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January 28, 2014

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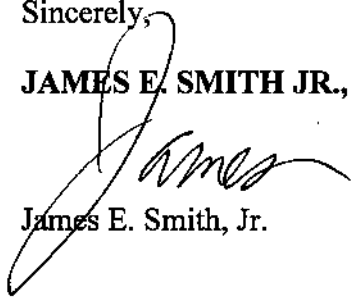
The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: *Friends of The Edisto v. South Carolina Department of Health and Environmental Control and Walther Farms-Windsor, S. C.*, Docket No. 13-ALJ-07-0610-CC, Our File No. 13206

Dear Judge Anderson:

Enclosed please find the original and one (1) copy of Petitioner's Notice Of Withdrawal Of Petition For Contested Case Hearing with prejudice with **Exhibit A**, the fully executed Settlement Agreement, and Proof Of Service.

Thanks for your assistance.

Sincerely,
JAMES E. SMITH JR., P.A.

James E. Smith, Jr.

Enclosures

cc: Stephen Hightower/Lisa Lucas Longshore
Office of General Counsel/Clerk DHEC Board
South Carolina DHEC

Jessica King and Lee Zimmerman
McNair Law Firm, P.A.



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

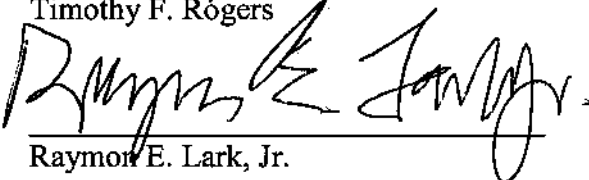
Friends of the Edisto,) Docket No. 13-ALJ-07-0610-CC
)
Petitioner,) **NOTICE OF WITHDRAWAL**
) **OF PETITION FOR**
v.) **CONTESTED CASE HEARING**
)
South Carolina Department of Health)
and Environmental Control and)
Walther Farms-Windsor, S.C.,)
)
Respondents.)
_____)

By the filing of this Notice, Petitioner, Friends of the Edisto hereby withdraws with prejudice its Petition For Contested Case Hearing in this matter as provided for in Rule 41(a)(1), SCRCF and ALC Rule 68, in accordance with the terms of the fully executed Settlement Agreement, attached hereto as **Exhibit A**.

Respectfully Submitted,



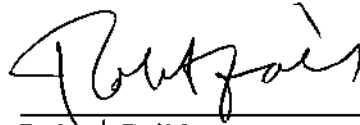
Timothy F. Rogers



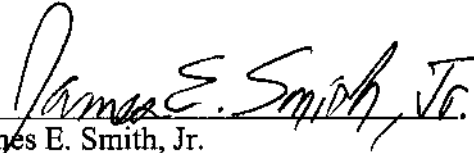
Raymond E. Lark, Jr.

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Attorneys For Petitioner

January 23, 2014

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between Walther Farms and Friends of the Edisto River (“FRED”) (collectively the “Parties”) to settle FRED’s Petition for A Contested Case Hearing filed with the South Carolina Administrative Law Court on December 20, 2013 (“Petition for a Contested Case Hearing”) [Attachment A], and arising from DHEC’s March 21, 2013 Acknowledgement of Walther Farms Registration to withdraw up to 805 million gallons per month from the South Fork of the Edisto River for irrigation purposes at its Augusta Farm in Aiken County, South Carolina (“the DHEC Registration Letter”). [Attachment B]

PURPOSE

This Agreement is made between the Parties hereto for the complete and final settlement of any and all claims, counterclaims, differences, and causes of action with respect to the matters covered in the Petition and the DHEC Registration Letter. This Agreement is intended to effect the extinguishment of all rights and obligations of the Parties, except as herein designated.

1. TERMS OF AGREEMENT

In consideration of execution of this Agreement, the Parties agree to settle upon the following terms:

1. Upon the effective date of this Agreement, FRED agrees to:
 - a) Immediately withdraw with prejudice the Petition for a Contested Case Hearing from the ALC.
 - b) Refrain from taking any actions, legal or otherwise, to delay or prohibit Walther Farms from installing groundwater withdrawal wells for irrigation purposes on the Augusta Farm or the Wiley Fork Farm in Aiken and Barnwell Counties.

c) Refrain from taking any other actions, legal or otherwise, to delay or prohibit Walther Farms from planting crops in February and March of 2014 at the Augusta Farm and the Wiley Fork Farm in Aiken and Barnwell Counties.

2. Walther Farms (Walther) agrees to:

- a) Within five (5) days of the effective date of the Agreement, submit to the Department of Health and Environmental Control ("DHEC" or "the Department") a written request to reduce its existing registration for the intake point at Augusta Farm to a maximum of 400 million gallons per month (MGM). At this time, Walther does not have plans and does not intend to seek future increases in surface water withdrawals for Augusta Farm. Walther will simultaneously provide below-named counsel for FRED a copy of said request as well as a copy of DHEC's acknowledgement of the reduced amount of 400 MGM for the Augusta Farm withdrawal registration.
- b) Within fifteen (15) days of the effective date of the Agreement, initiate contact with the US Geological Survey. Promptly begin to assist, support and provide financial assistance as necessary in an amount not to exceed \$35,000 to install, calibrate and operate a stream flow gage in the South Fork Edisto River at or near the intake structure at the Augusta Farm in coordination with the US Geological Survey so as to effectively monitor stream flow rates at that location.
- c) Within 30 days of the effective date of this Agreement, submit to DHEC a written request to withdraw its pending surface water withdrawal registration application for its Wiley Fork Farm in Aiken and Barnwell County and use only groundwater wells for irrigation on this farm for the twelve month period following the execution date of the Agreement. Walther will simultaneously provide below-

named counsel for FRED a copy of said request as well as a copy of DHEC's written acknowledgement of Walther's withdrawal of its registration. During the twelve month period from the date of execution of this Agreement, Walther further agrees to seek no additional surface water withdrawal registrations for Wiley Fork Farm. After expiration of the twelve month period, Walther agrees to provide timely notice to counsel for FRED of any future surface water withdrawal applications for Wiley Fork Farm filed with DHEC.

- d) Within seven (7) days of the effective date of this Agreement, submit to counsel for FRED a contingency plan to demonstrate supplemental sources of water on Augusta Farm that Walther may consider using during periods of reduced stream flow, which will include at least one backup groundwater well.
- e) Within 90 days, plant vegetation at the Augusts Farm intake point as a natural buffer and to aid in the prevention of stormwater runoff.
- f) Maintain forested and vegetative buffers between Augusta Farm's and Wiley Fork Farm's agricultural fields and the main run of the South Fork Edisto River. These buffers are approximately 455 acres on Augusta Farm and approximately 105 acres on Wiley Fork Farm. The Parties acknowledge that in the event Walther registers to withdraw surface water on Wiley Fork after the end of the 12 month period after the effective date of this Agreement, the limited area where an intake structure is registered to be constructed will be excluded from the buffer contemplated in this section.

2. **NO ADMISSION OF LIABILITY.** This Agreement is executed by the Parties for the sole purpose of settling disputed claims. It is understood and agreed by all Parties hereto that the Parties' Agreement is not, and is not intended to be construed as, an admission by either

Party and the Parties expressly are entering this Agreement merely to work together as neighbors and good citizens to find a mutually agreeable resolution. Neither this Agreement nor anything contained herein shall be admissible in any proceedings as evidence of or an admission by either Party of any violation of any law or regulation or of any liability whatsoever.

3. **NON DISPARAGEMENT AGREEMENT.** The leadership of FRED and Walther agree that, for a period of three years from the execution of this Agreement, they will not impugn the character, honesty, integrity, and/or morality of the other party.

4. **NOTICE OF BREACH AND CURE.** Should any Party believe that another Party has committed a material breach of this Agreement, the Party must provide written notice to the other Parties immediately upon discovery of the breach. The notice should inform the Parties of the conduct they believe constitutes a breach. Upon receipt of such notice, the Parties shall have ten (10) business days to meet and confer in good faith to cure any alleged breach. Should the Parties be unable to cure or otherwise resolve any allegations of a breach after having met and conferred, the Party alleging the breach may then initiate further actions to enforce the Agreement. No action may be initiated in a court of competent jurisdiction or other forum without first having complied with the provisions of this section.

5. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the Parties in relation to the subject matter hereof, and no promises, representations, conditions, provisions, or terms related thereto exist other than those set forth in this Agreement.

6. **BINDING EFFECT OF COVENANTS.** This Agreement shall inure to the benefit of all Parties hereto and their heirs, assigns, and/or successors. The Agreement shall bind all parties hereto and their heirs, assigns and/or successors, legal representatives, and

executors. This Agreement shall be interpreted against no Party as the drafter but as one that all Parties drafted.

7. **GOVERNING LAW.** This Agreement shall be construed under and be governed in all respects by the laws of the State of South Carolina.

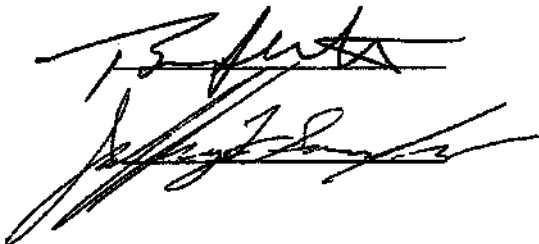
8. **AMENDMENT.** This Agreement cannot be amended or modified except in writing and signed by all Parties.

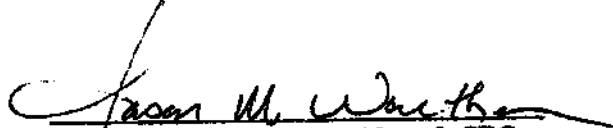
9. **COUNSEL CERTIFICATION.** The Parties hereby certify that each have carefully read the foregoing Agreement and understands the contents hereof. Further, each Party certifies that they have been represented by counsel throughout the negotiation of this Agreement, and have freely and voluntarily entered into this Agreement without any threat, coercion, or intimidation by any person.

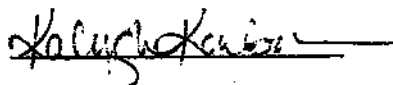
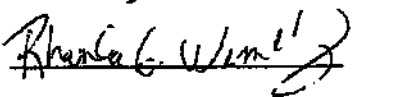
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the below dates indicated.

WITNESSES:


Walther Farms:




By: Jason Walther, President & CEO
Title: Walther Farms 1-27-14

Friends of the Edisto:


By: Timothy F. Rogers
Title: President

Attachment A

FRED's Petition for A Contested Case Hearing dated December 20, 2013

file set

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ATTORNEYS AT LAW

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OF COUNSEL:
NINA NELSON SMITH

*ALSO ADMITTED IN NC
*ALSO ADMITTED IN GA

December 20, 2013

VIA HAND DELIVERY

The Honorable Jana Shealy, Clerk
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Petition For Contested Case Hearing By Friends Of The Edisto, Petitioner, v. South Carolina Department of Health and Environmental Control and Walther Farms-Windsor, S.C., Respondents, Docket No. 13-ALC-_____, Our File No.13206

Dear Ms. Shealy:

Enclosed for filing are the original and additional copies of the Friends of the Edisto's Petition For Contested Case Hearing for the above case, Proof Of Service, and filing fee of \$500.00. Please stamp the extra copies and return it our courier.

Thanks for your assistance.

Sincerely,

JAMES E. SMITH JR., P.A.

Enclosures

cc: Office of General Counsel, DHEC/DHEC Board Clerk
Walther Farms-Windsor, SC c/o Jason Walther/L. Walther & Sons, Inc.



Service Disabled Veteran-Owned Small Business

FILED

DEC 20 2013

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Friends of the Edisto,)
)
) Petitioner,)
)
) v.)
) **PETITION FOR CONTESTED CASE**
) **HEARING**
)
) South Carolina Department of Health)
) and Environmental Control and)
) Walther Farms-Windsor, S.C.,)
)
) Respondents.)
)
 _____)

Re: Walther Farms- Windsor, S.C.
DHEC Agricultural Surface Water Withdrawal Registration 02IR025
South Fork Edisto River
Aiken County, S.C.

Friends of the Edisto (Petitioner), on behalf of its members, who use and enjoy the natural resources of the Edisto River threatened by this authorization to withdraw 805 million gallons of water per month from the South Fork Edisto River, hereby seek administrative review of the final decision of the Department of Health and Environmental Control (DHEC), dated December 6, 2013, attached hereto as **Exhibit A**, declining Board Review. This Surface Water Withdrawal authorization would permit the reduction in flow in the South Fork Edisto River during drought conditions and times of normal, periodic seasonal low flows without due regard for the "biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation," or the reasonable use rights of the public, including Petitioner's members. This matter is believed to represent the first determination made by

FILED

DEC 20 2013

SC ADMIN. LAW COURT

the Department pursuant to the South Carolina Surface Withdrawal, Permitting, Use and Reporting Act, 2010 Act No. 247, and implementing SC Regulation 61-119.

In support of this Petition for Administrative Review, Petitioner would respectfully show:

1. Friends of the Edisto is a non-profit membership organization whose mission is to promote natural resource conservation and sustainable development in the Edisto River basin. Our members use and enjoy the natural resources of the Edisto River and its basin, live, work and own property in the vicinity of the proposed project. Such uses include hunting, fishing, boating, swimming, agricultural activities, and the study and enjoyment of nature in and around the South Fork Edisto River near the Walther Farms surface water withdrawal site. Friends of the Edisto and its members are informed and believe that their use and enjoyment of these natural resources and their reasonable use of the waters of that river will be harmed by the proposed surface water withdrawal authorized by DHEC for Walther Farms.
2. The subject Agricultural Surface Water Withdrawal Registration # 02IR025, and determination to Walther Farms-Windsor, S.C. was issued by the DHEC Staff on March 21, 2013, without any public notice, notice to Friends of the Edisto or its affected members, consultation with the natural resource stewardship agency--the Department of Natural Resources--or opportunity to be heard prior to the DHEC Staff determination.
3. Following receipt of information of activity on the South Fork of the Edisto River (referred to as the South Fork Edisto River or South Edisto River in various DHEC documents, this Petition and Exhibits), Petitioner submitted its written Freedom Of Information Act (FOIA) Requests, on September 24, 2013, to be notified of agency

action affecting the river and its members. DHEC FOIA Staff, thereafter, provided Petitioner a copy of the Staff determination and Registration # 02IR025 and related information on November 18, 2013. Petitioner thereafter timely filed and served its Request For Final Board Review on December 2, 2013, within fifteen (15) days of DHEC's transmission of the Staff decision to Petitioner. Thereafter, the Clerk of the DHEC Board mailed the Board's decision declining to hold a final review conference, dated December 6, 2013. This Petition for a Contested Case hearing is, therefore, timely filed. S.C. Constitution, Art. I, § 22 and *South Carolina Coastal Conservation League v. South Carolina Department Of Health And Environmental Control*, 390 S.C. 418, 702 S.E. 2d 246 (2010).

4. In addition to a copy of the Clerk of the Board's decision declining to process Petitioner's Request attached as **Exhibit A**, is a copy of Petitioner's Request For Final Board Review (with corrected page 2) with Exhibits 1-4 and Certificates of Service as **Exhibit B**, collectively, wherein Petitioner sets forth its representative user and property interests and provides a summary of issues.

5. The proposed Walther Farms surface water withdrawal is of unprecedented magnitude--805 million gallons per month--compared to the threshold for water withdrawal permitting and registration under the new Act of only 3 million gallons per month or compared to the largest existing single Edisto River withdrawal of 893 million gallons per month for SCE&G's Cope Steam Electric Plant. Solely by virtue of its proposed end use for the "agricultural" purpose of growing potatoes for the production of Lays potato chips, this magnitude of water withdrawal from the small volume South Fork Edisto River is wholly unrestricted during times of seasonal low river flow or recorded

historic and likely future drought conditions when the protected water resources of the river will be most vulnerable. As river scientist and hydrology expert, Dr. Allan James, attests, the river exhibits highly pronounced seasonal flows with the highest rates of irrigation withdrawal very likely to coincide with dry periods during which the river will have flows far less than the average upon which the DHEC determination is based. **Exhibit C, James Affidavit, p. 1.** In particular, in his attached Exhibit 2 thereof, during August of 2002, flows as low as 57 cubic feet per second (cfs) were recorded in the river over a protracted period. The Walther authorized withdrawal, which translates into approximately 41 cfs, would leave only 16 cfs flow in the river under such conditions. Under such low flow conditions Walther would be authorized to withdraw 2/3 of the water in the South Fork Edisto River. In addition, in his attached Exhibit 3 thereof, Dr. James notes that the South Edisto exhibits a long-term trend of declining dry month flows during the last thirty years of record as compared to the previous forty years. DHEC's reliance on the earlier higher flow data likely results in an overestimate of the magnitude of flows that can be relied on in the future. *Id.* In Dr. James' expert opinion, the DHEC analysis substantially overestimates the reliability of water resources in the South Edisto. Water availability in the basin should be recalculated based on a more detailed flow analysis in the river. **Exhibit C, James Affidavit, p. 2.**

6. Similarly, the attached Affidavit by J.J. Jowers, Jr., P.E. and P.L.S. (**Exhibit D**), provides additional support for the opinions of Dr. James. In Mr. Jower's opinion, DHEC should not authorize withdrawals without taking into account seasonal flows, long-term flows, replenishment, adverse effects, and proper design before withdrawal of such huge

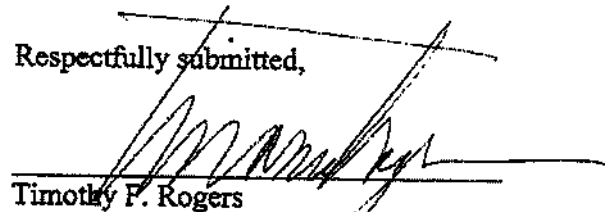
volumes of water by a consumptive user like Walther Farms from the South Fork Edisto River.

7. Petitioner is informed and believes that the determination, registration and withdrawal authorization would violate State and Federal environmental laws and regulations, including, but not limited, to the Federal Clean Water Act, 33 U.S.C. § 1251, *et seq.*; S.C. Constitution, Art. I, § 22, guaranteeing administrative Due Process, and Art. XIV, § 4, guaranteeing that “all navigable waters shall forever remain public highways free to the citizens of the state; the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; the South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.*; the Surface Withdrawal, Permitting, Use and Reporting Act, S.C. Code Ann. § 49-4-10, *et seq.*; and DHEC Regulations 61-68 and 61-119, and that the current determination, registration and withdrawal authorization are arbitrary, capricious, unsupported by substantial evidence, and in violation of constitutional, statutory, and regulatory requirements.

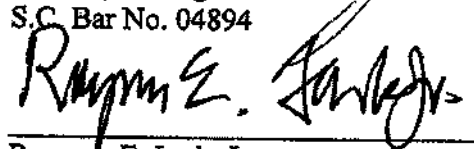
WHEREFORE, Petitioner requests that the Administrative Law Court conduct a contested case evidentiary hearing and, thereafter, issue its order reversing the decision of the Respondent DHEC to issue the subject Agricultural Surface Water Withdrawal Registration and authorization to Walther Farms, or so conditioning said authorization as to protect the river and Petitioner’s interests adequately or so conditioning said authorization as to adequately protect the river and Petitioner’s interests and in the meantime, all actions authorized by the subject determination and authorization be stayed.

Respectfully submitted,

By:

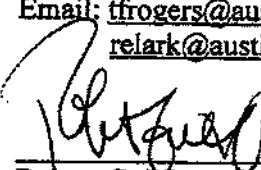


Timothy F. Rogers
S.C. Bar No. 04894

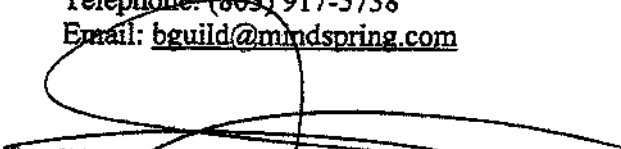


Raymon E. Lark, Jr.
S.C. Bar No. 3134

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December ²⁰ 2013

BOARD:
Allen Arisler
Chairman
Mark S. Lutz
Vice Chairman
Ann B. Kinsl, DDS
Secretary



BOARD:
R. Kenyon Wells
Charles M. Jove II, PE.
L. Clarena Barrs, Jr.
John O. Hutto, Jr., MD

Preserving and protecting the health of the public and the environment

**South Carolina Board of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201
Telephone (803) 898-3309 Fax: (803) 898-3393**

December 6, 2013

VIA US MAIL

Timothy F. Rogers, Esquire
Raymon E. Lark, Jr., Esquire
Austin & Rogers, PA
Post Office Box 11716
Columbia, SC 29201

Re: Walther Farms – Windsor, SC
Surface Water Withdrawal Registration 021R025
South Edisto River, Aiken County, SC

Dear Mr. Rogers and Mr. Lark:

I have received your Request for Review dated December 2, 2013, in the above referenced matter.

Pursuant to S.C. Code Section 44-1-60, a Department decision becomes final 15 calendar days after mailing unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee or affected person and should be filed with the Clerk of the Board at 2600 Bull Street, Columbia, SC 29201.

The Request for Review seeks review of a Department decision mailed on March 21, 2013. Your Request for Review was received by the Clerk of Board on December 2, 2013, which was 256 days after the decision was mailed. Therefore I am returning your Request for Review and your filing fee (Austin & Rogers, PA Check 5228) unprocessed.

Sincerely,

Lisa Lucas Longshore
Clerk

Austin & Rogers, P.A.
ATTORNEYS AND COUNSELORS AT LAW

TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
W. MICHAEL DUNCAN

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December 2, 2013



OF COUNSEL:
WILLIAM FREDERICK AUSTIN
JEFFERSON D. GRIFFITH, III*

* ALSO ADMITTED IN N.C.

RECEIVED

DEC 2 2013

Clerk, Board of Health
and Environmental Control

VIA HAND DELIVERY

Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Re: Request For Final Board Review By Friends Of The Edisto (FRED) With Filing Fee, Concerning Agricultural Surface Water Withdrawal Registration 021R025 To Walther Farms-Windsor, S.C., Our File No. 13206

Dear Mrs. Longshore:

Friends Of The Edisto (FRED) respectfully submits this request for final review by the DHEC Board with \$100 filing fee, pursuant to the provisions of S.C. Code Ann. §44-1-60, concerning Agricultural Surface Water Withdrawal Registration 021R025 To Walther Farms-Windsor, S.C., South Edisto River, Aiken County, S.C. FRED's members use and enjoy the natural resources of the Edisto River basin. They use and enjoy the waters of the South Fork Edisto River in the vicinity of the proposed surface water withdrawal for activities, including fishing, hunting, boating, swimming, and related activities. Members include property owners adjacent to and downstream from the impending withdrawal site. Members are concerned that their interests may be adversely affected by approval of such withdrawals by this Registration, including, but not limited to, reduction in the flow which will impede recreational use and navigation, which will harm fish and other aquatic life, reduce the pollution assimilative capacity of the River, and harm the protected functions and values of the aquatic ecosystem and its associated riparian habitat.

Attached as exhibits hereto are: Exhibit 1—a copy of DHEC Staff's notice to water withdrawers, dated September 19, 2012, regarding the *Surface Water Withdrawal, Permitting, Use, and Reporting Regulation (R.61-119)*, which became effective June 22, 2012 pursuant to the *Surface Water Withdrawal, Permitting, Use, and Reporting Act* of 2010; Exhibit 2—a copy of FRED's FOIA request, dated September 23, 2013 and designated as Request No. 1309292 by FOIA Staff on September 26, 2013; Exhibit 3—a copy of the DHEC Staff e-mail, dated November 18, 2013, providing responses as an attachment to the FOIA request; and Exhibit 4—a copy of DHEC Staff's determination letter of March 21, 2013, registration, and related map received as parts of Staff's responses to the FOIA request.

As shown in Exhibits 2 and 3, FRED is filing this request within 15 days of the e-mailing of the Staff determination after our written request for documents pertaining to an application or permitting or notice of intent for surface water withdrawal by Walther Farms. Furthermore, Staff's cover letter to Walther Farms in Exhibit 4 references Condition 1 of the Registration, as follows:

Please note Condition 1 of the Registration. This condition, based on R.61-119, requires that you notify the Department within 30 days of completion of construction of the intake that will be used to withdraw water from the South Edisto River. If this notification is not received within one year of the issue date of this Registration, authorization to construct and operate the proposed withdrawal is revoked unless you have requested and the Department has approved an extension of the time period.

DHEC Staff did *not* include any notification of completion of construction of the intake to withdraw water from the South Edisto River. Therefore, the Board should otherwise consider this request to be timely. Finally, we have not found any general public notice provided by DHEC in the *State Register* or elsewhere consistent with FRED's Due Process rights and SC Const., Art 1, § 22, concerning either the proposed registration by Walther Farms or DHEC Staff's proposed approval of it. For any and all of these reasons, the Board should consider this request to be timely.

FRED objects to approval of this Registration by DHEC Staff's "authorization to construct and operate the proposed withdrawal" for several reasons. They include, but are not necessarily limited to: (1) the safe yield determination is in error; (2) the withdrawal is "unreasonable"; (3) it will exceed the "safe yield of the source water body at the withdrawal point and of the Edisto River Basin;" (4) DHEC failed to give notice or provide affected persons an opportunity to comment or be heard before making decision; and (5) such failure(s), will cause the harms listed above and others, unless the Board grants this Request and reverses Staff's determination.

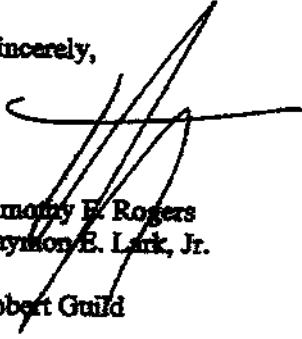
On information and belief this is the first such determination per the new Act, referenced in Exhibit 1, and is very significant with 3 ft diameter pipe, 4 600 hp pumps, and 8 pivot

(corrected p. 2 filed 12/3/13)

irrigators to take valuable water resources from the South Edisto River. As such, the processing and outcome of this matter have major public policy implications. FRED, therefore, respectfully, asks the DHEC Board to: (1) conduct a final review conference upon due notice; (2) provide an opportunity to FRED and other interested persons to be heard as to reasons for addressing concerns and/or objecting to this Staff decision; and (3) rescind that determination and authorization.

Thanks for your assistance.

Sincerely,



Timothy E. Rogers
Raymond E. Lark, Jr.
Robert Guild

Enclosures

cc: Walther Farms-Windsor, S.C.
c/o Jason Walther
52944 U.S. 131
Three Rivers, MI 49093

Exhibit 1

Surface Water Withdrawal Permitting is Underway in South Carolina
September 19, 2012

By Chuck Gorman, P.G., Director, Water Monitoring, Assessment and Protection
Division, DHEC Bureau of Water

The Surface Water Withdrawal, Permitting, Use, and Reporting Regulation (R.61-119) became effective June 22, 2012 pursuant to the *Surface Water Withdrawal, Permitting, Use, and Reporting Act* of 2010. The Act requires any surface water withdrawal over three million gallons in any month to be permitted by the South Carolina Department of Health and Environmental Control (DHEC). Surface water withdrawals over three million gallons in any month for agricultural activities require a registration from DHEC.

Now that the regulation is effective, DHEC has begun the permitting process for non-agricultural withdrawers and the registration process for agricultural withdrawers. Existing non-agricultural surface water withdrawers, as defined by the Act, must submit an application to DHEC within 180 day of the effective date of the regulation (determined to be on or before December 19, 2012) to receive a permit and a withdrawal amount based on the criteria established for existing withdrawers in the Act. If an existing withdrawer does not submit an application to DHEC by the aforementioned date, they will need to pursue a permit as a new surface water withdrawer. DHEC will be contacting existing agricultural withdrawers to register their withdrawals.

For more information about the surface water use permitting and registration process, visit the following website <http://www.scdhec.gov/environment/water/sfw.htm>. The website includes links to the Act, regulation and application forms for existing and new permits and registrations.

If you have any questions about surface water permitting, please contact Mr. Charles Gorman at 803-898-3112.

Exhibit 2

Austin & Rogers, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

C.C. HARNISS, III
(1949-2010)

TIMOTHY F. ROGERS
RAYMOND E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
W. MICHAEL DUNCAN

COLUMBIA OFFICE:
CONZALEE BUILDING
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POST OFFICE BOX 13716
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 252-4000
FACSIMILE: (803) 252-3679
WWW.AUSTINROGERSPA.COM

OF COUNSEL:
WILLIAM FREDERICK AUSTIN
JEFFERSON D. GRIFFITH, III*

* ALSO ADMITTED IN N.C.

September 24, 2013

Via US Mail and E-mail

Karla Mew, Director
Freedom of Information Office
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Re: Freedom of Information Act Requests On Behalf Of Friends Of The Edisto (FRED) Regarding And/Or Relating To: (A) Surface Water Withdrawal Registration # 02HR025 Re Bureau of Water Files for the said Registration, Application, Comments, and Supplemental Information Documents, Including Any Preliminary Assessments(s), Engineering Report(s), Other Assessments, And/Or Reports, and any other Documents Re said Registration; (B) Documents Relating To Any Notice of Intent or Permit Application Or Any Other Documents Pertaining to Any Groundwater Well(s) or Intended or Proposed Groundwater Well(s) Included In or Related To the Said Registration; (C) Documents Relating To Any Prior or Subsequent Registration or Permit Application or Notice of Intent Pertaining to Any Other Surface Water Withdrawal or Groundwater Well(s) from Walther Farms; And (D) Documents Relating to Any Approval Issued to Walther Farms for Any Surface Water Withdrawal(s) or Groundwater Well(s), Our File No. 13206

Dear Ms. Mew:

Please consider this letter to constitute FOIA requests regarding (A), (B), (C), and (D) above to be made available for review at your Office at your earliest convenience of all documents, including copies of emails. Following review of these documents, we will tag any specific documents which we might request to be copied.

Thank you very much for your assistance and attention to this matter.

Sincerely,
AUSTIN & ROGERS, P.A.

Timothy F. Rogers

Raymond E. Lark, Jr.

Cc: Alan Mehrzad
Robert Guild, Esquire

From: Young, LeAnn [<mailto:youngl@dhc.sc.gov>]
Sent: Monday, November 18, 2013 3:24 PM
To: Tim Rogers
Subject: FOI Request # 1309292

Mr. Rogers,

Please see attached as requested.

Thanks,

LeAnn Young
Administrative Coordinator I - Freedom of Information Office
SC Department of Health & Environmental Control
(803) 898-3880 Voice
(803) 898-3816 Fax

Regulation



Division of Environmental Health
Promoting and protecting the health of the public and the environment

March 24, 2015

Mr. Jason Wadher
52944 U.S. 131
Three Rivers, MI 49993

Re: Wadher Farms - Windsor, S.C.
Agricultural Surface Water Withdrawal Registration 022R025;
South Edisto River
Aiken County, S.C.

Dear Mr. Wadher:

We have reviewed your application for an agricultural surface water withdrawal from the South Edisto River for the amount of 100,000 gallons per day. The proposed withdrawal is within the approved withdrawal point and within the safe yield of the Edisto River. A copy of the withdrawal permit is attached to this letter. A copy of the permit is also attached.

Please note: Condition 1 of the Withdrawal Permit, Section 2-63-119, requires that you notify the Department within 30 days of the issuance of the permit that will be used to withdraw water from the Edisto River. If the permit is not received within one year of the issue date of this permit, you must request an extension of the permit. If the permit is received within one year of the issue date of this permit, you must request an extension of the permit.

Should you have any questions regarding this permit, please contact Michelle Bishop, Director, Division of Environmental Health, at (803) 733-7333 or by email at Michelle.Bishop@dhc.sc.gov.

Sincerely,

Rob Davis, Manager
Water Quantity Permitting Section
Water Monitoring, Assessment and Protection Division
Bureau of Water

Enc: SW Registration 022R02501

cc: Technical File (wenc)
Regional Office (via pdf)
Ms. Jessie King (via e-mail)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

2500 Bull Street • Columbia, SC 29201 • (803) 733-7333 • www.dhec.sc.gov



Division of Drinking Water
Protecting and promoting the health of the public and the environment

Division of Water
Surface Water Withdrawal Registration

A Surface Water Withdrawal Registration System Register

Water Permit
Augusta, Georgia - South Fork Ogeechee River
Withdrawal No. 2013-0001

This Registration allows the permittee to withdraw water from the South Fork Ogeechee River for the purpose of agricultural irrigation as specified below:

Project name:	Water Permit - Withdrawal, South Carolina
County:	Aiken
Project:	Surface Water South Fork Ogeechee River
System Permit:	021025
Source Number:	02102501
Maximum Monthly Withdrawal:	285,000 Gallons per Month
Maximum Yearly Withdrawal:	3,420,000 Gallons per Year
Conditions:	See attached registration conditions
Issue Date:	March 21, 2013

Registration Condition: Walker Farms -
Registration Source Number: 000000000
March 21, 2013

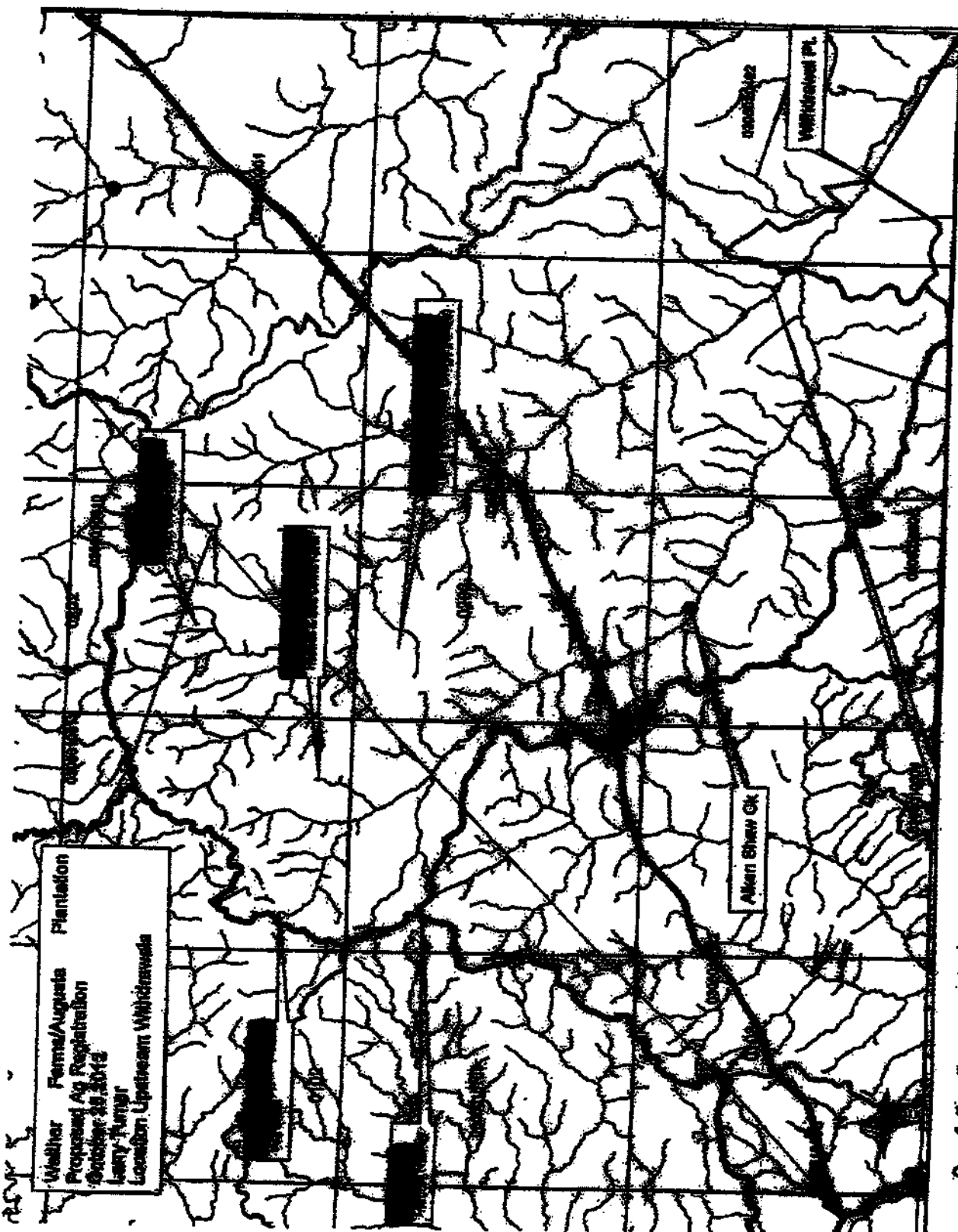
1. Walker Farms must notify the Department of the start of construction of the intake structure allowed by this registration within 15 days of the start of construction or completion of construction. If notification of construction of the intake structure is received by the Department by March 21, 2013, Walker Farms shall have 90 days to complete construction to construct and operate the intake structure. If notification of construction is received after the Walker Farms registration deadline, the Department may require an extension of the time period. Notification or a request for a time extension is to be made to:

Mr. Rob Devlin
Water Quality Permitting Section
SC DHEC, BOW
2009 Bull Street
Columbia, SC 29201

2. Walker Farms shall submit, on forms provided by the Department, a certified report of surface water withdrawal each month and annually. Such reports shall be submitted by the 5th day of January for the preceding year.

3. A registered surface water withdrawal user, at any time, subject as follows in its registered withdrawal account.

4. Nothing in this registration shall exempt any person, regardless of the duty to comply with all other applicable laws, regulations or orders of the Department and/or any other agency, from any other applicable law, regulation or order. Further, this registration does not exempt the registrant from compliance with any other local, state or federal law, regulation or ordinance.



Weather Farm/Augusta
Proposed Ag Registration
October 28, 2016
Larry Nungesser
Location: Upstream Withlacussee

Allen Shaw Ck

Withlacussee Pt.



CERTIFICATE OF MAILING

I, Kaleigh Karlson, an employee at Austin & Rogers, P.A., hereby certify a set of the Request
For Final DHEC Board Review with Exhibits has been sent this 2d of December, 2013, via U.S.

Mail, certified and return receipt requested to the following person:

Walther Farms-Windsor, S.C.
c/o Jason Walther
52944 U.S. 131
Three Rivers, MI 49093


Kaleigh Karlson

Columbia, SC

RECEIVED

DEC 3 2013

Clerk, Board of Health
and Environmental Control

CERTIFICATE OF MAILING

I, Kaleigh Karlson, an employee at Austin & Rogers, P.A., hereby certify a corrected page 2 to the Request For Final DHEC Board Review with Exhibits and this Certificate Of Mailing have been sent this 3d of December, 2013, via U.S. Mail, certified and return receipt requested to the following person:

Walther Farms-Windsor, S.C.
c/o Jason Walther
52944 U.S. 131
Three Rivers, MI 49093


Kaleigh Karlson

Columbia, SC

RECEIVED

DEC 3 2013

Clerk, Board of Health
and Environmental Control



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

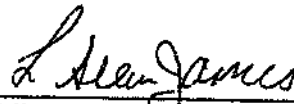
AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, L. Allan James, Ph. D., who, being duly sworn, deposes and states the following:

1. As shown in my attached CV (Exhibit 1), I am a professor at the University of South Carolina in Columbia, SC and hold masters degrees in Water Resources Management (1981) and Geography (1983 specializing in river science), and a Ph.D. held jointly with Geography and Geology (1988 specializing in river science). I have been on the faculty at USC since 1988, tenured since 1993, and a full professor of Geography since 2007. I am recognized as an expert in river science with abundant expertise in river flows and hydrologic regimes.
2. I have been engaged by the Friends of the Edisto (FRED) to assist in assessing the reasonableness of DHEC Staff's Agricultural Surface Water Withdrawal Registration # 12IR025 to Walther Farms-Windsor, S.C., issued March 21, 2013 (Walther-1), as well as in assessing the Walther Farms Agricultural Registration Application # 06IR027 before Staff (Walther-2) and related matters that may arise.
3. The surface water withdrawal from the South Edisto River proposed by Walther Farms was evaluated by Larry Turner of DHEC as presented in a memo dated March 18, 2013 addressed to Walther Farms (the Turner Report). That analysis calculated safe yields of water from the South Edisto at 80% of the mean annual flow; i.e., 100% minus 20% of mean annual flow. Basing flow-protection on long-term annual average conditions fails to account for systematic and predictable variability in the flows inherent to seasonality and to a long-term trend in declining flows.
4. Seasonality of flows is highly pronounced in the South Edisto and the highest rates of irrigation withdrawals are very likely to coincide with dry periods which will have flows much less than average conditions. An analysis of the seasonality of flows shows that the six drier months of the year (June-Nov.) have only 76% of the mean annual flow (Exhibit 2). Given that withdrawals will occur during the dry months of the year, the probabilities of withdrawals exceeding flows should be based on the period of dry conditions not on the entire annual cycle.
5. A long-term trend in declining dry month flows in the South Edisto is clearly demonstrated in the daily flow record near Denmark. Mean daily flows for the dry months were substantially higher in the early period of the gaging record near Denmark prior to 1971 than in the period after 1980. The mean dry month flows after 1980 were only 87% as large as the overall flows for the entire record. This reduction in mean flows in the recent period indicates that averages based on long-term flow rates likely overestimate the magnitude of flows that can be relied upon in the future (Exhibit 3). Although the cause of these reductions are unknown, they could be indicative of a continuing trend due to climate change or groundwater withdrawals that should be anticipated in water resources management for the future.
6. Given that (1) the DHEC analysis was conducted using mean annual flow conditions and did

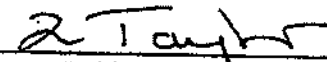
not consider systematically lower seasonal or long-term flows, and (2) water withdrawals will not be made randomly in time but will be concentrated during dry periods, it is my expert opinion that the DHEC analysis substantially overestimates the reliability of water resources in the South Edisto and that water availability in the basin should be recalculated based on a more detailed flow analysis in the river.

8. This is my Affidavit and I am responsible for its contents. I reserve the right to supplement it as additional information becomes available.



L. Allan James, Ph. D.

SWORN and subscribed to before me
this 13 day of December, 2013.



Notary Public for South Carolina
My Commission Expires August 20, 2011
My commission expires: _____

L. Allan James, Ph.D.
CURRICULUM VITAE

October, 2013

Exhibit 1

Department of Geography
Callcott Building
University of South Carolina
Columbia SC 29208
Email: ajames@sc.edu

Citizenship: USA
work: (803) 777-6117
cell: (803) 447-5592
Fax (work): (803) 777-4972
Home Page: <http://people.cas.sc.edu/ajames/>

EDUCATION

- Ph.D. in Geography and Geology** (held jointly), *Univ. Wisconsin, Madison*, 1988.
Dissertation: "*Historical transport and storage of hydraulic mining sediment in the Bear River, California.*" Dissertation advisors: James C. Knox (Geography) and David M. Mickelson (Geosciences).
- M.S. in Geography**, *Univ. Wisconsin, Madison*, 1983. Thesis: "*Post-flood channel adjustments in the upper Kickapoo River, Southwest Wisconsin.*" Advisor: Jim Knox
- M.S. in Water Resources Management**, *Univ. Wisconsin, Madison*, 1981. Advisor: Knox.
- B.A. in Geography**, *Univ. California, Berkeley*, 1978.

PROFESSIONAL APPOINTMENTS

- Professor of Geography with Tenure.** Geography Dept., Univ. South Carolina. 2007-present.
- Director, BioGeomorphology Laboratory**, 1989-present.
<http://people.cas.sc.edu/ajames/Lab/Lab.html>
- Associate Professor with Tenure.** Geography Dept., USC, 1993-2006.
- Assistant Professor.** Geography Dept., USC. 1988-1993.

TEACHING EXPERIENCE

- Geography Dept., Univ. South Carolina, 1988 to present (see course list below).
- Geography Dept., Univ. Georgia, Athens. 1987-1988. Weather and Climate; Soils.
- Geography Dept., Univ. Oregon, Eugene. Summer, 1987. Weather and Climate; Geomorphology.
- Geology Dept., Univ. Calif., Davis. Summer field camp; Sierra Nevada. 1996.
- Geography Dept., Univ. Wisconsin, Madison. Fall, 1986.
- Geog. Dept., Univ. Wisc. Center, Rock Co. Spring, 1985.
- Geog. Dept., Univ. Wisconsin, Madison. Lab Instructor/Teaching Assistant, 12 semesters, 1978-1984.

Courses Taught:

Water as a Resource; Geomorphology; Water & Watersheds; Watershed Hydrology; Fluvial Geomorphology; Floodplain & Watershed Management; Human Impacts on Fluvial Systems; Modeling Hydrologic & Geomorphic Systems.

GRANTS

Externally Funded Research Grants

- Yuba County Water Authority. *Historical Geomorphic and Land Use / Land Cover Reconstructions for the Lower Yuba River Based on Remote Sensing*. PI. Spring and summer, 2011. \$59,895.
- National Science Foundation, *Binghamton Geomorphology Symposium: Geospatial Technologies and Geomorphological Mapping*. #0924719. \$23,303. PI.
- U.S. Geological Survey. *Establishing a multi agency stewardship program for the National Hydrographic Database (NHD) in South Carolina, Part II*. G10AC00188, \$50,000. PI, with Michael Hodgson.
- U.S. Geological Survey. *Establishing a multi agency stewardship program for the National Hydrographic Database (NHD) in South Carolina, Part I*. G09AC00497, \$50,000. PI, with Michael Hodgson.
- Richland Co., Dept. Public Works. *Environmental Assessment of Stormwater Infrastructure Chemical Spraying*. Co-PI (PI = Liv M. Haselbach, Civil & Env. Engineering, USC). USCERA proposal 15520-08-17148. Oct. 1, 2007 through June 30, 2008. \$20,000
- National Science Foundation. *Tracking Hydraulic Mining Sediments from the Sierra Piedmont into Flood Bypasses of the Sacramento Valley, California*. Collaborative Research with Univ. Calif. Santa Barbara (M. Singer & T. Dunne) and Univ. Washington (R. Aalto); PI of USC portion; \$79,310 over three years. NSF BCS 0520933. July 2005 - July 2008.
- South Carolina Dept. Health and Environmental Control. \$98,840; with Dean, McKellar, and Carbone. *Rainfall-runoff relationships in the Colonel Creek watershed. 1997-99*.
- South Carolina National Guard. \$30,000 with Dean, McKellar, and Carbone, *Heavy metals in sediments of the Mill Creek and Colonel Creek watersheds; 1996-98*.
- South Carolina Dept. Health and Environmental Control. \$104,000, Co-PI with Dean, McKellar, and Carbone, *Rainfall-runoff relationships in the Mill Creek watershed. 1996-97*.
- National Science Foundation. \$24,000. *Mississippi River Flood Sedimentation*. Co-PI with B. Gomez (ISU), F. Magilligan (Dartmouth), and J. Phillips (E. Carolina). 1994.
- South Carolina Water Resources Commission, \$15,000. PI. *Delineation and Digitization of Drainage Divides*. Spring, 1992. PI.
- Southeast Regional Climate Center. \$31,536. Co-PI with Dr. G. Carbone. *Use of Geographic Information Systems in Climate Impact Analysis*. 1990.

National Science Foundation, Geog. and Regional Science Program. \$45,000. PI. *Hydraulic mining sediment in the Bear and South Yuba rivers, Calif.* NSF #SES-8822436. 1989-90. PI.

Externally Funded Education Enhancement & Travel Grants

U.S. Geological Survey and NSF, Faculty Enhancement Program in Water Resources and Hydrology; stipend and tuition.

AWARDS, HONORS, and ELECTED POSITIONS

Faculty Senate, University South Carolina. Elected, 2010-2013.

National Councilor, Assn. Amer. Geographers (AAG). Elected, 2009-2012.

Chair, *Water Resource Specialty Group (WRSG)*, AAG. Elected, 2002-2004.

Secretary/Treasurer, WRSG, AAG. Elected, 2000-2002.

Chair, *Geomorphology Specialty Group*, AAG. Elected, 1995-1996.

Secretary/Treasurer (elected), *Geomorphology Specialty Group*, AAG. Elected, 1994-1995.

Faculty Senate, University South Carolina. Elected, 1990-1992.

BOOKS AND PROCEEDING VOLUMES

James, L. Allan. 2012. *Landform Geography: Laboratory Exercises*. Kendall-Hunt, Pub. Co.

James, L.A., C. Harden, and J. Clague (eds.) 2013. *Geomorphology of Human Impacts, Climate Change, and Natural Hazards*. Volume 13 of *Treatise on Geomorphology*, J. Shroder (Chief Editor); Elsevier. 301pp.

James, L. A., S. Walsh, and M. P. Bishop (eds.) 2012. *Geomorphic Mapping and Spatial Analysis*. Proc. 41st Annual Binghamton Geomorphology Symp.; Columbia, SC, Oct. 15-17, 2010. N.Y.: Elsevier; 198 pp.

James, L. A., Rathburn, S. L., and Whittecar, G. R. (eds.) 2009. *Management and Restoration of Fluvial Systems with Broad Historical Changes and Human Impacts*: Geological Society of America Special Paper 451; Boulder, CO: Geol. Soc. Amer.; 244pp.

James, L. A. and W. A. Marcus (eds.). 2006. *The Human Role in Changing Fluvial Systems*. Proc. 37th International Binghamton Geomorphology Symposium, Oct. 20-22, 2006, Columbia, SC. 362 pp. The Netherlands: Elsevier.

Platt, R. H., James, L. A., et al. 1995. *Flood Risk Management and the American River Basin: An Evaluation*. National Research Council, Committee on Flood Control Alternatives in the American River Basin. Wash., D.C.: National Academy Press. 236 pp.

SELECTED REFEREED JOURNAL ARTICLES

- Singer, M. B., R. Aalto, L. A. James, N. E. Kilham, J. L. Higson, and S. Ghoshal. (in press). Enduring legacy of a toxic fan via episodic redistribution of California gold mining debris. *Proceedings National Academy of Sciences*.
- James, L. A. (in press) Legacy sediment: Definitions and processes of episodically produced anthropogenic sediment. *Anthropocene* (available online).
- Arrington, T. and L. A. James (in press). Downstream geomorphic variation and local bedrock influence of a steep transitional river: Blue Ridge to Piedmont, South Carolina. *Physical Geography*.
- Perveen, S. and L. A. James. 2012. Changes in correlation coefficients with spatial scale and implications for water resources and vulnerability data. *Professional Geographer* 64(3):389-400.
- Perveen, S. and L. A. James. 2011. Changes in correlation coefficients with spatial scale and implications for water resources and vulnerability data. *Professional Geographer*. DOI:10.1080/00330124.2011.609783
- James, L. A. and K. J. Hunt. 2010. The LiDAR-side of headwater streams: Mapping channel networks with high-resolution topographic data. *Southeastern Geographer* 50(4): 523-539.
- Perveen, S. and L. A. James. 2010. Scale invariance of water stress and scarcity indicators: Facilitating cross-scale comparisons of water resources vulnerability. *Applied Geography*. 31: 321-328. doi:10.1016/j.apgeog.2010.07.003
- Ghoshal, S., L. A. James, M. Singer, R. Aalto. 2010. Channel and floodplain change analysis over a 100-year period: Lower Yuba River, California. *Remote Sensing* 2, 1797-1825; doi:10.3390/rs2071797. Open Access: <http://www.mdpi.com/2072-4292/2/7/1797/>
- Perveen, S. and L.A. James. 2009. Multiscale effects on spatial variability metrics in global water resources data. *Water Resources Management*. DOI 10.1007/s11269-009-9530-2.
- James, L. A. 2009. Integrating water-quality into a water resources research agenda. *Journal of Contemporary Water Research and Education* 142: 1-6. Invited. <http://www.ucowr.siu.edu/updates/142/3.pdf>
- James, L. A., D. G. Watson, W. F. Hansen. 2007. Using Lidar to map gullies and headwater streams under forest canopy: South Carolina, USA. *Catena* 71: 132-144.
- James, L. A. 2006. Bed waves at the basin scale: implications to river management and restoration. *Earth Surface Processes and Landforms* 31: 1692-1706.
- James, L. A. and W. A. Marcus. 2006. The human role in changing fluvial systems: Retrospect, inventory and prospect. *Geomorphology* 79: 152-171.
- James, L.A. 1997. Channel incision on the lower American River, California, from streamflow gage records. *Water Resources Research* 33: 485-490.
- Carbone, G. and L. A. James. 1993. Applying GIS Technology to Climate Data in South Carolina. *Geo Info Systems* 3(9): 52-59.

REFEREED BOOK CHAPTERS AND PROCEEDINGS PAPERS

- James, L.A. 2013. Impacts of Early Agriculture and Deforestation on Geomorphic Systems. In: Shroder, J., Jr., James, L.A., C. Harden, J. Clague (Eds.), *Treatise on Geomorphology*. Academic Press, San Diego, CA, vol. 13, pp.48-77.
- James, L.A. and S. Lecce. 2013. Impacts of Land-Use and Land-Cover Change on River Systems. In: Shroder, J., Jr., Wohl, E. (Eds.), *Treatise on Geomorphology*. Academic Press, San Diego, CA, vol. 9, pp. 768-793.
- Mossa, J. and L.A. James 2013. Impacts of Mining on Geomorphic Systems. In: Shroder, J., Jr., James, L.A., C. Harden, J. Clague (Eds.), *Treatise on Geomorphology*. Academic Press, San Diego, CA, vol. 13, pp. 74-95.
- James, L. A., M. B. Singer, S. Ghoshal, and M. Megison. 2009. Sedimentation in the lower Yuba and Feather Rivers, California: Long-term effects of contrasting river-management strategies, in James, L.A., Rathburn, S.L., and Whittecar, G.R., eds. Management and Restoration of Fluvial Systems with Broad Historical Changes and Human Impacts: Geological Society of America Special Paper 451, doi: 10.1130/2009.2451(04).
- James, L. A. 2004. Decreasing sediment yields in northern California: vestiges of hydraulic gold-mining and reservoir trapping. In, V. Golosov, V. Belyaev, and D. E. Walling (Eds.), Sediment Transfer through the Fluvial System. Proc. Internat. Symp., Aug. 2-6, 2004. Moscow, Russia. Wallingford, UK: Internat. Assn. Hydrological Sciences (IAHS) Publ. 288 (Red Book); pp. 235-244.
- _____. 1994. Channel changes wrought by gold mining: Northern Sierra Nevada, California. In Effects of Human-Induced Changes on Hydrologic Systems, Marston, R. and V. Hasfurther (Eds.), Amer. Water Resources Assn., Proc. conference June 26-29, 1994, Jackson Hole, Wyoming; pp. 629-638.

MEMBERSHIPS IN PROFESSIONAL SOCIETIES

American Geographical Society	1990 to present
American Geophysical Union *L	1989 to present
Association of American Geographers *L	1978 to present
Geomorphology Specialty Group	1978 to present
Water Resources Spec. Group	1985 to present
British Geomorphological Research Group	2003 to present
Geological Society of America	1983 to present
Engineering Geology Division	1990 to present
Geology and Society Division	2003 to present
Geomorphometry, Scientific Committee	2010 to present
International Assn. of Geomorphologists	1989 to present
International Assn. Hydrological Sciences	1993 to present
AAG, GIS Specialty Group	1991 to 1999
American Water Resources Association	1993 to 2010

(*L: lifetime member)

PROFESSIONAL SERVICE and TECHNICAL ADVISING

Editorial Boards:

Geomorphology - 2004 to present. International refereed journal published by Elsevier.

Water – 2012 to present; International Open-Source journal published by MDPI.

Royal Geographic Society (with Inst. British Geographers), *Advancing Geography and Geographical Learning*, book series, editorial board – 2008 to present.

Exhibit 2

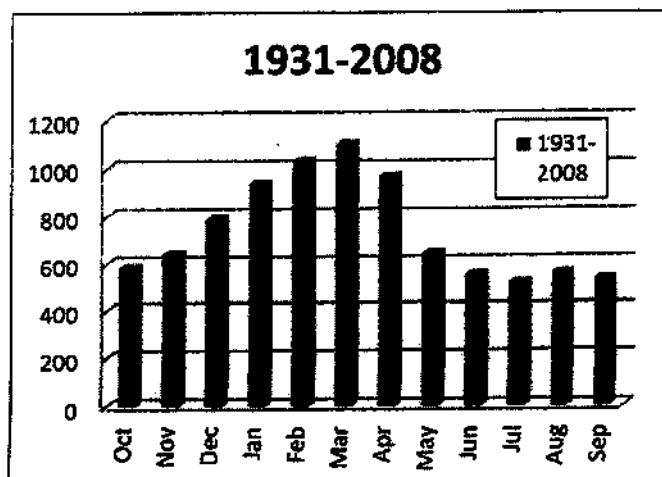
Seasonal Variations in Flow on the South Edisto River

L. Allan James, Ph.D.

Summary: Surface water withdrawals from the South Edisto River proposed by Walther Farms were evaluated by DHEC. The analysis by Larry Turner of DHEC presented in a memo dated March 18, 2013 addressed to Walther Farms (the Turner Report) calculated safe yields of water from the South Edisto as 80% of the mean annual flow; i.e., 100% minus 20% of mean annual flow. Merely ensuring a flow rate equivalent to 20% of the long-term mean annual flow fails to account for a number of issues including the seasonality of flows and long-term declining trends in flows. The highest rates of irrigation withdrawals are very likely to occur during dry periods which will have flows much less than average conditions. Thus, a policy based on long-term average conditions underestimates the risk of over-allocations during periods of scarcity. Defining a safe yield as withdrawals no more than 80% of mean annual flow does not ensure sustained flows or avoid environmental damages during drier summer months or drought periods.

Seasonality: The Turner report does not address the issue of seasonality, but both the climate and surface runoff in South Carolina are strongly seasonal. An analysis of the long-term record of mean daily flows at the U.S. Geological Survey stream-flow gage on the South Edisto River near Denmark (2173000) was performed to test for seasonality in flows. The strong seasonality of flow can be seen in the long-term monthly average flows at the Denmark gage (Figure 2-1). Based on this pattern, the Denmark data were split into two approximately equal seasonal periods for subsequent analysis: a six-month wet period from December through May and a six-month dry period from June through November.

Figure 2-1. Long-term mean monthly flows at the Denmark stream-flow gage on the South Edisto River for the period 1931 to 2008.



The next step in this analysis was to scale the mean daily flows at the Denmark gage down to the smaller flows at the Walther withdrawal site. This was done using the same method as the Turner report; that is, by multiplying Denmark flows by the ratio of basin areas ($373 \text{ mi}^2/720 \text{ mi}^2=0.518$). The next step was to compute mean flow values for the entire record (1931-2013) (Table 2-1). Next, daily flows from the Denmark record for the sixth drier months (June-Nov.) of each year were extracted and the mean was computed for the dry season. The ratio of the mean dry period flow to the mean annual (full year) flow (284/372) is only 76.4% (Figure 2-1), showing that the drier half of the year, when irrigation will presumably be at a maximum, has substantially lower flows on average than the long-term flow. This same proportion applies to seasonality of data at the Denmark gage site.

Table 2-1. Daily flow data summary. Data from U.S. Geological Survey Denmark gage, scaled to withdrawal site, and filtered for June-Nov. months. [all flow values in cfs]

Long-term (1931-2013), Full year (all months):		
	Denmark	Withdrawal site
Mean:	717	372
Maximum:	12,700	6,579
Minimum:	110	57
N days:	26,740	26,740
Long-term (1931-2013), Dry season (June-Nov.):		
Mean:	548	284
Maximum:	7,180	3,720
Minimum:	110	57
N days:	13,411	13,411

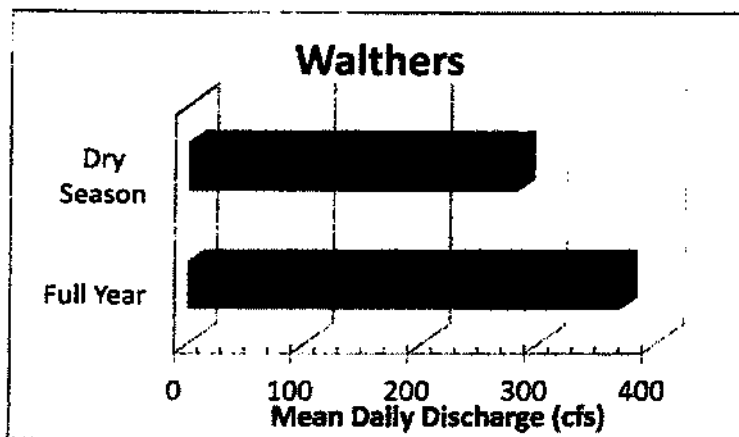


Figure 1. The six-month period from June to November has had substantially smaller (76.4%) average flows at the withdrawal site than the mean annual daily flows

Nothing prevents Walther Farms from extracting their full allocation during the driest of periods. Another aspect of the dry-month analysis that appears ominous is the proportion of low flows that the registered 805MGM represent. 805 MGM represents an average flow rate in the river of approximately 41 cfs. Flows as low as 57 cfs were recorded over a protracted period in August of 2002, which would leave only 16 cfs of flow after removal of the allocated 57 cfs were removed. Given other users in the basin this represents an over-allocation of water during dry periods. In fact, flows less than 80 cfs occurred 148 days (2.4% of the days) during the dry-month season since 1980. This poses a substantial risk of irreparable harm to aquatic systems in the South Edisto over the coming years.

Exhibit 3

Long-Term Reductions in Flow on the South Edisto River

L. Allan James, Ph.D.

Setting a flow rate equivalent to 20% of the long-term mean annual flow fails to account for long-term systematic variability in flow in the South Edisto River. Essentially, the implicit assumption was made that water availability in the river can be accurately estimated from flows during a period including a wetter period prior to 1971. Stream flows in the South Edisto were substantially higher in the early period of the gaging record near Denmark prior to 1971 than in the period after 1980. An analysis of daily stream flow data on the river near Denmark shows that flows were larger in the early period than in the more recent period. In fact, mean dry-month flows since 1980 have only been 87% of the flows recorded over the entire period 1931-2013. Thus, the DHEC analysis systematically overestimates the amount of water that will be available for safe yield.

Methods: The mean daily stream-flow record at the Denmark gage began August 4, 1931, ran continuously until Sept. 2, 1971, began again on October 1, 1980 and has been running until present. The entire period of daily flow data set up until November 21, 2013 was used in the following analysis, but only data from the six dry months from July to November were included. As an initial test for changes through time the dry period data were split into two large samples based on the natural hiatus of data from Sept.3, 1971 to August 30, 1980 (Table 2-1). As explained in Exhibit A, mean daily flows at the stream-flow gage near Denmark were scaled down to the smaller flows at the withdrawal site and mean daily flows for the sixth dry months (June-Nov.) were extracted for the dry-month analysis presented here.

Results: The mean dry-month daily flows for the period after 1980 (247 cfs) are only 79% of the daily flows prior to 1971 (315 cfs) (Figure 2-1). This indicates a substantial likelihood that flows during the recent period and carrying forward to the future may not be as robust or reliable as they were in the earlier period.

Causes and Implications of Long-Term Reductions in Flow: An explanation for the observed reduction in flow is beyond the scope of the analysis conducted, although many hypothetical explanations are conceivable. Likely subjects of further testing would be (1) climate or vegetation change resulting in reduced precipitation or increase evapotranspiration, (2) increased groundwater pumping translated to river stages through the highly porous substrate of the Sandhills soils, or (3) increased water withdrawals from the river by registered or other users. These changes documented for the period after 1980 may continue and may increase through time. More study is needed to document these trends and identify their cause.

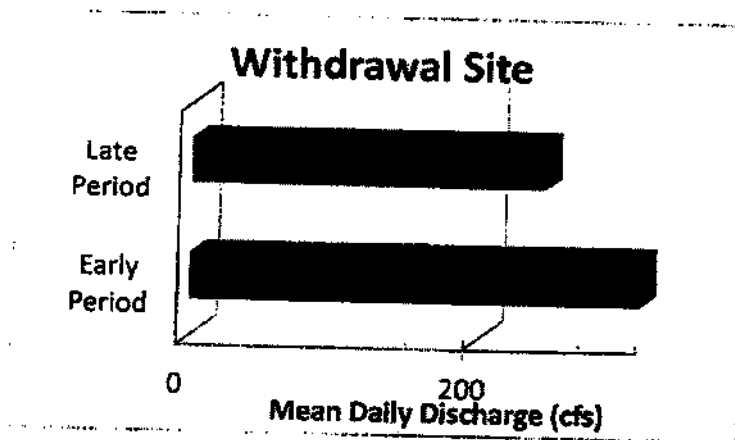


Figure 3-1. Mean daily flows for dry months of the 30-year period 1931 to 1971 were 314 cfs compared to the mean same daily dry-month flows from 1980 to 2013.

Table 3-1. Mean daily summary flow statistics for early (1931-1971) and late (1980-2013) periods on the South Edisto at the gage near Denmark and the withdrawal site. Data from U.S. Geological Survey Denmark gage, scaled to the withdrawal site. This and filtered for June-Nov. months. [all flow values in cfs]

Full Period (1931-2013) dry season:

	Near Denmark	Withdrawal site
Mean:	548	284
Maximum:	7,180	3,720
Minimum:	110	57
N days:	13,411	13,411

Early Period (1931-1971) dry season:

	Near Denmark	Withdrawal site
Mean:	607	314
Maximum:	7180	3,720
Minimum:	156	81
N days:	7,320	7,320

Late Period (1980-2013) dry season:

	Near Denmark	Withdrawal site
Mean:	478	247
Maximum:	2700	1399
Minimum:	110	57
N days:	6,091	6,091

Another measure of long-term declines in flows can be illustrated by a time series of deviations from the long-term overall dry-month mean flow (1931-2013). This simply involves subtracting the long-term mean flow from each daily flow and plotting the results against time (Figure 2-2A). The larger flows in the plot are not of interest here, since the real danger of the withdrawals is to the low-flow conditions of the river. To emphasize changes in low-flows over the period of record the vertical axis of the time series was rescale to show the deviations less than zero; i.e., flows below the long-term average (Figure B-3B)

Figure 2-2. Deviations from long-term, dry-season daily mean flows. (A) Full record of flow deviation events. (B) Focus on low-flow deviations shows that the post-1980 period has more extreme dry events than the earlier period.

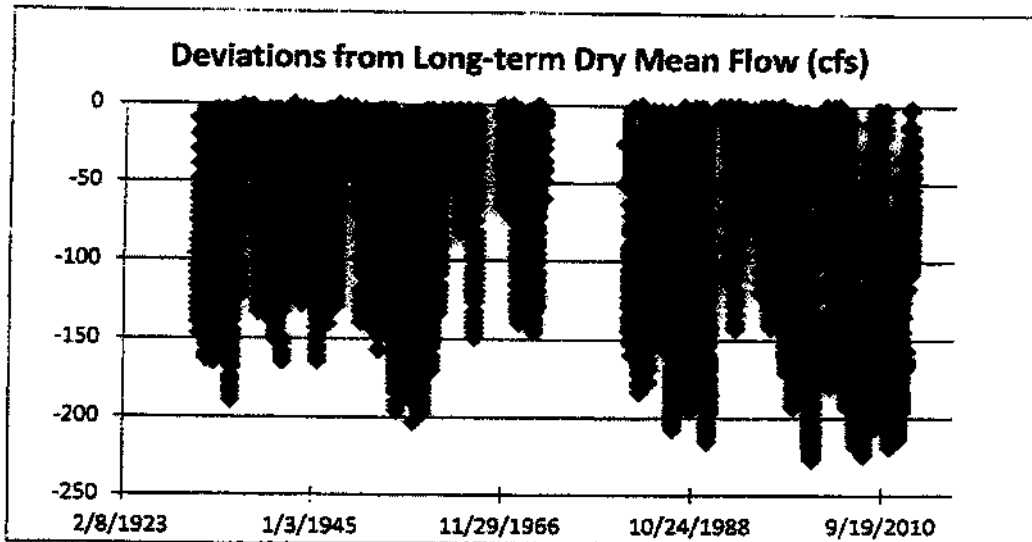
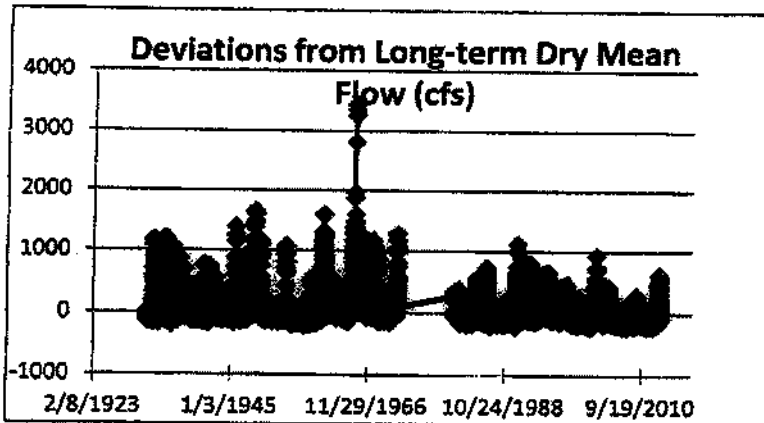




Figure 2-3. Photo of the Walther bank that is now under construction showing modest flow conditions in summer. Note how gentle and pristine the slope was on the far bank. Photograph taken by Dr. John Bass, August 2012.

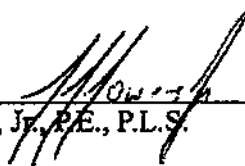


STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND)

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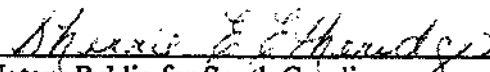
PERSONALLY APPEARED BEFORE ME, J.J. Jowers, Jr., P.E., P.L.S., who, being duly sworn, deposes and states the following:

1. I am a licensed professional engineer in the State of South Carolina (S.C. 23142). My office address is Edisto Engineers and Surveyors, Inc., 650 Broughton Street, Orangeburg, SC 29115.
2. I would like to make sure the facts are being presented accurately in assessing the reasonableness of DHEC Staff's Agricultural Surface Water Withdrawal Registration # 12IR025 to Walther Farms-Windsor, S.C., issued March 21, 2013 (Walther-1), as well as in assessing the Walther Farms Agricultural Registration Application # 06IR027 before Staff (Walther-2) and related matters that may arise. I have reviewed the DHEC FOIA Responses to the Requests by Friends of the Edisto (FRED), concerning Walther-1.
3. The approved intake capacity is approximately 41 cubic feet per second (cfs). Add the pending permit and the new withdrawal rate will be approximately 67cfs. The Edisto River at the Denmark gauge commonly reports the river level at or below 130cfs in the spring. That's over half the water flow in the river taken by one user. This significant reduction of natural water flow will have an adverse effect on the ecosystem as well as every community and every property owner all the way to the coast.
4. It would seem reasonable to expect significantly lower water flow in the Edisto River 20 miles upstream of the Denmark gauge near the withdrawal site. I challenge DHEC's assessment of safe surface water withdrawals using average flows and not historically recorded minimum flows.
5. It doesn't take a highly educated person to comprehend the concept of assessing issues based on critical scenarios. Buildings are not structurally designed for average capacity. Utility mains are not designed for average demand. In my expert opinion, assessing the safe withdrawal of water from a river system based on average flow data is fundamentally flawed.
6. This is my Affidavit and I am responsible for its contents. I reserve the right to supplement it as additional information becomes available.



J.J. Jowers, Jr., P.E., P.L.S.

SWORN and subscribed to before me this 19 day of December, 2013.



Notary Public for South Carolina
My commission expires: 10-22-21.

Attachment B

DHEC's March 21, 2013 Acknowledgement of Walther Farms Registration at Augusta Farm



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

March 21, 2013

Mr. Jason Walther
52944 U.S. 131
Three Rivers, MI 49093

Re: Walther Farms - Windsor, S.C.
Agricultural Surface Water Withdrawal Registration 02IR025;
South Edisto River
Aiken County, S.C.

Dear Mr. Walther:

We have reviewed your application for a surface water withdrawal from the South Edisto River in the amount of 805 million gallons per month (mgm) and have determined that the proposed withdrawal is within the safe yield of the source waterbody at the withdrawal point and within the safe yield of the Edisto River Basin. The detailed safe yield analysis is available if you would like to have a copy. A copy of Agricultural Registration 02IR025 is attached.

Please note Condition 1 of the Registration. This condition, based on R.61-119, requires that you notify the Department within 30 days of completion of construction of the intake that will be used to withdraw water from the South Edisto River. If this notification is not received within one year of the issue date of this Registration, authorization to construct and operate the proposed withdrawal is revoked unless you have requested and the Department has approved an extension of the time period.

Should you have any questions concerning this registration please contact Michael Bishop at (803) 898-3553 (office phone), (803) 898-2893 (fax), or by e-mail at bishopma@dhec.sc.gov.

Sincerely,

Rob Devlin, Manager
Water Quantity Permitting Section
Water Monitoring, Assessment and Protection Division
Bureau of Water

Enc: SW Registration 02IR025S01

cc: Technical File (w/enc)
Regional Office (via pdf)
Ms. Jessie King (via e-mail)



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

**Bureau of Water
Surface Water Withdrawal Registration**

A Surface Water Withdrawal Registration is hereby issued to:

**Walther Farms
Augusta Plantation, Oak Ridge Club Road
Windsor, SC 29856**

This Registration allows Walther Farms to construct and operate an intake for the withdrawal of surface water from the South Fork Edisto River for the purpose of agricultural irrigation as specified below:

Project name:	Walther Farms - Windsor, South Carolina
County:	Aiken
Project:	Surface Water Intake: South Fork Edisto River
System Permit:	02IR025
Source Number:	02IR025S01
Maximum Monthly Withdrawal:	805 Million Gallons per Month
Maximum Yearly Withdrawal:	6,440 Million Gallons per Year
Conditions:	See attached registration conditions
Issue Date:	March 21, 2013

Registration Conditions: Walther Farms - Windsor, South Carolina
Registration Source Number: 021R025S01
March 21, 2013

1. Walther Farms must notify the Department of completion of construction of the intake structure allowed by this registration within thirty (30) days of completion of construction. If notification of completion of construction is not received by the Department by March 20, 2014 (one year from the date of this registration), authorization to construct and operate the proposed withdrawal in the South Edisto River is revoked unless the Walther Farms requests and the Department approves an extension of the time period. Notification or a request for a time extension is to be made to:

Mr. Rob Devlin
Water Quantity Permitting Section
SC DHEC, BOW
2600 Bull Street
Columbia, SC 29201

2. Walther Farms shall submit, on forms provided by the Department, a certified report of surface water withdrawn each month and source(s) of the water, not less than annually. Such reports shall be submitted by the 30th day of January for the preceding year.

3. A registered surface water withdrawer may, at any time, request an increase in its registered withdrawal amount.

4. Nothing in this registration shall relieve any person regulated herein of the duty to comply with all other applicable statutes and regulations nor diminish the Department's authority to regulate facilities under any other applicable laws or regulations. Further, this registration does not exempt the permit holder from compliance with any other local, state or federal law, regulation or ordinance.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Friends of the Edisto,) Docket No. 13-ALJ-07-0610-CC
)
Petitioner,)
)
v.)
) **PROOF OF SERVICE**
)
South Carolina Department of Health)
and Environmental Control and)
Walther Farms-Windsor, S.C.,)
)
Respondents.)
_____)

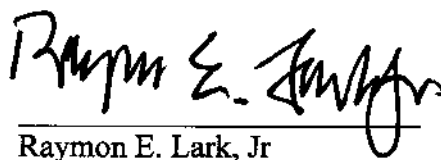
I, Raymon E. Lark, Jr., an attorney at Austin & Rogers, P.A., hereby certify a set of the Notice Of Withdrawal Of Petition For Contested Case Hearing with **Exhibit A** has been sent via hand delivery to:

Stephen Hightower/Lisa Lucas Longshore
Office of General Counsel/Clerk DHEC Board
South Carolina DHEC
2600 Bull Street
Columbia, South Carolina 29201

Attorneys For Respondent DHEC

Jessica King and Lee Zimmerman
McNair Law Firm, P.A.
1221 Main Street, Suite 1600
Columbia, SC 29211

**Attorneys For Respondent Walther Farms-
Windsor, S.C.**


Raymon E. Lark, Jr

January 28, 2014
Columbia, SC