

WATER PERMIT NO. 8123-3

Name of Applicant: Huron Hutterian Brethren

Address: 40068 Huron Colony Lane, Huron SD 57350

Phone: 605 350-6875

Amount of Water Claimed: no add'l

Total Acres: 50 acres

Source of Water Supply: James River

Water to be used for: irrigation

County: Beadle

Type of Waste Disposal System:

Location: 14 miles north of Huron

PRIORITY

Date Received: 2-17-15

Application/License Fee: \$ 300

Corrected Application Received:

Period of Annual Use: April 1 – October 31

Remarks: 26 acres to accommodate cornering system and 24 acres in a garden area utilizing diversion rate authorized by 7395-3

Diversion Point: NE 1/4 NW 1/4 Sec 24-T113N-

R62W existing under No. 7395-3

Land to be Irrigated: NW 1/4 Sec 19 and E 1/2 NE 1/4 Sec 30; all in T113N-R61W

Depth of Well:

Well Driller:

Remarks:

Type of Map: aerial

Prepared by: Eric Gronlund

Reviewed and the Number Assigned on: 2-24-15

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>8123-3</u> (office use only) Hydrologic Unit <u>10160006</u>
	Basin <u>James River</u>
	Newspaper <u>The Plainsman, Huron</u>

RECEIVED
FEB 17 2015
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.)

Apply for 26 additional acres to accommodate a cornering system in the NW 1/4 Section 19, T113N, R61W
and 24 additional acres in the garden area in the E 1/2 NE 1/4 Section 30, T113N, R61W

1. Name to Appear on Irrigation Permit Huron Hutterian Brethren

(check one) ☒ Owner ☐ Tenant/lessee ☐ Owner's Legal Agent

(name and complete address if different than above name)

Mailing Address 40068 Huron Colony Lane Huron SD 57350
(Address) (City) (State) (Zip Code)

Home Phone 352-5647 Cell 350-6875 Email huronfarms@yahoo.com

2. Amount of water claimed no addl *CFS or **GPM ***AF Total Acreage 50
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply James River

4. Location of point of diversion NE 1/4 NW 1/4 Section 24, T113N, R62W existing under WR No. 7395-3
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

County Beadle

5. County or counties where water will be used Beadle

6. Annual period during which water is to be used April 1 - October 31

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
NW 1/4 NW 1/4 Section 19, T113N, R61W	6.5	NE 1/4 NE 1/4 Section 30, T113N, R61W	17
NE 1/4 NW1/4 Section 19, T113N, R61W	6.5	SE 1/4 NE 1/4 Section 30, T113N, R61W	7
SW 1/4 NW 1/4 Section 19, T113N, R61W	6.5		
SE 1/4 NW 1/4 Section 19, T113N, R61W	6.5		

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

Currently holds Water Right No. 7395-3 which includes irrigation of the NW 1/4 Section 19, T113N, R61W from the James River. Huron Colony wants to install a cornering system to irrigate a total of 158 acres. The intent is also to irrigate the garden are in the E 1/2 NE 1/4 Section 30. This land is also authorized by Water Permit Nos. 7368-3 and 6431A-3 from the Tulare:East James aquifer and applications pending to transfer acres to accommodate the cornering system increase in garden area from the groundwater source.

I, Mark Holman, the applicant, certify that I have read this application, have examined the attached map, and that the matters stated are true.

SOUTH DAKOTA
WATER PERMIT NO. 8123-3 FOR IRRIGATION

Date of first receipt of application February 17, 2015.

Date deferred by Water Management Board May 7, 2015.

The Water Management Board approved Water Permit No. 8123-3 on July 6, 2016 for Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350 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. 8123-3 authorizes irrigation of 50 new acres from the James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second from the James River located in the NE 1/4 NW 1/4 Section 24-T113N-R62W to irrigate 1,034 acres. Twenty six of the new acres will be located in the NW 1/4 Section 19 and 24 new acres will be located in the E 1/2 NE 1/4 Section 30; all in T113N-R61W. The permit holder proposes to replace the irrigation system to accommodate a cornering system and will increase irrigation of the garden area. This permit will utilize the existing diversion rate authority authorized under Water Right No. 7395-3.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – October 31.
3. The date from which applicant may claim right is February 17, 2015.
4. One-fifth of the construction is to be completed on or before January 6, 2019.
5. All construction is to be completed on or before July 6, 2021.
6. Water is to be put to beneficial use on or before July 6, 2025.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - a) This permit does not authorize diversion of water from the James River after August 10th of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
 - b) This permit does not authorize diversions from James River when there is less than 20 cfs bypassing the USGS gaging station at Huron SD after pumping.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Jeanne Goodman
Jeanne Goodman, Chief Engineer

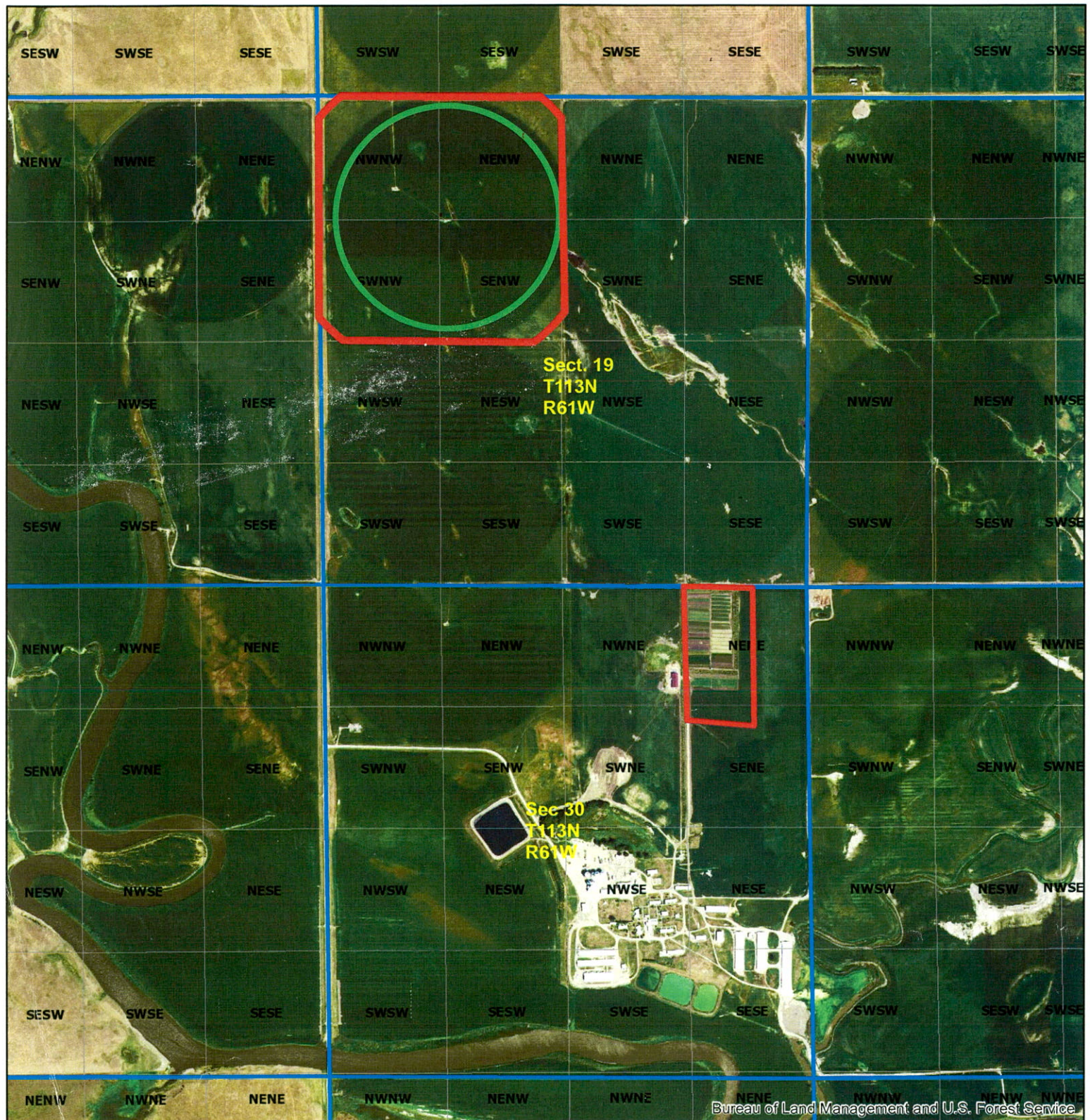
Water Rights Program

Department of Environment and Natural Resources

JUL 22 2016
date



Water Permit Application from Huron Hutterian Brethren
(new acres without an increase in diversion rate authority)



Existing irrigation authorized by Water Right No. 7395-3 from James River.
132 acres are also authorized from Tulare:East James
aquifer with an application pending to transfer acres to account for
intended cornering system and increased garden area.



Proposed new acreage from James River.



Prepared by:

Eric Gronlund based on
representation by Joey
Waldner

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

RECEIVED OF Huron Httm Brethren, 40065 Huron Colony Lane, Huron SD 57350 Date 2-23, 2015

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

Fee for Application for Permit No. <u>8123-3</u> to Appropriate Water, to construct and to put water to beneficial use	500 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>8123-3</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	700.00

No. 07292

By Jeanne Goodman
Chief Engineer (KS)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8123-3, Huron Hutterian Brethren**

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. 8123-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. 8123-3 for further study to evaluate the diversion rate status of water rights on the James River and evaluate if it is in the public interest to approve additional acres to be granted under the water right holders existing diversion rate authority when the James River has reached the Water Management Board's established diversion rate limit.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment and there are currently two prior filed applications that are deferred. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; 3) other review that may result in water becoming available for this appropriation; and 4) whether it is in the public interest.

See report on application for additional information.

Jeanne Goodman, Chief Engineer.
April 8, 2015

REPORT ON WATER PERMIT APPLICATION NO. 8123-3
Huron Hutterian Brethren, % Marvin Waldner
March 11, 2015

The Huron Hutterian Brethren, % Marvin Waldner, has filed Water Right Application No. 8123-3 to irrigate 50 new acres from the James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River to irrigate 1,034 acres. This application, if approved, does not increase the developed diversion rate.

Review Proposed Project

Water Permit Application No. 8123-3 is located 15 miles north of Huron in Beadle County, SD.

This application proposes to irrigate 50 new acres of which 26 new acres will be located in the NW¼ Section 19 and 24 new acres will be located in the E½ NE¼ Section 30; all in T113N-R61W. Authorized irrigation from the James River under Water Right No. 7395-3 includes 132 acres in the NW¼ Section 19.

The applicant proposes replacement of the irrigation system located in the NW¼ Section 19 to accommodate a cornering system and increase the size and irrigation of a garden located in the E½ NE¼ Section 30. These systems will utilize the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE¼ NW¼ Section 24-T113N-R62W. The requested annual period of use is from April 1 to October 1.

Irrigation of 132 acres in the NW¼ Section 19 and 10 acres in the N½ NE¼ Section 30 is also authorized by Water Permit No. 7368-3 and 6431A-3 from the Tulare: East James Aquifer. There are pending applications to transfer acres to accommodate the cornering system and increase the garden area irrigation from the groundwater source.

Review of Water Source

The water source for the proposed project is the James River in Beadle County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences extremely low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission, a predecessor to the SD Water Management Board, placed a 300-cfs diversion limit on the James River in South Dakota with a maximum combined diversion limit of 200 cfs from North Dakota border to Huron, SD. Due to the Missouri River backwater into the James River, the 300-cfs restriction has been applied from the North Dakota border to the Yankton-Hutchinson County Line.

Review of Existing Water Rights

Presently there are 101 Water Rights with diversions from the James River totaling 300.07 cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 67 Water Rights with diversions from the James River totaling 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota boarder to the Yankton-Hutchinson County line.

This application does not increase the developed diversion rate but does increase the number of acres being irrigated. Currently irrigation of 1,225.78 acres of land utilize the same diversion point authorized by Water Right No. 7395-3 at a diversion rate of 7.13 cfs. The proposed project, if approved, would add another 50 acres to be irrigated from the diversion point with no increase in diversion rate. Though this does not increase the total diversion rate from the James River it does have the potential to increase the volume of water diverted.

Conclusions

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8123-3 be deferred pending further study.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck
Natural Resources Engineer III
DENR, Water Rights Program

PRINTER'S AFFIDAVIT

RECEIVED

APR 29 2015

STATE OF SOUTH DAKOTA, WATER RIGHTS
COUNTY OF BEADLE: ss PROGRAM

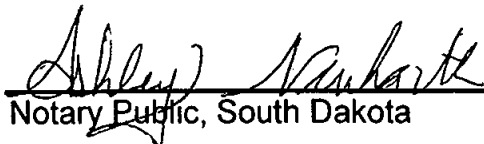
I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks 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:

**HURON COLONY – WATER RIGHTS
PERMIT 7906-3**

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 16TH day APR 2015. That the full amount of the fee charged for publishing is: **ONE HUNDRED TWELVE & 11/100** 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.



Subscribed and sworn to me before this 30TH Day of APR 2015.



Notary Public, South Dakota

My term expires:

Legal #1786

10/25/2017

F.P. 04-16-15

**NOTICE OF HEARING
on Applications Nos.
7906A-3 and 8123-3 to
Appropriate Water**

Notice is given that Huron Hutterian Brethren, c/o Marvin Waldner, 40068 Huron Colony Lane, Huron SD 57350 has filed the following applications for a water permit.

Application No. 7906A-3 proposes to amend Water Permit No. 7906-3

by transferring a portion of the irrigated acreage to other land. Water Permit No. 7906-3 authorizes irrigation of 191.78 acres located in the SE 1/4 Section 24 and NE 1/4 Section 25; all in T113N-R62W using the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE 1/4 NW 1/4 Section 24-T113N-R62W to irrigate 1,034 acres. This application proposes to transfer 83.6 acres located in the NE 1/4 Section 25-T113N-R62W authorized by Water Permit No. 7906-3 to the SW 1/4 Section 18-T113N-R61W (26 acres) and N 1/2 Section 24-T113N-R62W (57.6 acres). The applicant proposes to replace the irrigation system, and the transfer of acres will accommodate the cornering systems. This system will utilize the existing diversion rate authority authorized under Water Right No. 7395-3.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7906A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Application No. 8123-3 proposes to irrigate 50 new acres from the James River diversion point authorized by Water Right 7395-3 (described above). Twenty six of the new acres will be located in the NW 1/4 Section 19 and 24 new acres will be located in the E 1/2 NE 1/4 Section 30; all in T113N-R61W. The applicant proposes replacement of the irrigation system to accommodate a cornering system and will increase irrigation of a garden area. These systems will utilize the existing diversion rate authority authorized under Water Right No. 7395-3. Irrigation of this land is also authorized by Water Permit Nos. 7368-3 and 6431A-3 from the Tulare:East James Aquifer and pending applications to transfer acres to accommodate the cornering systems and increase the garden area irrigation from the groundwater source.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8123-3 because the Water Management Board has placed a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line. The James River diversion rate has reached the established 300 cfs limit in the described river segment and there are currently two prior filed applications that are deferred. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications are received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations and no hearing may be held before the board, unless the Chief Engineer makes a finding that an applications, 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 10:00 a.m. on May 6, 2015 in the Matthew Training Center, Joe Foss Bldg, 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 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 the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. 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 27, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting 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 May 6, 2015 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 the applications. The request for an automatic delay must be filed by April 27, 2015. 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.

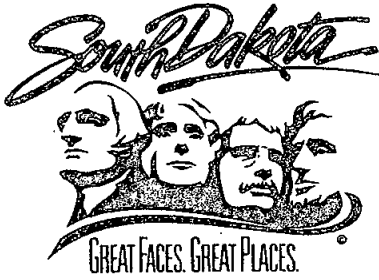
Information concerning these applications is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by April 27, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, applications or other information. Notice is given to individuals with disabilities 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 April 27, 2015. However, since this particular matter is a 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.

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 applications: 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 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner,
Secretary, Department
of Environment and
Natural Resources.
No. 1786 (adv.)
Published once at an
approximate cost of
\$112.11.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

April 9, 2015

Plainsman
PO Box 1278
Huron SD 57350

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application Nos. 7906A-3 & 8123-3 to Appropriate Water. Please publish the notice once on April 16, 2015. 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Huron Hutterian Brethren, c/o Marvin Waldner, 40068 Huron Colony Lane, Huron SD 57350 (Ph # 605-352-5647).

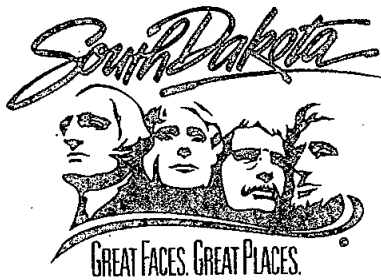
Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATE, CONTACT
THE NEWSPAPER(S) RIGHT AWAY.

April 9, 2015

Huron Hutterian Brethren
Marvin Waldner
40068 Huron Colony Lane
Huron SD 57350

Dear Mr. Waldner:

Water Permit Application Nos. 7906A-3 & 8123-3 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Plainsman printed at Huron SD (Ph # 605-353-7401). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and reports on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper(s) has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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

Instruction to Newspaper – Publish the Notice on April 16, 2015. 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 HEARING on Applications Nos. 7906A-3 and 8123-3 to Appropriate Water

Notice is given that Huron Hutterian Brethren, c/o Marvin Waldner, 40068 Huron Colony Lane, Huron SD 57350 has filed the following applications for a water permit.

Application No. 7906A-3 proposes to amend Water Permit No. 7906-3 by transferring a portion of the irrigated acreage to other land. Water Permit No. 7906-3 authorizes irrigation of 191.78 acres located in the SE 1/4 Section 24 and NE 1/4 Section 25; all in T113N-R62W using the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE 1/4 NW 1/4 Section 24-T113N-R62W to irrigate 1,034 acres. This application proposes to transfer 83.6 acres located in the NE 1/4 Section 25-T113N-R62W authorized by Water Permit No. 7906-3 to the SW 1/4 Section 18-T113N-R61W (26 acres) and N 1/2 Section 24-T113N-R62W (57.6 acres). The applicant proposes to replace the irrigation system, and the transfer of acres will accommodate the cornering systems. This system will utilize the existing diversion rate authority authorized under Water Right No. 7395-3.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7906A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Application No. 8123-3 proposes to irrigate 50 new acres from the James River diversion point authorized by Water Right 7395-3 (described above). Twenty six of the new acres will be located in the NW 1/4 Section 19 and 24 new acres will be located in the E 1/2 NE 1/4 Section 30; all in T113N-R61W. The applicant proposes replacement of the irrigation system to accommodate a cornering system and will increase irrigation of a garden area. These systems will utilize the existing diversion rate authority authorized under Water Right No. 7395-3. Irrigation of this land is also authorized by Water Permit Nos. 7368-3 and 6431A-3 from the Tulare:East James Aquifer and pending applications to transfer acres to accommodate the cornering systems and increase the garden area irrigation from the groundwater source.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 8123-3 because the Water Management Board has placed a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County Line. The James River diversion rate has reached the established 300 cfs limit in the described river segment and there are currently two prior filed applications that are deferred. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications are received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations and no hearing may be held before the board, unless the Chief Engineer makes a finding that an applications, 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 10:00 a.m. on May 6, 2015 in the Matthew Training Center, Joe Foss Bldg, 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 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 the applications and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. 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 27, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting 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 May 6, 2015 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 the applications. The request for an automatic delay must be filed by April 27, 2015. 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.

Information concerning these applications is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by April 27, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendation, 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 April 27, 2015. However, since this particular matter is a 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.

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 applications: 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 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of _____.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

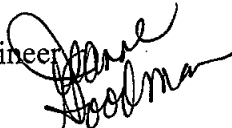
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

April 24, 2015

NOTICE

TO: Joey Waldner
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer 
Water Rights Program

SUBJECT: Change of Hearing Date for Water Permit Applications filed by Huron Hutterian Brethren

Huron Hutterian filed Water Permit Application Nos. 7369A-3, 7369B-3, 7369C-3, 7906A-3 and 8123-3 which were public noticed in the Plainsman for a May 6th hearing before the Water Management Board. Due to an unforeseen circumstance the hearing date has been changed to Thursday, May 7, 2015.

The Water Management Board will now conduct the hearing on Nos. 7369A-3, 7369B-3, 7369C-3, 7906A-3 and 8123-3 at 10:00 AM (Central Time) on Thursday, May 7, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. If a petition is received in response to the public notice, the petitioner will be notified of the change.

Applicable provision of the notice of application published April 16, 2015, in the Plainsman will still apply.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

c: Ann Mines-Bailey, Assistant Attorney General

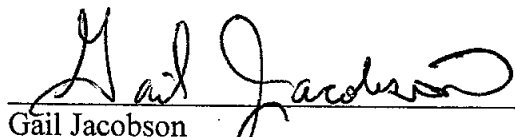
CERTIFICATION

I hereby certify that on April 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated April 24, 2015, regarding change of hearing date for Water Permit Application Nos. 7369A-3, 7369B-3, 7369C-3, 7906A-3 and 8123-3, as addressed below:

Joey Waldner
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

Sent Inter-office to:

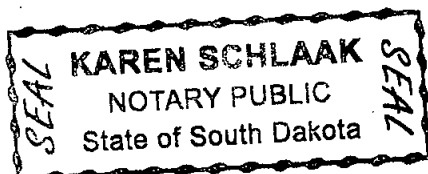
Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of April, 2015


Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 11, 2015

NOTICE

TO: Marvin Wollman
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Deferral of Water Permit Application No. 8123-3, Huron Hutterian Brethren

On May 7, 2015, the Water Management Board deferred consideration of Water Permit Application No. 8123-3 from the James River.

Application No. 8123-3 proposes to irrigate 50 new acres from the James River diversion point authorized by Water Right 7395-3 (described above). Twenty six of the new acres will be located in the NW 1/4 Section 19 and 24 new acres will be located in the E 1/2 NE 1/4 Section 30; all in T113N-R61W. The applicant proposes replacement of the irrigation system to accommodate a cornering system and will increase irrigation of a garden area. These systems will utilize the existing diversion rate authority authorized under Water Right No. 7395-3.

Application No. 8123-3 was deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for these appropriations.

Future notice will be provided when the application is scheduled before the Board.

Please contact Eric Gronlund at (605) 773-3352 if you have questions about the deferral of the application.

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 11, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 11, 2015, regarding deferral of Water Permit Application No. 8123-3, Huron Hutterian Brethren, as set forth below:

Marvin Wollman
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

Sent Notice Inter-Office mail to:

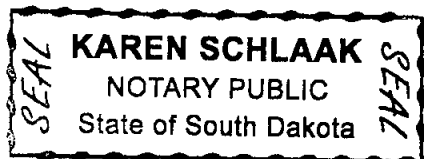
Ann Mines-Bailey, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Gail Jacobson
Water Rights Program, DENR

[illegible]

Sworn to, before me, this 11th day of May, 2015

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2019



Application No. 8123-3

Water Rights Program - DENR Conversation File Documentation

NAME OF PERSON OR FILE: Application No. 8123-3, Huron Hutterian Brethren

ADDRESS: COUNTY: Beadle County

DATE: April 11, 2016 TELEPHONE: 605 350-6875 (Joey Waldner)

RE: scheduling of hearing on deferred applications

I contacted Joey Waldner regarding Huron Hutterian Brethren's deferred application from the James River. The application was supposed to come back before the Water Management Board in May. I stated that there are a couple of existing water rights from the James River that DENR intends to schedule for cancellation. This may have the effect of freeing up diversion rate authority on the James River. However, those water rights subject to cancellation will not be brought before the Water Management Board until the July meeting. DENR's position is that their deferred application can not be heard until those water rights are cancelled. Mr. Waldner said it was fine to hold off on their application until the July meeting.

I told him the colony would get notice scheduling the application and the recommendation in June.

NAME:

Eric Brundage



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

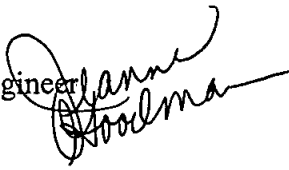
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

June 2, 2016

NOTICE OF HEARING

TO: Marvin Wollman
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8123-3, Huron Hutterian Brethren

On May 7, 2015, the Water Management Board deferred consideration of Water Permit Application No. 8123-3 from the James River to allow for further study. This notice schedules a hearing before the Board to reconsider the application.

Application No. 8123-3 proposes to irrigate 50 new acres from the James River diversion point authorized by Water Right 7395-3 (described above). Twenty six of the new acres will be located in the NW 1/4 Section 19 and 24 new acres will be located in the E 1/2 NE 1/4 Section 30; all in T113N-R61W. The applicant proposes replacement of the irrigation system to accommodate a cornering system and will increase irrigation of a garden area. These systems will utilize the existing diversion rate authority authorized under Water Right No. 7395-3.

DENR has concluded a study on water availability. Attached is the "Report on Water Availability on the James River at Current Appropriation". Based on this report, the recommendation for Application No. 8123-3 has been revised to be approval contingent on the Water Management Board first taking action to cancel two existing James River water rights. The revised recommendation is attached.

The Water Management Board will now conduct a hearing to consider Application No. 8123-3 at 2:00 PM (Central Daylight Time) on Wednesday, July 6, 2016, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing.

enclosures

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on June 2, 2016, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 2, 2016, regarding scheduling hearing on Water Permit Application No. 8123-3, Huron Hutterian Brethren, as set forth below:

Marvin Wollman
Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

Sent Notice Inter-Office mail to:

Ann Mines-Bailey, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



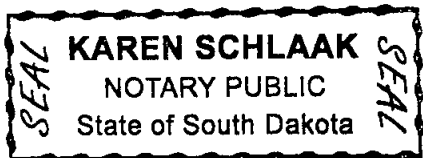
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of June, 2016



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



**REPORT ON WATER AVAILABILITY ON THE JAMES RIVER AT CURRENT
APPROPRIATION
May 24, 2016**

Purpose of this Study

It is the purpose of this study to analyze the appropriation limits for the James River as adopted by the Water Resources Commission (predecessor to the Water Management Board) and the Water Management Board at the April 1980, May 1987, and May 2007 Board Meetings. In addition, the study shows if future appropriations of water from the James River should also be administered as stated in the Board's decisions or if changes are warranted.

Historical Summary of James River Water Permits/Rights

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

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

In 2003, Water Rights Program Staff completed on-site surveys of James River water rights that had reported non-use for periods greater than three (3) years. These surveys resulted in forfeiture for non-use of twenty-four (24) James River water rights. To date the Water Rights Program periodically reviews James River water rights for non-use status and possible cancellation. As of the date of this report, the James River is within 1.71 cfs of being fully appropriated.

Previous to 2007, the James River historical appropriations contained a variety of shut-off and by-pass qualifications adopted at different times. In 2007, the Water Management Board adopted a set of qualifications for James River diversions in order to bring the shut-off and by-pass qualifications of active permits in line with the intentions of the Board as adopted at the April 1980 and May 1987 Board meetings. Future appropriations of water from the James River are also administered according to the qualifications adopted in 2007. The 20-cfs by-pass limit is applied at one of three U.S Geological Survey (USGS) gaging stations depending on the location of the diversion from the James River: gage at Ashton, SD, gage at Huron, SD, and gage near Scotland, SD. See qualifications example below:

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

Review of James River Water Permits/Rights

Past inspections of James River water permits/rights have resulted in updates to the number of permits and amounts of water appropriated from the river.

Presently there are ninety-nine (99) water rights on the James River reach from the North Dakota (ND) border to the SD Hutchinson/Yankton (HT/YA) county line with 298.29 cfs total diversions. These water rights are for direct diversion of water from the James River for irrigation and other uses during the normal irrigation season. The James River reach from Huron, SD to the ND border presently has sixty-seven (67) water rights with 186.11-cfs total diversions. This leaves thirty-two (32) water rights with 112.18 cfs direct diversion from the James River on the stretch below Huron to the HT/YA County line. Currently 1.71 cfs is available for appropriation on the James River from the ND border to the HT/YA County line, and for appropriation above the USGS gage at Huron due to the 200-cfs limit.

See table below for current appropriations.

RIVER REACH	IRR - cfs	OTH - cfs	TOTALS - cfs
ND border to Ashton	20.58	6.5	27.08
Ashton to Huron	133.16	25.87	159.03
TOTAL	153.74	32.37	186.11
Huron to HT/YA Co. ln.	79.40	32.78	112.18
TOTAL	79.40	32.78	112.18
TOTAL RIVER			298.29

Currently there are three Board deferred water permit applications, two for diversion of water from the James River and one for irrigation of additional acres with no additional diversion rate authority from the James River:

- Water Permit Application 8047-3 requesting the diversion of 2.96 cfs from the James River to irrigate 332 acres of land.
- Water Permit Application 8048-3 requesting the diversion of 5.35 cfs from the James River to irrigate 469 acres of land.
- Water Permit Application 8123-3 requesting to irrigate and additional 50 acres of land with no additional diversion from the James River.

In addition, there are two water rights authorizing diversion from the James River scheduled for cancellation.

- Water Right 9-3A authorizes the diversion of 5.0 cfs from the James River for municipal use.
- Water Right 37A-3 authorizes the diversion of 1.84 cfs from the James River for municipal use.

If the Board approves the cancellation of water rights 9-3A and 37A-3 an additional 6.84 cfs of diversion from the James River would be made available anywhere from the ND boarder to the HT/YA county line. With the 1.71 cfs currently available, the total diversion available for appropriation from the James River anywhere from the ND boarder to the HT/YA county line would be 8.55 cfs.

Actual Use at Current Appropriation

Currently 298.29 cfs is appropriated on the James River from the ND border to the HT/YA County line, of which, 186.11 cfs is appropriated above the USGS gage at Huron and 112.18 cfs is appropriated below Huron to the HT/YA County line.

In 2007, a study was conducted by Water Rights Staff in order to bring James River water permits/rights in line with a common August 10th shut-off date and 20 cfs by-pass requirement. The study determined the probability that additional water would be available during the irrigation season until August 10 of each year. The James River was divided into three river reaches between USGS gaging stations, ND border to the USGS gage at Ashton, SD; USGS gage at Ashton, SD to the USGS gage at Huron, SD; and USGS gage at Huron, SD to USGS gage near Scotland, SD. The water appropriated for irrigation and other uses for each of the three river reaches was calculated. Once these values were obtained, a formula for actual water use at current appropriation was developed.

Stated under **Historical Summary of James River Water Permits/Rights** in this report, the actual irrigation development and use on the James River in 1980 was found to be a maximum of 50-percent of permitted acres irrigated at any one time. This conclusion was reached after Water Rights Staff conducted detailed hydrographic surveys of the availability of water in the river and studies of the anticipated effects of approving water permits based on projected development and use by appropriators. A similar study was conducted in 2007 by reviewing irrigation questionnaires from 1996 – 2006. The 2007 study indicated that the 50-percent value was still appropriate. Since reporting for other uses is limited, 100-percent pumping for non-irrigation uses is assumed. In addition 20-cfs for domestic use was added. The resulting formula for maximum use is as follows:

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

Similarly for this study, pumping from 1996 through 2014 was examined to determine if the 50% value for irrigation development and use is still applicable today. The James River was looked at as a whole from the ND border to the HT/YA County line. As expected the heaviest pumping months were found to be July and August. The table below depicts the percent of the

appropriated diversion for irrigation from the James River actually pumped by month and year. Months experiencing 40% or greater pumping are depicted in red.

Table % of the total appropriated diversion for irrigation from the James River actually pumped by month and year.

	APR	MAY	JUN	JUL	AUG
1996	0	2	6	37	42
1997	0	0	3	16	20
1998	0	1	3	35	34
1999	0	0	2	25	27
2000	0	0	7	30	26
2001	0	0	8	26	25
2002	0	2	36	44	31
2003	0	0	12	28	33
2004	1	5	19	45	38
2005	0	2	16	44	46
2006*	0	4	21	50	30
2007	0	2	5	48	26
2008	0	0	3	26	16
2009	0	3	3	6	23
2010	0	0	0	1	8
2011	0	0	6	12	17
2012	0	3	37	57	55
2013	0	0	6	28	44
2014	0	2	12	51	53

*Note: Shutoff orders were issued in 2006 on August 1 through the rest of the irrigation season.

The higher percent of irrigation appropriation pumped ranges from 44% to 57% in eight out of 19 years. Therefore, it is assumed that the 50-percent value is still applicable today.

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

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

RIVER REACH	IRR	50%IRR	OTH	DOM	ACTUAL USE
ND border to Ashton	20.58	10.42	6.5	20	36.92
Ashton to Huron	133.16	66.58	25.87	20	112.45
Huron to HT/YA Co. ln.	79.4	39.7	32.78	20	92.48

The chance that water will still be available April 1 through August 10 was calculated using James River flows based on 50 or more years of USGS stream flow data for each of the three river reaches. The values in the table below reflect flow after pumping and subtracting the 20-cfs by-pass qualification. The %tile for the period of record represents the maximum flow that can be expected that percent of the time minus the 20-cfs by-pass.

%tile flow for period of record – 20 cfs by-pass flow = flow value

RIVER REACH	%TILE	APR	MAY	JUN	JUL	AUG 10
ND border to Ashton	10	-6	-6	-12	-20	-20
	20	21	43	26	8	-6
	25	41	89	69	33	6
	50	290	469	326	181	112
Ashton to Huron	10	9	3	-5	-19	-20
	20	45	68	55	21	-6
	25	85	135	88	41	11
	50	542	555	416	201	142
Huron to HT/YA Co. ln.	10	33	35	12	-3	-14
	20	107	105	75	17	-1
	25	137	159	110	40	9
	50	673	673	546	277	136

By August 10th there is a 25% chance that 6 cfs or less is available in the reach from the ND border to the Ashton gage; 11 cfs or less is available in the reach from Ashton gage to the gage at Huron; 9 cfs or less is available in the reach from the Huron gage to the Scotland gage. Conversely, there is a 75% chance that the above flows or greater are available.

Water Rights files show that there have been at least 12 shutoff orders issued on the James River since 1965. This represents 25.5% of the years from 1965 to present. Total appropriation of water from the James River during years that shutoff orders have been issued has ranged from 255 cfs to 300 cfs, full appropriation.

Conclusion

At current appropriation limits there is a 75% chance that water will be available through August 10. It is appropriate when protecting existing water rights to take into account the percent chance of water availability. Maintaining a 75% chance of having available water is appropriate.

To facilitate the judicious administration of the use of James River water, the protection of the in-stream beneficial uses of the river for recreational use and as a fishery, to maintain good quality water as well as sufficient quantity and velocity of water, continuation of the appropriation limits set by the Water Resources Commission (predecessor to the Water Management Board) and the Water Management Board in the 1960's, 1987, and 2007, is recommended.

Currently 1.71 cfs of diversion from the James River is available from the ND boarder to the HT/YA county line. Should the Board approve cancellation of water rights 9-3A and 37A-3 the amount of diversion available from the James River from the ND boarder to the HT/YA county line would increase to 8.55 cfs.


Lynn Beck
Natural Resources Engineer III
DENR, Water Rights Program

Resources

Report On Amendment Of James River Water Permits/Rights, April 24, 2007, Lynn Beck.

South Dakota Department of Environment and Natural Resources, Water Rights Program records.

Stream flow records, United States Geologic Survey Water Resources Web Site,
<http://waterdata.usgs.gov/sd/nwis/current/?type=flow>

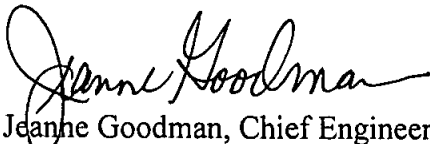
**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8123-3, Huron Hutterian Brethren**

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. 8123-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending APPROVAL of Application No. 8123-3 contingent on the Water Management Board first taking action to cancel two James River water rights because 1) there will be a reasonable probability that there is unappropriated water available for the applicant's proposed use upon the formal cancellation of the two existing James River water rights, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from the James River shall be in accordance with the following criteria:
 - a) This permit does not authorize diversion of water from the James River after August 10th of each calendar year, unless written orders have been issued by the Chief Engineer. Diversions under this permit are subject to senior water rights and any written orders issued by the Chief Engineer.
 - b) This permit does not authorize diversions from James River when there is less than 20 cfs bypassing the USGS gaging station at Huron SD after pumping.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.



Jeanne Goodman, Chief Engineer
June 2, 2016

NOTE: Prior to consideration of this deferred application, the Water Management Board is scheduled to conduct a hearing to determine whether to cancel two water rights held by the city of Huron. The cancellation of these water rights provides the ability to recommend approval of this application by remaining within the Board's established diversion rate limit of 300 cubic feet of water per second from the ND/SD border to the Hutchinson/Yankton County line. If the two existing water rights are not first cancelled at the July 6th meeting, the recommendation will be revised at the time of hearing that Application No. 8123-3 remain deferred.

REPORT ON WATER PERMIT APPLICATION NO. 8123-3
Huron Hutterian Brethren, % Marvin Waldner
March 11, 2015

The Huron Hutterian Brethren, % Marvin Waldner, has filed Water Right Application No. 8123-3 to irrigate 50 new acres from the James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River to irrigate 1,034 acres. This application, if approved, does not increase the developed diversion rate.

Review Proposed Project

Water Permit Application No. 8123-3 is located 15 miles north of Huron in Beadle County, SD.

This application proposes to irrigate 50 new acres of which 26 new acres will be located in the NW¼ Section 19 and 24 new acres will be located in the E½ NE¼ Section 30; all in T113N-R61W. Authorized irrigation from the James River under Water Right No. 7395-3 includes 132 acres in the NW¼ Section 19.

The applicant proposes replacement of the irrigation system located in the NW¼ Section 19 to accommodate a cornering system and increase the size and irrigation of a garden located in the E½ NE¼ Section 30. These systems will utilize the diversion rate authority and James River diversion point authorized by Water Right No. 7395-3. Water Right No. 7395-3 appropriates 7.13 cubic feet of water per second (cfs) from the James River located in the NE¼ NW¼ Section 24-T113N-R62W. The requested annual period of use is from April 1 to October 1.

Irrigation of 132 acres in the NW¼ Section 19 and 10 acres in the N½ NE¼ Section 30 is also authorized by Water Permit No. 7368-3 and 6431A-3 from the Tulare: East James Aquifer. There are pending applications to transfer acres to accommodate the cornering system and increase the garden area irrigation from the groundwater source.

Review of Water Source

The water source for the proposed project is the James River in Beadle County. Originating in North Dakota, the James River flows southward to the Missouri River near Yankton, SD. Approximately 475 miles of the James River are in South Dakota. During extended periods of low precipitation the James River experiences low flows and cannot be considered a reliable source of water.

In 1965 the SD Water Rights Commission placed a 300-cfs diversion limit on the James River. The diversion limit of 200 cfs from North Dakota backwater into the James River, the 300-cfs border to the Yankton-Hutchinson County.

*Original
Rpt & Rec*

or Management Board,
a maximum combined
to the Missouri River
from the North Dakota

Review of Existing Water Rights

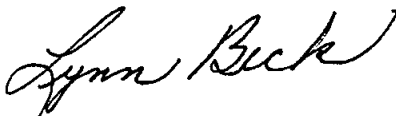
Presently there are 101 Water Rights with diversions from the James River totaling 300.07 cfs from the North Dakota border to the Yankton-Hutchinson County Line. From the North Dakota border to Huron, SD, there are 67 Water Rights with diversions from the James River totaling 186.11 cfs. There is no water available for appropriation anywhere from the North Dakota boarder to the Yankton-Hutchinson County line.

This application does not increase the developed diversion rate but does increase the number of acres being irrigated. Currently irrigation of 1,225.78 acres of land utilize the same diversion point authorized by Water Right No. 7395-3 at a diversion rate of 7.13 cfs. The proposed project, if approved, would add another 50 acres to be irrigated from the diversion point with no increase in diversion rate. Though this does not increase the total diversion rate from the James River it does have the potential to increase the volume of water diverted.

Conclusions

Due to the lack of water availability from the James River, it is recommended that Water Permit Application No. 8123-3 be deferred pending further study.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for this appropriation.



Lynn Beck
Natural Resources Engineer III
DENR, Water Rights Program



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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8123-3, Huron Hutterian Brethren**

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. 8123-3, Huron Hutterian Brethren, c/o Marvin Wollman, 40068 Huron Colony Lane, Huron SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. 8123-3 for further study to evaluate the diversion rate status of water rights on the James River and evaluate if it is in the public interest to approve additional acres to be granted under the water right holders existing diversion rate authority when the James River has reached the Water Management Board's established diversion rate limit.

The Water Management Board has placed a 300 cubic feet of water per second (cfs) diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. The James River diversion rate has reached the established 300 cfs limit in the described river segment and there are currently two prior filed applications that are deferred. Application No. 8123-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; 3) other review that may result in water becoming available for this appropriation; and 4) whether it is in the public interest.

See report on application for additional information.

Jeanne Goodman, Chief Engineer.

April 8, 2015



DEPARTMENT of ENVIRONMENT
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JUL 22 2016

Huron Hutterian Brethren
Marvin Wollman
40068 Huron Colony Lane
Huron SD 57350

Dear Mr. Wollman:

Enclosed is Water Permit No. 8123-3 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

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

enclosures



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August 15, 2017

2390A-3, 5651-3, 7395-3
7905-3, 7906-3, 8123-3

Huron Hutterian Bretheren
Attn: Joey Waldner
40068 Huron Colony Lane
Huron SD 57350

Dear Mr. Waldner:

This letter is in reference to your August 15, 2017 telephone call regarding water availability to continue irrigation from the James River for this summer. Flows in the James River continue to be strong. Because there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permit out of the James River through September 10, 2017.

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

Sincerely,


Jeanne Goodman, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
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PIERRE SD 57501-3182
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May 27, 2021

Dear James River Water Right Holder:

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

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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PIERRE SD 57501-3182
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August 16, 2021

Permit Nos. 7395-3, 7906-3, 7906A-3 & ~~8385-3~~

0123-3

Huron Httrn Brth
Marvin Wollman
40068 Huron Colony Lane
Huron SD 57350

Dear Mr. Wollman:

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

Water rights containing this qualification require mandatory compliance and pumping under your permit must cease unless you contact the Water Rights Program and receive permission to continue to divert water. Permission may be granted based upon water availability.

This is only a warning, but I expect your cooperation in following any requirements that have been placed on your water rights. If you have any questions, please contact Mark Rath, Blaise Hansen, or Nakaila Steen at (605) 773-3352.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program

cc: Joey Waldner



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2021

Dear James River Water Right Holder:

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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August 29, 2022

5651-3, 2390A-3, 7395-3,
7905-3, 7906-3, 7906A-3,
8123-3

Huron Hutterian Brethren
40068 Huron Colony Lane
Huron SD 57350

Dear Mr. Waldner:

This letter is in reference to your August 29, 2022, request for an extension to pump water from the James River beyond the August 10 shutoff date. Flows in the James River in the reach between the confluence with the North Dakota Border and the Huron are sufficient at this time to allow an extension. Because there is sufficient flow in the James River, I am granting your request to extend the shutoff date for your water permit out of the James River and allow you to divert through the end of the 2022 irrigation season.

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program