

No. 0579-1

Office of State Engineer
DOCUMENT FILE

Name: Keets, Henry

County: Laurence

Location: Chicken Creek

Sec. 13 - 7N - 1E

6-19-51

(A)

...one (1) East ...

...three hundred ...

...southwest corner of the fort, across ...

...means of ...

...of the ...

...over ...

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STATE OF SOUTH DAKOTA) SS
COUNTY OF LAWRENCE)

I hereby certify that the within instrument is a true, correct and complete photocopy of the original instrument as recorded in my office on the 12 day of Nov. 1901 at 8 o'clock and 35 minutes A.M. in Book 157 Page 433.

Dated

June 12, 1951

Milton A. Williams
Register of Deeds

By

Deputy

#3599

Location Certificate

Water Right

Chicken Creek

P. C. Riley

Filed Feb. 20, 1880

4 O'clock P. M.

C. H. McKinnis

Register of Deeds

Per W. L. Kuykendall

Deputy

To All Whome it may Concern. This is to certify that I P. C. Riley a Citizen of the United States have this day claimed and located one hundred inches or all the Water in what is known as Chicken Creek I claim the said water for irrigating purposes the water was turned out of its natural channel about fifty yards from its intersection with read water and the said Ditch conveying said water from its natural channel was built on or about May 15th 1878 This Certificate is filed in lieu of the original Certificate which was filed for record in the office of the Register of Deeds of said County on or about the sixth of July 1878 which together with the records thereof was destroyed by fire in Deadwood Sept. 26th. 1877.

This Feb. 20, 1880

P. C. Riley

Locator

STATE OF SOUTH DAKOTA) ss
LAWRENCE COUNTY)

I hereby certify that the within instrument is a true, correct and complete copy of the instrument as recorded in my office on the 20 th day of Feb. 1880 at 4 o'clock and 50 minutes P. M. in Book 8 Page 429.

Dated July 27 19 60

William H. Rankin
Register of Deeds

By _____ Deputy

June 19, 1951

Roland P. Bryan
Spearfish, S. Dak.

Re: Water Right No. 0579-1
Chicken Creek
Sec. 13-7N-1E

Dear Mr. Bryan:

A few days ago we had a letter from Florence Kents 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 Kents throws additional light on the matter. This Location 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 Kents. We will place this location notice on file in this Office for future reference.

Yours very truly,

RECEIVED
cc: Florence Kents Bettelheim

DEAN W. LOUCKS
State Engineer

Spearfish, So. Dakota
June 15, 1951

Mr. D. W. Loucks,
State Engineer,
Pierre, So. Dakota

Dear Sir:-

I have a problem involving water rights that I would like to report to you and have your advice on.

The facts of the situation are substantially as follows: I am the present owner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13, Twp. 7, Range 1, Lawrence County, So. Dak. In connection with this tract of land I have a water right. To familiarize you with the nature of this water right I am enclosing a photostat certified copy of the document.

About six weeks ago the owner of the land above me, Alfred J. Sleep, of Spearfish, South Dakota, had a dam built across the creek under the soil conservation setup. Both the soil conservation people and Mr. Sleep give the purpose of building this dam as for flood control and irrigation. This dam is 15 feet high at its highest point. This creek is a running stream and named Chicken Creek. The length of the dam is 140 feet and probably 85 feet at the base. To take care of the flow of water of Chicken creek they put in a 12 inch pipe.

I am the only interested party below the dam who has a recorded water right. I was not given any notice of the building of this dam and did not know of it until about two weeks ago. The dam is about two miles above my property.

Now here are the damages this dam will eventually cause to me and my water right:

1. This 12 inch pipe will eventually clog up and stop the natural flow of the creek.

2. It will deprive me and other interested parties below of flood waters which we must have from time to time to keep the creek channel clean.

3. If this dam fills up to the spillway it may choke some of the springs which are the normal source of water.

Would like to hear from you on the following questions:

1. Is there a record in your office of this project and if so how complete a record?

D. W. Loucks # 2.

2. Are such dams built without notice to your office under the soil conservation program?

3. Do you know of any requirement that notice of such a project must be given to the interested parties below, like in my case?

4. Could your office do something or suggest something as a possible remedy to correct this situation, other than court proceedings.

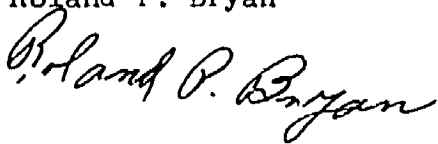
It is my own opinion that a 3 foot culvert or pipe would have prevented the trouble that I now believe to be inevitable.

Assuring you that I will appreciate very much any help and information you may be able to give in this matter.

Thanking you in advance and hoping to hear from you at your convenience, I am,

Very truly yours,

Roland P. Bryan

A handwritten signature in cursive script that reads "Roland P. Bryan". The signature is written in dark ink and is positioned below the typed name.

OFFICE OF STATE ENGINEER
STATE OF SOUTH DAKOTA
DEAN W. LOUCKS, STATE ENGINEER
PIERRE

June 16, 1951

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

Re: Water Application No. 0142-1
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 no 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 Sec 22, T. 7N., R. 1E. The filing was made May 11, 1950 and claims 10 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. You 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,

DEAN W. LOUCKS
State Engineer

DWL:mt