

WATER PERMIT NO. 6655-3

Name of Applicant: **Oscar, Inc.**

Address: **18892 390th Ave, Hitchcock SD 57348**

Phone: **605 266-2747**

Amount of Water Claimed: **1.78 cfs**

Total Acres: **160**

Source of Water Supply: **groundwater (one well)**

Water to be used for: **irrigation**

County: **Spink**

Type of Waste Disposal System:

Location: **12 miles northwest of Hitchcock**

PRIORITY Date Received: **8-16-05**

Application/License Fee: **\$375**

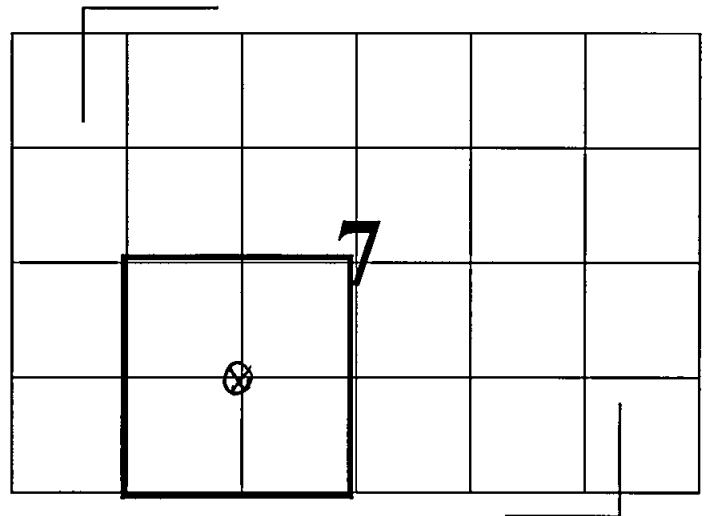
Corrected Application Received: **9-2-05**

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

Remarks:

Diversion Point: **center SW ¼ Section 7-T114N-R61W**

Land to be Irrigated: **SW ¼ Section 7-T114N-R61W**



Depth of Well: **100 feet**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by: **Ron Duvall**

Reviewed and the Number Assigned on: **9-6-05**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

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

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>6655-3</u> (office use only) Hydrologic Unit <u>10160006</u>
	Basin <u>James River</u>
	Newspaper <u>Redfield Press, Redfield</u>

 RECEIVED
 AUG 16 2005
 WATER RIGHTS
 PROGRAM

Application For Permit To Appropriate Water For Irrigation

 Type of Application: ☒ New ☐ Vested Right ☐ Amendment/Correction to Permit No. _____

(Use predates Mar 2, 1955)

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

- Name of Applicant Oscar Inc Phone 605-266-2747
 (check one) ☒ Owner ☐ Tenant/leasee
 Mailing Address 18892 390th Ave Hatcher State SD 57348
 (Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 1.78 *CFS or 800 **GPM 160 ***AF Total Acreage 160
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply well
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Spink
Center of 1/4 SW 1/4 7-114N-61W
- County or counties where water will be used Spink
- Annual period during which water is to be used Apr 1 - Sept 30
- List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
 (Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
<u>SW 1/4 7-114N-61W</u>	<u>160</u>		

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

 STATE OF SOUTH DAKOTA)
 County of Hughes SS

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

 Applicant's signature Oscar Inc by Lenny Peterson

 Subscribed and sworn to before me this 2nd day of September 20 05
Jennifer J. Hegg
 Notary Public signature

SOUTH DAKOTA
WATER PERMIT NO. 6655-3 FOR IRRIGATION

Date of first receipt of application August 16, 2005.

Date of return to applicant for corrections, amendments or changes August 17, 2005.

Date of receipt of corrected application September 2, 2005.

The Water Management Board approved Water Permit No. 6655-3 on July 12, 2006 for Oscar, Inc., c/o Floyd Peterson, 18892 390th Ave, Hitchcock SD 57348 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 6655-3 appropriates 1.78 cubic feet of water per second from one well to be completed into the Tulare:East James Aquifer (approximately 100 feet deep) located in the center of the SW ¼ Section 7 to irrigate 160 acres located in the SW ¼ Section 7; all in T114N-R61W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – September 30.
3. The date from which applicant may claim right is August 16, 2005.
4. One-fifth of the construction is to be completed on or before January 12, 2009.
5. All construction is to be completed on or before July 12, 2011.
6. Water is to be put to beneficial use on or before July 12, 2015.
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. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 6655-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. 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

AUG 17 2006

date



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth 100 ft
- b) Casing Type Plastic Diameter 16 in Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material ≈ 66 ft
- f) Depth to Water (ground surface to water level) 35 ft
- g) Distance to nearest existing domestic well:
On applicants property _____ On property owned by others ≈ 1/4 mi

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 _____

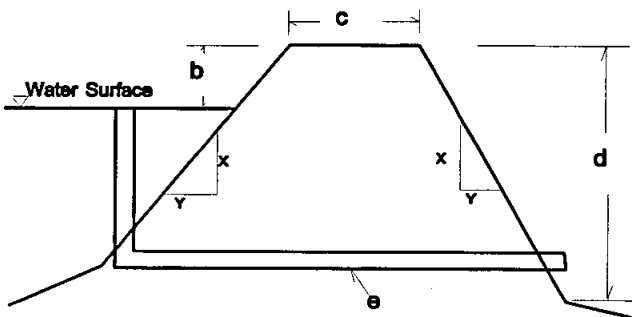
3. Dugout Information

- 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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date September 2, 20 05

RECEIVED OF Floyd Peterson, Oscar Inc., 18892 390th Ave, Hitchcock SD 57348

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

Fee for Application for Permit No. <u>6655-3</u> to Appropriate Water, to construct and to put water to beneficial use	250	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>6655-3</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	300.00

No.

00015416

By

Darland Erbe
Chief Engineer *gm*

2005

6632

T 4220

NC

1
96.7
N HEL

NC

2
76.5
N HEL

T 4362

well
⊗

1
146.1
N HEL

NC

NC

4
80.5
N HEL

3
23.7
N HEL

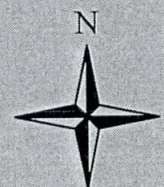
United States Department of Agriculture
Farm Service Agency

07-114-61

Don Darvall
Nat Res Engineer
9/2/05

Spink County

January 9, 2004



1997 Digital Orthophotography - Not To Scale

May 3, 2006

Chief Engineer
Water Rights Program, DENR
523 E. Capitol Avenue
Pierre SD 57501

Dear Mr. Erbele:

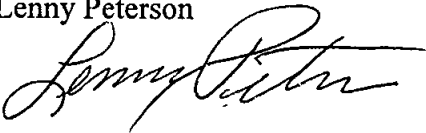
We hereby request to construct test wells in the quarter sections on the permits recently approved that are subject to findings of fact, conclusions of law and final decision. Specifically, the test wells are to be drilled in the center of the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ Section 19, T115N, R61W and the SW $\frac{1}{4}$ of Section 7, T114N, R61W.

Sincerely,

Oscar Peterson



Lenny Peterson



SOUTH DAKOTA WATER WELL COMPLETION REPORT

6341-3
11-02Location SE 1/4 SE 1/4 Sec 12 Twp 114 Rg 62

County

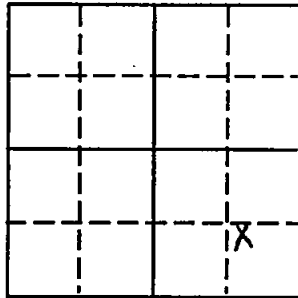
Spink

North

Please mark well
location with an "X"

W

E



Well Completion Date

4/2/2004

1 Mile

Distance to nearest potential pollution source (Septic tank, abandoned well, feed lot, etc.)

? ft. from In Pasture (identify source)

PROPOSED USE:

☐ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☒ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:

Forward

CASING DATA:

☐ Steel ☒ Plastic ☐ Other
If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	16.00 IN	0.0 FT	66.0 FT	24.00 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	50	Lb/gal	0.0 Ft	20.0 Ft
Clay	40	Lb/gal	20.0 Ft	40.0 Ft

Describe grouting procedure
Line

SCREEN:

☐ Perforated pipe ☒ Manufactured
Diameter 16.00 Inches Length 15.0 FeetMaterial PVCSlot Size .060 Set From 66.0 Feet to 81.0 FeetOther information

WAS A PACKER OR SEAL USED?

☒ Yes ☐ No
If so, what material? Gravel

Describe packer(s) and location

Gravel Packed

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? Pellets
☐ No, Why Not?
Lab sample sent to for
water quality analysisWell Owner: Jeff GatzkeBusiness Name: Address: 39334 187th StCity, State, Zip: Hitchcock SD 57348

WELL LOG:

DEPTH

FORMATION	FROM	TO
Yellow Clay	0	30
Yellow Coarse Gravel	30	40
Yellow Sand	40	50
Med. Sand w/ Coal	50	70
Med Coarse Sand	70	80
Shale	80	81

STATIC WATER LEVEL 35.0 FEETIf flowing: closed in pressure PSIGPM flow through Inch pipeControlled by ☐ Valve ☐ Reducers ☐ Other Reduced flow rate GPMCan well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe: 800 GPM with Test Pump Flow meter
☐ Bailed
☐ Other

Pumping Level Below Land Surface

 Ft. After Hrs. pumped GPM Ft. After Hrs. pumped GPMIf pump installed, pump rate: GPM

REMARKS

This well was drilled under license # 440

And this report is true and accurate.

Drilling firm: Pullman Well Drilling Inc.Signature of License Representative: Ken Palmer

RECEIVED

SEP - 9 2004

Signature of Well Owner or Equitable Property Holder: WATER RIGHTS
PROGRAMDate: 4/2/04

9-15-04

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 7 Twp 114 Rg 61

County

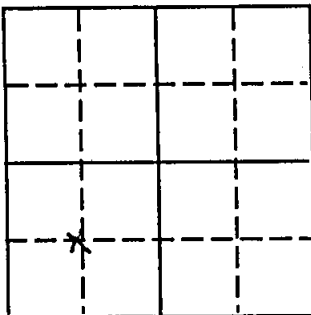
Spink

North

Please mark well location with an "X"

W

E



1 Mile

Well Completion Date

5/4/2006

Distance to nearest potential pollution source (Septic tank, abandoned well, feed lot, etc.)

? _____ ft. from _____ (identify source)

PROPOSED USE:

☐ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☒ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:

Reverse

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	16.00 IN	0.0 FT	80.0 FT	24.00 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	60	Lb/gal	0.0 Ft	30.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
Line

SCREEN:

☐ Perforated pipe ☒ Manufactured
 Diameter 16.00 Inches Length 15.0 Feet
 Material Stainless Steel
 Slot Size .057 Set From 80.0 Feet to 95.0 Feet
 Other information _____

WAS A PACKER OR SEAL USED?

☒ Yes ☐ NoIf so, what material? PeaRock

Describe packer(s) and location

@30

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? Pellets
☐ No, Why Not?
 Lab sample sent to for water quality analysis
Well Owner: Oscar PetersonBusiness Name: Oscar IncAddress: 18892 390 AveCity, State, Zip: Hitchcock SD 57348

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Yellow clay	0	12
Yellow Sand	12	14
Yellow clay	14	30
Yellow Sand	30	55
White Sand	55	96

STATIC WATER LEVEL 35.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe: w/ Turbine
☐ Bailed
☐ Other

Pumping Level Below Land Surface

35.0 Ft. After 4.0 Hrs. pumped 850.0 GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: _____ GPM

REMARKS

This well was drilled under license # 440

And this report is true and accurate.

Drilling firm: Pullman Well Drilling

Signature of License Representative:

Ken Palmer

Signature of Well Owner or Equitable Property Holder:

Date: _____

 RECEIVED
 JUN 1 2006
 WATER RIGHTS
 DIVISION



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 17, 2005

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

Dear Mr. Peterson:

Thank you for submitting the *Application for a Permit to Appropriate Water for Irrigation* of 160 acres in Spink County. In order to complete the application, the following is required.

- The original application which has been signed and notarized.
- Complete the enclosed Form 2A, Supplemental Information regarding the well information – proposed construction. If available, please submit a well log or test hole log signed by a licensed South Dakota well driller. If a test hole log is not available at the proposed well site, the Water Rights Program reserves the right to require a test hole log if it is deemed necessary to evaluate the application.
- A map showing the location of the well in relation to a government section corner or quarter corner by direction and distance is required. Please outline the land to be irrigated. The map must be signed by one of the following: Registered Land Surveyor, Registered Professional Engineer or by any other government employee who normally prepares maps as a part of his assigned duties (i.e. local NRCS office).
- The application/license filing fee will be \$300.00

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

enclosure

REPORT ON WATER PERMIT APPLICATION NO. 6655-3

Oscar, Inc
March 24, 2006

Application No. 6655-3 proposes to appropriate 1.78 cfs (800 gpm) from one well approximately 100 feet deep located in the center of the SW ¼ of section 7 to irrigate 160 acres located in the SW ¼ of section 7; all in T114N R61W in Spink County.

AQUIFER – TULARE EAST JAMES (T-EJ)

The Tulare East James is outwash (sand and gravel) that is under water table conditions in this area. The aquifer underlies approximately 23,200 acres in Beadle County and 100,700 acres in Spink County for a total of 123,900 acres and contains an estimated 132,000 acre-feet of storage in Beadle County and 476,000 acre-feet in Spink County for a total of 608,000 acre-feet of recoverable water in storage (Hedges, 1982). Kuiper estimated “Area B” (the Tulare East James aquifer in Spink County) underlies 167 square miles (106,880 acres) (Kuiper, 1984). Goodman estimated the aquifer underlies 102,400 acres and contains an estimated 630,000 acre feet of recoverable water in storage in just Spink County (Goodman, 1984). The Goodman estimate considered a greater saturated thickness than the Hedges estimate (results in greater aquifer volume of storage) and also slightly larger aquifer area based upon better mapping of the aquifer (close to the Kuiper estimate). The difference among these estimates is not significant or important. For all practical purposes the estimates are basically the same considering the hydrologic conditions at the time of the estimates. This report will use an aquifer area of 125,600 acres based upon the Hedges estimate for Beadle County and the Goodman estimate for Spink County and the amount of recoverable water in storage is estimated to be 762,000 acre feet using those same two sources.

No test well data was submitted with this application. There is information from nearby irrigation wells, domestic wells, observation wells and the published studies that is sufficient to evaluate this application.

RECHARGE DISCUSSION

Recharge to the aquifer has been estimated to range from 0.38 inches to 1.52 inches per year with a “best fit” of 0.76 inches per year (Hedges, 1983). Kuiper estimated the recharge volume to “area B” (the approximate Tulare East James aquifer in Spink County) to be about 6,800 acre-feet annually or 0.76 inches per year. Using the Kuiper “best fit” estimate of 0.76 inches per year the total aquifer recharge would be about 7,950 acre-feet per year for the Tulare East James aquifer for the entire 125,600 acres in Spink and Beadle Counties. This is a simple formula and calculation.

$$\text{RECHARGE} = \text{RECHARGE RATE} \times \text{AQUIFER AREA}$$

To calculate recharge simply multiply the rate (0.76 inches per year) times area (substitute an aquifer area of 125,600 acres) and divide by 12 (to get acre-inches into

acre-feet). This results in a total annual recharge volume estimate of 7,950 acre-feet per year for the Tulare East James aquifer. It is easy to see that both the aquifer size and recharge rate are important. The size of the aquifer is fairly well established. The rate of recharge is the key variable. Doubling the recharge rate as indicated by the potential range maximum estimate of 1.52 inches per year would significantly impact potential diversions from the aquifer and conversely the lower limit estimate of 0.38 inches could obviously impact existing diversions. In terms of volume the range of recharge would be from a low of about 4,000 acre-feet to high of about 15,900 acre-feet per year. In order to further evaluate this conundrum it is necessary to look at both reported pumping data and observation well water levels. Note the recharge estimate is an average annual rate not a specific rate for any given year.

CLIMATIC DISCUSSION

Graphs showing the annual precipitation, annual departure from average precipitation, and cumulative departure from normal for sites near Redfield and at Raymond are included with this report. Some basic generalizations can be made using this data. First, the mid 1980's and most of the 1990's were wet years and this corresponds well with the observation well hydrographs. It makes sense that wet years would result in recharge and would be reflected by rising ground water levels in the aquifer. Second, it appears that the timing (during the given year) and duration (several years) of precipitation affect the overall ground water levels significantly. In other words, it appears there is a cumulative affect and that hydrographs appear to correspond well with the cumulative departure from normal precipitation graphs.

WATER USE DISCUSSION

A group of permit applications from the Tulare East James aquifer (Nos. 4699-3, 4714-3, 4739-3, 4753-3, 4772-3, 4845-3) all were approved in 1981 with the last permit approved in April of 1982. Another permit No. 2276-3A was approved in November of 1982 but this permit only authorized additional acres for an existing system. Since that time little permitting activity has occurred from the aquifer. The first water permit application to be recommended for denial was No. 5009-3 for Duane Muxon. A report was presented to the Water Management Board in May of 1984 (Goodman, 1984). Since that application was considered seven permit applications (Nos. 5527-3, 5396-3, 4158A-3, 6287-3, 6445-3, 3325-3 and 3391-3) have been denied by the Water Management Board and two permit applications (Nos. 3470-3 and 5009-3) were withdrawn by the applicants. For all practical purposes the aquifer was considered to be fully appropriated based upon water use. This scenario was changed with water permit application No. 6431-3 (Philip Hines) and the subsequent court decision reversing the Water Management Board decision to deny that application. There will be more discussion on the court case later on in this report.

SDCL 46-2A-8 allows five years for development of a permit with four more years to put the water to beneficial use and SDCL 46-5-25 requires if one-fifth of the work shall not be completed within one-half the time allowed, as determined by the Water Management

Board, the Board can issue additional permits from the forfeited water. Therefore, it appears reasonable to start a water use table beginning in 1986. The theory is that the time for development of those 1981 and 1982 issued permits would have passed in 1986 and thus water use would be reflected in the table. Also included in the table are the reported irrigated acres and the water use in inches per acre. Taken as a whole, these data provide insight into the interrelationship of climate, aquifer development and water use. The irrigated acres are taken directly from the irrigation questionnaire and the water use calculated from the irrigation questionnaire. The water used in inches per acre is calculated using the following formula.

$$\text{WATER USE / IRRIGATED ACRES} \times 12 = \text{WATER USED INCHES PER ACRE}$$

TABLE 1

YEAR	REPORTED ACRES	TOTAL APPROPRIATION ACRE-FEET	WATER USE ACRE-FEET	WATER USED INCHES PER ACRE
2005	12,272	39,322	8,417	8.2
2004	12,489	39,288	7,374	7.1
2003	12,349	39,811	11,864	11.5
2002	11,641	42,020	13,668	14.1
2001	11,153	41,324	10,287	11.1
2000	11,296	40,198	7,690	8.2
1999	10,025	40,498	5,012	6.0
1998	9,226	40,498	3,476	4.5
1997	7,105	40,498	2,676	4.5
1996	9,916	40,498	7,389	8.9
1995	7,242	40,498	2,932	4.9
1994	8,368	40,510	3,897	5.6
1993	5,891	40,164	1,089	2.2
1992	10,790	40,220	3,224	3.6
1991	9,689	40,772	7,890	9.8
1990	8,861	40,716	6,928	9.4
1989	10,510	40,971	11,282	12.9
1988	9,695	41,043	11,106	13.7
1987	9,597	39,978	8,481	10.6
1986	9,073	41,741	4,940	6.5

The data in Table 1 indicate the following. First, the reported irrigated acres appear to change with climatic conditions. The very wet years show a decline in irrigated acres with an even more dramatic corresponding drop in total water use. This makes sense intuitively because during wet years certainly less water would be needed and used. Second, the annual water use in inches shows a high of 14.1 inches (in 2002) and a low of 2.2 inches (in 1993). The average use is about 8.2 inches per year based upon the 20 years of record. Third, the total appropriation does not change much. This is because the

permitted acreage did not change significantly. Finally, it appears that water use in inches may be a fair way to project potential water use from the aquifer.

WATER APPROPRIATION DISCUSSION

For the years of 1986 through 2005 the total appropriation from the aquifer has remained fairly constant. The total appropriation (in this case for irrigation) is the statutory limit allowed per acre. This limit is set by SDCL 46-5-6 and now is two acre-feet per acre. Originally this limit was three acre-feet per acre (changed by statute in 1978). All this means is that permits issued before the change are allowed three acre-feet per acre and subsequent permits are allowed two acre-feet per acre. It is obvious from looking at the Table 1 that the full allotment for irrigation water is never used. For this period of record, the year with the greatest water use is 2002. That year the “paper appropriation” was 42,020 acre-feet and the actual use was 13,668 acre-feet. This means for that year 32.5 percent of the appropriated water was used. A similar calculation can be made for any other year on the chart. The amount of water used in any given year is a reflection of many factors. Recognizing this as reality, the Water Management Board has always considered actual use (as reported on the irrigation questionnaire) as the primary factor for determining water availability and whether an aquifer should be considered fully appropriated.

There are good reasons for this assumption based upon both the historical reporting and statutes. The statutes SDCL 46-1-2, SDCL 46-1-4 and SDCL 46-1-6(3) are all relevant to this discussion. If the appropriation limit was used to determine water availability then the assumption would be that all water appropriated would be used. For irrigation in this area and in South Dakota this is physically improbable based upon crops grown, water needs for those crops and variable climatic conditions. In order to maximize water use the Board has based water availability decisions upon the reported water use rather than the total water appropriation.

As of March 2006, there are about 13,785 acres under irrigation permit or license for the Tulare East James aquifer with most of this acreage developed. Compare this acreage with the reported 12,272 acres irrigated in 2005 (see Table 1) reveals that for any number of reasons there are acres that do not get irrigated in a given year.

OBSERVATION WELL HYDROGRAPH DISCUSSION

The Water Rights Program monitors thirty five observation wells completed into the Tulare East James aquifer. Five of these observation wells are within a three mile radius of this application. These are observation wells SP-77U (located about one mile northwest), SP-79H (located about two miles northeast), and SP-77V (located about two miles east), SP-77P (located about two miles south) and SP-79K (located about three miles southwest) all from this application. Water levels for these wells show good response to climatic conditions. That is, rising water levels during wet years (recharge) and gradually declining water levels during dry years (Water Rights, 2006). The effects of pumping are generally slight with only observation well SP-66E showing a response

because of artesian conditions. Hydrographs for these observation wells are included with this report. Two other observation well hydrographs for SP-66D and SP-66E are also included with this report. These two graphs are included because they are representative of conditions in the aquifer extending back another 10 to 11 years. These two observation wells are located about nine and twelve miles north of this application, respectively.

In general, the hydrographs illustrate response to similar hydrologic conditions. The water levels rise during the mid-1980's (1984 and 1986 were wet years) indicating recharge. Also beginning in about 1993 water levels for all graphs were trending upward due to wet years in the 1990's also indicating recharge. The downward trends from the mid 1960's to the early 1980's are shown by the two graphs with a longer period of record. These graphs also mirror the other graphs when matched with the recent time frame. Also there are downward trends in the late 1980's through the early 1990's and from 2000 to the present. The downward trends represent periods of less recharge (diminished precipitation) combined with increased pumping. The hydrographs indicate that pumping can affect water levels in the short term where the aquifer is under artesian conditions. Only where the observation well is under artesian conditions is there a distinctive response to pumping (annual drawdown and recovery).

The absolute best records available are the observation well hydrographs. Even though there may be occasional measurement errors in this record the consistency of the record from well to well is remarkable. Since 1966, even with pumping associated with over 12,000 acres of irrigation development, and considering the intervening drought and wet years, the fall of 2005 aquifer water level as measured in the observation wells SP-66D and SP-66E is 1.4 feet and 2.0 feet respectively above the September 1967 level. This indicates that the aquifer is capable of sustaining permitted diversions within the context of the hydrologic conditions of the last forty years. For the time period beginning in 1986 through the fall of 2005, the water levels in the three nearby observation wells SP-77P, SP-77U, SP-79K, SP-79H, and SP-79V are 4.2 feet, 3.3 feet, 3.4 feet, 2.8 feet higher and 1.1 feet lower, and respectively. The combination of wet years (more potential recharge) and less pumping are obvious from the hydrograph data and the data presented in Table 1.

REGULATORY DISCUSSION

SDCL 46-6-3.1 states:

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

In this instance the water source is the Tulare East James aquifer and this aquifer is not stratigraphically lower than the Greenhorn Formation.

The best estimate for average annual recharge is 7,950 acre-feet per year. The pumping record indicates that during the last 20 years the pumped volume has surpassed the estimate for average annual recharge seven years (Table 1). However, the average pumping for the last 20 years has been 6,981 acre-feet per year which is less than the estimated average recharge of 7,950 acre-feet per year. The average pumping for the last five years of record is 10,322 acre-feet and this is greater than the average annual recharge. These statistics must be balanced with common sense and a practical understanding of irrigation practices and climate. The statute does not say average use just simply annual use. A recent Sixth Judicial Circuit court decision in the Hines v. SD DENR the judge ruled that "If the Board uses an average to calculate the average pumping rate, then the Board should use the average recharge rate. The average recharge rate is greater than the average pumping rate. Therefore, according to 46-6-3.1, the Board should grant Hines a water permit" and overturned the Board's decision of denial in that case.

SDCL 46-1-2 states:

"It is hereby declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what ways the water of the state, both surface and underground, should be developed for the greatest public benefit."

SDCL 46-1-4 states: (in part)

"It is hereby declared that because of conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."

SDCL 46-1-6(3) states:

"Beneficial use" any use of water within or outside of the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies:

From a practical point of view these three statutes convey the idea every effort should to be made to put water to beneficial use. Whether this means to use as the judge described average pumping records or some other combination of factors yet to be determined is open for consideration. If you examine the pumping records closely the very first thing noticed is the wide range in pumping volumes. Common sense dictates the reason for this. During wet years water is not needed, thus less is pumped and conversely during dry years more water is pumped because more is needed for crop growth. A more subtle fact is that management practices change with time. Not all permits are used every year and within individual permits, not all the acres permitted are irrigated every year. In fact,

irrigation development is a gradual process with generally more water used as time goes by and full development of permits is realized (Table 1). For this particular aquifer full development appears to have been attained in the late 1980's and early 1990's. Then the acreage was redeveloped in the last five years. Apparently the very wet years of the middle 1990's impacted the use of existing permits and additional development of permitted acres. The most recent development is probably because of drier climatic conditions but also because new permit applications were being denied by the Board thus encouraging existing permits to be fully used.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are four existing irrigation wells within one mile of this proposed well. The nearest irrigation well is about one-half mile west of the well for this application. That is water permit No. 6341-3. Interference is not expected to be a concern. Significant drawdown created by pumping does not extend very far from the pumping well. This is also shown by the observation well record. The question is not one of well interference but one of determination of average annual recharge and whether pumping exceeds that standard.

CONCLUSIONS

1. The Water Management Board has previously determined that water is not available for appropriation from the Tulare East James aquifer. This is based upon the expected water use from the aquifer compared to the average annual recharge to the aquifer. The Board has denied seven water permit applications for water from the Tulare East James aquifer. Water use from the Tulare East James has exceeded estimated average annual recharge seven years in the last 20 years.
2. In light of the judge's decision in *Hines v. SD DENR* the judge directed the Board to use average pumping as criteria for considering water availability. The average annual recharge for the aquifer is estimated at 7,950 acre feet. The average use from the aquifer for the last 20 years has been 6,981 acre feet. In theory, for an average year this would have left about 969 acre feet available for appropriation annually.
3. Using the 8.2 inches per acre per year average for water use from the aquifer, and considering there could have been 969 acre-feet of water available annually this would mean that an average of about 1,420 acres of additional land could have been irrigated during the last 20 years.
4. Well interference is not anticipated to be a concern. Pumping by individual production wells does not seriously impact other production wells. This is shown by the observation well record.
5. The best information available is the observation well record. That information combined with the precipitation data and the data presented in Table 1 are the most accurate and definitive available. It is also apparent that climatic conditions do affect the water level in the aquifer. Recharge from precipitation does occur. The effects of precipitation upon ground water levels appear to be gradual phenomena but nonetheless obvious.

6. Comparing aquifer storage to aquifer pumping indicates that less than three percent of water in storage has been used in a year of maximum pumping. The storage in aquifer dwarfs the water use. Pumping can go on for many years with little or no recharge to the aquifer and storage would be the source of water. This appears to be what occurred during the 1970's and early 1980's (based upon the observation well hydrographs). The problem is in determining how much of that decline can be attributed to pumping and how much simply lack of recharge.
7. Considering all the factors including pumping, recharge, aquifer area and storage, observation well hydrographs, historical development, statutes, and general irrigation practices on an equal basis, indicates that the preponderance of data suggests that the aquifer is near to being fully appropriated based upon use.
8. There is an overriding obligation in water law to protect the existing permit or right holders. Even though the estimates used to make the water availability determination are conservative and in part based upon experience there is a point in time where full appropriation does occur. This decision on full appropriation is inevitable.
9. There are 13,785 acres under irrigation permit or right for water from the Tulare East James aquifer as of March 2006. The record indicates that the acres reported used have never exceeded 12,489 acres (Table 1).
10. Aquifer development is not static and developed acres are always changing. There will be abandonment of acres, transfers, management decisions that will always affect permitting.
11. The analysis presented here is not meant to be the final word on the Tulare East James aquifer. The one factor which has the greatest potential for error is the estimate for average annual recharge. The 7,950 acre feet (0.76 inches per year) estimate for recharge is conservative but reasonable.
12. The Tulare East James aquifer should be considered fully appropriated with a developed acreage of 11,634 acres. This calculated acreage assumes an average use of 8.2 inches per year (the historical 20 year average) and is limited by the total average annual recharge of 7,950 acre-feet per year.


James A Goodman
Natural Resources Engineer

BIBLIOGRAPHY

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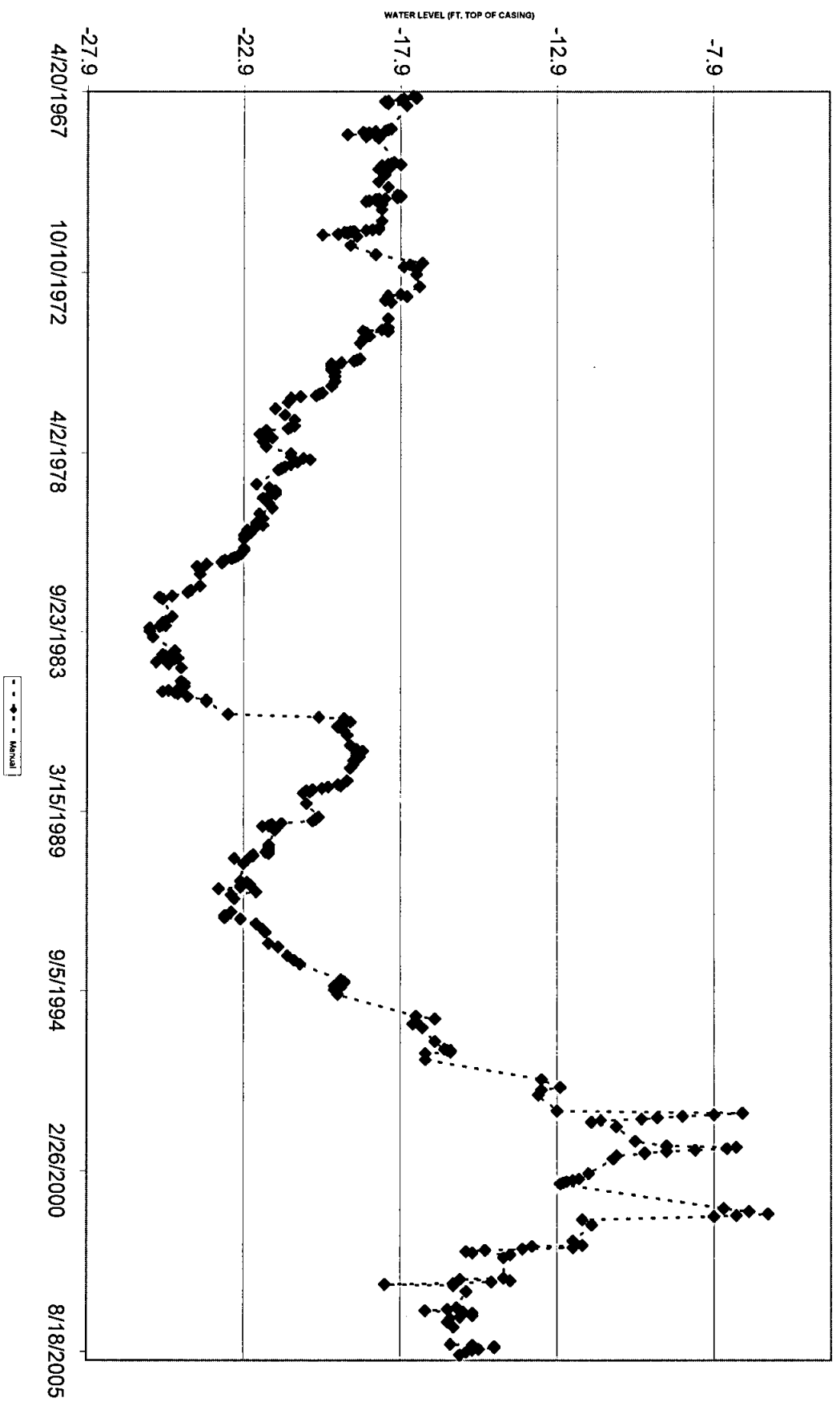
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Hedges, L.S., and others, 1983, Evaluation of Ground-Water Resources Eastern SD and Upper Big Sioux River, SD and Iowa, Ground Water Recharge, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 57069.

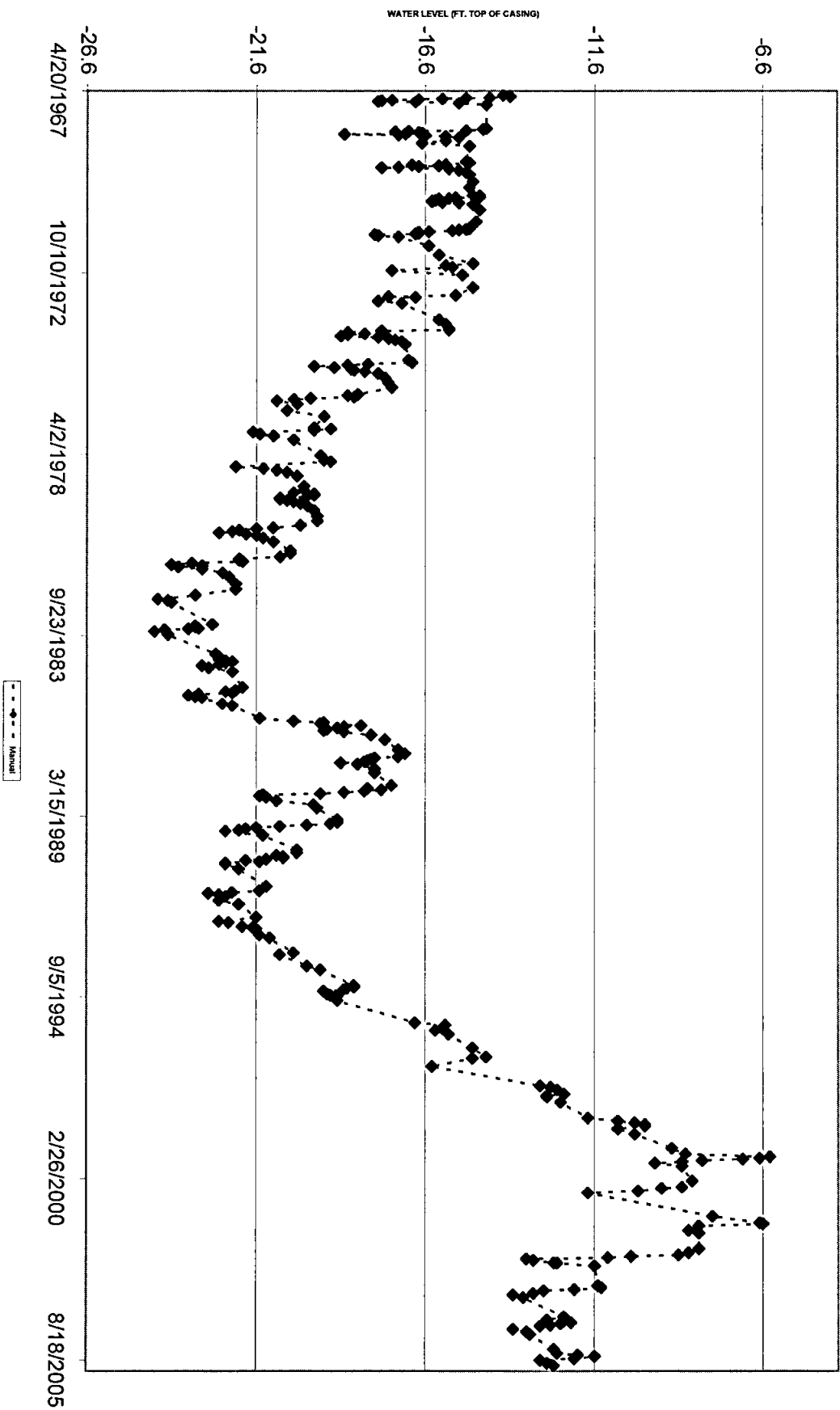
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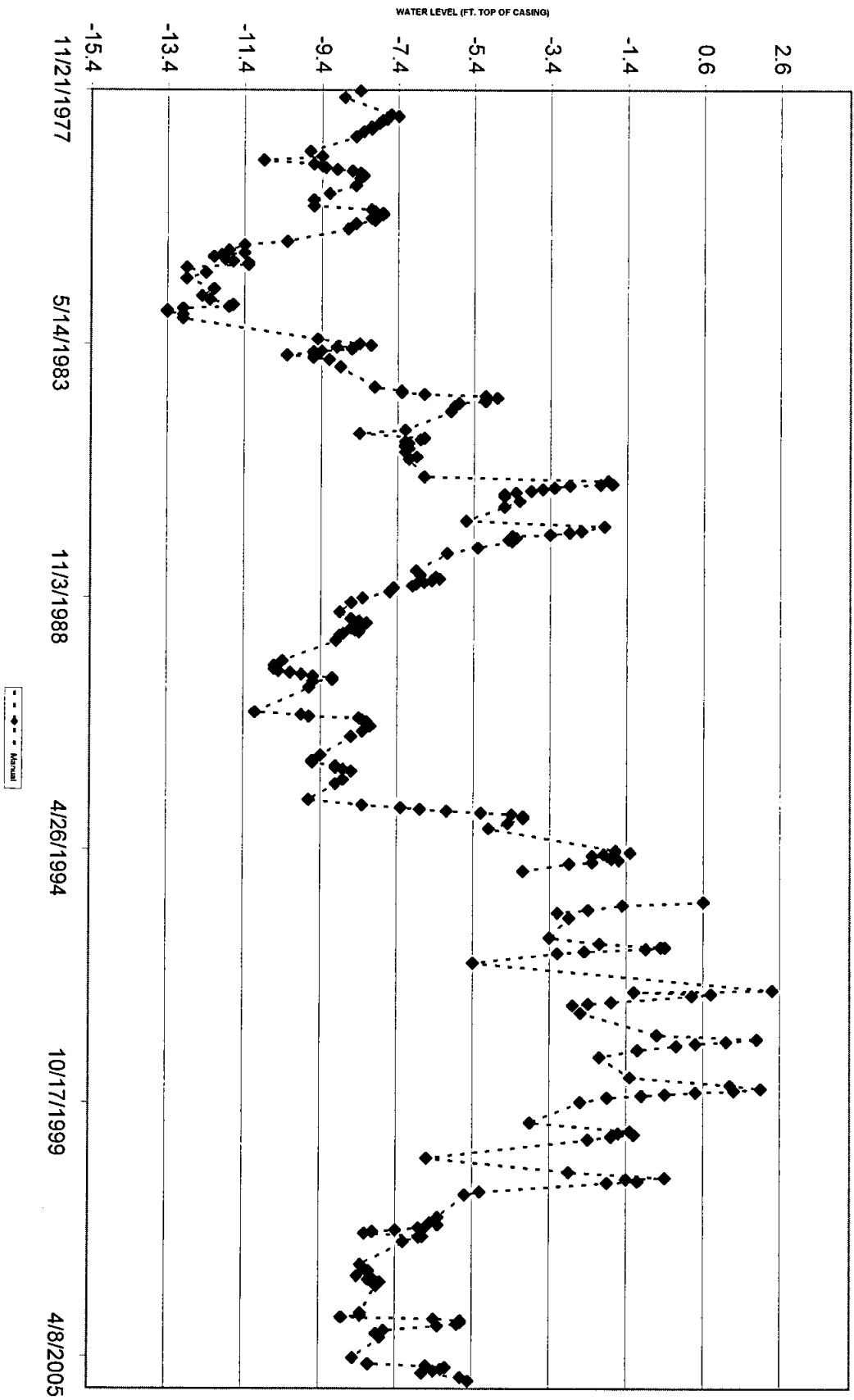
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SP-66D



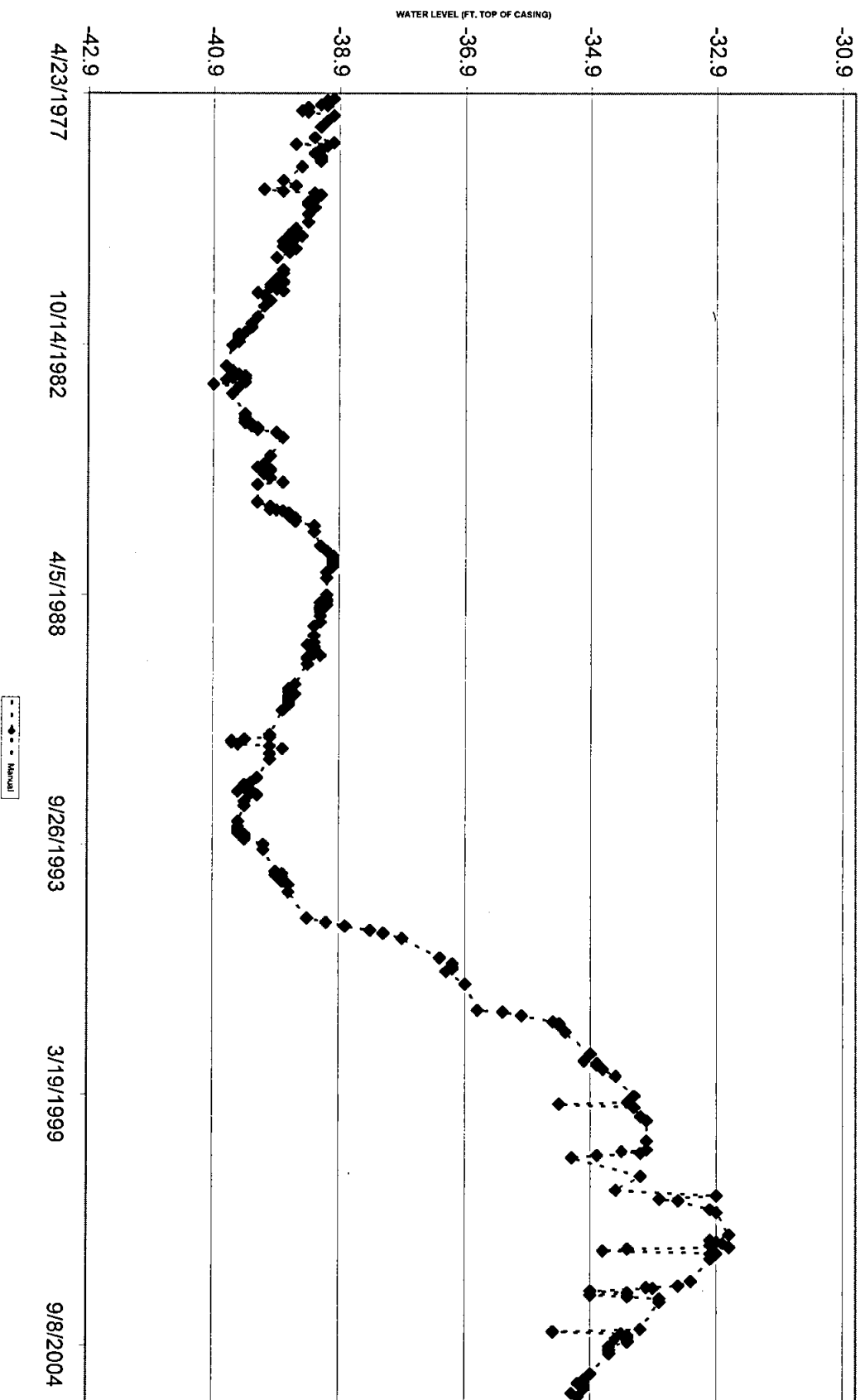
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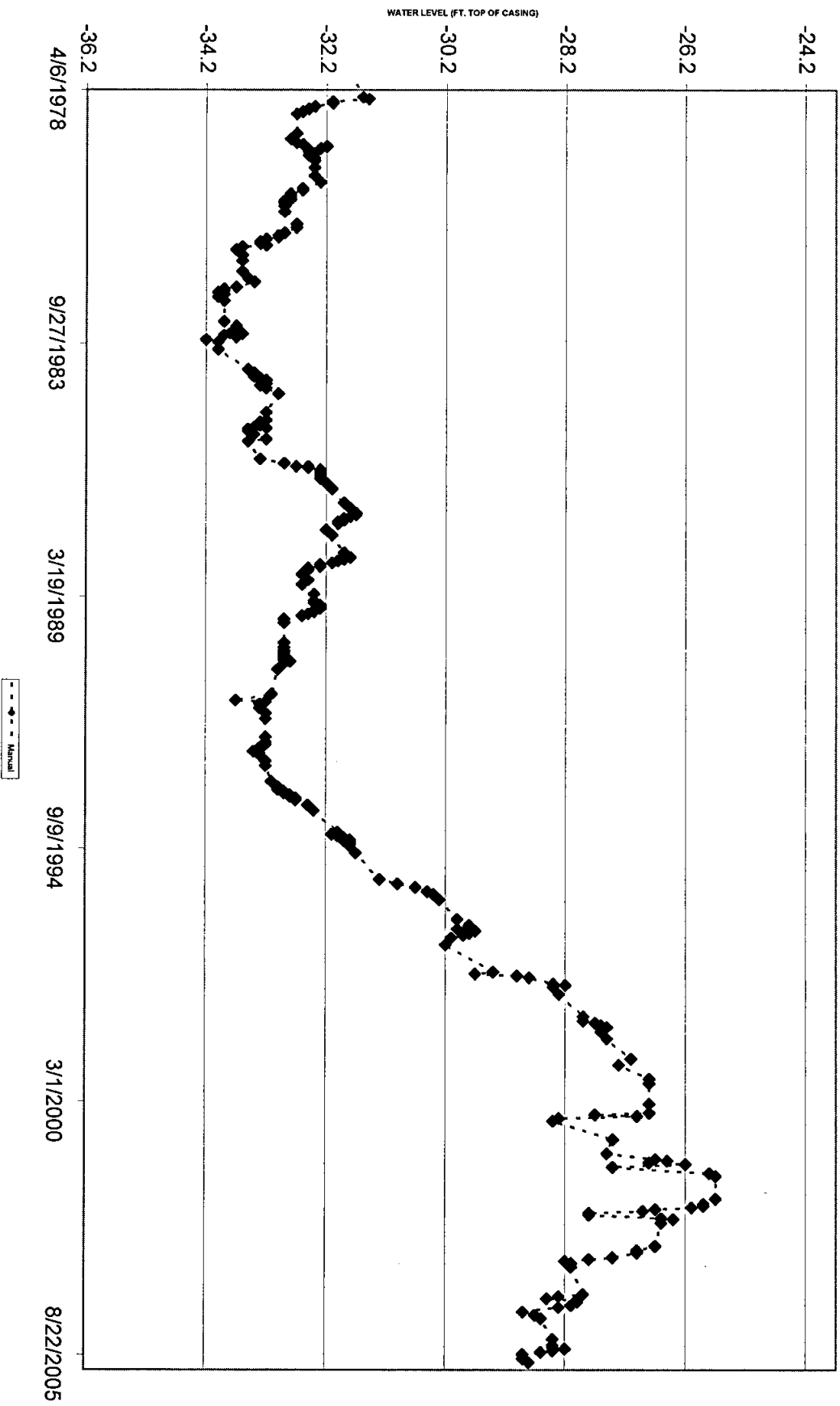
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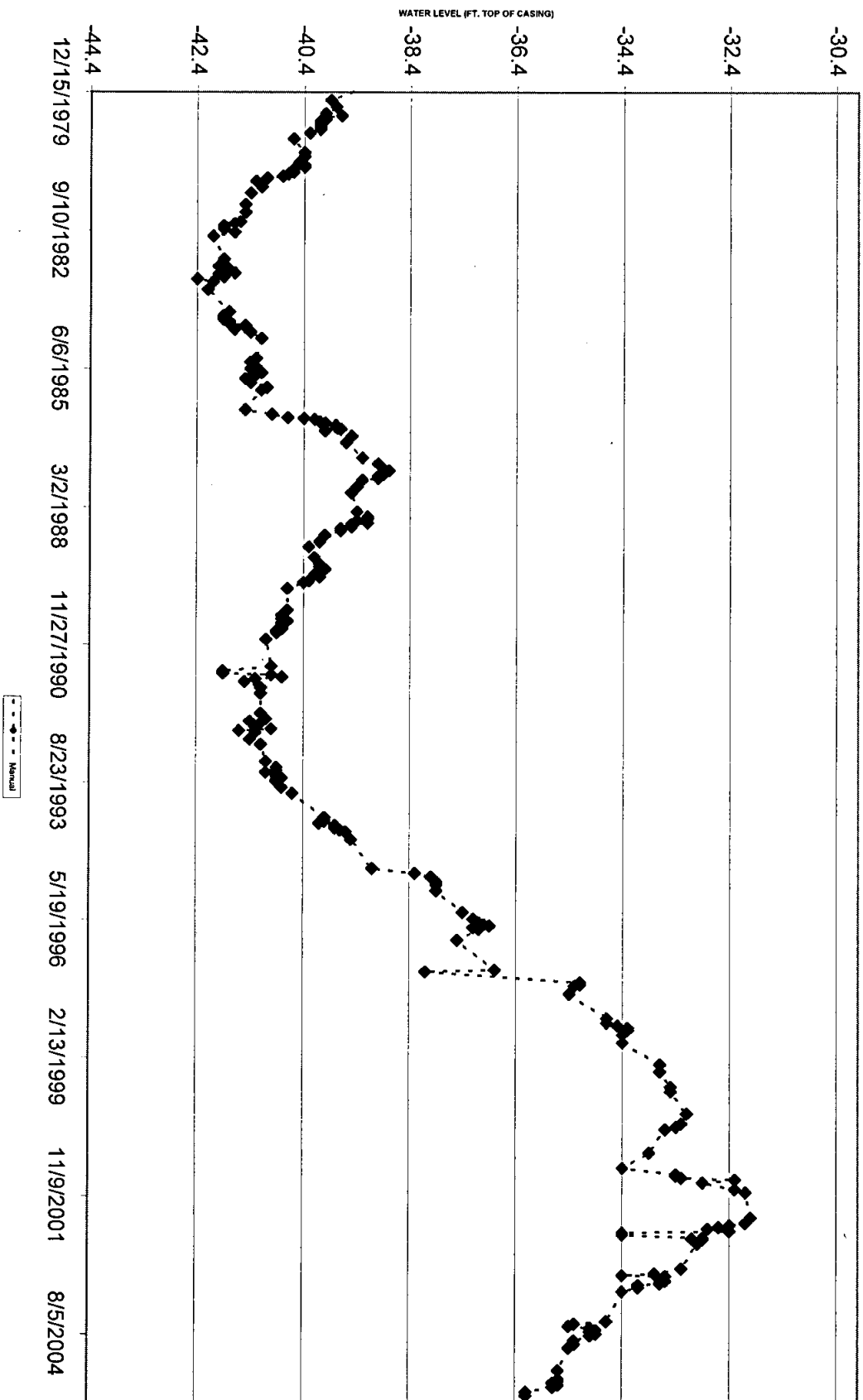
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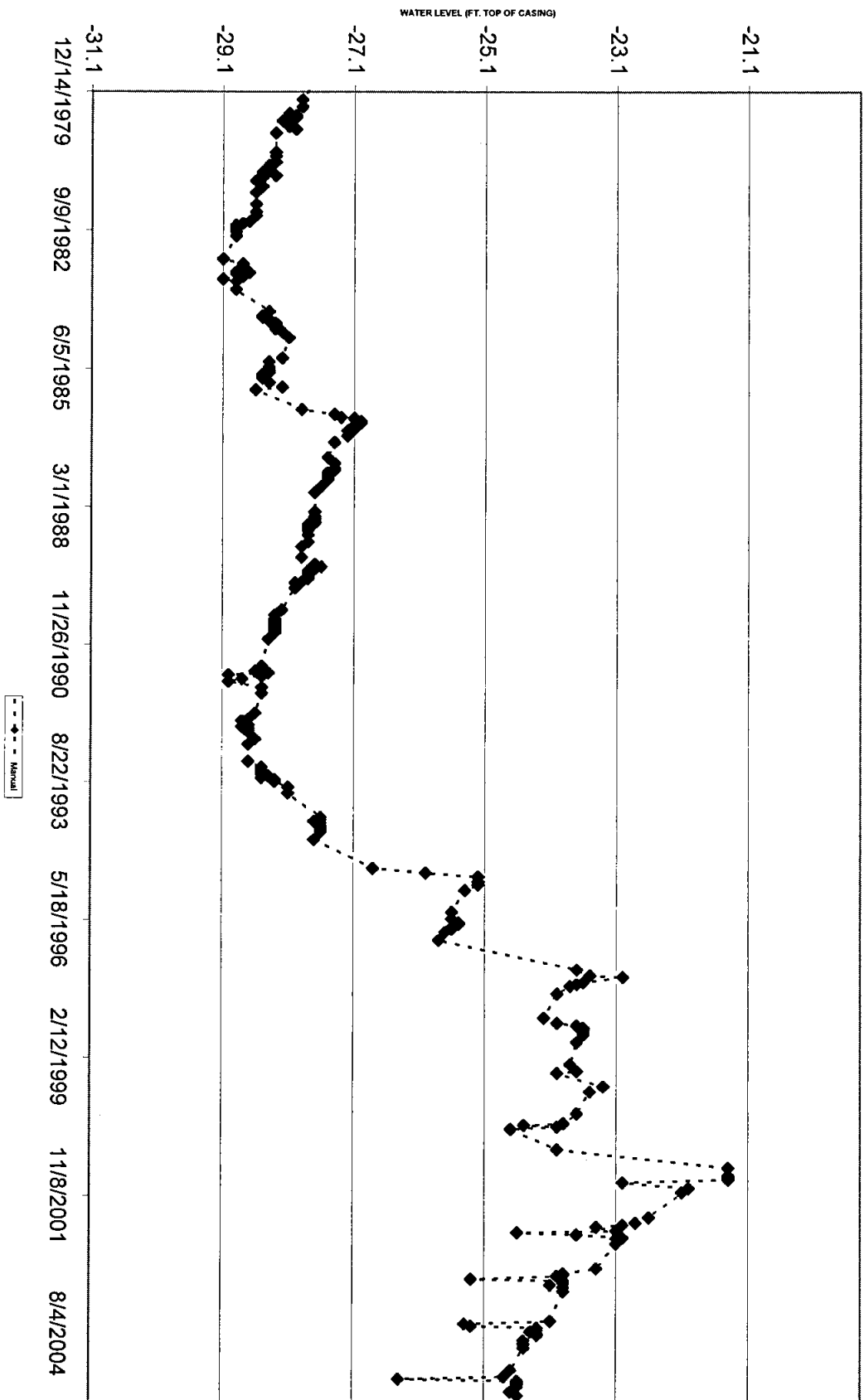
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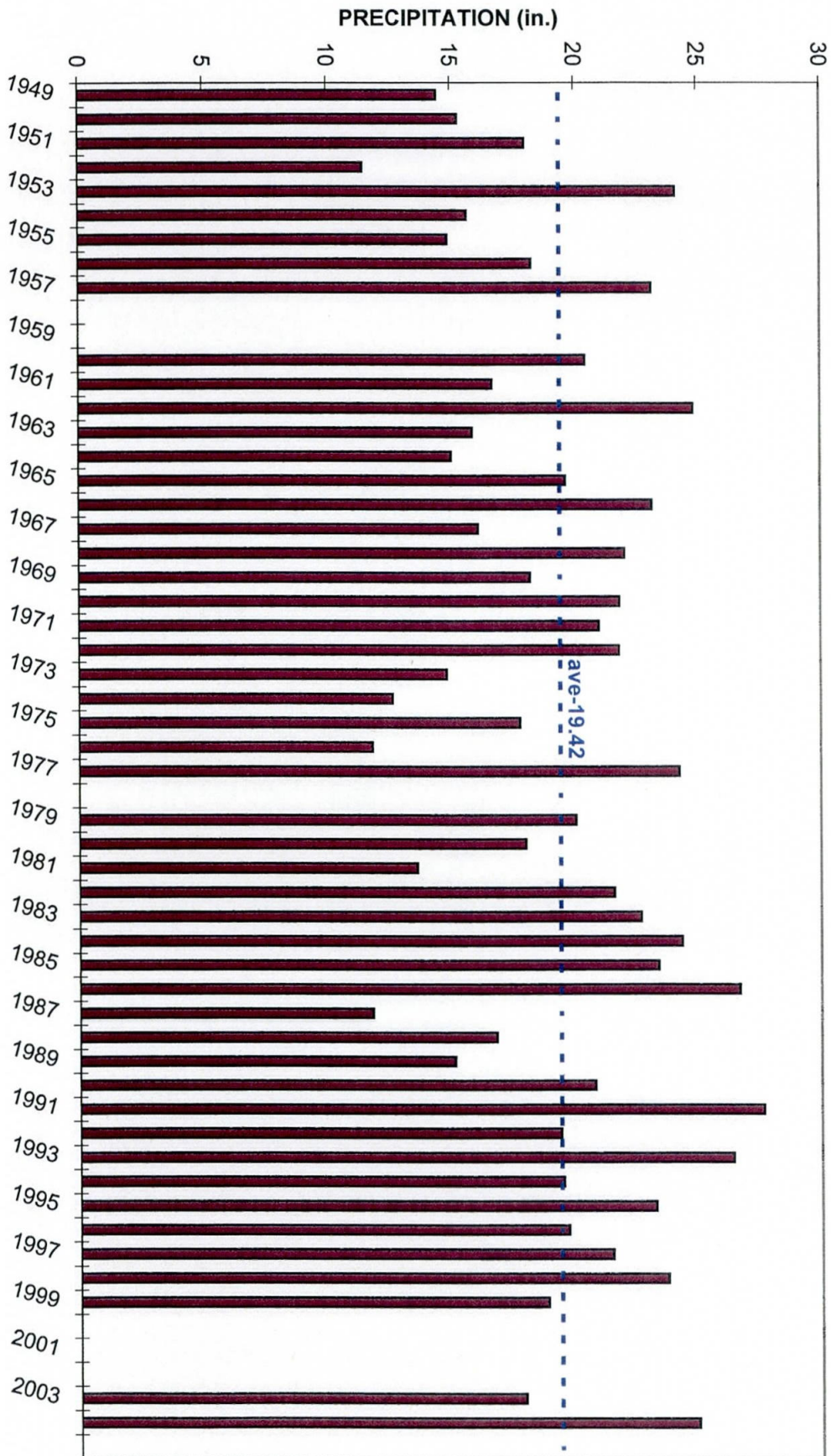


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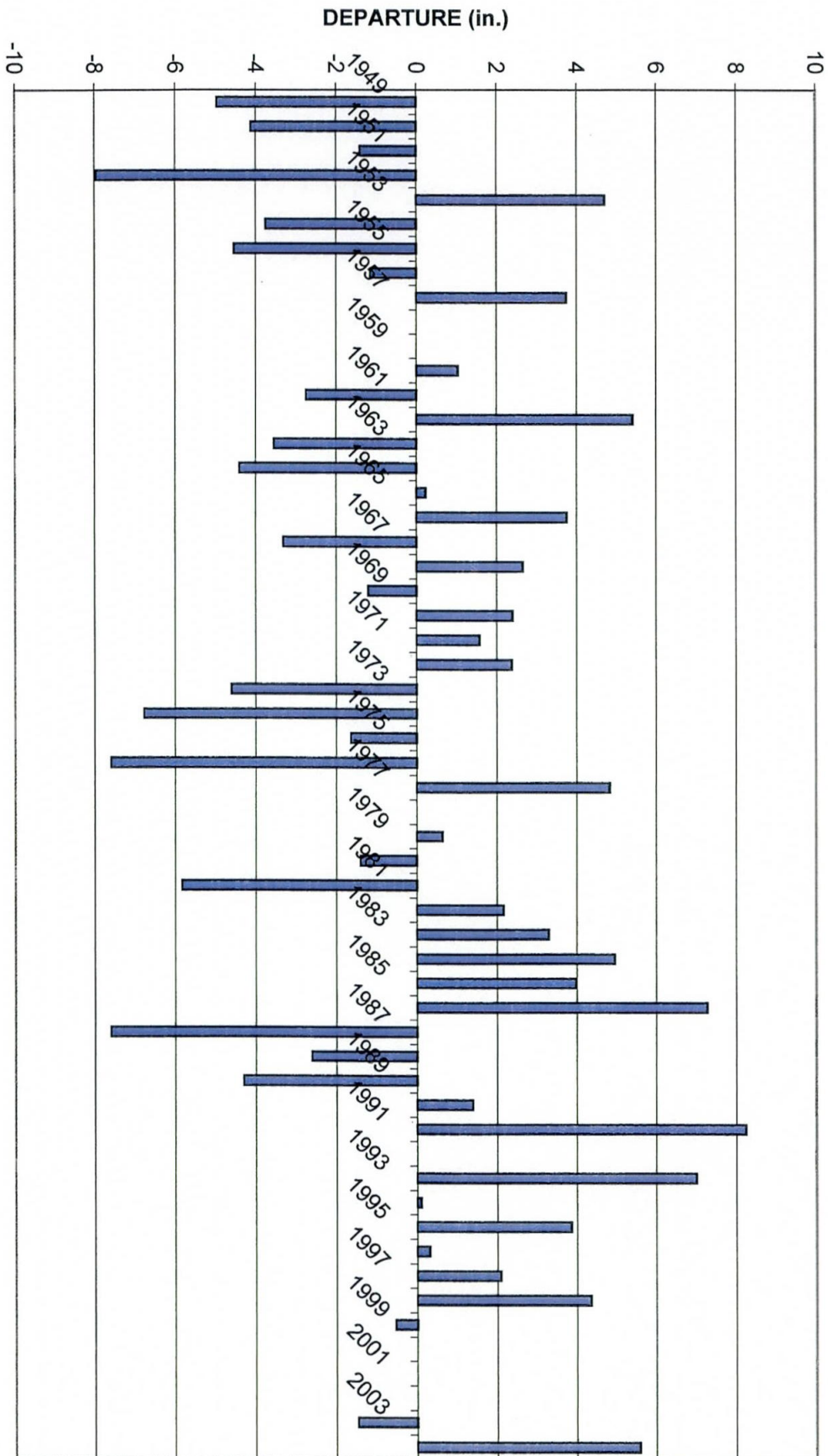
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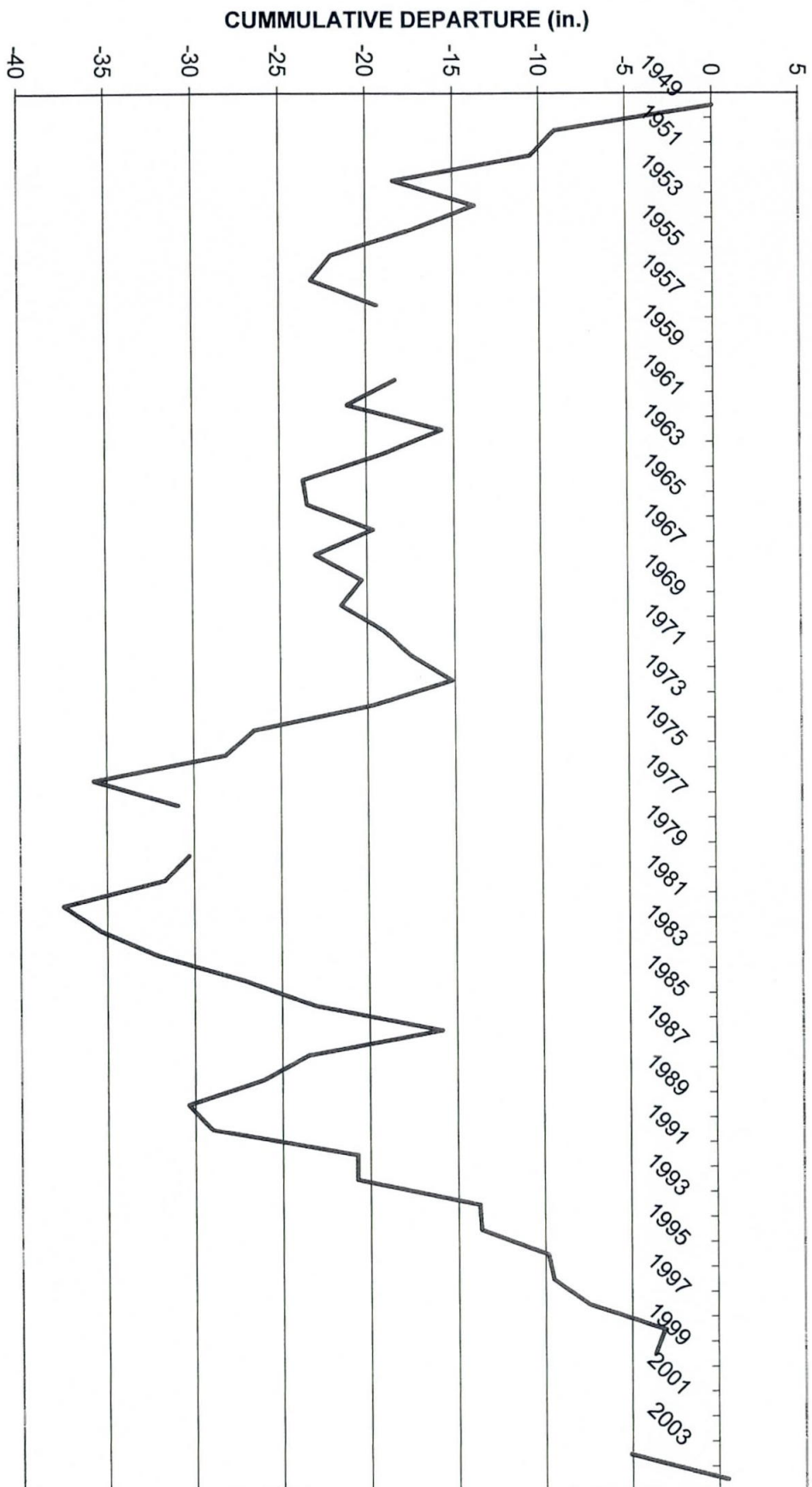


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1949-2004

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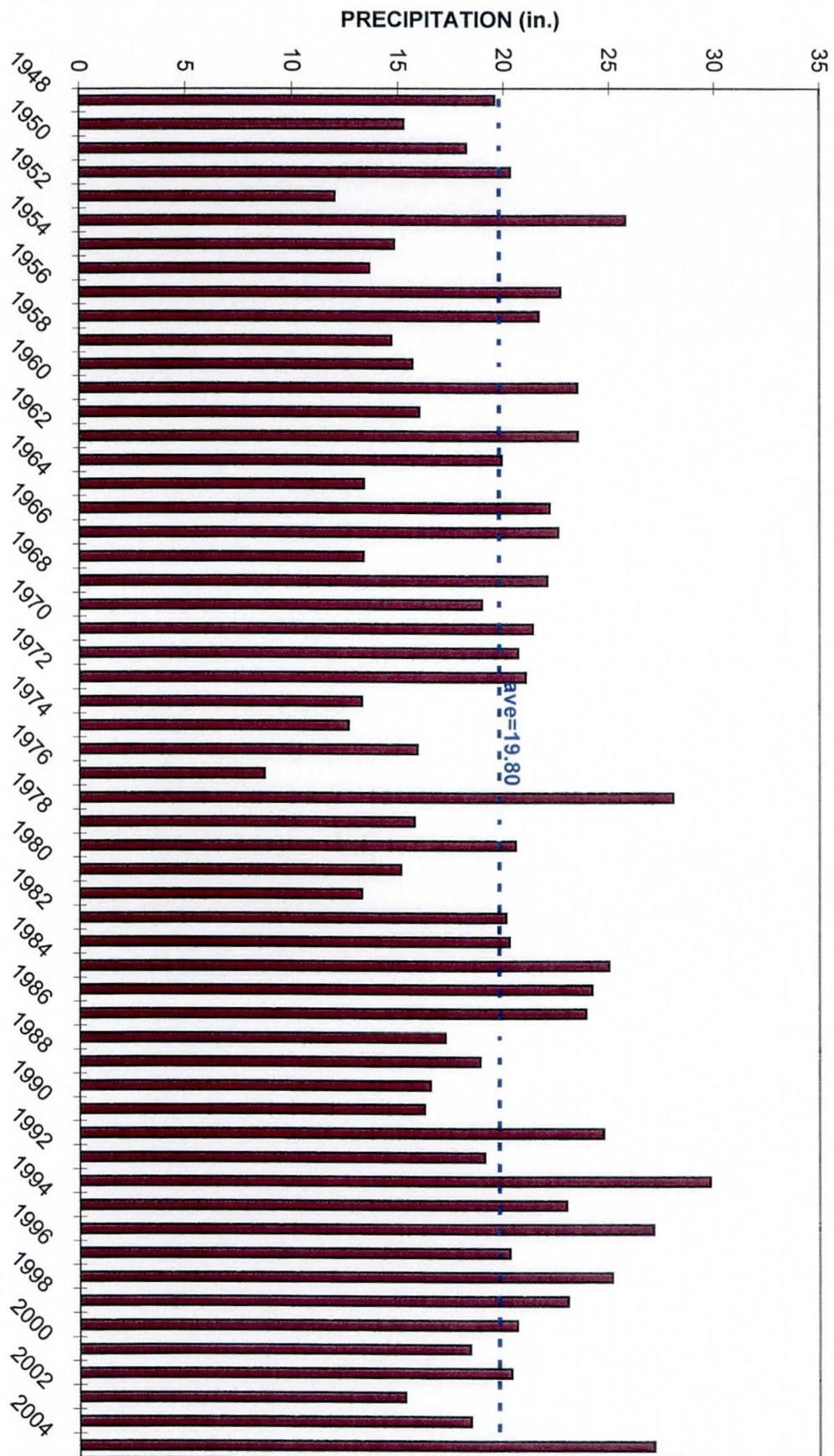


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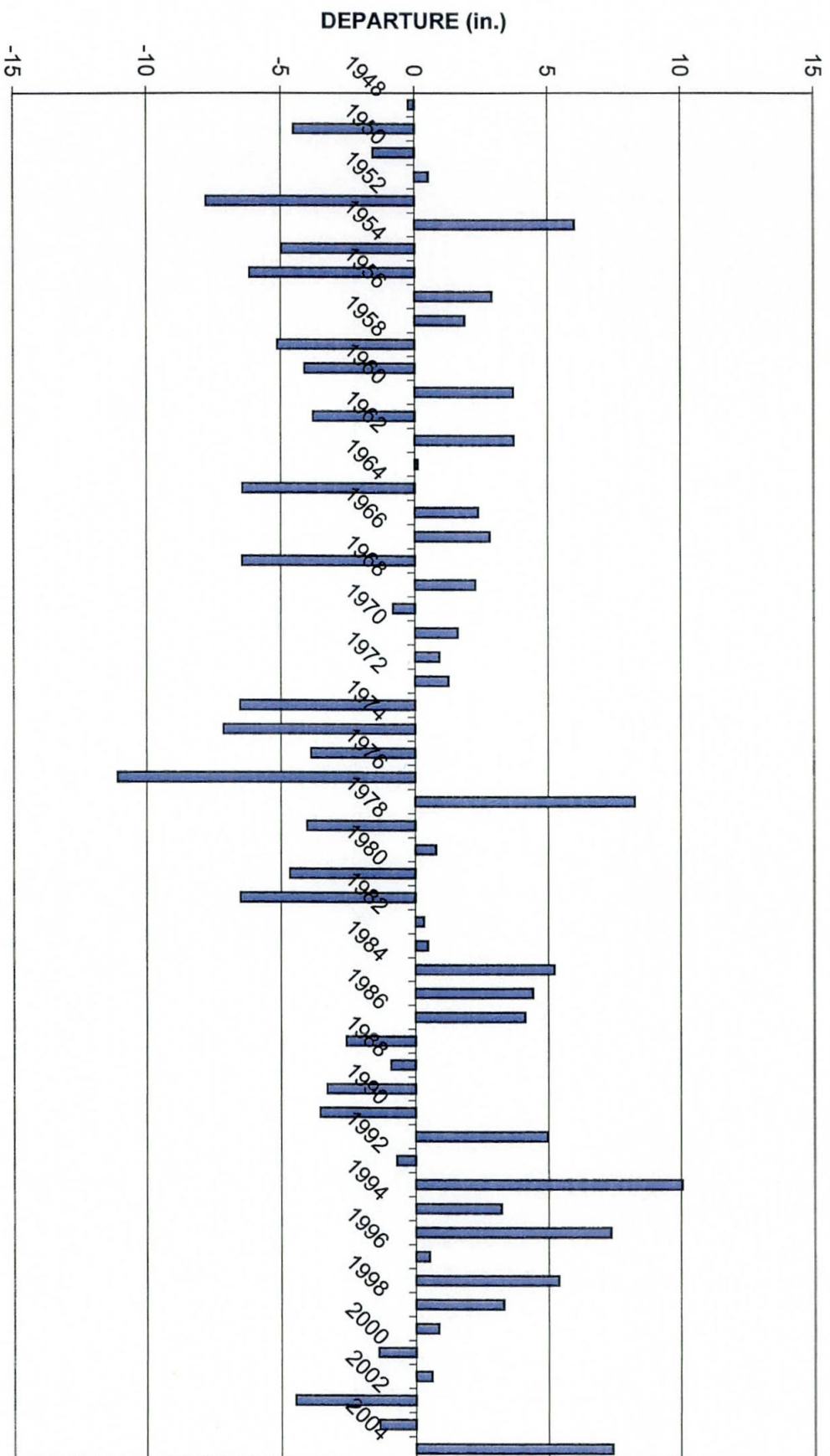


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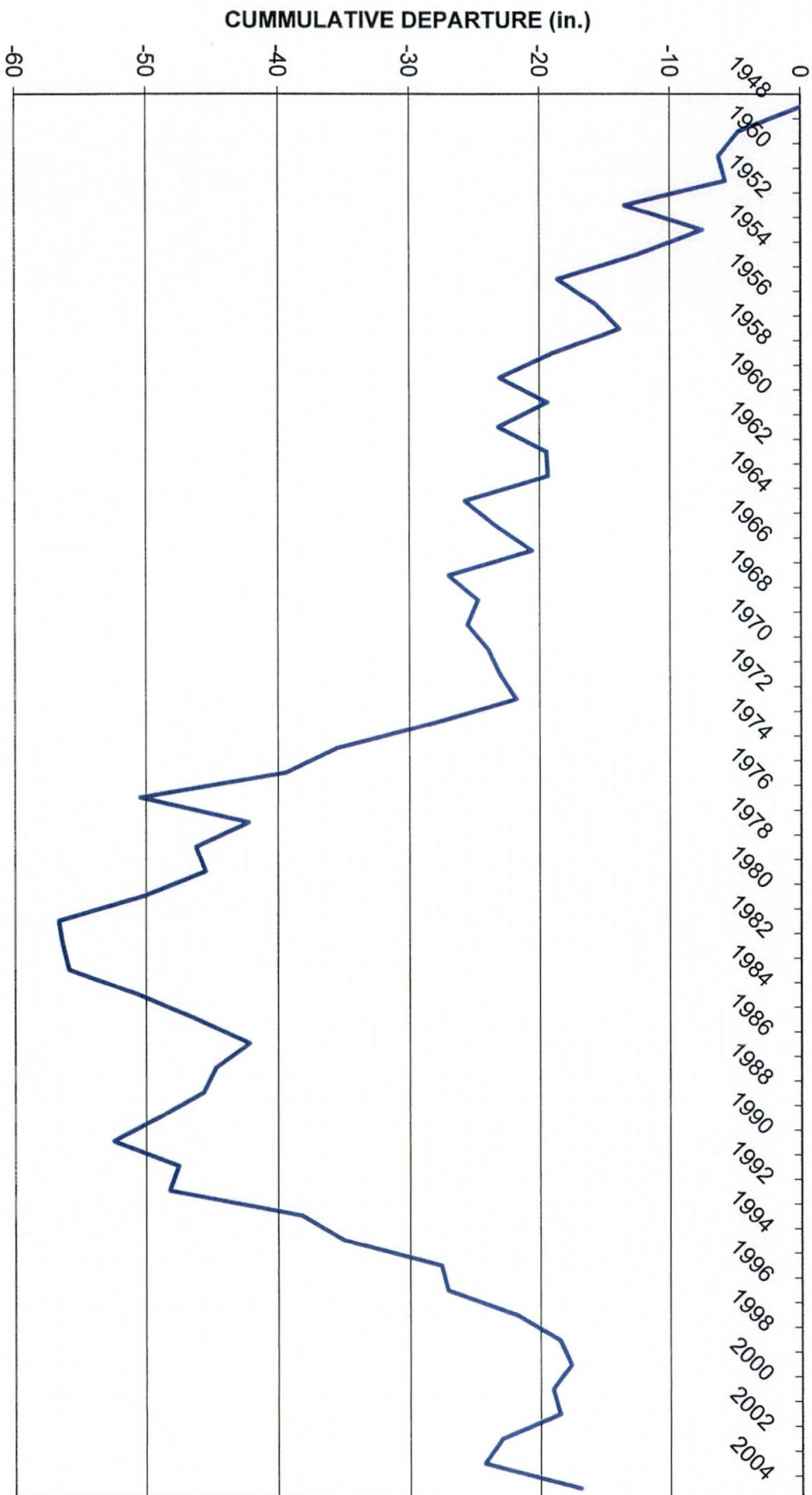
ANNUAL PRECIPITATION
at RAYMOND, SD
1948-2004



ANNUAL DEPARTURE FROM AVERAGE PRECIPITATION RAYMOND 1948-2004



**CUMMULATIVE ANNUAL DEPARTURE
FROM AVERAGE PRECIPITATION
RAYMOND
1948-2004**





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6655-3, Oscar Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 6655-3, Oscar Inc., c/o Floyd Peterson, 18892 390th Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 6655-3 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. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 6655-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. 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
April 3, 2006

#163 Floyd Peterson

Form 8

Notice of Hearing on Water

Appropriation

#163

NOTICE OF HEARING on Application No. 6655-3 to Appropriate Water

Notice is given that Oscar Inc, c/o Floyd Peterson, 18892 390th Ave, Hitchcock SD 57348 has filed an application for a water permit to appropriate 1.78 cubic feet of water per second from one well to be completed into the Tulare:East James Aquifer (approximately 100 feet deep) located in the center of the SW 1/4 Section 7 to irrigate 160 acres located in the SW 1/4 Section 7; all in T114N-R61W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6655-3 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. In making this recommendation, the Chief Engineer recognizes a recent court decision directing the use of average pumping as a criteria for considering water availability. Based on this analysis approximately 1,420 additional acres may be authorized for irrigation from the Tulare:East James Aquifer. Currently, water permit applications comprising 844 acres are pending before the Board, therefore, an additional 576 acres may be authorized for irrigation to reach fully appropriated status in the Tulare:East James Aquifer.

Any person interested in opposing or supporting this application must file

Legal Notices

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 April 24, 2006. 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 11:00 AM on May 3, 2006 in the Matthew Training Center, 523 E Capitol, Foss Building, 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 May 3, 2006 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 April 24, 2006.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by April 24, 2006, 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.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by April 24, 2006.

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

(April 5, 12)

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Spink) SS

I, Janet Johnson

certify that the attached printed Notice was taken

from the Reefield Press

printed and published in Huron SD

County of Beadle and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

April 5th

April 12th, 2006

Cost of Printing 4-5-06 - \$38.25

4-12-06 \$30.61 total 68.86

Janet Johnson
(Signature)

Office Manager
(Title)

April 12, 2006
(Date Signed)

Instruction to Newspaper - Publish first Notice on April 5, 2006 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 6655-3 to Appropriate Water

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 3, 2006

Oscar Inc
% Floyd Peterson
18892 390th Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Water Permit Application No. 6655-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the 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, report and Chief Engineer's are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The publisher has been instructed to publish your notice once each week for two consecutive weeks. 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

April 3, 2006

Redfield Press
PO Box 440
Redfield SD 57469-0440

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 6655-3 to Appropriate Water to be published twice. Please publish the first notice on April 5, 2006 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

Please BILL the APPLICANT for the cost of publication. The APPLICANT is Oscar Inc., % Floyd Peterson, 18892 390th Ave., Hitchcock SD (Ph # 605-266-2747).

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

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 6655-3

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

Date _____

We are in receipt of your letter of April 3, 2006 enclosing Notice to Appropriate Water by Application No. 6655-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 4, 2006

NOTICE

TO: William St. Clair
37644 184th Street
Tulare SD 57476

Lenny Peterson
Peterson Brothers
19111 Maple Avenue
Hitchcock SD 57348

Floyd Peterson
Oscar Inc.
18892 390th Avenue
Hitchcock SD 57348

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

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

The Water Management Board directed John Guhin, Assistant Attorney General, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the approval of Water Permit Application Nos. 6655-3 (Oscar Inc.), 6656-3 (Peterson Brothers), and 6675-3 & 6676-3 (St. Clair) from the Tulare:East James Aquifer. The Board will consider adoption of Findings, Conclusions and Final Decision at 8:30 AM, on July 12, 2006, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD 57501.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by June 22, 2006. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by July 3, 2006.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on July 12, 2006. The public hearing was completed on May 3, 2006. No additional testimony will be received on July 12, 2006.

If any party has questions about the findings process, please contact Eric Gronlund at (605) 773-3352.

Enclosure

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

WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink, Chairman
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer
29416 395TH Avenue
Wagner, SD 57380

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

Bernita Loucks, Secretary
219 42nd Street
Rapid City, SD 57702-0240

Dwayne Rollag
320 Lincoln Lane S
Brookings SD 57006-2741

James Hutmacher, Vice Chairman
802 East 7th Street
Oacoma SD 57365

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702-6874

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best, Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on May 4, 2006, I personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 4, 2006, regarding a consideration of findings of fact, conclusions of law and final decision in the matter of Water Permit Application Nos. 6655-3, 6656-3, 6675-3 and 6676-3, addressed as stated below.

William St. Clair
37644 184th Street
Tulare SD 57476

Lenny Peterson
Peterson Brothers
19111 Maple Avenue
Hitchcock SD 57348

Floyd Peterson
Oscar Inc.
18892 390th Avenue
Hitchcock SD 57348

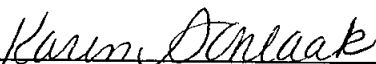
A copy of the Notice was sent Inter-office to:

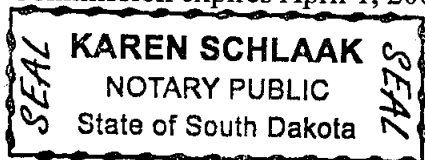
John Guhin, Assistant Attorney General
Diane Best, Assistant Attorney General


Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of May, 2006.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**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 8, 2006

Oscar Peterson
Lenny Peterson
Oscar Inc.
18892 390th Ave
Hitchcock, SD 57348

Dear Sirs:

As requested, pursuant to South Dakota Well Construction Standard 74:02:04:21, you are authorized to construct a test wells prior to approval of a water permit. The test wells are to be completed into the Tulare East James aquifer in the NW¼ and the NE¼ Sec. 19, T115N-R61W and the SW¼ of Sec.7, T114N-R61W. The test wells must be constructed in accordance with the SD Well Construction Standards. Any test holes that are abandoned must be plugged pursuant to the SD Well Construction Standards.

A SD Water Permit must be obtained before water from this well can be used. Approval of this test well does not assure issuance of a water permit. Following review of a Water Permit Application; and assessing the availability of water, the potential impacts to existing users, the beneficial use, and the public interest of a permit, the Chief Engineer will make a recommendation to the Water Management Board regarding the application. The recommendation to approve, deny, or defer the application will be publicly noticed and an opportunity afforded for the public to intervene. A public hearing may be required to consider the water permit.

Very truly yours,

JAMES A. GOODMAN, P.E.
Natural Resources Engineer
for GARLAND ERBELE, Chief Engineer
Water Rights Program
(605) 773-3352

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

RECEIVED

JUN - 5 2006

WATER RIGHTS
PROGRAM

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

June 1, 2006

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

James Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Bernita Loucks
219 42nd St.
Rapid City, SD 57702-0240

Dwayne Rollag
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Hitchcock, SD 57348

William St. Clair
37644 184th St.
Tulare, SD 57476

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

RE: In the Matter of Water Permit Application Nos. 6655-3,
Oscar Inc.,; 6656-3, Peterson Brothers; and 6675-3 &
6676-3, Williams St. Clair - Proposed Findings of Facts and
Conclusions of Law

Dear Water Management Board Members and Interested Parties:

Pursuant to the direction of the Water Management Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law and Final Decisions in each of the four above-entitled cases.

Water Management Board & Interested Parties
June 1, 2006
Page 2 of 2

Please see the Notices of the Chief Engineer dated May 4, 2006,
for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Guhin". The signature is fluid and cursive, with the first name "John" being more prominent.

John P. Guhin
Assistant Attorney General

JPG/sk
Enclosure

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 6655-3, OSCAR)
INC.)

IN THE MATTER OF WATER PERMIT)	FINDINGS OF FACT,
APPLICATION NO. 6656-3,)	CONCLUSIONS OF LAW
PETERSON BROTHERS.)	AND FINAL DECISION

IN THE MATTER OF WATER PERMIT)
APPLICATION NOS. 6675-3 AND)
6676-3, WILLIAM ST. CLAIR)

FINDINGS OF FACT

1. These Findings and Conclusions concern each of the above-named water permit applications. Each concerns an important legal issue arising from the Tulare: East James Aquifer. Unless otherwise indicated, each Finding and Conclusion applies to each water permit application.

2. Application No. 6655-3, Oscar, Inc., proposes to appropriate 1.78 cfs from a well approximately 100 feet deep to irrigate 160 acres in Spink County.

3. Application No. 6656-3, Peterson Brothers, proposes to appropriate 3.56 cfs from two wells approximately 115 feet deep to irrigate 320 acres in Spink County.

4. Application No. 6675-3, William St. Clair, proposes to appropriate 1.43 cfs to irrigate 120 acres from an existing well

authorized by Water Permit No.6382-3. Approval of this application allows cancellation of Water Permit No. 6382-3.

5. Application No. 6676-3, William St. Clair, proposes to appropriate 3.77 cfs from two wells approximately 85 feet deep to irrigate 264 acres in Spink County.

6. The proposed source of water for each of the applications is the Tulare: East James Aquifer. Expert evidence establishes that the total aquifer area in Beadle and Spink Counties is 125,600 acres and that the amount recoverable water in storage is 762,000 acre feet.

7. The most critical factual questions to be resolved in this controversy are the amount of recharge and the amount of annual use.

8. The State's expert, James Goodman, testified that recharge to the aquifer has been variously estimated to range from .38 inches to 1.52 inches per year. Mr. Goodman testified further, that the "best fit" analysis yielded a recharge of .76 inches per year. Using the "best fit" estimate of .76 inches per year, the total annual aquifer recharge is 7,950 acre feet per year for the Tulare: East James Aquifer for the entire 125,600 acres in Spink and Beadle Counties.

9. The Board credits the estimates and calculations of Mr. Goodman. No contrary estimates, studies or analyses were offered to the Board.

10. The Board agrees with the suggestion of the State's expert that the period of time from 1986 to 2005 provides the most relevant period from which to derive an estimate of annual water use in this case. The Tulare: East James Aquifer has a more or less unique history, in that no permit for a new water use has been approved since April 1982. This means, for all practical purposes, that there should have been no new water uses developed between 1986 and 2005.

11. The data regarding the period from 1986 to 2005 evidence a wide disparity in the number of acres under irrigation, with a low of 5,891 acres in 1993 to a high of 12,489 acres in 2004. The actual water use in acre feet has likewise varied from 1,089 acre feet in 1993 to 13,668 acre feet in 2002.

12. Analysis of the State's Expert Table 1 reveals that, not surprisingly, water use increases dramatically in dry periods and decreases dramatically in wet periods.

13. The average water use in acre feet for the 20-year period addressed in Table 1 has been 6,981 acre feet.

14. As found above, the "best fit" yields an aquifer recharge of 7,950 acre feet per year. The difference between that recharge and the average water use per year over the past 20 years -- 6,981 acre feet -- is 969 acre feet.

15. The Board finds that there is an average use of 8.2 inches per acre per year of water use from the aquifer over the past 20 years. Considering that average across 969 acre feet of water available annually, it appears that an additional 1,420 acres of land can be irrigated without mining water, assuming that the 20-year average water use set forth above is unchanged in the future.

16. The four applications at issue request the irrigation of an additional 844 acres. Therefore, this acreage may be approved consistent with the interpretation of the water mining statute as set forth below.

17. The Board has considered evidence that, despite compliance with the water mining statute as interpreted below, water problems may develop in the future. In particular, the Board notes that in some years the actual appropriation of water has been significantly above the average use of water over the past 20 years. In fact, Table 1 indicates that the average water use in acre feet has exceeded the 20-year average in 4 out of the last 5 years. Clearly, if this trend would continue, the

long-term effect might well be mining of the aquifer despite compliance with the water mining statute, as set forth below.

18. Nonetheless, there are strong indicators in the record that problems are unlikely to develop. First, the expert evidence indicates that even in the years of maximum pumping, less than 3 percent of the water in storage has been used. The storage in aquifer dwarfs the water use. Second, the evidence of the observation wells, some of which show recordings from 1967, indicates a greater amount of water at the end of the term in 2005 than at the beginning of the term in 1967. Other observation wells in the area show a greater amount of water in 2005 than in 1977, and a greater amount of water in 2004 than in 1979. Third, the Board credits the testimony of the State's expert that the amount of additional water which can be authorized under the approach taken by the Board today constitutes less than a 10 percent increase. The State's expert testified, without contradiction, that that increase is not in itself significant.

19. The Board next considers the independent issue of whether there is a reasonable probability that there is unappropriated water available for each of the proposed uses set forth by the applicants. The Board concludes, based upon for foregoing discussion, and on the 762,000 acre feet of

recoverable water in storage in the aquifer, that there is such a probability.

20. The Board next turns to the question of whether the proposed diversions can be developed without unlawful impairment of existing rights. With regard to Application No. 6656-3, Oscar, Inc., the Board finds that there are 4 existing irrigation wells within one mile of the proposed well, and that the nearest irrigation well is about 1/2 mile from the application. Uncontradicted evidence indicates that interference should not be a concern and that drawdown should not extend a great distance from the new well.

21. With regard to Application No. 6656-3, Peterson Brothers, the Board notes that there are also 4 existing irrigation wells within one mile of the proposed wells and that the nearest irrigation is likewise about 1/2 mile from the proposed well. Uncontradicted evidence demonstrates that interference should not be a concern and that drawdown from the pumping in the area will not extend a great distance from the new well.

22. With regard to Application Nos. 6675-3 and 6676-3, William St. Clair, the Board notes the following. There are 4 existing irrigation wells within 1/2 mile of the well for Permit Application No. 6675-3 and 2 existing irrigation wells within

1/2 mile of the well for Permit Application No. 6676-3.

Uncontradicted evidence indicates that interference is not expected to be a concern with regard to either well. In neither case will significant drawdown be a concern and in neither case should drawdown extend a great distance from the pumping well.

23. The proposed use for each of the wells is irrigation and in each case the proposed use is beneficial use.

24. The proposed uses are in the public interest as explained below and as qualified in the Final Decision.

CONCLUSIONS OF LAW

1. The Board has jurisdiction on this matter.

2. There is a reasonable probability that there is unappropriated water available for each of the Applicants' proposed uses.

3. The proposed diversions can be developed without unlawful impairment of existing rights if appropriate conditions are imposed upon the permits as set forth in the Final Decision.

4. The proposed uses, all for irrigation, are beneficial uses.

5. Grant of the permits is consistent with the South Dakota statute forbidding water mining. SDCL 46-6-3.1 provides, with an exception not applicable here, that an application to appropriate ground water may not be approved if it is probable

that the quantity of water withdrawn annually from the ground water source will exceed the quantity of average estimated annual recharge of water from the ground water source. The Court of the Sixth Judicial Circuit has interpreted this section to mean that the term "quantity of water withdrawn annually from a ground water source" should be calculated as an average. The Court also implied that the period of time utilized for the "average" should be the same period of time as used to compute the statutory "quantity of the average estimated annual recharge of water." Using the appropriate calculations, the appropriations at issue are allowable consistent with this interpretation of the water mining statute.

6. The Board also considers the interplay of the public interest requirement of the statute and the water mining statute. The Board does not find it necessary to determine whether the public interest component of state water law can be invoked to prohibit water mining in those cases in which there is compliance with the water mining statute. The reason that no such determination need be made in this case is that, even if the public interest requirement were invoked, these particular applications would comply. As set forth above, there is ample water in this aquifer, and the amount of additional water allowed by these applications does not appear to pose a

significant threat to the aquifer. Whether this might be different in another case is left for a future time.

7. Considering the foregoing, and all the evidence, the Board concludes that grant of their applications is in the public interest when qualified as set forth below.

8. The Board concludes that the use of the 20-year period identified by the State's expert is appropriate for this case. The Board further concludes that the actual periods of time utilized in other situations may well differ with regard to the factual situations and the information available.

FINAL DECISION IN WATER PERMIT APPLICATION 6655-3,
OSCAR, INC.

The Application for Water Permit No. 6655-3, Oscar, Inc., is approved subject to the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 6655-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water

Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

FINAL DECISION IN WATER PERMIT APPLICATION NO. 6656-3,
PETERSON BROTHERS

The Application for Water Permit No. 6656-3, Peterson Brothers, is approved subject to the following qualifications:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 6656-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

FINAL DECISION IN WATER PERMIT APPLICATION NO. 6675-3,
WILLIAM ST. CLAIR

The Application for Water Permit No. 6675-3, William St. Clair, is approved subject to the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. Water Permit No. 6675-3 deletes the qualification to reissued Water Right No. 4586-3 that states the well authorized by reissued Water License No. 4586-3 may not be in use when the well authorized by Water Permit No. 6382-3 is in operation.

3. Water Permit No. 6675-3 amends the qualifications on Water Permit No. 6382-3 as follows:

- Delete the 5-year term set forth in Qualification No. 1.
- Deletes Qualification No. 2 regarding operation of the well at the same time as well authorized by Water Right No. 4586-3 is in operation.

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

FINAL DECISION IN WATER PERMIT APPLICATION NO. 6676-3,
WILLIAM ST. CLAIR

The Application for Water Permit No. 6676-3, William St. Clair, is approved subject to the following qualifications:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 6676-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

Dated this _____ day of _____ 2006.

BY THE BOARD:

Francis E. Brink, Chairman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Findings of Fact, Conclusions of Law and Final Decision In the Matter of Water Permit Application No. 6655-3, Oscar, Inc.; In the Matter of Water Permit Application No. 6656-3, Peterson Brothers; and In the Matter of Water Permit Application Nos. 6675-3 and 6676-3, William St. Clair were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 1st day of June, 2006:

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

James Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Bernita Loucks
219 42nd St.
Rapid City, SD 57702-0240

Dwayne Rollag
320 Lincoln Lane S.
Brookings, SD 57006-2741

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

Leo Holzbauer
29416 395th Ave.
Wagner, SD 57380

Everett Hoyt
4422 Carriage Hills Dr.
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William St. Clair
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Tulare, SD 57476

Lenny Peterson
Peterson Brothers
19111 Maple Ave.
Hitchcock, SD 57348

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

and sent on the same date by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
and Natural Resources
Foss Building
Pierre, SD 57501-3181

and by hand delivery on the same date to:

Diane Best
Assistant Attorney General
1302 E. Hwy. 14, Ste. 1
Pierre, SD 57501-8501



John P. Guhin
Assistant Attorney General

STATE OF SOUTH DAKOTA



RECEIVED

JUN 21 2006

WATER RIGHTS
PROGRAM

OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

June 20, 2006

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

James Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Bernita Loucks
219 42nd St.
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John Guhin
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Garland Erbele, Chief Engineer
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William St. Clair
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Tulare, SD 57476

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

RE: In the Matter of Water Permit Application Nos. 6655-3,
Oscar Inc.,; 6656-3, Peterson Brothers; and 6675-3 &
6676-3, Williams St. Clair - Proposed Findings of Facts and
Conclusions of Law

Dear Water Management Board Members and Interested Parties:

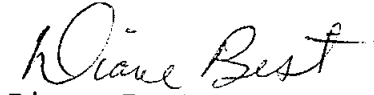
The Water Rights Program has received the Proposed Findings of Fact and Conclusions of Law in the above-referenced matter. We

Water Management Board & Interested Parties
June 20, 2006
Page 2 of 2

have no objections to entry of the Proposed Findings of Fact and
Conclusions of Law as drafted.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best". The signature is written in dark ink and is positioned above the printed name and title.

Diane Best
Assistant Attorney General

DB/kak

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
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RECEIVED

JUN 21 2006

WATER RIGHTS
PROGRAM

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

June 20, 2006

Gary Wipf
17801 401st Avenue
Frankfort, SD 57440

United Feeders LLP
c/o Thomas Walsh
705 100 Street SE
DeGraff, MN 56271

Ron Starr
40283 US Highway 212
Doland, SD 57436

RE: Tulare: East James Aquifer

Gentlemen:

I represent the Water Rights Program in the South Dakota Department of Environment and Natural Resources. I am writing to you because you currently have water permit applications pending before the South Dakota Water Management Board or otherwise have an interest in pending applications.

As you are likely aware, there has been a recent legal activity regarding another permit to appropriate water from the Tulare: East James Aquifer. The Hughes County Circuit Court determined in 2005 that the method the Department had used for determining whether water is available from this aquifer was not correct for that application. Although the application (Hines application) had previously been denied, the court determined that there was sufficient water available for that permit. Once the court determination was issued, there were several additional new permit applications. The first of these was heard by the South Dakota Water Management Board in May, 2006. Counsel for the South Dakota Water Management Board has now drafted proposed Findings of Fact and Conclusions of Law for those cases. These Findings of Fact and Conclusions of Law are not yet final. The

Tulare: East James Aquifer

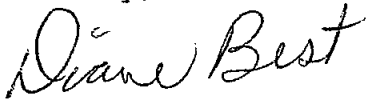
June 20, 2006

Page 2 of 2

Board will deliberate on these Findings of Fact and Conclusions of Law on July 12.

I am providing you with a copy of the proposed Findings of Fact and Conclusions of Law on these other Tulare: East James aquifer cases. Although these proposed Findings of Fact and Conclusions of Law are not final, they may provide some insight as to the Board's consideration of water permits from the Tulare: East James aquifer and its reaction to the new calculations of water availability. This letter is for informational purposes only.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best
Assistant Attorney General

DB/kak

Enclosure

Cc: Eric Gronlund, DENR (Interoffice)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 6655-3, OSCAR)
INC.)

IN THE MATTER OF WATER PERMIT)	FINDINGS OF FACT,
APPLICATION NO. 6656-3,)	CONCLUSIONS OF LAW
PETERSON BROTHERS.)	AND FINAL DECISION

IN THE MATTER OF WATER PERMIT)
APPLICATION NOS. 6675-3 AND)
6676-3, WILLIAM ST. CLAIR)

FINDINGS OF FACT

1. These Findings and Conclusions concern each of the above-named water permit applications. Each concerns an important legal issue arising from the Tulare: East James Aquifer. Unless otherwise indicated, each Finding and Conclusion applies to each water permit application.

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3. Application No. 6656-3, Peterson Brothers, proposes to appropriate 3.56 cfs from two wells approximately 115 feet deep to irrigate 320 acres in Spink County.

4. Application No. 6675-3, William St. Clair, proposes to appropriate 1.43 cfs to irrigate 100 acres from an existing well

authorized by Water Permit No.6382-3. Approval of this application allows cancellation of Water Permit No. 6382-3.

5. Application No. 6676-3, William St. Clair, proposes to appropriate 3.77 cfs from two wells approximately 85 feet deep to irrigate 264 acres in Spink County.

6. The proposed source of water for each of the applications is the Tulare: East James Aquifer. Expert evidence establishes that the total aquifer area in Beadle and Spink Counties is 125,600 acres and that the amount recoverable water in storage is 762,000 acre feet.

7. The most critical factual questions to be resolved in this controversy are the amount of recharge and the amount of annual use.

8. The State's expert, James Goodman, testified that recharge to the aquifer has been variously estimated to range from .38 inches to 1.52 inches per year. Mr. Goodman testified further, that the "best fit" analysis yielded a recharge of .76 inches per year. Using the "best fit" estimate of .76 inches per year, the total annual aquifer recharge is 7,950 acre feet per year for the Tulare: East James Aquifer for the entire 125,600 acres in Spink and Beadle Counties.

9. The Board credits the estimates and calculations of Mr. Goodman. No contrary estimates, studies or analyses were offered to the Board.

10. The Board agrees with the suggestion of the State's expert that the period of time from 1986 to 2005 provides the most relevant period from which to derive an estimate of annual water use in this case. The Tulare: East James Aquifer has a more or less unique history, in that no permit for a new water use has been approved since April 1982. This means, for all practical purposes, that there should have been no new water uses developed between 1986 and 2005.

11. The data regarding the period from 1986 to 2005 evidence a wide disparity in the number of acres under irrigation, with a low of 5,891 acres in 1993 to a high of 12,489 acres in 2004. The actual water use in acre feet has likewise varied from 1,089 acre feet in 1993 to 13,668 acre feet in 2002.

12. Analysis of the State's Expert Table 1 reveals that, not surprisingly, water use increases dramatically in dry periods and decreases dramatically in wet periods.

13. The average water use in acre feet for the 20-year period addressed in Table 1 has been 6,981 acre feet.

14. As found above, the "best fit" yields an aquifer recharge of 7,950 acre feet per year. The difference between that recharge and the average water use per year over the past 20 years -- 6,981 acre feet -- is 969 acre feet.

15. The Board finds that there is an average use of 8.2 inches per acre per year of water use from the aquifer over the past 20 years. Considering that average across 969 acre feet of water available annually, it appears that an additional 1,420 acres of land can be irrigated without mining water, assuming that the 20-year average water use set forth above is unchanged in the future.

16. The four applications at issue request the irrigation of an additional 844 acres. Therefore, this acreage may be approved consistent with the interpretation of the water mining statute as set forth below.

17. The Board has considered evidence that, despite compliance with the water mining statute as interpreted below, water problems may develop in the future. In particular, the Board notes that in some years the actual appropriation of water has been significantly above the average use of water over the past 20 years. In fact, Table 1 indicates that the average water use in acre feet has exceeded the 20-year average in 4 out of the last 5 years. Clearly, if this trend would continue, the

long-term effect might well be mining of the aquifer despite compliance with the water mining statute, as set forth below.

18. Nonetheless, there are strong indicators in the record that problems are unlikely to develop. First, the expert evidence indicates that even in the years of maximum pumping, less than 3 percent of the water in storage has been used. The storage in aquifer dwarfs the water use. Second, the evidence of the observation wells, some of which show recordings from 1967, indicates a greater amount of water at the end of the term in 2005 than at the beginning of the term in 1967. Other observation wells in the area show a greater amount of water in 2005 than in 1977, and a greater amount of water in 2004 than in 1979. Third, the Board credits the testimony of the State's expert that the amount of additional water which can be authorized under the approach taken by the Board today constitutes less than a 10 percent increase. The State's expert testified, without contradiction, that that increase is not in itself significant.

19. The Board next considers the independent issue of whether there is a reasonable probability that there is unappropriated water available for each of the proposed uses set forth by the applicants. The Board concludes, based upon for foregoing discussion, and on the 762,000 acre feet of

recoverable water in storage in the aquifer, that there is such a probability.

20. The Board next turns to the question of whether the proposed diversions can be developed without unlawful impairment of existing rights. With regard to Application No. 6656-3, Oscar, Inc., the Board finds that there are 4 existing irrigation wells within one mile of the proposed well, and that the nearest irrigation well is about 1/2 mile from the application. Uncontradicted evidence indicates that interference should not be a concern and that drawdown should not extend a great distance from the new well.

21. With regard to Application No. 6656-3, Peterson Brothers, the Board notes that there are also 4 existing irrigation wells within one mile of the proposed wells and that the nearest irrigation is likewise about 1/2 mile from the proposed well. Uncontradicted evidence demonstrates that interference should not be a concern and that drawdown from the pumping in the area will not extend a great distance from the new well.

22. With regard to Application Nos. 6675-3 and 6676-3, William St. Clair, the Board notes the following. There are 4 existing irrigation wells within 1/2 mile of the well for Permit Application No. 6675-3 and 2 existing irrigation wells within

1/2 mile of the well for Permit Application No. 6676-3.

Uncontradicted evidence indicates that interference is not expected to be a concern with regard to either well. In neither case will significant drawdown be a concern and in neither case should drawdown extend a great distance from the pumping well.

23. The proposed use for each of the wells is irrigation and in each case the proposed use is beneficial use.

24. The proposed uses are in the public interest as explained below and as qualified in the Final Decision.

CONCLUSIONS OF LAW

1. The Board has jurisdiction on this matter.

2. There is a reasonable probability that there is unappropriated water available for each of the Applicants' proposed uses.

3. The proposed diversions can be developed without unlawful impairment of existing rights if appropriate conditions are imposed upon the permits as set forth in the Final Decision.

4. The proposed uses, all for irrigation, are beneficial uses.

5. Grant of the permits is consistent with the South Dakota statute forbidding water mining. SDCL 46-6-3.1 provides, with an exception not applicable here, that an application to appropriate ground water may not be approved if it is probable

that the quantity of water withdrawn annually from the ground water source will exceed the quantity of average estimated annual recharge of water from the ground water source. The Court of the Sixth Judicial Circuit has interpreted this section to mean that the term "quantity of water withdrawn annually from a ground water source" should be calculated as an average. The Court also implied that the period of time utilized for the "average" should be the same period of time as used to compute the statutory "quantity of the average estimated annual recharge of water." Using the appropriate calculations, the appropriations at issue are allowable consistent with this interpretation of the water mining statute.

6. The Board also considers the interplay of the public interest requirement of the statute and the water mining statute. The Board does not find it necessary to determine whether the public interest component of state water law can be invoked to prohibit water mining in those cases in which there is compliance with the water mining statute. The reason that no such determination need be made in this case is that, even if the public interest requirement were invoked, these particular applications would comply. As set forth above, there is ample water in this aquifer, and the amount of additional water allowed by these applications does not appear to pose a

significant threat to the aquifer. Whether this might be different in another case is left for a future time.

7. Considering the foregoing, and all the evidence, the Board concludes that grant of their applications is in the public interest when qualified as set forth below.

8. The Board concludes that the use of the 20-year period identified by the State's expert is appropriate for this case. The Board further concludes that the actual periods of time utilized in other situations may well differ with regard to the factual situations and the information available.

FINAL DECISION IN WATER PERMIT APPLICATION 6655-3,
OSCAR, INC.

The Application for Water Permit No. 6655-3, Oscar, Inc., is approved subject to the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 6655-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water

Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

FINAL DECISION IN WATER PERMIT APPLICATION NO. 6656-3,
PETERSON BROTHERS

The Application for Water Permit No. 6656-3, Peterson Brothers, is approved subject to the following qualifications:

1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 6656-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

FINAL DECISION IN WATER PERMIT APPLICATION NO. 6675-3,
WILLIAM ST. CLAIR

The Application for Water Permit No. 6675-3, William St. Clair, is approved subject to the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. Water Permit No. 6675-3 deletes the qualification to reissued Water Right No. 4586-3 that states the well authorized by reissued Water License No. 4586-3 may not be in use when the well authorized by Water Permit No. 6382-3 is in operation.

3. Water Permit No. 6675-3 amends the qualifications on Water Permit No. 6382-3 as follows:

- Delete the 5-year term set forth in Qualification No. 1.
- Deletes Qualification No. 2 regarding operation of the well at the same time as well authorized by Water Right No. 4586-3 is in operation.

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

FINAL DECISION IN WATER PERMIT APPLICATION NO. 6676-3,
WILLIAM ST. CLAIR

The Application for Water Permit No. 6676-3, William St. Clair, is approved subject to the following qualifications:

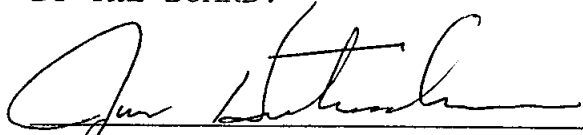
1. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 6676-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

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

Dated this 12 day of July 2006.

BY THE BOARD:


Chair



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 13, 2006

NOTICE

TO: William St. Clair
37644 184th Street
Tulare SD 57476

Lenny Peterson
Peterson Brothers
19111 Maple Avenue
Hitchcock SD 57348

Floyd Peterson
Oscar Inc.
18892 390th Avenue
Hitchcock SD 57348

FROM: Garland Erbele, Chief Engineer
Water Rights Program

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

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted July 12, 2006, by the Water Management Board approving Water Right Permit Nos. 6655-3, 6656-3, 6675-3 and 6676-3. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

Enclosure

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

CERTIFICATION

I hereby certify that on July 13, 2006, I personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 13, 2006, regarding adopting of findings of fact, conclusions of law and final decision in the matter of Water Permit Application Nos. 6655-3, 6656-3, 6675-3 and 6676-3, addressed as stated below.

William St. Clair
37644 184th Street
Tulare SD 57476

Lenny Peterson
Peterson Brothers
19111 Maple Avenue
Hitchcock SD 57348

Floyd Peterson
Oscar Inc.
18892 390th Avenue
Hitchcock SD 57348

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

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



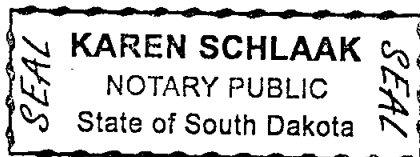
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of July, 2006.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

AUG 17 2006

Oscar Inc
% Floyd Peterson
18892 390th
Hitchcock SD 57348

Dear Mr. Peterson:

Enclosed is Water Permit No. 6655-3 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
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

October 21, 2010

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

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

Dear Oscar:

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

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

If you have any questions, please contact me.

Sincerely,

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

enclosures

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 6655-3

I have this day, May 24, 2012, made a thorough examination of the water use system constructed Oscar Inc., 209 27th Street NW, Huron SD 57350 of Permit No. 6655-3, bearing the priority of August 16, 2005 authorizing the diversion of 1.78 cu. ft. per second of the waters of Tulare:East James aquifer for irrigation purposes, in Spink County.

Inspection contact & relationship to permit holder, if applicable: **Lenny Peterson, son of Floyd 'Oscar' Peterson**

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Pullman
- 2) No. of Wells 1
- 3) Depth(s) 95 feet
- 4) Well log is available Yes If no, explain in comments

Comments: none

Casing:

- 1) Diameter 16 inches
- 2) Length 80 feet
- 3) Type plastic

Screen:

- 1) Type stainless steel
- 2) Length 15 feet
- 3) Static water level 35 feet

Pump:

- 1) Make submersible
- 2) Model
- 3) Size
- 4) Capacity 800 GPM

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

- 1) Type aluminum
- 2) Size 8 inches
- 3) Length approx. 20 feet

Comments: xx

C. Works used to apply water to beneficial use:**Center pivot:**

- 1) Make T-L
- 2) Overall length approx.. 1,350 with end gun throw feet
- 3) Number of towers 7
- 4) End gun Yes
- 5) Capacity 800 GPM

Chemigation Equipment:

- 1) Does chemigate Yes
- 2) Main line check valve Yes
- 3) Inspection port/air relief Yes
- 4) Low pressure drain Yes
- 5) Discharge is 20' from source Yes
- 6) Interlock type electrical
- 7) Injection pump type piston or other
- 8) Injection check valve Yes
- 9) Injection line check valve or positive displacement pump Yes

Comments:

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes

If no, describe:

- 2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes

List any extended period of nonuse: None

- 3) Exceptions to compliance are: None

E. Condition and Location:

1. The system is in good condition with the point(s) of diversion located as follows: approximately 1,320 feet north and 1,320 feet east of SW corner Section 7, T114N, R61W Latitude -98.21560 Longitude 44.69402.
2. The works are capable of diverting and conveying to the place of use 1.78 cu. ft. per second of water which is being used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

all in Section 7, T114N, R61W

NW ¼ SW ¼ 33 acres
 SW ¼ SW ¼ 33 acres

NE ¼ SW ¼ 33 acres
 SE ¼ SW ¼ 33 acres

comprising a total of 132 acres of land and the license should be issued for 1.78.

3. All structures, wells and lands on map **Yes**

If no, describe:

F. Comments or other permit(s) associated with the project:

There are inconsistencies in the number of acres irrigated on the annual irrigation questionnaire.

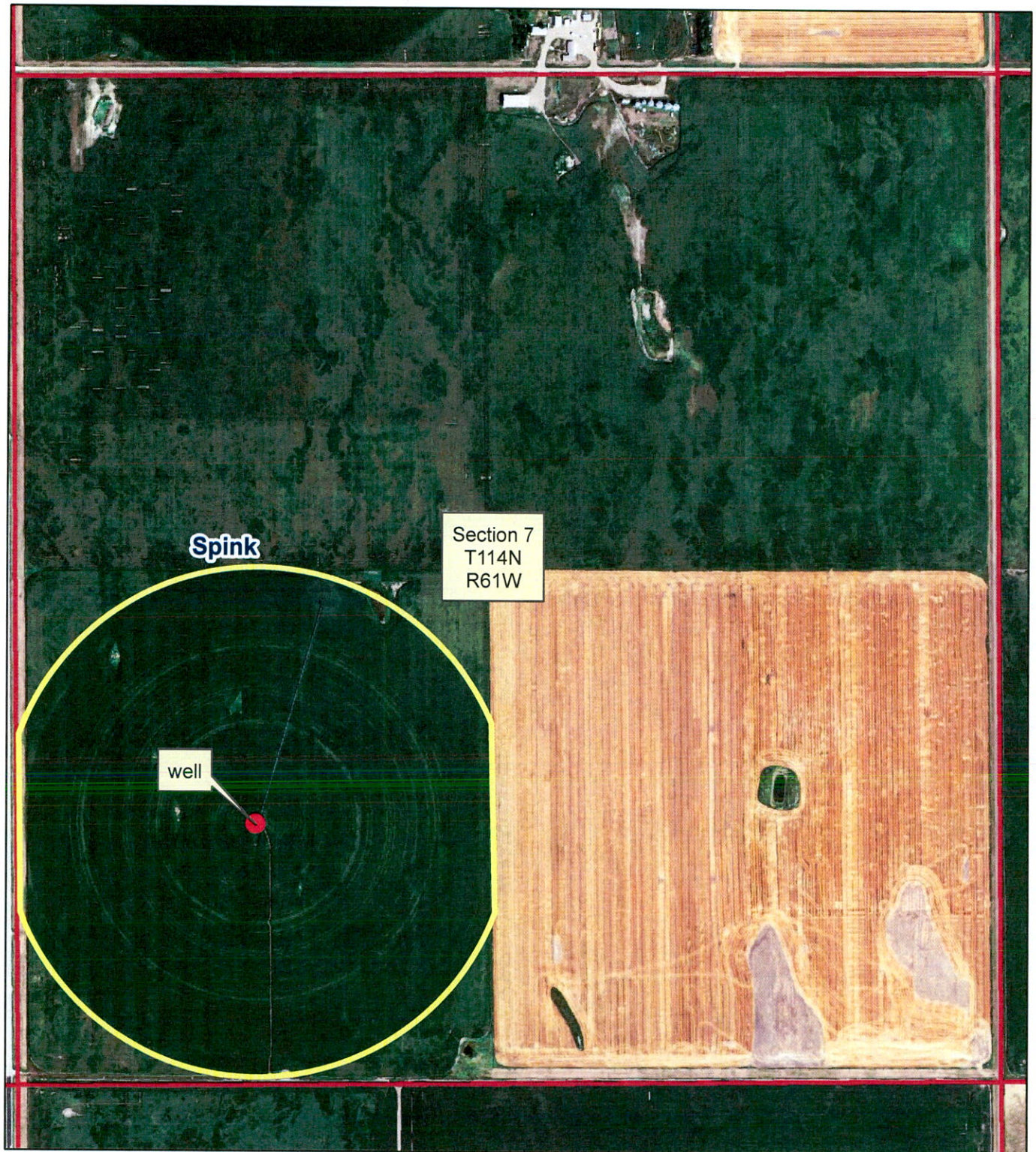
2006	132 acres	2011	160 acres
2007	160 acres	2012	130 acres
2008	136 acres	2013	160 acres
2009	134 acres	2014	160 acres
2010	160 acres	2015	150 acres

During the on-site investigation there was not a cornering system attached to the center pivot. Google Map was viewed and there are no visible signs of a cornering system. The area being irrigated can be clearly seen that matches with the 2014 FSA aerial used in Arc Map to determine the number of acres irrigated. The total number of acres is determined to be 132 acres.

While the on-site investigation was conducted in May of 2012, I do not have an explanation why it was not written up in a timely manner. It must have been set aside and I became aware of it when preparing to conduct new licensing investigations.


 Eric Gronlund
 DENR, Water Rights Program

Date report completed: **September 15, 2016**



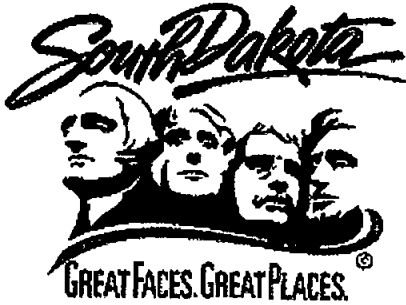
1,000 500 0 1,000 Feet

Well - approximately 1,320 feet north and 1,320 feet east of SW corner Section 7, T114N, R61W
Latitude -98.21560 Longitude 44.69402



Eric Gronlund

Eric Gronlund
Water Rights Program, DENR
Date of Investigation - May 24, 2012



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

OCT 11 2016

6655-3

Floyd Peterson
Oscar Inc
209 27th St NW
Huron SD 57350

Dear Mr. Peterson:

Enclosed is Water License No. 6655-3. 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.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the well authorized by Water Right No. 6655-3, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

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

enclosures

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 6655-3**

(1) Oscar Inc., 209 27th St NW, Huron SD 57350 made Application No. 6655-3, August 16, 2005 for a water permit to divert 1.78 cubic feet of water per second from ground water, one well (Tulare: East James Aquifer), Spink County, South Dakota for irrigation purposes. Permit No. 6655-3, with a priority date of August 16, 2005 was approved July 12, 2006 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before July 12, 2011 and for the application to beneficial use of said water on or before July 12, 2015.

(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 1.78 cubic feet of water per second for beneficial use. The location of the diversion point is 1,320 feet north and 1,320 feet east of the SW corner of Section 7, T114N, R61W (center of quarter).

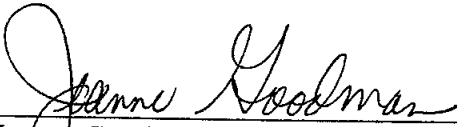
(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 7, T114N, R61W	NW ¼ SW ¼	33 acres
	SW ¼ SW ¼	33 acres
	NE ¼ SW ¼	33 acres
	SE ¼ SW ¼	33 acres
	Total	132 acres

(4) Pursuant to South Dakota Water Law 46-5-30.1 Oscar Inc., 209 27th St SW, Huron SD 57350 the holder and/or owner of Water Right No. 6655-3 is issued a license to appropriate water, the right to use 1.78 cubic feet of water per second from ground water, one well (Tulare: East James Aquifer) with a priority date of August 16, 2005 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 Water Right No. 6655-3 and subject to the following qualifications:

- The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- The well authorized by Permit No. 6655-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28. *Well drilled by Pullman Well Drilling in May, 2006. A copy of the well log is on file with the Water Rights Program.*
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.



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

OCT 11 2016

date

