

No. 0575-1

Office of State Engineer
DOCUMENT FILE

Name: *Trile, Amos F.*
McFarland, John

County: *Meade*
Filed in Bennington
County # 13334

Date: *Jan. 18, 1887*

Filed: *Jan. 22, 1887*

Location: *Bennington Co.*
Box Elder Creek.
(300 miners' share.)

Note: *Present owner is*
John L. McFarland
15

#13324

WATER RIGHT LOCATION CERTIFICATE NOTICE.

This is to Certify, That the undersigned Amos F. Gaile and John McFarland being citizens of the United States and over the age of twenty-one years have on this 18th day of January 1887 located, claimed and appropriated three hundred inches of the waters of this Box Elder Creek for agricultural manufacturing and domestic purposes. The point of diversion being at a point on said Creek near the South West corner of the South East quarter (SE $\frac{1}{4}$) ^{of the South East Quarter (SE $\frac{1}{4}$)} of Section Eight (8) Township Two (2) North of Range Eight (8) East B. H. M.

Witness our hands this 18th day of January 1887.

Amos F. Gaile

John McFarland

Filed for record January 22 A. D. 1887 at 11 A. M. and recorded in book G, page 25 of Location Records.

J. S. Gantz

Register.

Erma M. Kluthe
Register of Deeds
Water Right Notice
on Reg. No. 9, 1887, 25.
of Location Cert. 1887, 25.
Witness my hand and official seal this
4th day of October A. D. 1943.
Erma M. Kluthe
REGISTER OF DEEDS

CERTIFIED COPY OF ORIGINAL LOCATION

NOTICE

Filed in Pennington County under
13324

11.5. 1575-1

STATE OF SOUTH DAKOTA)

COUNTY OF PENNINGTON)

SS:

AFFIDAVIT

TO WHOM THIS MAY COME: We, the undersigned, old time residents of Box Elder Valley, and early day ranchers that travelled the Box Elder Valley Road northeast of town in the early days, saw John McFarland irrigate land on Box Elder in the fall of 1887 and 1888 from his dam on Box Elder Creek. Also, he irrigated every year when there was sufficient water in the creek.

Signed

W.A. Scott
W.A. Scott

Signed

John Kammerer
John Kammerer

Signed

Thomas K. Potter
Thomas K. Potter

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

SS:

On this 13th day of Nov in the year 1943 before me M. Gzansky, a Notary Public in and for the said County and State, personally appeared W.A. Scott known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same.

SEAL

M. Gzansky
Notary Public

over

REPRODUCTIONS.

REDUCTION 25X

ROLL NO. # 2

3-3-82

DATE MICROFILMED

ANALYST

CHIEF OPERATOR

State of South Dakota)
County of Pennington)SS;

On this _____ day of _____ in the year 19____, before me
_____, a Notary Public in and for said
County and State, personally appeared _____
known to me to be the person who is described in and who executed the
within and foregoing instrument and acknowledged to me that he executed
the same.

SEAL

NOTARY PUBLIC

State of South Dakota)
County of Pennington)SS:

On this 17th day of Dec in the year 1923, before me,
M. J. Brandy, a Notary Public in and for said
County and State, personally appeared Amos H. Potter
known to me to be the person who is described in and who executed the
within and foregoing instrument and acknowledged to me that he
executed the same.

SEAL

M. J. Brandy
Notary Public

1073-1

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

SS:

AFFIDAVIT

TO WHOM THIS MAY COME: During the time 1890 to 1900 while travelling back and forth from alkali to Rapid City across Box Elder Valley, I saw land being irrigated from the McFarland ditch a number of seasons; also water running in the ditches near the dam while riding across Box Elder Valley on horse back.

Signed this 3rd day of December 1943

Chas. P. McPherson
Chas. P. McPherson

STATE OF South Dakota)
COUNTY OF Pennington) SS:

On this 3rd day of December in the year 1943

before me the undersigned, a notary public in and for said County and State, personally appeared Chas. P. McPherson, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same.

SEAL

Marvin S. Jensen
Notary Public

10-73-1

June 12, 1944

Raymond F. Lund
Rapid City, South Dakota

Re: Water Right Claim,
Box Elder Creek,
Sec. 8, T 2 N, R 8 E,
John F. McFarland and
Amos Guile, our # 0575-1

Dear Mr. Lund:

Because of your past interest in the water right of John F. McFarland on Box Elder Creek, we are writing to inform you that a Mr. Ernest Hamm, neighbor of Mr. John L. McFarland who is a nephew of the John F. McFarland who filed the original location notice, and is a son of George McFarland, now deceased, brought to this office a water right location notice of the right of Amos F. Guile and John F. McFarland, filed on the 18th day of January, 1937.

The location certificate is supported by affidavits showing that the water was used. We are filing these papers in the usual manner.

Very truly yours,

Dean H. Loucks
State Engineer

DHL:ab

September 29, 1913

Raymond F. Lund, Project Supervisor
U. S. Dept. of Agriculture
Rapid City, South Dakota

Re: Water Right Claim
Box Elder Creek,
John F. McFarland

Dear Mr. Lund:

I have your letter of September 28th giving further information and making further inquiry relative to a water right claimed by Mr. John McFarland on Box Elder Creek, Section 8, T 2 N, R 8 E, claimed to have been filed January 18, 1887.

My letter of the 23th apparently crossed yours of above date in the mail. As stated in my letter of the 28th, we find no water right in the name of John McFarland at the location designated. We do find a water right in that section in the name of G. W. Ryan. The record shows, however, that this location was made on December 8, 1894. This may or may not be the right to which you refer.

The Ryan Ditch is indicated in the survey by the State Engineer made in 1908 as shown on the enclosed pencil tracing from the hydrographic map of that date.

Assuming that this is the water right in question, its present validity is dependent upon whether or not the water has been beneficially used continuously without a lapse of a legally designated period of time since 1905. If there has been a lapse of beneficial use of all or a part of the waters appropriated of a period of 3 years since 1905, the right, upon proof of such non-use, would be declared to be abandoned for any water not used.

You state, however, that Mr. McFarland has statements signed by old timers who knew his great-uncle verifying the fact that the ditches have been used periodically since the filing was made. If this means without a lapse of more than 2 years from 1905 to 1907 or a lapse of more than 3 years from 1907 to the present time and a proof of such filing can be found, I see no reason why the appropriation would not be valid at the present time.

The earliest right on record that we have on Box Elder Creek has a date of 7/28/68 and is in the name of Michael Duree and George C. Hunt and is for 10 sec. ft. Location of this right is Section 3, T 2 N, R 8 E. The next right

Raymond F. Lund
Page 2 - cont.

September 29, 1943

in priority recorded in our records is that of Christian Thompson for 60 sec. ft. with a date of 9/10/90. This right is located in Section 10, T 2 N, R 7 E. Then next in priority follows the right of George W. Ryan for 10 sec. ft. with a date of 12/8/94. This location is on Section 8, T 2 N, R 8 E on the same section in which Mr. McFarland claims a location.

We, of course, have no way of knowing whether or not any of these 3 prior rights have been abandoned because of non-use.

We will await any further information which may come from the county records at Sturgis in reply to our letter of September 28th, a copy of which was forwarded to you.

Very sincerely yours,

Dean W. Loucks
State Engineer

DWL:ab
encl

P. S. I might add for the information of Mr. McFarland should he decide to take out a new right and forfeit any previous claim of priority that our records show some 23 water right filings on the Box Elder Creek totaling an amount of appropriation of 279.1 sec. ft. of water and in addition there is a U. S. Forest Service right for 106 acre feet per year. The only record that we have of the flow of Box Elder Creek is the Stream Flow Record of the U. S. G. S. in 1905. This gives a maximum flow of 650 sec. ft., minimum flow of 2 sec. ft., and a mean flow of 69.6 sec. ft. On the basis of this one year and assuming that no other rights listed have been abandoned, it is apparent that the only unappropriated water on Box Elder Creek at this time would be flood flow water.

D. W. L.

6575-1

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SECURITY ADMINISTRATION

IN REPLY REFER TO

Rapid City, South Dakota
September 28, 1943

RECEIVED

SEP 2 1943

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

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Mr. Loucks:

A short time ago we prepared a letter to you concerning a water right filing on Box Elder Creek. Since we have had no reply we shall assume that you may not have received the letter. For that reason, I shall restate the circumstance.

Mr. John F. McFarland, present operator, states that his great uncle, John McFarland, filed a water right on Section 8 - Twp. 2N - Range 8E, on January 18, 1887. This filing on Box Elder Creek was for irrigation purposes. The question now is: Is this water right still good, or will it be necessary for Mr. McFarland to file again on this creek?

Water has been diverted from the creek from time to time to irrigate the above described land. Mr. McFarland has statements signed by oldtimers, who knew his great uncle, verifying the fact that the ditches have been used periodically since the filing was made in 1887.

Mr. McFarland is interested in finding out the present status of that water right before proceeding to elaborate on the present system. What is the law concerning the lapse of a water right? By that I mean, if a ditch or right has not been used for a period of time, does that right become null and void through disuse? If so, what is the period of time involved?

Any information that might be supplied will be greatly appreciated.

Sincerely yours,

Raymond F. Lund

Raymond F. Lund
Project Supervisor

P.S. - Mr. McFarland has used water continuously from the creek since 1932, that is when it has been available.

*Mr. McFarland received his mail through
Rapid City, Route 1.*

No. 526-2Water Division No. 2

(Blanks to be filled by the Engineer for the W. R. C.)

VESTED

District

STATE WATER RESOURCES COMM.

PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To appropriate Water within the State of South Dakota

(NOTE--Draw a line through items not applicable.)

1. Name of applicant John F. McFarland, Dan J. Frick
 Postoffice address Rapid City, A.C. #3, Box 374, County Pennington, State S. Dak.

I. If a corporation

- (a) Name of same _____
 (b) Date and place of incorporation _____
 (c) Amount of capital stock _____
 (d) Amount paid in _____
 (e) Names and addresses of directors _____

(NOTE--A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)

Completed

(b) Cash on hand, \$ _____

(c) Treasury stock, \$ _____

(d) Bonds to be issued, \$ _____

(e) Other resources, \$ _____

2. Name of diversion work John McFarland Ditch
 3. Amount of water claimed Six (6) 371 c.f.s. maximum cubic feet per second
 4. Source of water supply Box Elder Creek, Pennington County
 5. Location or point of diversion From SE corner of Sec. 2, North 33° 30' East 1370 Feet
on both banks Pennington County
 6. Annual period or periods during which water is to be used April to November (Inc.)
 7. To be used for:

- I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Gravity

(a) Number of acres to be irrigated 260 acres.(b) Legal subdivisions to be irrigated See attachment and map

(NOTE--A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

(c) Statement as to domestic use (giving location, etc.) When water is run in theditches it builds up supply in underlying gravel for shallow wells

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

(a) Nature of use _____

Name any of the above uses claimed

(b) Amount of power to be generated _____ horse power.

Amount claimed for engine cooling _____

(c) Location of plant _____

(d) Method of developing power _____

(e) Point where water will be returned to stream _____

MAP N° 510-2

Remarks by State Water Resource Commission:

"Vested Right" claimed
This Vested Right is a current record of
irrigated land developed under Water Right
filing No. 0575-1 and Dry Draw filing No. 607-2.

STATE OF SOUTH DAKOTA
County of Hughes } ss.

Pierre, South Dakota, March 27, 1959

This is to certify that the foregoing application was received by the Commission at 3:15 o'clock
p.m. upon the 19 day of March, 1959

State Water Resources Commission

By:

W. H. Brimer
Chief Engineer, Executive Officer

Vested Right
Number of permit 526-2

Date of first receipt of application March 19, 1959

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right 1.57 c.f.s. From January 18, 1887
2.14 c.f.s. From 1933

Approved March 27, 1959 Recorded in Book Vested Right Page 121

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before _____

Completed, 19____

2nd. The whole of said work is to be completed on or before Completed, 19____

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is

Completed, 19____

4th. The water appropriated shall be used for the purpose of irrigation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 3.71 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before Completed, 19____; said water to be used during the following described annual period:

April to October inclusive

Witness my hand this 27 day of March, 1959

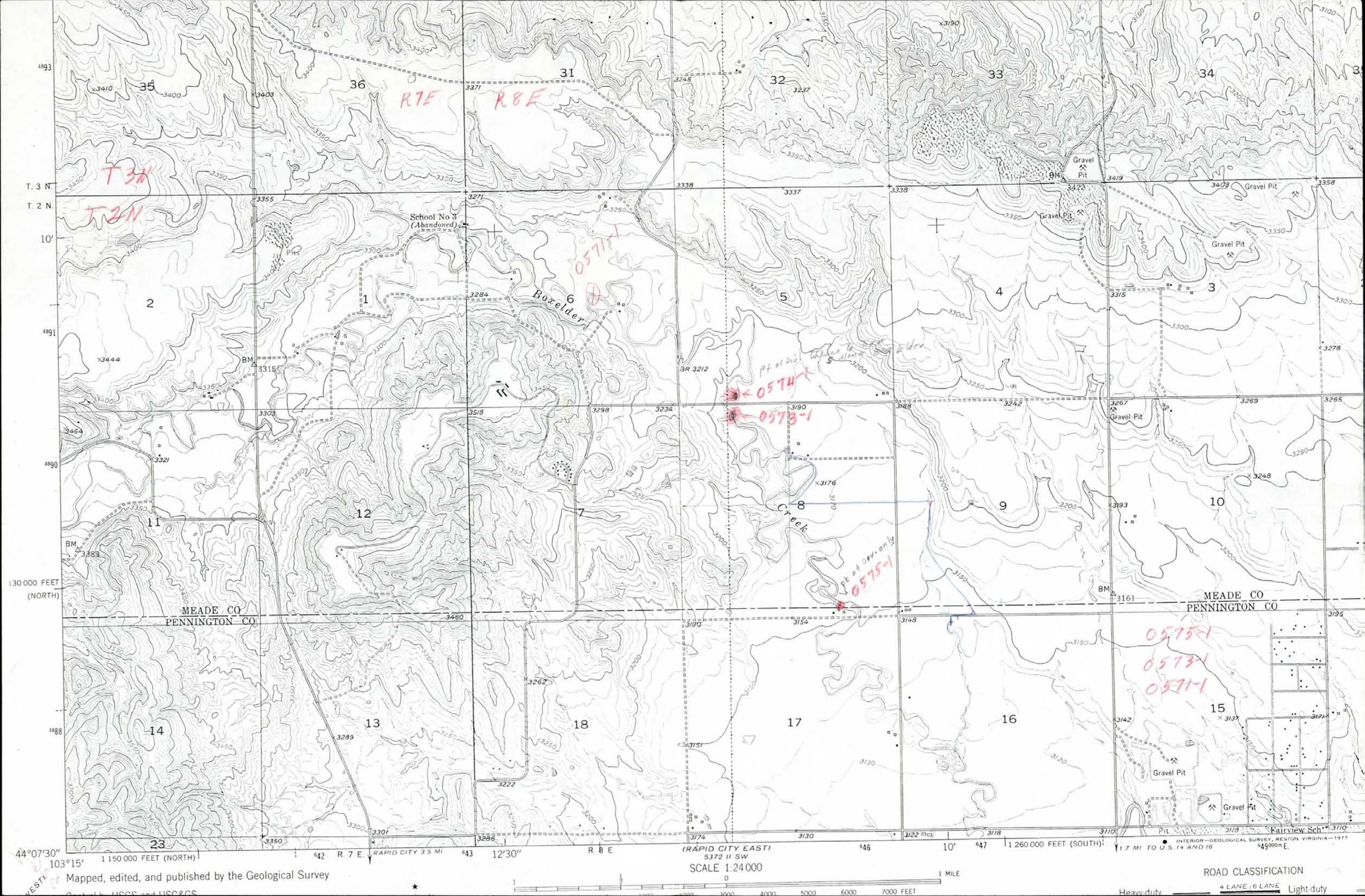
State Water Resources Commission

By:

W. H. Brimer
Chief Engineer, Executive Officer

Certificate of Construction Issued March 27, 1959

Water License Issued March 27, 1959



1893
T. 3 N.
T. 2 N.
10'
1891
1890
130 000 FEET (NORTH)
MEADE CO
PENNINGTON CO
1888
44°07'30"
103°15'
1 150 000 FEET (NORTH)
R. 7 E.
RAPID CITY 35 MI
R. 8 E.
12'30"
(RAPID CITY EAST)
5372 II SW
SCALE 1:24000
10'
1 260 000 FEET (SOUTH)
1.7 MI TO U.S. 14 AND 16
49°00'00" E.
ROAD CLASSIFICATION
Heavy-duty
4 LANE 16 LANE
Light-duty

Mapped, edited, and published by the Geological Survey

ROAD CLASSIFICATION