

WATER PERMIT NO. 7316-3

Name of Applicant: **Van Buskirk Farms LLP**

Address: **c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348** Phone: **605 350-5671**

Amount of Water Claimed: **4.5 cfs** Total Acres: **272 acres**

Source of Water Supply: **groundwater (2 wells)**

Water to be used for: **irrigation** County: **Spink**

Type of Waste Disposal System:

Location: **12 miles ^{east} northwest of Hitchcock**

PRIORITY Date Received: **1-30-12** Application/License Fee: **\$ 1,250**

Corrected Application Received: Period of Annual Use: **May 1 – September 30**

Remarks:

Diversion Point: **approximate center of NW ¼ and SW ¼ Sec 12-T114N-R62W**

Land to be Irrigated: **W ½ Sec 12-T114N-R62W**

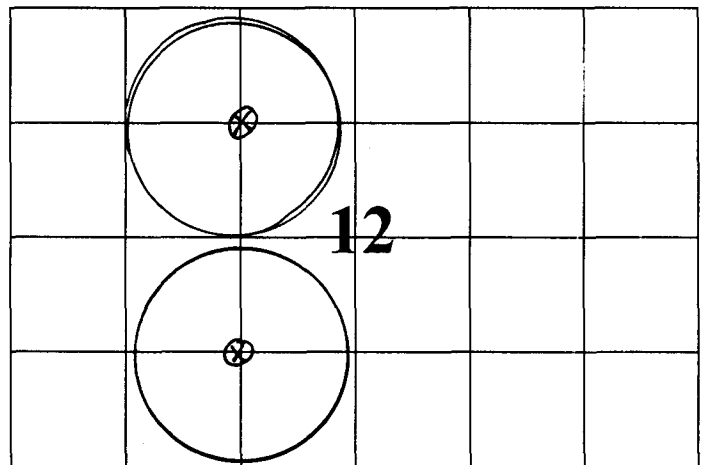
Depth of Well: **80 feet**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by: **Eric Gronlund**



Reviewed and the Number Assigned on: **1-31-12**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

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

Mail to: PMB 2020 DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>7316-3</u> (office use only) Hydrologic Unit <u>101 60006</u>
	Basin <u>James River</u>
	Newspaper <u>Redfield Press P.O. Box 740</u> <u>605-472-0822</u> <u>57469</u>

RECEIVED
JAN 30 2012
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.)

1. Name of Applicant Van Buskirk Farms LLP Phone 605 350-5671
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address Box 73 Hitchcock SD 57348
(Address) (City) (State) (Zip Code)
2. Amount of water claimed 3.89*CFS or **GPM ***AF Total Acreage 272
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply groundwater
4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Spink
approximate center of the NW 1/4 and approximate center of the SW1/4 Section 12, T114N, R62W
5. County or counties where water will be used Spink
6. Annual period during which water is to be used May 1 - September 30
7. 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
NE 1/4 NW 1/4 Section 12, T114N, R62W	34	NE 1/4 SW 1/4 Section 12, T114N, R62W	34
NW 1/4 NW 1/4 Section 12, T114N, R62W	34	NW 1/4 SW 1/4 Section 12, T114N, R62W	34
NE 1/4 NW 1/4 Section 12, T114N, R62W	34	SW 1/4 SW 1/4 Section 12, T114N, R62W	34
SW 1/4 NW 1/4 Section 12, T114N, R62W	34	SE 1/4 SW 1/4 Section 12, T114N, R62W	34

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

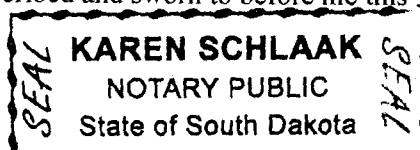
Develop center pivot

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. Also, attach map and any other technical information. (see instructions)

I, Matt Van Buskirk, 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 Matt Van Buskirk
Subscribed and sworn to before me this 30th day of January 20 12



Karen Schlaak
Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 7316-3**

Date of first receipt of application January 30, 2012.

The Water Management Board approved Water Permit No. 7316-3 on December 6, 2012 for Van Buskirk Farms LLP, Box 73, 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. 7316-3 appropriates 3.89 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – September 30.
3. The date from which applicant may claim right is January 30, 2012.
4. One-fifth of the construction is to be completed on or before June 6, 2015.
5. All construction is to be completed on or before December 6, 2017.
6. Water is to be put to beneficial use on or before December 6, 2021.
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 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. 7316-3 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. The diversion rate authority for Water Permit No. 7316-3 is limited to 3.89 cfs which is the statutory limit for irrigation of 272 acres.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

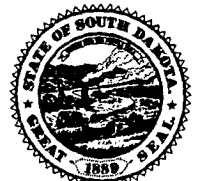
WATER MANAGEMENT BOARD

By: Garland Erbele

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

JAN 25 2013

date



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth approx. 80
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicant's property _____ On property owned by others quarters to N & E

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

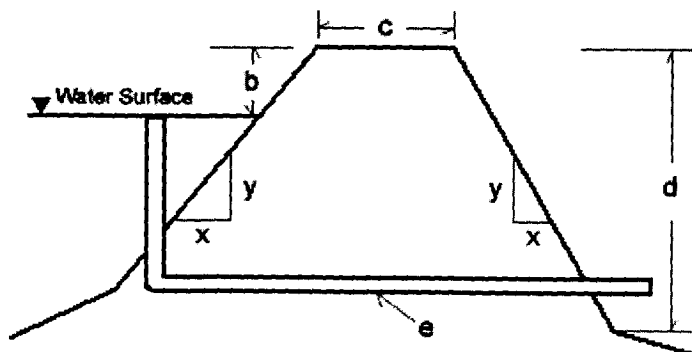
3. Dugout Information

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

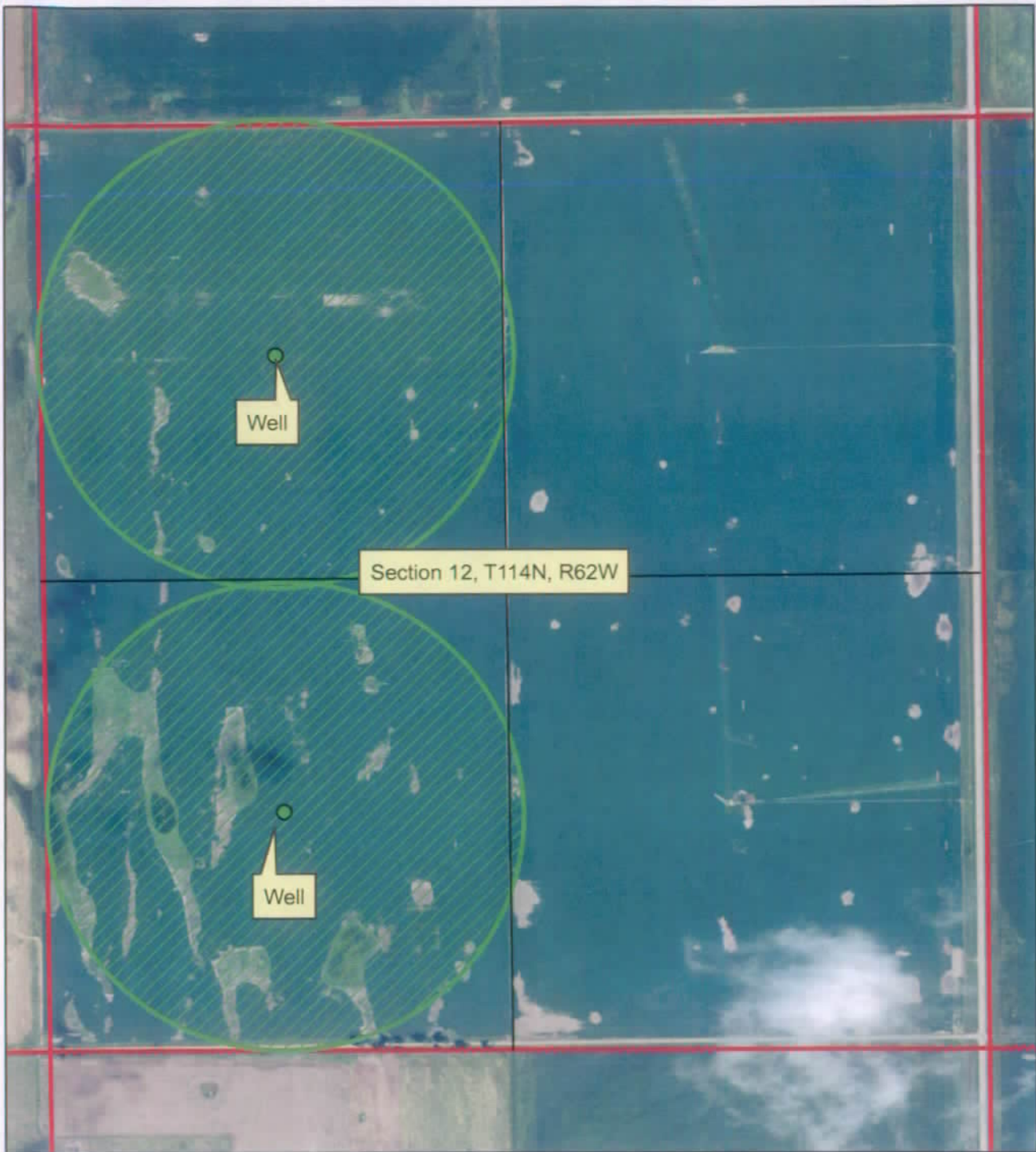
4. Water Storage Dams

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:



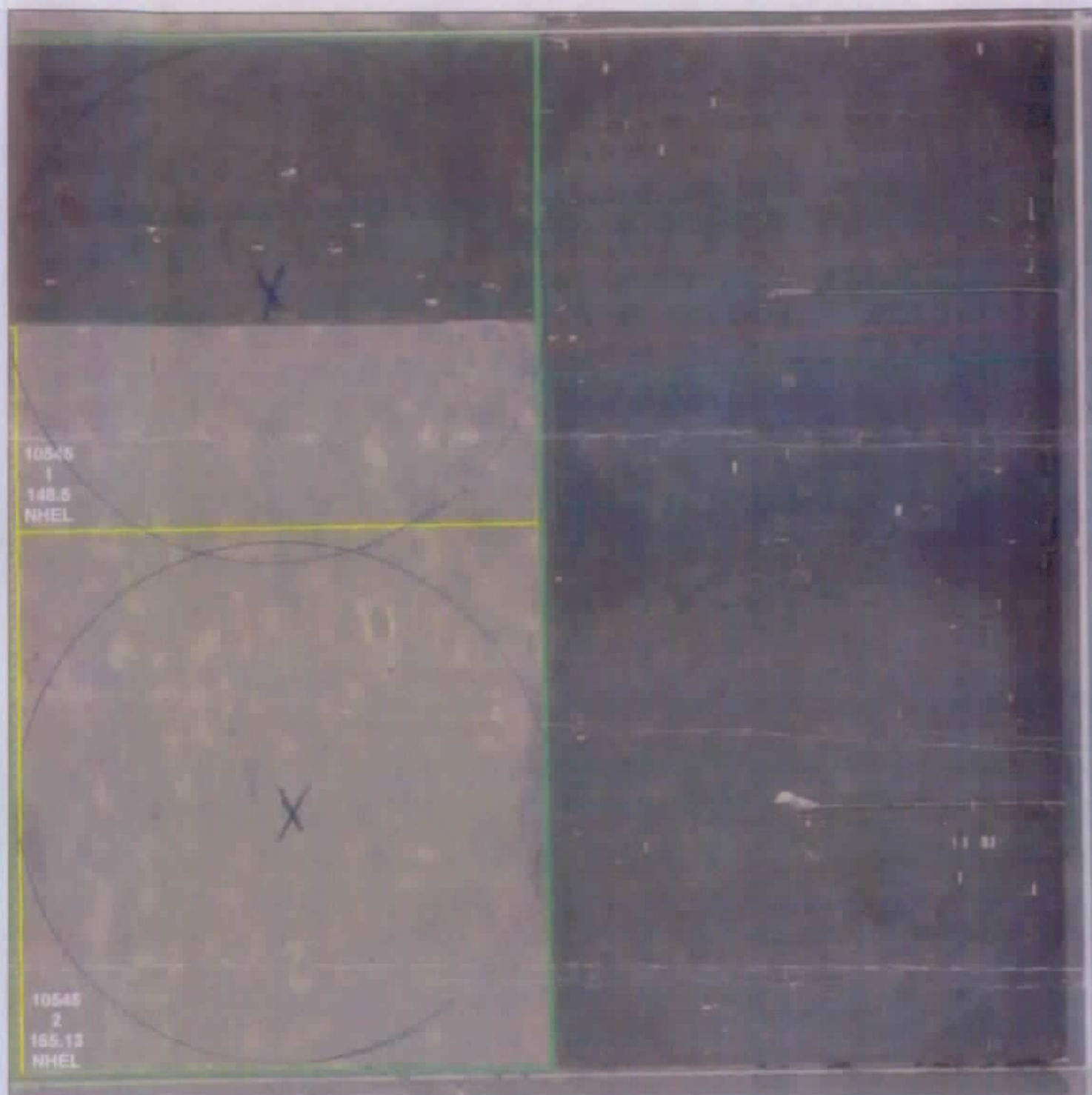
- b) Freeboard _____
- c) Crest Width _____
Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope (e.g. 3 to 1 is a typical slope)
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres



0 330 660 1,320 1,980 2,640
Feet



Eric Gronlund
Eric Gronlund
Water Rights Program, DENR
January 30, 2012
based on representation by applicant



USDA United States Department of Agriculture
Farm Service Agency



Spink County South Dakota

January 10, 2007

12-114N-62W

2004 Digital Orthophotography
1 inch equals 642 feet

	Tract Boundary
	CRP
	Easement
	Field Boundary
	Non Crop

USDA-FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership, rather it depicts the information provided to the producer and/or the USDA orthorectified imagery for South Dakota. The producer accepts the data "as is" and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on the data outside of FSA programs.

SOUTH DAKOTA WATER WELL COMPLETION REPORT

Location SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 12 Twp 114 Rg 62

County

Spink

North

Please mark well location with an "X"

W

E

Well Completion Date

4/2/20041 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	IN	FT	FT	IN
	16.00	0.0	66.0	24.00

GROUTING DATA:

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

Describe grouting procedure
Line

SCREEN:

☐ Perforated pipe ☒ ManufacturedDiameter 16.00 Inches Length 15.0 FeetMaterial PVCSlot Size .060 Set From 66.0 Feet to 81.0 Feet

Other information

WAS A PACKER OR SEAL USED?

☒ Yes ☐ NoIf 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 analysis

Well Owner: Jeff Gatzke

Business Name:

Address: 39334 187th StCity, State, Zip: Hitchcock SD 57348

WELL LOG:

FORMATION	DEPTH	
	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 ☐ OtherReduced flow rate GPM

Can well be completely shut in?

WELL TEST DATA:

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

Pumping Level Below Land Surface

Feet After Hrs. pumped GPMFeet After Hrs. pumped GPMIf pump installed, pump rate: GPM

REMARKS

RECEIVED**JAN 30 2012****WATER RIGHTS PROGRAM**This well was drilled under license # 440

And this report is true and accurate.

Drilling firm: Pullman Well Drilling Inc.

Signature of License Representative:

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Signature of Well Owner or Equitable Property Holder:

WATER RIGHTS PROGRAM

Date:

4/2/04

7-15-04

RECEIPT
WATER RIGHTS PROGRAM
South Dakota Department of Environment and Natural Resources

Date 1/30, 20 12

RECEIVED OF Van Buskirk Farms PO Box 72 Hitchcock SD 57348

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

Fee for Application for Permit No. <u>7316-3</u> to Appropriate Water, to construct and to put water to beneficial use	1050	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>7316-3</u>	200	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	1250 00

No. **05324**

By *Lorel Orville*
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7316-3, Van Buskirk Farms LLP**

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. 7316-3, Van Buskirk LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348.

The Chief Engineer is recommending DEFERRAL of Application No. 7316-3 to determine the level of development of issued permits that have not been licensed. The level of development may affect water availability from the aquifer. DENR's intent is to conduct licensing investigations of the unlicensed permits in order to bring this application back before the Board at their May or July meeting.

See report on application for additional information.

Garland Erbele, Chief Engineer
March 7, 2012

REPORT ON WATER PERMIT APPLICATION NO. 7316-3

For VanBuskirk Farms LLP

March 5, 2012

Application No. 7316-3 proposes to appropriate 4.5 cfs from two wells approximately 80 feet deep located in the approximate centers of the NW ¼ and SW ¼ of section 12 for irrigation of 272 acres located in the W ½ of section 12; all in T114N R62W in Spink County.

AQUIFER – TULARE EAST JAMES (T-EJ)

The Tulare East James aquifer has been declared fully appropriated based upon water use by the Water Management Board at the July 12, 2006 hearing. At that hearing a report was presented to the Board (Goodman, 2006) discussing the hydrogeology of the Tulare East James aquifer which summarized aquifer statistics, climate, recharge, water use, statutory considerations, observation well hydrographs and conclusions. A copy of the Findings of Fact and Conclusions of Law and Final Decision "In the Matter of Water Permit Application No. 6711-3, Oscar Inc.; In the Matter of Water Permit Application Nos. 6712-3 and 6713-3, Peterson Farms; In the Matter of Water Permit No. 6715-3, United Feeders, LLP; In the Matter of Water Permit Application No. 6728-3, Ron Starr" adopted on October 26, 2006 is included with this report for review.

This application is for additional water and for additional irrigated acres from the Tulare East James aquifer. No test holes were drilled but this application is within the area mapped as aquifer and the applicants estimated for well depth is reasonable based upon well and test hole information in the surrounding area.

The Water Rights Program does monitor observation wells in this immediate area. SP-77U is located within one-half mile to the north of this application, SP-79H is located about two miles northeast of this application, SP-77P is located about two miles southeast of this application and SP-79K is located about two miles southwest of this application. Water levels for these wells show good response to climatic conditions. Water levels rise during wet years (recharge) and gradually decline during dry years. Also there is some evidence of pumping which cause annual slight fluctuation of water levels. All these wells are under water table conditions except SP-77U which is under slightly artesian conditions at this time. Note that all the hydrographs show the favorable recharge conditions of the last few years and rises in water levels of 5 to 10 feet. In general the water level record indicates the aquifer is sustaining existing withdrawals and water levels at this time some of the highest for the period of record (Water Rights, 2012).

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are existing water rights to the east, north and northwest with wells about one-half mile from these proposed wells. Interference would not be a concern. Drawdown created by pumping does not appear to be significant in this area and would not affect water availability from the aquifer.

At this time there are water permits issued for the Tulare East James aquifer that are not licensed. A review of the reported irrigation on these permits indicates the potential for additional available water resulting from the licensing process. Until licensing is completed this cannot be determined. Based upon reported water use and acreage reported irrigated licensing may "free up" additional acreage and water for appropriation. However, that amount would not be sufficient to issue this application plus Water Permit Application No. 7295-3 for William St. Clair which is deferred pending a determination of the level of development.

CONCLUSIONS

1. The source of water for this application would be the Tulare East James aquifer.
2. The aquifer is considered to be fully appropriated by the Water Management Board.
3. There have been no changes in existing permits/rights such as abandonments or cancellations that would result in water being made available.
4. The water level record does indicate that the aquifer does recharge and that the aquifer is sustaining the existing level of development.
5. Because all the approved permits have not been licensed and the completion construction date was in 2011, it appears there may be excess permitted acres over and above the developed acres. Until these unlicensed permits are inspected and licensed nothing is officially available for appropriation. However, It is unlikely that there will be sufficient water available for this Water Permit Application No. 7316-3.



James A Goodman

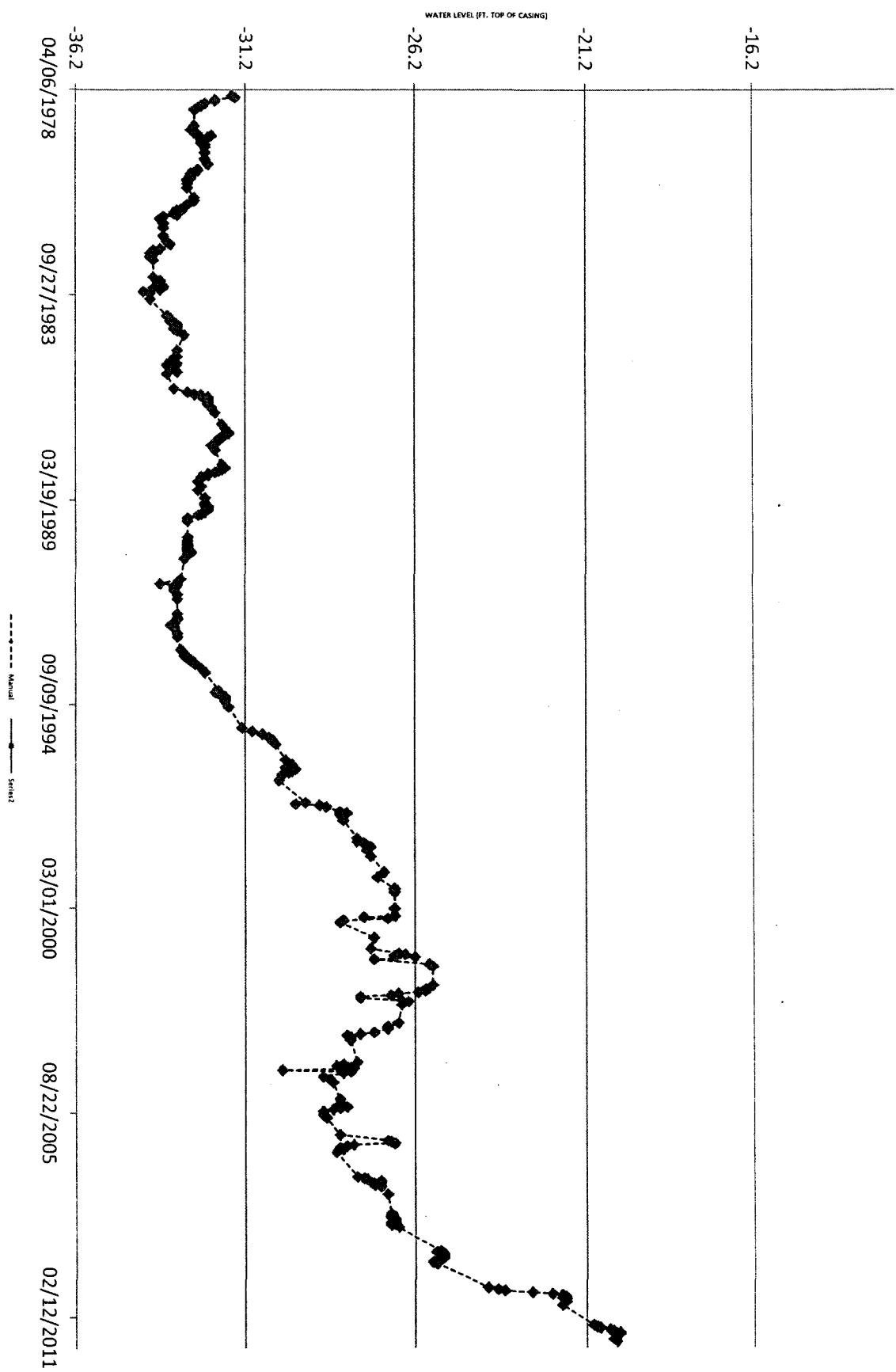
Natural Resources Engineer

BIBLIOGRAPHY

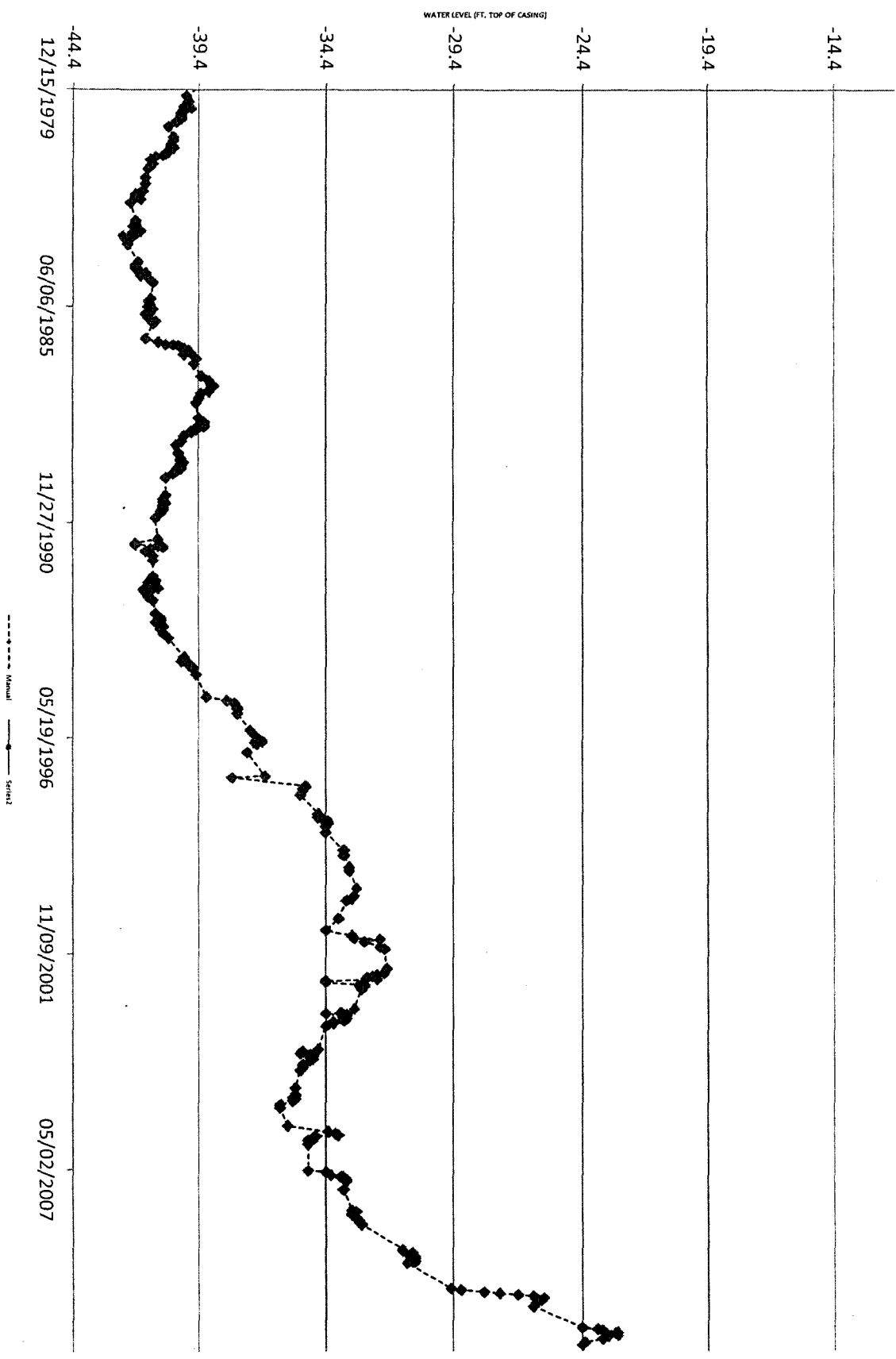
Goodman, J.A., 2006, Report on Water Permit Applications No. 6711-3 for Oscar Inc. and Nos. 6712-3 and 6713-3 for Peterson Farms, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

Water Rights, 2012, Unpublished Observation Well Records for the Tulare East James Aquifer, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

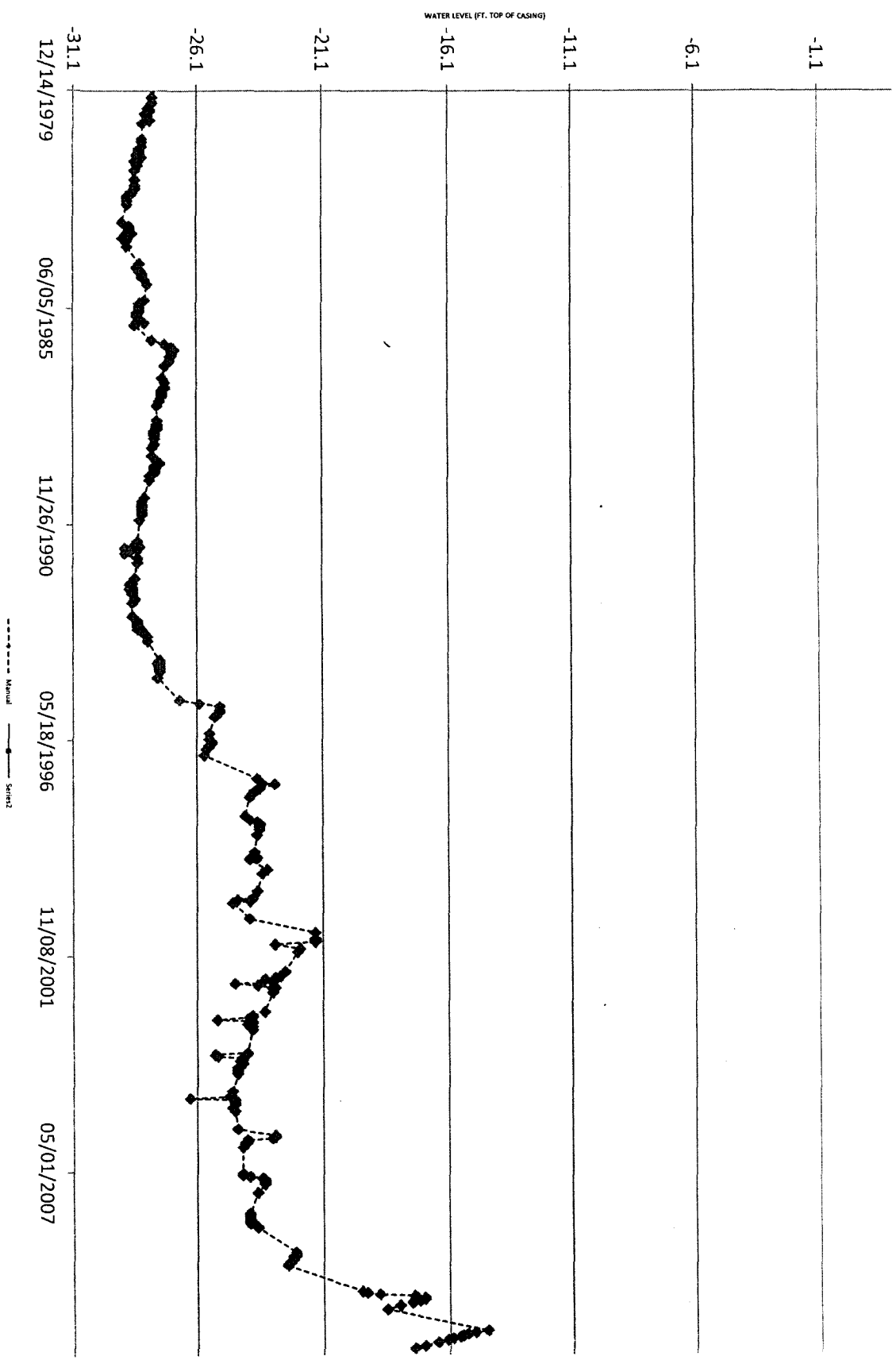
WATER RIGHTS' OBSERVATION WELL SP-77U



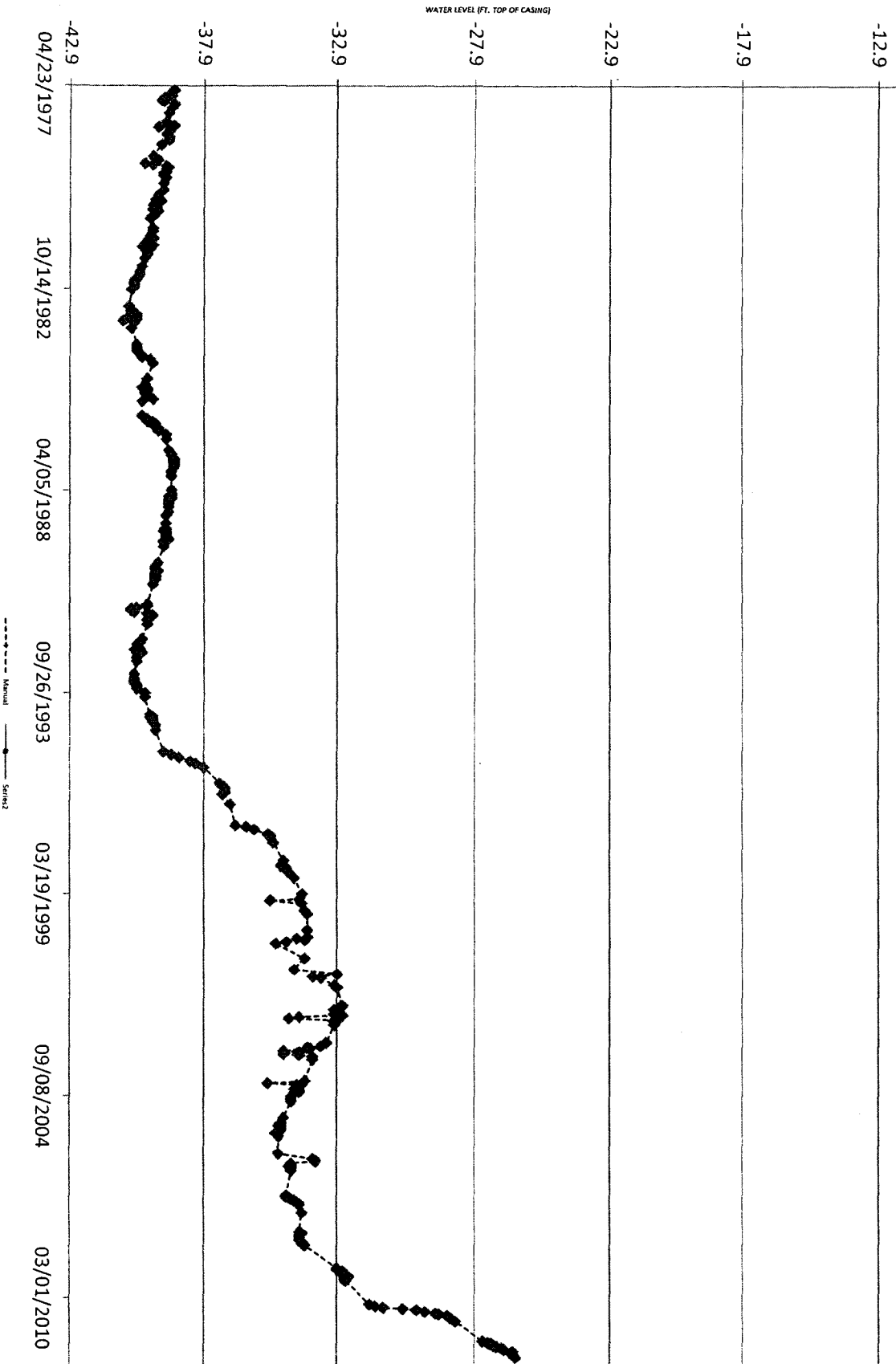
WATER RIGHTS' OBSERVATION WELL SP-79H



WATER RIGHTS' OBSERVATION WELL SP-79K



WATER RIGHTS' OBSERVATION WELL SP-77P





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 7, 2012

Van Buskirk Farms LLP
Matt Van Buskirk
PO Box 73
Hitchcock SD 57348

Dear Mr. Van Buskirk:

Water Permit Application No. 7316-3 for irrigation use has been examined and found to comply with the South Dakota water laws and applicable rules. The Chief Engineer's recommendation is for DEFERRAL of Application No. 7316-3. For your information, the staff report, Chief Engineer's recommendation and notice of hearing are enclosed.

Please review the report and recommendation. If you wish to proceed with the application and schedule a March 7, 2012 hearing before the Water Management Board, you must contact the Redfield Press (ph# 605 472-0822) to authorize publication of the notice of hearing. The notice was sent to the Redfield Press with instructions to publish only if the applicant authorizes publication.

If the notice is published on March 14 and 21, 2012, a hearing is scheduled for 10:00 AM, May 2, 2012 in the Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue in Pierre SD.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Eric Gronlund".

Eric Gronlund

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

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 7, 2012

Redfield Press
PO Box 440
Redfield SD 57469

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 7316-3 to Appropriate Water to be published twice. Please publish the first notice on March 14, 2012 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.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Van Buskirk Farms LLP. c/o Matt Van Buskirk, PO Box 73, Hitchcock SD 57348 (Ph # 605-350-5671).

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. 7316-3

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

Date _____

We are in receipt of your letter of March 7, 2012 enclosing Notice to Appropriate Water by Application No. 7316-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

Instruction to Newspaper - Publish first Notice on March 14, 2012 with the second publication 7 days later. The applicant is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF APPLICATION NO. 7316-3 to Appropriate Water

Notice is given that Van Buskirk Farms LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348 has filed an application for a water permit to appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 7316-3 to determine the level of development of issued permits that have not been licensed. The level of development may affect water availability from the aquifer. DENR's intent is to conduct licensing investigations of the unlicensed permits in order to bring this application before the Board at their May or July meeting.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 23, 2012. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 A.M. on May 2, 2012 in the Floyd Matthew Training Center, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The May 2, 2012 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 23, 2012.

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 23, 2012 at the above Water Rights Program address to request copies of information pertaining to this application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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 23, 2012.

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. Published twice at the total approximate cost of _____.

RECEIVED

MAR 26 2012

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

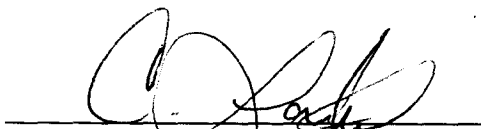
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield,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

#246 Notice

A printed copy of which is hereto attached, was printed and published in said newspaper in 2 successive issues, to wit: The first publication being made on March 14th and the last publication being made on March 21st, that Seventy-three and .08/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 21st day of March, 2012.


Notary Public, South Dakota

My commission expires 04/06/2016

Notice

#246

NOTICE OF APPLICATION NO. 7316-3 TO APPROPRIATE WATER

Notice is given that Van Buskirk Farms LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348 has filed an application for a water permit to appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 7316-3 to determine the level of development of issued permits that have not been licensed. The level of development may affect water availability from the aquifer. DENR's intent is to conduct licensing investigations of the unlicensed permits in order to bring this application before the Board at their May or July meeting.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 23, 2012. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 A.M. on May 2, 2012 in the Floyd Matthew Training Center, 523 E. Capitol Ave., Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The May 2, 2012 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 23, 2012.

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 23, 2012 at the above Water Rights Program address to request copies of information pertaining to this application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

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 23, 2012.

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. Pirmer, Secretary
Department of Environment and
Natural Resources

Published twice at an approximate
cost of \$73.08. (Mar 14, 21)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 6, 2012

Sent via email

Redfield Press
PO Box 440
Redfield SD 57469

The Plainsman
PO Box 1278
Huron SD 57350

ATTENTION: Legal Public Notice

Enclosed is a Notice on Hearing on Application Nos. 7295-3, 7316-3 and 7348-3 to Appropriate Water. Please publish the notice once on September 12, 2012. The text of the notice has been e-mailed to your paper.

Please send the Water Rights Program an affidavit immediately. Also, please bill the cost of the publication to the Water Rights Program.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, September 06, 2012 11:06 AM
To: 'Plainsman (rnewman.plainsman@midconetwork.com)';
'office.redpress@midconetwork.com' (office.redpress@midconetwork.com)
Subject: Notice of Hearing on Application No. 7295-3, 7316-3 and 7348-3
Attachments: 7295-3 7316-3 7348-3.oct.wmb.docx; 7295-3 7316-3 7348-3news.docx
Contacts: Plainsman

Ruby – Plainsman and Redfield Press,

Attached is a Notice of Hearing to be published on September 12, 2012. Please send us the affidavit immediately following publication. The Water Rights Program will pay the cost of publication. Please acknowledge receipt of this email.

Thanks,

Karen Schlaak

Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Affidavit of Publication

RECEIVED

SEP 20 2012

WATER RIGHTS
PROGRAM

Notice

#553

NOTICE OF HEARING ON APPLICATION NOS. 7295-3, 7316-3 AND 7348-3 TO APPROPRIATE WATER

Notice is given of three water permit applications to appropriate water from the Tulare:East James Aquifer in Spink County. The following applications were previously public noticed for deferral. Upon reevaluation of the current availability of water in the aquifer in light of historic record, recent irrigation reports and past and recent USGS reports, the Chief Engineer has revised his recommendation. Therefore it is necessary to public notice the applications and the Chief Engineer's revised recommendations.

Application No. 7295-3 filed by William F St. Clair, 37644 184th St, Tulare SD 57476 proposes to appropriate 1.78 cubic feet of water per second from one well to be completed into the Tulare:East James Aquifer (90 feet deep) located in the center of the NW 1/4 Section 30 for irrigation of 120 acres located in the NW 1/4 Section 30; all in T117N-R61W.

Application No. 7316-3 filed by Van Buskirk Farms LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348 proposes appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.

Application No. 7348-3 filed by Michael Sentell, 18690 398th Ave, Hitchcock SD 57348 proposes to appropriate 5.33 cubic feet of water per second from a gravel pit completed into the Tulare:East James Aquifer and located in the NE 1/4 SW 1/4 Section 14 for irrigation of 440 acres located in the NW 1/4 Section 13, NW 1/4, W 1/2 SE 1/4, SE 1/4 SW 1/4 Section 14; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7295-3, 7316-3 and 7348-3 because 1) the Water Rights Program reevaluated the current availability of water in the aquifer and determined that unappropriated water is available from the aquifer, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest to put water resources of the state to the fullest extent of which they are capable.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

STATE OF SOUTH DAKOTA,
County of Spink: ss.

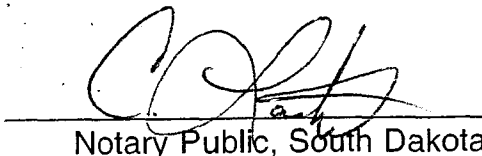
I, Mark E. Davis, of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield,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

#553 Notice

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on September 12th, that Seventy and 00/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.



Subscribed and sworn to before me this 12th day of September, 2012.


Notary Public, South Dakota

My commission expires 04/06/2016.

The Water Management Board will consider these applications at 10:30 AM on October 3, 2012 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny any of these applications based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support any of the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. 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 addresses are given above. A petition filed by an interested person must be filed by September 24, 2012. The petition may be informal, but must include a statement describing the petitioner's interest in any of the applications, the petitioner's reasons for opposing or supporting any of the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 3, 2012 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support any of the applications. The request for an automatic

delay must be filed by September 24, 2012. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by September 24, 2012, at the above Chief Engineer's address to request copies of the staff report, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7), notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 24, 2012. However, since this particular matter are water permit applications and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-14 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-10, 26-2A-14, 46-2A-15; 46-5-6.11, 46-5-10 thru 46-5-13, 46-5-30 thru 46-5-30.3, 46-5-32; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-26; and Board rules ARSD 74:02:01:01 thru 74:02:01:15.

The particular section of statutes and rules pertaining to these permit applications are, in addition to the above, the following: SDCL 46-2A-9, 46-6-3.1, 46-2A-15, 46-5-10 thru 46-5-13, 46-6-10, 46-6-26; the above listed administrative rules and the following rule pertaining to qualifications recommended by the Chief Engineer: ARSD Chapter 74:02:01:14.02.

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

Published at an approximate cost of \$70.00. (Sept 12)

RECEIVED

SEP 21 2012

PRINTER'S AFFIDAVIT

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.

I, TRISHA NELSON, being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

**SD ENVIRONMENTAL & NATURAL - WATER
PERMIT HEARING**

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 12TH day SEPT 2012 That the full NINETY-SEVEN & 49/000 dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

Trisha Nelson

Subscribed and sworn to before me this 20th day of SEPT. 2012.

Michael Sentell
Notary Public, South Dakota

My term expires 10/25/17

Legal # 379

F.P. 09-12-12

**NOTICE OF HEARING
on Application**

**Nos. 7295-3, 7316-3
and 7348-3**

to Appropriate Water

Notice is given of three water permit applications to appropriate water from the Tulare: East James Aquifer in Spink County. The following applications were previously public noticed for deferral. Upon reevaluation of the current availability of water in the aquifer in light of historic record, recent irrigation reports and past and recent USGS reports, the Chief Engineer has revised his recommendation. Therefore it is necessary to public notice the applications and the Chief Engineer's revised recommendations.

Application No. 7295-3 filed by William F. St. Clair, 37644 184th St, Tulare SD 57476 proposes to appropriate 1.78 cubic feet of water per second from one well to be completed into the Tulare: East James Aquifer (90 feet deep) located in the center of the NW 1/4 Section 30, for irrigation of 120 acres located in the NW 1/4 Section 30; all in T117N-R61W.

Application No. 7316-3 filed by Van Buskirk Farms LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348 proposes appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare: East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.

Application No. 7348-3 filed by Michael Sentell, 18690 398th Ave, Hitchcock SD 57348 proposes to appropriate 5.33

cubic feet of water per second from a gravel pit completed into the Tulare: East James Aquifer and located in the NE 1/4 SW 1/4 Section 14 for irrigation of 440 acres located in the NW 1/4 Section 13, NW 1/4, W 1/2 SE 1/4, SE 1/4 SW 1/4 Section 14; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7295-3, 7316-3 and 7348-3 because 1) the Water Rights Program reevaluated the current availability of water in the aquifer and determined that unappropriated water is available from the aquifer, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest to put water resources of the state to the fullest extent of which they are capable.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

The Water Management Board will consider these applications at 10:30 AM on October 3, 2012 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny any of these applications based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support any of the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. 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 addresses are given above. A petition filed by an interested person must be filed by September 24, 2012. The petition may be informal, but must include a statement describing the petitioner's interest in any of the applications, the pet-

itioner's reasons for opposing or supporting any of the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 3, 2012 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support any of the applications. The request for an automatic delay must be filed by September 24, 2012. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by September 24, 2012, at the above Chief Engineer's address to request copies of the staff report, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 24, 2012. However, since this particular matter are water permit applications and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision, and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as

applicable: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-14 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-10, 26-2A-14, 46-2A-15; 46-5-6.11, 46-5-10 thru 46-5-13, 46-5-30, 46-5-30.3, 46-5-32; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-26; and Board rules ARSD 74:02:01:01 thru 74:02:01:15.

The particular section of statutes and rules pertaining to these permit applications are, in addition to the above, the following: SDCL 46-2A-9, 46-6-3.1, 46-2A-15, 46-5-10 thru 46-5-13, 46-6-10, 46-6-26; the above listed administrative rules and the following rule pertaining to qualifications recommended by the Chief Engineer: ARSD Chapter 74:02:01:14.02. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

No. 379(adv.)
Published once at an approximate cost of \$97.48.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 6, 2012

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

VanBuskirk Farms LLP
c/o Matt VanBuskirk
Box 73
Hitchcock SD 57348

Michael Sentell
18690 398th Ave
Hitchcock SD 57348

Dear Sirs:

Water Permit Application Nos. 7295-3, 7316-3 and 7348-3 from the Tulare:East James Aquifer were previously deferred by the Water Management Board. Upon reevaluation, as stated in the notice, the Chief Engineer has revised his recommendations. Therefore, it is necessary to public notice the applications and Chief Engineer's revised recommendations.

A notice has been sent to the Redfield Press and the Huron Daily Plainsman. The three deferred applications are set to be published on September 12, 2012 scheduling an October 3, 2012 hearing before the Water Management Board. For your information, the notice of hearing, the recommendation of the Chief Engineer and report on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The Water Right Program will pay the cost of publication.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

October 4, 2012

PAYMENT REQUEST FORM

PAYEE: Redfield Press
PO Box 440
Redfield SD 57469

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

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Pub Notice on 7295-3 & 7316-3 & 7348-3 # 553

AMOUNT: \$70.00

FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION:

Leif Jackson 10/4/12

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.

October 4, 2012

PAYMENT REQUEST FORM

PAYEE: Plainsman
PO Box 1278
Huron SD 57350

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

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Pub Notice on 7295-3 & 7316-3 & 7348-3 # 379

AMOUNT: \$97.49

FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION:

Sail Jackson 10/4/12

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER
PERMIT APPLICATION NO. 7316-3, Van Buskirk Farms LLP**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7316-3, Van Buskirk Farms, LLP, Matt Van Buskirk, Box 73, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 7316-3 for 3.89 cfs because 1) the Water Rights Program evaluated the availability of water in the aquifer and determined that there is a reasonably probability that there is unappropriated water available from the Tulare:East James Aquifer, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest to put water resources of the state to the fullest extent of which they are capable with 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. ⁷³¹⁶⁻³~~7295-3~~ 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. The diversion rate authority for Water Permit No. 7316-3 is limited to 3.89 cfs which is the statutory limit for irrigation of 272 acres.
4. 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
September 6, 2012

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 7295-3, WILLIAM F. ST. CLAIR
NO. 7316-3, VAN BUSKIRK FARMS LLP
NO. 7348-3, MICHAEL SENTELL
NO. 7364-3, WIPF ACRES LP
NO. 7365-3, HURON COLONY
NO. 7366-3, HURON COLONY
NO. 7367-3, HURON COLONY
NO. 7368-3, HURON COLONY
NO. 7369-3, HURON COLONY
AND
NO. 7370-3, HURON COLONY
AUGUST 23, 2012

Water Permit Application No. 7295-3 proposes to appropriate water at a maximum diversion rate of 1.78 cubic feet of water per second (cfs) from one well approximately 90 feet deep, to be completed into the Tulare: East James aquifer. The well is to be located in the NW¼ of Section 30, T117N-R61W and the water is to be used to irrigate 120 acres located in the NW¼ of Section 30, T117N-R61W. This application was deferred by the Water Management Board on March 7, 2012 to allow time to determine the availability of water from the Tulare: East James aquifer.

Water Permit Application No. 7316-3 proposes to appropriate water at a maximum diversion rate of 4.5 cfs from two wells, approximately 80 feet deep, to be completed into the Tulare: East James aquifer. The wells are to be located in the W½ of Section 12, T114N-R62W and the water is to be used to irrigate 272 acres located in the W½ of Section 12, T114N-R62W. This application was deferred by the Water Management Board on May 2, 2012 to allow time to determine the availability of water from the Tulare: East James aquifer.

Water Permit Application No. 7348-3 proposes to appropriate water at a maximum diversion rate of 5.33 cfs from a gravel pit completed into the Tulare: East James aquifer located in the NE¼ SW¼ of Section 14, T114N-R62W. The water is to be used to irrigate 440 acres located in the NW¼ of Section 13, and the NW¼, W½ SE¼, SE¼SW¼ of Section 14; all of T114N-R62W. The Chief Engineer originally recommended deferral of this application to allow time to determine the availability of water from the Tulare: East James aquifer.

Water Permit Application No. 7364-3 proposes to appropriate water at a maximum diversion rate of 1.93 cfs from one well, approximately 100 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SE¼ of Section 7, T115N-R61W and the water is to be used to irrigate 135 acres located in the SE¼ of Section 7, T115N-R61W.

Water Permit Application No. 7365-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SW¼ of Section 20, T113N-R61W and the water is to be used to irrigate 132 acres located in the SW¼ of Section 20, T113N-R61W.

Water Permit Application No. 7366-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the NW¼ of Section 20, T113N-R61W and the water is to be used to irrigate 132 acres located in the NW¼ of Section 20, T113N-R61W.

Water Permit Application No. 7367-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the NE¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the NE¼ of Section 19, T113N-R61W.

Water Permit Application No. 7368-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the NW¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the NW¼ of Section 19, T113N-R61W.

Water Permit Application No. 7369-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SW¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the SW¼ of Section 19, T113N-R61W.

Water Permit Application No. 7370-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SE¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the SE¼ of Section 19, T113N-R61W.

AQUIFER: East James management unit of the Tulare aquifer (T:EJ)

GEOLOGY AND AQUIFER CHARACTERISTICS:

The Tulare East James aquifer is a system of interconnected sand and gravel layers that were deposited as outwash by meltwater from receding glaciers. The sands and gravels that make up the Tulare: East James aquifer were deposited on bedrock (Pierre Shale or Niobrara Formation), or on glacial till, and generally occur between 1,130 - 1,270 feet above mean sea level (msl). Wells completed into the aquifer are typically less than 130 feet deep (Water Rights 2012b; Water Rights 2012c). Although the saturated thickness of the Tulare: East James aquifer is estimated to be 37 feet in Spink County (Hamilton and Howells, 1996), the thickness of this outwash deposit is variable with a maximum exceeding 75 feet ("Lithologic Logs Database"; Water Rights, 2012b; Water Rights, 2012c). The aquifer underlies approximately 123,578 acres of Spink and Beadle Counties. Assuming an average thickness of 37 feet and a specific yield of 0.15, the aquifer contains approximately 685,857 acre-feet of recoverable water in storage. The Tulare: East James aquifer is buried over most of its area and is predominately under confined conditions. The water levels of wells completed into the Tulare: East James aquifer range from more than 50 feet below grade to above ground surface (i.e. free flowing wells). Based on the SD DENR-Water Rights Program observation well water level data (Water Rights, 2012a), groundwater movement in the aquifer is generally from east to west although there is northwest to southeast flow component in the northwest portion of the aquifer.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

WATER AVAILABILITY:

The probability of unappropriated water being available from the Tulare: East James aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably 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."

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37* (Memorandum Decision, April 29, 2005)).

The availability of unappropriated water from the Tulare: East James aquifer was evaluated based on observation well data and through consideration of a hydrologic budget for the aquifer.

OBSERVATION WELL DATA:

The analysis of observation well data provides a qualitative means of assessing the aquifer and provides the best information available to evaluate the Tulare: East James aquifer. In addition, Administrative Rule of South Dakota Section 74:02:05:07 requires that "the Water Management Board shall rely upon the record of observation well measurements to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer."

The DENR-Water Rights Program monitors 34 observation wells completed into the Tulare: East James aquifer (Water Rights, 2012a) (see figure 1). Hydrographs for four of these observation wells are shown in Figures 2-5. The hydrographs are representative for the Tulare: East James aquifer and show that the aquifer readily responds to climatic conditions, with rising water levels during wet years and declining water levels during dry years.

The analysis of the DENR-Water Rights Program observation well data provides the best information reasonably available to evaluate withdrawals from an aquifer as compared with recharge to the aquifer. Observation well data showing a steady, continual decline of the aquifer's water level or artesian pressure could indicate that withdrawals from an aquifer were exceeding recharge. In addition, water level fluctuations in an aquifer dominated by the influences of well withdrawals, or a change in the configuration of the potentiometric surface could indicate that well withdrawals are a significant component in the system relative to recharge and/or natural discharge. Examination of the observation well data to consider long term water level trends, any influences of well withdrawals and the configuration of the potentiometric surface of the aquifer are discussed below.

Observation well water level trends:

A rising water level in an aquifer indicates that recharge to the aquifer exceeds withdrawals from the aquifer and conversely a declining water level is indicative of withdrawals exceeding recharge. An equation for this relationship is:

$$\Delta S = R - D$$

Where: ΔS = change in the volume of water in storage in the aquifer

R= Recharge

D= Discharge

The observation well data for the Tulare: East James aquifer has documented upward trending water levels throughout the aquifer. The average slope of linear trend lines for observation well hydrographs over each well's period of record has been +0.000726 feet per day (+0.265 feet per year). The period of record extends back to 1967 for six observation wells and back to 1963 for two observation wells. With the exception of SP-82A and SP-82B which were installed in 1982, all of the observation wells have records from 1980 to present. The average slope of linear trend lines for observation well hydrographs for the 32 wells with records from 1980-2012 is +0.0008844 feet per day (+0.323 feet per year). The upward trending water levels indicate recharge to the Tulare: East James aquifer has likely been greater than the total of the discharges from the aquifer over the period of record.

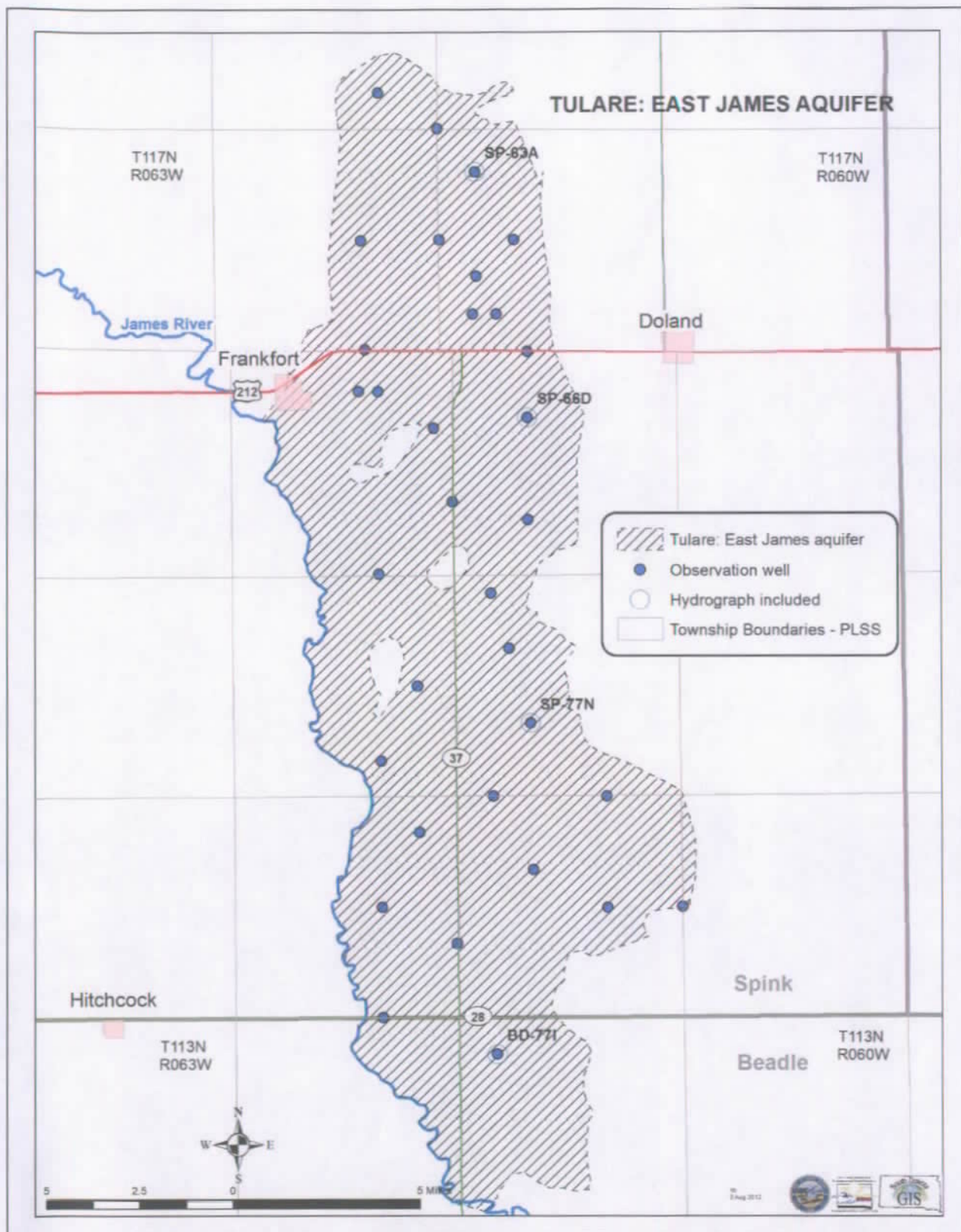


Figure 1. Location of the Tulare: East James aquifer

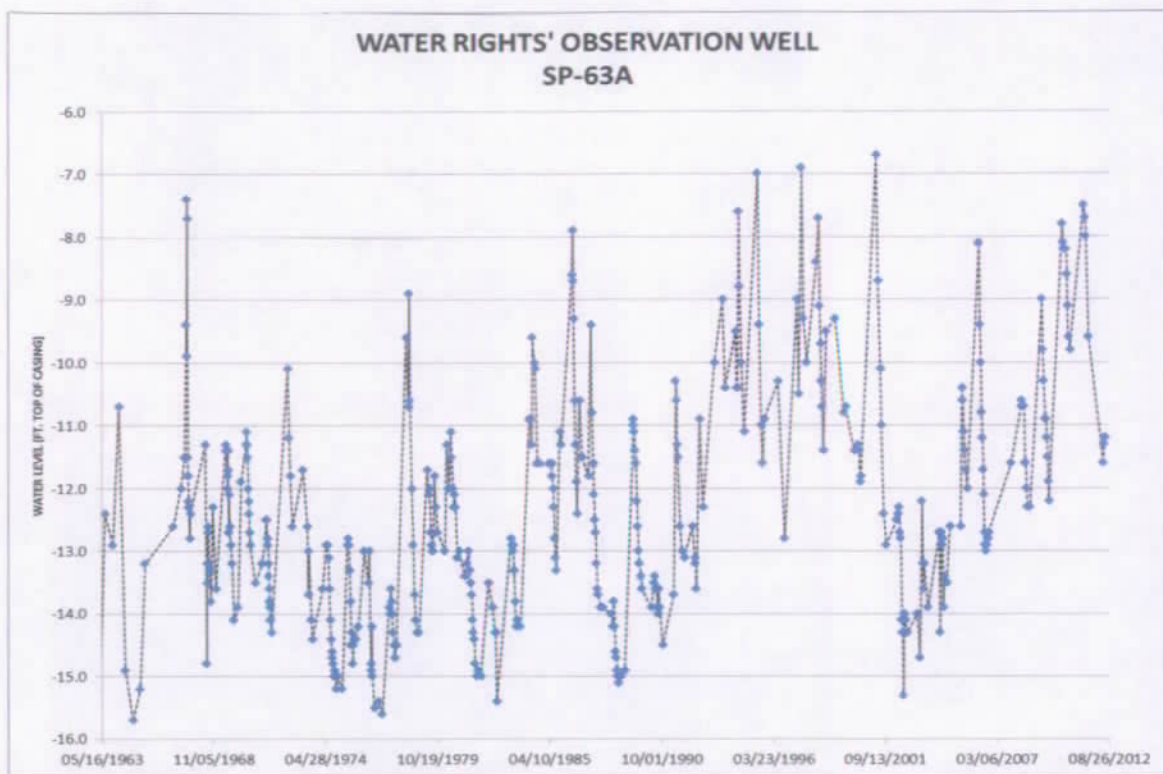


Figure 2. Hydrograph of DENR-Water Rights' observation well SP-63A. (see Figure 1 for location)



Figure 3. Hydrograph of DENR-Water Rights' observation well SP-66D (see Figure 1 for location)

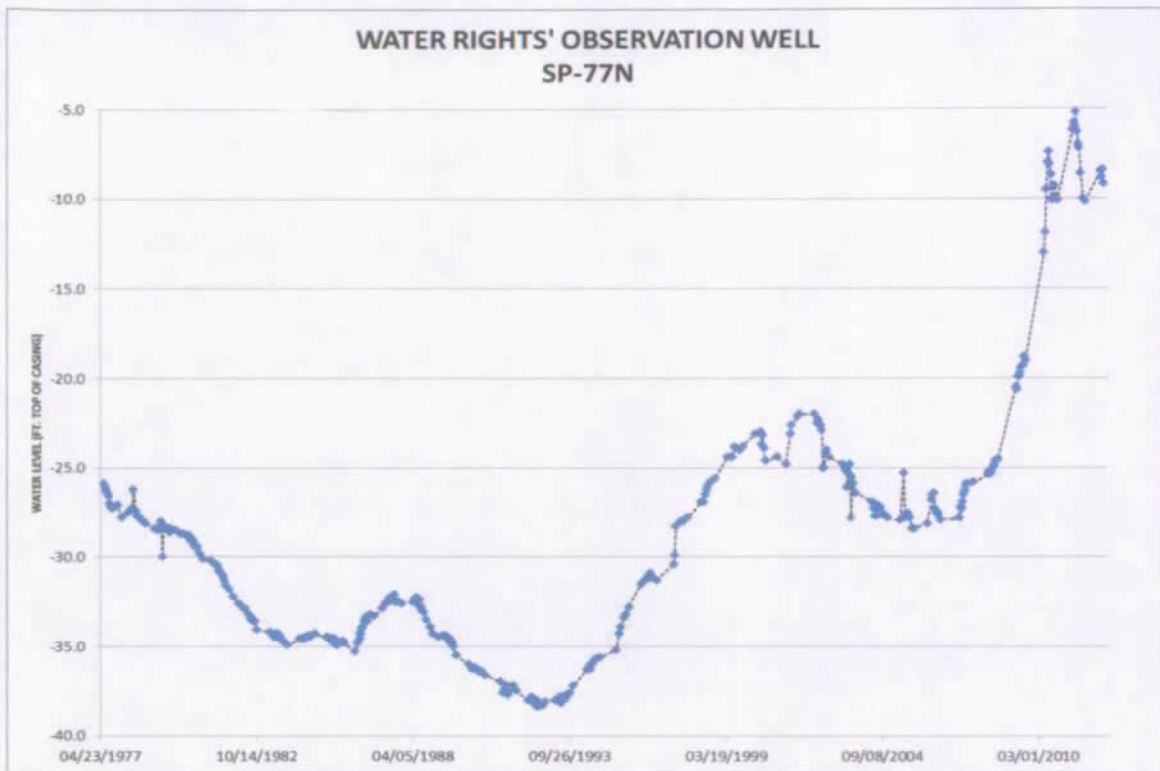


Figure 4. Hydrograph of DENR-Water Rights' observation well SP-77N (see Figure 1 for location)



Figure 5. Hydrograph of DENR-Water Rights' observation well BD-77I (see Figure 1 for location)

An analysis of observation well hydrographs was used to quantify the change in volume of water in storage in the aquifer. The analysis involved identifying observation wells completed into the unconfined portion of the Tulare: East James aquifer and determining the change of the water level in each well for every year. The amount of water represented by a change in water level was determined by multiplying the water level change by the aquifer's specific yield (0.15) (Kuiper, 1984). The average change in storage was applied over the portion of the aquifer that is under unconfined conditions to determine the volume in acre-feet per year of the change in storage.

This analysis is restricted to observation wells completed into an area where the aquifer is under unconfined conditions. The hydrograph shown in Figure 6, for an observation well that is completed in a portion of the Tulare: East James aquifer that was under unconfined conditions from 1977-2009 but became confined in 2009 when the water level was -22.1 feet from the top of the casing. The hydrograph shows fairly well the difference between changes in the amount of water in storage in the aquifer (pre-2009) and changes of the "pressure" of the aquifer (post-2009).

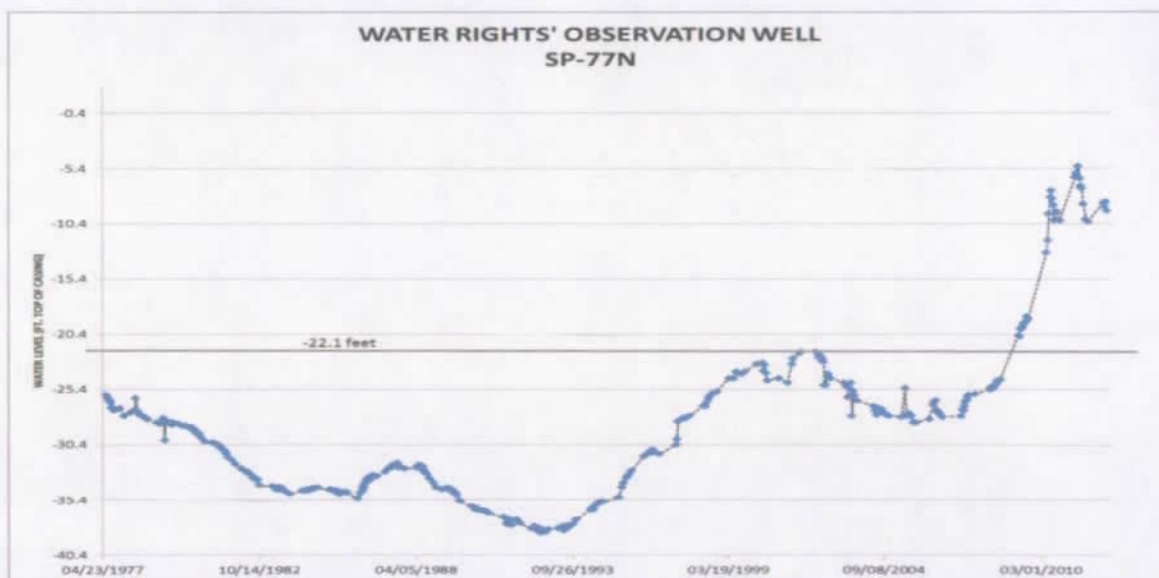


Figure 6. Hydrograph showing the difference between an unconfined aquifer and a confined aquifer.

Seven DENR-Water Rights' observation wells were used to analyze the Tulare: East James aquifer. These wells were chosen because they were in portions of the aquifer that remained unconfined for their entire period of record and the wells were determined to accurately reflect aquifer conditions. Although three of these observation wells have data older than 1980, the time period used for analysis was 1980-2011 to maximize the record-years of data. The results of the analysis are shown in Table 1.

WATER YEAR	ANNUAL WATER LEVEL CHANGE (ft) per OBSERVATION WELL							AVERAGE (ft/yr)
	SP-77J	SP-77P	SP-79G	SP-79H	SP-79K	SP-79O	SP-80K	
1980	-0.4	-0.3	-2.0	-0.8	-0.5	-0.1	-0.8	-0.7
1981	-0.9	-0.4	-1.3	-1.0	-0.3	-0.2	-0.9	-0.7
1982	-0.9	-0.4	0.7	-0.4	-0.3	0.3	-1.4	-0.3
1983	-0.5	0.0	0.6	-0.4	0.0	0.2	-0.9	-0.1
1984	0.6	0.6	1.4	0.7	0.7	0.8	-0.2	0.7
1985	0.7	0.1	0.0	0.3	0.0	-0.5	-0.2	0.1
1986	1.4	0.5	1.9	1.6	1.0	1.0	1.1	1.2
1987	0.5	0.2	-0.5	0.1	-0.4	-0.7	0.5	0.0
1988	-0.6	-0.1	-1.8	-0.6	-0.2	-0.2	-0.1	-0.5
1989	-1.0	-0.2	-0.4	-0.7	-0.2	0.0	-1.4	-0.6
1990	-0.9	-0.4	-0.4	-0.4	-0.4	-0.3	-1.2	-0.6
1991	-0.4	-0.2	0.5	-0.1	-0.1	0.1	-0.6	-0.1
1992	-0.5	-0.4	-0.1	-0.2	-0.1	-0.2	0.1	-0.2
1993	0.6	0.3	2.0	0.6	0.5	1.3	1.5	1.0
1994	0.4	0.4	1.2	1.3	0.4	-0.3	-0.3	0.4
1995	1.6	1.8	1.5	1.6	2.3	1.1	1.4	1.6
1996	1.0	1.0	-0.6	0.4	-0.4	-0.5	0.5	0.2
1997	1.9	1.5	2.8	2.2	2.0	1.1	2.2	2.0
1998	1.9	0.9	-0.4	0.9	0.1	-0.8	1.5	0.6
1999	1.9	0.5	0.0	0.9	0.2	-0.3	0.6	0.5
2000	-1.0	-1.2	-1.7	-0.1	-0.5	-2.2	-0.4	-1.0
2001	1.8	2.3	1.7	1.5	1.9	2.5	1.0	1.8
2002	-1.3	-0.1	-1.8	-0.8	-1.0	-1.1	-0.6	-1.0
2003	-0.9	-0.8	-1.9	-1.5	-0.8	-0.2	-0.4	-0.9
2004	-0.8	-0.8	0.1	-0.9	-0.6	-0.2	-0.3	-0.5
2005	-0.4	-0.5	-0.2	-0.9	-0.2	0.1	-0.5	-0.4
2006	-0.4	0.5	0.4	1.1	0.4	0.1	-0.2	0.3
2007	0.4	0.3	1.6	1.5	0.9	0.8	0.9	0.9
2008	0.2	0.2	0.3	0.6	-0.3	-0.3	0.5	0.2
2009	1.0	1.5	2.6	1.8	1.2	0.5	0.5	1.3
2010	2.6	3.8	2.6	5.0	4.4	1.5	2.0	3.1
2011	3.4	2.3	1.5	1.9	1.0	-0.1	1.4	1.6
<i>AVE</i>	<i>0.34</i>	<i>0.40</i>	<i>0.32</i>	<i>0.48</i>	<i>0.33</i>	<i>0.10</i>	<i>0.17</i>	<i>0.31</i>

Table 1. Water Level change per year per observation well

The average annual water level change for the seven observation wells for the period of 1980-2011 is +0.31 feet. Therefore, the water level for the unconfined portion of the aquifer increased an average of 0.31 feet per year from 1980-2011.

The areal extent of the Tulare: East James aquifer that has remained unconfined throughout the entire period of record was delineated by examining the logs of test holes ("Lithologic Logs Database"), domestic and irrigation wells (Water Rights, 2012b; Water Rights, 2012c) and observation wells (Water Rights, 2012a) as compared to a September 2011 potentiometric surface derived from DENR-Water Rights Observation Well Network. Approximately 22,477 acres were determined to be under unconfined conditions in September 2011.

Since 22,477 acres of the aquifer had an average annual water level rise of 0.31 feet, assuming a specific yield of 0.15, the annual change in volume of:

$$(22,477 \text{ acres} \times 0.31 \text{ feet} \times 0.15) = 1,045 \text{ acre feet}$$

Therefore the observation well data indicates that the annual recharge to the aquifer exceeded discharge from the aquifer by an average of 1,045 acre-feet per year for the period of 1980-2011.

Water level fluctuations due to well withdrawals:

Observation well data documents that the development that has occurred from the Tulare: East James aquifer has had an inconsequential effect on the aquifer over the long term. Figure 7 is a hydrograph for DENR-Water Rights Program observation well SP-66C. The water level record for this well extends back to June 9, 1967; a time span that includes most of the period of irrigation development from the aquifer. The observation well is located a short distance from several high capacity irrigation wells and the drawdown from the irrigation withdrawals is obvious. However, over the period of record of the hydrograph, the number of appropriations from the Tulare: East James aquifer increased from 25 to 113 and the number of acres authorized for irrigation increased from 4,210 to 15,571. The increased development is not apparent in the hydrograph.

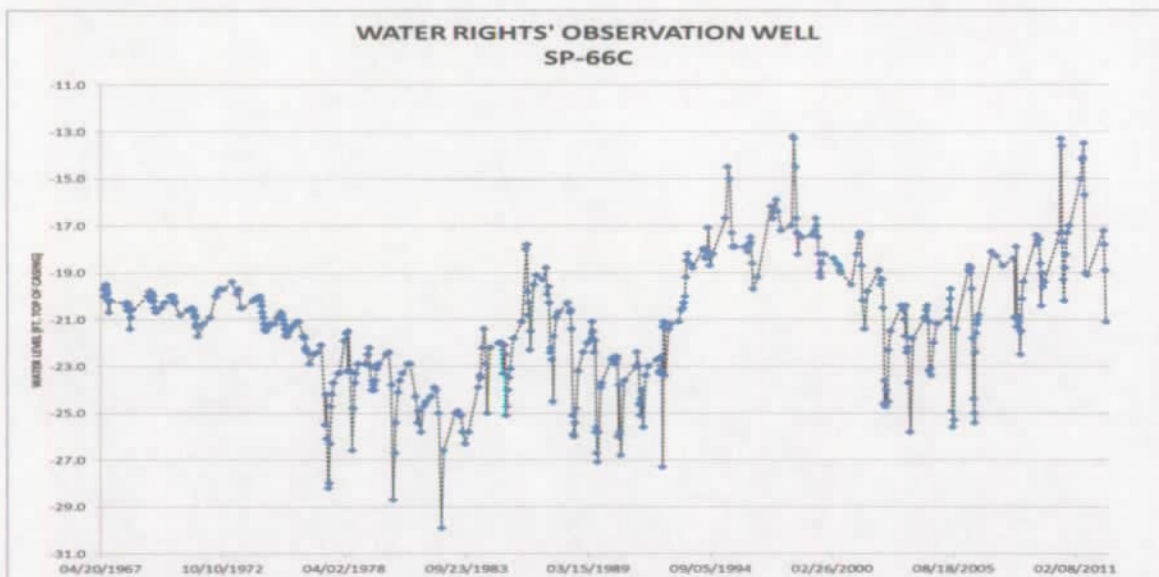


Figure 7. DENR-Water Rights' Observation well completed into the Tulare: East James aquifer, located near irrigation development

All of the observation well data shows that at the current level of development, climatic conditions greatly mask any temporal effects of well withdrawals. Therefore, the data shows that the combined recharge to and natural discharge from the Tulare: East James aquifer significantly exceeds long term well withdrawals.

Potentiometric Surface:

The potentiometric surface of the Tulare: East James aquifer was determined for two time periods based on the observation well measurements for September 1980 and for September 2011. A map showing the two potentiometric surfaces is shown in Figure 8.

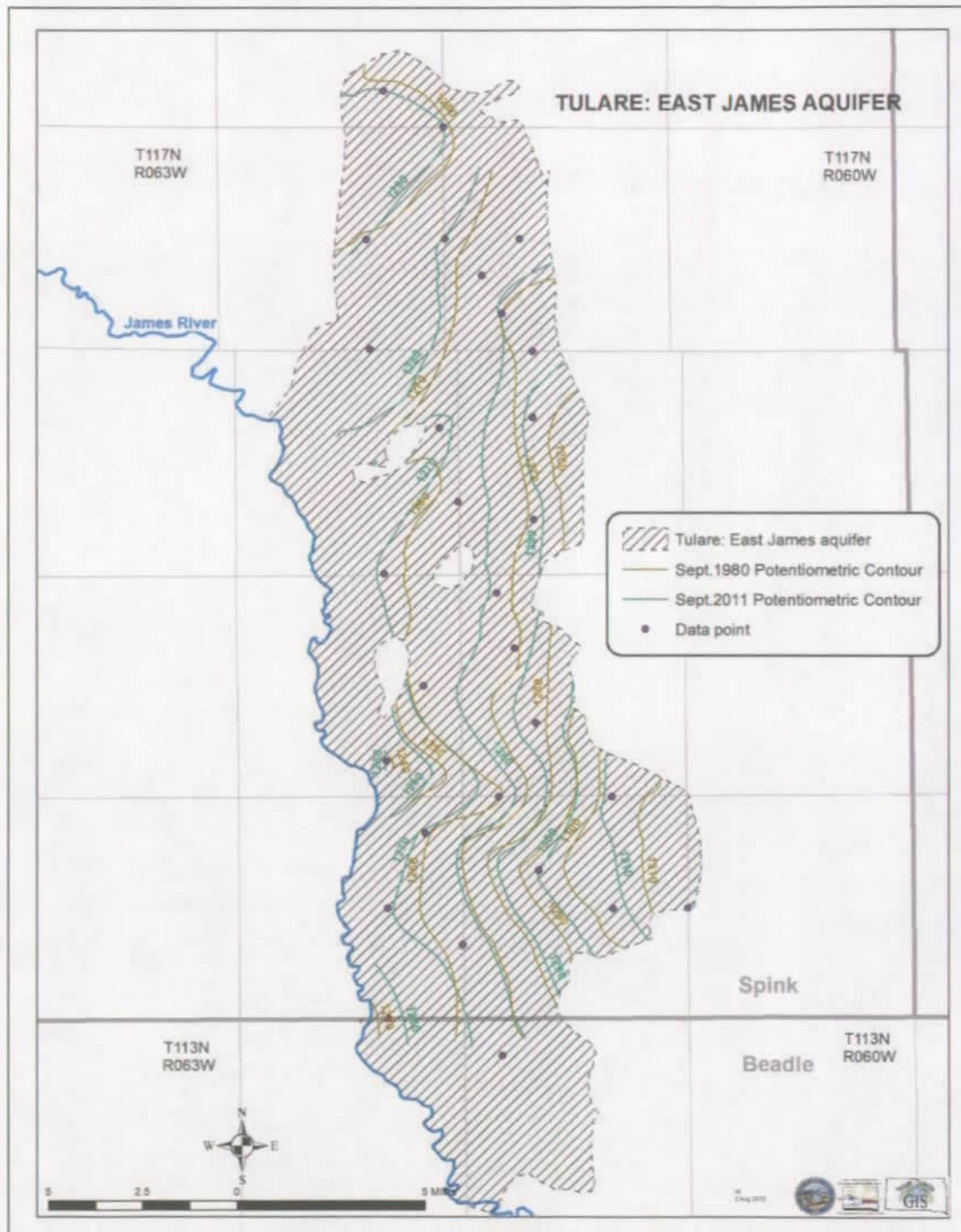


Figure 8. Comparison of the potentiometric surface of the Tulare: East James aquifer (September 1980 to September 2011)

Although the September 1980 water levels were generally lower than the September 2011 water levels, the configuration of the potentiometric surface has not changed significantly over time. It is clear that the amount of water in transient storage in the aquifer has not been significantly affected by increased appropriations and well withdrawals from the aquifer. The stress on the aquifer over time with increased appropriations is not evident in the records of water levels, therefore recharge to the aquifer and natural discharges from the aquifer significantly exceed well withdrawals.

HYDROLOGIC BUDGET:

SDCL 46-6-3.1 and the availability of unappropriated water from the Tulare: East James aquifer can be evaluated by considering a hydrologic budget for the aquifer which compares the recharge to and discharge from the aquifer.

Recharge:

Recharge to the Tulare: East James aquifer is primarily through infiltration of precipitation where the aquifer is at or near the surface. Timber Creek and some of its tributaries have incised into the Tulare: East James aquifer and streamflow provides recharge to the aquifer especially in the northern portion of the aquifer (Goodman, 1984). In addition, "...leakage through ruptured well casings or infiltration of uncontrolled discharge from flowing wells completed in bedrock may recharge aquifers in the glacial deposits" (Hamilton and Howells, 1996).

Recharge Estimates:

Previous Estimates:

Recharge to the Tulare: East James aquifer was estimated by Hedges and others (1985) using an observation well analysis to be 2.5 inches per year for the unconfined portion of the aquifer. Hedges and others (1985) used a regional flow-net analysis to estimate a recharge rate of 0.72 inches per year for the unconfined portion of the aquifer and 0.30 inches per year for the confined portion of the Tulare: East James aquifer. Average annual recharge to the Tulare: East James aquifer was also estimated by Kuiper (1984), using a digital groundwater model to be 0.38-1.52 inches per year with a "best fit" of 0.76 inches per year.

In the past the Water Management Board has accepted 0.76 inches per year as the best available recharge rate estimate, an areal extent equal to 125,600 acres and an average annual recharge volume of 7,950 acre-feet per year for the Tulare: East James aquifer (Water Management Board Findings dated 26 October, 2006 (Paragraph 8)). Assuming an areal extent of the aquifer 123,578 acres (see Figure 1), the average annual recharge to the Tulare: East James aquifer 7,827 acre-feet per year.

Regional Flow Net Analysis:

The recharge potential of the Tulare: East James aquifer was evaluated by interpreting a regional flow net analysis based on the September 2011 water level data from the DENR-Water Rights' Observation Well Network. A flow net analysis is a calculation of the amount of water flowing through the aquifer according to the equation:

$$Q = TIL$$

Where:

Q = flow in gallons per day

T= Transmissivity in gallons per day per foot
I= Hydraulic gradient in feet per mile
L= Cross sectional length in miles

The average hydraulic conductivity for the Tulare: East James aquifer was estimated based on the specific capacities of the 12 irrigation wells completed into the aquifer for which the data to allow these calculations was available (Water Rights, 2012b; Water Rights, 2012c). Transmissivity was calculated at each well using the wells' specific capacity ("Transmissivity from Specific Capacity"), and the transmissivity was divided by the aquifer thickness at the well. The average hydraulic conductivity was calculated to be 1,512.9 gallons per day per square foot (gpd/ft²). The average transmissivity of the Tulare: East James aquifer of a cross section through which all of the flow of the aquifer must flow was determined by multiplying the average thickness of the cross section (38.4 feet) times the average hydraulic conductivity for the aquifer (1,512.9 gallons per day per square foot) to be 58,095 gallons per day per foot.

The hydraulic gradient for the Tulare: East James aquifer was estimated to average 7.5 feet per mile based on data from the DENR-Water Rights' Observation Well Network.

The cross section length of the Tulare: East James aquifer was determined to be approximately 17 miles based on the current aquifer delineation.

The amount of water moving through the Tulare: East James aquifer is estimated as follows:

$$\begin{aligned} Q &= ((58,095 \text{ gpd/ft}) \times (7.5 \text{ ft/mile}) \times (17 \text{ miles})) / (325,851 \text{ gallons/ac-ft}) \\ &= 22.7 \text{ ac-ft/day} \\ &= \underline{8,285 \text{ ac-ft/yr}} \end{aligned}$$

In order to sustain this estimated volume of groundwater moving through the aquifer, the recharge rate in inches per acre per year based on an area of the aquifer of 123,578 acres would be 0.80 inches. This recharge rate cannot be considered "average annual recharge" since it used only 2011 data; however the estimate does show the reasonableness of the average annual recharge estimate from Kuiper (1984).

Discharge:

Discharge from the Tulare: East James aquifer is both natural (i.e. evapotranspiration and discharge to the James River) and through well withdrawals.

Well withdrawals:

Well withdrawals from the Tulare: East James aquifer occur through domestic use which does not requiring a water permit or right and uses from appropriative rights/permits.

Domestic water use:

There are 55 domestic water supply wells on file with the DENR-Water Rights (Water Rights, 2012c) that appear to be completed into the Tulare: East James aquifer. The volume of water used by these wells was estimated based on the average rural use for Mid Dakota RWS (i.e. 7,000 gallons per tap per month), (SD-Department of Environment and Natural Resources, 2012) to be approximately 14 acre-feet per year.

Appropriative water use

All of the water rights/permits appropriating water from the Tulare: East James aquifers are for irrigation use. The history of the development of irrigation in the Tulare: East James aquifer can be seen in Figures 9 and 10.

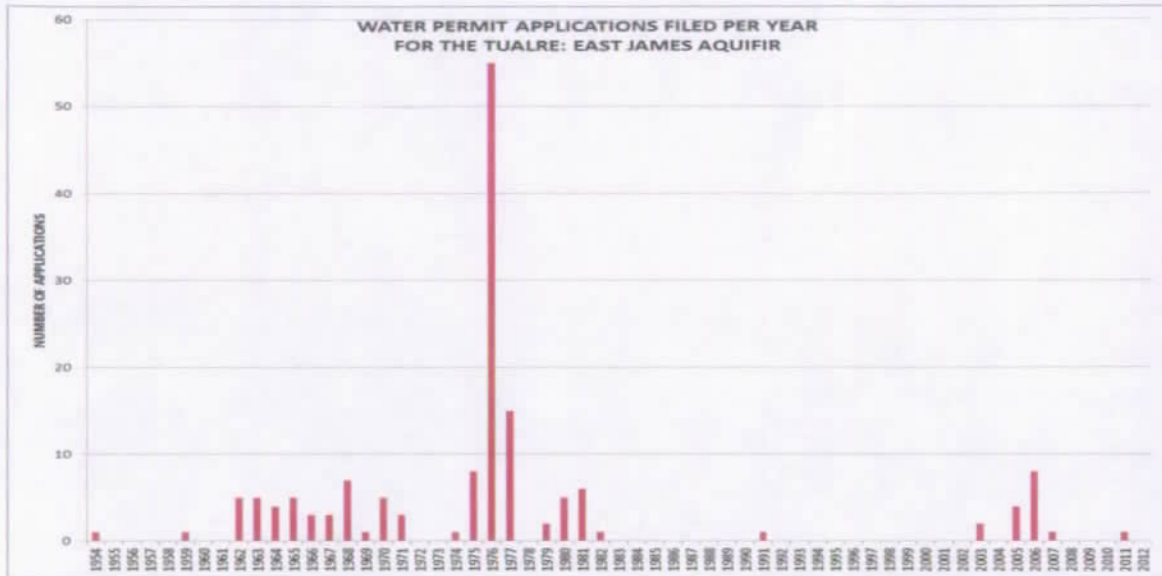


Figure 9. Water permit applications filed per year for the Tulare: East James aquifer

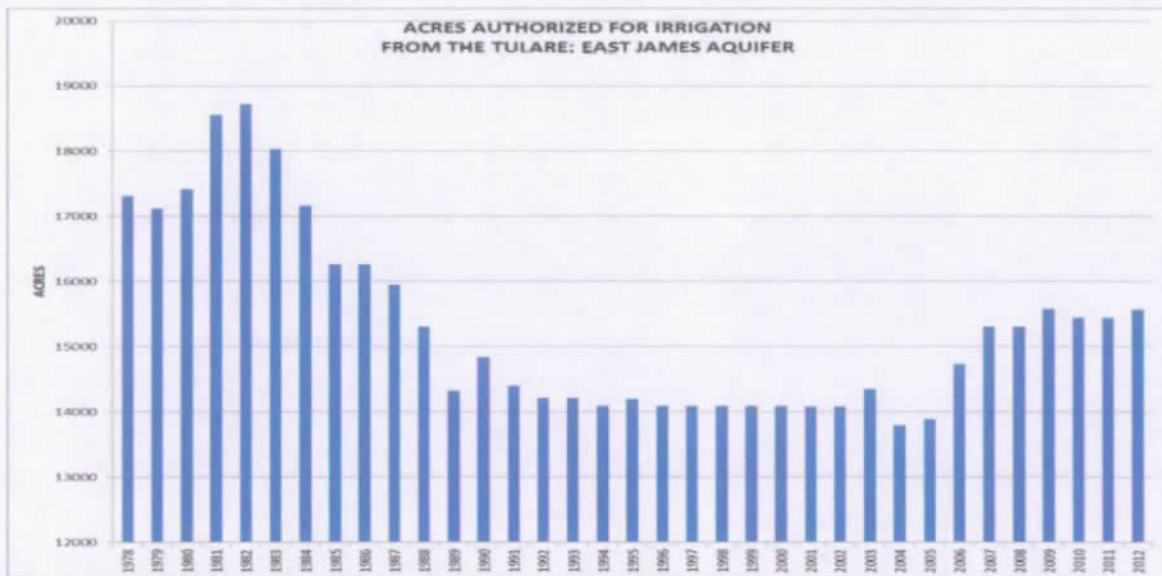


Figure 10. Acres authorized for Irrigation from the Tulare: East James aquifer

Examination of Figures 9 and 10 show that for practical purposes, irrigation development was essentially complete by 1979 or 1980. The number of appropriations and amount of water reported pumped from the aquifer (see Table 2) also suggest that the Tulare: East James aquifer should be considered fully developed as of about 1979 or 1980.

YEAR	NO. PERMITS	APPROPRIATION (acre-feet/year)	PUMPED (acre-feet/year)
1979	81	46,062.00	5,321.00
1980	82	46,326.00	7,348.00
1981	92	48,404.00	12,935.00
1982	80	44,931.30	6,873.68
1983	82	45,395.60	5,951.32
1984	81	42,131.20	4,236.80
1985	79	41,777.20	4,251.00
1986	80	41,741.20	4,940.00
1987	76	39,978.20	8,481.00
1988	75	41,043.20	11,106.20
1989	76	40,971.20	11,281.50
1990	75	40,716.20	6,928.00
1991	76	40,772.20	7,890.10
1992	76	40,220.20	3,224.40
1993	75	40,164.20	1,089.00
1994	76	40,510.35	3,897.29
1995	75	40,498.20	2,932.31
1996	75	40,498.20	7,389.13
1997	75	40,498.20	2,676.00
1998	75	40,498.20	3,475.85
1999	75	40,498.20	5,011.51
2000	75	40,498.20	7,690.37
2001	77	41,324.20	10,287.41
2002	78	42,020.20	13,668.09
2003	75	39,811.20	11,864.48
2004	77	39,288.20	7,372.58
2005	79	39,322.20	8,491.16
2006	84	40,986.20	11,746.21
2007	86	41,498.20	7,204.13
2008	85	40,974.20	3,900.71
2009	87	41,510.20	3,908.42
2010	88	41,246.20	2,414.41
2011	87	40,766.20	4,675.06
<i>MAX</i>	92	48,404.00	13,668.09
<i>MIN</i>	75	39,288.20	1,089.00
<i>AVE</i>	79.24	41,602.44	6,680.67

Table 2. Irrigation water use statistics for the Tulare: East James aquifer (Water Rights, 1980-2012)

The total well withdrawal from the aquifer including domestic use is expected to average less than 6,700 acre-feet/year. This total withdrawal from the Tulare: East James aquifer due to pumping is around 0.98% of the estimated recoverable water in storage in the aquifer (6,700 acre-feet pumped per year versus 685,857 acre-feet of recoverable water in storage).

A comparison of the estimated average well withdrawals from the Tulare: East James aquifer (6,700 acre-feet/year) with the estimated average annual recharge rate for the aquifer (7,827 acre-feet/year) shows that approximately 1,127 acre-feet of unappropriated water is available from the Tulare: East James aquifer.

In the past, the Water Management Board has considered the number of additional acres that can be permitted for irrigation given a volume of unappropriated water, as a function of the average irrigation application rate (i.e. inches of water applied per acre) for the aquifer.

The average annual application rate calculated from the total volume of water reported pumped and the total acres reported irrigated for the Tulare: East James aquifer for the period of 1979-2011 is 7.68 inches per year (see Table 3).

Year	Acres Permitted	Acres Irrigated	Irrigated/Permitted Percentage	Total Permits Reporting	Permits Pumping Water	Total Pumped (ac-ft)	Average Application Rate (in/ac/yr)
1979	17113.7	9231	53.94	84	56	5388.25	7.00
1980	17412.7	*	*	*	*	*	*
1981	18561.7	*	*	*	*	*	*
1982	18721.7	*	*	*	*	*	*
1983	18030.7	8441.5	46.82	87	55	6208.44	8.83
1984	17158.7	9032	52.64	87	58	4828.48	6.42
1985	16264.7	8863	54.49	83	56	4638.54	6.28
1986	16264.7	9123	56.09	80	63	5065.92	6.66
1987	15944.7	9385	58.86	77	62	8565.77	10.95
1988	15304.7	10023.5	65.49	76	68	11294.18	13.52
1989	14325	10317.8	72.03	76	59	11491.67	13.37
1990	14835	8969	60.46	75	50	6958.00	9.31
1991	14399	9612.6	66.76	77	60	7797.19	9.73
1992	14215	10717.8	75.40	77	64	3328.84	3.73
1993	14215	5614	39.49	77	34	1122.85	2.40
1994	14095	8113	57.56	67	49	3888.01	5.75
1995	14195	6118	43.10	67	31	2302.63	4.52
1996	14095	10059	71.37	67	59	7180.73	8.57
1997	14095	6885	48.85	67	40	2664.00	4.64
1998	14095	8321.8	59.04	67	51	3473.86	5.01
1999	14095	9610.8	68.19	67	58	4949.86	6.18
2000	14089	10274	72.92	68	62	7524.65	8.79
2001	14087	9984	70.87	69	61	9593.02	11.53
2002	14087	10760.8	76.39	71	62	12767.30	14.24
2003	14351	11684.8	81.42	75	66	11448.20	11.76
2004	13796	11999	86.97	75	71	7168.92	7.17
2005	13887	12083.4	87.01	82	67	8379.21	8.32
2006	14731	12718.8	86.34	86	72	11487.25	10.84
2007	15307	11518.4	75.25	83	66	7116.63	7.41
2008	15307	13533	88.41	84	73	3900.71	3.46
2009	15575	11547.3	74.14	87	63	3908.42	4.06
2010	15443	8161.2	52.85	88	46	2379.06	3.50
2011	15443	8789	56.91	87	49	4675.06	6.38
2012*	15571*						
MAX	18721.70	13533.00	88.41	88.00	73.00	12767.30	14.24
MIN	13796.00	5614.00	39.49	67.00	31.00	1122.85	2.40
AVE	15258.79	9716.38	65.34	77.10	57.70	6383.19	7.68

Table 3. Irrigation development from the Tulare: East James aquifer (*data not available), (modified from Mathiowetz, 2012a)

The analysis of observation well data indicates that the recharge to the Tulare: East James aquifer exceeded the withdrawals from the aquifer by an average of 1,045 acre feet per year from 1980-2011. A comparison of the estimated average annual recharge to the aquifer with the estimated average annual well withdrawals from the aquifer from 1979-2011 shows that 1,127 acre-feet of unappropriated water is available from the Tulare: East James aquifer. Assuming an average irrigation application rate of 7.68 inches per year, an average of 1,633 additional acres could have been irrigated based on the observation well analysis and an average of 1,761 additional acres could have been irrigated based on estimated average annual recharge.

EXISTING WATER RIGHTS:

There have been a total of 164 applications to appropriate water from the Tulare: East James aquifer. The status of the applications is shown in Table 4.

STATUS	NUMBER OF APPLICATIONS
LICENSED	69
PERMITTED	24
INCORPORATED	27
CANCELLED	29
DENIED	9
WITHDRAWN	6

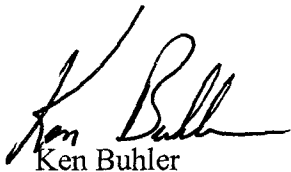
Table 4. Status of water permit applications from the Tulare: East James aquifer

Development from the Tulare: East James aquifer dates back to the mid 1950's and there are currently at least 137 irrigation wells producing from the aquifer. Well interference has never been an issue from the aquifer and it is likely that additional irrigation wells could be completed without unlawfully impairing existing water rights.

CONCLUSIONS:

1. The Tulare: East James aquifer is an extensive, primarily buried, generally confined glacial outwash aquifer.
2. The best information currently available indicates that the Tulare: East James aquifer underlies approximately 123,578 acres of Spink and Beadle Counties.
3. The best information currently available identifies an average annual recharge rate to the Tulare: East James aquifer as approximately 0.76 inches per year.
4. The volume of average annual recharge to the Tulare: East James aquifer based on an area of 123,578 acres and a recharge rate of 0.76 inches per year is approximately 7,827 acre-feet per year.
5. The average annual well withdrawal from the Tulare: East James aquifer is from 1979-2011 estimated to be 6,700 acre-feet per year.
6. The SD DENR-Water Rights Program observation well data documents that over the period of record the potentiometric surface of the Tulare: East James aquifer has averaged an upward trend.
7. The SD DENR-Water Rights Program observation well data documents that well withdrawals from the Tulare: East James aquifer have not had a long term effect on the amount of water in storage in the aquifer.
8. The SD DENR-Water Rights Program observation well data documents that the configuration of the potentiometric surface of the Tulare: East James aquifer has not changed significantly with time or increased development.

9. The SD DENR-Water Rights Program observation well data documents that recharge to the Tulare: East James aquifer has exceeded the discharge from the aquifer by an average of 1,045 acre-feet per year.
10. The average annual irrigation application rate for the Tulare: East James aquifer from 1979-2011 has been 7.68 inches per year.
11. Assuming an average application rate of 7.68 inches per year, an average of 1,761 additional acres could have been irrigated based on a comparison of average annual recharge and average annual well withdrawals
12. Assuming an average application rate of 7.68 inches per year, an average of 1,633 additional acres could have been irrigated based on the observation well analysis of the aquifer.
13. Well interference has never been a problem from the Tulare: East James aquifer and there is a reasonable probability that additional irrigation wells could be completed into the aquifer without adversely impacting existing users.
14. Water permit application Nos. 7295-3, 7316-3, 7348-3, 7364-3, 7365-3, 7366-3, 7367-3, 7368-3, 7369-3, 7370-3 propose to appropriate water to irrigate 1759 acres from the Tulare: East James aquifer.
15. There is a reasonable probability that unappropriated water is available from the Tulare: East James aquifer to supply water for these appropriations.



Ken Buhler

SD DENR-Water Rights Program

REFERENCES:

- Goodman, J.A., 1984, Report on Applications No. 5009-3 Duane Muxen, No. 3178A-3 M.J.T. Inc., and No. 2235A-3 Gary D. Wipf, DENR-Water Rights Program unpublished report in Water Permit Application File No. 5009-3
- Hamilton L.J., and Howells, L.W., 1996, Water Resources of Spink county, South Dakota, U.S. Geological Survey Water-Resources Investigations Report 96-4056, 68 p.
- Hines v. South Dakota Dept. of Environ. and Nat'l. Resources, Hughes County 04-37 (Memorandum Decision, April 29, 2005)
- Kuiper, L.K. 1984, Appraisal of the Water Resources of The Eastern Part of the Tulare Aquifer, Beadle, hand, and Spink Counties, South Dakota: U.S. Geological Survey Water-Resources Investigations Report 84-4078, 52 p.
- Mathiowetz, A.W. 2012. Unpublished data. Pierre, SD.: South Dakota Department of Environment and Natural Resources Water Rights Programs.

SD-Department of Environment and Natural Resources, 2012, 2011 Regional Water Rate Survey, SD-DENR, Joe Foss Bldg. Pierre, SD

“Transmissivity from Specific Capacity.” Aquifer Test Forum sponsored by HydroSOLVE, Inc.
1 August.2012< <http://www.aqtesolv.com/forum/transcap.asp>

Water Permit Application Nos. 6711-3, 6713-3, 6715-3 and 6728-3 (Water Management Board Findings of Fact, Conclusions of Law and Final Decision issued 26 October, 2006)

Water Rights, 1980-2012a, Irrigation Questionnaires 1980-2011, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 1980-2012b, “Annual Irrigation Summary by Aquifer”: SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights, 2012a, Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2012b, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2012c, Well Completion Report Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 3, 2012

NOTICE

TO: Matt Van Buskirk
Van Buskirk Farms, LLP
Box 73
Hitchcock SD 57348

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

SUBJECT: Deferral of Water Permit Application No. 7316-3, Van Buskirk Farms, LLP

Water Permit Application No. 7316-3 proposes to appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate center of the NW ¼ and SW ¼ of Section 12 for irrigation of 272 acres located in the W ½ Section 12; all in T114N-R62W.

On May 2, 2012, the Water Management Board deferred Application No. 7316-3 to allow time for DENR to determine the level of development of issued permits that have not been licensed. The application will be scheduled for Board hearing once a licensing investigation of permits has been conducted. Future notice of the time, date and location of the hearing and the Chief Engineer's revised recommendation will be provided to you.

Due to changes in the public notice statutes for water permits this past Legislative session, water permit applications that come before the Water Management Board after July 1st will be required to be public noticed again. When this occurs you will be provided notice and DENR will pay the cost of publication.

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

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 3, 2012, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 3, 2012, regarding deferral of Water Right Permit Application No. 7316-3, as addressed below:

Diane Best, Assistant Attorney General
317 N. Main
Sioux Falls SD 57104-6004

Matt Van Buskirk
Van Buskirk Farms, LLP
Box 73
Hitchcock SD 57348



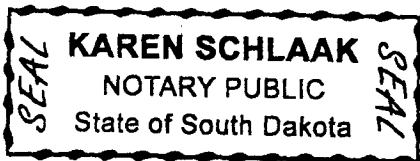
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of May, 2012.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 14, 2012

NOTICE

TO: Matt Van Buskirk
Van Buskirk Farms, LLP
Box 73
Hitchcock SD 57348

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

SUBJECT: Water Permit Application No. 7316-3, Van Buskirk Farms, LLP

Water Permit Application No. 7316-3 proposes to appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate center of the NW ¼ and SW ¼ of Section 12 for irrigation of 272 acres located in the W ½ Section 12; all in T114N-R62W.

On May 2, 2012, the Water Management Board deferred Application No. 7316-3 to allow time for DENR to determine the level of development of issued permits that have not been licensed. DENR previously indicated that the application would be scheduled for the July 11 – 12, 2012 meeting. However, there are now a total of seven additional applications filed seeking to appropriate water from the Tulare:East James Aquifer. These applications will require public notice which cannot be accomplished by the July meeting. DENR's position is that all the applications from this aquifer should be brought before the Board at the same time. That Board meeting will likely be October 3 – 4, 2012.

Due to changes in the public notice statutes this past Legislative session, water permit applications that come before the Water Management Board after July 1st will be required to be public noticed again. When this occurs you will be provided notice and DENR will pay the cost of publication. This notice will include the time, date and location of the hearing and the Chief Engineer's revised recommendation.

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

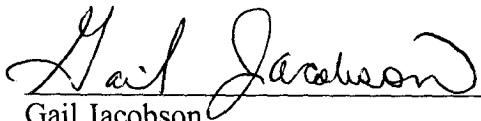
c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on June 14, 2012, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 14, 2012, regarding Water Right Permit Application No. 7316-3, as addressed below:

Diane Best, Assistant Attorney General
317 N. Main
Sioux Falls SD 57104-6004

Matt Van Buskirk
Van Buskirk Farms, LLP
Box 73
Hitchcock SD 57348



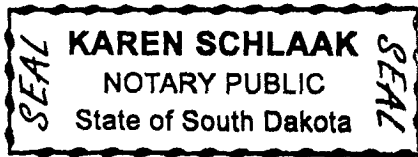
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of June, 2012.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 6, 2012

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

VanBuskirk Farms LLP
c/o Matt VanBuskirk
Box 73
Hitchcock SD 57348

Michael Sentell
18690 398th Ave
Hitchcock SD 57348

Dear Sirs:

Water Permit Application Nos. 7295-3, 7316-3 and 7348-3 from the Tulare:East James Aquifer were previously deferred by the Water Management Board. Upon reevaluation, as stated in the notice, the Chief Engineer has revised his recommendations. Therefore, it is necessary to public notice the applications and Chief Engineer's revised recommendations.

A notice has been sent to the Redfield Press and the Huron Daily Plainsman. The three deferred applications are set to be published on September 12, 2012 scheduling an October 3, 2012 hearing before the Water Management Board. For your information, the notice of hearing, the recommendation of the Chief Engineer and report on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The Water Right Program will pay the cost of publication.

Sincerely,


Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 6, 2012

Sent via email

Redfield Press
PO Box 440
Redfield SD 57469

The Plainsman
PO Box 1278
Huron SD 57350

ATTENTION: Legal Public Notice

Enclosed is a Notice on Hearing on Application Nos. 7295-3, 7316-3 and 7348-3 to Appropriate Water. Please publish the notice once on September 12, 2012. The text of the notice has been e-mailed to your paper.

Please send the Water Rights Program an affidavit immediately. Also, please bill the cost of the publication to the Water Rights Program.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTICE OF HEARING on Application Nos. 7295-3, 7316-3 and 7348-3 to Appropriate Water

Notice is given of three water permit applications to appropriate water from the Tulare:East James Aquifer in Spink County. The following applications were previously public noticed for deferral. Upon reevaluation of the current availability of water in the aquifer in light of historic record, recent irrigation reports and past and recent USGS reports, the Chief Engineer has revised his recommendation. Therefore it is necessary to public notice the applications and the Chief Engineer's revised recommendations.

Application No. 7295-3 filed by William F St. Clair, 37644 184th St, Tulare SD 57476 proposes to appropriate 1.78 cubic feet of water per second from one well to be completed into the Tulare:East James Aquifer (90 feet deep) located in the center of the NW 1/4 Section 30 for irrigation of 120 acres located in the NW 1/4 Section 30; all in T117N-R61W.

Application No. 7316-3 filed by Van Buskirk Farms LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348 proposes appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.

Application No. 7348-3 filed by Michael Sentell, 18690 398th Ave, Hitchcock SD 57348 proposes to appropriate 5.33 cubic feet of water per second from a gravel pit completed into the Tulare:East James Aquifer and located in the NE 1/4 SW 1/4 Section 14 for irrigation of 440 acres located in the NW 1/4 Section 13, NW 1/4, W 1/2 SE 1/4, SE 1/4 SW 1/4 Section 14; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7295-3, 7316-3 and 7348-3 because 1) the Water Rights Program reevaluated the current availability of water in the aquifer and determined that unappropriated water is available from the aquifer, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest to put water resources of the state to the fullest extent of which they are capable.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

The Water Management Board will consider these applications at 10:30 AM on October 3, 2012 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny any of these applications based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support any of the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. 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 addresses are given above. A petition filed by an interested person must be filed by September 24, 2012. The petition may be informal, but must include a statement describing the petitioner's interest in any of the applications, the petitioner's reasons for opposing or supporting any of the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the

hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The October 3, 2012 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support any of the applications. The request for an automatic delay must be filed by September 24, 2012. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Contact Eric Gronlund by September 24, 2012, at the above Chief Engineer's address to request copies of the staff report, recommendations, applications or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

7

Under SDCL 1-26-17~~(6)~~ notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is September 24, 2012. However, since this particular matter are water permit applications and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-14 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-10, 26-2A-14, 46-2A-15; 46-5-6.11, 46-5-10 thru 46-5-13, 46-5-30 thru 46-5-30.3, 46-5-32; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-26; and Board rules ARSD 74:02:01:01 thru 74:02:01:15.

The particular section of statutes and rules pertaining to these permit applications are, in addition to the above, the following: SDCL 46-2A-9, 46-6-3.1, 46-2A-15, 46-5-10 thru 46-5-13, 46-6-10, 46-6-26; the above listed administrative rules and the following rule pertaining to qualifications recommended by the Chief Engineer: ARSD Chapter 74:02:01:14.02. Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of _____.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 6, 2012

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

Floyd Peterson
209 27th Street NW
Huron SD 57350

Dear Lenny and Oscar:

As you are aware, DENR received a number of water permit applications seeking to appropriate water the Tulare:East James Aquifer in Spink and Beadle County for irrigation. The Chief Engineer has carefully reviewed the staff report on the applications and is recommending approval.

Please find enclosed the staff report, recommendations and public notice of hearing on these ten pending applications. The public notice is set to occur on September 12, 2012 scheduling a October 3, 2012 hearing before the Water Management Board. Petitions to intervene in the hearing process must be filed by September 24, 2012.

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

Enclosures

RECEIVED

SEP 21 2012

WATER RIGHTS
PROGRAM

September 20, 2012

Kevin Marton
South Dakota Department of Transportation
700 East Broadway
Pierre, South Dakota 57501

Garland Erbele
Chief Engineer
Water Rights Program, SD DENR
Foss Building
523 East Capital
Pierre, South Dakota 57501

**RE: Irrigation application for Tulare: East James Aquifer
Water Permit Application Nos. 7316-3, 7348-3, 7364-3, 7365-3, 7366-3,
7367-3, 7368-3, 7369-3, and 7370-3
Petition in Opposition**

Dear Mr. Marton and Mr. Erbele:

Oscar, Inc., as a land owner and operator, affected by the issuance of any additional irrigation appropriation in connection with the Tulare: East James Aquifer. This letter is intended as and constitutes a petition in opposition to said Water Permit Application No. 7316-3, Water Permit Application No. 7348-3, Water Permit Application No. 7364-3, Water Permit Application No. 7365-3, Water Permit Application No. 7366-3, Water Permit Application No. 7367-3, Water Permit Application No. 7368-3, Water Permit Application No. 7369-3, and Water Permit Application No. 7370-3, also referred to the irrigation permit,; and is further intended as and constitutes a petition in opposition to the Chief Engineer's recommendation to allow any additional appropriation without consideration of previously filed applications for water appropriation.

In addition the averaging that was done to arrive at available water did not properly consider the Boards previous findings. That if the method is now going to be

changed, previous applications should be afforded notice and opposition to apply and not lose priority in filing.

That proposed development cannot be done without potentially impairing existing rights.

Please confirm receipt of this petition opposing said application and petition opposing the Chief Engineer's recommendation; and please inform me of the date, time, and location of the public hearing on said application; as well as any other information that needs to be submitted to your office(s) prior to the public hearing.

Thank you.

Sincerely,
Oscar Inc. by Lloyd Peterson
OSCAR INC.

September 20, 2012

RECEIVED
SEP 21 2012
WATER RIGHTS
PROGRAM

Kevin Marton
South Dakota Department of Transportation
700 East Broadway
Pierre, South Dakota 57501

Garland Erbele
Chief Engineer
Water Rights Program, SD DENR
Foss Building
523 East Capital
Pierre, South Dakota 57501

**RE: Irrigation application for Tulare: East James Aquifer
Water Permit Application Nos. 7316-3, 7348-3, 7364-3, 7365-3, 7366-3,
7367-3, 7368-3, 7369-3, and 7370-3
Petition in Opposition**

Dear Mr. Marton and Mr. Erbele:

I, Lenny Peterson, as a land owner and operator, affected by the issuance of any additional irrigation appropriation in connection with the Tulare: East James Aquifer. This letter is intended as and constitutes a petition in opposition to said Water Permit Application No. 7316-3, Water Permit Application No. 7348-3, Water Permit Application No. 7364-3, Water Permit Application No. 7365-3, Water Permit Application No. 7366-3, Water Permit Application No. 7367-3, Water Permit Application No. 7368-3, Water Permit Application No. 7369-3, and Water Permit Application No. 7370-3, also referred to the irrigation permit,; and is further intended as and constitutes a petition in opposition to the Chief Engineer's recommendation to allow any additional appropriation without consideration of previously filed applications for water appropriation.

In addition the averaging that was done to arrive at available water did not properly consider the Boards previous findings. That if the method is now going to be

changed, previous applications should be afforded notice and opposition to apply and not lose priority in filing.

Please confirm receipt of this petition opposing said application and petition opposing the Chief Engineer's recommendation; and please inform me of the date, time, and location of the public hearing on said application; as well as any other information that needs to be submitted to your office(s) prior to the public hearing.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lenny Peterson".

Lenny Peterson

RECEIVED

SEP 24 2012

WATER RIGHTS
PROGRAM

Sept 20 2012

Eric Gronlund

Dear Eric

You have an application coming up on SE $\frac{1}{4}$ - 7 - 115-61 our well in SW $\frac{1}{4}$ 17 is on west side of the Quarter when we started that back in the 1960's the only place that we found any water was on the west side along the Road after 3 other test holes in the Quarter we thought it was very good but after we started using it we ended up with the pump at the very bottom 139 ft and we can still pull it way down there after long pumping periods - the wells on SE $\frac{1}{4}$ 17 + NE $\frac{1}{4}$ 20 - all 115 61 don't seem to make any difference if they are running or not. at times we have to leave that well on SW $\frac{1}{4}$ 17 115-61 Rest Then we can go again.

For some reason it doesn't follow the state well on the road east of Sec 7 115-61 - we just don't want to lose the flow of water we do have - we've been making it work fine the way it is.

Thank you
Allen Wipf

WILKINSON & WILKINSON
ATTORNEYS AT LAW
103 JOLIET AVE., S.E. P.O. BOX 29
DE SMET, SOUTH DAKOTA 57231

TELEPHONE: 605 / 854-3378
TELEFAX: 605 / 854-9006

HARRY J. EGGEN (1922-1969)
ELLSWORTH F. WILKINSON (1955-2005)

TODD D. WILKINSON
MARCENE J. SMITH
GARY W. SCHUMACHER*

September 21, 2012

RECEIVED
SEP 24 2012
WATER RIGHTS
PROGRAM
* ALSO LICENSED IN MINNESOTA

Garland Erbele
Chief Engineer
Water Rights Program, SD DENR
Foss Building
523 East Capital
Pierre, South Dakota 57501

**RE: Irrigation application for Tulare: East James Aquifer
Water Permit Application Nos. 7316-3, 7348-3, 7364-3, 7365-3, 7366-3,
7367-3, 7368-3, 7369-3, and 7370-3
Petition in Opposition**

Dear Mr. Erbele:

Our office represents Lenny Peterson and Oscar Inc., who are a land owners and operators, affected by the issuance of any additional irrigation appropriation in connection with the Tulare: East James Aquifer. This letter is intended as and constitutes a petition in opposition to said Water Permit Application No. 7316-3, Water Permit Application No. 7348-3, Water Permit Application No. 7364-3, Water Permit Application No. 7365-3, Water Permit Application No. 7366-3, Water Permit Application No. 7367-3, Water Permit Application No. 7368-3, Water Permit Application No. 7369-3, and Water Permit Application No. 7370-3, also referred to the irrigation permit,; and is further intended as and constitutes a petition in opposition to the Chief Engineer's recommendation to allow any additional appropriation without consideration of previously filed applications for water appropriation.

In addition the averaging that was done to arrive at available water did not properly consider the Boards previous findings. That if the method is now going to be

changed, previous applications should be afforded notice and opposition to apply and not lose priority in filing.

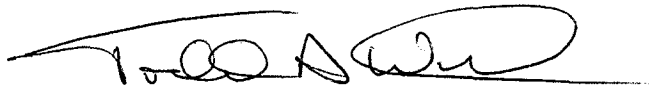
Please confirm receipt of this petition opposing said application and petition opposing the Chief Engineer's recommendation; and please inform our office of the date, time, and location of the public hearing on said application; as well as any other information that needs to be submitted to your office(s) prior to the public hearing.

We would request a twenty (20) day extension for the hearing. If possible, when rescheduling the hearing could you contact our office to coordinate schedules, that would be great appreciated.

Thank you.

Sincerely,

WILKINSON & WILKINSON

A handwritten signature in black ink, appearing to read 'Todd D. Wilkinson', with a long horizontal line extending to the right.

Todd D. Wilkinson

TDW: mo

Enclosures

cc: Lenny Peterson
Oscar Inc
William St. Clair
Van Buskirk Farms, LLP c/o Matt Van Buskirk
Michael Sentell
Wipf Acres, LP c/o Gary Wipf
Huron Hutterian Brethren c/o Joey Waldner



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 24, 2012

NOTICE

TO:

William St. Clair
37644 184th Street
Tulare SD 57476

Van Buskirk Farms LLP
c/o Matt Van Buskirk
Box 73
Hitchcock SD 57348

Michael Sentell
18690 398th Avenue
Hitchcock SD 57348

Wipf Acres LP
c/o Gary Wipf
17801 401st Avenue
Frankfort SD 57440

Huron Hutterian Brethren
c/o Joey Waldner
40068 Huron Colony Lane
Huron SD 57350

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

Oscar Inc
c/o Floyd Peterson
209 27th Street NW
Huron SD 57350

Todd D. Wilkinson
Wilkinson & Wilkinson
P.O. Box 29
DeSmet SD 57231

Allen Wipf
40476 184th Street
Doland SD 57436

FROM:

for 
Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing for Water Permit Application Nos. 7295-3, 7316-3, 7348-3, 7364-3 and 7365-3 through 7370-3

Petitions have been submitted opposing Water Permit Application Nos. 7295-3 (St. Clair), 7316-3 (Van Buskirk), 7348-3 (Sentell), 7364-3 (Wipf) and 7365-3 through 7370-3 (Huron Hutterian Brethren). In addition, a petition was submitted specific to Application No. 7364-3. These petitions were in response to the notice of hearing published September 12, 2012 in the Plainsman printed in Huron and/or the Redfield Press. All the petitions are enclosed. The petition filed by counsel for Peterson's also requests an automatic delay of the October 3, 2012 hearing on these water permit applications. Therefore, the hearings on all ten applications are automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 3, 2012.

DENR anticipates consolidating the applications for the purpose of conducting the hearing since all ten applications propose to appropriate water from the Tulare:East James Aquifer .

The hearing will be scheduled for the December 5 and 6, 2012, Water Management Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing will be provided to parties of record.

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

enclosures

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 24, 2012, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 24, 2012, regarding automatic delay of hearing on Water Right Permit Application Nos. 7295-3, 7316-3, 7348-3, 7364-3 and 7365-3 through 7370-3 with enclosures, as addressed below:

William St. Clair
37644 184th Street
Tulare SD 57476

Van Buskirk Farms LLP
c/o Matt Van Buskirk
Box 73
Hitchcock SD 57348

Michael Sentell
18690 398th Avenue
Hitchcock SD 57348

Wipf Acres LP
c/o Gary Wipf
17801 401st Avenue
Frankfort SD 57440

Huron Hutterian Brethren
c/o Joey Waldner
40068 Huron Colony Lane
Huron SD 57350

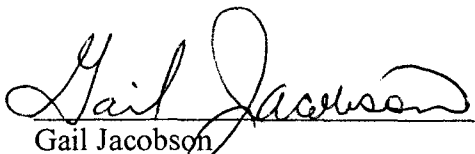
Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

Oscar Inc
c/o Floyd Peterson
209 27th Street NW
Huron SD 57350

Todd D. Wilkinson
Wilkinson & Wilkinson
P.O. Box 29
DeSmet SD 57231

Allen Wipf
40476 184th Street
Doland SD 57436

Diane Best, Assistant Attorney General
317 N Main
Sioux Falls SD 57104

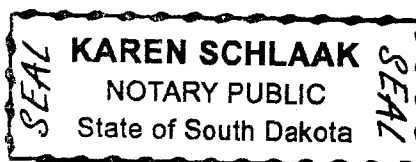

Gail Jacobson

Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of September, 2012.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

November 9, 2012

denr.sd.gov

NOTICE

TO: Van Buskirk Farms LLP
c/o Matt Van Buskirk
Box 73
Hitchcock SD 57348

Huron Hutterian Brethren
c/o Joey Waldner
40068 Huron Colony Lane
Huron SD 57350

Michael Sentell
18690 398th Avenue
Hitchcock SD 57348

Wipf Acres LP
c/o Gary Wipf
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Hitchcock SD 57348

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c/o Floyd Peterson
209 27th Street NW
Huron SD 57350

Todd D. Wilkinson
Wilkinson & Wilkinson
P.O. Box 29
DeSmet SD 57231

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing for Water Permit Application Nos. 7316-3,
7348-3, 7364-3 and 7365-3 through 7370-3

The Water Rights Program received petitions filed opposing the Chief Engineer's recommendation and requesting an automatic delay in the matter of the Water Permit Application Nos. 7316-3 (Van Buskirk), 7348-3 (Sentell), 7364-3 (Wipf) and 7365-3 through 7370-3 (Huron Hutterian Brethren). The petitions were in response to the notice of hearing published September 12, 2012 in the Plainsman printed in Huron and/or the Redfield Press. The hearing scheduled for October 3, 2012 was postponed and is now to be scheduled for the Water Management Board's December 6, 2012 meeting.

The Water Management Board will consider the Water Permit Application Nos. 7316-3 (Van Buskirk), 7348-3 (Sentell), 7364-3 (Wipf) and 7365-3 through 7370-3 (Huron Hutterian Brethren) at 1:00 PM, December 6, 2012 meeting in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

Water Permit Application No. 7295-3 filed by William St. Clair seeking to appropriate water from the Tulare:East James Aquifer is also scheduled to be heard at this same time. Application No. 7295-3 is not contested.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommending APPROVAL of Application Nos. 7316-3 (Van Buskirk), 7348-3 (Sentell), 7364-3 (Wipf) and 7365-3 through 7370-3 (Huron Hutterian Brethren) because 1) the Water Rights Program evaluated the availability of water in the aquifer and determined that there is a reasonable probability that there is unappropriated water available from the Tulare:East James Aquifer, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve, 2) deny, 3) defer or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

This hearing is an adversarial proceeding. Parties 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.

Enclosed is a copy of DENR's staff report, the Chief Engineer's recommendations, affidavit of publications, petitions and the September 24, 2012 notice of autodelay. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:24.01.

Questions regarding the hearing process may be directed to Eric Gronlund at (605) 773-3352 or Diane Best, Assistant Attorney General at (605) 367-5880 ext 105. In addition, please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing.

enclosures

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on November 9, 2012, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 9, 2012, regarding automatic delay of hearing on Water Right Permit Application Nos. 7316-3, 7348-3, 7364-3 and 7365-3 through 7370-3 with enclosures, as addressed below:

Diane Best, Assistant Attorney General
300 N Dakota Avenue, Suite 403
Sioux Falls SD 57104

Van Buskirk Farms LLP
c/o Matt Van Buskirk
Box 73
Hitchcock SD 57348

Michael Sentell
18690 398th Avenue
Hitchcock SD 57348

Wipf Acres LP
c/o Gary Wipf
17801 401st Avenue
Frankfort SD 57440

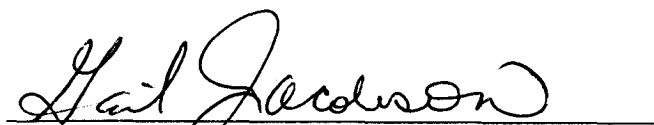
Huron Hutterian Brethren
c/o Joey Waldner
40068 Huron Colony Lane
Huron SD 57350

Lenny Peterson
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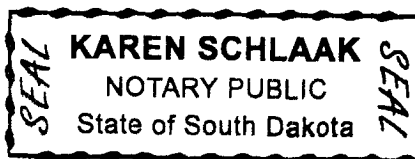


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of November, 2012.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013





JAN 2 5 2013

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Van Buskirk Farms LLP
Matt Van Buskirk
PO Box 73
Hitchcock SD 57348

Dear Mr. Van Buskirk:

Enclosed is Water Permit No. 7316-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

The water permit will be subject to cancellation if necessary works are not constructed within the five year period listed under Item No. 5 of the permit (December 6, 2017). In addition, water rights law provides that if one fifth (1/5) of the works authorized by this permit are not completed within 2 1/2 years of approval of the permit, the Water Management Board may accept and approve an application for the use of any water included in this water permit and the right to use the water under this permit be subject to cancellation for forfeiture. Since the Tulare:East James Aquifer is deemed fully appropriated by DENR, one fifth of construction will need to be completed by June 6, 2015 or the permit maybe subject to cancellation for forfeiture before the Board.

A 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 information 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

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 7316-3

I have this day, November 3, 2015, made a thorough examination of the water use system constructed by Van Buskirk Farms LLP c/o Matt Van Buskirk at PO Box 73, Hitchcock SD 57348 holder of Permit No. 7316-3, bearing the priority of January 30, 2012 authorizing the diversion of 3.89 cubic feet per second (cfs) of the waters of the Tulare: East James for irrigation purposes, in Spink County.

Inspection contact & relationship **Matt Van Buskirk**
to permit holder, if applicable:

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Stretch's Well Service
- 2) No. of Wells 2
- 3) Depth(s) 80 feet
- 4) Well log is available Yes

Casing:

- 1) Diameter 16 inches
- 2) Length 40 (north) & 60 (south) feet
- 3) Type SDR 26 (plastic)

Screen:

- 1) Type stainless steel
- 2) Length 40 (north) & 20 (south) feet
- 3) Static water level 23 (north) & 23 (south) feet

Pump:

- 1) Make submersible
- 2) Capacity 800 GPM

Well completion report indicated that installed pumps were both 800 GPM

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

Comments: **Wells located close to pivot center**

C. Works used to apply water to beneficial use:

Center pivot:

- 1) Make Valley (identical pivots)
- 2) Overall length 1,290 feet

3) Number of towers 7

4) End gun Yes

5) Capacity 800 GPM*

*As indicated by Matt Van Buskirk

Chemigation Equipment:

1) Does chemigate Yes (both pivots)

2) Main line check valve Yes

3) Inspection port/air relief Yes

4) Low pressure drain Yes

5) Discharge is 20' from source not present at time of inspection

6) Interlock type electrical or mechanical

7) Injection pump type not present at time of inspection

8) Injection check valve Y/N

9) Injection line check valve or positive displacement pump Y/N

Comments: xx

D. Compliance with Permit Requirements:

1) Permit qualifications being abided by Yes

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 points of diversion located as follows: north: approximate center of the NW ¼ Sec. 12-114N-R62W (longitude: -98.23583 & latitude: 44.70105) and 1,381 feet south and 1,337 feet east of the NW corner Sec. 12 and south: approximate center of the SW ¼ Sec. 12-114N-R62W (longitude: -98.23585 & latitude: 44.69400) and 1,273 feet north and 1,325 feet east of the SW corner of Sec. 12

2. The works are capable of diverting and conveying to the place of use 3.56 cfs of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

legal description/acreage

SW ¼ Sec. 12-T114N-R62W 136 acres

legal description/acreage

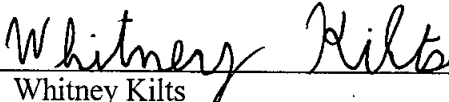
NW ¼ Sec. 12-T114N-R62W 136 acres

comprising a total of 272 acres of land and the license should be issued for 3.56 cfs.

3. All structures, wells and lands on map Yes

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

none



Whitney Kilts

Natural Resources Engineer

DENR, Water Rights Program

Date report completed: 09/02/2016

**NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE**

MAIL TO: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182
ph. (605) 773-3352

Date 11/3/2015

FROM: Van Buskirk Farms c/o Matt Van Buskirk
(name)
Box 73
(address)
Hitchcock SD 57348 605 350-5671
(city) (state) (zip) (phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 7316-3 states that the water use system is to be constructed by
12/6/2017, and water is to be put to beneficial use by 12/6/2021
(date) (date)

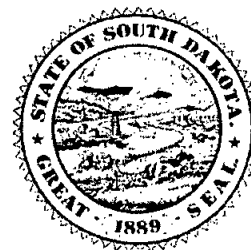
The water use system was completed on 2013
(date)

Applying the water to beneficial use was completed on 2013
(date)

You may schedule an investigation so that the water license may be issued.

Matt Van Buskirk

Done with completion





Completed by: *Whitney Kilts*
Whitney Kilts, Natural Resources Engineer
SD DENR, Water Rights Program

Diversion point(s) located using Garmin eTrex 10 GPS

Date: September 2, 2016

Water Right No. 7316-3



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

OCT 11 2016

7264-3
7316-3

Van Buskirk Farms LLC
c/o Matt Van Buskirk
PO Box 73
Hitchcock SD 57348

Dear Mr. Van Buskirk:

Enclosed are Water License Nos. 7264-3 and 7316-3. These are the final water right documents completing your process of obtaining a Water Right. Also, included with each license is a map prepared by the staff engineer who conducted the investigation.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the wells authorized by Water Right No. 7264-3 and 7316-3, 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 Licenses, 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. 7316-3

(1) Van Buskirk Farms LLC, c/o Matt Van Buskirk, PO Box 73, Hitchcock SD 57348 made Application No. 7316-3, January 30, 2012 for a water permit to divert 3.89 cubic feet of water per second from two wells - Tulare:East James Aquifer, Spink County, South Dakota for irrigation purposes. Permit No. 7316-3, with a priority date of January 30, 2012 was approved December 6, 2012 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before December 6, 2017 and for the application to beneficial use of water on or before December 6, 2021.

The permit holder submitted a *Notice of Completion of Works and Application of Water to Beneficial Use* on November 3, 2015. The *Notice* stated the diversion system was completed and the water placed to beneficial use in 2013.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 7316-3 is issued a license, bearing a priority date of January 30, 2012 to appropriate 3.56 cubic feet of water per second from two wells - Tulare:East James Aquifer to irrigate 272 acres.

The north well is located in the approximate center of the NW 1/4 Section 12-T114N-R62W (1,381 feet S and 1,337 feet E of the NW corner).

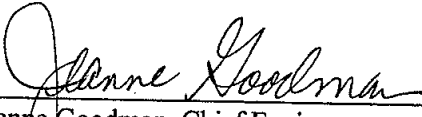
The south well is located in the approximate center of the SW 1/4 Section 12-T114N-R62W (1,273 feet N and 1,325 feet E of the SW corner).

The acres authorized for irrigation are as follows:

Section 12-T114N-R62W	SW 1/4	136 acres
	NW 1/4	136 acres
	Total	272 acres

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 7316-3 including the following qualifications:

- 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.
- The wells authorized by Permit No. 7316-3 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. *The wells were drilled by Stretch's Well Service in June, 2013. Copies of the logs are on file with the Water Rights Program.*
- The diversion rate authority for Water Permit No. 7316-3 is limited to 3.89 cfs which is the statutory limit for irrigation of 272 acres. *Based on actual usage, the maximum diversion rate is reduced to 3.56 cfs.*
- 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





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

No. 7316-3

December 21, 2022

Matt Van Buskirk
PO Box 98
Hitchcock SD 57348

Dear Matt:

I am writing regarding the water use reporting for the 2022 irrigation season under Water Right No. 7316-3. This water right authorizes irrigation of 272 acres in the W 1/2 Section 12-T114N-R62W from the Tulare:East James aquifer. The water right authorized up to 2 acre feet of water to be applied to each acre of land. In other words, 24 inches of water can be applied on the 272 acres which equates to a maximum of 544 acre feet of water.

Your 2022 irrigation questionnaire water use reported under No. 7316-3 indicates 742.4 acre feet of water was applied. This equates to the application of 32.7 inches over the entire 272 acres.

Genny McMath with the Water Rights Program contacted you regarding whether the reported amount applied was accurate and you confirmed that it was correct.

In the future you must limit the amount of water diverted in a manner that does not exceed the statutory limit for application of water. Being the water source is the Tulare:East Jame aquifer which is fully appropriated, we are not able to approve a new water permit for a greater amount. The amount of water applied must not continue to exceed the authorized amount.

Please contact me if you have questions.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program, DANR
605 773-3352

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Matt Van Buskirk, Van Buskirk Farms, PO Box 98, Hitchcock SD 57348

DATE: December 20, 2022

TELEPHONE: 605 350-5671

RE: irrigation questionnaire

COMMENTS:

When entering in the 2022 irrigation questionnaire, I noted that Mr. Van Buskirk reported irrigating over the statutory limit for acres irrigated.

His report indicated the following:

June: 800 gpm for 1,440 hours	(should be 1,600 gpm for 720 hours)
July: 800 gpm for 1,440 hours	(should be 1,600 gpm for 720 hours)
August: 800 gpm for 1,440 hours	(should be 1,600 gpm for 720 hours)
Sept.: 800 gpm for 720 hours	(should be 1,600 gpm for 360 hours)

The inspection report indicates he has two wells and two pivots and pumps at 1600 gpm. When entering in the information, I doubled the pump gpm to 1600 and decreased the hours to half of what he reported for the 4 months.

When calculated out, it shows he pumped 742.4 acre feet of water on 272 acres.

I called and spoke with Matt about the numbers. He confirmed he pumped what the questionnaire shows but acknowledged the pump rate should be doubled and the hours cut in half as I explained it to him. I talked to him about the excessive amount of water applied and explained he was authorized 2 acre feet per acre which equates to 544 acre feet annually for the 272 acres. He said he understood.



Genny McMath
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 19, 2024

NOTICE

TO: VAN BUSKIRK FARMS LLP, MATT VAN BUSKIRK, PO BOX 98, HITCHCOCK, SD 57348
0098

FROM: Ron Duvall, Engineer III
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2023 Irrigation Questionnaires

Our records indicate your 2023 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 20, 2023. The Water Management Board has directed owners of water permits who have not submitted the 2023 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 1723-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1504B-3, 3390-3A, 3191-3, 5601-3, 7264-3, 7315A-3, 7316-3 & 8261-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 6, 2024 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1504B-3, 3390-3A, 3191-3, 5601-3, 7264-3, 7315A-3, 7316-3 & 8261-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 1723-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaires are received in this office before the **March 6, 2024** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Amanda Dewell at (605) 773-3352 or email at amanda.dewell@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: LZTUNL**

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 2, 2024

1504B-3, 3390-3A, 3191-3
5601-3, 7264-3, 7315A-3
1723-3, 7316-3 & 8261-3

Van Buskirk Farms LLC
c/o Matt Van Buskirk, Mgr
PO Box 98
Hitchcock SD 57348

Dear Mr. Van Buskirk:

I am writing to acknowledge the receipt of your 2023 irrigation questionnaire(s).

You may disregard the January 19, 2024, "Notice" concerning the reporting requirements for Water Permit No(s). 1504B-3, 1723-3, 3390-3A, 5601-3, 7264-3, 7315A-3, 7316-3 & 8261-3. The information was received prior to the March 6, 2024, Water Management Board meeting and these permit numbers have been removed from the agenda.

If you have any questions, please contact me.

Sincerely,

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

NOTE: The irrigation questionnaire for Scott Mueller's Permit No. 3191-3 has not been received. Permit No. 3191-3 is still scheduled to be reviewed by the Water Management Board on Wednesday, March 6, 2024. If the irrigation questionnaire is returned prior to the March 6th meeting, it will be removed from the agenda.

cc: STEVEN NICOLAI, 4535 MORMAN COULEE RD, LACROSS WI
SCOTT A MUELLER, 19221 397TH AVE, HITCHCOCK SD 57348



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

January 14, 2025

NOTICE

TO: VAN BUSKIRK FARMS LLP, MATT VAN BUSKIRK, PO BOX 98, HITCHCOCK SD 57348

FROM: Ron Duvall, Engineer III
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2024 Irrigation Questionnaire(s)

Our records indicate your 2024 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 7316-3. The request for the Questionnaire was dated October 23, 2024. The Water Management Board has directed owners of water permits who have not submitted the 2024 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 7316-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held on **Wednesday, March 5, 2025, at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 7316-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is (are) received in this office before the **March 5, 2025**, hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Amanda Dewell at (605) 773-3352 or email at amanda.dewell@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: CFLRWV**

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



also add to: 8261-3, 7315A-3, 7264-3
7316-3, 8108-3, 8109-3, 8110-3
8748-3, 8752-3, 8751-3, 8750-3

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

8749-3
5601-3

January 21, 2025

7316-3

Van Buskirk Farms LLP
18892 390th Ave
Hitchcock SD 57348

Dear Mr. Van Buskirk:

Enclosed is a "Notice" dated January 14, 2025, concerning the 2024 Irrigation Questionnaire.

The notice was originally mailed to Van Buskirk Farms LLP, PO Box 98, Hitchcock SD 57348. The post office notified our office that your address has changed, and your records have been updated accordingly.

This is a time sensitive matter. Please complete and return the enclosed questionnaire or submit your report online at <https://danr.sd.gov/iq/> using this password **CFLRWV**.

If this change of address is in-correct, please contact our office immediately to update your contact information.

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

55E NFE 114192410001/15/25
RETURN TO SENDER
VANBUSKIRK
18892 390TH AVE
HITCHCOCK SD 57348-7707

RETURN TO SENDER



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 30, 2025

7316-3

Van Buskirk Farms LLP
c/o Matt Van Buskirk
18892 390th Ave
Hitchcock SD 57348

Dear Mr. Van Buskirk:

I am writing to acknowledge the receipt of your 2024 irrigation questionnaire(s).

You may disregard the January 14, 2025, "Notice" concerning the reporting requirements for Water Permit No(s). 7316-3. The information was received prior to the March 5, 2025, Water Management Board meeting and the above listed permit number(s) have been removed from the agenda.

If you have any questions or concerns, please contact me.

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us