

WATER PERMIT NO. 8835-3

Name of Applicant: **Nick & Scott Bebo**

Address: **17061 390th Avenue, Redfield SD 57469**

Phone: **605-460-0302**

Amount of Water Claimed: **6.65**

Total Acres: **466**

Source of Water Supply: **Surface**

Water to be used for: **Irrigation**

County: **Spink**

Type of Waste Disposal System:

Location: **Approx. 5 miles northeast of Redfield SD**

PRIORITY

Date Received: **02-08-24**

Application/License Fee: **\$1,550.00**

Corrected Application Received: **02-~~12~~⁰⁸-24**

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

Remarks:

Diversion Point: **NW 1/4 SW 1/4 Sec 28 -T117N-
R63W**

Land to be Irrigated: **NW 1/4 Sec 28, S 1/2 NW
1/4 Sec 21 -T117N-R63W**

			21		
			28		

Depth of Well:

Well Driller:

Remarks:

Type of Map: **aerial**

Reviewed and the Number Assigned on: **02-12-24**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
WATER PERMIT NO. 8835-3**

Date of first receipt of application February 8, 2024.

The Water Management Board approved Water Permit No. 8835-3 on December 4, 2024, for Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469, 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. 8835-3 appropriates 6.65 cubic feet of water per second (cfs) from the James River at a point located in the NW 1/4 SW 1/4 Section 28 for irrigation of 466 acres located in the NW 1/4 Section 28; S 1/2, NW 1/4 Section 21; all in T117N-R63W. This site is located approximately five miles northeast 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: April 1 – September 30.
3. The date from which applicant may claim right is February 8, 2024.
4. One-fifth of the construction is to be completed on or before June 4, 2027.
5. All construction is to be completed on or before December 4, 2029.
6. Water is to be put to beneficial use on or before December 4, 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. This permit does not authorize diversions from the James River any time when there is less than 50 cfs bypassing the USGS gaging station at Huron, SD, after pumping.
2. This permit does not authorize diversion of water from the James River after July 15th of each calendar year when there is less than 100 cfs bypassing the USGS gaging station at Huron, SD, after pumping, unless written orders have been issued by the Chief Engineer.
3. The permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer.
4. Diversions under the permit are subject to senior water rights and any written orders issued by the Chief Engineer.
5. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
6. The Water Management Board retains jurisdiction in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

WATER MANAGEMENT BOARD

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

JAN 07 2025

date



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

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8835-3</u> (office use only) Hydrologic Unit <u>10160006</u> Basin <u>Middle James</u> Newspaper <u>Redfield Press</u> <u>Aberdeen American News</u>
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PAID

FEB 08 2024

Ck# 160216
Rec't# _____

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.)

Asking to revisit the limits set on irrigating out of the James River + the cubic feet per second allowed at this time

1. Name to Appear on Irrigation Permit Nick + Scott Bebo

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

Mailing Address 17061 390th Ave Redfield SD 57469
(Address) (City) (State) (Zip Code)

Phone _____ Mobile 605-460-0302 email farmipad2022@gmail.com

2. Amount of water claimed 6.65 *CFS or _____ **GPM _____ ***AF _____ Total Acreage 418A
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable) 466

3. Source of water supply James River

4. Location of point of diversion NW corner of SW 1/4 sec 28-117N-63W
(example - 3 wells in SW 1/4 NE 1/4 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 April - September 30

7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
NW 1/4 sec 28-117N-63W	58		
SE 1/4 sec 21-117N-63W	120	136	
SW 1/4 sec 21-117N-63W	120	136	
NW 1/4 sec 21-117N-63W	120	136	

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

Asking for the CFS to be revisited allowing water to be used from the James River for irrigation purposes. There has been significant flooding in recent years + more + more tiling projects replenishing the water supply to the river.

RECEIVED

FEB 09 2024

I, Nick Bebo, the applicant, WATER
Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☐ Drilling new well(s) ☐ Using existing well(s)a) If new wells, how many ____ Have test holes been drilled ☐ Yes ☐ No Drilled by ____
(if yes, please provide copies of logs)

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

For either Existing or Proposed Wells:

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

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

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) ____ Year Constructed ____

c) Connected to the City of ____ Sanitary System

3. Dugout Information

a) Surface Dimensions ____ Depth ____

b) Depth to water (ground surface to water level) ____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

b) Freeboard ____

c) Crest Width ____

Crest Length ____

d) Height ____

e) Primary Outlet Capacity ____

If pipe, diameter ____

f) Secondary Spillway Capacity ____

Spillway Width ____

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

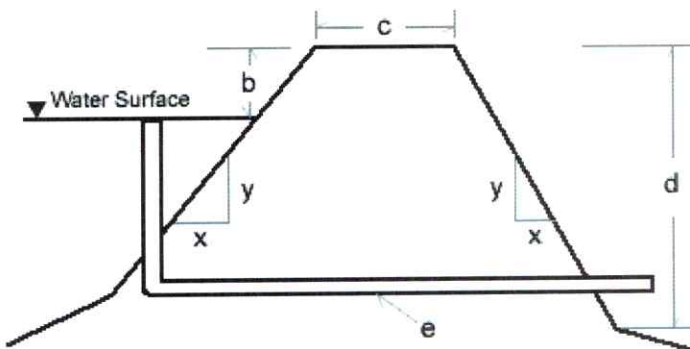
Upstream ____

Downstream ____

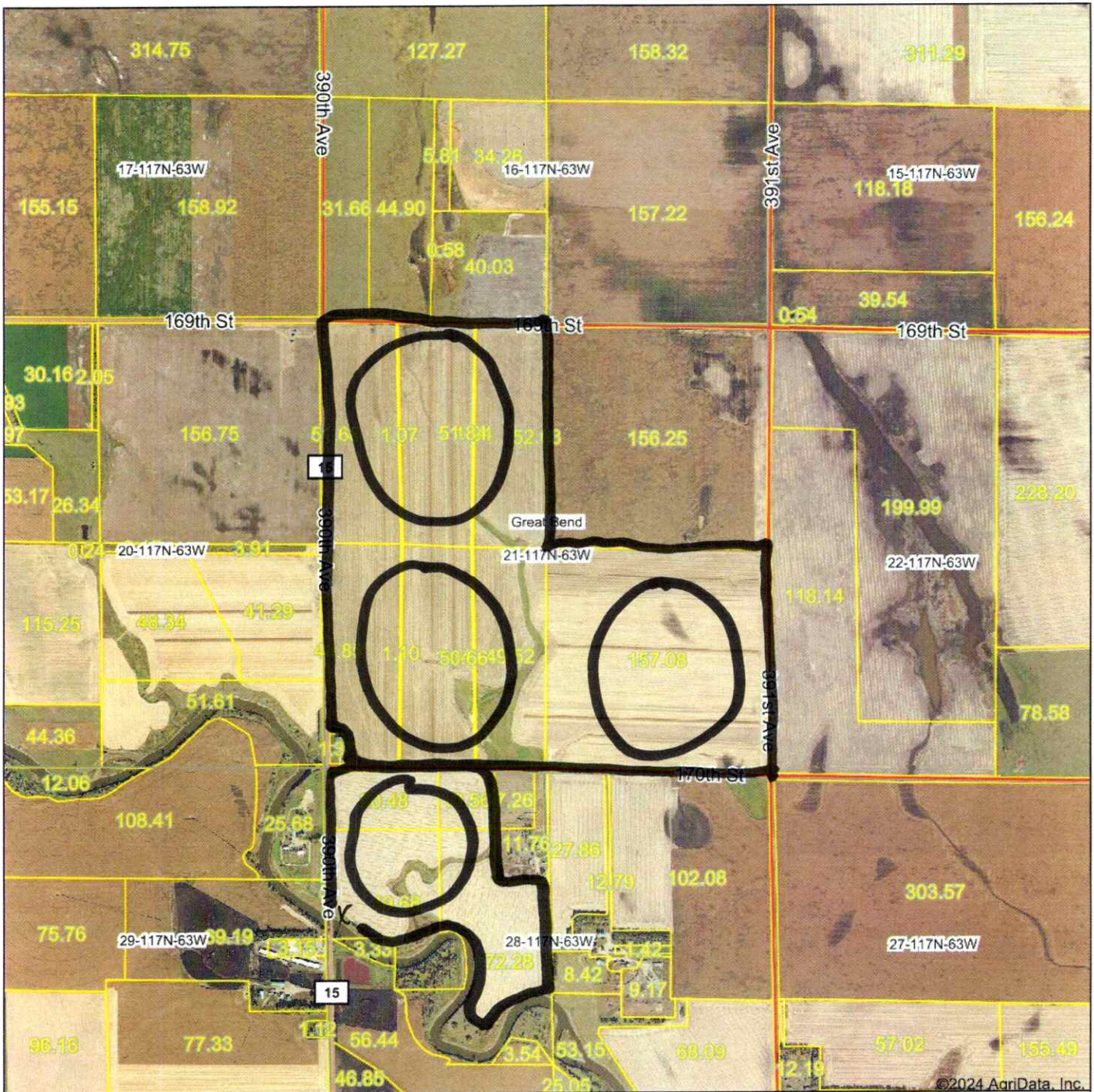
h) Surface Area of Impoundment ____

i) Storage ____ Acre Feet

j) Drainage Area Above Dam ____ Acres



Aerial Map



Map Center: 44° 55' 56.42, -98° 25' 17.37

0ft 1835ft 3670ft

21-117N-63W
Spink County
South Dakota



2/7/2024

Maps Provided By:



© AgriData, Inc. 2023

www.AgrDataInc.com

Field borders provided by Farm Service Agency as of 5/21/2008.



Map 1 Layers

☒ **New Generic Layer**

(All Attributes)



Transparency - 100 %



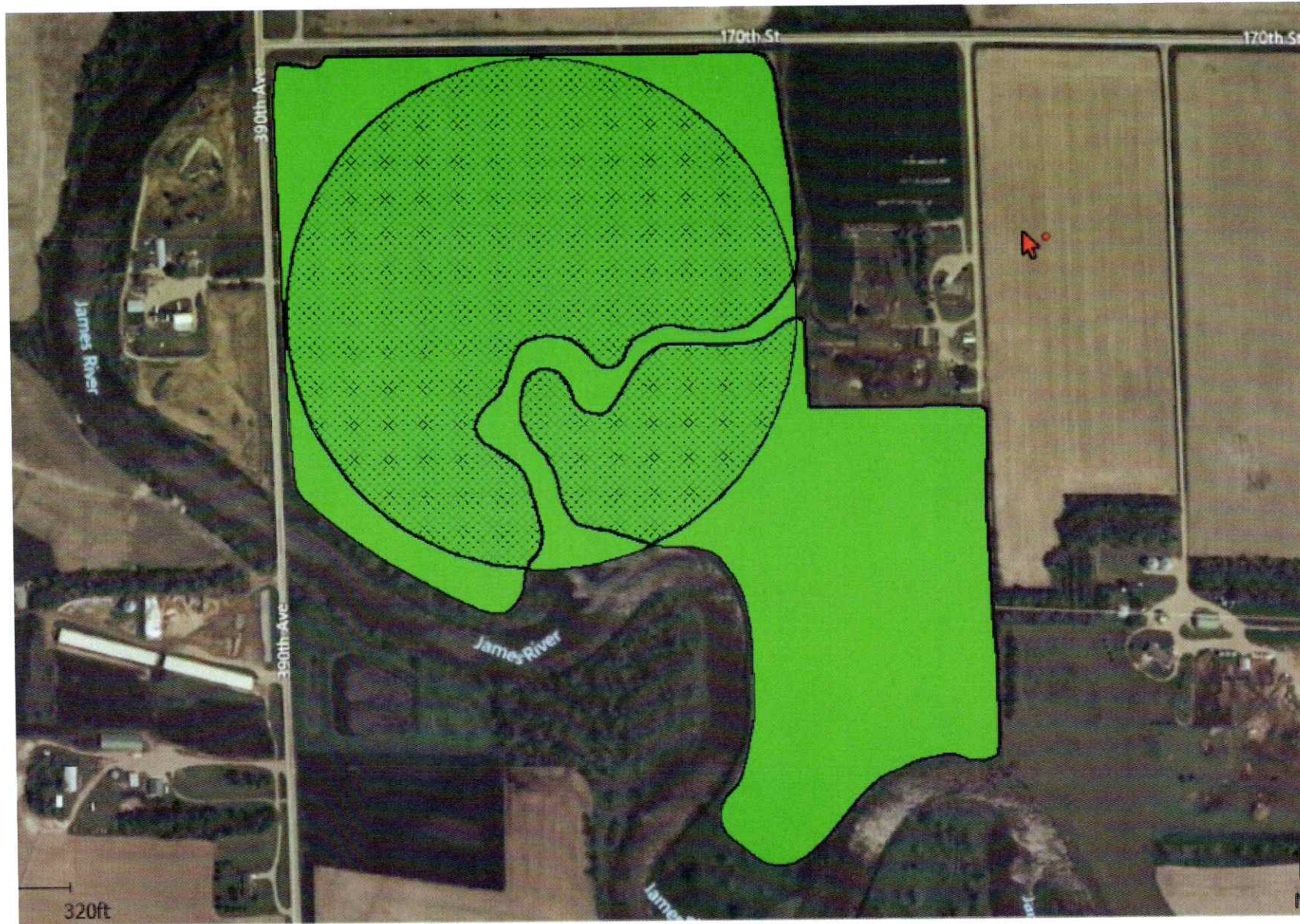
(All Attributes)

☒ All Attributes

Statistics(Selected / All)

Minimum	-----
Maximum	-----
Average	-----
Total	-----
Area	362.04 / 466.48 ac
Length	24,387 / 68,916 ft
Count	1 / 2

☒ **GB21XXWS | Bebo**



Map 2 Layers

☒ **New Generic Layer**

(All Attributes)



Transparency - 100 %



(All Attributes)

■ All Attributes

Statistics(Selected / All)

Minimum	-----
Maximum	-----
Average	-----
Total	-----
Area	58.57 / 166.82 ac
Length	9,600.0 / 30,868 ft
Count	1 / 3

☒ **GB28NW02 | Bebo**



RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date February 8, 2024

RECEIVED OF Nick/Scott Bebo 17061 390th Avenue Redfield SD 57469

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

Fee for Application for Permit No. <u>8835-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>1250.00</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>8835-3</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>1450.00</u>

By Eric Gronlund
Chief Engineer
EG



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 20, 2024

Nick & Scott Bebo
17061 390th Avenue
Redfield SD 57469

Dear Sirs:

When you submitted your three water permit applications for irrigation, you included a check for each application. However, since only one application for 466 acres will be processed, then a refund of \$2,800.00 will be returned to you. The refund check should be received within the next couple of weeks.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

February 20, 2024

PAYMENT REQUEST FORM

PAYEE: Nick & Scott Bebo
17061 390th Avenue
Redfield SD 57469

FROM: DANR-Water Rights Program
523 E. Capitol Ave
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Refund of over payment of Water Permit Application Fee

AMOUNT: \$2800.00

FUNDING SOURCE: WR Fees

GENERAL:

FEDERAL:

OTHER:

COMMENTS:

AUTHORIZATION:

Eric Nieland 2/24/2024

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

File No. 8835-3

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Nick & Scott Bebo

ADDRESS: 17061 390th Avenue, Redfield SD

DATE: February 12, 2024

PHONE: 605.460.0302

RE: Water Permit Application from James River

COMMENTS:

I spoke to Nick Bebo concerning three applications submitted for the same acreage all from the James River. Mr. Bebo intended one application to start irrigating 110 acres that was covered by a now cancelled water right. Another application for the same area was to allow irrigation of the area by exceeding the 300 cubic feet of water per second limit for appropriations on the James River. Another application was for the same area indicating that Aberdeen did not need their James River future use permit since they are looking to the Missouri River for future water supplies. I told Mr. Bebo that Aberdeen would need to be one relinquishing their future use permit and whether Aberdeen wanted to do so is revisited during the seven-year review of their future use permit.

Mr. Bebo was agreeable to proceeding with one application with the preference that the application be approved as a regular water right permit by exceeding the 300 cfs limit as needed. On the application form is the assertion that flows in the James River have increased and additional water is available. I informed Mr. Bebo that we would likely recommend approval as a temporary use permit for any amount of water available under the 300 cfs limit and denial of any amount over 300 cfs and that he could oppose the recommendation to get the matter heard by the Water Management Board. I told Mr. Bebo we would send him a petition form along with the notice of hearing, the staff report, and chief engineer's recommendation. We also discussed increasing the number of acres for the three, quarter center pivots from 120 acres to 136 acres. Mr. Bebo agreed with increasing the acres to ensure, if the application is approved, there are enough acres covered by the permit. Mr. Bebo was also in agreement with applying for the statutory diversion rate of 6.65 cfs to irrigate a total of 466 acres. I informed Mr. Bebo that the application fees for the other two applications would be refunded. Increasing the acreage from 418 to 466 acres results in an additional \$100.00 needed for the application so the total amount being refunded for the other two applications minus the additional \$100.00 is \$2,800.00.

Ron Duvall, Engineer III
SD DANR, Water Rights Program

Rodriguez, Rachel

From: Nick Bebo <farmipad2022@gmail.com>
Sent: Thursday, February 8, 2024 4:12 PM
To: Rodriguez, Rachel
Subject: Re: [EXT] Water Permit Applications
Attachments: image001.png

Yes I am in agreement with the 418 acres being a new application

On Thu, Feb 8, 2024, 3:52 PM Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us> wrote:

Good Afternoon Nick,

I am in receipt of your 3 water permit applications for irrigation. In looking at the first application, I see that you have 418 acres described in the land description section. However, the total acreage is 110 which is based off the cancelled permit. When a permit is cancelled, it cannot be amended, therefore, this is a new application for 418 acres. Please let me know if you are in agreement with the 418 acres for your new application.

You can expect to receive an email for the other two applications.

Thank you,

Rachel Rodriguez

DANR | Program Assistant

Rachel.Rodriguez@state.sd.us





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8835-3, Nick and Scott Bebo**

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. 8835-3, Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending DEFERRAL of Application No. 8835-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

At the Water Management Board hearing to be scheduled on this matter, 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. If you intend to oppose this DEFERRAL recommendation, the public notice of hearing will provide details on filing a petition in opposition to the chief engineer's recommendation.

See report on application for additional information.

Eric Gronlund, Chief Engineer
March 28, 2024



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8835-3 - NICK & SCOTT BEBO**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources, concerning deferred Water Permit Application No. 8835-3 - Nick & Scott Bebo, 17061 390th Avenue, Redfield SD 57469.

The Chief Engineer is recommending APPROVAL of the above-listed water permit application because 1) there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversions can be developed without unlawfully impairing 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. This permit does not authorize diversions from the James River any time when there is less than 50 cfs bypassing the USGS gaging station at Huron, SD, after pumping.
2. This permit does not authorize diversion of water from the James River after July 15th of each calendar year when there is less than 100 cfs bypassing the USGS gaging station at Huron, SD, after pumping, unless written orders have been issued by the Chief Engineer.
3. The permit does not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer.
4. Diversions under the permit are subject to senior water rights and any written orders issued by the Chief Engineer.
5. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
6. The Water Management Board retains jurisdiction in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

See report on application for additional information.

Eric Gronlund, Chief Engineer
November 14, 2024

REPORT ON WATER PERMIT APPLICATION NO. 8835-3

Nick & Scott Bebo

28 March 2024

Application No. 8835-3 proposes to appropriate 6.65 cubic feet of water per second (cfs) from the James River at a point located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 for the irrigation of 466 acres located in the NW $\frac{1}{4}$ of Section 28, S $\frac{1}{2}$, NW $\frac{1}{4}$ of Section 21; all in T117N-R63W. This site is located in Spink County, approximately five miles northeast of Redfield, South Dakota.

South Dakota Codified Law (SDCL) 46-1-4

“It is hereby declared that, because of conditions prevailing in this state, the 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 that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water.”

SDCL 46-2A-2

“Within sixty days of receipt of a completed application, 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.”

Review of Proposed Water Source

Originating in North Dakota, the James River flows southward across South Dakota and empties into the Missouri River east of Yankton, SD. The river has a total length of approximately 710 miles, with 475 miles in South Dakota (Young, 1973). The river's elevation decreases about 460 feet over a distance of 710 miles, which gives the river an average gradient of only 0.7 feet per mile (Young, 1973). This is extremely flat and travel times of water are measured in weeks, rather than hours or days (USACE, 2018). During extended periods of low precipitation, the James River experiences extremely low flows and cannot be considered a reliable source of water.

The United States Geological Survey (USGS) operates a streamflow gaging station network in South Dakota. The USGS collects realtime stream flow data and retains a historical record of the flow data for each of these stations (USGS, 2024). Water Rights staff use this flow data to help regulate water usage during dry periods and for performing flow analyses in determining the likelihood of water availability at a particular location. The USGS provides an online statistical package to help analyze the flow data. Water in the James River is managed in South Dakota by splitting the James River into three sections, associated with three different USGS streamgages: No. 06473000 James River at Ashton, No. 06476000 James River at Huron, and No. 06478500

James River near Scotland. A map showing the locations of the three USGS streamgages on the James River monitored by the Water Management Board (WMB), can be seen on Figure 1.

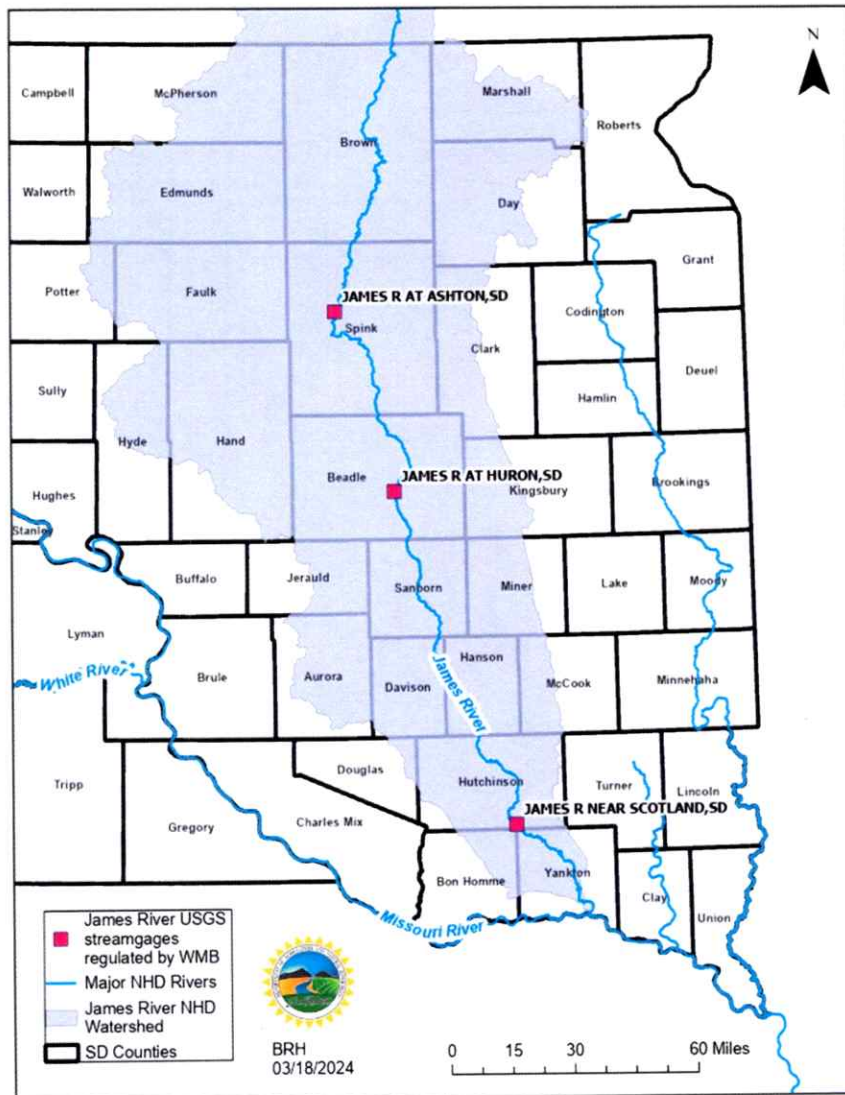


Figure 1. Map showing locations of three James River USGS streamgages in South Dakota (USGS, 2024).

Since the 1990's, there has been an increasing trend of streamflow in the James River (USGS, 2024; Hirsch and De Cicco, 2015). Streams in the eastern Dakotas have experienced the greatest increases in streamflow during the last 60 years in comparison to any other USGS gaged stream in the United States (Norton et al., 2022). In 2020, the USGS Gage No. 06471000 James River at Columbia, was measured above flood stage for more than 518 consecutive days (Norton et al., 2022). Since then, the National Weather Service has updated its flood severity categories to reflect flow changes to the James River (NWS, 2023).

Using the R packages EGRET and dataRetrieval (Hirsch et al., 2015), daily mean flow data for their entire respective record from three streamgages on the James River were used for statistical analyses. Figures 2 through 4 show three different discharge statistics and their smoothed values for the USGS streamgage at Huron, SD, one of three James River gages monitored by the Water

Management Board. The smoothing method used by EGRET is based on locally weighted scatterplot smoothing (Lowess), and the curves are resistant to the influence of one or two years with extremely high or low flows (Hirsch et al., 2015).

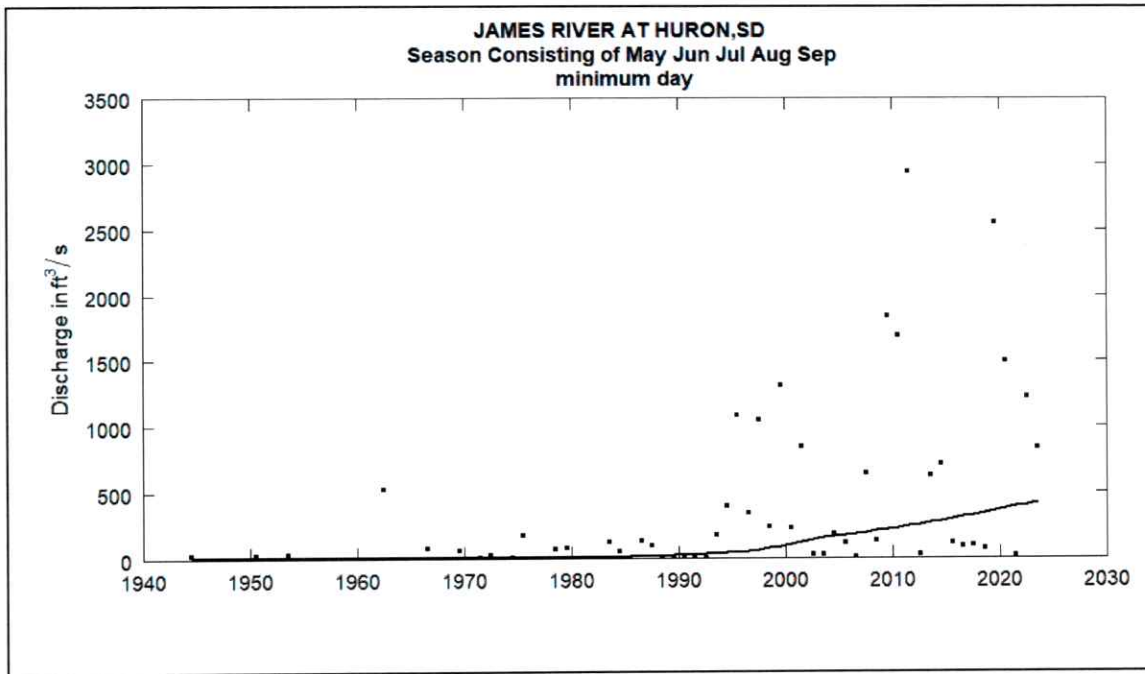


Figure 2. Annual minimum 1-day daily mean discharge at the USGS Gage No. 06476000 James River at Huron, SD for the months of May, June, July, August, and September (Hirsch et al., 2015; USGS, 2024).

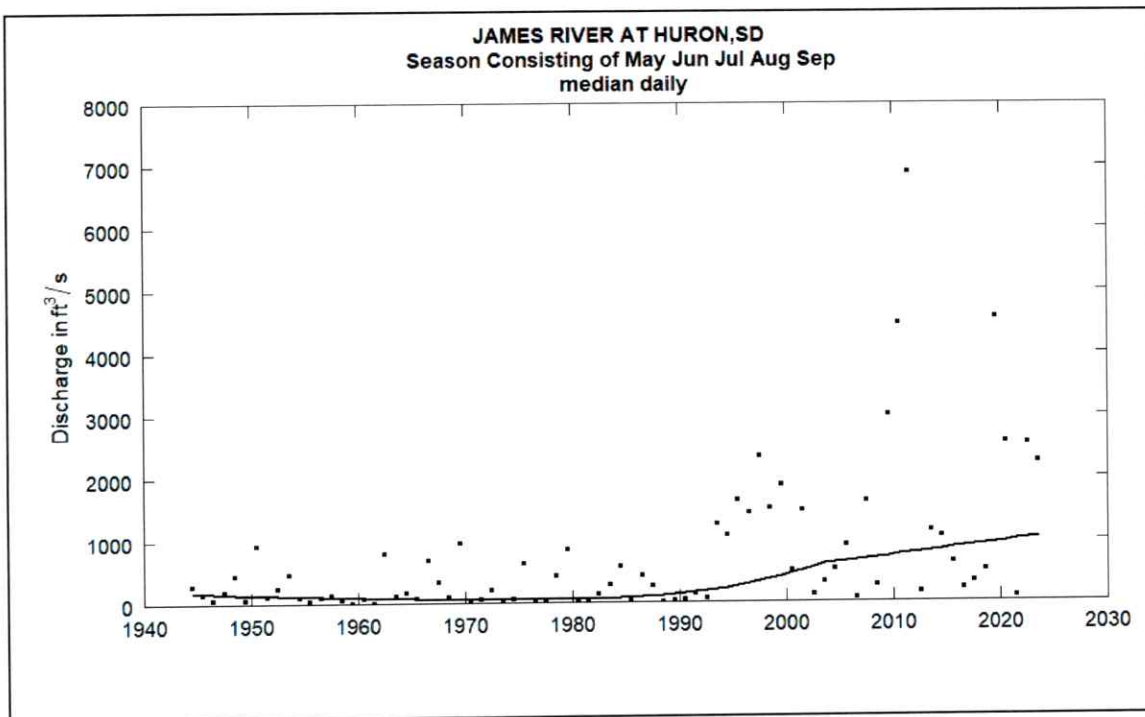


Figure 3. Annual median of daily mean discharges at the USGS Gage No. 06476000 James River at Huron, SD for the months of May, June, July, August, and September (Hirsch et al., 2015; USGS, 2024).

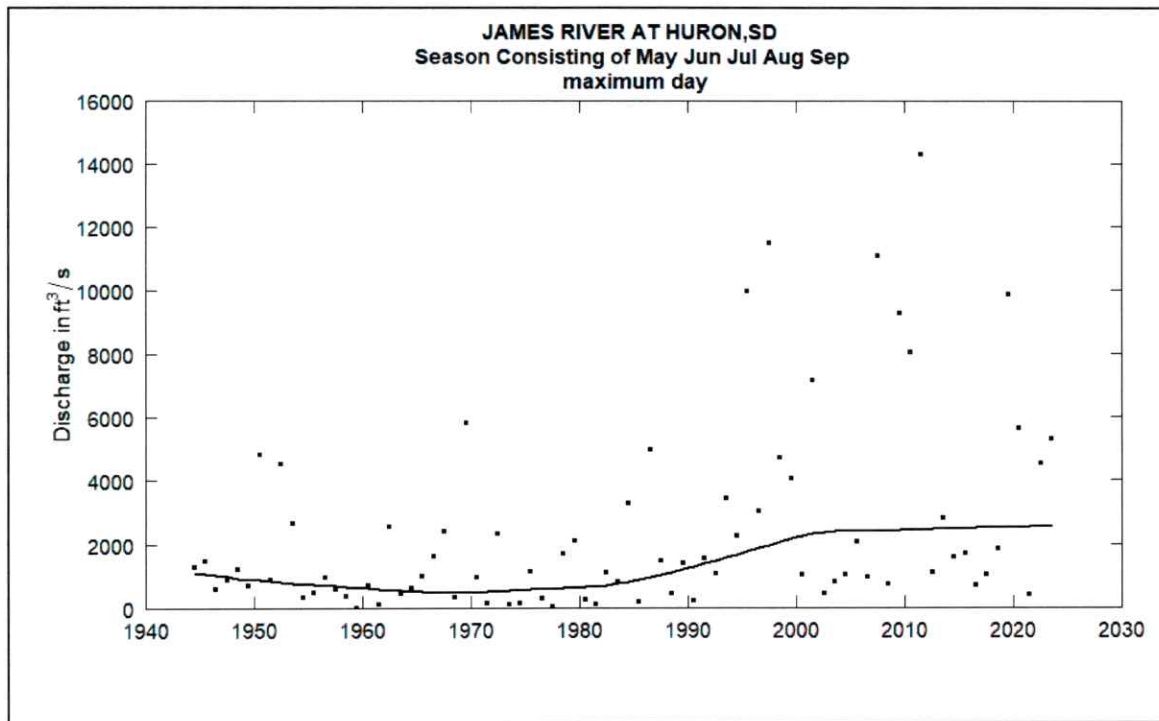


Figure 4. Annual maximum 1-day daily mean discharge at the USGS Gage No. 06476000 James River at Huron, SD for the months of May, June, July, August, and September (Hirsch et al., 2015; USGS, 2024).

Figures 2 through 4 show three different flow statistics to give an overall impression of James River streamflow from 1944 to 2023. For the annual minimum flow, annual median flow, and annual maximum flow, the data show a rise after the 1990's. The other two gages on the James River monitored by the WMB show similar trends.

Review of the James River Water Management Regulation

In 1965, the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed maximum appropriation limits over sections of the James River in South Dakota (Water Rights, 2024). A 300 cfs appropriation limit restriction applies to the river reach between the North Dakota-South Dakota border to the Yankton-Hutchinson County Line (Water Rights, 2024). Of this restriction, a 200 cfs appropriation limit restriction was placed from the North Dakota border to the USGS gaging station in Huron, SD. The SD Water Management Board has adopted these appropriation limits. The report which led to the appropriation limits on the James River also states that several hundred additional cfs could be approved with a July 1st cutoff date (Water Rights, 2024). However, no water permits above the established 300/200 cfs limits were ever issued with or without a July 1st cutoff date.

In 2007, the SD Water Management Board adopted standardized qualifications (Beck, 2007) for the James River. Existing water rights/permits were amended to include the standardized qualifications with the intent of using the same qualifications on future James River water rights/permits (Water Rights, 2024). In order to address times when water availability is scarce from the James River, the Water Management Board has placed the following qualifications on certain James River permits:

- James River Permits do not authorize diversion of water from the James River after August 10th of each calendar year unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- James River Permits do not authorize diversion from the James River when there is less than 20 cfs bypassing the USGS gaging station within the stretch of river where the closest downstream USGS gage is at Ashton, at Huron, or near Scotland.

Review of Existing Water Rights/Permits

Currently there are 77 water rights/permits and two future use permits appropriating or reserving 199.19 cfs of the 200.00 cfs appropriation limit between the North Dakota-South Dakota border and the USGS gaging station at Huron, SD, and there are 116 water rights/permits and two future use permits appropriating or reserving 298.92 cfs of the 300.00 cfs appropriation limit between the North Dakota-South Dakota border and the Yankton-Hutchinson County Line (Water Rights, 2024).

There are four pending applications with earlier priority, and if Water Permit Application No. 8821-3 was approved, there will be 0.00 cfs available from the James River for appropriation under the 200 cfs limit so the river will be considered fully appropriated between the North Dakota-South Dakota border and the USGS gaging station at Huron, SD. Below the USGS gaging station at Huron, 0.27 cfs remains available for appropriation within the 300 cfs limit (Water Rights, 2024). Application No. 8835-3 is the fifth pending application for diversion of water from the James River within the same stretch of river that is fully appropriated.

Future Use Permit No. US594-3 held by the U.S. Bureau of Reclamation reserves 500 cfs from the James River and other sources. The majority of the water reserved by this permit and attributed to the James River would have come from return flows created by the defunded and non-constructed Oahe Project with the water being diverted at the James River pumping plant. Originally, the reservation of water was by Future Use Permit No. 1067-3 held by the Oahe Conservancy Sub-District but was transferred to the Bureau of Reclamation under Future Use Permit No. US594-3 in 1974. The remainder of Future Use Permit No. 1067-3 was cancelled by the Water Management Board in 2012. The status of this future use permit should be reviewed since the source of the majority of the water reserved was to be from a federal irrigation project that was never constructed and has been defunded (Water Rights, 2024).

Future Use Permit No. 8512-3 held by the City of Aberdeen reserves 8.5 cfs in the stretch of the James River which limits appropriation to 200 cfs. When a water source is otherwise fully appropriated, state law provides for a temporary use permit to be granted to put water to beneficial use reserved by a future use permit. However, temporary use permits are effective only until such time as the future use permit holder wants to use the water reserved by the future use permit. If that occurs, the temporary use permit holder would be given six months' notice of cancellation of their temporary use permit.

There is currently no rule or law in South Dakota which allows temporary use permits to become a regular water permit while retaining the same priority date as the temporary use permit. If pending application Nos. 8822-3, 8823-3, 8824-3 and this application, No. 8835-3 are approved, those permits would be temporary use water permits based on the current flow thresholds on the

James River, which limit appropriation to 200 cfs in the stretch where the applications for this report are located.

Review of the Current Appropriation Limits

Due to this influx of new applications, it seems prudent to take a fresh look at the current appropriation limits and qualifications that are placed on James River water permits to determine if they remain reasonable and allow water to be put to beneficial use to the fullest extent that the James River is capable of supporting, while protecting existing rights and domestic use.

Water Rights engineers use statistical analysis on flow data before making recommendations to the Chief Engineer and the Water Management Board as they make water management decisions. Two methods to measure the central tendency of a dataset are the mean, often referred to as average, and the median, otherwise referred to as 50th percentile. The mean is the sum of all data values divided by the sample size. The median is the central value of a distribution when the data are sorted by magnitude (Helsel et al., 2020). The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long-term flow data, large flood event data skew the calculated mean value giving an unreasonable expectation of a higher flow value over a period of time. For this reason, the median is used to measure central tendency, because it is minimally affected by the magnitude of any single observation (Helsel et al., 2020).

Monthly median flow values were calculated from historical daily flow data collected at the Ashton, Huron, and Scotland USGS streamgages on the James River. The median monthly flow values for the months of May through September were calculated for three periods of record: the earliest year of record to 1989, 1990 to 2022, and the full period of record. Three bar graphs for each of the streamgages can be seen in Figures 5 through 7.

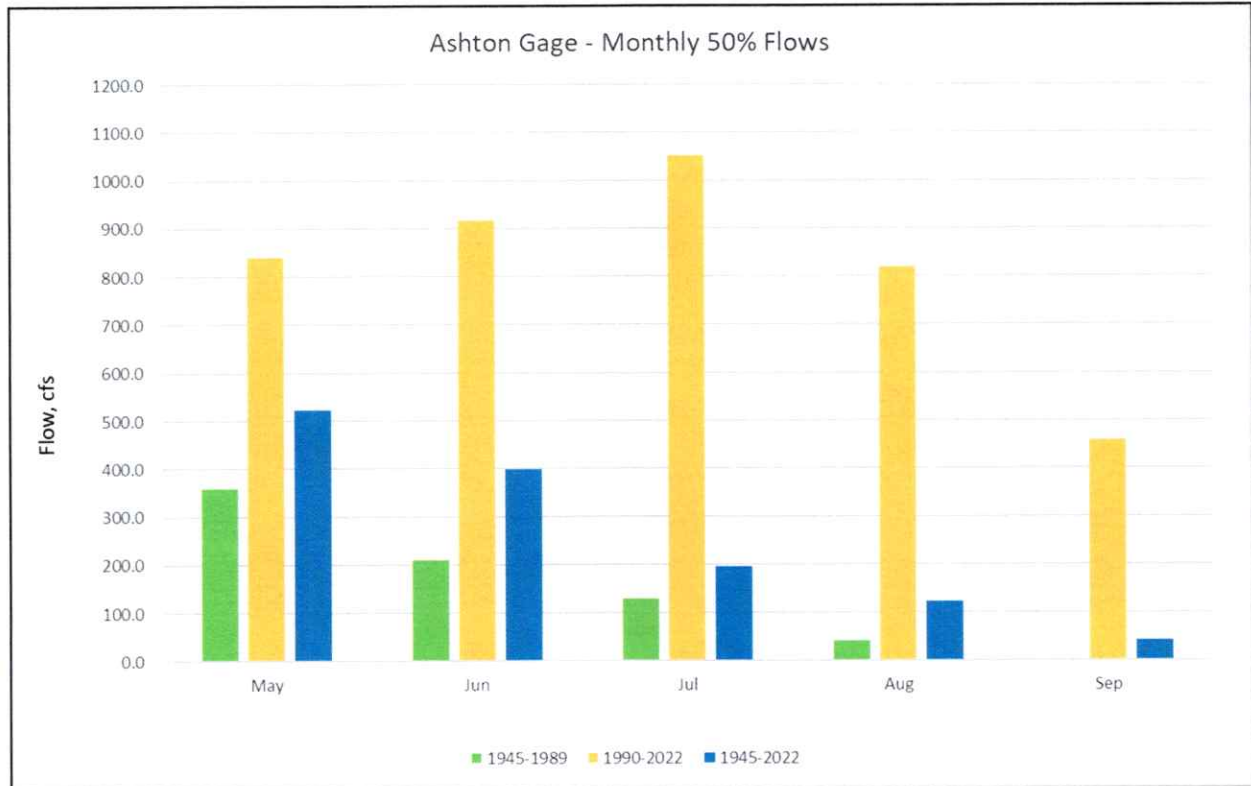


Figure 5. Monthly 50th percentile flow hydrograph for the USGS gaging station No. 06473000 James River at Ashton, SD, for the years 1945 to 1989, 1990 to 2022, and the full period of record. The contributing drainage area is 8,333 mi² (USGS, 2024).

The 50th percentile monthly streamflow collected at the USGS gaging station No. 06473000 James River at Ashton, SD (Figure 5) shows that the 1990 to 2022 median monthly values are significantly larger than median monthly values for the period of 1945 to 1989. The lowest and highest difference for monthly median flows are 455 cfs for September to 923 cfs for July.

Comparing the 1990 to 2022 median monthly values to those over the entire period of record, 1945-2022, the flows are still larger in the past 30 years. The lowest and highest difference for monthly median flows are 40 cfs for September to 187 cfs for July. Analyzing the entire period of record gives a better indication of what can be expected over a long period of time, considering both the wet and dry cycles that the river experiences.

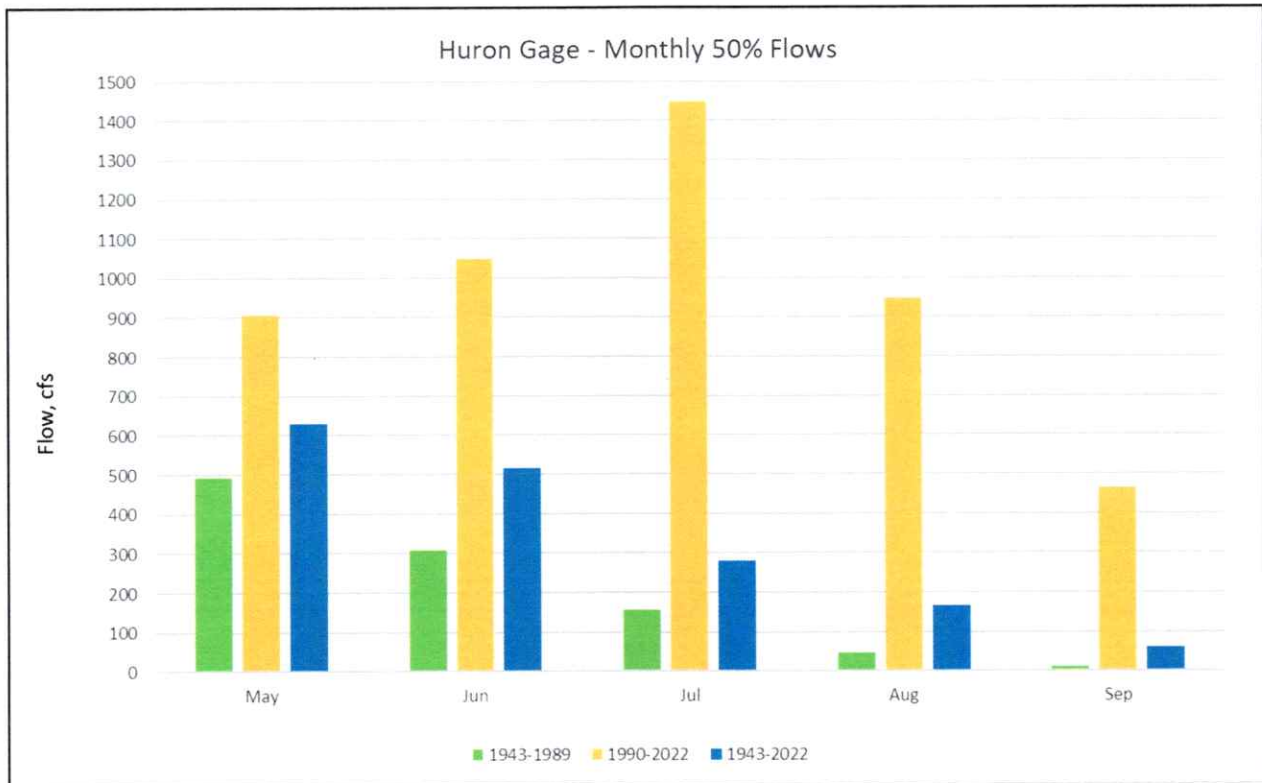


Figure 6. Monthly 50th percentile flow hydrograph for the USGS gaging station No. 06476000 James River at Huron, SD, for the years 1943 to 1989, 1990 to 2022, and the full period of record. The contributing drainage area is 13,795 mi² (USGS, 2024).

The 50th percentile monthly streamflow collected at the USGS gaging station No. 06476000 James River at Huron, SD (Figure 6) shows that the 1990 to 2022 median monthly values are significantly larger than median monthly values for the period of 1943 to 1989. The lowest and highest difference for monthly median flows are 451 cfs for September to 1,293 cfs for July.

Comparing the 1990 to 2022 median monthly values to those over the entire period of record, 1943 to 2022, the flows are still larger in the past 30 years. The lowest and highest difference for monthly median flows are 49 cfs for September to 207 cfs for July. Analyzing the entire period of record gives a better indication of what can be expected over a long period of time, considering both the wet and dry cycles that the river experiences.

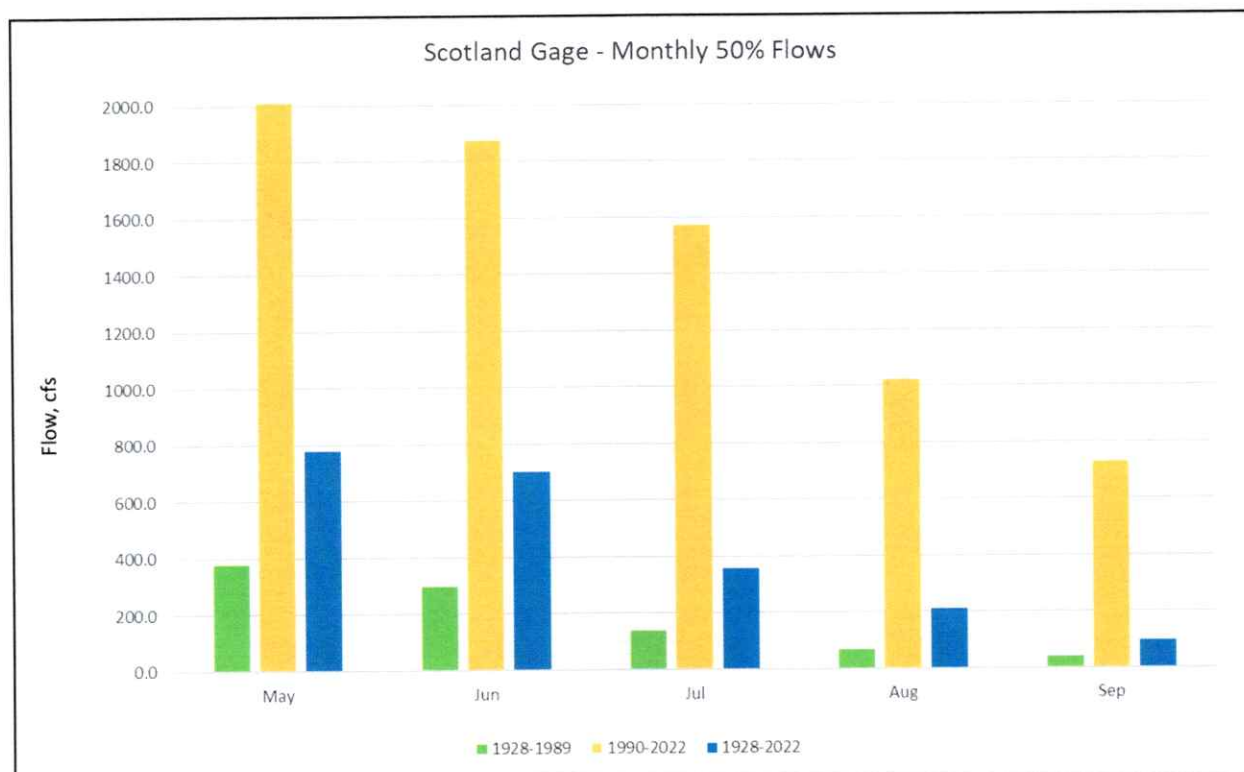


Figure 7. Monthly 50th percentile flow hydrograph for the USGS gaging station No. 06478500 James River near Scotland, SD, for the years 1928 to 1989, 1990 to 2022, and the full period of record. The contributing drainage area is 18,616 mi².

The 50th percentile monthly streamflow collected at the USGS gaging station No. 06478500 James River near Scotland, SD (Figure 7) shows that the 1990 to 2022 median monthly values are significantly larger than median monthly values for the period of 1929 to 1989. The lowest and highest difference for monthly median flows are 690 cfs for September and 1,632 cfs for May.

Comparing the 1990 to 2022 median monthly values to those over the entire period of record, 1928 to 2022, the flows are still larger in the past 30 years. The lowest and highest difference for monthly median flows are 55 cfs for September to 403 cfs for July. Analyzing the entire period of record gives a better indication of what can be expected over a long period of time, considering both the wet and dry cycles that the river experiences.

Discussion

Current qualifications on the James River include a 300 cfs limit, and of that restriction, no more than 200 cfs can be appropriated in the stretch between the North Dakota-South Dakota border and the USGS gaging station at Huron, SD. Additionally, there are minimum flow shutoff levels and a mandatory August 10th shutoff date.

Due to changing streamflow conditions on the James River and the recent influx of new applications, Water Rights staff believes a review is warranted to determine if new qualifications can be crafted to allow issuance of permits in excess of the 300/200 cfs limit while still protecting existing water rights and domestic uses. While the central tendency of streamflow for the James River has significantly increased since the 1990's, there are still intermittent years where flow in the river is low and unreliable. Even though the last 30 years have shown significantly increasing streamflow trends during the irrigation season (Figures 2 through 4, 5 through 7) (Hirsch and De Cicco, 2015; Norton et al., 2022); USGS, 2024), a thorough review with careful recommendations to the Board is warranted because increased streamflow trends may or may not continue. Any changes to the regulatory framework need to ensure that existing water right holders and domestic water users are protected. This effort should be undertaken prior to determine whether applications that would otherwise be issued as temporary use permits can be qualified in a manner to allow issuance as standard water permits.

Public notice should be provided in counties adjoining the James River of any future Water Management Board meetings in which modification of the 1965 appropriation limit is being considered by the Board.

Conclusions

1. Water Permit Application No. 8835-3 should be deferred for a more in-depth investigation of the current appropriation limit restrictions and bypass limits placed on the James River.
2. Upon completing an analysis, a recommendation may be made to:
 - Retain or modify the 300 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the Yankton-Hutchinson County line.
 - Retain or modify the 200 cfs appropriation limit on the James River from the North Dakota-South Dakota border to the USGS gaging station at Huron, SD.
 - If approval of water permit applications in excess of the 300/200 cfs limitation is allowed, recommend qualifications to be attached to new permits to protect existing water rights and domestic uses.



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

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

March 28, 2024

Nick and Scott Bebo
17061 390th Avenue
Redfield SD 57469

Dear Mr. Bebo:

Water Permit Application No. 8835-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Redfield Press printed in Redfield SD (Ph # 605 472-0822) and the American News printed in Aberdeen SD (see attachment for contact number). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
(605) 773-3352

enclosures

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

Instruction to Newspaper – Publish the Notice on April 10, 2024. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 8835-3 to Appropriate Water

Notice is given that Nick & Scott Bebo, 17061 390th Avenue, Redfield SD 57469 have filed an application for a water permit to appropriate 6.65 cubic feet of water per second (cfs) from the James River at a point located in the NW ¼ SW ¼ section 28 for irrigation of 466 acres located in the NW 1/4 section 28; S ½, NW ¼ section 21; all in T117N-R63W. The applicant is seeking approval of the application as a water right permit even if the 300 cfs appropriation limit on the James River is exceeded. This site is located approximately five miles northeast 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 DEFERRAL of Application No. 8835-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. 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. The Chief Engineer’s recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:30 AM (Central Time) on 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 22, 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 22, 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 22, 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 22, 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: Gannett Legals Public Notices 4 <ganlegpubnotices4@gannett.com>
Sent: Thursday, March 28, 2024 1:24 PM
To: Rodriguez, Rachel
Subject: RE: [EXT] 10014249 8835-3 Nick & Scott Bebo - Public Notice
Attachments: 10014249.pdf

Please find your order confirmation and proof of ad attached.

Your ad is set to run in American News on 4/10/24 with a cost of \$93.45

The total cost includes an affidavit, that will be mailed to you 7-10 business days after the last day of the ad printing. Please reply by **4 pm Friday, April 5, 2024 to cancel or with any changes for the ad**. You will receive an invoice in the mail.

All orders are subject to a 3.99% service fee if paid with a credit card. As an incentive for customers, we provide a discount off the order cost equal to the 3.99% service fee if you pay with ACH. Pay by ACH and Save!
Final Order cost provided at time of payment and via a receipt.

Your notice is scheduled to run per your request and will publish unless you advise otherwise.

In the future, if you would like to utilize our online self-serve ad portal to place your legal notices, please visit your local publication's online classifieds legal section. There, you can conveniently submit and immediately preview your notices anytime, 24/7.

Thanks,

*NOTE: We are not legally trained, and it is your responsibility to make sure your AD meets the requirements of your State/Court which includes wording and publication times. Please verify all information is there and that it is correct. Anything missing and/or incorrect can cause your publication to be rejected in which you will be responsible for all fees to republished.

Diana Tope
Public Notice Representative

 **LocaliQ** |  **USA TODAY
NETWORK**
Office: 844-254-5287

From: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>
Sent: Thursday, March 28, 2024 2:11 PM
To: SD-Aberdeen Legals <aan-legals@aberdeennews.com>
Subject: 10014249 8835-3 Nick & Scott Bebo - Public Notice

Attached is a notice to be published on April 10, 2024.

Nick and Scott Bebo, 17061 390th Avenue, Redfield SD 57469, 605-460-0302 has been notified to contact you to authorize publication and arrange for payment.



Order Confirmation

Not an Invoice

Account Number:	620733
Customer Name:	Nick & Scott Bebo
Customer Address:	Nick & Scott Bebo 17061 390Th AVE Redfield SD 57469-6710
Contact Name:	Karen Schlaak
Contact Phone:	
Contact Email:	karen.schlaak@state.sd.us
PO Number:	

Date:	03/28/2024
Order Number:	10014249
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	305.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
ABD The American News	1	04/10/2024 - 04/10/2024	Public Notices
ABD aberdeennews.com	1	04/10/2024 - 04/10/2024	Public Notices

Total Cash Order Confirmation Amount Due	\$93.45
Tax Amount	\$0.00
Service Fee 3.99%	\$3.73
Cash/Check/ACH Discount	-\$3.73
Payment Amount by Cash/Check/ACH	\$93.45
Payment Amount by Credit Card	\$97.18

As an incentive for customers, we provide a discount off the total order cost equal to the 3.99% service fee if you pay with Cash/Check/ACH. Pay by Cash/Check/ACH and save!

Order Confirmation Amount

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Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, March 28, 2024 1:10 PM
To: Redfield Office
Subject: 8835-3 Nick & Scott Bebo - Public Notice
Attachments: 8835-3 public.wmb_final.docx; FORM8.FRM.doc

Attached is a notice to be published on April 10, 2024.

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

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

Thank you,

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



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, March 28, 2024 1:11 PM
To: aan-legals@aberdeennews.com
Subject: 8835-3 Nick & Scott Bebo - Public Notice
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Thank you,

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



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Aberdeen News
Watertown Public Opinion

PO Box 630567 Cincinnati, OH 45263-0567

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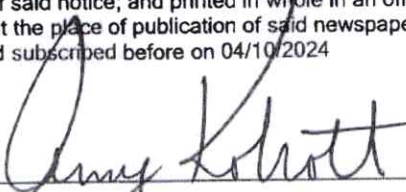
Water Rights Program
Water Rights Program
523 E Capitol Ave.
Pierre SD 57501

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

The AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, and has been such a newspaper during the times hereinafter mentioned; and personal knowledge of the facts herein state that the notice hereto annexed was Published in said newspapers in the issue dated:

04/10/2024

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper.
Sworn to and subscribed before on 04/10/2024



Legal Clerk



Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$93.45

Order No: 10014249

of Copies:

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1

PO #:

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

RYAN SPELLER
Notary Public
State of Wisconsin

**NOTICE OF HEARING on
Application No. 8835-3 to
Appropriate Water**

Notice is given that Nick & Scott Bebo, 17061 390th Avenue, Redfield SD 57469 have filed an application for a water permit to appropriate 6.65 cubic feet of water per second (cfs) from the James River at a point located in the NW ¼ SW ¼ section 28 for irrigation of 466 acres located in the NW ¼ section 28; S ½, NW ¼ section 21; all in T117N-R63W. The applicant is seeking approval of the application as a water right permit even if the 300 cfs appropriation limit on the James River is exceeded. This site is located approximately five miles northeast 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 DEFERRAL of Application No. 8835-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. 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. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:30 AM (Central Time) on 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 autho-

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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 22, 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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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 22, 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 April 10, 2024 at the total approximate cost of \$93.45 and may be viewed free of charge at www.sdpublicnotices.com 10014249

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:

#7350 NOTICE OF HEARING

was printed and published in said newspaper in 1 issue, to wit: The first publication being made on April 10th. That Seventy-One and 75/100 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 10th, day of April, 2024

Kayla Jessen

Notary Public, South Dakota

My commission expires 09/26/2024



Notice of Hearing

#7350

NOTICE OF HEARING on Application No. 8835-3 to Appropriate Water

Notice is given that Nick & Scott Bebo, 17061 390th Avenue, Redfield SD 57469 have filed an application for a water permit to appropriate 6.65 cubic feet of water per second (cfs) from the James River at a point located in the NW 1/4 SW 1/4 section 28 for irrigation of 466 acres located in the NW 1/4 section 28; S 1/2, NW 1/4 section 21; all in T117N-R63W. The applicant is seeking approval of the application as a water right permit even if the 300 cfs appropriation limit on the James River is exceeded. This site is located approximately five miles northeast 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 DEFERRAL of Application No. 8835-3 until the Fall/Winter 2024 Water Management Board meeting to allow completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified and, if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses. 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. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duval for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:30 AM (Central Time) on 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 22, 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 22, 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 22, 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 22, 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 the total approximate cost of \$71.75 and may be viewed free of charge at www.sdpublicnotices.com. (Apr. 10)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

November 14, 2024

NOTICE OF HEARING

TO: Nick & Scott Bebo
17061 390th Avenue
Redfield SD 57469

FROM: Amanda Dewell, Permitting Administrator *Amanda Dewell*
SD DANR, Water Rights Program

SUBJECT: Scheduling of Hearing on Deferred Water Permit Application Nos. 8835-3, 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3

On May 8, 2024, the Water Management Board (Board) deferred Water Permit Application No. 8835-3 and on July 10, 2024, the Board deferred Water Permit Application Nos. 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3; all until the Fall/Winter 2024, allowing for a complete hydrologic analysis determining whether the 300/200 cubic feet of water per second (cfs) appropriation threshold on the James River should be retained or modified and, if modified to allow appropriations in excess of 300/200 cfs, what qualifications should be attached to new water permits to protect existing James River water right holders and domestic users. The Water Rights staff report is complete and the recommendation to the Board is to adopt the report allowing appropriations in excess of the 300/200 cfs threshold with appropriate qualifications. Enclosed is the draft report *Re-examining James River Management* and, based on the draft report, revised Chief Engineer's recommendations dated November 14, 2024, concerning Application Nos. 8835-3, 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3.

The Chief Engineer's revised recommendations for the above-listed applications is that the Board APPROVE all of the applications based on 1) a report entitled *Report to the Water Management Board On Reexamining James River Management* which concludes there is a reasonable probability unappropriated water is available, 2) with qualifications, the proposed diversions can be developed without unlawful impairment of existing domestic uses and water rights, 3) the use is a beneficial use, and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board.

The Water Management Board will conduct the hearing to reconsider deferred Water Permit Application Nos. 8835-3, 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3, at 10:00 AM (Central Time), on Wednesday, December 4, 2024, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda.

This Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) take no action/continue deferral, 4) deny the applications after reaching a conclusion based on facts presented at the hearing.

If you intend to oppose the recommendations that the Board approve the above-listed applications with the qualifications listed on the recommendations, please file a petition opposing the recommendations by November 25, 2024. A petition form is enclosed for your use if you intend to oppose the recommendations. If you support the recommendations, no petition needs to be filed.

Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. Applicable provisions of the public notice published in the Aberdeen American News and the Redfield Daily Press on April 10, 2024, and June 12, 2024, still apply.

NOTE: At the December 4 Board meeting, prior to the Board considering your deferred applications, the Board will be presented a final version of the report re-examining the 300/200 cfs thresholds on the James River. The Board is not obligated to adopt the James River Management Plan as presented by the Water Rights staff. Any changes made by the Board may impact the Chief Engineer's recommendations concerning your applications, including whether your applications can be acted upon at the December 4, 2024, meeting.

Questions regarding the hearing process may be directed to Ron Duvall (ron.duvall@state.sd.us) or Amanda Dewell (amanda.dewell@state.sd.us), Water Rights Program (605) 773-3352.

Cc: Jennifer Verleger, Assistant Attorney General
Legal Counsel for Chief Engineer

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated November 14, 2024, regarding Water Permit Application Nos. 8835-3, 8859-3, 8860-3, 8861-3, 8862-3, and 8863-3 – Nick & Scott Bebo, draft report *Reexamining James River Management*, revised recommendations dated November 14, 2024, and an applicant's petition form 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 November 14, 2024.

Nick & Scott Bebo
17061 390th Avenue
Redfield SD 57469

Above also Sent Inter-office to:

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



Shannon Konst
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of Nov, 20 24.



Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

May 9, 2024

NOTICE OF ENTRY OF ORDER

TO: Nick & Scott Bebo
17061 390th Avenue
Redfield SD 57469

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

FROM: Amanda Dewell, Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Deferral of Water Permit Application No. 8835-3, Nick & Scott Bebo

Notice is given that on May 8, 2024, the South Dakota Water Management Board deferred Application No. 8835-3 until the Fall/Winter 2024, as recommended by the Chief Engineer. As noted in the Chief Engineer's recommendation, deferral of the application is to allow time for completion of a hydrologic analysis to determine whether the 300/200 cubic feet per second appropriation limit on the James River should be retained or modified, and if modified to allow appropriations in excess of the current limit, what qualifications should be attached to new water permits to protect existing James River water rights and domestic uses.

c: David McVey, Assistant Attorney General, Legal Counsel for the SD Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated May 9, 2024, regarding deferral of Water Permit Application No. 8835-3, Nick & Scott Bebo, was 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 May 9, 2024.

Nick & Scott Bebo
17061 390th Avenue
Redfield SD 57469

Above was 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


Shannon Konst
Water Rights Program, DANR

[illegible]

Sworn to, before me, this 9th day of May, 2024.



Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

JAN 07 2025

Nick and Scott Bebo
17061 390th Avenue
Redfield SD 57469

Dear Sirs:

Enclosed is Water Permit No. 8835-3 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.: 8835-3

Name of Applicant: Nick & Scott Bebo

Date of Posting: 4/8/2024

Date of Removal: 1/7/2025

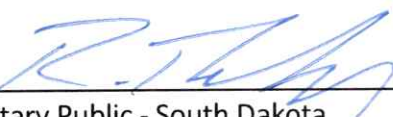


Ron Duvall, Engineer III

1/7/2025

Date

Subscribed and sworn to before me, a notary public, this 7th day of Jan, 2025.



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

(SEAL)

