

Considered: _____

Vested Right Claim
~~WATER PERMIT NO.~~ 1404-1

HAP No. same

Name of Applicant Miller - Mulholand Ditch c/o Joe M. Schenk

Post Office Address Route 1, Box 204, Spearfish SD 57783

Amount of Water Claimed 2.5 cfs Total Acres 88.3

Source of Water Supply Crow Creek

Water to be used for irrigation County Lawrence

About 8 miles NW of Spearfish

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

F.F. & C.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY _____ Date Received May 22, 1987 Fee \$15.00 Remarks _____

Corrected Application Received _____ Period of Annual Use Apr 1 - Oct 31

WATER QUALITY APPROVAL RECEIVED NA APPROVED/CONDITIONAL (Circle one)

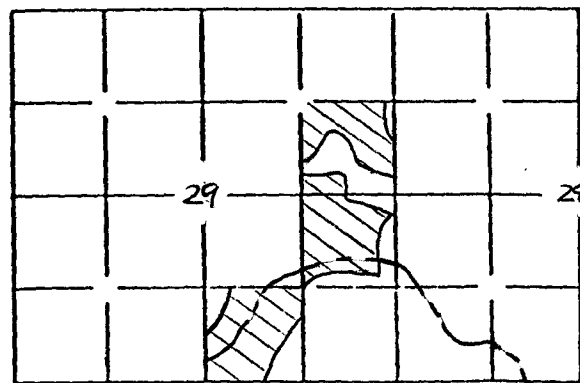
WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point Crow Creek: ^{SE 1/4} ^{SW 1/4} ^{NE 1/4} section 33 -

T7N-R1E

Land to be Irrigated SE 1/4 NE 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4

section 29-T7N-R1E



Well Log: Driller NA Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

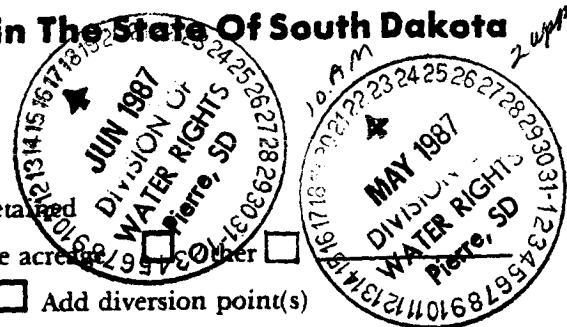
Type of Map aerial photo ~~plat~~ PREPARED BY Rasool Ahadi Reviewed and the Number

assigned on August 12, 1987 By Ron D. Wall

No. <u>1404-1</u>	Hydrologic Unit <u>10120203</u>
Map No. <u>same</u>	Basin <u>Belle Fourche R</u>
Newspaper <u>Queen City Mail/Belle Fourche Daily</u>	
Post _____	

Application For Permit To Appropriate Water Within The State Of South Dakota

Type of Application: Check one or more of the following:

New ☐ Vested Right ☒ Future Use ☐☐ Application to amend Permit No. _____ with old priority date retained☐ Change diversion point(s) ☐ Add diversion point(s) ☐ Change acreage ☐ Other ☐☐ Application to: ☐ Change use ☐ Change diversion point(s) ☐ Add diversion point(s)☐ Add Acreage ☐ Increase diversion rate ☐ Other _____ See Permit No. _____☐ Application to: ☐ Use ☐ Transfer water reserved by Future Use Permit No. _____1. Name of Applicant Miller-Mulholland Ditch/Joe M. Schenk Phone No. 642-2245Post Office Address Route 1, Box 204, Spearfish, South Dakota State 57783
(Street, RR or Box) City Zip Code2. Amount of water claimed (c.f.s) 2.5 Total acres irrigated 88.33. Source of Water supply Crow Creek, tributary of Redwater River4. Location of point of diversion approximately 1930'-E, 600'-S from the NW corner of Section 33, T7N-R1E. SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28-T7N-R1ECounty Lawrence5. Counties where water will be used Lawrence6. Annual period during which water is to be used April 1 thru October 31

7. 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.
SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 29, T7N-R1E	26.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, T7N-R1E	35.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, T7N-R1E	27.3

Land Description	No. Acres Irr.

Attach sheet if more space is needed

8. Give a brief description of proposed project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

This is an application to file a vested right claim pursuant to SDCL 46-5-49.

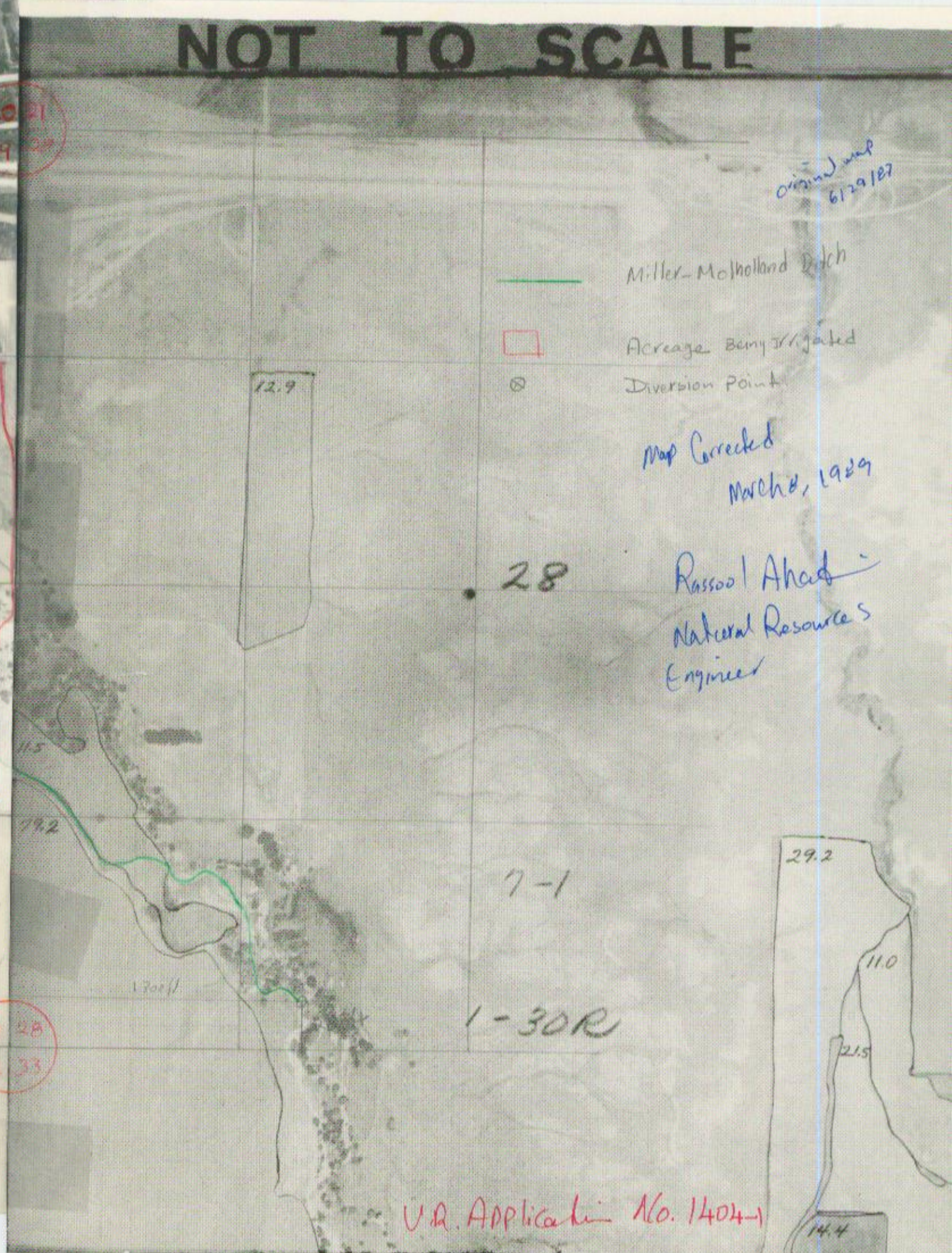
Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)

STATE OF SOUTH DAKOTA)
County of Lawrence)^{ss}I, Joe M. Schenk the applicant, certify that I have read the foregoing application, 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 Joe M. SchenkSubscribed and sworn to before me this 21 day of June 19 87

NOT TO SCALE



NOT TO SCALE



SOUTH DAKOTA

VESTED WATER RIGHT NO. 1404-1 FOR IRRIGATION

Date of Receipt of Claim May 22, 1987.

Date of Validation December 2, 1987.

The Water Management Board validated Vested Water Right Claim No. 1404-1 for irrigation purposes for Miller-Mulholand Ditch c/o Joe M. Schenk, Route 1, Box 204, Spearfish SD 57783 with the following limitations, conditions and qualifications:

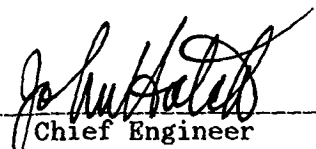
1. Vested Water Right No. 1404-1 appropriates 2.5 cubic feet of water per second from Crow Creek to irrigate 88.3 acres via the Miller-Mulholand Ditch. The Crow Creek diversion point for the Miller-Mulholand Ditch is located in the SE 1/4 SW 1/4 section 28-T7N-R1E. The irrigated acreage is located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4 Section 29-T7N-R1E.
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 acre per year and may not exceed one-seventieth (1/70) cubic feet of water per second for each acre of irrigated land. The water is to be used during the following annual period: April 1 - October 31.
3. The priority date of the Vested Water Right is February 20, 1880.
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.
6. The applicable portions of Location Certificate No. 6879 and No. 7956 have been incorporated into No. 1404-1 and the abandoned portions of No. 6879 and No. 7956 have been cancelled.

QUALIFICATIONS

1. That Vested Water Right No. 1404-1 is subject to domestic use rights. Diversion of water under Water Right No. 1404-1 is contingent upon supplies being available first to domestic users.
2. That a flow measuring device be installed at or near the point of diversion for Miller-Mulholand Ditch within one year of validation of Vested Water Right No. 1404-1. The measuring device shall be permanently installed. The design shall be approved prior to construction, by the chief engineer.

WATER MANAGEMENT BOARD

By: _____


Chief Engineer

APR 6 1990

date

Division of Water Rights

Dept. of Water and Natural Resources

ATTACHMENT A
VESTED WATER RIGHT NO. 1404-1

1. That Vested Water Right No. 1404-1 is subject to domestic use rights. Diversion of water under Water Right No. 1404-1 is contingent upon supplies being available first to domestic users.
2. That a flow measuring device be installed at or near the point of diversion for Miller-Mulholand Ditch within one year of validation of Vested Water Right No. 1401-1. The measuring device shall be permanently installed. The design shall be approved prior to construction, by the Chief Engineer.

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1404-1 FOR IRRIGATION

(1) Miller-Mulholand Ditch, %Joe Schenk of RR 1, Box 204, Spearfish SD 57783 made Application No. 1404-1, March 22, 1987 for validation of a vested right claim to appropriate 2.5 cubic feet of water per second from Crow Creek, Lawrence County, South Dakota for irrigation purposes. Vested Water Right No. 1404-1 was validated December 2, 1987 with a priority date of February 20, 1880. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

(2) The applicant is entitled to divert 2.50 cubic feet of water per second for beneficial use. The location of the diversion point is in the SE 1/4 SW 1/4 Section 28, T7N, R1E.

The location of the irrigated acreage is:

T7N, R1E, Section 29	SE 1/4 NE 1/4	26.0 acres
	NE 1/4 SE 1/4	35.0 acres
	SW 1/4 SE 1/4	27.3 acres

TOTAL 88.3 acres

(3) Pursuant to Section 46-5-30.1 Miller-Mulholand Ditch, %Joe M Schenk, RR 1, Box 204, Spearfish SD 57783 the holder(s) and/or owner(s) of Vested Water Right No. 1404-1 is issued a license to appropriate 2.50 cubic feet of water per second from Crow Creek with a priority date of February 20, 1880 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 1404-1 and subject to South Dakota State Law.



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

APR 6 1990

Affidavit of Water Use

No. _____

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use already constructed is needed, primarily with vested right claims.

**Affidavit Of Construction Of Water Use System
And Application Of Water To Beneficial Use**

Name of Applicant (Same as Form 2) Miller-Mulholand Ditch/Joe M. Schenk

Post Office Address Route 1, Box 204, Spearfish, South Dakota 57783
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation NA Date of Posting NA

Date of recording December 15, 1880 Recording date Lawrence Co. 14 368
Where Book Page

B. Date of start of construction of water supply system 1880

C. Date that water was first applied to beneficial use February 20, 1880

D. Name of owner of original water supply system Elial Miller, Thomas Mulholand

E. Amount of water originally applied to beneficial use 320 miner's inches

F. Present Use of Water - Amount of water now being used irrigation - 2.5 cfs

Date that this water was first used February 20, 1880

G. Chronological History of Water Use

To the best of my knowledge the ditch has always been in use since it was constructed.

and has always claimed, and still do all the water in the spring, that feed this ditch except the domestic use, set aside by the courts to other party.

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

County of Butte

I, Joe M. Schenk the applicant, certify that I have read the foregoing
(print or type)
 and that the matters therein stated are true.

Signed Joe M. Schenk

Subscribed and sworn to before me H. M. A. Habeck, 19 87

H. M. A. Habeck

Notary Public for the State of South Dakota
 My Commission Expires 11-1-90

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

 (Print name) 19____

 (Print name) 19____

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

410914

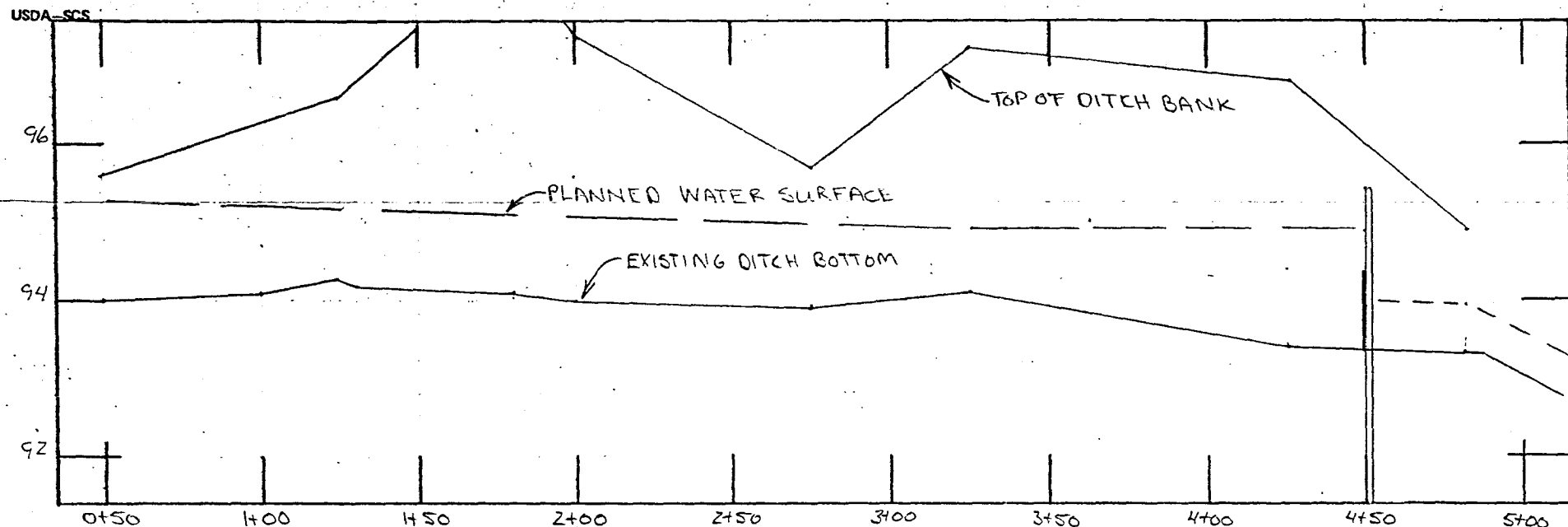
Pierre, June 17, 1987

RECEIVED OF Miller-Mulholand Ditch/Joe M. Schenk, Rt. 1, Box 204, Spearfish, SD 57783
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>1404-1</u> to Appropriate Water, to construct works and to put water to beneficial use _____	15 00 VR
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 _____	
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	15 00

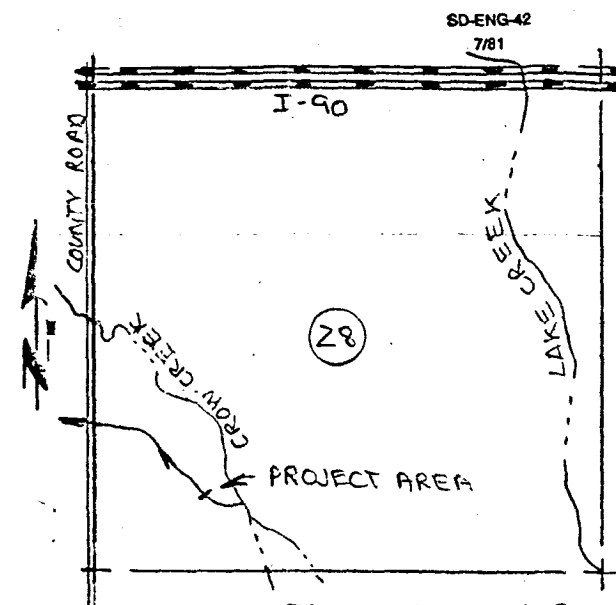
By John Hatch
Chief Engineer JOHN HATCH



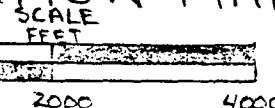


PROFILE OF DITCH

SCALE: Vert 1"=2', Horiz 1"=50'

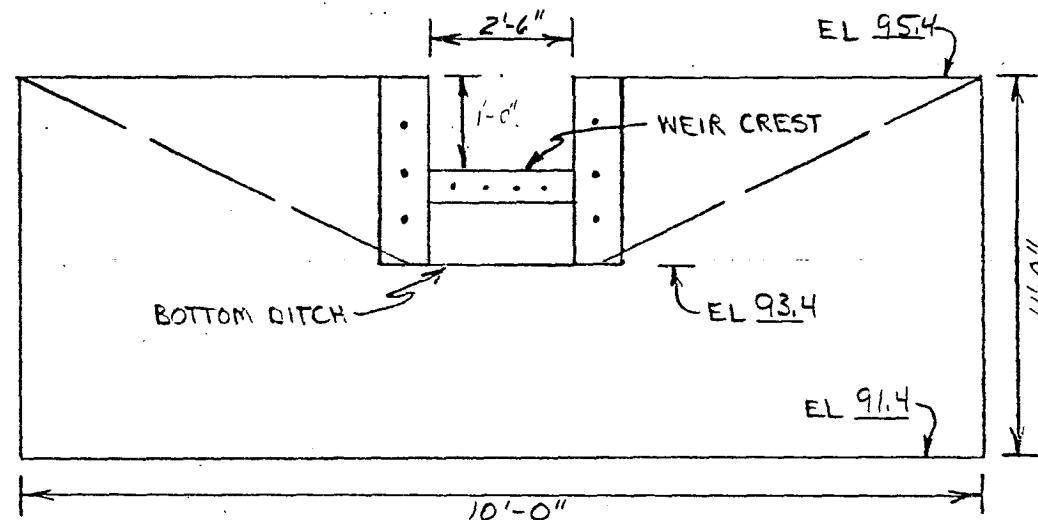
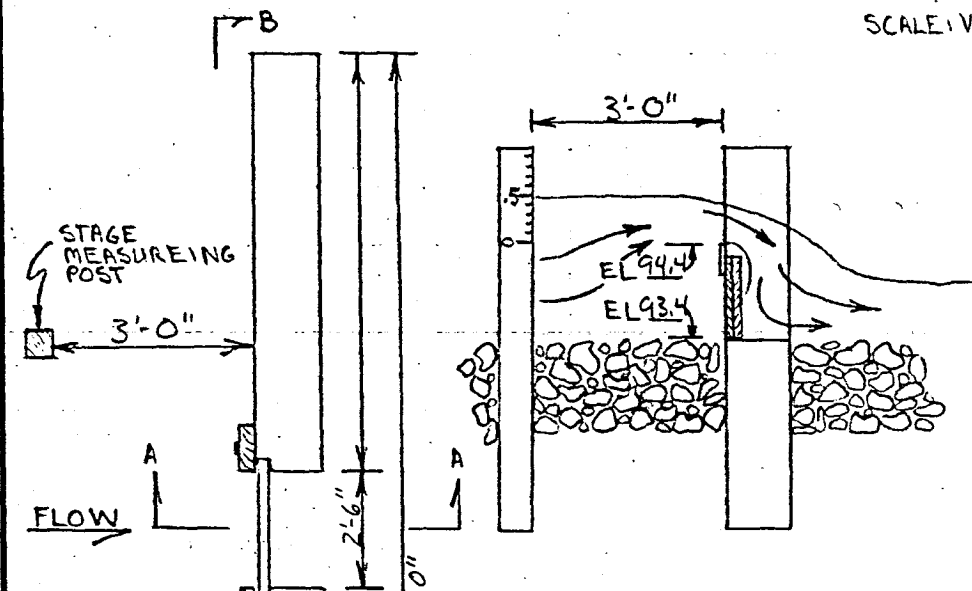


LOCATION MAP

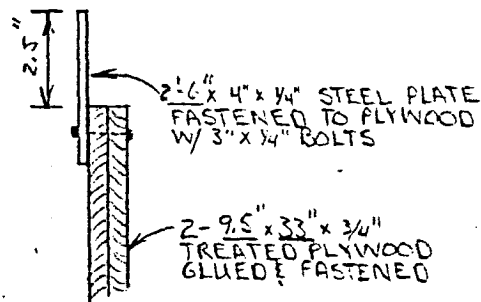


WEIR
DISCHARGE

H (FEET)	Q (CFS)
1.0	7.66
.9	6.65
.8	5.58
.7	4.60
.6	3.68
.5	2.83
.46	2.50
.4	2.04
.3	1.34
.2	0.73
.1	0.24



REINFORCED CONCRETE
W/ 24 BAR 12" C-C
EACH WAY



CREST DETAIL
(NO SCALE)

PLAN VIEW
(NO SCALE)

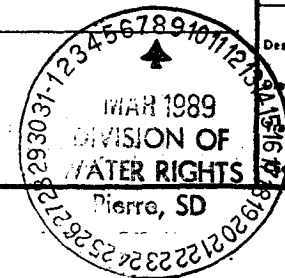
NOTE: 1) DITCH BANKS & BOTTOM NEEDS
ROCK PROTECTION 4' UPSTREAM &
6' DOWNSTREAM FROM WEIR
2) PLACE RE-BAR IN CENTER OF
8" THICK CONCRETE WALL, LEAVE
3" CLEAR SPAN DISTANCE FROM ALL
EDGES.

SHARP-CRESTED WEIR
JOE SCHENK

SEC 28, T7N-R1E LAWRENCE CO.

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Designed	T. VERHELST	Date	3/1/89
Approved by	[Signature]		
Title	[Signature]		
Sheet	No. 1	Drawing No.	
of			





Weir Dimensions:

Reg'd Flow - 2.5 cfs

Try $L = 2.5'$ $H = .5'$

$$\begin{aligned} Q &= 3.33 H^{3/2} (L - 0.2 H) \\ &= 3.33 (0.5)^{3/2} (2.5 - 0.2(.5)) \\ &= 2.83 \text{ cfs} \end{aligned}$$

End Contraction Requirements:

$$\begin{aligned} \text{Crest Above Bottom} &= 2H \\ &= 2(.5) \\ &= 1.0' \end{aligned}$$

$$\begin{aligned} \text{Side Walls From Bank} &= 2H \\ &= 2(.5) \\ &= 1.0' \end{aligned}$$

Elevations:

EL. Bottom Ditch - 93.4

EL. Crest Weir - 94.4

EL. Flow @ 2.5 cfs - 94.86

EL. TOP of Wall - 95.4

Seepage Control:

$$\begin{aligned} \Sigma L_v &= C_w H - \frac{1}{3} \Sigma L_H \\ &= 2.3 (.5) - \frac{1}{3} (.67) \\ &= 3.23 \end{aligned}$$

$$L_1 = 3.23 / 2 = 1.62'$$

1.0	- 7.66
.9	- 6.65
.8	- 5.58
.7	- 4.60
.6	- 3.68
.5	- 2.83
.4	- 2.04
.3	- 1.34
.2	- 0.73
.1	- 0.24

WATER RIGHTS

Water Right Owner		Priority Date
J. K. Schenk		Feb. 20, 1880
George Papoušek		Feb. 20, 1880
Mrs. Lorna F. Rebbe		Apr. 1880
George Papoušek		and cannot find date

Bruce Miller

Scale - 4 inches = 1 mile



17-7-1

16-7-1

CROW



INDICATES AREA REPORTED AS FORMERLY IRRIGATED

CROW CREEK IRRIGATION

STOTTS DITCH ST

20-7-1

21-7-1

REBBE DITCH RE

29-7-1

28-7-1

MILLER - MULHOLLAND DITCH MM

6-23, 1982

The information on this map was made
from a field investigation by LeRoy J. Mernaugh
Tim Schaaf and Joe and Dan Schenk

~~Joe Schenk~~ Joe Schenk



DITCH DIVERSION SERVICE
CROW CREEK IRRIGATION

DEC. 1964

Name of Ditch MILLER - MULHOLLAND DITCH Stream CROW CREEK

Address _____ Purpose IRRIGATION

Location of Diversion Point SE $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 22, T7N, R1E, B.H.M.

Maximum Diversion Rate 2.38 cubic feet per second (119.2 miners inches)

Total Irrigated Acreage Served 119.2.

<u>Description of Lands Served</u>		<u>Acreage</u>	<u>Owner</u>
T7N, R1E			
Sec. 29			
A	SE $\frac{1}{4}$, NE $\frac{1}{4}$	15	J. K. Schenk
	NE $\frac{1}{4}$, SE $\frac{1}{4}$	31	
		46	
B	SW $\frac{1}{4}$, SE $\frac{1}{4}$	8.2	George Papoušek
		8.2	
		53.2	
C	NW $\frac{1}{4}$, SE $\frac{1}{4}$ *	10	George Papoušek
	NW $\frac{1}{4}$, SE $\frac{1}{4}$ *	15	
		17	
D	SW $\frac{1}{4}$, NE $\frac{1}{4}$ *	1	George Papoušek
	SE $\frac{1}{4}$, NW $\frac{1}{4}$	1	
		34	
E	NE $\frac{1}{4}$, SW $\frac{1}{4}$ *	22	George Papoušek
		22	
		66	
		119.2	

DITCH DIVERSION SERVICE
CROW CREEK IRRIGATION

DEC. 1964

Name of Ditch REBBE DITCH Stream CROW CREEK

Address _____ Purpose IRRIGATION

Location of Diversion Point SE $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 28, T7N, R1E, S.H.M.

Maximum Diversion Rate .74 cubic feet per second (37 miners inches)

Total Irrigated Acreage Served 37.

<u>Description of Lands Served</u>		<u>Acreage</u>	<u>Owner</u>
T7N, R1E			
Sec. 28			
A	SW $\frac{1}{4}$, NW $\frac{1}{4}$	<u>25</u>	Mrs. Leona F. Rebbe
	NW $\frac{1}{4}$, SW $\frac{1}{4}$	11	
B	NE $\frac{1}{4}$, SW $\frac{1}{4}$	<u>1</u>	
		<u>12</u>	
		<u>37</u>	

December 14, 1961

Mrs. Leone F. Rebbe
Spearfish, S. Dak.

Re: Rebbe Ditch

Dear Mrs. Rebbe:

The State Water Resources Commission has been making a study of water use pertaining to the surface flows of Redwater River and its tributaries in South Dakota.

As a part of this study, a search has been made for written records and documents which pertain to the diversions of the water. The Commission found the following pertaining to the Rebbe Ditch:

- (1) "Location Certificate" of Addison Myers and John Mulholland claiming appropriation date of July 24, 1880 filed in Book 14, page 207, in Lawrence County.
- (2) "Certificate" of Elial Miller and Thomas Mulholland claiming appropriation date of February 20, 1880 for 320 miner's inches of the waters of Crow Creek, filed in Book 14, page 368.
- (3) "Location Certificate" of Geo. W. Stotts and John P. Stotts, located April 1, 1878, filed in Book 27, page 56.
- (4) Supreme Court Opinion, filed July 8, 1908, Driskill et al v. Rebbe et al, Volume 22, South Dakota Reports page 242-256.
- (5) Rehearing in Supreme Court. Driskill v. Rebbe, Opinion filed November 14, 1911.
- (6) Modified Judgement, Eighth Judicial Circuit, Driskill v. Rebbe, dated January 26, 1912.

When water rights are involved in court action, as were the Miller-Mulholland, the Rebbe and the Stott's water rights, the final ruling of the Court in effect

December 14, 1961

interprets, determines and establishes the water rights to the extent specified by the Court. Based on the Supreme Court Opinion, the Supreme Court Rehearing and the Modified Judgement of the Circuit Court, it appears that of the three water rights involved:

(1) The Miller-Mulholland ditch has first priority, based on a filing date of February 20, 1880. The Courts did not specify the amount of water to be diverted under this water right, but the Courts did specify that the owner of an undivided one-half interest in this ditch and water right was entitled to divert waters of Crow Creek to the extent necessary and proper for domestic uses and the irrigation of from 125 to 130 acres of land, not exceeding an undivided one-half of the capacity of the ditch at the time of the Modified Judgement in Circuit Court.

(2) The Rebbe Ditch has second priority, based on a settlement date in April 1880. The Courts did not specify the amount of water to be diverted under this water right, but the Courts did specify that the riparian owner of the land, irrigated from the Rebbe Ditch at the time of the Modified Judgement in Circuit Court, could divert water from Crow Creek to the extent necessary and proper for domestic purposes and for irrigation of land that is cultivable and riparian to Crow Creek.

(3) The Stotts Ditch has third priority based on prescription of the Stotts ditch and water right. The Courts did not specify a priority date of this water right nor the amount of water that could be diverted, but the Courts did specify that the owner of this water right could divert waters remaining in Crow Creek after supplying the Miller-Mulholland water right and the Rebbe riparian right.

It would be advisable for you to check to see if you can locate additional records that pertain to the Rebbe Ditch. The Water Resources Commission would appreciate being informed about any additional data you find that you deem applicable, in order to obtain as complete a record as possible, and would arrange to have a representative meet with you to discuss the information contained in this letter and such additional information as you might find, if you so desire.

Mrs. Leone F. Rebbe

December 14, 1961

A letter dated January 14, 1961 was sent to you enclosing a map showing fields reported to be irrigated and the acreages of these fields. With your help these fields and acreages have been revised. Enclosed, for your information, is a copy of the revised map and the revised list of owners and acreages.

Sincerely,

J. W. GRIMES
Executive Officer and
Chief Engineer

Encls: Map & List

December 14, 1961

Mrs. J. E. Schenk
RFD 1
Spearfish, S. Dak.

Re: Miller-Mulholland Ditch

Dear Mrs. Schenk:

The State Water Resources Commission has been making a study of water use pertaining to the surface flows of Redwater River and its tributaries in South Dakota.

As a part of this study, a search has been made for written records and documents which pertain to the diversions of the water. The Commission found the following pertaining to the Miller-Mulholland Ditch:

- (1) "Location Certificate" of Addison Myers and John Mulholland claiming appropriation date of July 24, 1880 filed in Book 14, page 207, in Lawrence County.
- (2) "Certificate" of Elial Miller and Thomas Mulholland claiming appropriation date of February 20, 1880 for 320 miner's inches of the waters of Crow Creek, filed in Book 14, page 368.
- (3) "Location Certificate" of Geo. W. Stotts and John P. Stotts, located April 1, 1878, filed in Book 27, page 36.
- (4) Supreme Court Opinion, filed July 8, 1908, Driskill et al v. Rebbe et al, Volume 22, South Dakota Reports page 242-256.
- (5) Rehearing in Supreme Court. Driskill v. Rebbe, Opinion filed November 14, 1911.
- (6) Modified Judgement, Eighth Judicial Circuit, Driskill v. Rebbe, dated January 26, 1912.

When water rights are involved in court action, as were the Miller-Mulholland, the Rebbe and the Stott's water rights, the final ruling of the Court in effect interprets, determines and establishes the water rights to the extent specified by the Court. Based on the Supreme Court Opinion, the Supreme Court Rehearing and the Modified Judgement of the Circuit Court, it appears that of the three water rights involved:

- (1) The Miller-Mulholland ditch has first priority, based on a filing date of February 20, 1880. The Courts did not specify the amount of water to be diverted under this water right, but

Mrs. J. K. Schenk

December 14, 1961

the Courts did specify that the owner of an undivided one-half interest in this ditch and water right was entitled to divert the waters of Crow Creek to the extent necessary and proper for domestic uses and the irrigation of from 125 to 130 acres of land, not exceeding an undivided one-half of the capacity of the ditch at the time of the Modified Judgement in Circuit Court.

(2) The Rebbe Ditch has second priority, based on a settlement date in April 1880. The Courts did not specify the amount of water to be diverted under this water right, but the Courts did specify that the riparian owner of the land, irrigated from the Rebbe Ditch at the time of the Modified Judgement in Circuit Court, could divert water from Crow Creek to the extent necessary and proper for domestic purposes and for irrigation of land that is cultivable and riparian to Crow Creek.

(3) The Stotts Ditch has third priority based on prescription of the Stotts Ditch and water right. The Courts did not specify a priority date of this water right nor the amount of water that could be diverted, but the Courts did specify that the owner of this water right could divert waters remaining in Crow Creek after supplying the Miller-Mulholland water right and the Rebbe riparian right.

It would be advisable for you to check to see if you can locate additional records that pertain to the Miller-Mulholland Ditch. The Water Resources Commission would appreciate being informed about any additional data you find that you deem applicable, in order to obtain as complete a record as possible, and would arrange to have a representative meet with you to discuss the information contained in this letter and such additional information as you might find, if you so desire.

A letter dated January 14, 1961 was sent to Mr. J. K. Schenk enclosing a map showing fields reported to be irrigated and the acreages of these fields. These fields and acreages have been revised. Enclosed, for your information, is a copy of the revised map and the revised list of owners and acreages.

Sincerely,

J. W. GRIMES
Executive Officer and
Chief Engineer

Encls: Map & List

CC: Mr. J. M. Schenk
RFD 1
Spearfish, S. Dak.

December 14, 1961

Mr. George F. Papousek
RFD 1
Spearfish, S. Dak.

Re: Miller Mulholland Ditch
Stotts Ditch

Dear Mr. Papousek:

The State Water Resources Commission has been making a study of water use pertaining to the surface flows of Redwater River and its tributaries in South Dakota.

As a part of this study, a search has been made for written records and documents which pertain to the diversions of the water. The Commission found the following pertaining to the Miller-Mulholland and Stotts Ditch:

(1) "Location Certificate" of Addison Myers and John Mulholland claiming appropriation date of July 24, 1880 filed in Book 14, page 207, in Lawrence County.

(2) "Certificate" of Elial Miller and Thomas Mulholland claiming appropriation date of February 20, 1880 for 320 miner's inches of the waters of Crow Creek, filed in Book 14, page 368.

(3) "Location Certificate" of Geo. W. Stotts and John P. Stotts, located April 1, 1878, filed in Book 27, page 56.

(4) Supreme Court Opinion, filed July 8, 1908, Driskill et al v. Rebbe et al, Volume 22, South Dakota Reports page 242-256.

(5) Rehearing in Supreme Court. Driskill v. Rebbe, opinion filed November 14, 1911.

(6) Modified Judgement, Eighth Judicial Circuit, Driskill v. Rebbe, dated January 26, 1912.

When water rights are involved in court action, as were the Miller-Mulholland, the Rebbe and the Stott's water rights, the final ruling of the Court in effect interprets, determines and establishes the water rights to the extent specified by the Court. Based on the Supreme Court Opinion, the Supreme Court Rehearing and the Modified Judgement of the Circuit Court, it appears that of the three water rights involved;

December 14, 1961

(1) The Miller-Mulholland ditch has first priority, based on a filing date of February 20, 1880. The Courts did not specify the amount of water to be diverted under this water right, but the Courts did specify that the owner of an undivided one-half interest in this ditch and water right was entitled to divert the waters of Crow Creek to the extent necessary and proper for domestic uses and the irrigation of from 125 to 130 acres of land, not exceeding an undivided one-half of the capacity of the ditch at the time of the Modified Judgement in Circuit Court.

(2) The Rebbe Ditch has second priority, based on a settlement date in April 1880. The Courts did not specify the amount of water to be diverted under this water right, but the Courts did specify that the riparian owner of the land, irrigated from the Rebbe Ditch at the time of the Modified Judgement in Circuit Court, could divert water from Crow Creek to the extent necessary and proper for domestic purposes and for irrigation of land that is cultivable and riparian to Crow Creek.

(3) The Stotts Ditch has third priority based on prescription of the Stotts ditch and water right. The Courts did not specify a priority date of this water right nor the amount of water that could be diverted, but the Courts did specify that the owner of this water right could divert waters remaining in Crow Creek after supplying the Miller-Mulholland water right and the Rebbe riparian right.

It would be advisable for you to check to see if you can locate additional records that pertain to the Miller-Mulholland and Stotts Ditch. The Water Resources Commission would appreciate being informed about any additional data you find that you deem applicable, in order to obtain as complete a record as possible, and would arrange to have a representative meet with you to discuss the information contained in this letter and such additional information as you might find, if you so desire.

A letter dated January 14, 1961 was sent to you enclosing a map showing fields reported to be irrigated and the acreages of these fields. With your help these fields and acreages have been revised. Enclosed, for your information, is a copy of the revised map and the revised list of owners and acreages.

Sincerely,

J. W. GRIMES
Executive Officer and
Chief Engineer

Encls: Map and List

7956.

CERTIFICATE

Miller Water Right.

Crow Creek.

Elial Miller.

Filed Dec. 15, 1880. 10:30 A.M.

C. E. McKinnis, Register of Deeds

By W. H. Watt, Deputy.

Know all men by these presents That we, the undersigned, have this day located and appropriated Three hundred and twenty (320) inches Miners Measurement of the waters of Crow Creek in Lawrence County, Dakota Territory, situated about two miles East of the Territorial line between Wyoming and Dakota Territories, for Mining, Milling, Agricultural, Culinary, domestic, ice manufacturing, irrigating or any other useful or beneficial purpose to which said waters can be applied, to be taken out of said creek at a point about from one quarter to one half mile South of the point of the diversion of the Water Right on said Creek claimed by George Stotts, and near a clump of Elms at or near the source of said creek. We also claim the right to divert and convey said waters by ditch pipe or flume to any point where they can be used for any of the purposes above mentioned.

Located and appropriated this 20th day of February A. D., 1880. This shall be known as the Miller Water Right.

Elial Miller

Thomas Mulholland

STATE OF SOUTH DAKOTA)
) ss
 COUNTY OF LAWRENCE)

I hereby certify that the within instrument is a true, correct and complete copy of the instrument as recorded in my office on the 15th day of December, 1880, at 10:30 A. M., in Book 14 at Page 368.

Dated this 10th day of September, 1960.

9.4.3

5879.

LOCATION CERTIFICATE.

"Myers and Mullholland Water Right".
 Crow & Beaver Creek.
 Addison Myers, et al.
 Filed Sept. 8th, 1880. at 8 o'clock A.M.
 C. H. McKinnis, Register of Deeds
 By W. H. Watt, Deputy.

Know all men by these presents, that we, the undersigned citizens of the United States and residents of the County of Lawrence and Territory of Dakota, have this day located and appropriated all the waters flowing in Crow and Beaver Creeks at a point about a quarter of a mile below the confluence of said creeks. Said creeks are situated about eight (8) miles in a Westerly direction from the town of Spearfish in said County and Territory. This shall be known as the "Myers & Mullholland Water Right", and is claimed for mining, milling, agricultural, irrigating, domestic, culinary, ice manufacturing or any other useful or beneficial purposes to which said waters can be applied.

We also claim the right to divert and convey said waters by ditch pipe or flume to any point where they can be used for any of the purposes above mentioned.

Located and appropriated July 24, 1880.

Addison Myers

John Mullholland

STATE OF SOUTH DAKOTA)
) ss
 COUNTY OF LAWRENCE)

I hereby certify that the within instrument is a true, correct and complete copy of the instrument as recorded in my office on the 8th day of September, 1880, at 8 o'clock A. M., in Book 14 at Page 207.

Dated this 30th day of September, 1960.

William H. Barker

RECORDS SECTION 35 ROLL NO. 1
 S-4-83
 DATE RECORDED
 INDEXED

WATER RIGHTS DIVISION
(605) 773-3352

April 23, 1987

Joe M. Schenk
Route 1, Box 204
Spearfish, South Dakota 57783

RE: Miller-Mulholand Ditch

Dear Mr. Schenk:

Enclosed you will find a set of application forms to file your vested right claim. Please review the forms for accuracy, sign in the presence of a notary and return to this office with a filing fee of \$15.00.

If you have any questions, please feel free to contact me.

Sincerely,

Rassool Ahadi
Natural Resources Engineer

RA:ms
Enc.

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

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

November 18, 1981

Joe Schenk
RR 1
Spearfish SD 57783

Keith & Leland Johnson
Box AB
Spearfish SD 57783

Gentlemen:

An investigation was conducted in your area with regard to the diversion of the Miller-Mulholland Ditch diversion and the Rebbe Ditch diversion. It was noted, that a large amount of digging had taken place causing the entire flow of the spring to enter the Crow Creek Channel. It appears that by this work, it has limited the diversion capability of the Rebbe Ditch to a point where the Rebbe Ditch can not obtain water.

The priorities according to the office of Water Rights on Crow Creek in this particular area are as follows:

- (1) Miller-Mulholland Ditch
- (2) Rebbe Ditch
- (3) Stotts Ditch

When water is not being put to beneficial use for the lands under the Miller-Mulholland Ditch, then water must be made available to the lands under the Rebbe Ditch. The lands as reported by the Water Resources Commission investigations which have water rights under these ditches are as follows:

- (1) Under the Miller-Mulholland Ditch:
 - a) In the center quarter of Sec 29 - 72.2 acres
 - b) SW $\frac{1}{4}$ SE $\frac{1}{4}$ - 8.2 acres
 - c) NE $\frac{1}{4}$ SE $\frac{1}{4}$ - 22.0 acres
 - d) SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ - 4.4 acresTotal - 106.8 acres

- (2) Under the Rebbe Ditch
 - a) In the W $\frac{1}{2}$ SW $\frac{1}{4}$ - 11.5 acres total

Something must be done in order to correct the problem near the Rebbe Ditch headgate. A control structure could be placed in such a manner as it will provide a means for raising the water elevation for the Rebbe Ditch when not in use on the Miller-Mulholland lands. It is strongly suggested that you and the Johnson Brothers get together and resolve the problem.

There is another means of diverting the water for the lands covered under the Rebbe Ditch which is by use of a pump to divert and carry the water to the lands to be irrigated. I have not talked to the Johnson Bros. about this possibility. The main thing is to keep each other informed on the plans for irrigation, and work together to get the best benefit out of the available supplies of water.

November 18, 1981
Joe Schenk, Keith & Leland Johnson
Page 2

If something can not be worked out, then it may be necessary for this office to intervene and issue orders or it may be settled in a court action.

Please advise me if there are any questions.

Very truly yours,

JAMES WINTERTON
Water Resources Engineer

JW:ks



Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

June 30, 1982

Joe Schenk
RR 1
Spearfish SD 57783

Dear Mr. Schenk:

In reply to your complaint investigated by Leroy Mernaugh and Tim Schaal of this office concerning the moving of dirt causing adverse affects on your diversion from Crow Creek, the investigation found that water was capable of being diverted from the creek in a quantity sufficient to meet your needs to irrigate the lands covered by the Miller-Mulholland ditch. The work completed by the Johnson's did not appear to have adversely affected your capability to irrigate.

Last year the complaint was from the Johnson's regarding your digging within the channel in what appeared to be an attempt to get more flow out of the springs. I believe both the Johnson's and yourself can utilize the flows of Crow Creek without damage to each other. There is no action this office can take unless water rights are shown to be adversely affected. This office realizes that the major problem between you and the Johnson's is more personal than anything else. This office does not want to be the scapegoat for personal feuds.

As far as whether or not the Rebbe Ditch is still a vaild water right remains to be seen. If it can be shown that the Ditch has not been used for irrigation then the water right is forfeited for nonuse. However, reasonable domestic use would still be allowed for individual household purposes and irrigation of a family garden consisting of one half acre or less.

Investigations are being conducted in the Spearfish Redwater Area to determine existing rights, the amount of water being put to beneficial use, and lands under irrigation. When completed, the validity of any claim to water will have to come before the Water Management Board for their recognition of the claim. I hope this will straighten out our records as to whether or not certain claims to water are valid.

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

Very truly yours,

JAMES WINTERTON
Water Resources Engineer

JW:ks

DIVERSION DITCH SERVICE

NAME OF THE DITCH:

ADDRESS:

DIVERSION POINT:

MAXIMUM DIVERSION RATE:

ACREAGE SERVED:

Joe M. Schenk Miller Mulholland
R-I Box 204 Sparfish Lake
S-1/2
SW 1/4 SEC. 28 T 7 N-R 1 E; SOURCE: Spring & Crow Creek
1.2 C.F.S. or about
90 ACRES Schenk 1/2 W M ditch

LANDOWNER'S

NAME

LOCATION OF LAND

BEING IRRIG. BY

THIS DITCH

ACREAGE

COMMENTS

Joe M. Schenk

29-7-1

90

When an owner of a joint party ditch gives up his right to said ditch does his water go to the remaining owners of ditch. I have asked this question before & have not had satisfactory answer. Please let me know if you have to apply for it or not.

Joe Schenk

Fish - E 1/2 mile

S. of Rd. Re. House



LANDOWNER'S
NAME

LOCATION OF LAND
BEING IRRIG. BY
THIS DITCH

ACREAGE

COMMENTS

--	--	--	--

Dear Sirs



July 6, 1987

It appears Rhadi hasn't done his home work when it comes to the point of diversion of the Peeble ditch. There is a paragraph of your finding in 1977 when we were harassed with the Johnson well dug on the Miller Mollholland ditch water source.

(Quote) Investigation indicates that the Peeble ditch obtains water from Crow Creek with an April 1880 priority date. This allows sufficient water to irrigate certain legally described lands. The point of diversion is approximately 1/2 mile downstream from Miller Mollholland point of diversion. The Peeble ditch was mentioned in a settlement at V. Peeble as the date of settlement of the land.

Now it appears that Rhadi has let Johnson talk him into allowing enough water to irrigate 16 acres of land from the domestic use ditch that the courts

allowed. Rights from the source of
M. M. ditch.

The object is the interference
with our water source & note you
have already said in your finding
that there was no water right well
or any other claims on spring water

We would like to have a copy of
just what is in Johnsons Affidavit
of water use & the exact point
of diversion of his claim.

Be always,
Jas H. DeKane



Gate Capacity:

$$b = 3 \text{ ft.}$$

$$h = 2 \text{ ft.}$$

$$Q = C'd(b - 2h) \sqrt{g} H^{3/2}$$

$$y = 0.1$$

$$C_d' = 0.587$$

$$g = 32.2 \text{ ft/s}^2$$

$$Q_{\text{Gate}} = 24.5 \text{ CFS}$$

Ditch Capacity:

$$Q_{\text{Ditch}} = 4.24 \text{ CFS}$$

Culvert in the ditch approx 100 ft downstream from the gate:

$$Q = V A$$

$$S = 0.006$$

$$V = \frac{1.49}{n} (R)^{2/3} S^{1/2}$$

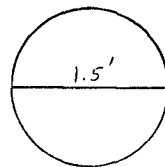
$$n = 0.025$$

$$A = 1.7671 \text{ ft}^2$$

$$R = \frac{A}{w_p} = \frac{A R^2}{2 A R} = \frac{R}{2} = 0.375 \text{ ft.}$$

$$V = \frac{1.49}{0.025} (0.375)^{2/3} (0.006)^{1/2} = 2.3999 \text{ FPS}$$

$$Q = V A \Rightarrow Q = 4.24 \text{ CFS}$$



Dear Sirs

The descriptions of acres are
are not quite right. Maybe
Basson Ahadi could stop
in when he is out this
way and get them straight.

Joe Schenk



Dear Mr Winton March 9-1982

In your letter of Nov. 18, it appears Johnson is putting on the pressure.

No we did not do a lot of digging in spring area. We did clear off some gravel that washed in, as you know Crow Creek sometimes floods badly & will sometimes run high with snow melt, for as long as a month or more.

We have been cleaning out these springs since the water right was taken out, when we clean the ditch and do other maintenance work.

The cleaning out of the springs did not have anything to do with the water level, other than cleaning out some watercress with the domestic use ditch that run north from the springs.

The Rehbes & now the Johnsons are trying to switch their irrigation rights of two lower ditches up to the domestic use ditch & then claim some of the spring water, that was appropriated by the Miller Mullholland water right.

The ditch that watered the 11.5 acres you mentioned was taken out below the M. M. dam & head gate and is still visible to see. This ditch runs parallel to the M. M. ditch to county road by school house.

The other one was down stream about $\frac{1}{2}$ mile and ran north of creek to field where Johnsons shop is now located.

We can not see why Johnson will fuss about this old & established water right, when he knows he did not buy it with the place and he has a good artesian well besides, unless it is pure harassment.

If he is serious about it he can put back the old dam below M. M. so long as he doesn't interfere with the M. M. dam & head gate or try to divert the spring water around our head gate like you were suggesting.

Here is a portion of the Driscoll V. S. Reble Court case if you haven't looked into it. Quoted It is further ordered, adjudged & decreed that the defendants (Rebles) their agents, servants, heirs, successors & assigns be, and they are hereby forever enjoined & restrained from interfering in any way with the full use & enjoyment by the plaintiffs of the said ditch, water right & water & from any manner, asserting any right, title or interest therein, and that they be

And they are hereby forever enjoined & restrained from interfering with, or in any way preventing the full & free access of the plaintiffs their agents, servants, heirs, successors and assigns, to go upon and along the lands over & across, which the said ditch & head gate are located for the purpose of maintaining & operating same.)

I think it states very plain that Johnson has no right to claim an interest in our dam, as you were suggesting as the water in the spring untill it pass's our head gate and then it is his to use.

As always
Joe Schenk



Department of Water & Natural Resources

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

WATER RIGHTS DIVISION
(605) 773-3352

May 26, 1987

Joe Schenk
Route 1, Box 204
Spearfish, South Dakota 57783

RE: Miller-Mulholland Ditch

Dear Mr. Schenk:

Enclosed you will find the corrected application forms which you returned. The location of the 26.0 acres is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, T7N-R1E. In the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 there are 1.7 acres which, based on the boundary of the land provided by you, belong to you. This land is located to the South of the Miller-Mulholland Ditch. If you are still not convinced that the 1.7 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ belong to you, please cross it off, sign and notarize the forms and return them to our office with \$15.00 filing fee.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "RA" or "Rassool Ahadi".

Rassool Ahadi
Natural Resources Engineer

RA:ms
Enc.



Department of Water & Natural Resources

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

WATER RIGHTS DIVISION
(605) 773-3352

June 10, 1987

Joe Schenk
Route 1, Box 204
Spearfish, South Dakota 57783

RE: Miller, Mulholland Ditch

Dear Mr. Schenk:

Enclosed you will find the corrected application forms to file your vested right claim. Please sign and notarize the forms and return them to our office with \$15.00 filing fee.

If you have any questions, please contact me.

Sincerely,

Rassool Ahadi
Natural Resources Engineer

RA:ms
Enc.

Conversation or File Documentation

NAME OF PERSON OR FILE: Joe SchenkADDRESS: Route 1, Box 204 COUNTY _____DATE: 6/26/87 TELEPHONE _____RE: Water use From Miller - Mulholland Ditch

COMMENTS:

Joe Schenk called regarding the vested right claim for the M-M Ditch. Mr. Schenk does not want water appropriated (l.cfs) for use by Johnson for irrigation. Mr. Schenk stated that a court case had decided that Johnson could use water only for domestic purposes from the ditch; however, Johnson could irrigate from a second ditch further down. Mr. Schenk wanted to be informed of the time and place the vested right claim would be considered.

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.

NAME: Ron Duvall

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1404-1, Miller-Mulholand Ditch

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Validation of Vested Water Right Application No. 1404-1, Miller Mulholand Ditch, c/o Joe M. Schenk, Route 1, Box 204, Spearfish, South Dakota.

The Chief Engineer is recommending VALIDATION of Application No. 1404-1 for 2.5 cfs and that the applicable portions of Location Certificate No. 6879 and No. 7956 have been incorporated into No. 1404-1 and the abandoned portions of No. 6879 and No. 7956 have been cancelled, because 1) water has been appropriated as described for irrigation use with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest with the following qualifications.

1. That Vested Water Right No. 1404-1 is subject to domestic use rights. Diversion of water under Water Right No. 1404-1 is contingent upon supplies being available first to domestic users.
2. That a flow measuring device be installed at or near the point of diversion for Miller-Mulholand Ditch within one year of validation of Vested Water Right No. 1404-1. The measuring device shall be permanently installed. The design shall be approved prior to construction by the chief engineer.

See the attached report for additional information.


JOHN HATCH, Chief Engineer
October 14, 1987

Report on the Miller-Mulholland Ditch (Crow Creek)
Vested Water Right Application No. 1404-1
September 8, 1987

Background

Pursuant to SDCL 46-5-49 and ARSD 74:02:01:20, the Miller-Mulholland Ditch has filed an application to validate a vested right claim. The application claims 2.5 cfs of Crow Creek water, a tributary of Redwater River, to irrigate 88.3 acres in Section 29, T7N-R1E in Lawrence County. The diversion point is located in the NE1/4 NW1/4 Section 33, T7N-R1E.

Document Search

The following documents were found pertaining to the Miller-Mulholland Ditch:

- 1) Location Certificate No. 6879 signed by Addison Myers and John Mulholland claims an appropriation date of July 24, 1880, and was filed and recorded in Book 14, Page 207, in Lawrence county.
- 2) Certificate No. 7956 signed by Elial Miller and Thomas Mulholland claims an appropriation date of February 20, 1880, for 320 miner's inches of the waters of Crow Creek, and was filed and recorded in Book 14, Page 368, in Lawrence County.
- 3) Supreme Court Opinion, dated July 8, 1908, Driskill vs Rebbe et al, Volume 22, South Dakota Reports Page 242-256.
- 4) Rehearing in Supreme Court. Driskill vs Rebbe Opinion, dated November 14, 1911.
- 5) Modified Judgement, Eighth Judicial Circuit, Driskill vs Rebbe dated January 26, 1912.

Based on the court's judgement, the Miller-Mulholland Ditch has a priority date of February 20, 1880. The court did not specify the amount of water to be diverted under this water right, but the court did specify that the owner has an undivided one-half interest in this ditch and water right, and was entitled to divert waters of Crow Creek to the extent necessary and proper for domestic uses and the irrigation of 125 to 130 acres of land, not exceeding an undivided one-half capacity of the ditch at the time of the 1912 Modified Judgement in Circuit Court.

Discussion

The Water Resources Commission investigated the irrigation from Miller-Mulholland Ditch in the early 1960's. At that time, 119.2 acres were mapped as being irrigated from the ditch. The maximum diversion rate was reported to be 2.38 cfs.

Recent investigations by Water Rights Division engineers have found that 88.3 acres are being served by the ditch. It has a capacity of approximately 4.24 cfs and the headgate is capable of diverting 24.5 cfs.

To determine the amount of water needed to irrigate 88.3 acres under Miller-Mulholland Ditch, two different methods were used:

- 1) State Law, SDCL 46-5-6 allows 1.0 cfs for each 70 acres of irrigation. If 1.0 cfs is necessary to irrigate 70 acres, 1.26 cfs of water will be used to irrigate 88.3 acres. Considering the efficiency of flood irrigation in the area, which according to SCS for this area is 50%, the total diversion rate required will be 2.5 cfs.
- 2) Using the SCS, S.D. Irrigation Guide, the peak consumption occurs in July. The crops in the area use 28.8% of their annual water consumption during the Month of July. Assuming the crops need 3.0 feet of water every irrigation season, a total of 264.9 acre-feet is needed for the season, from which 76.3 acre-feet or 1.24 cfs will be used in the Month of July. Considering a 50% loss due to the system, the total diversion rate required will be 2.48 cfs.

Conclusions and Recommendations

- 1) The headgate and the ditch are capable of diverting more water than the 2.5 cfs claimed.
- 2) Based upon the 1.0 cfs per 70 acres criteria plus a 50% loss calculation, the peak quantity of water necessary to irrigate the land served by Miller-Mulholland Ditch would be 2.5 cfs. Comparing this to the SCS, South Dakota Irrigation Guide calculations, this quantity of water appears to be reasonable.
- 3) It is recommended that the Miller-Mulholland Vested Water Right Claim be validated for a diversion rate of 2.5 cfs to irrigate 88.3 acres as described in Application No. 1404-1 with a priority date of February 20, 1880.
- 4) It is recommended that if Vested Water Right Application No. 1404-1 is validated, the applicable portions of Location Certificate No. 6879 and Certificate No. 7956 be incorporated into No. 1404-1, and the abandoned portions of Location Certificate No. 6879 and Certificate No. 7956 be cancelled.



Rassool Ahadi
Natural Resources Engineer

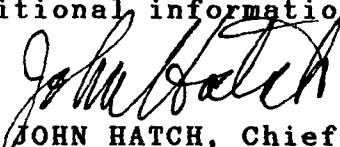
**RECOMMENDATION OF CHIEF ENGINEER FOR READVERTISEMENT OF
VALIDATION OF VESTED WATER RIGHT APPLICATION NO. 1404-1,
Miller-Mulholand Ditch**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning readvertisement of Validation of Vested Water Right Application No. 1404-1, Miller Mulholand Ditch, c/o Joe M Schenk, Route 1, Box 204, Spearfish SD.

The Chief Engineer is recommending VALIDATION of readvertised Application No. 1404-1 for 2.5 cfs and that the applicable portions of Location Certificate No. 6879 and No. 7956 have been incorporated into No. 1404-1 and the abandoned portions of No. 6879 and No. 7956 have been cancelled, because 1) water has been appropriated as described for irrigation use with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. That Vested Water Right No. 1404-1 is subject to domestic use rights. Diversion of water under Water Right No. 1404-1 is contingent upon supplies being available first to domestic users.
2. That a flow measuring devise be installed at or near the point of diversion for Miller-Mulholand Ditch within one year of validation of Vested Water Right No. 1404-1. The measuring device shall be permanently installed. The design shall be approved prior to construction, by the chief engineer.

See the attached report for additional information.


JOHN HATCH, Chief Engineer
April 4, 1989

SOUTH DAKOTA Department of
Water & Natural Resources

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

August 13, 1987

Miller-Mulholand Ditch
c/o Joe M Schenk
Rt 1, Box 204
Spearfish SD 57783

Dear Mr. Schenk:

This letter is to inform you that the vested right claim for Miller-Mulholand Ditch has been reviewed. A report on the investigation of the vested right claim is being prepared. When the report is finalized your application will be complete pursuant to SDCL 46-2A-2. A recommendation will then be prepared and notice of hearing will be given stating the time and place the Water Management Board will consider the vested right claim. Tentatively, the hearing is to be scheduled for December 2 and 3, 1987 in the Black Hills area.

Please contact us if you have any questions.

Sincerely,



RON DUVALL
Water Resources Engineer
605 773-3352



Department of Water & Natural Resources

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

October 22, 1987

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT THE
NEWSPAPERS RIGHT AWAY.

Miller-Mulholland Ditch
c/o Joe M. Schenk
Rt 1, Box 204
Spearfish SD 57783

Dear Mr. Schenk:

Your Application No. 1404-1 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publishers of the QUEEN CITY MAIL printed at Spearfish and the BELLE FOURCHE DAILY POST printed at Belle Fourche. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your notice of hearing to validate a vested right and to arrange for payment. Early contact with the papers can eliminate delays. The publishers have been instructed to publish your 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 application can be considered by the Water Management Board.

Sincerely,

A handwritten signature in black ink that reads "Ron Duvall". The signature is written in a cursive style with a large, looped "R" and "D".

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

October 22, 1987

QUEEN CITY MAIL
Box 7
Spearfish SD 57783

Dear Sir:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1404-1. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before October 28, 1987.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Miller-Mulholand Ditch, c/o Joe M Schenk, Rt 1, Box 204, Spearfish SD 57783.

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 permit application 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: Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Validate A Vested Right Application which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



Department of Water & Natural Resources

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

October 22, 1987

BELLE FOURCHE DAILY POST
1004 5th Ave
Belle Fourche SD 57717

Dear Sir:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1404-1. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before October 28, 1987.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Miller-Mulholand Ditch, c/o Joe Schenk, Rt 1, Box 204, Spearfish SD 57783.

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 permit application 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: Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Validate A Vested Right Application which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

Instruction to Newspaper - Publish first publication of the following Notice on or before October 28, 1987 with 2nd publication 1 week later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Right Application No. 1404-1 to Appropriate Water

Notice is hereby given that Miller-Mulholland Ditch, c/o Joe M. Schenk whose mailing address is Route 1, Box 204, Spearfish, South Dakota has filed an application to validate a vested right claim to appropriate 2.5 cubic feet per second (cfs) from Crow Creek to irrigate 38.3 acres via the Miller-Mulholland Ditch with a claimed priority date of February 20, 1880. The Crow Creek diversion point for the Miller-Mulholland Ditch is located in the NE 1/4 NW 1/4 Section 33, T7N, R1E. The irrigated acreage is located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4 Section 29, T7N, R1E.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1404-1 for 2.5 cfs and that the applicable portions of Location Certificate Nos. 7956 and 6879 will be incorporated into No. 1401-1 and the abandoned portions of Certificate Nos. 7956 and 6879 be cancelled, because 1) water has been appropriated as described for irrigation with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest.

Validation of this application will be considered by the Water Management Board at Howard Johnson's, Roosevelt and Jefferson Rooms, Rapid City SD, December 2, 1987 at 1:00 pm.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-20, must file a written petition with BOTH the applicant and the Chief Engineer by November 20, 1987. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, Joe Foss Bldg, Pierre SD (605 773-2352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by November 20, 1987.

No. 1404-1

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Lawrence) ss.

I, Jimmie R. Stephenson hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Queen City Mail

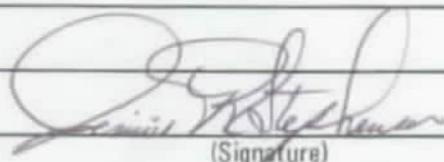
A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the

City of Spearfish

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

October 28th

November 4th


(Signature)

Publisher

(Title)

11-4-87

(Date Signed)

Cost of Printing: _____

110 X .2564 = 28.20

110 X .2051 = 22.56

Total = 50.76

NOTICE OF HEARING
TO VALIDATE VESTED
RIGHT APPLICATION
NO. 1404-1 TO
APPROPRIATE WATER

Notice is hereby given that Miller-Mulholland Ditch, c/o Joe M Schenk whose mailing address is Route 1, Box 204, Spearfish, South Dakota has filed an application to validate a vested right claim to appropriate 2.5 cubic feet per second (cfs) from Crow Creek to irrigate 88.3 acres via the Miller-Mulholland Ditch with a claimed priority date of February 20, 1880. The Crow Creek diversion point for the Miller Mulholland Ditch is located in the NE 1/4 NW 1/4 Section 33, T7N, R1E. The irrigated acreage is located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4 Section 29, T7N, R1E.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1404-1 for 2.5 cfs and that the applicable portions of Location Certificate Nos. 7956 and 6879 will be incorporated into No. 1401-1 and the abandoned portions of Certificate Nos. 7956 and 6879 be cancelled, because 1) water has been appropriated as described for irrigation with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest.

Validation of this application will be considered by the Water Management Board at Howard Johnson's, Roosevelt and Jefferson Rooms, 2211 LaCrosse, Rapid City SD, December 2, 1987 at 1:00 pm.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by November 20, 1987. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or



support of the application, and the
signature and mailing address of the
petitioner or his legal counsel if legal
counsel is obtained. The applicant
need not file a petition.

This application is made pursuant
to the provisions of SDCL 46-1-1 thru
46-1-9, 46-1-12 thru 46-1-15; 46-2-
3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17;
46-2A-1 thru 46-2A-10, 46-2A-12,
46-2A-14, 46-2A-15, 46-2A-18; 46-
5-1 thru 46-5-11, 46-5-13 thru 46-5-
15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-
30.4, 46-5-31, 46-5-49; and Board
Rules ARSD 74:02:01:01 thru
74:02:01:15 and 74:02:01:19 thru
74:02:01:22.

This hearing is an adversary pro-
ceeding. The applicant or any person,
after filing a petition, has the right to
be present or to be represented by a
lawyer. These and other due process
rights will be forfeited if they are not
exercised. Decisions of the Board
may be appealed to the Circuit Court
and State Supreme Court as provided
by law.

Any person wishing a copy of the
Chief Engineer's recommendation,
further information on this applica-
tion or to assure access to the hearing
by the handicapped can contact the
Water Rights Division, Joe Foss Bldg.
Pierre SD (605 773-3352) for assis-
tance prior to the hearing date. The
time of the hearing will be automati-
cally extended for at least twenty days
upon written request of the applicant
or person who has filed a petition to
oppose or support the application.
The request for extension must be
filed with the Chief Engineer by
November 20, 1987.

Oct 28, Nov 4

No. 1404-1

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 Belle Fourche Daily Post

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 Belle Fourche

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

October 28, 1987

November 3, 1987

Marion Lucas
(Signature)

Editor
(Title)

November 3, 1987
(Date Signed)

Cost of Printing: 43.08

128 L 2 times



NOTICE OF HEARING
TO VALIDATE
Vested Right Application
No. 1404-1

to Appropriate Water

Notice is hereby given that Miller-Mulholand Ditch, c/o Joe M. Schenk whose mailing address is Route 1, Box 204, Spearfish, South Dakota has filed an application to validate a vested right claim to appropriate 2.5 cubic feet per second (cfs) from Crow Creek to irrigate 88.3 acres via the Miller-Mulholand Ditch with a claimed priority date of February 20, 1880. The Crow Creek diversion point for the Miller-Mulholand Ditch is located in the NE 1/4 NW 1/4 Section 33, T7N, R1E. The irrigated acreage is located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4 Section 29, T7N, R1E.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1404-1 for 2.5 cfs and that the applicable portions of Location Certificate Nos. 7956 and 6879 will be incorporated into No. 1401-1 and the abandoned portions of Certificate Nos. 7956 and 6879 be cancelled, because 1) water has been appropriated as described for irrigation with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest.

Validation of this application will be considered by the Water Management Board at Howard Johnson's, Roosevelt and Jefferson Rooms, 2211 LaCrosse, Rapid City, SD, December 2, 1987 at 1:00 p.m.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve-validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate

in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by November 20, 1987. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner on his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15, 46-2-3, 1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18, 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, Joe Foss Bldg., Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by November 20, 1987.

7/10/28-11/3

**South Dakota
Department of
Game, Fish and Parks**

**Division of Wildlife
Sigurd Anderson Building
445 East Capitol
Pierre, South Dakota 57501-3185
(605) 773-3381**

November 20, 1987

Mr. John Hatch, Chief Engineer
Division of Water Rights
S.D. Department of Water & Natural Resources
Joe Foss Building
Pierre, SD 57501



Dear Mr. Hatch:

Pursuant to the filings made by the S.D. Department of Game, Fish and Parks to the attached list of applicants, some confusion exists regarding the intent of the filings. For your information when dealing with inquiries to the nature of the GF&P interest in the upcoming hearings the following information should be useful.

GF&P intends to participate in the upcoming water right validations by supporting the water rights staff recommendations that will bring each water right into legal compliance with existing laws, e.g. appropriate quantities of water for the land base, appropriately sized and gauged headgates for the right in question, abandonment of unused quantities of water, etc. GF&P filed with your office and each applicant so that we would officially be parties to the hearing process and be able to carry out the mandated duties of the Department under SDCL Chapter 41. We also are of the opinion that the Department would have been negligent in not participating in proceedings that relate to water resource allocation directly affecting waters that support fish and wildlife values.

I hope this information will aid you in describing the nature of the interest the Department of Game, Fish and Parks has in the upcoming proceedings. If you have any questions you can contact me at 773-5511.

Sincerely,

Ron Koth
Water Permits Coordinator

RK/ld

November 24, 1987
(date)

page 1

Parties of Record before Water Management Board regarding Vested Right
Application No. 1404-1, Miller - Mulholand Ditch

For:

Joe M. Schenk
Miller - Mulholand Ditch
Route 1, Box 204
Spearfish SD 57783

~~Interested~~ Interested:

Richard Beringson, Secretary
SD Dept of Game, Fish + Parks
Anderson Bldg., 445 E Capitol
Pierre SD 57501

**South Dakota
Department of
Game, Fish and Parks**

**Division of Wildlife
Sigurd Anderson Building
445 East Capitol
Pierre, South Dakota 57501-3185
(605) 773-3381**

November 16, 1987



Mr. John Hatch, Chief Engineer
Division of Water Rights
S.D. Department of Water & Natural Resources
Joe Foss Building
Pierre, SD 57501

Dear Mr. Hatch:

Pursuant to the notice provided by the Chief Engineer under SDCL 46-2A-4 the South Dakota Department of Game, Fish and Parks intends to be a party to water right claim 1404-1 on Crow Creek, Lawrence County.

GF&P is an interested and potentially affected party by virtue of statutory authority to manage fish and wildlife resources of the state (SDCL Chapter 41). The pending water right claim could affect the quantity of water available for natural resource management.

Thank you for the opportunity to comment on this pending water right application.

Sincerely,

A handwritten signature in cursive script that reads "Richard J. Beringson".

Richard J. Beringson
Secretary

RJB/ld

cc: Miller-Mulholand Ditch % Joe M. Schenk



Department of Water & Natural Resources

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

April 6, 1989

Miller-Mulholand Ditch
c/o Joe M Schenk
Rt 1, Box 204
Spearfish SD 57783

Dear Mr. Schenk:

Vested Right No. 1404-1 was published with an incorrect legal description of the diversion point from Crow Creek. Therefore, the notice of hearing needs to be readvertised with the correct diversion point. A notice of hearing has been sent to the Publishers of the Queen City Mail, Spearfish and the Belle Fourche Daily Post, Belle Fourche. For your information, a copy of the notice is enclosed. The recommendation of the Chief Engineer and a report on the readvertisement will be sent later. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The cost of publication of this notice will be paid by the Division of Water Rights. Please contact us if you have any questions.

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

April 6, 1989

Belle Fourche Daily Post
1004 5th Ave
Belle Fourche SD 57717

Dear Sir:

Enclosed is a Readvertisement of Notice of Hearing on Vested Right No. 1404-1 to be published twice. Please publish the first notice on or before April 12, 1989 with the second publication 7 days later.

Please bill the Water Rights Division for the cost of the advertisement.

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 permit application 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 _____ enclosing Readvertisement of Notice of Hearing on Vested Right No. 1404-1 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



 **Department of
Water & Natural Resources**

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

April 6, 1989

Queen City Mail
Box 7
Spearfish SD 57783

Dear Sir:

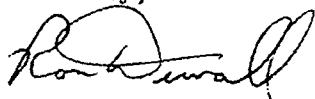
Enclosed is a Readvertisement of Notice of Hearing on Vested Right No. 1404-1 to be published twice. Please publish the first notice on or before April 12, 1989 with the second publication 7 days later.

Please bill the Water Rights Division for the cost of the advertisement.

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 permit application 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 _____ enclosing Readvertisement of Notice of Hearing on Vested Right No. 1404-1 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



Instruction to Newspaper - Publish first Notice on or before April 12, 1989 with 2nd publication 7 days later.

READVERTISEMENT OF NOTICE OF HEARING Regarding
Vested Water Right No. 1404-1 to Appropriate Water

Notice is given that Miller-Mulholand Ditch, c/o Joe M Schenk, Rt 1, Box 204, Spearfish SD 57783 filed an application to validate a vested water right claim on May 22, 1987. Vested Water Right No. 1404-1 appropriates 2.50 cubic feet of water per second from Crow Creek to irrigate 88.3 acres via the Miller-Mulholand Ditch. The Vested Right was validated on December 2, 1987 with a February 20, 1880 priority date. Readvertisement of the notice of hearing published once during the last week of October and once during the first week of November in 1987 is to correct the legal description of the diversion point from Crow Creek. The correct location of the diversion point on Crow Creek is in the SE 1/4 SW 1/4 Section 28-T7N-R1E not in Section 33-T7N-R1E as originally published. This readvertisement does not authorize any increase in the acreage irrigated or any increase in the water appropriation.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right No. 1404-1 because 1) water has been appropriated as described for irrigation use with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest. This readvertisement will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD on May 10, 1989 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the readvertisement, 2) approve the readvertisement with qualifications, 3) defer or 4) deny the readvertisement based on the facts presented at the public hearing.

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 BOTH the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the readvertisement, the petitioner's reasons for opposing or supporting the readvertisement and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant 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 time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by April 28, 1989.

This readvertisement is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA
COUNTY OF BUTTE

Rhonda Schultz, being duly sworn, says:
That the Daily Belle Fourche Post is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined in SDCL 17-2-2, as amended, published at Belle Fourche, Butte County, South Dakota, by Allison Publishing, Inc.; that affiant is, and during all of said times was, an employee of such newspaper and has personal knowledge in this affidavit; and that the notice, order or advertisement,

entitled Readvertisement #1404-1, a printed copy of which is attached, was published in the newspaper for 2 successive issues on the following dates:

<u>April 11</u>	<u>1989</u>
<u>April 18</u>	<u>1989</u>
_____	19____
_____	19____
_____	19____

that the full amount of the fee charged for publication of the advertisement was the sum of \$ 36.69, the benefit of the publisher of said newspaper; that the affiant has a full understanding for the division of the fee has been agreed to by the person, and that no part of the fee has been paid by any other person.

Rhonda Schultz
Bookkeeper

Subscribed and sworn to before me this
15th day of May, A.D. 19 90.

Jay Kennedy
Notary Public
County of Butte, South Dakota

(SEAL)

READVERTISEMENT OF NOTICE OF HEARING Regarding Vested Water Right No. 1404-1 to Appropriate Water

Notice is given that Miller-Mulholand Ditch, c/o Joe M. Schenk, Rt. 1, Box 204, Spearfish SD 57783 filed an application to validate a vested water right claim on May 22, 1987. Vested Water Right No. 1404-1 appropriates 2.50 cubic feet of water per second from Crow Creek to irrigate 88.3 acres via the Miller-Mulholand Ditch. The Vested Right was validated on December 2, 1987 with a February 20, 1880 priority date. Readvertisement of the notice of hearing published once during the last week of October and once during the first week of November in 1987 is to correct the legal description of the diversion point from Crow Creek. The correct location of the diversion point on Crow Creek is in the SE1/4SW1/4 Section 28-T7N-R1E not in Section 33-T7N-R1E as originally published. This readvertisement does not authorize any increase in the acreage irrigated or any increase in the water appropriation.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right No. 1404-1 because 1) water has been appropriated as described for irrigation use with a priority date of February, 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest. This readvertisement will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E. Capitol, Pierre SD on May 10, 1989 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the read-

vertisement, 2) approve the readvertisement with qualifications, 3) defer or 4) deny the readvertisement based on the facts presented at the public hearing.

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 BOTH the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the readvertisement, the petitioner's reasons for opposing or supporting the readvertisement and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant 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 time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by April 28, 1989.

This readvertisement is made

pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

2/4/11-18

No. 1404-1



PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County Butte) ss.

I, Rhonda Schultz

certify that the annexed printed copy of Notice of Intent

Water was taken from the Miller Foss Building

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

State of South

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

April 11, 1989

April 18, 1989

Rhonda Schultz
(Signature)

Boobhooan
(Title)

4-11-89
(Date Signed)

Cost of Printing: 36.69

Public notices

READVERTISEMENT OF
NOTICE OF HEARING
Regarding Vested Water
Right No. 1404-1
to Appropriate Water

Notice is given that Miller-Mulholand Ditch, c/o Joe M. Schenk, Rt. 1, Box 204, Spearfish SD 57783 filed an application to validate a vested water right claim on May 22, 1987. Vested Water Right No. 1404-1 appropriates 2.50 cubic feet of water per second from Crow Creek to irrigate 88.3 acres via the Miller-Mulholand Ditch. The Vested Right was validated on December 2, 1987 with a February 20, 1880 priority date. Readvertisement of the notice of hearing published once during the last week of October and once during the first week of November in 1987 is to correct the legal description of the diversion point from Crow Creek. The correct location of the diversion point on Crow Creek is in the SE1/4SW1/4 Section 28-T7N-R1E not in Section 33-T7N-R1E as originally published. This readvertisement does not authorize any increase in the acreage irrigated or any increase in the water appropriation.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right No. 1404-1 because 1) water has been appropriated as described for irrigation use with a priority date of February, 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest. This readvertisement will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E. Capitol, Pierre SD on May 10, 1989 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the read-

vertisement, 2) approve the readvertisement with qualifications, 3) defer or 4) deny the readvertisement based on the facts presented at the public hearing.

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 BOTH the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the readvertisement, the petitioner's reasons for opposing or supporting the readvertisement and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant 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 time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by April 28, 1989.

This readvertisement is made

pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

2/4/11-18

Affidavit of Publication

STATE OF SOUTH DAKOTA }
COUNTY OF LAWRENCE }

SS.

Bill T. Masterson, Jr. of said County and State being first duly sworn, on his oath says: That The QUEEN CITY MAIL is a legal daily newspaper of general circulation, printed and published in the City of Spearfish, in said County and State by Bill Kurerth, and has been such a newspaper during the times hereinafter mentioned; and that said newspaper has a bonafide circulation of at least 200 copies weekly, and has been published within said County in the English language for at least one year prior to the first publication of the notice herein mentioned, and is printed in whole or in part in an office maintained at the place of publication; and That I Bill T. Masterson, Jr., the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

READVERTISEMENT OF NOTICE OF HEARING REGARDING VESTED WATER RIGHT NO 1404-1 to Appropriate Water

a printed copy of which is hereto attached, was printed and published in said newspaper for TWO successive and consecutive weeks, the first publication being made on the 12th day of April, 19 89, and the last publication on the 19th day of April, 19 89, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 48.93, inures solely to the benefit of the publisher of the QUEEN CITY MAIL, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 19th day of April, 1989

Audith Johnson

NOTARY PUBLIC, LAWRENCE COUNTY, SOUTH DAKOTA

My Commission Expires
10-24-1996

My commission expires

READVERTISEMENT OF NOTICE OF HEARING Regarding Vested Water Right No. 1404-1 to Appropriate Water

Notice is given that Miller-Mulholand Ditch, c/o Joe M. Schenk, Rt. 1, Box 204, Spearfish, SD 57783 filed an application to validate a vested water right claim on May 22, 1987. Vested Water Right No. 1404-1 appropriates 2.50 cubic feet of water per second from Crow Creek to irrigate 88.3 acres via the Miller-Mulholand Ditch. The Vested Right was validated on December 2, 1987 with a February 20, 1880 priority date. Readvertisement of the notice of hearing published once during the last week of October and once during the first week of November in 1987 is to correct the legal description of the diversion point from Crow Creek. The correct location of the diversion point on Crow Creek is in the SE1/4 SW1/4 Section 28-T7N-R1E not in Section 33-T7N-R1E as originally published. This readvertisement does not authorize any increase in the acreage irrigated or any increase in the water appropriation.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right No. 1404-1 because 1) water has been appropriated as described for irrigation use with a priority date of February 20, 1880, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest. This readvertisement will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E. Capitol, Pierre SD on May 10, 1989 at 10:00 a.m. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the readvertisement, 2) approve the readvertisement with qualifications, 3) defer or 4) deny the readvertisement based on the facts presented at the public hearing.

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 BOTH the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E.



Capitol, Pierre, SD 57501 (605 773-

3352)". The petition may be informal,

but must include a statement describ-

ing the petitioner's interest in the

readvertisement, the petitioner's rea-

sons for opposing or supporting the

readvertisement and the signature

and mailing address of the petitioner

or legal counsel if legal counsel is ob-

tained. The applicant need not file a

petition. Contact the Water Rights

Division to request information on

this application or to assure access to

the hearing by the handicapped.

This hearing is an adversary pro-

ceeding. Any person filing a petition

and/or the applicant have the right to

be represented by a lawyer. These and

other due process rights will be for-

feited if not exercised. Decisions of

the Board may be appealed to the

Circuit Court and State Supreme

Court as provided by law. The time of

the hearing will also be automatically

delayed for at least twenty days upon

written request to the Chief Engineer

from the applicant or a petitioner.

The request for a delay must be re-

ceived by April 28, 1989.

This readvertisement is made pur-

suant to SDCL 46-1-1 thru 46-1-9,

46-1-12 thru 46-1-15; 46-2-3.1, 46-2-

9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1

thru 46-2A-14, 46-2A-12, 46-2A-14,

46-2A-15, 46-2A-18; 46-5-1 thru 46-

5-11, 46-5-13 thru 46-5-15, 46-5-24,

46-5-25, 46-5-30.2, 46-5-30.4, 46-5-

31, 46-5-43; and 46-5-44.

74:02:01:01 thru 74:02:01:15 and

74:02:01:19 thru 74:02:01:22.

April 1989

S-441



Department of Water & Natural Resources

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

January 9, 1989

Miller-Mulholland Ditch
c/o Joe Schenk
Rt 1, Box 204
Spearfish SD 57783

RE: Installation of a Permanent Measuring Device for
Vested Right No. 1404-1

Dear Mr. Schenk:

As a reminder, the Water Management Board, at the December 2 and 3, 1987 meeting, validated your vested right claim on Miller-Mulholland Ditch. The Board's motion required installation of a permanent measuring device on the ditch at or near the point of diversion within one year of validation of your vested right claim. To comply with the Board's order, the measuring device must be installed prior to the 1989 irrigation season. Please note that the plans and specifications for the measuring device must be approved by the chief engineer prior to installation.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "RA".

RASSOOL AHADI
Natural Resources Engineer
(605)773-3352





Department of Water & Natural Resources

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

March 8, 1989

Joe M. Schenk
RR 1, Box 204,
Spearfish S.D. 57783

RE: Approval of the Plans and Specifications for a Measuring
Device, Vested Right No. 1404-1

Dear Mr. Schenk:

We have reviewed the plans and specifications for your measuring device designed by the Soil Conservation Service. The measuring device will be used to measure the flow in Miller-Mulholland Ditch. The plan proposes to use a sharp crested weir with a length of 2.5 feet. The plans and specifications are approved as submitted. Please note that the recommendations of the Soil Conservation Service regarding the preparation of the ditch bottom, prior to the installation of the measuring device, must be followed.

If you have any questions, please contact Rassool Ahadi, (605 773-3352).

Very truly yours,

A handwritten signature in black ink, appearing to read "John Hatch". The signature is written in a cursive, flowing style.

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

 **Department of
Water & Natural Resources**

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

April 26, 1989

Miller-Mulholand Ditch
c/o Joe M Schenk
Rt 1, Box 204
Spearfish SD 57783

Dear Mr. Schenk:

Enclosed is the Report and the Recommendation of the Chief Engineer for Readvertised Vested Water Right Application No. 1404-1 which will be considered at the May 10, 1989 Water Management Board Meeting.

Sincerely,



KAREN SCHLAACK
Senior Secretary
605 773-3352

enclosures



April 25, 1989



Mr. John Hatch
Chief Engineer
Water Rights Division
Foss Building
523 East Capitol
Pierre, SD 57501

Dear Sir:

I am writing to protest the change of the diversion point of the Miller-Mulholand ditch. I believe that if the diversion point of the water right that predates 1404-1 designates section 33, then it should remain this way.

It appears from a site visit by Vern Lecy and myself that the operators of the ditch must be planning to lower the flow line again, from the head gate westerly, as evidenced by construction stakes that have been installed. We protest this action, because of danger to livestock.

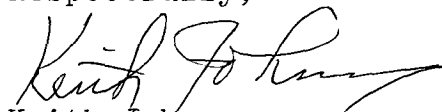
We also protest the lowering of the flow line and the trespass on our property by heavy equipment, used to lower the outlet from the spring on the east side of Crow Creek, thereby depriving us of access to the domestic rights you refer to in paragraph five of your letter of February 10, 1988.

It appears evident there is a misunderstanding regarding the lay of the land referred to in paragraph seven. We have not denied anyone access to the ditch or head-gate, however, the spring I refer to is not in the creek bed, but to the east of it and the diversion ditch is to the west.

We still feel the action of the water board, revoking our water right at their December 2, 1987 meeting at Rapid City was unfair because of the impossible situation we were placed in by our right being junior to Schenks and therefore we could not use water during the regular growing season and if we didn't our right was forfeit, a classic Catch 22 situation.

Thank you for your consideration of the foregoing.

Respectfully,


Keith Johnson

cc Mr. Joe M. Schenk

Report on Vested Right No. 1404-1
Miller-Mulholland Ditch
Correction of Advertisement
April 3, 1989

Background

Vested right No. 1404-1 appropriates 2.5 cubic feet of water per second from Crow Creek. The water is used to irrigate 88.3 acres in Section 29, T7N-R1E, in Lawrence County, with a priority date of February 20, 1880. The vested right was validated on December 2, 1987.

Discussion

In October and November of 1987, the vested right Claim was advertised. On December 2, 1987, the Water Management Board validated Vested Right Claim No. 1404-1. However, the location of the diversion point on the application was then found to be incorrect. Mr. Joe Schenk, president of the ditch company was contacted. A follow up investigation confirmed that the diversion point is located in the SE1/4 SW1/4 Section 28, T7N-R1E, and not in the NE1/4 NW1/4 Section 33, T7N-R1E, as advertised.

Conclusions and Recommendations

1. Water has been diverted from the SW1/4 Section 28, T7N-R1E, since February of 1880.
2. Miller-Mulholland Ditch is the only irrigation system diverting water from Crow Creek.
3. It is recommended that the readvertisement be approved to correct location of the diversion point.
4. It is also recommended that the qualifications placed on Vested Water Right No. 1404-1 stay the same.

Rassool Ahadi
M. RASSOOL AHADI
Natural Resources Engineer

Approved by:

James Winterton
JAMES WINTERTON
Natural Resources Engineer

April 27, 1989
(date)

page 1

Parties of Record before Water Management Board regarding
readvertisement of Vested Water Right No. 1404-1, Miller
Mulholand Ditch c/o Joe M. Schenk

Proponent :

Opponent :

Miller - Mulholand Ditch
c/o Joe M Schenk
Route 1, Box 204
Spearfish SD 57783

Keith Johnson
PO Box 1011
Spearfish SD 57783



Department of

Water & Natural Resources

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3181

May 17, 1989

NOTICE

TO: Miller-Mulholand Ditch c/o Joe M Schenk
Route 1, Box 204
Spearfish SD 57783
and party of record (see attached sheet)

FROM: John Hatch, Chief Engineer *John Hatch*
Water Rights Division
Pierre SD 57501

SUBJECT: Validation of Readvertisement for Vested Water Right
No. 1404-1, Miller-Mulholand Ditch c/o Joe M Schenk

This notice is to inform you that on May 10, 1989, the Water Management Board validated the readvertisement of Vested Water Right No. 1404-1 as qualified in the Chief Engineer's recommendation dated April 4, 1989.

Decisions of the Water Management Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

cc: John Haak, Assistant Attorney General



CERTIFICATION

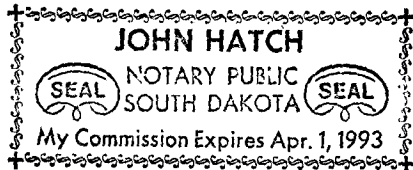
I hereby certify that on May 17, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Validation of Readvertisement for Vested Water Right No. 1404-1, Miller-Mulholand Ditch addressed as shown on the Parties of Record sheet.

Karen Schlaak

KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of May, 1989.



John Hatch
Notary Public



Department of Water & Natural Resources

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

APR 6 1990

Miller-Mulholand Ditch
c/o Joe M Schenk
Rt 1, Box 204
Spearfish SD 57783

Dear Mr. Schenk:

Enclosed are Validated Vested Water Right and Water License No. 1404-1. 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
605 773-3352

enclosures



1404-1



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

November 14, 2018

958-1
1404-1

Travis Schenk
10307 Chicken Creek Rd
Spearfish SD 57783

Dear Mr. Schenk:

I am writing in regard to ownership of land described in Water Right No. 958-1 (J Daniel & Renee L Schenk) and Vested Water Right No. 1404-1, Miller-Mulholand Ditch. Dan Schenk called and indicated both should be transferred to you.

Enclosed are partially completed Notice of Transfer of Ownership forms for filing the ownership changes. Please review the forms to ensure that you own all of the land listed. This is especially important with the vested right listed under Miller-Mulholand Ditch.

Upon completion of the forms, please sign and return them to our office with a required filing fee of \$50.00 each (total of \$100). The check or money order for the fee can be made payable to the Water Rights Program.

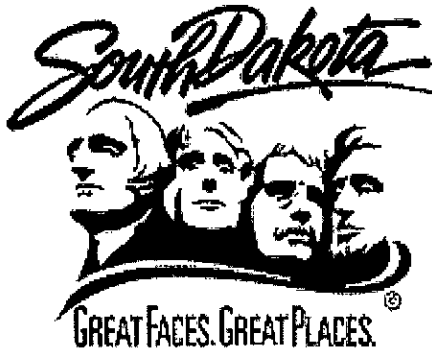
I have enclosed copies of both water rights for your records. If I can answer any questions for you, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures



1404-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

October 28, 2019

958-1
1404-1

Travis Schenk
19757 Red Hill Rd
Spearfish SD 57783-4122

Dear Mr. Schenk:

I am writing regarding ownership of land described in Water Right No. 958-1 and Vested Water Right No. 1404-1. If you own all the land described in each water right, both should be transferred to your name.

Enclosed are partially completed "Notice of Transfer of Ownership" forms for use in filing the ownership changes. Please review and complete as needed. Upon completion, please sign and return the forms to our office with a required filing fee of \$50 each (\$100 total). The check or money order for the fee can be made payable to the Water Rights Program.

I have included copies of each water right for you to keep for your records. If I can answer any questions for you, please let me know.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

PAID

JAN - 6 2020

Ck# 1341

NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

JAN 06 2020

WATER RIGHTS
PROGRAM

No.

1404-1

Date:

12-31-19

I/We request that Vested Water Right No. 1404-1

formerly owned by: Miller-Mulholand Ditch

be transferred to: (name & address)

Travis & Jody Schenk

19757 Red Hill Rd

Speartish SD 57783

Telephone No.

Title to the following described land(s)/property has been transferred as described above:

88.3 acres - SE 1/4 NE 1/4, NE 1/4 SE 1/4 and SW 1/4 SE 1/4 Section 29, T7N, R1E

I/We understand that the validity of Vested Water Right No. 1404-1 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Travis Schenk

; the new owner, certify that the above information is true and correct.

T-Sch

(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

1404-1

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Environment and Natural Resources

Date January 6, 20 20

RECEIVED OF Travis Schenk/Jody Schenk 19757 Red Hill Rd Spearfish SD 57783

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct 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>1404-1</u>	\$50.00
Fee for _____	\$
Fee for Issuing New Well Driller's License No. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law) TOTAL	\$50.00

By Jeanne Goodman
Chief Engineer VM



1404-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

January 8, 2020

958-1
1404-1

Travis & Jody Schenk
19757 Red Hill Rd
Spearfish SD 57783-4122

Dear Mr. & Mrs. Schenk:

I am writing to acknowledge receipt of the transfer forms and filing fees you submitted for changing ownership on Water Right No. 958-1 and Vested Water Right No. 1404-1.

The ownership changes have been completed. The above listed water right and vested water right are now listed in your names.

Enclosed for your records are receipts for the filing fees paid for each transfer. If I can answer any questions for you, please let me know.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures