

vested Right  
Water Right No. 1290-1

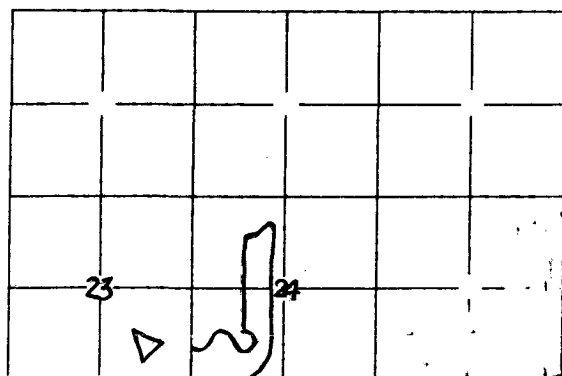
1. Considered: \_\_\_\_\_, 19\_\_\_\_n
2. Name of Applicant MONTE HOLCOMB
3. Post Office Address Star Route, Box 113, Buffalo, S.D. 57720
4. Amount of Water Claimed 1.21 maximum acre feet \_\_\_\_\_
5. Source of Water Supply Dodge Draw
6. Water to be used for IRR acres to be irrigated 85
7. County Harding about 1N ½ miles east of Harding
8. PROOF OF PUBLICATION: Received \_\_\_\_\_ Not Received \_\_\_\_\_  
APPLICATION: Approved 10-5-83 Subject to \_\_\_\_\_  
Not Approved \_\_\_\_\_ Action Deferred \_\_\_\_\_

PRIORITY 6/6/04 Dated Received 8/22/83 Application complete-yes x no \_\_\_\_\_ FEE 10.50  
Remarks Water Right filing 0396-1 incorporated into this V/R

Corrected Application received \_\_\_\_\_ Period of Annual Use \_\_\_\_\_

WATER QUALITY Received yes \_\_\_\_\_ no \_\_\_\_\_ APPROVED/CONDITIONAL (Circle one)  
WI-1 Description same as application-yes \_\_\_\_\_ no \_\_\_\_\_ Remarks \_\_\_\_\_  
not applicable

Disapproved \_\_\_\_\_ Returned \_\_\_\_\_



Diversion Point \_\_\_\_\_  
SE¼ SE¼ Section 23-T17N-R2E

Land to be irrigated \_\_\_\_\_  
E½ NW¼, NE¼ SW¼ And S½ SW¼ Section 24  
T17N-R2E

WELL LOG Driller \_\_\_\_\_ Licensed - yes \_\_\_\_\_ no \_\_\_\_\_  
Depth Waterspreading, dam 14', storage 10.0 ac ft, drainage above  
dam 7100 acres  
Remarks \_\_\_\_\_

MAP Map No. 1290-1 Map located in Water Right xx Map file \_\_\_\_\_  
 Type of Map drawn Prepared by LeRoy Mernaugh  
 Div of Water Rights

+++++

REVIEWED This Application was received within 30 days of the date received, accepted as complete, Number assigned and written up for advertisement before the Board on:  
8/24/83

Betty Westlund  
 (Signed)

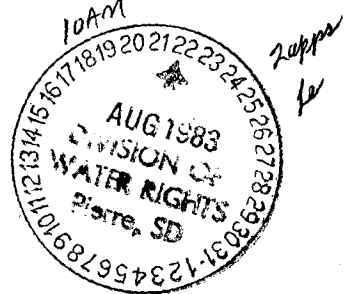
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PROTESTS Letters/Petitions in File - yes \_\_\_\_\_ no \_\_\_\_\_ Remarks \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REMARKS Date  
 F.F. & C. Final Decision, including F.F. & C. of Law were adopted \_\_\_\_\_  
 OF LAW, Date  
 FINAL Final Decision mailed to parties and/or parties notified that Final Decision was  
 DECISIONS adcped \_\_\_\_\_  
 ETC. Remarks \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

No. 1290-1

Map No. 1290-1 Water Division No. 1 Little Missouri District  
Above for Office Use 10110201



# APPLICATION FOR PERMIT To Appropriate Water within the State of South Dakota

**Check one of the following:**

New \_\_\_\_\_ Vested Right X Future Use \_\_\_\_\_

Change in Diversion \_\_\_\_\_ Additional Diversion \_\_\_\_\_

Change in Acreage \_\_\_\_\_ Additional Acreage \_\_\_\_\_

1. Name of Applicant Monte Holcomb Phone No. 375-3459  
 Post Office Address Star Route, Box 113, Buffalo State SD 57720  
 (Street, RR, or Box) (Town) (Zip Code)  
 If a corporation show date and place of incorporation \_\_\_\_\_

2. Method of accomplishing work (contract, employment of others, or by direct labor) \_\_\_\_\_ completed

3. Name of diversion work HOLCOMB IRRIGATION PROJECT

4. Amount of water claimed (cubic feet per second) 1.21

5. Source of water supply Dodge Draw

6. Location of point of diversion 120 feet N and 500 feet W of SE corner Section 23, T17N,  
R2E (SE4 SE4)

County Harding

7. Annual period or periods during which water is to be used March thru October

8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation (waterspreading)

9. For irrigation use, Total number of acres to be irrigated 85

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. |
|------------------------------------------------------|----------------|
| NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 24., T17N, R2E | 6              |
| SE $\frac{1}{4}$ NW $\frac{1}{4}$ "                  | 19             |
| NE $\frac{1}{4}$ SW $\frac{1}{4}$ "                  | 20             |
| SW $\frac{1}{4}$ SW $\frac{1}{4}$ "                  | 27             |

| Land Description                                     | No. Acres Irr. |
|------------------------------------------------------|----------------|
| SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 24., T17N, R2E | 13             |
|                                                      |                |
|                                                      |                |
|                                                      |                |

**Attach sheet if more space is needed**

10. Time required to complete construction of water supply system completed years. Additional time required to complete application of water to the proposed beneficial use \_\_\_\_\_ years.

11. Choice of county newspaper for publication of Notice of Intent to Appropriate Water \_\_\_\_\_

## 12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.  
diversion dam / headgate

Water Right Filing No. 0396-1  
will be incorporated into this  
Vested Right

**B. Works proposed to transport water to place of use.**  
diversion ditch

**C. Works proposed to apply water to beneficial use.**  
floodings & dikes

**Estimated Total Cost \$** \_\_\_\_\_

**Attachments: 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 HARDING )ss.

I, Monte Holcomb 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 construction.

Signed Monte Holcomb

Subscribed and sworn to before me this 19th day of August 19 83

Notary Public (or other qualified officer)

Vested WATER RIGHT APPLICATION APPROVAL

The Water Management Board hereby <sup>recognizes Vested</sup> ~~approves~~ Water Right Application No. 1290-1

Monte Holcomb

Star RT. Box 113 Buffalo

South Dakota

(Post Office Address)

(Applicant)  
(State)

With the following qualifications.

"Vested Right" Claimed

Date of first receipt of application August 22, 1983

Date of return to applicant for correction, amendments or changes required \_\_\_\_\_, 19\_\_\_\_

Date of receipt of corrected application \_\_\_\_\_, 19\_\_\_\_

<sup>Recognized</sup> ~~Approved~~ October 5, 1983, Recorded in Book \_\_\_\_\_ Page \_\_\_\_\_

<sup>Vested</sup> ~~Water RIGHT PERMIT NO.~~ 1290-1

The Water Management Board hereby <sup>recognizes</sup> ~~grants and issues this~~ <sup>Vested</sup> Water Right Permit No. 1290-1 <sup>recognizing</sup> ~~authorizing the~~ construction of the water use system and the putting of water to beneficial use as stated in the Application and as qualified in the <sup>Vested</sup> ~~Water Right Application approval~~, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is June 6, 1904

~~2. The equivalent of at least one fifth of the work above specified is to be completed on or before~~  
\_\_\_\_\_, 19\_\_\_\_

3. The whole of said work is ~~to be completed on or before~~ \_\_\_\_\_, 19\_\_\_\_

4. The ~~limit of time from proof of beneficial use~~ <sup>Completed</sup> of water appropriated in accordance herewith is \_\_\_\_\_, 19\_\_\_\_

5. The water appropriated ~~shall be~~ <sup>is</sup> 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 1.21 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 uses served, and if for 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~~ October 5, 1983; said water to be used during the following described

annual period: March 1 thru October 31

Witness my hand this 28<sup>th</sup> day of October, 1983

THE WATER MANAGEMENT BOARD

By: John Klatte  
Chief Engineer, Water Rights

Certificate of Construction Issued \_\_\_\_\_, 19\_\_\_\_

Water License Issued October 31, 1983

D. Well Information

- (1) Drill Hole, Diameter \_\_\_\_\_, Depth \_\_\_\_\_
- (2) Casing, Type \_\_\_\_\_, Diameter \_\_\_\_\_, Thickness \_\_\_\_\_  
(wood, concrete, steel, etc )
- (3) Screen, Type \_\_\_\_\_, Diameter \_\_\_\_\_, Length \_\_\_\_\_
- (4) Gravel Pack, Thickness \_\_\_\_\_, Length of gravel pack \_\_\_\_\_

E. Dugout Information or Estimates

- (1) Surface dimensions, \_\_\_\_\_, Depth \_\_\_\_\_

F. Fill out for Either a Well or a Dugout.

- (1) Water Bearing Materials. (Attach a copy of test well log)

Depth to top of water bearing material \_\_\_\_\_

Depth to bottom of water bearing material \_\_\_\_\_

Depth to water (ground surface to water level) \_\_\_\_\_

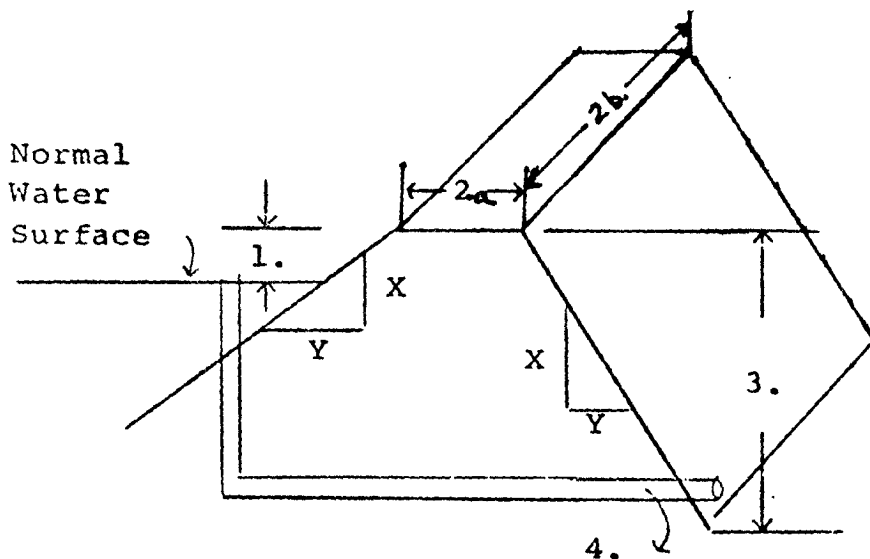
- (2) Distance to nearest existing household or livestock watering well.

On same owner's property \_\_\_\_\_ rds.

On property owned by others \_\_\_\_\_ rds.

G. Water Storage Dams

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, length, maximum water depth, surface area, drainage area, storage capacity, dam slope, dimensions, location and size of outlet works, of each storage dam. The location of each water storage dam should be shown on the water right map.



1. Freeboard 3.0'
- 2a Crest width 10' b. length 500
3. Height of Dam 14'
4. Outlet dimensions:  
Pipe diameter 12" cmp/hd gate  
Spillway width 50'+
- X & Y slope:  
Upstream 4:1  
Downstream 2:1  
Surface area of impoundment 3.0  
Drainage area above dam 7100 ac  
Dam Storage 10.0 ac ft

Permit No. 1290-1Water Division 1 Little Missouri River Water District  
# 10110201REPORT OF EXAMINATION OF WORKS  
AND/OR APPLICATION OF WATER TO BENEFICIAL USE

TO: WATER RIGHTS, WATER MANAGEMENT BOARD / FOSS BLDG., PIERRE, SOUTH DAKOTA 57501

I have this day made a thorough examination of the water use system constructed by Monte Holcomb.

\_\_\_\_\_ of Star Route, Box 113, Buffalo, S.D. 57720 holder \_\_\_\_\_  
 vested right  
 of Permit No. 1290-1, bearing date of priority of June 6, 1904  
 authorizing the diversion of 1.21 cu. ft. per second of the waters of Dodge Draw.  
 for Irrigation purposes, in Harding County.

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

The Water Use System consists of,

## A. Works used to divert the water:

Diversion Dam / 12" CMP thru dam. With Head gate.  
Dam 14' High +, 500' Long; 4'1 x 2'1 SS.; 3.0' Freeboard;  
50' Em Spillway; Water Depth 10.0'; 3.0 Surface Ac.;  
10 Ac Ft storage

## B. Works used to transport water to place of use,

Diversion Ditch

## C. Works used to apply water to beneficial use.

Dikes and Ditches. For Flood IrrigationThe system is in the following condition: GoodThe point of diversion is located 120' N and 500' W of SE Cor Sec. 23  
T 17N R 2EThe works are capable of diverting and conveying to the place of use 3.0  
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 section 24, T 17N R 2E  
NE 1/4 NW 1/4 - 6 Ac., SE 1/4 NW 1/4 - 19 Ac., NE 1/4 SW 1/4 - 20 Ac.  
SW 1/4 SW 1/4 - 27 Ac., SE 1/4 SW 1/4 - 13 Ac.

comprising a total of 85 acres of land.Date August 4, 1982
LeRoy J. Hennigh  
 (Signature)

# Pre-Emption of Right of Way and Location of Water.

TO WHOM THESE PRESENTS MAY CONCERN, know ye, that I, David Willett

..... of the county of Butte in the state of South Dakota, a citizen of the United States, do hereby declare and publish as a legal notice to all the world, that I claim and have a valid right to the occupation, possession and enjoyment of all and singular, all that tract or parcel of land lying and being in the county of Butte, in the state of South Dakota, for the exclusive right of way for the purpose of constructing a flume or water ditch from North Valley Creek stream to the W 1/2 SW 1/4 + SE 1/4

..... of section 24 in Township 17 N. of range 2 East more particularly described as follows: Commencing at a point in North Valley Creek which is 33 feet North thence 474.15 feet West, thence North 28 Deg. 13 Min. West 108.3 feet to the beginning point from which South 28 Deg. 13 Min. East 108.3 thence due East 1800 feet, thence North 25 Deg. East 300 feet on to the W 1/2 SW 1/4 + SE 1/4 Sec. 24 in Twp. 13 North, Range 2 East of the B. H. M.

SE 1/4 SW 1/4, Sec. 24, T17N, R2E <sup>1/25-second feet</sup>  
I also claim and have a valid right to the enjoyment and use of 1000 inches of water from said stream for irrigating purposes to be conveyed through such flume or water ditch to said tract of land, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal this 7<sup>th</sup> day of June ..... A. D. 1904

..... David Willett

Notice posted on stream..... June 6 ..... 1904

Ditch commenced at stream..... June 6 ..... 1904

State of South Dakota, } ss  
County of Butte.

On this 7<sup>th</sup> day of June ..... 1904, before me.....

..... a Notary Public.....

In and for the County and State aforesaid, personally appeared David Willett

to me personally known to be the person who executed the foregoing written instrument, and acknowledged that he executed the same for the uses and purposes therein set forth. Witness my hand and official seal, the day and date above written.

..... O. O. Stokes.....

..... Notary Public.....

My commission expires April 7<sup>th</sup> 1908

(Seal)

# 0396-1

12-23-82. No picture in original folder. Therefore  
this is none that can be found. Picture  
was taken about in the discussion.  
Merritt

# WATER RIGHT DISCUSSION

This involves a Water Right in Section 24 of Township 17 North, Range 2 East in Harding County, South Dakota. The land involved and now owned by Glada Cooper and Monty Holcomb. (Note: The plat shows it as having been formerly owned by Thurlow Cooper and now owned by Lewis and which is in error as it is now owned by Monty Holcomb.)

Since the 7th day of February, 1952, the following named property, to-wit:

the West one-half of the East one-half and the West one-half of Section 24, Township 17 North, Range 2 East, B. H. M., Harding County, South Dakota, containing 480 acres, more or less, according to the Government survey thereof,

was owned in common tenancy by Thurlow Cooper and his sister, Glada Cooper, the latter also known as Glada Cooper Smith. At the time that the Partition action was started Glada was divorced from her husband. The land was actually inherited from their father.

A Partition action was commenced between the brother and sister in reference to the above described property and on the 21st day of September, 1959, the Court entered into the Judgment wherein the Court approved the Partition as set up by the Referee and gave to Glada Cooper the following parcel of land, namely:

the West Half of the East Half and the East Half of the East Half of the West Half of Section 24

and gave to Thurlow E. Cooper the following described parcel of land, namely:

the West Half of the West Half and the West Half of the East Half of the West Half of Section 24, Township 17 North, Range 2 East in Harding County.

After the above Thurlow Cooper sold his land to Monty Holcomb.

The property division by the Court is shown on the plat with the green representing the part that is now owned by Glada Cooper and the red representing the part that was assigned to Thurlow Cooper and subsequently sold to Monty Holcomb.

I think I am correct in stating that at one time a David Willett owned a part of this land, namely:

the West Half of the East Half and the East Half of the West Half of said Section 24, Township 17 - 2, in Harding County.

David Willett never did own any part of the West Half of the West

2

Half of said Section.

David Willett filed for a water right for some of his property on the 15th day of June, 1904, and to the best of my knowledge apparently had the same prepared by some woman who prepared also a plat for him and in which water right Willett requested water from the North Valley Creek for irrigation of portions of his land and which said land to be irrigated was described in said filing as the following:

the West Half of the Southwest Quarter and the Southeast Quarter, Section 27, Township 17 North, Range 2 East.

It becomes apparent at once that Willett was asking for the irrigation of land that he didn't own namely, he did not own all of the Southeast Quarter but only owned the West Half of the Southeast Quarter; and, did not own the West Half of the Southwest Quarter but in fact only owned the East Half of the Southwest Quarter.

Pursuant to his water right, Willett constructed a dam in the Southern part of the West Half of the Southeast Quarter of the Southwest Quarter of said Section and which was on property that he owned. This dam is shown on the plat and also on Pictures 1 and 2.

A county or Township Highway runs all around this particular Section and on the North side of the road that runs along the South side of this Section a fairly deep ditch has been put in, partly as a barrow pit and partly for purposes of a ditch for draining water towards the dam proper and almost directly South of the dam but a little to the West a dugout was made so as to catch water coming down the ditch along the North side of the road and drain it into the dam. The approximate diversion point is shown in Pictures 1 and 2 where I have indicated with a circle and the water then drains down towards that dam. Up until the time that the Monty Holcomb acquired any of this property, the water was drained into the dam from the diversion shown in Pictures 1 and 2 spreading first of all over the land to the South of the dam and the water was approaching the dam and then gathering behind the dam. At about the center of the dam, Willett made an opening and this spot is shown in Picture #3 where two people are standing through<sup>which</sup> the water would spill into a ditch that was constructed immediately on the North side of the dam and which ditch followed the dam proper towards the East and caused the water then to spread over the East Half of the West Half of the Southwest Quarter and over the West Half of the Southeast Quarter and in that area generally draining to the

3

North and on into the West Half of the Northeast Quarter and a low spot being in the Northwest Quarter of the Northeast Quarter. The ditch around the dam on the North side and which was used to cause the spread of the water as of indicated immediately preceeding this sentence, is shown in Picture #4 and as is indicated in said Picture 4 the canal for the ditch on the North side of the dam follows the earthen dam around towards the East and then in somewhat of a straight line towards the other property that was then owned by Willett. This was the condition of the drainage and irrigation system since 1904 and up until a year or two ago when Monty Holcomb acquired the Property.

Now the first thing that we are confronted with is this that the description in the Water Application made on June 15, 1904, was erroneous and the description could only have read to irrigate land owned by Willett in the East Half of the Southwest Quarter and in the West Half of the Southeast Quarter. As stated before Willett did not own the West Half of the Southwest and he did not own the East Half of the Southeast Quarter.

Now, after Holcomb obtained ownership of the land he went in there in 1961 or 62 and closed up the hole in the dam which was used in the past to divert water from the dam into the ditch on the North side of the dam and then on into the land hereinbefore described and put in a new ditch on the West side of the dam and which is shown in Picture #5 and then made a small diversion from this dam so that the water could divert to the East at approximately the point shown in Picture #5 where Glada Cooper is standing. This new diversion by Holcomb completely changes the drainage system and now forces the overflow from the dam to spread out over land that Holcomb owns before it ever gets to the land owned by Glada Cooper and deprives Glada Cooper of the water for irrigation of her land that she has always enjoyed or was entitled to enjoy in the past.

Holcomb was warned in 1962 that he was depriving Glada Cooper of water that she was entitled to, which she had always gotten on her portion of the land since the year 1904 and apparently at which time Mr. Holcomb must have checked the water right filing and then, we believing it was he who did it, put in a plug or dam across the ditch from the North side of the road which is on the South side of this Section near the Southwest Quarter of said Township and which plug is more fully in Picture 6 just a little bit beyond the

telephone post showing in the center of said picture and which causes the water that normally would have gone on down the ditch and then drain into the dam proper to flow out into and flood the area in the Southwest Quarter of the Southwest Quarter. Holcomb apparently taking the position that he has the right to irrigate this land that way by reason of the 1904 filing of Willett. However, note that Willett never owned that property and never did irrigate it under his water right.

The above and foregoing is a history of the situation as it has developed and as it now exists at the present time.

#### LEGAL PROPOSITION

First of all I think if nothing else the vested right to Willett and to his subsequent successors on the portion of land that he actually did and could irrigate from the dam under his 1904 filing and which I think is covered under Supp. Section 7 of SDC. 1960 Supp. 61.01 and particularly Subdivision (e) thereof which reads as follows: "Vested Rights - Uses of water under diversion and applications of water prior to the passage of the 1907 Water Law and not subsequently abandoned or forfeited." There is never been any abandonment of the system of irrigation that was used by Willett and the Coopers, which in effect was a spreading flood type system of irrigating land.

Therefore, it would be my honest opinion that first of all Affidavits should be filed to correct the erroneous description that was given in 1904 and state and show the proper area that apparently was then to be included and which actually was subject to irrigation after the year of 1904 until 1962 when Mr. Holcomb took it upon himself to change the entire system.

The next question that may arise would be as to the partition that was ordered by the Court and whether that in any way effected the water right that was applicable to the land involved. I do not think that the Order of the Court made any change at all in the statutes have always provided that the water is pertinent to the land for irrigation purposes and in SDC 61.0141 our statute provided as follows:

"All water used in this State for irrigation purposes shall remain pertinent to the land upon which it is used."

The above Section has been recodified and the new law now specifically provides as follows in SDC 1960 Supp. 61.0127 as follows:

"Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the Parties thereto, unless filed for record in the Office of the Commission. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed with the Commission, upon assignment; but no right to appropriate water for irrigation purposes shall be assigned, for the ownership thereof and any wise transferred, apart from the land for which it is appertinent, except in the manner especially provided by law; and the transfer of title to land in any manner shall carry with it all rights to the use of water appertinent thereto for irrigation purposes."

Therefore, it is my conclusion that the law specifically provides that any transfer or division that has been made either by the Parties or by the Court carried with it appertinent to the land all rights to the use of water for irrigation purposes that it had enjoyed and had a right to in the past and it has this right without interference from anyone except a prior water right holder.

Our statute goes even further then that and under SDC. 1960 61.0128 provides as follows:

"All water used in this State for irrigation purposes shall remain appertinent to the land upon which it is used; but if for any reason should it at any time become impractical to use all or any part of such water beneficially or economically for the irrigation of any land to which the right of its uses is appertinent, all or any part of such right may be severed from such land and simultaneously transferred and become appertinent to other land without losing priority right thereto fore established, if such change can be made without detriment to existing rights, upon the approval of an application of the owner to the Commission. Before the approval of any such application, the applicant must give notice thereof by publication, in the form required by the Commission, once a week for four (4) consecutive weeks in a newspaper of general circulation in the location of the stream system in which the tracts of land are located. Upon receipt of the proofs of publication, the Commission shall render its decision thereon in writing, which shall be final unless some person interested in the same source of water supply shall, within sixty days, bring appropriate action in the Circuit Court of the County in which the land is located for a review of such decision. If the owner of the land to which water has become appertinent abandons the use of such water upon such land, such water shall become public water, subject to general appropriation."

It then becomes quite obvious that the partition by the Court in no manner affected the water rights and that all water rights appertinent to the property transferred remained appertinent to the land as it always was before and that neither of the owners could make any change in the system of irrigation so as to effect the system of the other without following the procedures set out in 61.0128 as above quoted. This would apply to the change in diversion that Holcomb made in the dam and also applies specifically to the plug that he put in the road ditch.

#### CONCLUSIONS

- (1) I think a corrected Affidavit should be gotten to get the proper description in the 1904 filing as a number one item.
- (2) Legally I think that Glada Cooper can then move into Court by mandamus and injunction requiring Holcomb to restore the dam to its original condition and to remove the plug that he has put in the highway.
- (3) I think the State Water Department make a check and survey of this area to see what water rights are being effected and perhaps the State would at least have some authority over the plug that is in the road ditch.
- (4) I think the supervisors of the road on the South side of the Township concerned which might be a Township or it might even be a County road could be contacted and requested that they cause the said plug to be removed and the drain which Holcomb provided into his place be plugged up again.

COPY.

## PRE-EMPTION OF RIGHT OF WAY AND LOCATION OF WATER.

TO WHOM THESE PRESENTS MAY CONCERN, Know ye, that I, David Willett of the County of Butte, in the State of South Dakota, a citizen of the United States, do hereby declare and publish as a legal notice to all the world, that I claim and have a valid right to the occupation, possession and enjoyment of all and singular, all that tract or parcel of land lying and being in the County of Butte, in the State of South Dakota, for the exclusive right of way for the purpose of constructing a flume or water ditch from North Valley Creek stream to the W1/2 SW1/4 and SE1/4 of section 24 in Township 17 N. of Range 2 East more particularly described as follows: Commencing at a point in North Valley Creek which is 33 feet North thence 474.15 feet West thence North 28 Deg. 13 Min. West 103.3 feet to the beginning point from which South 28 Deg. 13 Min. East 108.5 feet thence due East 1800 feet, thence North 25 Deg. East 300 feet on to the W1/2 SW1/4 and SE1/4 Sec. 24 in Twp. 13 North, Range 2 East of the B.H.W.

I also claim and have a valid right to the enjoyment and use of 1000 inches or 25 second feet of water from said stream for irrigating purposes to be conveyed through such flume or water ditch to said tract of land, together with and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal this 7th day of June A.D. 1904.

David Willett.

Notice posted on stream June 6, 1904.

Ditch commenced at stream June 6, 1904.

State of South Dakota ( ss.  
County of Butte

On this 7th day of June 1904 before me a notary public in and for the County and State aforesaid, personally appeared David Willett to me personally known to be the person who executed the foregoing written instrument, and acknowledged that he executed the same for the uses and purposes therein set forth. Witness my hand and official seal, the day and date above written.

(SEAL)

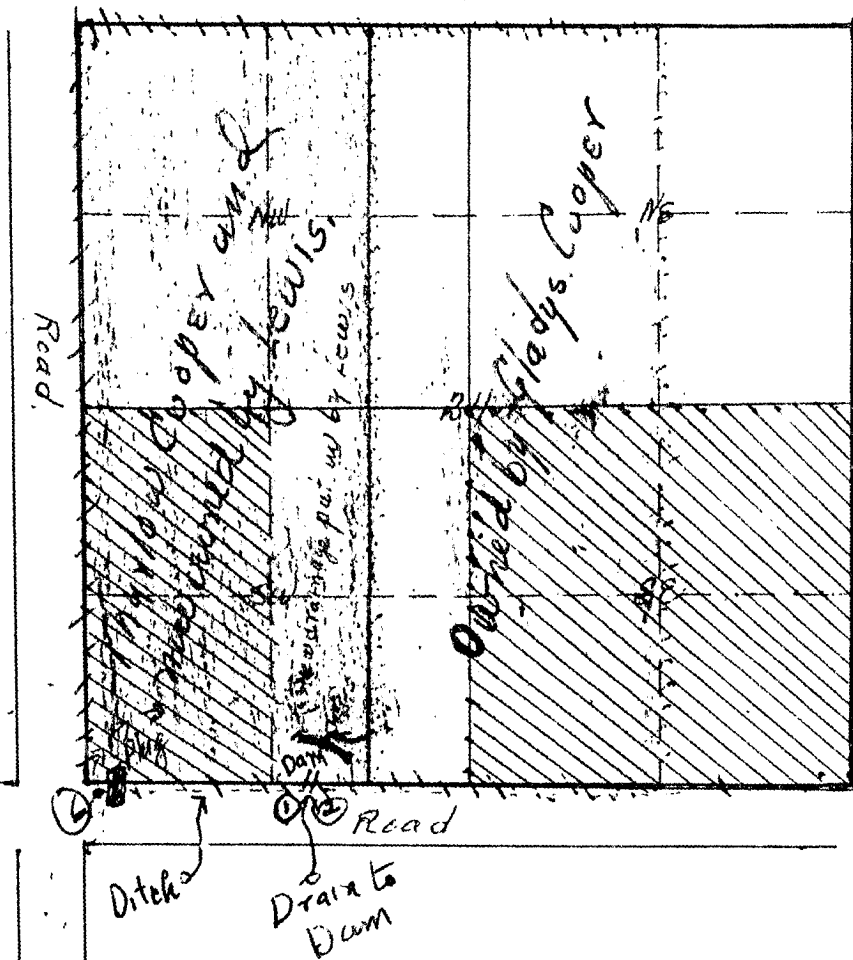
O.O. Stokes, Notary Public.

My commission expires April 7th, 1908.

# 0396-1



17N 2 E  
Harding County



No. \_\_\_\_\_

NOTE: This Form is supplemental to Form 2, and is to be used when an affidavit pertaining to construction and water use, already completed, is needed.

**AFFIDAVIT OF CONSTRUCTION OF WATER USE  
SYSTEM AND APPLICATION OF WATER TO BENEFICIAL USE**

Name of Applicant (Same as Form 2) Monte HolcombPost Office Address Star Rt Box 113, Buffalo, State South Dakota 57720

If a Corporation show date and place of incorporation \_\_\_\_\_

13. Notice of Appropriation (If available) NOTE: The following information taken from Water Right Filing # 0396-1

Date of Posting June 6, 1904 Date of Recording June 7, 1904

Recording Data \_\_\_\_\_

14. Date of start of construction of water supply system June 6, 190415. Date that water was first applied to beneficial use 190416. Name of owner of original water supply system Dave Willett17. Amount of water originally applied to beneficial use 20 c. f. s.

18. Present Use of Water

Amount of water now being used 20 c. f. s.Date that this amount of water was first used 1904

19. Chronological History of Water Use

Constructed by Dave Willett and has been in continual use and in good operating condition since construction.

Thurlow/<sup>Cooper</sup>acquired the property and continued to use the system.

In 1959 Monte Holcomb purchased the land and has used the system to the present time.

Attach to this Form 2B. any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

STATE OF SOUTH DAKOTA )

) ss.

County of Harding )

I, Monte Holcomb, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed Monte HolcombSubscribed and sworn to before me this 19th day of August 1983

THOMAS E. GRASLIE  
Notary Public, STATE OF SOUTH DAKOTA  
My Commission Expires July 12, 1984

Thomas E. Graslief  
(Notary Public - or other qualified Officer)

I, the undersigned do hereby certify that I know about the water use system described above that I have read the going and that the matters therein stated are true.

State of South Dakota

Vested Water License No. 1290-1

(1) Monte Holcomb

of Star Rt, Box 113, Buffalo, South Dakota

Vested Right  
made Application No. 1290-1, August 22, 1983 recognition of the right,  
for a water permit to appropriate

1.21 cubic feet per second of water from Dodge Draw

Harding County, South Dakota for Irrigation purposes.

Vested Right  
A Permit No. 1290-1, with a priority date of June 6, 1904

recognized  
was approved October 5, 1983 and issued to applicant(s) for diversion of water with construction of the described

water supply system to be completed on or before and for the application to beneficial use of said

water on or before

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 1.21 cubic feet per second of water

for beneficial use. The location of the diversion point(s) is 120'N and 500'W of SE corner, Section 23,

T17N, R3E (DD)

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 Section 24, T17N, R2E

NE $\frac{1}{4}$  NW $\frac{1}{4}$  6 acres (BA)

SE $\frac{1}{4}$  NW $\frac{1}{4}$  19 " (BD)

NE $\frac{1}{4}$  SW $\frac{1}{4}$  20 " (CA)

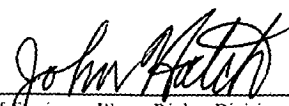
SW $\frac{1}{4}$  SW $\frac{1}{4}$  27 " (CC)

SE $\frac{1}{4}$  SW $\frac{1}{4}$  13 " (CD)

85 acres

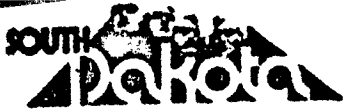
(4) Pursuant to §46-5-30.1 Monte Holcomb  
of Star Route, Box 113, Buffalo, South Dakota  
Vested  
the holder(s) and/or owner(s) of Water <sup>Right</sup> Permit No. 1290-1 is issued a license to appropriate water, the right to use  
1.21 cubic feet per second of water from Dodge Draw with a priority date  
of June 6, 1904 from the location specified in (2) of this license. The water is  
conducted to and upon lands specified in (3) of this license for the purpose of irrigation

Vested  
This license is subject to any limitations or qualifications listed in Water <sup>Right</sup> Permit No. 1290-1 and subject  
to South Dakota State Law.

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

October 31, 1983

This Water License No. 1290-1 is based on a Vested Right Claim filed with the Water Management Board.



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501

WATER RIGHTS DIVISION  
(605) 773-3352

November 1, 1983

Monte Holcomb  
Star Rt, Box 113  
Buffalo SD 57720

Dear Mr. Holcomb:

Enclosed herewith are your Vested Right Permit, Water License No. 1290-1.  
This Water License is the final water right document completing your  
process of obtaining a vested 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,

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

JOHN HATCH, Chief Engineer  
Water Rights Division

JH: ks

enclosures

NOTE: The applicable portions of Water Right Filing 0396-1 have been  
incorporated into Vested Right No. 1290-1 and the abandoned  
portions of Filing No. 0396-1 have been cancelled.

 **Department of  
Water & Natural Resources**

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

1290-1

July 20, 1988

Alice Holcomb  
HCR 2 Box 113  
Buffalo, SD 57720

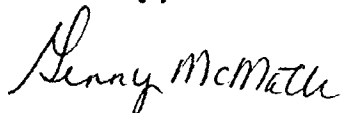
Dear Ms. Holcomb:

Enclosed is a partially completed "Notice of Transfer" for use in filing an ownership change on Vested Water Right Claim No. 1290-1. The form should be checked over by the new owner and signed in the presence of a notary public. Upon completion of the form, return it to our office with a required filing fee of \$2.50. The vested water right claim will then be transferred to the proper name.

South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of a Water Permit or Water Right to appropriate water to be filed with this office within ninety days.

If you have any questions, please contact us.

Sincerely,



GENNY MCMATH  
Natural Resources Analyst  
605 773-3352

enclosure



## NOTICE OF TRANSFER OF REGISTERED WATER RIGHT CLAIM



TO: Water Rights  
Foss Building  
Pierre, SD 57501

Date: Sept. 23, 1988

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

85 acres - E $\frac{1}{2}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  SW $\frac{1}{4}$  Section 24, T17N, R2E

formerly owned by Monte Holcomb, St Rt Box 113, Buffalo, SD 57720

has been transferred to Alice Holcomb HCR 2 Box 113 Buffalo, SD  
(please include complete mailing address) 57720  
together with any rights to the beneficial use of water thereon as evidenced by

Water Right Claim No. 1290-1 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 HARDING ) ss.

I, Nauna Patterson being first duly sworn on my oath depose 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.

Alice Holcomb  
Nauna Patterson  
(Signed)

Subscribed and sworn to before me this 23 Day of September, 1988.

Nauna Patterson  
(Notary Public)

Expires - 4-20-1994

# RECEIPT

Division of Water Rights

411433

South Dakota Department of Water and Natural Resources

Pierre, September 26, 19 88

RECEIVED OF Alice L. Holcomb, HCR 2 Box 113, Buffalo, SD 57720

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>Permit No. 1290-1</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)

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

Joe Foss Building  
Pierre, South Dakota 57501

Water Rights Division

Phone (605) 773-3352

September 27, 1988

Alice L. Holcomb  
HCR 2, Box 113  
Buffalo, South Dakota 57720

Dear Mrs. Holcomb:

Enclosed is receipt No. 411433 in the amount of \$ 2.50 which you  
paid for transfer of Water Right No. 1290-1.

Our records now show you as the owner of this Water Right.

Sincerely,

Maxine Stirling  
Secretary

ms/  
Enc.

**SOUTH DAKOTA**

**VESTED WATER RIGHT NO. 1290-1 FOR IRRIGATION**

Date of Receipt of Claim August 22, 1983.

Date of Validation September 27, 1989.

The Water Management Board validated Vested Water Right Claim No. 1290-1 for irrigation purposes for Alice Holcomb, HCR 2, Box 113, Buffalo SD 57720 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1290-1 appropriates 1.21 cubic feet of water per second from Dodge draw to irrigate 85 acres. Water is diverted by a storage dam (10 acre feet storage capacity) located in the SE1/4 SE1/4 section 23 to irrigate acreage located in the E1/2 NW1/4, NE1/4 SW1/4, S1/2 SW1/4 section 24; all in T17N-R2E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: March 1 - October 31.
3. The priority date of the Vested Water Right is June 6, 1904.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

**WATER MANAGEMENT BOARD**

By:  MAR 11 1993  
Chief Engineer date

Division of Water Rights  
Dept. of Environment and Natural Resources



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

MAR 11 1993

1290-1

Alice Holcomb  
HCR 2, Box 113  
Buffalo SD 57720

Dear Ms. Holcomb:

The Water Management Board has validated the enclosed Vested Water Right No. 1290-1. This validation gives legal status to the claim and is the final document for your vested right.

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

Very truly yours,

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

enclosure

R 2 E

# Monte Holcomb

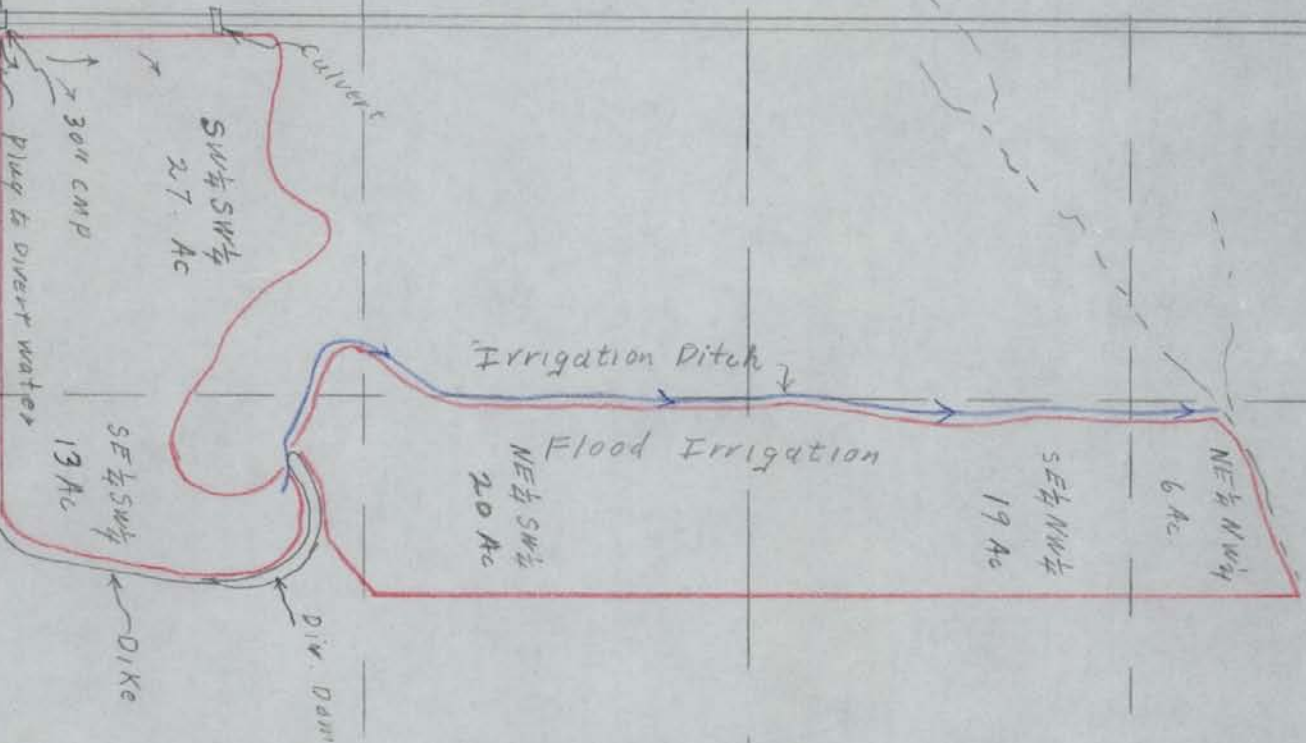
T 17 N

Overlay of  
8" / mi. Aeria map  
by Ed Mennig

7100 Ac. Watershed

Diversion Point  
120' N + 500' W  
of SE cor Sec. 23

12" CMP  
w/ Headgate



Appl. # Map # 1390-1

R 2 E

# Monte Holcomb.

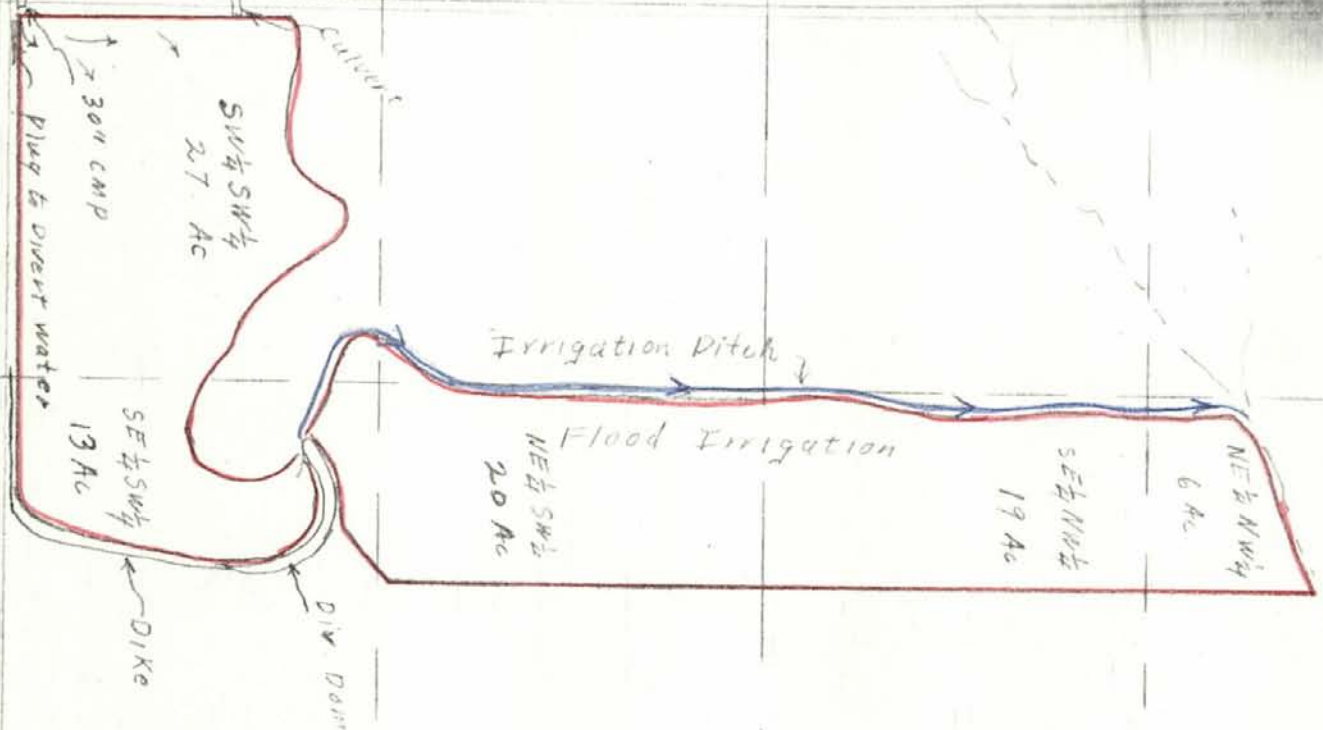
T 17 N

Overlay of  
8" / mi. Aeria map  
by J. M. Mearns

7100 Ac. Watershed

Diversion Point  
120' N + 500' W  
of SE cor Sec. 23

12" CMP  
w/ Headgate



Appl & Map # 1290-1

R 2 E

T 17 N

Monte Holcomb

Overlay of  
8" mi Aeria map  
by J.D. Hester

7100 Ac. Watershed

Diversion Point

120' N + 500' W  
of SE cor Sec. 23

12" CMP  
w/ Headgate

SW  $\frac{1}{4}$  SW  $\frac{1}{4}$   
27 Ac

30' CMP

plug to direct water

SE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
13 Ac

Dike

Div. Dam

Irrigation Ditch

Flood Irrigation

NE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
20 Ac

SE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
19 Ac

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
6 Ac

T 18 N

R 3 E

R 2 E

Monte Holcomb

T 17 N

Overlay of  
8" mi. Aerial map  
by J. J. McNamee

7100 Ac. Watershed

Diversion Point

120' N + 500' W  
of SE cor Sec. 23

12" CMP  
w/ Headgate

SW  $\frac{1}{4}$  SW  $\frac{1}{4}$   
27 Ac

± 30" CMP

Plug to divert water

SE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
13 Ac

Dike

Div. Dam

Irrigation Ditch

Flood Irrigation

NE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
20 Ac

SE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
19 Ac

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
6 Ac

T 22 N

R 1 E

APPE # Map # 1890-1