

No. 9172-1

Office of State Engineer
DOCUMENT FILE

Name: Holman, Harry

County: Butte #17470
Harding

Date: April 19, 1903

Filed: May 23, 1903

Location: Shick Creek

Pre-Emption of Right of Way and Location of Water.

To Whom These Presents May Concern, Know ye, that I Harry Holman

..... of the County of Butte, in the State of South Dakota, a citizen of the United States, do hereby declare and publish as a legal notice to all the world, that I claim and have a valid right to the occupation, possession and enjoyment of all and singular, all that tract or parcel of land lying and being in the County of Butte, in the State of South Dakota, for the exclusive right of way for the purpose of constructing a flume or water ditch from Slick creek stream to the

NW 4

of Section 33 in Township 20 of Range 1 E B M more particularly described as follows: Commencing at

point five hundred ft north of the south line of NW 4
Section 33 and 80 rd east of west line of NW 4 of section
33 Township 20 North of range 1 E B M. on creek
named Slick Creek

I also claim and have a valid right to the enjoyment and use of 1000 inches of water from said stream for irrigating purposes to be conveyed through such flume or water ditch to said tract of land, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal this 19 day of May A. D. 1903

Notice posted on stream April 19th 1903

Ditch commenced at stream May 22nd 1903

State of South Dakota, } ss
County of Butte, }

On this 19 day of May 1903, before me, A. Notary Public

in and for the County and State aforesaid, personally appeared Harry Holman

to me personally known to be the person who executed the foregoing written instrument, and acknowledged that he executed the same for the uses and purposes therein set forth. Witness my hand and official seal, the day and date above written.

Notary Public

Certified Copy

DEED OF TRUST
BUTTE COUNTY, MONTANA
Received of *May 11 1903* and
of *P.O. 11*, and recorded in
Book *13* of *Page 108*.....
Geo B Ross

REGISTER OF DEEDS

HARRY HOLMAN

No. 0172-1

DEED OF TRUST IN THE STATE OF MONTANA

I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original of the deed of trust filed in this office on the 11th day of May, 1903, and that the same is a correct copy of the original of the deed of trust filed in this office on the 11th day of May, 1903.

Dated *Aug 11 1903*

H. E. Frost

By *J. W. P. Smith*

COPY.

PRE-EMPTION OF RIGHT OF WAY AND LOCATION OF WATER.

JOSEPH W. PRESENIS MAY, CONERN, Know ye, that I Harry Holman of the County of Butte, in the State of South Dakota, a citizen of the United States, do hereby declare and publish as a legal notice to all the world, that I claim and have a valid right to the occupation, possession and enjoyment of all and singular, all that tract or parcel of land lying and being in the County of Butte, in the State of South Dakota, for the exclusive right of way for the purpose of constructing a flume or waterditch from Slick Creek stream to the NW1/4 of Section 33 in Township 20 of Range 1 E. R.H.V more particularly described as follows: Commencing at point five hundred ft. north of the south line of NW1/4 Section 33 and 80 rd. east of west line of NW1/4 of section 33 Township 20 North of range 1 E. R.H.V. on creek named Slick Creek.

I also claim and have a valid right to the enjoyment and use of 1000 inches of water from said stream for irrigating purposes to be conveyed through such flume or water ditch to said tract of land, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal this 19 day of May A.D. 1903.

Harry Holman.

Notice posted on stream April 19th, 1903.

Ditch commenced at stream May 22nd, 1903.

State of South Dakota { ss.
County of Butte

On this day of 190 , before me a notary public in and for the County and State aforesaid, personally appeared, to be personally known to be the person who executed the foregoing written instrument and acknowledged that he executed the same for the uses and purposes therein set forth. Witness my hand and official seal, the day and date above written.

Notary public.

Located by

No. 0172. 1

I hereby certify that the within and
 instrument is a true, correct and
 transcript of the instrument hereby
 to be, as the same was filed for
 office of the State Engineer.

Witness was using the roof pipe in Jan of 1958 A.D. 1961.
Photographs and measurements photographs of in various directions.
Witness on water pipe to air filter of tank. Photograph with all but sufficient the
of water from roof collect for irrigation. Unobserved to be connected through end
I also sign and have a small light to the apartment and use of 1000 inches

[illegible]

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

I hereby certify that the within and foregoing instrument is a true, correct and complete transcript of the instrument which it purports to be, as the same was filed for record in the office of the State Engineer.

Witness my hand and official seal this 10 day of April 1908

State Engineer

By 63-63-200

ask for the release of conscientious objectors in the country of Egypt' in the State Department of all and singular' all of the world' and I told and have a number of the United States' to hereby certify fully known of the Country of

OFFICIAL COPY.

1967.

200

April 4, 1955

Fred Buck
State Engineer
Helena, Montana

Re: Water Rights Nos. 0171-1
and 0172-1
Slick Creek
Harry Holman (A. Harry or
Alexander Harry)

Dear Mr. Buck:

Mr. Lyle Lewton was just in my Office and explained a situation which involves his irrigation in South Dakota with water from Slick Creek which stream flows into South Dakota from Montana. Mr. Lewton has operated and irrigated his farm for the last fifty years and has used water from Slick Creek to irrigate alfalfa. He has several hundred acres.

He informs me that just recently a land owner in Montana which is over the line has built a dam to irrigate two or three acres which dam cuts off the supply from Mr. Lewton. I explained to Mr. Lewton that this matter involves an interstate problem and perhaps could only be handled properly by an interstate compact. However, I did promise Mr. Lewton that I would write to you and call the matter to your attention. It would seem that if the party is using the entire flow to irrigate two or three acres and using the water that had been heretofore been used to irrigate several hundred acres there must be a waste of the flow in the operation. I am sure that neither Montana or South Dakota approves of the wasteful use of water and if it is possible to regulate the use of the water by the party in Montana so that Mr. Lyle Lewton can continue to get the use of same which he has had over the past fifty years, it would be appreciated by this Office.

Mr. Lewton holds an old Certificate of Appropriation dated June 23, 1913 in the name of Alexander Harry Holman. The right dates from May 10, 1901 for the use of 155 acre feet of water of South Slick Stream. Our water right No. is 0171-1.

He also holds a Pre-Emption of Right of Way and Location of Water dated April 19, 1903 whereby he claims the use of one thousand inches of water from Slick Creek for the irrigation of lands described therein.

It might be well to give some thought to an interstate compact between Montana, South Dakota and North Dakota relative to the waters of the Little Missouri River. Uranium developments in Harding County, South Dakota will undoubtedly create a demand for careful use of the available supplies.

With best personal regards,

Sincerely,

DWL:EW
cc: Gov. Foss
Lyle Lewton, Camp Creek

DEAN W. LOUCH
State Engineer

STATE OF MONTANA
STATE ENGINEER

Sam W. Mitchell Building
HELENA, MONTANA

Fred E. Buck, State Engineer
Hans L. Bille, Assistant

May 24, 1955

Mr. Dean W. Loucks
State Engineer
State Capitol Building
Pierre, South Dakota

Dear Mr. Loucks:

This will acknowledge receipt of your letter concerning Lyle Lewton's problem in connection with the use of water from Blick Creek.

In Montana, the State Engineer has nothing whatever to do with water right filings or the distribution of water for irrigation. In this state, a potential user files a Notice of Appropriation with the County Clerk and Recorder, in the county where the water is to be appropriated, and thence proceeds to divert and use the water.

We do not have a state central agency of any kind where water rights are filed. Under these conditions, I would have no legal authorization to intercede on Mr. Lewton's behalf. The only recourse Mr. Lewton would have, at the present time, would be to file a suit against the person making the encroachment against his water right.

I presume sometime it will be necessary to negotiate a Compact on the Little Missouri River and its tributaries. This procedure may be a long drawn out affair covering several years. In the meantime, Mr. Lewton would be suffering the loss of water and crops.

Very truly yours,

/s/ Fred E. Buck

Fred E. Buck
State Engineer

B/C

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SOUTH DAKOTA
STATE WATER RESOURCES COMMISSION

July 29, 1959

Mr. Lem F. Overpeck
Overpeck, Hamblin & Mueller, Attorneys
Belle Fourche, South Dakota

Mr. Lyle Lewton
Camp Crook, South Dakota

Mr. Walter White
Camp Crook, South Dakota

Gentlemen:

Mr. Lyle Lewton has asked that the State Water Resources Commission investigate the water rights on South Slick Creek in Harding County.

This investigation has been completed by the staff of the State Water Resources Commission and the resulting evaluation report is enclosed for your information.

I suggest that the parties concerned use the information in the enclosed report as a basis for settling their controversy.

Since the only right of record as between the White-Nepher and Lewton interests is that which is recorded under the name of Harry Holman covering land now owned apparently by Mr. Lewton, I suggest that the parties concerned establish a record of their "vested rights" under Section 61.0102 (7), Chapter 430, Session Laws of 1955. A pamphlet copy of Chapter 430, Session Laws of 1955, as amended, is enclosed.

I will be pleased to help in any way that I can.

Sincerely,

JWC:ls
Enc's.

C O P Y

J. W. GRIMES
Chief Engineer

WATER RIGHT EVALUATION
ON SOUTH SLICK CREEK FROM THE MONTANA-SOUTH DAKOTA BOUNDARY TO
THE LITTLE MISSOURI RIVER IN
HARDING COUNTY, SOUTH DAKOTA

General Statement

Investigation and observation show that only two irrigators on South Slick Creek in South Dakota have claims to valid water rights. These irrigators are Lyle Lewton and the owners of the White-Nepher land.

While Mrs. Ella Pryor (Butte County records, Book 7, page 325, Dec. 1, 1898) and perhaps others have filed water rights on South Slick Creek, it is evident that the systems on the Lewton and White-Nepher land are the only systems that have been constructed and maintained so as to be eligible for consideration as recorded or "vested" water rights.

Water Rights on Lyle Lewton's land

Water Right No. 0171-1 originally filed in Butte County by Harry Holman on May 10, 1901 as a Pre-Emption of Right of Way and Location of Water, called for 1000 inches of water for 240 acres in section 33, T 20 N, R 1 E.

Water Right No. 0172-1 originally filed in Butte County by Harry Holman is a restatement of the above-mentioned No. 0171-1 Water Right. It was apparently filed on April 19, 1903 and called for 1000 inches on the NW $\frac{1}{4}$ of Section 33, T 20 N, R 1 E or on 160 acres of the same 240 acres mentioned in filing No. 0171-1

By affidavit, Proof of Application of Water to Beneficial Use dated June 17, 1913 and Certificate of Appropriation of Water dated June 23, 1913, beneficial use of water to the extent of 1 acre-foot on each of 155 acres was established.

This is the only record of a valid water right that is in the files of the Water Resources Commission for use of water in South Dakota from South Slick Creek. It is for 155 acre feet of water annually on 155 acres in the NE $\frac{1}{4}$ of Section 33, the SE section 28 and the SW of 27, all in T 20 N, R 1 E, Harding County. Under provisions of current water laws, the diversion rate of water for irrigation of this land is 2.21 cubic feet per second except during periods when there is an excess of water flowing in the stream than is necessary to satisfy domestic use requirements and other valid water rights.

See 0171-1 for additional water rights evaluation

It seems evident that a "Vested Right" exists on Mr. Lewton's lands in addition to the recorded water right. Such a "vested right" can be made a matter of record either by the present owner filing a "vested right" application with the Water Resources Commission or by the water rights being adjudicated by the Water Resources Commission or by a Court of Law. Such a "vested right" would have a priority date after June 23, 1913. The amount of water, until the "vested right" is recorded is not definite but the investigator, by observation and from remarks made by Mr. Lewton, estimates the "vested right" would be on 145 acres or for 2.07 cubic feet of water per second in addition to the recorded water right.

Water Rights on the White-Nepher Land

Cela Moody on April 4, 1903 filed notice in Montana that he had on March 21, 1903 begun appropriating 1008 inches of water from South Slick Creek in Montana to irrigate in Section 29, T 20 N, R 1 E (which is in South Dakota). Apparently no water right was recorded in South Dakota covering use of this water in South Dakota.

The Water Resources Commission has no jurisdiction as to the validity of the filing in Montana. By observation, it seems evident that there is basis for a "vested right" to use the water for irrigation in South Dakota. A priority date of March 21, 1903 seems probable.

Again, as stated in discussing the "vested right" on Mr. Lewton's land, the "vested right" can be made a matter of record either by the present owners filing a "vested right" application with the Water Resources Commission or by the water rights being adjudicated.

The amount of water, until the "vested right" is recorded, is not definite, but from investigation, observation and remarks made by Mr. White and Mr. Nopher, it is estimated that the "vested right" would be on 100 acres or for 1.23 cubic feet of water per second.

Summary

Based on the above discussed water rights records and the estimates concerning probable "vested rights", adjudication of the water rights on South Slick Creek in Harding County would be as follows:

1. The first 2.21 cubic feet per second of water as measured at his diversion point would go to Lyle Lewton for irrigation of 155 acres.

Based on recorded rights made by Harry Holman having priority date of May 10, 1901.

3.

2. When flows at Lewton's diversion point reached 2.21 cubic feet per second, White-Nepher would take the next 1.25 cubic feet per second of water at their diversion point.

Based on the White-Nepher "Vested Right" having a priority date of March 21, 1903.

3. After White-Nepher receives their 1.25 cubic feet per second of water, Lewton would take the next 2.07 cubic feet per second as measured at his diversion point.

Based on Lewton's "Vested Right" having a priority date after June 23, 1913.

4. Waters in excess of 5.53 cubic feet per second (2.21 plus 1.25 plus 2.07) in South Slick Creek may be diverted by both irrigators to the extent that such excess water is not required to satisfy existing or future water rights, when or if established, for use of water from South Slick Creek or from the Little Missouri River downstream from the mouth of South Slick Creek. Because of diversion point locations, the White-Nepher lands have first opportunity to divert such excess waters. The Lewton diversion may divert such excess waters which originate in the South Slick Creek drainage basin, including tributaries, below the White-Nepher diversion point plus waters originating above the White-Nepher diversion point which passes the White-Nepher diversion structure.

Based on Section 61.0126, Chapter 430, Session Laws of 1955, as amended.

RECEIVED

OCT 15 2018

WATER RIGHTS
PROGRAM

PAID

OCT 15 2018

Ck# 7099

SD EForm - 0495LD V2

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

Mail to: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 0172-1
Date: 10-10-18

I/We request that Water Right/Permit No. 0172-1 formerly owned by:
A. Harry Holman be transferred to:

New Owner Name: John and Charles Humbracht
Address: 12223 N. Camp Crook Rd.
City, State, Zip: Camp Crook SD 57724 Telephone No. 605-797-4493

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

Purchased with warranty Deed.

☒ I understand that the validity of Water Right/Permit No. 0172-1 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, John and Charles Humbracht, the new owner, certify that the above information is true and correct.

Charles Humbracht
John Humbracht
(signed by new owner)

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

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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date **October 15**, 20 **18**

RECEIVED OF **John & Charles Humbracht 12223 N Camp Crook Rd Camp Crook SD 57724**

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	50	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. _____		
Fee for Filing Transfer Form 0172-1		
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. _____	50	00
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	

No. **08775**

By

Jeanne Goodman
Chief Engineer *200*

0172-1

RECEIVED

OCT 15 2018

WATER RIGHTS
PROGRAM

05-506

64
Book Deeds Page 463

Prepared By:	Brady Pluimer, P.C.	No.	05-506
Address:	135 E. Colorado Blvd.	Record	5/31/05 8:00 A.M.
	Spearfish, SD 57783	Book ⁶⁴ <u>Deeds</u> Page <u>463-464</u>	
Tele. No.:	(605) 722-9000	<u>Carrie Schmel</u> Register of Deeds	
		Harding County	
		FEE: \$12.00 pd-ck	

☒ Recorded
☒ Compared
☒ Grantor
☒ Grantee
☒ Numerical

WARRANTY DEED

LEWTON RANCH, INC., a South Dakota Corporation, Grantor, of PO Box 672, Sturgis, SD 57785 for and in consideration of Nine Hundred Forty-nine Thousand One Hundred Twenty-one and 25/100 Dollars (\$949,121.25), **GRANTS, CONVEYS and WARRANTS** to **CHARLES F. HUMBRACHT and JOHN W. HUMBRACHT**, an undivided one-half interest each as tenants in common, d/b/a **Humbracht Brothers**, Grantees, of HC 59, Box 1, Camp Crook, SD 57724, the following described real property, in the County of Harding, State of South Dakota:

Township 19 North, Range 1 East, BHM, Harding County, SD:

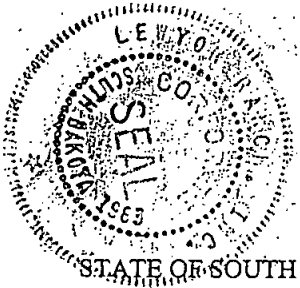
- Section 4: Government Lots 1, 2, 3 and 4;
South Half of the Northwest Quarter; and,
Northwest-Quarter of the Southwest Quarter.
- Section 5: Government Lots 1 and 2;
South Half of the Northeast Quarter;
South Half of the Southwest Quarter; and,
Southeast Quarter.
- Section 6: Government Lot 4.
- Section 7: Government Lots 1, 2 and 3.
- Section 8: North Half of the Northeast Quarter;
Northwest Quarter; and,
North Half of the Southwest Quarter.

Township 20 North, Range 1 East, BHM, Harding County, SD:

- Section 27: South Half of the Southwest Quarter; and,
Southwest Quarter of the Southeast Quarter.
- Section 28: South Half of the Southeast Quarter.
- Section 32: South Half of the Northeast Quarter; and,
Southeast Quarter.
- Section 33: All.
- Section 34: Northwest Quarter of the Northeast Quarter;
Northwest Quarter; and,
West Half of the Southwest Quarter.

Including all improvements and appurtenances and subject to all existing easements, covenants, restrictions and rights of way of record. Grantor specifically reserves unto itself all right, title and interest that it may now own or possess in and to any and all oil, gas, and mineral rights on the above-described real property.

Dated this 27th day of May, 2005.



LEWTON RANCH, INC.

ROBERT LEWTON, Secretary/Treasurer

STATE OF SOUTH DAKOTA

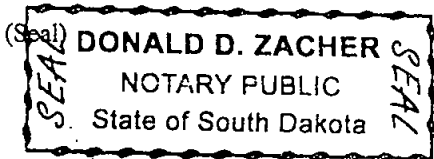
COUNTY OF Butte

)
)SS.
)

Transfer Fee Paid \$ 950.00 pd-ck

On this 27th day of May, 2005, before me, the undersigned Notary Public, personally appeared ROBERT LEWTON who acknowledged himself to be the Secretary-Treasurer of Lewton Ranch, Inc., a South Dakota corporation and that he, as such Secretary-Treasurer being authorized so to do, executed the foregoing deed for the purposes therein contained, by signing the name of the corporation by himself as Secretary-Treasurer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


NOTARY PUBLIC

Commission Expires: Sept. 13, 2006



0172-1



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 31, 2018

0171-1
0172-1
1315-1

John & Charles Humbracht
12223 N Camp Crook Rd
Camp Crook SD 57724

Dear Sirs:

I am writing to let you know the ownership changes you filed on October 15, 2018 for Water Right Filing Nos. 0171-1, 0172-1 and Vested Water Right No. 1315-1 have been completed. The filings and vested water right are now listed in your names.

The two water right filing Nos. 0171-1 and 0172-1 from South Slick Creek were investigated in 1959. Please find attached a document entitled "Water Right Evaluation on South Slick Creek from the Montana-South Dakota Boundary to the Little Missouri River in Harding County, South Dakota". The report indicated the systems have been constructed and maintained so as to be eligible for consideration as recorded or "vested" water rights. The vested right can be made a matter of record by the present owner filing a "vested right" application with the Water Resources Commission.

A vested water right application was never filed by prior owners. It would be to your benefit to file a vested water right application for validation by the Water Management Board (predecessor to the Commission). The validation process includes public notice of the diversion rate and acres irrigated to provide quantification of the right to use water for irrigation from South Slick Creek. The application forms are enclosed. Filing Nos. 0171-1 and 0172-1 provide foundation for when the water use began. You will need to provide what acres have been historically irrigated. The report from 1959 indicates that 155 acres of the 240 acres on the initial filing were established for irrigation.

With respect to the ownership changes, enclosed are your receipts for the filing fees you paid. If you have any questions concerning the enclosed materials and the process for filing a vested water right, please contact Eric Gronlund with our program at 605 773-3352.

Sincerely,

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

enclosures