

699B-3

RECEIVED

JUN 24 2005

WATER RIGHTS
PROGRAM

ATT:

Genny Mc Math

I have retained
the part of the
property that lies
west of firesteel
creek in the W W 1/4
of Sec 24-103-60

H. T. Bosworth
220 W. Gale Rd
Mishell S.P.
52301

996-9159

NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED
JUN 24 2005
WATER RIGHTS
PROGRAM

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 699-3

Date: May 27, 2005

I/We request that Water Right No. 699-3

formerly owned by: H T Bosworth

be transferred to: (name & address) Mary K. Puetz

910 Firesteel Drive
Mitchell, SD 57301 Telephone No. 605-996-2904

Title to the following described land(s)/property has been transferred as described above:

162.2 acres - Lots 1, 2, 3 & 4 of Section 24, T103N, R60W and Lot 5 of Section 19, T103N, R59W

I/We understand that the validity of Water Right No. 699-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Mary K. Puetz, the new owner, certify that the above information is true and correct.

Mary K. Puetz
(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.



June 28, 2005

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

699-3

Mary K Puetz
910 Firesteel Dr
Mitchell SD 57301

Dear Ms. Puetz:

Thank you for visiting with me about the ownership change for Water Right No. 699-3. Enclosed are a copy of the water right and a copy of the map submitted with the original application.

Mr. Bosworth has indicated he retained ownership of the land west of Firesteel Creek. If I am correct, the area he is referring to is highlighted yellow on the map. The remaining acreage is highlighted in green.

Please review the materials and let me know if the areas I marked appear to be correct as far as ownership is concerned. If everything is correct, you may keep the enclosed copies. If you have changes to make, go ahead and edit the map and return it to me with the necessary corrections.

The water right will be divided and reissued as "699A-3 – H T Bosworth" and 699B-3 – Mary K Puetz". The diversion rate applied to each will be a prorated amount based on the number of acres each of you own.

Thank you in advance for your help.

Sincerely,

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

enclosures

June 30, 2005

Department of Environment & Natural Resources
ATTN: Genny McMath, Environmental Scientist
Water Rights Program
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

Re: Irrigation Rights Transfer

Dear Genny:

Thank you for your call and your efforts for completing the transfer of the Irrigation Water Right Number 699-3. Enclosed is the filing fee of \$2.50.

I look forward to receiving the maps of the designated property.

Thanks again.

Sincerely,



Mary Puetz
910 Firesteel Drive
Mitchell, SD 573001
605-996-2904

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JUL - 1 2005
WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date July 1, 20 05

RECEIVED OF Mary Puetz, 910 Firesteel Dr., Mitchell SD 57301

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

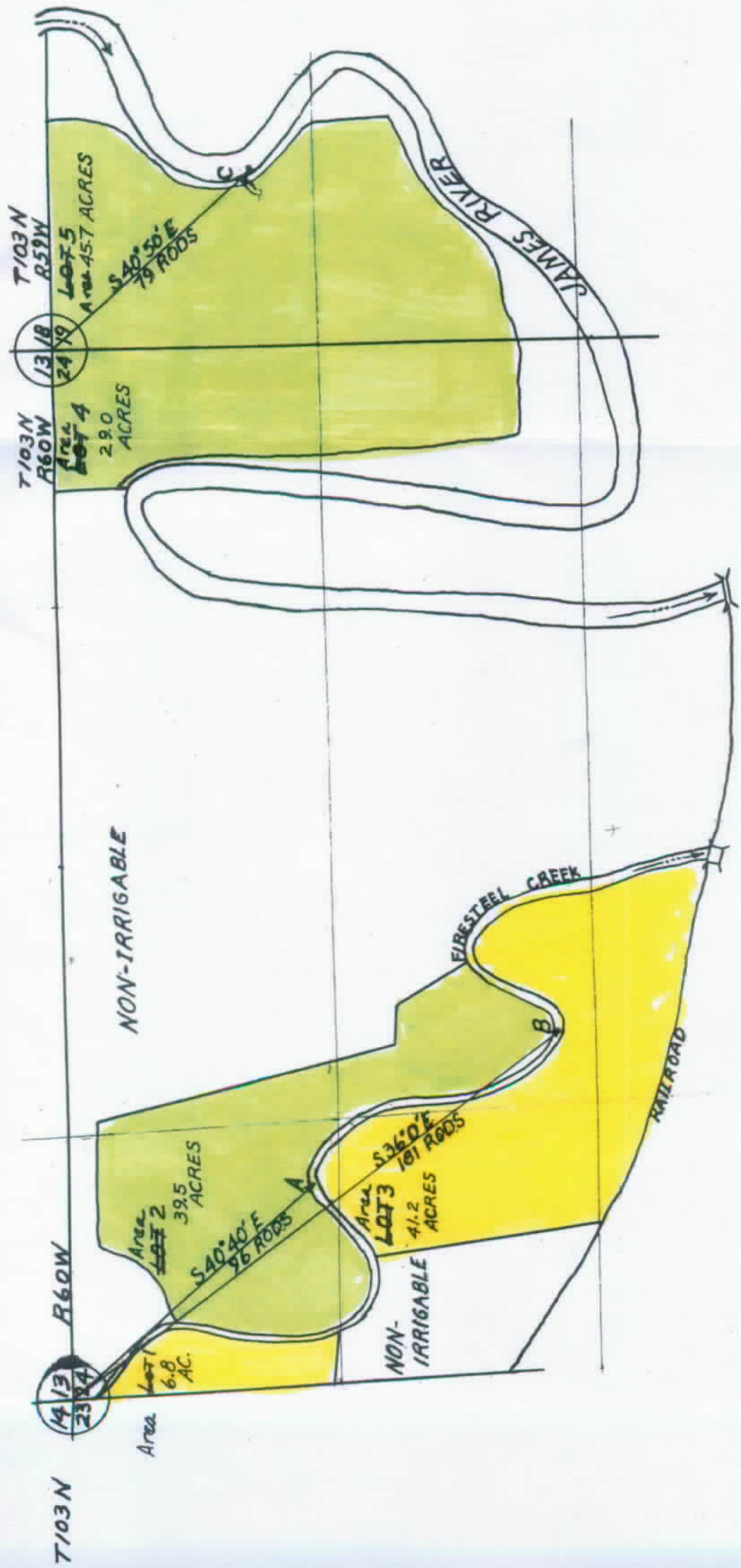
Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2.50	
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>699B-3</u>		
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	2.50

No.

919 9

By

Darlene E. Ehlke
Chief Engineer
gme



Water Right No. 699-3 authorizes diversion of 2.32 cubic feet of water per second (cfs) from Firesteel Creek and the James River to irrigate 162.2 acres.

Division points:

Firesteel Creek: between points S40°40'E, 96 rods and S36°E, 181 rods from the NW corner Section 24, T103N, R60W (meaning between points in the NW ¼ NW ¼ and the SW ¼ NW ¼ Section 24);
James River: S40°50'E, 79 rods from the NW corner of Section 19, T103N, R59W (NW ¼ NW ¼)

Irrigated land: SEE COLORED AREA ----->

The colored areas on the map are my interpretation of how the land has been divided up between Mr. Bosworth (yellow areas) and Ms. Puetz (green areas). If the water right is divided according to the areas marked, the following would reflect the separate water rights:

No. 699A-3: H T Bosworth, diversion of 0.69 cfs from Firesteel Creek to irrigate 48 acres in Lots 1 and 3, Section 24, T103N, R60W;

No. 699B-3: Mary K Puetz, diversion of 1.63 cfs from Firesteel Creek and the James River to irrigate 114.2 acres in Lots 2 & 4, Section 24, T103N, R60W and Lot 5 Section 19, T103N, R59W.

AL C. BOSWORTH - OWNER					
AL C. BOSWORTH IRRIGATION PROJECT NO. 1					
Description	LOCATION	SEC.	TOWNSHIP	RANGE	ACRES
NW ¼ NW ¼	Area Lot 1	24	103 N	60W	6.8
N ½ SE ¼ of NW ¼	Area Lot 2	24	103 N	60W	39.5
S ½ NW ¼ & N ½ SW ¼	Area Lot 3	24	103 N	60W	41.2
E ½ NE ¼	Area Lot 4	24	103 N	60W	29.0
W ½ NW ¼	Area Lot 5	19	103 N	59W	45.7
TOTAL					162.2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Mary Puetz, 910 Firesteel Creek, Mitchell SD 57301

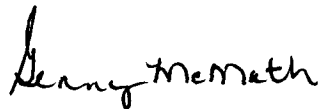
DATE: July 1, 2005

RE: Ownership of land

COMMENTS:

Ms. Puetz called in regard to the map and copy of water right I had forwarded to her earlier in the week. She thought the areas outlined looked correct and said we could issue the water right accordingly.

Ms. Puetz indicated all of her land is still in CRP. She thought some may come out in 2008 but the majority would be 2013. I explained to her about the annual irrigation questionnaire and indicated I would not send her a form until the land came out of CRP. She indicated she would notify us if anything changed.



Genny McMath
Environmental Scientist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUL 08 2005

699B-3

Mary K Puetz
910 Firesteel Dr
Mitchell SD 57301

Dear Ms. Puetz:

Enclosed is your Water License No. 699B-3 and Receipt No. 001899 in the amount of \$2.50. Based on the ownership change you filed, Water Right No. 699-3 was divided and reissued to reflect separate ownership.

Your water right includes two qualifications. One qualification pertains to your use of water from the James River. The other qualification refers to reporting requirements on the annual irrigation questionnaire. Our understanding is that the land you purchased is in the Conservation Reserve Program through 2013. You will not receive an irrigation questionnaire for reporting purposes until the land comes out of CRP.

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

Sincerely,

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

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 699B-3
DIVISION OF NO. 699-3 INTO 699A-3 AND 699B-3

(1) Al C Bosworth, Mitchell, SD was issued Water License No. 699-3, November 7, 1969 for a water right to divert 2.32 cubic feet of water per second (cfs) from the James River and Firesteel Creek, Davison and Hanson Counties, South Dakota for irrigation purposes. Water License No. 699-3, with a priority date of March 2, 1960 was issued to the applicant for diversion of water with construction of the described water supply system completed and the application to beneficial use of water completed.

On May 4, 1977, Water Right No. 699-3 was transferred to Harry T Bosworth. On June 24, 2005, an ownership change was filed on a portion of land covered under the water right. The water right is now being divided and reissued to reflect separate ownership.

- **No. 699A-3, H T Bosworth** authorizing diversion of 0.69 cfs from Firesteel Creek to irrigate 48 acres in Lots 1 and 3 of Section 24, T103N, R60W, Davison County.
- **No. 699B-3, Mary K Puetz** authorizing diversion of 1.63 cfs from the James River and Firesteel Creek to irrigate 114.2 acres in Lots 2 and 4 in Section 24, T103N, R60W, Davison County and Lot 5 in Section 19, T103N, R59W, Hanson County.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, Mary K Puetz, 910 Firesteel Dr., Mitchell SD 57301 the holder and/or owner of Water Right No. 699B-3 is issued a license, bearing a priority date of March 2, 1960 to appropriate 1.63 cubic feet of water per second from Firesteel Creek and the James River to irrigate 114.2 acres.

The diversion point located on **Firesteel Creek** is between points S40°40'E, 96 rods (NW ¼ NW ¼) and S36°E, 181 rods from the NW corner Section 24 (SW ¼ NW ¼) all in T103N, R60W, Davison County. The diversion point on the **James River** is located S40°50'E, 79 rods from the NW corner of Section 19, T103N, R59W (NW ¼ NW ¼), Hanson County.

The acres authorized for irrigation are as follows:

Section 24, T103N, R60W	Lot 2	39.5 acres
	Lot 4	29.0 acres
Section 19, T103N, R59W	Lot 5	45.7 acres
		114.2 acres

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 699-3 including the following qualification:

- This water right is subject to the Irrigation Water Use Questionnaire being submitted each year.
- Use of water under this water right is subject to flows in the James River of 15 cfs or more past your diversion point.

Garland Erbele

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

JUL 08 2005

date





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 1, 2006

NOTICE OF SHUTOFF ORDER

TO: MARY K PUETZ
910 FIRESTEEL DR
MITCHELL SD 57301

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: James River Shutoff Order

Shutoff Order for Water Right No(s). 699B-3

To protect domestic use on the James River, the department is issuing shutoff orders to water right holders on the James River from the Yankton-Hutchinson county line north to the North Dakota border. Effective immediately, no diversions of water from the James River will be allowed. Previous to this Order, shutoff orders were issued for water right junior to January 1, 1975 located upstream of Huron.

Flow in the James River continues to decline to the point where domestic use of water, which includes livestock watering from the river, has become a concern. USGS gaging stations over this entire river reach are measuring flow levels at or below 20 cubic feet per second, the required bypass for downstream domestic use. This order will remain in effect until the end of the calendar year.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the river.

If you have any questions, please contact Lynn Beck or Mark Rath with the Water Rights Program at (605) 773-3352. Thank you.



**DEPARTMENT of ENVIRONMENT
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PMB 2020
JOE FOSS BUILDING
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www.state.sd.us/denr

December 5, 2006

699B-3

Mary K Puetz
910 Firesteel Dr
Mitchell SD 57301

Dear Ms. Puetz:

I am writing in follow-up to our phone conversation last week in which you requested information on maintaining a water right when the land is in CRP.

Under South Dakota Water Law, water must be placed to beneficial use for the purpose it was appropriated at least once every three years in order to maintain a water permit or right. However, in the case of the conservation reserve program, SDCL 46-5-37.2 allows an exception to the "use it or lose it" criteria. I have enclosed excerpts of the water laws and Water Management Board rules dealing with these issues.

During our conversation you indicated that under the CRP program, you are allowed to irrigate trees and are using the source described in the water right for this purpose. I visited with staff and the consensus was that even though you will not lose your water right for placing your land in the program, since you are irrigating the trees, you should still fill out an annual irrigation questionnaire.

The water use would most likely be minimal however the data you supply would help establish a year of record. We use the information supplied by irrigators in determining how much water is used each year from a particular source. When new applications are received in an area, we look at current water use from the specific source as one of the criteria in determining if the new application can be approved or not.

I am enclosing a 2006 irrigation questionnaire for your use in reporting how much water was pumped during this last season. I have included a postage paid envelope for your use in returning the form. Thank you in advance for your help and if I can answer any more questions for you, please contact me.

Sincerely,

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

enclosures

January 5, 2007

Department of Environment and Natural Resources
ATTN: Genny McMath, Environmental Scientist
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

Re: Water Rights/Usage

Genny:

Thank you for your time this morning. I appreciate the clarification. I will keep you informed regarding the duck pond as it is developed either this fall or in the spring of 2008.

Approximate water usage in 2006 was as follows:

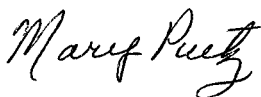
May – July: 3000 gallons per week equally approximately 40,000 gallons.

August through mid September we received over ten inches of rain so no water usage occurred.

Mid-September through October, periodic watering accounted for approximately 5000 gallons.

Thank you again Genny for your time.

Sincerely,



Mary Puetz

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**DEPARTMENT of ENVIRONMENT
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www.state.sd.us/denr

April 11, 2007

TO: All James River Water Right Holders

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

SUBJECT: Proposed Amendment to Conditions on James River Water Rights

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

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

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

enclosure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPORT ON AMENDMENT OF JAMES RIVER WATER PERMITS/RIGHTS

April 24, 2007

Purpose of this Study

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

Historical Summary of James River Water Permits/Rights

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

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

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

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

Review of James River Water Permits/Rights

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

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

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

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

Water Availability at Current Appropriation

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

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

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

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

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

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

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

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

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

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

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

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

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

Water Availability at Full Appropriation

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

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

Proposed Amendment of James River Water Rights

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

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

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

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



Lynn Beck
Natural Resources Engineer Specialist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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**CHIEF ENGINEER'S RECOMMENDATIONS FOR WATER RIGHTS
ON THE JAMES RIVER IN SOUTH DAKOTA**

Chief Engineer's Recommendation for Water Rights Above Huron:

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

ND Border to the gage at Ashton, SD

Water Permit No. 6427-3:

Delete: Qualification No. 1

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

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

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

Add:

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

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

Water Right No. 5027-3:

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

Water Permit No. 5737-3:

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

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

Delete: Qualification No. 1

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

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

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

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

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

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

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

Add:

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

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

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

Chief Engineer's Recommendation for Water Rights Below Huron:

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

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

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

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

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

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

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

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

Water Permit No. 6534-3:

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

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

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



Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

April 25, 2007

Attachment 1

HISTORY OF JAMES RIVER WATER PERMITS/RIGHTS QUALIFICATIONS

April 9, 2007

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

1965 - 1979

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

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

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

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

1980- 1984

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

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

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

1985 - 1987

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

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

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

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

and replaced with the following:

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

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

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

and replaced with the following:

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

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

2003 - Present

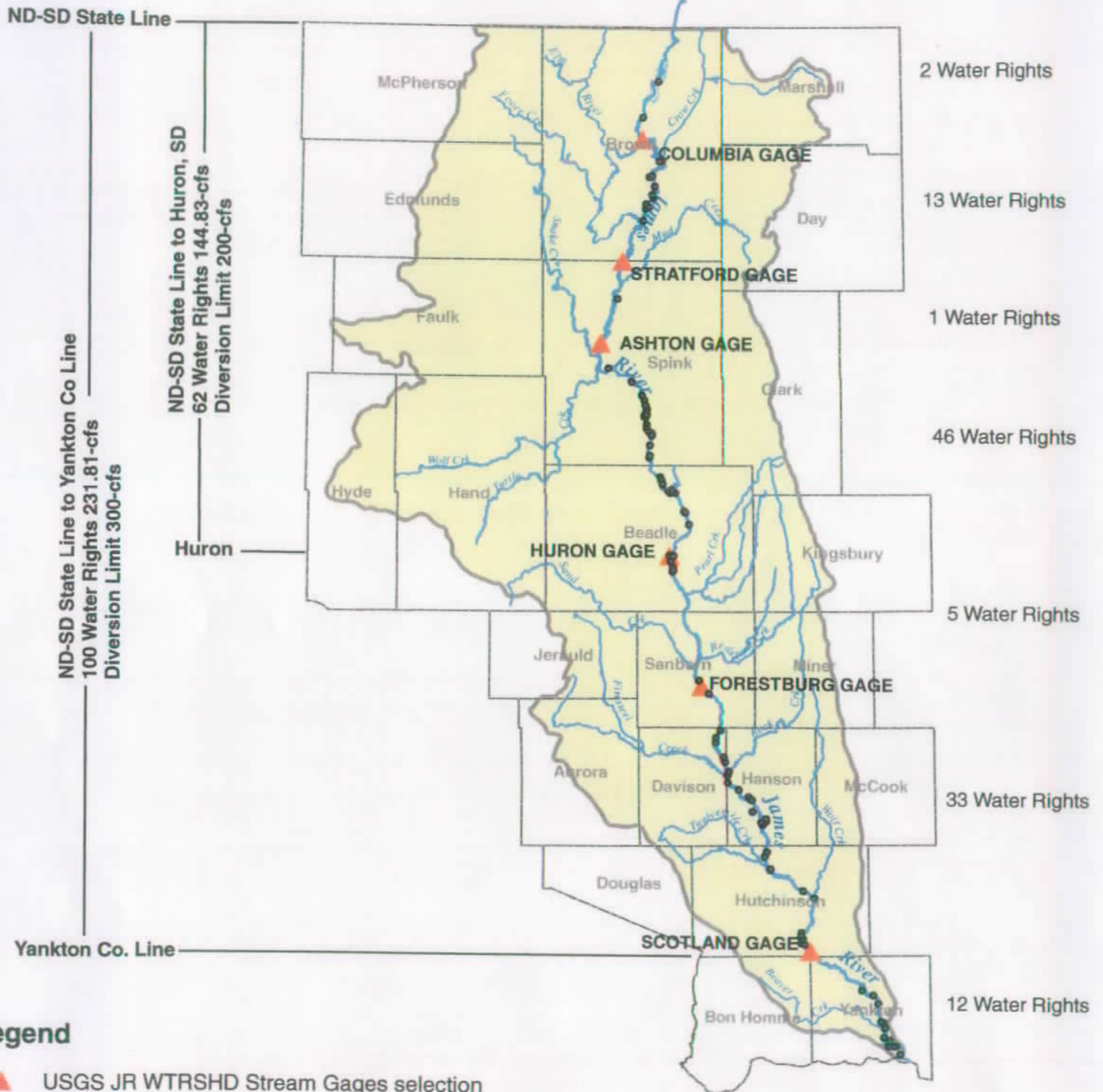
In 2003 Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews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

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

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

Attachment 2 JAMES RIVER BASIN, SOUTH DAKOTA

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



Legend

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

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

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

and replaced with the following:

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

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

2003 - Present

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

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

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

JAMES RIVER WATER RIGHTS BY GAGING STATION

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

ABOVE HURON:

WR's above Columbia Gage: 2

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

WR's above Stratford Gage: 13

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

WR's above Ashton Gage: 1

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

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

WR's above Huron Gage: 46

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

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

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

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

BELOW HURON:

WR's above Forestburg Gage: 5

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

WR's above Scotland Gage: 33

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

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

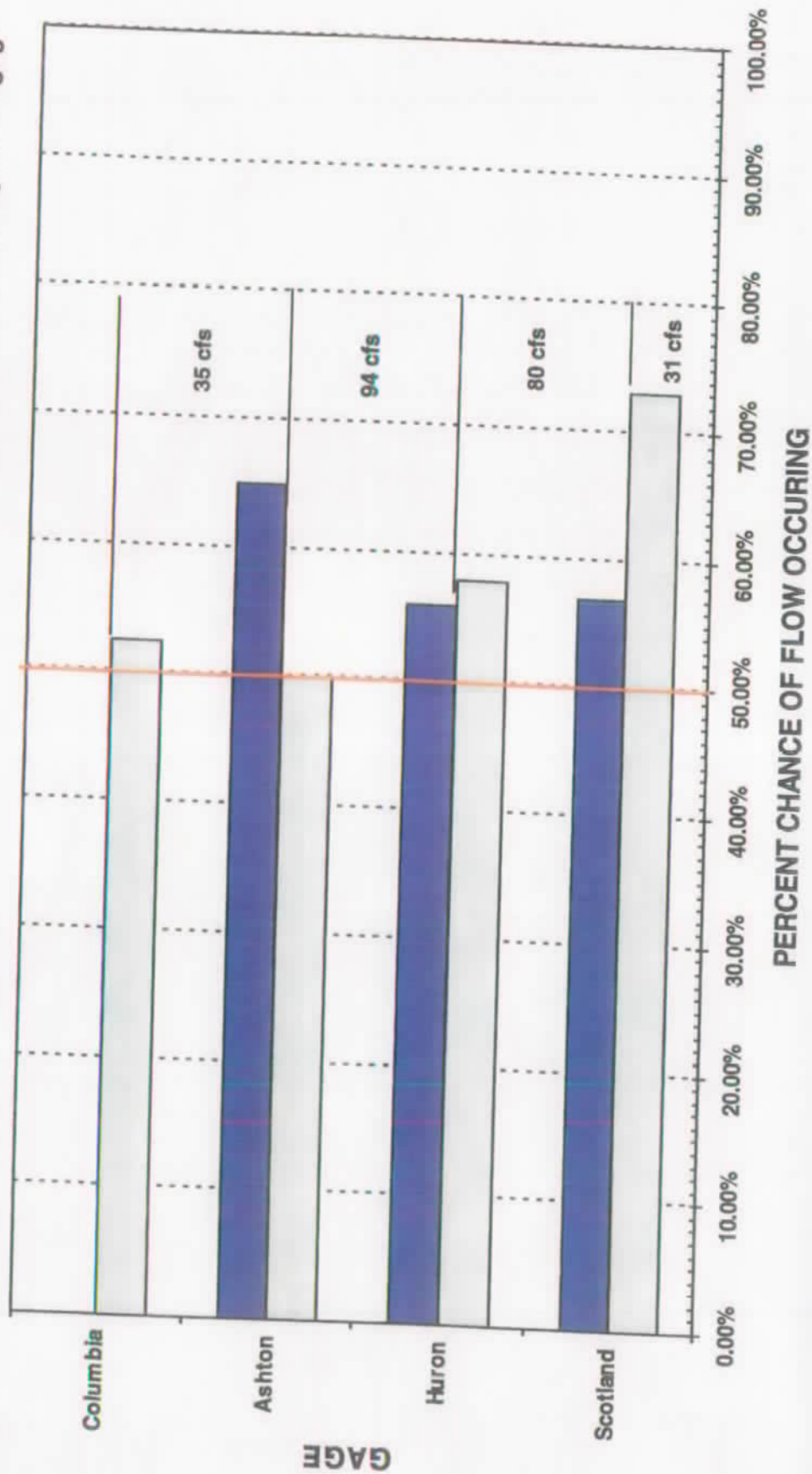
Huron to Scotland appropriated cfs = 86.98. 50% irrigation pumping plus 100% other use pumping and 20 cfs for domestic use, current needed cfs = 79.88.

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

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

■ % chance to satisfy above gage

□ % chance to satisfy below gage

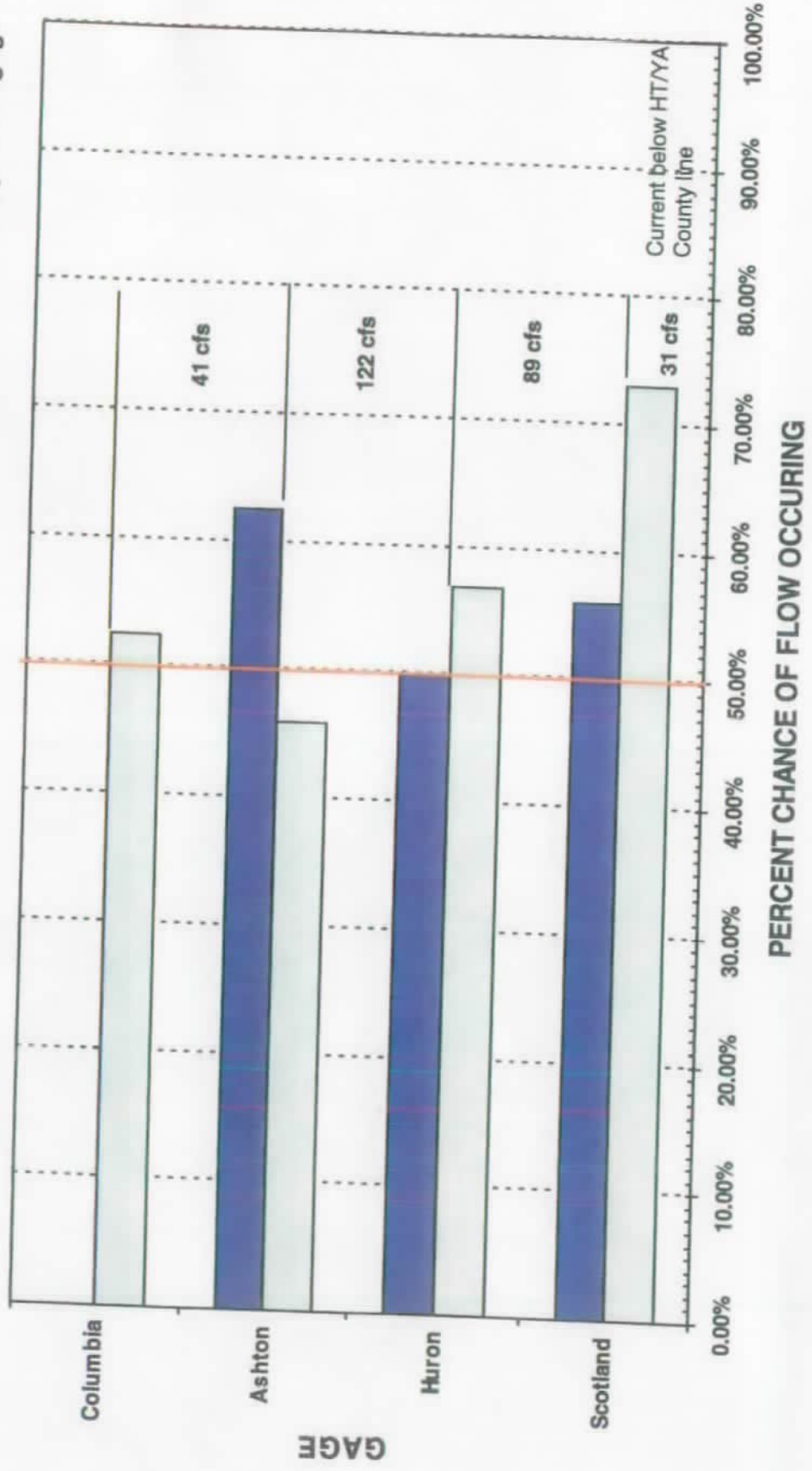


% CHANCE OF FLOW BEING AVAILABLE FOR DIVERSION THRU AUGUST 10TH

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

■ % chance to satisfy above gage

□ % chance to satisfy below gage





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 21, 2007

NOTICE

TO: MARY K PUETZ
910 FIRESTEEL DR
MITCHELL SD 57301

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

SUBJECT: Amendment to Qualifications on Water Right No. 699B-3

On May 9th, the Water Management Board amended a qualification to Water Right No. 699B-3. This action was taken as set forth in the notice sent to you on April 11, 2007 and published in James River basin newspapers and the staff report mailed to you on April 25, 2007.

Attached is a listing of the new qualification and the deleted qualification which reflects the amendment to your water right. Please file this with your water right records. The qualification that you submit the annual irrigation questionnaire continues to be a condition of your water permit.

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

Enclosure

Attachment to Water Right No. 699B-3

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

Qualification added to Water Right No. 699B-3

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

Qualification deleted from Water Right No. 699B-3

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

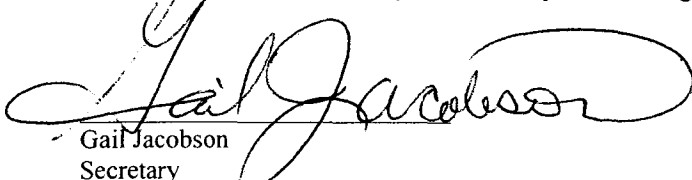
CERTIFICATION

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

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

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

Diane Best, Assistant Attorney General, Capitol Building

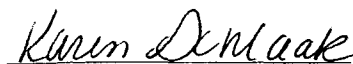

Gail Jacobson
Secretary
Water Rights

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF HUGHES)

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



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



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, 2009

699B-3

Mary K Puetz
25328 Georgella Pl
Mitchell SD 57301-5126

Dear Ms. Puetz:

Enclosed is a "Notice" dated October 16, 2009 concerning the 2009 irrigation questionnaire.

The notice was originally mailed to 910 Firesteel Dr, Mitchell 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



699B-3
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 6, 2012

**JAMES RIVER WATER RIGHT QUALIFICATION REMINDER
WATER RIGHT NO(s). 699B-3**

To: MARY K PUETZ
25328 GEORGELLA PL
MITCHELL SD 57301

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

Subject: James River Qualification Reminder for Permit No(s). 699B-3

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 25, 2015

699-3B

Mary K Puetz
25328 Georgella Pl
Mitchell SD 57301 5126

Thank you for contacting us in regard to your Water Right No. 699-3B and specifically how to maintain the water right. Enclosed for your reference is a copy of your water right and corresponding map.

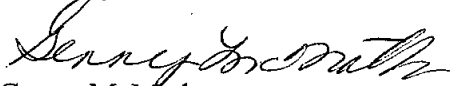
Under South Dakota Water Law, water must be placed to beneficial use for the purpose it was appropriated at least once every three years in order to maintain a water permit. This three year period could be waived if legal excuse exists for the years of nonuse. Enclosed are excerpts of the water right laws and Water Management Board Rules dealing with these issues.

An exception to forfeiture for nonuse is found in SDCL 46-5-37.2. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if:

- the water source is not fully appropriated
- if the withdrawal from use does not prevent approval of new permits from the same source, and
- if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

It is our understanding from our phone conversations that you are looking at a year-to-year placement of land in CRP. We will continue to mail you annual questionnaires to obtain water use information. Please keep in mind the above information on abandonment and forfeiture and the exceptions to forfeiture. If at any time you have questions on any of the criteria and how it pertains to your situation, please contact us.

Sincerely,


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

enclosures

Statutes:

46-5-36. Abandonment of use of water appurtenant to land - Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

46-5-37. Failure to use beneficially appropriated water - Forfeiture for nonuse - Reversion to public. When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

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

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Rules:

74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

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

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

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

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NO. 699B-3

December 8, 2016

denr.sd.gov

May K Puetz
25328 Georgella Place
Mitchell SD 57301-5126

Dear Ms. Puetz:

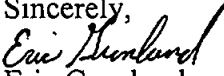
You hold Water Right No. 699B-3 appropriating 1.63 cubic feet of water per second (cfs) from Firesteel Creek and the James River for irrigation of 114.2 acres in Section 24, T103N, R60W and Section 19, T103N, R59W in Davison County. From the map that is part of the record for this water right it appears that 0.56 cfs / 39.5 acres are associated with Firesteel Creek and 1.07 cfs / 74.7 acres are associated with the James River. The 2016 Irrigation Questionnaire indicates the land is enrolled in the Conservation Reserve Program.

State law provides if any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused portion of the water right to forfeiture for nonuse. The unused water shall revert to the public and shall be regarded as unappropriated public water. Normally, the enrollment of land in the Conservation Reserve Program is an exception to this forfeiture for nonuse statute. However, the exception to forfeiture for nonuse provision only applies if the water source is not fully appropriated and if the withdrawal does not prevent approval of new permits from that source. The James River is currently within 0.24 cfs of the Water Management Board established diversion rate limit to where new permits will no longer be issued from the James River. This appropriative status of the James River impacts the ability to protect your water right from forfeiture for nonuse when the land authorized for irrigation is enrolled in an acreage reserve or production quota program. Below is the applicable state statute.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

You have three years to either proceed with irrigation of the land or apply to transfer the acres to a new location as provided by water rights law. Failure to do so will result in the James River portion of the water right being subject to cancellation for forfeiture for nonuse.

Please feel free to contact me if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

No. 699B-3

January 5, 2018

Wayne Puetz
25328 Georgella Place
Mitchell SD 57301-5126

Dear Mr. Puetz:

Please find attached the December 8, 2016, letter sent to your wife as well as the applicable statutes regarding when a water right can be subject to cancellation.

If you have any questions regarding water rights, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NO. 699B-3

December 8, 2016

denr.sd.gov

May K Puetz
25328 Georgella Place
Mitchell SD 57301-5126

Dear Ms. Puetz:

You hold Water Right No. 699B-3 appropriating 1.63 cubic feet of water per second (cfs) from Firesteel Creek and the James River for irrigation of 114.2 acres in Section 24, T103N, R60W and Section 19, T103N, R59W in Davison County. From the map that is part of the record for this water right it appears that 0.56 cfs / 39.5 acres are associated with Firesteel Creek and 1.07 cfs / 74.7 acres are associated with the James River. The 2016 Irrigation Questionnaire indicates the land is enrolled in the Conservation Reserve Program.

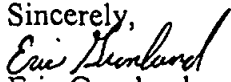
State law provides if any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused portion of the water right to forfeiture for nonuse. The unused water shall revert to the public and shall be regarded as unappropriated public water. Normally, the enrollment of land in the Conservation Reserve Program is an exception to this forfeiture for nonuse statute. However, the exception to forfeiture for nonuse provision only applies if the water source is not fully appropriated and if the withdrawal does not prevent approval of new permits from that source. The James River is currently within 0.24 cfs of the Water Management Board established diversion rate limit to where new permits will no longer be issued from the James River. This appropriative status of the James River impacts the ability to protect your water right from forfeiture for nonuse when the land authorized for irrigation is enrolled in an acreage reserve or production quota program. Below is the applicable state statute.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

You have three years to either proceed with irrigation of the land or apply to transfer the acres to a new location as provided by water rights law. Failure to do so will result in the James River portion of the water right being subject to cancellation for forfeiture for nonuse.

Please feel free to contact me if you have any questions.

Sincerely,


Eric Gronlund

Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

Statutes:

46-5-36. Abandonment of use of water appurtenant to land - Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

46-5-37. Failure to use beneficially appropriated water - Forfeiture for nonuse - Reversion to public. When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

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

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of SDCL 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Rules:

74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

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

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

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

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

CORTRUST BANK NATIONAL ASSOCIATION
100 E Havens & Main
Mitchell, SD 57301

699B-3

PROXY

The undersigned hereby appoints _____ with full power to act alone, as proxy with the power to appoint his substitute, and hereby authorizes him to represent and vote all of the shares of common stock of CorTrust Bank National Association, Mitchell, South Dakota held of record by the undersigned.

The undersigned hereby revokes any other proxy or proxies heretofore given to vote or act with regard to the Common Stock of the Bank.

Please mark, sign, date and return this proxy promptly using the enclosed envelope.

Printed Shareholder's Name Wayne & Mary Pietz Living Trust

Number of Shares 277

Signature of Shareholder(s)





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 11, 2019

denr.sd.gov

NO. 699B-3

Mary K Puetz
25328 Georgella Place
Mitchell SD 57301-5126

Dear Ms. Puetz:

In 2016, DENR contacted you regarding Water Right No. 699B-3 for irrigation from the James River and Firesteel Creek held in your name. See attached letter from December, 2016.

Water Right No. 699B-3 appropriates 1.63 cubic feet of water per second (cfs) from Firesteel Creek and the James River for irrigation of 114.2 acres in Section 24, T103N, R60W and Section 19, T103N, R59W in Davison County. Attached is a map showing the approximate location of lands authorized by the water right. From the map it appears that 0.56 cfs / 39.5 acres are associated with Firesteel Creek and 1.07 cfs / 74.7 acres are associated with the James River. The 2016 plat book indicates the land is held in the name of either Mary K Puetz or Puetz Legacy Trust.

Based on the annual irrigation questionnaires submitted, the land authorized for irrigation by the water right continues to be enrolled in the Conservation Reserve Program (CRP) and irrigation has not taken place. Water rights are to be used for the purpose for which the water is appropriated and least once every three years or the water right becomes forfeited for nonuse and is subject to cancellation.

Normally, enrollment of land in CRP is an exception to this forfeiture for nonuse statute. However, the exception to forfeiture for nonuse provision only applies if the water source is not fully appropriated and if the withdrawal does not prevent approval of new permits from that source. The James River is currently within 0.01 cfs of the Water Management Board established diversion rate limit when new permits can no longer be issued from the James River. If someone applies for a new water permit from the James River, DENR can not recommend favorably on the application due to the fact we'd have to account for the 1.07 cfs appropriation from the James River held in your water right. Therefore, your water right is no longer protected from forfeiture for nonuse when the land is enrolled in an acreage reserve or production quota program.

Three years have passed since notified in 2016 to either proceed with irrigation of the land or apply to transfer the acres to a new location as provided by water rights law. Please state your intentions for the water right by March 11, 2019, as DENR is investigating whether cancellation of the water right is warranted.

Please feel free to contact me if you have any questions.

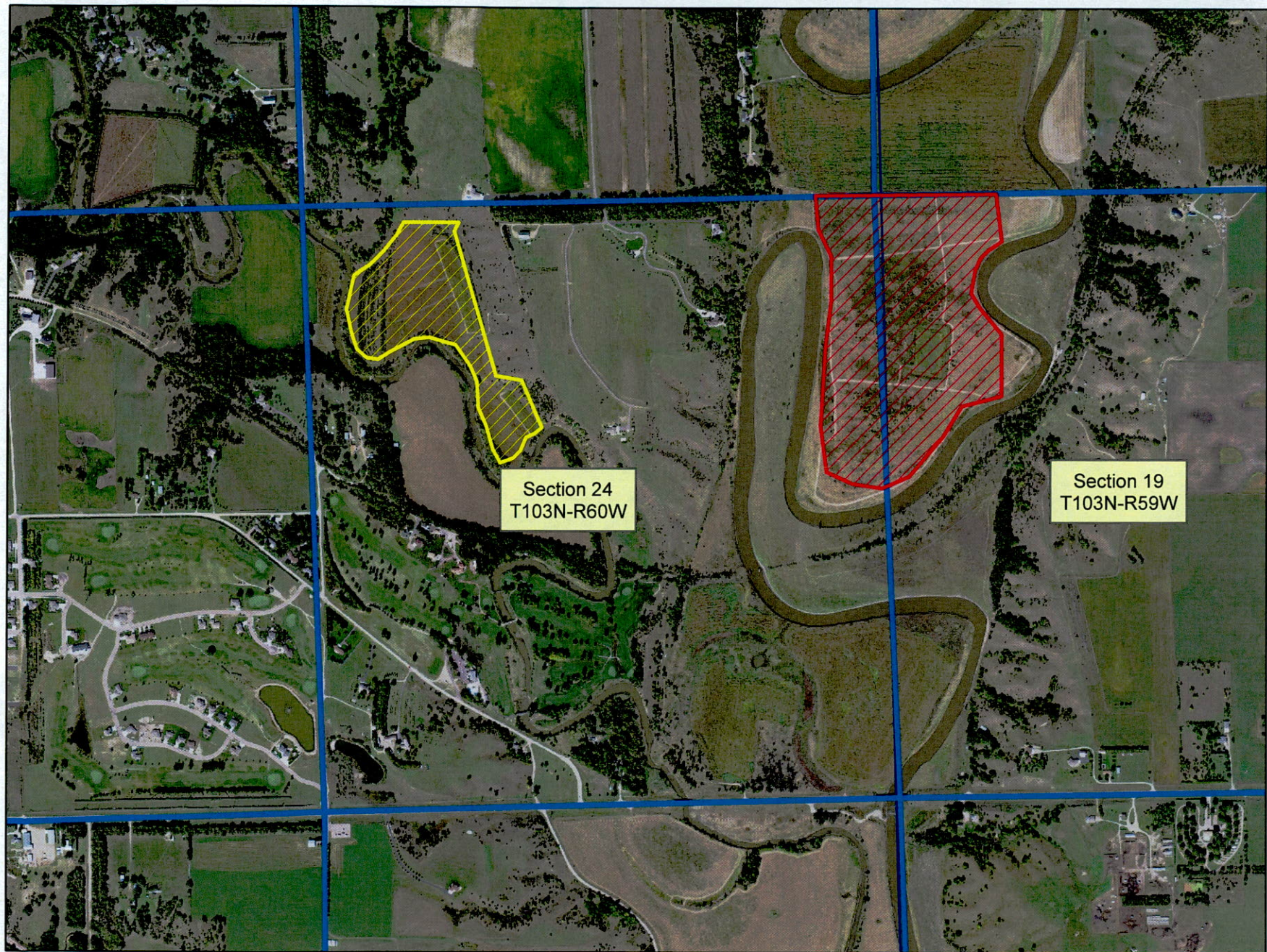
Sincerely,

Eric Gronlund COPY
Eric Gronlund

Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

enclosure

Approximate Location of Lands Authorized by Water Right No. 699B-3, Mary K Puetz



LAND IRRIGATED FROM JAMES RIVER



LAND IRRIGATED FROM FIRESTEEL CREEK



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2021

Dear James River Water Right Holder:

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program

699B-3



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

November 12, 2021

699B-3

Mark Puetz
Puetz Legacy Trust
174 N Harmon Dr
Mitchell SD 57301

Dear Mr. Puetz:

Thank you for sending in the 2021 irrigation questionnaire for Water Right No. 699B-3.

Enclosed is a partially completed "Notice of Transfer of Ownership" form for use in filing an ownership change. Please review and complete as needed. Upon completion, please sign and return the form to our office with a required filing fee of \$50. The check or money order for the fee can be made payable to the Water Rights Program.

I have included a copy of the water right for your records. If you have any questions, please give me a call.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

enclosures

699B-3

RECEIPT**WATER RIGHTS PROGRAM**

South Dakota Department of Agriculture and Natural Resources

Date November 17, 2021RECEIVED OF Mark Puetz 174 N Harmon Dr. Mitchell SD 57301

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$ _____
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. _____	\$ _____
Fee for Filing Transfer Form <u>699B-3</u>	<u>\$50.00</u>
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	
TOTAL	<u>\$50.00</u>

By Eric Gronlund
 Chief Engineer
Em

PAID

NOV 17 2021

Ck# 1064

**NOTICE OF TRANSFER OF OWNERSHIP
RECEIVED**

To: Chief Engineer
Water Rights Program, DANR
523 E. Capitol
Pierre, SD 57501-3181

NOV 17 2021

WATER RIGHTS
PROGRAM

No. 699B-3

Date: 11-15-2021

I/We request that Water Right No. 699B-3

formerly owned by: Mary K Puetz

be transferred to: (name & address) Puetz Legacy Trust

(Mark Puetz and Amy Novak as Trustees) 174 N Harmon Dr.
Mitchell, SD 57301

Telephone No. 605-770-4947

Title to the following described land(s)/property has been transferred as described above:

114.2 acres – Lots 2 & 4, Section 24, T103N, R60W

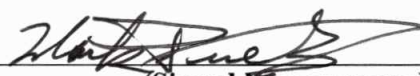
Lot 5 Section 19, T103N, R59W

I/We understand that the validity of Water Right No. 699B-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Puetz Legacy Trust, the new owner, certify that the above information is true and correct.

 (Trustee)
(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

November 17, 2021

699B-3

Mark Puetz
Puetz Legacy Trust
174 N Harmon Dr
Mitchell SD 57301

Dear Mr. Puetz:

I am writing to acknowledge receipt of the transfer form and filing fee you submitted for Water Right No. 699B-3.

The ownership change has been completed. The water right formerly held by Mark K Puetz is now listed under Puetz Legacy Trust, Mark Puetz and Amy Novak, Trustees.

I have enclosed a receipt for the filing fee that was paid. If you have any questions, please give me a call.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

enclosure