

No. 0502-1

Office of State Engineer
DOCUMENT FILE

Name: Meyer, Amelia

County: Meade

Date: April 7, 1892

Location: Bear Butte Creek

Dir. Pl.: SW 1/4 Sec. 28

T. 6 N. R. 6 E.

See File # 0504-1 for
Transfers

LOCATION CERTIFICATE.

Know all men by these presents that the undersigned a citizen of the United States hereby locates 400 inches of water of Bear Butte creek, for irrigating, domestic, agricultural, Manufacturing, and Milling purposes. The water hereby claimed shall be taken out of said creek at a point where a copy of this Notice is posted being on SE 1/4 Section 26, Township 6 North range 6 East R. H. M. and is to be conducted by ditches and Flumes onto and across the lands of the undersigned situated in said Township and range.

This water right was located on 7th day of April, 1892.

Date of Certificate Apr. 7th, 1892.

her
Analia x Meyer,
mark
Locator.

Recorded April 26, 1892 at 1 P. M., in Book 6 on Page 291
of the Records of Meade County, S. D.

STATE OF SOUTH DAKOTA, COUNTY OF MEADE, SS.
Office of Register of Deeds.

I hereby certify that the above and foregoing is a full, true, correct and complete transcript of the original record in this office.

Dated this 21st day of July, A. D., 1906.

Frank Smith
Register of Deeds.

CERTIFIED COPY.

Water Location.

Amalia Meyer

Moade County.

Bear Butte Co

N. 5502-1

 **South Dakota Department of
Water & Natural Resources**
Joe Foss Building
Pierre, South Dakota 57501

April 16, 1982

NOTICE OF CANCELLATION

Henry Bruch
Howes Route
Sturgis, South Dakota 57785

0502-1, 0503-1, 0504-1 and 0505-1

Dear Mr. Bruch:

On May 13, 1981, Mr. Daley J. Pernaugh of this office made a field investigation pertaining to Water Permit Nos. 0502-1, 0503-1, 0504-1 and 0505-1, filed by Amalia Meyer and now owned by you.

The investigation indicated that no water has been used for irrigation, domestic, agricultural, manufacturing and milling purposes for many years as specified in the permits. Domestic and livestock use do not require a permit.

South Dakota Water Laws provide that when any person entitled to the use of appropriated water fails to beneficially use the water for a period of three years, or longer, such water shall revert to the public.

Therefore cancellation of this Water Permit will be considered by the Board of Water Management at 9:00 A. M., on June 10, 1982 at Meeting Room #1, Knapp Building, Church and Illinois, Pierre, South Dakota.

Very truly yours,

JOHN HATCH, Chief Engineer
Division of Water Rights
Phone: (605) 773-3352

c41407 Jh.wr

South Dakota Department of
Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501
Water Rights Division
605 773-3352

July 12, 1982

NOTICE OF CANCELLATION

TO: Jackie Huber, Attorney, P.O. Box 283, Piedmont SD 57769
John Bruch, Howes Rt, Box 2, Sturgis SD 57785
Henry Bruch, Howes Rt, Sturgis SD 57785
Truman Quall, 620 W Blvd, Rapid City SD 57501
Jim Sigman, Howes Rt, Sturgis SD 57785
Bernard Bruch, Berford Rt, Sturgis SD 57785
Antoinette Pelkey, Box 205, Sturgis SD 57785

FROM: John Hatch, Chief Engineer, Water Rights Division *John Hatch*

SUBJECT: Cancellation of Water Rights No. 0462-1, 0558-1 John Bruch; 0502-1,
0503-1, 0504-1, 0505-1 Henry Bruch; 0509-1 Truman Quall; 0547-1 Jim
Sigman; 0561-1 Bernard Bruch and 0562-1 Antoinette Pelkey

The Water Management Board will consider cancellation of Water Rights No. 0462-1, 0558-1, 0502-1, 0503-1, 0504-1, 0505-1, 0509-1, 0547-1, 0561-1 and 0562-1 at 3:00 pm, July 28, 1982, Civil Defense Room, State Capitol Building, Pierre SD.

This hearing will be conducted in accordance with the provisions of SDCL 46-1-1, 46-1-2, 46-1-8, 46-1-9 thru 46-2-11, 46-5-36, 46-5-37, and Board Rules APSD 74:02:01:36 thru 74:02:01:41.

At this hearing the Board can cancel all or part of the rights or defer action. The Board may consider any abandoned or forfeited waters to be available for appropriation subject to the provisions of SDCL 46-5.

This hearing is an adversary proceeding. Any person has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

JH:ks

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCELLATION)	FINDINGS OF FACT AND
OF WATER PERMIT NO. 0502-1)	CONCLUSIONS OF LAW

FINDINGS OF FACT

1. It has been stipulated and it is now found that land in the SW-1/4 of Sec. 28 in T6, R6E, Black Hills Meridian constituting 160 acres was settled and homesteaded prior to 1890. It was further stipulated and is now found that a homestead patent was properly filed on January 6, 1906 by George Paul.

2. A stipulation has also been made and it is now found that a location certificate for a water right to serve this property was properly filed on April 7, 1892. This location certificate, now numbered 0502-1, located a right to 400 inches of water (8 c.f.s.) for "irrigating, domestic, agricultural, manufacturing and mining purposes" which water was "to be conducted by ditches and flumes onto and across the lands [of Amalia Meyer] situated in said township and range."

3. It has further been stipulated and is now found that Henry Bruch is the correct title holder to this property and water right by chain of title from the above-named persons.

4. No credible evidence was offered that the 160 acres of land in question was not continuously irrigated by surface irrigation from the Location Notice No. 0502-1 from the time of the filing of the location certificate to the

time Henry Bruch purchased the property in 1959 or 1960. By continuously irrigated, it is meant that there was no period of three consecutive years where irrigation of all 160 acres did not take place without legal excuse.

5. Henry Bruch purchased the property in question in 1959 or 60. In 1962 he reconstructed the dam located at the diversion point indicated on Location Notice No. 0502-1.

6. Henry Bruch has, since 1962, irrigated by surface irrigation 50 acres within the SW-1/4 of Sec. 28, T6, R6. Bruch has not, during this period, formed an intent to abandon the water right for this 50 acre tract nor has it been shown that he forfeited the right to irrigate that 50 acre tract of land by allowing three years to pass without irrigation without legal excuse.

7. Bruch has not, at any time, irrigated by surface irrigation the remaining 110 acres for which Location Certificate 0502-1 was filed.

8. Henry Bruch has failed without legal excuse to irrigate by surface irrigation this remaining 110 acres of land for three consecutive years without legal excuse.

9. Subsurface irrigation of the remaining 110 acres has not taken place, at least in the period in which Henry Bruch has owned this property.

10. The non-use by Bruch of the water for the 110 acres for a period of over 20 years raises a presumption that Bruch intended to abandon the water right for the 110 acres. No credible evidence has been introduced to rebut the presumption.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter.
2. The notice given was sufficient under constitutional and statutory tests.
3. No issue as to a riparian right is properly raised in this case; further no issue arises in this case as to whether the federal government granted any water right when it granted a patent to George Paul. The only issue before the Board is the degree to which the State water right created by Location Certificate 0502-1 survives.
4. No right to subirrigation may be created pursuant to a location certificate under South Dakota law.
5. The burden, in a cancellation proceeding, is on the State of South Dakota to show by a preponderance of the evidence that the right in question has been forfeited or abandoned; a cancellation proceeding is distinguishable from a general adjudication in which the burden is on the purported holder of the water right to demonstrate the continued existence of that right.
6. The State has failed to sustain its burden of showing that Henry Bruch or his predecessors either abandoned or forfeited the right to continue using water for surface irrigation under 0502-1 with regard to the 50 acres Bruch now irrigates through surface irrigation.
7. The State has sustained its burden of showing that Henry Bruch both abandoned and forfeited his right to use water under 0502-1 to irrigate by surface or subsurface methods the remaining 110 acres within the SW-1/4 of Sec. 28 in T6N, R6E, Black Hills Meridian.

8. The water right created by Location Notice 0502-1 is cancelled insofar as it creates any right to use water for any purpose except irrigation. The right to use the water for irrigating the 110 acres not now irrigated is cancelled. The right to use water under Location Certificate No. 0502-1 for irrigating the remaining 50 acres is not cancelled.

BY THE BOARD:

Marian B. Gunderson
CHAIRMAN
Marian B Gunderson

Merwyn H. Walter
SECRETARY
Merwyn H Walter

Dated this 27 day of February, 1984.

IN FURTHER TEST OF THE TO CANCEL WATER RIGHTS FILINGS IN BEADE COUNTY, SO. DAKOTA

Complainant, Henry Bruch, a sovereign citizen of the State of South Dakota, a resident of Beade County, South Dakota, a property owner in Beade County, hereby making the following statements of facts and legal arguments:

1. That as are the owners of land in Beade County upon which water rights are located and that location certificates have been duly filed claiming water from Beade Creek;

2. That water has been used by subsequent owners as feasibility dictated from this source over the past 98 years for irrigation, domestic and agricultural uses;

3. That these water rights have been transferred several times with the land and have become an integral part of the value of these lands;

4. That the cancellation of these rights would constitute a severe and irreparable loss of value of these lands;

5. That cancellation of these rights would therefore be a taking of private property without the process of law as forbidden by Article V of the Constitution Amendments;

6. Cancellation of proceedings in this matter could become a conspiracy to deny civil rights to S.D. citizens;

7. These hearings are improper (or illegal) in that the defendants were not properly notified. Advertisements for two or three weeks in a newspaper with poor circulation in the dead of winter can hardly be construed as proper notice in proceedings of this scope and magnitude;

8. The Board is operating without basis in law in attempting to cancel riparian rights under S.D.C.L. 46-5-36 or 46-5-37;

9. Beade Creek has been dry or very low for the past several years due to drought no cause can be inferred when use is impossible because of an act of God;

10. There has been, through the years, construction and repairs (as recently as October 1931) on facilities to use water if it could be used without damage to downstream neighbors;

11. The water board has questionable jurisdiction in this matter since it is part of the Executive Branch of government and property can only be taken from citizens by due process of law which indicates action by the judicial branch;

12. That riparian water rights are an integral part of the value of the land and not merely a "license" to be granted or withdrawn at the discretion of an appointed board;

13. Personal notice has not been received by defendants as required under A.R.S.D. 52:01:01:2;

14. The complainant, Henry Bruch and others, are hereby specially appearing and in no way concede that this a legally noticed hearing;

15. Attempts to cancel water rights under A.R.S.D. 52:01:01:34, 52:01:01:35, 52:01:01:6 and 52:01:01:37 are without statutory authorization in that the cited authority S.D.C.L. 46-2-5 does not mention cancellation;

16. It is extremely detrimental to the state that many individual citizens are to lose their water rights that the S. D. Water Board should be granting a large water right to go to a foreign, private corporation;

17. The State of South Dakota has established, by its own precedent that water rights have a value by the proposed sale of water rights to a private corporation, therefore, property owners should be fairly and justly compensated for value severed from the land;

18. We challenge the jurisdiction of the Water Board as the State of South Dakota has filed a lawsuit against West River landowners to determine ownership of these rights;

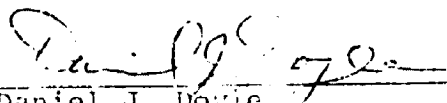
19. The statutes which supposedly authorize the ruler under which the Board is operating, to wit: S.D.A. 46-1-36 and 46-5-37, none of these statutes authorize the conclusion by the Board.

Henry Fruch

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CAN-)
CELLATION OF WATER PERMIT)
NOS. 0502-1, 0503-1, 0504-1,) CERTIFICATE OF SERVICE
0505-1, 0547-1, 0561-1,)
0462-1, and 0558-1)

I hereby certify that true and correct copies of
the State of South Dakota, Division of Water Rights Motion
to Compel Discovery, Notice of Motion, and Affidavit in the
above-entitled actions were served by United States mail,
first class, postage prepaid upon Ms. Jacqueline Huber,
Attorney at Law, Post Office Box 283, Piedmont, South Dakota
57769 on this 23rd day of July, 1982.


Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCEL-)
LATION OF WATER PERMIT NOS.)
0462-1, 0509-1, 0558-1,) CERTIFICATE OF SERVICE
0503-1, 0547-1, 0502-1,)
0504-1 AND 0505-1)

I hereby certify that true and correct copies of the
State's Interrogatories in the above-entitled actions were
served by United States mail, first class, postage prepaid
upon Ms. Jacqueline Huber, Post Office Box 283, Piedmont,
South Dakota 57769 on this 5th day of August, 1992.

Daniel J. Doyle
Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCEL-)
LATION OF WATER PERMIT NOS.)
0462-1, 0509-1, 0558-1,)
0503-1, 0547-1, 0502-1,)
0504-1 AND 0505-1)

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of
the State's Request for Admission in the above-entitled
actions were served by United States mail, first class,
postage prepaid upon Ms. Jacqueline Huber, Attorney at Law,
Post Office Box 283, Piedmont, South Dakota 57769 on this
_____ day of August, 1982.

Daniel J. Doyle
Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CAN-)
CELLATION OF WATER PERMIT)
0502-1)

STATE'S INTERROGATORIES

TO: MR. HENRY BRUCH AND HIS ATTORNEY, JACQUELINE HUBER:

You and each of you will please take notice and
be advised;

That the State of South Dakota, pursuant to SDCL
1-26-19.2, and any acts amendatory thereof, demands answers
under oath to the following Interrogatories within thirty (30)
days of this service upon you of said Interrogatories.

These Interrogatories shall be deemed to be con-
tinuing, and if information is discovered by or becomes known
to the contestant or to the contestant's attorney or to anyone
acting upon contestant's behalf after answering the same, and
before hearing, which would change or add to the answers
given, you are directed and requested to furnish said infor-
mation to the undersigned under oath giving timely notice
thereof.

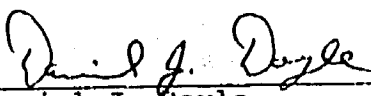
1. State how long you have lived at your
present residence.
2. State how long you have lived in Meade
County, South Dakota.
3. Describe the lands owned, leased, managed or
being purchased by you in Meade County, South
Dakota.
4. State the dates you acquired title to the
property you own.

5. State which lands owned, leased, or managed by you have been irrigated. State the years this land has been irrigated, the amount of water applied to the land each year, and the point of diversion from which the water was taken.
6. State what crops have been irrigated on this land.
7. State which lands have been irrigated by others, and when, before your acquisition lease or management of those lands.
8. State whether you have purchased or leased irrigation equipment for irrigating the lands indicated in Question No. 3. State what type of irrigation equipment has been purchased and from whom the equipment was purchased.
9. State who has constructed the irrigation works, if any, on lands owned, leased, being purchased, or managed by you.
10. List the names and addresses of all witnesses upon whom you intend to rely to establish any act or fact which you contend supports your position.

Dated and signed this 14th day of June,

982.

MARK V. MEIERHENRY
ATTORNEY GENERAL



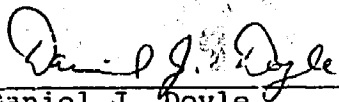
Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CAN-)
CELLATION OF WATER PERMIT)
0502-1)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of
the State's Interrogatories in the above-entitled action
was served by United States mail, first class, postage
prepaid upon Mr. Henry Bruch, Post Office Box 1, Howes
Route, Sturgis, South Dakota 57785 and Ms. Jacqueline Huber,
Attorney at Law, Post Office Box 283, Piedmont, South Dakota
57769 on this 14th day of June, 1982.



Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

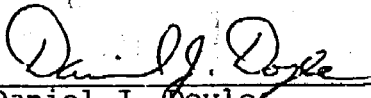
IN THE MATTER OF THE CAN-)
CELLATION OF WATER PERMIT) MOTION FOR ORDER COMPELLING DISCOVERY
NO. 0502-1)

The State of South Dakota, Division of Water Rights,
moves the Board as follows:

1. For an order requiring Henry Bruch to answer the
State's Interrogatories served on Mr. Bruch and his attorney
Jacqueline Huber by first class mail, postage prepaid, on
June 14, 1982.

2. For an award to the State of reasonable expenses
incurred in obtaining this Order.

Dated and signed this 23rd day of July, 1982.


Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

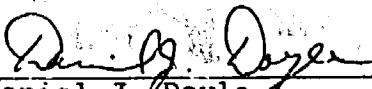
NOTICE OF MOTION

TO: JACQUELINE HUBER, POST OFFICE BOX 283, PIEDMONT, SOUTH
DAKOTA 57769, ATTORNEY FOR HENRY BRUCH

Please take notice, that the undersigned will bring
the above Motion on for hearing before the Water Management
Board in the Civil Defense Room of the State Capitol Building
in the city of Pierre, South Dakota on the 28th day of July,

1982 at 2:55 in the afternoon of that day or as soon there
after as counsel can be heard.

Dated and signed this 23rd day of July, 1982.



Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCEL-)
LATION OF WATER PERMITS NO.)
0502-1, 0504-1 AND 0505-1)

REQUEST FOR ADMISSION

The Division of Water Rights of the South Dakota Department of Water and Natural Resources requests contestant Henry Bruch, within thirty (30) days after service of this Request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the hearing:

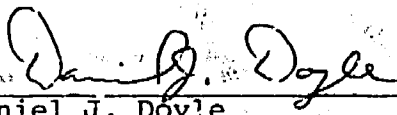
1. That each of the following statements is true:

- a) That from the time Henry Bruch acquired a property interest in Section 28, Township 6 North, Range 6 East, Black Hills Meridian no diversion of water from Bear Butte Creek for any nondomestic or nonstopwatering beneficial uses has been made by or through any man-made works from any diversion points in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.
- b) That from the time Henry Bruch acquired a property interest in Section 28, Township 6 North, Range 6 East, Black Hills Meridian no diversion of water

from Spring Creek for any nondomestic
or nonstockwatering beneficial uses has
been made by or through any man-made
works from a diversion point in Section
28, Township 6 North, Range 6 East,
Black Hills Meridian.

Dated this 6th day of August, 1982.

MARK V. MEIERHENRY
ATTORNEY GENERAL



Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

OCT 28 1982

IN THE MATTER OF THE CANCELLATION
OF WATER RIGHTS (WATER PERMITS NO.
0502-1, 0504-1 AND 0505-1)

RESPONSE TO
REQUEST FOR ADMISSION

Henry Bruch, being first duly sworn, gives this answer
to the Request for Admission submitted to him by the State
of South Dakota:

1. (a) Deny.
1. (b) Deny.

Dated this 22nd day of October, 1982.

Henry Bruch
Henry Bruch

Rosalee Boettcher

NOTARY PUBLIC

My commission expires: My Commission Expires January 18, 1990

ROSALEE BOETTCHER, Notary Public

STATE OF SOUTH DAKOTA)

: SS.

AFFIDAVIT

COUNTY OF HUGHES)

I, Daniel J. Doyle, Assistant Attorney General
for the State of South Dakota, being first duly sworn, say
that:

1. I am the attorney for the State of South Dakota,
Division of Water Rights in the administrative hearings of
IN THE MATTER OF THE CANCELLATION OF WATER PERMIT NOS. 0502-1,
0503-1, 0504-1, 0505-1, 0547-1, 0561-1, 0462-1, and 0558-1
before the Water Management Board.

2. That on June 14, 1982 I served by first class
mail, postage prepaid, written Interrogatories pursuant to
SDCL 1-26-19.2 and SDCL 13-6-33(a) upon Mr. Henry Bruch,
Mr. Bernard Bruch, Mr. John Bruch, and Mr. James Sigman and
their attorney Ms. Jacqueline Huber.

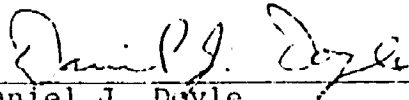
3. More than thirty days have passed since service
of the Interrogatories on these parties.

4. No answers have been filed and no copy of the
answers have been served on the State of South Dakota, Division
of Water Rights or on affiant.

5. A copy of the Interrogatories are on file with the
Water Management Board.

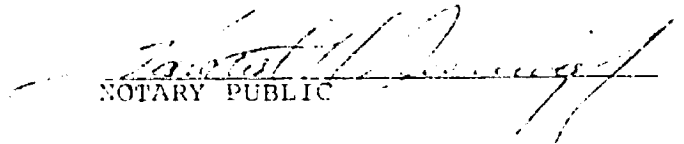
6. No court or agency order has been filed herein
enlarging the time in which to file the answers to the
Interrogatories.

Dated and signed this 23rd day of July, 1982.



Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

Subscribed and sworn to before me, a Notary Public,
on this 23rd day of July, 1982.


NOTARY PUBLIC

(SEAL)

My Commission Expires: **HAROLD H. DEERING, JR., Notary Public**
My Commission Expires
June 24, 1985

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CAN-
CELLATION OF WATER RIGHTS

ANSWERS TO
STATE'S INTERROGATORIES

1. State how long you have lived at your present residence.
Since 1961.

2. State how long you have lived in Meade County,
South Dakota.

50 years.

3. Describe the lands owned, leased, managed or being
purchased by you in Meade County, South Dakota.

Some of the following are percent ownership.

N 1/2 Sec. 17. Township 8, Range 12 E.

Township 5 N, Range 6 E.

NE 1/4 Sec. 7; SE 1/4, E 1/2 SW, NE 1/4 NE 1/4 Sec. 5
except RW. NE 1/4 Sec. 4; E 1/2 NW 1/4 NW 1/4.
NE 1/4 NW 1/4 N 1/2 NE 1/4 Sec. 3.

Township 6 N, Range 6 E.

Sec. 32, SE 1/4 SE, N 1/2 SE, S 1/2 NE. Sec. 33, N 1/2 SW,
SE 1/4, N 1/2 except RW. Sec. 34, all except RW.
Sec. 27, S 1/2. Sec. 28, all. Sec. 21, E 1/2, S 1/2
SW 1/4. Sec. 23, E 1/2. Sec. 14, SE 1/4, NW 1/4, S 1/2
NE 1/4, NE 1/4 SE, S 1/2 SE. Sec. 1, N 1/2 SW; NW 1/4;
N 1/2 NE.

Township 7 N, Range 6 E.

Sec. 36 S 1/2; S 1/2 NW 1/4.

Township 9 N, Range 11 E.

Sec 36, all.

Township 9 N, Range 12 E.

Sec. 31, all. Sec. 32 all. Sec. 33 S 1/2. Sec. 20 S 1/2
and NW 1/4. Sec. 25. E 1/2 NW; NW NW. Sec. 24 SW 1/4
SW 1/4.

Township 8 N, Range 11 E.

Sec. 1 S 1/2 NW; SW 1/4; W 1/2 SE. Sec. 11 S 1/2 NE 1/4.
Sec. 12 NE 1/4 N 1/2 NW 1/4.

Township 8 N, Range 12 E.

Sec. 18 N 1/2. Sec. 17 N 1/2 (not in Bernard's).
Sec. 8 E 1/2 E 1/2. Sec. 9 S 1/2 SE; SW 1/4. Sec. 4 all.
Sec. 5 E 1/2; S 1/2 and NE 1/4 of SW 1/4 N 1/2 and SE 1/4
of NW 1/4. Sec. 6 NW 1/4; N 1/2 NE 1/4; NE 1/4 NE 1/4
S 1/2 SE 1/4 NW 1/4 SE 1/4 NE 1/4 SW 1/4. Sec. 3 W 1/2
NW 1/4.

4. State the dates you acquired title to the property you own.

I have purchased these parcels of land between 1953 and
1982. We did not have sufficient time to sort out the
purchase history on all of them.

5. State which lands owned, leased, or managed by you have
been irrigated. State the years this land has been irrigated, the

amount of water applied to the land each year, and the point of diversion from which the water was taken.

Lands listed in response to Question 3.

6. State what crops have been irrigated on this land.

Hay and grain.

7. State what crops have been irrigated by others, and when, before your acquisition lease or management of those lands.

Unknown.

8. State whether you have purchased or leased irrigation equipment for irrigating the lands indicated in Question No. 3. State what type of irrigation equipment has been purchased and from whom the equipment was purchased.

Yes. Pumps and pipe. David Richards, Norris Rovere, Philip Bestgen, Bud Olsen.

9. State who has constructed the irrigation works, if any, on lands owned, leased, being purchased, or managed by you.

William or Amelia Meyer, John May, Henry Bruch, Al. Bruch.

10. List the names and addresses of all witnesses upon whom you intend to rely to establish any act or fact which you contend supports your position.

PAUR

John Egger, Patric ~~Bruch~~, John Bruch, Jim Sigman, Neal Rowett, Henry Karrels, George Blair, A. B. Thomerson, Meland Arvid. ALBERT BRUCH, MARK BRADLEY

DATED and signed this 23 day of JULY, 1982.

Henry Bruch
Henry Bruch

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCEL-)
LATION OF WATER PERMITS NO.) STATE'S INTERROGATORIES
0502-1, 0504-1 AND 0505-1)

TO: MR. HENRY BRUCH AND HIS ATTORNEY, JACQUELINE HUBER:

You and each of you will please take notice and be advised; that the State of South Dakota, pursuant to SDCL 1-26-19.2, and any acts amendatory thereof, demands answers under oath to the following Interrogatories within thirty (30) days of this service upon you of said Interrogatories.

These Interrogatories shall be deemed to be continuing, and if information is discovered by or becomes known to the contestant or to the contestant's attorney or to anyone acting upon contestant's behalf after answering the same, and before hearing, which would change or add to the answers given, you are directed and requested to furnish said information to the undersigned under oath giving timely notice thereof.

1. State the date or dates you acquired a property interest in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

2. State with specificity the lands in Sections 32, 33, 34, 28, and 27 which have been irrigated in the years of irrigation using the waters of either Bear Butte Creek or Roses Creek with diversion points in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

3. State the specific locations of any manmade diversion points, dikes, dams, or irrigation ditches located on Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

4. State the approximate date or dates of construction of the facilities referred to in the answer to Interrogatory No. 3.

5. Describe the maintenance, rehabilitation, or repair performed by you or caused to be performed by you on the facilities referred in the answer to Interrogatory No. 3.

6. State the nondomestic and nonirrigation beneficial uses of water made by you from the waters of Bear Butte Creek or Roses Creek from diversion points located in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

7. State the years of beneficial use of water for the uses described in your answer to Interrogatory No. 6.

8. State the quantity of water used each year for the beneficial uses of water described in your answers to Interrogatories No. 2 and 6.

9. Describe in detail the works used for putting the water diverted from Bear Butte Creek or Roses Creek to beneficial use.

10. State when the works referred to in your answer to Interrogatory No. 9 were constructed and by whom.

11. State the condition of the works referred to in your answer to Interrogatories No. 9 and 3.

12. List the names and addresses of all witnesses upon whom you intend to rely to establish any act of fact which you contend supports your position.

0502

South Dakota
Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

WATER RIGHTS DIVISION
(605) 773-3352

January 25, 1984

NOTICE

Jackie Huber, Attorney
Box 509
Aspen, Colorado 81612

RE: 1281-1, 0502-1 and 0503-1

Dear Ms. Huber:

November 30, 1983, the Water Management Board delayed consideration of Findings of Fact, Conclusions of Law and Final Decisions on Water Permit Application No. 1281-1, Department of Game, Fish and Parks and cancellation of Water Right Filings No. 0502-1 and 0503-1. These considerations were delayed to allow you to be present.

Consideration of proposed Findings, Conclusions and Final Decisions on No. 1281-1, 0502-1 and 0503-1 is now scheduled at 1:15 pm, February 15, 1984 in the Civil Defense Room, basement State Capitol Building, Pierre, South Dakota.

December 2, 1983, I advised that the Board had directed that any proposed Findings of Fact, Conclusions of Law and Final Decisions are to be submitted and received by individual Board Members prior to February 1, 1984.

Please advise if you have any questions.

Very truly yours,

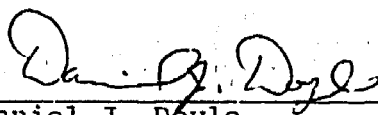
John Hatch, Chief Engineer
Water Rights Division

JH:ms
cc: Henry Bruch
Jack Merwyn

Equal Opportunity Employer

Dated and signed this 5th day of August, 1982.

MARK V. MEIERHENRY
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Daniel J. Doyle", is written over a horizontal line.

Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

OCT 28 1982

IN THE MATTER OF THE CANCEL-)
LATION OF WATER RIGHTS: (WATER)
PERMITS NO. 0502-1, 0504-1)
AND 0505-1))

ANSWERS TO
STATE'S INTERROGATORIES

1. State the date or dates you acquired a property interest in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

Different parcels of land - various dates from 1960 - 1972.

2. State with specificity the lands in Sections 32, 33, 34, 28, and 27 which have been irrigated in the years of irrigation using the waters of either Bear Butte Creek or Roses Creek with diversion points in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

All of the lands in these Sections are sub-irrigated by these streams. Water diverted in Section 28 flows down a ditch and ultimately reaches my land in Sections 33, 28, and 27. (See earlier interrogatory answers for land description)

3. State the specific locations of any manmade diversion points, dikes, dams, or irrigation ditches located on Sections 28, Township 6 North, Range 6 East, Black Hills Meridian.

Site 1 - SW 1/4 of SW 1/4 of Section 28 - dam
Site 2 - SW 1/4 of SW 1/4 of Section 28 - pumping site
Site 3 - SW 1/4 of NE 1/4 of Section 28 - dam & pumping station

4. State the approximate date or dates of construction of the facilities referred to in the answer to Interrogatory No. 3.

I believe these dams and ditches date back to at least the date of the Location notices (1892?) on these water rights. My work has been to reconstruct and rehabilitate these works. Pumps were added in recent years.

5. Describe the maintenance, rehabilitation, or repair work performed by you or caused to be performed by you on the facilities referred in the answer to Interrogatory No. 3.

As early as 1962, we reconstructed the third dam site.

It has been washed out several times by floods and has been reconstructed a number of times. I specifically remember work in 1972, 1975 and 1982. Pumps at Site 3 were installed in 1982. We have done ditch maintenance as needed.

6. State the nondomestic and nonirrigation beneficial uses of water made by you from the waters of Bear Butte Creek or Roses Creek from diversion points located in Section 28, Township 6 North, Range 6 East, Black Hills Meridian.

Used for beekeeping business and gravel washing. We assume livestock watering falls under domestic use.

7. State the years of beneficial use of water for the uses described in your answer to Interrogatory No. 6.

Beekeeping use for 6 years. Gravel washing in 1982.

8. State the quantity of water used each year for the beneficial uses of water described in your answers to Interrogatories No. 2 and 6.

Unknown. Not more than 500 miner's inches of water at any one site.

9. Describe in detail the works used for putting the water diverted from Bear Butte Creek or Roses Creek to beneficial use.

Site 1 - A dam blocks the creek with culvert through it and when we need water we block the culvert. The water then goes through ditch on to the fields.

Site 2 - Pump adds water to ditch which runs from Site 1.

Site 3 - Old dam has washed out. We now use that area for pumping site.

10. State when the works referred to in your answer to Interrogatory No. 9 were constructed and by whom.

Site 1 - Originally constructed by William Meyer in the 1890's.

Site 2 - Site was here when I came. I believe John May constructed it in the 1950's. I installed the pump in 1982.

Site 3 - Originally constructed in 1890's. Used now as pumping station.

11. State the condition of the works referred to in your answer to Interrogatories No. 9 and 3.

Excellent.

12. List the names and addresses of all witnesses upon whom you intend to rely to establish any act of fact which you contend supports your position.

John Egger, 2131 Baldwin St. Sturgis, South Dakota
Patrick Paur, P. O. Box , Sturgis, South Dakota
John Bruch, Howes Route, Sturgis, South Dakota
Jim Sigman, Howes Route, Sturgis, South Dakota
Neal Rowett, P.O. Box , Sturgis, South Dakota
Henry Karrels, P.O. Box , Sturgis, South Dakota
George Blair, Tilford, South Dakota
A. B. Thomerson, Hereford, South Dakota
Arvid Meland, 624 Ruby Street, Sturgis South Dakota

DATED this 22nd day of October, 1982.

Henry Bruch
Henry Bruch

Rosalee Boettcher
NOTARY PUBLIC

ROSALEE BOETTCHER, Notary Public
My commission expires: My Commission Expires January 10, 19

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
Pierre, South Dakota 57501-5090
Phone (605) 773-3215

MARK V. MEIERHENRY
ATTORNEY GENERAL

November 17, 1983

Mr. John Hatch
Division of Water Rights
Department of Water
and Natural Resources
Foss Building
Pierre, South Dakota 57501



RE: IN THE MATTER OF THE CANCELLATION OF WATER PERMIT NO.
0502-1

Dear John:

Enclosed please find the original of proposed Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter. The proposals are made by me as advisor to the Board.

Sincerely,

A handwritten signature in cursive script, appearing to read "John P. Guhin".

John P. Guhin
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-3805

JPG:do

Enclosure

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCELLATION)	FINDINGS OF FACT AND
OF WATER PERMIT NO. 0502-1)	CONCLUSIONS OF LAW

FINDINGS OF FACT

1. It has been stipulated and it is now found that land in the SW-1/4 of Sec. 28 in T6, R6E, Black Hills Meridian constituting 160 acres was settled and homesteaded prior to 1890. It was further stipulated and is now found that a homestead patent was properly filed on January 6, 1906 by George Paul.

2. A stipulation has also been made and it is now found that a location certificate for a water right to serve this property was properly filed on April 7, 1892. This location certificate, now numbered 0502-1, located a right to 400 inches of water (8 c.f.s.) for "irrigating, domestic, agricultural, manufacturing and mining purposes" which water was "to be conducted by ditches and flumes onto and across the lands [of Amalia Meyer] situated in said township and range."

3. It has further been stipulated and is now found that Henry Bruch is the correct title holder to this property and water right by chain of title from the above-named persons.

4. No credible evidence was offered that the 160 acres of land in question was not continuously irrigated by surface irrigation from the Location Notice No. 0502-1 from the time of the filing of the location certificate to the

time Henry Bruch purchased the property in 1959 or 1960. By continuously irrigated, it is meant that there was no period of three consecutive years where irrigation of all 160 acres did not take place without legal excuse.

5. Henry Bruch purchased the property in question in 1959 or 60. In 1962 he reconstructed the dam located at the diversion point indicated on Location Notice No. 0502-1.

6. Henry Bruch has, since 1962, irrigated by surface irrigation 50 acres within the SW-1/4 of Sec. 28, T6, R6. Bruch has not, during this period, formed an intent to abandon the water right for this 50 acre tract nor has it been shown that he forfeited the right to irrigate that 50 acre tract of land by allowing three years to pass without irrigation without legal excuse.

7. Bruch has not, at any time, irrigated by surface irrigation the remaining 110 acres for which Location Certificate 0502-1 was filed.

8. Henry Bruch has failed without legal excuse to irrigate by surface irrigation this remaining 110 acres of land for three consecutive years without legal excuse.

9. Subsurface irrigation of the remaining 110 acres has not taken place, at least in the period in which Henry Bruch has owned this property.

10. The non-use by Bruch of the water for the 110 acres for a period of over 20 years raises a presumption that Bruch intended to abandon the water right for the 110 acres. No credible evidence has been introduced to rebut the presumption.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter.
2. The notice given was sufficient under constitutional and statutory tests.
3. No issue as to a riparian right is properly raised in this case; further no issue arises in this case as to whether the federal government granted any water right when it granted a patent to George Paul. The only issue before the Board is the degree to which the State water right created by Location Certificate 0502-1 survives.
4. No right to subirrigation may be created pursuant to a location certificate under South Dakota law.
5. The burden, in a cancellation proceeding, is on the State of South Dakota to show by a preponderance of the evidence that the right in question has been forfeited or abandoned; a cancellation proceeding is distinguishable from a general adjudication in which the burden is on the purported holder of the water right to demonstrate the continued existence of that right.
6. The State has failed to sustain its burden of showing that Henry Bruch or his predecessors either abandoned or forfeited the right to continue using water for surface irrigation under 0502-1 with regard to the 50 acres Bruch now irrigates through surface irrigation.
7. The State has sustained its burden of showing that Henry Bruch both abandoned and forfeited his right to use water under 0502-1 to irrigate by surface or subsurface methods the remaining 110 acres within the SW-1/4 of Sec. 28 in T6N, R6E, Black Hills Meridian.

8. The water right created by Location Notice 0502-1 is cancelled insofar as it creates any right to use water for any purpose except irrigation. The right to use the water for irrigating the 110 acres not now irrigated is cancelled. The right to use water under Location Certificate No. 0502-1 for irrigating the remaining 50 acres is not cancelled.

BY THE BOARD:

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCELLATION)
OF WATER PERMIT NO. 0502-1)

FINAL
DECISION

Based upon the Findings of Fact and Conclusions of Law entered today it is Ordered that the water right created by Location Notice No. 0502-1 to irrigate land in the SW-1/4 of Sec. 28, in T6, R6E, Black Hills Meridian constituting 160 acres and for other purposes is cancelled insofar as it creates any right to use water for any purpose except irrigation. It is further Ordered that the right to use water for irrigating the 110 acres not now irrigated is cancelled. It is further Ordered that the right to use water under this Certificate for irrigating the remaining 50 acres is not cancelled.

BY THE BOARD:

**NOTICE OF INTENT TO CANCEL
WATER RIGHT FILINGS**

The South Dakota Water Management Board will consider Cancellation of Water Right Filings No. 0462-1 Diversion of 100 miners inches (2 cfs) from a spring located the East side of SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, T6N, R6E, No. 0502-1 Diversion of 400 miners inches (8 cfs) from Bear Butte Creek in SW $\frac{1}{4}$ Section 28, T6N, R6E, No. 0503-1 Diversion of 500 miners inches (10 cfs) from Bear Butte Creek in S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 32, T6N, R6E, No. 0504-1 Diversion of 500 miners inches (10 cfs) from Bear Butte Creek in NW $\frac{1}{4}$ NE $\frac{1}{4}$ of SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 28, T6N, R6E and from Roses Creek in S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 23, T6N, R6E and NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T6N, R6E, No. 0505-1 Diversion of 300 miners inches (6cfs) from Roses Creek (Cottle Creek) S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 28 and NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T6N, R6E, No. 0509-1 Diversion of 30 miners inches (0.6 cfs) from a spring located in NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, T3N, R7E, No. 0547-1 Diversion (no amount specified) from Bear Butte Creek on or near the South line of SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T6N, R7E and a ditch across NE $\frac{1}{4}$ Section 19, T6N, R7E, No. 0558-1 Diversion of 500 miners inches (10 cfs) from Spring Creek located in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T6N, R6E, No. 0561-1 Diversion (no amount specified) from Bear Butte Creek located in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T6N, R6E and a ditch across S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 23, T6N, R6E, No. 0562-1 Deed for Right of Way for ditch (no amount of water specified) across NW $\frac{1}{4}$ Section 24, T6N, R6E at 10 am, May 5, 1983, Joe Foss Building, Room 216, 523 E Capitol, Pierre, South Dakota. These hearings were originally scheduled for July 28, 1982 and February 24, 1983.

These hearings will be conducted pursuant to the provisions of 46-1-1 thru 46-1-10, 46-1-14, Section 13 of HB 1001 as enacted by the 1933 Legislature; 46-2-3.1, 46-2-9, 46-2-11, Section 32 of HB 1001; 46-5-36, 46-5-37, Section 69 of HB 1001, Sections 1, 4, 5, 6, 12, 13 of HB 1002; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. Several of the preceding SDCL Sections are amended by HB 1001 and 1002 as enacted by the 1983 Legislature. These are contested cases pursuant to procedures contained in SDCL 1-26.

The Chief Engineer of the Water Rights Division is recommending cancellation of Water Right Filings No. 0462-1, 0558-1, 0502-1, 0503-1, 0504-1, 0505-1, 0509-1, 0547-1, 0561-1 and 0562-1 because investigation findings indicate these Filings have been abandoned or forfeited.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to cancel all or part of the water right filings after it reaches a conclusion based upon facts presented at the public hearing. Persons who are already parties to these hearings and other known persons who may have an ownership interest in a portion of the property covered by the listed Water Right Filings have been given written notice of the cancellation hearings. The purpose of this notice is to advise that

any other interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with the Chief Engineer by April 25, 1983. The petition may be informal, but it must include a statement describing the petitioner's interest in the cancellations, which Filings are located on the property owned by the petitioner, the reasons for the petitioner's opposition to or support for the cancellations, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained.

The time of the hearing will be automatically extended for at least twenty days upon written request of any person who has filed a petition to oppose or support the cancellation. If an extension is requested, the hearings on cancellation of those Filings located on a Petitioner's property will be continued until the next regular Board Meeting July 21 and 22, 1983 in Webster, South Dakota. Any request for an extension must be filed with the Chief Engineer by April 25, 1983. The Board may consider any abandoned or forfeited waters to be available for appropriation subject to the provisions of SDCL 46-5, HB 1001 and HB 1002.

These hearings are adversary proceedings. Any person has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on the proposed cancellations or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWRN, Joe Foss Bldg. Pierre SD (605 773-3352) for assistance prior to the hearing.

16, 1983

TO: Water Rights Division
Joe Foss Bldg.
Pierre SD 57501

We are in receipt of you
to Cancel Water Right Filings
March 16, 1983.

Linda Adams
Name

Publ Mar. 16 and 23, 1983
Times-Tribune

1983 enclosing Notice of Intent

published in our issue of
ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Keade County Times-Tribune
Newspaper

