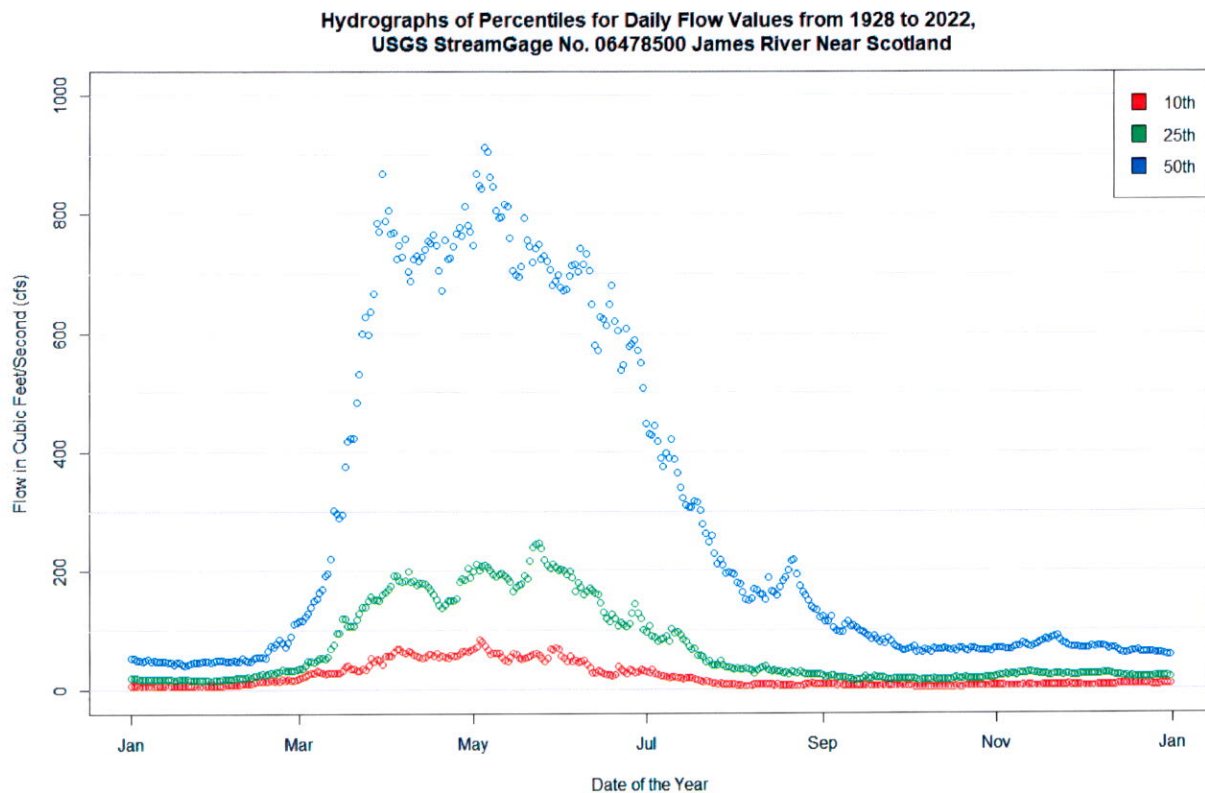


Figure 2. Hydrographs of the 10th, 25th, and 50th percentiles for daily streamflow from the years 1928 to 2022 for USGS streamgage No. 06478500 (USGS, 2023).

Channel capacity of the James River in South Dakota ranges from a minimum of about 200 cfs in the northern portion to a maximum of about 10,000 cfs near the mouth of the river (Benson, 1988). Full bank conditions on the James River occur once every two years, on average (50th percentile), but the river also has potential for extended periods of low or zero flow, and shutoff orders can be issued (Benson, 1988). The requested period of use for this application is May 1st to September 1st, and the median daily flow values range from about 700 to 900 cfs at the gage near Scotland throughout May before steadily dropping to just over 100 cfs by September 1st. At the 25th percentile, flow in the James River peaks at about 250 cfs in May and decreases to about 20 cfs by September 1st.

Review of the James River Water Management Regulation:

In 1965, the South Dakota Water Rights Commission, predecessor to the SD Water Management Board, placed maximum appropriation limits over sections of the James River in South Dakota (Rath, 2022). A 300 cfs appropriation limit applies on the river from the North Dakota border to the Yankton-Hutchinson County Line. Of that restriction, no more than 200 cfs of water can be appropriated from the North Dakota-South Dakota border to the USGS James River streamgage in Huron, SD. The South Dakota Water Management Board has adopted these appropriation limits (Water Rights, 2023).

In 2007, the SD Water Management Board standardized its qualifications, and any existing water rights/permits were amended to include these qualifications that would be used on any future James River water rights/permits (Water Rights, 2023). In order to address times when water availability is scarce from the James River, the Water Management Board has placed the following qualifications on James River permits with diversions located in the reach between Huron and the Yankton-Hutchinson County line:

- The permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under the permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- The permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station near Scotland, SD after pumping.

Existing Users:

Currently, there are 76 water rights/permits and one future use permit appropriating or reserving 199.16 cfs of the 200 cfs appropriation limit of the James River between the North Dakota-South Dakota border and USGS streamgage No. 06476000 James River at Huron, SD (Water Rights, 2023). There are currently 116 water rights/permits and one future use permit appropriating or reserving 297.85 cfs of the 300 cfs appropriation limit of the James River between the North Dakota-South Dakota border and the Yankton-Hutchinson County line (Water Rights, 2023). The requested diversion point for this application is in southern Sanborn County, located in the reach between Huron and the Yankton-Hutchinson County line. At the time this report was written there is 2.15 cfs of water available from the James River for appropriation. If this permit is approved, there would be 0.00 cfs remaining of the 300 cfs limit for the James River reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County line and the river will be considered fully appropriated.

Conclusions:

1. The applicant proposes to appropriate water at a maximum instantaneous diversion rate of 2.15 cfs from the James River at a pump located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T105N-R60W to maintain the water level in an existing dam as needed.
2. The existing dam, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, is used for the irrigation of 136.4 acres in the SE $\frac{1}{2}$ of Section 25, all in T105N-R60W as authorized by pending Water Permit Application No. 8774-3.
3. There is 2.15 cfs of water available for appropriation from the James River between the North Dakota-South Dakota border and the Yankton-Hutchinson County line, including reserved water for Future Use Permit No. 8512-3, at the time of Water Permit Application No. 8785-3.
4. If this water permit application is approved, the applicant will be able to pump water from the James River under the following qualifications:
 - This permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
 - This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS streamgage No. 06478500 James River near Scotland, SD, after pumping.
5. If Water Permit Application No. 8785-3 is approved, there would be 0.00 cfs remaining of the 300 cfs appropriation limit for the James River reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County line and the river will be considered fully appropriated.


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

Reviewed by:


Mark D. Rath
Natural Resources Engineer III
SD DANR, Water Rights Program

References

- Benson, R.D. 1988. Analysis of Flood-Flow Frequency, Flow Duration, and Channel-Forming Flow for the James River in South Dakota. Water-Resources Investigations Report 87-4208. U.S. Geological Survey. Huron, South Dakota.
- Emerson, D.G., and Niehus, C.A. 1994. Development of Historic and Synthesized Unregulated Streamflow for the James River in North Dakota and South Dakota, 1983-91. U.S. Geological Survey. Water-Resources Investigations Report 94-4018. Bismarck, North Dakota.
- Helsel, D.R., Hirsch, R.M., Ryberg, K.R. et al. 2020. Statistical Methods in Water Resources: U.S. Geological Survey Techniques and Methods. Book 4, Chapter A3.
<<https://doi.org/10.3133/tm4a3>>
- Rath, M.D. 2022. Report on Water Permit Application No. 8604-3. DANR- Water Rights Program. Joe Foss Building. Pierre, SD.
- USGS. 2021. USGS Streamgaging Network Overview. <<https://www.usgs.gov/mission-areas/water-resources/science/usgs-streamgaging-network#overview>>
- USGS. 2023. National Water Information System. Stream Gaging Station Network for South Dakota. USGS 06478500 James River near Scotland, SD.
- Water Rights. 2023. Water Right/Permit 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 NEWSPAPERS RIGHT AWAY.**

September 13, 2023

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

Dear Mr. Wurtz:

Water Permit Application No. 8785-3 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Sanborn Weekly Journal printed in Woonsocket SD (Ph # 605 796-4221) and the 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 September 21 or 22, 2023. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 8785-3 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 2.15 cubic feet of water per second from the James River located in the SW 1/4 NW 1/4 Section 25-T105N-R60W. Water will be diverted, as needed, to maintain the water level in an existing dam to the primary spillway elevation. The dam in the SE 1/4 NW 1/4 Section 25 is used for irrigation of 136.4 acres in the SE 1/4 Section 25; all in T105N-R60W by Water Permit Application No. 8774-3. 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. 8785-3 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 October 2, 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 October 2, 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

Sanborn Weekly Journal

From: Rodriguez, Rachel
Sent: Wednesday, September 13, 2023 9:52 AM
To: Carrie Howard
Subject: 8785-3 Upland Hutterian Brethren - Public Notice
Attachments: 8785-3 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 21, 2023.

Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian SD 57314, (605 770-7240) 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: Wednesday, September 13, 2023 9:53 AM
To: rcrandall@plainsman.com
Subject: 8785-3 Upland Hutterian Brethren - Public Notice
Attachments: 8785-3 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 22, 2023.

Upland Hutterian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian SD 57314, (605 770-7240) 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



AFFIDAVIT OF PUBLICATION

State of South Dakota

SS

County of Sanborn

NOTICE OF APPLICATION NO. 8785-3 to Appropriate Water

Notice is given that Upland Huttenian Brethren, c/o Kenneth Wurtz Jr., 24221 412th Avenue, Artesian, SD 57314 has filed an application for a water permit to appropriate 2.15 cubic feet of water per second from the James River located in the SW 1/4 NW 1/4 Section 25-T105N-R60W.

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. 8785-3

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:

Sept. 21

23

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That was full amount of the fee charged for publication of the attached public notice insures to the sole benefit of the publisher; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whatsoever; that the fees charged for the publication thereof are: \$ 42.96

Signed: Carrie Howard

Subscribed and sworn before me this 12 day of Oct, 20 23

Mark Simons

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

My Commission expires August 11, 20 29



RECEIVED

OCT 16 2023

OFFICE OF
WATER

Water will be diverted, as needed, to maintain the water level in an existing dam to the primary spillway elevation. The dam in the SE 1/4 NW 1/4 Section 25 is used for irrigation of 136.4 acres in the SE 1/4 Section 25; all in T105N-R60W by Water Permit Application No. 8774-3. 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. 8785-3 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 October 2, 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 October 2, 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 on September 21, 2023, at the total approximate cost of \$43.50 and may be viewed free of charge at www.sdpublicnotices.com.

Proof Of Publication

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

Legal Notice Number: 2191

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: Upland Hutterian Brethren – Notice of Application to Appropriate Water was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on - 9/22/2023. That the full amount of the fee charged for the \$45.87 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.

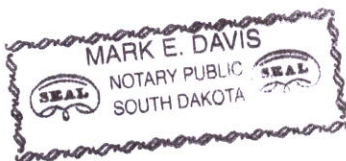


Subscribed and sworn to me before this date 9/29/23.



Notary Public, South Dakota

My Term Expires 12/27/2024



RECEIVED

OCT 13 2023

OFFICE OF
WATER

2000 - Legals

F. P. 09-22-23

NOTICE OF APPLICATION NO. 8785-3 to

Appropriate Water

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address provided below.

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No. 2191 (adv.)
Published one time at the total approximate cost of \$45.87 and may be viewed free of charge at www.sdpublicnotices.com.

2000 - Legals

2000 - Legals

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, September 13, 2023 10:42 AM
To: up.kenjr@uplandhb.com
Subject: 8785-3 Upland Hutterian Brethren - Public Notice
Attachments: 8785-3_rec.pdf; 8785-3_Ltr.pdf; 8785-3_PublicNotice.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.

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

NOV 09 2023

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

Dear Mr. Wurtz, Jr.:

Enclosed is Water Permit No. 8785-3 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.: 8785-3

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

Date of Posting: 9/18/2023

Date of Removal: 11/9/2023

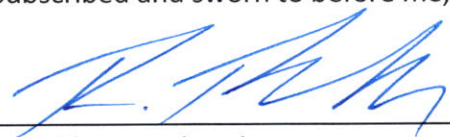


Ron Duvall, Engineer III

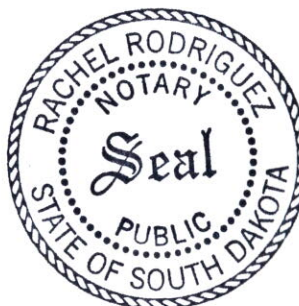
11/9/2023

Date

Subscribed and sworn to before me, a notary public, this 9 day of Nov, 2023.



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



(SEAL)