

Considered: _____

Vested Right Claim
WATER PERMIT NO. 1413-1

MAP No. same

Name of Applicant Higgins Gulch, East Ditch c/o Dick Cundy

Post Office Address St. Onge Road, Spearfish SD 57783

Amount of Water Claimed 1.04 cfs Total Acres 64

Source of Water Supply Higgins Gulch

Water to be used for irrigation County Lawrence

About 3 miles N of Spearfish.

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY _____ Date Received May 21, 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)

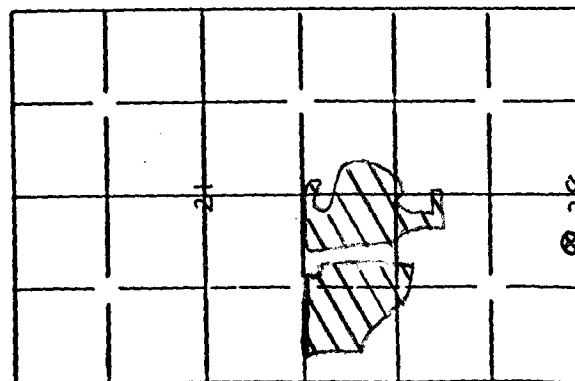
WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point Higgins Gulch: NE 1/4 NW 1/4

section 28 - T7N-R2E

Land to be Irrigated S 1/2 SW 1/4, SW 1/4 SE 1/4 section 21;

N 1/2 NW 1/4 section 28; all in T7N-R2E



Well Log: Driller NA Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

Type of Map aerial photo PREPARED BY Rassool Ahadi Reviewed and the Number

assigned on September 28, 1987 By Ron Durrall

No. 1413-1 Hydrologic Unit 10120203
 Map No. same Basin Belle Fourche R
 Newspaper Queen City Mail, Box 7, Spearfish (Wed)
Belle Fourche Daily Post, 1004 15th Ave

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 Higgins Gulch, East Ditch/Dick Cundy Phone No. 642-3130Post Office Address St. Onge, ~~Spearfish~~, South Dakota State 57779
(Street, RR or Box) City Zip Code2. Amount of water claimed (c.f.s) 1.04 Total acres irrigated 64.03. Source of Water supply Higgins Gulch4. Location of point of diversion 1700 ft E, 900 ft S. from NW Corner of Section 28, T7N-R2ECounty Lawrence5. Counties where water will be used Lawrence6. Annual period during which water is to be used April 1 - 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.
SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21 T7N R2E	24.4
SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21 T7N R2E	29.2
SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21 T7N R2E	4.5
NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28 T7N R2E	1.2

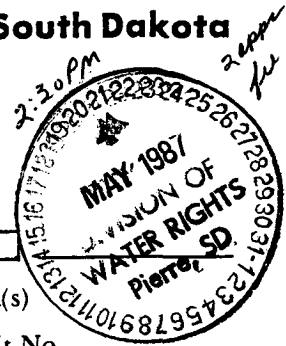
Land Description	No. Acres Irr.
NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28 T7N R2E	4.7

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 Butte)^{ss}I, Dick Cundy 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 Richard CundySubscribed and sworn to before me this 20 day of May 19 87JOANNE DENHAM, Notary Public
My Commission Expires 10/14/92

Attachment to Application No. 1413-1

Explanation of the "Amount of Water Claimed"

The Supreme Court Opinion, filed October 7, 1941 and the Amended Judgement of the Circuit Court dated October 27, 1942 in the case of Cundy vs Weber states:

The West Ditch was to take first 75 miner's inches (1.5 cfs) of water, then the East Ditch would take up to 52 miner's inches (1.04 cfs) of the remaining flow in the gulch. If any flow remained after these two amounts were diverted, the West Ditch could divert the balance of the flow of the stream (conversion to cfs added by Division of Water Rights).

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1413-1 FOR IRRIGATION

(1) Higgins Gulch, East Ditch & Dick Cundy of RR #1, Box 55, St. Onge, SD 57779 made Application No. 1413-1, May 21, 1987, for validation of a vested right claim to appropriate 1.04 cubic feet of water per second from Higgins Gulch, Lawrence County, South Dakota for irrigation purposes. Vested Water Right No. 1413-1 was validated December 2, 1987, with a priority date of April 20, 1877. 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 0.91 cubic feet of water per second (cfs) from Higgins Gulch after Higgins Gulch West Ditch has diverted the first 1.5 cfs from Higgins Gulch (Vested Water Right No. 1412-1), for beneficial use. The location of the diversion points is: 1700 feet east and 1310 feet south of the NW corner of Section 28, T7N, R2E.

The location of the irrigated acreage is:

T7N, R2E Section 21 SW 1/4 SW 1/4 24.4 acres

SE 1/4 SW 1/4 29.2 "

SW 1/4 SE 1/4 4.5 "

Section 28 NW 1/4 NW 1/4 1.2 "

NE 1/4 NW 1/4 4.7 "

Total acres irrigated 64.0

(3) Pursuant to Section 46-5-30.1 Higgins Gulch, East Ditch,
%Dick Cundy of RR #1, Box 55, St. Onge, SD 57779 the holder(s)
and/or owner(s) of Vested Water Right No. 1413-1 is issued a
license to appropriate 0.91 cubic feet of water per second from
Higgins Gulch as described in (2) of this license with a priority
date of April 20, 1877 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. 1413-1 and
subject to South Dakota State Law.



JOHN HATCH, Chief Engineer
Water Rights Division
Department of Water and Natural
Resources
MAY 1 1988

VESTED WATER RIGHT

The Water Management Board hereby validates Vested Water Right Claim No. 1413-1.

Higgins Gulch, East Ditch

Route 1, Box 55, St. Onge

(applicant)

(post office address)

South Dakota

57779

(state)

(zip code)

Date of receipt of Application May 21, 1987.

Validated December 2, 1987.

The Water Management Board hereby validates the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Vested Water Right, subject, however, to the following limitations and conditions:

1. The date from which the applicant may claim right is April 20, 1877*, 19.
2. The whole of said work has been completed and water has been applied to beneficial use as described on Form 2B of this application.
3. The water appropriated is used for the purpose of irrigation.
4. The prior rights of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be unlawfully impaired by this appropriation.
5. The amount of the appropriation hereby validated shall not exceed 0.91 cubic feet per second after Higgins Gulch West Ditch has diverted the first 1.50 cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served. For irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water has been actually and beneficially applied for irrigation. The water is to be used during the following described annual period April 1-October 31.

The applicable portions of Location Certificate No. 78144 have been incorporated into Vested Water Right Nos. 1413-1 and 1412-1 and the abandoned portions of Location Certificate No. 78144 have been cancelled.

Vested Water Right No. 1413-1 was validated subject to the qualifications listed in Attachment A.

* See Attachment B

WATER MANAGEMENT BOARD

By: John Hatch

(Chief Engineer)

Division of Water Rights
Dept. of Water and Natural Resources

MAY 1 1988

, 1988.

ATTACHMENT A
VESTED WATER RIGHT NO. 1413-1

1. That Vested Water Right No. 1413-1 is subject to domestic use rights. Diversion of water under Water Right No. 1413-1 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 Higgens Gulch East Ditch within one year of validation of Vested Water Right No. 1413-1. The measuring device shall be permanently installed. The design shall be approved prior to construction, by the Chief Engineer.

ATTACHMENT B
Vested Water Right No. 1413-1

Explanation of the priority date:

1. The judgement of the Circuit Court, filed December 3, 1894 and the Supreme Court Opinion filed June 17, 1896 in the case of Scott vs Toomey states:

The West Ditch would have a priority date of April 20, 1877.

The priority date for the East Ditch would be later than the one for the West Ditch. The Court did not specify a specific date as the priority date of the East Ditch.

2. Approximately 20 acres of land located in the SW 1/4 SW 1/4 and SE 1/4 SW 1/4, Section 21, T7N, R2E which belongs to Mr. Dick Cundy and have the priority date of the East Ditch are being irrigated from the West Ditch based on an agreement between Mr. Cundy (East Ditch) and Mr. Humphrey (West Ditch).

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) Higgins Gulch, East Ditch/Dick Cundy

Post Office Address St. Onge Spearfish South Dakota 57783
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation May 1877 Date of Posting NA*

Date of recording October 25, 1883 Recording date Lawrence County 27 249
Where Book Page

B. Date of start of construction of water supply system 1877C. Date that water was first applied to beneficial use 1877 also see attached sheetD. Name of owner of original water supply system Daniel J. ToomeyE. Amount of water originally applied to beneficial use See attached sheet "Amount of Water Claimed"F. Present Use of Water - Amount of water now being used irrigation, 52 miners inchesDate that this water was first used 1877

G. Chronological History of Water Use

To the best of my knowledge the ditch has always been in use with no period of non-use.

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) SS

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

Signed Dick CundySubscribed and sworn to before me May 20, 19 87

JOANNE DENHAM, Notary Public
 My Commission Expires 10/14/92

*Not Available

Notary Public or other qualified officer

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

Dick Cundy 19 87
(Print name)5-20 19 87
(Print name)

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, May 21, 1937

RECEIVED OF Higgins Gulch, East Ditch/Dick Cundy

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

Fee for Application for Permit No. <u>1413-1</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 (ms)

IN THE CIRCUIT COURT OF THE EIGHTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH DAKOTA
WITHIN AND FOR LAWRENCE COUNTY.

HARRY CUNDY, Plaintiff,

-vs-

JACOB WEBER and DAVID R. THOMPSON
now deceased; CAROLYN THOMPSON
substituted in the Supreme Court.
Defendants.

AMENDED JUDGMENT.

The above entitled matter coming to be heard before the court, the Honorable A. R. Denu, presiding. The Plaintiff appearing by his attorneys, Hayes and Rentto and the defendant by their attorneys, Rice, Battelheim and Dan McCutchen and the parties having filed in court their written stipulation waiving Findings of Fact and Conclusions of Law and having further stipulated in writing as to the Judgment entered by the court and the court being now fully advised and informed.

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants have a prior and first right to the waters in Higgins Gulch for the irrigation of their lands described in the pleading in this action to the extent of 75 Miners' inches; as the West part of South half mol of the Northwest quarter and the North half of the Southwest quarter of Section 21, Township 7, North Range 2 East of the B.H.M. The Weber land; And the South half of the Southeast quarter of Section 17 and the North half of the East quarter of Section 20 Township 7 North of Range 2 East of the B.H.M., the Thompson lands.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff has the next right in and to the waters of Higgins Gulch Creek to the extent of 52 Miners' inches of water for the irrigation of his lands described hereafter; The North half of the Northwest quarter of Section 28 and the South Half of the Southwest quarter of Section 21, Township 7 North Range 2 East of the B.H.M., The Cundy lands.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that after each of the parties hereto has been supplied with the above priorities then the

THIS IS TO CERTIFY THAT THE FOREGOING IS TRUE AND CORRECTLY SET FORTH IN THE ORIGINAL RECORD AND WAS RECORDED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILATION LAW 1-27-1. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR REPRODUCTION OF THE ABOVE RECORD WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR REPRODUCTION OF DOCUMENTS.

REPRODUCTION SECTION 25 ROLL NO. 1

DATE RECORDED 5-4-82

RECORDED BY [Signature]

defendant shall have the right to use the balance of the water in the stream of which they may make a beneficial use.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that when the quantity of water flowing in Higgins Gulch Creek is short, the defendants shall limit their removal of water from the stream to 75 miners' inches to and until the Plaintiff has received his full 52 inches at all times, when the Plaintiff is receiving his 52 inches, the defendants may use the balance of the water in the stream.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants are hereby required and ordered to arrange their own headgate in the present dam so that they will draw only 75 inches of water and allow the balance to pass down the stream to the dam of the Plaintiff until the Plaintiff is securing his full 52 inches.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Plaintiff shall be required to construct his own dam and own headgate therein so that the same will not take off or carry more than 52 inches of water.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Plaintiff shall build his own dam below the dam of the defendant and shall not connect his dam in any way with the dam of the defendants.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the dam so to be erected by the Plaintiff below the dam of the defendant shall be so constructed that it will stop practically all of the water going down the stream to the dam and divert the plaintiff's 52 miners' inches without undue loss.

Done this 27 day of October, 1942.

ATTEST:

A. B. LAWLER, Clerk

By: SAIME J. BAUGH, Deputy

(SEAL)

BY THE COURT:
A. R. DENII, JUDGE.

FILED
OCT. 29, 1942.
A. B. Lawler,
Clerk Circuit Court,
Lawrence County, S.D.
By: Saime J. Baugh, deputy
11-42-43.

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRESENTATION OF THE
ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA CHAPTER
LAW 1-274. IT IS FURTHER CERTIFIED THAT THE MICROPHOTODUPLICATION PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A
MANNER WHICH MEETS THE REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT RECORDS.
EXEMPTION, SECTION 25, REL NO. 1, 5-4-84
DATE MICROFILMED
A. B. Lawler

SOUTH DAKOTA
State Water Resources Commission

STATE OFFICE BUILDING
PIERRE, SOUTH DAKOTA

December 14, 1961

Mr. Parel Harmon
RFD 1
Spearfish, S. Dak.

Mr. W. W. Dickey
815 State
Spearfish, S. Dak.

Mr. C. L. Bridges
RFD 1
Spearfish, S. Dak.

Re: Higgins Gulch

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 irrigation from Higgins Gulch:

(1) A water right location, dated October 25, 1883, claiming location date of May, 1877 and claiming all the flows of Higgins Gulch, filed in Volume 27, page 440, Lawrence County, signed by Daniel J. Toomey.

(2) The Judgement of the Circuit Court, filed December 3, 1894 and the Supreme Court Opinion filed June 17, 1896 in the case of Scott v. Toomey.

In this action the "west" ditch, having a priority of April 20, 1877, was declared to be entitled to so much of the waters of Higgins Gulch as could be diverted by the "west" ditch.

The Supreme Court Opinion, filed October 7, 1941 and the Amended Judgement of the Circuit Court dated October 27, 1942 in the case of Cundy v. Weber.

In this action the Court said the "west" ditch was to take the first 75 miner's inches of water, then the "east" ditch would take up to 32 miner's inches of the remaining flow in the stream. If any flow remained after these two amounts were diverted, the "west" ditch could divert the balance of the flow of the stream.

THIS IS TO CERTIFY THAT THE MICROFORMATIC IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILLED LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A FURTHER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROFORMATIC REPRODUCTIONS.

REDUCTION 25 ROLL NO. 1 DATE MICROFILMED 5-4-82

James J. [Signature]

No. 7842

Location Certificate Water Right

Wiggins' claim

Daniel J. Toomey

Filed October 23, 1883, at
1:15 o'clock P. M.

J. D. Tracy, Recorder
by Ed. McGarity, Deputy

Know all men by these presents, That I, the undersigned citizen of the U. S. and
resident of Lawrence County Dakota, claim by right of location and appropriation for
mining, domestic, agricultural, or any other useful or beneficial purposes, the follow-
ing water right, to wit: All the waters of Wiggins' claim at a point on Jacobson's
Ranch, below Jones Springs.

I claim the right to divert and convey said water to (it), also to flow in any
point where it can be used to advantage for any of the aforesaid purposes.

Located in May, 1877, and have been in actual possession of said water right ever
since.

Date of this certificate, October 23, 1883.

Daniel J. Toomey

STATE OF SOUTH DAKOTA }
COUNTY OF LAWRENCE } ss

I hereby certify that the within instrument is a true, correct and complete copy of
the instrument as recorded in my office on the 23rd day of October, 1883, at 1:15 o'clock
P. M., in Book 27 at Page 249.

Dated this 23 day of September, 1883.

[Handwritten signature]

HIGGINS GULCH IRRIGATION

<u>Name</u>	<u>Field</u>	<u>Acres</u>	<u>Total</u>
W. V.ickey	A	36.0	
	B	31.1	67.1
Mrs. B. Harmon	C	23.0	93.0
D. Bridges	D	102.1	105.1
		Ditch Total	205.2
			100.0

[Handwritten signature]

DIVERSION DITCH SERVICE

NAME OF THE DITCH: *Higgins Gulch Spring and big Spring*

ADDRESS: *Rt 1 Box 170 Spearfish S.D.*

DIVERSION POINT: $\frac{1}{4}$ $\frac{1}{4}$ SEC. T N-R E; SOURCE:

MAXIMUM DIVERSION RATE: C.F.S.

ACREAGE SERVED: *110* ACRES *BS = 146.8*

Higgins total = area Higgins include

LANDOWNER'S NAME	LOCATION OF LAND BEING IRRIG. BY THIS DITCH	ACREAGE	COMMENTS
---------------------	---	---------	----------

Robert W. Humphrey

Higgins Gulch

D

110

*including 5 acres of
tree belt*

see the paper

Viola McNenny

B SE

64.3

Dalzer

Big Spring

A

32.5 AC

WATER RIGHTS DIVISION
(605) 773-3352

February 2, 1987

Dick Cundy
St. Onge
Spearfish, South Dakota 57783

RE: Higgen^S_N Gulch, East Ditch

Dear Mr. Cundy:

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

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

Sincerely,

Rassool Ahadi
Natural Resources Engineer

RA:ms
Enc.

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1413-1, Higgens Gulch East 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. 1413-1, Higgens Gulch East Ditch, c/o Dick Cundy, St. Onge, Road Spearfish, South Dakota.

The Chief Engineer is recommending VALIDATION of Application No. 1413-1, for 0.91 cfs from Higgens Gulch after Higgens Gulch West Ditch has diverted the first 1.5 cfs from Higgens Gulch and that the applicable portions of Location Certificate No. 78144 have been incorporated into Permits No. 1413-1 and No. 1412-1 and that the abandoned portions of Certificate No. 78144 have been cancelled, because 1) water has been appropriated as described for irrigation use with a priority date of April 20, 1877, 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. 1413-1 is subject to domestic use rights. Diversion of water under Water Right No. 1413-1 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 Higgens Gulch East Ditch within one year of validation of Vested Water Right No. 1413-1. 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 20, 1987

Report on the Higgens Gulch Claims
Vested Water Right Applications No. 1412-1 and No. 1413-1
October 13, 1987

Background

Pursuant to SDCL 46-5-49 and ARSD 74:02:01:20, Higgens Gulch West and East Ditches have filed applications to validate their vested right claims. The Higgens Gulch Claims consist of two vested water right claims:

- 1) Higgens Gulch West Ditch (Application No. 1412-1), claims the first 1.5 cfs of Higgens Gulch water and the balance of any flow in Higgens Gulch after Higgens Gulch East Ditch has diverted 1.04 cfs to irrigate 210 acres in Sections 17, 20, and 21, T7N-R2E, in Lawrence County. The diversion point is located in the NE1/4 NW1/4 Section 28, T7N-R2E, in Lawrence County.
- 2) Higgens Gulch East Ditch (Application No. 1413-1), claims 1.04 cfs of Higgens Gulch water after Higgens Gulch West Ditch has diverted the first 1.5 cfs from Higgens Gulch to irrigate 64 acres in Sections 21 and 28, T7N-R2E, in Lawrence County. The diversion point is located in the NE1/4 NW1/4 Section 28, T7N-R2E, in Lawrence County.

Document Search

The following documents were found pertaining to the Higgens Gulch Vested Water Right Claims:

- 1) Location Certificate No. 78144 dated October 25, 1883, which was signed by Daniel J. Toomey, claimed a location date of May 1877. The certificate claimed all the flows of Higgens Gulch, was filed with the Lawrence County Register of Deeds and was recorded in Volume 27, Page 249.
- 2) A Judgement of the Circuit Court, filed December 3, 1894, and a Supreme Court Opinion filed June 17, 1896, in the case of Scott vs. Toomey. In this case, the West Ditch, with a priority date of April 20, 1877, was declared to be entitled to so much of the Higgens Gulch water as could be diverted by the West Ditch.
- 3) The Supreme Court Opinion, filed October 7, 1941, and the Amended Judgement of the Circuit Court dated October 27, 1942, in the case of Cundy vs. Weber. In this action, the court said that the West Ditch was to take the first 75 miner's inches (1.5 cfs) from Higgens Gulch, then the East Ditch would take up to 52 miner's inches (1.04 cfs) of remaining flow in the stream. If any flow remained after these two amounts were diverted, the West Ditch could divert the balance of the flow of the stream.

The court did not specify a priority date for East Ditch. However, it did state that the West Ditch could divert the first 1.5 cfs from Higgens Gulch and the balance of any flow in Higgens

Gulch after Higgens Gulch East Ditch has diverted 1.04 cfs. Both Ditches have a common priority date of April 20, 1877, however, West Ditch has the first right and East Ditch has the second right with West Ditch having the third right to any remaining Higgens Gulch flows.

Discussion

The Water Resources Commission investigated the irrigation from Higgens Gulch in the early 1960's. At that time, 265.2 acres were mapped as being irrigated from the gulch in this area.

Recent investigations by the Water Rights Division engineers have found that a total of 274 acres - 210 acres West Ditch and 64 acres East Ditch - is being irrigated from the Higgens Gulch. The increase in the acreage is mainly due to the addition of the areas being irrigated that are covered by trees and also the shelter-belt located in the SE1/4 Section 17, T7N-R2E.

To determine the amount of water needed to irrigate 210 and 64 acres, 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 properly irrigate 70 acres, 3.0 cfs will be used to irrigate 210 acres and 0.91 cfs will be used to irrigate 64 acres.
- 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 feet of water every irrigation season, a total of 822 acre-feet of water is needed for the season, from which 236.7 acre-feet or 3.8 cfs - 2.9 cfs for 210 acres and 0.9 cfs for 64 acres - will be used in the Month of July. Since the water is diverted through a system of pipelines, no water loss due to the irrigation system is anticipated.

Conclusions and Recommendations

- 1) The headgates for the West and East Ditches are capable of diverting more water than the diversion rates claimed.
- 2) Based upon the 1.0 cfs per 70 acres criteria, the peak quantity of water necessary to irrigate the land under Higgens Gulch West Ditch Claim would be 3.0 cfs and Higgens Gulch East Ditch Claim would be 0.91 cfs. Comparing this to the SCS, South Dakota Irrigation Guide calculations, these quantities of water appear to be reasonable.
- 3) It is recommended that Higgens Gulch West Ditch Vested Water Right Claim be validated for the first 1.5 cfs from Higgens Gulch and the balance of any flow in Higgens Gulch up to a

total of 3.0 cfs (after Higgens Gulch East Ditch has diverted 0.91 cfs) to irrigate 210 acres as described in Application No. 1412-1, with a priority date of April 20, 1877, and that Higgens Gulch East Ditch Vested Water Right Claim be validated for 0.91 cfs from Higgens Gulch (after Higgens Gulch West Ditch has diverted the first 1.5 cfs from Higgens Gulch) to irrigate 64 acres as described in Application No. 1413-1 with a priority date of April 20, 1877.

- 4) It is recommended that if Vested Water Right Application No. 1412-1 and No. 1413-1 are validated, that the applicable portions of Location Certificate No. 78144 be incorporated into No. 1412-1 and No. 1413-1, and that the abandoned portions of Location Certificate No. 78144 be cancelled.



Rassool Ahadi
Natural Resources Engineer



Department of Water & Natural Resources

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

October 29, 1987

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

Higgins Gulch East Ditch
c/o Dick Cundy
St. Onge Road
Spearfish SD 57783

Dear Mr. Cundy:

Your Application No. 1413-1 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 FOURCE DAILY POST printed at Belle Fourche SD. 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 cursive script, appearing to read "Ron Duvall".

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 29, 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. 1413-2. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before November 4, 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 Higgins Gulch East Ditch, c/o Dick Cundy, St. Onge Road, Spearfish SD.

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 29, 1987

QUEEN CITY MAIL
Box 7
Spearfish SD 57783

Dear Sir:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1413-1. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before November 4, 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 Higgins Gulch East Ditch, c/o Dick Cundy, St. Onge Road, Spearfish SD.

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 November 4, 1987 with 2nd publication 1 week later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Right Application No. 1413-1 to Appropriate Water

Notice is hereby given that Higgens Gulch East Ditch, c/o Dick Cundy whose mailing address is St. Onge Road, Spearfish, South Dakota has filed an application to validate a vested right claim to appropriate 1.04 cubic feet of water per second (cfs) from Higgens Gulch, after Higgens Gulch West Ditch has diverted the first 1.5 cfs from Higgens Gulch, to irrigate 64 acres via the East Ditch with a claimed priority date of 1877. The Higgens Gulch diversion point for the East Ditch is located in the NE 1/4 NW 1/4 Section 28, T7N, R2E. The irrigated acreage is located in the S 1/2 SW 1/4, SW 1/4 SE 1/4 Section 21; N 1/2 NW 1/4 Section 28; all in T7N, R2E.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1413-1 for 0.91 cfs from Higgens Gulch after Higgens Gulch Ditch has diverted the first 1.5 cfs from Higgens Gulch and that the applicable portions of Location Certificate No. 78144 be incorporated into No. 1413-1 and 1412-1 and that the abandoned portions of No. 78144 be cancelled because 1) water has been appropriated as described for irrigation with a priority date of April 20, 1877, 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, 2211 LaCrosse, 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 1-26, 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 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 (605 773-3352) 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.

No. 1413-1

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

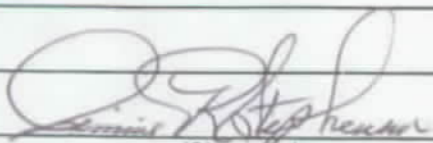
A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the _____

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:

November 3rd, 1987

November 10th, 1987



(Signature)

Publisher

(Title)

11-10-87

(Date Signed)



Cost of Printing: 111 x .2564 = 28.46

111 x .2051 = 22.77

total = 51.23

NOTICE OF HEARING

To Validate Vested
Right Application No. 1413-1
To Appropriate Water

Notice is hereby given that Higgins Gulch East Ditch, c/o Dick Cundy whose mailing address is St. Onge Road, Spearfish, South Dakota, has filed an application to validate a vested right claim to appropriate 1.04 cubic feet of water per second (cfs) from Higgins Gulch after Higgins Gulch West Ditch has diverted the first 1.5 cfs from Higgins Gulch, to irrigate 64 acres via the East Ditch with a claimed priority date of 1877. The Higgins Gulch diversion point for the East Ditch is located in the NE 1/4 NW 1/4 Section 28, T7N, R2E. The irrigated acreage is located in the S 1/2 SW 1/4, SW 1/4 SE 1/4 Section 21; N 1/2 NW 1/4 Section 28; all in T7N, R2E.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1413-1 for 0.91 cfs from Higgins Gulch after Higgins Gulch West Ditch has diverted the first 1.5 cfs from Higgins Gulch and that the applicable portions of Location Certificate No. 78144 be incorporated into No. 1413-1 and 1412-1 and that the abandoned portions of No. 78144 be cancelled because 1) water has been appropriated as described for irrigation with a priority date of April 20, 1987, 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, 2211 LaCrosse, Roosevelt and Jefferson Rooms, 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, 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 on 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 (605 773-3352) 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.

Nov. 3, 10

No. 1413-1

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:

November 4, 1987

November 11, 1987

Marion Lucas
(Signature)

Editor
(Title)

November 11, 1987
(Date Signed)

Cost of Printing: \$45.10

Public Notice

NOTICE OF HEARING
TO VALIDATE
Vested Right Application
No. 1413-1
to Appropriate Water

Notice is hereby given that
Higgins Gulch East Ditch, c/o
Dick Cundy whose mailing ad-
dress is St. Onge Road,
Spearfish, South Dakota has
filed an application to validate a
vested right claim to appropri-
ate 1.04 cubic feet of water per
second (cfs) from Higgins
Gulch, after Higgins Gulch
West Ditch has diverted the
first 1.5 cfs from Higgins Gulch,
to irrigate 64 acres via the East
Ditch with a claimed priority
date of 1877. The Higgins Gulch
diversion point for the East
Ditch is located in the NE 1/4
NW 1/4 Section 28, T7N, R2E.
The irrigated acreage is located
in the S 1/2 SW 1/4, SW 1/4 SE
1/4 Section 21; N 1/2 NW 1/4
Section 28; all in T7N, R2E.

Pursuant to SDCL 46-2A-2
the Chief Engineer of the Water
Rights Division recommends
VALIDATION of Vested Water
Right Application No. 1413-1
for 0.91 cfs from Higgins Gulch
after Higgins Gulch Ditch West
has diverted the first 1.5 cfs
from Higgins Gulch and that
the applicable portions of Loca-
tion Certificate No. 78144 be in-
corporated into No. 1413-1 and
1412-1 and that the abandoned
portions of No. 78144 be
cancelled because 1) water has
been appropriated as described
for irrigation with a priority
date of April 20, 1877, 2) the use
has been developed without
unlawful impairment of exist-
ing 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 Jeffer-
son 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) ap-
prove 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 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 (605-773-3352) 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.



Department of Water & Natural Resources

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

October 1, 1987

Higgins Gulch, East Ditch
c/o Dick Cundy
St Onge Road
Spearfish SD 57783

Dear Mr. Cundy:

This letter is to inform you that the vested right claim for Higgins Gulch, East 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,

A handwritten signature in cursive script that reads "Ron Duvall".

RON DUVALL
Water Resources Engineer
605 773-3352



United States Department of the Interior
BUREAU OF RECLAMATION
Missouri Basin Region
P.O. Box 36900
Billings, Montana 59107-6900



IN REPLY
REFER TO: MB-450
870.

John Hatch, Chief Engineer
Water Rights Division
Joe Foss Building
Pierre, SD 57301

NOV 19 1987

Dear Mr. Hatch:

Pursuant to South Dakota Civil Law 1-26, we hereby make known our objections to Applications to Validate Vested Water Rights (applications) Nos. 1388-1, 1390-1, 1394-1, 1395-1, 1399-1, 1400-1, 1402-1, 1405-1, 1408-1, 1409-1, 1410-1, 1411-1, 1412-1, 1413-1, 1415-1, 1417-1, 1423-1, and 1425-1. These applications are scheduled for consideration by the Water Management Board in Rapid City, South Dakota, on December 2, 1987, at 1:00 pm.

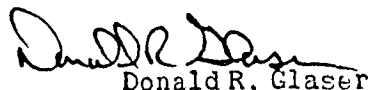
We concur with the Chief Engineer's recommendations regarding the diversion rates for the applications listed above and would object to increases in the diversion rates above those recommended by the Chief Engineer. The Bureau of Reclamation (Bureau) is the owner of water rights for the Belle Fourche Irrigation Project (Project) located on the Belle Fourche River. Most of the vested rights (with the exception of application No. 1423-1) have points of diversion located on tributaries to the Belle Fourche River upstream of the Project diversion dam. The Project could be adversely impacted if the applications are validated with flow rates in excess of those historically utilized.

Finally, we request that you send a copy of the Chief Engineer's recommendation regarding each of the applications listed above to Bruce Laymon who will be representing the Bureau's interests at the hearings. His mailing address is listed below.

U.S. Bureau of Reclamation
Attention: Bruce Laymon
Belle Fourche Project Office
P.O. Box 226
Newell, SD 57760

If you have any questions regarding our interest in these matters, please contact Dave Nelson at (406) 657-6639 or Bob Pike at (406) 657-6469.

Sincerely yours,


Donald R. Glaser

For B. E. Martin
Regional Director

Enclosure

Identical letters sent to attached listing

Mr. Ralph Bahm
RR 1, Box 196
Spearfish, SD 57783

Ms. Della Crago
RR 1, Box 24
Belle Fourche, SD 57717

Mr. Dick Cundy
St. Onge Road
Spearfish, SD 57783

Homestake Mining Company
P.O. Box 875
Lead, SD 57754

Mr. Albert Jeffery
RR 1
Spearfish, SD 57783

Mr. Leland Johnson
Mr. Keith Johnson
RR 1, Box 1011
Spearfish, SD 57783

Mr. Richard Lausser
RR 1, Box 195
Spearfish, SD 57783

Redwater Irrigation Association
P.O. Box 351
Belle Fourche, SD 57717

Mr. R. Thornton Vallery
Star Route, Box 188
Nisland, SD 57762

Mr. James Chenowith
Box 248
Woodrow, CO 80757

Mr. Ralph Crago
RR 1, Box 52B
St. Onge, SD 57779

Mr. Melvin Delzer
Box 1045
Spearfish, SD 57783

Mr. Robert Humphrey
Rt. 1, Box 170
Spearfish, SD 57783

Mr. James Jennings
RR 1, Box 182C
Spearfish, SD 57783

Mr. William Lambert
Box 335
Beulah, WY 82712

Mr. Josef Meier
421 Meier Street
Spearfish, SD 57783

Mr. Wesley W. Thompson
Rt. 1, Box 198A
Spearfish, SD 57783

**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 CF&P interest in the upcoming hearings the following information should be useful.

CF&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. CF&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,

A handwritten signature in dark ink, appearing to read "Ron Koth". The signature is fluid and cursive, written over a few lines.

Ron Koth
Water Permits Coordinator

RK/ld

November 25, 1987
(date)

page 1

Parties of Record before Water Management Board regarding Vested Right
Application No 1413-1, Higgins Gulch East Ditch

For:

Dick Sundy
Higgins Gulch East Ditch
Route 1, Box 55
St. Onge SD 57779

Interested:

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

Against:

B.E. Martin, Regional Director
Bureau of Reclamation
P.O. Box 36900
Billings MT 59107 - 6900

Bruce Haymon
U.S. Bureau of Reclamation
PO Box 226
Newell SD 57760

**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 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 No. 1413-1 on Higgins Gulch, 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,

Richard J. Beringson
Secretary

RJB/ld

cc: Higgins Gulch, East Ditch % Dick Cundy



Department of Water & Natural Resources

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

MAY 1 1988

Dick Cundy
Higgins Gulch, East Ditch
Route 1, Box 55
St. Onge, South Dakota 57779

Dear Mr. Cundy:

Enclosed are your Validated Vested Water Right and Water License No. 1413-1.
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,

A handwritten signature in cursive script that reads "John Hatch". The signature is written in dark ink and is positioned above the typed name.

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

JH:ms

enclosures

 **Department of
Water & Natural Resources**

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

January 9, 1989

Higgins Gulch, East Ditch
c/o Richard Cundy
St. Onge Road
St Onge SD 57779

RE: Installation of a Permanent Measuring Device for
Vested Right No. 1413-1

Dear Mr. Cundy:

As a reminder, the Water Management Board, at the December 2 and 3, 1987 meeting, validated your vested right claim on Higgins Gulch, East 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,



ASSOOL AHADI
Natural Resources Engineer
605)773-3352



Higgins Gulch

Don Strop Donald P. Strop
SD DENR WR 3/25/05

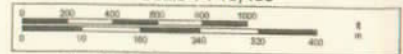
West

East

Hydrant

Diversion Point
N44.54355°
W103.88328°

Scale 1 : 10,400



1" = 866.7 ft

Data Zoom 14-3



Higgins Gulch

Don Stroup
3D DENR WR
8/25/03

OLD BELL FOURCHE HWY

OLD BELL FOURCHE HWY

OLD BELL FOURCHE HWY

West

East

Hydrant

CAMP COMFORT RD

CAMP COMFORT RD

Diversion Point
N44.54355°
W103.89328°



17 16
20 21

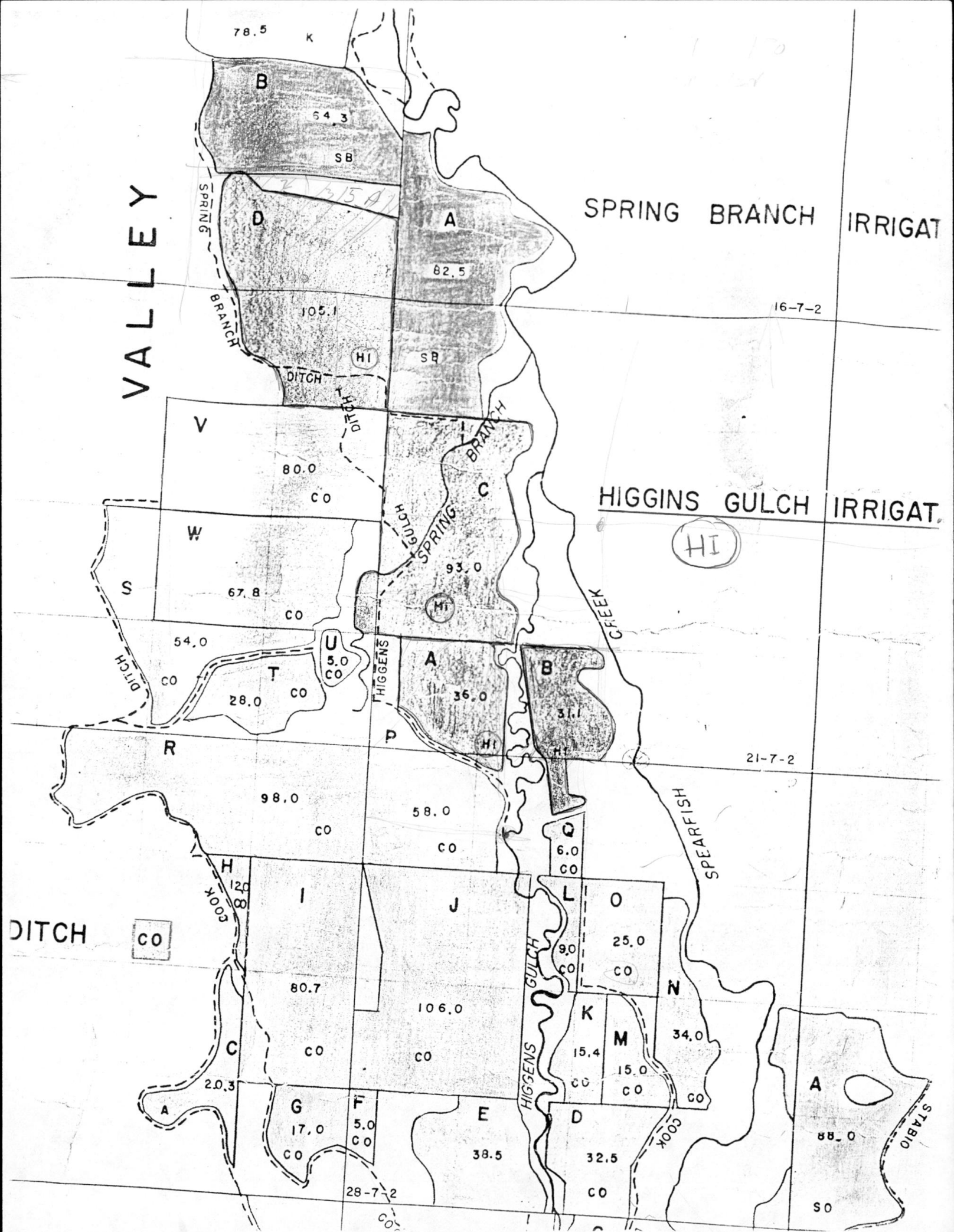
20 21
29 28

diversion
point

M. A. Had
Nat. Res. Eng.

9/28/87

V. R. Appl. No. 1413-1





MR. Had
Nat. Res. Eng.

9/28/87

V.R. Appl. No. 1413-1

VALLEY

SPRING BRANCH IRRIGAT

16-7-2

HIGGINS GULCH IRRIGAT.

HI

21-7-2

28-7-2

DITCH

CO

STABIO

SO

78.5

K

B

54.3

SB

D

105.1

HI

DITCH

A

82.5

SB

V

80.0

CO

W

67.8

CO

S

CO

R

98.0

CO

T

28.0

CO

U

5.0

CO

A

36.0

HI

B

31.1

HI

58.0

CO

Q

6.0

CO

H

120.0

CO

I

80.7

CO

J

106.0

CO

L

9.0

CO

O

25.0

CO

N

34.0

CO

K

15.4

CO

M

15.0

CO

D

32.5

CO

E

38.5

F

5.0

CO

G

17.0

CO

C

20.3

A

A

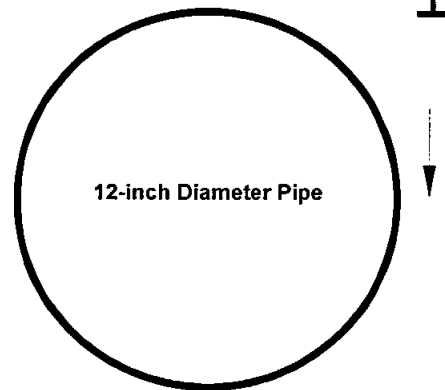
88.0

SO

Higgins Gulch East Flow Measurement

The height (H) of the water shall be measured from the middle of the inlet pipe

H = height of water over center of pipe



Slide Gate Wide Open	
H	Q (cfs)
1-ft	2.73
10-inches	2.50
8-inches	2.23
6-inches	1.94

Slide Gate Half Open	
H	Q (cfs)
1-ft	1.37
10-inches	1.25
8-inches	1.13
6-inches	0.97
4-inches	0.80
2-inches	0.57

SPEARFISH CREEK IRRIGATION DITCHES - CONTACT INFORMATION

Updated 7/8/14

1392-1	MANN DITCH Edgar Burr 209 Evans Ln Spearfish, SD 605-642-7963	COOK DITCH Mike McGuigan 2350 Dairy Ln Spearfish, SD 605-641-2052	1389-1
1403-1	RAMSDELL DITCH Mike Kyte 1121 N. Main St. Spearfish, SD 605-642-4932	SPRING BRANCH DITCH Ross Delzer 19481 US Hwy 85 Belle Fourche, SD 605-642-3778	1424-1
1400-1	OWENS-GAY DITCH Tom Callaway City of Spearfish Spearfish, SD 605-642-1333	KEMPER-COOK-BURNS DITCHES Eric Jennings 19488 Creekside Loop Spearfish, SD 605-642-3411	1399-1 1394-1
1386-1	WALTON-SCHULER DITCH David Rossi Home 605-584-4904 Work 307-682-8530 Back up - Woody Hayes 605-645-2007	HIGGENS GULCH DITCH WEST Layton Lensegrav 10902 SD Hwy 34 Belle Fourche, SD 605-641-1124 or 605-723-3095	1412-1
1387-1**	TONN-EVANS DITCH Jared Capp - President 609 Nellie Lane Spearfish, SD 605-639-9041	HIGGENS GULCH DITCH EAST Cundy Trust c/o Jim Jennings-Co Trustee 19483 Old Belle Rd Spearfish, SD 605-642-2146	1413-1
1388-1	BOWMAN DITCH Phil Kissack 19460 Creekside Loop Spearfish, SD 605-642-4914		

**1387-1 is actually listed in the name of Spearfish Tonn-Evans Ditch