

WATER PERMIT NO. 6375-3

Name of Applicant: Bixler Farms

Address: 39477 184th St, Hitchcock SD 57348 Phone: 605 266-2763

Amount of Water Claimed: 5.33 cfs Total Acres: 480

Source of Water Supply: James River

Water to be used for: irrigation County: Spink

Type of Waste Disposal System:

Location: 9 miles east of Tulare

PRIORITY Date Received: 1-2-03 Application/License Fee: \$425

Corrected Application Received: Period of Annual Use: May 1 – October 1

Remarks:

Diversion Point: on quarter-quarter line between
the SE ¼ SE ¼ Section 28 and NE ¼ NE ¼ Sec
33; all in T115N-R62W

Land to be Irrigated: W ½ Sec 32-T115N-R62W
and NW ¼ Sec 5-T114N-R62W

Depth of Well: NA

Well Driller: : NA

Remarks:

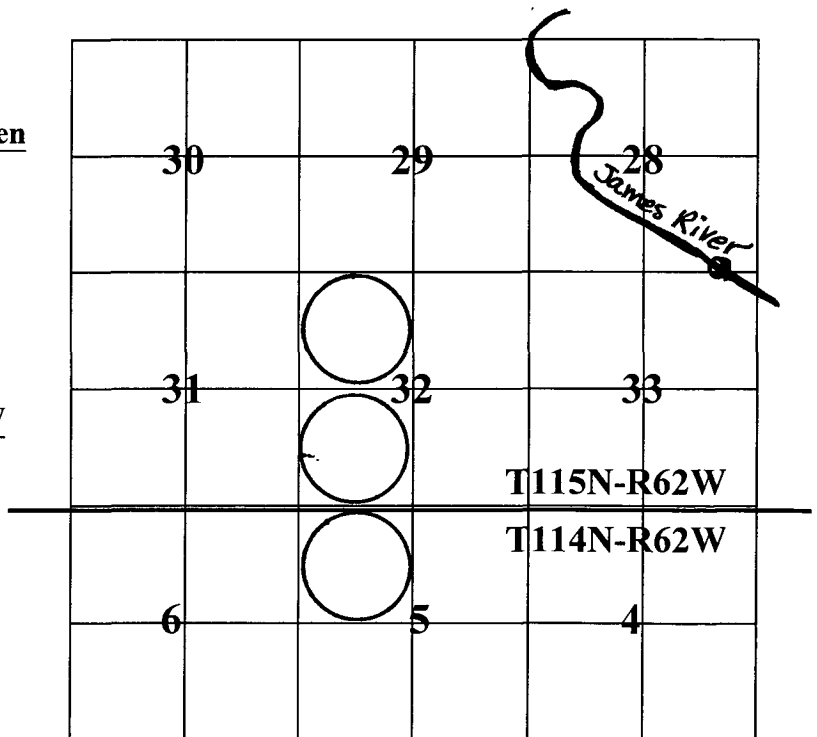
Type of Map: aerial

Prepared by: Jerry Hermann, NRCS

Reviewed and the Number Assigned on: 1-2-03

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



SOUTH DAKOTA
WATER PERMIT NO. 6375-3 FOR IRRIGATION

Date of first receipt of application January 2, 2003.

The Water Management Board approved Water Permit No. 6375-3 on March 5, 2003 for Bixler Farms, 39477 184th St, 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. 6375-3 appropriates 5.35 cubic feet of water per second from the James River located on the quarter line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33-T115N-R62W to irrigate 480 acres located in the W $\frac{1}{2}$ Section 32-T115N-R62W and the NW $\frac{1}{4}$ Section 5-T114N-R62W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – October 1.
3. The date from which applicant may claim right is January 2, 2003.
4. One-fifth of the construction is to be completed on or before September 5, 2005.
5. All construction is to be completed on or before March 5, 2008.
6. Water is to be put to beneficial use on or before March 5, 2012.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - When pumping from the James River, low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
 - From May 1 to June 30, diversions from the James River are authorized only when the flow at the Huron SD Third Street Dam is at least 63 cfs while pumping under this permit.
 - From July 1 – October 1, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
 - Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Garland Erbele

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

APR 21 2003

date



Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)	
	No. <u>6375-3</u>	Hydrologic Unit <u>1016 0006</u>
	Basin <u>James River</u>	
	Newspaper <u>Redfield Press</u>	

RECEIVED
JAN 02 2003
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: X 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 Bixler Farms Phone 605-266-2763
(check one) Owner Tenant/lessee
Mailing Address 394th 184th St Hitchcock, S.D. 57348
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 5.35 *CFS or 2400 **GPM ***AF Total Acreage 480
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply JAMES RIVER
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
JAMES RIVER 4500' EAST of Point A. Point A being SW corner of SW1/4 SEC 28-115-62 +
NW corner of NW1/4 SEC 33-115-62 on quarter quarter line County SINK
- County or counties where water will be used Sink
- Annual period during which water is to be used May 1 to Oct 1
- 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
NW1/4 SEC 32-115-62	160		
SW1/4 SEC 32-115-62	160		
NW1/4 SEC 5-114-62	160		

8. Give a description of the project. (Attach sheet if more space is needed)
We will bury underground pipe along a mile line right of way 3/4 mile from river between SEC 28-115-62 + SEC 33-115-62. Pipe will then be buried diagonal across our land in SEC 32-115-62 to center of SW1/4 SEC 32-115-62. Water will be diverted from this point to 3 center pivot irrigation on each quarter.

STATE OF SOUTH DAKOTA) SS

County of Sink

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, Reed Bixler, 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 Reed Bixler

Subscribed and sworn to before me this 3rd day of December 20 02

ROBIN BUCHHOLZ
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA

Robin Buchholz

Notary Public My Commission Expires 03-08-2004

(Complete applicable portions only)

(type or print in ink)

JAMES RIVER

1. Well Information - Proposed Construction

- 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 _____

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) _____ Year Constructed _____
- c) Connected to the City of _____ Sanitary System _____

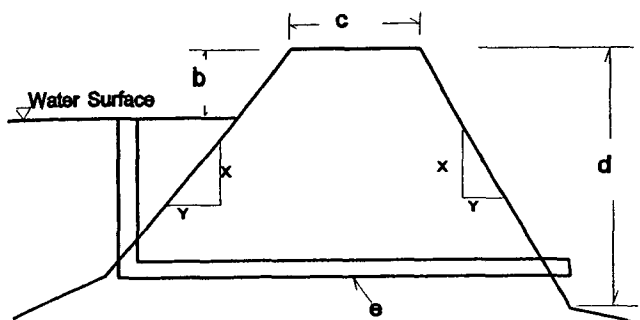
3. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

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

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



- b) Freeboard _____
- c) Crest Width _____
 Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
 If pipe, diameter _____
- f) Secondary Spillway Capacity _____
 Spillway Width _____
- g) X & Y Slope _____
 Upstream _____
 Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres

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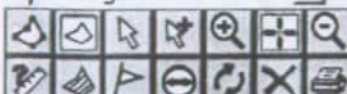
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6375-3

MAP NOT TO SCALE
THIS IS NOT AN OFFICIAL WETLAND MAP

6d63

2002

1.295.5

4420-147R

SC WRLS

2.189.5

115-62

T2493

T4347

T4384

NC

NC

NC

1.152.0

5

1.17.6

2.42.4

1.48.8

T778

T4385

NC

4.34.9

1.33.0

K20

4420-147R

NC

NC

NC

37.2

2.12.4

114-62

1.6.0

6375-3

MAP NOT TO SCALE

THIS IS NOT AN OFFICIAL WETLAND MAP

6663

2002

Point A

JAMES
RIVER
4500'
EAST

T2495

NC

3.2

NC

NC

K20

4420-147R

1.298.5

2.189.5

145-62

T2493

John Thompson SC NRCS

T4347

NC

T4384

NC

6375-3

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date ~~January~~ December N2, 20 03

RECEIVED OF Reed Pivler, 39477 184th St., Hitchcock SD 57348

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

Fee for Application for Permit No. <u>4375-3</u> to Appropriate Water, to construct and to put water to beneficial use	375	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>4375-3</u>	50	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	425.00

No.

000500

By

Darland Ebele
Chief Engineer *gmv*



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6375-3, Bixler Farms**

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. 6375-3, Bixler Farms, c/o Reed Bixler, 39477 184th Street, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 6375-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - When pumping from the James River, low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
 - From May 1 to June 30, diversions from the James River are authorized only when the flow at the Huron SD Third Street Dam is at least 63 cfs while pumping under this permit.
 - From July 1 – October 1, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
 - Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
January 24, 2003

REPORT ON WATER PERMIT APPLICATION NO. 6375-3

Bixler Farms
January 22, 2003

Application No. 6375-3, Bixler Farms, proposes to appropriate 5.35 cubic feet of water per second from the James River. The diversion point is to be located on the quarter line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 all in T115N-R62W to irrigate 480 acres located in the W $\frac{1}{2}$ Section 32 all in T115N-R62W and the NW $\frac{1}{4}$ of Section 5 T114N-R62W. The proposed project is located approximately 12 miles east of Tulare in Spink County.

Review of Existing Water Rights and the Water Source

The water source for this irrigation project is from the James River. The James River has a 200 cfs appropriation limit for the river reach from the North Dakota state line to the Huron Third Street Dam. At this time there are 59 existing water rights/permits appropriating 147.2 cfs from this river reach. There is also a 300 cfs total limit for the James River from the North Dakota state line to the Yankton/Hutchinson county line. Currently there are 116 existing water rights/permits appropriating 266.7 cfs from the James River. There is also an existing future use permit No. 1067-3 held by the Oahe Conservancy Sub-district for the James River with a priority date of November 7, 1963. If this permit is approved, total appropriations from the James River will be below the appropriation limits set by the Water Management Board.

The James River is not dependable as a continuous source of water. Many water rights/permits appropriating water from the James River in the reach from the ND State line to the 3rd Street Dam in Huron are subject to specific qualifications addressing seasonal low flows. Historically, these have been subject to shutoff orders as a normal part of the irrigation season. The most recent water permits issued to Oscar Inc. for irrigation from the James River contain several qualifications limiting pumping from the James River during specific dates and require the bypass of specific flows in order to protect existing water rights and down stream domestic use. If this permit is issued it should contain the following qualifications:

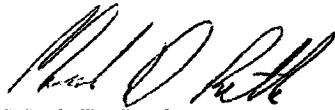
- A. Low flows as needed for downstream domestic use, including livestock water and prior water rights/permits must be bypassed.
- B. From May 1 to June 30, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam is at least 63 cfs while pumping under this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

Any new appropriation from the James River in this river reach would also need to be subject to these same qualifications or other qualifications in order to protect the water supply for senior rights and domestic use. Because the number and location of James River water rights continue to change, the Water Management Board, at some time in the future, may want to review the

bypass qualifications for all James River water rights/permits. These qualifications may need to be adjusted to reflect the most current status of diversions from the James River.

Conclusions

1. Application No. 6375-3 proposes to appropriate 5.35 cfs to irrigate 480 acres.
2. The water source for the irrigation project is the James River. The James River is not dependable as a continuous source of water. Many water rights/permits appropriating water from the James River are subject to specific qualifications addressing normal seasonal low flows and have historically been subject to shutoff orders.
3. In order to protect existing senior water rights and domestic use, if approved the permit should be issued with the following qualifications:
 - A. Low flows as needed for downstream domestic use, including livestock water and prior water rights/permits must be bypassed.
 - B. From May 1 to June 30, diversions from the James River are authorized only when the flow at the Huron, SD Third Street Dam is at least 63 cfs while pumping under this permit.
 - C. From July 1 to October 1, diversions from the James River are not authorized unless by written orders issued by the Chief Engineer.
 - D. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.



Mark D. Rath

Natural Resources Engineering Specialist

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

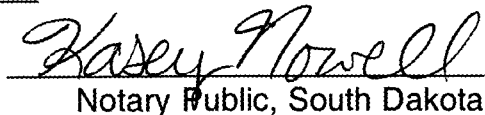
I, Mark E. Davis, of said County & State, first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939 amended by Chapter 298 of the Session of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis 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:

#33 Notice of Application

A printed copy of which is hereto attached, has been printed and published in said newspaper in successive issues, to wit: The first publication being made on February 5, 2003 and the last publication being made on February 12, 2003 that the full amount of the fee charged for publishing the same to-wit: the sum of Thirty-eight and 57/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 12th day of February, 2003.


Notary Public, South Dakota

My term expires 08/16/08

RECEIVED

FEB 13 2003

WATER RIGHTS
PROGRAM

Notice of Application

No. 33

NOTICE OF APPLICATION NO. 6375-3 TO APPROPRIATE WATER

Notice is given that Bixler Farms, c/o Reed Bixler, 39477 184th St., Hitchcock, SD 57348 has filed an application for a water permit to appropriate 5.35 cubic feet of water per second from the James River located on the quarter line between the SE 1/4 SE 1/4 Section 28 and NE 1/4 NE 1/4 Section 33-T115N-R62W to irrigate 480 acres located in the W 1/2 Section 32-T115N-R62W and the NW 1/4 Section 5-T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6375-3 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 24, 2003. 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 5, 2003 in the Matthew Training Center, Foss Building, 523 E. Capitol Ave., Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The March 5, 2003 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 24, 2003.

Any hearing may be an adversarial 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 24, 2003, 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; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

Steven M. Pimer, Secretary
Department of Environment and
Natural Resources
(February 5, 12)



Instruction to Newspaper - Publish first Notice on February 5, 2003 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 6375-3 to Appropriate Water

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 27, 2003

Redfield Press
PO Box 440
Redfield SD 57469-0440

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 6375-3 to Appropriate Water to be published twice. Please publish the first notice on February 5, 2003 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 Bixler Farms, % Reed Bixler, 39477 184th St., Hitchcock SD 57348 (Ph # 605-266-2763).

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. 6375-3

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

Date _____

We are in receipt of your letter of January 27, 2003 enclosing Notice of Hearing to Appropriate Water by Application No. 6375-3 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name _____

Newspaper _____



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

January 27, 2003

Bixler Farms
% Reed Bixler
39477 184th St
Hitchcock SD 57348

Dear Mr. Bixler:

Water Permit Application No. 6375-3 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). You will need to contact the newspaper and authorize publication of this notice. 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. Upon receiving authorization, 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 also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

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**

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

APR 21 2003

Bixler Farms
% Reed Bixler
39477 184th St
Hitchcock SD 57348

Dear Mr. Bixler:

Enclosed is Water Permit No. 6375-3 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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 21, 2003

6375-3

NOTICE OF SHUT OFF ORDER

To: Bixler Farms
% Reed Bixler
39477 184th St
Hitchcock, SD 57348

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

Subject: Shut Off Order for James River Water Permit No. 6375-3, Effective
Immediately.

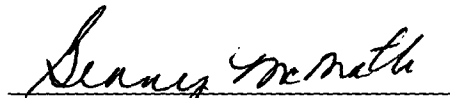
The flows in the James River have dropped to 39 cfs at Huron SD. In order to protect existing domestic use and senior water rights from the James River, effective immediately no pumping from the James River is authorized until January 1, 2004 or until further notice.

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

CERTIFICATION

I hereby certify that on April 21, 2003 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 21, 2003 regarding Notice of Shut Off Order 6375-3 addressed as stated below:

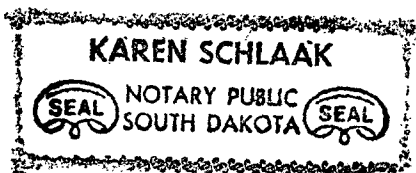
Bixler Farms
% Reed Bixler
39477 184th St
Hitchcock SD 57348


Genny McMath
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of April, 2003.


Karen Schlaak
Notary Public
My 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

May 06, 2003

RESCISSION OF SHUTOFF ORDER

No. 6375-3

TO: Bixler Farms
Reed Bixler
39477 184th Street
Hitchcock, SD 57348

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

SUBJECT: Rescission of Water Right No. 6375-3 April 21, 2003 James River Shutoff Order

The April 21, 2003 Shutoff Order for Water Right No. 6375-3 is being **rescinded immediately**. Recent precipitation in the area and a decision by Sand Lake National Wildlife Refuge (NWR) to draw Sand Lake down have changed the short term outlook for the James River. Sand Lake NWR has started to lower the water level in the refuge to re-establish vegetation destroyed during the high water level periods in the 1990s. The release of water from Sand Lake and precipitation in the James River basin have sufficiently increased the James River flow to the point diversions under Water Right No. 6375-3 can be resumed.

We will continue to monitor James River conditions and if flows remain favorable, diversions will be allowed until the mandatory June 30th shutoff date qualified in Water Right No. 6375-3. If after June 30th you wish to continue pumping from the James River, you will need to make a written request for an extension of time with the Chief Engineer, DENR Water Rights Program.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 30, 2004

6375-3

Reed Bixler
Bixler Farms
39477 184th St
Hitchcock, SD 57348

Dear Mr Bixler:

This letter is in reference to your June 30, 2004 telephone call regarding water availability for irrigation from the James River for this summer. Due to the large amounts of precipitation falling recently in the James River basin in North Dakota and South Dakota, flows in the river continue to be strong. Because there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permits out of the James River to August 10, 2004. If you wish to request an additional extension beyond August 10, you will need contact us at that time and we will make the determination of water availability for James River for the remainder of the 2004 irrigation season.

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

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 12, 2004

6375-3

Reed Bixler
Bixler Farms
39477 184th St
Hitchcock, SD 57348

Dear Mr Bixler:

This letter is in reference to your August 11, 2004 telephone call regarding water availability for irrigation from the James River for this summer. Flows in the James River continue to be strong. Because there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permits out of the James River to the end of 2004 irrigation season.

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

Sincerely,

For Garland Erbele, Chief Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 7, 2006

**JAMES RIVER WATER RIGHT QUALIFICATION REMINDER
WATER RIGHT NO(s). 6375-3**

To: BIXLER FARMS
39477 184TH ST
HITCHCOCK SD 57348

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

Subject: James River Qualification Reminder for Permit No(s). 6375-3

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

April 11, 2007

TO: All James River Water Right Holders

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

SUBJECT: Proposed Amendment to Conditions on James River Water Rights

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

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

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

enclosure

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

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

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

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

North Dakota Border to the Ashton gage (northern segment)
Ashton gage to Huron gage (central segment)
Huron gage to gage near Scotland (southern segment)

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

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

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

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

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

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

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

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

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

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

REPORT ON AMENDMENT OF JAMES RIVER WATER PERMITS/RIGHTS

April 24, 2007

Purpose of this Study

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

Historical Summary of James River Water Permits/Rights

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

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

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

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

Review of James River Water Permits/Rights

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

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

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

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

Water Availability at Current Appropriation

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

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

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

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

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

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

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

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

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

0.5(IRR cfs) + 1.0(OTH cfs) + 20 cfs IRR – irrigation use OTH – other uses

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

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

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

Water Availability at Full Appropriation

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

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

Proposed Amendment of James River Water Rights

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

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

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

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



Lynn Beck
Natural Resources Engineer Specialist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
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**CHIEF ENGINEER'S RECOMMENDATIONS FOR WATER RIGHTS
ON THE JAMES RIVER IN SOUTH DAKOTA**

Chief Engineer's Recommendation for Water Rights Above Huron:

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

ND Border to the gage at Ashton, SD

Water Permit No. 6427-3:

Delete: Qualification No. 1

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

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

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

Add:

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

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

Water Right No. 5027-3:

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

Water Permit No. 5737-3:

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

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

Delete: Qualification No. 1

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

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

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

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

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

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

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

Add:

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

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

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

Chief Engineer's Recommendation for Water Rights Below Huron:

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

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

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

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

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

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

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

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

Water Permit No. 6534-3:

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

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

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



Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

April 25, 2007

Attachment 1

HISTORY OF JAMES RIVER WATER PERMITS/RIGHTS QUALIFICATIONS

April 9, 2007

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

1965 - 1979

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

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

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

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

1980- 1984

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

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

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

1985 - 1987

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

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

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

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

and replaced with the following:

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

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

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

and replaced with the following:

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

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

2003 - Present

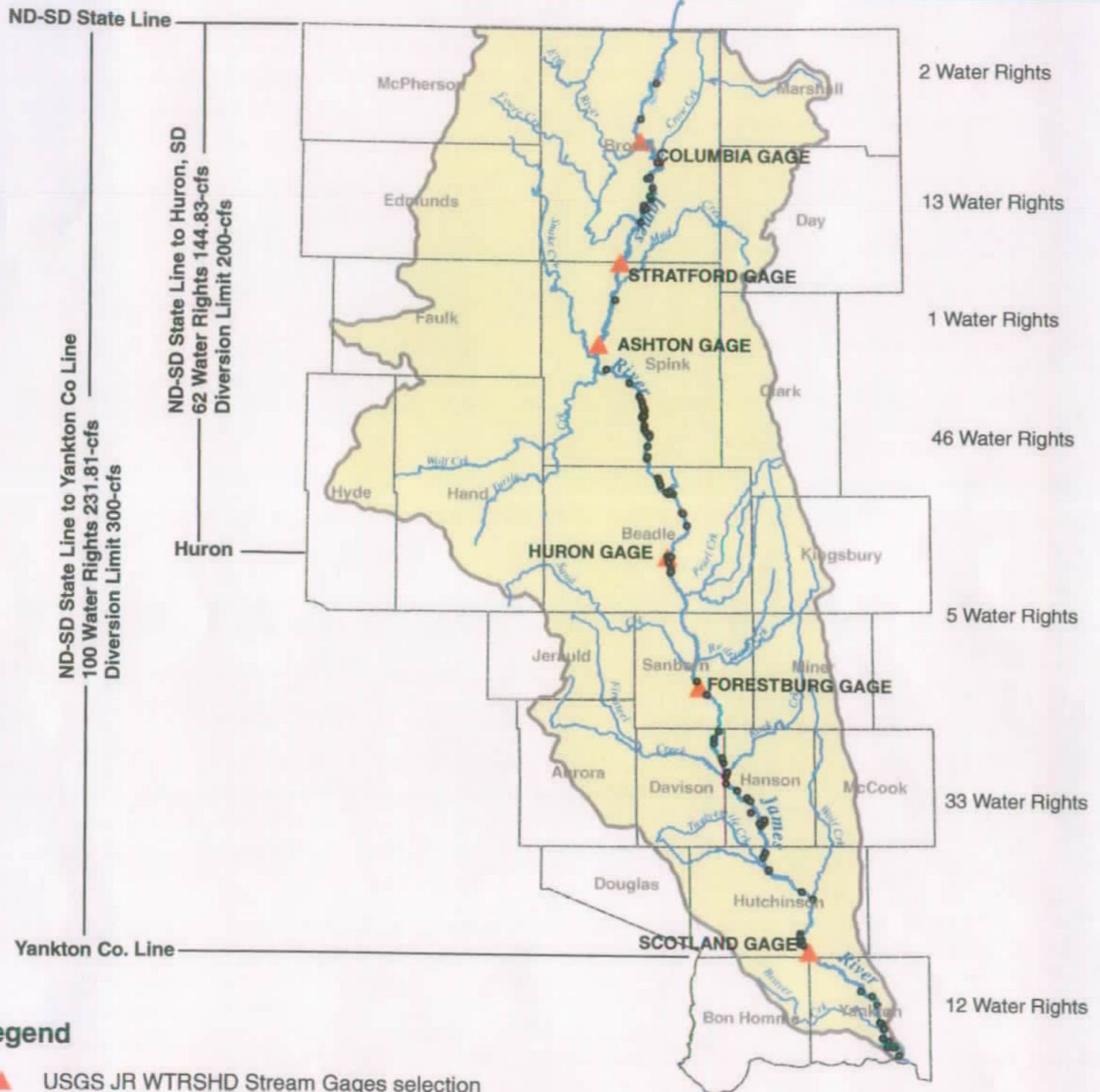
In 2003 Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews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

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

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

Attachment 2 JAMES RIVER BASIN, SOUTH DAKOTA

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



Legend

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

JAMES RIVER WATER RIGHTS BY GAGING STATION

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

ABOVE HURON:

WR's above Columbia Gage: 2

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

WR's above Stratford Gage: 13

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

WR's above Ashton Gage: 1

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

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

WR's above Huron Gage: 46

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

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

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

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

BELOW HURON:

WR's above Forestburg Gage: 5

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

WR's above Scotland Gage: 33

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

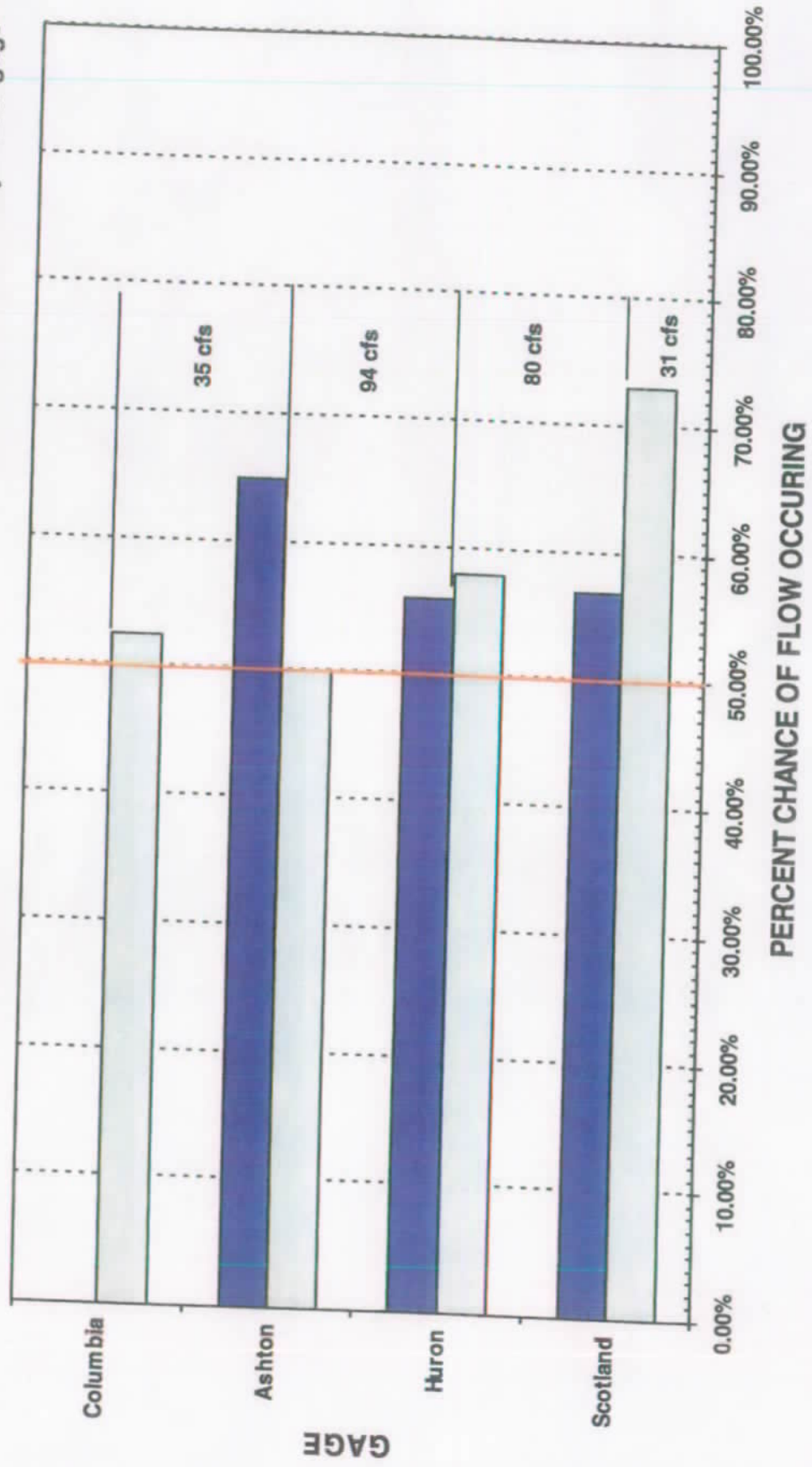
PERMIT NO	CO	GAGE NO	PRIOR DATE	STATUS	CUR CFS	FL QUAL1	FL QUAL2	FL QUAL WRTN ORD	USE 1
5970-3	HT	7	12/13/1996	LC	1.440			WRTN ORD 8/10	IRR
4072-3	HT	7	01/24/1977	LC	0.480			WRTN ORD 8/10	IRR
2385-3	HT	7	09/23/1975	LC	1.300			WRTN ORD 8/10	IRR
6131-3	HT	7	03/22/1999	LC	0.770			WRTN ORD 8/10	IRR
5392A-3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

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

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

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

- % chance to satisfy above gage
- % chance to satisfy below gage

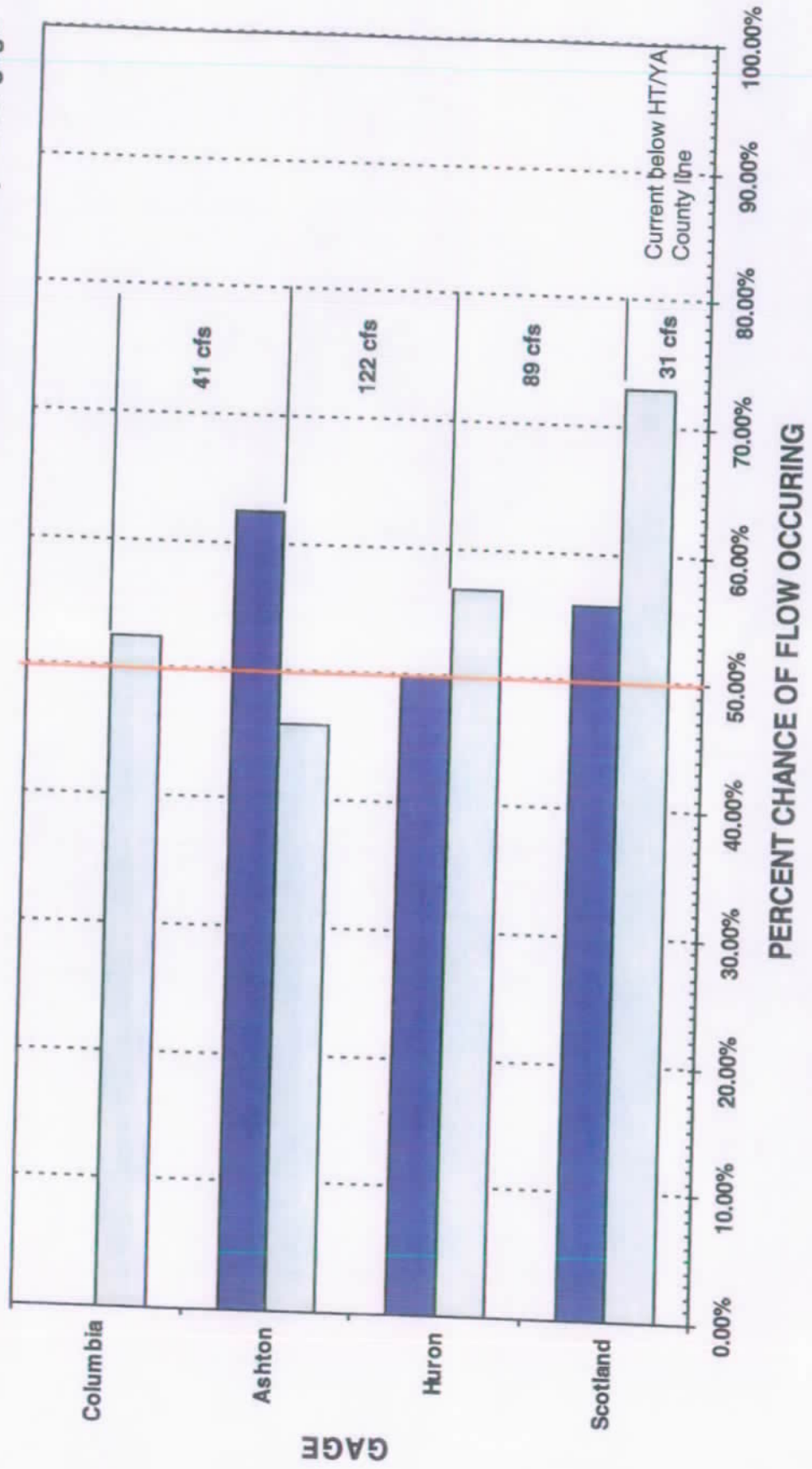


% CHANCE OF FLOW BEING AVAILABLE FOR DIVERSION THRU AUGUST 10TH

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

■ % chance to satisfy above gage

□ % chance to satisfy below gage





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 21, 2007

NOTICE

TO: REED BIXLER
BIXLER FARMS
39477 184TH STREET
HITCHCOCK SD 57348

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

SUBJECT: Amendment to Qualifications on Water Permit No. 6375-3

On May 9th, the Water Management Board amended qualifications to Water Permit No. 6375-3. This action was taken as set forth in notice sent to you on April 11, 2007 and published in James River basin newspapers and the staff report mailed to you on April 25, 2007.

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

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

Enclosure

Attachment to Water Permit No. 6375-3

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

Qualifications as amended to Water Permit No. 6375-3

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

Qualifications as deleted on Water Permit No. 6375-3

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

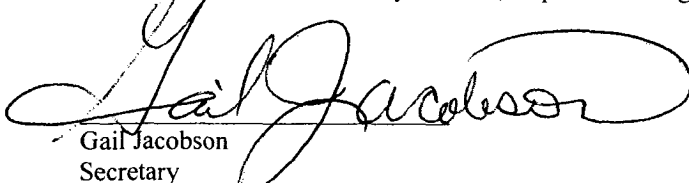
CERTIFICATION

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

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

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

Diane Best, Assistant Attorney General, Capitol Building


Gail Jacobson
Secretary
Water Rights

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF HUGHES)

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


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



6375-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 6, 2012

**JAMES RIVER WATER RIGHT QUALIFICATION REMINDER
WATER RIGHT NO(s). 6375-3**

To: BIXLER FARMS
39477 184TH ST
HITCHCOCK SD 57348

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

Subject: James River Qualification Reminder for Permit No(s). 6375-3

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 10, 2012

Bixler Farms
39477 184th St
Hitchcock SD 57348

Dear Mr. Bixler:

In response to your telephone call on August 9, 2012 requesting an extension to pump from the James River beyond the August 10th cutoff, you are authorized to pump under Water Right No. 6375-3 subject to the following:

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

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

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

Permit No. 6375-3
James River - Water District

Contact Person & Address: **Reed Bixler, 39477 184th St, Hitchcock SD 57348**

Report Of Examination Of Works

On, **August 27, 2013**, I made a thorough examination of the water use system constructed by **Bixler Farms** holder of Permit No. **6375-3**, bearing the priority of **January 2, 2003** authorizing the diversion of **5.35** cu. ft. per second of the waters of **the James river** for **irrigation** purposes, in **Spink** County.

The system is in the following condition **good**. The point of diversion is located **from the joint corner of Secs 27,28,33, & 34 T115N-R62W, 950 feet west** with latitude of **44.731984** and a longitude of **-98.278761** as determined using **GPS**. The works are capable of diverting and conveying to the place of use **5.35** 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:

Land located in **Sec 32 T115N-R62W**

<u>NW ¼ NW ¼ - 33 ac</u>	<u>NE ¼ NW ¼ - 33 ac</u>	<u>SE ¼ NW ¼ - 33 ac</u>	<u>SW ¼ NW ¼ - 33 ac</u>
<u>NW ¼ SW ¼ - 33 ac</u>	<u>NE ¼ SW ¼ - 33 ac</u>	<u>SE ¼ SW ¼ - 33 ac</u>	<u>SW ¼ SW ¼ - 33 ac</u>

Land located in **Sec 5 T114N-R62W**

<u>NW ¼ NW ¼ - 33 ac</u>	<u>NE ¼ NW ¼ - 33 ac</u>	<u>SE ¼ NW ¼ - 33 ac</u>	<u>SW ¼ NW ¼ - 33 ac</u>
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comprising a total of **396** acres of land and the license should be issued for **5.35** cfs.

Review of Permit Qualifications And Regulations:

- 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**.
- 4) Exceptions to compliance are: **none**

Report On the Specifics of the System

Diversion Point Information:

Pump:

- | | | | |
|-------------------------------|------------------------------------|-------------------------|------------------------------------|
| 1) Make <u>Cornell</u> | 2) Model <u>6HE M18DB-2</u> | 3) Size <u>6</u> | 4) Capacity <u>2400</u> GPM |
|-------------------------------|------------------------------------|-------------------------|------------------------------------|

Motor:

- | | | |
|----------------------------------|-------------------------------|---|
| 1) Make <u>Catepillar</u> | 2) Model No. <u>C9</u> | 3) Horsepower rating <u>300</u> hp |
|----------------------------------|-------------------------------|---|

DISTRIBUTION LINES OR CANALS:

- | | | |
|--------------------|--------------------------|----------------------------|
| 1) Type <u>PVC</u> | 2) Size <u>12</u> inches | 3) Length <u>9600</u> feet |
| 1) Type <u>PVC</u> | 2) Size <u>10</u> inches | 3) Length <u>2500</u> feet |
| 1) Type <u>PVC</u> | 2) Size <u>8</u> inches | 3) Length <u>2500</u> feet |

SYSTEM TYPE:

Center pivot: NW ¼ Sec 32 T115N-R62W

- | | |
|-----------------------------------|------------------------------------|
| 1) Make <u>Valley</u> | 2) Overall length <u>1280</u> feet |
| 3) Number of towers <u>7</u> | 4) End gun <u>yes</u> |
| 5) High or low pressure <u>Lo</u> | 6) Capacity <u>800</u> GPM |

Center pivot: SW ¼ Sec 32 T115N-R62W

- | | |
|-----------------------------------|------------------------------------|
| 1) Make <u>Valley</u> | 2) Overall length <u>1280</u> feet |
| 3) Number of towers <u>7</u> | 4) End gun <u>yes</u> |
| 5) High or low pressure <u>Lo</u> | 6) Capacity <u>800</u> GPM |

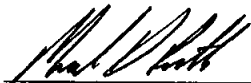
Center pivot: NW ¼ Sec 5 T114N-R62W

- | | |
|-----------------------------------|------------------------------------|
| 1) Make <u>Valley</u> | 2) Overall length <u>1280</u> feet |
| 3) Number of towers <u>7</u> | 4) End gun <u>yes</u> |
| 5) High or low pressure <u>Lo</u> | 6) Capacity <u>800</u> GPM |

CHEMIGATION EQUIPMENT:

- 1) Does chemigate no

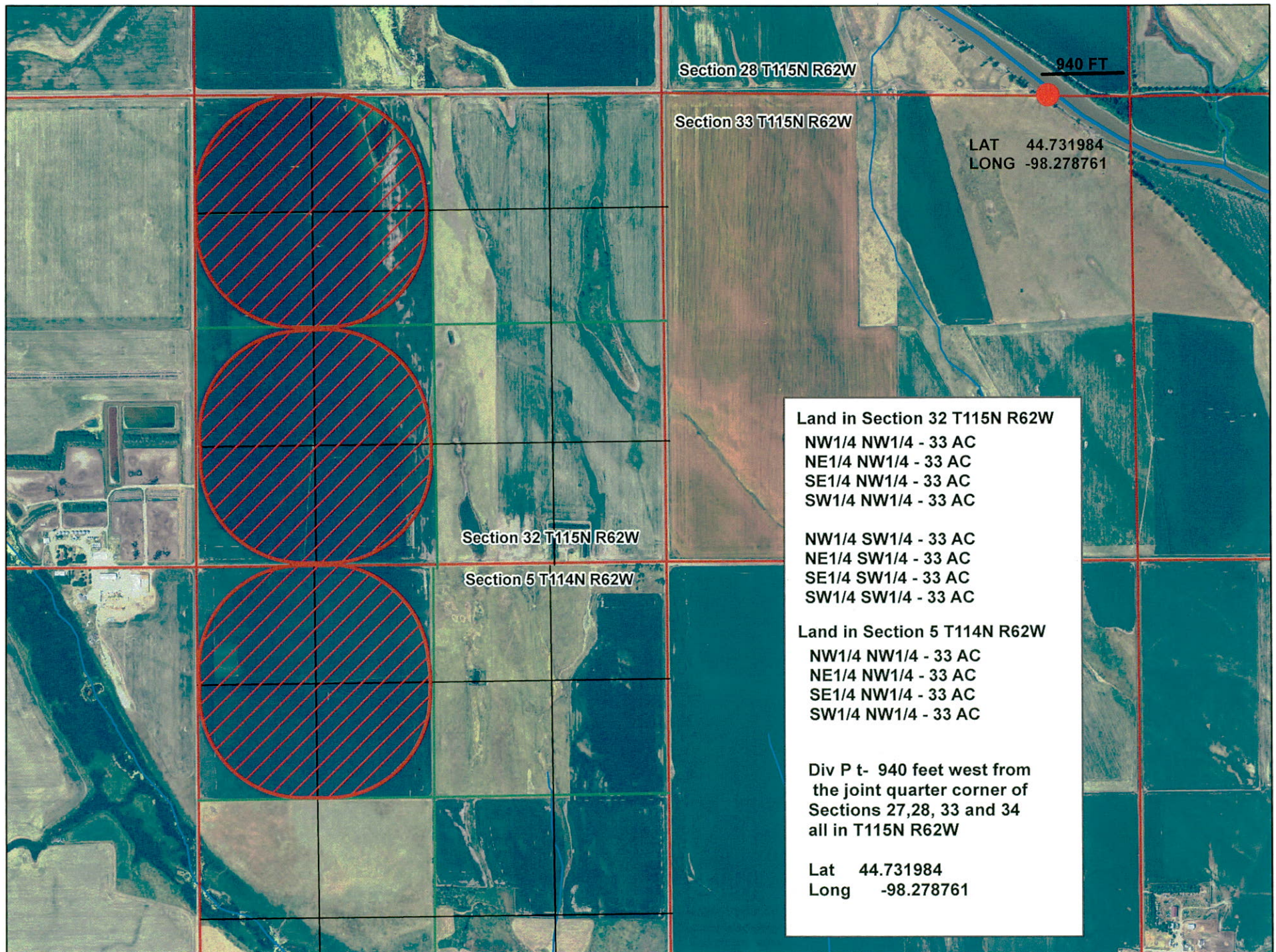
Comments : none



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

8-30-2013

Date



NO. 6375-3



2,100

1,050

0

2,100 Feet

Mark D Rath
 Mark D Rath, Natural Resources Engineer
 08-30-2013

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 6375-3

(1) Bixler Farms, 39477 184th St, Hitchcock SD 57348 made Application No. 6375-3, January 2, 2003 for a water permit to divert 5.35 cubic feet of water per second from the James River, Spink County, South Dakota for irrigation purposes. Permit No. 6375-3, with a priority date of January 2, 2003 was approved March 5, 2003 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 5, 2008 and for the application to beneficial use of said water on or before March 5, 2012.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 5.35 cubic feet of water per second for beneficial use. The location of the diversion point is 950 feet west of the joint corner of Sections 28 and 33, T115N, R62W (quarter line between the SE ¼ SE ¼ Section 28 and NE ¼ NE ¼ Section 33).

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 32, T115N, R62W				Section 5, T114N, R62W	
NW ¼ NW ¼	33 acres	NW ¼ SW ¼	33 acres	NW ¼ NW ¼	33 acres
NE ¼ NW ¼	33 acres	NE ¼ SW ¼	33 acres	NE ¼ NW ¼	33 acres
SE ¼ NW ¼	33 acres	SE ¼ SW ¼	33 acres	SE ¼ NW ¼	33 acres
SW ¼ NW ¼	33 acres	SW ¼ SW ¼	33 acres	SW ¼ NW ¼	33 acres
Total acres irrigated - 396					

(4) Pursuant to South Dakota Water Law 46-5-30.1 Bixler Farms, 39477 184th St, Hitchcock SD 57348 the holder and/or owner of Water Right No. 6375-3 is issued a license to appropriate water, the right to use 5.35 cubic feet of water per second from the James River with a priority date of January 2, 2003 from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Incorporated Water Right No. 6375-3 and subject to the following qualifications:

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

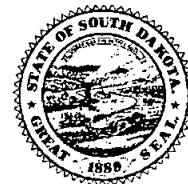
(Amended by the Water Management Board on May 9, 2007)

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


Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

SEP 11 2013

date





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
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denr.sd.gov

SEP 11 2013

6375-3

Reed Bixler
Bixler Farms
39477 184th St
Hitchcock SD 57348

Dear Mr. Bixler:

Enclosed is Water License No. 6375-3. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

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

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

May 27, 2021

Dear James River Water Right Holder:

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

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2021

Dear James River Water Right Holder:

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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523 E. CAPITOL AVE
PIERRE SD 57501-3182
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Permit No. 6375-3

WATER RIGHTS PROGRAM—FILE DOCUMENTATION

NAME: Bixler Farms

ADDRESS: 39477 184th St. Hitchcock, SD 57348

DATE: 08/13/2024

PHONE: 605-226-2763

RE: Request to extend pumping past the August 10th cutoff on James River

COMMENTS:

Mr. Reed Bixler called on August 13, 2024 requesting to continue pumping from the James River past the August 10 cutoff date.

RECOMMENDED ACTION:

Approved and told Mr. Bixler that a letter would be sent out to confirm the request.

Brittan Hullinger, Engineer 1
SD DANR, Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 14, 2024

Permit No. 6375-3

Bixler Farms, c/o Reed Bixler
39477 184th Street
Hitchcock, SD 57348

Dear Mr. Bixler,

This letter is in reference to your August 13, 2024, request for an extension to pump water from the James River beyond the August 10 shutoff date. Flows in the James River in the reach between the confluence with the North Dakota Border and the USGS stream gaging station James River at Huron are sufficient at this time to allow an extension. Because there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permit out of the James River and allow you to divert through the end of the 2024 irrigation season.

In the event that dry climatic conditions in the river basin cause river flow to significantly decrease and flow measured at the USGS stream gaging station James River at Huron drops to below 20 cfs, you will be contacted and provided orders to cease pumping. Realtime flows in the James River can be monitored by going to the following website:

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 6, 2026

Permit No. 6375-3

Bixler Farms
Attn: Jake Bixler
39477 184th Street
Hitchcock, SD 57348

Dear Mr. Bixler,

This letter is in reference to your August 6, 2026, request for an extension to pump water from the James River beyond the August 10 shutoff date. Flows in the James River in the reach between the North Dakota Border and the USGS stream gaging station James River at Huron are sufficient at this time to allow an extension. Since there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permit out of the James River, allowing diversions through August 24, 2026. If continued use is needed beyond August 24, 2026, please contact the Water Rights Program for an additional extension of time. We are only giving extensions for the James River in two week increments at this time, since the forecast is for continued hot and dry conditions throughout August.

In the event that dry climatic conditions in the river basin cause river flow to significantly decrease, and flow measured at the USGS stream gaging station James River at Huron drops to below 20 cfs, you will be contacted and provided orders to cease pumping. Realtime flows in the James River can be monitored by going to the following website:

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

If you have any questions, please contact Whitney Kilts with the Water Rights Program at (605) 773-3352.

Sincerely,

Adam Mathiowetz, PE
Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources