

WATER PERMIT NO. 8883-3

Name of Applicant: Van Winkle Dairy LP

Address: 26137 448th Avenue, Canistota SD 57012

Phone: 605-366-7290

Amount of Water Claimed: 0.33 cfs

Total Acres: N/A

Source of Water Supply: Groundwater

Water to be used for: Commercial

County: McCook

Type of Waste Disposal System:

Location: Approx. 2 miles east of Canistota SD

PRIORITY

Date Received: 06-21-24

Application/License Fee: \$950.00

Corrected Application Received: N/A

Period of Annual Use: January 1 – December 31

Remarks: ~~Based on inspection - Additional diversion points and diversion rate to what is authorized by~~

WR 6762-3 & Permit 7169-3. *nope! the Dairy had their own engineers submit a report outlining their water needs for their new expansion project. Although 6762-3, 7169-3, and this (if approved) would eventually be incorp'd.*

Diversion Point: NE 1/4 NE 1/4 Sec 36-T102N-

R54W

Land to be Irrigated: N/A

Depth of Well: 280

Well Driller: Putzke Well Drilling

Remarks:

Type of Map: aerial

36

Reviewed and the Number Assigned on: 06-24-24

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 8883-3

Date of first receipt of application June 21, 2024.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 8883-3 to Van Winkle Dairy LP, 26137 448th Avenue, Canistota SD 57012, 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. 8883-3 appropriates up to 117.6 acre-feet of water annually at a maximum pump rate of 0.33 cubic feet of water per second from up to three wells completed into the Cretaceous Aged Undifferentiated Sandstone Aquifer (approximately 280 feet deep) located in the NE 1/4 NE 1/4 Section 36-T102N-R54W. Water will be used for commercial purposes at a dairy cattle confinement facility located in the S 1/2 NE 1/4 Section 36-T102N-R54W. This site is located approximately two miles east of Canistota SD.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 8883-3 is November 25, 2024.
5. The date from which applicant may claim right is June 21, 2024.
6. One-fifth of the construction is to be completed on or before May 25, 2027.
7. All construction is to be completed on or before November 25, 2029.
8. Water is to be put to beneficial use on or before November 25, 2033.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The wells approved under Water Permit No. 8883-3 are located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Permit must control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The proposed wells authorized by Permit No. 8883-3 must be constructed by a licensed well driller and construction of the well and installation of the pump must comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8883-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.

(continued)

4. Water Permit No. 8883-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The Permit holder must report to the Chief Engineer annually the amount of water withdrawn from the Cretaceous Aged Undifferentiated Sandstone Aquifer.
6. Water Permit No. 8883-3 authorizes a total annual diversion of up to 117.6 acre-feet of water from the Cretaceous Aged Undifferentiated Sandstone Aquifer.

WATER MANAGEMENT BOARD

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

DEC 13 2024
date



FORM 2: Application for uses other than irrigation
(type or print)

Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8883-3</u> Hydrologic Unit <u>10170102</u>
	Basin <u>Missouri R</u>
	Newspaper <u>Salem Special</u> <u>Sioux Falls Argus Leader</u> (office use only)

PAID

JUN 21 2024

Ck# 25804

Rec't# _____

Application for Permit to Appropriate Water in South Dakota

Check use(s) of water:

☐
☐
☐

Municipal
Rural Water System
Domestic (over 18 gpm)

☐
☒
☐

Water Distribution System
Commercial
Industrial

☐
☐
☐

Recreational
Fish & Wildlife
Other _____

☐

Institutional
Geothermal

Type of Application:
(check one)

☒
☐
☐

New

☐

Vested Right (Use predates Mar 2, 1955)

☐

Future Use Reservation

Place to Beneficial Use Water Reserved by Future Use Permit No. _____

Amendment/Correction to Permit No. _____

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

1. Name to Appear on Water Permit Van Winkle Dairy LP

Mailing Address 26137 448th Ave

Canistota

SD

57012

Phone 605-366-7290

Mobile 605-366-7290

Email ~~Kevin@vanwinkledairy.com~~ admin@vanwinkledairy.com

2. Amount of water claimed 0.33 *CFS or 150 **GPM and 117.6 ***AF or _____ Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use)

3. Source of water supply groundwater, 2-3 new wells

4. Location of point of diversion 2 wells in NE 1/4 Section 36 T102N-R54W County McCook
(example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)

If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No

If "Yes," where will water be used? _____

(example - NW 1/4 section 12-T104N-R53W)

5. County or counties where water will be used McCook

6. Annual period during which water is to be used Jan 1 - Dec 31

7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

150 gpm from 2-3 new wells (1 of the wells is to be used as a backup water supply) to provide water to commercial dairy confinement facility.

Additional diversion points and diversion rate to what is authorized by WR 6762-3 & WP 7169-3.

Kevin Van Winkle
1. Van Winkle Dairy by Kevin Van Winkle Owner Partner, 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)

RECEIVED

JUN 21 2024

OFFICE OF
WATER

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 2 Have test holes been drilled? ☐ Yes ☒ No Drilled by Putzke Well Drilling
(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) 280' Depth to Top of Water Bearing Material 250' Depth to Water from Surface 250'
- 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) lagoons + Septic Tank
- b) System Capacity (gallons) 24 million + 24 million Year Constructed 2006 + 2020
- c) Connected to the City of NA Sanitary System

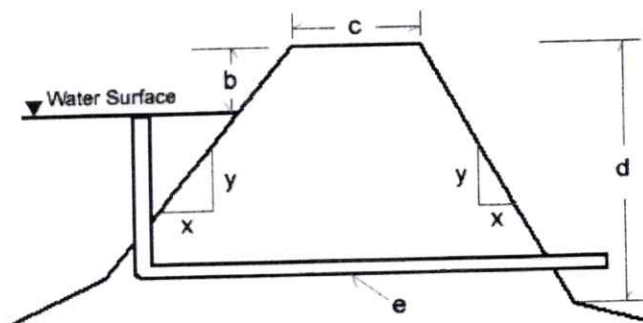
3. Dugout Information

- 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

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JUN 21 2024

OFFICE OF
WATER



OFFICE OF
WATER

102N 54W
Section: 23

102N 54W
Section: 24

102N 53W
Section: 19

102N 54W
Section: 26

102N 54W
Section: 25

102N 53W
Section: 30

102N 54W
Section: 35

10170102 Vermillion

102N 54W
Section: 36

Lewis and Clark Lake

102N 53W
Section: 31

101N 54W
Section: 02

101N 54W
Section: 01

101N 53W
Section: 06

101N 53W

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date June 24th, 2024

RECEIVED OF Van Winkle Dairy LP 26137 448th Ave Canisota SD 57012

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

Fee for Application for Permit No. <u>8883-3</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>750.00</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>8883-3</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>950.00</u>

By Eric Groeland
Chief Engineer

SK

Receipt Number: 1382113File Number **DP001602****LIMITED PARTNERSHIP**

For

VAN WINKLE DAIRY LIMITED PARTNERSHIP

Filed at the request of:

VANCE R C GOLDAMMER
101 N PHILIPS AVE STE 402
SIOUX FALLS SD 57104

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, December 02, 2004**

Secretary of State

Fee Received: \$100.00

Filed this 2nd day of Dec, 2004
Chris Nelson
 SECRETARY OF STATE

RECEIVED

DEC 2 04

S.D. SEC. OF STATE

**VAN WINKLE DAIRY LIMITED PARTNERSHIP
 CERTIFICATE OF LIMITED PARTNERSHIP**

I, the undersigned, the General Partner of a limited partnership formed under the laws of the State of South Dakota, do certify as of the 1st day of December, 2004, as follows:

1. **Name of Limited Partnership.** The name of the limited partnership is Van Winkle Dairy Limited Partnership, a South Dakota limited partnership.

2. **Address of Office and Agent.** The office of the Partnership shall be at 46020 265th Street, Hartford, South Dakota 57033, and at such other places as the General Partner may designate in writing to the Limited Partners. In addition, the Partnership may maintain such other offices as the General Partner may deem advisable at any other place or places. The agent of the Partnership, for the purpose of service of process and at the address of the office of the Partnership is Tanya Van Winkle.

3. **Name and Business Address of General Partner.** The name and business address of the General Partner is as follows:

GENERAL PARTNER

<u>Name</u>	<u>Address</u>
Van Winkle Family, LLC	46020 265 th Street Hartford, SD 57033

4. **Term.** The Partnership shall be in effect as of the date of the filing of this Certificate with the office of the Secretary of State of South Dakota, and shall continue until December 1, 2054, unless terminated pursuant to any provision of the limited partnership agreement.

5. **Continuation of Partnership Business Upon the Termination of Existence of General Partner.** Upon the dissolution or adjudication of bankruptcy of the sole remaining General Partner, the Partnership shall be dissolved unless a majority in interest of the Limited Partners consent within a period of ninety (90) days from the date of such event to the admission of a successor General Partner, and such successor elects to continue the business of the Partnership.

IN WITNESS WHEREOF, the parties hereto have executed and sworn to this Certificate or has caused this Certificate to be duly executed on its behalf by its duly authorized officer, all as of the date and year first above written.

GENERAL PARTNER:

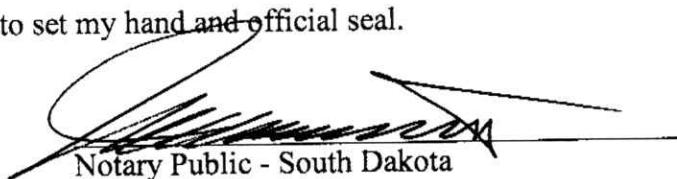
Van Winkle Family, LLC

By Tanya Van Winkle
its member-manager

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

On this 1st day of December, 2004, before me, the undersigned officer, personally appeared Tanya Van Winkle, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public - South Dakota

[SEAL]

My commission expires: 07-06-05

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DEC 02 04

S.D. SEC. OF STATE

Secretary of State
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

LETTER OF CONSENT
TO USE SIMILAR NAME

The undersigned member/manager of Van Winkle Family, LLC, hereby grants consent to the use of the name Van Winkle Dairy Limited Partnership.

DATED: December 1, 2004.

Van Winkle Family, LLC

By *Tanya Van Dulle*
Its *member-manager*

**Water Rights Program
File Documentation**

NAME OF PERSON OR FILE: Van Winkle Dairy LP, Kevin Van Winkle

DATE: Aug 15, 2024 TELEPHONE: 605-366-7290

RE: Aquifer Assignment and delay of application review

COMMENTS:

This application was initially reviewed by staff engineer Tyler Jensen. During Tyler's initial review and further discussion with me, it was determined this application would likely not withdraw water from the Codell aquifer and Water Right No. 6762-3, which serves the same dairy as this application, needed to have its aquifer designation reassigned to reflect a more current understanding of the local geology. The new aquifer designation for Water Right No. 6762-3 and the aquifer for this application should be the Cretaceous aged undifferentiated sandstone aquifer. The Cretaceous aged undifferentiated sandstone aquifer is an aquifer with limited information and difficult to discern when reviewing well completion reports when a geologist was not present recording the formation information.

On Aug. 15, Chief Engineer Gronlund and I called Kevin to discuss the application. We explained to Mr. Van Winkle the challenges in the review of the application and the need for us extend the time for the Water Rights Program to review the application so the application could be properly evaluated.



Adam Mathiowetz
Natural Resources Engineer
DANR-Water Rights Program

Duvall, Ron

From: VWD Admin <admin@vanwinkledairy.com>
Sent: Wednesday, July 3, 2024 11:23 AM
To: Duvall, Ron
Cc: Rodriguez, Rachel; Dewell, Amanda
Subject: RE: [EXT] Water Permit Application

Hi Ron,

Thanks for bringing that to our attention. Our estimated annual water volume for the wells in the permit application is 38,325,000 gallons. Please let us know if you need any additional information.

Thanks,

VAN WINKLE DAIRY

26137 448th Avenue | Canistota, SD 57012
E: admin@vanwinkledairy.com | P: (605) 296-2655

From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Tuesday, July 2, 2024 4:52 PM
To: admin@vanwinkledairy.com
Cc: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Subject: Water Permit Application

Mr. Van Winkle,

I am looking over your water permit application for up to three wells to supply the dairy in section 36-T102N-R54W. The application identifies a target diversion (pump) rate of 150 gallons per minute. The application also needs to identify an annual volume of water in gallons or acre-feet of water. A volume of water historically has not been required, but has been a requirement for several years now for nearly all permits for commercial and other nonirrigation uses.

I understand you have other water rights so you will need to take that into consideration. In estimating your annual water use, the amount of water may depend on which source will be your primary source to supply the dairy. If you are uncertain, then you may want to consider this application as your primary source and estimate accordingly. Please make sure your estimate is reasonable without underestimating the annual volume because to increase the volume later will require submission of another application in the future.

If you have any questions, please let me know.

Thank you,

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



DANR
SOUTH DAKOTA

6762-3 + 7169-



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

April 25, 2024

Van Winkle Dairy LP
c/o Tanya & Kevin Van Winkle
26137 448th Ave
Canistota SD 57012

Dear Mr. & Ms. Van Winkle:

I am writing you today regarding the proposed expansion of Van Winkle Dairy. The Water Rights Program recently received a copy of the engineering report that had been submitted to the Livestock Services Office, outlining the proposed expansion.

Presently, Van Winkle Dairy LP holds Water Right No. 6762-3 and Water Permit No. 7169-3 for commercial use in a dairy confinement facility.

Water Right No. 6762-3 appropriates 0.27 cfs (approx. 120 gpm) from three wells, completed into the Codell Aquifer, E ½ NE ¼ Section 36, T102N, R54W. Water Permit No. 7169-3 appropriates 0.17 cfs (approx. 75 gpm) from one well to be used as a backup, completed into the Pleistocene Unknown Aquifer, SE ¼ NE ¼ Section 36, T102N, R54W. The total combined appropriation authorized by Water Right No. 6762-3 and Permit No. 7169-3 is 0.44 cfs (approximately 195 gallons of water per minute).

Based on the information provided in the engineering report, it is our understanding that the dairy will require a minimum of two new wells and an additional diversion rate of 0.33 cfs equal to 150 gpm.

The engineering report also indicated that Van Winkle Dairy LP would be applying for a new water permit once the locations are finalized.

For your convenience, I've enclosed a partially completed Permit Application for you to review and return to our office with the required fees. The fees for this permit application would total \$950.00. Please make checks payable to "SD Water Rights Program".

If you have any questions or concerns, please give me a call and we can discuss them.

Sincerely,

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

enclosure



**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. 8883-3, Van Winkle Dairy LP**

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. 8883-3, Van Winkle Dairy LP, 26137 448th Avenue, Canistota SD 57012.

The Chief Engineer is recommending APPROVAL of Application No. 8883-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The wells approved under Water Permit No. 8883-3 are located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under this Permit must control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The proposed wells authorized by Permit No. 8883-3 must be constructed by a licensed well driller and construction of the well and installation of the pump must comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8883-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-36.2 or 34A-2-112 or 34A-2-124 for concentrated animal feeding operations.
4. Water Permit No. 8883-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The Permit holder must report to the Chief Engineer annually the amount of water withdrawn from the Cretaceous Aged Undifferentiated Sandstone Aquifer.
6. Water Permit No. 8883-3 authorizes a total annual diversion of up to 117.6 acre-feet of water from the Cretaceous Aged Undifferentiated Sandstone Aquifer.

See report on application for additional information.


Eric Gronlund, Chief Engineer
November 5, 2024

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8883-3
FOR
VAN WINKLE DAIRY LP
NOVEMBER 06, 2024

Application No. 8883-3 proposes to appropriate up to 117.6 acre-feet of water per year (ac-ft/yr) at a maximum instantaneous diversion rate of 0.33 cubic feet of water per second (cfs) from up to 3 wells to be completed into the Cretaceous aged undifferentiated sandstone aquifer (approximately 280 feet deep) located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36-T102N-R54W. The water is to be used for commercial purposes at a dairy cattle confinement facility located in the S $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 36-T102N-R54W. The site is located approximately two miles east of Canistota, SD in McCook County.

This application also serves to change the named aquifer designation for Water Right 6762-3. Water Right No. 6762-3 serves the same dairy confinement facility as App. No. 8883-3 proposes to serve. Water Right No. 6762-3 authorizes the appropriation of water at a maximum instantaneous diversion rate of 0.27 cfs from the Codell aquifer. At the time of initial review of the application for Water Right No. 6762-3 in 2006 the best information available indicated the sandstone encountered in the wells that had been constructed prior to the submittal of the permit application was the Codell aquifer (Goodman, 2006). However, further drilling and re-interpretations of existing lithologic logs by the SD Geological Survey (SDGS, 2024) and various Water Rights Program engineers reviewing well completion reports and water permit applications (Water Rights, 2024e and 2024f) has determined this sandstone is not the Codell aquifer. The sandstone at this site should be considered a Cretaceous aged undifferentiated sandstone and thus part of a Cretaceous aged undifferentiated sandstone aquifer. This change of aquifer designation from the Codell aquifer to the Cretaceous aged undifferentiated sandstone aquifer does not represent a physical change in the water source. It is an update to the name of the aquifer materials to reflect the currently best available information. It does not authorize any increase in authorized diversion rate or appropriated water, relocation of existing wells, or completion of additional wells.

AQUIFER: Cretaceous aged undifferentiated sandstone (KU)

Aquifer Characteristics:

During the Cretaceous age, the Western Interior Seaway variably inundated the midcontinental United States and Canada (see Figure 1). The Sioux Quartzite in southeast South Dakota, southwest Minnesota and northwest Iowa was a topographic high that served as a highland and thus island in the interior sea (Kairo, 1987). As southeastern South Dakota was inundated, multiple separate times, the marine waters flooded valleys in the quartzite highland forming marine embayments, parts of the highland became shoreline and shallower marine areas surrounded the highland (Holzheimer, 1987; Kairo, 1987). This resulted in variable localized sedimentation, so the Cretaceous aged deposits on and around the Sioux Quartzite highland vary lithologically from adjacent open marine deposits (Kairo, 1987). The Cretaceous aged deposits of differing lithology are collectively referred to as Cretaceous undifferentiated. The Cretaceous section of the Sioux Ridge geologic area from the South Dakota Stratigraphic Correlation Chart is shown in Figure 2

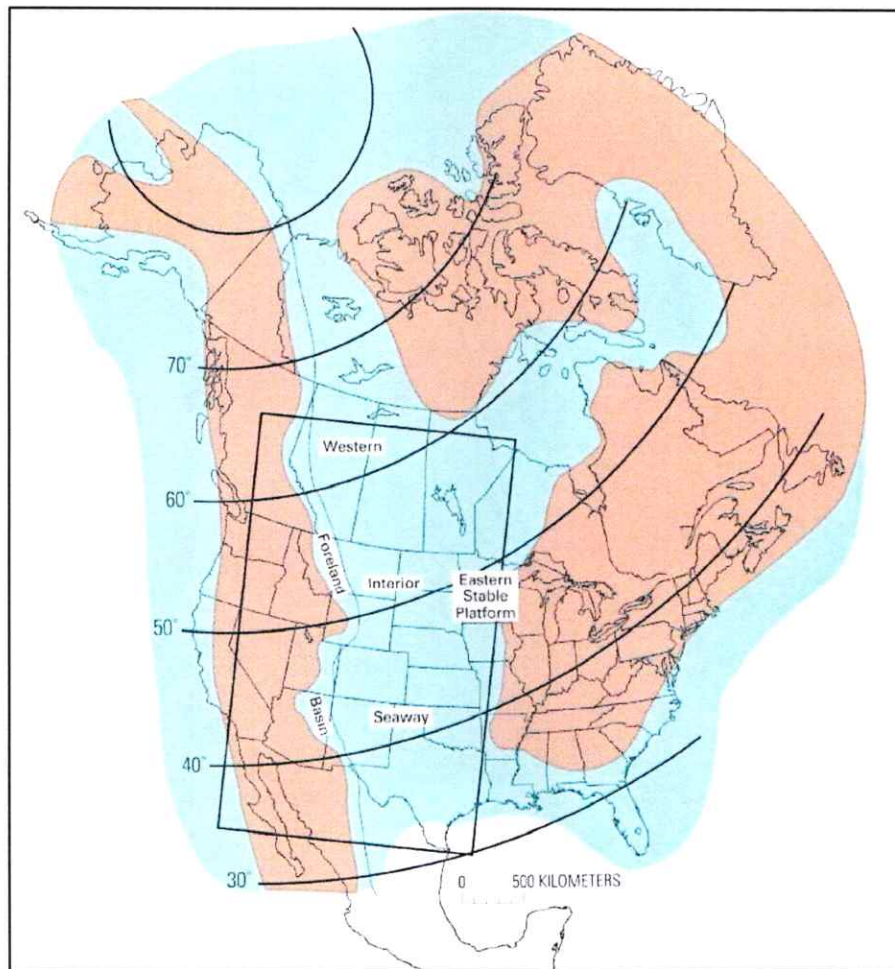


Figure 1: Approximate maximum extent of the Cretaceous age Western Interior Seaway (Roberts and Krischbaum, 1995)

Within the Cretaceous undifferentiated material in South Dakota, the Water Rights Program identifies one named aquifer, the Split Rock Creek aquifer. The Split Rock Creek aquifer is located primarily in southeastern Minnehaha County and extends into adjacent states (Kairo, 1987). The Split Rock Creek Formation consists primarily of embayment deposits of a specific sequence of Cretaceous aged materials (Tomhave, 1994). There has been another name applied to geologic materials that could potentially be Cretaceous undifferentiated in nature, the Sioux Quartzite Wash aquifer. Hansen (1986) described the Sioux Quartzite Wash aquifer as being composed of pink, uncemented, well rounded and well-sorted quartzose sand. The Sioux Quartzite Wash aquifer has been identified as being present in several counties in South Dakota including McCook County (Kilts, 2017). However, the extent in McCook County has not been delineated. Furthermore, the Sioux Quartzite Wash aquifer is unlikely to be a single continuous aquifer, but instead isolated pockets that may yield sufficient quantities of water to be considered an aquifer. It is unlikely, based on the well completion reports in the file for Water Right No. 6762-3, any new wells completed into “sandstone” as described in the well completion reports for Water Right No. 6762-3 in the 280 to 300 feet deep range at the applicant’s site would be completed into the Sioux Quartzite Wash aquifer.

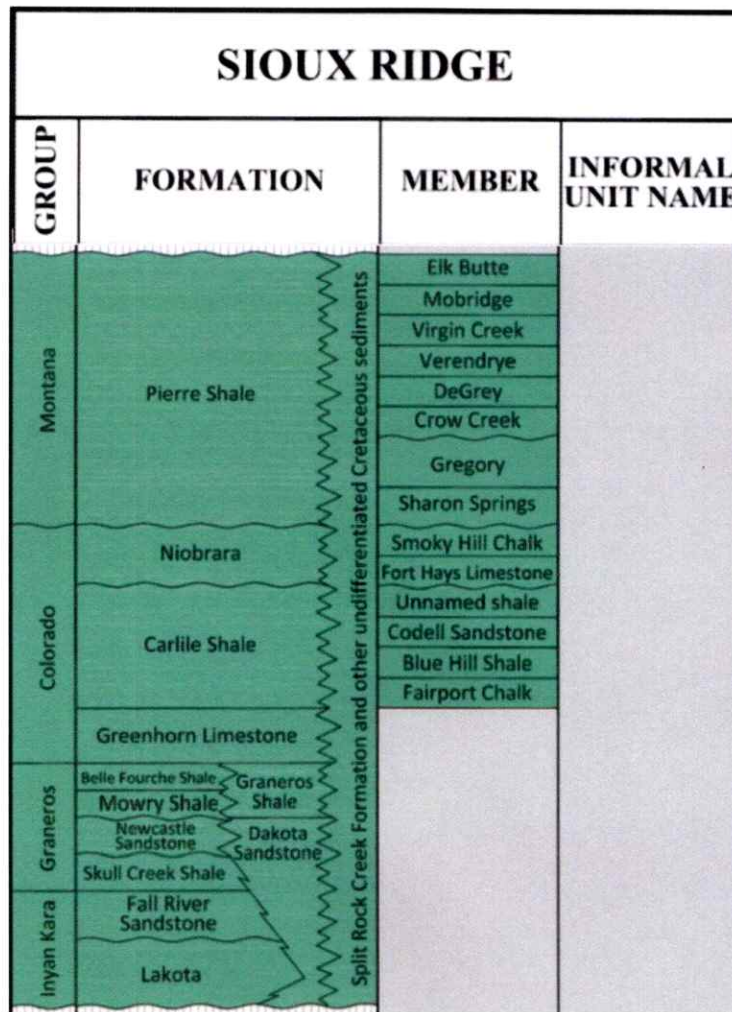


Figure 2- Cretaceous section of the Sioux Ridge geologic area of the South Dakota Stratigraphic Correlation Chart (modified from Fahrenbach et al, 2010)

Table 1- Geology and Static Water Level on the Well Completion Reports for the Wells Authorized Under Water Right No. 6762-3 (Water Rights, 2024e)

Well #1		Well #2		Well #3	
Depth (ft)	Formation	Depth (ft)	Formation	Depth (ft)	Formation
0-2	Top Soil	0-2	Top Soil	0-2	Top Soil
2-58	Brown Clay	2-60	Brown Clay	2-60	Brown Clay
58-283	Blue "	60-280	Blue Clay	60-283	Blue Clay
283-305	Sandstone	280-300	Sandstone	283-303	Sandstone
305	Blue Clay	300	Blue Clay	303	Blue Clay
170	Static W/L	170	Static W/L	170	Static W/L
8/1/2006	Drill Date	9/1/2006	Drill Date	9/7/2006	Drill Date

Table 1 shows the listed geology and static water level in the wells drilled for Water Right No. 6762-3. The sandstone encountered based on the well completion reports does not agree with the

2004 Tomhave and Schulz “Bedrock Geologic Map Showing the Configuration of the Bedrock Surface in South Dakota East of the Missouri River” map (see Figure 3).

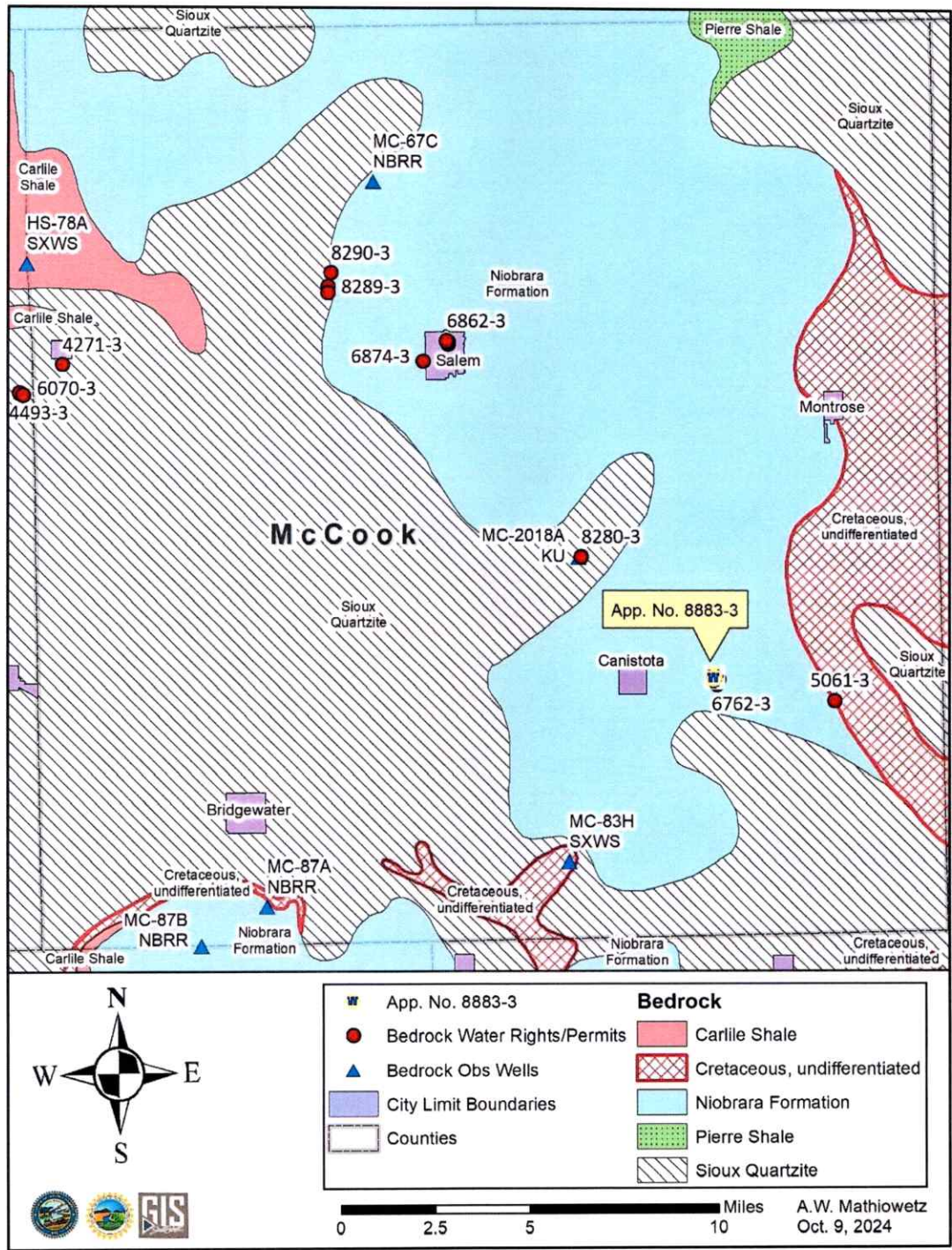


Figure 3- McCook County and directly adjacent portion of the eastern South Dakota bedrock geologic map (modified from: Tomhave and Schulz, 2004) with bedrock aquifer water rights/permits (Water Rights, 2024e), bedrock observation wells (Water Rights, 2024d) and App. No. 8883-3 proposed well sites.

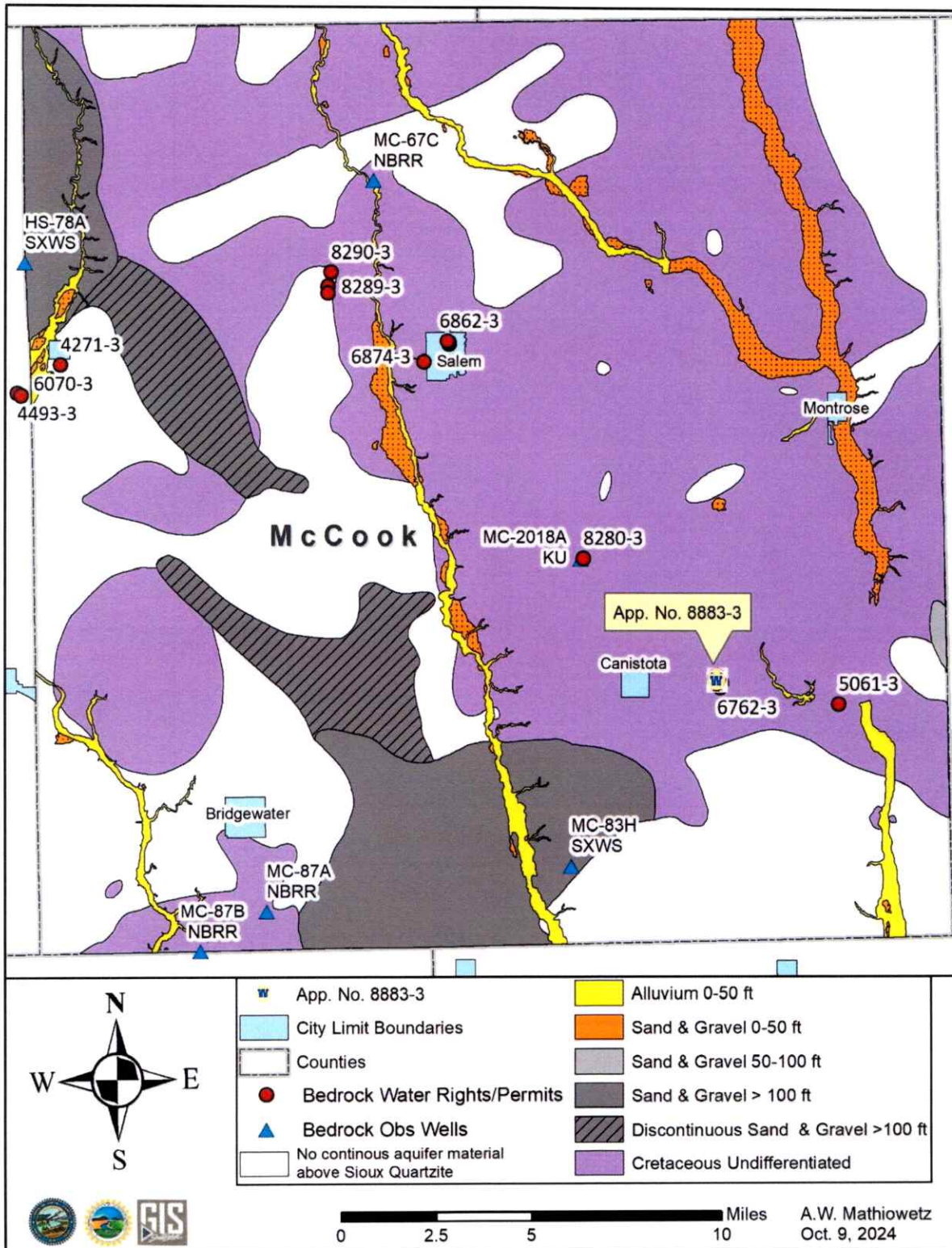


Figure 4- McCook County first occurrence of aquifer materials (modified from: Holmes, 2019) with bedrock aquifer water rights/permits (Water Rights, 2024e), bedrock observation wells (Water Rights, 2024d) and App. No. 8883-3 proposed well sites

On the bedrock map, the identified bedrock at the applicant's location is the Niobrara Formation. The extent of the Cretaceous undifferentiated mapped by Tomhave and Schulz (2004) in McCook County is limited (see Figure 3). However, a mapped portion is within 2.5 miles of the applicant's proposed well sites. Review of the lithologic logs and well completion reports in the area, those pre-dating the map and several subsequent, indicated some of the formations that were identified as "Niobrara Formation", or "Sioux Quartzite Wash" would likely be identified as Cretaceous undifferentiated materials using current interpretation of the geology (Holmes, 2019; Kilts, 2017; SDGS, 2024; Water Rights, 2024f). These changes and reevaluations are shown by changes in the mapped location of the Cretaceous undifferentiated formation the First Occurrence of Aquifer Materials in McCook County map (see Figure 4) (Holmes, 2019).

Holmes (2019) map shows a significant reevaluation of available lithologic information between the creation of the bedrock map (Tomhave and Schulz, 2004) and the first occurrence of aquifer materials maps (Holmes, 2019). Comparing the formation maps in Figure 3 and 4, it is clear what had previously been generally interpreted as the Niobrara Formation in the area of this application was reevaluated as Cretaceous undifferentiated materials. The shales, sands, marls, sandstones, siltstone, and chinks of the Cretaceous undifferentiated cannot be considered a single continuous aquifer, and the full extent to which any of these can function as an aquifer is unknown. The extent of hydrologic connection that may exist between these different materials is also unknown. In general, only the sands, sandstones, and chinks typically would have sufficient porosity to yield adequate amounts of water to be considered an aquifer. The mapped portions in McCook County where the Cretaceous undifferentiated is the uppermost aquifer material is approximately 181,590 acres (Holmes, 2019).

APPLICABLE SOUTH DAKOTA CODIFIED LAW (SDCL):

Pursuant to SDCL 46-2A-9, "A permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the diversion point can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SDCL 46-2-9 and 46-2-11." This report will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within the Cretaceous aged undifferentiated sandstone aquifer.

This application proposes to appropriate water from the Cretaceous aged undifferentiated sandstone aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

"No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

The Greenhorn Formation is a Cretaceous aged Formation. Cretaceous aged undifferentiated sandstone aquifer includes portions that are or may be stratigraphically equivalent to the Greenhorn Formation. However, the applicant is not a water distribution system. Therefore, the balance between recharge to and withdrawals from the Cretaceous aged undifferentiated sandstone aquifer must be considered for this application.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer. The Water Rights Program monitors one observation well that is known to be completed into a Cretaceous aged undifferentiated sandstone aquifer, MC-2018A (Water Rights, 2024d). This well is located approximately 4.7 miles northwest of the applicant's proposed well sites.

There are four other possible observation wells in McCook County, MC-67C, MC-83H, MC-87A, and MC-87B, that may be completed into the aquifer as well. Currently, MC-67C, MC-87A, and MC-87B are labeled as completed into the Niobrara aquifer and MC-83H is labeled as completed into the Sioux Quartzite Wash aquifer. The construction and aquifer assignment for these observation wells pre-date the bedrock map (Tomhave and Schulz, 2004) and first occurrence of aquifer materials map for McCook County (Holmes, 2019). The water level elevations for MC-67C are in general 40 to 50 ft above the MC-2018A water levels which are generally 20 to 30 feet above the water levels for MC-83H, MC-87A, and MC-87B (see Figure 5).

Assuming a gradient moving from the north, MC-67C to the south, through MC-2018A to the other three wells the gradient of water level change, feet per mile (ft/mi), ranges from approximately 3.5 to 4.5 ft/mi. The highest gradient is between MC-67C and MC-2018A. While the higher end of the range is a little higher than is typical in a glacial aquifer, it is reasonable in a bedrock aquifer particularly one with highly complex and variable deposition and aquifer material. This assumes the wells are all completed into the same aquifer. Note that measurement of observation well MC-87A has been suspended due to the presence of iron bacteria in the well. Figure 5 is the hydrographs for the previously mentioned observation wells.

All of the observation wells are approximately five or more miles away from this application and thus not necessarily into the same specific portion or fracture system of the aquifer as this application (Water Rights, 2024d). However, the observation wells are useful for showing whether the aquifer is recharged and how it reacts to localized pumping. Observation well MC-2018A, which was installed adjacent to and as part of the approval process for Water Permit No. 8280-3 has a relatively short period of record and is definitely under the influence of the very close proximity pumping. Those two factors make it less reliable in determining overall water availability.

In general, the observation well hydrographs document the formations receive recharge as water levels broadly follow the same cycle as climatic conditions, rising during periods of higher precipitation and slowly declining during periods of lower precipitation. The observation wells in

close proximity to pumping, including domestic use, do show some effects from pumping. However, over the period of record, these observation wells show relatively stable water levels. As previously stated, the selected observation wells are completed into bedrock formations within McCook County. Since the time of well completion for each well, there has been significant drilling and reevaluation of the formations and reassigning the more classic Cretaceous aged sequence formation (e.g. Niobrara, Codell, etc.) into an undifferentiated Cretaceous formation designation to note that the various formations are intermixed in this area (Holmes, 2019). Consequently, the observation wells can only be used in a general sense and not for specific analysis of water availability.

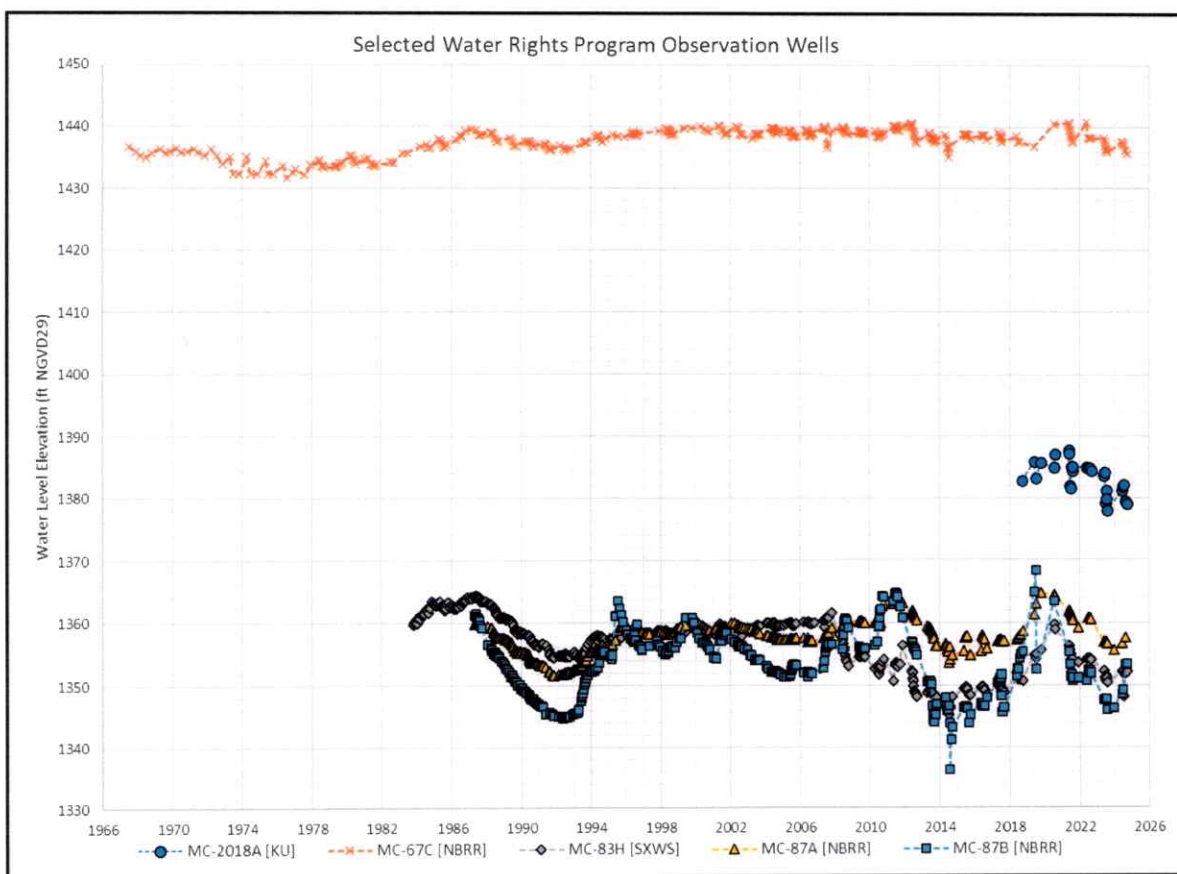


Figure 5- Hydrographs for selected observation wells that are or maybe completed into the Cretaceous differentiated materials in McCook County (Water Rights, 2024d)

Hydrologic Budget:

Recharge

Due to the overlying glacial till, generally 200+ ft, groundwater inflow is likely to be the primary method of recharge to this sandstone. As Kilts (2017) noted in the report for Water Right No. 8280-3 which is located approximately 4.7 miles northwest of this application's site during the application review, "The hydrogeology in the area is complex so the potential sources of groundwater inflow can be noted but not identified with certainty." The additional drilling and reanalysis of the geology in the area has not changed the validity of that statement. Potential sources of groundwater inflow are the other geologic materials that fall under the name Cretaceous

undifferentiated (e.g. marls, sands, siltstones, chinks, etc.), the Sioux Quartzite where sufficiently fractured and saturated, the Sioux Quartzite Wash if present, and any glacial origin buried sands and gravels that are in direct contact or adjacent to the Cretaceous aged undifferentiated sandstone that comprises the aquifer this application proposes to use. There is not sufficient data available to estimate a recharge rate to this aquifer. Kilts (2017) reviewed an aquifer performance test that was conducted for Water Right No. 8280-3 as part of its permitting process. Kilts (2017) noted:

“Static water levels at the time of well completion for wells #1 (March 10, 2017) and #2 (March 24, 2017) were 136 feet below the measuring point. Prior to the aquifer pumping test the wells were utilized under a temporary permit for construction. After the aquifer pumping test, water levels in well #1 recovered to about 133 feet below grade and water levels in well #2 recovered to about 135 feet below grade (LBG, 2017). The similarity in preconstruction pumping and pretest pumping water levels to post-construction and post-test pumping water levels appears to indicate the potential for at least some amount of recharge to the aquifer.”

Furthermore, Water Right No. 6762-3 was approved in March 2007 and pumped since that time without reported issue. This is further supported by observation well MC-2018A which was installed in close proximity to Water Right No. 8280-3 per a qualification for approval of the application. The observation well shows a recorded range of water levels from 142 to 132 feet below top of casing (see Figure 5) and shows what appears to be a relatively stable water level. Although, a period of record of six years is not sufficient to review in the long-term. Typically, a period of 10 or more years is required to determine the general trend of the water level in an aquifer as it allows sufficient time for an entire wet-dry cycle in eastern South Dakota's climate.

There are a few domestic wells completed into the Cretaceous undifferentiated materials in the area. However, some of the wells are completed into marls and chinks, frequently identified as the Niobrara Formation in the past. The evaluation of historic water levels using domestic well construction information is highly subjective especially when compared to dedicated observation well data. This is further complicated by the varying and inconsistent terminology used by well drillers. Looking at the domestic wells within approximately five miles of the applicant's well sites, the domestic wells likely completed into the Cretaceous undifferentiated materials show water levels varying from approximately 1,350 to 1,465 ft above the NGVD29 datum. The water levels generally follow climatic trends, lower during drier periods and higher during wetter periods. This indicates the aquifer does receive recharge. In general, the larger differences in water level of the domestic wells can be attributed to a combination of location and well completion date. The more northern wells tended to have slightly higher water levels, which is consistent with the observation wells' data in Figure 5.

Discharge

Discharge from the aquifer is likely via leakage to hydrologically connected aquifers where the potentiometric surface of the Cretaceous aged undifferentiated sandstone aquifer is above the hydrologically connected aquifer, and withdrawals from wells. Review of well completion reports within approximately 5 miles indicate there are 28 wells that may be completed into the aquifer on file with the Water Rights Program (Water Rights, 2024f). There are six wells, beside the applicant's own wells, on file within two miles with two of those wells within one mile of the

applicant's well sites all of those wells (Water Rights, 2024f). All of those wells have a listed use of domestic and/or livestock. There are no water rights/permits within two miles of the applicant's well sites besides the applicant's current permit, Water Right No. 6762-3 (Water Rights, 2024e).

There are several water rights that have potential to be completed into the aquifer. Kilts (2017) noted Water Right No. 6762-3 for Van Winkle Dairy labeled as using the Codell aquifer, Water Right No. 6874-3 for the McCook Country Club and Water Right No. 6862-3 for the City of Salem, both labeled as using the Sioux Quartzite Wash aquifer, are possibly in the Cretaceous aged undifferentiated sandstone aquifer. Kilts's (2017) report was for Water Right No. 8280-3 for Dylbrook Farms RE LLC identified it as withdrawing water from the Cretaceous aged undifferentiated sandstone specifically. Water Right No. 5061-3 for Battle Creek Campground is currently identified as withdrawing water from the Niobrara aquifer (Water Rights, 2024e). There is no well completion report on file for Water Right No. 5061-3. Review of well completion reports (Water Rights, 2024e) and lithologic logs (SDGS, 2024) in the area indicate that it may also be withdrawing from undifferentiated Cretaceous aged materials. Water Right No. 6762-3 is within the Cretaceous aged undifferentiated sandstone aquifer. Water Right No. 8280-3 is also within the same aquifer, but may not be hydrologically connected. Water Right Nos. 6874-3, 6862-3, and 5061-3 may be in the Cretaceous aged undifferentiated sandstone aquifer but due to the unknowns and significant complexity of the hydrogeology of the area, there is a lack of certainty and would require significant further study. For the purposes of this report, all of these water rights will be considered as completed into the Cretaceous aged undifferentiated sandstone aquifer.

Water Right Nos. 5061-3, 6762-3, and 6862-3 are limited by maximum diversion rate. The Water Rights Program has historically assumed permits limited only by diversion rate pump at the maximum permitted diversion rate 60% of the time. Water Right No. 5061-3 had rural water installed in 2000, so it is unclear if there is any annual water use under this permit. It will be assumed to use the 60% number, but it is likely much less than that. For permits that report, their average annual reported pumpage is used if there are at least 10 years of data that are relatively consistent and do not show continuous growth. Water Right Nos. 6862-3 and 6874-3 use this method. For permits limited by an annual volume, the total volume is developable and that is the estimated use, unless it is a reporting permit, and it meets the above-mentioned criteria. Water Right No. 8280-3 falls into this category with only 6 years of reported use and increasing water use each year during that period. Estimated average annual water use is shown in Table 2. Note the 2008 water use reporting by Water Right No. 6862-3 seems to be erroneous at 0 ac-ft. Due to this, that year was not used for calculation of average annual use.

The estimated average annual use, assuming all of the previous mentioned permits are withdrawing from undifferentiated Cretaceous aged materials, is approximately 380 ac-ft/yr. It is important to note that it is likely an overestimated due to the unknown status of use by Water Right No. 5061-3 and the uncertain hydrogeology meaning not all of these permits may be withdrawing from the same aquifer. However, this is the best reasonably available information.

Hydrologic Budget

An estimated average annual recharge rate is not available for the Cretaceous aged undifferentiated sandstone aquifer nor for the Cretaceous aged undifferentiated deposits in general. The estimated average annual withdrawal from the Cretaceous aged undifferentiated deposits which included the

undifferentiated sandstone this aquifer proposes to use within McCook County is approximately 380 ac-ft/yr. This application proposes to appropriate 117.6 ac-ft/yr. The observation well data shows this aquifer does receive recharge. This is further supported by an aquifer performance test conducted during the application process for Water Right No. 8280-3. Based on the reasonably best information available, there is a reasonable probability unappropriated water is available for this proposed appropriation.

Table 2- Estimated average annual use from the Cretaceous aged undifferentiated sandstone aquifer and other potential undifferentiated Cretaceous aged aquifers in McCook County (Water Rights, 2024b, 2024c, and 2024e)

PERMIT NO.	5061-3	6762-3	6862-3	6874-3	8280-3	Total
NAME	BATTLE CREEK CAMPGROUND	VAN WINKLE DAIRY LP	CITY OF SALEM	MCCOOK COUNTRY CLUB	DYLBROOK FARMS RE LLC	
STATUS	LC	LC	LC	LC	LC	
AQUIFER	NBRR	CDLL	SXWS	SXWS	KU	
USE	COM	COM/LCO	MUN	IRR/DOM	COM/LCO	
CFS	0.02	0.27	1.33	0.11	0.22	
ACRES	n/a	n/a	n/a	30	n/a	
PERMITTED VOL. (ac-ft/yr)	n/a	n/a	n/a	n/a	121	
REPORTING PERIOD (TOTAL YEARS)	n/a	n/a	2007-2023, excluding 2008 (16)	2008-2023 (16)	2018-2023 (6)	
Report AVG			125.8	7.1	50	
60% PUMPING	8.7	117.4	n/a	n/a	n/a	
ESTIMATED USE (ac-ft/yr)	8.7	117.4	125.8	7.1	121	380
LC= Water Right, NBRR= Niobrara, CDLL= Codell, SXWS= Sioux Quartzite Wash, KU= Cretaceous undifferentiated sandstone, COM= Commercial, LCO= Livestock Confinement Operation, MUN= Municipal, IRR= Irrigation, DOM= Domestic						

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

The nearest appropriative water right that may be completed into the same aquifer besides the applicant's Water Right No. 6762-3, is Water Right No. 5061-3 located approximately 3.4 miles east and the next nearest is Water Right No. 8280-3 located approximately 4.8 miles northwest (Water Rights, 2024e). The nearest domestic well on file with the Water Rights Program that may be completed into the same aquifer is located approximately 0.5 miles east of the applicant's well sites (Water Rights, 2024f). There may be other wells not on file with the Water Rights Program in close proximity to the applicant's well sites. The location of domestic wells is based on the legal location information provided by the well driller on the well completion report.

The Cretaceous aged undifferentiated sandstone aquifer in McCook County is predominantly under confined conditions. Within approximately 5 miles of the applicant's well sites, wells have artesian head pressures ranging from approximately 9 to 162 feet above the top of aquifer with an average of 63 feet (Water Rights, 2024f). It should be noted it is likely not all of these wells are completed into the same aquifer as the applicant's existing permitted wells and proposed wells. However, it does provide some guidance on what is likely to be encountered.

The Water Management Board has recognized in the past to place water to maximum beneficial use some drawdown may occur. In order to protect domestic users, the Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs.

South Dakota Codified Law (SDCL) 46-6-6.1 does not necessarily protect artesian head pressure as a means of delivery, and the Water Management Board has recognized in the past to place water to maximum beneficial use, a certain amount of drawdown may occur. The Water Management Board considered the delivery of water by artesian head pressure versus maximum beneficial use of water issue for Water Right No. 2313-2 for Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Water Management Board adopted Findings of Facts and Conclusions of Law that noted reservation of artesian head pressure for delivery of water would be inconsistent with SDCL 46-1-4 which states, “general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable...” (Water Rights, 1995). Furthermore, the Water Management Board found if increased cost or decreased production as a result of impacts on artesian head pressure by legitimate users is to be considered an adverse impact it would also be in conflict with SDCL 46-1-4 (Water Rights, 1995). With that in mind, some existing well owners may need to lower their pumps to accommodate for deeper water levels.

While precise drawdown cannot be determined without aquifer performance testing, any drawdown created from pumping this proposed diversion is not expected to cause unlawful impairment of existing water rights with adequate wells or adequate domestic wells. This is due to the amount of artesian head pressure, the distance between appropriative wells, the fact that the wells for Water Right No. 6762-3 have been in use since approximately 2007 without reported issue, and the proximity of the proposed wells to the applicant’s existing wells will likely require management to limit drawdown from impacting themselves (Water Rights, 2024a). There have been no complaints regarding well interference in McCook County. Based on the available information, there is a reasonable probability this application can be developed without unlawful impairment to existing water rights or domestic users with adequate wells.

CONCLUSIONS:

1. Application No. 8883-3 proposes to appropriate up to 117.6 acre-feet of water per year (ac-ft/yr) at a maximum instantaneous diversion rate of 0.33 cubic feet of water per second (cfs) from up to 3 wells to be completed into the Cretaceous aged undifferentiated sandstone aquifer (approximately 280 feet deep) located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36-T102N-R54W. The water is to be used for commercial purposes at a dairy cattle confinement facility located in the S $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 36-T102N-R54W. The site is located approximately two miles east of Canistota, SD in McCook County
2. Water Right No. 6762-3 for Van Winkle Dairy LP is currently designated as withdrawing water from the Codell aquifer. The best reasonably available information determined that the

formation is actually a Cretaceous aged undifferentiated sandstone aquifer. The designation change does not constitute a physical change in the water source. It is merely an update of aquifer name based on newer information. This change does not allow or authorize an increase in diversion rate, appropriated water, or number of wells.

3. Based on the hydrologic budget and observation well data, there is a reasonable probability unappropriated water is available for this application.
4. There is a reasonable probability that pumping this proposed diversion will not unlawfully impair existing users with adequate wells.



Adam Mathiowetz, PE
SD DANR-Water Rights Program

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
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PIERRE SD 57501-3182
danr.sd.gov

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

November 6, 2024

Van Winkle Dairy LP
c/o Kevin Van Winkle
26137 448th Avenue
Canistota SD 57012

Dear Mr. Van Winkle:

Water Permit Application No. 8883-3 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to The Special printed in Salem SD (Ph # 605 425-2361) and the Argus Leader printed in Sioux Falls SD (requires prepayment). 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.

NOTICE OF APPLICATION NO. 8883-3 to Appropriate Water

Notice is given that Van Winkle Dairy LP, 26137 448th Avenue, Canistota SD 57012, has filed an application for a water permit to appropriate up to 117.6 acre-feet of water annually at a maximum pump rate of 0.33 cubic feet of water per second from up to three wells completed into the Cretaceous aged undifferentiated sandstone Aquifer (approximately 280 feet deep) located in the NE 1/4 NE 1/4 Section 36-T102N-R54W. Water will be used for commercial purposes at a dairy cattle confinement facility located in the S 1/2 NE 1/4 Section 36-T102N-R54W. This site is located approximately two miles east of Canistota SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8883-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by November 25, 2024.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 25, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of_

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, November 6, 2024 10:25 AM
To: legals@argusleader.com
Subject: 8883-3 Van Winkle Dairy LP - Public Notice
Attachments: 8883-3 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on November 14, 2024.

Van Winkle Dairy LP, 26137 448th Avenue, Canistota SD 57012, 605-366-7290, admin@vanwinkledairy.com has been notified to contact you to authorize publication and arrange for payment.

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

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

Thank you,

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



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, November 6, 2024 10:23 AM
To: tschwans@triotel.net
Subject: 8883-3 Van Winkle Dairy LP - Public Notice
Attachments: 8883-3 public.short_final.docx; FORM8.FRM.doc

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Thank you,

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





PO Box 630567 Cincinnati, OH 45263-0567

AFFIDAVIT OF PUBLICATION

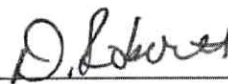
Rachel Rodriguez
Van Winkle Dairy LP
26137 448th AVE
Canistota SD 57012-6032

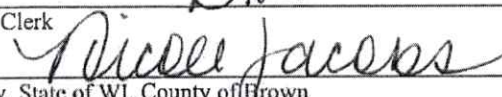
STATE OF WISCONSIN, COUNTY OF BROWN

The Argus Leader, a daily newspaper published in the city of Sioux Falls, Minnehaha County, State of South Dakota, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue:

11/14/2024

and that the fees charged are legal.
Sworn to and subscribed before on 11/14/2024



Legal Clerk


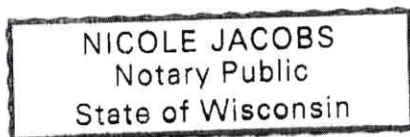
Notary, State of WI, County of Brown
8-21-26

My commission expires

Publication Cost:	\$56.98	
Tax Amount:	\$0.00	
Payment Cost:	\$56.98	
Order No:	10754310	# of Copies:
Customer No:	1496093	1
PO #:		

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.



NOTICE OF
APPLICATION NO. 8883-3
to Appropriate Water

Notice is given that Van Winkle Dairy LP, 26137 448th Avenue, Canistota SD 57012, has filed an application for a water permit to appropriate up to 117.6 acre-feet of water annually at a maximum pump rate of 0.33 cubic feet of water per second from up to three wells completed into the Cretaceous aged undifferentiated sandstone Aquifer (approximately 280 feet deep) located in the NE 1/4 NE 1/4 Section 36-T102N-R54W. Water will be used for commercial purposes at a dairy cattle confinement facility located in the S 1/2 NE 1/4 Section 36-T102N-R54W. This site is located approximately two miles east of Canistota SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8883-3 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

<https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by

either an interested person or the applicant must be filed by November 25, 2024. The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at

<https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by November 25, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$56.98 and may be viewed free of charge at www.sdpublicnotices.com.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of McCook + Hanson) SS

I, Troy Schwans

certify that the attached printed Notice was taken

from the The Special

printed and published in Salem

County of McCook and

state of South Dakota. The notice was published

in the newspaper on the following date:

November 14, 2024

Cost of Printing \$44.78

Troy Schwans
(Signature)

Publisher/Editor
(Title)

11/16/24
(Date Signed)

PUBLIC NOTICE NOTICE OF APPLICATION NO. 8883-3 to Appropriate Water

Notice is given that Van Winkle Dairy LP, 26137 448th Avenue, Canistota SD 57012, has filed an application for a water permit to appropriate up to 117.6 acre-feet of water annually at a maximum pump rate of 0.33 cubic feet of water per second from up to three wells completed into the Cretaceous aged undifferentiated sandstone Aquifer (approximately 280 feet deep) located in the NE 1/4 NE 1/4 Section 36-T102N-R54W. Water will be used for commercial purposes at a dairy cattle confinement facility located in the S 1/2 NE 1/4 Section 36-T102N-R54W. This site is located approximately two miles east of Canistota SD.

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Published once at the total approximate cost of \$44.78 and may be viewed free of charge at www.sdpublicnotices.com.

11-14
347583

RECEIVED

NOV 20 2024

OFFICE OF
WATER

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, November 6, 2024 11:02 AM
To: admin@vanwinkledairy.com
Subject: 8883-3 Van Winkle Dairy LP - Public Notice
Attachments: 8883-3 Rec.pdf; 8883-3 Ltr.pdf; 8883-3 PubNotice.pdf

Good morning,

Attached is a copy of the report, chief engineer's recommendation, and information regarding the public notice for your water permit application. You should receive an email from the Argus Leader/Gannett Legals with information regarding your notice. They use an online payment portal called Shoom. As stated in the letter, **please contact the paper(s) as soon as possible to authorize publication and arrange for payment.** This information is also being mailed to you today.

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

Thank you,

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



December 13, 2024

REFUND REQUEST FORM

PAYEE:

Van Winkle Dairy LP
C/O Kevin Van Winkle
26137 448th Avenue
Canistota SD 57012

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

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Refund for overpayment of #8883-3 Application Fee

AMOUNT: \$250.00

FUNDING SOURCE: WR Fees

GENERAL:

FEDERAL:

OTHER:

COMMENTS:

AUTHORIZATION: *Eve Henscheid 12/13/2024*

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

DEC 13 2024

Van Winkle Dairy LP
c/o Kevin Van Winkle
26137 448th Avenue
Canistota SD 57012

Dear Mr. Van Winkle:

Enclosed is Water Permit No. 8883-3 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

An application/license filing fee of \$950.00 was submitted with the application. The correct fee for this permit is \$700.00. Therefore \$250.00 will be refunded to you. The refund check should be received within the next couple of weeks.

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**

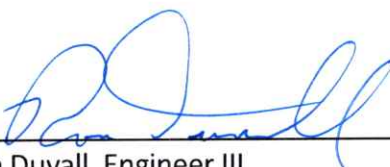
Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the 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.: 8883-3

Name of Applicant: Van Winkle Dairy LP, c/o Kevin Van Winkle

Date of Posting: 11/12/2024

Date of Removal: 12/13/2024

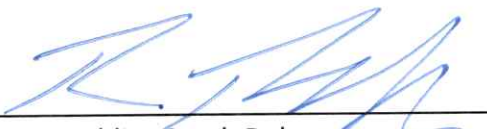


Ron Duvall, Engineer III

12/13/2024

Date

Subscribed and sworn to before me, a notary public, this 18th day of Dec, 2024.



Notary Public - South Dakota
My commission expires:

Rachel Rodriguez
My Commission Expires
May 18, 2029

(SEAL)



Water Rights Program File Documentation

Permit/Right No. and Owner: Water Right No. 6762-3 for Van Winkle Dairy LP

Date: Nov. 06, 2024

County: McCook

RE: aquifer designation

COMMENTS:

During the review of Water Permit Application No. 8883-3, Mathiowetz (2024) determined Water Right No. 6762-3 requires an updated aquifer designation based on newer information and further investigation of the local hydrogeology. Currently, Water Right No. 6762-3 is labeled as withdrawing water from the Codell aquifer. Per Mathiowetz (2024):

This application also serves to change the named aquifer designation for Water Right 6762-3. Water Right No. 6762-3 serves the same dairy confinement facility as App. No. 8883-3 proposes to serve. Water Right No. 6762-3 authorizes the appropriation of water at a maximum instantaneous diversion rate of 0.27 cfs from the Codell aquifer. At the time of initial review of the application for Water Right No. 6762-3 in 2006 the best information available indicated the sandstone encountered in the wells that had been constructed prior to the submittal of the permit application was the Codell aquifer (Goodman, 2006). However, further drilling and re-interpretations of existing lithologic logs by the SD Geological Survey (SDGS, 2024) and various Water Rights Program engineers reviewing well completion reports and water permit applications (Water Rights, 2024e and 2024f) has determined this sandstone is not the Codell aquifer. The sandstone at this site should be considered a Cretaceous aged undifferentiated sandstone and thus part of a Cretaceous aged undifferentiated sandstone aquifer. This change of aquifer designation from the Codell aquifer to the Cretaceous aged undifferentiated sandstone aquifer does not represent a physical change in the water source. It is an update to the name of the aquifer materials to reflect the currently best available information. It does not authorize any increase in authorized diversion rate or appropriated water, relocation of existing wells, or completion of additional wells.

The statements made by Mathiowetz (2024) are still accurate and reflect the best, most reasonably available information at this time. This change of aquifer designation, to the Cretaceous aged undifferentiated sandstone (KU) aquifer, does not represent a physical change in the water source. It is an update to the name of the aquifer materials to reflect the currently best available information for aquifer extents. This update to the aquifer name does not authorize any increase in the amount of water appropriated by Water Right No. 6762-3, relocation of existing wells, or completion of additional wells into the aquifer. Going forward, issuance of any pertinent documents will reflect the updated aquifer designation.



Adam Mathiowetz
Natural Resources Engineer



Eric Gronlund
Chief Engineer

Reference:

Mathiowetz, A.W. 2024. Report to the Chief Engineer on Water Permit Application No. 8883-3 for Van Winkle Dairy LP. SD DANR-Water Rights Program. Pierre, SD.

8883-3

RECEIVED

MAR 03 2025

OFFICE OF
WATERNOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USEDate 1-7-25TO: Water Rights Program, DANR
523 E. Capitol
Pierre, SD 57501-3181

FROM:

Van Winkle Dairy LP26137 ^(name) 448th AveCanistota, SD 57012 ^(address)

(city, state, zip)

605-366-7290

(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 8883-3 states that the water use system is to be constructed by1-2-2025

(date)

, and water is to be put to beneficial use by

2-10-25

(date)

The water use system was completed on

1-2-25

(date)

Applying the water to beneficial use was completed on

3-1-25

(date)

You may schedule an investigation so that the water license may be issued.

Kevin Van Winkle

(signature)





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 5, 2025

No. 8883-3

Van Winkle Dairy LP
c/o Kevin Van Winkle
26137 448th Ave
Canistota, SD 57012

Dear Mr. Van Winkle:

I am writing to acknowledge receipt of the "Notice of Completion of Works" form that you sent in to let us know that you are completed with your water use system.

The system is now ready for inspection. Inspections are done on a county-by-county basis as staff time permits. You have done everything you need to do and the intervening time between the completion of your project and the staff inspection has no bearing on your water permit.

Someone from our office will contact you prior to the inspection to set up a time that is convenient for you. If you have any questions, please contact me.

Sincerely,

Miranda Smith
Water Rights Program
(605) 773-3352
email: Miranda.Smith@state.sd.us