

031-1
No. 189-1

Office of State Engineer DOCUMENT FILE

Name of Applicant

Grouse Bog.

Geo. H. Packard

John McClure

E. M. Bowman

Date of Filing

April 18, 1884.

County

Butte # 189-1

Filed: April 19, 1884

Location: Redwater Creek

Location of Water.

Know all men by these presents:

That we, the undersigned, do locate, claim and appropriate Two thousand inches of the water of Redwater Creek in Butte Co. D. T. for mining, milling, manufacturing, agricultural and domestic purposes. Said water is to be taken out at a point on the west side of Redwater on A.E. Chouteau's farm near his north line in Section 24 Township 8 North Range 2 East B.M.M. Said ditch and water right being the same that was located and appropriated by John McClure, Conrad Berg and Wesley Peaks in the year 1879.

Dated this 18th day of April, 1884,

Conrad Berg.
Geo. W. Packard.
John McClure.
E.M. Bowman.

No. 1311

COPY

Water Right

Located by

Conrad Berg et al

April 18, 1884.

Butte County.

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 done at my office in Pierre, State of South Dakota this 27 day of November 1908

Samuel H. Lea
State Engineer.

By B. B. Lea

Rebaptist

Location of Water.

Know all men by these presents:

That we, the undersigned, do locate, claim and appropriate Two thousand inches of the water of Redwater Creek in Butte Co. D.T. for mining, milling, manufacturing, agricultural and domestic purposes. Said water is to be taken out at a point on the west side of Redwater on A.A. Chouteau's farm near his north line in Section 24 Township 8 North Range 2 East B.H. M. Said ditch and water right being the same that was located and appropriated by John McClure, Conrad Berg and Wesley Peake in the year 1872.

Dated this 18th day of April, 1884.

Conrad Berg.

Geo. W. Packard.

John McClure.

E. M. Brennan.

certified copy

CONRAD BERG
GEO. W. PACKARD
JOHN MC CLURE

Territory E.M. BOWMAN

County Butte

File 17

April 1894

at 8 o'clock

Room 4

G. E. Johnson

Record entry made by
L. F. West, Register & Recorder

189.

Dec. 4

G. E. Frost

Ada Miller

No. 0311

Reduction

July 9, 1953

431-1

Fred E. Nelson
County Supervisor
U. S. Dept. of Agriculture
Belle Fourche, South Dakota

Re: Water Right 0244-1
& 031-1
John McClure, Geo. W.
Packard
Now Wm. McLaughlin

Dear Mr. Nelson:

This is in reply to your letter of June 17 in which you state that your Office is financing a pumping irrigation facility for Wm. McLaughlin and wish to be certain that the borrower has legal rights to the use of water by pumping from Red Water River. With the added information supplied in your letter of above date, we find that the old right filed in our Office similar to the copy which you enclose in your letter.

There is no way that I know of establishing without a study and review and probably an adjudication of rights whether or not the old right is in effect and to what extent. These old rights are very incomplete as far as information is concerned. My only suggestion is that Mr. McLaughlin might make application for a water right, filling in the information that is now required with such application. This would establish a definite point of diversion and locate the lands which are irrigated or which are to be irrigated and would establish the amount of water claimed according to present usage. It is possible, of course, that such an application might be protested by other users from Red Water River. However, if enough information and study was made prior to filing the application, it might be possible to establish a definite claim and at the same time set up the additional facts concerning same which are necessary for intelligent interpretation of the right as compared with other users.

Engineer Edward B. Hather of Mitchell has done considerable amount of such work in the southern Hills and might be interested in furnishing his services in your behalf.

Yours very truly,

D-L:RW

DEAN W. LOUCKS
State Engineer

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION
Belle Fourche, South Dakota
June 17, 1953

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

Dear Mr. Loucks:

Our State Office at Huron has advised us that you failed to find any information on water rights claimed to have been established on Red Water River in Butte County and known as the Roberts Canal or Old Mill Ditch. This office is financing a pumping irrigation facility for Wm. McLaughlin, and must be certain that the borrower has legal rights to the use of water by pumping from the river before proceeding further with the loan.

Mr. McLaughlin's plan is to pump water from the west side of the river at a point near the north line of the NW $\frac{1}{4}$ of Section 24-8-2, into the existing canal crossing his land to irrigate about 46 acres in Section 13-8-2. This canal has been in use continuously since 1879 so far as can be determined. A dam has been used to divert the water into the canal all these years but Mr. McLaughlin, together with other users below him on the canal, have incurred considerable expense in repairing the dam which has again washed out.

Attached is a copy of the Certificate of Location of Water Rights recorded on April 18, 1884, by John McClure, Conrad Berg and Geo. W. Packard. The exact point of diversion is not set out but the proposed pumping site is at the same point. There is no other diversion from the river in Section 24-8-2 which leaves no doubt but what this is the same rights under which the users have been operating.

Water rights have apparently been recognized in various instances, one in particular having been made a part of a warranty deed dated December 6, 1919, in which Daniel P. and Sarah J. Roberts conveyed to Ed Sunquist title to some of the land now owned by Wm. McLaughlin, together with "all water and water rights appurtenant and heretofore used on the above lands and any and all their interest in the McClure-Berg Ditch." Also in 1916, the Redwater Irrigation Association, which diverts water from a point upstream, came to an agreement with users under the Roberts Canal as to a certain division of available water, acknowledging that they were entitled to 200 inches of water. This agreement came about through legal channels.

It is the opinion of this writer that Mr. McLaughlin has a legal right to the use of water from the proposed pumping site as one of the users under the canal in question which seems to have been called at one time or another three different names, the Roberts Canal, Old Mill Ditch and McClure-Berg Ditch. There may be some question as to the individual landowners rights to the use of the canal, however, it is believed a mutual agreement can be reached on the point.

2 - Mr. Dean W. Loucks, State Engineer - 6-17-53

Perhaps you can advise us at an early date your opinion as to whether or not the water rights are sufficiently established. Otherwise, please advise us, what steps should be taken to establish the rights once and for all.

Yours very truly,


Fred E. Nelson
County Supervisor

Attach.

RECEIVED
JUN 17 1953
OFFICE OF THE STATE ENGINEER
SACRAMENTO, CALIF.

200 Certificate of Location of Water Rights

Know all men by these presents that we the undersigned have located, claimed and appropriated Two Thousand (2000) inches of the waters of Red Water Creek in Butte Co. D.T. for Mining, Milling, Manufacturing, Agricultural and Domestic purposes, said water is taken out at a point on the West side of Redwater in Section 24, Township 8 North, Range 2 East 58M on farm owned by A. A. Chouteau near his North line.

Dated this 16th day of April 1884.

John McClure
Conrad Berg
Geo. W. Packard

We the undersigned do solemnly swear that the aforesaid ditch was located, claimed and was in actual use May 12th, 1879, by John McClure, Conrad Berg and W. W. Peake. Said Peake's interest being transferred to G. W. Packard December 1st, 1881 and has been in use and fully represented according to the laws of the United States and Territory of Dakota since May 12, 1879.

John McClure
Conrad Berg

Sworn to before me this 5th day of May 1884.

C. F. Johnson
County Clerk

SEAL

No. 200

Location Certificate

Territory of Dakota

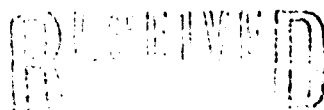
SS

Butte County

I hereby certify that this instrument was filed in my office this 5th day of May, 1884 at 1 o'clock P.M. Recorded in Book 7 on Page 5.

C. F. Johnson
Register of Deeds

Record entry made by F. T. West
Register of Deeds



OFFICE OF THE REGISTER
BUTTE COUNTY, DAKOTA

August 27, 1924

Mr. Chambers Kellar
Lead, South Dakota

Dear Sir:

Your letter of the 25th inst., enclosing a petition for extension of time for the completion of a dam on Red Water Creek in connection with the Conrad Berg-McClure water right, has been received. We are, however, returning herewith the above petition for correction and additional information as follows:

1-In the first paragraph it appears that Butte County, a political subdivision of the State of South Dakota, is among the petitioners. However, we are wondering if Butte County should not be the residency of the other petitioners rather than one of the petitioners.

2-In the second paragraph we shall ask you to insert the description of the land upon which this dam is constructed and the description of the point of diversion.

In the estimate of the cost of replacing said dam as given in the petition indicates that this is a project of considerable size and since we have in our files only a copy of the water location dated April 18, 1884, and since it appears that the use of at least a part of the water of the original appropriation would be abandoned for a period of more than three years resulting in a reversion to the public of the unused water, unless an extension of time for the completion of the work is granted, (Para. 8243, 1919 Revised Pol. Code) and consequently making the present law effective in this matter, we believe it is advisable for our records and for the protection of the holders of the water right to have a survey made and maps and plans of this project filed in this office in accordance with the regular procedure for obtaining a water right. If the plans also show that this project is of considerable size Mr. Berg, State Engineer, who is at present on an inspection trip of building construction, in the eastern part of the State, may also feel it necessary to make an inspection of this project.

If we can be of any further assistance in this matter kindly let us know.

Yours truly,

OFFICE OF STATE ENGINEER

BY Assistant Engineer.

HFE:JB, Jr.

Enc.

No. 034-1

Chambers Keller
ATTORNEY AND COUNSELOR
LEAD, SOUTH DAKOTA

August 25th, 1924

Hon. John Berg
State Engineer
Pierre, South Dakota

RECEIVED

AUG 26 1924

STATE ENGINEER
PIERRE, S. DAK.

Dear Sir:

Herewith application for extension of time within which to reconstruct a dam destroyed by flood in 1922. This is made for the purpose of availing ourselves of the provisions of Section 8238 of the Revised Code of 1919. I doubt very much whether the provisions of the statute apply to the early water rights taken prior to the enactment of our irrigation code, nevertheless, we thought it advisable to avail ourselves of the provisions of this section out of the abundance of caution and in order that no question might arise should the courts hold the same applicable.

I shall very much appreciate it if you will give the extension requested.

Yours truly,
Chambers Keller

CK-S
Enc.

SOUTH DAKOTA
Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-31d1

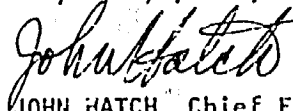
DEC 1 1983

Della Crago
McClure Ditch
Route 1, Box 24
Belle Fourche, South Dakota 57717

Dear Mrs. Crago:

Enclosed are your Validated Vested Water Right and Water License No. 1390-1.
As long as you use the water beneficially, as stated in the Water License,
the State Water Laws provide that you have a continuing right to use the
water.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352

JH: ms

enclosures

NOTE: Applicable portions of Water Right Filing Nos. 031-1 and
0244-1 are incorporated into Permit No. 1390-1.

Equal Opportunity Employer