

WATER PERMIT NO. 8825-3

Name of Applicant: **Lenny D. Peterson**

Address: **19111 Maple Avenue, Hitckcock SD 57348**

Phone: **605-354-4602**

Amount of Water Claimed: **1.33 cfs**

Total Acres: **230**

Source of Water Supply: **Surface**

Water to be used for: **Irrigation**

County: **Spink**

Type of Waste Disposal System:

Location: **Approx. 6.5 miles southwest of Redfield SD**

PRIORITY Date Received: **01-16-24**

Application/License Fee: **\$1,150.00**

Corrected Application Received: **01-23-24**

Period of Annual Use: **May 1 – August 31**

Remarks:

Diversion Point: **SW 1/4 NE 1/4 Sec 11-T115N-R65W**

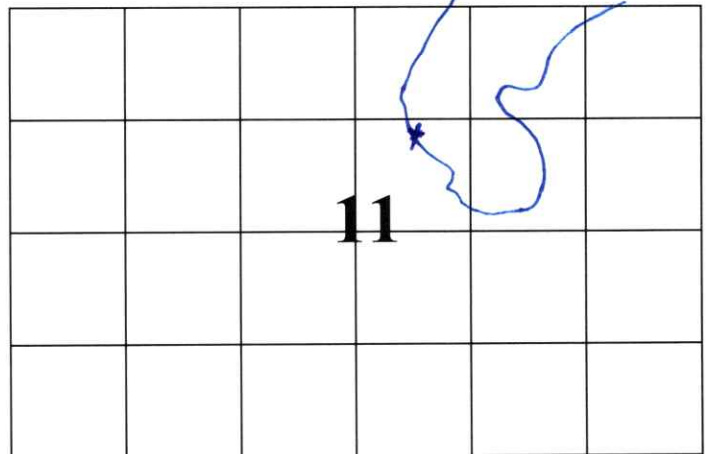
Land to be Irrigated: **E 1/2 Sec 11-T115N-R65W**

Depth of Well:

Well Driller:

Remarks:

Type of Map: **aerial**



Reviewed and the Number Assigned on: **01-24-24**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
WATER PERMIT NO. 8825-3**

Date of first receipt of application January 16, 2024.

Date of return to applicant for corrections, amendments or changes January 16, 2024.

Date of receipt of corrected application January 23, 2024.

The Water Management Board approved Water Permit No. 8825-3 on May 8, 2024 for Lenny D Peterson, 19111 Maple Avenue, Hitchcock SD 57348, 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. 8825-3 appropriates 1.33 cubic feet of water per second from Turtle Creek located in the SW 1/4 NE 1/4 Section 11 for irrigation of 230 acres located in the E 1/2 Section 11; all in T115N-R65W. This site is located approximately six and one-half miles southwest of Redfield 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 – August 31.
3. The date from which applicant may claim right is January 16, 2024.
4. One-fifth of the construction is to be completed on or before November 8, 2026.
5. All construction is to be completed on or before May 8, 2029.
6. Water is to be put to beneficial use on or before May 8, 2033.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from Turtle Creek authorized by this Permit is subject to all the following:
 - a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) This Permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE ¼ NE ¼ of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d) This Permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9-T116N-R64W, Spink County when pumping is occurring.

(continued)

2. The Water Management Board retains jurisdiction of this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this Permit for the purpose of inspecting works and determining if the irrigation system is operating.
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

MAY 17 2024
date



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

Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8825-3</u> Hydrologic Unit <u>1016 2009</u>
	Basin <u>Turtle</u>
	Newspaper <u>Redfield Press</u>
	<u>Plainsman</u> (office use only)

RECEIVED

JAN 16 2024

OFFICE OF
WATER

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 Lenny D Peterson

Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.

Mailing Address 19111 Maple Ave Hitchcock sd 57348
(Address) (City) (State) (Zip Code)

Phone 605-266-2793 Mobile 605-354-4602 Email kpeterson@venturecomm.net

2. Amount of water claimed 1.33 *CFS or 600 **GPM ***AF Total Acreage 230
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Turtle Creek

4. Location of point of diversion sw 1/4 of ne 1/4 section 11 T115N-R65W

(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

County Spink

5. County or counties where water will be used Spink

6. Annual period during which water is to be used May 1 -August 31

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
E1/2 section 11-T115N-R65W	230		

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

Put in one irrigation system to irrigate two hundred and thirty acres. Manage irrigation on a rotational basis based on four months of pumping.

I, Lenny Peterson owner, 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 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)

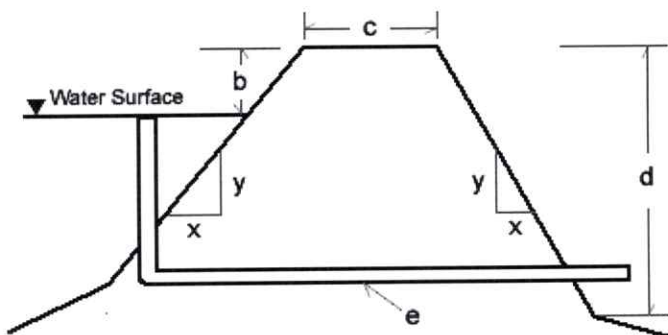
Upstream _____

Downstream _____

h) Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres



Lenny Peterson

Legend
11-115-65
Lenny Peterson Land

NW 1/4 11-115-65

NE 1/4 11-115-65

X Diversion
Point

E 1/2 SW1/4 11-115-65

W1/2 SW1/4 11-115-65

SE 1/4 11-115-65

SW 1/4 12-115-65

SE 1/4 12-115-65

The new permit would then be:
E 1/2 of Section 11 - 230 acres

Google Earth

2000 ft

Lenny Peterson
Irrigation Permit

Legend
11-115-65
Lenny Peterson Land

NW 1/4 11-115-65

NE 1/4 11-115-65

X Diversion
Point

E 1/2 SW1/4 11-115-65

W1/2 SW1/4 11-115-65

SE 1/4 11-115-65

SW 1/4 12-115-65

SE 1/4 12-115-65

150 acres

The new permit would then be:
E 1/2 of Section 11 - 230 acres

116N 65W
Section: 34

116N 65W
Section: 35

116N 65W

116N 65W
Section: 36

115N 65W
Section: 03

115N 65W
Section: 02

115N 65W
Section: 01

115N 65W
Section: 10

115N 65W
Section: 11

10160009 Turtle

115N 65W
Section: 12

115N 65W

115N 65W
Section: 15

115N 65W
Section: 14

115N 65W
Section: 13

115N 65W
Section: 22

115N 65W
Section: 23

115N 65W
Section: 24

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date January 23, 2024

RECEIVED OF Lenny Peterson 19111 Maple Ave., Hitchcock SD 57348

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

Fee for Application for Permit No. <u>8825-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>950.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8825-3</u>	\$ <u>200.00</u>
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	
TOTAL	\$ <u>1150.00</u>

By Eric Gronlund
Chief Engineer
rm

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, January 17, 2024 1:26 PM
To: 'kpeterson@venturecomm.net'
Subject: New Water Permit Application
Attachments: Form2A.pdf; Map for New Permit - 230 acres (1).pdf

Good Afternoon,

In looking over your new application, I just want to clarify that the attached map is for the new application, correct? And please provide answers to the questions highlighted in yellow on Form2A.

Thank you,

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



Rodriguez, Rachel

From: Gronlund, Eric
Sent: Tuesday, January 16, 2024 4:43 PM
To: Rodriguez, Rachel; Dewell, Amanda
Cc: Rath, Mark; Hullinger, Brittan
Subject: FW: [EXT] FW: Map for Irrigation
Attachments: New Irrigation Permit - Map.pdf

Documentation for Lenny Peterson's application to amend Permit No. 8268-3

From: kpeterson@venturecomm.net <kpeterson@venturecomm.net>
Sent: Tuesday, January 16, 2024 1:50 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Re: [EXT] FW: Map for Irrigation

Hey Eric, as per our conversation we would like to amend the 8268-3 permit to drop the June 1st deadline and instead use the bypass flow set by Dennis Oddens report at the monitoring station. All other requirements for irrigation would remain the same.

Also we will be sending a revised map for our new application.

Thank you!

Lenny Peterson

On 2024-01-16 10:19, Gronlund, Eric wrote:

The prior permit (No. 8268-3) was for the W ½ Section 11 and S ½ Section 12. The map states 230 acres to be irrigated in the E ½ Section 11. Just so Water Rights understands that this is for entirely new acres (and not acres not developed under the original water permit). Is that correct?

Attached is your original application and the issued Water Permit No. 8268-3.

The application you submitted on-line is bare bones and needs to be completed. Issues I see at first glance are as follows (Rachel or Amanda) can add to what I missed.

- For the type of application the amendment/correction box is checked. Isn't this a "new" permit.
- Item No. 2 amount of water claimed – Permit No. 8268-3 authorized 2.67 cfs (1,200 gpm). Is this the pump rate currently developed? With this new application, will the pump rate stay the developed amount or is a greater pump rate requested since you are irrigating more acres. If so, under Item No. 2 the pump rate greater than what is currently developed needs to be included.

- Item No. 2 – the map indicates 230 acres will be irrigated in the E ½ Section 11. Therefore, 230 acres should be inserted here.
- Item No. 3 – assume Turtle Creek is the water source. Is that correct?
- Item No. 4 – Water Permit No. 8268-3 has the location of the diversion point between NE ¼ NW ¼ Section 11 and S ½ SW ¼ Section 12. Is that still correct.
- Item No. 5 - Spink County
- Item No. 6 – Period of use -- Water Permit No. 8268-3 is May 1 – August 31. Is that the same for this application?
- Item No. 7 – Breakdown of acres – the map states 230 acres in the E ½ Section 11 but outlines the entire 320 acres half section. Presume that is because Turtle Creek winds through the area. A good faith effort needs to be made to breakdown the planned acres to be irrigation by 40 acre parcel (quarter-quarter section).

The application filing fee for 230 acres is \$950. The \$200 licensing fee for 8268-3 (which originated with withdrawal of Application No. 8229-3) will still apply if the diversion point is the same since these will all be incorporated into one water license upon developed (if approved).

With the application are you also requesting amendment to the qualification on Permit No. 8268-3 regarding deleting June 1st shut-off and replacing with a flow bypass amount at the Watershed Protection Program's gaging station.

Eric

From: kpetereson@venturecomm.net <kpetereson@venturecomm.net>
Sent: Monday, January 15, 2024 3:14 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Fwd: [EXT] Map for Irrigation

Hey Eric, please see attached map for the new irrigation permit that I have applied for. The diversion point for the new project would be the same as existing permit 8268-3. Please reach out with any questions.

Thank you,

Lenny Peterson

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

Subject: Map for Irrigation
Date: 2024-01-15 15:07



**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. 8825-3, Lenny Peterson**

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. 8825-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8825-3 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. Diversion of water from Turtle Creek authorized by this Permit is subject to all the following:
 - a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
 - b) Diversion of water under this Permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
 - c) This Permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36-T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d) This Permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9-T116N-R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of this Permit in the event additional information shows changes need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this Permit for the purpose of inspecting works and determining if the irrigation system is operating.
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
March 1, 2024

**REPORT ON WATER PERMIT APPLICATION NO. 8268A-3
TO AMEND WATER RIGHT NO. 8268-3
AND WATER PERMIT APPLICATION NO. 8825-3**

LENNY PETERSON

February 12, 2024

Application No. 8268A-3 requests to amend Water Right No. 8268-3 to remove the permit qualification not authorizing diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer. Water Right No. 8268-3 appropriates 2.67 cubic feet of water per second (cfs) from Turtle Creek from a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 to irrigate 270 acres in the W $\frac{1}{2}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11; all in T115N-R65W. Application No. 8268A-3 does not seek to appropriate additional water or irrigate more acres than authorized by Water Right No. 8268-3. All other permit qualifications on Water Right No. 8268-3 remain unchanged and would be included on Water Permit No. 8268A-3, if approved.

Application No. 8825-3, proposes to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11 to irrigate 230 acres located in the E $\frac{1}{2}$ Section 11; all in T115N-R65W. The location for these two irrigation projects is approximately 6.5 miles southwest of Redfield, SD in Spink County.

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

South Dakota Codified Law SDCL 46-2A-2 states that:

“The chief engineer shall recommend in writing approval, disapproval, or deferral until further notice and shall schedule the application for hearing by the Water Management Board. The recommendation shall include any terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity which are consistent with this chapter, necessary to protect the public interest and related to matters within the jurisdiction of the chief engineer or the board.”

SDCL 46-2A-9

In the case of Application No. 8825-3 for a new appropriation of water, there are four criteria in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. These criteria are: 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.

This report will analyze the available information to present to the Chief Engineer on the first two criteria that the Chief Engineer needs to consider for granting a new water permit, before making an official recommendation to the Water Management Board.

SDCL 46-2A-12 & 46-5-30.4

In the case of Application No. 8268A-3 the criteria for granting an amendment are different than the criteria for a new appropriation. SDCL 46-2A-12 states:

“An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.”

SDCL 46-5-30.4 states:

“Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.”

These criteria must be met before an amendment to Water Right No. 8268-3 can be approved.

Review of Application No. 8268A-3 Amendment Change Request and Water Permit Application No. 8825-3

Figure 1 is an area map showing irrigated land covered by Water Right No. 8268-3, which Water Permit Application No. 8268A-3 proposes to amend by removal of the condition for a June 1st shutoff unless written orders have been issued by the Chief Engineer. In addition, the land proposed for development by Application No. 8825-3 is shown on this figure.

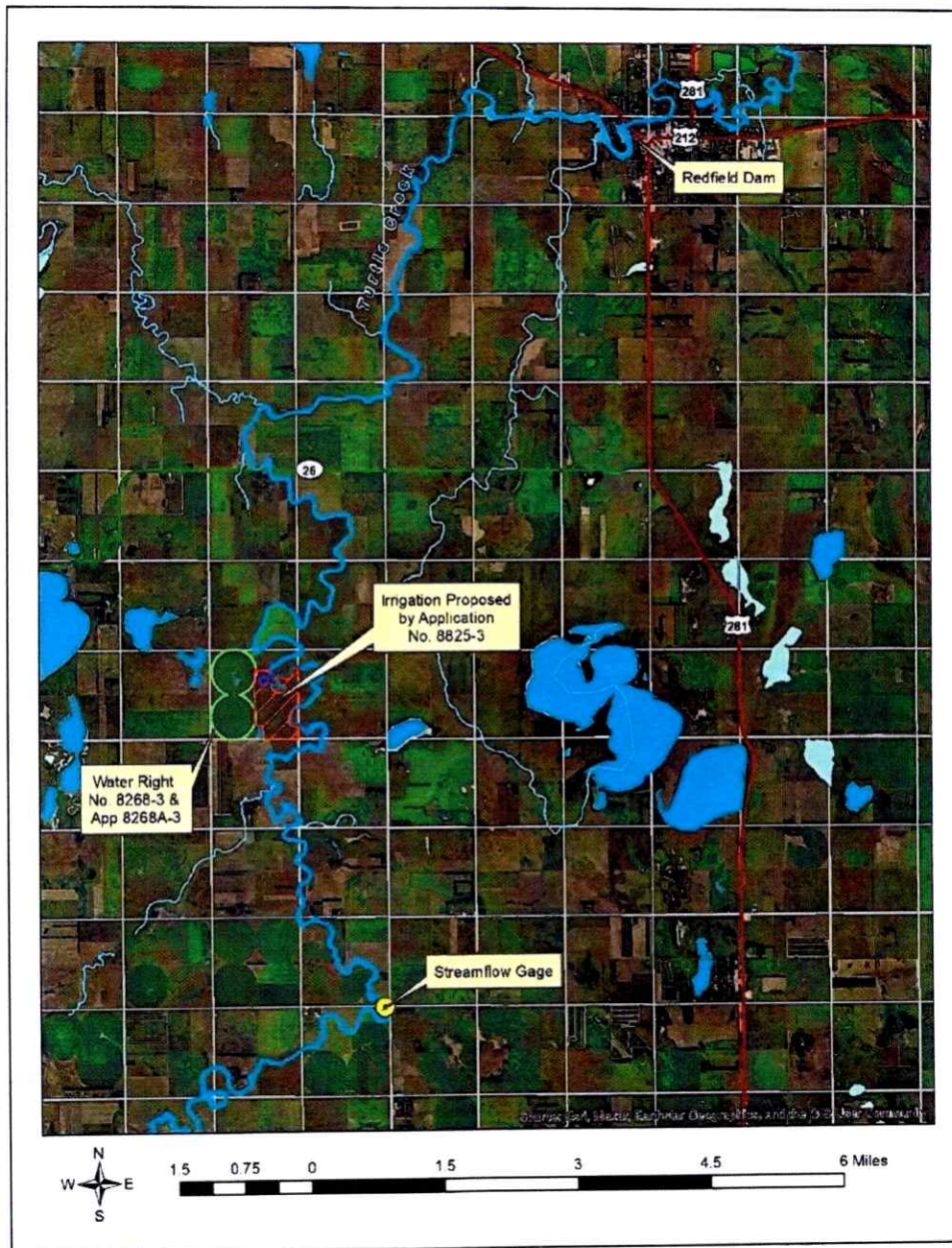


Figure 1. Area Map for Water Permit Application Nos. 8268A-3 and 8825-3 (Water Rights, 2024).

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. It is a seasonal stream with heavier flows in the spring due to snow runoff and thunderstorm or rain events. As the summer progresses, however, the amount of water decreases, and the creek becomes a less reliable water source. The Turtle Creek watershed upstream of the proposed project drains approximately 1,140 square miles (USGS, 2019).

Water Permit No. 8268-3 was originally approved to divert 2.67 cubic feet of water per second for the irrigation of 450 acres with qualifications one of which does not authorize diversion of water after June 1st of each year, and another that water must be flowing over the spillway of the Redfield dam. A water license was issued based on an on-site license inspection completed January 25th, 2024. The inspection found only 270 of the 450 permitted acres were developed at the diversion rate of 2.67 cfs. Application No. 8268A-3 is requesting the Water Management Board remove the following qualification from Water Permit No. 8268-3:

“Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer (Water Rights, 2024).”

Application No. 8825-3 proposes to appropriate and pump from Turtle Creek at a rate of 1.33 cfs to irrigate 270 acres from Turtle Creek. This will be an increase in the Turtle Creek diversion rate and irrigated acres from the amount developed under Water Permit No. 8268-3.

Review of Existing Water Rights

In the downstream reach of Turtle Creek from the proposed location of Water Permit Application No. 8825-3 to the Turtle Creek confluence with the James River there are seven existing water rights/permits appropriating 7.34 cfs for irrigation and two existing water rights authorizing storage of up to 1,568 acre-feet annually for municipal use (Table 1).

WR No.	Name	Use	Priority	Amount
96A-3	Jerad Jungwirth	Irrigation	February 11, 1953	1.68 cfs
96B-3	Janet Kegler	Irrigation	February 11, 1953	0.32 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Dustin or Dawn Schmidt	Irrigation	February 11, 1957	1.35 cfs
8268-3	Lenny Peterson	Irrigation	March 1, 2017	2.67 cfs

Table 1. Turtle Creek water rights located in Spink County SD (Water Rights, 2024).

Consulting Engineer Analysis and Conclusions

The applicant provided a stream analysis report on Turtle Creek completed by Dennis G. Odens, P.E. of Bartlett & West to support his request for the new permit and amendment change (Odens, 2023). Mr. Odens stated anecdotally the applicant believes streamflow has increased due to climatological changes and that the present-day stream flows are not accurately represented by USGS historical streamflow data on Turtle Creek. In the report, Mr. Odens analyzed historical stream gaging data from a discontinued USGS gage, called Turtle Creek west of Tulare SD, which operated between 1953-1989. He compared these data to the data collected between 2012-2023 at a SD DANR operated stream gage, WQM-172, located at the same site as the discontinued USGS gage (Odens, 2023; SD DANR, 2024). In performing the analysis, Mr. Odens used the raw stream stage data from the WQM-172 site, collected stream channel characteristics and created his own flow rating table. Rating tables are used to convert measured stream stage levels to flow values. The report concluded that the median stream flow during the months of May through August measured at the SD DANR gage over the past 12 years is significantly greater than what was measured by the USGS Turtle Creek gage, at the same location, for the 36 years the gage was operated. The report concluded that when flow bypassing the Turtle Creek stream gage, WQM-172, exceeded 7.34 cfs, water use authorized by Water Permit No. 8268-3 could be allowed without detriment to existing rights.

The report also considered whether Turtle Creek could support additional irrigation by doubling the diversion rate currently authorized by No. 8268-3 from the existing 2.67 cfs to 5.34 cfs. Based upon his analysis, Mr. Odens concluded there is reasonable probability that there is unappropriated water available for additional irrigation (Odens, 2023).

Review of the Proposed Requests

On December 7, 2017, Water Management Board approved Water Permit Application No. 8268-3 with qualifications (Water Rights, 2024a). In their Findings of Fact, Conclusion of Law, and Final Decision for the permit, the Board concluded:

“The proposed diversion can be developed as proposed without unlawful impairment to existing rights with the qualification recommended by the Chief Engineer, particularly that the applicant shall not irrigate after June 1 unless the Chief Engineer issues a written order authorizing an extension and that irrigation under this permit is not permissible unless water is discharging across the entire length of the spillway weir at Redfield dam.”

At the time of the hearing on Water Permit No. 8268-3, the SD DANR streamflow monitoring gage, WQM-172 was in place and collecting flow data, but flow information was not available realtime. Since then, WQM-172 has been upgraded and realtime streamflow data is available online through National Weather Service's NWPS website (NWPS, 2024). Because there is now

publicly accessible realtime streamflow monitoring available, it is reasonable to replace the automatic June 1st shutoff qualification with a flow bypass qualification.

There are currently nine existing water rights/permits appropriating water from Turtle Creek downstream of the proposed diversion location for Application No. 8825-3. Not including Water Right No. 8268-3, Water Rights/Permits Nos. 23-3, 18-3, 96B-3, and 408-3 are routinely used each year. Assuming that not all water rights/permits will pump at the same time, SD DANR has historically estimated that 50% of permitted diversion rates will be pumping at any given time (Beck, 2007). To calculate a bypass qualification, the permitted diversion rates for Water Rights/Permits Nos. 23-3, 18-3, 96B-3, and 408-3 were summed, and then divided in half, making the assumed downstream use at any given time to be 1.5 cfs during the irrigation season.

Since Turtle Creek pools in Redfield Dam before the water reaches downstream users, an approximate evaporation rate for the irrigation season was calculated, and direct precipitation was subtracted from that value. Evaporation for each month was calculated with average monthly pan evaporation data in feet for Redfield, South Dakota (Poudyal, 2006). A pan to lake coefficient of 0.7 was applied. Average precipitation for May, June, July, and August from 1985-2023 was subtracted from monthly evaporation rates (NOAA, 2024). The area of Redfield Dam is approximately 310 acres (Water Rights, 2023), and for each month of the irrigation season, average monthly evaporation (acre-feet/month) was calculated. This was converted to cubic feet per second of continuous evaporation per month. Taking the average of the four months of the irrigation season, the estimated evaporation rate is 1.5 cfs of continuous evaporation at any given time during the irrigation season.

Water Right No. 8268-3 and Water Permit No. 8825-3, if approved, will assume to pump a total of 4 cfs at any given time during the irrigation season. The assumption that a user is only pumping 50% of the time will not be applied because they are the upstream most junior appropriator.

Summing the estimated use at any given time of the downstream rights (1.5 cfs), the estimated evaporation rate at any given time during the irrigation season (1.5 cfs), the diversion rate for Water Right No. 8268-3 (2.67 cfs), and the diversion rate for Water Permit Application No. 8825-3 (1.33 cfs), the gage at WQM-172 should be required to be bypassing at least 7.0 cfs. If the WQM-172 gage is less than 7 cfs but there is flow over the entire Redfield Dam spillway, the permit holder can request permission from the Chief Engineer to be allowed to continue to pump. The drainage area upstream of the WQM-172 gage is 1,125 sq-mi. The drainage area upstream of the Redfield Dam spillway is 1,482 sq-mi which is an additional 357 sq-mi. Any inflow from the Turtle Creek watershed below the WQM-172 gage will contribute to additional flow over the Redfield Dam spillway.

In addition, the qualification on Water Right No. 8268-3 which only allows diversion of water when water is spilling over the Redfield Dam should remain on Water Permit No. 8268A-3, and also be placed on Water Permit No. 8825-3, if approved. This qualification states that:

“The permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T116N-R64W, in Spink County when pumping is occurring (Water Rights, 2024).”

Daily data is available from both the USGS streamflow gage on Turtle Creek which operated from 1953 to 1989, as well as from the WQM-172 for the years 2012 to 2023. Daily flow from these sites is the daily mean value calculated from the instantaneous streamflow data (USGS, 2024). A comparison was made between the median daily flow collected at the USGS gage for the years 1953 to 1989 and median daily flow collected at the SD DANR WQM-172 gage for the years 2012 to 2023 (Figure 2)

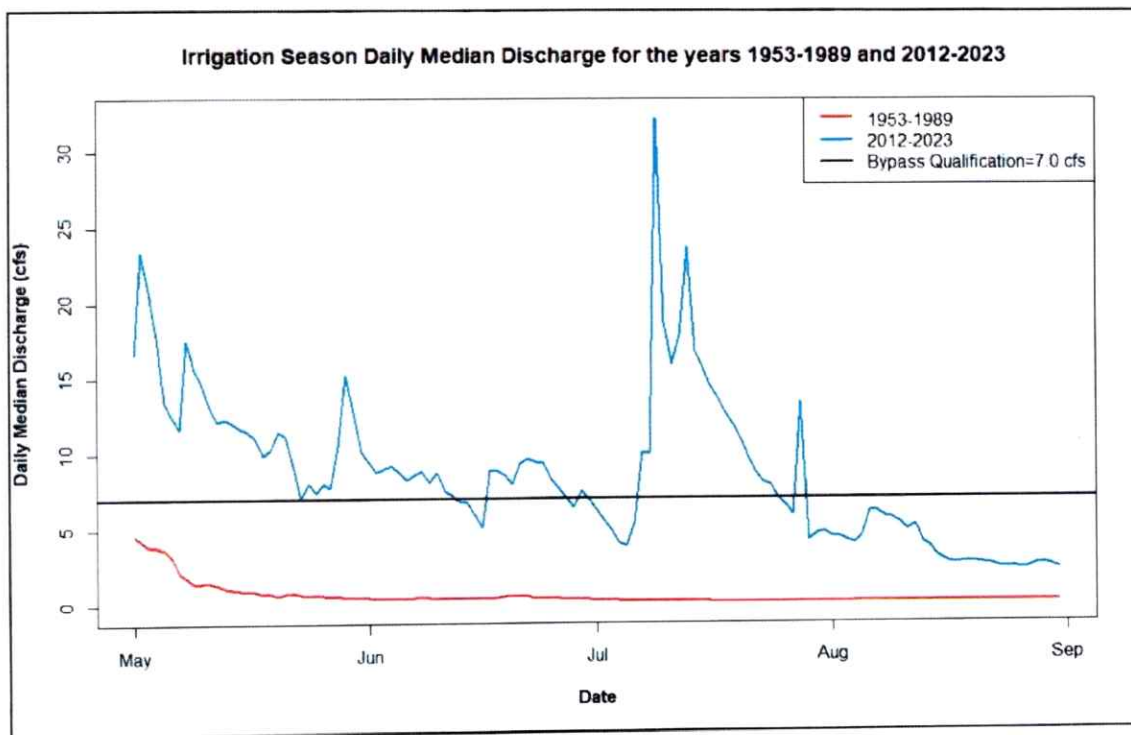


Figure 2. Comparison of median daily flows collected at stream gaging site on Turtle Creek west of Tulare SD from 1953-1989 by the USGS versus median daily flows collected from 2012-2023 by the SD DANR streamgage (USGS, 2024; SD DANR, 2024).

As Figure 2 shows, the flows measured at this site since 2012 show a significant increase in median daily flow for the requested irrigation period, May through August, compared to the flows collected by the USGS gage during the years 1953-1989. However, due to climate variability historically experienced over the northern plains, this trend of greater flow cannot be guaranteed in the future.

The available data were also analyzed by taking the percentage of days in each month of the irrigation season where the average daily flow was greater than 7.0 cfs. The four graphs below illustrate those percentages for irrigation months of May, June, July, and August (Figures 3 to 6) for all years from the USGS gage and the WQM-172 gage. It is worth mentioning that there are gaps in the yearly data from 1956-1966, 1982-1985, and 1989-2012. Based on available data, Figures 3 through 6 show that there is reasonable probability that there will be water available for this appropriation at times during the irrigation season.

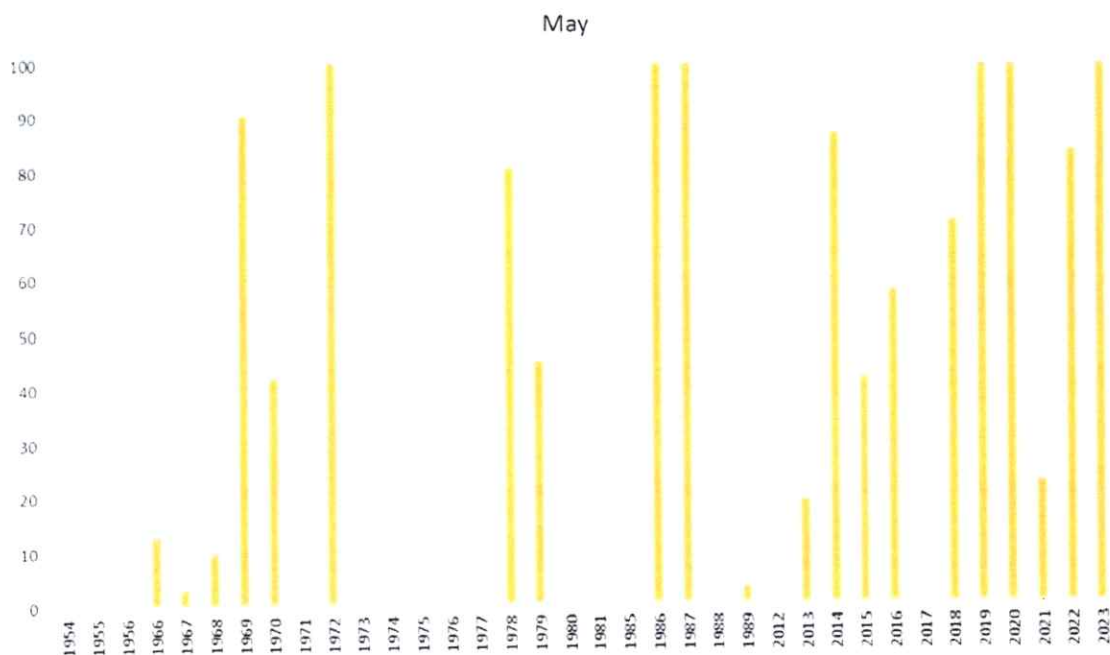


Figure 3. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of May. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

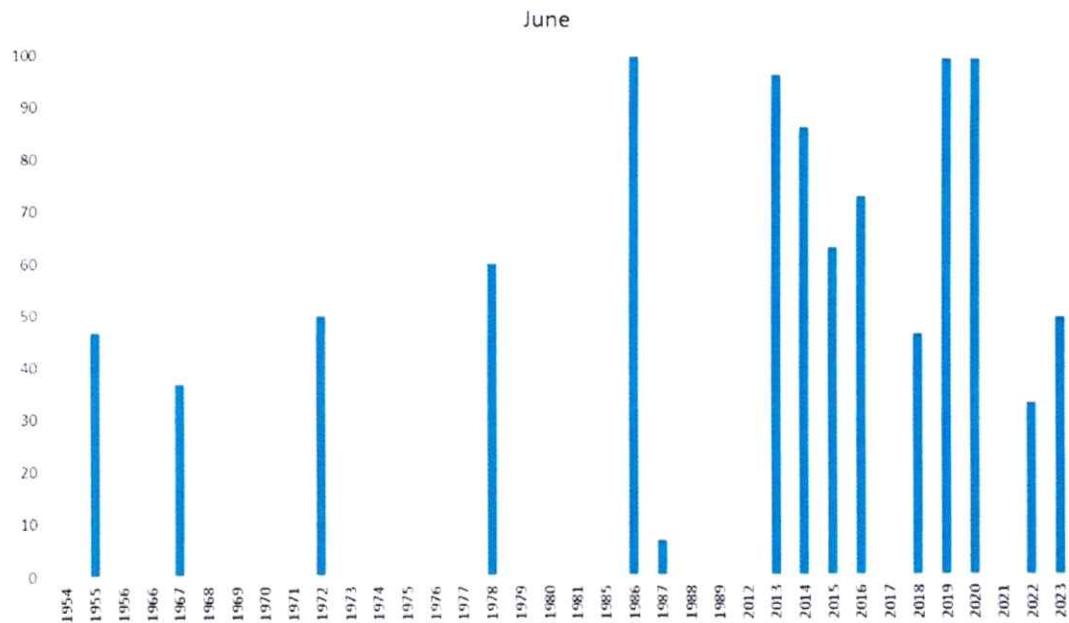


Figure 4. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of June. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

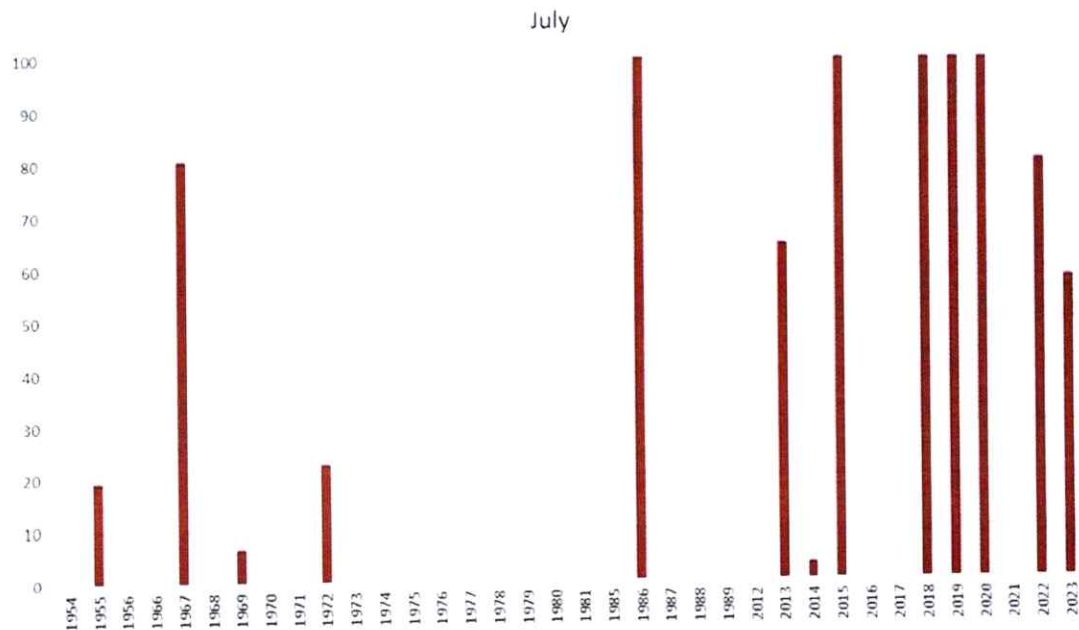


Figure 5. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of July. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

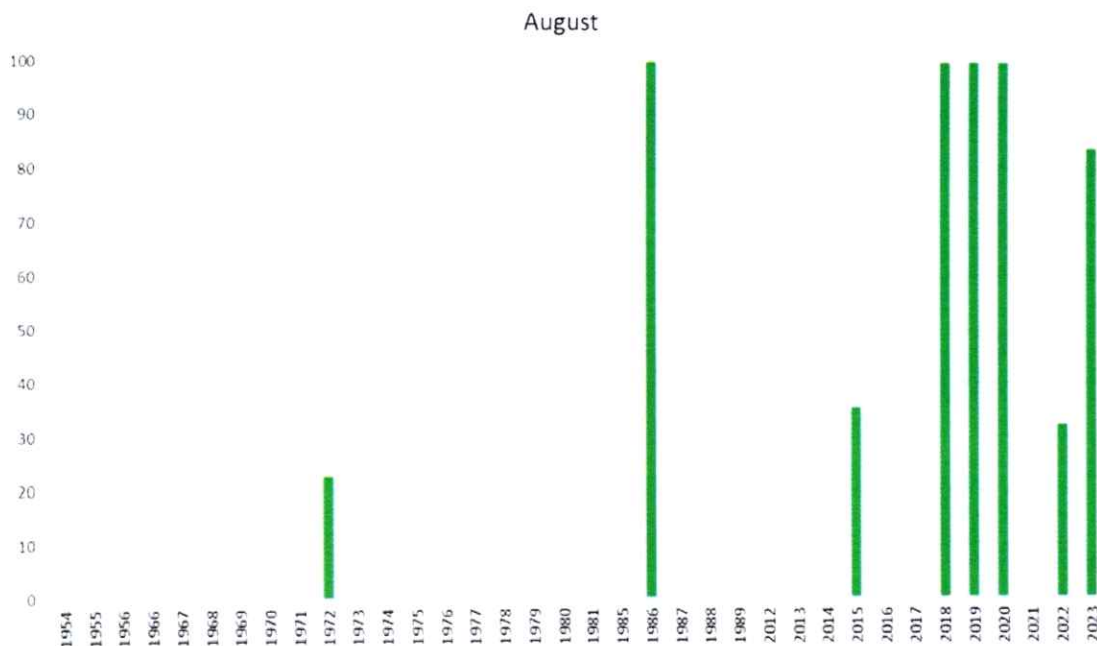


Figure 6. Percentage of days average daily streamflow exceeded 7.0 cfs for the month of August. Flow was measured between 1954 and 2023, measured at the USGS stream gaging site on Turtle Creek located four miles west of Tulare SD, and the WQM-172 gaging station at the same location for the years of record (USGS, 2024; SD DANR, 2024).

Historic streamflow data often does not follow an easily recognized trend, and often there is not enough data to discern the trend of streamflow over time to forecast the behavior of streamflow in the future. The Water Rights Program uses the best information available to determine if there is a reasonable probability that water will be available at the time of proposed appropriation. Planners of stream use should be prepared for the possibility that future flow in Turtle Creek could be different than what was experienced in the recent past.

Recommendations

Water Permit Application No. 8268A-3 proposes to amend Water Right No. 8268-3 by removing the June 1st automatic shutoff qualification and Application No. 8825-3 proposes to divert 1.33 cfs from Turtle Creek to irrigate 230 acres. If both applications are approved, they should contain a form of the following qualifications:

- Diversion of water from Turtle Creek authorized by this water permit is subject to all of the following qualifications.
 - a. Flow as needed for domestic use, including livestock watering, and prior water rights must be bypassed.
 - b. Diversion of water under this permit is subject to senior water rights and written orders, including shut-off orders, issued by the Chief Engineer.
 - c. The water permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172

located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T115N-R56W, unless written orders have been authorized by the Chief Engineer.

- d. The water permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam, located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T116N-R64W, Spink County, when pumping is occurring.
- The Water Management Board retains jurisdiction of the water permit in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.
 - Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this water permit for the purpose of inspecting works and determining if the irrigation system is operating.
 - This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Conclusions

1. Application No. 8268A-3 is a request to amend Water Right No. 8268-3 to remove the permit qualification not authorizing diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
2. Application No. 8825-3, proposes to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11 to irrigate 230 acres.
3. There is a reasonable probability that at times there will be unappropriated water available for the additional irrigation proposed by Application No. 8825-3 and existing domestic water uses and water rights will not be unlawfully impaired if Application Nos 8268A-3 and 8825-3 are approved with some form of the following qualifications:
 - Diversion of water from Turtle Creek authorized by this water permit is subject to all of the following qualifications:
 - a. Flow as needed for domestic use, including livestock water and prior water rights must be bypassed.
 - b. Diversion of water under this water permit is subject to senior water rights and written orders, including shut-off orders, issued by the Chief Engineer.
 - c. The water permit does not authorize diversion of water from Turtle Creek when flow drops below 7.0 cfs measured at the SD DANR streamflow gage WQM-172 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36 T115N-R65W, unless written orders have been authorized by the Chief Engineer.
 - d. The water permit authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam, located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 T116N-R64W, Spink County, when pumping is occurring.

- The Water Management Board retains jurisdiction of this water permit in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.
- Pursuant to SDCL 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by this water permit for the purpose of inspecting works and determining if the irrigation system is operating.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.



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



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

References

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 26, 2024

City of Redfield
c/o Adam Hanson, Finance Officer
626 Main Street
Redfield SD 57469-1127

Dear Mr. Hanson,

Lenny Peterson has filed water right permit applications with the state of South Dakota for irrigation use from Turtle Creek. Enclosed is a copy of the public notice, report, and recommendations regarding Application Nos. 8268A-3 and 8825-3. Both notices will be published on April 3, 2024 in the Redfield Press and Plainsman newspapers.

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
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

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

March 26, 2024

Lenny D. Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Water Permit Application Nos. 8268A-3 and 8825-3 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. Both notices have been sent to the Redfield Press printed in Redfield SD (Ph # 605 472-0822) and the Plainsman printed in Huron SD (Ph # 605 353-7414). You will need to contact the newspapers and authorize publication of these notices. For your information, a copy both notices, the recommendation of the Chief Engineer and report on the applications are enclosed. Please review the notices 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 Notices 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 notices. The newspapers have also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

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 April 3, 2024. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 8825-3 to Appropriate Water

Notice is given that Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW 1/4 NE 1/4 Section 11 for irrigation of 230 acres located in the E 1/2 Section 11; all in T115N-R65W. This site is located approximately six and one-half miles southwest 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 Approval of Application No. 8825-3 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.

The Water Management Board will consider this application at 10:45 AM (Central Time) on May 8, 2024, 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 April 15, 2024.

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 May 8, 2024, 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 April 15, 2024. 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 April 15, 2024.

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 April 15, 2024. 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: Tuesday, March 26, 2024 10:16 AM
To: Ruby Crandall
Subject: 8825-3 Lenny Peterson - Public Notice
Attachments: 8825-3 public.wmb_final.docx; FORM8.FRM.doc

Attached is a notice to be published on April 3, 2024.

Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348, 605-354-4602 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: Tuesday, March 26, 2024 10:15 AM
To: Redfield Office
Subject: 8825-3 Lenny Peterson - Public Notice
Attachments: 8825-3 public.wmb_final.docx; FORM8.FRM.doc

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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: 2517

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: Lenny Peterson – Notice of Hearing was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 04/3/2024. That the full amount of the fee charged for the \$78.48 of Public Hearings 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.

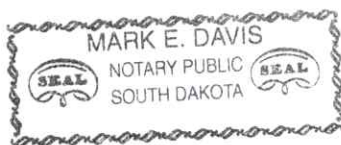


Subscribed and sworn to me before this date 4/24/24.



Notary Public, South Dakota

My Term Expires 12/27/2024



RECEIVED

MAY 03 2024

OFFICE OF
WATER

**NOTICE OF HEARING
on Application
No. 8825-3 to
Appropriate Water**

Notice is given that Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW 1/4 NE 1/4 Section 11 for irrigation of 230 acres located in the E 1/2 Section 11; all in T15N-R65W. This site is located approximately six and one-half miles southwest of Redfield SD.

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 8825-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/> public or contact Ron Duval for this information,

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 May 8, 2024, 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 April 15, 2024. 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.

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are available.

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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. 2517 (adv.)
Published one time at the total approximate cost of \$78.48 and may be viewed free of charge at www.sdpublicnotices.com.

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:

#7343 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on April 3rd. 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 3rd, day of April, 2024

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



Notice of Hearing

#7343

NOTICE OF HEARING on Application No. 8825-3 to Appropriate Water

Notice is given that Lenny D. Peterson, 19111 Maple Avenue, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.33 cubic feet of water per second from Turtle Creek located in the SW 1/4 NE 1/4 Section 11 for irrigation of 230 acres located in the E 1/2 Section 11; all in T115N-R65W. This site is located approximately six and one-half miles southwest 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 Approval of Application No. 8825-3 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.

The Water Management Board will consider this application at 10:45 AM (Central Time) on May 8, 2024, 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 April 15, 2024.

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 May 8, 2024, 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 April 15, 2024. 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 April 15, 2024.

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 April 15, 2024. 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 one time at the total approximate cost of \$68.38 and

may be viewed free of charge at www.sdpublicnotices.com. (Apr. 3)

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Tuesday, March 26, 2024 11:23 AM
To: kpeterson@venturecomm.net
Subject: 8825-3 Lenny Peterson - Public Notice
Attachments: Recoms & Report.pdf; Letter.pdf; 8268A-3 PubNotice.pdf; 8825-3 PubNotice.pdf

Good morning,

Attached are copies of the report, chief engineer's recommendations, and information regarding the public notices for your water permit applications. As stated in the letter, **please contact the papers as soon as possible to authorize both publications 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





RECEIVED DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

APR 29 2024

OFFICE OF
WATER
Petition

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

Opposing Application for a Water Right Permit

Application No. 8825-3 Name of Applicant Lenny Peterson

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

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

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

- loss of future domestic use for human consumption and livestock watering
- loss of riparian vested senior water rights for future irrigation rights
- loss of future water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by GFP
- loss of storage capacity for aquifer going to Twin Lakes
- loss of habitat for fishing and hunting
- loss of property value with depletion of aquifer

List the reasons for your opposition to this application.

Rollie Binger, Jerry Binger, Tim Binger, John K Roeber, Don Schade all signed up for the Oahe Project with Hans Jessen. They all bought land along Turtle Creek and Cottonwood Lake. This land is west of the 100th Meridian and falls under the Doctrine of Prior Appropriations, "First in time, First in right." Most senior water right holders have first call on any water that is available. 1978 provision added present withdrawals of ground water in excess of the average estimated recharge to the ground water source. Since the farmers and family farms have existed for decades, the descendants should maintain senior water rights. Lenny Peterson has owned this property for about five years.

In closing, give these young farmers an opportunity for future use permits. Their fathers and grandfathers were also great stewards of the land and natural resources. When President Roosevelt initiated the "New Deal," the Pick/Sloan project, Congress approved several dams to bring water and jobs to the surviving farmers. Returning Veteran Serviceman from WWII were given the opportunity to work on these great dams and reclamation projects. The opportunity to receive future water rights and low cost hydroelectric to the Tribes and rural farm areas.

Thank you for your time and consideration.

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

First Name: Robert Last Name: Roeber

Mailing Address: 309 E 6th Ave

City: Redfield State: SD Zip: 57469

Optional contact information. Phone: 605-460-0395 Email: _____

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

Amended Supplement. Missouri River Basin Water Law Timeline

- 1824 U.S. Supreme Court declares in *Gibbons v. Ogden* “That the power of Congress comprehends navigation, within the limits of every state in the Union, so far as that navigation may be, in any manner, connected with commerce with foreign nations, or among the several states, or with the Indian Tribes.” Federal commerce power over navigation includes authority to control not only all navigable water of the U.S., but also the non-navigable tributaries if the navigable waterway is affected or if interstate commerce is otherwise affected.
- 1936 Flood Control Act 1936. The Act prescribes that federal investigations and improvements of rivers and waterways should be under the jurisdiction of the Corp of Engineers
- 1939 Board of Engineers for Rivers and Harbors recommends a 9ft by 300ft navigation channel on the Missouri River for Sioux City to the mouth
- 1942 Missouri River States committee organized a meeting in Billings, Montana. Aim of Governors Committee is to foster and expediate the planning and development and the use of the water and land resources of the Missouri basin for the greatest common good of the basin and the nation.
- 1944 Flood control act. Senate document 247. Pick and Sloan. Flood protection structures. Water rising west of the 97th meridian.
- 1946 Fish and wildlife Coordination Act for consultation to prevent loss or damage to fish and wildlife at a federal or non-federal agency, project operation under federal permit when the project is authorized to impound, divert, or control waters. Amended in 1958 equal consideration to other project purposes
- 1963 US Supreme Court reaffirms the Winter’s Doctrine in *Arizona vs. California* and clarifies the question of quantification of Indian reserve water rights.
- 1971 Framework study to provide guidance for future multi-purpose development of basin water and related land resources for the optimum or best use.
- 1968 Congress reauthorizes downscaled Oahe Irrigation Project
- 1968 Wild and Scenic Rivers Act consider setting aside certain streams as wild, scenic, or recreation rivers as an alternative to other uses
- 1969 Act Requires an Environmental Impact Statement
- 1972 Missouri River Basin Commission is created by Presidential Executive Order 11658. The Federal Water Pollution Control Act is amended into Nations waters permits to be administered by the Corps of Engineers for the disposal of dredge fill. EPA 402 and 403. 404 separate permit.
- 1977 MRBC adopts its first comprehensive water management plan
- 1980 MRBC adopts its second comprehensive water management plan
- 1980 Fish and Wildlife conservation act provides funds to state

Amended Supplement. Missouri River Basin Water Law Timeline

1981	COE officially completes navigation channel to Sioux City.
1981	Janklow ETSI (Energy Transport Systems, Inc.) intent to contract with South Dakota to 50,000 acre feet of water a year for 50-year lease.
1982	Congress authorizes Development of Web Water in lieu of Oahe and Pollack-Herried Projects.
1982	Reclamation Reform Act
1986	Congress passes a Water Resource Development Act. 1 st in 16 years. New cost sharing requirement and preconditions for local protection projects. Senate Report No. 470 and House Report 282, 89 th congress 1 st session. Authority to undertake fish and wild life mitigation measures.
1990	Upper Basin States Montana, South Dakota, North Dakota concerned about the impact of Spawning fish filed suit in U.S. District Court. US Court of Appeals for the 8 th circuit ruled in favor of the Corps of Engineers
1992	Missouri files suit, reducing below the amount recommended in the water control plan contained in the master manual
1993	US District Court dismissed suit filed by South Dakota, North Dakota, and Montana against the Corps of Engineers. Bureau used 1.5 acre ft per irrigated acre as the consumption use formula.
1945	Statement of Merril Q Sharpe (South Dakota Governor) before the Senate sub-committee on irrigation and reclamation with reference to S.555 September 25, 1945.
1824	Supreme Court Gibbons v. Ogden power of Congress comprehends navigation within the limits of every state of the union connected with commerce
1824	Authorizes the Corps of Engineers
1862	First 160-acre land grant under the Homestead Act. Nebraska
1866	Rights have vested and accrued owners of such vested rights shall be maintained and protected the acquisition of water by prior appropriation was entitled for a beneficial use was entitled to protection
1877	Desert Lands Act sale of public land to those who would irrigate them within 3 years
1897	Captain Hiram Chittenden COE submits report upon the practicality and desirability of constructing reservoirs in upper Missouri basin an indispensable condition to the highest development of the region
1889	John Wesley Powell
1902	Reclamation Act. Secretary of Interior
1906	Secretary of Interior authorizes to develop Hydro Electric generator at reclamation projects where modular irrigation

Amended Supplement. Missouri River Basin Water Law Timeline

1908	Winters vs. US Indian reserved water rights
1917	Conservation of water sheds legislation states enter into compacts or agreements
1920	Federal Water Tower Act
1925	The Rivers and Harbors Act heeds for irrigation in planning for navigation, water power, and flood control
1926	First Interstate Compact allocating surface water in the Missouri River approved by Colorado and Nebraska. South Platte.
1927	308 reports authorized. Purposes of navigation, flood control, hydroelectric power, and irrigation
1933	Roosevelt provisions of National Industrial Recovery Act to initiate first main steam dam of the Missouri
1936	Roosevelt creates the Great Plains Committee Flood Control Act
1938	Hydroelectric facility at Fort Peck
1939	BOR Sloan Plan
1944	Missouri River States Committee. Beneficial consumptive use of basin water arising in states wholly or partially west to have precedence over water for navigation. 98 th meridian to have precedence. Contains a statement assigning navigation functions a priority, subordinate to beneficial consumptive use functions in cases involving water west of the 97 th meridian.
1950	Congress establishes guidelines for settlement negotiations with Cheyenne River and Standing Rock Sioux Tribes for the Oahe Project.
1951/1952	Extensive floods
1952	Congress authorizes \$450 settlement with Arapahoe and Shoshone Tribes of the Wind River Reservation for Boyson project damages.
1953	COE files suit to condemn lands on Crow Creek and Lower Brule Sioux Reservations for Fort Randall Dams
1954	Congress authorizes 10.6 million settlement with Cheyenne Reiver Sioux Tribe for Oahe Project damages and 238,000 settlement with Yankton Sioux Tribe for Fort Randall Project Damages
1957	Congress authorizes 12.3 million dollar settlement with Standing Rock Sioux Tribe for Oahe Damages
1958	Water Supply Act
1963	US Supreme Court reaffirms the Winters Doctrine in Arizona v. California and clarifies the question of quantification of Indian reserved water rights.
March 15, 1993	Letter from Daschle to President Clinton

Wilkinson & Schumacher Law Prof. LLC
Attorneys At Law

HARRY J. EGGEN (1922-1969)
ELLSWORTH F. WILKINSON (1952-2005)

103 JOLIET AVE., S.E. - P.O. BOX 29
DE SMET, SOUTH DAKOTA 57231

TODD D. WILKINSON
GARY W. SCHUMACHER*
MICHELLE ORTON, paralegal

TELEPHONE: (605) 854-3378
FACSIMILE: (605) 854-9006

April 25, 2024

RECEIVED

APR 26 2024

OFFICE OF
WATER
todd@wslawfirm.net
gary@wslawfirm.net
michelle@wslawfirm.net
*ALSO LICENSED IN
MINNESOTA

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Attorney Ryan S. Vogel
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen, SD 57402
Attorney for City of Redfield

Robert Roeber
309 E 6th Ave
Redfield SD 57469

David M. McVey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501
Attorney for Water Management Board

Ron Duvall
Water Rights Program
Joe Foss Building
523 East Capitol Building
Pierre SD 57501
Chair for Water Management Board

Jennifer L. Verleger
Assistant Attorney General
1302 East Highway 14, suite 1
Pierre, SD 57501
*Attorney for SD Chief Engineer
and Water Rights Program*

Re: *In the Matter of Water Permit Application No. 8825-3, Lenny Peterson*

All:

Enclosed please find a true and correct copy of the Notice of Appearance, Applicant Lenny Peterson's Motion to Dismiss, and Certificate of Service in the above entitled matter. This is intended as service by mail upon you.

Thank you.

Sincerely yours,

WILKINSON & SCHUMACHER
LAW PROF LLC



Todd D. Wilkinson

TDW:mo
Encl.

APR 26 2024

OFFICE OF
WATER

IN THE MATTER OF WATER PERMIT	)	NOTICE OF APPEARANCE
APPLICATION NO. 8825-3,	)	
LENNY PETERSON.	)	

PLEASE TAKE NOTICE that Todd D. Wilkinson of Wilkinson & Schumacher Law Prof, LLC, PO Box 29, De Smet, South Dakota, hereby gives notice that he will be appearing as the retained attorney of record for Lenny Peterson, in the above referenced matter.

Dated this 25th day of April, 2024.

WILKINSON & SCHUMACHER
LAW PROF LLC



Todd D. Wilkinson
103 Joliet Avenue S.E.
P.O. Box 29
De Smet, South Dakota 57231
(605) 854-3378 telephone
(605) 854-9006 facsimile
todd@wslawfirm.net
Attorney for Lenny Peterson

APR 26 2024

OFFICE OF
WATER

IN THE MATTER OF WATER PERMIT	)	APPLICANT LENNY PETERSON'S
APPLICATION NO. 8825-3,	)	MOTION TO DISMISS
LENNY PETERSON.	)	

FACTS

Application NO. 8825-3 was applied for by Lenny Peterson and properly filed and noticed. Lenny Peterson's application is for a water permit, to irrigate 230 acres in the E ½ of Section 11, Township 115 North, Range 65 West, Spink County, South Dakota. The appropriation requested is for 1.33 cubic feet per second (cfs) from Turtle Creek. Chief Engineer Eric Gronlund issued a recommendation for approval of Application NO. 8825-3 subject to several conditions that Lenny Peterson does not oppose.

A. Robert Roeber failed to properly serve his petition.

1. Lenny Peterson never received a petition in opposition from Robert Roeber postmarked April 16, 2024. See Exhibit A.
2. Mr. Roeber's listed alleged injuries if the application is approved. Robert Roeber did not personally serve his petition. SDCL 46-2A-4(4) requires the opposition petition to be served by first-class mail or personally delivered to the chief engineer's office and the applicant within 10 days after the published notice.

3. The applicant never received Robert Roeber's petition via first-class mail. The Water Rights Program received Mr. Roeber's petition via first-class mail postmarked April 16, 2024, one day after the procedural deadline.
4. As this petition was not properly served, Mr. Roeber should not be considered a proper party to a contested case hearing on the Application.

B. Robert Roeber's petition does not allege a unique injury nor any injury to himself.

5. SDCL 46-2A-4(4) requires that a person can only participate in a hearing if (a) the person alleges that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general.
6. The petition filed by Robert Roeber fails to allege any potential injuries and fails to allege any personal injuries to him at all. The petition names "Rollie Binger, Jerry Binger, Tim Binder, John K. Roeber, and Don Schade as being impacted but does not allege any unique personal injuries to himself.

C. By failing to identify any unique personal injuries the petition is fatally flawed and should be denied.

7. Robert Roeber lists six objections in his petition, all of which allege future losses:

- i. Loss of future domestic use for human consumption and livestock watering;
- ii. Loss of riparian vested senior water rights for future irrigation rights;
- iii. Loss of future water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by Game, Fish, and Parks;
- iv. Loss of storage capacity for aquifer going to Twin Lakes;
- v. Loss of habitat for fishing and hunting; and
- vi. Loss of property value with depletion of aquifer.

All of these are interests of the general public and the state law delegates that responsibility to the Chief Engineer and staff and board.

Conclusion

8. Robert Roeber's petition fails to allege any unique injury to himself and the alleged future injuries are generic in general and not unique. The petition does not qualify Robert Roeber as a person able to participate in a contested hearing under SDCL 46-2A-4(4)(a). the applicant requests that Rober Roeber's petition be dismissed.

Dated this 25th day of April, 2024.

WILKINSON & SCHUMACHER
LAW PROF LLC



Todd D. Wilkinson
103 Joliet Avenue S.E.
P.O. Box 29
De Smet, South Dakota 57231
(605) 854-3378 telephone
(605) 854-9006 facsimile
todd@wslawfirm.net
Attorney for Lenny Peterson

APR 26 2024

OFFICE OF
WATER

IN THE MATTER OF WATER PERMIT	)	
APPLICATION NO. 8825-3,	)	CERTIFICATE OF SERVICE
LENNY PETERSON.	)	

The undersigned, Todd D Wilkinson, hereby certifies that a true and correct copy of the **Applicant Lenny Peterson's Motion to Dismiss and Notice of Appearance**, were served upon the following by first class mail, postage prepaid, on this the 25th day of April, 2024.

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Attorney Ryan S. Vogel
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen, SD 57402
Attorney for City of Redfield

Robert Roeber
309 E 6th Ave
Redfield SD 57469

David M. McVey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501
Attorney for Water Management Board

Ron Duvall
Water Rights Program
Joe Foss Building
523 East Capitol Building
Pierre SD 57501
Chair for Water Management Board

Jennifer L. Verleger
Assistant Attorney General
1302 East Highway 14, suite 1
Pierre, SD 57501
*Attorney for SD Chief Engineer
and Water Rights Program*

Dated this 25th day of April, 2024.

WILKINSON & SCHUMACHER
LAW PROF LLC

A handwritten signature in black ink, appearing to read 'Todd D. Wilkinson', written over a horizontal line.

Todd D. Wilkinson
103 Joliet Avenue S.E.
P.O. Box 29
De Smet, South Dakota 57231
(605) 854-3378 telephone
(605) 854-9006 facsimile
Attorney for Lenny Peterson

Duvall, Ron

From: Ryan Vogel <rvogel@rwwsh.com>
Sent: Tuesday, April 23, 2024 9:32 AM
To: Duvall, Ron
Subject: RE: [EXT] Application No. 8825-3

I'm withdrawing the request for automatic delay filed on behalf of the City of Redfield. Thanks.



Ryan S. Vogel
Partner

RICHARDSONLAWFIRM

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

1 Court Street 1 Post Office Box 1030 1 Aberdeen, SD 57402-1030 1 [Map](#)
P (605) 225-6310 1 F (605) 225-2743
www.rwwsh.com 1 www.Facebook.com/RichardsonLawSD

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From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Tuesday, April 23, 2024 9:30 AM
To: Ryan Vogel <rvogel@rwwsh.com>
Subject: RE: Application No. 8825-3

Ryan,

There is no form so, just to confirm, please respond to this message that you are withdrawing the request for an automatic delay and I will put this email exchange in the file for Water Permit Application No. 8825-3, Lenny Peterson.

Thank you,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA

From: Ryan Vogel <rvogel@rwwsh.com>
Sent: Tuesday, April 23, 2024 9:27 AM
To: Duvall, Ron <Ron.Duvall@state.sd.us>
Subject: [EXT] Application No. 8825-3

Ron,

I'm agreeable to withdrawing Redfield's request for delay. Is there anything specific I should file? Please let me know. Thanks.



Ryan S. Vogel
Partner

RICHARDSONLAWFIRM

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

1 Court Street | Post Office Box 1030 | Aberdeen, SD 57402-1030 | [Map](#)
P (605) 225-6310 | F (605) 225-2743
www.rwwsh.com | www.Facebook.com/RichardsonLawSD

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Richardson, Wyly, Wise, Sauck & Hieb, LLP is a South Dakota registered limited liability partnership that has elected to be governed by the South Dakota Uniform Partnership Act (SDCL 48-7A).

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a “Notice of Response Deadline regarding Motion to Dismiss” dated April 22, 2024, concerning Water Permit Application No. 8825-3, was served upon the following by enclosing the same in envelopes and sent FedEx Standard Overnight mail on April 22, 2024.

Robert Roeber
309 E. 6th Ave.
Redfield, SD 57469

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

Todd Wilkinson
Wilkinson & Schumacher Law Prof. L.L.C.
103 Joliet Ave. SE
De Smet, South Dakota 57231-0029

Ryan Vogel Richardson, Wyly, Wise, Sauck & Hieb
1 Court Street
Aberdeen, SD 57402

Above also Sent Inter-office to:

Jennifer L. Verleger, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

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

Vickie Maberry
Vickie Maberry
Water Rights Program, DANR

[illegible]

Sworn to, before me, this 22nd day of April, 2024.

Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029





OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

APR 19 2024

OFFICE OF
WATER

BRENT K. KEMPEMA
CHIEF DEPUTY

April 18, 2024

Chief Engineer Eric Gronlund
Water Rights DANR
523 E. Capitol
Pierre, SD 57501-3182

David M. McVey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-2243
Email: David.McVey@state.sd.us
Counsel for Water Management Board

Pre-hearing Chair for Water
Management Board
c/o Ron Duvall
DANR Water Rights Program
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182

Todd Wilkinson
Wilkinson & Schumacher Law
Prof. L.L.C.
P.O. Box 29
De Smet, South Dakota 57231-
0029
Counsel for Lenny Peterson

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

Ryan Vogel
Richardson, Wyly, Wise, Sauck
& Hieb
P.O. Box 1030
Aberdeen, SD 57402

Robert Roeber
309 E. 6th Ave.
Redfield, SD 57469

Re: *In the Matter of Water Permit Application No. 8825-3, Lenny Peterson*

To Whom It May Concern:

Enclosed please find a true and correct copy of the *Chief Engineer's Motion to Dismiss* and *Certificate of Service* in the above-referenced matter.

Sincerely,

/s/ Jennifer L. Verleger

Jennifer L. Verleger
Assistant Attorney General

JLV/lde
Enclosure

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

IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 8825-3,)
LENNY PETERSON)

CHIEF ENGINEER'S
MOTION TO DISMISS

INTRODUCTION

1. Lenny Peterson applied for a water permit, Application No. 8825-3. The Chief Engineer and Water Rights Program received two petitions in opposition to the Application. Mr. Roeber's petition is procedurally defective and does not meet the criteria for granting party status under SDCL § 46-2A-4. The Chief Engineer asks that the Roeber petition be dismissed.

FACTS

2. Lenny Peterson applied for a water permit, Application No. 8825-3, to irrigate 230 acres in the E ½ of Section 11, Township 115 North, Range 65 West, approximately 6.5 miles southwest of Redfield, SD. The proposed appropriation is for 1.33 cubic feet per second (cfs) from Turtle Creek.

3. Ms. Brittan Hullinger and Mr. Mark Rath, Natural Resources Engineers for the Department of Agriculture and Natural Resources (DANR) Water Rights Program, co-authored a technical report addressing the Application. Based on the technical report and his engineering judgment, Chief Engineer Eric Gronlund issued a recommendation for approval of Application No. 8825-3 subject to several conditions.

4. The Application and recommendation were properly noticed under SDCL § 46-2A-4. Comments and petitions in opposition were due April 15, 2024.

5. The Water Rights Program received a petition in opposition from Robert Roeber postmarked April 16, 2024. *See* Exhibit A. Mr. Roeber listed six alleged injuries the Application's approval would cause him:

- Loss of future domestic use for human consumption and livestock watering
- Loss of riparian vested senior water right for future irrigation rights
- Loss of future water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by Game, Fish, and Parks
- Loss of storage capacity for aquifer going to Twin Lakes
- Loss of habitat for fishing and hunting
- Loss of property value with depletion of aquifer

Id. The reason listed for opposing the petition is that senior water rights holders should maintain their senior water rights. *Id.*

LAW AND ARGUMENT

A. Mr. Roeber did not properly serve his petition.

6. "Petitions filed pursuant to SDCL [§] 46-2A-4(4) ... to oppose or support an application must be served by first class mail or personally delivered to the chief engineer's office and the applicant. Mail must be postmarked ... within 10 days after the published notice pursuant to SDCL 46-2A-23." ARSD § 74:02:01:12.04. The petition form itself also includes a note that the petition must be served either by mail or personally delivered to the Water Rights

Program by the deadline date specified in the public notice.¹ See Exhibit A. The Water Rights Program received Mr. Roeber's petition via first class mail postmarked April 16, 2024, one day after the procedural deadline.² As this petition was not properly served, Mr. Roeber should not be considered a proper party to a contested case hearing on the Application.

B. Mr. Roeber's petition does not allege a unique injury, nor any injury to himself.

7. In 2021, the legislature amended SDCL § 46-2A-4 to clarify and streamline the water right permitting process. In so doing, the legislature provided for the submission of comments from any member of the public regarding a potential appropriation, but restricted those individuals who may require and participate in a hearing to those who have alleged a unique personal injury and that injury must fall within the Board's regulatory authority. Specifically, SDCL § 46-2A-4(4) provides:

... that a person may only participate in the hearing if:

- (a) The person alleges that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general[.]

¹ In addition, Mr. Roeber was personally instructed via phone by Ron Duvall, water rights staff member, who provided the form to Mr. Roeber, to mail the completed petition no later than April 15.

² For full disclosure, the Water Rights Program did receive a courtesy copy of Mr. Roeber's petition via email at 4:45 pm on April 15. Applicant Lenny Peterson is not included on the email, and it is unknown if or when he has been properly served.

The legislature imposed this restriction believing that the multi-layered reviews by the Water Rights Program staff, the Chief Engineer, and the Board adequately protects the general public's interests.

8. Here, not only does Petitioner Roeber fail to allege any potential injuries that are personally unique, he fails to allege any personal injury at all. His petition names "Rollie Binger, Jerry Binger, Tim Binder, John K. Roeber, and Don Schade," but makes no reference to himself. *See* Exhibit A. He further couches his complaint on behalf of "farmers and family farms [that] have existed for decades" and "the descendants." *Id.* These are members of the general public whose rights the legislature has specifically delegated the Water Rights Program staff, the Chief Engineer, and the Board for protection. To summarize, Petitioner Roeber believes that the Application should not be granted because senior water rights holders should maintain their senior water rights. *Id.* While the Chief Engineer agrees senior water rights must be protected, to the extent these rights are being asserted on behalf of the public rather than a specific individual or entity, the Chief Engineer is responsible for that protection without the need for a contested case hearing.

C. The objections regarding future perceived harms raised by Mr. Roeber's petition are contrary to fundamental water law administration principles.

9. Mr. Roeber lists six objections in his petition, all of which relate to future perceived harms:

- Loss of *future* domestic use for human consumption and livestock watering
- Loss of riparian vested senior water right for *future* irrigation rights

- Loss of *future* water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by Game, Fish, and Parks
- Loss of [*future*] storage capacity for aquifer going to Twin Lakes
- Loss of [*future*] habitat for fishing and hunting
- Loss of [*future*] property value with depletion of aquifer

See Exhibit A (emphasis added). But rejecting an application based on objections about perceived harms that might potentially occur at some undisclosed future time runs counter to fundamental water law administration principles.

10. The prior appropriation doctrine is generally regarded as originating from the California Supreme Court based on the legal maxim “*qui prior est in tempore potior est injure*” (whoever is earlier in time is strong in right) in 1855. *Irwin v. Phillips*, 5 Cal. 140, 147 (1855). Since nearly that time (and as succinctly stated in the statutes of the other Dakota) another judicial maxim has pervaded water law – “One must so use one’s own rights as not to infringe upon the rights of another.” N.D. Cent. Code § 31-11-05.

11. This concept was recognized in the water law context by the U.S. Supreme Court as early as 1874. In *Basey v. Gallagher*, 87 U.S. 670, Gallagher was a downstream water user who sued when Basey constructed an upstream dam and fully diverted the stream, depriving Gallagher of his water use. The Court noted that since 1855, “the right to water by prior appropriation for any beneficial purpose is entitled to protection” in the Pacific States and Territories. *Id.* at 683. Noting specific examples, the court continued: “Water is diverted to propel machinery in flour-mills and saw-mills, and to irrigate land for cultivation, as well as to enable miners to work their

mining claims; and in all such cases the right of the first appropriator, *exercised within reasonable limits*, is respected and enforced.” *Id.* (emphasis added). Concluding, the Court stated: “We say within reasonable limits, for this right to water, like the right by prior occupancy to mining ground or agricultural land, is not unrestricted. *It must be exercised with reference to the general condition of the country and the necessities of the people, and not so as to deprive a whole neighborhood or community of its use and vest an absolute monopoly in a single individual.*” *Id.* (emphasis added).

12. This maxim that “one must so use one’s own rights as not to infringe upon the rights of another” is also reflected in water law in the antispeculation doctrine. “The antispeculation doctrine prohibits the acquisition of a conditional water right without a vested interest or a specific plan to possess and control the water for a specific beneficial use.” 94 C.J.S. Waters § 347. In other words, water rights cannot be acquired simply because an individual wishes to deprive future users the ability to obtain water rights. “Merely storing water for a later use [can be] akin to speculative hoarding” and without a plan for an “immediate beneficial use ... has been found to violate an antispeculation policy.” 94 C.J.S. Waters § 347.

13. The “adequate well” doctrine also reflects the principle that future users cannot be held hostage by senior prior appropriators. In South Dakota, all wells except monitoring wells must be constructed as “adequate wells.” ARSD 74:02:04:23.01. An “adequate well” is defined as “a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet

to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet.” ARSD 74:02:04:20(6). Only domestic wells that “adequate wells” can be registered with the Chief Engineer. ARSD 74:02:01:05.02. And only “adequate wells” can be considered “adversely impacted domestic wells” if there is a decline in water levels such that the well is no longer sufficiently able to provide water. ARSD 74:02:04:20(7). In other words, the only domestic wells entitled to protection from junior appropriators are “adequate wells.” The policy reason for this “adequate well” doctrine is that “a whole neighborhood or community” (*Basey*, 87 U.S. at 683) of future water users should not be prevented from appropriating water simply because the senior appropriator’s well is too shallow in the aquifer. This would “vest an absolute monopoly in a single individual.” *Basey*, 87 U.S. at 683.

14. The Chief Engineer is charged with administering water law for “the protection of the public interest in the development of water ... for the greatest public benefit.” SDCL § 46-1-2. The use of that water is “a paramount interest” to the people of the state. SDCL § 46-1-1. “[T]he general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable ... [and] the conservation of such water is to be exercised with a view to the reasonable and beneficial use ... in the interest of the people and for the public welfare.” SDCL § 46-1-4.

15. All of these doctrines illustrate that generic objections about future

perceived harms, such as those raised by Mr. Roeber's petition, are contrary to fundamental water law administration principles. Mr. Roeber's speculation about future impacts without any specificity – and not even on behalf of himself, but generic “farmers” and “descendants” – are not the sort of harms the prior appropriation doctrine and administration of water rights are meant to protect.

CONCLUSION

16. Mr. Roeber's petition does not allege any unique injury to himself, nor are the perceived future injuries he alleges unique to this water permit. Under Mr. Roeber's view of the prior appropriation doctrine, no additional water permits would be able to be granted anywhere because there could always be the threat of speculative harm. Mr. Roeber's petition does not qualify him as a person able to participate in a contested case hearing under SDCL § 46-2A-4(4)(a), and he cannot use his own right to the reasonable use of water to unreasonably infringe upon the rights of others to pursue their own reasonable water use. In addition, his petition was untimely. The Chief Engineer asks that Mr. Roeber's petition be dismissed.

Respectfully submitted April 18, 2024.

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Jennifer L. Verleger

Jennifer L. Verleger
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-2243
Email: Jennifer.Verleger@state.sd.us

*Attorneys for South Dakota Chief Engineer
and Water Rights Program*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **Chief Engineer's Motion to Dismiss** were served upon the following by enclosing the same in envelopes with first class postage prepaid, and depositing said envelopes in the United States mail on April 18, 2024:

Chief Engineer Eric Gronlund
Water Rights DANR
523 E. Capitol
Pierre, SD 57501-3182

Ryan Vogel
Richardson, Wyly, Wise, Sauck
& Hieb
P.O. Box 1030
Aberdeen, SD 57402

Todd Wilkinson
Wilkinson & Schumacher Law Prof. L.L.C.
P.O. Box 29
De Smet, South Dakota 57231-0029
Counsel for Lenny Peterson

Robert Roeber
309 E. 6th Ave.
Redfield, SD 57469

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

And on the same date, a copy was hand delivered to:

David M. McVey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-2243
Email: David.Mcvey@state.sd.us
Attorney for Water Management Board

And on the same date, the original was sent inter-office for filing:

Pre-hearing Chair for Water Management Board
c/o Ron Duvall
DANR Water Rights Program
Joe Foss Building
523 East Capitol Building
Pierre, SD 57501

Dated April 18, 2024.

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Jennifer L. Verleger
Jennifer L. Verleger
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-2243
Email: Jennifer.Verleger@state.sd.us

*Attorneys for South Dakota Chief Engineer
and Water Rights Program*



RECEIVED

APR 17 2024

OFFICE OF
WATER

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Petition

Opposing Application for a Water Right Permit

Application No. 8825-3 Name of Applicant Lenny Peterson

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

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

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

- loss of future domestic use for human consumption and livestock watering
- loss of riparian vested senior water rights for future irrigation rights
- loss of future water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by GFP
- loss of storage capacity for aquifer going to Twin Lakes
- loss of habitat for fishing and hunting
- loss of property value with depletion of aquifer

List the reasons for your opposition to this application.

Rollie Binger, Jerry Binger, Tim Binger, John K Roeber, Don Schade all signed up for the Oahe Project with Hans Jessen. They all bought land along Turtle Creek and Cottonwood Lake. This land is west of the 100th Meridian and falls under the Doctrine of Prior Appropriations, "First in time, First in Right." Most senior water right holders have first call on any water that is available. 1978 provision added present withdrawals of ground water in excess of the average estimated recharge to the ground water source. Since the farmers and family farms have existed for decades, the descendants should maintain senior water rights. Lenny Peterson has owned this property for about five years.

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

First Name: Robert Last Name: Roeber

Mailing Address: 309 E 6th Ave

City: Redfield State: SD Zip: 57469

Optional contact information. Phone: 605-460-0398 Email: _____

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

Exhibit A

R Roeber
309 E. 6th Ave
Redfield S. Dak
57469

Retail



U.S. POSTAGE PAID
FCM LG ENV
REDFIELD, SD 57469
APR 16, 2024



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APR 17 2024

OFFICE OF
WATER

Attention - Water Rights Program
Dept. of Agriculture, Natural Resources
Joe Foss Building
523 E. Capitol Ave
Pierre, SD 57501-3182



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APR 17 2024

OFFICE OF
WATER

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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

Petition

Opposing Application for a Water Right Permit

Application No. 8825-3 Name of Applicant Lenny Peterson

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

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

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

- loss of future domestic use for human consumption and livestock watering
- loss of riparian vested senior water rights for future irrigation rights
- loss of future water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by GFP
- loss of storage capacity for aquifer going to Twin Lakes
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- loss of property value with depletion of aquifer

List the reasons for your opposition to this application.

Rollie Binger, Jerry Binger, Tim Binger, John K Roeber, Don Schade all signed up for the Oahe Project with Hans Jessen. They all bought land along Turtle Creek and Cottonwood Lake. This land is west of the 100th Meridian and falls under the Doctrine of Prior Appropriations, "First in time, First in Right." Most senior water right holders have first call on any water that is available. 1978 provision added present withdrawals of ground water in excess of the average estimated recharge to the ground water source. Since the farmers and family farms have existed for decades, the descendants should maintain senior water rights. Lenny Peterson has owned this property for about five years.

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

First Name: Robert Last Name: Roeber

Mailing Address: 309 E 6th Ave

City: Redfield State: SD Zip: 57469

Optional contact information. Phone: 605-460-0395 Email: _____

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

RICHARDSON LAW FIRM

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

1 COURT STREET

POST OFFICE BOX 1030
ABERDEEN, SD 57402-1030

E-MAIL: RVogel@rwwsh.com
Asst: AJimenez@rwwsh.com

www.rwwsh.com

DWIGHT CAMPBELL	(1887-1964)
STANLEY R. VOAS	(1909-1972)
JAMES A. WYLY	(1939-2009)
LLOYD C. RICHARDSON, JR.	(1924-2012)
RICHARD L. RUSSMAN	(1967-2014)
WILLIAM K. SAUCK, JR.	(RETIRED)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

ROY A. WISE
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER
RYAN S. VOGEL
CHRISTI M. WEIDEMAN
BRIANNA J. HAUGEN

April 11, 2024

VIA U.S. MAIL

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Mr. Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

Re: Water Permit Application #8825-3

Dear Mr. Gronlund and Mr. Peterson:

I have been retained to represent the City of Redfield regarding opposing the above-referenced water permit application. Enclosed please find the following:

1. Notice of Appearance;
2. City of Redfield's Petition Opposing Water Permit Application; and
3. City of Redfield's Request for Automatic Delay.

If you have any questions, please feel free to contact me.

Best regards,

Ryan S. Vogel

RSV/aj
Enclosures

Cc: Adam Hansen (via email)

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RECEIVED

APR 12 2024

OFFICE OF
WATER

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

* * * * *

PERMIT APPLICATION #8825-3

LENNY PETERSON

NOTICE OF APPEARANCE

* * * * *

PLEASE TAKE NOTICE that Ryan S. Vogel, of the law firm of Richardson, Wyly, Wise, Sauck & Hieb, LLP, will undertake the representation of City of Redfield in the above-captioned matter.

Dated this 11th day of April, 2024.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By /s/ Ryan S. Vogel
Attorneys for City of Redfield

Ryan S. Vogel
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: RVogel@rwwsh.com

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for City of Redfield, hereby certifies that on the 11th day of April 2024, a true and correct copy of **NOTICE OF APPEARANCE** was served via U.S. Mail on:

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Mr. Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

Dated this 11th day of April, 2024.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By /s/ Ryan S. Vogel
Attorneys for City of Redfield

Ryan S. Vogel
One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: RVogel@rwwsh.com

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

* * * * *

PERMIT APPLICATION #8825-3

LENNY PETERSON

**CITY OF REDFIELD'S PETITION
OPPOSING WATER PERMIT
APPLICATION**

* * * * *

The City of Redfield, by and through its attorney of record, Ryan S. Vogel, of Richardson, Wyly, Wise, Sauck & Hieb, LLP, Aberdeen, South Dakota, hereby files this Petition opposing the application to appropriate water, Application No. 8825-3, filed by Lenny Peterson. This Application is opposed by the City of Redfield upon the grounds, *inter alia*, that the City of Redfield, and its residents, will be adversely affected, who are persons with senior, existing downstream rights to said water.

However, the City of Redfield does not oppose approval of the application if the qualifications as set forth in the Recommendation of the Chief Engineer for Water Permit Application dated March 1, 2024 are adopted.

Dated this 11th day of April, 2024.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By /s/ Ryan S. Vogel
Attorneys for City of Redfield

Ryan S. Vogel
One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: RVogel@rwwsh.com

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for City of Redfield, hereby certifies that on the 11th day of April 2024, a true and correct copy of **CITY OF REDFIELD'S PETITION OPPOSING WATER PERMIT APPLICATION** was served via U.S. Mail on:

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Mr. Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

Dated this 11th day of April, 2024.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By /s/ Ryan S. Vogel
Attorneys for City of Redfield

Ryan S. Vogel
One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: RVogel@rwwsh.com

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

* * * * *

PERMIT APPLICATION #8825-3

LENNY PETERSON

**CITY OF REDFIELD'S REQUEST
FOR AUTOMATIC DELAY**

* * * * *

The City of Redfield, by and through its attorney of record, Ryan S. Vogel, hereby makes this request for an automatic delay of the hearing on this matter filed by Lenny Peterson, which is currently scheduled to be heard before the Water Management Board on May 8, 2024, at 10:45 a.m.

Dated this 11th day of April, 2024.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By /s/ Ryan S. Vogel
Attorneys for City of Redfield

Ryan S. Vogel
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: RVogel@rwwsh.com

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for City of Redfield, hereby certifies that on the 11th day of April 2024, a true and correct copy of **CITY OF REDFIELD'S REQUEST FOR AUTOMATIC DELAY** was served via U.S. Mail on:

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Mr. Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

Dated this 11th day of April, 2024.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By /s/ Ryan S. Vogel
Attorneys for City of Redfield

Ryan S. Vogel
One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: RVogel@rwwsh.com



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

May 1, 2024

NOTICE OF ENTRY OF ORDER

TO: Robert Roeber Lenny Peterson Todd Wilkinson
309 E. 6th Ave. 19111 Maple Ave. Wilkinson & Schumacher Law Prof. L.L.C.
Redfield, SD 57469 Hitchcock, SD 57348 103 Joliet Ave. SE
De Smet, South Dakota 57231-0029
Counsel for Lenny Peterson

Ryan Vogel, Richardson, Wyly,
Wise, Sauck & Hieb
1 Court Street
Aberdeen, SD 57402

Jennifer L. Verleger, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
Counsel for Chief Engineer

David M. McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
Counsel for Water Management Board

FROM: Ron Duvall, Natural Resources Engineer
SD DANR, Water Rights Program

SUBJECT: Order Granting the Chief Engineer's Motion to Dismiss Robert Roeber Petition and
Denying Applicant's Motion Regarding Application No. 8825-3, Lenny Peterson

Enclosed is an Order granting the Chief Engineer's Motion to Dismiss the Robert Roeber Petition in Opposition to Water Permit Application No. 8825-3 and denying the Applicant's Motion to Dismiss as moot.

Pursuant to SDCL 46-2-24, the Order may be appealed to the Board by filing an appeal on or before May 7, 2024, 5:00 P.M. Central time. Such appeal must be in writing and sent via U.S. Mail.

Mail appeal to:

Atten: Ron Duvall
SD DANR, Water Rights Program
523 E Capitol Ave
Pierre SD 57501

If an appeal of the Order is filed, it will be considered by the Water Management Board prior to the hearing on Water Permit Application No. 8825-3. The appeal of the Order, if any, and the hearing on Water Permit Application No. 8825-3 are scheduled for 10:45 AM (Central Time) on May 8, 2024, in the Matthew Training Center, Joe Foss Bldg., 523 E. Capitol Ave., Pierre, SD.

Questions regarding this matter may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Enclosure

CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a "Notice of Entry of Order Granting the Chief Engineer's Motion to Dismiss Robert Roeber Petition and Denying Applicant's Motion" dated May 1, 2024, concerning Water Permit Application No. 8825-3 and the Order signed by Pre-Hearing Chairman Rodney Freeman on April 30, 2024, was served upon the following by enclosing the same in envelopes and sent FedEx Standard Overnight mail on May 1, 2024.

Robert Roeber
309 E. 6th Ave.
Redfield, SD 57469

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

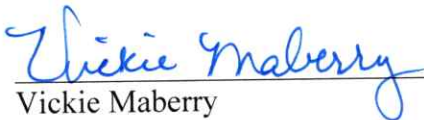
Todd Wilkinson
Wilkinson & Schumacher Law Prof. L.L.C.
103 Joliet Ave. SE
De Smet, South Dakota 57231-0029

Ryan Vogel
Richardson, Wyly, Wise, Sauck & Hieb
1 Court Street
Aberdeen, SD 57402

Above also Sent Inter-office to:

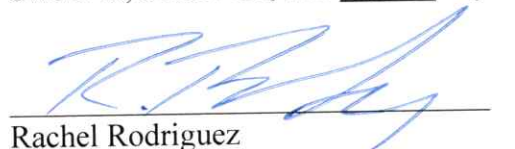
Jennifer L. Verleger, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

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


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 1st day of May, 2024.


Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029



APR 30 2024

OFFICE OF
WATERSTATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	ORDER GRANTING CHIEF
PERMIT APPLICATION NO. 8825-3,	)	ENGINEER'S
LENNY PETERSON	)	MOTION TO DISMISS

PROCEDURAL HISTORY

1. Lenny Peterson applied for a water permit, Application No. 8825-3, to irrigate 230 acres in the E ½ of Section 11, Township 115 North, Range 65 West, approximately 6.5 miles southwest of Redfield, SD(the "Application".) The proposed appropriation is for 1.33 cubic feet per second (cfs) from Turtle Creek.
2. Robert Roeber filed a Petition in Opposition which was postmarked on April 16, 2024 listing six injuries which would allegedly occur if the Application were granted.
3. On April 18, 2024, the Chief Engineer, by and through their legal counsel, filed a Motion To Dismiss the Petition In Opposition to Water Permit Application No. 8825-3 filed by Robert Roeber.
4. On April 22, 2024, at the direction of the Pre-Hearing Chair, a Notice Of Response Deadline Regarding Motion To Dismiss was served on the interested individuals which directed "that any written responses to the motion to dismiss be received no later than 5:00 p.m. central daylight time on Monday, April 29, 2024."
5. The Notice required any responses to be served on Pre-hearing Chair for Water Management Board c/o Ron Duvall, Robert Roeber, Lenny Peterson, Todd Wilkinson, Ryan Vogel, and inter-office to Jennifer Verleger and David McVey.
6. On April 25, 2024 the Applicant Lenny Peterson, by and through his attorneys, filed a motion to dismiss the petition in opposition to Water Permit Application No. 8825-3 filed by Robert Roeber.

7. On April 29, 2024, a response was timely and properly served on the Pre-hearing Chair for Water Management Board c/o Ron Duvall and on the Chief Engineer. There was no Certificate of Service attached and it is unknown whether any of the other required parties were served.

DECISION

The Pre-hearing Chair has jurisdiction to consider this matter pursuant to South Dakota Codified Law (SDCL) 1-4 1-15.3 and 46-2-24. Decisions of the Pre-hearing Chair may be appealed to the Water Management Board pursuant to provisions of SDCL 46-2-24.

Both the Chief Engineer and the Applicant argue in their respective Motions that the Petition in Opposition is defective in that:

1. The Petition was not properly served as required by SDCL §46-2A-4(4) and ARSD § 74:02:01:12.04.
2. The Petition did not allege a unique injury as required by SDCL §46-2A-4(4).

SDCL § 46-2A-4(4) provides in relevant part:

A statement that a person may only participate in the hearing if:

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

ARSD § 74:02:01:12.04 provides:

Petitions filed pursuant to SDCL 46-2A-4(4) or 46-2A-23 to oppose or support an application must be served by first class mail or personally delivered to the chief engineer's office and the applicant. Mail must be postmarked or personal delivery must occur at least 10 days before the published date of hearing pursuant to SDCL 46-2A-4 or within 10 days after the published notice pursuant to SDCL 46-2A-23. If the tenth day is a Saturday, Sunday, or legal holiday, petitions must be postmarked or personally delivered to the chief engineer's office and the applicant by the next working day.

The Water Rights Program received Mr. Roeber's petition via first class mail postmarked April 16, 2024, one day after the procedural deadline. Additionally, the Applicant alleges in his Motion to Dismiss that he never received the Petition in Opposition via First Class Mail in advance of the procedural deadline as required by both statute and rule. No Certificate of Service was attached to the Petition in Opposition demonstrating such service was made, nor does Mr. Roeber contest the asserted lack of service in his April 29, 2024 response to the Motion to Dismiss. Mr. Roeber had the opportunity to submit proof or assert that service was completed properly and failed to do so.

Mr. Roeber lists six objections in his petition:

1. Loss of future domestic use for human consumption and livestock watering.
2. Loss of riparian vested senior water right for future irrigation rights.
3. Loss of future water replenishment of Western Hitchcock/Tulare aquifer with the removal of WPA Dam by Game, Fish, and Parks.
4. Loss of storage capacity for aquifer going to Twin Lakes.
5. Loss of habitat for fishing and hunting.
6. Loss of property value with depletion of aquifer.

In the Petition in Opposition, Mr. Roeber alleges six individuals and their rights will be negatively affected in the event the application is granted. The listed individuals are Rollie Binger, Jerry Binger, Tim Binder, John K. Roeber, Don Schade and Hans Jessen; notably absent is Mr. Roeber himself. Mr. Roeber couches his complaint on behalf of "farmers and family farms [that] have existed for decades" and "the descendants." In the response to the Motion to dismiss filed by Mr. Roeber, he does not address the issue of a unique injury but rather provides further historical references to the Missouri River Basin Water Law Timeline.

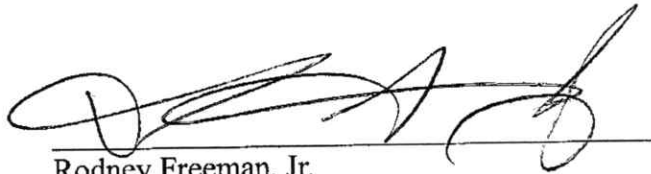
Nothing in Roeber's Petition in Opposition nor in his response to the Motion to Dismiss alleges an injury to him that is unique from any injury suffered by the public in general.

ORDER

FOR THE REASONS SET FORTH HEREIN, the Chief Engineer's Motion to dismiss is **GRANTED** as Mr. Roeber's Petition was not properly served and failed to set forth an injury to Mr. Roeber that is unique from any injury suffered by the public in general.

The Motion to Dismiss filed by the Applicant herein is **DENIED** as moot.

Dated this 30th day of April 2024.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', is written over a horizontal line.

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

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

OFFICE OF
WATER

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER) PERMIT APPLICATION NO. 8825-3,) LENNY PETERSON)	ORDER GRANTING CHIEF ENGINEER'S MOTION TO DISMISS
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PROCEDURAL HISTORY

1. Lenny Peterson applied for a water permit, Application No. 8825-3, to irrigate 230 acres in the E ½ of Section 11, Township 115 North, Range 65 West, approximately 6.5 miles southwest of Redfield, SD(the "Application".) The proposed appropriation is for 1.33 cubic feet per second (cfs) from Turtle Creek.
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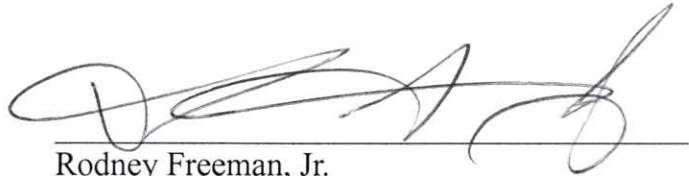
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ORDER

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Dated this 30th day of April 2024.

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

MAY 17 2024

Lenny D Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Enclosed is Water Permit No. 8825-3 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.: 8825-3

Name of Applicant: Lenny Peterson

Date of Posting: 4/2/2024

Date of Removal: 5/17/2024

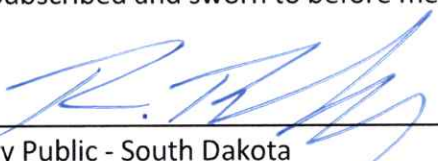


Ron Duvall, Engineer III

5/17/2024

Date

Subscribed and sworn to before me, a notary public, this 17th day of May, 2024.



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

(SEAL)

