

No. 0442-1

Office of State Engineer
DOCUMENT FILE

Name: Fisher, Ben. J.

County: Lawrence #32949

Date: June 15, 1900

Filed: Feb. 24, 1905

Location: Chicken Creek
20 mi.

No 132949
Water Right
By
Orin E. Trisler
Filed for record
February 24th 1905
at 4-30 O'clock P.M.,
Edward Trevaskis
Register of Deeds
By E M, Ellis, Deputy

Know all men by these Presents That I the undersigned do hereby claim by right of location and appropriation twenty inches of water for mining milling Domestic and irrigating purposes the flowing water right in Lawrence Co, South Dakota on Chicken Creek and or Sec 22 T, 7, N, R, 1 E, B, H, M., Said water right being located N. 70° 00' W, 510 from the 1/4 Sec cor common Secs 22&27, T7, N R 1 E B H M A dam being thrown across Chicken Creek at that point and water backed up to Sec line common to sec 22&27

The amount of water claimed being 20 miners inches, The Water Right to be known as the Trisler Water Right, Date of appropriation June 15th 1900, Date of title Certificate Oct 20th 1904,

Orin E. Trisler,

I, ~~Edward Trevaskis~~ Register of Deeds, in and for the County of Lawrence, and State of South Dakota, do hereby certify that the above and foregoing instrument to which this is attached, is a true, correct and complete transcript of the instrument recorded in my office and that the same was filed on the 24th day of February 1905, at 4 o'clock and 30 minutes P.M.
Book 178, Page 573

WITNESS my hand and official seal, done at my office in Deadwood, State of South Dakota, this 14th day of May 1905

By _____ Deputy.

Edward Trevaskis
Register of Deeds.

June 19, 1951

Roland P. Bryan
Spearfish, S. Dak.

Re: Water Right No. 0577-1
Chicken Creek
Sec. 13-7N-1E

Dear Mr. Bryan:

A few days ago we had a letter from Florence Keats Bettelheim and we replied giving her such information as we could find in this Office. However, your letter enclosing the Location Notice and Certificate of Henry Keats throws additional light on the matter. This Location Notice is not filed in our records and apparently is one of those water rights which was missed when the records were transferred from the County files to this Office.

Since 1907 water right recordings have been made direct in this Office. However, as given with the information to Mrs. Bettelheim we do have a water right under the name of Orin F. Trisler under date of appropriation of June 15, 1900. This is in Section 22-7N-1E and claims the appropriation of 20" of water for mining, milling, domestic and irrigation purposes from Chicken Creek. As near as we can tell now this is probably the location to which you refer and on which Mr. Sleep has recently reconstructed an old dam.

Dams may be built by owners under the Dry Draw law, namely 61.0133 of the South Dakota Water Code; also under this law "Any person holding a right under this section shall not be subject to the rules and regulations of the State Engineer". This, however, applies to Dry Draws which are legally defined as any ravine or water course not having a flow of at least 20 miner's inches of water during the greater part of the year. We have no record of what the flow in Chicken Creek is so are unable to determine from here whether or not it is a Dry Draw or a running stream. If it is a Dry Draw, dams can be built by owners without notice to this Office. Also they would be required to give no notice to other owners. However, to get a water right on a flowing stream it is necessary that they apply to this Office for such right and that a notice be advertised in a local paper once a week for four weeks. This has not been done in the case of Mr. Sleep. He may be basing his authority on this old 1900 Trisler right to which I refer above or he may be assuming that the stream is a Dry Draw.

My suggestion at this time is that the best way to prevent court litigation is to accumulate all information possible in connection with these two rights. When you have complete information, the solution will perhaps be apparent. After receiving the above information you may wish to write this Office further.

We thank you for the copy of the Location Notice of Henry Keats. We will place this Location Notice on file in this Office for future reference.

Yours very truly,

RLB:ZJ
cc: Florence Keats Bettelheim

DEAN W. LOUCKS
State Engineer

RECEIVED
Sak
JUN 14 1951 73, 157

State Engineer
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.
Pierre, S. D.

Dear Sir -
I have a 1700 acre
Ranch 10 miles from town
on the Redwater River I am
in process of selling this
to a young man, Roland
Bryan. About 50 years ago,
when my father bought his
first land down there, he
located a water right on the
Chicken Creek; the courts
allowing him 50 miner's
inches of water. The stream,
which is a small one, orig-
inates in a number of springs
southwest of our place. This
right is, of course, duly re-
corded in Deadwood and there
has been no trouble or litigation

about it over that long period
of years. It was understood
that the 3 farmers above were
allowed to take out
enough water for home use,
a vegetable garden, and stock
watering at their farms, at
no time were they to water
crop or pasture land, or make
any sort of dam for stock
watering purposes at a distance.
A few times farmers (mostly
tenants) wanted to water a
field, but various deadwood
lawyers advised them to
refuse by the conditions that
had prevailed so long, and
were laid to rest. We I recall
it, the law firm of Martin
and Mason so advised Mr.
Rushon vice owner of the
place in which some of the
spring arose and later Mr.
Heffner and Judge Rice
gave similar advice to
Mr. Wheeler and Mr. Scheuch,
Sr.

2.

A few moments ago, Mr. A. G. Riepp brought the wheel place, a small dry farm. He came to see me about the water right and I told him these facts and he said he just wanted to pump what water he was entitled to, and was satisfied with it to all appearances. A few days ago, Roland Bryan found he had built a dam on the field of his place where some of the springs originate and adjoining his best field of alfalfa. This was built by the A. A. A. at slight expense to him. It is a very large substantial dam, about 15 feet high, length 148 ft. width at bottom 85 ft, top 10 feet. Through the base of this he has run a 12 inch pipe to carry the water from the spring across to its original channel.

The water level being low in
comparison with what it was
50 years ago, this is rich
pipe road, if unobstructed,
carry the normal flow, but the
stream carries a lot of silt and
there is always a lot of leaf and
other debris. This small pipe
would be constantly obstructed
and require clearing. When
I heard about it I called Mr.
Sleep and asked him how he
came to do such a thing.
He said it was not a dam, but
a fill so he would have a good
road to drive out of his place.
(He does not live on it but has a
tenant farmer) and that his
second reason was that he
built it for flood control.
I consider it very high handed
policy for a man to decide
on flood control matters without
consulting the other farmers
who use the creek. This little
stream has a long twisting
channel before it reaches the

17
said after that from our place
to where it enters into the
Red River. Every 4 or 5 years
sometimes only once in 10
years, a cloudburst storm
will bring a flash flood
down the creek. This at-
tains a great height as it
cleans out all the accumulated
debris from the thick growth
of trees and brush along its
channel. It would take
many days work every year
if a farmer on my place
tried to attempt to do what
high water will do in a few
hours, without injury to
anyone. On none of these mat-
ters did the Mr. Sleep con-
sult anyone. The Triple A
firm assumed he had a
right to erect a dam and went
ahead. When Mr. Bryan and I
checked on his contract with
the AAA, we found he had listed
the purpose of the dam as
for "irrigation purposes".

a direct contradiction of
what he told me. I accidentally
there is a good road out of
his place that has been used
for so years. I called my son,
who is a lawyer in San
Gabriel, Calif. and who of
course is familiar with the
situation as we lived on the
Ranch 30 years and he ad-
vised me to write you, as no
doubt you could handle the
situation to avoid the ex-
pense of litigation and the
loss of time for Mr. Bryan
at the busiest season of the
year. Mr. Sleep, retired from
business, from these farms
as investments; this young
man, Deland Bryan, started
with nothing, and by thrift
and good farming has ac-
quired enough machinery
and livestock to justify his
purchase of an expensive and
improved place. He has made
all his required payments

4.
to date, and 4. to Federal Farm
Loan, which is carrying
part of the necessary loan
and retain an equity in
the place and will have pay-
ments over a period of years.
Mr. Ryan has a wife and 3
small children. He uses every
drop of this water in his dairy
barns, for garden purposes
and tries when the flow is
not too low to irrigate one
alfalfa field.

Now as any farmer
down there will tell you
the idea of this dam with its
inadequate flood control
pipe (should be at least 48
inches to have any value for
that) is that in time of heavy
rain or high water, it will
back up behind the field
and then Mr. Ryan can put
on a portable pump and
irrigate his alfalfa field

June 16, 1951

Florence Keats Bettelheim (Mrs. B. F.)
Box 307
Spearfish, South Dakota

Re: Water Application No. 6242-1
County No. 132949
Orin F. Trisler

Dear Mrs. Bettelheim:

This is in reply to your letter of June 13, 1951 in which you are concerned about the infringement on your water right through the construction of a dam by P.M.A. for Mr. Sleep. I will give you what our records show and perhaps you can arrive at a conclusion.

We have in our files a copy of a water right giving the date of appropriation as June 15, 1900 to Orin F. Trisler. This diversion is on Chicken Creek N. 70° 00' W., 510 feet from the 1/4 Sec. Cor. common to Secs. 22 & 27, T. 7N., R. 1E. The amount of water claimed by this right is 20 miners inches. This seems to agree with the information in your letter except as to the amount of water claimed and you did not give us your father's name so we do not know that it was Trisler. Since you state that there has been litigation I presume that it has not been decreed by the courts but is in effect as originally written. You might check the county records relative to the amount of water claimed. It is possible that there could be an error in the copy in our office as these were made a number of years ago.

As to the Sleep filing our records show a "Dry Draw Filing" by Eugene A. and Alfred J. Sleep, Filing No. 1478-1 with location of dam in SW 1/4 Sec 22, T. 7N., R. 1E. The filing was made May 11, 1950 and claims 40 acre feet of water annually for live stock purposes and the right to construct a dam and ditches for the purpose of directing flood waters for irrigation. From your letter there is a question in my mind as to whether or not Chicken Creek is a dry draw according to the legal definition which defines a "dry draw" as "any ravine or watercourse not having a flow of at least twenty miner's inches of water during the greater part of the year". Mr. Alfred J. Sleep has asked for water right papers for a flowing stream and has been furnished same but so far he has not filed an application for a state water right. He has also stated that there was an old dam at the location which was reconstructed by P.M.A. (AAA).

From the above records it would appear that you would have the right to twenty miners inches of water which would have to be released to you at any time it could be used and was wanted by you. It would also appear that the Sleep filing as on a dry draw might be in improper form but that it might be possible for him to file and receive a permit for any unused water on the stream.

You refer to an understanding or agreement between owners along the stream. We have had or your predecessors have had legal advice relative to same and I would not care to make any commitments along the line without full information. This, however, would be a matter between the owners in which the state would not have a part.

If after reading the above and if you can give us further information we would be glad to hear from you further.

Very truly yours,

WILLIAM W. LUCKS
State Engineer

DEL:mt

LOCATION NOTICE

RECEIVED
MAR 18 1950

FOR WILLIAM M. C. T. H. E. E. E.

That Eugene A. Sleep and Alfred J. Sleep

whose post office is Spearfish, South Dakota, a citizen of the United States.

above the age of 21 years, being in possession of the following described land, to wit: SW1/4, S1/2 Sec. 22

SW1/4, S1/2, NE1/4, S1/2 Sec. 23, & SW1/4, S1/2 Sec. 26

Section 22-23-26 Township 7 Range N 1 Ed. H. M.

In Lawrence County, South Dakota. Availing him self of the right

granted him under the provisions of Chapter 2, Article 1, Paragraph 823 of the Revised Code of 1919, has located and claims the right to construct a certain dam across a dry draw situated in the

SW 1/4 of the NW 1/4 of Section 26 Township 7 Range

1, and has located and claims the right to construct ditches and flumes for the purpose of directing flood waters from said dam for irrigation of the land first above described and for Live Stock Purposes, and claims the right of way across any land for the purpose of conveying water for said purposes.

Said locator claims for the above purpose 24.0 acre feet of water annually.

The location of the point of diversion of the reservoir is as follows:

From the NW Corner Sec. 26 70 Paces East corner line.

The ditch constructed will run in a northerly direction to and on said land for a distance of 1000 feet.

Said location was made on the 6th day of June, 1950

Witness my hand and seal this 15 day of March, 1950

A fee of one dollar is herewith enclosed for filing this Location Notice in the State Engineer's Office, as required by Section 55.1906 of the SDC of 1939.

Eugene A. Sleep
Alfred J. Sleep

Locator

STATE OF SOUTH DAKOTA,
County of Lawrence ss.

On the 15th day of March, 1950 before me

Alfred M. Muehlen

County and State aforesaid, personally appeared Eugene A. Sleep and Alfred J. Sleep, to me personally known to be the person who executed the foregoing 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.

Alfred M. Muehlen
Notary Public

Notary Public
Alfred M. Muehlen
10/10/52

THE NATURE OF APPLICATION)
)
FOR WATER RIGHT CERTIFICATE)

PETITION FOR WATER RIGHT CERTIFICATE
ON DRY DRAIN

RECEIVED

OCT 9 1956

TO, MR. DEAN W. LAUCKER, STATE ENGINEER OF SOUTH DAKOTA:

OFFICE OF STATE ENGINEER
PIERRE, SOUTH DAKOTA

Your petitioners, Eugene A. Sleep and Alfred J. Sleep, of Lawrence County, South Dakota, respectively represent and show:

That they are the owners and in possession of the following described lands situated in the County of Lawrence, State of South Dakota, to-wit: The SE $\frac{1}{4}$, E $\frac{1}{2}$, E $\frac{1}{2}$ of Section 27, the SW $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$, S.E. 7 $\frac{1}{2}$, & NW $\frac{1}{4}$, NE $\frac{1}{4}$ S.E. 10, all in Township 7, North of Range 1, East of the R.R.M., and,

1. That on the 15th day of March, 1956, they posted a copy of the nature of their application for a water right near the head of the ditch carrying the water to the lands of location, the amount of water claimed, and the purpose for which it is to be used; and that on the 15th day of March, 1956, at 9:00 o'clock A.M., they appeared to the State Engineer for record the location certificate with the Register of Deeds of said Lawrence County, South Dakota, and that a copy of the same was mailed to the said State Engineer's office in Pierre, South Dakota, of which his file number is No. 1441-1.

2. That a dam was built in a dry draw and the same was completed June 6, 1956.

3. That the length of said dam is One Hundred and Eighty-eight (188) feet, and the height of the dam is Twelve and one-half (12 $\frac{1}{2}$) feet.

4. That the description of the land upon which said dam is located is as follows, to-wit: The Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 27 in Township 7, North of Range 1, East of the R.R.M., in Lawrence County, South Dakota.

5. That the nature of the beneficial use to which the water has been and will be applied is for irrigation by Sprinkler System upon the lands described as follows, to-wit:

- 1.0 Acres in the Southeast (SE) Corner of Section 27, and,
- 10.0 Acres in the Southwest (SW) Corner of Section 27, and,
- 2.0 Acres in the Northwest (NW) Corner of Section 27, all in Township 7, North of Range 1, East of the R.R.M., in Lawrence County, South Dakota.

WHEREFORE, your petitioners herewith remit the sum of \$2.00 fees, and pay for a certificate of Water right in accordance with the terms of the original appropriation notice as provided by Section 61.0122, S.D.C. of 1939.

Dated this 30th day of September, 1956.

Eugene A. Sleep
Petitioner
Alfred J. Sleep
Applicant

Subscribed and sworn to before me,

on 30th day of September, 1956.

W. H. [Signature]
Notary Public (S.D.)

IN THE PRESENCE OF,

E. Earl [Signature]
Harry E. [Signature]
Witnesses

The undersigned clerks residing in the immediate vicinity of the for and after recorded, have interpreted elections of said Lawrence County, and in the daily presence of the undersigned, that he has read the foregoing petition and on the contents thereof he is true of his knowledge.

James M. [Signature]
Clerk of Court

W. H. [Signature]
Notary Public

Water Division No.

Water District

CERTIFICATE OF APPLICATION OF WATER TO BENEFICIAL USE

DEPOSITION OF HOLDER

Ques. 1 State your name, residence, occupation and postoffice address.

Ans. Eugene A. Sleep and Alfred J. Sleep, RFD No. 1, Farness, Spearfish, South Dakota

Ques. 2 If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. No Corporation. Individuals only.

Ques. 3 State number and date of permit, and date of priority you propose to establish under the permit
Location Notice, Dry Draw No. is 1442-1, The dry draw procedure does not provide for
Ans. issuing permits for dry draw fillings as set up in Sec. 61.0133 SDC

Ques. 4 State source of water supply and give exact location of point of diversion.

Ans. Spell spring and drainage; point of diversion is 70 rods east of the NE corner of Section 26, Twp. 7, North, Range 1, East of the P.H.M. Lawrence County, South Dakota

Ques. 5 Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. 12" pipe with headgate, place of use is immediately outside the dam in ditch and is pumped onto the land by a Sprinkler system partly, no name for ditch in field and all the land belongs to the users upon which permit is located

Ques. 6 State for what purpose water is used and describe place of use (if for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. 2.2 acres in SE corner of Sec. 22, 12.0 acres in SW corner of Sec. 22, and 2.25 acres in NW corner of Sec. 26, all in Twp. 7, North, Range 1, East of the P.H.M. Lawrence County, South Dakota, used for irrigation only.

Ques. 7 If for other than irrigation purpose, state how applied, amount of horse power generated or

Ans.

Ques. 8 What is the minimum amount of water required for the operation above?

Ans. 12 in. at 100 ft (21) acre feet

Ques. 9 If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder:

Ans.

Not applicable.

And March 21, 1957, by which said applicant was to be paid, which was paid down the day, which parties according to the terms of the will, for collection.

Emory A. Sledge
(Sign) *Emory A. Sledge*

I hereby certify that the foregoing testimony was read to the above applicant before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to

before me at my office in Spearfish, _____, County of Lawrence

State of South Dakota, on this 18th day of October A.D. 1957.

Emory A. Sledge
NOTARY PUBLIC,

Lawrence County, South Dakota

My commission expires Nov. 28, 1957.

Form No.
Proof of Application of Wages to Beneficial Use
DEPOSITION OF HOLDER
Amount of water
Source
County
Purpose
Place of use
Date of priority
Received and filed

STATE OF SOUTH DAKOTA

CERTIFICATE OF APPROPRIATION OF WATER

WHEREAS, On the 30th day of September, 1954, Eugene A. Sleep & Alfred J. Sleep of Spearfish, Lawrence, and State of South Dakota, filed in this office a petition setting forth facts concerning the appropriation of the waters of Dry Creek

WHEREAS, On the 18th day of October, A. D. 1954, made on the application to beneficial use of 21-acre-feet cubic feet per second of said water for irrigation in 15.95 acres, of which 2.0 acres in Sec. 22, 13.0 acres in Sec. 23, and 3.95 acres in N¹/₄ of Section 26, all in Twp. 7, North, Range 1, East of the R. H. M. in Lawrence County, South Dakota, used for irrigation only.

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to Eugene A. Sleep & Alfred J. Sleep of Spearfish, South Dakota, the holder and owner of Location Notice No. 1443-1, Lawrence County, a water right dating from March 18, 1900, to the use of 21-acre feet per year cubic feet per second of the waters of a Dry Creek in the County of Lawrence, and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at the point designated herein, and conducted to certain lands in the as described above

R. H. M. for the purpose of irrigation, subject, however, to the laws of the State of South Dakota, license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken when such rules and regulations provide for the object the economical use of such water.

WITNESS, My hand and the seal of my office at Pierre, South Dakota, this 19th day of October, A. D. 1954.

DEAN S. LOUCKS,