

WATER PERMIT NO. 6183-3

Name of Applicant: Oscar, Incorporated

Address: 18892 390th Ave, Hitchcock SD 57348

Phone: 605 266-2747

Amount of Water Claimed: 21.4 cfs

Total Acres: 1,503

Source of Water Supply: James River

Water to be used for: irrigation

County: Spink

Type of Waste Disposal System: NA

Location: approximately 6 miles northeast of Hitchcock

PRIORITY Date Received: 2-22-2000

Fee: \$825

Corrected Application Received: 2-28-2000

Period of Annual Use: March 1 – November 30

Remarks:

Diversion Point: points between NW ¼ Sec 15
and SW ¼ Sec 22 all in T114N-R62W

Land to be Irrigated: Sec 15, S ½ Sec 16, NE 1/4
Sec 21, SE ¼ Sec 22, W ½ Sec 25; all in T114N-
R62W

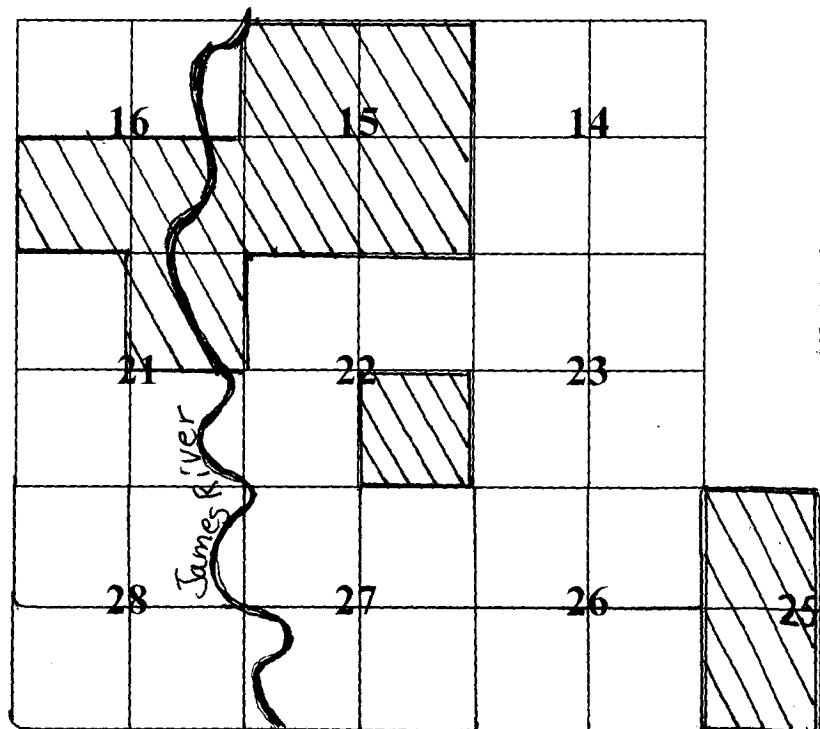
Depth of Well: NA

Well Driller: : NA

Remarks:

Type of Map: topo

Prepared by: Ron Duvall



Reviewed and the Number Assigned on: 2-28-2000

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 6183-3 FOR IRRIGATION

Date of first receipt of application February 22, 2000.

The Water Management Board approved Water Permit Application No. 6183-3 on May 3, 2000 for Oscar Incorporated, c/o Floyd Peterson, 18892 390th Ave, Hitchcock SD 57348 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 6183-3 appropriates 21.4 cubic feet of water per second from the James River from points between and including the NW ¼ Section 15 and SW ¼ Section 22; T114N-R62W to irrigate 1,503 acres located in portions of Section 15, S ½ Section 16, NE ¼ Section 21, SE ¼ Section 22, W ½ Section 25; T114N-R62W.
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: March 1 – November 30.
3. The date from which applicant may claim right is February 22, 2000.
4. One-fifth of the construction is to be completed on or before November 3, 2002.
5. All construction is to be completed on or before May 3, 2005.
6. Water is to be put to beneficial use on or before May 3, 2009.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - When pumping from the James River, low flows as needed for downstream domestic use, including livestock water, and prior water rights/permits must be bypassed.
 - From March 1 – March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this Permit.
 - From April 1 – June 30, diversion from the James River are authorized only when the flow at the Huron Third Street Dam exceeds 63 cfs while pumping under this permit.
 - From June 30 to November 30, diversions from the James River are not authorized unless the Chief Engineer issues written orders allowing diversions.
 - Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

(continued)

Water Permit No. 6183-3

Oscar Incorporated

Page 2

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

JUN 05 2000

date



Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>6183-3</u>	(office use only) Hydrologic Unit <u>10160006</u>
	Basin <u>James River</u>	
	Newspaper <u>The Redfield Press, Redfield, SD</u>	



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.) _____

- Name of Applicant Oscar Incorporated Phone 266-2747
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 18892 390th Ave Hitchcock SD State 57348
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 21.4 *CFS or 22.8 **GPM ***AF Total Acreage 1503
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply James River
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) James River: Points
between and including NW1/4 sec 15 and SW1/4 sec 22; all in
T114N-R62W County Spink
- County or counties where water will be used Spink
- Annual period during which water is to be used Mar 1 - Nov 30
- 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
sec 15-114N-62W	628	W1/2 sec 25-114N-62W	320
S1/2 sec 16-114N-62W	320	240	
NE1/4 sec 21-114N-62W	160		
SE1/4 sec 22-114N-62W	160		

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

STATE OF SOUTH DAKOTA) SS

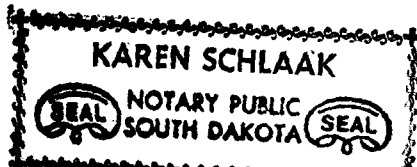
County of Hughes

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

I, Floyd Peterson, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Oscar Inc by Floyd Peterson Pres.

Subscribed and sworn to before me this 22nd day of February 19 2000



Karen Schlaak
Notary Public signature

KAREN SCHLAAK, Notary Public
My Commission Expires

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

NC 416400

Pierre, February 28, 2000

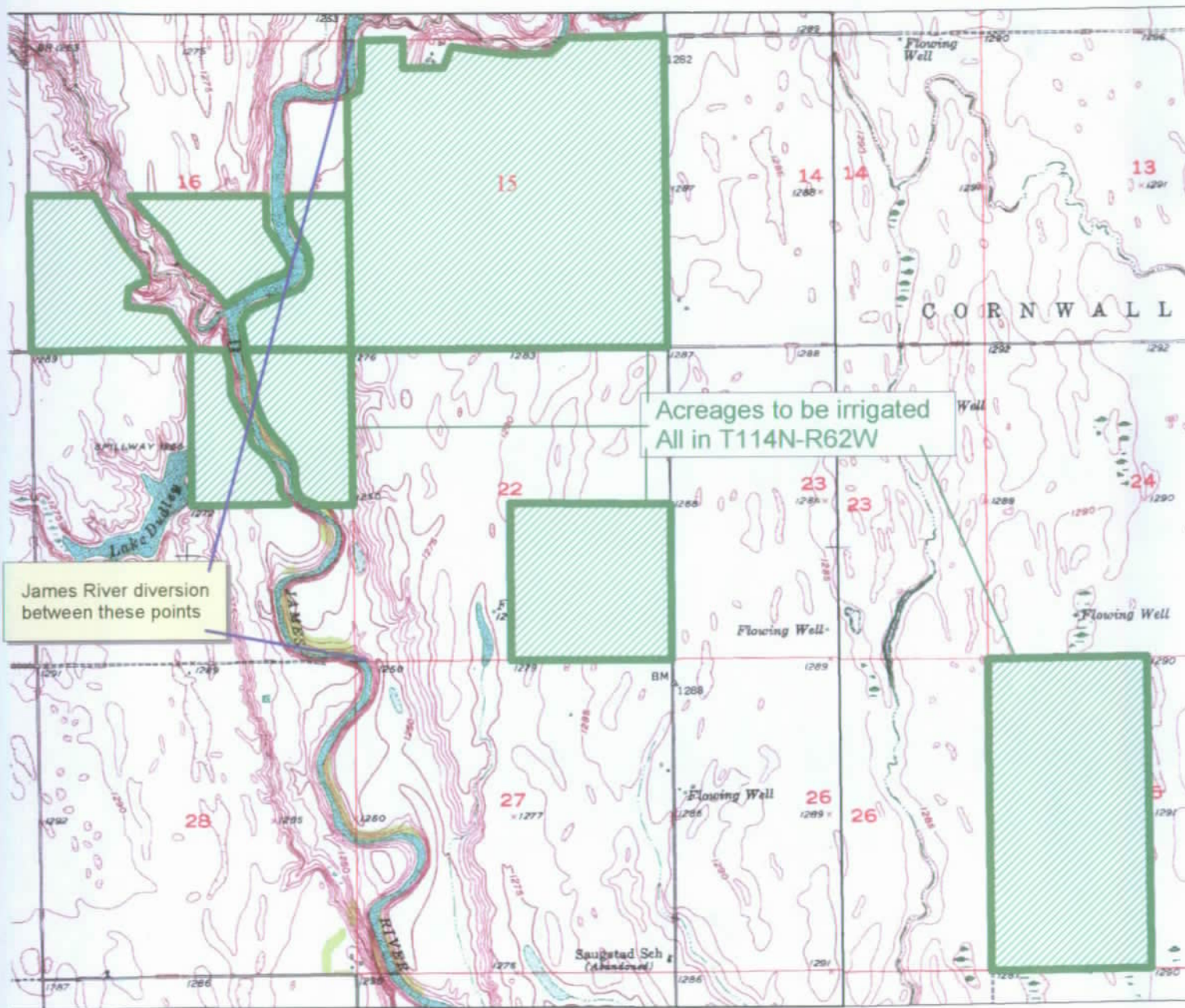
RECEIVED OF Oscar, Inc., 18892 - 390th Ave., Hitchcock, SD 57348-7707
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>6183-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	825	00
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>6183-3</u>	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	875 00

By Shirley Ebele
Chief Engineer

3000 0 3000 Feet



South Dakota
Department of Environment
& Natural Resources
Water Rights

Application map for Oscar Incorporated
February 25, 2000

6183-3

REPORT ON WATER PERMIT APPLICATIONS NO. 6182-3 & 6183-3

Oscar Incorporated

March 29, 2000

Water Permit Application No. 6182-3, Oscar Incorporated, proposes to appropriate 10.2 cubic feet of water per second (4578 gpm) from the James River in Spink County for irrigating 718 acres. Diversions for the proposed project would take place during the period March 1st through November 30th each year. The diversion points are to be between and including the SW ¼ of Section 10 and NE ¼ of Section 3 in T114N-R62W (Attachment 1).

Water Permit Application No. 6183-3, Oscar Incorporated, proposes to appropriate 21.4 cubic feet of water per second (9605 gpm) from the James River in Spink County for irrigating 1503 acres. Diversions for the proposed project would take place during the period March 1st through November 30th each year. The diversion points are to be between and including the NW ¼ of Section 15 and SW ¼ of Section 22 in T114N-R62W (Attachment 1).

Review of Water Source and Existing Water Rights

The water source for the proposed project is the James River in Spink County, SD. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are within South Dakota. During low precipitation years the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the South Dakota Water Rights Commission, a predecessor to the Water Management Board, placed a 300 cubic feet per second (cfs) diversion limit on the James River with a maximum combined diversion limit of 200 cfs from Huron, SD to the North Dakota border. Due to the backup of Missouri River water into the James River, the 300 cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County line. Presently there are 120 licensed and permitted diversions totaling 249.72 cfs from the North Dakota border to the Yankton-Hutchinson County line. From the North Dakota border to Huron, SD there are 65 licensed and permitted diversions totaling 135.37 cfs. If the Oscar Incorporated applications are approved, the total river and the Huron to North Dakota reach diversion rates would still be below the established limits.

There are 26 senior water rights with withdrawals totaling 61.82 cfs located on the river from the proposed project site in Spink County downstream to Huron, SD. In the past, shut off orders have been issued to these licensed and permitted water right holders during periods of low flow in the James River (Attachment 4).

From 1943 to 1998 the U.S. Geological Survey's (USGS) Huron, SD stream flow gauge registered flows in the James River (Attachment 2) with a median of 50 cfs, a maximum of 22,800 cfs, and no flow 23.4 percent of the time. The typical irrigation season interval from March to November shows flows in the James River at Huron, SD with a median of 90 cfs and no flow 26 percent of the time. The median percentile hydrograph (attachment 3) shows a 50 percent probability of 155 cfs or greater flow in July and 71 cfs or greater flow in August. At the 75 percent probability, the hydrograph shows 43 cfs or greater flow in July and 4 cfs or greater flow in August.

There have been a number of water right/permits issued on the James River for the reach from Huron, SD to the North Dakota State line containing similar bypass qualifications. They are:

- No. 5027-3, Lake Byron Watershed District with a priority date of 6/14/84: April 1-June 30, sixty cfs or more bypassed after diversions for domestic use or prior water rights. Diversions not authorized after June 30 unless by written orders issued by the Chief Engineer.
- No. 5667-3, City of Huron with a priority date of 5/4/92: April 1-June 30, 54 cfs or more are being bypassed. June 30-September 30 diversions not authorized unless by written orders issued by the

Chief Engineer. October 1-March 31, 20 cfs or more is bypassed as measured at the Huron Third Street Dam.

- No. 5737-3, Spink Hutterian Brethren, Inc. with a priority date of 12/17/92: March 1-March 31 flow at Huron Third Street Dam is at least 20 cfs while pumping. April 1-June 30 flow at Third Street Dam exceeds 63 cfs while pumping. June 30-November 30 diversions not authorized unless by written orders issued by the Chief Engineer.
- No. 5796-3, Glendale Colony with a priority date of 11/24/93: March 1-March 31 flow at Huron Third Street Dam at 29 cfs while pumping. April 1-June 30 flow at Huron Third Street Dam exceeds 63 cfs while pumping. June 30-November 30 diversions not authorized unless by written orders from the Chief Engineer.

Applications Nos. 6182-3 and 6183-3 should have similar bypass qualifications in order to protect senior James River water rights/permits including the above four water rights/permits. If these two applications are approved, they should contain the following qualifications:

- Low flows as needed for downstream domestic use, including livestock water and prior water rights/permits must be bypassed.
- From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam is at least 29 cfs while pumping under this permit.
- From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam exceeds 63 cfs while pumping under this permit.
- From June 30 to November 30, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
- Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

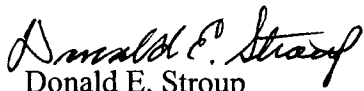
Because the number and the location of James River water rights continue to change, the Water Management Board, at some time in the future, may want to review the bypass qualifications for all James River water rights/permits. These qualifications may need to be adjusted to reflect the most current status of diversions from the James River.

Conclusions

1. Water Permit Applications No. 6182-3 and 6183-3, Oscar Incorporated, propose to divert a total of 31.6 cfs (14,183 gpm) from the James River to irrigate 2221 acres in Spink County, SD.
2. Based upon data from the USGS Huron, SD gauging station, water is available in the James River during high and normal flow periods.
3. If these permits are approved, the total river and Huron to North Dakota reach diversion rates from the James River would still be within the limits set in 1965 by the Water Rights Commission.
4. The James River is susceptible to shutoff orders being issued by the Chief Engineer because of extremely low flows during dry periods.

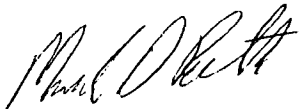
If these applications are approved, they should contain the following qualifications:

- Low flows as needed for downstream domestic use, including livestock water and prior water rights/permits must be bypassed.
- From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam is at least 29 cfs while pumping under this permit.
- From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam exceeds 63 cfs while pumping under this permit.
- From June 30 to November 30, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
- Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.



Donald E. Stroup
Natural Resources Engineer I
Water Rights Program

Reviewed by:



Mark D. Rath
Natural Resources Engineer III
Water Rights Program

References:

U.S. Geological Survey Daily Mean Discharge Data retrieved from the National Water Information System Files (ADAPS)

South Dakota Department of Environment and Natural Resources, Water Rights Program Records

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6183-3, Oscar, Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 6183-3, Oscar, Inc., c/o Floyd Peterson, 18892 390th Ave., Hitchcock, SD 57348.

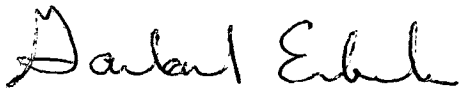
The Chief Engineer is recommending APPROVAL of Application No. 6183-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from the James River shall be in accordance with the following criteria:

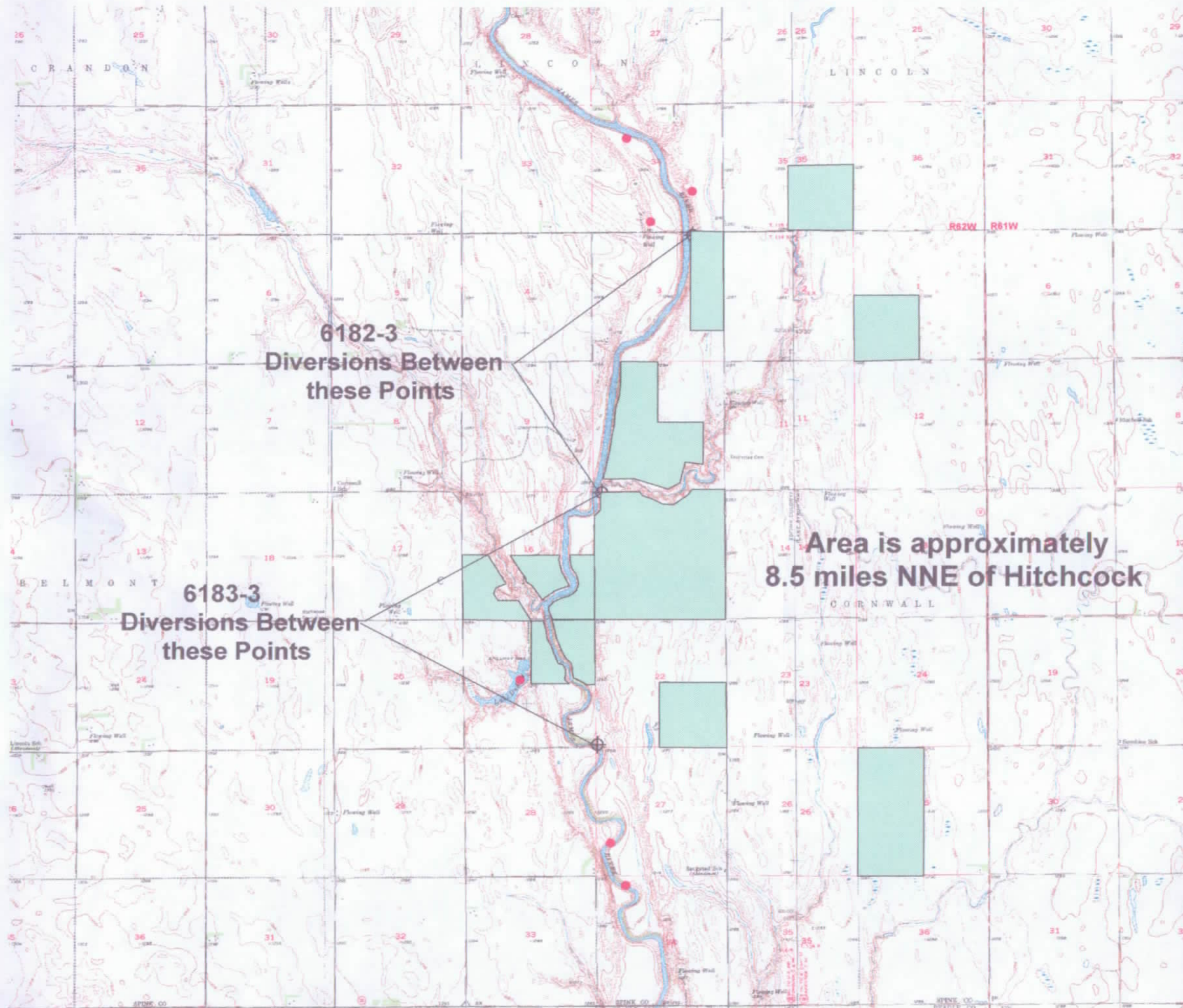
- When pumping from the James River, low flows as needed for downstream domestic use, including livestock water, and prior water rights/permits must be bypassed.
- From March 1 – March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this Permit.
- From April 1 – June 30, diversion from the James River are authorized only when the flow at the Huron Third Street Dam exceeds 63 cfs while pumping under this permit.
- From June 30 to November 30, diversions from the James River are not authorized unless the Chief Engineer issues written orders allowing diversions.
- Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.



Garland Erbele, Chief Engineer
March 31, 2000



- Water Right License/Permit
- Irrigated Acreage

OSCAR, INC

Permits 6182-3 & 6183-3

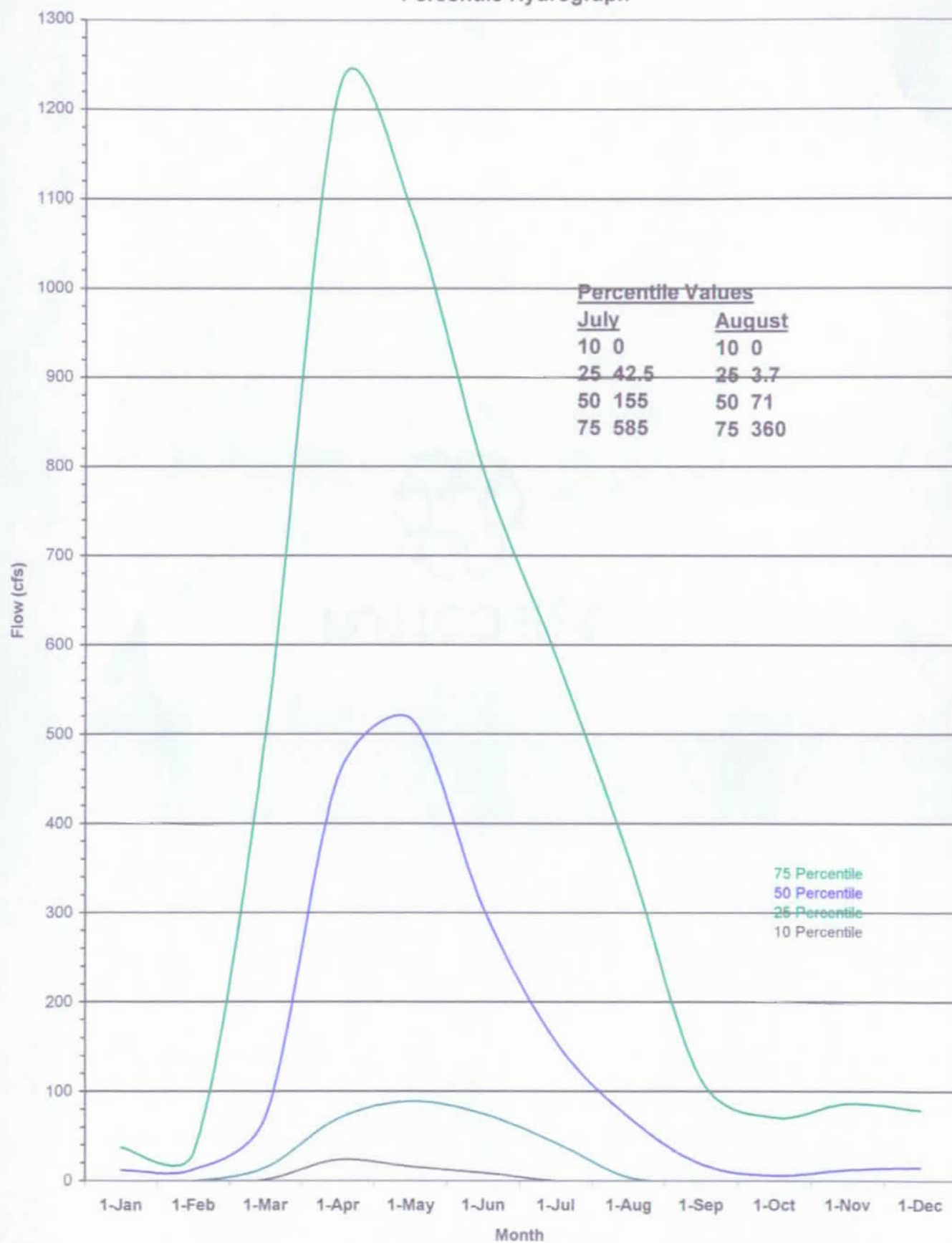
Huron Gauging Station Statistics

	<u>1943-1998</u>	<u>March-November Interval</u>
Number of Values	15411	11942
Number Zero Values	4708	3122
Median (cfs)	50	90
Mean (cfs)	381.6	494
Maximum (cfs)	22,800	22,800
10 Percentile (cfs)	0	0
25 Percentile (cfs)	1	6
50 Percentile (cfs)	50	90
75 Percentile (cfs)	297	534
90 Percentile (cfs)	1020	1300

Monthly Median Percentiles

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Percentile
0	0	1	23	16	9	0	0	0	0	0	0	10
0	0	15	70	89	75	43	4	0	0	0	0	25
12	13	73	455	517	304	155	71	19	6	13	15	50
37	33	707	1225	1085	794	585	360	113	71	86	79	75
75	83	1230	2300	2236	1539	1178	1030	487	284	262	163	90

**USGS Huron Gauge Station
1943-1998 Median
Percentile Hydrograph**



James River Shutoffs		
Year	Date	Reach
1975	--	No information, low flow year, probably Aug or earlier shutoff
1976	July 27	From Sand Lake Wildlife Refuge Dam to 3 rd St. dam Huron.
	August 6	From 3 rd St. dam to N Yankton Co. line
1977	May 11	From Sand Lake Wildlife Refuge to 3 rd St. dam Huron
	June 6	From ND line to 3 rd St. dam Huron
	June 11	From 3 rd St. dam Huron to I90 Mitchell
1978	--	No information, very low flow year, probably Aug or earlier shutoff
1979	--	No information, low flow year, probably Aug or earlier shutoff
1980	May 24	From ND line to 3 rd St. dam Huron
	May 29	From 3 rd St. dam Huron to I90 Mitchell
	June 10	Rescinded May 29 order until further notice
	June 10	Rescinded Mar 24 order until June 26
	July 17	From 3 rd St. dam Huron to I90 Mitchell
	August 4	From I90 Mitchell to Yankton Co. line
1981	March 12	From ND line to I90 Mitchell July 15 & August cutoff dates
	April 3	Rescinded March 12 order
	April 16	From ND line to I90 Mitchell – extended to April 21
	June 4	From I90 Mitchell to Yankton Co. line
1982	August 15	From 3 rd St. dam Huron to Yankton Co. line
		Aug 10 th extended to Aug 25 th from Sand Lake to Yankton Co.
1983	July 15	July 15 th cutoff extended to Aug 1 st entire river
	August 10	Aug 10 th cutoff extended to Sep 1 st entire river
1984		No August 10 shutoff
1985	June 22	From ND to 3 rd St. dam Huron
	June 27	From Huron to I90 near Mitchell-Jul 15 th cutoffs I90 to Yankton Co.
1986		No August 10 shutoff
1987		No August 10 shutoff
1988	May 25	From ND to 3 rd St. dam Huron
		Extended to June 15th
	July 4	From 3 rd St. dam Huron to Yankton Co. line
		Extended to Jul 11 for permits before 1976 below I90
		Extended indefinitely for permits before 1976 I90 to Yankton Co.
1989	July 20	From ND to 3 rd St. dam Huron
	August 3	From 3 rd St. dam Huron to I90 near Mitchell
1990	April 6	From ND to Hutchinson-Yankton Co. line
	May 30	Rescinded April 6 order from Yankton Co. line to I90
	June 20	Rescinded April 6 order from Huron to I90
	June 29	Rescinded April 6 order from James River diversion dam to Huron
	August 2	Rescinded April 6 order from Ashton to JR diversion dam
1991		Pumping beyond August 10 allowed
1992	April 14	From ND to I90 near Mitchell
	June 22	Rescinded April 14 order from Huron to Ashton to I90
		Rescinded April 14 order for # 5027-3,5207-3,4354-3
	June 23	Rescinded April 14 order from Ashton to ND
1993-99	--	Pumping beyond August 10 allowed



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

March 31, 2000

The Redfield Press
Box 440
Redfield, SD 57469-0440

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application Nos. 6182-3 and 6183-3 to Appropriate Water to be published twice. Please publish the first notice on April 5, 2000, with the second publication 7 days later.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Oscar, Incorporated, %Floyd Peterson, 18892 390th Ave., Hitchcock, SD 57348 (Ph # (605) 266-2747).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

Nos. 6182-3 & 6183-3

TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of March 31, 2000, enclosing Notice of Hearing to Appropriate Water by Application Nos. 6182-3 & 6183-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

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

March 31, 2000

Oscar, Incorporated
%Floyd Peterson
18892 390th Ave.
Hitchcock, SD 57348

Dear Mr. Peterson:

Water Permit Application Nos. 6182-3 and 6183-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Redfield Press printed at Redfield, SD (Ph # (605) 472-0822). For your information, a copy of the notice, the recommendations of the Chief Engineer and a report on the applications 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 newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendations, 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 applications.

Instruction to Newspaper - Publish first Notice on April 5, 2000, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NOS. 6182-3 and 6183-3 to Appropriate Water

Notice is given that Oscar, Incorporated, c/o Floyd Peterson, 18892 390th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 6182-3 proposes to appropriate 10.2 cubic feet of water per second (cfs) from the James River from points between and including the SW $\frac{1}{4}$ Section 10 and NE $\frac{1}{4}$ Section 3; T114N-R62W to irrigate 718 acres located in portions of the S $\frac{1}{2}$, NW $\frac{1}{4}$ Section 10, NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 3, SW $\frac{1}{4}$ Section 1; T114N-R62W and SE $\frac{1}{4}$ Section 35-T115N-R62W.

Application No. 6183-3 proposes to appropriate 21.4 cfs from the James River from points between and including the NW $\frac{1}{4}$ Section 15 and SW $\frac{1}{4}$ Section 22; T114N-R62W to irrigate 1,503 acres located in portions of Section 15, S $\frac{1}{2}$ Section 16, NE $\frac{1}{4}$ Section 21, SE $\frac{1}{4}$ Section 22, W $\frac{1}{2}$ Section 25; T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 6182-3 and 6283-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

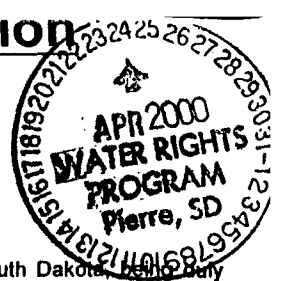
Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 24, 2000. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider these applications at 11:00 a.m., May 3, 2000, Floyd Matthew Training Center, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The May 3, 2000, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by April 24, 2000.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by April 24, 2000, at the above Water Rights Program address to request copies of information pertaining to these applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These applications are made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication



NOTICE OF APPLICATION Nos. 6182-3 AND 6183-3 TO APPROPRIATE WATER

Notice is given that Oscar, Incorporated, c/o Floyd Peterson, 18892 390th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 6182-3 proposes to appropriate 10.2 cubic feet of water per second (cfs) from the James River from points between and including the SW ¼ Section 10 and NE ¼ Section 3; T114N-R62W to irrigate 718 acres located in portions of the S ½, NW ¼ Section 10, NE ¼ SE ¼, E ¼ NE ¼ Section 3, SW ¼ Section 1; T114N-R62W and SE ¼ Section 35-T115N-R62W.

Application No. 6183-3 proposes to appropriate 21.4 cfs from the James River from points between and including the NW ¼ Section 15 and SW ¼ Section 22; T114N-R62W to irrigate 1,503 acres located in portions of Section 15, S ½ Section 16, NE ¼ Section 21, SE ¼ Section 22, W ½ Section 25; T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 6182-3 and 6283-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 24, 2000. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal

STATE OF SOUTH DAKOTA

SS

County of Spink

I, Alina E. Becker, of said County of Spink and State of South Dakota, being duly sworn, on her oath says: The Doland Times-Record is a weekly newspaper of general circulation printed and published in Doland, Spink County and the State of South Dakota, by Alina E. Becker and has been such newspaper during the times hereinafter mentioned: that the Doland Times-Record is a legal newspaper and has been in existence for more than one year immediately preceding the first publication herein mentioned, and has more than two hundred bonafide subscribers: that I, the undersigned, am publisher of said newspaper in charge of the advertising thereof, and have personal knowledge of all the facts stated in this affidavit: and that the advertisements headed

Notice of Application
Nos. 6182-3 and 6183-3
TO Appropriate Water
a printed copy of which is hereto attached, was printed and published in the said

newspaper for two successive issues.

the first publication 33.90 4-5 20 00

the second publication 27.12 4-12 20 00

the third publication _____ 20 _____

the fourth publication _____ 20 _____

the fifth publication _____ 20 _____

the sixth publication 104 lines 20 _____

the seventh publication _____ 20 _____

the eighth publication _____ 20 _____

That \$ 61.02 being the full amount of the fee of publication of the annexed notice, insures solely to the benefit of the publisher of said newspaper: that no arrangement or understanding for a division thereof has been made with any person, and that no part thereof has been agreed to pay to any other person, whomsoever.

PAYMENT REQUEST FORM

PAYEE: The Redfield Press
Box 440
Redfield, SD 57469-0440

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

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Publication of Notice of Application to Appropriate Water for
Application Nos. 6182-3 and 6183-3, published on April 12 & 19, 2000.

AMOUNT: \$58.46

FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION: David Ershle 4/20/2000

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.

THE REDFIELD PRESS

16 E 7TH AVE
PO BOX 440
REDFIELD, SD 57489

Phone (605) 472-0822 Fax (605) 472-3634

STATEMENT / INVOICE

DATE 04/30/00

CUSTOMER NUMBER 122559

PAGE 1

A FINANCE CHARGE OF 1-1/2% PER MONTH
WHICH IS AN ANNUAL PERIODIC RATE OF 18%
PER YEAR WILL BE ADDED TO AMOUNTS NOT
PAID WITHIN 30 DAYS OF INVOICE DATE.

WATER RIGHTS DIVISION
ERIC GRONLUND
PIERRE SD 57501-3181

AMOUNT \$
ENCLOSED \$

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE TO ASSURE PROPER CREDIT TO YOUR ACCOUNT.

2951	04/12/00	INVOICE	ORD:2963	58.46
	QTY	AMT	DESCRIPTION	
	1.000	58.46	LEGAL 81 FLOYD PETERSON WATER	
			AP	
INCHES	.00			



CURRENT	PAST DUE AMOUNTS			AMOUNT DUE
	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	
58.46	.00	.00	.00	58.46



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

JUN 05 2000

Oscar Incorporated
%Floyd Peterson
18892 390th Ave.
Hitchcock, SD 57348

Dear Mr. Peterson:

Enclosed are Water Permit Nos. 6182-3 and 6183-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Form 10's, *Notice of Completion of Works and Application of Water to Beneficial Use*, are enclosed. Please return these completed forms after you have finished the systems and have put the water to beneficial use. An investigation can then be scheduled so the water licenses 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,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

June 28, 2000

6182-3
6183-3

Oscar Incorporated
c/o Floyd Peterson
18892 390th Ave
Hitchcock, SD 57348

Dear Mr. Peterson:

This letter is in reference to your telephone request for an extension to the June 30th shutoff date to pump from the James River. Flows in the James River continue to be good, therefore you are authorized to continue pumping from the James River for irrigation under Water Permit Nos. 6182-3 and 6183-3 for the remainder of the 2000 irrigation season. If river flow conditions drastically change such that downstream senior water rights and domestic use are being adversely impacted, you will be contacted and a shutoff order may be issued at that time.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 3, 2002

6182-3
6183-3

Oscar Incorporated
c/o Floyd Peterson
18892 390th Ave
Hitchcock, SD 57348

Dear Mr. Peterson:

This letter is in reference to your letter requesting an extension to pump from the James River. Flows in the James River continue to be good, therefore you are authorized to continue pumping from the James River for irrigation under Water Permit Nos. 6182-3 and 6183-3 for the remainder of the 2002 irrigation season.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

Mark D Rath
for Garland Erbele, Chief Engineer
Water Rights Program

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

April 16, 2003

6182-3
6183-3

NOTICE OF SHUT OFF ORDER

To: Oscar Inc
Floyd Peterson
18892 390th Ave
Hitchcock, SD 57348

From: Garland Erbele, Chief Engineer
Water Rights Program, DENR
(605) 773-3352 *Garland Erbele*

Subject: Shut Off Order for James River Water Permit Nos. 6182-3 and 6183-3,
Effective Immediately.

The flows in the James River have dropped to 37 cfs at Huron SD. In order to protect existing domestic use and senior water rights from the James River, effective immediately no pumping from the James River is authorized until January 1, 2004 or until further notice.

If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program, phone (605) 773-3352.

Hitchcock, SD
August 29, 2002

RECEIVED

SEP 03 2002

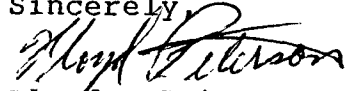
WATER RIGHTS
PROGRAM

Mark Rath
Department of Environment and Natural Resources
523 East Capitol
Pierre, SD 57501

Dear Mr. Rath,

I am requesting an extension to water longer from our permit numbers 6182-3 and 6183-3 from the James River in Spink County.

Sincerely,



Floyd H Peterson
Oscar Inc.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

May 06, 2003

RESCISSION OF SHUTOFF ORDER

No. 6182-3

No. 6183-3

TO: Oscar Inc.
Floyd Peterson
18892 390th Ave.
Hitchcock, SD 57348

FROM: Garland Erbele, Chief Engineer
DENR Water Rights Program
(605)773-3352

SUBJECT: Rescission of Water Right Nos. 6182-3 & 6183-3 April 18, 2003 James River Shutoff Order

The April 18, 2003 Shutoff Order for Water Right Nos. 6182-3 and 6183-3 is being **rescinded immediately**. Recent precipitation in the area and a decision by Sand Lake National Wildlife Refuge (NWR) to draw Sand Lake down have changed the short term outlook for the James River. Sand Lake NWR has started to lower the water level in the refuge to re-establish vegetation destroyed during the high water level periods in the 1990s. The release of water from Sand Lake and precipitation in the James River basin have sufficiently increased the James River flow to the point diversions under Water Right Nos. 6182-3 and 6183-3 can be resumed.

We will continue to monitor James River conditions and if flows remain favorable, diversions will be allowed until the mandatory June 30th shutoff date qualified in Water Right Nos. 6182-3 and 6183-3. If after June 30th you wish to continue pumping from the James River, you will need to make a written request for an extension of time with the Chief Engineer, DENR Water Rights Program.

If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program, phone (605)773-3352.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 23, 2003

6182-3

6183-3

6400-3

Oscar Incorporated
c/o Floyd Peterson
18892 390th Ave
Hitchcock, SD 57348

Dear Mr. Peterson:

This letter is in reference to your telephone request for an extension to the June 30th shutoff date to pump from the James River. Flows in the James River continue to be good therefore you are authorized to continue pumping from the James River for irrigation under Water Permit Nos. 6182-3, 6183-3 and 6400-3 until August 10, 2003. If at that time you wish to continue irrigating beyond August 10, you will need to contact this office and request another extension. Upon receipt of the request, we will reevaluate water availability conditions, and make a determination if another extension is warranted.

If river flow conditions drastically change between now and August 10, such that downstream senior water rights and domestic use are being adversely impacted, you will be contacted and a shutoff order may be issued at that time.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 8, 2004

6182-3
6183-3
6400-3

Floyd Peterson
Oscar Incorporated
18892 390th Ave
Hitchcock, SD 57348

Dear Mr Peterson:

This letter is in reference to your June 8, 2004 telephone call regarding water availability for irrigation from the James River for this summer. Due to the large amounts of precipitation falling recently in the James River basin in North Dakota and South Dakota, flows in the river continue to increase. Because there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permits out of the James River to August 10, 2004. If you wish to request an additional extension beyond August 10, you will need contact us at that time and we will make the determination of water availability for James River for the remainder of the 2004 irrigation season.

If you have any questions, please contact Mark Rath or Don Stroup of the Water Rights Program at phone (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

Permit No. 6183-3
James River - Water District

Report Of Examination Of Works And/Or Application of Water To Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have these days, **June 30, 2005**, made a thorough examination of the water use system constructed by **Oscar, Inc., c/o Floyd "Oscar" Peterson, 18892 390th Avenue, Hitchcock SD 57348** holder of Permit No. **6183-3**, bearing the priority of **February 22, 2000** authorizing the diversion of **21.4** cu. ft. per second of the waters of **James River** for **irrigation** purposes, in **Spink** County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

Portable pumps and motor A 150 hp John Deere diesel (4045) and a 250 hp Allis diesel equipped with Cornell pumps are used as the power source.

B. Works used to transport water to place of use:

An 8" aluminum pipelines are used to convey water from the river intakes to the center pivots or aluminum gated pipe

C. Works used to apply water to beneficial use:

There are four center pivots in place (one T-L, two Zimmatic and Lockwood) and the aluminum gated pipe on site in order to irrigate the bottom lands as represented on the map.

The system is in the following condition **good**. The point of diversion is located **between points located approximately 40 feet south and 330 feet east of the NW corner of Section 27, T114N, R62W (Lat N 44.661600 W-098.279983) and 2,580 feet north and 1,075 west of the SE corner of Section 16, T114N, R62W (Lat N 44.6832267 W-98.285473).** **The two points specified are the primary pump locations.** The works are capable of diverting and conveying to the place of use **9.58** cu. ft. per second of water (assuming use of two 900 gpm portable pumps and the 2500 gpm pump) which is to be used for **irrigation**. Water has been put to beneficial use to the maximum extent as follows:

Legal	Acres	Legal	Acres
NW¼ SE¼ Sec. 22, T114N, R62W	34 acres	NE¼ SE¼ Sec. 22, T114N, R62W	34 acres
SW¼ SE¼ Sec. 22, T114N, R62W	34 acres	SE¼ SE¼ Sec. 22, T114N, R62W	34 acres
NW¼ SW¼ Sec. 15, T114N, R62W	34 acres	NE ¼ SW ¼ Sec. 15, T114N, 62W	34 acres
SW¼ SW¼ Sec. 15, T114N, R62W	34 acres	SE ¼ SW ¼ Sec. 15, T114N, 62W	34 acres
NW¼ SE¼ Sec. 15, T114N, R62W	34 acres	NE ¼ SE ¼ Sec. 15, T114N, 62W	34 acres
SW¼ SE¼ Sec. 15, T114N, R62W	34 acres	SE ¼ SE ¼ Sec. 15, T114N, 62W	34 acres
NW¼ NE¼ Sec. 15, T114N, R62W	12 acres	NE ¼ NE ¼ Sec. 15, T114N, 62W	12 acres
SW¼ NE ¼ Sec. 15, T114N, R62W	37 acres	SE ¼ NE ¼ Sec. 15, T114N, 62W	37 acres
NE ¼ NE ¼ Sec. 21, T114N, R62W	25 acres	SE ¼ NE ¼ Sec. 21, T114N 62W	17 acres

comprising a total of 548 acres of land and the license should be issued for 7.83 cfs.

Applicable permit qualifications have been complied with: Yes X

Exceptions to compliance are: None

Date Report Completed: August 2, 2005

A handwritten signature in cursive script, appearing to read "Eric Gronlund", is written over a horizontal line.

Eric Gronlund
Natural Resources Engineer
DENR, Water Rights Program

FIELD INVESTIGATION REPORT FOR PERMIT NO. 6183-3

DATE OF INVESTIGATION:	June 30, 2005
NAME & ADDRESS OF INVESTIGATION CONTACT/ RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE	Floyd "Oscar" Peterson 18892 390th Avenue Hitchcock SD 57348
NAME & ADDRESS OF PERMIT HOLDER	Same

DIVERSION POINT LEGAL LOCATION: between points located approximately 40 feet south and 330 feet east of the NW corner of Section 27, T114N, R62W (Lat N 44.661600 W-098.279983 and 2,580 feet north and 1,075 west of the SE corner of Section 16, T114N, R62W (Lat N 44.6832267 W-98.285473). The two points specified are the primary pump locations.

Pumps

Pump # 1	Pump # 2
Make – Cornell	Make -- Cornell
Model – 4RBF16PKG	Model –
Serial -- ?	Serial – 64216381
Size – 8"	10"
Capacity – 900 gpm	Capacity – 2,500 gpm *

* according to Mr. Peterson

Motor

Motor # 1	Motor # 4
Make -- John Deere (diesel)	Make -- Allis (diesel)
Serial – PE 4045D360458	Serial – not found
Model – 4045 DF150	Model – not found
HP – 150 hp	HP – 266 hp

DISTRIBUTION LINES OR CANALS: from well to center pivot

1) Type aluminum 2) Size 8 inches 3) Length underground from diversion points to 4 pivot points approx. 12,500 feet in place. The flood irrigation with gated pipe was not in place at time of licensing investigation. However, Peterson's do have pipe on their property for use in flood irrigating. The flood irrigation is on river bottomland where pipe is

drained removed after each irrigation season in the event of spring flooding. The pipe was not in place at time of licensing investigation because they had sufficient moisture.

SYSTEM TYPE:

Center pivots:

	Pivot 1 SE ¼ Section 10	Pivot 2 SW ¼ Section 15	Pivot 3 SE ¼ Section 15	Pivot 4 NE 1/4
Make	T-L	Zimmatic	Lockwood	Zimmatic
Length	Approx. 1200'	Approx. 1200'	Approx. 1200'	Approx. 1200'
Towers	8	7	10	7
End Gun	Yes	Yes	Yes	Yes
Pressure	Medium	Medium	Medium (drop nozzles)	medium
Capacity	850 gpm	850 gpm	850 gpm	850 gpm

Mr. Peterson states that they operate all their pivots at medium pressure at a rate of approximately 850 gpm.

Also present was gated pipe (unassembled because of sufficient rainfall) for irrigation of the bottom land. Did not count the number of 8" aluminum pipeline but estimate sufficient pipe to flood irrigate the bottom land shown on map.

CHEMIGATION EQUIPMENT: no chemigation at time of licensing investigation

PERMIT QUALIFICATIONS:

- 1) Special qualifications to permit being abided by Yes
- 2) All structures, wells and lands on map Yes
- 3) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes

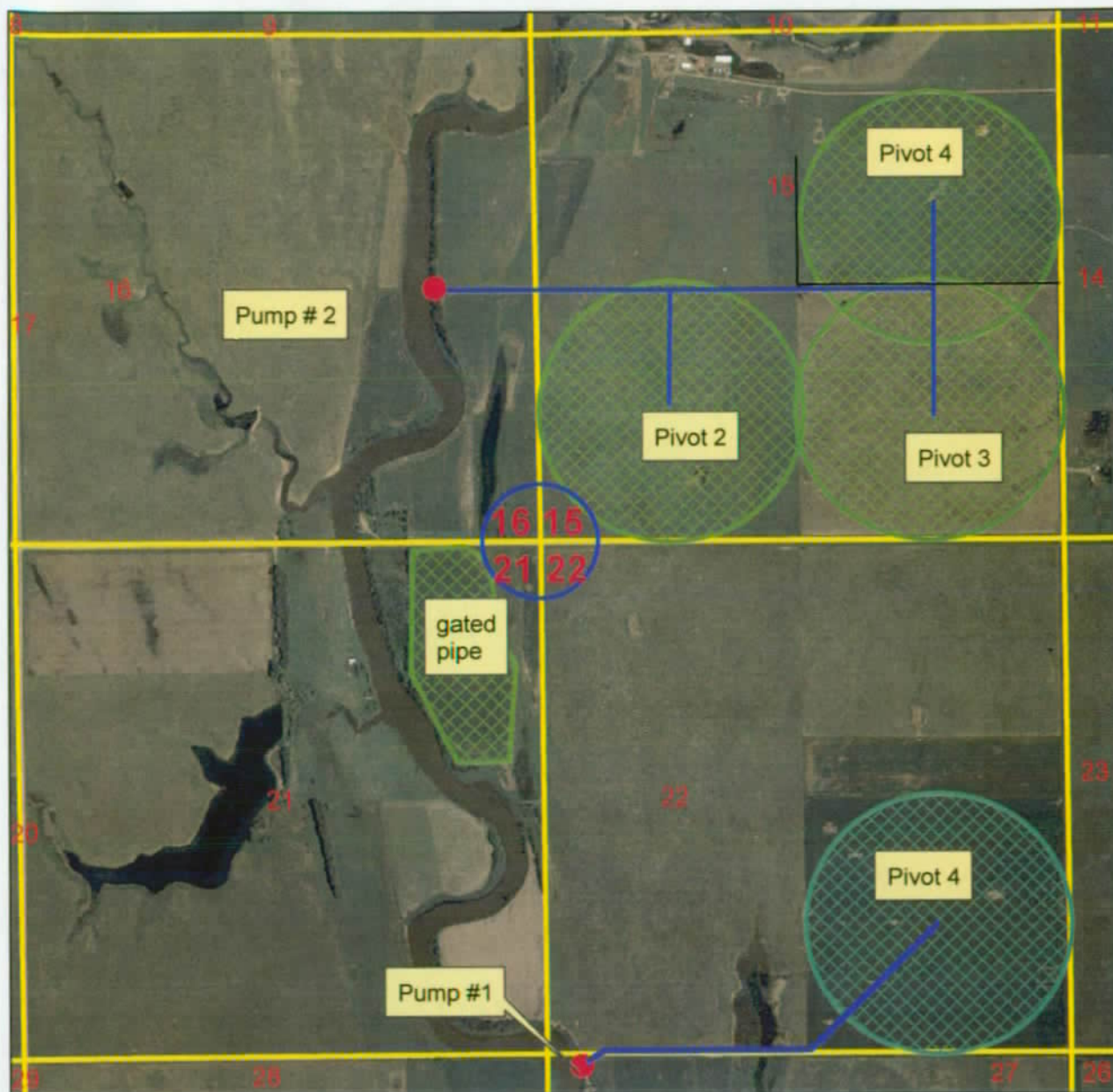
Comments:

Pump site #1 is located in the very NW corner of Section 27, T114N, R62W. The southern boundary for the James River diversion authorized by this permit is the SW $\frac{1}{4}$ of Section 22 (section directly north of Section 27). The actual pump site is just across the section line to the south.

At the time of the licensing the area had sufficient rainfall and they had not irrigated yet during the 2005 season. Neither pump/motor was in place. These are portable pump which were viewed at the shop in the NW $\frac{1}{4}$ of Section 15. I was not able to view the pump site for Pump 2 because the road into where they set the river pump/motor was inundated.

Arriving at a diversion capacity for this water permit is difficult. Oscar Peterson has a number of portable pump/motor units. Because of the portability of the pumps, he can with relative ease set up pumping intake to irrigate the lands authorized by this permit. Therefore, I propose the water license be issued based on the statutory limit (1cfs per 70 acres) for the areas that are developed for irrigation.

The pivot locations were not located using a GPS. This is the best representation of the pivot locations and estimate of acres developed.



0 1,000 2,000 4,000 6,000 8,000 Feet

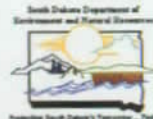


Pump site # 1 is located approximately 40 feet south and 330 feet east of the NW corner of Section 27, T114N, R62W

Lat/Lon N44.661600 W-098.279983

Pump site # 2 is located approximately 2,580 feet north and 1,075 feet west of the SE corner of Section 16, T114N, R62W

Lat/Lon N44.6832267 W-098.285473



Eric Gronlund
Eric Gronlund
Water Rights Program, DENR
Licensing Investigation - June 30, 2005

Change of Diversion Point

NAME: Oscar Inc., c/o Floyd Peterson

ADDRESS: 18892 390th Avenue, Hitchcock SD 57348

DATE: August 15, 2005 **COUNTY:** Spink County

BACKGROUND:

Water Permit No. 6183-1 appropriates 21.4 cfs from the James River from point between and including the NW ¼ Section 15 and the SW ¼ Section 22, all in T114N, R62W. The water is to be use to irrigate 1,503 acres located in portion of Section 15, S ½ Section 16, NE ¼ Section 21, SE ¼ Section 22, W ½ Section 25, T114N, R62W.

A licensing investigation found the southern diversion point was slightly south of the defined location for the diversion points as authorized by Permit No. 6183-3. The diversion point is approximate 40 feet south of the section line between Section 22 and Section 27. The legal description to the quarter – quarter section of this pump site is the NW ¼ NW ¼ Section 27, T114N, R62W.

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- **Developed water source same as permitted source and no additional water appropriated**

The water sources continues to be the James River

No additional appropriation of water is requested. The licensing investigation found that number of acres irrigated and diversion rate are significantly less than the quantity authorized by Permit No. 6183-3

- **Review of Existing Diversions**

A detailed review of existing diversions was not conducted. There are no other water rights in reach between what is defined by the permit and the actual location of the southern most diversion point. The diversion point is located 40 feet south of the permitted location.

CONCLUSION

- This change of diversion point does not appropriate additional water.

- The water source remains the James River
- Existing water rights and domestic uses will not be adversely impacted by authorizing this change in the boundary where pumping stations may be placed.
- Authorization of the developed location of the diversion points will allow licensing of Water Permit No. 6183-3.

RECOMMENDED ACTION

Based on the above criteria, it is recommended that the change in location of the southern boundary authorized for placing James River pumping stations be authorized by Water Permit No. 6183-3.


Eric Gronlund
Water Rights Program

The Chief Engineer makes a finding pursuant SDCL 46-5-13.1 and ARSD 74:02:01:14.01 that:

This change in the diversion point boundary will not increase the potential for adverse effects to existing diversions.


Garland Erbele, Chief Engineer
Water Rights Program

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 6183-3

(1) Oscar, Inc., c/o Floyd Peterson, 18892 390th Ave, Hitchcock SD 57348 made Application No. 6183-3, February 22, 2000 for a water permit to divert 21.4 cubic feet of water per second from the James River, Spink County, South Dakota for irrigation purposes. Permit No. 6183-3, with a priority date of February 22, 2000 was approved May 3, 2000 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 3, 2005 and for the application to beneficial use of water on or before May 3, 2009.

An investigation conducted for licensing purposes found one of the James River diversion points under Water Permit No. 6183-3 was not in the location authorized by the permit. Pursuant to SDCL 46-5-13.1, the Chief Engineer makes a finding that the change in location of diversion point does not increase the potential for interference with existing water rights.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 6183-3 is issued a license, bearing a priority date of February 22, 2000 to appropriate 7.83 cubic feet of water per second from the James River to irrigate 548 acres.

The primary pump locations are: between points located approximately 40 feet south and 330 feet east of the northwest corner of Section 27-T114N-R62W (NW ¼ NW ¼) and 2,580 feet north and 1,075 feet west of the southeast corner of Section 16-T114N-R62W (NE ¼ NE ¼). The acres authorized for irrigation are as follows:

Section 22-T114N-R62W		Section 21-T114N-R62W	
NW ¼ SE ¼	34 acres	NE ¼ NE ¼	25 acres
SW ¼ SE ¼	34 acres	SE ¼ NE ¼	17 acres
NE ¼ SE ¼	34 acres		
SE ¼ SE ¼	34 acres		
Section 15-T114N-R62W			
NW ¼ NE ¼	12 acres	NW ¼ SW ¼	34 acres
SW ¼ NE ¼	37 acres	SW ¼ SW ¼	34 acres
NE ¼ NE ¼	12 acres	NE ¼ SW ¼	34 acres
SE ¼ NE ¼	37 acres	SE ¼ SW ¼	34 acres
NW ¼ SE ¼	34 acres		
SW ¼ SE ¼	34 acres		
NE ¼ SE ¼	34 acres		
SE ¼ SE ¼	34 acres	Total 548 acres	

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 6183-3 including the following now applicable qualifications:

Diversion of water from the James River shall be accordance with the following criteria:

(continued)

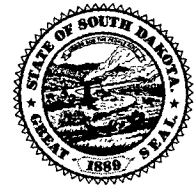
- When pumping from the James River, low flows as needed for downstream domestic use, including livestock water, and prior water rights/permits must be bypassed.
- From March 1 – March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this permit.
- From April 1 – June 30, diversions from the James River are authorized only when the flow at the Huron Third Street Dam exceeds 63 cfs while pumping under this permit.
- From June 30 – November 30, diversions from the James River are not authorized unless the Chief Engineer issues written orders allowing diversions.
- Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

SEP 30 2005

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

Oscar Inc.
c/o Floyd Peterson
18892 390th Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Enclosed are the following: Water License Nos. 4612A-3, 6182-3, 6183-3, 6196-3, 6200-3, 6231-3 and 6332-3. These are the final water right documents completing the process of obtaining Water Rights.

As long as you use the water beneficially, as stated in the Water Licenses, State Water Laws provides that you have a continuing right to use the water.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 7, 2006

**JAMES RIVER WATER RIGHT QUALIFICATION REMINDER
WATER RIGHT NO(s). 6400-3 6183-3 6182-3**

To: OSCAR INC
18892 390TH AVE
HITCHCOCK SD 57348

From: Garland Erbele, Chief Engineer
Water Rights Program, DENR
(605) 773-3352

Subject: James River Qualification Reminder for Permit No(s). 6400-3
6183-3 6182-3 .

Qualifications on your water right indicate that you are not authorized to divert James River water after June 30th. Please, consider this a reminder and cease diversion if you have not already done so. You may resume diversion on the date stated in the qualifications on your water right.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

April 11, 2007

TO: All James River Water Right Holders

FROM: Garland Erbele, Chief Engineer
Water Rights Program, DENR *Garland Erbele*

SUBJECT: Proposed Amendment to Conditions on James River Water Rights

As Chief Engineer of the Water Rights Program, I am proposing amending conditions placed on many James River water rights in order to provide consistency for the period when pumping is authorized from the river. Please find enclosed the Chief Engineer's recommendation and a notice being published in newspapers along the James River in South Dakota. The notice schedules a May 9th hearing before the Water Management Board regarding the amendment.

Water Rights on the James River contain a variety of shutoff dates and by-pass flow qualifications. To facilitate the administration of James River water rights, the Chief Engineer is recommending that the Water Management Board amend water rights to provide a standard August 10th shut-off date and bypass conditions relative to USGS gaging stations. Real time flows can easily be accessed via USGS's website at <http://waterdata.usgs.gov/sd/nwis/>. The proposed amendments will not impose any condition more restrictive than currently in place and all water rights will remain subject to senior water rights and any written orders issued by the Chief Engineer.

Please review the enclosed recommendation and public notice. If your water right is among those that will be amended the section in the recommendation dealing with your water right is highlighted. If there is no highlighted section in your enclosure, then there is no proposed change to your water right. If you have any questions about the proposed changes, I encourage you to contact Lynn Beck or Mark Rath at (605) 773-3352.

enclosure

Instruction to Newspaper - Publish first Notice on April 12, 2007 with the second publication 7 days later. The Water Rights Program is responsible for payment.

NOTICE OF CHIEF ENGINEER'S RECOMMENDATION FOR JAMES RIVER WATER RIGHTS

Notice is given that the Water Rights Program, Department of Environment and Natural Resources, 523 E Capitol Avenue, Pierre SD proposes to amend conditions placed on many James River water rights in South Dakota. The objective is to bring consistency among water rights for the period when pumping is authorized from the river. This requires the modification to the conditions placed on a number of existing water rights. The amendments will not increase the authorized diversion rate or number of irrigated acres authorized under existing James River water rights. Water rights held by cities for municipal use will not be amended by this proposed action.

Currently, water rights differ in the date that pumping must cease and the amount of water that must bypass a United States Geological Survey's gaging station to pump. The Water Rights Program has reviewed all James River water rights and determined that they can be modified to a standard shut-off date of August 10th of each calendar year. In addition, it is proposed that the bypass condition along the river is best managed in three segments identified by USGS gaging stations as follows.

North Dakota Border to the Ashton gage (northern segment)

Ashton gage to Huron gage (central segment)

Huron gage to gage near Scotland (southern segment)

Water rights that currently have a bypass condition within each segment will be conditioned with a 20 cfs bypass.

The proposed amendment will not impose any conditions more restrictive than the conditions currently in place on any water right. James River water rights holders will be provided personal notice of the proposed amendment to their water right.

The Chief Engineer recommends that the Water Management Board approve deletion of the existing shut-off and bypass conditions on applicable water rights and add the following qualifications to those James River water rights as set forth above.

1. This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been so issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
2. This permit does not authorize diversions from the James River when there is less than 20 cfs bypassing the USGS gaging station at Ashton SD (or Huron and Scotland).

Any person interested in opposing or supporting this proposed amendment change shall file a written petition with the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". A petition filed by either an interested person or water right holder must be filed by April 30, 2007. The petition may be informal, but must include a statement describing the petitioner's interest, the petitioner's reasons for opposing or supporting the proposed change, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board hearing to consider the amendment to delete and add the above qualifications will be held at 11:00 AM, May 9, 2007 in the Floyd Matthew Training Center, 523 E Capitol Avenue, Pierre SD. The hearing will be held pursuant to the provisions of SDCL 46-1-14 and 46-2-17.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) defer, or 3) deny the amendment changes based on the facts presented at the public hearing. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-9 and 46-2-11.

The May 9, 2007 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from any interested person opposing the amendments. The request for an automatic delay must be filed by April 30, 2007.

Any hearing will be an adversary proceeding. Any person filing a petition has the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by April 30, 2007, at the above Water Rights Program address to request copies of information pertaining to this action. Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Water Rights Program if you have special needs for which special arrangements can be made.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

REPORT ON AMENDMENT OF JAMES RIVER WATER PERMITS/RIGHTS

April 24, 2007

Purpose of this Study

The James River historical appropriations show a variety of shut-off and by-pass qualifications adopted at different times. It is the purpose of this study to bring the shut-off and by-pass qualifications of active permits in line with the intentions of the Water Management Board as adopted at the April 1980 and May 1987 Board Meetings. In addition, the study shows that future appropriations of water from the James River can also be administered as stated above.

Historical Summary of James River Water Permits/Rights

During the 1960's the Water Resources Commission (predecessor to the Water Management Board) set a 300 cubic feet per second (cfs) limit and an August 10th cutoff date for appropriations from the James River. It was also determined that 20 cfs of water should by-pass Huron, SD to provide for downstream domestic use. The diversion limit was further defined as a combined 200 cfs of water above Huron and in addition permits having a combined 300 cfs of water could be approved above the SD Hutchinson-Yankton county line.

The Commission set limit was reached in 1968 and applications were deferred until 1975 when cancellations and underdeveloped appropriations allowed for deferred applications to be approved until the 300 cfs limit was reached. Applications were once again deferred until 1979 when a similar situation allowed James River diversions to be approved. In 1980 appropriations on the James River were once again opened and based on studies of actual irrigation development and use, it was projected that a maximum of 50-percent of permitted acres were irrigated at any one time. In 1987 a recommendation was made to the Water Management Board to change the qualifications on those active water permits upstream of Huron, SD requiring alignment with the August 10th cut-off date and the 20-cfs by-pass at the Third Street Dam, and for those water permits downstream of Huron, SD to the August 10th cut-off date.

Most recently, in 2003 Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews James River water rights for non-use status and possible cancellation. Currently there is unappropriated water in the James River.

See Attachment 1 for a detailed historical review of James River shut-off and by-pass qualifications.

Review of James River Water Permits/Rights

Past inspections of James River water permits/rights have resulted in updates to the number of permits and amounts of water appropriated from the river. See Attachment 2 for a map of the James River permits/rights and Attachment 3 for a list of James River Water Rights including their use and qualifications.

Presently there are eighty-six (86) water rights on the James River reach from the North Dakota (ND) border to the SD Hutchinson-Yankton county line with 231.81-cfs total diversions. These

water rights are for direct diversion of water from the James River during the normal irrigation season. The James River reach from Huron, SD to the ND border presently has fifty-one (51) water rights with 144.83-cfs total diversions. The majority of these water rights are in Spink (25) and Beadle (16) Counties with 124.94-cfs total diversions. At this time there are no water rights in effect for direct diversion of water from the James River upstream of the James River Columbia, SD U.S Geological Survey (USGS) gaging station. Currently 68.19-cfs is available for appropriation on the James River from the ND border to the Hutchinson/Yankton County line, of which, not more than 55.17-cfs is available for appropriation above the USGS gage at Huron due to the 200-cfs limit.

This leaves thirty-five water rights with 86.98-cfs direct diversion from the James River during the normal irrigation season on the stretch below Huron to the Hutchinson/Yankton County line. The majority of these water rights are in Davison (10) and Hutchinson (13) counties with 64.66-cfs total diversions. Currently up to 68.19-cfs is available for diversion below Huron.

Water Availability at Current Appropriation

Currently 231.81-cfs is appropriated on the James River from the ND border to the Hutchinson/Yankton County line, of which, **144.83-cfs** is appropriated above the USGS gage at Huron and **86.98-cfs** is appropriated below Huron to the Hutchinson/Yankton County line. A study was conducted, by water rights staff, to determine the probability that water would be available during the irrigation season until August 10 of each calendar year if existing water permits/rights are brought in line with a common August 10 shut-off date.

The James River was divided into three river reaches between USGS gaging stations, ND border to the USGS gage at Ashton, SD; USGS gage at Ashton, SD to the USGS gage at Huron, SD; and USGS gage at Huron, SD to USGS gage near Scotland, SD. The water appropriated for irrigation and other uses for each of the three river reaches was calculated, see table below.

RIVER REACH	IRR	OTH	TOTALS
ND border to Ashton	16.85	6.5	23.35
Ashton to Huron	95.2	26.28	121.48
TOTAL	112.05	32.78	144.83
Huron to HT/YA Co. ln.	54.2	32.78	86.98
TOTAL	54.2	32.78	86.98

Once these values were obtained, a formula for actual water use at current appropriation was developed.

Stated under, **Historical Summary of Shut-Off and By-Pass Qualifications, 1980 – 1984**, in Attachment 1, the actual irrigation development and use on the James River were found to be a maximum of 50-percent. This conclusion was reached after Water Rights Staff conducted detailed hydrographic surveys of the availability of water in the river and studies of the anticipated effects of approving water permits based on projected development and use by appropriators. A similar study was conducted with current irrigation diversions on the James River. Irrigation questionnaires from 1996 – 2006 were reviewed to estimate maximum

pumping at any one time during the irrigation season. The maximum found in each river reach is as follows:

ND border to the gage at Ashton, SD	52%
Gage at Ashton to gage at Huron, SD	42%
Gage at Huron, SD to HT/YA Co. line	29%

Therefore, the 50-percent value is still applicable today.

Since reporting for other uses is limited, 100-percent pumping is assumed. In addition 20-cfs for domestic use was added. The resulting formula for maximum use is as follows:

$0.5(\text{IRR cfs}) + 1.0(\text{OTH cfs}) + 20 \text{ cfs}$
IRR – irrigation use
OTH – other uses

RIVER REACH	IRR	50%IRR	OTH	DOM	NEEDED	% CHANCE AVAIL. AUG 10
ND border to Ashton	16.85	8.42	6.5	20	34.92	65
Ashton to Huron	95.2	47.6	26.28	20	93.88	56
Huron to HT/YA Co. ln.	54.2	27.1	32.78	20	79.88	57

In order to bring existing water permits/rights in line with a common August 10 shut-off date the percent chance that water will still be available August 10 must be calculated. This was done using James River flows based on 50 or more years of USGS stream flow data for each of the three river reaches. There is a 65% chance, or better, of flow being available in the reach from the ND border to the Ashton gage; 56% chance, or better, in the reach from the Ashton gage to the gage at Huron; 57% chance, or better, in the reach from the gage at Huron to the Scotland gage. A bar graph representing the above percent chance of water being available August 10th can be found in Attachment 4.

There are factors of safety built into the computations. All of the percent probabilities that water will be available at current appropriations were calculated using flow data collected from the James River during years pumping occurred. Also, while using a 50% figure for simultaneous irrigation pumping it is assumed that 100% of all other uses will be pumping at the same time.

Water Availability at Full Appropriation

In addition, the study shows that future appropriations of water from the James River can also be administered as stated above. Using estimates for future appropriations calculations showed that there is a 63% chance, or better, of flow being available in the reach from the ND border to the Ashton gage; 50% chance, or better, in the reach from the Ashton gage to the gage at Huron; 56% chance, or better, in the reach from the gage at Huron to the Scotland gage. A bar graph representing the above percent chance of water being available August 10th can be found in Attachment 5.

The same factors of safety apply to the calculations at full appropriation as those for calculations at current appropriations.

Proposed Amendment of James River Water Rights

The present appropriations from the ND-SD border to the Hutchinson-Yankton County line total 231.81-cfs. The present total appropriations are less than the 300-cfs limit set by the Water Resources Commission in 1965 and below the June 1985 appropriation total of 254.07-cfs that brought about the Water Management Board's adoption of qualification changes during the May 1987 meeting.

To facilitate the judicious administration of the use of James River water, the protection of the in-stream beneficial uses of the river for recreational use and as a fishery, to maintain good quality water as well as sufficient quantity and velocity of water, and bring the shut-off and by-pass qualifications of active permits in line with the intentions of the Water Management Board as adopted at the April 1980 and May 1987 Board Meetings; it is proposed that appropriations of water from the James River be administered by similar qualifications adopted at the May 1987 meeting without the prior right qualification for Future Use Permit No. 1067-3. Diversions will still be subject to senior water rights and any written orders by the Chief Engineer.

Although the James River is involved in Future Use Permit No. 1067-3, Oahe Conservancy Sub-District, this permit is predicated or conditioned upon Missouri River water being delivered to the James River through the Oahe Project. Presently Future Use Permit No. 1067-3 is allotted 6500-cfs of such water from the James River, but the status of the permit is questionable since the Oahe Project has been terminated.

The Chief Engineer, Water Rights Program, proposes that the Water Management Board take action as stated in the Chief Engineer's Recommendation.

A handwritten signature in cursive script, appearing to read "Lynn Beck".

Lynn Beck
Natural Resources Engineer Specialist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

**CHIEF ENGINEER'S RECOMMENDATIONS FOR WATER RIGHTS
ON THE JAMES RIVER IN SOUTH DAKOTA**

Chief Engineer's Recommendation for Water Rights Above Huron:

The Chief Engineer is recommending that the Water Management Board amend the following permits/rights located above Huron as described:

ND Border to the gage at Ashton, SD

Water Permit No. 6427-3:

Delete: Qualification No. 1

1. Diversion of water from the James River shall be in accordance with the following criteria:

- When pumping from the James River, low flows as needed for down stream domestic use, including livestock water and prior water rights must be by-passed.
- From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this Permit.
- From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 63 cfs while pumping under this Permit.
- From July 1 - October 1, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
- Diversion under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

The Chief Engineer is also recommending that the Water Management Board approve the following Qualifications as standard for existing James River permits issued from the ND border to the gage at Ashton, SD.

Add:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
 - This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Ashton, SD after pumping.
-

Gage at Ashton, SD to the gage at Huron, SD

Water Right No. 5027-3:

Delete: Qualification No. 1 "Low flows as needed for downstream domestic use and prior water rights must be bypassed. The minimum bypass at Huron for domestic use is 20 cfs. During the period of April 1 through June 30 of each calendar year, diversions are authorized only when 60 cfs or more are by-passed after diversion for domestic use or prior water rights, unless a lower flow by-pass based upon the need for water in Lake Byron verses the need for water downstream, is authorized by the Chief Engineer. This permit does not authorize diversion of water from the James River after June 30th of each calendar year unless written orders have been so issued by the Chief Engineer. In the management of the James River under this permit, flows will be monitored at all gaging stations, and cutoffs will be timed to insure water supplies for domestic use and prior water rights."

Water Permit No. 5737-3:

Delete: Qualification No. 1 "When pumping from the James River into the storage pond, low flows as needed for downstream domestic use, including livestock water, and prior water rights/permits must be by-passed. From March 1 – March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this Permit. From April 1 – June 30, diversions from the James River are authorized only when the flow at the Huron Third Street Dam exceeds 63 cfs while pumping under this Permit. From June 30 until November 30, diversions from the James River are not authorized unless allowed by written orders issued by the Chief Engineer. Diversion under this Permit shall be in accordance with any written orders issued by the Chief Engineer."

Water Right Nos. 6182-3 & 6183-3; Water Permit Nos. 6398-3, 6400-3, & 6505-3:

Delete: Qualification No. 1

1. Diversion of water from the James River shall be in accordance with the following criteria:

- When pumping from the James River, low flows as needed for down stream domestic use, including livestock water and prior water rights must be by-passed.

- From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this Permit.
- From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 63 cfs while pumping under this Permit
- From July 1 - October 1, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
- Diversion under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

Water Permit Nos. 6375-3, 6588-3, 6589A-3, 6589B-3, 6590-3, 6613-3, 6614-3, 6614A-3, & 6738-3:
Delete: Qualification No. 1

1. Diversion of water from the James River shall be in accordance with the following criteria:

- When pumping from the James River, low flows as needed for down stream domestic use, including livestock water and prior water rights must be by-passed.
- From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 63 cfs while pumping under this Permit
- From July 1 - October 31, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
- Diversion under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

The Chief Engineer is also recommending that the Water Management Board approve the following Qualifications as standard for existing James River permits issued below the gage at Ashton, SD to the gage at Huron, SD.

Add:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

Water Right Nos. 1734-3, 1735-3, 1943-3, 1979-3, 2129-3, 2386-3, 2629-3, 4066A-3, 4066B-3, 4071-3, 5651-3, 5925-3, & Water Permit No. 6081-3.

Delete: "flowing over James River Dam" from Qualification No. 2.

Chief Engineer's Recommendation for Water Rights Below Huron:

Gage at Huron, SD to the gage near Scotland, SD

The Chief Engineer is recommending that the Water Management Board amend the following permits/rights located below the gage at Huron, SD as described:

Water Right Nos. 607-3 & 608-3:

Delete: "This permit is granted allowing withdrawal of water whenever 25 cfs or more is flowing past your diversion point."

Add: "This permit does not authorize diversions from the James River when less than 20 cfs is by-passing the gage near Scotland, SD after pumping."

Water Right Nos. 690-3 & 699B-3:

Delete: "Use of water under this water right is subject to flows in the James River of 15 cfs or more past your diversion point."

Add: "This permit does not authorize diversions from the James River when less than 20 cfs is by-passing the gage near Scotland, SD after pumping."

Water Permit No. 6534-3:

Delete: "July 15th" from Qualification No. 1.

Add: "August 10th" to Qualification No. 1.

Contact Lynn Beck, Water Rights Program staff engineer at (605) 773-3352 if you have questions regarding this recommendation.



Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

April 25, 2007

Attachment 1

HISTORY OF JAMES RIVER WATER PERMITS/RIGHTS QUALIFICATIONS

April 9, 2007

Historical Summary of Shut-Off and By-Pass Qualifications:

1965 - 1979

In 1965 the South Dakota (SD) Water Resources Commission, a predecessor to the SD Water Management Board, placed a 300 cubic feet per second (cfs) total diversion limit on the James River with a maximum combined total diversion limit of 200-cfs from Huron, SD to the North Dakota border. Due to Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the SD Yankton-Hutchinson County Line. The Water Resources Commission also set an automatic August 10th diversion shutoff date unless a written order from them or their legal representative was issued to the holder of a James River water right.

In May of 1968 the 300-cfs limit was reached and the SD Water Rights Commission, also a predecessor to the SD Water Management Board, adopted the policy of automatically deferring without advertising further water permit applications until it was determined that non-appropriated water was available in the James River.

It was determined at the November 1975 Water Rights Commission Meeting that water permits could again be issued for James River water within the 300-cfs limit because of prior permit cancellations. Permits were issued at that time to bring the total appropriations back to the 300-cfs limit.

Applications for James River water received after November 1975 were advertised and officially deferred at the January and March 1979 Water Rights Commission Meetings. The James River was withdrawn from further appropriations for one year at the March 1979 Water Rights Commission Meeting until further studies could be made to determine if there was non-appropriated James River water available.

1980- 1984

The James River was again opened for appropriation of water at the January 1980 Water Rights Commission Meeting. The following items pertaining to James River water use were noted in the July 1980 Findings of Fact, Conclusions of Law, and Final Decision resulting from this meeting:

- The Water Rights Staff had conducted detailed hydrographic surveys of the availability of water in the river and studies of the anticipated effects of approving water permits based on projected development and use by appropriators,
- Based on such studies of actual irrigation development and use, it is projected that a maximum of 50-percent of permitted acres will be irrigated at any one time,
- Based on such surveys and studies, there is non-appropriated water available during the spring and through July 15th of normal years,
- The determination of non-appropriated water availability was based strictly on naturally occurring flows and not on anticipated flows diverted into the river from the proposed Garrison Project,
- The Water Quality Staff conducted a detailed study of the river as a fishery,

- Citizens of South Dakota, as well as other states, make substantial use of the river for recreational fishing as well as other in stream beneficial uses,
- Those portions of the river below Huron, SD support a variety of fish and aquatic life as well as acting as a spawning ground for fish in the Missouri River,
- Protection of the in stream beneficial uses of the river requires good quality of water as well as sufficient quantity and velocity of water, and
- Protection of the in stream beneficial uses of the river could be accomplished while still approving additional permits for appropriation by imposing certain by-pass requirements on those issued for use downstream of Huron, SD.

1985 - 1987

In the spring of 1985 examinations were completed by Water Rights Program personnel to update the status of appropriations from the James River. As a result of the examinations, twenty-five (25) water permits were cancelled for non-development or forfeited for non-use. The actual appropriation amount of several other water permits were also reduced to the actual amount of water being used by the appropriator. As of June 1985 there were total appropriations of 254.07-cfs from the James River.

A recommendation was made to the Water Management Board at the May 1987 meeting to change the qualifications on those active water permits upstream of Huron, SD requiring alignment with the August 10th cut-off date and the 20-cfs by-pass at the Third Street Dam, and for those water permits downstream of Huron, SD to the August 10th cut-off date.

At the May 1987 Water Management Board Meeting it was proposed that for those James River permits downstream of Huron, SD the following qualifications be deleted:

- No diversions after July 15th of each year, or in periods of obvious low flow without a written order of the Water Management Board or its legally appointed representative. Diversions shall be in accordance with written orders, if any, of the board or its representative.
- To maintain instream flows for instream and domestic purposes, the permit does not authorize diversions when there is less than the following cubic-feet-per-second bypassing the Scotland Gaging Station:
 - (a) less than 80-cfs during any month of April,
 - (b) less than 70-cfs during any month of May,
 - (c) less than 50-cfs during any month of June, and
 - (d) less than 20-cfs during the remainder of the year.

and replaced with the following:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year, nor at any time when the river's flow is obviously low, unless written orders have been so issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

For those permits upstream of Huron, SD it was also proposed that the following qualifications be deleted:

- No diversions after July 15th of each year, nor in periods of obvious low flow without a written order of the Water Management Board or its legally appointed representative. Diversions shall be in accordance with written orders, if any, of the Board or its representative.
- Prior water rights on the James River contain an August 10th cut-off date, and the additional requirement that diversions cannot be made when 20-cfs are not by-passing the Third Street Dam in Huron, to provide for downstream domestic use. In the management of the James River under these permits, flows will be monitored at all gauging stations, and cut-offs will be timed to insure water supplies to fulfill the prior water rights and domestic qualification.
- The Oahe Subdistrict has priority rights to portions of this water to the limited extent they may exist under Future Use Withdrawal Permit No. 1067-3. This application is approved subject to these prior rights if or when the Oahe Subdistrict develops the reserve supply.

and replaced with the following:

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year, nor at any time when the river flow is obviously low, unless written orders have been so issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when water is not by-passing the James River Dam north of Huron or when less than 20-cfs of water is by-passing the Third Street Dam in Huron.
- Prior rights may exist for portions of this water to a limited extent under Future Use Withdrawal Permit No. 1067-3. This permit is subject to these prior water rights if or when the reserved water supply is developed.

These proposals were adopted by the Water Management Board at the May 1987 meeting.

2003 - Present

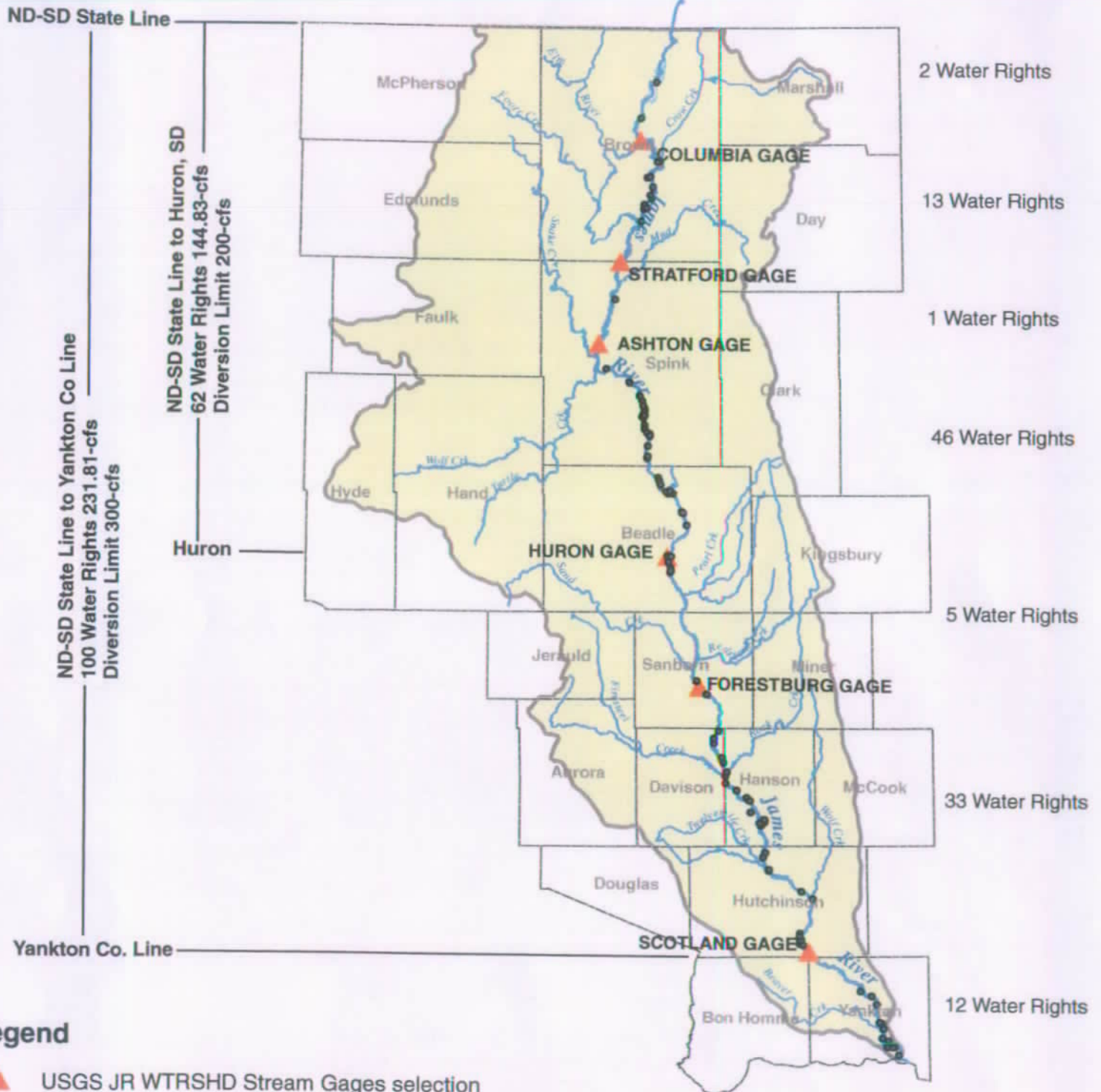
In 2003 Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews James River water rights for non use status and possible cancellation.

Presently there are eighty-six (86) water rights on the James River reach from the North Dakota (ND) border to the SD Hutchinson-Yankton county line with 231.81-cfs total diversions. These water rights are for direct diversion of water from the James River during the normal irrigation season. The James River reach from Huron, SD to the ND border presently has fifty-one (51) water rights with 144.83-cfs total diversions. The majority of these water rights are in Spink (25) and Beadle (16) Counties with 124.94-cfs total diversions. At this time there are no water rights in effect for direct diversion of water from the James River upstream of the James River Columbia, SD U.S Geological Survey (USGS) gaging station.

This leaves thirty-five water rights with 86.98-cfs direct diversion from the James River during the normal irrigation season on the stretch below Huron to the Hutchinson/Yankton County line. The majority of these water rights are in Davison (10) and Hutchinson (13) counties with 64.66-cfs total diversions.

Attachment 2 JAMES RIVER BASIN, SOUTH DAKOTA

Map showing James River Basin and water rights located between streamflow-gaging stations in South Dakota.
April 24, 2007



Legend

- ▲ USGS JR WTRSHD Stream Gages selection
- James River Water Rights
- ▲ USGS James River Stream Gages
- James River Watershed in SD

JAMES RIVER WATER RIGHTS BY GAGING STATION

WRTN ORD – Can't pump after the date without a "Written Order" from the Chief Engineer.

ABOVE HURON:

WR's above Columbia Gage: 2

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1	USE 2	USE 3
US1-3	BN	1	10/16/1934	LC	0.000			FWP	DOM	REC
5516-3	BN	1	03/08/1991	LC	0.000	110 CFS AT DIV		FWP		
total					0.000					

WR's above Stratford Gage: 13

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1	USE 2
27-3	BN	2	03/31/1941	LC	0.500			FWP	REC
1817-3	BN	2	01/01/1935	LC	0.000	VR		REC	
5924-3	BN	2	04/03/1996	PE	0.000	FLOOD FLOWS		FWP	
1125-3	BN	2	08/19/1964	LC	1.980	20 CFS		IRR	
1491-3	BN	2	01/15/1968	LC	1.940	20 CFS		IRR	
6427-3	BN	2	06/26/2003	PE	6.000	89 CFS	WRTN ORD 7/1	FWP	
4066A-3	BN	2	09/03/1976	LC	0.680	20 CFS	WRTN ORD 8/10	IRR	
4066B-3	BN	2	09/03/1976	LC	0.650	20 CFS	WRTN ORD 8/10	IRR	
5925-3	BN	2	04/09/1996	LC	2.000	20 CFS	WRTN ORD 8/10	IRR	
5277-3	BN	2	01/25/1989	LC	2.300	20 CFS	WRTN ORD 8/10	IRR	
6081-3	BN	2	05/27/1998	PE	2.220	20 CFS	WRTN ORD 8/10	IRR	
2629-3	BN	2	11/17/1975	LC	1.440	20 CFS	WRTN ORD 8/10	IRR	
1841-3	BN	2	01/01/1935	LC	0.000	VR		IRR	
total					19.710			REC	

WR's above Ashton Gage: 1

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1
4071-3	SP	3	01/20/1977	LC	3.640	20 CFS	WRTN ORD 8/10	IRR
total					3.640			

ND to Ashton appropriated cfs = 23.35, 50% irrigation pumping plus 100% other use pumping and 20 cfs for domestic use, current needed cfs = 34.92.

WR's above Huron Gage: 46

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1	USE 2
1172-3	SP	4	03/08/1965	LC	1.500	20 CFS	WRTN ORD 8/10	IRR	
1421-3	SP	4	06/15/1967	LC	0.670	20 CFS	WRTN ORD 8/10	IRR	
2129-3	SP	4	10/10/1974	LC	1.690	20 CFS	WRTN ORD 8/10	IRR	
1943-3	SP	4	05/30/1972	LC	1.890	20 CFS	WRTN ORD 8/10	IRR	

PERMIT NO	CO	GAGE NO	PRIOR DATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1	USE 2
1735-3	SP	4	02/16/1970	LC	1.940	20 CFS	WRTN ORD 8/10	IRR	
6589A-3	SP	4	02/04/2005	PE	2.290	63 CFS	WRTN ORD 7/1	IRR	
6587-3	SP	4	11/04/1968	PE	1.910	20 CFS	WRTN ORD 8/10	IRR	
1733-3	SP	4	10/12/1967	LC	3.770	20 CFS	WRTN ORD 8/10	IRR	
6400-3	SP	4	02/10/2003	PE	6.860	63 CFS	WRTN ORD 7/1	IRR	
6590-3	SP	4	02/04/2005	PE	1.560	63 CFS	WRTN ORD 7/1	IRR	
1734-3	SP	4	11/04/1968	LC	3.750	20 CFS	WRTN ORD 8/10	IRR	
6589B-3	SP	4	02/04/2005	PE	2.290	63 CFS	WRTN ORD 7/1	IRR	
1450-3	SP	4	10/12/1967	LC	4.440	20 CFS	WRTN ORD 8/10	IRR	
6588-3	SP	4	02/04/2005	PE	0.000	63 CFS	WRTN ORD 7/1	IRR	
1538-3	SP	4	03/19/1968	LC	4.000	20 CFS	WRTN ORD 8/10	IRR	
2396-3	SP	4	10/10/1975	LC	1.880	20 CFS	WRTN ORD 8/10	IRR	
5737-3	SP	4	12/17/1992	PE	1.880	63 CFS	WRTN ORD 8/10	IRR	
6375-3	SP	4	01/02/2003	PE	5.350	63 CFS	WRTN ORD 6/30	IRR	
6738-3	SP	4	07/05/2006	PE	2.890	63 CFS	WRTN ORD 7/1	IRR	
2386-3	SP	4	09/24/1975	LC	1.280	20 CFS	WRTN ORD 7/1	IRR	
6398-3	SP	4	02/24/2003	PE	0.610	63 CFS	WRTN ORD 8/10	IRR	
1979-3	SP	4	03/27/1973	LC	3.760	20 CFS	WRTN ORD 7/1	IRR	
6182-3	SP	4	02/22/2000	LC	7.030	63 CFS	WRTN ORD 8/10	IRR	
6183-3	SP	4	02/22/2000	LC	7.830	63 CFS	WRTN ORD 6/30	IRR	
616-3	SP	4	06/06/1959	LC	1.140			IRR	
1027-3	BD	4	01/01/1936	LC	0.000	20 CFS		MUN	
6505-3	BD	4	04/26/2004	PE	1.560	63 CFS	WRTN ORD 7/1	IRR	
6613-3	BD	4	03/31/2005	PE	6.680	63 CFS	WRTN ORD 7/1	IRR	
6614-3	BD	4	03/31/2005	PE	1.890	63 CFS	WRTN ORD 7/1	IRR	
6614A-3	BD	4	03/31/2005	PE	0.000	63 CFS	WRTN ORD 7/1	IRR	
5651-3	BD	4	04/01/1947	LC	0.180	20 CFS	WRTN ORD 8/10	IRR	
2387-3	BD	4	12/12/1966	LC	3.500	20 CFS	WRTN ORD 8/10	IRR	
2390A-3	BD	4	09/26/1975	PE	1.890	20 CFS	WRTN ORD 8/10	IRR	
2390-3	BD	4	09/26/1975	LC	1.890	20 CFS	WRTN ORD 8/10	IRR	
5027-3	BD	4	06/14/1984	LC	12.000	60 CFS	WRTN ORD 8/10	IRR	
1276-3	BD	4	01/01/1949	LC	2.220	VR	WRTN ORD 6/30	REC	MUN
4866-3	BD	4	01/01/1949	LC	1.560	20 CFS	WRTN ORD 8/10	IRR	
2643-3	BD	4	02/06/1976	LC	1.620	20 CFS	WRTN ORD 8/10	IRR	
5321-3	BD	4	04/27/1989	LC	0.030	20 CFS	WRTN ORD 8/10	COM	
2049-3	BD	4	02/13/1974	LC	2.000	20 CFS	APRIL MAY JUNE	MUN	REC
9-3A	BD	4	03/31/1950	LC	5.000			MUN	
9-3	BD	4	04/22/1914	LC	5.000			MUN	

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1	USE 2
37A-3	BD	4	11/04/1942	PE	0.000	20 CFS		MUN	
37-3	BD	4	11/04/1942	LC	2.250			IND	
755-3	BD	4	12/23/1960	LC	0.000	2-15 CFS		MUN	
1022-3	BD	4	01/01/1936	LC	0.000	VR		MUN	
total					121.480				

Ashton to Huron appropriated cfs = 121.48, 50% irrigation pumping plus 100% other use pumping and 20 cfs for domestic use, current needed cfs = 93.88,

BELOW HURON:

WR's above Forestburg Gage: 5

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL WRTN ORD	USE 1
550-3	BD	5	09/10/1958	LC	0.600	20 CFS		IRR
559-3A	BD	5	12/03/1958	LC	2.010	15 CFS		IRR
US552-3	BD	5	04/25/1946	LC	0.000			IRR
5385-3	BD	5	01/01/1955	LC	1.360		WRTN ORD 8/10	IRR
5357-3	SA	5	01/01/1936	LC	0.000			REC
total					3.97			

WR's above Scotland Gage: 33

PERMIT NO	CO	GAGE NO	PRIORDATE	STATUS	CUR CFS	FL QUAL1	FL QUAL2	FL QUAL WRTN ORD	USE 1
5500-3	SA	6	03/06/1991	LC	0.250			WRTN ORD 8/10	IRR
1422-3	DN	6	01/02/1968	LC	2.000			WRTN ORD 8/10	IRR
305-3	DN	6	09/22/1956	LC	0.890				IRR
1917-3	DN	6	12/22/1971	LC	1.740			WRTN ORD 8/10	IRR
5207-3	DN	6	04/20/1957	LC	5.580				IRR
5022-3	DN	6	06/19/1984	LC	2.900	20 CFS PST DIV			IRR
4354-3	DN	6	04/06/1978	LC	29.000	20 CFS PST DIV			RWS
690-3	DN	6	03/02/1960	LC	0.860	15 CFS PST DIV			MUN
699B-3	DN	6	03/02/1960	LC	1.630	15 CFS PST DIV			IRR
280-3	DN	6	01/01/1955	LC	0.890				IRR
1693A-3	DN	7	08/04/1969	PE	1.330				IRR
5121-3	HS	7	01/28/1987	LC	0.880			WRTN ORD 8/10	IRR
1900-3	HS	7	09/16/1971	LC	1.550			WRTN ORD 8/10	IND
436-3	HS	7	04/05/1945	LC	1.050			WRTN ORD 8/10	IRR
4656-3	HS	7	09/16/1971	LC	5.820			WRTN ORD 8/10	IRR
608-3	HS	7	05/05/1959	LC	0.380	25 CFS PST DIV			IRR
1902-3	HS	7	09/16/1971	LC	4.750				IRR
4717A-3	HS	7	09/16/1971	LC	1.670			WRTN ORD 8/10	IRR
2411-3	HS	7	10/20/1975	LC	2.000			WRTN ORD 8/10	IRR
607-3	HT	7	05/05/1959	LC	0.660	25 CFS PST DIV			IRR
6534-3	HT	7	08/17/2004	PE	2.780			WRTN ORD 7/15	IRR
6125-3	HT	7	02/01/1999	PE	1.560			WRTN ORD 8/10	IRR

PERMIT NO	CO	GAGE NO	PRIOR DATE	STATUS	CUR CFS	FL QUAL1	FL QUAL2	FL QUAL WRTN ORD	USE 1
5970-3	HT	7	12/13/1996	LC	1.440			WRTN ORD 8/10	IRR
4072-3	HT	7	01/24/1977	LC	0.480			WRTN ORD 8/10	IRR
2385-3	HT	7	09/23/1975	LC	1.300			WRTN ORD 8/10	IRR
6131-3	HT	7	03/22/1999	LC	0.770			WRTN ORD 8/10	IRR
5392A-3	HT	7	03/01/1990	LC	1.340			WRTN ORD 8/10	IRR
6506-3	HT	7	04/26/2004	PE	0.000			WRTN ORD 8/10	IRR
5391-3	HT	7	03/01/1990	LC	2.610			WRTN ORD 8/10	IRR
6132-3	HT	7	03/22/1999	LC	0.850			WRTN ORD 8/10	IRR
6082-3	HT	7	06/02/1998	PE	0.570			WRTN ORD 8/10	IRR
2631A-3	HT	7	11/25/1975	LC	1.700			WRTN ORD 8/10	IRR
6083-3	HT	7	06/02/1998	PE	1.780			WRTN ORD 8/10	IRR
total					83.01				

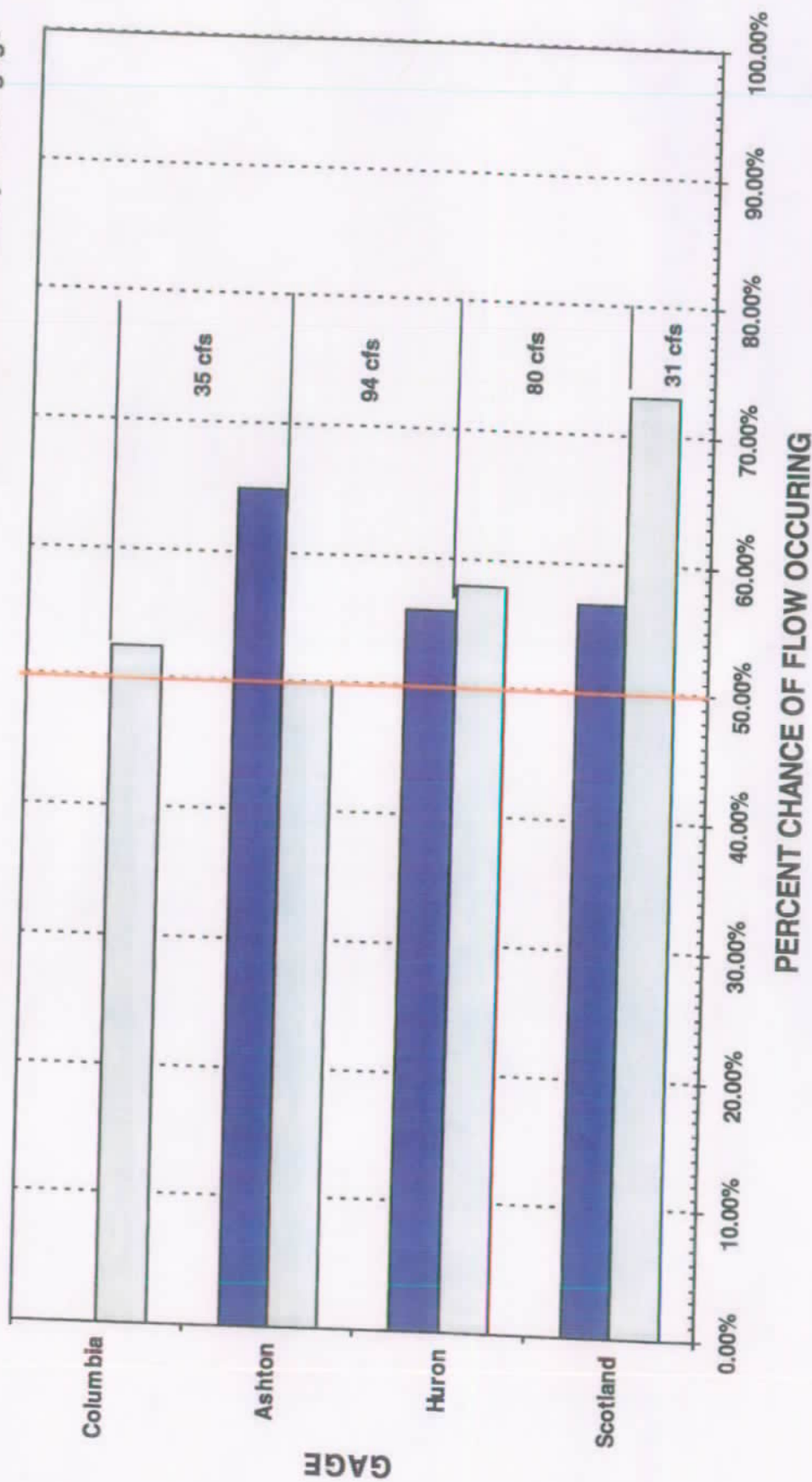
Huron to Scotland appropriated cfs = 86.98. 50% irrigation pumping plus 100% other use pumping and 20 cfs for domestic use, current needed cfs = 79.88.

% CHANCE OF FLOW BEING AVAILABLE FOR DIVERSION THRU AUGUST 10TH

Cfs values are at 50% irrigation pumping and 100% other use diversion at current appropriation plus 20 cfs domestic.

■ % chance to satisfy above gage

□ % chance to satisfy below gage

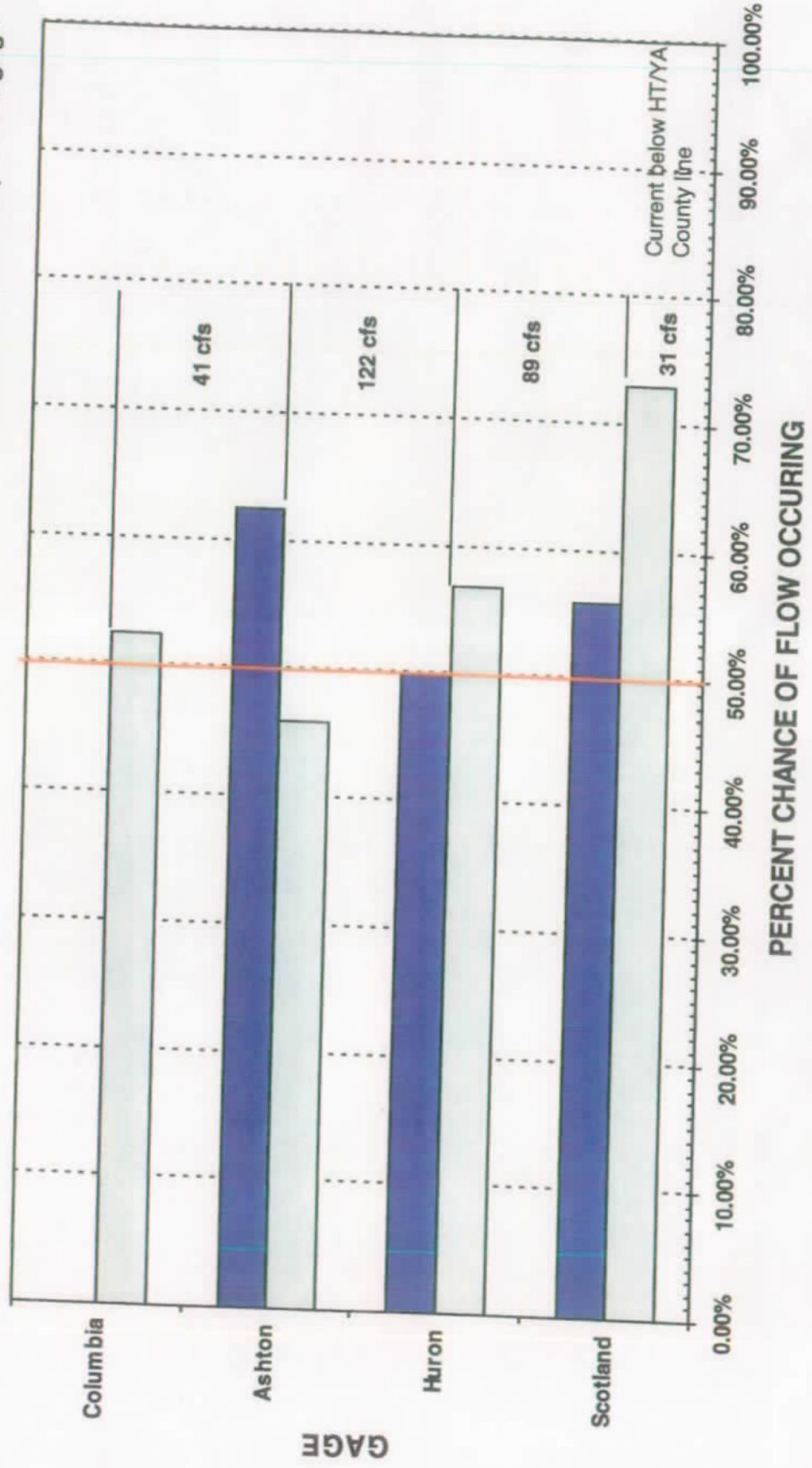


% CHANCE OF FLOW BEING AVAILABLE FOR DIVERSION THRU AUGUST 10TH

Cfs values are at 50% irrigation pumping and 100% other use diversion when fully appropriated plus 20 cfs domestic.

■ % chance to satisfy above gage

□ % chance to satisfy below gage





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

May 21, 2007

NOTICE

TO: FLOYD PETERSON
OSCAR INC
18892 390TH AVE
HITCHCOCK SD 57348

FROM: Garland Erbele, Chief Engineer
Water Rights Program, DENR

SUBJECT: Amendment to Qualifications on Water Right Nos. 6182-3, 6183-3 and Permit No. 6400-3

On May 9th, the Water Management Board amended qualifications to Water Right Nos. 6182-3, 6183-3 and Permit No. 6400-3. This action was taken as set forth in notice sent to you on April 11, 2007 and published in James River basin newspapers and the staff report mailed to you on April 25, 2007.

Attached is a listing of the qualifications as amended and the deleted qualification which reflects the Board's action to your water rights. Please file this with your water permit records. All other qualifications listed on your water rights were not changed by the Board's action and remain in effect. For example, submittal of the annual irrigation questionnaire continues to be a qualification of your water permit.

If you have any questions about the Board's action or the amendment, please contact Lynn Beck at 605 773-3352.

Enclosure

Attachment to Water Right No. 6183-3

Amended Qualifications set by the Water Management Board on May 9, 2007

Qualifications as amended to Water Right No. 6183-3

- This permit does not authorize diversion of water from the James River after August 10th of each calendar year, or at any time the river's flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
- This permit does not authorize diversions from the James River when there is less than 20-cfs by-passing the gage at Huron, SD after pumping.

Qualifications as deleted Water Right No. 6183-3

- When pumping from the James River, low flows as needed for down stream domestic use, including livestock water and prior water rights must be by-passed.
- From March 1 to March 31, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 29 cfs while pumping under this Permit.
- From April 1 to June 30, diversions from the James River are authorized only when the flow at the Huron Third Street Dam is at least 63 cfs while pumping under this Permit
- From July 1 - October 1, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
- Diversion under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

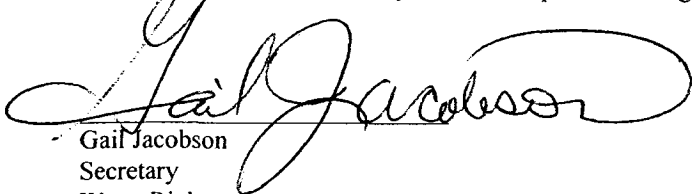
CERTIFICATION

I hereby certify that on May 21, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 21, 2007 regarding Amendment to James River Qualifications addressed as stated below:

Marke Grasse, 38313 131st St, Aberdeen SD 57401
Ron Wheeler, Lake Byron Watershed, PO Box 1363, Huron SD 57350
Floyd Peterson, 18892 390th Ave Hitchcock SD 57348
Reed Bixler, Bixler Farms, 39477 184th St, Hitchcock SD 57348
Ruben Endander, 18239 398th Ave, Frankfort SD 57440
Lyle Arden Bendenagel, 39586 176th St, Frankfort SD 57440
Arne Svarstad, 13797 392nd Ave, Aberdeen SD 57401
Alfred Locken, 39643 137th St, Bath SD 57427
Jon & Loren Locken, 13755 396th Ave, Bath SD 57427
Keith Kettering, 39064 156th St, Mellette, SD 57461
Roger Locken, Locken Ag, 39643 137th St, bath SD 57427
Orrin Roth, 26752 421st Ave, Parkston SD 57366
Loren Roth, 42051 262nd St, Alexandria SD 57311
Don Barber, 41321 Hwy 38, Mitchell SD 57301
Mary K Puetz, 910 Firesteel Dr, Mitchell SD 57301
Russ Werning, 1543 Parkview Dr, Watertown SD 57201
Harvey Wollman, 40004 184th St, Frankfort SD 57440
John Wipf, Spink Colony, 18206 Spink Ln, Frankfort SD 57440
Jerry Kleinsasser, Glendale Colony, 17866 Glendale Dr, Frankfort SD 57440
Sam Waldner, Huron Colony, 40068 Huron Colony Ln, Huron SD 57350

A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building


Gail Jacobson
Secretary
Water Rights

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF HUGHES)

Sworn to, before me, this 21st day of May, 2007.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

October 21, 2010

Floyd Peterson
209 27th St NW
Huron SD 57350-5010

RE: Water Right or Permit Nos. 616-3, 1509-3, 3255-3, 4612A-3, 5601-3 6182-3, 6183-3,
6196-3, 6200-3, 6231-3, 6312A-3, 6332-3, 6400-3, 6655-3, 6711A-3, 6331A-3, 7125-3
& 7183-3

Dear Oscar:

Enclosed is a "Notice" dated October 15, 2010 concerning the 2010 irrigation questionnaires.

The notice was originally mailed to 18892 30th Ave, Hitchcock SD. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures



0183-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

August 6, 2012

JAMES RIVER WATER RIGHT QUALIFICATION REMINDER
WATER RIGHT NO(s). 6182-3, 6183-3, 6400-3, 7183-3

To: OSCAR INC
209 27TH ST NW
HURON SD 57350

From: Garland Erbele, Chief Engineer
Water Rights Program, DENR
(605) 773-3352

Subject: James River Qualification Reminder for Permit No(s). 6182-3, 6183-3, 6400-3,
7183-3

Qualifications on your water right indicate that you are not authorized to divert James River water after August 10th. Please, consider this a reminder and cease diversion if you have not already done so. No diversion can take place after August 10th unless under written orders by the Chief Engineer. You may resume diversion on the date stated in the qualifications on your water right.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

August 9, 2012

Oscar Inc
209 27th St NW
Huron SD 57350

Dear Mr. Peterson:

In response to a telephone call on August 9, 2012 requesting an extension to pump from the James River beyond the August 10th cutoff, you are authorized to pump under Water Right Nos. 6400-3, 6182-3, 6183-3 and 7183-3 subject to the following:

- No irrigation from the James River beyond August 24, 2012 for the 2012 irrigation season
- Flows remain available for downstream domestic users and prior water rights
- Flows past the Huron gaging station remain above 20 cubic feet per second after pumping

We will continue to monitor the James River and if conditions warrant, you may be shutoff prior to August 24, 2012, with no prior notice given. If you have any questions, please contact Lynn Beck or Mark Rath at (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

August 24, 2012

Oscar Inc
209 27th St NW
Huron SD 57350

Dear Mr. Peterson:

In response to a telephone call on August 24, 2012 requesting an extension to pump from the James River beyond the August 10th cutoff, you are authorized to pump under Water Right Nos. 6400-3, 6182-3, 6183-3, and 7183-3 subject to the following:

- No irrigation from the James River beyond September 7, 2012 for the 2012 irrigation season
- Flows remain available for downstream domestic users and prior water rights
- Flows past the Huron gaging station remain above 20 cubic feet per second after pumping

We will continue to monitor the James River and if conditions warrant, you may be shutoff prior to September 7, 2012, with no prior notice given. If you have any questions, please contact Lynn Beck or Mark Rath at (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

Gronlund, Eric

From: Duvall, Ron
Sent: Monday, May 11, 2015 10:50 AM
To: Goodman, Jeanne; Gronlund, Eric; Rath, Mark
Cc: Smith, Kim
Subject: FW: Investigation

For Water Rights...

NOTE: When replying to this email do NOT click the person's [\[mailto:myname@email.com\]](mailto:myname@email.com) address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

From: dave olsen [\[mailto:ojbar@yahoo.com\]](mailto:ojbar@yahoo.com)
Sent: Saturday, May 09, 2015 1:24 PM
To: DENR INTERNET INFORMATION
Cc: Joel A. Arends
Subject: Investigation

Dear DENR Office Staff and Water Board Members.

It was great to be in meetings with you last week. I am thankful for your time in hearing all the cases at last weeks hearings.

I have concerns and am requesting you to investigate Sec 15 water permits in Cornwall township part of the James River watershed. These three systems in question are operated by Oscar Inc and were permitted back around 2000 or 2001. The systems ran for the first two years and have not ran since. Since your call and investigation on the standby permit held in the unnamed tributary in the section north of there, the three old systems have been taken down, a well drilling truck was out in the middle of that section, and a new half mile system has been installed which has yet to run as well.

Please pull the Maps on this section of ground and they will show you for each year of record, that these systems have not moved. There is no pump and there has not been a pump in place for well over 10 years at the discharge location along the James River.

Making this request is not in opposition of the Peterson's in any fashion, but more so to further show that the Water Board and your department that the voluntary reporting system is broke. This System which is part of your science is holding some South Dakotans back from the possible use of extra water that may be available in the water shed as well in different aquifers within the State. Your Department needs to take a deep long look into who holds water rights, the true beneficial use of these rights after permitting, and of course Truth.

What is the penalty for false reporting on a water survey? What is the penalty for falsely testifying at your water rights hearings?

If a piece of land is permitted for and holds two water rights, which is legal, is it in the best interest of the right holder to be honest and report non use? Or could it lead to false reporting so families might horde permits to move to other ground at a later time giving them unfair advantage. The possibility to transfer said rights further compounds the fact that the Right holder may not be using them as reported. Should these rights not go back into the system instead of being transferred? Please think about reviewing some of these permits where multiple

water rights are held, this may be a great place to start the implementation of a metering program to insure beneficial use is happening after the right is granted.

With the new lottery system for new found water in the future, The question I have is If a land owner goes to the work, time, and expense to hire an expert, prove a case of more water, bring that case to the department and the board, would this new system then give any new found water to the next in line per your drawing or have you made provisions that should someone challenge they would still be offered due process and the possibility of benefit from a proven case?

Does the department review water rights in fully appropriated watersheds and aquifers to insure beneficial use of permitted water is indeed taking place?

Lastly, I would like to work with your department to come up with a possible plan to hold and store water from the unnamed tributary flowing through our property into the James River. If it is possible while you are out doing any investigations that you might stop in and we could take a look at options.

Thank you for your time in these matters. I look forward to hearing from you as well as working with your office in the future.

Dave Olsen
18526 398 ave
Hitchcock, SD 57348
Phone: (605) 450-0501
hunt@pheasantphun.com



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

June 26, 2015

Dave Olsen
18526 398th Avenue
Hitchcock SD 57348

Dear Mr. Olsen:

The South Dakota Department of Environment and Natural Resources (DENR) received your May 9, 2015, email requesting investigation of the water right held by Oscar Inc. in Section 15, T114N, R62W (Cornwall Township). You also brought up several concerns including the irrigation questionnaire process and review of water rights within fully appropriated watersheds.

Water Rights staff engineers conducted an investigation of the water right and water permit associated with irrigation of Section 15. Your email indicates that irrigation in Section 15 has not taken place in well over 10 years. By statute a permit holder is given five years to complete construction of a water delivery system and an addition four years to put water to beneficial use. Oscar Inc. had until May 3, 2005, to complete construction and May 3, 2009, to put the water to beneficial use. Therefore, DENR's review was limited to the period 2009 through 2014. This letter summarizes DENR's findings and addresses the other issues you raised in your email. The following two administrative rules of South Dakota are relevant to a review for nonuse of a water right/permit.

74:02:01:37. Invalid water permit, right, or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions:

- (1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;
- (2) Use of water has been abandoned as specified in SDCL 46-5-36;
- (3) Use of water has been forfeited for nonuse as specified in SDCL 46-5-37.

74:02:01:37.01. Legal excuse for nonuse of water. Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

- (1) Unavailability of water to satisfy a permit, right, or vested right;
- (2) Legal proceedings which prevent the use of water;
- (3) Water use under existing climatic conditions would result in a waste of water.

Water Right No. 6183-3 held by Oscar Inc. appropriates 7.83 cubic feet of water per second from the James River to irrigate a total of 548 acres in the E ½ and SW ¼ Section 15, E ½ NE ¼ Section 21 and the SE ¼ Section 22; all in T114N, R62W. The water permit was approved May 3, 2000. A licensing

investigation was conducted by a staff engineer on June 30, 2005, which found the irrigation systems in place.

In 2013, Oscar Inc. filed Application No. 7619-3 to irrigate an additional 90 acres in Section 15. The application states the intent is to replace the three quarter section pivots in Section 15 with a larger new half mile system. This application was approved and the permit issued with the date to complete construction and place water to beneficial use for this permit of March 11, 2018, and March 11, 2022, respectively.

DENR presumes you saw the replacement of the original pivots with the new larger pivot. However, the email indicates a well drilling truck was in the middle of that section. There is not a water permit for groundwater in Section 15. The service truck you saw in the field may have been used to set up the new pivot system.

Your e-mail also states no pumps have been in place for well over 10 years. It is common for irrigators to use portable pumps when diverting surface water because of the potential for flooding of permanent pumps. During the licensing investigation, a portable pump was in place.

Aerial photography and the submitted irrigation questionnaires confirm that irrigation has not taken place in Section 15 in the years since 2009. However, the 2011 irrigation questionnaire states that in Section 15 there was adequate moisture and the river was too high to put in a pump. Precipitation in 2011 was above normal. Therefore, there is legal excuse for the nonuse of water. In 2013, the irrigation questionnaire states a wind storm damaged systems in Section 15. It was confirmed by aerial photography the system in the SE ¼ of Section 15 was blown over. The aerial photography does not show the other two systems in Section 15 were damaged, but DENR has no basis to refute that there was damage to these systems. Finally, the 2014 irrigation questionnaire simply indicated "still under construction after wind damage". This appears consistent with Oscar Inc. actions to obtain a new permit to irrigate more acres to accommodate replacing the three systems with a new half mile pivot. As Chief Engineer, I consider an act of nature beyond the right holders control a legal excuse as long as getting a system operational is pursued. Obtaining a new permit for additional acres and investing in a new system shows intent to pursue irrigation. Since 2009, there is not a clear three year period of nonuse without legal excuse.

Pursuant to SDCL 46-5 37.1, an investigation of Water Right No. 6183-3 and 7619-3 has been conducted to determine whether there has been abandonment or forfeiture. When bringing a recommendation for cancellation of a water right before the Water Management Board, the state of South Dakota bears the burden of proof that the water right is subject to cancellation. Based on the period of record from 2009 – 2014, the evidence does not show a period of nonuse that subjects the water right to cancellation. Therefore, I am not in a position to recommend cancellation and proceed to notice the matter for hearing before the Water Management Board.

In response to other issues in your email, DENR takes its responsibility to manage the waters of the state seriously. We understand the irrigation questionnaire reporting system is not perfect, but it is far from broken. There are thousands of South Dakota water right holders that fulfill their duty by responsibly and accurately completing the mandatory irrigation questionnaire to the best of their ability each fall. In the case of Water Right No. 6183-3, Mr. Peterson accurately reported he did not irrigate, and in many years provided a reason why irrigation did not take place. In cases where there is obvious error in reporting, DENR contacts the irrigator in an effort to get correct information on water use. In

cases where there is egregious false reporting, DENR can impose fines for violation and bring the permit before the Water Management Board for suspension of the water right. While your question regarding false testimony is a legal matter, it is DENR's understanding that not being truthful under oath is perjury.

You raise the issue of land being authorized for irrigation from two separate water sources. Current water rights law in South Dakota allows for water rights to be held on the same land from different water sources. In most instances there is a legitimate basis for this to occur. As an example, a water right is held from a river as the primary source of water supply for irrigation. However, the river may be subject to shut-off orders during periods of low flow or the intake location subject to flooding during high flow. Therefore, a water right is also held to use ground water when the surface source is not available.

You mention implementation of a metering program to insure beneficial use is happening after the water right is granted. Metering can be an effective tool. A few states are requiring metering in specific basins. South Dakota has required meters in a few specific instances. There is a cost associated to the water right holder with the up front and routine maintenance and calibration to insure proper readings. While DENR certainly does not rule out requiring metering in the future at this time it seems to be an unnecessary cost when our permittees are completing and returning their questionnaires as required.

The recent random selection process created a priority list of water permit applications from the Tulare:East James aquifer and Tulare:Western Spink/Hitchcock aquifer. If for any reason, the Water Management Board determines unappropriated water is available from the aquifer, the Board shall make the unappropriated water available to the applications being held by DENR based on the priority list. The new law recently enacted requires a public hearing to review the groundwater source at least every five years to determine whether unappropriated water is available. DENR anticipates that a comprehensive review of the water source will take place prior to this public hearing that will look at observation well data and the status of water rights from the aquifer.

Finally, you indicated a desire to work with DENR to come up with a plan to store water from an unnamed tributary flowing through Olsen property. There are instances in South Dakota where permitting is in place to divert water to off-stream storage during high flows. The stored water is then later used for irrigation. The diversion rate to storage, the storage capacity, and the acres to be irrigated would all need to be specified in the water permit application. Depending on the size of the dam, dam safety regulations may apply that would require design by a registered professional engineer.

Thank you for your e-mail with water use concerns. Please contact Eric Gronlund at 605 773-3352 or eric.gronlund@states.sd.us if you would like to discuss specific issues addressed in this letter.

Sincerely,



Jeanne Goodman, Chief Engineer
Water Rights Program, DENR

C: Floyd Peterson, 209 27th Street, NW, Huron SD 57350

REPORT TO THE CHIEF ENGINEER
Investigation of Use for Water Right No. 6183-3, Oscar Inc.

BACKGROUND

Water Right No. 6183-3 was licensed in 2005 to appropriate 7.83 cubic feet per second from two pumps diverting from the James River in Spink County. The water is to be used to irrigate 548 acres as follows: 136 acres in the SE ¼ of Section 22 (Pivot 4), 136 acres in the SW ¼ of Section 15 (Pivot 2), 136 acres in the SE ¼ of Section 15 (Pivot 3), 98 acres in the NE ¼ of Section 15 (Pivot 1), and 42 acres in the NE ¼ of Section 21, all in T114N-R62W. The 42 acres in the NE ¼ of Section 21 are irrigated from the James River via a gated pipe. Pivot 4 (in Section 22) is supplied by Pump 1. The other three pivots are supplied by Pump 2, located to the north of Pump 1. See Figure 1.

In addition to 6183-3, Water Permit Application No. 7619-3 was approved in 2013 to irrigate 90 additional acres in Section 15. The application proposed to replace the three existing pivots in the NE ¼, SE ¼, and SW ¼ of Section 15 with a single pivot, centered in the middle of the section. No additional diversion rate authority was requested or granted in the approval of Water Permit Application No. 7619-3.

Dave Olsen, 18526 398 Ave., Hitchcock, SD 57348, submitted an email to the Water Rights Program on May 9, 2015, asserting that the systems irrigating the portions of Water Right No. 6183-3 in Section 15 “ran for the first two years and have not run since”. He contends the pump supplying these pivots in Section 15 has not been in place for over ten years. It is not clear which years Mr. Olsen is referring to when he states the system “ran for the first two years” but irrigation questionnaires specify the land in Section 15 was irrigated in 2002 and 2004.

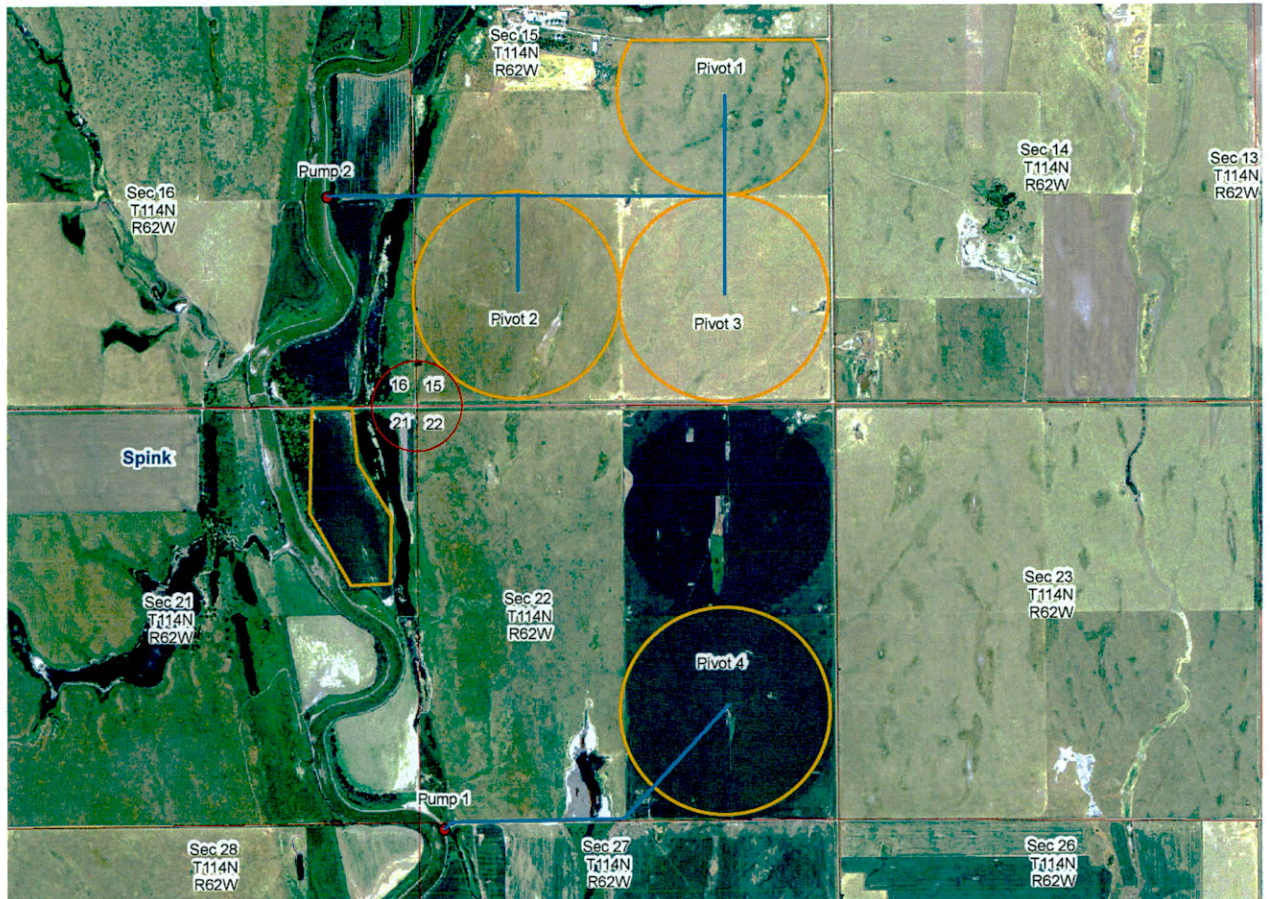


Figure 1: Lands irrigated under Water Right No. 6183-3.

SDCL 46-5-37 and SDCL 46-5-37.1

SDCL 46-5-37 states “If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water”

SDCL 46-5-37.1 states “Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.”

SDCL 46-2A-8 states “Any construction necessary to put the water to beneficial use shall be completed within five years of approval of the permit and the water shall be put to beneficial use within an additional four years.” Although constructed and licensed, prior to May of 2009, the systems authorized under Water Right No. 6183-3 were still within the nine year period applicants are allowed in order to put the system to beneficial use.

Consequently, non-use in this nine year period prior to 2009 cannot be used to show abandonment or forfeiture of Water Right No. 6183-3.

The following section will analyze whether the portions of Section 15, T114N-R62W held under Water Rights No 6183-3 were irrigated since 2009 and if not, whether the reasons for non-irrigation are legally defensible in order to avoid cancellation due to non-use.

ARSD 74:02:01:37 and ARSD 74:02:01:37.01

74:02:01:37. Invalid water permit, right, or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions.

- (1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;
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- (1) Unavailability of water to satisfy a permit, right, or vested right;
- (2) Legal proceedings which prevent the use of water;
- (3) Water use under existing climatic conditions would result in a waste of water.

EVIDENCE OF IRRIGATION AND NON-IRRIGATION

Annual irrigation questionnaires submitted by Mr. Peterson indicate the SE ¼ of Section 22, T114N-R62W has been consistently irrigated since 2009. Except for irrigation of the NE ¼ of Section 21 in 2014, these same irrigation questionnaires indicate that irrigation has not occurred in any of the other four quarter sections authorized for irrigation under Water Permit No. 6183-3. The reasons given for non-irrigation of these lands from year to year are listed in Table 1. Aerial imagery is gathered periodically, and in years when aerial imagery is available for the area covered by Water Permit No. 6183-3, this imagery confirms the reports given in the irrigation questionnaires. There does not appear to be any inconsistencies between aerial imagery and irrigation questionnaires over the period of interest for the lands authorized to be irrigated under Water Right No. 6183-3.

In regards to Dave Olsen's assertion that the pump which supplies the pivots in Section 15 has not been in place since 2006, aerial imagery cannot confirm or disconfirm this claim. Although the pump is not visible in aerial imagery, it is likely the pump is mobile and can be removed at any time, as is common with James River irrigation systems. That said, given that no known irrigation has occurred in Section 15 since 2004, it is highly unlikely that the pump was in place during the period in question.

In 2009 and 2014, Mr. Peterson specifies in irrigation questionnaires the land in Section 15 is planted with grass. Grass requires less moisture than corn or soybeans. Because of the decreased water demand, sufficient moisture may have been available in those years for the land in Section 15 but not for Section 22.

Year	Total Acres Irrigated	Acres Irrigated in Sec 22	Crop	Reason for No Irrigation	Acres Irrigated in Sec 21	Crop	Reason for No Irrigation	Acres Irrigated in Sec 15	Crop	Reason for No Irrigation
2009	136	136	Corn	N/A	0	None	Flooded	0	Grass	Unknown
2010	136	136	Corn	N/A	0		Unknown	0		Unknown
2011	136	136	Soy	N/A	0		Sufficient Moisture	0		Stage Too High to Pump
2012	136	136	Corn	N/A	0		Unknown	0		Unknown
2013	136	136	Sorgham	N/A	0		Unknown	0		Damage to System
2014	178	136	Corn	N/A	42	Alfalfa	N/A	0	Grass	Under Constuction

Table 1: Irrigation questionnaire data and information obtained through aerial imagery for Water Right No. 6183-3 (Water Rights, 2010-2015; Farm Service Agency, 2009-2012).

The NE ¼ of Section 22, T114N-R62W is located within the flood plain of the James River. Consequently, this area is prone to flooding. Streamflow in the James River in 2009, 2010, and 2011 was abnormally high (USGS, 2015). Consistent with this is the claim in irrigation questionnaires that the NE ¼ of Section 21 could not be irrigated as the area was flooded. Although Mr. Peterson does not claim sufficient moisture in 2009 or 2010, it is reasonable to assume that irrigation was not necessary (if the land was not flooded) in those years due to increased precipitation. However, Mr. Peterson does claim to have irrigated the SE ¼ of Section 22 in these years, indicating sufficient moisture in the form of precipitation was not available. A possible explanation is that Mr. Peterson planted grass in Section 15 in those years, which would require significantly less moisture than the corn planted in the SE ¼ of Section 22. It is clear that neither soy beans nor corn were planted in Section 15 during this time.

In 2013, Floyd Peterson explains in the irrigation questionnaire for Water Right No. 6183-3 that the system in Section 15 was damaged by wind. It is unclear as to whether the wind damaged all three pivots in that section, but it is clear from aerial imagery that the pivot in the SE ¼ of Section 15 was knocked over and rendered inoperable. The other two pivots in that Section in the NE ¼ and the SW ¼ do not display visible damage in aerial imagery. However, since Water Permit No. 7619-3 was approved before the irrigation season in 2013, it is possible the land in question was to be irrigated by a system that was still under construction in 2013 and 2014. Although the 2014 irrigation questionnaire indicates the system is under construction, it is not clear if this means the new system (authorized by Water Permit No. 7619-3) is being constructed or the old system (authorized by Water Right No. 6183-3) is being repaired. However, Mr. Olsen claims the new system is under construction.

Dave Olsen observed what he described as a “well drilling truck” during the period in which the new larger pivot authorized by Water Permit No. 7619-3 was being constructed. Neither Water Right No. 6183-3 nor Water Permit No. 7619-3 authorize the construction of a well or the diversion of groundwater. No well logs for this location have been submitted to DENR, which is required by licensed well drillers. It is not known if this was a well drilling rig or whether this was equipment to assist with the construction of the new pivot.

CONCLUSIONS

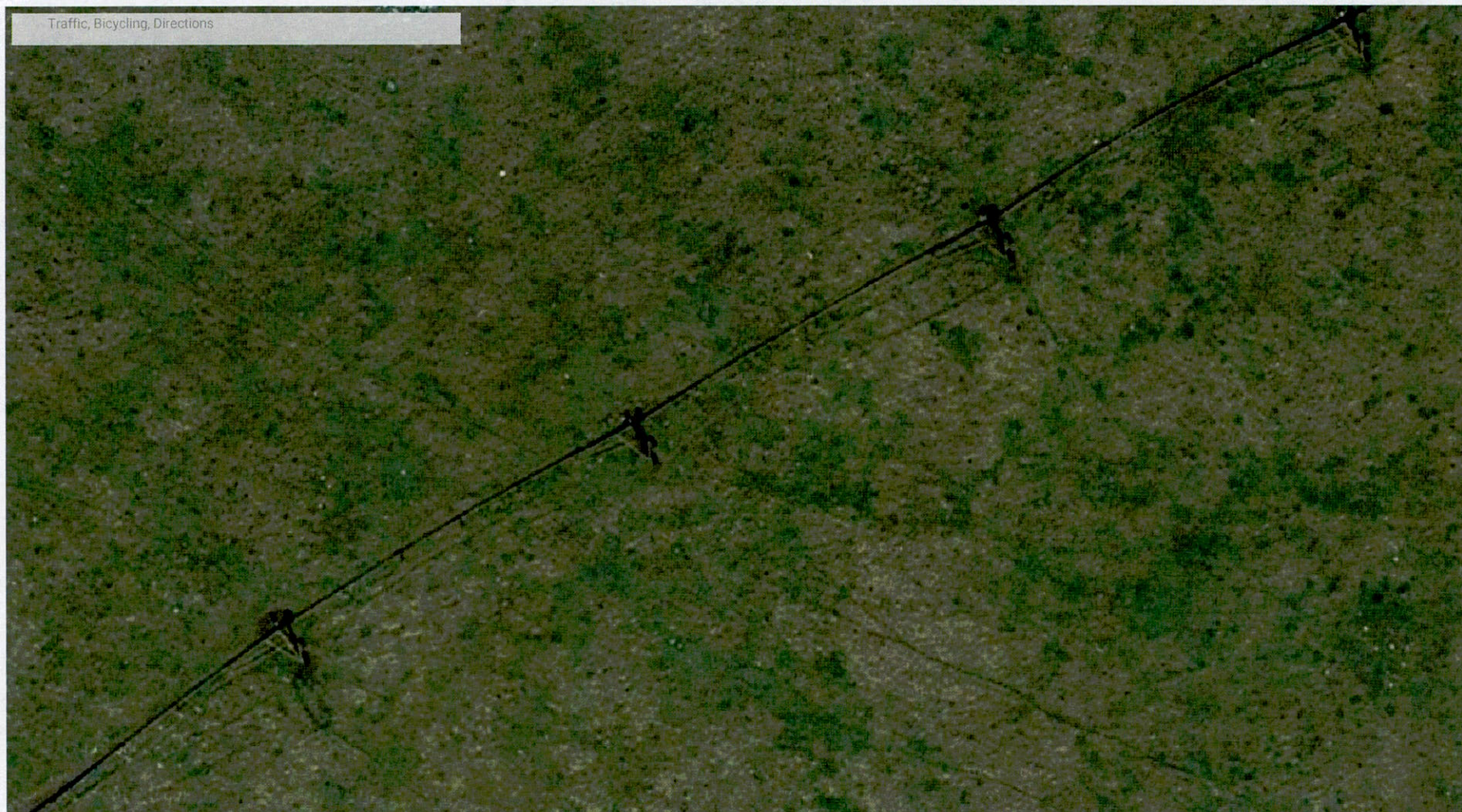
With the exception of 2009, 2010, and 2012, Floyd Peterson presents in irrigation questionnaires submitted to the Water Rights Program valid reasons under ARSD74:02:01:37.01 for having not irrigated the land in Section 15, T114N-R62W. The years 2009 and 2010 were abnormally wet and may not have necessitated irrigation in order to effectively cultivate the land, especially if the lands were used to grow grass (as Mr. Peterson denotes in his 2009 irrigation questionnaire). The reasons for non-irrigation in 2012 are unknown. Therefore, this year can be counted towards the three year period of non-use required to prove abandonment or forfeiture of the system but is only one of the three years needed. The extent of damage done in 2013 to the systems in Section 15 is unknown, and the possibility for irrigation of Section 15 during 2013 and 2014 is equally uncertain. However, since Water Permit No. 7619-3 was approved in early 2013,

the new land in Section 15 was authorized to be irrigated in 2013 and 2014 by a system that was, and is, within the five year period of construction.

Although the lands irrigated in Section 15, T114N-R62W appear to have valid excuses for non-use in the majority of years, irrigation questionnaires do not provide valid reasons for the non-irrigation of the NE $\frac{1}{4}$ of Section 21 in 2012 or 2013. This qualifies for two years of non-irrigation without a valid reason given as opposed to a single year for the lands in Section 15. However, this also falls short of the three years required for abandonment or forfeiture under SDCL 46-5-37.

A handwritten signature in black ink, appearing to read 'Bracken Capen', with a long horizontal stroke extending to the right.

Bracken Capen
Natural Resources Engineer
Water Rights Program



BLOWN OVER PIVOT in SE $\frac{1}{4}$ Sec 15 T114N R62W



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

May 27, 2021

Dear James River Water Right Holder:

I am writing to water right holders and operators who use water from the James River that river flow is much lower this year and to let them know that shutoff orders are possible this summer.

South Dakota law gives the highest priority to domestic use, including livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses will begin to interfere with domestic use. If river levels become critically low, the department may be forced to issue shutoff orders to protect domestic use, including livestock watering and those water rights that are most senior.

We are only cautioning that shutoff orders may become necessary. **This not a shutoff order.** This letter is only intended to give you advanced warning that your ability to divert water may be cut short this year. If shutoff orders are issued, you will receive another letter from the department. In the meantime, water right holders can help by closely monitoring water usage and avoid wasting water.

If you are interested, the US Geological Survey has an Internet site showing river flows at 164 stream gauging stations across the state. To view the latest realtime stream flow, go to:

<https://waterdata.usgs.gov/sd/nwis/current/?type=flow>

Thank you for your cooperation. If you have any questions, please contact Mark Rath, Blaise Hansen, or Nakaila Steen at (605) 773-3352.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2021

Dear James River Water Right Holder:

I am writing to water right holders and operators who either use water from the James River or tributaries under permits with the August 10 shutoff date qualification.

Water rights containing this qualification requires a mandatory compliance and pumping under your permit must cease after August 10th unless you contact the Water Rights Program and receive permission to continue to divert water.

Water Rights staff drove along the James River last week after the August 10 shutoff date to spot-check whether water right holders were complying with this qualification. This spot-check found multiple water right holders diverting water in violation of this qualification.

Again, I remind you, compliance with this shutoff qualification is required unless you request and receive permission from the Water Rights Program to continue pumping. Permission may be granted based upon water availability.

Thank you for your cooperation. If you have any questions, please contact Mark Rath, Blaise Hansen, or Nakaila Steen at (605) 773-3352.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program