

1182-1

1. Considered JANUARY 31 1979
2. Name of Applicant GEORGE F. LEACH
3. Post Office Address FRUITDALE, S.D. 17-8N-4E
4. Amount of Water claimed 1.6
5. Source of Water supply BELLE FOURCHE RIVER
6. Water to be used for IRRIGATION
Acres to be irrigated 100
7. Water to be diverted and used in BUTTE County
about 12.15 miles of FRUITDALE
8. Proof of Publication Received 1-10-79
Not Received _____
9. Application Approved _____
Subject to _____
Not Approved _____
Action Deferred 1/31/79

10. Remarks:

No. 1182-1Map No. 992-1 Water Division No. 1 BELLE FOURCHE RIVER District
(Blank to be filled by the Engineer for the D. H. C.)

APPLICATION FOR PERMIT

To Appropriately Water within the State of South Dakota

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

1. Name of Applicant George F. Leach
 Post-office address Frankfort State So. Dak. 57742
 If a corporation, how formed and place of incorporation _____
 2. Method of accomplishing work: (contract, employment of others, or by direct labor) direct labor
 3. Name of diversion work Leach Irrigation Project
 4. Amount of water claimed (cubic feet per second) 2 1.6 MAX. ALLOWABLE
 5. Source of water supply Belle Fourche River
 6. Location of point of diversion Approximately 400 feet Southwest of the Center of Sec. 12, T8N, R4E
 County Butte
 7. Annual period or periods during which water is to be used Primarily from May 15 to Sept. 15
 8. Use to be made of water: (irrigation, industrial, municipal, commercial, recreation, etc.) agriculture
 9. For irrigation use: Wheat Total number of acres to be irrigated 108

List below each forty-acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
<u>NE 1/4 Sec. 12-8-4</u>	<u>19</u>	<u>SE 1/4 Sec. 12-8-4</u>	<u>4</u>
<u>SE 1/4 Sec. 12-8-4</u>	<u>36</u>		
<u>SW 1/4 Sec. 12-8-4</u>	<u>20</u>		
<u>SE 1/4 Sec. 12-8-4</u>	<u>25</u>		

Attach sheet if more space is needed

10. Time required to complete construction of water supply system 1 years. Additional time required to complete application of water to the proposed beneficial use 3 years.
 11. Choice of newspaper for Notice of Intent to Appropriately Water publication See Belle Fourche Party Post
 12. Principal Features of the Proposed Water Supply System:

A. Works proposed to divert water from its natural source

Pump

B. Works proposed to transport water to place of use

Pipe line

C. Works proposed to apply water to beneficial use

FloodingEstimated Total Cost \$12,000.00Attachment: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map.
(See instructions concerning preparation.)

STATE OF SOUTH DAKOTA

County of ButteI, Geo. F. Leach, the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary constructionSigned George F. LeachSubscribed and sworn to before me this 29th day of Sept, 1978

Notary Public (or other qualified officer)

Notary Public, BUTTE COUNTY, S. DAK.
My Commission Expires NOV. 6, 1983

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1182-1
GEORGE F. LEACH FRUIT DALE
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57742 With the following modifications:
 (State)

Flows in the stretch of the Belle Fourche River above Owl Creek are not a dependable source of water during the latter part of summer. Prior water rights and downstream domestic use must be respected. This permit is approved allowing withdrawals whenever 36 c.f.s. of water is flowing past the diversion point in this permit. No irrigation or withdrawal may take place before the Board's Staff certifies to the applicant in writing that the measuring device is sufficient and is properly in place. This water permit is subject to suspension or revocation by the Water Management Board, on petition of the Conservation Commission, should the Conservation Commission suspend or revoke its own conditionally granted irrigation permit.

Date of first receipt of application SEPTEMBER 25 19 76
 Date of return to applicant for correction, amendments or changes required SEPTEMBER 25 19 76
 Date of receipt of corrected application NOVEMBER 15 19 78
 Approved MAY 25 19 79 Recorded in Book 21 Page 70

WATER RIGHT PERMIT NO. 1182-1

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1182-1 for the construction of the water use system and the putting of water to beneficial use as stated in the Application and modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is SEPTEMBER 25 19 78
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before NOVEMBER 25 19 84
3. The whole of said work is to be completed on or before MAY 25 19 82
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is MAY 25 19 85
5. The water appropriated shall be used for the purpose of IRRIGATION
6. 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.
7. The amount of the appropriation herein granted shall not exceed 1.6 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial use served, and if for the irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and 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 MAY 25 19 85; said water to be used during the following described annual period MAY 15 to SEPTEMBER 15

Witness my hand this 11th day of OCTOBER 19 79

WATER RIGHTS COMMISSION

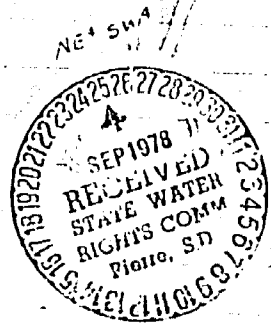
By:

John H. Telt
 Chief Engineer, Executive Officer

Certificate of Construction issued _____ 19 _____

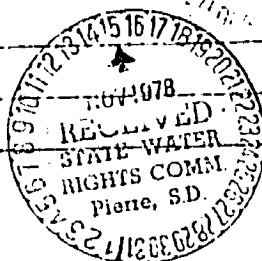
Water License issued _____ 19 _____

Point of diversion is from Belle Fourche
River, approximately 400 feet southwest
of the center of Sec. 17, T8N R4E.
All of land irrigated from this point of
diversion is in the south one-half of same
sec. 17.



(THIS FORM REQUIRED FOR PROPOSED GROUND WATER IRRIGATION ONLY)

NAME George F. Leach
ADDRESS Fruitdale, So. Ark. 57242
COUNTY Bell



LEGAL DESCRIPTION

1. ^{Approx} WELL LOCATION Belle Fourch River

2. LOCATION OF AREA TO BE IRRIGATED ⁴ SE 17 - 8 - 4

Army 25 Ac

W ² NE ² SE ⁴	17-8-4
SE ² SE ⁴	17-8-4
SW ² SE ⁴	17-8-4

19 Ac

" 31. Geo.

10 25 Rev.

86-24-78

10 2

TYPE OF IRRIGATION

3. GRAVITY ✓ TOLINE _____ CENTER PIVOT _____

4- CROPS TO BE IRRIGATED

WATER QUALITY

5. SAMPLE NUMBER. 17-021

6. SALINITY (EC $\times 10^6$) 13.87

7. SODIUM (SAR) _____

8. RESIDUAL SODIUM CARBONATE (meq/l.) 1.0

I do hereby certify that a chemical analysis of the ground water representative of that used to irrigate shall be acquired from South Dakota State University and: the soils information has been acquired from Bell & Co. Conservation District, County Extension office or Soil Conservation Service.

and:
that the legal description for the location of the well and land to be irrigated is true and correct.

James J. Leach
APPLICANT'S SIGNATURE

16. CRIMED AND SWORN BEFORE ME THIS
DAY OF Oct 1978.

James S. Long
(TITLE OR SEAL)

APPROVED/DISAPPROVED

APPROVED/DISAPPROVED:

Notary Public, BURLING COUNTY, S. DAK.
My Comm. Exp. Expires 1927, 6, 1923

25. *Compt. Rend. Acad. Sci. Paris* 1.07. 6, 1923.

COMMUNICATIONS BY DIRECT MAIL

Conditionally Accepted

SD-CONS-31A
5/75

SOIL MAP

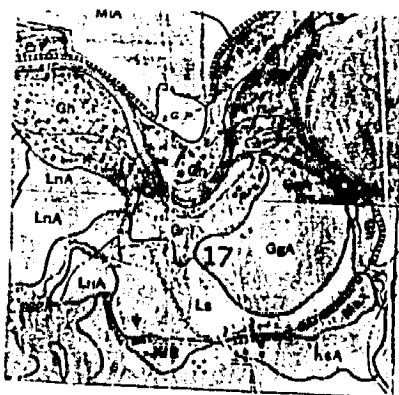
Owner George Leach Operator Same

County Butte State South Dakota

Soil survey sheet(s) or code No.(s) _____ Approximate scale 2.6" = 1 mile

Prepared by U.S. Department of Agriculture, Soil Conservation

Service cooperating with Butte Conservation District



SOIL MAP LEGEND

- I-2 - KsA - (Keith Silt Loam) - These are deep, well drained soils occurring on nearly level (0-2%) terraces. They have silty or loamy surface layers, silty clay loam or clay loam subsoils and silty or loamy underlying materials. Water intake is about 0.5 inches per hour. Water holding capacity is about 2.1 inches per foot. The moisture holding zone is 3 to 4 feet thick.
- IIe3 - GsA - (Glenberg Fine Sandy Loam) - These are deep, well drained fine sandy loam soils occurring on nearly level (0-2%) bottomlands and low terraces, in calcareous sandy alluvium. Water intake is about 1.5 inches per hour. Water holding capacity is about 1.3 inches per foot. The moisture holding zone is 4 to 6 feet deep. These soils are very susceptible to wind erosion.
- IIIs1 - Kt - (Kyle Clay, Terrace) - These are deep, well drained clay soils occurring on nearly level (0-2%) terraces and bottomlands. Water intake rate is about 0.1 inch per hour. Water holding capacity is about 2.3 inches per foot. The moisture holding zone is 3 to 6 feet thick.

SD-CONS-31A
5/75

SOIL MAP

Owner George Leach

Operator Same

County Battle

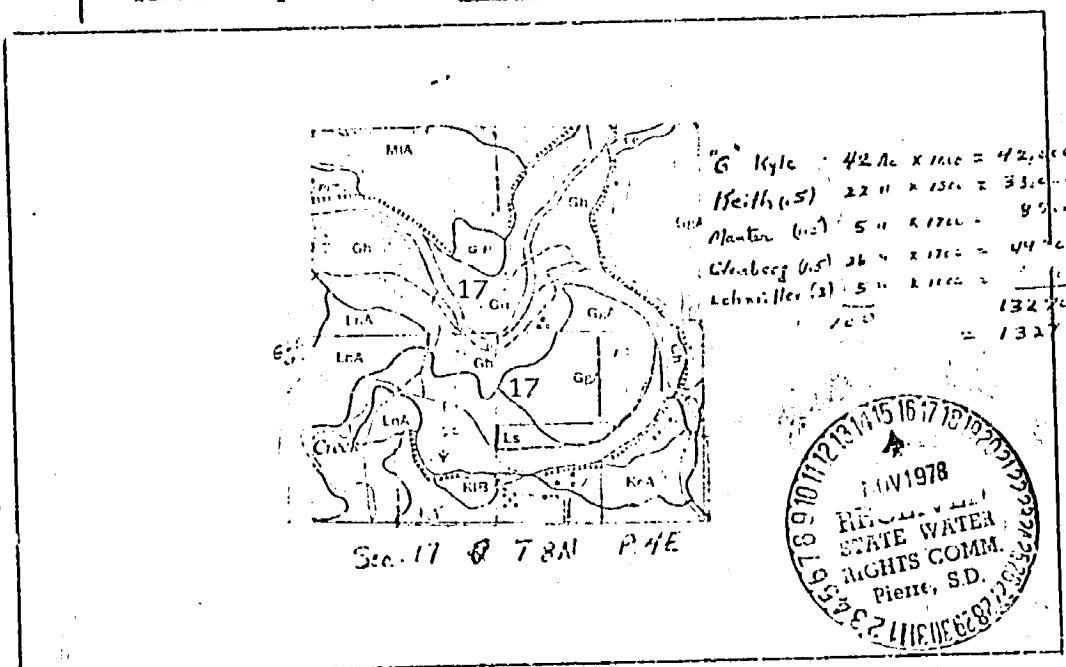
State South Dakota

Soil survey sheet(s) or code No.(s) _____ Approximate scale 2.6" = 1 mile



Prepared by U.S. Department of Agriculture, Soil Conservation

Service cooperating with Battle Conservation District



SOIL MAP LEGEND

I-2 - Kea - (Keith Silt Loam) - These are deep, well drained soils occurring on nearly level (0-2%) terraces. They have silty or loamy surface layers, silty clay loam or clay loam subsoils and silty or loamy underlying materials. Water intake is about 0.5 inches per hour. Water holding capacity is about 2.1 inches per foot. The moisture holding zone is 3 to 4 foot thick.

IIIe3 - Gp - (Glenberg Fine Sandy Loam) - These are deep, well drained fine sandy loam soils occurring on nearly level (0-2%) bottomlands and low terraces, in calcareous sandy alluvium. Water intake is about 1.5 inches per hour. Water holding capacity is about 1.3 inches per foot. The moisture holding zone is 4 to 6 feet deep. These soils are very susceptible to wind erosion.

IIIe1 - Kt - (Kyle Clay Terrace) - These are deep, well drained clay soils occurring on nearly level (0-2%) terraces and bottomlands. Water intake rate is about 0.1 inch per hour. Water holding capacity is about 2.3 inches per foot. The moisture holding zone is 3 to 6 feet thick.

WJC-SAMP/TOM
6/77

Conditional

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF CONSERVATION

(RECOMMENDED MANAGEMENT)



NAME OF APPLICANT George F. Leach, Fruitdale, SD

RECOMMENDED MANAGEMENT:

1. Water should not be applied more than 1, 2, 3, 4, 5, times during the irrigation season. *NA*
2. Each uninterrupted application (one rotation of center pivot) should be of at least 1, 2, 3, 4, inches of water. *NA*
3. ☒ Yes ☐ No Surface drainage suggested -on any areas that would tend to pond water
4. ☐ Yes ☐ No Subsurface drainage suggested
5. ☒ Yes ☐ No Specific land areas that ~~XXXXXXX~~ require special management
 - A. Kyle clays because of their very low intake rate.
 - B. Lohmiller SiCl because they are poorly drained soils and also are subject to flooding from snowmelt.
6. ☒ Deep tillage (For the purpose of aiding movement of water through dense subsoils)
7. ☐ Heavy fall application of irrigation water

Some of your Kyle soils have a short run if irrigated to the north. If topography permits and east or west irrigation grade may give a slower water advance to permit a better water intake.

Deep chisel-type tillage after crops are harvested, if used occasionally, will allow water to penetrate to the subsoil to allow for more water storage. The extent of such tillage, as to depth, spacing and frequency will be dictated by your experience.

The Kyle and Lohmiller soils would benefit the most by deep tillage. The quality of water as submitted in analysis #78-867 is good. History of the Belle Fourche River in your area shows that total salts (electrical conductivity) vary from 1200 to 1900. Generally, total salts are highest when the river flow is low.

Copy to Applicant - 1
Copies to Water Rights - 2
Copy to File - 1

REPORT OF ANALYSIS:
 Water Quality Laboratory
 Water Resources Research Institute
 South Dakota State University
 Brookings, South Dakota 57007

Submitted by: MOORE, Leach
 Address: Brookings, SD 57002

Date Rec'd: Nov 10, 1978
 Sample No.: 73-867
 Identification: Little Source River

WATER ANALYSIS

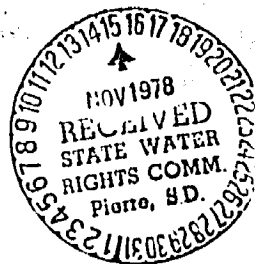
Calcium (Ca)	123	ppm*	11.40	mc/l**
Magnesium (Mg)	46	ppm	3.74	mc/l
Sodium (Na)	20	ppm	0.44	mc/l
Potassium (K)	3	ppm	0.08	mc/l
Sulfate (SO ₄)	538	ppm	11.18	mc/l
Nitrate (as N)		ppm		mc/l
Chloride (Cl)	22	ppm	0.22	mc/l
Bicarbonate (HCO ₃)	232	ppm	3.80	mc/l
Carbonate (CO ₃)		ppm		mc/l
Iron (Fe)		ppm		mc/l
Fluoride (F)		ppm		mc/l
Hardness (EDTA as CaCO ₃)		ppm		g.p.g.***
Alkalinity (Methyl Orange)	190	ppm (as CaCO ₃)		
Alkalinity (Phenolphthalein)	0	ppm (as CaCO ₃)		
Electrical Conductivity	1231	micromhos per cm at 25° C.		
Sodium Adsorption Ratio	0.16	Adjusted at 0.41		
Sodium	2.61	% of cations		
Residual sodium carbonate	0.00	mc/l		
pH	7.03			
Others:				

*ppm=parts per million

**mc/l=millequivalent per liter

***g.p.g.=grains per gallon

COMMENTS: Total cations 11.66 mc/l
 Total anions 15.20 mc/l



By: Shirley Litten

Service Performed	Amount Due
Irrigation analysis	15.00

Make checks payable to: Water Quality Laboratory

Cut along dotted line and return the lower portion with payment

Sample No. 73-867

Amount Enclosed \$

Signed

6 IVes1 - KIB - (Kyle Clay) - These are deep, well drained, gently sloping (2-6%) clay soils. Water intake is about 0.1 inch per hour. Water holding capacity is about 2.3 inches per foot. The moisture holding zone is 3 to 6 feet thick.

1.5 IJel - MaA - (Mantle Fine Sandy loam) - These are deep, well drained fine sandy loam soils occurring on nearly level (0-2%) terraces. The horizons have moderate structure. Water intake is about 1.0 inch per hour. Water holding capacity is about 1.5 inches per foot. The moisture holding zone is 4 to 6 feet thick. These soils are very susceptible to wind erosion.

LS - Lohmiller silty clay loam, acid variant

This soil is on higher land, has low fertility, and is distinctly acid in reaction. Runoff is slow, and the area is subject to flooding from stream overflow.

Lok - Lohmiller silty clay loam 0-2% slopes

Gh - Glenwood - 0-2% slopes



No. 1182-1

Publish first publication, on or before December 29, 1979

NOTICE OF HEARING ON
APPLICATION TO APPROPRIATE WATER

Pierre, South Dakota 57501

November 29, 1979

Notice is hereby given George F. Leach whose post office address is Fruitdale, South Dakota, has made an application in accordance with the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-14; 46-2-9 thru 46-2-11, 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-41, and Commission Rules ARSD 52:01:01:01 thru 52:01:01:13, for a permit to appropriate for beneficial use 1.6 cubic feet of water per second of time from the Belle Fourche River through the Leach Irrigation Project #2, the point(s) of diversion of which is(are) to be located in the NE 1/4 SW 1/4

of Section 17, Twp. 8N, Range 4E. Said water to be used for the purpose of providing irrigation on portions of the following described land:

W 1/2 NE 1/4 SE 1/4, 1, and SE 1/4 SW 1/4 all in Section 17-T8N-R4E

This Application No. 1182-1 will be considered by the Water Rights Commission at the SDEA Auditorium, 411 E. Capitol, Pierre SD upon the 31st day of January, 1979

at 10 A.M. The Commission is authorized to make a determination on this application at the hearing. All interested persons may appear and be heard. Any person who may be affected by a Commission decision who desires to present evidence or cross-examine witnesses according to SDCL 1-26 may notify the Commission in writing prior to the hearing or orally at the hearing.

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 Commission may be appealed to the Courts as provided by law.

WATER RIGHTS COMMISSION

Betty Westlund
Water Rights Specialist

cc: George F. Leach, Fruitdale, SD 57742

No. 1182-1

Public Notice

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Butte) ss.

I, Marion Lucas hereby
certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the Butte Journal Bee

A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the

City of Butte of Butte
County of Butte and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

Dec 22, 1978

Dec 29, 1978

Marion Lucas
(Signature)
Editor
(Title)

Dec 30, 1978
(Date Signed)



No. 1182-1
**NOTICE OF HEARING
ON APPLICATION TO
APPROPRIATE WATER**
Pierre, South Dakota 57501
November 29, 1978

Notice is hereby given George
F. Leach whose post office
address is Fruitdale, South
Dakota, has made an appli-
cation in accordance with the
provisions of SDCs 46-1-1 thru
46-1-9, 46-1-14, 46-2-9 thru
46-2-11, 46-6-13, 46-5-1 thru
46-5-8, 46-5-10 thru 46-5-22,
46-5-41, and Commission Rules
APSD 52:01:01:01 thru
52:01:01:13, for a permit to
appropriate for beneficial use
1.6 cubic feet of water per
second of time from the Beale
Faurche River through the
Leach Irrigation Project #2,
the point(s) of diversion of
which is (are) to be located in
the NE 1/4 SW 1/4 of Section 17,
Twp. 8N, Range 4E. Said water
to be used for the purpose of
providing irrigation on portions
of the following described land:
W 1/4 NE 1/4 SE 1/4 SW 1/4
and SE 1/4 SW 1/4 all in
Section 17-T8N-R4E.
This application No. 1182-1
will be considered by the
Water Rights Commission at
the SDEA Auditorium, 411 E.
Capitol, Pierre, S.D. upon the
31st day of January, 1979
at 10 A.M. The Commission is
authorized to make a deter-
mination on this application at
the hearing. All interested per-
sons may appear and be heard.
Any person who may be affected
by a Commission decision who
desires to present evidence or
cross-examine witnesses ac-
cording to SDCL 1-26 may
notify the Commission in
writing prior to the hearing or
orally at the hearing.

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 Commission
may be appealed to the Courts
as provided by law.

**WATER RIGHTS
COMMISSION**
Betty Westlund,
Water Rights Specialist

RECEIPT

WATER RIGHTS COMMISSION
State of South Dakota

No 4 6533

PIERRE, September 25, 1978, 19__

RECEIVED OF George Leach, Fruitdale SD 57742

the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit to Appropriate Water No 1182-1 (examination, processing, recording and filing;)	225	00
Fee for inspecting Construction, and issuing Cert. of Construction No		
Fee for inspecting Beneficial Use, and issuing Water License No		
Fee for issuing Location Certificate-Dry Draw, No		
Fee for filing		
Fee for certified copy of		
Fee for Print copy of map		
Fee for Certifying		
Fee for (any other work as provided by law)		
TOTAL	225	00

WATER RIGHTS COMMISSION

By *John Hatch*
Chief Engineer, Executive Officer
JOHN HATCH kdw

No. 1182-1

February 5, 1979

Mr. George F. Leach
Fruitdale, SD 57742

Dear Mr. Leach:

For your information the Water Rights Commission at their January 31, 1979 meeting have placed your Application No. 1182-1 in a deferred status.

If you have any questions feel free to contact this office.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH/bt

1187-1



Department of Natural Resource Development

WATER RIGHTS COMMISSION
Joe Foss Building, Pierre, South Dakota 57501
Phone 605/773-3151

May 9, 1979

TO: Persons Concerned with Referred Applications in Butte County
FROM: John Hatch, Chief Engineer, Water Rights Commission
SUBJECT: Reconsideration of Deferred Application

The Water Rights Commission will reconsider deferred water right applications in Butte County at 2:30 p.m., May 24, 1979, at the Lincoln Room, Howard Johnson Motel, 2211 LaCrosse, Rapid City SD.

This reconsideration hearing will be conducted in accordance with the provisions of SDCL 46-1-1 thru 46-1-9; 46-1-14; 46-2-9 thru 46-2-11; 46-2-13; 46-5-1 thru 46-5-8; 46-5-10 thru 46-5-22; 46-5-41; 46-6-3; 46-6-5; 46-6-6.1; 46-6-10; 46-6-3.1; 46-6-14 and Commission Rules ARSD 52:01:01:01 thru 52:01:01:13.

These applications were previously deferred by the Water Rights Commission, pending staff investigation.

After reconsideration of the deferred applications the Commission can approve, conditionally approve, defer, or deny all or part of the Application.

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 Commission may be appealed to the Courts as provided by law.

Very truly yours,

A handwritten signature in cursive script that reads "John Hatch".

JOHN HATCH, Chief Engineer
Water Rights Commission

JH:l.jw



Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501
Phone 605/773-8151 3352

June 13, 1979

Ed Brunner & Sons
Hiland, SD 57762 (1106-1)

Esther Kling
Hiland, SD 57762 (1177-1)

George Leach
Fruitdale, SD 57742 (112-1)

Gentlemen:

The Water Rights Commission requested that proposed Findings of Fact, Conclusions of Law and a proposed Decision concerning approval of Permits No. 1106-1, 1177-1, and 1182-1 be prepared. At this time, we do not know when the next meeting will be scheduled, since the Governor's Reorganization abolished the Water Rights Commission with a new Water Management Board to be appointed effective July 1, 1979. Following appointment of a new Board, a meeting date will be set and Findings, Conclusions and Decision will be considered at that time.

Assistant Attorneys General will prepare the requested documents; however, each of you may prepare or have your attorney prepare proposed Findings, Conclusions and Decision if you wish. We will notify you when the next meeting is scheduled.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH/gy

cc: John Smith, Assistant Attorney General
John L. Lewis
Ed Kling
Thomas E. Carr
R. Thornton Vallery
Solomon Stark
Leon Miner

1182-1

**SOUTH DAKOTA Department of
Water & Natural Resources**
Joe Foss Building Water Rights, Water Management Division
Pierre, South Dakota 57501 Phone (605) 773-3352

July 23, 1979

TO: Persons concerned with Permits from the Belle Fourche River in Butte County

FROM: John Hatch, Chief Engineer, Water Rights

SUBJECT: Consideration and adoption of final decision, including Findings of Fact & Conclusions of Law on the approval of Permits listed below

The Water Rights Commission requested that proposed Findings of Fact, Conclusions of Law and a proposed Decision regarding action taken on the following Permits be prepared:

1106-1 Ed Brunner & Sons
1177-1 Esther Kling
1182-1 George Leach

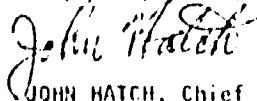
The Board of Water Management will meet in Pierre, SD, August 2, 1979, at the Civil Defense Room, Capitol Building. We have placed consideration of the proposed Findings of Fact, Conclusions of Law and Decision on the Agenda for 1:00 PM, August 3, 1979.

This hearing will be conducted in accordance with the provisions of § 46-1-1 thru 46-1-9; 46-1-14; 46-2-2 thru 46-2-11; 46-2-13; 46-5-1 thru 46-5-8; 46-5-10 thru 46-5-22; 46-5-41; and Board Rules ARSD 52:01:01:01 thru 52:01:01:13.

All parties may submit or mail proposed Decisions, Findings and Conclusions to the Board members (mailing addresses enclosed) prior to consideration by the Board, if they wish.

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 Courts as provided by law.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights, WMB

JH:plh

Enclosure

Equal Opportunity Employer

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

APPLICATION OF GEORGE LEACH)
FOR PERMIT NO. 1182-1)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The proposed decision have been timely served upon the parties and opportunity having been provided for each party to file Findings of Fact and Conclusions of Law, to file exceptions and to file briefs and present oral argument to the Board, and the Board having considered all such submissions, the Board hereby makes the following:

FINDINGS OF FACT

1. On September 25, 1978, George Leach applied for permit No. 1182-1 for 2.0 c.f.s. of water to irrigate 112 acres. The point of diversion was to be located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 8 North, Range 4 East. The lands to be irrigated were described as W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ all in Section 17, Township 8 North, Range 4 East, and the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 17, Township 8 North, Range 4 East. The application was accompanied by a check for the filing fee but the application itself lacked the applicant's signature. The application was returned to the applicant and was again received with signature by the staff of the Water Rights Commission (now the Water Management Board) on October 2, 1978.

2. The application was amended to request only 108 acres to be irrigated, eliminating the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 8 North, Range 4 East. The application was also amended to request only 1.6 c.f.s of water.

3. The application was duly advertised and the affidavit of publication has been received. All notice required by law have been given.

4. The application was deferred at the January 31, 1979 meeting of the Water Rights Commission.

5. The application was fully considered at the May 24-25, 1979 meeting of the Water Rights Commission. Notice of the meeting was served on all persons who appeared in opposition to or in favor of the permit at the 1978 meeting.

6. The State Conservation Commission has issued a conditional approval of soil-water compatibility for lands and water named in this application. Certain of the lands involved are described in the application for water permit as SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 8 North, Range 4 East. This same section of land is described in the application for conservation permit as SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 8 North, Range 4 East.

7. The gauging station operated by the USGS from November of 1945 to September of 1970 indicates flows which can be expected from the Belle Fourche River above Owl Creek. The applicant's proposed point of diversion is above Owl Creek.

8. The USGS research shows that flows will ordinarily be substantial for the early part of the season but will be greatly diminished during the latter part of the season.

9. A desirable means of responding to the high flow - low flow problem is to set a minimum flow on the stream which must bypass the applicant before he can begin to take water from the stream.

10. The applicant here should allow 36 c.f.s. of water to bypass his point of diversion to insure that senior appropriators are not harmed.

11. The Board should require that the applicant install a measuring device so that the bypass may be monitored by him and the Board.

12. There is unappropriated water available under the conditions and within the limitations included below.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to issue the requested permit.
2. The application was properly recorded as received on September 25, 1978 and retains its priority date of September 25, 1978 pursuant to SDCL 46-5-16 even though it was returned to the applicant for his signature.
3. The publication of notice complies with applicable regulation and statute.
4. The description of land and water in the Conservation Commission Permit is sufficient to allow this Board to act.
5. SDCL 46-1-4 requires the Board to maximize the beneficial use of the state's water and where there is a reasonable probability based upon the evidence to believe that unappropriated water is available, the Board should issue a permit.
6. There is unappropriated water available under the conditions and at the rate specified below.
7. The proposed project is feasible.
8. The granting of the permit is in the public interest.
9. The State Conservation Commission has set maximum levels for salinity and sodium in the soil at the beginning of a growing season on all lands irrigated pursuant to a conditionally granted permit and has determined by rule that a conditional irrigation permit may be revoked or suspended when those levels are exceeded.
10. The Board of Water Management recognizes the statutorily vested authority of the State Conservation Commission to set maximum salinity and sodium levels for its conditionally granted irrigation permits.

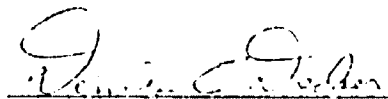
11. The Board has the power under SDCL 46-7-2 to require an applicant to install a measuring device to monitor bypass as a condition to use of water under this permit.

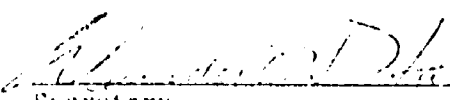
12. The present applicant must allow 36 c.f.s. of water to bypass his point of diversion to insure that senior appropriators are not harmed.

13. The following are reasonable conditions to be attached to this permit: Flows in the stretch of the Belle Fourche River above Owl Creek are not a dependable source of water during the latter part of the summer. Prior water rights and downstream domestic uses must be respected. This permit is approved allowing withdrawals whenever 36 c.f.s. of water or more is flowing past the diversion point in this permit. A measuring device must be installed to record the flows of the river. No irrigation can commence until the staff of the Board certifies in writing to the applicant that his measuring device is sufficient and is properly in place. This permit is subject to suspension or revocation by the Water Management Board, on petition of the Conservation Commission, should the Conservation Commission suspend or revoke its own conditionally granted irrigation permit.

14. The permit should be approved subject to the foregoing conditions and limitations.

Dated this 10th day of August, 1979.


Chairman


Secretary

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

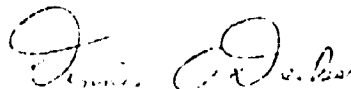
APPLICATION OF GEORGE LEACH)
FOR PERMIT NO. 1182-1)

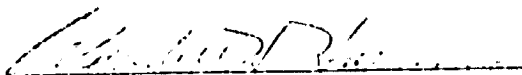
FINAL DECISION

Having entered its Findings of Fact and Conclusions of Law, it is the final decision of the Board:

1. The application of George Leach for 1.6 c.f.s. of water from the Belle Fourche River, the point of diversion to be located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 8 North, Range 4 East, to irrigate 108 acres is approved.
2. That the permit is subject to the following conditions:
Flows in the stretch of the Belle Fourche River above Owl Creek are not a dependable source of water during the latter part of summer. Prior water rights and downstream domestic use must be respected. This permit is approved allowing withdrawals whenever 36 c.f.s. of water is flowing past the diversion point in this permit. No irrigation or withdrawal may take place before the Board's staff certifies to the applicant in writing that the measuring device is sufficient and is properly in place. This water permit is subject to suspension or revocation by the Water Management Board, on petition of the Conservation Commission, should the Conservation Commission suspend or revoke its own conditionally granted irrigation permit.

Dated this 13th day of August, 1979.


Chairman


Secretary

LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTOGRAPHIC REPRODUCTIONS. REVISION 25.1 ROLL NO. 9 DATE MICROFILMED 3-15-82

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

June 10, 1981

George Leach
Fruitvale, SD 57742

Mr. Leach:

The rules adopted by the Water Management Board for establishing a water use control area on the Belle Fourche River, Whitewood Creek and Owl Creek requires that the water right holder be assessed a fee of ten dollars for each cubic foot per second or portion thereof of the diversion capability of the diversion works plus twenty-five cents for each acre irrigated as shown by the water rights of record in the Division of Water Rights. These fees are required to be paid to the Division of Water Rights by July 1, 1981.

Permits for which fees have not been paid by July 1, 1981 shall be refused the right to divert water for the remainder of the year. The fees paid will be used to defray the costs of providing water master services within the water use control area. The following is a tabulation of your assessment.

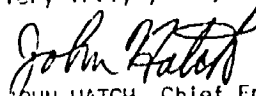
<u>Permit No.</u>	<u>Diversion Rate</u>	<u>Acreage</u>	<u>Fee</u>
1182-1	1.60 cfs	108.00	\$47.00

TOTAL \$47.00

Please make check or money order payable to the Dept. of Water and Natural Resources and send to the Division of Water Rights, Joe Foss Building, Pierre, SD 57501.

If you have any questions, do not hesitate to contact this office.

Very truly yours,


JOHN HATCH, Chief Engineer
Water Rights Division

JH/JW/gy

Equal Opportunity Employer

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 8338

June 26 81

George F. Leach, Deach Dairy, 505 Stanley, ^{PIERRE,} Belle Fourche, SD 57717

RECEIVED OF

the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit to Appropriate Water No. (examination, processing, recording and filing)		
Fee for Inspecting Construction, and Issuing Cert. of Construction No.		
Fee for Inspecting Beneficial Use, and Issuing Water License No.		
Fee for Issuing Location Certificate-Dry Draw, No.		
Fee for filling		
Fee for certified copy of		
Fee for Print copy of map		
Fee for Certifying		
Water master services on WRE 1182-1		47.00
Fee for (any other work as provided by law)		
TOTAL		47.00

WATER RIGHTS COMMISSION

By *(John Hatch)*
Chief Engineer, Executive Officer
JOHN HATCH / ED

Belle Fourche River and Tributaries
Water Use Control Area
Financial Report
1981

Summary of Receipts and Expenditures
June, 1981 - July, 1981

1182-1

	<u>Receipts</u>	<u>Disbursements</u>	<u>Balance</u>
Collections (Water User's fees)	\$7,379.37	\$ 2,028.62	\$ 5,350.75
Watermaster (Salary and Mileage)	\$7,379.37	\$2,028.62	\$5,350.75

Detailed Report of Receipts

No.	Name	Diversion Rate	Acreage	Receipts (total fee)	Amount Returned
789-1	Louis Budmayr	0.30	95.50	\$ 34.00	\$ 30.10
429-1	Ed Brunner & Son	1.43	106.07	46.50	41.16
429-1A	Mel Pittman	1.07	79.00	40.00	35.41
506-1	Bob Bartels	.23	17.00	14.25	12.61
892-1	Bob Bartels	1.00	70.00	27.50	24.34
417-1A	Quinten & Karen Watson	.53	78.00	29.50	26.11
417-1B	Clarence Anderson	1.43	206.00	64.00	56.65
417-1	Mrs. Eddie (Vivian) Anderson	1.15	69.00	69.50	61.52
531-1	Ruby Dillinger	1.27	89.29	42.50	37.62
1162-1	Charles & Dorothy Shaykett	4.61	324.70	131.00	115.96
1210-1	Charles & Dorothy Snaykett	1.80	128.30	52.00	46.03
1132-1	Ezra Pauley	4.00	285.00	111.25	98.48
1204-1	Art Heitz, Jr.	2.19	153.00	68.25	60.41
1205-1	Harlan K Schnell	1.88	132.00	53.00	46.91
1215-1	H L & Mildred Brunner	3.00	264.50	96.12	85.08
418-1	Alex Miller	1.67	117.00	49.25	43.59
1213-1	Robert W Grant	1.43	100.00	45.00	35.83
419-1	Herman Stark	2.50	179.00	74.75	66.17
421-1	Lee Dutton	2.50	175.00	73.75	65.28
1049-1	Thorval Jensen	1.47	103.00	45.75	40.50
1122-1	Thorval Jensen	4.88	324.14	135.75	120.16
1160-1	Thorval Jensen	1.30	133.49	53.50	47.36
1029-1	Homestake Mining	1.39	97.00	44.25	39.17
910-1	Donald Halbmaier	2.50	175.00	73.75	65.28
1165-1	Tom Bowen	2.85	200.00	80.00	70.81
722-1	Edith Anderson & Tom Bowen	2.80	196.00	79.00	69.93
1148-1	Homestake Mining	13.50	948.00	377.00	333.71
430-1	Gerald Wetz	1.65	116.00	49.00	43.37
432-1	Roy Casteel	4.30	307.00	126.75	112.20
414-1	Mary Ann Schumter	3.40	239.00	99.75	88.30
411-1	Edward Poss	5.10	452.00	173.00	153.13
440-1	David A Richards	5.00	416.00	154.00	136.32
1149-1	Homestake Mining	3.20	226.00	96.50	85.42
1150-1	Homestake Mining	7.60	534.00	213.50	188.98
1137-1	McNenny Ranch Inc.	5.90	418.00	164.50	145.61
1151-1	Homestake Mining	5.50	390.00	157.50	139.41
321-1	George Levin & Sons	7.00	490.00	192.50	170.40
1136-1	George Levin & Sons	3.07	215.00	93.75	82.98

Detailed Report of Receipts Cont.

No.	Name	Diversion Rate	Acreage	Receipts (total fee)	Amount Returned
1152-1	Homestake Mining	6.60	462.00	\$ 185.50	\$ 164.20
449-1	George Wurnig	5.00	365.00	171.25	151.59
1153-1	Homestake Mining	6.10	428.00	177.00	156.68
311-1	Lester Clark	16.61	1,163.60	461.00	408.06
310-1	Lester Clark	6.76	473.20	188.50	166.85
248-1	Lawrence Burke	0.90	64.00	26.00	23.01
1077-1	Charles M Arneson	1.44	131.00	52.75	46.69
165-1	Trigg Ranches Inc.	4.30	301.00	275.00	243.42
122-1	Trigg Ranches Inc.	3.75	263.00		
1146-1	Trigg Ranches Inc.	1.89	336.00		
928-1	Charles Wennberg	2.20	155.00	68.75	60.86
312-1	Gilbert Alan	1.46	101.80	45.50	40.28
926-1	Donald Berger	2.04	143.00	65.75	58.20
1176-1	Arthur J Odekoven	2.30	163.00	70.75	62.63
1190-1	Neil Shuck	3.53	247.00	101.75	90.07
611-1	Alex Miller	3.35	235.00	98.75	87.41
569-1	Ramona McFarland	0.97	68.00	27.00	23.90
870-1	Eugene C Bishop	0.70	49.00	22.25	19.70
401-1	Kenneth & Dorothy Aker	1.88	132.00	53.00	46.91
135-1	Walter Hoifman	3.11	220.00	95.00	84.09
403-1	James A Mickelson	3.10	218.00	94.50	83.65
469-1	Raymond Garness	1.30	91.00	42.75	37.84
1218-1	William Dillinger	.40	42.70	20.75	18.37
1222-1	John Ismay(Norman)	1.11	79.00	39.75	35.19
1154-1	Homestake Mining	4.50	319.00	129.75	114.85
285-1	Edgar Colin Smart	1.42	150.00	67.50	---
331-1	Anna Stetta (Louis Budmayr)	1.87	131.00	52.75	---
472-1	Timothy Reich	2.00	167.84	62.00	---
275-1	John Durr	1.90	133.00	53.25	---
271-1	Herbert Clarkson	.06	43.00	20.75	---
296-1	Robert Helmer	2.50	179.00	74.75	---
308-1	Lewis Bertolotto	.64	45.00	21.25	---
282-1	James Jeffrey	1.05	73.70	38.50	---
1182-1	George Leach	1.60	108.00	47.00	---
228-1	Thornton Vallery	.72	54.17	23.75	---
293-1	Thornton Vallery	5.50	386.00	156.50	---
264-1	Thornton Vallery	.22	15.30	14.00	---
321-1	Clarence & Lawrence Foos	1.64	115.00	48.75	---
962-1	Ione A Shevling	3.00	251.00	92.75	---
960-1	Thornton & Gwenivere Vallery	.50	35.00	18.75	---
289-1	Thornton & Gwenivere Vallery	1.02	75.00	38.75	---
273-1	Ruben & Esther Kling	.46	32.60	18.25	---
273-1A	Ruben & Esther Kling	1.54	108.40	47.25	---
1177-1	Ruben & Esther Kling	3.30	231.00	97.75	---
416-1	Creta & Leslie Miner	2.66	198.00	79.50	---
865-1	Solomn Stark	2.14	150.00	67.50	---
287-1	David G Rathbun	2.20	154.00	68.50	---
1126-1	John Lewis	3.11	339.00	124.75	---

REPORT ON DEFERRED APPLICATION NOS. 1106-1, 1177-1, 1182-1
IN BUTTE COUNTY, SOUTH DAKOTA ON THE BELLE FOURCHE RIVER
May 15, 1979

The Water Rights Commission had previously deferred action on Application Nos. 1106-1 for Ed Brunner and Sons, 1177-1 for Esther Kling, and 1182-1 for George Leach pending an investigation by the Commission Staff.

The applications are as follows:

Appl. No.	Name	Diversion Point	cfs	Acres
1106-1	Ed Brunner & Sons	SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 8, T8N, R5E	3.3	230.3
1177-1	Esther Kling	NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, T8N, R4E	3.3	231
1182-1	George Leach	NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17, T8N, R4E	1.6	108

THE PROPOSED PROJECTS

The applications propose to pump a total of 8.2 cfs of water from the Belle Fourche River in the area between the Fruitdale gauging station number 4360 and the Owl Creek Inlet (see attached map). The land listed on the Brunner Application is under the Belle Fourche Irrigation District and obtains water from this source. Mr. Brunner wishes to use this water to supplement the Irrigation District water during peak usage of the ditches because the ditches during these times are not capable of carrying the needed supplies. The Kling and Leach Applications would depend solely on whatever flows are available in the Belle Fourche River along with return flows which are added to the Belle Fourche from Maloney Creek. This creek picks up part of the return flows of the Redwater Ditch Co.

OPPOSITION

The main objections that were raised concerned water availability during the irrigation season for downstream senior rights.

DISCUSSION ON THE AVAILABILITY OF WATER

Adequate supplies of water are usually available below the mouth of Owl Creek due to return flows from the Irrigation District. Above the mouth flows can become very low especially during the later part of July and the months of August and September.

The gauging station operated by the USGS located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 3, T8N, R3E gives an indication of the flows that can be expected. The following is the mean flow for the years of record from 11/1945 - 9/1970 broken down into 10 day intervals:

	Time Period	Mean Flow cfs		Time Period	Mean Flow cfs
April			May		
	1-10	162		1-10	187
	11-20	112		11-20	240
	21-30	91.7		21-31	249

	Time Period	Mean Flow cfs		Time Period	Mean Flow cfs
June	1-10	174	July	1-10	92.2
	11-20	240		11-20	52.1
	21-31	249		21-31	22.1
August	1-10	28.3	September	1-10	22.3
	11-20	8.2		11-20	38.8
	21-31	9.8		21-30	23.8

According to the above records, flows on the average would be available up through July 20. Therefore, a cutoff date could be set. The gauging station, however, does not give an indication of the return flows from the Redwater Ditch entering the Belle Fourche via Maloney Creek and flows entering the Belle Fourche from Stinking Water Creek. These flows have not been quantified and there is a question on the impact of these drainages to the Belle Fourche River flows. The applicants for water rights say that there is a significant increase in flows due especially to the return flows of the Redwater irrigation.

CONCLUSIONS

There are times when flows would be available primarily in the early part of the irrigation season. In order to control pumping during low flow times, it is best to set a minimum flow which must be bypassed at a given location to meet the needs of downstream senior rights. The following is a listing in order of location from Owl Creek to the Fruitdale gauging station:

Water Permit No.	Diversion Rate (cfs)	Total
1126-1	3.11	
855-1	2.14	
287-1	2.2	
416-1	2.66	10.11
1106-1 (Appl. Deferred)	3.3	13.41
1177-1 (Appl. Deferred)	3.3	
273-1	0.46	
273-1A	1.54	
289-1	1.02	
960-1	0.50	
961-1	1.50	
962-1	3.0	
321-1	1.64	
264-1	0.22	
228-1	0.72	
290-1	5.5	32.81
1182-1 (Appl. Deferred)	1.6	
402-1	1.7	
282-1	1.05	
296-1	2.5	39.66

The above listing indicates the flows which would have to be bypassed for each of the Deferred Applications.

RECOMMENDATIONS:

The staff recommends that the applications be approved with bypass provisions depending on the location of the diversion above Owl Creek. An additional 10% is added to the bypass rates to take care of losses which may be incurred from other than irrigation. Mr. Ed Brunner also indicated that he would be willing to reduce his requested diversion rate from 3.3 cfs to 2.2 cfs as the water will be used as a supplemental supply to that of the Irrigation District's water.

RECOMMENDATION FOR APPL. NO. 1106-1, Ed Brunner & Sons

Approve application No. 1106-1 for 2.2 cfs with the qualification that flows in the stretch of the Belle Fourche River above Owl Creek are not a dependable source of water during the latter part of the summer. Prior water rights and downstream domestic use must be respected. This permit is approved allowing withdrawals whenever 12 cfs of water or more is flowing past your diversion point. Lands described in this permit which receive water from the Belle Fourche Project may not receive water under this permit when the needed supplies are available from the Belle Fourche Project.

RECOMMENDATION FOR APPL. NO. 1177-1, Esther Kling

Approve application No. 1177-1 for 3.3 cfs with the qualification that flows in the stretch of the Belle Fourche River above Owl Creek are not a dependable source of water during the latter part of the summer. Prior water rights and downstream domestic use must be respected. This permit is approved allowing withdrawals whenever 15 cfs of water or more is flowing past your diversion point.

RECOMMENDATION FOR APPL. NO. 1182-1, George Leach

Approve application No. 1182-1 for 1.6 cfs with the qualification that flows in the stretch of the Belle Fourche River above Owl Creek are not a dependable source of water during the latter part of the summer. Prior water rights and downstream domestic use must be respected. This permit is approved allowing withdrawals whenever 36 cfs of water or more is flowing past your diversion point.

James E. Winterton

JAMES WINTERTON, Water Resources Engineer IV
Water Rights Commission

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) ss

Swore to, before me, this 23rd day of May, 1977.

Lois L. Piles
Notary Public

LOIS L. PILES, Notary Public
My Commission Expires
February 9, 1981



Department of Water & Natural Resources

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

March 23, 1987

GEORGE R LEACH
RR #1 BOX 48
BELLE FOURCHE, SD 57717

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 1091-1, 1182-1. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 2:00 pm, May 6, 1987 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

1. Amend Permit No(s). 1091-1, 1182-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

The hearing(s) is an adversary proceeding. The permit owner 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 the State Supreme Court as provided by law.

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

NOTE: If the questionnaire(s) is received in this office before the hearing date, your name will be deleted from the agenda for the hearing.

**South Dakota Department of
Water & Natural Resources**

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

April 24, 1987

1182-1
1091-1

George Leach
RR #1 Box 48
Belle Fourche, SD 57717

Dear Mr. Leach:

This will acknowledge receipt of the 1986 Irrigation Questionnaires for Water Permit Nos. 1182-1 and 1091-1 listed in your name. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of these permits and the date hearings were to be held before the Water Management Board to determine any action to be taken concerning the violation.

Please disregard the notice sent to you dated March 23, 1987. Your name has been deleted from the agenda pertaining to these hearings.

If you have any questions, please contact us.

Very truly yours,



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

NOTE: Mr. Leach, the irrigation questionnaire information was obtained from the Farmers Home Administration in Belle Fourche.



Department of Water & Natural Resources

Jon Foss Building
523 East Capitol
Pierre, South Dakota 57501

Division of Water Rights
605 773-3352

No. 1182-1

November 25, 1985

George F. Leach
Fruitdale,
South Dakota 57742

Dear Mr. Leach:

The inspection of your water use system and inspection of the extent of the application of water to beneficial use, as developed under your Water Right No. 1182-1 has been completed. Your final water right document, the Water License, can now be issued.

Statutes require that we charge a \$50.00 fee for the inspection and issuing of the Water License. Upon receipt of the \$50.00 fee from you, your Water License will be sent to you.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until this \$50.00 license fee has been paid. Please contact us if you have any questions.

Sincerely,

Maxine Stirling
Staff Assistant

ms/

NOTE: On form of payment, please include the number of the water permit. This insures proper handling of the fee.

DWNR-814 8/83

Water Rights Division - DWNR
Conversation or File Documentation

File No. 1182-1

1091-1

NAME OF PERSON ~~XXXXXXXXXX~~ Farmers Home Administration

ADDRESS: Belle Fourche, SD COUNTY

DATE: March 26, 1987 TELEPHONE

RE: status of permits

COMMENTS:

Mr. Leach notified our office his land was now owned by Farmers Home Administration.

I contacted them concerning irrigation done in 1986, they said there was none.

Land is being sold, they will contact our office sometime in the near future

at such time as the land sale goes through.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

4/82

NAME: Henry McMath

**SOUTH Dakota Department of
Water & Natural Resources**

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

August 6, 1987

Richard Reder
HCR 76 Box 198
Nisland, SD 57762

Dear Mr. Reder:

The transfers of Water Right No. 1091-1 and Water Permit No. 1182-1 have been completed and are now listed in your name. Enclosed are Receipt Nos. 410956 and 410957 in the amount of \$2.50 each for the fees you paid for the transfers. Also enclosed are copies of the completed transfer forms.

When you stopped in the office to file the transfers, I indicated to you that Water Right No. 1091-1 had been inspected and licensed and that Water Permit No. 1182-1 had not yet been inspected for licensing purposes. An inspection of a water use system is conducted after the construction date on the permit has passed. A Water License is then issued for what was actually developed under the permit.

After you had left, I reviewed the permit file for No. 1182-1 and found that an inspection of the water use system had been conducted in July, 1985. A water license was never issued due to lack of a \$50.00 inspection fee from Mr. Leach. Mr. Leach was notified on November 25, 1985, February 25, 1986 and September 2, 1986 of the requirement to submit a \$50.00 fee before the license could be issued. The notice sent to Mr. Leach dated September 2, 1986 ordered him to stop diverting water until the license fee had been paid. No response was received from Mr. Leach.

The water license can be issued for Water Permit No. 1182-1 upon receipt of the \$50.00 fee. Please remit this amount as soon as possible. If you have any questions, please contact us.

Sincerely,

Genny McMATH

GENNY MCMATH
Natural Resources Analyst
605 773-3352

enclosure

NO. 1182-1

NOTICE OF TRANSFER



TO: Water Rights
Foss Building
Pierre, SD 57501

Date: _____

This is to notify you that the title to the lands described as follows:

108 Acres W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T8N-R4E

formerly owned by George Leach,

has been transferred to Richard Reder, HCR 76, Box 198, Hisland, SD 57762

(please include complete mailing address)
together with any rights to the beneficial use of water thereon as evidenced by

Water Right Permit No. 1182-1 as provided for in SDCL 46-5-32 and 46-5-33.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Div. of Water Rights, Water Management Board as evidence of the change of ownership.

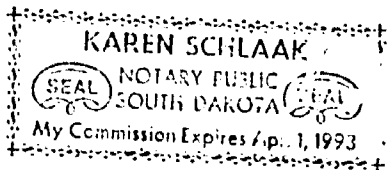
A fee of Two Dollars and Fifty Cents (\$2.50) is hereto attached to cover filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)
County of Hughes) ss.

I, _____ being first duly sworn on my oath despose and say:
That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

Richard F. Reder
(Signed)

Subscribed and sworn to before me this 5th Day of August, 1987.



Karen Schlaak
(Notary Public)

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

410353

Pierre, August 5, 1937

RECEIVED OF Richard Rader, HCR 76, Box 192, Wisland, SD 57767

the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>1162-1</u>	2	50
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	2 50

By

John Hatch
Chief Engineer JOHN HATCH (ms)

RECEIPT

Division of Water Rights
South Dakota Department of Water and Natural Resources

Pierre, August 17, 1937

RECEIVED OF Richard Roder, HCR 76 Box 198, Nisland, SD 57762
the following amount in fees for services rendered as provided for by law.

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>1134-1</u>		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____	50	00
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	
		50 00

By John Hatch
Chief Engineer JOHN HATCH (S)



Department of Water & Natural Resources

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

Third Notice
Permit No. 1182-1

September 2, 1986

NOTICE OF ORDER TO STOP DIVERTING WATER
UNDER PERMIT NO. 1182-1 FOR
FAILURE TO SUBMIT WATER LICENSE INSPECTION FEE

George F. Leach
Fruitdale, SD 57742

Dear Mr. Leach:

November 25, 1985 and February 25, 1986 you were notified the final inspection fee of \$50.00 is due before Water License No. 1182-1 can be issued. To date, the fee has not been received.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until the License fee has been paid. Pursuant to SDCL 46-2-17 and 46-2-18, you are ordered to stop diverting any water authorized by Permit No. 1182-1 until the \$50.00 fee is paid.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division
Phone: (605) 773-3352

S520.WR

SOUTH DAKOTA
Department of
Water & Natural Resources

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

SECOND NOTICE

February 25, 1986

Permit No. 1182-1

NOTICE OF WATER LICENSE INSPECTION FEE REQUIREMENT

George F. Leach
Fruitdale, South Dakota 57742

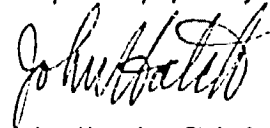
Dear Mr. Leach:

November 25, 1985 you were notified the final inspection fee of \$50.00 is due before Water License No. 1182-1 can be issued. As of this date, the fee has not been received.

The fee is a final step in the legal process of obtaining and perfecting a water right and is required by SDCL 46-2-13(3). Upon receipt of the \$50.00 fee, your Water License will be sent to you. This is the final document for the perfection of your Water Right. A perfected water right is similar to a property right and once a water right is perfected, it cannot be lost as long as the water is used.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until the License fee has been paid. Please submit the required fee immediately to avoid jeopardizing your water permit.

Very truly yours,



John H. Leach, Chief Engineer
Water Rights Division
Phone: (605) 773-3352

S508.WR

Permit No. 1182-1Belle Fourche River Water District 10120202**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by George F. Leach
 _____ of Fruitdale, S.D. 57742 holder of
 Permit No. 1182-1, bearing the priority of September 25 1978 authorizing
 the diversion of 1.6 cu. ft. per second of the waters of Belle Fourche River
 for Irrigation purposes, in Butte County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

Motor - Lincoln - 40 HP. Ser # 1832744, Frame 324T, 1763 RPM.
 Pump - Gorman Rupp. Ser # ~~840169~~ 840169, Model 8682-3
 Pump. 800 gpm Est.

B. Works used to transport water to place of use:

Gated Pipe 9" dia. one mile length

C. Works used to apply water to beneficial use:

Gated pipe for Flood & Furrow irrigation

The system is in the following condition Good.

The point of diversion is located 2400 ft N and 200 ft west of the S $\frac{1}{2}$
corner of section 17, T8N R4E

The works are capable of diverting and conveying to the place of use 1.78
 cu. ft. per second of water which is to be used for Irrigation

Water has been put to beneficial use to the maximum extent as follows: All in sec. 17, T8N R4ESE $\frac{1}{4}$ SW $\frac{1}{4}$ = 25 Ac.NE $\frac{1}{4}$ SE $\frac{1}{4}$ = 20 Ac.SW $\frac{1}{4}$ SE $\frac{1}{4}$ = 28 Ac.SE $\frac{1}{4}$ SE $\frac{1}{4}$ = 35 Ac.comprising a total of 108 acres of land and the license should be issued for 1.54 cfsApplicable permit qualifications have been complied with X Yes NoExceptions to compliance are: _____ Date July 16, 1985

Leroy J. Mernaugh
 signature

State of South Dakota
Water License No. 1182-1

(1) George F. Leach
of Fruitdale, South Dakota 57742
made Application No. 1182-1, September 25, 1978 for a water permit to appropriate
1.60 cubic feet per second of water from the Belle Fourche River,
Rutte County, South Dakota for irrigation purposes.
Permit No. 1182-1, with a priority date of September 25, 1978
was approved May 25, 1979 and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before May 25, 1982 and for the application to beneficial use of said
water on or before May 25, 1985.

August 5, 1987, Water Permit No. 1182-1 was transferred to Richard Reder, Nisland,
South Dakota.

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of
the construction of the water supply system and is entitled to divert 1.54 cubic feet per second of water
for beneficial use. The location of the diversion point(s) is 2400 feet North and 200 feet West
of the S 1/4 Corner of Section 17, T6N, R4E.

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, to irrigate the following land all in T8N, R4E

Section 17	SE $\frac{1}{4}$ SW $\frac{1}{4}$	25 Acres
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	20 Acres
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	28 Acres
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	35 Acres
TOTAL		108 ACRES

(4) Pursuant to §46-5-30.1 Richard Reder
of HCR 76, Box 198, Nisland, South Dakota 57762
the holder(s) and/or owner(s) of Water Permit No. 1182-1 is issued a license to appropriate water, the right to use
1.54 cubic feet per second of water from the Belle Fourche River with a priority date
of September 25, 1978 from the location specified in (2) of this license. The water to be
conducted to and upon lands specified in (3) of this license for the purpose of irrigation

This license is subject to any limitations or qualifications listed in Water Permit No. 1182-1 and subject
to South Dakota State Law.


Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

NOV 3 1987



No. 1182-1

Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
Phone (605) 773-3352

NOV 3 1987

Richard Reder
HCR 76, Box 198
Hisland, South Dakota 57762

Dear Mr. Reder:

Enclosed herewith is, Water License No. 1182-1. This is the final water right document completing your process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH: ms

Enclosures

WNR-817 3/83
Transmittal of Water License

SON

DEC. 12.89

1182-1



JOHN HATCH-CHIEF ENGINEER
WATER RIGHT DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, S.D. 57501

DUE TO INFORMATION THAT HAS BEEN RECEIVED FROM THE WATER RIGHTS DIVISION, WE REQUEST THAT WATER RIGHT 1182-1 FOR LANDS LOCATED IN THE SW 1/4 AND SE 1/4 OF SECTION 17 T 3N RANGE 4E, BUTTE CO. BE BROUGHT BEFORE THE WATER MANAGEMENT BOARD FOR REVIEW AT THE MARCH 1990 MEETING AT RAPID CITY.

WE ALLEDGE THAT THIS WATER RIGHT WAS NEVER COMPLETELY OR PROPERLY INSPECTED AND A WATER LISENCE WAS ISSUED TWO YEARS LATER WITHOUT ANOTHER PROPER ON SITE INSPECTION. AS OF THIS DATE WE ALLEDGE THIS WATER RIGHT HAS NEVER BEEN STARTED OR COMPLETED.

WE REQUEST THE WATER RIGHT DIVISION MAKE IMMEDIATE AND A COMPLETE INSPECTION OF THE WATER RIGHT, SO IT CAN BE BROUGHT BEFORE THE WATER MANAGEMENT BOARD AT THE MARCH 1990 RAPID CITY MEETING.

THANK YOU.

SINCERELY,

Ed Kling

R. Shontz Valley

cc JIM HURLY
MARIAN GUNDERSON

*HCR. 76. Box 188
Hiland. S. D.
57762*

1182-1

Dec 17-89

This was inspected on July 16, 1985 and a new owner paid the inspection fee on Nov 3, 1987, and claims a valid water right with no restrictions.

We have Mr George Seach stating that he will testify if this can be brought up at the March 1990 meeting in Rapid City.

we also have one or two other people
that would like to testify as well

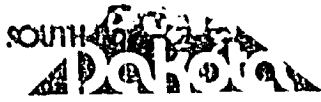
SIGNED

Rights that are on this section
of the Belle Fourche River.

Thank you
K. Thornton Vallery



SIGNED



Department of Water & Natural Resources

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

January 4, 1990

Richard Reder
HCR 76, Box 198
Nisland SD 57762

Dear Mr. Reder:

Enclosed is a copy of a request for a declaratory ruling on the validity of Water Right No. 1182-1 received from R Thornton Vallery and Ed Kling.

A notice of hearing concerning this request for a declaratory ruling will need to be published prior to the Water Management Board considering this request. A copy of the notice including the time and place of hearing will be forwarded to you under separate cover.

Please contact me if you have any questions.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

 **Department of
Water & Natural Resources**

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

January 10, 1990

Richard Reeder
HCR 76, Box 198
Nisland SD 57762

R. Thornton Vallery
HCR 76, Box 188
Nisland SD 57762

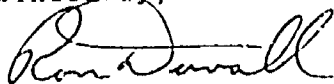
Ed Kling
HCR 76, Box 194
Nisland SD 57762

Dear Sirs:

Notice of Hearing on your Petition to Determine the Legal Status of Water Right No. 1182-1, has been sent to the Publisher of the Belle Fourche Daily Post printed at Belle Fourche SD. For your information a copy of the notice is enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The publisher has been instructed to publish the notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. We must receive Proof of Publication before the petition can be considered by the Water Management Board.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures





Department of Water & Natural Resources

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

January 10, 1990

BELLE FOURCHE DAILY POST
PO Box 400
Belle Fourche SD 57717-0400

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on a Petition to Determine the Legal Status of Water Right No. 1182-1 to be published twice. Please publish the first notice on or before January 19, 1990 with the second publication 7 days later.

Please BILL the WATER RIGHTS DIVISION for the cost of publication.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The petition cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE

TO: Ron Duvall
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

No. _____

Date _____

We are in receipt of your letter of January 10, 1990 enclosing Notice of Hearing on a Petition to Determine the Legal Status of Water Right No. 1182-1 which was first published in our issue of _____.
ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



PROOF OF

STATE OF SOUTH DAKOTA)

County _____)

**NOTICE OF HEARING
ON PETITION TO
DETERMINE THE
LEGAL STATUS OF
WATER RIGHT NO. 1182-1,
RICHARD REDER**

Notice is given that R Thornton Vallery, HCR 76, Box 188, Nisland SD and Ed Kling, HCR 76, Box 194, Nisland SD have petitioned the Water Management Board pursuant to SDCL 46-5-37.1 to determine the legal status of Water Right No. 1182-1 held by Richard Reder, HCR 76, Box 198, Nisland SD 57762. No. 1182-1 appropriated 1.54 cubic feet of water per second from the Belle Fourche River to irrigate 108 acres with a priority date of September 25, 1978. The Belle Fourche River diversion point for No. 1182-1 is in the NE1/4 SW1/4 and the irrigated acreage is located in the S1/2 SE1/4, NE1/4 SE1/4, SE1/4 SW1/4; all in section 17-T8N-R4E.

Mr. Vallery and Mr. Kling believe that Water Right No. 1182-1 is not a valid water right because construction of the irrigation project was not started or completed. SDCL 46-2A-8 requires that any construction necessary to put water to beneficial use shall be completed within five years of approval or the permit and the water shall be put to beneficial use within an additional four years. Further, SDCL 46-5-37 requires that appropriated water be put to beneficial use at least once every 3 years or the unused portion reverts to the public and becomes unappropriated water. Exceptions to forfeiture of a water right/permit due to nonuse are found in SDCL 46-5-37.2 and legal excuses for nonuse of water are found in Board General Rule 74:02:01:37.01.

The petition to determine the legal status of Water Right No. 1182-1 will be considered by the Water Management Board at a hearing scheduled for 8:15 am on March 7, 1990, Roosevelt/Jefferson Room, Howard Johnson's, 2211 LaCrosse Street, Rapid City, SD. The Board may issue one of the following decisions regarding this matter after all evidence is taken at the hearing: 1) that legal excuse or exceptions existed for nonconstruction and/or periods of nonuse of water and No. 1182-1 is a valid water right, 2) that Water Right No. 1182-1 was not constructed or if constructed, that No. 1182-1 has been forfeited and/or abandoned and No. 1182-1 is cancelled, 3) amend Water Right No. 1182-1 or 4) take no action or do some combination of the above.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with R Thornton Vallery, Ed Kling, Richard Reder

and the Chief Engineer by February 23, 1990. The petition may be informal, but must include a statement describing the petitioner's interest in the petition to determine the legal status of 1182-1, the petitioner's reasons for opposing or supporting the petition to determine the legal status of No. 1182-1, and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The Chief Engineer's address is "Water Rights Division, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the addresses for R Thornton Vallery, Ed Kling and Richard Reder are given above. R

Thornton Vallery, Ed Kling and Richard Reder need not file petitions to intervene. The time of the hearing will be automatically delayed for at least twenty days upon request to the Chief Engineer by any interested person. The request for a delay must be received by February 23, 1990. Contact the Water Rights Division to request information on the petition or to assure access to the hearing by the handicapped.

The hearing is an adversary proceeding. Any person filing a petition and/or R Thornton Vallery, Ed Kling and Richard Reder have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The Board has legal authority and jurisdiction to consider this matter and may also consider amending or cancelling Water Right No. 1182-1 pursuant to SDCL 46-1-14, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-5-36, 46-5-37, 46-5-37.1, 46-5-37.2; and Board General Rules, Sections 74:02:01:36 thru 74:02:01:41.

2/11/13-20

certify that the attached printed from the _____

A newspaper which during the whole said notice herein after stated, has been published in the _____

_____ of _____

County of _____ and that the said notice was published in following two dates:

(Signature)

(Title)

(Date Signed)

Cost of Printing: \$42.00

March 12, 1990
(date)

page 1

Parties of Record before Water Management Board Determine legal
status of Water Right No. 1182-1, Richard Beder

Richard & Marge Beder

HCR 76, Box 198

Nisland SD 57762

R. Thornton Vallery

HCR 76 Box 188

Nisland SD 57762

Ken Barker, Attorney

PO Box 370

Belle Fourche SD 57717

Ed Kling

Box 194

Nisland SD 57762

Wes Buckmaster, Attorney

PO Box 726

Belle Fourche SD 57717

 **Department of
Water & Natural Resources**

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

March 13, 1990

NOTICE

TO: Parties of Record for Water Right No. 1182-1, Richard Reder
(see attached sheet)

FROM: John Hatch, Chief Engineer 
Water Rights Division
505 773-3352

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final
Decision

The Water Management Board has directed John Guhin, the Board's attorney to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision on the legal status of Water Right No. 1182-1, Richard Reder. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 pm, May 23, 1990, Ramkota Inn, Pelican Room, Hwy 212, Watertown SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record and their attorneys (copy enclosed) by May 3, 1990. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by May 11, 1990.

The public hearing was completed March 7, 1990. No additional testimony will be received on May 23, 1990.

cc: John Guhin, Assistant Attorney General

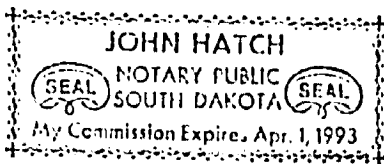
CERTIFICATION

I hereby certify that on March 13, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on preparation of Findings, Conclusions and Final Decision for Water Right No. 1182-1, Richard Reder addressed as stated on the Parties of Record sheet.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of March, 1990.



John H. Allen
Notary Public



Department of Water & Natural Resources

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

RECEIVED
MAR 16 1990

051310

March 15, 1990

Ken E. Barker, Attorney
P O Box 370
Belle Fourche, SD 57717

Wes Buckmaster, Attorney
P O Box 726
Belle Fourche, SD 57717

RE: Water Management Board Action on Water Right No. 1182-1

Dear Mr. Barker and Mr. Buckmaster:

The Water Management Board, at its March 7, 1990 meeting, denied the petition to determine the legal status of Water Right No. 1182-1.

At the hearing, Mr. Leach testified that he never constructed the irrigation system for Water Right No. 1182-1. He also testified that the irrigation questionnaires that were submitted for 1182-1 for the irrigation years of 1984 and 1985 were mistakes. He stated that the information on these questionnaires was actually for Water Right No. 1091-1. The diversion point for 1091-1 is located on Maloney Creek.

Further investigation of Water Right Division files has shown that Mr. Leach returned completed questionnaires for 1091-1 for the 1984 and 1985 irrigation seasons. The information on the questionnaires for 1091-1 is different than that which was submitted on the questionnaires for 1182-1.

Enclosed, please find copies of the irrigation questionnaires submitted by Mr. Leach for the 1984 and 1985 irrigation seasons.

If you have any questions, please contact John Haak, Assistant Attorney General (605 773-3215).

Sincerely,

Delvin D Brosz

Delvin D. Brosz, PE
Natural Resources Engineer
605 773-3352

cc: John Haak ✓

8182-1
 REMOVED TO LEACH
 AND 21 BOX 88
 SCALE PRODUCTION
 SO 67717

NUMBER

NO. acres actually irrigated during 1985- check this box ☐
 If your system has not been constructed- check this box ☐
 If you did not irrigate during 1985- check this box ☐
 Please fill out and return at once.
 Source: Irrigation estimates.
 This is the water management record date
 This is the water meter at surface after
 source: Irrigation estimates.

November 1985
 For Dec. Use Only

Type of Power: Electric X 80 80
 1. Electric X 80
 2. Gravity
 3. Gasoline
 4. Nat. Gas pipeline
 5. Diesel
 6. Propane
 7. Other

Type of System
 1. Hand Moved Sprinklers
 2. Portable booms
 3. Center pivots (# of)
 4. Gated pipes
 5. Slidewheel
 6. Towlines
 7. Gun type
 8. Hydrostatic
 9. Siphons
 10. Flood
 11. Other

Owner or address change, if any:

Month	# days pumped	Average # hours per day	Average pump rate (gpm)	Acres of Crop		Water Used		Irrigated and Estimated water use	
				Crop	Acres	Used	Acres	Used	
April									
May									
June	6	10	500	Hay	80	500			
July	6	10	500	Hay	80	500			
August	6	10	500	Hay	80	500			
Sept.	6	10	500	Hay	80	500			
Oct.									
Other Month									

COMMENTS:

Complete and return to:

WATER MANAGEMENT
 Mr. Rights, Div. 1
 1000 S. D. 57501



1984-8

Source of water: Surface water
Irrigation system: Surface water
Irrigation system: Surface water

Source

This is the Water Management Record data sheet for recording 1984 SURFACE WATER source irrigation estimates.

October, 1984
For Dept. of US Army

Please fill out and return at once.

No. acres actually irrigated with surface water 30

If you did not irrigate during 1984-check this box ☐

If your system has not been constructed-check this box ☐

Type of system: Surface water

Power source: Electric
Gravity: Electric
Gasoline: Electric
Fuel-oil: Electric
Oil: Electric
Diesel: Electric
Propane: Electric
Other: Electric

Type of system

None Moved Sprinklers

Portable booms

Center pivot

Other

Other

Other

Other

Other

Other

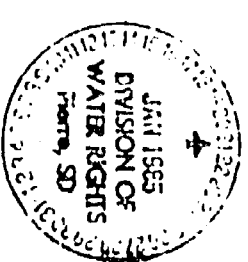
Other

Month	Days pumped	Average # hours per day	Average # pump rate (gpm)	Acres irrigated	Water used	Crop	Acres	Water used
April								
May								
June								
July	4	10	700	30	5			
August	6	24	700	30	19			
Sept.								
Oct.								
Other								

Comments:

Concrete and return to:

WATER MANAGEMENT BOARD
Water Rights Division
Joe Foss Building
Pierre, SD 57501



100-1
JAMES L. LEWIS
100-1
100-1
100-1

Bar

This is the Water Management Board data sheet for recording 1984 SURFACE WATER source irrigation estimates.

October, 1984
for Dept. Use Only

Please fill out and return at once.
No. acres actually irrigated with surface water 100
If you did not irrigate during 1984 check this box ☐
If your system has not been constructed check this box ☐

Item of Reference	Inspected Initialed
1. <u>Electric</u>	<u>12-22-45</u>
2. <u>Water</u>	<u> </u>
3. <u>Asoline</u>	<u> </u>
4. <u>Oil</u>	<u> </u>
5. <u>Polish</u>	<u> </u>
6. <u>Tools</u>	<u> </u>
7. <u>Other</u>	<u> </u>

Item of Reference	Inspected Initialed
1. <u>and V</u>	<u> </u>
2. <u>Drain</u>	<u> </u>
3. <u>Water</u>	<u> </u>
4. <u>Oil</u>	<u> </u>
5. <u>Polish</u>	<u> </u>
6. <u>Tools</u>	<u> </u>
7. <u>Other</u>	<u> </u>

Month	Days pumped	Average # hours per day	Average pump rate (gpm)	Acres of Crop Irrigated and		Water Used
				Crop	Acres	
Aug.	12	24	1000	Alfalfa	30	4
July	10	10	1000	Alfalfa	30	5
June	3	8	1000	Alfalfa	30	13
May				Alfalfa	30	14
April				Alfalfa	30	39
March						
Feb.						
Jan.						
Other Month						

COMMENTS:

Complete and return to:
WATER MANAGEMENT &
River Rights Divis



1091-1
 GEO C LUTS L-ACH
 RM 91 BOX 49
 SPTLE PIERRE
 SD 57501

OWNER

5

This is the Water Management Board data sheet for recording 1985 surface water source irrigation statistics.

Please fill out and return at once. No. acres actually irrigated with surface water 120

If you did not irrigate during 1985 check this box ☐

If your system has not been constructed check this box ☐

Month	# days pumped	Average # hours per day	Average pump rate (gpm)	Acres of Crop Irrigated and Estimated Water Used			
				Crop	Acres	Water Used	Estimated Acres
April							
May							
June	8	14	600	Hay	80	12.0	600
July	12	12	600	Hay	80	10.0	400
August	12	12	600	Hay	80	10.0	400
Sept.	12	12	600	Hay	80	10.0	400
Oct.							
Other Month							

COMMENTS:

Complete and return to:

WATER MANAGEMENT BOARD
 Water Rights Division
 Joe Foss Building
 Pierre, SD 57501

Owner or address change, if any:



Attorney General

MAR 21 1990

QUINN, DAY & BARKER

ATTORNEYS AT LAW

117 5th AVENUE

P.O. BOX 370

BELLE FOURCHE, SOUTH DAKOTA 57717-0370

PHONE (605) 832-2743

051534

TERENCE R. QUINN
MICHAEL W. DAY
KENNETH E. BARKER
ROBERT L. MORRIS

March 20, 1990

RE BRANDENBURG
OF COUNSEL

FAX (605) 692-4270

Mr. John Guhin, Assistant Attorney General
Mr. John Haak, Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

Re: Water Management Board Action on Water Right No. 1182-1
Our File No. 5684.001

Dear Mr. Guhin and Mr. Haak:

I am in receipt of the irrigation questionnaires for Water Right No. 1091-1 for the years 1984 and 1985 as completed by Mr. Leach. As you recall, these questionnaires were referred to in the testimony provided by Mr. Leach at the Water Management Board meeting on March 7, 1990. The administrative hearing was held to determine the legal status of Water Right No. 1182-1. Mr. Leach testified that he never constructed the irrigation system for Water Right No. 1182-1, although the record indicated that he had filled out irrigation questionnaires for the water right for the years 1984 and 1985. He stated that actually those questionnaires should have been applied to Water Right No. 1091-1 rather than 1182-1. At the time of the hearing, the Division did not have on hand the completed questionnaires for Water Right No. 1091-1, but they have since been provided to counsel of record by Mr. Delvin D. Brosz, Natural Resources Engineer.

I would respectfully request that the questionnaires completed by Mr. Leach for the years 1984 and 1985 for Water Right No. 1091-1 be made a part of the record in the above referenced matter. My basis for making such a request is as follows:

1) Water Right No. 1091-1 was referred to extensively in the testimony provided by Mr. Leach. He testified that he was in error in completing the questionnaire for Water Right No. 1182-1. Obviously, if he completed a water right questionnaire for Water Right No. 1091-1 during the same years he completed the questionnaire for Water Right No. 1182-1, his recollection is not

Mr. John Guhin
Mr. John Haak
March 20, 1990
Page 2

correct. Because the questionnaires are part of the Division regularly kept business records which normally would have been available at the time of hearing, they should now be made a part of the official record.

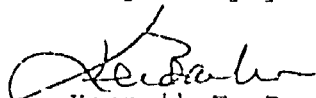
2) Secondly, if the Department is not willing to accept the questionnaires as part of the official record due to extensive reference as self-authenticating business records, in the alternative, I would request that they be made a part of the record pursuant to SDCL §1-26-19(3). Pursuant to the Administrative Procedures Act, the Board has adopted Rules of Evidence set forth in Chapter 19-9 et seq. That being the case, the questionnaires for Water Right No. 1091-1 for the years 1984 and 1985 are public records pursuant to Chapter 19-10. I would request that the referred records be accepted by the Board as part of the record by judicial notice. Again, you will note that the records are self-authenticating as required by statute.

3) Finally, if the questionnaires are not accepted under either of the above two recommendations, I would request a telephone conference hearing prior to the issuance of the Findings of Fact and Conclusions of Law allowing me to make a motion to amend the official record so that the records could be formally offered.

I would appreciate your earliest response concerning my request to make the questionnaires a part of the official record.

By copy of this letter to Wesley W. Buckmaster, counsel for R. Thornton Vallery, this is intended to be service by mail upon him.

Very truly yours,



Kenneth E. Barker

KEB/bl

cc: Richard Reder
Wesley W. Buckmaster

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

March 21, 1990

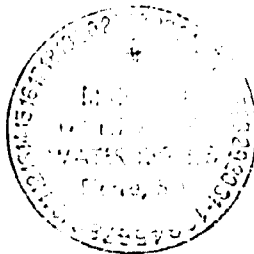
Mr. Kenneth E. Barker
Quinn, Day & Barker
117 5th Avenue
P.O. Box 370
Belle Fourche, SD 57717-0370

Re: Water Management Board action on Water Right No.
1182-1, your File No. 5684.001

Dear Mr. Barker:

I am in receipt of your March 20, 1990 letter jointly addressed to John Guhin and myself. At the outset, I need to make it clear to you that Mr. Guhin and I represent separate entities. John is the attorney for Water Management Board; I am assigned to represent the Department of Water and Natural Resources, Division of Water Rights. Since the Division appears before the Board on matters such as the above-referenced matter, John and I maintain a "Chinese wall" which prohibits the discussion of any aspect of a matter that is pending before the Board, unless such discussion is held on the public record at a properly noticed Board meeting, and all interested persons are given an opportunity to attend and participate. In my opinion, the separation created by the Chinese wall extends to the sharing of mail. Thus, I have not forwarded, and do not intend to forward, a copy of your letter to Mr. Guhin.

As to the issue raised in your letter, the Division does not oppose your request. I believe that the irrigation questionnaires which you would like to add to the record are material to the Board's decision. I suggest that absent an agreement from all parties to allow the addition to the record, your request should be made to the Board through a formal motion with whatever supporting materials or evidence you deem appropriate. Procedurally, I would suggest serving copies of your motion on the parties and filing the original



Mr. Kenneth E. Barker
March 21, 1990
Page 2

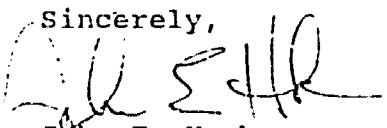
in the Board's file, which is maintained by the Department.
You may mail the original for filing to:

Attn: Karen Schlaak
Department of Water and Natural Resources
Division of Water Rights
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

I have tentatively reserved time for you during the next
Board meeting at 1:00 p.m. in Watertown on May 23, 1990.

If you have any questions or comments, please give me a
call.

Sincerely,



John E. Haak
Assistant Attorney General

JEH:jj

cc: Wesley W. Buckmaster
Delvin D. Brosz

Attorney General

BUCKMASTER AND MACY
ATTORNEYS AT LAW
1501 5th Avenue • P.O. Box 726
BELLE FOURCHE, SD 57717

MAR 28 1990

051864

PHONE (605) 892-2623
FAX (605) 892-6337

WESLEY W. BUCKMASTER

RANDALL L. MACY

March 27, 1990

Mr. John E. Haak
Assistant Attorney General
State Capitol
Pierre, SD 57501-3215

RE: Water Management Board Action on
Water Right #1182-1

Dear John:

I am in receipt of Ken Barker's letter of March 20, 1990, and your response of March 21, 1990.

Mr. Vallery and Mr. Kling have some real concern about the reliability of the newly discovered annual reports for Water Right #1091-1. They are unsigned and undated. As a practical matter this method of record keeping leaves a great deal to be desired and there is simply a complete absence of foundation for those reports. Even if they are admitted to the record as part of the "business records" they are so insufficient in foundation as to totally lack probative value.

The Water Management Board decided in favor of the validity of Water Right #1182-1 without the annual reports of present concern being brought to their attention. Thus it is hard to understand your statement, i.e. that these reports are "material to the Board's decision".

Some things ought to be very clear from the experience that we have had from this case. The first is that the annual reports that your agency receives are grossly deficient in form, content and verification. Your agency has annual reports for the years of 1984 and 1985 that purport to describe the use of two water rights, i.e. 1182-1 and 1091-1. However, it is clear from Mr. Leach's testimony, under oath and in person that he never developed water right #1182-1 and that he never used water right #1182-1.

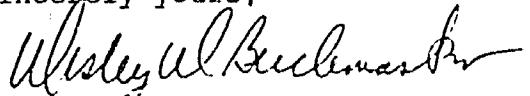
Mr. Leach testified and his testimony was undisputed that the location of the water right is actually fenced out of his farm and into Mr. and Mrs. Reder's farm. There was never a road or a gate constructed to that fence. There was never any electrical service or any other development of that water right by Mr. Leach up and to the point in time that he gave up possession of his farm in late 1986.

Haak Letter
March 27, 1990
Page 2

It is clear from the uncontroverted testimony of Mr. Leach that Mr. Mernaugh inspected a water right that was never constructed and never used. Regardless of the outcome of this case on the merits, the facts discovered are instructive or should be instructive to the Water Management Board and the Water Management Division as to the extraordinarily casual method of documenting construction and use of water rights when the actual validity of any given water right has significant potential impact from an economic standpoint.

We object to making the annual reports for Water Right #1091-1 part of the record. They are irrelevant, immaterial and nonprobative, and are not in fact material to the Board's "decision", a decision has already been made adversely to the Petitioners.

Sincerely yours,



WESLEY W. BUCKMASTER

WWB/jej

cc: Ken Barker
Thornton Vallery
Ed Kling

QUINN, DAY & BARKER

ATTORNEYS AT LAW

117 5th AVENUE

P.O. BOX 370

BELLE FOURCHE, SOUTH DAKOTA 57717-0370

PHONE (605) 892-2743



R.E. BRANDENBURG
OF COUNSEL

FAX (605) 892 4273

TERENCE R. QUINN
MICHAEL W. DAY
KENNETH E. BARKER
ROBERT L. MORRIS

March 29, 1990

Attn: Karen Schlaak
Department of Water and Natural Resources
Division of Water Rights
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Water Management Board Action on Water Right No. 1182-1
Our File No. 5684.001

Dear Ms. Schlaak:

Enclosed please find for your filing with the Water Management Board's file the original Motion to Supplement Record and the original Memorandum in Support of Motion to Supplement Record in the above referenced matter. By copy of this letter, I am serving a copy of each on Mr. Guhin, Mr. Haak and Mr. Buckmaster.

Very truly yours,

Kenneth E. Parker

KEB/bl

Enclosures

cc: John Guhin
John Haak
Wes Buckmaster
Richard Reder

QUINN, DAY & BARKER

ATTORNEYS AT LAW

117 5TH AVENUE

P.O. BOX 370

BELLE FOURCHE, SOUTH DAKOTA 57717-0370

PHONE (605) 892-2743

March 29, 1990

Attorney General

052386

APR 05 1990

TERENCE R. QUINN
MICHAEL W. DAY
KENNETH E. BARKER
ROBERT L. MORRIS

RE BRANDENBURG
OF COUNSEL

FAX (605) 892-4273

Mr. John Guhin, Assistant Attorney General
Office of Attorney General
Natural Resource Section
State Capitol Building
Pierre, SD 57501

✓ Mr. John Haak, Assistant Attorney General
Office of Attorney General
Natural Resource Section
State Capitol Building
Pierre, SD 57501

Mr. Wesley W. Buckmaster
Attorney at Law
P.O. Box 726
Belle Fourche, SD 57717

Re: Water Management Board Action on Water Right No. 1182-1
Our File No. 5684.001

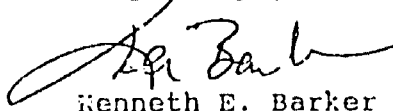
Gentlemen:

Enclosed please find for service by mail upon you the following enclosed documents:

- 1) Motion to Supplement Record;
- 2) Memorandum in Support of Motion to Supplement Record.

I have noted from Mr. Haak's previous correspondence that time has been reserved at the Board meeting at 1:00 p.m. in Watertown on May 23, 1990 to hear such matter. I would respectfully request that at that time the Board consider my Memorandum in Support of the Motion. At this time, I have no plans to appear personally due to the cost to my client. If that changes, I will so notify counsel, or if it is preferred that I appear personally, I am sure arrangements can be made for my personal appearance, or in the alternative, a telephone conference hearing.

Very truly yours,



Kenneth E. Barker

KEB/bl
cc: Richard Reder

In Re: Water Right No. 1182-1
Petition of R. Thornton Vallery

)
)
) MOTION TO SUPPLEMENT RECORD
)
)

Comes now, Richard Reder, by and through his attorneys of record, Quinn, Day and Barker of Belle Fourche, South Dakota, and hereby moves the Water Management Board for the State of South Dakota to supplement the record of that hearing held on March 7, 1990, by adding Irrigation Beneficiaries for Water Right No. 1091-1 for the years 1984 and 1985, in the above referenced matter by and for the following reasons:

1) Mr. Leach, Mr. Reder's predecessor in interest, testified that Irrigation Questionnaires for Water Right No. 1182-1 for the years 1984 and 1985 were in error and actually should have been filed for Water Right No. 1091-1. However, as indicated in the attached proposed Exhibits 1A through 4A, clearly Mr. Leach filled out separate and distinct Irrigation Questionnaires for each respective water right;

2) Irrigation Questionnaires for Water Right No. 1091-1 were unavailable at the Water Board Hearing on the above referenced matter on March 7, 1990;

3) That the Department of Water and Natural Resources records indicate that the site for Water Right No. 1182-1 was inspected in July of 1985 and it was noted that the site was improved and ready for irrigation at that time;

4) That Mr. Leach's testimony is in direct contradiction to the Water Right Questionnaires submitted by him on Water Right Nos. 1182-1 and 1091-1. Such testimony is also contradictory to

the Department of Water and Natural Resources records indicating inspection by Department personnel in July of 1985;

5) For those reasons set forth in the attached Memorandum which is incorporated by reference hereto.

THEREFORE, Mr. Reder, by and through his attorneys of record, respectfully move the Water Board to supplement the record with the addition of the Questionnaires for Water Right 1091-1 for the years 1984 and 1985 which are attached and incorporated by referenced hereto as Exhibits 1A and 2A.

Respectfully submitted this 3rd day of April, 1990.

QUINN, DAY & BARKER
Attorneys for Richard Reder

By: Kenneth E. Barker
Kenneth E. Barker
P.O. Box 370
Belle Fourche, SD 57717
(605) 892-2743

CERTIFICATE OF SERVICE

I, Kenneth E. Barker, do certify that on the 3rd day of April, 1990, I caused a copy of the foregoing Motion to Supplement Record to be served upon Mr. John Guhin, Assistant Attorney General, Office of Attorney General, Natural Resource Section, State Capitol Building, Pierre, SD 57501; Mr. John E. Haak, Assistant Attorney General, Office of Attorney General, Natural Resource Section, State Capitol Building, Pierre, SD 57501; and Mr. Wesley W. Buckmaster, Attorney at Law, P.O. Box 726, Belle Fourche, SD 57717; by depositing a copy of the same in an envelope securely sealed and with first class postage fully prepaid thereon, in the United States mail at the City of Belle Fourche, Butte County, South Dakota, and addressed to the above named addressees at the foregoing addresses, the same being the last known addresses of said addressees.

Kenneth E. Barker
Kenneth E. Barker

In Re: Water Right No. 1182-1	)	MEMORANDUM IN SUPPORT OF MOTION TO SUPPLEMENT RECORD
Petition of R. Thornton Vallery	)	
	)	
	)	

Comes now, Richard Reder, by and through his attorneys of record, Quinn, Day and Barker of Belle Fourche, South Dakota, and hereby respectfully submits this Memorandum in Support of his Motion to Supplement Record.

Richard Reder, respectfully requests that the Questionnaires completed by Mr. Leach for the years 1984 and 1985 for Water Right No. 1091-1 be made a part of the record in the above referenced matter. The basis for making such a request is as follows:

1) Water Right No. 1091-1 was referred to extensively in the testimony provided by Mr. Leach. He testified that he was in error in completing the Questionnaires for Water Right No. 1182-1 and that the Questionnaires for 1984 and 1985 were actually for Water Right No. 1091-1. However, it has been discovered that there are Irrigation Questionnaires that are quite different from those also completed by Mr. Leach for Water Right No. 1182-1 for the same years. Obviously, if Mr. Leach completed the Water Right Questionnaire for Water Right No. 1091-1 during the same years he completed the Questionnaire for Water Right No. 1182-1, his recollection is not now correct. Because the Questionnaires are part of the Division's regularly kept business records, they should now be made a part of the official record.

2) Secondly, and alternatively, if the Department is not willing to accept the Questionnaires as part of the official record due to the extensive references as self-authenticating business records, in the alternative, it is respectfully requested that they be made a part of the record pursuant to SDCL §1-26-19(3). Pursuant to the Administrative Procedures Act, the Board has adopted Rules of Evidence set forth in Chapters 19-9 et seq. That being the case, the Questionnaires for Water Right No. 1091-1 for the years 1984 and 1985 are public records pursuant to Chapter 19-10. I would request that the records referred to be accepted by the Board as part of the record by judicial notice. Again, you will note that the records are self-authenticating as required by statute.

3) The Department of Water and Natural Resources records indicate that the Water Right No. 1182-1 was inspected by the Department personnel in July of 1985. That being the case, the Irrigation Questionnaires submitted by Mr. Leach for Water Right No. 1182-1 are obviously correct and the corresponding Irrigation Questionnaires for Water Right No. 1091-1 support their authenticity. Accordingly, as a matter of practicality, fairness and common sense, it is respectfully requested that the Questionnaires be made a part of the record.

By and for the above reasons, Richard Reder respectfully requests that the attached Exhibits 1A and 2A be submitted as part of the official record on the petition to determine the

Memorandum
Petition of Vallery
Page 3

validity of Water Right No. 1182-1 submitted by R. Thornton
Vallery.

Respectfully submitted this 3rd day of April, 1990.

QUINN, DAY & BARKER
Attorneys for Richard Keder

By: Kenneth E. Barker
Kenneth E. Barker
P.O. Box 370
Belle Fourche, SD 57717
(605) 892-2743

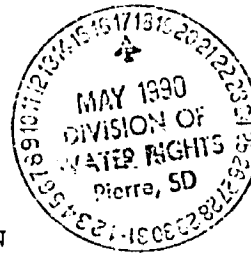
CERTIFICATE OF SERVICE

I, Kenneth E. Barker, do certify that on the 3rd day of April, 1990, I caused a copy of the foregoing Memorandum in Support of Motion to Supplement Record to be served upon Mr. John Guhin, Assistant Attorney General, Office of Attorney General, Natural Resource Section, State Capitol Building, Pierre, SD 57501; Mr. John E. Haak, Assistant Attorney General, Office of Attorney General, Natural Resource Section, State Capitol Building, Pierre, SD 57501; and Mr. Wesley W. Buckmaster, Attorney at Law, P.O. Box 726, Belle Fourche, SD 57717; by depositing a copy of the same in an envelope securely sealed and with first class postage fully prepaid thereon, in the United States mail at the City of Belle Fourche, Butte County, South Dakota, and addressed to the above named addressees at the foregoing addresses, the same being the last known addresses of said addressees.

Kenneth E. Barker
Kenneth E. Barker

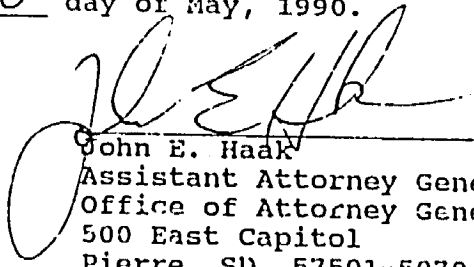
STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	MOTION TO JOIN IN
PETITION TO DETERMINE THE	)	RICHARD REDER'S MOTION
LEGAL STATUS OF WATER RIGHT	)	TO SUPPLEMENT RECORD
NO. 1182-1.	)	



COMES NOW the South Dakota Department of Water and Natural Resources, Division of Water Rights, by and through its attorney of record, John E. Haak, Assistant Attorney General, and hereby moves the Water Management Board for permission to join in Richard Reder's Motion to Supplement Record by adding irrigation questionnaires for water right no. 1091-1 for the years 1984 and 1985 for the reasons stated in Richard Reder's April 3, 1990, Motion to Supplement Record and such other and further reasons as may be brought out during oral arguments before the Board on May 23, 1990.

Dated this 15th day of May, 1990.



John E. Haak
Assistant Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

 **Department of
Water & Natural Resources**

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

May 31, 1990

NOTICE

TO: Parties of Record for Water Right No. 1182-1, Richard Reder
(see attached sheet)

FROM: John Hatch, Chief Engineer 
Water Rights Division
605 773-3352

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final
Decision

On May 24, 1990, the Water Management Board adopted the Order to supplement the record with the addition of certain irrigation questionnaires (copy enclosed).

The Board will consider proposed Findings, Conclusions and Final Decision on the legal status of Water Right No. 1182-1 at 1:00 pm, July 25, 1990, in Room 216, Joe Foss Building, 523 East Capitol, Pierre SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record and their attorneys (copy enclosed) by July 5, 1990. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by July 16, 1990.

Except for consideration of the Order to supplement the record May 24, 1990, the public hearing was completed March 7, 1990. No additional testimony will be received on July 25, 1990.

cc: John Guhin, Assistant Attorney General

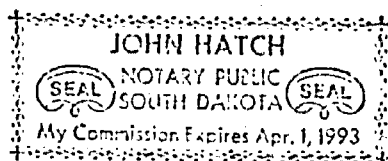
CERTIFICATION

I hereby certify that on May 31, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice for Preparation of Findings of Fact, Conclusions of Law and Final Decision on the legal status of Water Right No. 1182-1 addressed as stated on the Parties of Record sheet.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA ;
COUNTY OF HUGHES) SS

Sworn to, before me, this 1st day of June, 1990.



John Hatch
Notary Public

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	FINDINGS OF FACT,
PETITION TO DETERMINE THE	)	CONCLUSIONS OF LAW
LEGAL STATUS OF WATER RIGHT	)	AND
NO. 1182-1; RICHARD REDER	)	FINAL DECISION

FINDINGS OF FACT

I

This is action brought by Petitioners R. Thornton Vallery and Ed Kling to determine the status of Water Right No. 1182-1.

II

Water Right No. 1182-1 is a water right to appropriate 1.54 cfs of water from the Belle Fourche River with a priority of September 25, 1978.

III

Water Right No. 1182-1 was granted effective August 13, 1979. The Chief Engineer, in his Order of that date, directed that the whole of construction of the irrigation works was to be completed by May 25, 1982, and that water was to be applied to the land by May 25, 1985.

IV

Petitioners Vallery and Kling allege that Water Right No. 1182-1 is not a valid right at this time because construction of the irrigation project was not started or completed, and the water was not timely put to use.

V

The burden is on Petitioners to demonstrate that the construction was not started or completed or that water was not timely put to use.

VI

The Board finds that the Petitioners have failed to meet their burden.

VII

George Leach was the original owner of the water right and held the land in question until 1986. Leach testified that he had not constructed works or irrigated the land under Water Right No. 1182-1 at any time.

VIII

Irrigation questionnaires submitted by George Leach, however, show 30 acres of irrigation in 1984, and 80 acres of irrigation in 1985, under the authority of Water Right No. 1182-1.

IX

Leach testified that although he may have submitted the irrigation questionnaires cited in paragraph VIII, above, that the submission was mistaken. Leach testified that he actually intended to submit questionnaires for Water Right No. 1091-1, a right also held by him on Maloney Creek, and not Water Right No. 1182-1. The evidence demonstrates to the satisfaction of the Board, however, that Leach submitted questionnaires in 1984 and 1985, for both Water Right Nos. 1182-1 and 1091-1, the

right for Maloney Creek. The Board does not credit the testimony of Leach in this regard.

X

The Board finds further that Leroy Mernaugh, of the Water Rights Division, submitted an "Inspection of Works" document as to Water Right No. 1182-1, on July 16, 1985, which described the condition of the irrigation works as "good" and which stated that water had been put to use on all 108 acres identified in the Application for Water Right No. 1182-1.

XI

The method of diversion for this project requires only a motor, pump and pipe. The inspection in July of 1985, shows that such were present on site at that time.

XII

The Final Decision granting Water Right No. 1182-1 required the Applicant to procure a measuring device, and that the staff certify to the Applicant in writing that the measuring device was sufficient before irrigation took place. Leach testified that he never did have a measuring device. However, the irrigation questionnaires show that Leach reported irrigation in 1984 and 1985, irrigation which could not take place legitimately without such a device. Leach's testimony as to the lack of a measuring device will not be credited nor will Mr. Leach now be heard to undermine the legitimacy of his own irrigation reports to the Department.

XIII

The Petitioners have not presented sufficient evidence to demonstrate that construction was not started or completed, or that water was not put to use by the times set out in the original right.

CONCLUSIONS OF LAW

I

This Board has jurisdiction of this matter.

II

Petitioners have not sustained their burden of showing the invalidity of Water Right No. 1182-1.

III

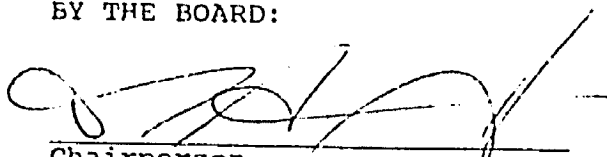
The Board need not consider, and does not rule upon, the issue of whether the time limits set out in SDCL 46-2A-8, as enacted by the Legislature in 1983, are applicable to this matter.

FINAL DECISION

The Petition of R. Thornton Vallery and Ed Kling to declare Water Right No. 1182-1 invalid is denied.

Dated this 5th day of July, 1990.

BY THE BOARD:


Chairperson
Water Management Board

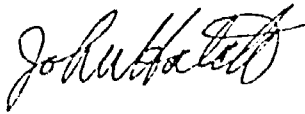
 **Department of
Water & Natural Resources**

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

August 2, 1990

NOTICE

TO: Parties of Record for Water Right No. 1182-1, Richard Reder
(see attached sheet)

FROM: John Hatch, Chief Engineer 
Water Rights Division
605 773-3352

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final
Decision

This is to notify you that a Final Decision, including Findings of Fact, Conclusions of Law were adopted by the Water Management Board on the legal status of Water Right No. 1182-1 which was considered at the May 24, 1990 meeting.

A copy of the signed final Decision, Findings and Conclusion is enclosed. South Dakota Statutes provide that the decision of the Board may be appealed to the Courts.

cc: John Haak, Assistant Attorney General

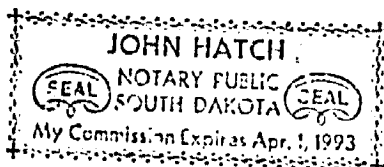
CERTIFICATION

I hereby certify that on August 2, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Adoption of Findings of Fact, Conclusions of Law and Final Decision on the legal status of Water Right No. 1182-1 addressed as stated on the Parties of Record sheet.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of August, 1990.



John H. [Signature]
Notary Public

1182-1



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

DEC 5 1995

1450-1

Richard Reder
HCR 76, Box 198
Nisland, SD 57762

Dear Mr. Reder:

Enclosed is Water License No. 1450-1 and Receipt No. 414676 for \$50.00 which was assessed for an inspection and issuance of the license. Water License No. 1450-1 is the final document which completes the process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

gm
enclosures

NOTE: The applicable portions of Water Right Nos. 1091-1, 1182-1 and 1234-1 have been incorporated into this Water License.

1182

**South Dakota Department of
Water & Natural Resources**

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

December 11, 1989

R. Thornton Vallery
HCR 76, Box 188
Nisland SD 57762

Dear Mr. Vallery:

This letter is in answer to your telephone request of December 8, 1989.

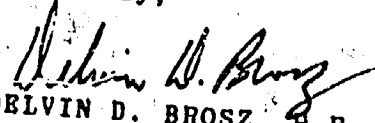
Water Right No. 1182-1 is for irrigation of 108 acres located in the SW 1/4 and SE 1/4 of Section 17, T8N, R4E. This is not the same land as in Application No. 1450-1.

Water Right No. 1182-1 was inspected by LeRoy Mernaugh on July 16, 1985. The Water License was issued on November 3, 1987.

A copy of the transcript for the December 6, 1989 Water Management Board Meeting can be obtained from:

Lynne Ormesher
Capitol Reporting Services
PO Box 903
Pierre SD 57501
605 224-7611

Sincerely,


DELVIN D. BROSZ, P.E.
Natural Resources Engineer JV
Water Rights Division
605 772-3352

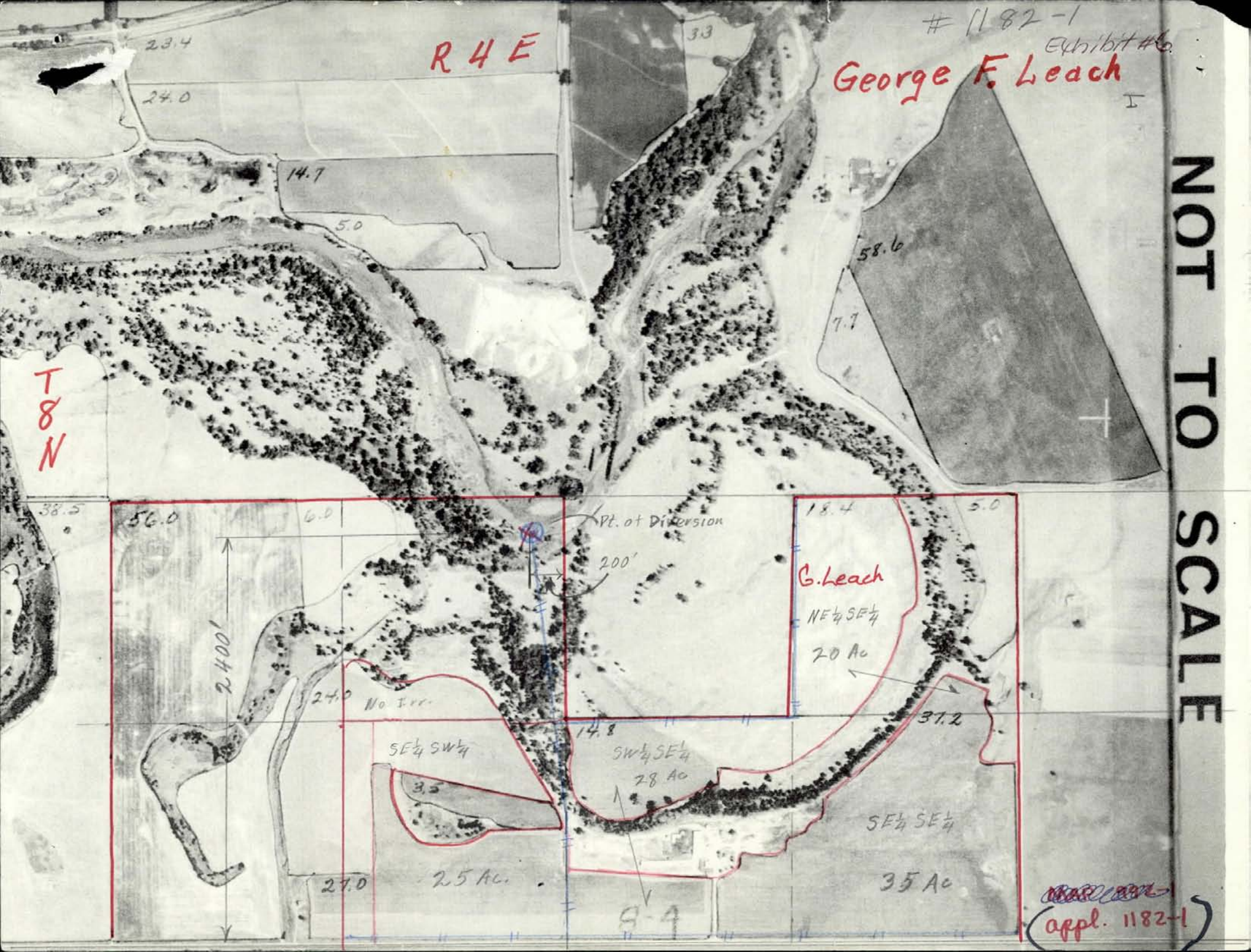
1182-1
Exhibit #6

George F. Leach

R 4 E

T 8 N

NOT TO SCALE



~~Map 1182-1~~
(appl. 1182-1)

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

R 4 E

Owner George Leach Operator Same
County Butte State South Dakota Date Sept. 1978
Approximate acres 1442 Approximate scale 8" = 1 mi/p
Cooperating with _____ Butte _____ Conservation District
Plan identification _____ Photo number _____
Assisted by Charles J. Logan USDA Soil Conservation Service

