

**WATER PERMIT NO. 6231-3**

Name of Applicant: Oscar Inc.

Address: 18892 390<sup>th</sup> Ave, Hitchcock SD 57348

Phone: 605 266-2747

Amount of Water Claimed: 12.87 cfs

Total Acres: 901 acres

Source of Water Supply: runoff and springs

Water to be used for: irrigation

County: Spink

Type of Waste Disposal System:

Location: 7 miles northwest of Hitchcock

PRIORITY

Date Received: 9-20-2000

Fee: \$150

Corrected Application Received::

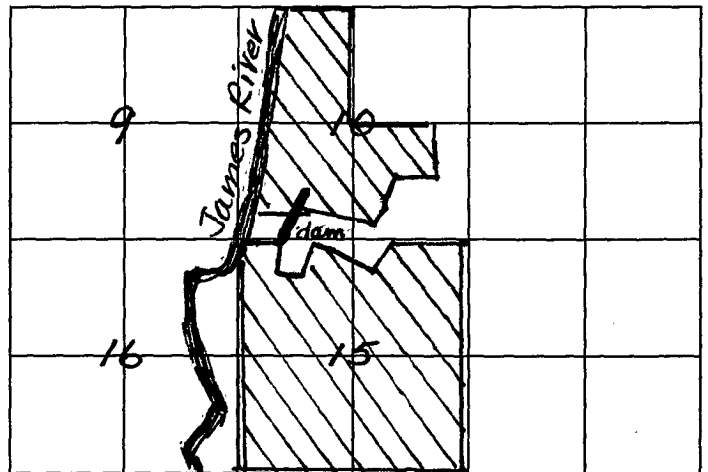
Period of Annual Use: March 1 – November 30

Remarks: Permit Nos. 6182-3 and 6183-3 authorize irrigation of same acreage from the James River

Diversion Point: S ½ SW ¼ Sec 10-T114N-R62W

Water Impounded: S ½ S ½ Sec 10 & N ½ N ½

Sec15; all in T114N-R62W



Depth of Well: NA

Well Driller: :

Remarks:

Type of Map: topo

Prepared by: Ron Duvall

Reviewed and the Number Assigned on: 10-10-2000

By: **Karen Schlaak**

Notice of Hearing - date to intervene: \_\_\_\_\_

**SOUTH DAKOTA**  
**WATER PERMIT NO. 6231-3 FOR IRRIGATION**

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Date of first receipt of application September 20, 2000.

The Water Management Board approved Water Permit Application No. 6231-3 on July 11, 2001 for Oscar Incorporated, Floyd Peterson, 18892 390<sup>th</sup> 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. 6231-3 authorizes impoundment of 15 acre-feet of water from runoff and springs by constructing a dam located in the S ½ SW ¼ Section 10 with water impounded in the S ½ S ½ Section 10 and N ½ N ½ Section 15; all in T114N-R62W. This permit authorizes impoundment of water sufficient to maintain water at the outlet elevation and will be used to irrigate 901 acres located in Section 15 and the S ½ and NW ¼ Section 10; all in T114N-R62W. Water Permit Nos. 6182-3 and 6183-3 authorize irrigation of the same acreage from the James River. Water Permit Nos. 6182-3 and 6183-3 and this permit, combined may not exceed 1 cubic feet of water per second for each 70 acres irrigated.
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 September 20, 2000.
4. One-fifth of the construction is to be completed on or before January 11, 2004.
5. All construction is to be completed on or before July 11, 2006.
6. Water is to be put to beneficial use on or before July 11, 2010.
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 shall be in accordance with the following criteria:
  - Low flows as needed for downstream domestic use, including livestock water, and prior James River water rights/permits must be bypassed.
  - The dam must have a low flow bypass structure and bypass inflows from the springs and watershed runoff from June 30 – November 30 unless the Chief Engineer issues written orders allowing the capture and storage of water.
  - Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

(continued)

- Water that has been lawfully stored in the dam following the above criteria may be diverted by the permit holder for irrigation purposes at any time during the irrigation season. The permit is not obligated to release lawfully stored water to provide water for downstream domestic uses or prior water rights.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
  3. Water Permit No. 6231-3 authorizes a dam with storage capacity of 15 acre feet of water.
  4. A new water right permit will need to be obtained if the storage capacity of the dam is increased. Additionally, plans and specifications will need to be submitted and approved by the Water Rights Program prior to construction for any alterations to the dam that cause the dam height to exceed six feet and the dam's storage capacity to exceed fifty acre-feet of water.
  5. Impoundment of water authorized by this permit may not impair the use of any lands held by neighboring property owners including, but not limited to, causing permanent pooling of water on land owned by others and/or specific alterations of plant species directly attributable to water use under this permit. Permanent impoundment of water on adjoining land may occur only if a written flood easement is obtained from the property owner or owners.

**WATER MANAGEMENT BOARD**

By: Garland Erbele

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

SEP 24 2001

date



|                                                                                                                    |                                                                     |
|--------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Mail to:<br>Water Rights Program<br>Joe Foss Building<br>523 E. Capitol<br>Pierre, SD 57501-3181<br>(605) 773-3352 | No. <u>6231-3</u> (office use only) Hydrologic Unit <u>10160006</u> |
|                                                                                                                    | Basin <u>James River</u>                                            |
|                                                                                                                    | Newspaper <u>Redfield Press, Redfield</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 12.87 \*CFS or 15 \*\*GPM 901 \*\*\*AF Total Acreage 901  
(\*Cubic Feet per Second) (\*\*Gallons per Minute) (\*\*\*)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Runoff & Springs
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) dam: S1/2SW1/4 sec 10 -  
114N-62W and impoundment in S1/2S1/2 sec 10 & N1/2N1/2 sec 15; all  
in 114N-62W 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 |
|--------------------------------|------------|------------------|-------|
| <u>sec 15 - 114N-62W</u>       | <u>623</u> |                  |       |
| <u>S1/2, NW1/4 10-114N-62W</u> | <u>278</u> |                  |       |
|                                |            |                  |       |
|                                |            |                  |       |

8. Give a description of the project. (Attach sheet if more space is needed) This application is to  
irrigate acreage (portions) covered by Nos. 6182-3 + 6183-3 from  
surface runoff and springs. James River.

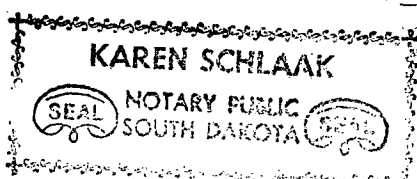
STATE OF SOUTH DAKOTA) SS  
County of Hughes

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 Incorporated Pres.

Subscribed and sworn to before me this 20<sup>th</sup> day of September 20 00



Karen Schlaack  
KAREN SCHLAACK, Notary Public  
My Commission Expires  
April 1, 2001



(type or print in ink)



a) Drill Hole Diameter \_\_\_\_\_ Depth \_\_\_\_\_

b) Casing Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_

c) Screen Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_

d) Gravel Pack \_\_\_\_\_ Length of Gravel Pack \_\_\_\_\_

e) Depth to Top of Water Bearing Material \_\_\_\_\_

f) Depth to Water (ground surface to water level) \_\_\_\_\_

g) Distance to nearest existing domestic well: \_\_\_\_\_

On applicants property                      On property owned by others

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

b) System Capacity (gallons) \_\_\_\_\_ Year Constructed \_\_\_\_\_

c) Connected to the City of \_\_\_\_\_ Sanitary System \_\_\_\_\_

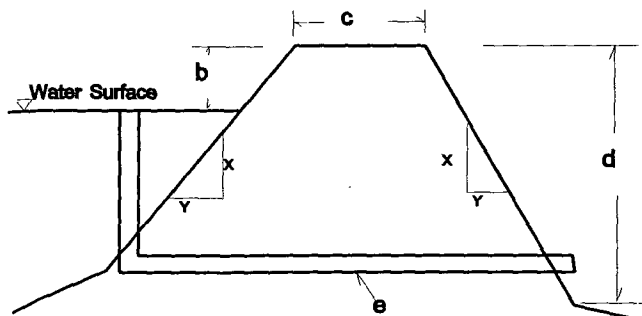
a) Surface Dimensions \_\_\_\_\_ Depth \_\_\_\_\_

b) Depth to water (ground surface to water level) \_\_\_\_\_

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

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

As constructed by owner



≈ 6 in culvert in bottom of fill that  
is plugged when storing water  
4-2000

- b) Freeboard NA
- c) Crest Width 20 + feet  
Crest Length  $\approx 1,300$  feet
- d) Height 6 feet
- e) Primary Outlet Capacity \_\_\_\_\_  
If pipe, diameter \_\_\_\_\_
- f) Secondary Spillway Capacity \_\_\_\_\_  
Spillway Width \_\_\_\_\_
- g) X & Y Slope \_\_\_\_\_  
Upstream \_\_\_\_\_  
Downstream \_\_\_\_\_
- h) Surface Area of Impoundment  $\approx 30$  ac
- i) Storage  $\approx 90$  Acre Feet
- j) Drainage Area Above Dam  $\approx 5,800$  Acres

Potential Additional Qualifications to Oscar, Inc. Application No. 6231-3

- Amend current qualification No. 3 to “Water Permit No. 6231-3 authorizes a dam with a storage capacity of 15 acre feet of water.
- A new water right permit will need to be obtained if the storage capacity of the dam is increased. Additionally, plans and specification will need to be submitted and approved by the Water Rights Program prior to construction for any alterations to the dam that cause the dam height to exceed 6 feet and the dam’s storage capacity to exceed 50 acre feet of water
- Impoundment of water authorized by this permit may not impair the use of any lands held by neighboring property owners including, but not limited to, causing permanent pooling of water on land owned by others and/or specific alterations of plant species directly attributable to water use under this permit. Permanent impoundment of water on adjoining land may occur only if a written flood easement is obtained from the property owner or owners.

4/25/01 TGS

Water Permit Application No 6231-3  
Oscar Inc.

Assume D/S Top Elev = 1245

Dam Height = 6 ft.

Top of Dam Elev = 1251

Surface Area @ 1251 = 5 Ac

$$5 \times 6 \times .5 = \underline{15 \text{ Ac-Ft}}$$

Assume Top of Dam Elev = 1255

Dam Height = 10 ft

Surface Area = 15 Ac

$$15 \times 10 \times .5 = \underline{75 \text{ Ac-Ft}}$$

# P's Review

Water Permit Application No. 6231-3  
Oscar Incorporated

According to Form 2A-Water Permit Application # 6231-3  
the structure will be only 6 ft high.

According to our Safety of Dams Rules - Chapter 74:02:08  
a Barrier is NOT considered a dam for the  
purposes of this chapter if the height does not  
exceed 6 feet regardless of storage capacity.

Therefore, Safety of Dams P's Review IS NOT REQUIRED!

From USGS WRI 80-80 - "Tech. for Est Flood Peaks ... in SD"

DA = 5800 Ac = 9.06 mi.<sup>2</sup>  
Slope = 6.25 ft/mile  
SF = 2.66

$$\begin{aligned} Q_{25} &= 83.4 A^{.64} S^{.44} S_i^{-.72} \\ &= 83.4 (9.06)^{.64} (6.25)^{.44} (2.66)^{-.72} \\ &= 83.4 (3.75) (2.24) (0.4944) \\ &= \underline{346 \text{ cfs}} \end{aligned}$$

$$\begin{aligned} Q_{50} &= 106 A^{.63} S^{.45} S_i^{-.69} \\ &= 106 (9.06)^{.63} (6.25)^{.45} (2.66)^{-.69} \\ &= 106 (4.0) (2.28) (0.5091) \\ &= \underline{492 \text{ cfs}} \end{aligned}$$

NRC's Annual F.I.C.

DA = 5800 CN = 70 ISO = 2 1/4

ISO = 2 50% chance = 0.20  
 $0.20 \times 5800/12 = \underline{97 \text{ Ac-Ft}}$

ISO = 2 1/2 50% chance = 0.27  
 $0.27 \times 5800/12 = \underline{130 \text{ Ac-Ft}}$

ISO = 2 1/4  $97 + 130/2 = \underline{114 \text{ Ac-Ft}}$

ISO = 2 10% chance = 1.3  
ISO = 2 1/2 10% chance = 1.6  
ISO = 2 3/4 10% chance = 1.5  
 $1.5 \times 5800/12 = \underline{725 \text{ Ac-Ft}}$

# RECEIPT

## Water Rights Program

South Dakota Department of Environment and Natural Resources

NE 416637

Pierre, September 20, 2010

RECEIVED OF Oscar, Inc., 11892 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. \_\_\_\_\_ to Appropriate Water, to construct  
and to put water to beneficial use \_\_\_\_\_

100 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. \_\_\_\_\_

50 00

Fee for Filing Transfer Form \_\_\_\_\_

Fee for Filing Extension Request \_\_\_\_\_

Fee for \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Any Other Work Provided by Law)

Total

100 00

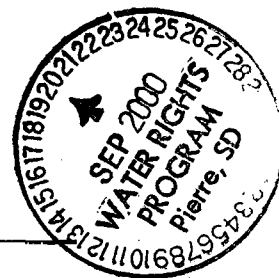
By Richard J. J. J.  
Chief Engineer

145

UNITED STATES  
DEPARTMENT OF  
AGRICULTURE

NATURAL RESOURCES  
CONSERVATION  
SERVICE

251/2 WEST 6<sup>TH</sup> AVE.  
REDFIELD, SD 57469  
PHONE: 472-1437  
FAX: 472-3346

DATE: 9-20-00PARTY FAXED TO: Oscar PetersonNUMBER FAXED TO: 266-2894

ATTENTION: \_\_\_\_\_

NUMBER OF PAGES: 1  
(Including this page)

REMARKS:

\* Based on Oscar's Measurements \*

Drainage Area = 5,800 Ac

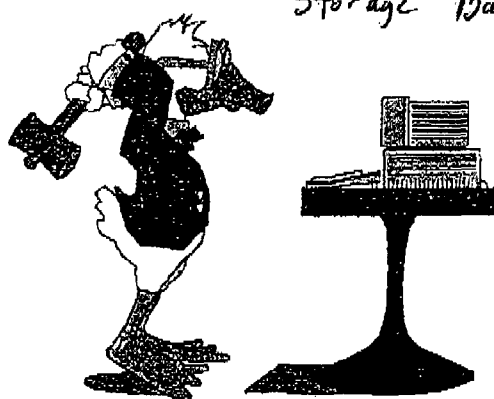
Surface Area = 30 Ac

Total Storage = 90 Ac FT

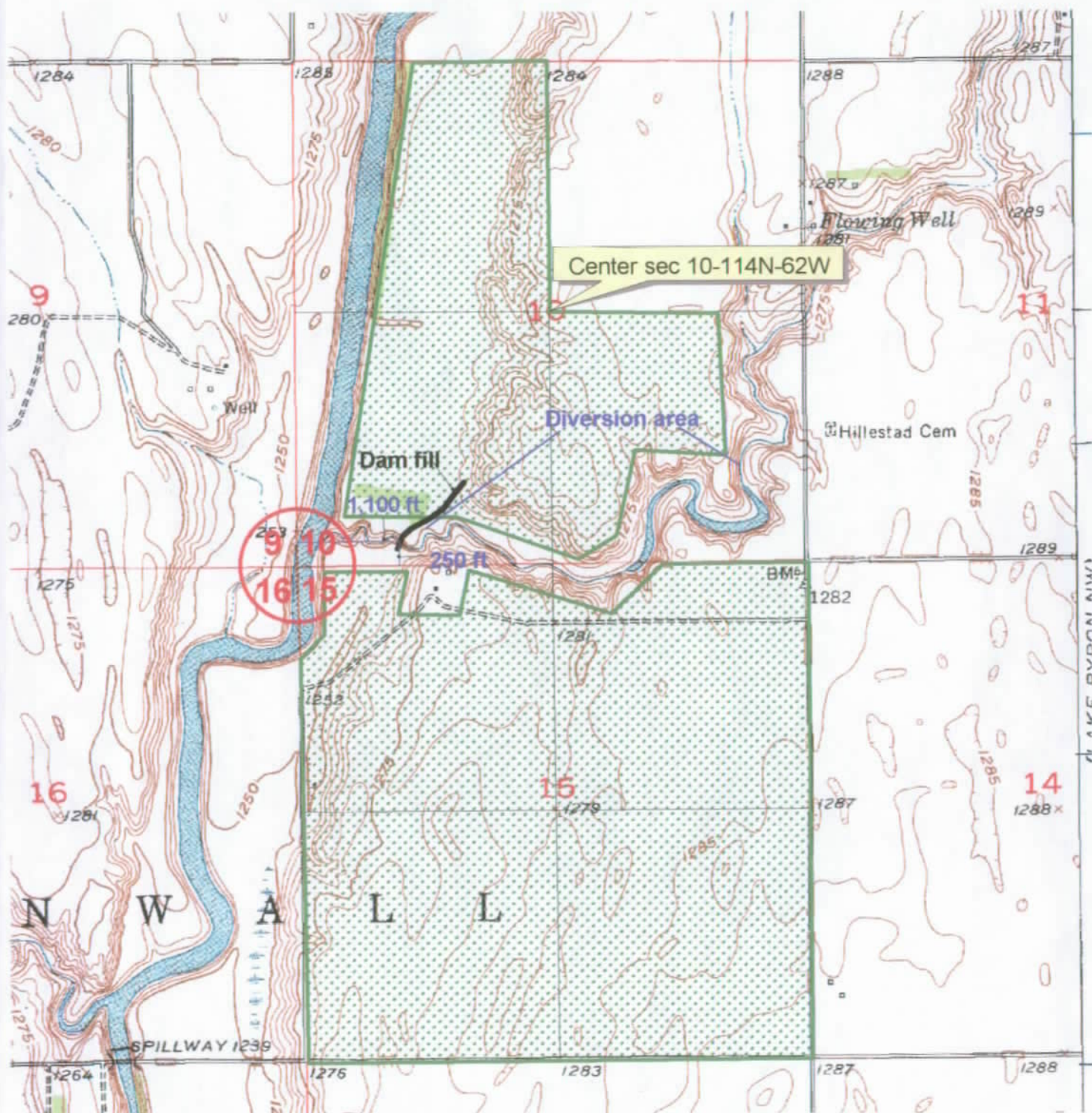
\* There was no technical Assistance from NRCS, and therefore,  
does not meet NRCS Specs. I calculated a surface Area + Total

Storage Based on Oscar's Measurements.

Jim Dylla - SCT



2000 0 2000 Feet



*South Dakota*  
Department of Environment  
& Natural Resources  
Water Rights

*Ron Duvall*

Ron Duvall, Nat Res Engineer

Application map for Oscar Incorporated  
September 21, 2000

6231-3

REPORT ON  
WATER PERMIT APPLICATION NO. 6231-3  
Oscar Incorporated  
October 31, 2000

Water Permit Application No. 6231-3 has been filed by Oscar Incorporated, c/o Floyd Peterson, President, to impound 90 acre-feet of water from runoff and spring flow by constructing a dam located in the S 1/2 SW 1/4 of Section 10-T114N-R62W, in Spink County. The application also requests impoundment of sufficient water to maintain water at the outlet elevation and will be used to irrigate 901 acres located in Section 15 and the S 1/2 and NW 1/4 of Section 10-T114N-R62W. The 901 acres of irrigated land are also covered by Water Permits Nos. 6182-3 and 6183-3, which authorize diversion of 31.6 cfs from the James River. Water Permit Nos. 6182-3 and 6183-3 and this application, combined may not exceed 1 cubic foot of water per second for each 70 acres irrigated.

Discussion:

The application indicates that the proposed dam will be only six feet high. Due to the small size of the project, design of the structure is not subject to the requirements of the Safety of Dams Rules, Chapter 74:02:08. According to Mr. Peterson, the embankment now serves as a field roadway and has a rock covered overtopping section, which functions as a spillway, and will have a gated culvert to regulate storage. Mr. Peterson indicated that sometimes the embankment is overtopped by the James River, which is located about 1000 feet downstream of the embankment.

The proposed dam will have a total drainage area of 5800 acres, or 9.06 square miles. The annual yield for this drainage area with a 50 percent chance of occurrence, or 1 out of 2 years, is expected to be 130 acre-feet. The annual yield with a 10 percent chance, or 1 out of 10 years, is expected to be 725 acre-feet.

The proposed dam will be located on an unnamed tributary to the James River about 1000 feet upstream of its confluence with the James River. There are no existing Water Permits/Rights located on the unnamed tributary between the proposed dam and the James River; however, there are 26 senior Water Rights located on the James River between Huron, SD and the proposed dam and/or the recently approved permits for Oscar Inc., Water Permits No. 6182-3 & 6183-3.

In 1965 the South Dakota Water Rights Commission placed a 300 cfs diversion limit on the James River with a maximum combined diversion limit of 200 cfs from Huron, SD to the North Dakota border. With the recent approval of Water Permit Nos. 6182-3 and 6183-3, there are now 67 permits on the James River between Huron and North Dakota with a total diversion of 166.97. In the past, shut off orders have been issued to these permits during James River low flow periods.



page 2

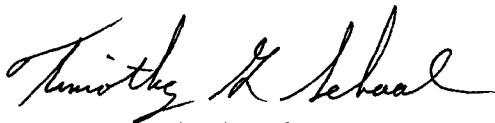
Water Permit Application No. 6231-3

Oscar incorporated

The purpose for Water Permit Application No. 6231-3, and the storage of 90 acre-feet of water, is to have a back-up supply of water to irrigate with during the shut off periods. Water Permit Application No. 6231-3 should have a bypass qualification to protect senior James River Water Rights/Permits during shut off periods. During the James River shut off periods, irrigation would only be allowed from existing storage at the time the shut off order is issued. Any spring flow or runoff received for the duration of the shut off order must be bypassed.

Conclusions:

1. Water Permit Application No. 6231-3 should be approved since unappropriated water is available and approval should not have any adverse effects on existing Water Permits/Rights.
2. If approved, the low flow bypass requirement for downstream domestic use should be a qualification on Water Permit Application No. 6231-3.
3. Also, if approved, the James River low flow shut off qualifications should be a qualification for the spring flow and runoff associated with Water Permit Application No. 6231-3. During the James River shut off periods, irrigation would only be allowed from existing storage at the time the shut off order is issued. Any spring flow or runoff received for the duration of the shut off order must be bypassed.



Timothy G. Schaal, P.E.

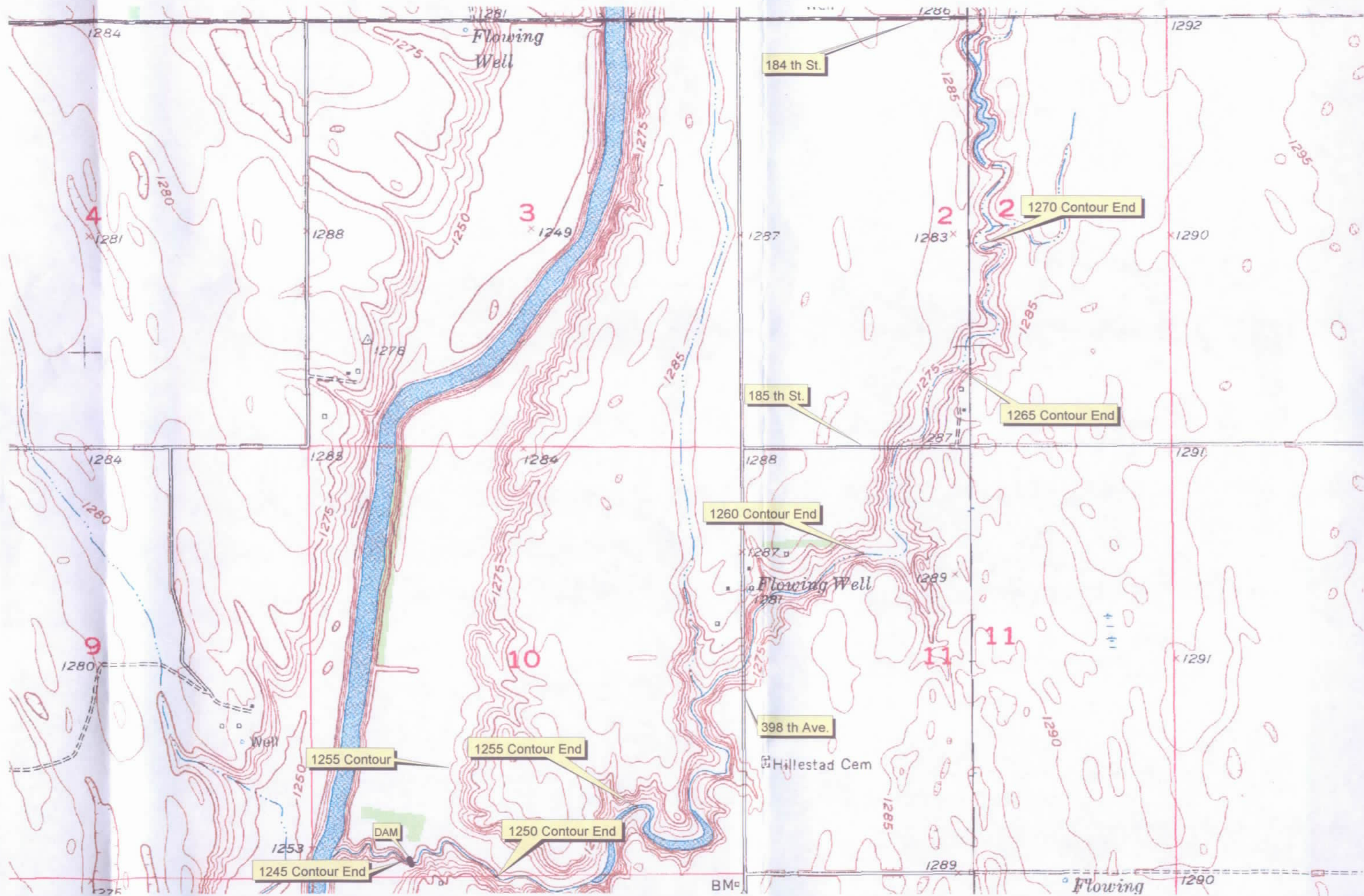
Natural Resources Engineer Specialist

Approved by:

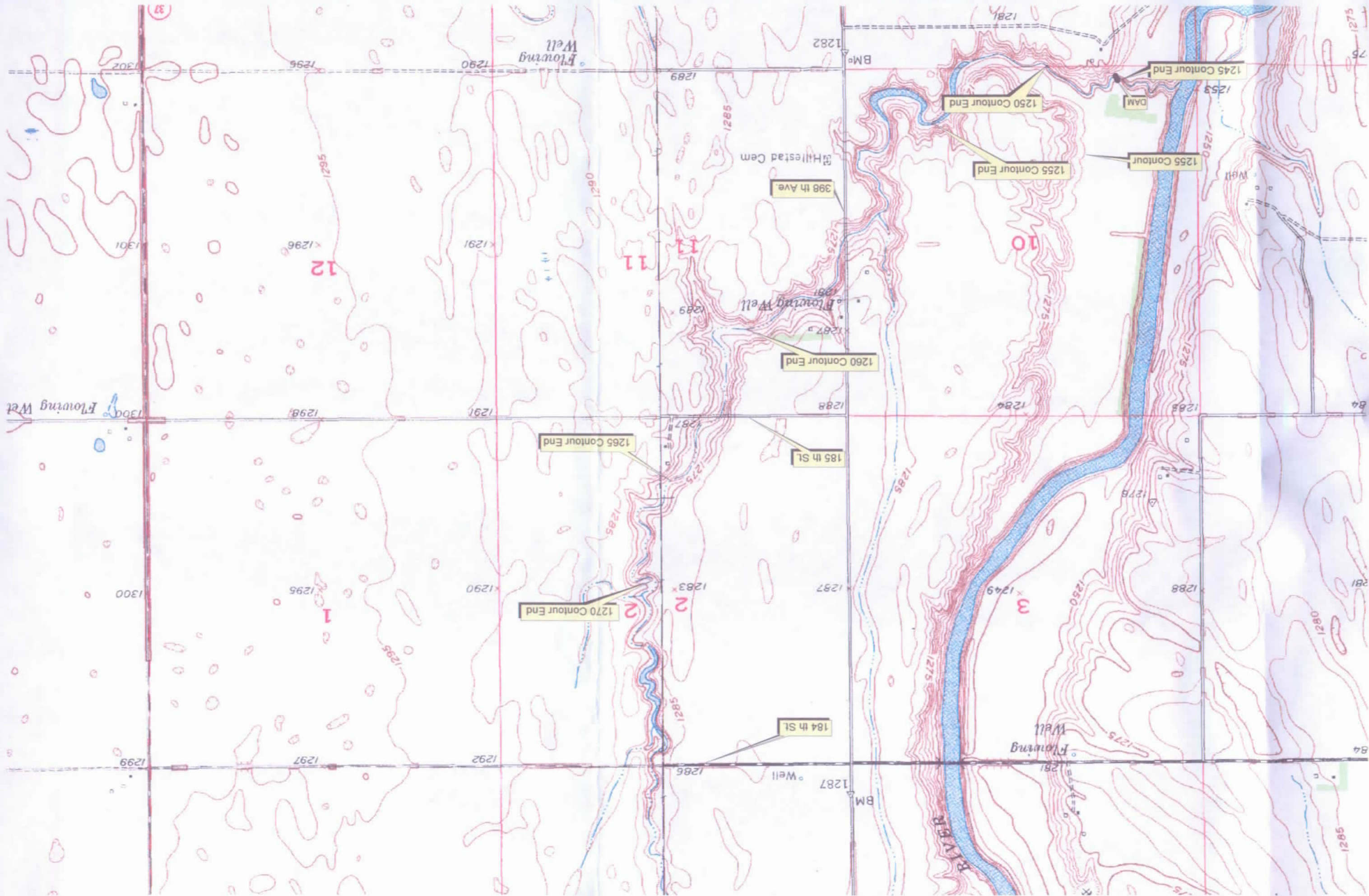


Gale N. Selken, P.E.

Natural Resources Engineer Director









**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 6231-3, Oscar Incorporated, c/o Floyd Peterson**

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. 6231-3, Oscar Incorporated, c/o Floyd Peterson, 18892 390<sup>th</sup> Avenue, Hitchcock, SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 6231-3 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 shall be in accordance with the following criteria:

- Low flows as needed for downstream domestic use, including livestock water, and prior James River water rights/permits must be bypassed.
- The dam must have a low flow bypass structure and bypass inflows from the springs and watershed runoff from June 30 – November 30 unless the Chief Engineer issues written orders allowing the capture and storage of water.
- Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.
- Water that has been lawfully stored in the dam following the above criteria may be diverted by the permit holder for irrigation purposes at any time during the irrigation season. The permit is not obligated to release lawfully stored water to provide water for downstream domestic uses or prior water rights.

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

3. Water Permit No. 6231-3 authorizes a dam with storage capacity of 90 acre feet of water.

See report on application for additional information.

Garland Erbele, Chief Engineer  
January 5, 2001



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

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

January 5, 2001

Floyd Peterson  
Oscar Incorporated  
18892 390<sup>th</sup> Ave  
Hitchcock SD 57348

Dear Mr. Peterson:

Water Permit Application No. 6231-3 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 recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above 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 application.

Sincerely,

Eric Gronlund  
Natural Resources Engineer  
(605) 773-3352

enclosures

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





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 5, 2001

Redfield Press  
Box 440  
Redfield SD 57469-0440

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 6231-3 to Appropriate Water to be published twice. Please publish the first notice on January 17, 2001 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, 18892 390<sup>th</sup> 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-----

No. 6231-3

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

Date \_\_\_\_\_

We are in receipt of your letter of January 5, 2001 enclosing Notice of Hearing to Appropriate Water by Application No. 6231-3 which was first published in our issue of \_\_\_\_\_. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Newspaper

Instruction to Newspaper - Publish first Notice on January 17, 2001 with the second publication 7 days later. The applicant is responsible for payment.

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NOTICE OF HEARING on Application No. 6231-3 to Appropriate Water

Notice is given that Oscar Incorporated, c/o Floyd Peterson, President, 18892 390<sup>th</sup> Ave, Hitchcock SD 57348 has filed an application for a water permit to impound 90 acre-feet of water from runoff and springs by constructing a dam located in the S  $\frac{1}{2}$  SW  $\frac{1}{4}$  Section 10 with water impounded in the S  $\frac{1}{2}$  S  $\frac{1}{2}$  Section 10 and N  $\frac{1}{2}$  N  $\frac{1}{2}$  Section 15; all in T114N-R62W. This application requests impoundment of water sufficient to maintain water at the outlet elevation and will be used to irrigate 901 acres located in Section 15 and S  $\frac{1}{2}$  and NW  $\frac{1}{4}$  Section 10; all in T114N-R62W. Water Permit Nos. 6182-3 and 6183-3 authorize irrigation of the same acreage from the James River. Water Permit Nos. 6182-3 and 6183-3 and this application, combined may not exceed 1 cubic feet of water per second for each 70 acres irrigated.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6231-3 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 this application 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 recommendation. 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 February 23, 2001. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, 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 this application at 10:00 a.m., March 7, 2001, Floyd Mathew Training Center, Joe Foss Building, 523 E. Capitol, Pierre SD 57501. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The March 7, 2001 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 application. The request for an automatic delay must be filed by February 23, 2001.

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 February 23, 2001, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

# Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Spink

SS

OK

I, Billy L. Hanson, of said County and State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Billy L. Hanson, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

No. 19 Notice of Hearing

Oscar Inc. # 121751

a printed copy of which is hereto attached, was printed and published in said newspaper in 2 successive issues, to wit:

The first publication being made on Jan. 17, 2001

2nd Jan. 24, 2001 5th 20

3rd 20 6th 20

4th 20 7th 20

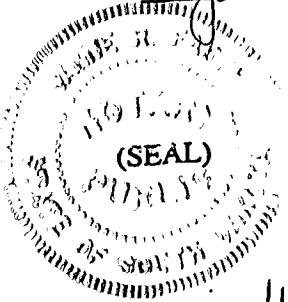
that the full amount of the fee charged for publishing the same to-wit: the sum of \$ 31.90, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Billy L. Hanson

Subscribed and sworn to before me this 17th day of January, 2001.

Jamie B. Fauth

Notary Public (Spink County, South Dakota)



12.25 in.  
110X-29 = \$31.90

## Notice of Hearing

No. 19

NOTICE OF HEARING on Application No. 6231-3 to Appropriate Water

Notice is given that Oscar Incorporated, c/o Floyd Peterson, President, 18892 390th Ave., Hitchcock SD 57348 has filed an application for a water permit to impound 90 acre-feet of water from runoff and springs by construction a dam located in the S 1/2 SW 1/4 Section 10 with water impounded in the S 1/2 S 1/2 Section 10 and N 1/2 N 1/2 Section 15; all in T114N-R62W. This application requests impoundment of water sufficient to maintain water at the outlet elevation and will be used to irrigate 901 acres located in Section 15 and S 1/2 and NW 1/4 Section 10; all in T114N-R62W. Water Permit Nos. 6182-3 and 6183-3 authorize irrigation of the same acreage from the James River. Water Permit Nos. 6182-3 and 6183-3 and this application, combined may not exceed 1 cubic foot of water per second for each 70 acres irrigated.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6231-3 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 this application must file a written petition with BOTH the applicant and the Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. 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 February 23, 2001. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reason for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal council, if legal council is obtained.

The Water Management Board will consider this application at 10:00 a.m., March 7, 2001, Floyd Mathew Training Center, Joe Foss Building, 523 E. Capitol, Pierre SD 57501. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The March 7, 2001 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 application. The request for automatic delay must be filed by February 23, 2001.

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 February 23, 2001, at the above Water





Feb. 21, 2001

Chief Engineer - Water Rights Program  
Foss Building  
523 E. Capital  
Pierre, S D 57501  
605 773 3352 Fax - 773 4068

Re: I am responding to the "Notice of Hearing" printed in the Redfield Press proposed by "Oscar, Inc".

I am filing an informal petition of great concern opposing the construction of a dam on the natural water way. In opposition to this proposal I bring forth the following concerns:

1. 398 th Avenue - bridge flooding
2. Section -11-114-62 & section - 2-114-62 (flooding of private land)
3. Loss and/or subsequent damage to fences
4. 185 th Street - culvert flooding
5. 184 th Street - flooding
6. Access through out my property
7. Impact of ground water
8. Impact of standing stagnate water on insects, parasites and diseases
9. Impact on wildlife
10. Impact on the James River
- 11.. Health, safety, and welfare of the General Public, Livestock, Land, and Ourselves

I am requesting an automatic delay of the hearing date of March 7, 2001. I would also request a notice of the next hearing date scheduled in this matter plus any and all material and information concerning this project.

Sincerely,

*Arthur E. Olsen*

Arthur E. Olsen  
18524 398 th Ave.  
Hitchcock, S D 57348

Phone 605 266 2560 Fax 266 2887

cc: Oscar, Inc.  
18892 390 th Ave  
Hitchcock, S D 57348

Phone 605 266 2747





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

February 26, 2001

**NOTICE**

TO: Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

FROM: Garland Erbele, Chief Engineer  
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Right Permit Application No. 6231-3, Oscar Incorporated

In response to the public notice of hearing in the Redfield Press, Arthur E. Olsen has filed a petition in the matter of Application No. 6231-3. The petition also requests an automatic delay of March 7, 2001, hearing before the Water Management Board. Therefore, the hearing on Application No. 6231-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on March 7, 2001.

The hearing on Application No. 6231-3 will be scheduled for the May 2 and 3, 2001 Water Management Board meeting in Pierre. Future notice of the exact date, time and place of the hearing for Application No. 6231-3 will be provided to all parties of record.

A copy of the staff report and Chief Engineer's recommendation is enclosed for the petitioner.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

## CERTIFICATION

I hereby certify that on February 26, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 26, 2001, regarding Automatic Delay of Hearing on Water Right Permit Application No. 6231-3, Oscar Incorporated, addressed as stated below:

Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

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

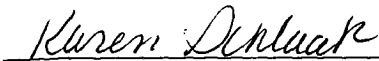
Diane Best, Assistant Attorney General, Capitol Building



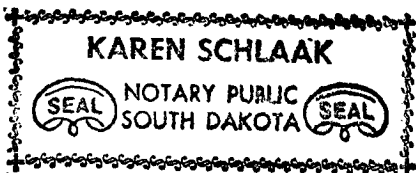
Eric S. Gronlund  
Natural Resources Engineer  
Water Right Program

STATE OF SOUTH DAKOTA     )  
                                          ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 27<sup>th</sup> day of February, 2001.



Karen Schlaak  
Notary Public



KAREN SCHLAACK, Notary Public  
My Commission Expires  
April 1, 2001



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

March 28, 2001

**NOTICE**

TO: Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

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

SUBJECT: Scheduling of Hearing on Water Right Permit Application No. 6231-3, Oscar, Inc.

Water Permit Application No. 6231-3 proposes to impound 90 acre-feet of water from runoff and springs in a dam located in the S½ SW¼ Section 10, T114N, R62W to irrigate 901 acres. The March 7, 2001 hearing before the Water Management Board was automatically delayed by the petitioner.

The Water Management Board will consider Application No. 6231-3 on May 2, 2001, at 9:15 AM, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the Notice published January 17 and 24, 2001, in the Redfield Press will still apply at the May 2<sup>nd</sup> hearing before the Water Management Board. This hearing is an adversary proceeding. Any party of record has the right to be present and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

# CERTIFICATION

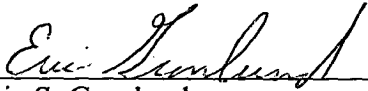
I hereby certify that on March 28, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 28, 2001, regarding Scheduling of the Hearing on Water Right Permit Application No. 6231-3, Oscar Incorporated, addressed as stated below:

Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

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

Diane Best, Assistant Attorney General, Capitol Building



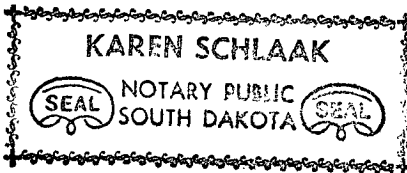
Eric S. Gronlund  
Natural Resources Engineer  
Water Right Program

STATE OF SOUTH DAKOTA     )  
                                          ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 29<sup>th</sup> day of March, 2001.



Karen Schlaak  
Notary Public



KAREN SCHLAACK, Notary Public  
My Commission Expires  
April 1, 2001





OSCAR INC. DAM April 24, 2001





















184 th St. 8 foot Bridge



185 th St. 4 foot CMP Culvert



398 th Ave. 15 foot Bridge & Upstream Channel



398 th Ave. 15 foot Bridge & Downstream Channel





**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

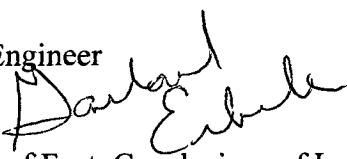
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

May 8, 2001

**NOTICE**

TO: Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

FROM: Garland Erbele, Chief Engineer  
Water Rights Program 

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application No. 6231-3 filed by Oscar, Inc. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 PM on July 11, 2001 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Parties of Record (names listed above) by June 21, 2001. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) and all Parties of Record by July 2, 2001.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on July 11, 2001. The public hearing was completed May 2, 2001. No additional testimony will be received on July 11, 2001.

Enclosure

c: John Guhin, Deputy Attorney General  
Diane Best, Assistant Attorney General

## CERTIFICATION

I hereby certify that on May 8, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 8, 2001, regarding preparation of proposed findings of fact, conclusions of law and final decision on Water Right Permit Application No. 6231-3, Oscar Incorporated, addressed as stated below:

Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

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

Diane Best, Assistant Attorney General, Capitol Building  
John Guhin, Deputy Attorney General, Capitol Building



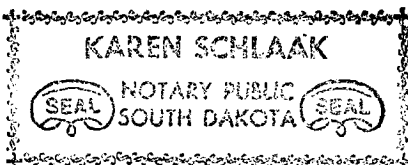
Eric S. Gronlund  
Natural Resources Engineer  
Water Right Program

STATE OF SOUTH DAKOTA     )  
                                          ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 9<sup>th</sup> day of May, 2001.



Karen Schlaak  
Notary Public



STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY GENERAL**

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
Phone (605) 773-3215  
FAX (605) 773-4106  
[www.state.sd.us/atg](http://www.state.sd.us/atg)

**MARK BARNETT**  
ATTORNEY GENERAL

**LAWRENCE LONG**  
CHIEF DEPUTY ATTORNEY GENERAL

June 12, 2001

MEMORANDUM

TO: Water Management Board and Interested Parties  
FROM: John P. Guhin, Deputy Attorney General *John Guhin*  
RE: Proposed Findings of Fact, Conclusions of Law, and  
Final Decision with Regard to Water Permit Application  
No. 6231-3.

Pursuant to the direction of the Water Management Board, I am enclosing proposed Findings of Fact, Conclusions of Law, and a Final Decision in the above-entitled matter. Please see the Notice of the Chief Engineer of May 8, 2001, for further information.

JPG/js  
Enclosures

j-pld31.jpg





STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

|                          |   |                     |
|--------------------------|---|---------------------|
| IN THE MATTER OF THE     | ) | FINDINGS OF FACT,   |
| APPLICATION FOR          | ) | CONCLUSIONS OF LAW, |
| WATER PERMIT NO. 6231-3, | ) | AND FINAL DECISION  |
| OSCAR, INC.              | ) |                     |

FINDINGS OF FACT

1. This is an application to impound ninety acre feet of water from run-off and spring flow by constructing a dam in Spink County. The water is to be used to irrigate 901 acres of land. This land is also covered by two recently granted water permits; those water permits authorized diversion of 31.6 cfs from the James River.

2. The application indicates that the proposed dam will be six feet high. Analysis by the State's expert indicates that a dam six feet high at the proposed location will store only fifteen acre feet of water. Oscar, Inc. is actually requesting ninety acre feet of water. There is no substantial evidence in the record indicating that the dam will actually hold ninety acre feet of water.

3. The opponent to the application, Mr. Olsen, has contended that the six foot dam will, or may, back water up on his property, which is at or above the 1255 feet mean sea level (fmsl) contour level. Mr. Olsen admitted, however, that he had no particular expertise in the reading of contour maps and presented no evidence other than his evaluation of the contour map. The State's expert, Tim Schall, indicated his analysis that a six foot dam would not back up water onto the Olsen property.

The Board credits Mr. Schall's analysis that this will be no water backed upon Mr. Olsen's property. In addition, the Board will qualify the application to specifically provide that the applicant cannot impair the use of the Olsen property, or other property not his own.

4. The watercourse in question is a tributary to the James River and is properly treated as an integral part of the James River system. In 1965, the Water Rights Commission, the predecessor to this Board, placed a 300 cfs diversion limit on the James River with a combined maximum diversion rate from Huron to the North Dakota border of 200 cfs. There are now sixty-seven permits between Huron and the North Dakota border and there is a reasonable possibility that these permits could be subject to shut-off orders.

5. As a consequence, the Applicant's use of the natural flow of the tributary in question by way of his two recently obtained permits could be shut off. The permit sought here will allow the construction and use of the dam to provide a reserve to irrigate with when the James River permits are shut off. Once a shut-off order is issued, the permittee will be able to irrigate, but only out of direct storage when the shut-off order is in effect. The new in-flows will have to be bypassed.

6. The Board notes that the proposed dam is only six feet high and, due to its small size, the safety of dam rules do not apply. The Applicant will be unable to add height to the six-foot high dam without an additional application and approval of that application.

7. The proposed dam will have a drainage area of 5,800 acres or 9.06 square miles. The annual yield for this drainage area with a fifty percent chance of occurrence is expected to be 130 acre feet. The annual yield of with a ten percent chance, one out of ten years, is expected to be 725 acre feet. There is sufficient water available for this permit.

#### CONCLUSIONS OF LAW

1. There is a 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, when developed as qualified below.

3. The proposed use, for irrigation, is a beneficial use.

4. The proposed use is in the public interest as qualified below. In making this determination, the Board has concluded that a six-foot dam should not cause the backing up of water onto the neighbor's property and, moreover, has qualified the permit to protect the neighbor's property.

#### FINAL DECISION

The application for Water Permit No. 6231-3 is granted with the following qualifications.

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

- a. Low flows as needed for downstream domestic use, including livestock water, and prior James River water rights/permits must be bypassed.
- b. The dam must have a low flow bypass structure and bypass inflows from the springs and watershed runoff from June 30 - November 30 unless the Chief

Engineer issues written orders allowing the capture and storage of water.

- c. Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.
  - d. Water that has been lawfully stored in the dam following the above criteria may be diverted by the permit holder for irrigation purposes at any time during the irrigation season. The permit is not obligated to release lawfully stored water to provide water for downstream domestic uses or prior water rights.
- 2. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
  - 3. Water Permit No. 6231-3 authorizes a dam with storage capacity of fifteen acre feet of water.
  - 4. A new water right permit will need to be obtained if the storage capacity of the dam is increased. Additionally, plans and specification will need to be submitted and approved by the Water Rights Program prior to construction for any alterations to the dam that cause the dam height to exceed six feet and the dam's storage capacity to exceed fifty acre feet of water.
  - 5. Impoundment of water authorized by this permit may not impair the use of any lands held by neighboring property owners including, but not limited to, causing permanent pooling of water on land owned by others and/or specific alterations of plant species directly attributable to water use under this permit. Permanent impoundment of water on adjoining land may occur only if a written flood easement is obtained from the property owner or owners.

Dated this \_\_\_\_\_ day of June, 2001.

BY THE BOARD:

---

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of proposed Findings of Fact, Conclusions of Law, and Final Decision In The Matter of the Application for Water Permit No. 6231-3, Oscar, Inc. were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 12<sup>th</sup> day of June, 2001:

Marian Gunderson  
811 W. 3rd Street  
Yankton, S.D. 57078-3702

Bernita Loucks  
219 42nd Street  
Rapid City, S.D. 57702-2123

Rodney Freeman Jr.  
P.O. Box 176  
Huron, S.D. 57350-0176

Dwayne A. Rollag  
320 Lincoln Lane South  
Brookings, S.D. 57006-2741

Leo Holzbauer  
RR 1 Box 170  
Wagner, S.D. 57380-9681

Francis E. Brink  
1214 S. Well Street  
Aberdeen, S.D. 57401-7351

Floyd Peterson  
Oscar, Inc.  
18892 390th Avenue  
Hitchcock, S.D. 57348

Arthur E. Olsen  
18524 398th Avenue  
Hitchcock, S.D. 57348

HAND DELIVERED

BY INTEROFFICE MAIL

Diane Best  
Office of Attorney General  
500 East Capitol Avenue  
Pierre, S.D. 57501-5070

Garland Erbele  
Water Rights Program  
Dept. of Environment &  
Natural Resources  
Foss Building  
523 East Capitol Avenue  
Pierre, S.D. 57501-3182

  
John P. Guhin  
Deputy Attorney General  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
Telephone: (605) 773-3215



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

|                          |   |                     |
|--------------------------|---|---------------------|
| IN THE MATTER OF THE     | ) | FINDINGS OF FACT,   |
| APPLICATION FOR          | ) | CONCLUSIONS OF LAW, |
| WATER PERMIT NO. 6231-3, | ) | AND FINAL DECISION  |
| OSCAR, INC.              | ) |                     |

FINDINGS OF FACT

1. This is an application to impound ninety acre feet of water from run-off and spring flow by constructing a dam in Spink County. The water is to be used to irrigate 901 acres of land. This land is also covered by two recently granted water permits; those water permits authorized diversion of 31.6 cfs from the James River.

2. The application indicates that the proposed dam will be six feet high. Analysis by the State's expert indicates that a dam six feet high at the proposed location will store only fifteen acre feet of water. Oscar, Inc. is actually requesting ninety acre feet of water. There is no substantial evidence in the record indicating that the dam will actually hold ninety acre feet of water.

3. The opponent to the application, Mr. Olsen, has contended that the six foot dam will, or may, back water up on his property, which is at or above the 1255 feet mean sea level (fmsl) contour level. Mr. Olsen admitted, however, that he had no particular expertise in the reading of contour maps and presented no evidence other than his evaluation of the contour map. The State's expert, Tim Schaal, indicated his analysis that a six foot dam would not back up water onto the Olsen property.

The Board credits Mr. Schaal's analysis that this will be no water backed upon Mr. Olsen's property. In addition, the Board will qualify the application to specifically provide that the applicant cannot impair the use of the Olsen property, or other property not his own.

4. The watercourse in question is a tributary to the James River and is properly treated as an integral part of the James River system. In 1965, the Water Rights Commission, the predecessor to this Board, placed a 300 cfs diversion limit on the James River with a combined maximum diversion rate from Huron to the North Dakota border of 200 cfs. There are now sixty-seven permits between Huron and the North Dakota border and there is a reasonable possibility that these permits could be subject to shut-off orders.

5. As a consequence, the Applicant's use of the natural flow of the tributary in question by way of his two recently obtained permits could be shut off. The permit sought here will allow the construction and use of the dam to provide a reserve to irrigate with when the James River permits are shut off. Once a shut-off order is issued, the permittee will be able to irrigate, but only of out of direct storage when the shut-off order is in effect. The new in-flows will have to be bypassed.

6. The Board notes that the proposed dam is only six feet high and, due to its small size, the safety of dam rules do not apply. The Applicant will be unable to add height to the six-foot high dam without an additional application and approval of that application.

7. The proposed dam will have a drainage area of 5,800 acres or 9.06 square miles. The annual yield for this drainage area with a fifty percent chance of occurrence is expected to be 130 acre feet. The annual yield of with a ten percent chance, one out of ten years, is expected to be 725 acre feet. There is sufficient water available for this permit.

#### CONCLUSIONS OF LAW

1. There is a 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, when developed as qualified below.

3. The proposed use, for irrigation, is a beneficial use.

4. The proposed use is in the public interest as qualified below. In making this determination, the Board has concluded that a six-foot dam should not cause the backing up of water onto the neighbor's property and, moreover, has qualified the permit to protect the neighbor's property.

#### FINAL DECISION

The application for Water Permit No. 6231-3 is granted with the following qualifications.

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

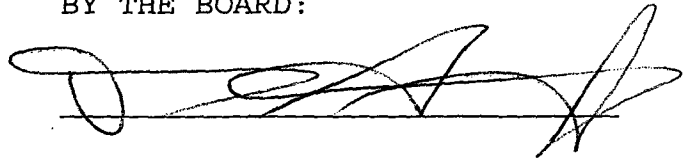
- a. Low flows as needed for downstream domestic use, including livestock water, and prior James River water rights/permits must be bypassed.
- b. The dam must have a low flow bypass structure and bypass inflows from the springs and watershed runoff from June 30 - November 30 unless the Chief

Engineer issues written orders allowing the capture and storage of water.

- c. Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.
  - d. Water that has been lawfully stored in the dam following the above criteria may be diverted by the permit holder for irrigation purposes at any time during the irrigation season. The permit is not obligated to release lawfully stored water to provide water for downstream domestic uses or prior water rights.
- 2. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
  - 3. Water Permit No. 6231-3 authorizes a dam with storage capacity of fifteen acre feet of water.
  - 4. A new water right permit will need to be obtained if the storage capacity of the dam is increased. Additionally, plans and specification will need to be submitted and approved by the Water Rights Program prior to construction for any alterations to the dam that cause the dam height to exceed six feet and the dam's storage capacity to exceed fifty acre feet of water.
  - 5. Impoundment of water authorized by this permit may not impair the use of any lands held by neighboring property owners including, but not limited to, causing permanent pooling of water on land owned by others and/or specific alterations of plant species directly attributable to water use under this permit. Permanent impoundment of water on adjoining land may occur only if a written flood easement is obtained from the property owner or owners.

Dated this 19<sup>th</sup> day of July, 2001.

BY THE BOARD:

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned over a horizontal line.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

July 23, 2001

**NOTICE**

TO: Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

FROM: Garland Erbele, Chief Engineer  
Water Rights Program

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted July 11, 2001, by the Water Management Board approving Water Right Permit No. 6231-3 filed by Oscar Incorporated. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

c: John Guhin, Deputy Attorney General  
Diane Best, Assistant Attorney General



CERTIFICATION

I hereby certify that on July 23, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 23, 2001, regarding adoption of findings of fact, conclusions of law and final decision on Water Right Permit No. 6231-3, Oscar Incorporated, addressed as stated below:

Floyd Peterson  
Oscar, Inc.  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Authur E. Olsen  
18524 398<sup>th</sup> Avenue  
Hitchcock, SD 57348

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

John Guhin, Assistant Attorney General, Capitol Building  
Diane Best, Assistant Attorney General, Capitol Building



Eric S. Gronlund  
Natural Resources Engineer  
Water Right Program

STATE OF SOUTH DAKOTA     )  
                                                  ) SS  
COUNTY OF HUGHES         )

Sworn to, before me, this 24<sup>th</sup> day of July, 2001.



Karen Schlaak  
Notary Public  
May Commission Expires April 1, 2007



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

SEP 24 2001

Oscar Incorporated  
Floyd Peterson  
18892 390<sup>th</sup> Ave  
Hitchcock, SD 57348

Dear Mr. Peterson:

Enclosed is Water Permit No. 6231-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

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

enclosures

**Permit No. 6231-3**  
**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 390<sup>th</sup> Avenue, Hitchcock SD 57348** holder of Permit No. **6231-3**, bearing the priority of **September 20, 2000** authorizing the diversion of **12.87 cfs** \*cu. ft. per second of the waters from runoff in an unnamed tributary to the James River and impoundment of **15 acre feet of water** for **irrigation** purposes, in **Spink** County.

\* the diversion rate was not defined on the application but is listed on the application as the statutory limit.

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

A. Works used to divert the water:

**A small dam is in place and portable pumps and motors are available (see licensing investigations for Water Permit Nos. 6182-3 and 6183-3 for pumps)**

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

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

C. Works used to apply water to beneficial use:

**There is one center pivot (T-L) 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 **impoundment is located approximately 200 feet north and 1,120 feet east of the SW corner of Section 10, T114N, R62W( Lat N 44.691350 W-098.276983). Pump site would be placed approximately 100 – 150 feet from the dam embankment.** 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 NW¼ Sec. 10 T114N R62W     | 12 acres | NE¼ NW¼ Sec. 10 T114N R62W | 40 acres |
| SW¼ NW¼ Sec. 10 T114N R62W     | 17 acres | SE¼ NW¼ Sec. 10 T114N R62W | 40 acres |
| NW¼ SW¼ Sec. 10 T114N R62W     | 25 acres | NE¼ SW¼ Sec. 10 T114N R62W | 40 acres |
| SW¼ SW¼ Sec. 10 T114N R62W     | 18 acres | SE¼ SW¼ Sec. 10 T114N R62W | 24 acres |
| NW¼ SE¼ Sec. 10 T114N R62W     | 39 acres | SW¼ SE¼ Sec. 10 T114N R62W | 25 acres |
| NE 1/4 SE ¼ Sec. 10 T114N R62W | 8 acres  |                            |          |

comprising a total of **288** acres of land and the license should be issued for **4.11 cfs** \*\* and storage of up to **5 acre feet of water**.

\*\* based on statutory limit of 288 acres

Applicable permit qualifications have been complied with: No

Exceptions to compliance are: I saw no sign of a low flow bypass structure as required by condition No1. The application does state that there is a 6 inch culvert at the base of the impoundment that may be plugged to store water. Regardless, this dam impounds only 5 acre feet of water prior to water flowing through the spillway area. This is not a significant amount of water and does not affect James River flows.

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. 6231-3

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

DIVERSION POINT LEGAL LOCATION: impoundment is located approximately 200 feet north and 1,120 feet east of the SW corner of Section 10, T114N, R62W( Lat N 44.691350 W-098.276983). Pump site would be placed approximatel 100 – 150 feet from the dam embankment.

**Pumps :** portable pumps used under Water Permit Nos. 6182-3 and 6183-3 would be used in the event that James River shut-off orders were issued.

| 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 does have pipe on their property for use in flood irrigating. The flood irrigation is on river bottomland where pipe

is drained and 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 pivot:**

- 1) Make T-L
- 2) Overall length 1200 feet
- 3) Number of towers 8
- 4) Distance between towers 150 feet
- 5) End gun Yes
- 6) High or low pressure medium
- 7) Capacity 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.

#### **DAM INFORMATION:**

- 1) Height to crest 6 feet
- 2) Height to primary spillway 5 feet
- 3) Height to secondary spillway      ft
- 4) Crest width approx. 25 feet
- 5) Crest length approx. 230 feet
- 6) Spillway length 30 feet
- 7) Spillway width 10 - 12 feet
- 8) Approx. storage approx. 5 ac-ft
- 9) Approx. storage to crest approx. 6 ac-ft
- 10) Date constructed:

\* Application stated that a 6 inch culvert is placed in the bottom of fill and that this can be plugged when storing water. During my investigation, I did not view the culvert. Water was flowing over the dam in an armored section (approx. 10 feet wide) which was approximately one foot below the crest. In my engineering judgment, this dam is likely subject to overtopping and failure in large run-off events. Failure of this structure should not pose a significant threat due to the small size of



the structure and its proximity to the James River. This drainage confluences with the James River approximately 1,000 feet below the dam.

**CHEMIGATION EQUIPMENT: no chemigation at time of licensing investigation**

**PERMIT QUALIFICATIONS:**

- 1) Special qualifications to permit being abided by no
- 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:** At the time of the licensing the area had sufficient rainfall and they had not irrigated yet during the 2005 season. Mr. Peterson stated that the diversion of water from this impoundment is a standby use in the event shut-off orders are issued on their James River water rights for irrigating these same acres. It is my engineering judgment that in the event of James River shutoff orders that this impoundment would not be a reliable source of water to irrigate 288 acres of land. This is based on the relatively small size of the impoundment and the inflow to the impoundment at the time of the licensing investigation

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

Mr. Peterson stated it is not his intent to irrigate in Section 15, T114N, R62W from this impoundment.

The annual irrigation questionnaires submitted in 2003 and 2004 state that irrigation took place at a rate of 2400 gpm to irrigate 480 acres of grass. From my review, I do not know what 480 acres they are referencing.

6231-3

Water Rights Program - DENR  
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit No. 6231-3, Oscar Inc.

ADDRESS: 18892 390<sup>th</sup> Avenue, Hitchcock SD COUNTY: Spink

DATE: August, 19, 2005 TELEPHONE:

RE: Completion of Construction

COMMENTS:

On June 30, 2005, Mike DeFea and myself conducted inspections of a number of Oscar Inc. water permits for the purpose of licensing. Water Permit No. 6231-3 was on of the systems that Floyd "Oscar" showed us as being completed. Therefore, we inspected the water permit even though the time to complete construction is July 11, 2006. The license can be issued since the system is complete to the extent intended by Mr. Peterson.

The pump and motor were not in place at the time of the on-site visit. The dam is used only when shut-off orders are issued for the James River. Mr. Peterson stated that the acreage in Section 15, T114N, R62W would not be irrigated from the dam.

NAME:

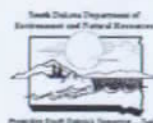
*Eric Henderson*

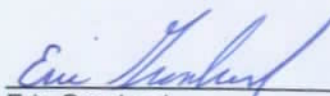


Picture of the dam taken from the north looking in a southerly direction.



Dam is located approximately 200 feet north and 1,120 feet east of the SW corner of Section 10, T114N, R62W  
Lat/Lon N44.691350 W-098.27983  
Pump location is set up approximately 100 - 150 feet from the dam embankment  
(pump not in place at time of licensing investigation)



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

# STATE OF SOUTH DAKOTA

## WATER LICENSE NO. 6231-3

(1) Oscar, Inc., c/o Floyd Peterson, 18892 390<sup>th</sup> Ave, Hitchcock SD 57348 made Application No. 6231-3, September 20, 2000 for a water permit to impound 15 acre-feet of runoff and springs, Spink County, South Dakota for irrigation purposes. Permit No. 6231-3, with a priority date of September 20, 2000 was approved July 11, 2001 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before July 11, 2006 and for the application to beneficial use of water on or before July 11, 2010.

(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. 6231-3 is issued a license, bearing a priority date of September 20, 2000 to impound 5 acre-feet of runoff in an unnamed tributary to the James River and divert 4.11 cfs to irrigate 288 acres.

Water Right Nos. 6182-3 and 6183-3 authorize irrigation of the same acreage from the James River. No. 6231-3 serves as a standby water source in the event shutoff orders are issued from the James River.

The impoundment is located approximately 200 feet north and 1,120 feet east of the southwest corner of Section 10-T114N-R62W (SW ¼ SW ¼). The acres authorized for irrigation are as follows:

| Section 10-T114N-R62W |          |                 |          |
|-----------------------|----------|-----------------|----------|
| NW ¼ NW ¼             | 12 acres | NW ¼ SW ¼       | 25 acres |
| SW ¼ NW ¼             | 17 acres | SW ¼ SW ¼       | 18 acres |
| NE ¼ NW ¼             | 40 acres | NE ¼ SW ¼       | 40 acres |
| SE ¼ NW ¼             | 40 acres | SE ¼ SW ¼       | 24 acres |
| NW ¼ SE ¼             | 39 acres |                 |          |
| NE ¼ SE ¼             | 8 acres  |                 |          |
| SW ¼ SE ¼             | 25 acres | Total 288 acres |          |

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 6231-3 including the following now applicable qualifications:

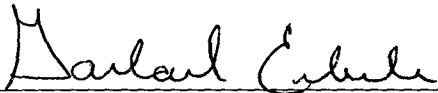
Diversion of water from shall be accordance with the following criteria:

- Low flows as needed for downstream domestic use, including livestock water, and prior James River water rights/permits must be bypassed.
- The dam must have a low flow bypass structure and bypass inflows from the springs and watershed runoff from June 30 – November 30 unless the Chief Engineer issues written orders allowing the capture and storage of water.
- Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

(continued)



- Water that has been lawfully stored in the dam following the above criteria may be diverted by the permit holder for irrigation purposes at any time during the irrigation season. The permit is not obligated to release lawfully stored water for downstream domestic uses or prior water rights.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
- Water Permit No. 6231-3 authorizes a dam with storage capacity of 5 acre feet of water (storage amount developed).
- A new water right permit will need to be obtained if the storage capacity of the dam is increased. Additionally, plans and specifications will need to be submitted and approved by the Water Rights Program prior to construction for any alterations to the dam that cause the dam height to exceed six feet .
- Impoundment of water authorized by this permit may not impair the use of any lands held by neighboring property owners including, but not limited to, causing permanent pooling of water on land owned by others and/or specific alterations of plant species directly attributable to water use under this permit. Permanent impoundment of water on adjoining land may occur only if a written flood easement is obtained from the property owners.



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](http://www.state.sd.us/denr)

Oscar Inc.  
c/o Floyd Peterson  
18892 390<sup>th</sup> 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

6231-3



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
PMB 2020  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

October 21, 2010

Floyd Peterson  
209 27<sup>th</sup> 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 30<sup>th</sup> 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](mailto:genny.mcmath@state.sd.us)

enclosures

STATE OF SOUTH DAKOTA  
WATER MANAGEMENT BOARD

**RECEIVED**  
**JUN 12 2014**  
**WATER RIGHTS**  
**PROGRAM**

---

IN THE MATTER OF PERMIT NO. 6231-3

PETITION TO INVESTIGATE  
ABANDONMENT OF WATER  
PERMIT

---

COMES NOW, Mr. Dave Olsen, by and through his attorney of record Joel A. Arends, and moves this agency to investigate the abandonment and forfeiture of water permit #6231-3 for the following reasons:

1. SDCL 46-5-37.1 provides that an interested party may request that the Chief Engineer investigate whether a water permit has been forfeited or abandoned.
2. SDCL 46-5-37 mandates a permit holder forfeit his appropriated water rights after failing to beneficially use any part of said water right for three years and if no administrative exception for nonuse applies.
3. SDCL 46-1-4 requires that appropriated water must be put to beneficial use to the fullest extent it is capable.
4. ARSD 74:02:01:37.01 allows for exception to nonuse where there is not enough water to satisfy the permit, legal proceedings preventing said use, or existing climatic conditions would constitute waste of the resource. First, there has been water available to satisfy the permit. Second, there are no legal proceedings on the record preventing the use of the water in question. Third, there is a complete absence of evidence to show that permit holder's water use under existing climatic conditions would constitute waste and therefore constitute a defense to his

nonuse. The climatic data source relied upon by the state of South Dakota shows that for the last three years, climatic conditions have been such that waste is not a valid defense for nonuse.

5. ARSD 74:02:01:37.02 also allows for exception to nonuse where water diversion works are maintained in working condition for immediate use upon demand. The works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

6. Petitioner has substantial reason to believe, and evidence to present, that a surface area water permit issued to Oscar, Inc., Permit No. 6231-3, has been both forfeited and abandoned as described in SDCL 46-5-37 and ARSD 74:02:01:37.02.

7. Permit No. 6231-3 has a primary source listed as a diversion dam created by an unnamed tributary of the James River however; its holder has not used the diversion dam works at any time during the last three years nor is there any equipment in place to allow for its use as is required pursuant to ARSD 74:02:01:37.02. See attached *Affidavits of David Olsen, Annette Olsen and Arthur Olsen*.

8. Petitioners have been prejudiced by the existence and subsequent ongoing non-use of the Permit Holder's water permit.

9. Petitioners respectfully request that the Chief Engineer investigates the permit and further recommends, based on the evidence, that a hearing before the Water Management Board be scheduled in order to cancel the current holder's permit.

Respectfully submitted this 9<sup>th</sup> day of June 2014.

ARENDS LAW, P.C.

SS//Joel A. Arends//SS

Joel A. Arends  
Arends Law, P.C.  
P.O. Box 1246  
Sioux Falls, SD 57101-1246  
(605) 254-2624  
[joel@arendslaw.com](mailto:joel@arendslaw.com)  
Attorney for Petitioners



RECEIVED

JUN 12 2014

WATER RIGHTS  
PROGRAM

STATE OF SOUTH DAKOTA  
WATER MANAGEMENT BOARD

---

IN THE MATTER OF PERMIT NO. 6231-3

AFFIDAVIT IN SUPPORT OF  
PETITION TO INVESTIGATE  
ABANDONMENT OF WATER  
PERMIT

---

STATE OF SOUTH DAKOTA     )  
                                          )SS  
COUNTY OF LINCOLN         )

I, Annette K. Olsen being first duly sworn on oath, depose and state:

1. I am of adult age. I am mentally sound and competent to testify in the Court of the State of South Dakota. The matters set forth in this Affidavit are based upon my own personal knowledge unless otherwise stated. I would testify in open court, if called upon to do so, as to the fact set forth herein.

2. I make this affidavit in support of Petitioners' Petition to Investigate Abandonment of Water Permit No. 6231-3 issued to permit holder Oscar, Inc.

3. I have substantial reason to believe, and evidence to present, that the surface area water permit issued to Oscar, Inc., has been both forfeited and abandoned as described in SDCL 46-5-37.

4. SDCL 46-5-37.1 provides that an interested party may request the Chief Engineer investigate whether a water permit has been forfeited or abandoned. This affidavit is a request for the Chief Engineer to investigate the nonuse of Permit No. 6231-3. I am an interested party

because I have an interest in land that is adjoining to the Permit No. 6231-3 and that I intend to request a surface area water permit for said land.

5. SDCL 46-5-37 mandates a permit holder forfeit his appropriated water rights after failing to beneficially use any part of said water right for three years and if no administrative exception for nonuse applies.

6. SDCL 46-1-4 requires that appropriated water must be put to beneficial use to the fullest extent it is capable.

7. ARSD 74:02:01:37.01 allows for exception to nonuse where there is not enough water to satisfy the permit, legal proceedings preventing said use, or existing climatic conditions would constitute waste of the resource.

8. ARSD 74:02:01:37.02 allows for exception to nonuse where water diversion works are maintained in working condition for immediate use upon demand. The works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

9. Permit No. 6231-3, has not been used by its holder at any time during the last nine (9) years.

10. Upon information and belief, and according to eyewitness testimony, including my own personal observations made with my senses, the works to divert appropriated water failed to include functional motors, pumps and appurtenances to convey water from the surface source to its destination. Furthermore, the water diversion works are not in working condition for immediate use upon demand.

11. Attached and incorporated into this Affidavit by reference is a disc containing photographic evidence that the permit holder in question has no pumping equipment in place in order to facilitate the use of the permit nor has any pumping equipment has ever been placed on the area in question.

12. None of the listed exceptions contained in SDAR 74:02:01:37.01 are present in this matter.

a. First, there has been water available to satisfy the permit. See attached Affidavits and historical well observation data for well SP-77U. Well SP-77U is the well closest in proximity to the surface area permit in question.

b. Second, there are no legal proceedings on the record preventing the use of the water in question.

c. Third, there is a complete absence of evidence to show that permit holder's water use under existing climatic conditions would constitute waste and therefore constitute a defense to his nonuse. The climatic data source relied upon by the state of South Dakota shows that for the last three years, climatic conditions have been such that waste is not a valid defense for nonuse. See attached United States Historical Climatology Network data.

13. I am requesting that the Chief Engineer investigate the permit and further recommend, based on the evidence, that a hearing before the Water Management Board be scheduled in order to cancel the current holder's permit.

## VERIFICATION

[illegible]

ANNETTE K. OLSEN, being first duly sworn, states as follows:

1. That I am the person known as Annette K. Olsen and make this verification in support of the aforementioned Affidavit.
2. That I have read the foregoing and understand the contents.
3. That the matters, facts and things stated herein are true, accurate and complete.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein above first written.

Annette K. Olsen  
Annette K. Olsen

SUBSCRIBED AND SWORN TO before me this 28<sup>th</sup> day of May, 2014.

[Signature]  
Notary Public - State of South Dakota

My Commission expires: 3-19

SEAL



STATE OF SOUTH DAKOTA  
WATER MANAGEMENT BOARD

**RECEIVED**  
**JUN 12 2014**  
**WATER RIGHTS**  
**PROGRAM**

---

IN THE MATTER OF PERMIT NO. 6231-3

AFFIDAVIT IN SUPPORT OF  
PETITION TO INVESTIGATE  
ABANDONMENT OF WATER  
PERMIT

---

STATE OF SOUTH DAKOTA     )  
                                          )SS  
COUNTY OF LINCOLN         )

I, David K. Olsen being first duly sworn on oath, depose and state:

1. I am of adult age. I am mentally sound and competent to testify in the Court of  
the State of South Dakota. The matters set forth in this Affidavit are based upon my own  
personal knowledge unless otherwise stated. I would testify in open court, if called upon to do  
so, as to the fact set forth herein.

2. I make this affidavit in support of Petitioners' Petition to Investigate  
Abandonment of Water Permit No. 6231-3 issued to permit holder Oscar, Inc.

3. I have substantial reason to believe, and evidence to present, that the surface area  
water permit issued to Oscar, Inc., has been both forfeited and abandoned as described in SDCL  
46-5-37.

4. SDCL 46-5-37.1 provides that an interested party may request the Chief Engineer  
investigate whether a water permit has been forfeited or abandoned. This affidavit is a request  
for the Chief Engineer to investigate the nonuse of Permit No. 6231-3. I am an interested party

because I have an interest in land that is adjoining to the Permit No. 6231-3 and that I intend to request a surface area water permit for said land.

5. SDCL 46-5-37 mandates a permit holder forfeit his appropriated water rights after failing to beneficially use any part of said water right for three years and if no administrative exception for nonuse applies.

6. SDCL 46-1-4 requires that appropriated water must be put to beneficial use to the fullest extent it is capable.

7. ARSD 74:02:01:37.01 allows for exception to nonuse where there is not enough water to satisfy the permit, legal proceedings preventing said use, or existing climatic conditions would constitute waste of the resource.

8. ARSD 74:02:01:37.02 allows for exception to nonuse where water diversion works are maintained in working condition for immediate use upon demand. The works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

9. Permit No. 6231-3, has not been used by its holder at any time during the last nine (9) years.

10. Upon information and belief, and according to eyewitness testimony, including my own personal observations made with my senses, the works to divert appropriated water failed to include functional motors, pumps and appurtenances to convey water from the surface source to its destination. Furthermore, the water diversion works are not in working condition for immediate use upon demand.

11. Attached and incorporated into this Affidavit by reference is a disc containing photographic evidence that the permit holder in question has no pumping equipment in place in order to facilitate the use of the permit nor has any pumping equipment has ever been placed on the area in question.

12. None of the listed exceptions contained in SDAR 74:02:01:37.01 are present in this matter.

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- b. Second, there are no legal proceedings on the record preventing the use of the water in question.
- c. Third, there is a complete absence of evidence to show that permit holder's water use under existing climatic conditions would constitute waste and therefore constitute a defense to his nonuse. The climatic data source relied upon by the state of South Dakota shows that for the last three years, climatic conditions have been such that waste is not a valid defense for nonuse. See attached United States Historical Climatology Network data.

13. I am requesting that the Chief Engineer investigate the permit and further recommend, based on the evidence, that a hearing before the Water Management Board be scheduled in order to cancel the current holder's permit.

## VERIFICATION

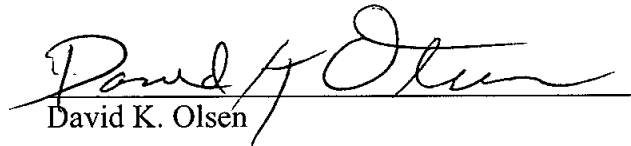
[illegible]



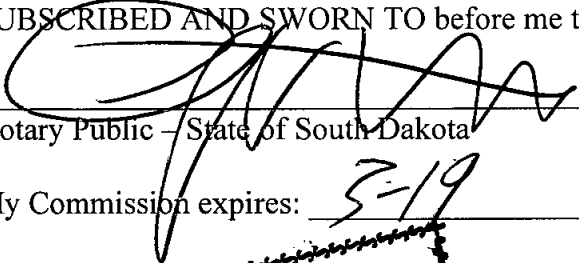
DAVID K. OLSEN, being first duly sworn, states as follows:

1. That I am the person known as David K. Olsen and make this verification in support of the aforementioned Affidavit.
2. That I have read the foregoing and understand the contents.
3. That the matters, facts and things stated herein are true, accurate and complete.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein above first written.

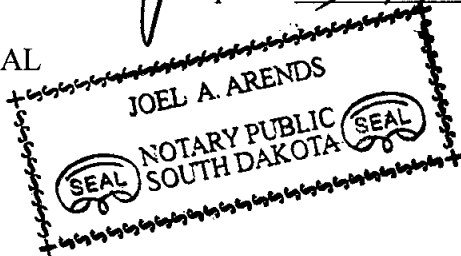
  
David K. Olsen

SUBSCRIBED AND SWORN TO before me this 28<sup>th</sup> day of May, 2014.

  
Notary Public – State of South Dakota

My Commission expires: 5-19

SEAL



STATE OF SOUTH DAKOTA  
WATER MANAGEMENT BOARD

**RECEIVED**  
**JUN 12 2014**  
**WATER RIGHTS  
PROGRAM**

---

IN THE MATTER OF PERMIT NO. 6231-3

AFFIDAVIT IN SUPPORT OF  
PETITION TO INVESTIGATE  
ABANDONMENT OF WATER  
PERMIT

---

State of South Dakota        )  
                                          SS  
County of Lincoln        )

I, Arthur E. Olsen being first duly sworn on oath, depose and state:

1. I am of adult age. I am mentally sound and competent to testify in the Court of the State of South Dakota. The matters set forth in this Affidavit are based upon my own personal knowledge unless otherwise stated. I would testify in open court, if called upon to do so, as to the fact set forth herein.

2. I make this affidavit in support of Petitioners' Petition to Investigate Abandonment of Water Permit No. 6231-3 issued to permit holder Oscar, Inc.

3. I have substantial reason to believe, and evidence to present, that the surface area water permit issued to Oscar, Inc., has been both forfeited and abandoned as described in SDCL 46-5-37.

4. SDCL 46-5-37.1 provides that an interested party may request the Chief Engineer investigate whether a water permit has been forfeited or abandoned. This affidavit is a request for the Chief Engineer to investigate the nonuse of Permit No. 6231-3. I am an interested party

because I have an interest in land that is adjoining to the Permit No. 6231-3 and that I intend to request a surface area water permit for said land.

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9. Permit No. 6231-3, has not been used by its holder at any time during the last nine (9) years.

10. Upon information and belief, and according to eyewitness testimony, including my own personal observations made with my senses, the works to divert appropriated water failed to include functional motors, pumps and appurtenances to convey water from the surface source to its destination. Furthermore, the water diversion works are not in working condition for immediate use upon demand.

11. Attached and incorporated into this Affidavit by reference is a disc containing photographic evidence that the permit holder in question has no pumping equipment in place in order to facilitate the use of the permit nor has any pumping equipment has ever been placed on the area in question.

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- c. Third, there is a complete absence of evidence to show that permit holder's water use under existing climatic conditions would constitute waste and therefore constitute a defense to his nonuse. The climatic data source relied upon by the state of South Dakota shows that for the last three years, climatic conditions have been such that waste is not a valid defense for nonuse. See attached United States Historical Climatology Network data.

13. I am requesting that the Chief Engineer investigate the permit and further recommend, based on the evidence, that a hearing before the Water Management Board be scheduled in order to cancel the current holder's permit.

## VERIFICATION

STATE OF SOUTH DAKOTA )  
COUNTY OF Lincoln )SS )

ARTHUR E. OLSEN, being first duly sworn, states as follows:

1. That I am the person known as Arthur E. Olsen and make this verification in support of the aforementioned Affidavit.
2. That I have read the foregoing and understand the contents.
3. That the matters, facts and things stated herein are true, accurate and complete.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein above first written.

Arthur E Olsen

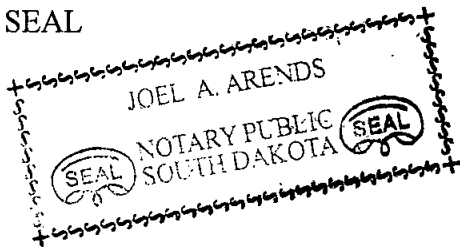
Arthur E. Olsen

SUBSCRIBED AND SWORN TO before me this 28 day of May, 2014.

[Signature]  
Notary Public - State of South Dakota

My Commission expires: 3-19

SEAL





DEPARTMENT OF ENVIRONMENT  
and NATURAL RESOURCES

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



June 13, 2014

Floyd Peterson  
Oscar Inc  
18892 390<sup>th</sup> Avenue  
Hitchcock SD 57348

Dear Mr. Peterson:

The Water Rights Program received the attached petition to investigate abandonment of Water Right No. 6231-3 held in the name of Oscar Inc. South Dakota Codified Law 46-5-37.1 provides that upon initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, the chief engineer may investigate whether or not a water right has been abandoned or forfeited. This letter is intended to serve as notification that a petition was received and that an investigation of this water right will be conducted. This may involve an on-site visit.

Attached is Water Right No. 6231-3. This water right appropriates water from runoff and springs that flow into a dam in the SW ¼ SW ¼ Section 10, T114N, R62W.

Please anticipate receiving a call in the near future regarding setting up a time for a staff engineer to conduct an on-site investigation of the system.

Sincerely,

Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[eric.gronlund@state.sd.us](mailto:eric.gronlund@state.sd.us)

enclosures

cc: Joel A Arends, Arends Law, PO Box 1246, Sioux Falls SD 57101-1246

## **Gronlund, Eric**

---

**From:** Gronlund, Eric  
**Sent:** Friday, June 13, 2014 11:47 AM  
**To:** joel@arendslaw.com  
**Subject:** Petition to investigate abandonment of water permit

Mr. Arends:

DENR is in receipt of the petition to investigate abandonment of Water Right No. 6231-3 held in the name of Oscar Inc. DENR is providing Mr. Floyd Peterson notice of the petition as required under SDCL 46-5-37.1.

I note that Item No. 11 on each of the three affidavits in support of petition states there is an attached disc containing photographic evidence. The submittal received by DENR did not include this attached disc.

Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[Eric.gronlund@state.sd.us](mailto:Eric.gronlund@state.sd.us)



## Gronlund, Eric

---

**From:** Gronlund, Eric  
**Sent:** Wednesday, June 25, 2014 10:29 AM  
**To:** 'Joel A. Arends'  
**Subject:** RE: Petition to investigate abandonment of water permit

The disc has not showed up in DENR's mail as of Wednesday, June 25<sup>th</sup>. Eric

---

**From:** Joel A. Arends [<mailto:joel@arendslaw.com>]  
**Sent:** Thursday, June 19, 2014 11:23 AM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

It was returned to me for insufficient postage. Apparently I didn't put enough stamps on it.

I'm resending it today. Best. Joel.

Joel A. Arends  
Arends Law, P.C.  
P.O. Box 1246  
Sioux Falls, S.D. 57101-1246  
(605) 254-2624  
[Joel@arendslaw.com](mailto:Joel@arendslaw.com)

On Jun 19, 2014, at 11:18 AM, "Gronlund, Eric" <[Eric.Gronlund@state.sd.us](mailto:Eric.Gronlund@state.sd.us)> wrote:

DENR has not yet received the disc in the mail.

---

**From:** Joel A. Arends [<mailto:joel@arendslaw.com>]  
**Sent:** Friday, June 13, 2014 12:53 PM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

Mr. Gronlund:

Thanks for the notice.

I am enclosing the disc in today's mail for attachment and incorporation into the Affidavit.

Best,

Joel Arends

Arends Law, P.C.  
Joel A. Arends  
Managing Partner  
101 W. 69th Street, Suite 105  
P.O. Box 1246

Sioux Falls, SD 57108  
(605) 254-2624  
[joel@arendslaw.com](mailto:joel@arendslaw.com)

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I note that Item No. 11 on each of the three affidavits in support of petition states there is an attached disc containing photographic evidence. The submittal received by DENR did not include this attached disc.

Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[Eric.gronlund@state.sd.us](mailto:Eric.gronlund@state.sd.us)

## Gronlund, Eric

---

**From:** Gronlund, Eric  
**Sent:** Thursday, June 19, 2014 11:19 AM  
**To:** 'Joel A. Arends'  
**Subject:** RE: Petition to investigate abandonment of water permit

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**Sent:** Friday, June 13, 2014 12:53 PM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

Mr. Gronlund:

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Best,

Joel Arends

Arends Law, P.C.  
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Managing Partner  
101 W. 69th Street, Suite 105  
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Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[Eric.gronlund@state.sd.us](mailto:Eric.gronlund@state.sd.us)

## Gronlund, Eric

---

**From:** Joel A. Arends <joel@arendslaw.com>  
**Sent:** Wednesday, June 25, 2014 5:36 PM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

Mr. Gronlund:

Attached, please find the photos referred to in Mr. Olsen's Affidavit.

Best,

Joel Arends















Verizon

2:30 AM



# Find My Friends



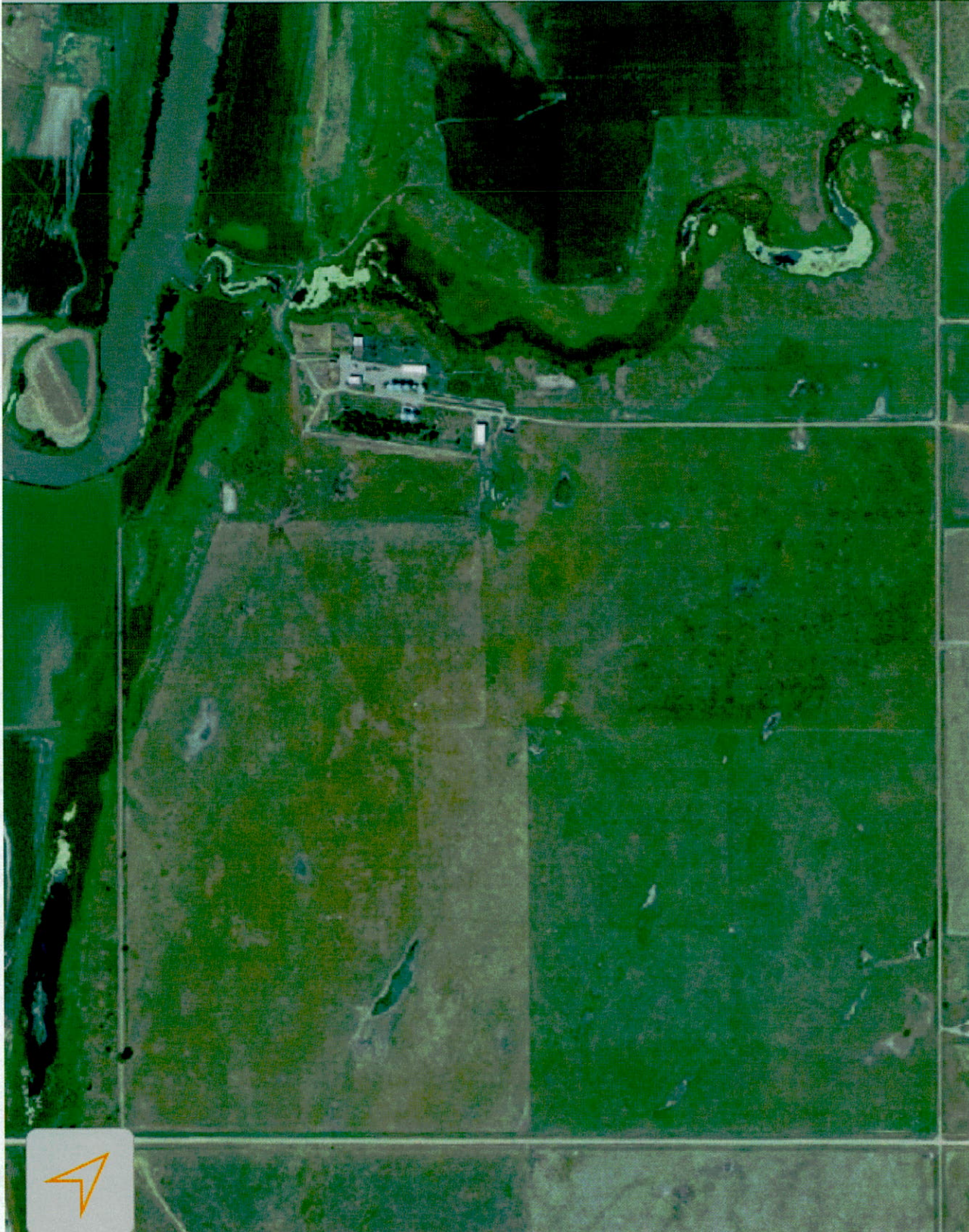


Verizon

2:34 AM



# Find My Friends















Verizon

2:28 AM



# Find My Friends











# Find My Friends



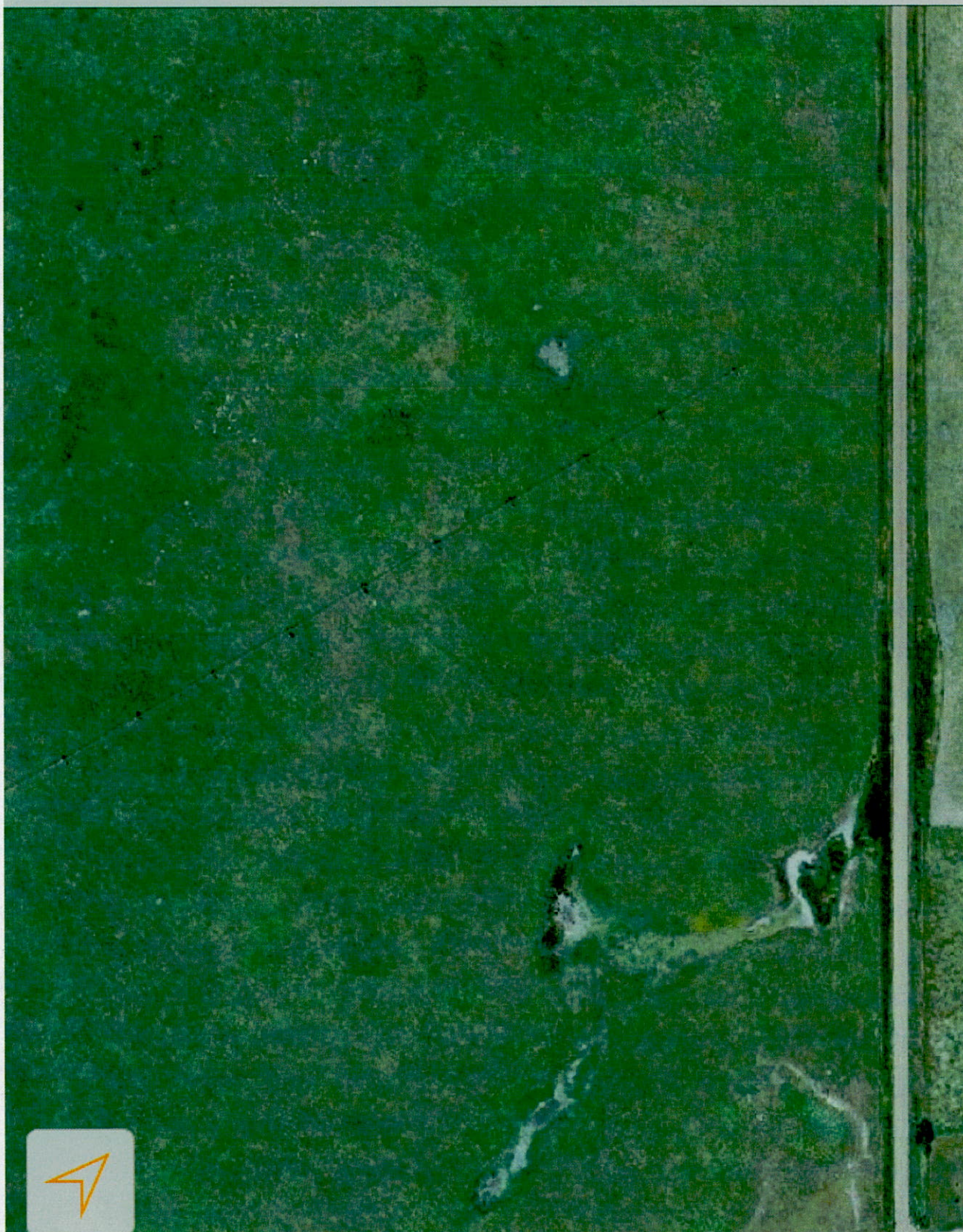








# Find My Friends





Arends Law, P.C.  
Joel A. Arends  
Managing Partner  
101 W. 69th Street, Suite 105  
P.O. Box 1246  
Sioux Falls, SD 57108  
(605) 254-2624  
[joel@arendslaw.com](mailto:joel@arendslaw.com)

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Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[Eric.gronlund@state.sd.us](mailto:Eric.gronlund@state.sd.us)

## Gronlund, Eric

---

**From:** Joel A. Arends <joel@arendslaw.com>  
**Sent:** Wednesday, June 25, 2014 5:38 PM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

Mr. Gronlund:

Additional photos:

Best,

Joel Arends

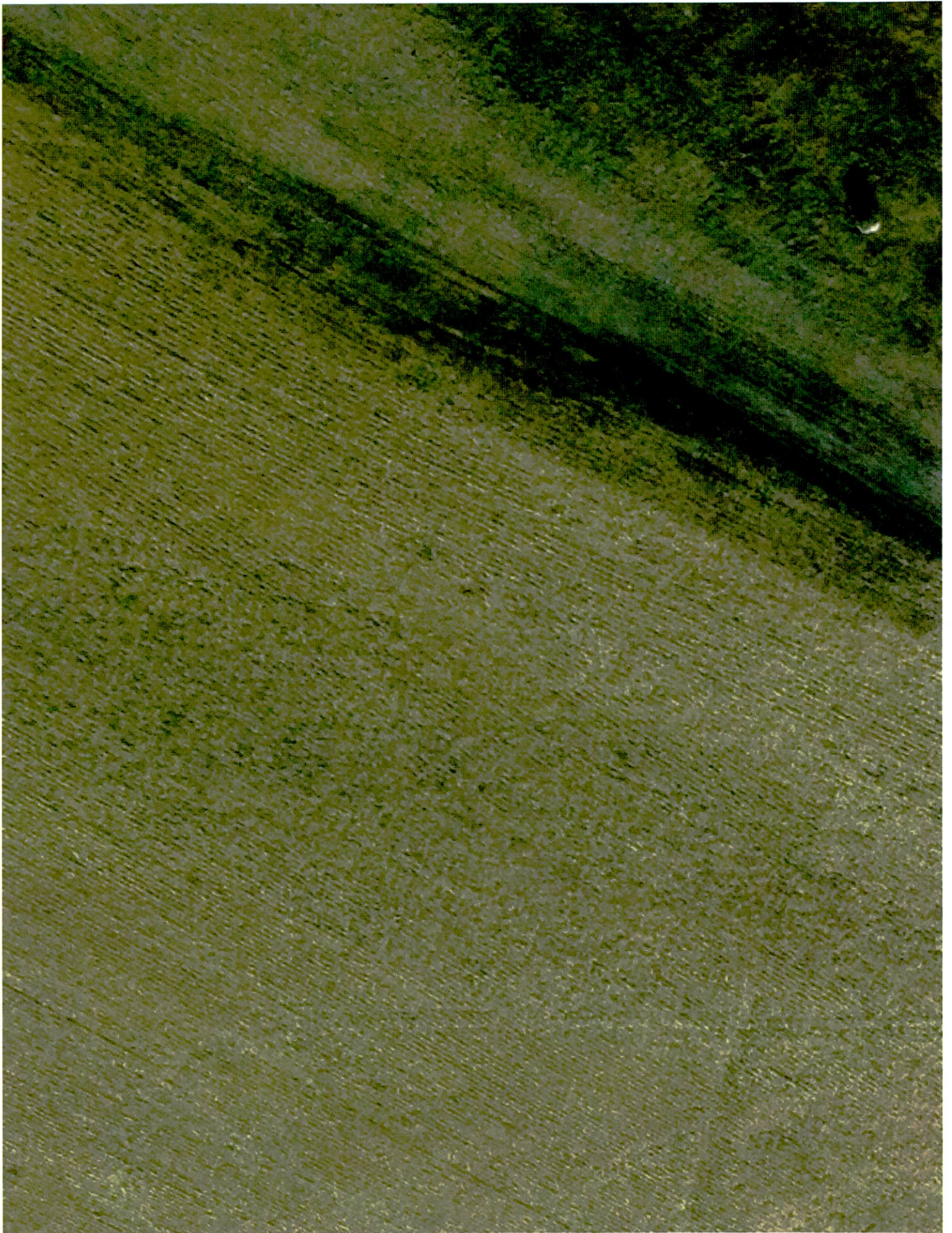














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The disc has not showed up in DENR's mail as of Wednesday, June 25<sup>th</sup>. Eric

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**Sent:** Thursday, June 19, 2014 11:23 AM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

It was returned to me for insufficient postage. Apparently I didn't put enough stamps on it.

I'm resending it today. Best. Joel.

Joel A. Arends  
Arends Law, P.C.  
P.O. Box 1246



Sioux Falls, S.D. 57101-1246

(605) 254-2624

[Joel@arendslaw.com](mailto:Joel@arendslaw.com)

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**To:** Gronlund, Eric

**Subject:** Re: Petition to investigate abandonment of water permit

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Thanks for the notice.

I am enclosing the disc in today's mail for attachment and incorporation into the Affidavit.

Best,

Joel Arends

Arends Law, P.C.

Joel A. Arends

Managing Partner

101 W. 69th Street, Suite 105

P.O. Box 1246

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DENR is in receipt of the petition to investigate abandonment of Water Right No. 6231-3 held in the name of Oscar Inc. DENR is providing Mr. Floyd Peterson notice of the petition as required under SDCL 46-5-37.1.

I note that Item No. 11 on each of the three affidavits in support of petition states there is an attached disc containing photographic evidence. The submittal received by DENR did not include this attached disc.

Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[Eric.gronlund@state.sd.us](mailto:Eric.gronlund@state.sd.us)



**Gronlund, Eric**

---

**From:** Joel A. Arends <joel@arendslaw.com>  
**Sent:** Wednesday, June 25, 2014 5:38 PM  
**To:** Gronlund, Eric  
**Subject:** Re: Petition to investigate abandonment of water permit

Mr. Gronlund:

Additional photos:

Best,

Joel Arends















Arends Law, P.C.  
Joel A. Arends  
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Water Rights Program, DENR  
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**Gronlund, Eric**

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**Sent:** Wednesday, June 25, 2014 5:36 PM  
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Mr. Grondlund:

Attached, please find the photos referred to in Mr. Olsen's Affidavit.

Best,

Joel Arends















Verizon

2:30 AM



# Find My Friends





Verizon

2:34 AM



# Find My Friends

















# Find My Friends







Verizon

2:30 AM



# Find My Friends











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Water Rights Program, DENR  
605 773-3352  
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DEPARTMENT OF ENVIRONMENT  
and NATURAL RESOURCES

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



September 15, 2014

Joel A. Arends  
Arends Law, PC  
PO Box 1246  
Sioux Falls SD 57101-1246

Dear Mr. Arends:

The South Dakota Department of Environment and Natural Resources (DENR) received your June 9, 2014, petition filed on behalf of Dave Olsen to investigate abandonment of Water Right No. 6231-3 held by Oscar Inc. The petition asserts that the water right holder has not used the diversion dam works at any time during the last three years nor is there any equipment in place to allow for its use. The petition requests the Chief Engineer investigate the permit and further recommend, based on the evidence, that a hearing before the Water Management Board be scheduled in order to cancel the water right.

Water License No. 6231-3 held in the name of Oscar, Inc. was issued to impound 5 acre feet of water of runoff in an unnamed tributary to the James River and appropriates 4.11 cubic feet of water per second from the impoundment to irrigate 288 acres located in portions of the NW  $\frac{1}{4}$ , SW  $\frac{1}{4}$ , N  $\frac{1}{2}$  SE  $\frac{1}{4}$  and SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 10, T114N, R62W. Water Right No. 6182-3 authorizes irrigation of the same acreage from the James River. Water Right No. 6231-3 serves as standby water source to the James River water right.

On July 21, 2014, staff engineer Mark Rath conducted an on-site investigation of the irrigation system for Water Right No. 6231-3. At the time of the investigation the dam was in place, full and discharging to the downstream waterway. The portable pump with motor and a portable fuel tank were located approximately 800 feet west of the dam at the James River diversion point authorized by Water Right No. 6182-3. In addition, a center pivot was in place in the S  $\frac{1}{2}$  Section 10, T114N, R62W, several sections of aluminum pipe for conveying water were adjacent to the dam, and 55 segments of gated pipe were stacked in close proximity to the acres authorized for irrigation. Mark Rath's report is enclosed.

The annual irrigation questionnaires for both Water Right Nos. 6182-3 and 6231-3 were reviewed. Based on the reporting by Mr. Peterson there has not been a three year period of nonuse. In addition, during the staff investigation, Jeb Peterson, the water right holder's grandson, stated that irrigation from the dam has taken place in the past.

The petition cites that pursuant to Administrative Rule 74:02:01:37.01 Legal excuse for nonuse of water, none of the listed exceptions for legal excuse are present. DENR concurs that there is not any known evidence that the three criteria listed for legal excuse for nonuse of water exist in this matter. However, as stated in the petition, Administrative Rule 74:02:01:37.02 Exceptions



to nonuse of water states that a water supply maintained for either fire protection or standby purposes is not nonuse of a water right. DENR's investigation found equipment is in place to allow for its use which meets the standard of being maintained for standby purposes.

Specifically that rule states:

A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

If irrigation did not take place from the impoundment, which is contrary to what was reported on the annual irrigation questionnaire, the issue becomes whether this permit is maintained for standby purposes. The staff report concludes functional motors, pumps, and appurtenances to convey water are on site. The Board rule states "...maintained in working condition for immediate use upon demand". From DENR's perspective the pump, motor, and fuel tank can be moved the approximate 800 feet from the James River diversion point to the impoundment and pipe reconfigured and connected in one day. This satisfies our conclusion that this meets the intent of the Board rule regarding immediate use upon demand.

Pursuant to SDCL 46-5-37.1, an investigation of Water Permit No. 6231-3 has been conducted on whether or not Water Permit No. 6231-3 has been abandoned or forfeited. 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 evidence and Board rule for standby use, I am not persuaded that the state can meet its burden of proof at hearing.

Barring submittal of new evidence showing abandonment or forfeiture occurred, I decline to further investigate whether any portion of Water Right No. 6231-3 has been abandoned or forfeited.

Sincerely,

  
Jeanne Goodman, Chief Engineer  
Water Rights Program, DENR

enclosure

c: Floyd Peterson, 209 27<sup>th</sup> Street NW, Huron SD 57350

REPORT ON THE STATUS OF WATER RIGHT NO. 6231-3  
OSCAR INCORPORATED  
August 11, 2014

Water Right No. 6231-3, Oscar Incorporated c/o Floyd Peterson, is licensed to appropriate 4.11 cubic feet of water per second from a 5 acre-foot dam located on an unnamed tributary to the James River to irrigate 288 acres. The diversion point for No. 6231-3 is located in the SW1/4 of Section 10 T114N-R62W. The intent of Water Right No. 6231-3 is a standby water supply to a portion of the same acres covered by Water Right No. 6182-3 also held by Oscar Incorporated with the water source being the James River. The proposed project is located in southern Spink County.

Petition to Investigate the Status of Water Right No. 6231-3

On June 12, 2014, the SD DENR Water Rights Program received a petition from Mr. Dave Olson through his attorney Joel A. Arends requesting the Water Rights Program investigate the status of the Water Right No. 6231-3 to determine whether the right should be cancelled due to abandonment or forfeiture.

On June 13, 2014, the Water Rights Program sent Floyd Peterson, the representative for Oscar Incorporated, a letter notifying him a petition was received and an investigation would be conducted including a possible on-site visit. On July 18, 2014 I contacted Floyd Peterson by telephone to schedule a site investigation in regards to the petition request. I obtained Mr. Peterson's permission to be on-site to do the investigation the following Monday even though he had a previous commitment and would be unable to be there.

On July 21, 2014, I made an on-site investigation of the irrigation for Water Right No. 6231-3. Jeb Peterson, Floyd Peterson's grandson, accompanied me during my investigation and showed me the dam, irrigation equipment, pump and motor for this project.

The dam listed in the water right is intact and at the time of the investigation was full and discharging to the downstream waterway, a tributary to the James River. The equipment used to divert the water is an intake, portable pump with motor and a portable fuel tank. These were located approximately 800 feet west of the dam at one of the James River diversion points authorized by No. 6182-3. Adjacent to the dam were several sections of 7 inch aluminum pipe used to transport the water to the equipment used to irrigate the designated acres. The irrigation equipment on site consists of a 7 tower center pivot irrigator is in place with the pivot point located approximately 1900 feet north from the dam and a stacked pile of 55 sections of 10 inch diameter by 30 foot long gated pipe having 20 inch spacing between gates located approximately 900 feet northeast from the dam, Figures 1 - 7. At the time of the investigation there was no irrigation occurring. The gated pipe was in a stack and was not placed in the field at that time. Jeb Peterson indicated that if there was a need to pump from the dam, the pump, motor, intake and fuel tank could be moved to the north side of the dam and attached to the 7 inch aluminum pipe which could provide water to the center pivot and/or the gated pipe. He also indicated that they have performed irrigation in this manner in the past.

The equipment listed above and location of the irrigated land is consistent with what was found by Water Rights Staff Engineer Eric Gronlund in 2005 when he made a water permit investigation for licensing of Water Right Nos. 6231-3 and 6182 - 3, Attachments 1 - 2.

# Site Map for July 21, 2014 Investigation of WR No. 6231-3



Figure 1 – Site map for the investigation of the status of No. 6231-3.





Figure 2 – Small dam located in SW¼ of Sec 10 T114N-R62W



Figure 3 – Pump, motor and intake located in SW¼ of Sec 10 T114N-R62W





Figure 4 – Fuel tank located in SW¼ of Sec 10 T114N-R62W.



Figure 5 –Aluminum pipe to transport water located in SW¼ of Sec 10 T114N-R62W.



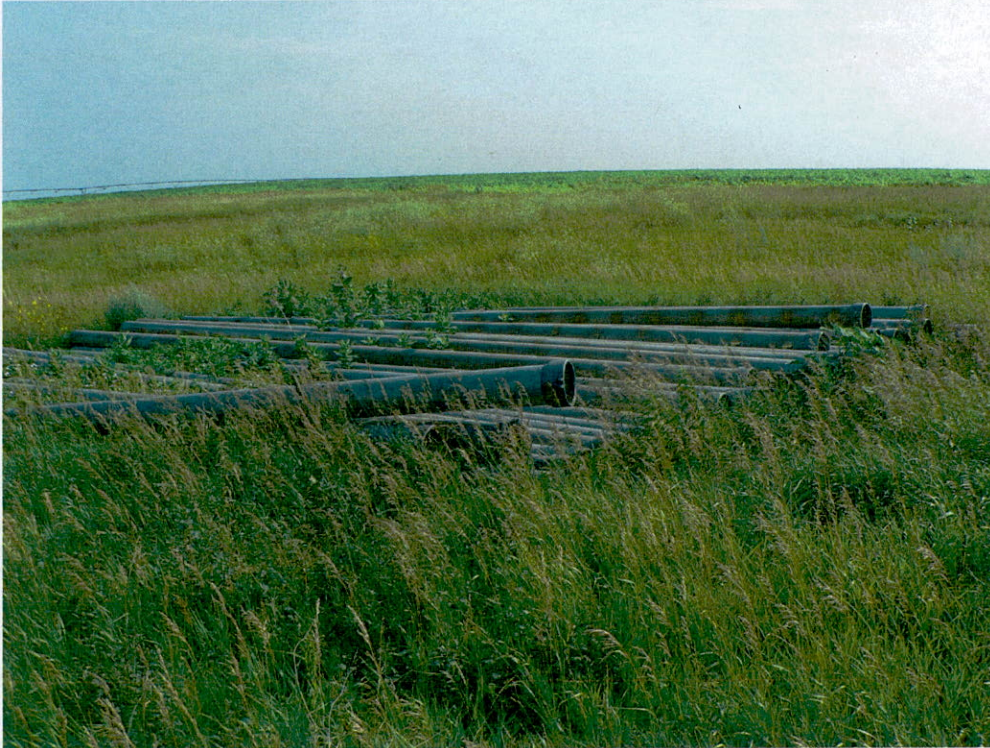


Figure 6 –Gated irrigation pipe located in SW¼ of Sec 10 T114N-R62W.



Figure 7 – Center pivot irrigator located in Sec 10 T114N-R62W.



### Review of the Annual Irrigation Questionnaires

A review of the annual irrigation questionnaire reports for Water Right Nos. 6182-3 and 6231-3 was made, Tables 1 and 2. The only multiple year period of reported non-use for either right occurred during the 5 year construction period, Tables 1 - 2.

| YEAR | IRRIGATED | ACRES REPORTED |
|------|-----------|----------------|
| 2001 | No        | 0              |
| 2002 | No        | 0              |
| 2003 | No        | 0              |
| 2004 | Yes       | 216            |
| 2005 | Yes       | 480            |
| 2006 | Yes       | 204            |
| 2007 | Yes       | 156            |
| 2008 | Yes       | 132            |
| 2009 | Yes       | 204            |
| 2010 | Yes       | 492            |
| 2011 | No        | 0              |
| 2012 | Yes       | 204            |
| 2013 | Yes       | 132            |

Table 1 – Status of the irrigation reported on the annual irrigation questionnaires for No. 6182-3

| YEAR | IRRIGATED | ACRES REPORTED |
|------|-----------|----------------|
| 2001 | No        | 0              |
| 2002 | No        | 0              |
| 2003 | Yes       | 480            |
| 2004 | Yes       | 480            |
| 2005 | Yes       | 165            |
| 2006 | Yes       | 136            |
| 2007 | Yes       | 156            |
| 2008 | Yes       | 132            |
| 2009 | Yes       | 80+            |
| 2010 | Yes       | 86.4           |
| 2011 | Yes       | 97             |
| 2012 | Yes       | 97             |
| 2013 | Yes       | 150            |

Table 2 – Status of the irrigation reported on the annual irrigation questionnaires for No. 6231-3

South Dakota Administrative Rule 74:02:01:37.02 specifies exceptions for nonuse of water which includes standby purposes. The standby use is allowed if the equipment used to divert the water is maintained in working condition and is available upon demand. This includes having functional pumps, motors and a means to convey the water from the source to the place of use.

**74:02:01:37.02. Exceptions to nonuse of water.** A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

### Conclusions

Based upon the site investigation made on July 21, 2014, verifying the presence of the functional required pump, motor, pipe and irrigation equipment that could be up and running within a very short period of time, Water Right No. 6231-3 would qualify for standby use for No. 6182-3 under Administrative Rule 74:02:01:37.02. Also, a review of the annual irrigation questionnaires indicates continuous use and a statement by Jeb Peterson, the water right holder's grandson, that they had in the past irrigated from the dam. Based upon this, there is no compelling evidence Water Right No. 6231-3 should be taken in front of the Water Management Board for cancellation due to abandonment or forfeiture.



Mark D. Rath  
Natural Resources Engineer III

## Attachment 1

Water Right No. 6182-3



**Permit No. 6182-3**  
**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 390<sup>th</sup> Avenue, Hitchcock SD 57348 holder of Permit No. 6182-3, bearing the priority of February 22, 2000 authorizing the diversion of 10.2 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 John Deere diesel each 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 three T-L 8 tower center pivot 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 excellent. The point of diversion is located between points located approximately 590 feet south and 1,305 feet west of the NE corner of Section 3, T114N, R62W ( Lat N 44.717750 W-098.264867) and 580 feet north and 475 east of the SW corner of Section 10, T114N, R62W (Lat N 44.69205 W-98.279783). The two points specified are the primary pump locations. The works are capable of diverting and conveying to the place of use 7.58 cu. ft. per second of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

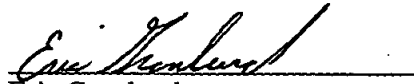
| Legal                        | Acres    | Legal                         | Acres    |
|------------------------------|----------|-------------------------------|----------|
| NW¼ SE¼ Sec. 35, T115N, R62W | 34 acres | NE¼ SE¼ Sec. 35, T115N, R62W  | 34 acres |
| SW¼ SE¼ Sec. 35, T115N, R62W | 34 acres | SE¼ SE¼ Sec. 35, T115N, R62W  | 34 acres |
|                              |          |                               |          |
| NE¼ NE¼ Sec. 3, T114N, R62W  | 4 acres  | NE ¼ SE ¼ Sec. 3, T114N, R62W | 31 acres |
| SE¼ NE¼ Sec. 3, T114N, R62W  | 33 acres |                               |          |
|                              |          |                               |          |
| NW¼ NW¼ Sec. 10 T114N R62W   | 12 acres | NE¼ NW¼ Sec. 10 T114N R62W    | 40 acres |
| SW¼ NW¼ Sec. 10 T114N R62W   | 17 acres | SE¼ NW¼ Sec. 10 T114N R62W    | 40 acres |
| NW¼ SW¼ Sec. 10 T114N R62W   | 25 acres | NE¼ SW¼ Sec. 10 T114N R62W    | 40 acres |
| SW¼ SW¼ Sec. 10 T114N R62W   | 18 acres | SE¼ SW¼ Sec. 10 T114N R62W    | 24 acres |
| NW¼ SE¼ Sec. 10 T114N R62W   | 39 acres | SW¼ SE¼ Sec. 10 T114N R62W    | 25 acres |
| NE ¼ SE ¼ Sec. 10 T114N R62W | 8 acres  |                               |          |

comprising a total of 492 acres of land and the license should be issued for 7.03 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. 6182-3

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

DIVERSION POINT LEGAL LOCATION: between points located approximately 590 feet south and 1,305 feet west of the NE corner of Section 3, T114N, R62W ( Lat N 44.717750 W-098.264867) and 580 feet north and 475 east of the SW corner of Section 10, T114N, R62W (Lat N 44.69205 W-98.279783). The two points specified are the primary pump locations.

### Pumps

| Pump # 3                  | Pump # 4              |
|---------------------------|-----------------------|
| Make – Cornell            | Make – Cornell W 14   |
| Model – 5RBF16PKG         | Model – CFY 156 PKG   |
| Serial -- 13116           | Serial – T34668 12.75 |
| Size – 8" in and 10 " out | 8"                    |
| Capacity – 2,500 gpm      | Capacity – 900 gpm    |

### Motor

| Motor # 3                   | Motor # 4                   |
|-----------------------------|-----------------------------|
| Make -- John Deere (diesel) | Make -- John Deere (diesel) |
| Serial – PE 4045T303819     | Serial – PE 4045D39274      |
| Model – 4045 T250           | Model – 4045 150            |
| HP – 250 hp                 | HP – 150 hp                 |

DISTRIBUTION LINES OR CANALS: from well to center pivot

1) Type aluminum      2) Size 8 inches      3) Length underground from  
diversion points to 3 pivot points approx. 10,000 feet



**SYSTEM TYPE:****Center pivot:**

- 1) Make all three pivots shown are T-L
- 2) Overall length 1200 feet
- 3) Number of towers 8
- 4) Distance between towers 150 feet
- 5) End gun Yes
- 6) High or low pressure medium
- 7) Capacity 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:**

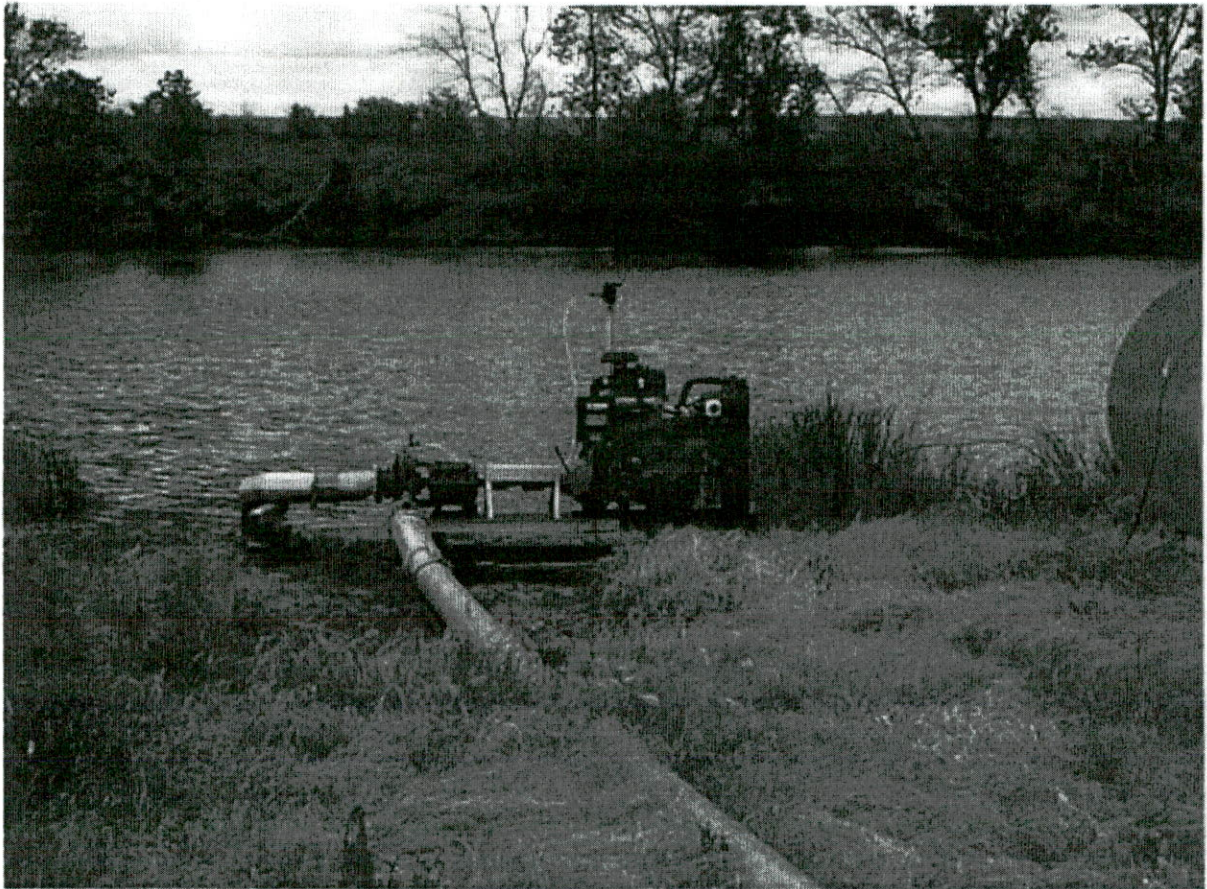
- 1) Special qualifications to permit being abided by Yes
- 2) All structures, wells and lands on map Yes
- 3) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes

Comments: At the time of the licensing the area had sufficient rainfall and they had not irrigated any except the pivot authorized in the S ½ of Section 10. This pivot was operated because it was just completed. The picture of Pump #4 below supplies water to this pivot and the flood irrigation of the bottom lands. Pump # 3 had not yet been installed for the year but was viewed in the farmyard.

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. I did not include the SW ¼ of Section 1 to be licensed. This quarter is being irrigated by Water Permit No. 4612A-3 from a well constructed in the Tulare:East James Aquifer. Although

Mr. Peterson says he has the ability to irrigate this ground using the James River, I did not see sufficient pipe or equipment to convey water to this quarter section located 3 miles away from the diversion point.

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



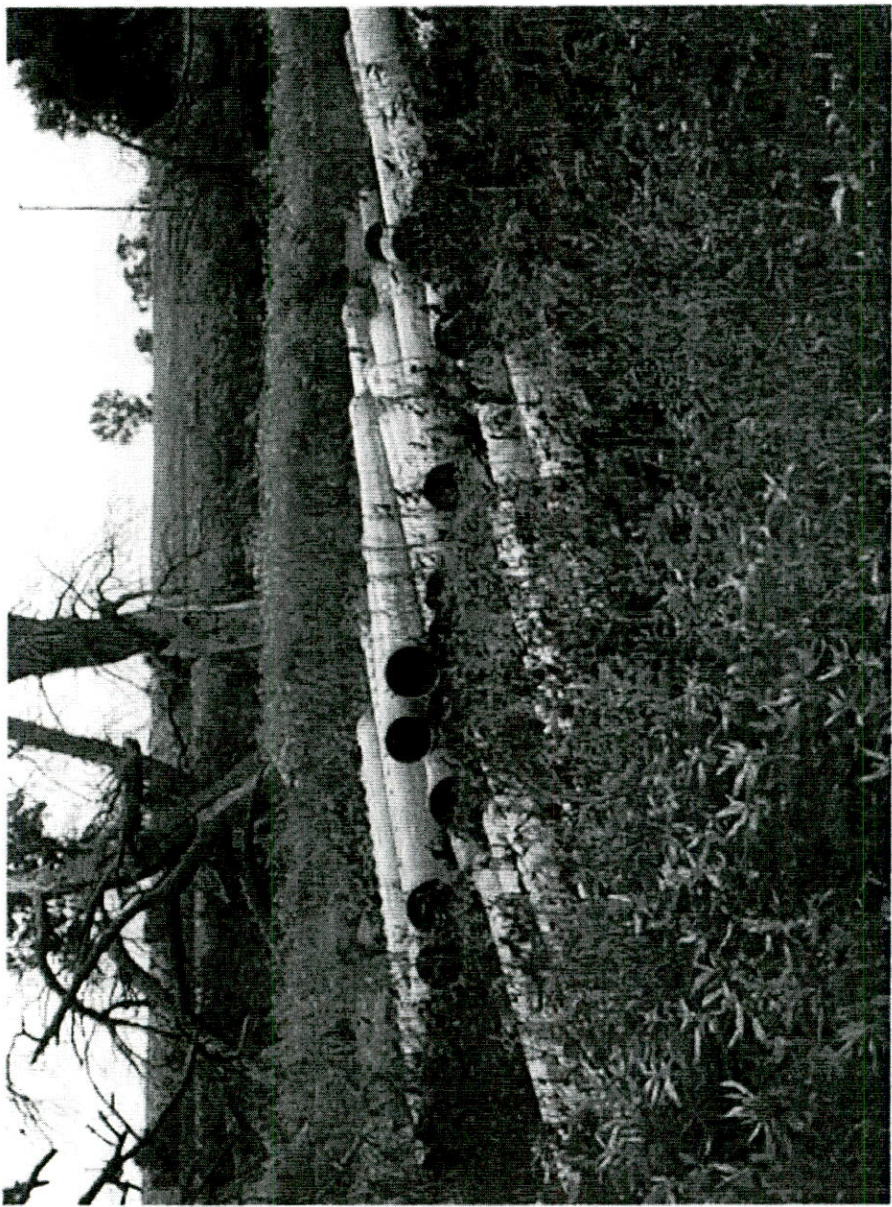
Pump site No. 4 located in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 10, T114N, R62W





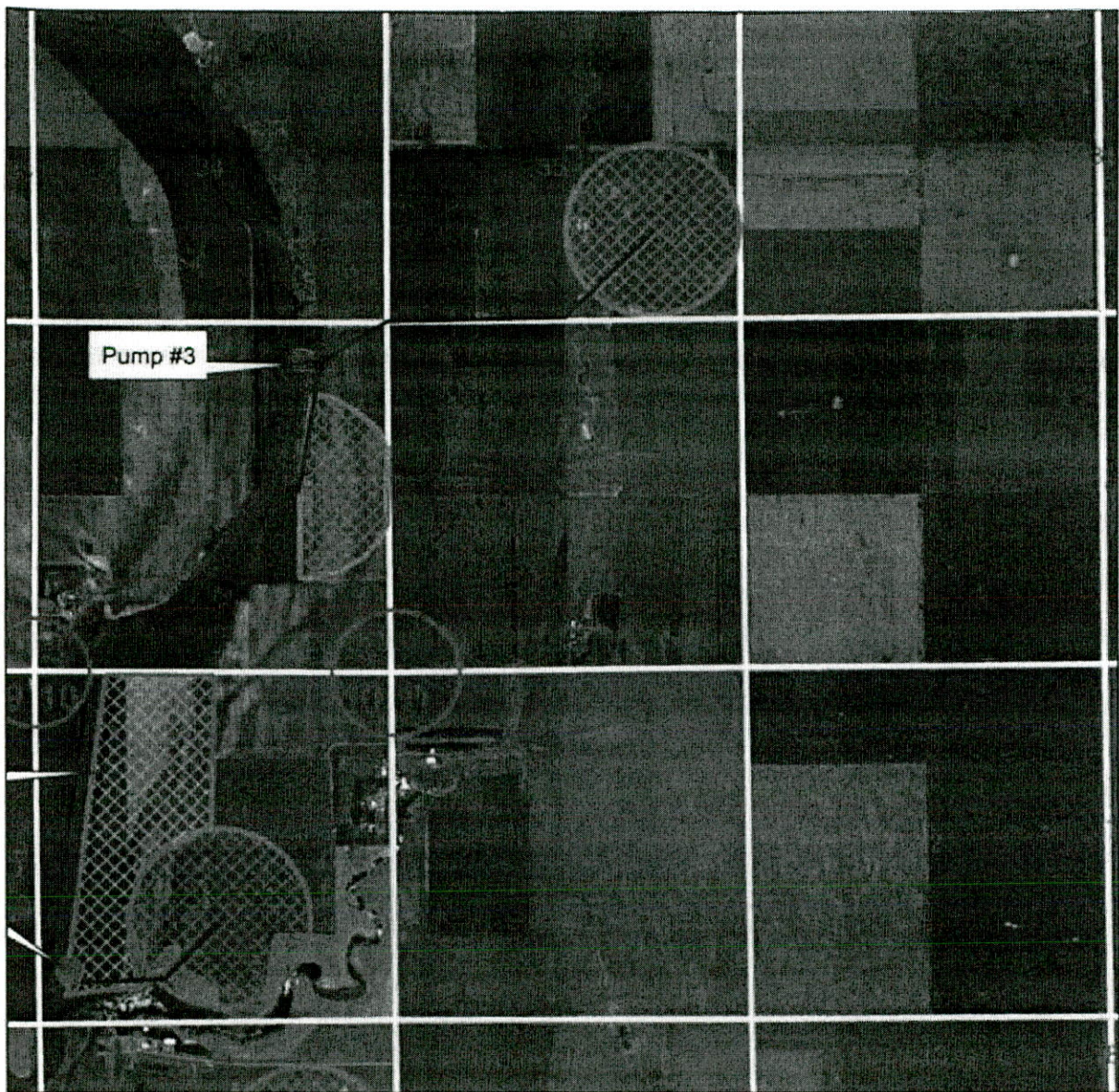
Center Pivot located in the SE  $\frac{1}{4}$  Section 35, T115N, R62W (picture taken from the S  $\frac{1}{4}$  corner looking to the northeast)





Aluminum pipe on site at pump station No. 3

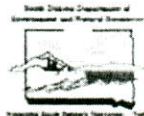




0 1,450 2,900 5,800 8,700 11,600 Feet



Pump site # 3 is located approximately 590 feet south and 1305 feet west of the NE corner of Section 3, T114N, R62W  
Lat/Lon N44.717750 W-098.264867  
Pump site # 4 is located approximately 580 feet north and 475 feet east of the SW corner of Section 10, T114N, R62W  
Lat/Lon N44.69205 W-098.279783



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



## STATE OF SOUTH DAKOTA

### WATER LICENSE NO. 6182-3

(1) Oscar, Inc., c/o Floyd Peterson, 18892 390<sup>th</sup> Ave, Hitchcock SD 57348 made Application No. 6182-3, February 22, 2000 for a water permit to divert 10.2 cubic feet of water per second from the James River, Spink County, South Dakota for irrigation purposes. Permit No. 6182-3, 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.

(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. 6182-3 is issued a license, bearing a priority date of February 22, 2000 to appropriate 7.03 cubic feet of water per second from the James River to irrigate 492 acres.

The primary pump locations are: between points located approximately 590 feet south and 1,305 feet west of the northeast corner of Section 3-T114N-R62W (NW ¼ NE ¼) and 580 feet north and 475 feet east of the southwest corner of Section 10-T114N-R62W (SW ¼ SW ¼). The acres authorized for irrigation are as follows:

| Section 35-T115N-R62W |          | Section 3-T114N-R62W |          |
|-----------------------|----------|----------------------|----------|
| NW ¼ SE ¼             | 34 acres | NE ¼ NE ¼            | 4 acres  |
| SW ¼ SE ¼             | 34 acres | SE ¼ NE ¼            | 33 acres |
| NE ¼ SE ¼             | 34 acres |                      |          |
| SE ¼ SE ¼             | 34 acres | NE ¼ SE ¼            | 31 acres |
| Section 10-T114N-R62W |          |                      |          |
| NW ¼ NW ¼             | 12 acres | NW ¼ SW ¼            | 25 acres |
| SW ¼ NW ¼             | 17 acres | SW ¼ SW ¼            | 18 acres |
| NE ¼ NW ¼             | 40 acres | NE ¼ SW ¼            | 40 acres |
| SE ¼ NW ¼             | 40 acres | SE ¼ SW ¼            | 24 acres |
|                       |          |                      |          |
| NW ¼ SE ¼             | 39 acres |                      |          |
| NE ¼ SE ¼             | 8 acres  |                      |          |
| SW ¼ SE ¼             | 25 acres |                      |          |
|                       |          | Total 492 acres      |          |

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 6182-3 including the following now applicable qualifications:

Diversion of water from the James River shall be 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.

(continued)

Water License No. 6182-3

Oscar, Inc.

Page 2

- 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



## Attachment 2

Water Right No. 6231-3



**Permit No. 6231-3**  
**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 390<sup>th</sup> Avenue, Hitchcock SD 57348 holder of Permit No. 6231-3, bearing the priority of September 20, 2000 authorizing the diversion of 12.87 cfs \*cu. ft. per second of the waters from runoff in an unnamed tributary to the James River and impoundment of 15 acre feet of water for irrigation purposes, in Spink County.

\* the diversion rate was not defined on the application but is listed on the application as the statutory limit.

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

A. Works used to divert the water:

**A small dam is in place and portable pumps and motors are available (see licensing investigations for Water Permit Nos. 6182-3 and 6183-3 for pumps)**

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

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

C. Works used to apply water to beneficial use:

**There is one center pivot (T-L) 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 impoundment is located approximately 200 feet north and 1,120 feet east of the SW corner of Section 10, T114N, R62W (Lat N 44.691350 W-098.276983). Pump site would be placed approximately 100 - 150 feet from the dam embankment. 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 NW¼ Sec. 10 T114N R62W     | 12 acres | NE¼ NW¼ Sec. 10 T114N R62W | 40 acres |
| SW¼ NW¼ Sec. 10 T114N R62W     | 17 acres | SE¼ NW¼ Sec. 10 T114N R62W | 40 acres |
| NW¼ SW¼ Sec. 10 T114N R62W     | 25 acres | NE¼ SW¼ Sec. 10 T114N R62W | 40 acres |
| SW¼ SW¼ Sec. 10 T114N R62W     | 18 acres | SE¼ SW¼ Sec. 10 T114N R62W | 24 acres |
| NW¼ SE¼ Sec. 10 T114N R62W     | 39 acres | SW¼ SE¼ Sec. 10 T114N R62W | 25 acres |
| NE 1/4 SE ¼ Sec. 10 T114N R62W | 8 acres  |                            |          |

comprising a total of 288 acres of land and the license should be issued for 4.11 cfs \*\* and storage of up to 5 acre feet of water.

\*\* based on statutory limit of 288 acres

Applicable permit qualifications have been complied with: No

Exceptions to compliance are: I saw no sign of a low flow bypass structure as required by condition No1. The application does state that there is a 6 inch culvert at the base of the impoundment that may be plugged to store water. Regardless, this dam impounds only 5 acre feet of water prior to water flowing through the spillway area. This is not a significant amount of water and does not affect James River flows.

Date Report Completed: August 2, 2005

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

Eric Gronlund  
Natural Resources Engineer  
DENR, Water Rights Program

**6231-3**

Water Rights Program - DENR  
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit No. 6231-3, Oscar Inc.

ADDRESS: 18892 390<sup>th</sup> Avenue, Hitchcock SD COUNTY: Spink

DATE: August, 19, 2005 TELEPHONE:

RE: Completion of Construction

COMMENTS:

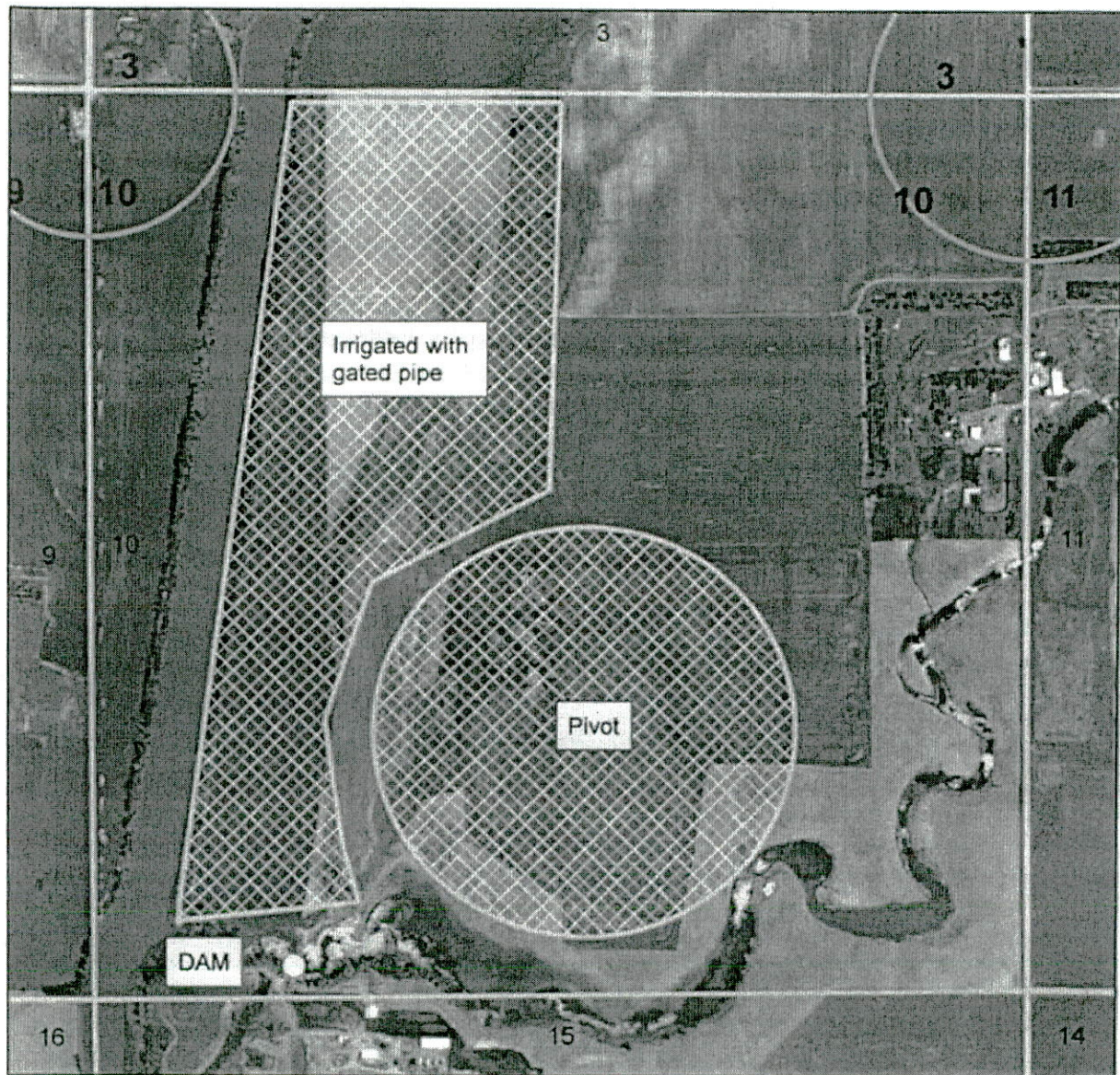
On June 30, 2005, Mike DeFea and myself conducted inspections of a number of Oscar Inc. water permits for the purpose of licensing. Water Permit No. 6231-3 was one of the systems that Floyd "Oscar" showed us as being completed. Therefore, we inspected the water permit even though the time to complete construction is July 11, 2006. The license can be issued since the system is complete to the extent intended by Mr. Peterson.

The pump and motor were not in place at the time of the on-site visit. The dam is used only when shut-off orders are issued for the James River. Mr. Peterson stated that the acreage in Section 15, T114N, R62W would not be irrigated from the dam.

NAME:

*Eric Henderson*





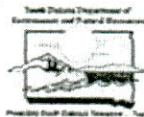
0 550 1,100 2,200 3,300 4,400 Feet



Dam is located approximately 200 feet north and 1,120 feet east of the SW corner of Section 10, T114N, R62W

Lat/Lon N44.691350 W-098.27983

Pump location is set up approximately 100 - 150 feet from the dam embankment (pump not in place at time of licensing investigation)



*Eric Gronlund*  
Eric Gronlund

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

**STATE OF SOUTH DAKOTA**  
**WATER LICENSE NO. 6231-3**

(1) Oscar, Inc., c/o Floyd Peterson, 18892 390<sup>th</sup> Ave, Hitchcock SD 57348 made Application No. 6231-3, September 20, 2000 for a water permit to impound 15 acre-feet of runoff and springs, Spink County, South Dakota for irrigation purposes. Permit No. 6231-3, with a priority date of September 20, 2000 was approved July 11, 2001 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before July 11, 2006 and for the application to beneficial use of water on or before July 11, 2010.

(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. 6231-3 is issued a license, bearing a priority date of September 20, 2000 to impound 5 acre-feet of runoff in an unnamed tributary to the James River and divert 4.11 cfs to irrigate 288 acres.

Water Right Nos. 6182-3 and 6183-3 authorize irrigation of the same acreage from the James River. No. 6231-3 serves as a standby water source in the event shutoff orders are issued from the James River.

The impoundment is located approximately 200 feet north and 1,120 feet east of the southwest corner of Section 10-T114N-R62W (SW ¼ SW ¼). The acres authorized for irrigation are as follows:

| Section 10-T114N-R62W |          |                 |          |
|-----------------------|----------|-----------------|----------|
| NW ¼ NW ¼             | 12 acres | NW ¼ SW ¼       | 25 acres |
| SW ¼ NW ¼             | 17 acres | SW ¼ SW ¼       | 18 acres |
| NE ¼ NW ¼             | 40 acres | NE ¼ SW ¼       | 40 acres |
| SE ¼ NW ¼             | 40 acres | SE ¼ SW ¼       | 24 acres |
|                       |          |                 |          |
| NW ¼ SE ¼             | 39 acres | Total 288 acres |          |
| NE ¼ SE ¼             | 8 acres  |                 |          |
| SW ¼ SE ¼             | 25 acres |                 |          |

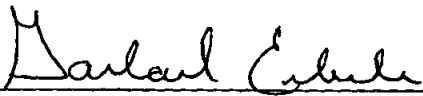
(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 6231-3 including the following now applicable qualifications:

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

- Low flows as needed for downstream domestic use, including livestock water, and prior James River water rights/permits must be bypassed.
- The dam must have a low flow bypass structure and bypass inflows from the springs and watershed runoff from June 30 – November 30 unless the Chief Engineer issues written orders allowing the capture and storage of water.
- Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

(continued)

- Water that has been lawfully stored in the dam following the above criteria may be diverted by the permit holder for irrigation purposes at any time during the irrigation season. The permit is not obligated to release lawfully stored water for downstream domestic uses or prior water rights.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
- Water Permit No. 6231-3 authorizes a dam with storage capacity of 5 acre feet of water (storage amount developed).
- A new water right permit will need to be obtained if the storage capacity of the dam is increased. Additionally, plans and specifications will need to be submitted and approved by the Water Rights Program prior to construction for any alterations to the dam that cause the dam height to exceed six feet .
- Impoundment of water authorized by this permit may not impair the use of any lands held by neighboring property owners including, but not limited to, causing permanent pooling of water on land owned by others and/or specific alterations of plant species directly attributable to water use under this permit. Permanent impoundment of water on adjoining land may occur only if a written flood easement is obtained from the property owners.



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

SEP 30 2005

date







6231-3 7349-3 8353A-3

**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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

December 17, 2024

Oscar Peterson  
209 27<sup>th</sup> Street NW  
Huron SD 57350

Dear Oscar:

You stopped in the office on Friday, December 13<sup>th</sup> regarding three water permits/rights that you received irrigation questionnaires. The question is why you were getting three questionnaires for what you thought was irrigation of the same acres. The short answer to your question is each water permit/right appropriates water from a different water source. A copy of the water license/permit and map is each water right/permit. Below is an explanation.

Water Right No. 6231-3 appropriates water from a small dam on a spring fed stream the originates on the Olsen property. The dam is located very close to where the small stream flows into the James River. The authorized irrigated acres include the southern pivot and a strip of land adjacent to the James River. If you'll recall your original application was contested by Mr. Olsen

Water Right No. 7349-3 was originally held by Michael Sentell. The water right appropriates water from a dugout completed into the alluvium along the James River. The irrigated acres total 193 acres from the two center pivots as shown on the map.

Water Permit No. 8353A-3 appropriates water directly from the James River to irrigate 160 acres which are portions of land authorized by Water Right No. 7349-3. Water Permit No. 8353A-3 was an amendment which transfer the diversion point and irrigated acres to this location.

The reason you get three separate irrigation questionnaires for acreage that is for the same two center pivot (except for the strip along the James River authorized by Water Right No. 7349-3) is that you need to specifically report based on which of the three water sources is used.

Hope this help resolve the confusion. If any of these water sources are no longer used and you want the water right/permit cancelled, please let me know.

Sincerely,

Eric Gronlund  
Water Right Program, DANR  
605 773-3352  
[Eric.gronlund@state.sd.su](mailto:Eric.gronlund@state.sd.su)

enclosure