

Considered: _____

vested Right Claim
WATER PERMIT NO. 1423-1

HAP No. same

Name of Applicant R. Thornton Vallery 605-257-2264

Post Office Address Star Route, Box 188 Wisland SD 57762

Amount of Water Claimed 10 cfs Total Acres 565.47

Source of Water Supply Belle Fourche River

Water to be used for irrigation County Butte

About 3 miles E of Fruitdale.

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY Date Received May 3, 1982 Fee \$15⁰⁰ Remarks see 10/26/87

Corrected Application Received _____ Period of Annual Use Apr 1 - Nov 1

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

WI-1 Description same as Application YES NO REMARKS _____

Diversion Point Belle Fourche River : between
points in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$; section 15-
T8N-R4E

Land to be Irrigated S $\frac{1}{2}$ SE $\frac{1}{4}$ section 10; W $\frac{1}{2}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ SE $\frac{1}{4}$ section 11; N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ section 14;
NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$
section 15; all in T8N-R4E

Well Log: Driller NA Licensed YES NO

Depth of Well _____ REMARKS _____

Type of Map aerial photo PREPARED BY J. Winterton Reviewed and the Number
assigned on October 19, 1987 By Ron Duwall

**SOUTH DAKOTA
VESTED WATER RIGHT NO. 1423-1 FOR IRRIGATION**

Date of Receipt of Claim May 3, 1982.

Date of Validation May 11, 1988.

The Water Management Board validated Vested Water Right Claim No. 1423-1 for irrigation purposes for R. Thornton Vallery, HCR 76, Box 188, Nisland SD 57762 with the following limitations, conditions, and qualifications:

1. Vested Water Right No. 1423-1 appropriates 0.58 cubic feet of water per second (cfs) from the Belle Fourche River to irrigate 48 acres. The Belle Fourche River diversion points are located between the SE1/4 NW1/4 and NE1/4 NE1/4 section 15 including the S1/2 SE1/4 section 10; all in T8N-R4E. The irrigated acreage is located in the NW1/4 NE1/4 (30 acres), NE1/4 NE1/4 (10 acres), SW1/4 NE1/4 (7 acres), SE1/4 NW1/4 (1 acre) section 15-T8N-R4E. Water Right Nos. 228-1 and 264-1 are incorporated into Vested Water Right No. 1423-1.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: April 1 - November 1.
3. The priority date of the Vested Water Right is February 2, 1900. See Vested Right Water License No. 1423-1 for additional priority dates.
4. The water system has been constructed and water has been put to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota may not be lawfully impaired by this appropriation.

QUALIFICATIONS

1. Vested Water Right No. 1423-1 is subject to domestic use rights. Diversion of water under Water Right No. 1423-1 is contingent upon supplies being available first to domestic users.
2. This water right is subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: 
Chief Engineer

APR 9 1991

Division of Water Rights
Dept of Water and Natural Resources

No. 1423-1Map No. same Water Division No. 10/20202 Belle Fourche R. District
Above for Office Use

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

Check one of the following:

New _____ Vested Right X Future Use _____

Change in Diversion _____ Additional Diversion _____

Change in Acreage X Additional Acreage _____

1. Name of Applicant R. Thornton Vallery Phone No. 605-257-2264
 Post Office Address Star Route Box 188, HCR 76, Nisland State South Dakota 57762
 (Street, RR, or Box) (Town) (Zip Code)
 If a corporation show date and place of incorporation _____

2. Method of accomplishing work (contract, employment of others, or by direct labor) Direct labor3. Name of diversion work Vallery River Ranch Diversion4. Amount of water claimed (cubic feet per second) 10 cu. se. feet5. Source of water supply Belle Fourche River

6. Location of point of diversion Section 15 Township 8 Range 4
between points in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$

County Butte7. Annual period or periods during which water is to be used April 1 thru November 18. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation9. For irrigation use, Total number of acres to be irrigated 565.47

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

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
See Attached Sheet			

Attach sheet if more space is needed

10. Time required to complete construction of water supply system Completed years. Additional time required to complete application of water to the proposed beneficial use _____ years.

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

12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.

Pumps

B. Works proposed to transport water to place of use.

Pipe lines

C. Works proposed to apply water to beneficial use.

gated pipe

circle system

Traveling guns

Estimated Total Cost \$ 180,000.00

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

STATE OF SOUTH DAKOTA)

County of Butte) ss.

I, R. Thornton Vallery the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.

Signed R. Thornton VallerySubscribed and sworn to before me this 27th day of April, 1982Debra Richards

Notary Public (or other qualified officer)

WNR-892-7279

Notary Public, Butte County, SD
 My Commission Expires Nov. 25, 1988

T8N R4E

1/4 Pt. of Div.

58°36'E

2745'

Pt of Diversion

1 Ac

SE 1/4 NW 1/4

NE 1/4 SW 1/4
39 Ac

SE 1/4 SW 1/4
23 Ac

SW 1/4 SE 1/4

13 Ac

264-1

228-1

NW 1/4 NE 1/4

30 Ac

10 Ac

SW 1/4 NE 1/4

20 Ac

290-1

1203-1

NW 1/4 SE 1/4

37 Ac

SE 1/4 NE 1/4

32 Ac

NE 1/4 SE 1/4

Pond Area

NE 1/4 SW 1/4

17 Ac

NW 1/4 NE 1/4

29 Ac

290-1

1203-1

SW 1/4 NE 1/4

39 Ac

NW 1/4 SE 1/4

18 Ac

NE 1/4 NE 1/4

24 Ac

SE 1/4 NE 1/4

39 Ac

NE 1/4 SE 1/4

21 Ac

SE 1/4 SE 1/4

27 Ac

From Leroy Thornburgh's Water Right
Inspection and map prepared by him

James E. Thornton P.E.
Natural Resources Engineer
Division of Water Rights
Oct. 11, 1987

MAP No. 1423-1

R. Thornton Vallery - Owner
Red Boundary - Present Lands Irrigated - 1987
Cross Hatched - Area Vested with 1925 Priority
Total Acreage Irrigated -- 500 acres



LAND DESCRIPTION

Section 10 Township 8 Range 4

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

24 acres

Section 11 Township 8 Range 4

NW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$ SE $\frac{1}{4}$

75 acres

Section 14 Township 8 Range 4

NW $\frac{1}{4}$ SW $\frac{1}{4}$
NE $\frac{1}{4}$ SW $\frac{1}{4}$
NW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$
NE $\frac{1}{4}$ NE $\frac{1}{4}$
SE $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$

17 acres
17 "
21 "
27 "
18 "
28 "
21 "
21 "

Section 15 Township 8 Range 4

NE $\frac{1}{4}$
E $\frac{1}{2}$ NW $\frac{1}{4}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$
NW $\frac{1}{4}$ SW $\frac{1}{4}$
SE $\frac{1}{4}$ SW $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$

21 "
22 "
24 "
34 "
28 "
16 "

286 acres

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

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

Name of Applicant (Same as Form 2) R. Thornton Vallery

Post Office Address Star Route Box 188, State South Dakota 57762

If a Corporation show date and place of incorporation _____

13. Notice of Appropriation (If available)

Date of Posting February 6, 1900 Date of Recording February 12, 1900 4P.M.

Recording Data Butte County Court House

14. Date of start of construction of water supply system Early 1900

15. Date that water was first applied to beneficial use Early 1900

16. Name of owner of original water supply system P. P. Vallery

17. Amount of water originally applied to beneficial use 2 c. f. s.

18. Present Use of Water

Amount of water now being used 10 c. f. s.

Date that this amount of water was first used Gradual increase from 1900 to present day

19. Chronological History of Water Use

(See Attached sheet)

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

STATE OF SOUTH DAKOTA)

) ss.

County of _____

I, R. Thornton Vallery, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed R. Thornton Vallery

Subscribed and sworn to before me this 27th day of April, 1982

Debra Richards

(Notary Public - or other qualified Officer)
Notary Public, Butte County, SD
My Commission Expires Nov. 25, 1988

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.

Randall T. Vallery

WATER RIGHT 0191-1
Filed February 6, 1900
P. P. Vallery

Water was diverted from the Belle Fourche River in Section 15-8-4 during the years of 1905-1912 by a large water wheel in the bend of the river in Section 15-8-4 (Affidavit by Ruth Vallery Young). This water wheel was probably lost due to the Spring floods in 1912.

By approximately 1912, P. P. Vallery had secured an Avery tractor and a Crane and Temple pump for diverting water from the Belle Fourche River.

By 1918-1919 sugar beets were raised for feed and test plots were grown and also alfalfa hay and corn.

In 1909 P. P. Vallery shipped two carloads of hogs to Omaha, I know he raised corn to feed them and probably some of it was irrigated.

By 1921 he had correspondence with the State pertaining to pumping etc.

About 1922 Philip H. Vallery (his son) joined him and began to help with the farming and ranching interests.

Philip Vallery filed for water rights 228-1, 264-1 in 1951 which covered approximately 70 acres in Section 15.

In 1948, I, R. Thornton Vallery, joined Philip Vallery (my father) in his farming and ranching interests and then filed for water rights 289-1 and 290-1 for approximately 461 acres in 1957.

All this time sugar beets, corn, and alfalfa hay were being raised on irrigated acres when water was available.

The water right 0191-1 was not known about until about 1980, therefore, I feel that at least 10 cfs should be honored as an appropriated or a vested water right back to 1900.

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

411025

Pierre, October 26, 1987

RECEIVED OF R. Thornton Vallery, Nisland, SD 57762

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

Fee for Application for Permit No. <u>1423-1</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
CLERK JOHN HATCH

March 28, 1921.

Mr. P. P. Vallery,
Nisland, S. D.

Dear Sir:

Your recent letter has been received
relative your taking water from Belle Fourche River.

It is true that as a riparian owner you
can appropriate water from the river that flows through
your land. According to law, the legal allowance is
one cubic foot of water per second for each seventy
acres of land irrigated, and the farmers above you
could not take any more water than their water rights
call for, based on the above legal allowance.

Since you are a riparian owner, it possibly
might not be absolutely necessary for you to secure a
water right, but by so doing you establish a priority
date to the water and put yourself on record as showing
the amount of water you expect to use, etc.

The blanks which we forwarded you contain
a number of lines which you would necessarily have to
leave blank as they would not apply to your case. The
blanks are prepared to cover many different cases, -in-
dividuals, corporations, etc.

If we can assist you further, kindly write
us.

Very truly yours,

Secretary.

Water right filed Feb. 6, 1900 6 men
Christian Jensen Sec 21 Portions of Sections
P.P. Vallery Sec 15-22-23-
Jacob Snyder Sec 11-12-
Andrew Snyder Section 11-10?
Rasmus Gotfredson Sec 11-10-?
James Larson Sec 17-18-

R.Y. Chapman Page-10 "History of Belle Irrigation Project"
1902 Bureau of Reclamation Saw
1902-1903 Preliminary work done on Orman dam A.Giles, P.P. Vallery

May 19, 1904 List of names of petitioners for B.F. Water Vallery, warden.

May 26, 1904 - 90,000 Acres proposed - map - proposed -

April 13, 1905 Pictures of dam construction

May 18, 1905 articles & pictures

June 5, 1905 Blanchard - statement - "more water than land"

Sept 12 - 1907 P.P. Vallery Best yellow corn - B.F. County fair.

1908 Crane & Temple pump - Avery Tractor

1917 Flood - Spring - water lift

1928 Flood -

1917 Sugar beet seed brought in and test
W.W.I years plots planted & irrigated - fed to livestock.

1925 Great western sugar Co.

1927 U & I sugar Co. came in

STATE OF SOUTH DAKOTA)
COUNTY OF BUTTE) ss.

AFFIDAVIT

Alfred Hansen of Fruitdale, Butte County, South Dakota
being first duly sworn on his oath deposes and says:

That he is a citizen and long time resident of Butte
County, South Dakota and that he was well and personally
acquainted with Peter P. Vallery who owned and farmed the NE $\frac{1}{4}$
Section 15, Township 8 North of Range 4, E.B.H.M, Butte
County, South Dakota.

That affiant well remembers the said Peter P. Vallery,
during the years 1916 and 1917 especially, having an Avery
tractor and a pump which he used in irrigating the above described
farm land with water pumped out of the Belle Fourche River.
That affiant saw such irrigating being done on said premises
during the years mentioned.

Alfred Hansen

Subscribed and sworn to before me this 21st day of July, 1960

Notary Public

My commission expires

April 12, 1961

STATE OF SOUTH DAKOTA)
COUNTY OF BUTTE)

SS.

SUPPLEMENTARY AFFIDAVIT

H. O. Payne being first duly sworn on his oath deposes and says:

That he is the Standard Oil Bulk service dealer in Nisland, South Dakota and that as such dealer he has delivered bulk oil products to the Philip Vallery farm since 1926. That he recalls purchase of a 15-30 McCormick Deering tractor at that time by Mr. Vallery and that Mr. Vallery also had - with his father P.P. Vallery, a six inch ^{Co.} Crane Centrifugal pump which they were using in irrigation crops. That they were purchasing gas and oil from him and that he delivered it to the pump many times while the pump was in use for irrigating purposes.

That affiant knows of his own knowledge that there has been regularly delivery since 1926 bulk oil products either to the irrigating works and pump or the farm premises of Philip Vallery. That crops have been irrigated annually since 1926 by Philip Vallery with about forty acres being irrigated originally and about seventy acres being irrigated at the present time.

Dated at Nisland, Butte County, South Dakota this 30th day of June, 1961.

H. O. Payne
Subscribed and sworn to before me this 1 day of July, 1961.

L. H. Buehler
Notary Public

My commission expires: July 11, 1965

STATE OF SOUTH DAKOTA)
COUNTY OF BUTTE)

SS.

SUPPLEMENTARY AFFIDAVIT

Jack Heidrich being first duly sworn on his oath deposes and says:

That he lives at Wisland, South Dakota and is well and personally acquainted with Philip Vallery and the Vallery farm. That he was employed on the Vallery farm from the summer of 1947 to March, 1960.

That affiant knows of his own knowledge - having actually done a lot of the irrigating himself - that growing crops have been and were irrigated by an irrigation system on the Vallery farm in each of the years from 1947 through 1959.

That when affiant started working there about forty acres were being irrigated and that at the time he left about seventy acres were being irrigated. That the crops irrigated included beets, corn, alfalfa and grains.

Dated at Wisland, Butte County, South Dakota this 30th day of June, 1961.

Jack Heidrich

Subscribed and sworn to before me this 30th day of June, 1961.

James H. Roberts
Notary Public

My commission expires:

June 1965

STATE OF SOUTH DAKOTA)
COUNTY OF BUTTE) SS.

A F F I D A V I T

Ruth Vallery Young of Seattle, King County, Washington,
being first duly sworn on her oath deposes and says:

That she is a daughter of Peter P. Vallery. That in the
years 1914 to 1920 she lived on the Peter P. Vallery farm
described as follows:

NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 8
North of Range 4, E.B.H.M., Butte
County, South Dakota.

That she knows of her own knowledge that Peter P. Vallery
about the year 1916 or 1917 purchased an Avery Tractor and that
in 1918 the said Peter P. Vallery purchased^a centrifugal pump
and used the said tractor and the said pump to pump water from
the Belle Fourche River to irrigate the lands described above
during the years 1918 to 1920. That she frequently saw said
pumping operation during the period of time above mentioned.

Ruth Vallery Young

June
~~May~~ 1960.

Subscribed and sworn to before me this 1st day of

Mary M. Cameron
Notary Public

My commission expires

Apr. 8, 1963

Notary Public in and for the State
of Washington residing at Seattle

STATE OF SOUTH DAKOTA }
COUNTY OF BUTTE } SS.

A F F I D A V I T

W. W. Young of Seattle, King County, Washington, being first duly sworn on his oath deposes and says:

That he is a son-in-law of Peter P. Vallery. That in the years 1912 to 1920^{and 1918 to 1919} he taught school in Nisland, Butte County, South Dakota and homesteaded an acreage right across the Belle Fourche River from the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 8 North of Range 4, E.B.H.M., Butte County, South Dakota.

That affiant married the daughter of Peter P. Vallery, Ruth Vallery, and was well acquainted with the Vallery place and the farming operations being conducted there.

That he knows of his own knowledge that Peter P. Vallery about the year 1916 or 1917 purchased an Avery Tractor and that in 1918 the said Peter P. Vallery purchased^a centrifugal pump and used the said tractor and the said pump to pump water from the Belle Fourche River to irrigate the lands described above during the years 1918 to 1922. That he frequently saw said pumping operation during the period of time above mentioned.

W W Young
Subscribed and sworn to before me this 1st day of June, 1960.

Mary M. Cameron
Notary Public

My commission expires

Apr. 8, 1963

Notary Public in and for the State
of Washington residing at Seattle

STATE OF SOUTH DAKOTA }
COUNTY OF BUTTE }

ss.

AFFIDAVIT

Alfred Hansen of Fruitdale, Butte County, South Dakota
being first duly sworn on his oath deposes and says:

That he is a citizen and long time resident of Butte
County, South Dakota and that he was well and personally
acquainted with Peter P. Vallery who owned and farmed the NE 1/4
of Section 15, Township 8 North of Range 4, E.B.H.M, Butte
County, South Dakota.

That affiant well remembers the said Peter P. Vallery,
during the years 1916 and 1917 especially, having an Avery
tractor and a pump which he used in irrigating the above described
land with water pumped out of the Belle Fourche River.
That affiant saw such irrigating being done on said premises
during the years mentioned.

Alfred Hansen

Subscribed and sworn to before me this 24 day of July, 1940

Carl B. ...
Notary Public

...

Know all men by these presents that the undersigned hereby locates and appropriates the waters of the Belle Fourche River stream creek or gulch to be taken and diverted therefrom at a point on the same in section three 40 rods north of the house occupied by Lavasey and on the premises owned by William McMasters in Butte County, South Dakota and carried thence by ditch and flume on a line as near as may be in easterly direction a distance of 15 miles more or less. The place of intended use. The number of inches of water claimed and appropriated is 7,000 miner's inches the purpose of the appropriation is for Irrigation, manufacturing and domestic use, date of appropriation, February 6th 1900 Date of posting notice of appropriation, of ditch-----date of certificate Feb. 6, 1900.

Rasmus Godfredson

Jacob Snyder

P.P. Valley

Christian Jensen -

James Larson

A. H. Snyder. - *Edwin F. Kling*

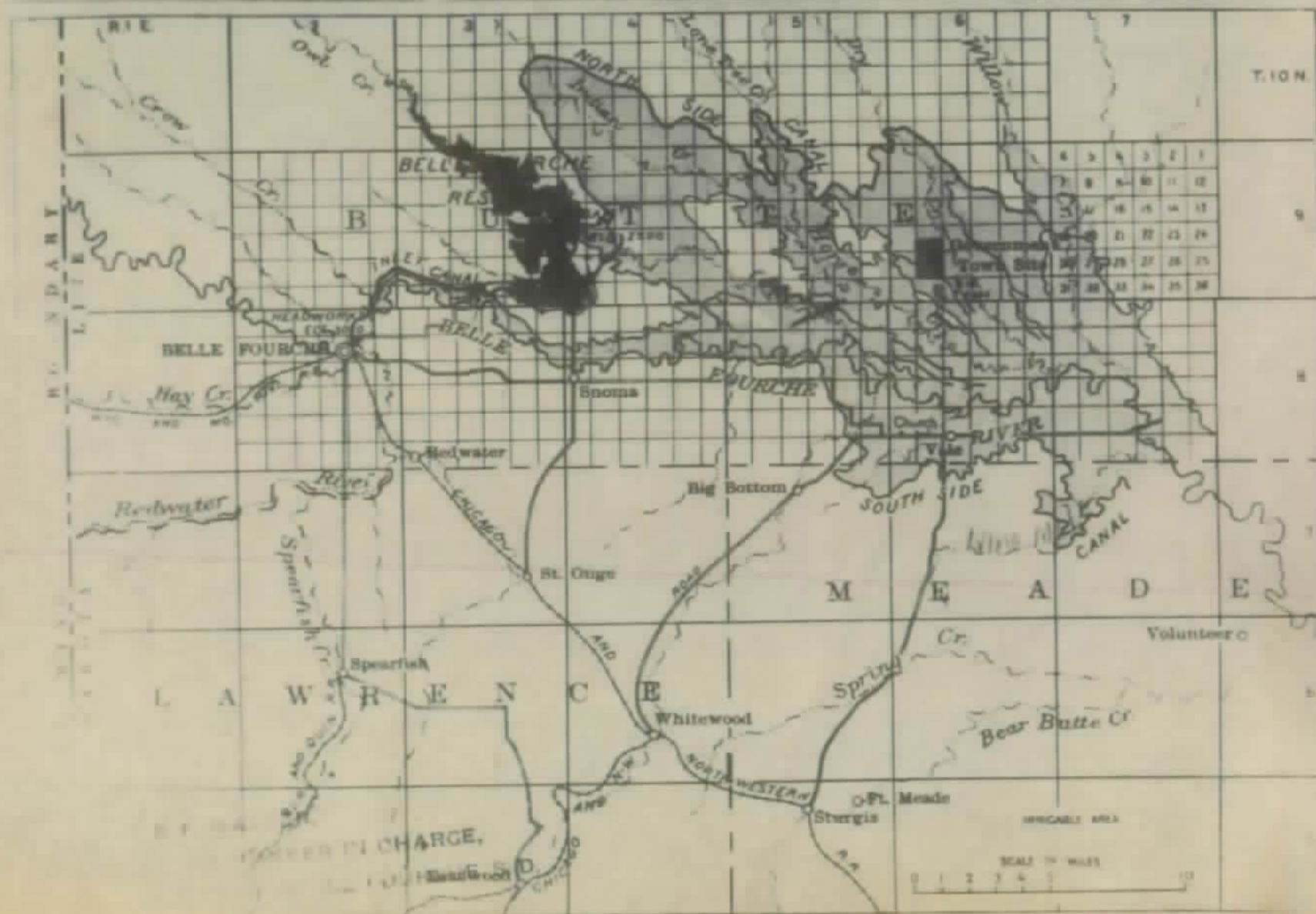
LM 1-2/-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS HAS BEEN APPROVED BY THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROFILM REPRODUCTIONS. REDUCTION 25% FILE NO. 1-2-2

DATE MICROFILMED

CHIEF OF BUREAU

STATE OF SOUTH DAKOTA - BUREAU OF RECLAMATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY

THIS IS TO CERTIFY THAT THE MICROPHOTODUPLICATION 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 RECORD WAS IN A PERMANENT AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTOGRAPHIC REPRODUCTIONS. REDUCTION 20% REL NO. 1 2-8-88



U. S. G. S.
RECLAMATION SERVICE
BELLE FOURCHE PROJECT SOUTH DAKOTA
GENERAL MAP

Dissemination

RECEIVED

MAR 10 1921

OFFICE OF STATE ENGINEER

PIERRE, S. DAK.

Nisland, S. Dak.

March 8, 1921

Natur Right

State Engineer,
Pierre, S. Dak.

Dear Sir:

We received the circular and the letters and noted the contents but wondered if the laws would fit our case as it seemed to wa us that the laws fitted a project where the water was sold and not just used on the land ^{which} where the river ran thru.

We understand that on a river which runs thru a place and which is not navigateable, the tax payer can take water from and no one can stop him from it as long as he don't take all of the water.

If that is the case the farmers above us could take water ~~water~~ from the river and we could not stop them even if we had a water right, as they pay taxes on the river and had control of it where it ran thru their place.

Please enlighten us on this matter and tell us if it is necessary to have a water right on our place.

Yours truly,

P.P. Vallery
P. P. Vallery.

March 4, 1921.

Mr. P. P. Vallery,
Nisland, S. D.

Dear Sir:

We are just in receipt of a letter from Mr. Hayden, the Project Manager in which he states that your contemplated diversion will not affect their water rights on the Belle Fourche River, and we are therefore furnishing you the following information:

The enclosed circular relating to water rights in South Dakota contains detailed instructions. With regard to surveys, maps, maps, etc., the instructions on page 6 of the circular should be followed. It is necessary to furnish with each application a map showing the proposed point of diversion, the headworks and canals for conveying water over the lands. The areas to be irrigated in each legal sub-division or 40-acre tract should be plainly shown. In case it is desired to take in more land later on, this land should be shown as an irrigable area, and the course and directions of the various canals for furnishing water should also be shown. These maps should be prepared by a deputy state surveyor of this state.

With regard to fees, the law provides that a fee of \$5.00 shall accompany each application for a permit to appropriate water. This fee should be sent at the time you forward your application for a permit. The application should be made out on the blank form No. 2 which is sent you herewith. After examining the application and maps which should accompany same, a notice will be sent you for publication in some newspaper published in the stream system. The proof of publication should be sent to this office in advance of the date set for the hearing upon the application. After the hearing, provided there is no valid objection to same, the application will be approved and a permit issued you. Before issuing such permit, a recording fee of \$2.10 is required. You will then be at liberty to construct your works and make use of the water for the purpose designated in your application. After completing your diversion works, notice should be sent to this office that you are ready to make proof of completion and proof of application of water to beneficial use. The necessary blank forms for furnishing these proofs and for perfecting your water right will then be sent you from this office.

Yours very truly,

Enc.-Form #2,
Circular.

Secretary.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
Newell, S. Dak., March 2, 1921.

Mr. John Berg,
State Engineer,
Pierre, S. D.

Dear Sirs

Water Rights

Your letter of February 25th has been received.

Referring to the request of Mr. P.P. Vallery of Nisland for permission to pump water out of the Belle Fourche River between Fruitdale and Nisland, I wish to advise that such diversion would not interfere in any way with the water rights on the Belle Fourche Project for the reason that all water diverted for use on this project is taken out of the River about two miles below the town of Belle Fourche.

Respectfully yours,

B. E. Hayden
Project Manager

BEH:LO

Know all men by these presents that the undersigned hereby locates and appropriates the waters of the Belle Fourche River stream creek or gulch to be taken and diverted therefrom at a point on the same in section three 40 rods north of the house occupied by Lavasey and on the premises owned by William M. Masters in Butte County South Dakota and carried thence by ditch and flume on a line as near as may be in an easterly direction a distance of 15 miles more or less. The place of intended uses. The number of inches of water claimed and appropriated is 7000 ^{minors} inches the purpose of the appropriation is for Irrigation Manufacturing and domestic use. date of appropriation February 6th 1900. date of posting notice of Appropriation ~~February 6th 1900~~ of ditch — date of Certificate Feb 6 1900.

Rasmus Godfredson	Christian Jensen
Jacob Snyder	James Larson
J. P. Valley	A. H. Snyder

?

Confidential Copy

No. 0191-1

Office of the Register of Deeds
BUTTE COUNTY, SOUTH DAKOTA

Received by me on the 12 day
of February 11, 1900, at
Butte, S.D., and recorded in
Book 7 of this Page 379
J. H. Snyder

REGISTER OF DEEDS

RASMUS GODTFREDSON
JACOB SNYDER
P. P. VALLERY
CHRISTIAN JENSEN
JAMES LARSON
A. H. SNYDER

*I hereby certify that the foregoing
copy of the original of the
above described instrument is
a true and correct copy of the
original as the same appears in
the records of this office.*

NO 34

Dated SEP 22 1906

Attest

By *Wm. H. Keene*
Deputy

Rec.

Belle Torche

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
Newell, S. Dak., March 3, 1931.

Mr. John Berg,
State Engineer,
Pierre, S. D.

Dear Sirs

Your letter of February 25th has been received.

Referring to the request of Mr. P.P. Vallery of Nisland for permission to pump water out of the Belle Fourche River between Fruitdale and Nisland, I wish to advise that such diversion would not interfere in any way with the water rights on the Belle Fourche Project for the reason that all water diverted for use on this project is taken out of the River about two miles below the town of Belle Fourche.

Respectfully yours,

B. E. Hayden
Project Manager

BEH: LO

ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA
LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN
AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPH
REPRODUCTIONS. REDUCTION 24x REL NO 1 DATE MICROFILMED 3-23-82 CAMERA OPERATOR

March 4, 1921.

Mr. B. P. Vallery,
Nisland, S. D.

Dear Sir:

We are just in receipt of a letter from Mr. Hayden, the Project Manager in which he states that your contemplated diversion will not affect their water rights on the Belle Fourche River, and we are therefore furnishing you the following information:

The enclosed circular relating to water rights in South Dakota contains detailed instructions. With regard to surveys, maps, etc., the instructions on page 6 of the circular should be followed. It is necessary to furnish with each application a map showing the proposed point of diversion, the headworks and canals for conveying water over the lands. The areas to be irrigated in each legal sub-division or 40-acre tract should be plainly shown. In case it is desired to take in more land later on, this land should be shown as an irrigable area, and the course and directions of the various canals for furnishing water should also be shown. These maps should be prepared by a deputy state surveyor of this state.

With regard to fees, the law provides that a fee of \$5.00 shall accompany each application for a permit to appropriate water. This fee should be sent at the time you forward your application for a permit. The application should be made out on the blank form No. 2 which is sent you herewith. After examining the application and maps which should accompany same, a notice will be sent you for publication in some newspaper published in the stream system. The proof of publication should be sent to this office in advance of the date set for the hearing upon the application. After the hearing, provided there is no valid objection to same, the application will be approved and a permit issued you. Before issuing such permit, a recording fee of \$2.10 is required. You will then be at liberty to construct your works and make use of the water for the purpose designated in your application. After completing your diversion works, notice should be sent to this office that you are ready to make proof of completion and proof of application of water to beneficial use. The necessary blank forms for furnishing these proofs and for perfecting your water right will then be sent you from this office.

Yours very truly,

Enc.-Form #2,
Circular.

Secretary.

DATE MICROFILMED

CHIEF OPERATOR

STATE OF MISSISSIPPI - BUREAU OF AGRICULTURE - OFFICE OF RECORDS MANAGEMENT - (L) 11-11-11 - (L) 11-11-11
THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPHIC 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 LAWS 1-27-41. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT REPRODUCTIONS.

REDUCTION 2.5x ROLL NO. 1 DATE MICROFILMED 3-2-82 CAMERA ORIGINATOR

No. 61911
(See 220-228-1)

Office of State Engineer
DOCUMENT FILE

Name: Jones, Christian
et al

County: Butler #11038

Date: Feb. 6, 1900

Filed: Feb. 12, 1910

Location: Pine Grove Plant
7000

et al: Jones, Christian
Hodges, James
Vallentyne, P.O.
Lester, James
Ingles, A.H.

Location Certificate water right

Know all men by these presents, that the undersigned hereby locates and appropriates the waters of the Bell Fourche River, stream, creek, or gulch, to be taken and diverted therefrom at a point on the same, in Section three, 40 rods north of the house occupied by Larsoy and on the premises owned by William McMaster in Butte County South Dakota, and carried thence by ditch and flume on a line as near as may be in an easterly direction, a distance of 15 miles more or less, the place of intended use; The number of inches of water claimed and appropriated is 7000 minus inches, the purpose of the appropriation is for Irrigation, manufacturing and domestic use. date of appropriation February 6th 1900. date of posting notice of appropriation of ditch 6th 1900. date of certificate February

Rasmus Gotfredson
Jacob Snyder
P. P. Tillery

Christian Jensen
James Larson
A. H. Snyder

Office of Register of Deeds.
BUTTE COUNTY, SOUTH DAKOTA.

Received for record the 12th day
of February 11, 1900, at 4
o'clock P.M., and recorded in
Book 7 of said page 371
J. W. Van Horn
REGISTER OF DEEDS.

January 25, 1982

Water Management Board
DWNR, Joe Foss Bldg.
Pierre, SD 57501

ATTENTION: Burton F. Jones

Dear Sirs:

Advertised in the Belle Fourche Bee on Friday, January 15, 1982 are the request for cancellation of water rights of long standing.

The water right #0191-1 of Christian Jensen et. al., dated February 6, 1900 claiming 7000 inches of water from the Belle Fourche River is the particular water right I am referring to.

I, R. Thornton Vallery, a grandson of P. P. Vallery, and current owner and operator of the land the water was, and has been used on request that the Water Management Board withhold the determination of said water right #0191-1 until I can get more information, as I feel there is substantial documented evidence that P. P. Vallery and following generations have used and kept in use a portion of this water right.

Thank-you.

Sincerely,

R. Thornton Vallery

dr

WATER RIGHTS DIVISION

(605) 773-3352

May 21, 1982

R. Thornton Vallery
Star Route, Box 188
Nisland, South Dakota 57762

Dear Mr. Vallery:

In reference to your application for a "vested" right, the Location Notice (No. 0191-1) filed on February 6, 1900 does not give any legal descriptions of the point of diversion on the lands that were proposed to be irrigated. The ditch, if ever constructed was to divert water at a point in Section 3, 40 rods north of the house occupied by Lavasey and on the premises owned by William McMasters and then carried in an easterly direction a distance of 15 miles more or less to the place of intended use. The Section 3 which is mentioned must be in 78N, R3E.

You may wish to check with the register of deeds office and find out the location of the original Wm. McMasters place in Section 3 and if there is any record of the location of the house occupied by Lavasey. Also it must be determined if the ditch was ever constructed. Our records show that Mr. P.P. Vallery was in correspondence with the State Engineer in 1921 inquiring about applying for water rights from the Belle Fourche River and wondering if pumping from the river would interfere with the Belle Fourche Project. The U.S. Reclamation Service indicated to John Berg, State Engineer that they would have no problem with diversions occurring between Fruitdale and Nisland.

I would appreciate it if you could come up with any additional information regarding the original point of diversion and the path which the ditch followed.

Very truly yours,

Jim Winterton
Water Resources Engineer

JW:ms

VAL-FLOW, INC.
NISLAND, SOUTH DAKOTA 57762

Memo

LETTER

Phone 257-2264



Date 10-23-87

Subject

Water right 0191-1

To Jim Winterton

Good morning Jim:

Enclosed is my check for \$15⁰⁰ for the filing fee for water right on the original water right # 0191 which was filed in February of 1900. I feel you ^{don't} have some information that could be useful to this very important water right. This was taken out by more than one person and more than one purpose.

Please keep me informed as to time and date's of hearing

Thanks -
R. Thornton Valley

☐ Please reply

☐ No reply necessary

SIGNED

Report on Vested Water Right Application No. 1423-1
R. Thornton Vallery
October 15, 1987

Vested Right Application No. 1423-1 requests validation of a vested right claim pursuant to SDCL 46-5-49, and ARSD 74:02:01:20 and 74:02:01:21 for the diversion of 10 cfs of water from the Belle Fourche River for the irrigation of approximately 500 acres of land. The claim is based on a location notice filed in the Butte County Court House. The filing date was February 12, 1900 and the notice was recorded in Book 7 of the Miscellaneous Records on page 379. The filing is on record in the Division of Water Rights as Water Right Location Notice Filing No. 0191-1.

Discussion

Application No. 1423-1 was originally filed May 3, 1982. May 21, 1982, a letter was sent to R. Thornton Vallery requesting additional information on the location of the house occupied by Lavasey and the location of the ditch. This information was never provided, however, the investigations which were conducted by Division of Water Rights engineers determined the proposed point of diversion to be in the SE 1/4 of Section 3, T8N-R4E. At this location there was no evidence that an irrigation ditch was ever constructed to divert the flows of the Belle Fourche River. The point of diversion on the location notice is located approximately 8 miles upstream of the lands owned and irrigated by R. Thornton Vallery.

The location notice is stated as follows:

Location Certificate
Water Right

Know all men by these presents that the undersigned hereby locates and appropriates the waters of the Belle Fourche River, stream, creek, or gulch, to be taken and diverted therefrom at a point on the same, in section three, 40 rods north of the house occupied by Lavasey and on the premises owned by William McMaster in Butte County South Dakota, and carried thence by ditch and flume on a line as near as may be in an easterly direction, a distance of 15 miles more or less, the place of intended uses; The number of inches of water claimed and appropriated is 7,000 miners inches, the purpose of the appropriation is for Irrigation, manufacturing and domestic use. Date of appropriation February 6th 1900. Date of posting notice of appropriation of ditch Date of Certificate - February 6th 1900.

Rasmus Gotfredson
Jacob Snyder
P. P. Vallery

Christian Jensen
James Larson
A. H. Snyder

Documents submitted by Mr. Vallery and others in the area support the claim for a vested right, but only to a limited extent. R. Thornton Vallery states that a large water wheel was used to divert water in section 15, T8N-R4E during the years 1905 - 1912 based on an affidavit by Ruth Vallery Young. Then in approximately 1912, P. P. Vallery secured an Avery tractor and a Crane and Temple pump for diverting waters from the Belle Fourche River. The affidavits support the contention that water has been used from approximately 1909 on the low lands in Section 15.

Correspondence from P. P. Vallery in 1921 to the State Engineer asked about taking water from the Belle Fourche River and whether or not he would need a water right. A reply was sent to P. P. Vallery on March 28, 1921. The reply stated in the third paragraph: "Since you are a riparian owner, it possibly might not be absolutely necessary for you to secure a water right, but by so doing you establish a priority date to the water and put yourself on record as showing the amount of water you expect to use, etc." Most correspondence in the files indicates that P. P. Vallery was contemplating irrigation. It did not state whether or not he was irrigating at that time.

On May 26, 1951, P. P. Vallery submitted an application for an appropriation of water to the State Engineer. Included in the application was a survey plat drawn by Ben Wood, a registered land surveyor, showing 54.17 acres which were at that time irrigated and/or proposed for development. This is filed as Water Right No. 228-1 (incorporated into Water Right No 264-1). The State Engineer issued Water License No. 228-1 for 0.70 cfs to irrigate 54.17 acres in section 15, T8N-R4E with a priority date of May 26, 1951.

The Water License was revised and reissued in 1961 based on supporting affidavits submitted by P. P. Vallery. The priority date was adjusted to 1925 for 0.58 cfs and 0.14 cfs retained a priority date of May 26, 1951. The lands irrigated remained the same. In any event, in 1961, P. P. Vallery was given a priority date of 1925 on the acreage irrigated in Section 15. Based on the affidavits on file regarding irrigation prior to 1925, the priority date for the 0.58 cfs could be changed to 1909.

The request for validation of a vested right for 10 cfs based on Water Right Location Notice Filing 0191-1 is not valid because the ditch was never developed. The irrigation which was developed by Mr. P. P. Vallery was done so as a riparian owner. This was not prohibited under the 1907 law and the use became vested for the lands that had been developed for irrigation and the diversions which had taken place. The earliest account of the use of a pump from the Belle Fourche River was in approximately 1918. Prior to that, Ruth Vallery Young states that she recalls a water wheel located on the Belle Fourche River as early as 1909. Water Right Location Notice Filing No. 0191-1 referred to by R. Thornton Vallery does not apply in this case.

Conclusions and Recommendations

The proposed irrigation under Water Right Location Notice No. 0191-1 was never developed and can not be used now as a basis for establishing a priority date. Based on subsequent affidavits received in 1960 and 1982, portions of the lands in section 15, T8N-R4E qualify for a priority date of 1909 when the water wheel was in place on the river and used to divert water to lands in section 15.

It is recommended that Water Right Location Notice No. 0191-1 be cancelled for nondevelopment. Application No. 1423-1 should be validated for 0.58 cfs to irrigate 48 acres from a diversion point located on the Belle Fourche River in the SE1/4NW1/4 of section 15, T8N-R4E to irrigate the lands described as follows:

NW1/4NE1/4 - 30 acres	
NE1/4NE1/4 - 10 acres	
SW1/4NE1/4 - 7 acres	
SE1/4NW1/4 - 1 acre	All in Section 15, T8N-R4E

This acreage is presently irrigated and was in the past irrigated as evidenced by the present Water Right No. 264-1 which holds a priority date of 1925. The priority date for the irrigation of this land should be established as 1909 based on the affidavits on file in the Division of Water Rights. The remaining portions of Vested Right Application No. 1423-1 are not valid claims.



James Winterton
Natural Resources Engineer

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1423-1, R. Thornton Vallery

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. 1423-1, R. Thornton Vallery, Star Route, Box 188, Nisland SD.

The Chief Engineer is recommending VALIDATION of Application No. 1423-1 for 0.58 cfs and that Water Rights No. 228-1 and No. 264-1 have been incorporated into No. 1423-1 because 1) water has been appropriated as described for irrigation of 48 acres with a priority date of January 1, 1909, 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. 1423-1 is subject to domestic use rights. Diversion of water under Water Right No. 1423-1 is contingent upon supplies being available first to domestic users.
2. This water right is subject to the irrigation water use questionnaire being submitted each year.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
October 15, 1987



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
NEWSPAPER RIGHT AWAY.

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

Dear Mr. Vallery:

Your Application No. 1423-1 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 Publisher of the BELLE FOURCHE 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 newspaper to authorize publication of your notice of hearing to validate a vested right and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has 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,

Ron Duvall

Natural Resources Engineer

605 773-3352

enclosures

SOUTH Dakota 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:

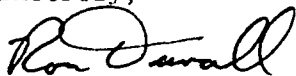
Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1423-1. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before November 4, 1987.

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

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. 1423-1 to Appropriate Water

Notice is hereby given that R. Thornton Vallery whose mailing address is Star Route, Box 188, Nisland, South Dakota has filed an application to validate a vested right claim to appropriate 10 cubic feet of water per second (cfs) from the Belle Fourche River to irrigate 565.5 acres with a claimed priority date of February 6, 1900. The Belle Fourche River diversion points are located between points in the SE 1/4 NW 1/4 and NE 1/4 NE 1/4 Section 15 including the S 1/2 SE 1/4 Section 10; all in T8N, R4E. The irrigated acreage is located in the S 1/2 SE 1/4 Section 10; W 1/2 NE 1/4, E 1/2 SE 1/4 Section 11; N 1/2 SW 1/4, NE 1/4, N 1/2 SE 1/4 Section 14; NE 1/4, E 1/2 NW 1/4, SE 1/4 NW 1/4, NW 1/4 SW 1/4, SE 1/4 SW 1/4, N 1/2 SE 1/4 Section 15; all in T8N, R4E.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1423-1 for 0.58 cfs and that Water Rights No. 228-1 and No. 264-1 be incorporated into No. 1423-1, because 1) water has been appropriated as described for irrigation of 48 acres with a priority date of January 1, 1909, 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. 1423-1

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Butte) ss.

I, Marion Lucca 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 Lucca
(Signature)

Editor
(Title)

November 11, 1987
(Date Signed)

Cost of Printing: \$44.09

Public Notice

NOTICE OF HEARING
TO VALIDATE
Vested Right Application
No. 1423-1
to Appropriate Water

Notice is hereby given that
R. Thornton Vallery whose
mailing address is Star Route,
Box 188, Nisland, South Dakota
has filed an application to vali-
date a vested right claim to ap-
propriate 10 cubic feet of water
per second (cfs) from the Belle
Fourche River to irrigate 565.5
acres with a claimed priority
date of February 6, 1900. The
Belle Fourche River diversion
points are located between
points in the SE 1/4 NW 1/4 and
NE 1/4 NE 1/4 Section 15 includ-
ing the S 1/2 SE 1/4 Section 10;
all in T8N, R4E. The irrigated
acreage is located in the S 1/2 SE
1/4 Section 10; W 1/2 NE 1/4, E
1/2 SE 1/4 Section 11; N 1/2 SW
1/4, NE 1/4, N 1/2 SE 1/4 Section
14; NE 1/4, E 1/2 NW 1/4, SE
1/4 NW 1/4, NW 1/4 SW 1/4, SE
1/4 SW 1/4, N 1/2 SE 1/4 Section
15; all in T8N, R4E.

Pursuant to SDCL 46-2A-2
the Chief Engineer of the Water
Rights Division recommends
VALIDATION of Vested Water
Right Application No. 1423-1
for 0.58 and that Water Rights
No. 228-1 and No. 264-1 be in-
corporated into No. 1423-1, be-
cause 1) water has been appro-
priated as described for irriga-
tion of 48 acres with a priority
date of January 1, 1909, 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.



 **Department of
Water & Natural Resources**

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

October 20, 1987

R. Thornton Vallery
Star Route, Box 188
Nisland, South Dakota 57762

Dear Mr. Vallery:

I am writing in reference to your application for validation of a vested right claim based on water right location notice no. 0191-1 filed on February 6, 1900. We have your application ready to be processed and advertised for the December 2nd and 3rd 1987 Water Management Board Meeting to be held in Rapid City. However, the application needs a \$15.00 filing fee before it can be advertised. This fee was not submitted to us when the application was originally received.

I still question the validity of the claim. You are claiming 10 cfs for the irrigation of approximately 500 acres of land which we both know has been developed over many years on your place there. The only land which may pertain to an early vested right claim is approximately 48 acres which are located within the bend in the river in section 15, T8N-R4E. The validation of the vested right claim can only be allowed for the quantity of water put to beneficial use and the lands irrigated at the time of the claim. The irrigation which took place in the early 1900's was very limited and therefore can only be validated for the lands developed and irrigated then. This is substantiated by the vested right claim by P. P. Vallery in the year 1951 when the only irrigation which was developed at that time was 54 acres in section 15, T8N-R4E when a plat was drawn by Ben Wood, a registered land surveyor, showing the developed acreage at that time. A 1925 priority date was given for 0.58 cfs and a 1951 priority date for 0.14 cfs on the 54.17 acres in section 15.

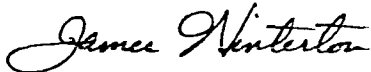
We have not been able to find anything in the water right files which would verify any development of water right location notice 0191-1. Our surveys lead us to believe that the ditch proposed under this water right location notice was never developed. The Water Management Board will be presented with our contention that the water right location notice No. 0191 should be cancelled for reasons of never being constructed and that any vested right which may have existed would be limited to the 0.58 cfs to irrigate 48 acres presently developed and irrigated in portions

October 20, 1987
R, Thornton Vallery
Page 2

of section 15 as originally surveyed. Based on the affidavits, the 1925 priority date could possibly be amended to a priority date of 1909 for this acreage when a water wheel was known to have been located there to divert flows from the Belle Fourche River.

If you desire to have this brought before the Board in December, we need your fee of \$15.00 by October 26, 1987. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "James Winterton".

James Winterton
Natural Resources Engineer
605 773-3352

WATER RIGHTS DIVISION
(605) 773-3352

November 13, 1987

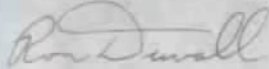
R. Thornton Vallery
Star Route, Box 188
Hiland, South Dakota 57762

Dear Mr. Vallery:

This letter is in response to our phone conversation on November 12, 1987.
Enclosed are copies of Water Right Filing Nos. 0376-1 and 0377-1 and a copy
of SDCL 46-4-5.

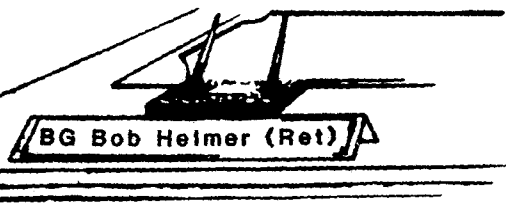
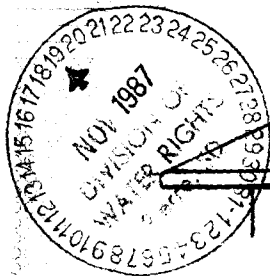
Please contact us if you have any questions.

Sincerely,



Ron Duvall
Natural Resources Engineer

RD:ms
Enc.



Nov 17, 1987

Division of Water Right
Joe Foss Bldg.
Pierre, S.D. 57501

Dear Sir:

I'm writing in reference to a notice in the Belle Fourche Daily Post dated Nov 11, 1987 in regard to a Vested Right application # 1423-1 to appropriate water.

Also to address notice of Cancellation of Water Right Location # 0191-1

I would like an opportunity to be heard on the above mentioned notices.

Also appearing and requesting to testify will be Mr. James Jeffrey RR 1, Fruitdale, S.D. 57742.

Sincerely
Robert L Helmer
Box 696
Belle Fourche, S.D. 57717

We the undersigned, who have water rights below Thornton Valley, wish to protest the application of water rights No. 228-1 and No. 229-1 into right 1423-1.

1. Back-dating these water rights dishonors the priority rights of others below them.

2. It adds 517.5 acres and 9.42 second feet of water to the older water right, which was not developed or used at these early dates.

NAME

ADDRESS

DATE

David Rattler

Nisland S.D.
Box 176, 57762

11-14-87

Leon Mena

Nisland S.D.
HCR 76 Box 500

11-14-87

Richard Stark

Box 45 Nisland S.D.

11-16-87

Lawrence Foor

HCR 120 Nisland S.D.

11-14-87

Bob Lewis

HCR 76 #153 Nisland S.D.

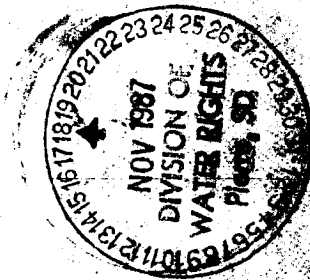
11-16-87

Ed Kling

Box 196

Nisland, S.D.

11-16-87





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

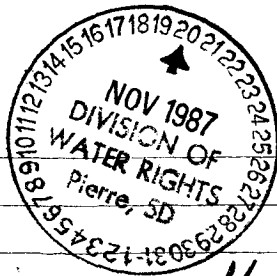
Mr. Robert Humphrey
Rt. 1, Box 170
Spearfish, SD 57783

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



11-19-87

Dear Sirs,

I am opposing your effort to cancel 0191-1 water permit. Those of us under this permit are presently looking at our legal position in protecting this water right. We have the right in the books, why is the burden of proof on us to keep it? Please at least table this matter so we have time to prepare our case.
Thankyou,

Ed Kling
Present Tenant on the
land of Esther Kling



Department of Water & Natural Resources

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

October 29, 1987

NOTICE OF CANCELLATION

TO: R Thornton Vallery, St Rt Box 188, Nisland, SD 57762

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

SUBJECT: Cancellation of Water Right Location Notice No. 0191-1

The Water Management Board will consider cancellation of Water Right Location Notice No. 0191-1 at 1:00 pm, December 2, 1987 in the Roosevelt & Jefferson Rooms, Howard Johnson's, 2211 LaCrosse, Rapid City, SD.

The hearing(s) will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

The Chief Engineer of the Water Rights Division is recommending cancellation of Water Right Location Notice No. 0191-1 because the filing has been abandoned or forfeited.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right Location Notice No. 0191-1 based upon facts presented at the public hearing. Our records show you to be a party interested in the cancellation consideration of Water Right Location Notice No. 0191-1. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by November 20, 1987. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained. The Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1, 46-2, 46-2A and 46-5.

These hearings are adversary proceedings. Any party 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.

Further information on the proposed cancellation or to assure access to the hearing by the handicapped can be obtained by contacting the Water Rights Division, DWNR, Joe Foss Building, Pierre, SD (605-773-3352) for assistance prior to the hearing. The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting March 2-3, 1988. Any request for extension must be filed with the Chief Engineer by November 20, 1987.

Please note: Cancellation of No. 0191-1 does not prohibit you from making a new application for this project in the future.

CERTIFICATION

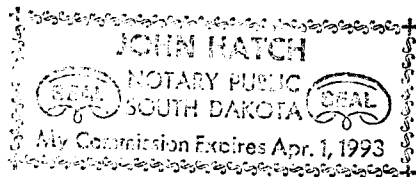
I hereby certify that on October 29, 1987 I have personally deposited with the U.S. Mail, a postage prepaid envelope containing Notice of Cancellation addressed to R Thornton Valley, St Rt Box 188, Nisland SD 57762.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of October, 1987.

John Hatch
Notary Public



NOV.16,87

DEPT. OF WATER AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

DEAR SIRs:

AS AN INTERESTED PERSON WHO WILL BE AFFECTED BY THE CANCELLATION OF WATER RIGHT # 0191-1, I SUBMIT THIS LETTER AS AN INFORMAL PETITION OBJECTING TO THIS CANCELLATION. THE WATER RIGHT # 0191-1 WAS FILED WITH A PRIORITY DATE OF FEB. 6,1900, ON THE BELLE FOURCHE RIVER.

I WILL APPEAR BEFORE THE BOARD ON DEC.2,1987, AT 1:00 P.M. AND REQUEST A PORTION OF THAT WATER RIGHT (10 CFS) BE VALIDATED AND ALLOWED TO PASS THRU THE DIVERSION DAM ON THE BELLE FOURCHE RIVER.

THIS WATER IS TO BE USED FOR IRRIGATION ON THE SAME LAND THAT IT WAS APPROPRIATED FOR ON FEB.6,1900. A PORTION OF THE WATER REQUESTED HAS BEEN BENEFICIALLY USED ALL OF THESE YEARS.

I WILL FURNISH INFORMATION AND REFERENCES OF WHEN AND HOW THIS WATER WAS USED FOR IRRIGATION PURPOSES.

REASONS FOR OBJECTION:

1. OBJECT COMPLETE CANCELLATION OF WATER RIGHT #0191-1
2. LOCATION HAS NOT BEEN ABANDONED OR FORFEITED
3. APPROATIONS: # 0376-1 AND #0377-1 WERE APPLIED FOR WITH THE INTENT OF SERVICING THE SAME LAND WITH WATER AS #0191-1, BUT WAS NEVER DEVELOPED ON LANDS SOUTH OF THE BELLE FOURCHE RIVER. THIS IS WHY # 0191-1 IS NEEDED.

SINCERELY,

R. Thornton Vallery

R.T. VALLERY
HCR 76 BOX 188
NISLAND, S.D. 57762
(605) 257-2264



NOV.16,1987

DEPT. OF WATER AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, S.D. 57501-3181

DEAR SIRs:

I SUBMIT THIS LETTER AS AN INFORMAL PETITION OBJECTING TO THE RECOMMENDATIONS ON THE WATER RIGHT (1423-1) BY THE CHIEF ENGINEER. THE CHIEF ENGINEER RECOMMENDS VALIDATION OF THIS VESTED WATER RIGHT (31423-1) AND I APPRICATE THAT, BUT I HAVE ASKED FOR A PRIORITY DATE OF FEB. 6,1900 AND 10 (CFS) TO IRRIGATE 565.5 ACRES.

OBJECTIONS:

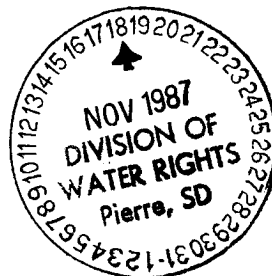
1. PRIORITY DATE OF JAN.1,1909
2. WATER APPORATIONMENT OF .058 (CFS)
3. WE DO NOT WISH TO INCORPORATE OTHER WATER RIGHTS AS RECOMMENDED BY THE CHIEF ENGINEER, UNLESS WE HAVE A PIRORTY DATE OF 1900 AND A COMBINED WATER RIGHT OF 10 (CFS).

I FEEL THAT THE PRIORITY DATE OF FEB.6,1900 IS CORRECT AND THAT THE 10 (CFS) SHOULD REMAIN THE SAME AS THE ORIGINAL WATER RIGHT.

SINCERELY,

R. Thornton Vallery

R.T. VALLERY
HCR 76 BOX 188
NISLAND, S.D. 57762
(605) 257-2264



STEPHENS, QUINN & BUCKMASTER

ATTORNEYS AT LAW

1501 FIFTH AVENUE

P.O. BOX 788

BELLE FOURCHE, SOUTH DAKOTA 57717-1199

PHONE (605) 892-2773



HARRY R. STEPHENS
TERENCE R. QUINN
WESLEY W. BUCKMASTER
MICHAEL W. DAY
RANDALL L. MACY
KENNETH E. BARKER

November 17, 1987

Mr. John Hatch
Chief Engineer
Water Rights Division
Joe Foss Building
Pierre, SD 57501

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

Re: In the Matter of the Notice of Hearing to Validate Vested
Water Right Application No. 1423-1 to Appropriate Water
Purpose: Petition pursuant to above Notice of Hearing
on behalf of Belle Fourche Irrigation District,
Newell, South Dakota
Our File: #1744.047

Dear Chief Engineer:

Pursuant to the Notice of Hearing to validate the above referenced, the same having been duly published according to said Notice, and as attorney for the Belle Fourche Irrigation District, Newell, South Dakota, I hereby formally advise and petition to have the right to present evidence and/or cross-examine witnesses according to SDCL 1-26 and any acts amendatory thereto pursuant to the Notice of Hearing above referenced.

In addition, be advised that the Belle Fourche Irrigation District opposes the claimed validation of a vested water right to appropriate 10 cubic feet of water per second from the Belle Fourche River to irrigate 565.5 acres with a claimed priority date of February 6, 1900 as so stated by R. Thornton Vallery.

Be further advised that the Belle Fourche Irrigation District has no opposition to the recommendation of the Chief Engineer for the validation of Vested Water Right Application No. 1423-1 for 0.58 cubic feet of water per second and that Water Rights No. 228-1 and No. 264-1 be incorporated into No. 1423-1, because (1) water has been appropriated as described for irrigation of 48 acres with a priority date of January 1, 1909, (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.

Objection to Mr. Vallery's Application to validate the vested claim to appropriate 10 cubic feet of water per second as above described, is based upon a number of concerns, but not limited to:

(1) It would make the District responsible for releasing water to Mr. Vallery at his pleasure and request and continuous if he so desires.

(2) The District has a vested water right as of 1904 and the claimed right would be prior thereto and Mr. Vallery is not entitled to it.

(3) Mr. Vallery's request would necessitate someone being at the diversion gate every day of the irrigation season to regulate the water flow. This would be a large increase in cost to the District.

(4) There is no possible way of measuring the amount of water to divert without further expenditures for equipment.

(5) There would be a definite problem with ordering water from Keyhole Reservoir because the District would never know when Vallery would want water and would have to be in constant contact with Keyhole Reservoir in order to determine what is indeed the need from time to time.

(6) It is impossible to determine what is the natural river flow or what is Keyhole Reservoir water. It appears that this would be a constant source of disagreement and argument between the District and Mr. Vallery.

(7) It is asserted and claimed that Mr. Vallery cannot prove that his Application is of beneficial use. Further, it is not in the best interests of the public to allow him to take this amount of water from the river.

As indicated herein, the above may or may not constitute the entirety of the reasons that the District objects to the Application to validate as filed by R. Thornton Vallery.

In addition, and pursuant to the Notice of Hearing, the undersigned, on behalf of the Belle Fourche Irrigation District, respectfully requests an extension of at least twenty (20) days for hearing hereon. Further, the undersigned respectfully requests that the hearing officer, or person in charge of such hearing, contact the undersigned at his or her earliest convenience and advise as to appropriate hearing dates.

Mr. John Hatch/Mr. R. Thornton Vallery
November 17, 1987
Page 3

Respectfully submitted this 17th day of November, 1987.

STEPHENS, QUINN & BUCKMASTER
Attorneys for the Belle Fourche
Irrigation District

By: /s/ Terence R. Quinn
Terence R. Quinn
P.O. Box 788
Belle Fourche, SD 57717
(605) 892-2773

CERTIFICATE OF SERVICE

I, Terence R. Quinn, do hereby certify that on the ____ day of November, 1987, I caused a copy of the foregoing petition to be served upon Mr. John Hatch, Chief Engineer, Water Rights Division, Joe Foss Building, Pierre, South Dakota 57501; and Mr. R. Thornton Vallery, Star Route, Box 188, Nisland, South Dakota 57762; by depositing a copy of the same in an envelope securely sealed and with first class postage fully prepaid thereon, in the United States mail at the City of Belle Fourche, Butte County, South Dakota, and addressed to the above named addressees at the foregoing addresses, the same being the last known address of said addressees.

/s/ Terence R. Quinn
Terence R. Quinn

November 23, 1987
(date)

page 2

Parties of Record before Water Management Board regarding Vested
Right Application No. 1423-1, R. Thornton Vallery

Against:

Bob Lewis

HCR 76, Box 153

Nisland SD 57762

Ed Kling

Box 196

Nisland SD 57762

B.E. Martin, Regional Director

Bureau of Reclamation

P.O. Box 36900

Billings MT 59107-6900

Bruce Layman

U.S. Bureau of Reclamation

P.O. Box 226

Newell SD 57760

November 23, 1987
(date)

page 1

Parties of Record before Water Management Board regarding Vested Right
Application No. 1423-1, R. Thornton Vallery

For :

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

Against :

Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

represented by :

Terence R. Quinn
PO Box 788
Belle Fourche, SD 57717

Against:

David Rathbun
Box 176
Nisland SD 57762

Robert L. Helmer
Box 696
Belle Fourche SD 57717

Leon Minor
HCR 76, Box 200
Nisland SD 57762

James Jeffery
RR1
Fruitdale SD 57742

Saloman Stark
Box 45
Nisland SD 57762

Lawrence Foos
HCR 120
Nisland SD 57762

SOUTH DAKOTA
Department of
Water & Natural Resources

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

November 24, 1987

NOTICE

TO: R. Thornton Vallery
Star Rt, Box 188
Nisland SD 57762
and Parties of Record

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



SUBJECT: Automatic Continuance of Hearing on Vested Right Application No. 1423-1 and
Continuance of Hearing on Cancellation Consideration of Water Right Location
Notice No. 0191-1

The Water Management Board will NOT consider Vested Right Application No. 1423-1 and cancellation of Location Notice No. 0191-1 at the December 2-4, 1987 Board meeting. A request for an automatic continuance of hearing on Application No. 1423-1 was received from Terence R. Quinn, representing the Belle Fourche Irrigation District, on November 18, 1987. The hearing on Application No. 1423-1 is automatically continued pursuant to SDCL 46-2A-4 and 46-2A-5. The hearing to consider cancellation of Notice No. 0191-1 is also continued to allow both Application No. 1423-1 and Notice No. 0191-1 to be considered together. Application No. 1423-1 and Notice No. 0191-1 are rescheduled for hearing on March 2, 1988 at 11:30 am, in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of hearing may be later than 11:30 am due to prior agenda items. Applicable provision of the notice of hearing published on November 4 and 11, 1987 in the Belle Fourche Daily Post will still apply at the hearing.

cc: Terence R Quinn, Attorney
John Guhin, Assistant Attorney General
Harold Deering, Assistant Attorney General
Water Management Board

CERTIFICATION

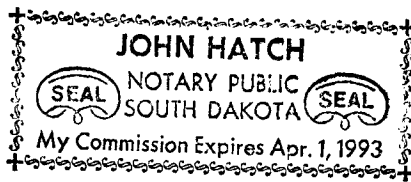
I hereby certify that on November 24, 1987 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice of Automatic Continuance of Hearing on Vested Right Application No. 1423-1 and Cancellation of Water Right Location Notice No. 0191-1 addressed as stated on the Parties of Records sheet.

Karen Schlaak

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of November, 1987.



John Hatch
Notary Public



Department of Water & Natural Resources

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

November 24, 1987

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

Dear Mr. Vallery:

Enclosed are copies of petitions received in response to the public notice of hearing for Vested Right Application No. 1423-1 and Notice No. 0191-1.

Sincerely,

A handwritten signature in cursive script, reading "Ron Duvall". The signature is written in dark ink and is positioned below the word "Sincerely,".

RON DUVAL
Natural Resources Engineer
605 773-3352

enclosures

Jim

January 12, 1988

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

Dear Mr. Vallery:

I am writing to follow up on our conversation during the Belle Fourche "Capitol for a Day" December 16, 1987. I have contacted the Department of Water and Natural Resources regarding your request to maintain flows in the Belle Fourche River below the diversion dam of the Belle Fourche Irrigation District.

As you know, the Water Management Board will consider validation of your claim for vested rights at the March 2, 1988 Board meeting. I can not directly help you with your vested right claim. Only the Board is authorized by the Legislature to decide if your vested water right claim may be validated. The Board must base its decision on the evidence presented at the time of the hearing, and I can assure you that I have instructed the Department of Water and Natural Resources to do a thorough investigation of your concerns. Since any decision of the Board is subject to appeal to the courts, the Board is careful to make its decision based upon the evidence presented.

Thank you for contacting me on this matter.

Very truly yours,

GEORGE S. MICKELSON

Feb 26, 1988
Nisland, S. Dak.

to: Department of Water & Natural Resources
John Hatch, Chief Engineer
Water Rights Division
Dear John,

At this time I wish to withdraw
my protest against Vested Right application
No. 1423-1, R Thornton Valley.
Thank you

Leon Minor
HCR 76 Box 200
Nisland, S Dak 57762



STEPHENS, QUINN & BUCKMASTER

ATTORNEYS AT LAW

1501 FIFTH AVENUE

P.O. BOX 788

BELLE FOURCHE, SOUTH DAKOTA 57717-1199

PHONE (605) 892-2773

HARRY R. STEPHENS
TERENCE R. QUINN
WESLEY W. BUCKMASTER
MICHAEL W. DAY
RANDALL L. MACY
KENNETH E. BARKER

March 8, 1988

Attorney General

Attorney General

MAR 10 1988

012155

R.E. BRANDENBURG
OF COUNSEL

Mr. John Guhin
Department of Water and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

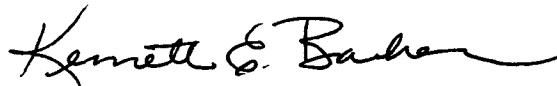
Re: Vallery Hearing
Our File No. 1744.047

Dear John:

I would really appreciate it if you would provide me copies of the staff report and recommendation that was provided to the Water Management Board on the Vallery matter, permit no. 1423-1.

John, it is my understanding that the 0.58 cfs proved in the Vallery permit, was effective at the point of diversion. Naturally, that fact will be set forth in your findings and conclusions, however, that will weigh heavily as to whether this matter is appealed. It is my understanding that at the point of diversion, 0.58 cfs is in almost all situations provided by the natural flow of the river between the diversion dam and Vallery's diversion. I hope you can help me clarify this issue.

Very truly yours,



Kenneth E. Barker

KEB/bl





Department of Water & Natural Resources

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

March 8, 1988

NOTICE

TO: R. Thornton Vallery
Star Rt, Box 188
Nisland SD 57762
and Parties of Record

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

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

The Water Management Board has directed John Guhin, the Board's attorney to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision on the validation of Vested Water Right Application No. 1423-1 and cancellation of Water Right Location Notice No. 0191-1. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 pm, May 11, 1988, Room 216, Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record and their attorneys (copy enclosed) by April 20, 1988. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by April 29, 1988.

The public hearing on Vested Right Application No. 1423-1 and Water Right Location Notice No. 0191-1 was completed March 3, 1988. No additional testimony will be received on May 11, 1988.

cc: John Guhin, Assistant Attorney General
Harold Deering, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 8, 1988 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice for Preparation of Findings, Conclusions and Final Decision on Vested Right Application No. 1423-1 and Cancellation of Water Right Location Notice No. 0191-1 addressed as stated on the Parties of Records sheet.

Baren Schlack

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of March, 1988.



John Galt
Notary Public

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL



March 18, 1988

MEMORANDUM

TO: John Hatch, Division of Water Rights
FROM: John P. Guhin, Deputy Attorney General *Jol*
RE: Letter of Kenneth Barker dated March 8, 1988

I am enclosing a letter from Mr. Barker. Could you please send him the staff report and recommendation on Application No. 1423-1.

JPG:pjh

cc: Kenneth Barker

Enclosure



Department of Water & Natural Resources

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

March 29, 1988

James Jefferies
RR 1, Box 82
Fruitdale SD 57742

Dear Mr. Jefferies:

As requested, enclosed are cassettes from the Water Management Board Meeting, March 2, 1988, dealing with Vested Water Application No. 1423-1 and Cancellation of Water Right Location Notice No. 0191-1, R. Thornton Vallery. The portion of the hearing you are interested in starts on Side 2 of Tape 3.

The cost of reproducing the tapes is \$1.00 per cassette and \$2.50 labor for a total of \$4.50.

Sincerely,

A handwritten signature in cursive script that reads "Karen Schlaak".

KAREN SCHLAACK
Senior Secretary

enclosures

Handwritten initials, possibly "B.D.", in a cursive script.

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

411190

Pierre, April 4, 1988

RECEIVED OF Jim Jeffery, RR 1, Box 82, Fruitdale, SD 57742

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for <u>copy of tape of WMB Meeting March 2, 1988</u>		4 50
(Any Other Work Provided by Law)	Total	4 50

By John Hatch
JOHN HATCH

 **Department of
Water & Natural Resources**

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

May 31, 1988

NOTICE

TO: R. Thornton Vallery
Star Rt, Box 188
Nisland SD 57762
and Parties of Record

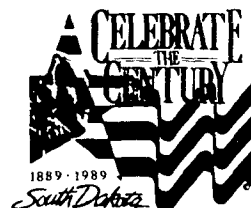
FROM: John Hatch, Chief Engineer
Water Rights Division
605 773-3352



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

This is to notify you that a Final Decision, including Findings of Fact, Conclusions of Law were adopted by the Water Management Board for denial of Vested Right Application No. 1423-1 and cancellation of Water Right Location Notice No. 0191-1 which were considered at the March 3, 1988 meeting.

Copies of the signed final Decision, Findings and Conclusion are enclosed for the applicant. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that the decisions of the Board may be appealed to the Courts.



CERTIFICATION

I hereby certify that on May 31, 1988 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice on Adoption of Findings, Conclusions and Final Decision on Vested Right Application No. 1423-1 and Cancellation of Water Right Location Notice No. 0191-1 addressed as stated on the Parties of Records sheet.

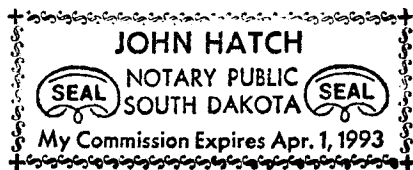
Haren Schlaak

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of June, 1988.

John Hatch
Notary Public



 **Department of
Water & Natural Resources**

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

June 1, 1988

NOTICE

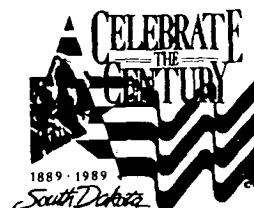
TO: R. Thornton Vallery
Star Rt, Box 188
Nisland SD 57762
and Parties of Record

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



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

The Notice dated May 31, 1988 was incorrect. The Water Management Board adopted Findings of Fact, Conclusions of Law and a Final Decision for validation of Vested Right Application No. 1423-1 and cancellation of Water Right Location Notice No. 0191-1 which were considered at the March 3, 1988 meeting.



CERTIFICATION

I hereby certify that on June 1, 1988 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice on Adoption of Findings, Conclusions and Final Decision on Vested Right Application No. 1423-1 and Cancellation of Water Right Location Notice No. 0191-1 addressed as stated on the Parties of Records sheet.

Karen Schuur

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of June, 1988.



John Hatch
Notary Public

3-31-88

Honen Schloak ..

Dear Honen

Thank you for your
Cooperation It is ~~very~~
much appreciated.

Sincerely

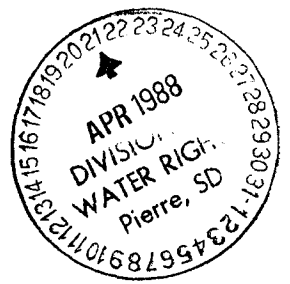
Jim Jeffery

BB1 #82

Fruitdale

SD 57742

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD



IN THE MATTER OF VESTED)
RIGHT APPLICATION NO. 1423-1)
-- R. THORNTON VALLERY)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL DECISION

FINDINGS OF FACT

1. The claim is ostensibly based on Location Notice No. 0191-1, filed February 12, 1900. This Board has determined that the project contemplated under this Location Notice has never been constructed and has cancelled the Location Notice.

2. Nonetheless, the vested right claim is eligible for validation in part as a vested riparian claim.

3. No party to this action disputes that Vallery and his successors have irrigated 48 acres from a diversion point located on the Belle Fourche River in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 8 North, Range 8 East. No party likewise disputes that the amount of water eligible for validation is .58 c.f.s.

4. The parties do dispute the date to be assigned to validation of this vested riparian right.

5. The Board finds that the proper validation date is February 2, 1900, for the following reasons. First, a published article indicates that in about 1900, Peter P. Vallery, a predecessor of the present applicant, built a water hoist which would have been used for irrigation. Second, another published article indicates that Vallery irrigated sugar beets before the potential for irrigation

development became clear to most people, that is, before 1904. The irrigation was from artesian wells and from water pumped for irrigation from the Belle Fourche River. This points to a priority date of pre-1904. Third, an early use for irrigation by P.P. Vallery is consistent with his personal history. Mr. Vallery was intimately involved in the early development of irrigation in the Belle Fourche area. Fourth, P.P. Vallery in 1904 supported the organization of the Belle Fourche Water District. This demonstrates further that he did have an early strong interest in irrigation. Fifth, while the 1900 Location Notice 0191-1 has been cancelled, it remains probative evidence that P.P. Vallery was engaged in irrigation at an early date and lends credence to the thesis that he was actually engaged in irrigation in 1900. Sixth, in 1907, P.P. Vallery had the best yellow corn at the Belle Fourche County Fair. The presence of prize winning yellow corn on Vallery's land indicates that the land was irrigated at least by 1907.

6. The letters submitted to the Board by the ancestors of R. Thornton Vallery indicate that a water wheel was present on the property by 1909. The letters do not indicate that the 1909 date was necessarily the first date at which the water wheel existed.

CONCLUSIONS OF LAW

1. This Board has jurisdiction of this matter.

2. Water has been appropriated as described above for irrigation of 48 acres with a priority date of February 2, 1900.

3. There has been no showing of a three year interruption of use of this water without legal excuse so as to bring into play the forfeiture statutes.

4. This use has been developed without unlawful impairment of existing rights.

5. The use for irrigation is a beneficial use.

6. The use is in the public interest with the conditions as set out in the Final Decision.

7. The issue of the validity of the water right held by the Belle Fourche Irrigation District is not determined in this proceeding.

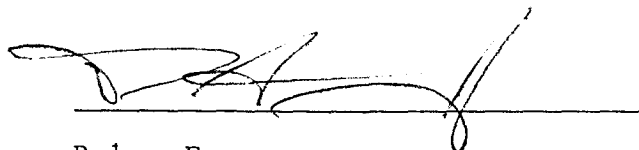
FINAL DECISION

The application for Vested Right 1423-1 for .58 c.f.s. is validated. Water Right Nos. 228-1 and 264-1 are declared to be incorporated within 1423-1. The following conditions attach to 1423-1:

1. Vested Water Right No. 1423-1 is subject to domestic use rights. Diversion of water under Water Right No. 1423-1 is contingent upon supplies being available first to domestic users.

2. This water right is subject to the irrigation water use questionnaire being submitted each year.

BY THE BOARD:

A handwritten signature in dark ink, appearing to be 'Rodney Freeman', written over a horizontal line.

Rodney Freeman
Vice-Chairman

May 11, 1988

Handwritten initials, possibly 'JH', in dark ink.

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE CANCELLATION)	FINDINGS OF FACT,
OF LOCATION NOTICE NO. 0191-1)	CONCLUSIONS OF LAW, AND
)	FINAL DECISION

FINDINGS OF FACT

1. Water Right Location Notice No. 0191-1 was filed by six men, including P.P. Vallery, on February 6, 1900.
2. The location notice claimed a right to remove 7,000 miner's inches of water from a specified diversion point on the Belle Fourche River and carry the water eastward a "distance of 15 miles more or less." The water was to be used for irrigation, manufacturing, and domestic purposes.
3. There is no evidence that the project identified by the location notice was ever constructed.
4. The mere existence of irrigation in the general area in which the project was to have been built is not sufficient to indicate that water was used under Location Notice No. 0191-1. The water uses which have been developed through the decades have been, in fact, developed on projects independent of and clearly distinguishable from the project identified on Location Notice No. 0191-1.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.

2. The project identified by Location Notice No. 0191-1 has not been constructed within the period of 1900 to 1988.

3. No water has been utilized under Location Notice No. 0191-1 for 88 years.

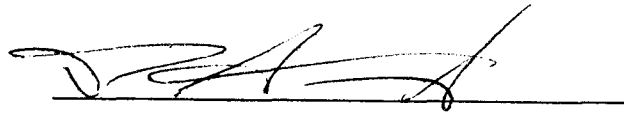
4. There have been three years of nonuse of the water in question without legal excuse.

5. The location notice has been forfeited.

FINAL DECISION

Location Notice No. 0191-1 is declared cancelled.

BY THE BOARD

A handwritten signature in dark ink, appearing to read 'Rodney Freeman', is written over a horizontal line.

Rodney Freeman
Vice-Chairman



Department of Water & Natural Resources

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

September 30, 1988

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

Dear Mr. Vallery:

I am writing in answer to your letter that was received on September 22, 1988.

The Water Management Board validated Vested Water Right Claim No. 1423-1 on May 11, 1988 for 0.58 cubic feet per second (cfs) to irrigate 48 acres in Section 15, T8N, R4E with a priority date of February 2, 1900. At that time, the Board also incorporated Nos. 228-1 and 264-1. That means that all Water Rights and Vested Water Right Claims for that one system are under No. 1423-1.

Under Nos. 228-1 and 264-1 you have a Vested Water Right Claim for 0.18 cfs to irrigate 15 acres in Section 10, T8N, R4E with a priority date of July 1, 1952. (This is listed as 13 acres with a priority date of June 1, 1952 in the validation table. This is in error). Under these numbers you also have a Water Right for an additional 0.14 cfs to irrigate the lands in Section 15 with a priority date of May 26, 1951. Totally, you can divert 0.90 cfs to irrigate 63 acres.

The Vested Water Right Claim of 0.18 cfs to irrigate 15 acres in Section 10 has not been validated. The Board will still have to validate this portion.

You stated that you have copies of the original water right maps showing 69.4 acres on this tract of land. These are the maps that were filed with the applications. Actual measurements from current ASCS aerial photos show the area to be 63 acres.

If we can answer any other questions, please contact us.

Very truly yours,

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



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

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

January 24, 1989

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

Dear Mr. Vallery:

I have enclosed a copy of a map drawn by Leroy Mernaugh when he had made an investigation of the lands irrigated by your water rights. The following are the water rights that exist for you now:

Water Right No. 1203-1: This water right incorporates 290-1. Water Right No. 1203-1 now covers the dam and the irrigation of 349 acres of land described as follows:

In Section 15, T8N, R4E

SW1/4NE1/4 - 20 acres
SE1/4NE1/4 - 32 acres
NE1/4SW1/4 - 39 acres
NW1/4SE1/4 - 37 acres
NE1/4SE1/4 - 7 acres
SE1/4SW1/4 - 23 acres

In Section 14, T8N, R4E

NW1/4SW1/4 - 4 acres
NE1/4SW1/4 - 17 acres
NW1/4SE1/4 - 18 acres
NE1/4SE1/4 - 21 acres
SW1/4NE1/4 - 39 acres
SE1/4NE1/4 - 39 acres
NW1/4NE1/4 - 29 acres
NE1/4NE1/4 - 24 acres

Total - 349 acres

Water Right No. 960-1: This water right incorporates 289-1 and covers the irrigation of 88 acres of land described as follows:

In Section 11, T8N, R4E

SE1/4SE1/4 - 27 acres
SE1/4NW1/4 - 19 acres
SW1/4NE1/4 - 37 acres
NE1/4NW1/4 - 3 acres
NW1/4NE1/4 - 2 acres

Total - 88 acres



Vested Right No. 264-1: This water right incorporates 228-1. However, the validation by the Water Management Board of the lands covered by the original Water Right No. 228-1 will now be known as Vested Water Right No. 1423-1. The lands that were originally covered by Water Right No. 228-1 are the lands which were given the February 2, 1900 priority date. The lands covered by 264-1 would still have a priority date of July 1, 1952. After the water rights have been incorporated, Vested Water Right Nos. 264-1 and 228-1 will be replaced and the only number assigned to these lands will be 1423-1. The following is a description of the lands and the priority dates assigned to each:

The lands in section 10, T8N, R4E and described as follows have a July 1, 1952 date:

SW1/4SE1/4 - 13 acres

SE1/4SE1/4 - 2 acres Total - 15 acres

The lands in Section 15, T8N, R4E and described as follows have the February 2, 1900 date:

NW1/4NE1/4 - 30 acres

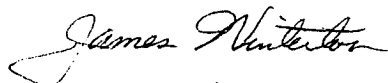
NE1/4NE1/4 - 10 acres

SE1/4NW1/4 - 1 acre

SW1/4NE1/4 - 7 acres Total - 48 acres

The total acres under your water rights adds up to 500 acres. Let me know if you have any further questions.

Very truly yours,



James Winterton
Natural Resources Engineer



Department of Water & Natural Resources

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

1423-1

November 17, 1989

Thornton Vallery
HCR 76 Box 188
Nisland, SD 57762

Dear Mr. Vallery:

Enclosed are your 1989 irrigation questionnaires for Water Right Nos. 960-1, 1203-1 and 1423-1. The following information needs to be supplied on the forms in order for them to be complete:

No. 960-1: 1) Number of days pumped
 2) Average hours per day

No. 1203-1: 1) Clarify the number of days pumped in each month
 2) Average hours per day
 3) Average pump rate

No. 1423-1: 1) The whole form needs completion

The form you submitted for Water Right No. 962-1 was completed satisfactorily.

Water Management Board Rules require the annual irrigation questionnaires to be completed and returned to this office. Please complete the forms and return them before DECEMBER 15, 1989.

If you have any questions, please contact me.

Sincerely,

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

GENNY MCMATH
Natural Resources Analyst
(605) 773-3352

enclosures

Del-Droy:

I have the original in my file here.

I also have a complete copy of the minutes that led up to this order:

We would appreciate positive
Cooperation from the State and
the Water Rights Division

Sincerely
R. Thompson Valley

Notice to Water Right Holders Along the Belle
Fourche River between the Belle Fourche Project
Diversion Dam and the Mouth of Owl Creek.

The following water right holders are hereby notified that their respective water right priority is in accordance with that shown by this listing. The water needs of prior water rights are to be satisfied before a water right holder diverts water.

The following list shows the maximum rate at which the water right holder may divert water. This is the maximum rate allowable. The actual diversion should be the amount of water needed but shall not exceed the maximum rate shown by this list.

Some of these water right holders obtain water from other sources. When water is being obtained from such other source diversion of water from the Belle Fourche River under the water rights listed is not allowed. For instance, if a water right holder listed below is using water from the Belle Fourche Project (or by some other means than under this list of water rights) he is not entitled to divert water at the same time under his water right as listed below.

Each water right holder is responsible for proper diversion of his water in strict compliance with his priority, rate of diversion and other aspects of his water right. It is up to each individual irrigator to avoid unlawful interference with other water rights. The State water laws specify that it is a misdemeanor punishable by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail not exceeding 30 days, or by both such fine and imprisonment.

If you have any question concerning this notice, clarify your question with the Water Resources Commission, State Office Building, Pierre, South Dakota.

STATE WATER RESOURCES COMMISSION

J.W. Grimes

J.W. GRIMES
Executive Officer



STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1423-1 FOR IRRIGATION

(1) R. Thornton Vallery of HCR 76, Box 188, Nisland SD 57762 made Application No. 1423-1, May 3, 1982 for validation of a vested right claim to appropriate 10.0 cubic feet of water per second (cfs) from the Belle Fourche River, Butte County, South Dakota for irrigation purposes. Vested Water Right No. 1423-1 was validated May 11, 1988 for 0.58 cfs with a priority date of February 2, 1900. 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.

The applicable portions of Vested Water Right Nos. 228-1 and 264-1 are incorporated into Water License No. 1423-1. Priority dates as they pertain to the land irrigated and the diversion rates are described in (2) and (3) of this license.

(2) The applicant is entitled to divert 0.90 cfs for beneficial use from the Belle Fourche River. The location of the diversion points are located between the SE 1/4 NW 1/4 and NE 1/4 NE 1/4 Section 15 including the S 1/2 SE 1/4 Section 10; all in T8N, R4E.

The location of the irrigated acreage is:

T8N, R4E, Section 10	SW 1/4 SE 1/4	13 acres
	SE 1/4 SE 1/4	2 "
Section 15	NW 1/4 NE 1/4	30 "
	NE 1/4 NE 1/4	10 "
	SW 1/4 NE 1/4	7 "
	SE 1/4 NW 1/4	1 "
Total		63 acres

Section 10: priority date of July 1, 1952 - 0.18 cfs

Section 15: priority date of February 2, 1900 - 0.58 cfs

priority date of May 26, 1951 - 0.14 cfs

(3) Pursuant to Section 46-5-30.1 R. Thornton Vallery of HCR 76, Box 188, Nisland SD 57762 the holder and owner of Vested Water Right No. 1423-1 is issued a license to appropriate 0.90 cubic feet of water per second from the Belle Fourche River with priority dates of February 2, 1900, May 26, 1951 and July 1, 1952 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. 1423-1 and subject to South Dakota State Law.


JOHN HATCH, Chief Engineer

Water Rights Division

Department of Water and Natural Resources

APR 9 1991



DEPARTMENT OF WATER & NATURAL RESOURCES

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

April 9, 1991

R Thornton Vallery
HCR 76, Box 188
Nisland SD 57762

Dear Mr. Vallery:

Enclosed are Vested Water Right Nos. 264-1 and 1423-1 as validated by the Water Management Board and Water License No. 1423-1 which incorporates Vested Right Nos. 228-1 and 264-1. These validations give legal status to the claims and License No. 1423-1 is the final document for your vested rights.

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

Very truly yours,

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

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 20, 1994

R Thornton Vallery
HCR 76 Box 188
Nisland, SD 57762

Dear Mr. Vallery:

Thank you for the prompt return of your 1994 irrigation questionnaires. Enclosed are copies of Vested Water Right Nos. 228-1, 264-1 & 1423-1 and Water Right Nos. 289-1, 290-1, 960-1 & 1203-1.

I will attempt to give you a summary of your existing water rights and vested water rights which will hopefully answer your questions.

Water Right No. 960-1 authorizes irrigation of 88 acres in portions of Section 11, T8N, R4E **The applicable portions of Water Right No. 289-1 were incorporated into Water License No. 960-1.** Priority dates of April 24, 1972 and January 17, 1957 were retained (see enclosed water license).

Water Right No. 1203-1 authorizes irrigation of 349 acres in portions of Sections 14 and 15, T8N, R4E **The applicable portions of Water Right No. 290-1 were incorporated into Water License No. 1203-1.** A priority date of January 17, 1957 was retained for irrigation of the land with direct diversion from the Belle Fourche River. A priority date of September 8, 1980 was retained for water pumped into the storage dam. (see enclosed water license)

Vested Water Right No. 1423-1 authorizes irrigation of 63 acres in portions of Section 10 and 15, T8N, R4E **The applicable portions of Vested Water Right Nos. 228-1 and 264-1 were incorporated into Vested Water Right No. 1423-1.** Priority dates of February 2, 1900, May 26, 1951 and July 1, 1952 were retained (see enclosed water license).

All of the acreage you irrigate should be covered under Water Right Nos. 960-1 & 1203-1 and Vested Water Right No. 1423-1. Under South Dakota Water Law 46-2A-14, any application or permit to appropriate water shall refer to one water use system. Water Management Board Rule 74:02:01:16.01 states that when inspecting systems that are covered by more than one permit or right, the applicable portions of all permits or rights and priority dates may be incorporated into one water license under the number of the latest permit issued.

page 2

December 20, 1994

R Thornton Vallery

Once water permits are licensed, the irrigation questionnaires are made to correspond with that particular license. This is why you no longer receive irrigation questionnaires for Water Right and Vested Right Nos. 228-1, 264-1, 289-1 and 290-1. I would like to stress to you that just because we no longer mail questionnaires for those water right numbers, does not mean that you have lost those water rights/vested rights. You are still reporting for each of the systems.

The numbering system we have for water permits is a method for tracking water permits, rights or vested rights and has no bearing on the priority dates associated with your water use systems. Your water use systems have been in place and utilized since the early 1900's. Whether we number them 1, 2 or 900 does not change when you started irrigating or the number of systems you have in place.

I hope I have addressed your concerns Mr. Vallery. If you have any further questions, please contact me and I will be try to answer them for you.

Sincerely,

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

Genny McMath
Environmental Scientist
Water Rights Division
(605) 773-3352

enclosures



1423-1
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

December 27, 2004

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery:

Thank you for sending in the 2004 irrigation questionnaires for Water Right Nos. 960-1 & 1203-1 and Vested Water Right No. 1423-1.

Enclosed are partially completed "Notice of Transfer of Ownership" forms for filing an ownership change with each water right. Please review the forms and make any necessary corrections. Upon completion, please sign and return them to our office with a required filing fee of \$2.50 each (total of \$7.50). The check or money order for the fee can be made payable to the Water Rights Program.

I have included copies of the water rights in the event you need them. If you have any questions, please contact me.

Sincerely,

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

enclosures



1423-1

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 15, 2005

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery:

I am writing in regard to the ownership changes for Water Right Nos. 960-1 & 1203-1 and Vested Water Right No. 1423-1, currently listed in Thornton Vallery's name. In December, 2004 "Notice of Transfer of Ownership" forms were sent to you to transfer the rights from Thornton's name to your names. To date, we have not received them back from you.

In the event you need additional forms, enclosed are partially completed "Notice of Transfer of Ownership" forms for filing an ownership change with each water right. Please review the forms and make any necessary corrections. Upon completion, please sign and return them to our office with a required filing fee of \$2.50 each (total of \$7.50). The check or money order for the fee can be made payable to the Water Rights Program.

If you have any questions, please contact me.

Sincerely,

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

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

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

RECEIVED

JUN 22 2005

WATER RIGHTS
PROGRAM

No. 1423-1

Date: _____

I/We request that Vested Water Right No. 1423-1

formerly owned by: R Thornton Vallery

be transferred to: (name & address) Randy and Rhonda Vallery, 12287 Vallery Rd,
Nisland, SD 57762

Telephone No. 605 257-2365

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

63 acres - S ½ SE ¼ Section 10, N ½ NE ¼, SW ¼ NE ¼, SE ¼ NW ¼ Section 15, T8N, R4E

I/We understand that the validity of Vested Water Right No. 1423-1 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 Two Dollars and Fifty Cents (\$2.50) 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 Randy Vallery, the new owner, certify that the above information is true and correct.
Rhonda Vallery

Randy Vallery Rhonda Vallery
(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.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date June 22, 20 05

RECEIVED OF Rhonda Vallery, 12287 Vallery Rd., Nisland SD 57762

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2 50	
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>1423-1</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

064392

By

J. D. E. E. E.

Chief Engineer

gm



1423-1

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 23, 2005

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery:

I am writing to acknowledge receipt of the ownership changes you submitted for Water Right Nos. 960-1, 1203-1 and Vested Water Right No. 1423-1. The transfers have been completed. The water rights and vested water right formerly listed in the name of R Thornton Vallery are now listed in your names.

Enclosed are your Receipt No. 001891, 001892 and 001893 in the amounts of \$2.50 each. You may keep these for your records.

If I can answer any questions for you, please contact me.

Sincerely,

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

enclosure



1423-1

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 24, 2006

NOTICE

TO: RANDY & RHONDA VALLERY, 12287 VALLERY RD, NISLAND, SD 57762

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2005 Irrigation Questionnaires

Our records indicate that the 2005 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 28, 2005. The Water Management Board has directed that owners of water permits who have not submitted the 2005 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 960-1 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1203-1 & 1423-1 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 10:30 am, March 2, 2006 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1203-1 & 1423-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 960-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office on/or before **February 24, 2006**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath (605) 773-3352.

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 1, 2006

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery:

I am writing to acknowledge receipt of your 2005 irrigation questionnaires. You may disregard the January 24, 2006, "Notice" concerning reporting requirements for Water Right Nos. 960-1, 1203-1 and 1423-1.

The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

One thing I would like to point out is that we use the information irrigators supply each year to determine how much water is being used from a particular source. The data supplied should be as close as possible to what was actually diverted. If you are applying as much water as you reported, you are exceeding your water rights.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



1423-1

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 18, 2008

NOTICE

TO: RANDY & RHONDA VALLERY, 12287 VALLERY RD, NISLAND, SD 57762

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2007 Irrigation Questionnaires

Our records indicate that the 2007 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 19, 2007. The Water Management Board has directed that owners of water permits who have not submitted the 2007 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 960-1 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1203-1 & 1423-1 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **10:00 am, March 11, 2008** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1203-1 & 1423-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 960-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is(are) received in this office on/or before **March 3, 2008**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352. If you prefer, you can complete the questionnaire on-line at the following link:

<https://www.state.sd.us/eforms/secure/eforms/E0455V6-IQ.pdf>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

[Home](#) | [Help](#)

1423-1

[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: 2303 2160 0000 0802 4872
Status: **Delivered**

Your item was delivered at 11:11 AM on January 19, 2008 in NISLAND, SD 57762. The item was signed for by R VALLERY.

Track & Confirm

Enter Label/Receipt Number.

[Additional Details >](#) [Return to USPS.com Home >](#)

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)

Proof of Delivery

Verify who signed for your item by email, fax, or mail. [Go >](#)

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No FEAR Act EEO Data

FOIA

SIGNATURE CONFIRMATION NUMBER: 2303 2160 0000 0802 4872	
RANDY & RHONDA VALLERY 12287 VALLERY RD NISLAND SD 57762	
Waiver of Signature	☐ YES ☐ NO
Postmark Here	
POSTAL CUSTOMER: Keep this receipt. For inquiries: Access internet web site at www.usps.com or call 1-800-222-1811	
☐ Priority Mail™ Service ☐ First-Class Mail® parcel ☐ Package Services parcel	



1423-1
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 29, 2008

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery:

I am writing to acknowledge receipt of your 2007 irrigation questionnaires. You may disregard the January 18, 2008, "Notice" concerning reporting requirements for Water Right Nos. 960-1, 1203-1 and 1423-1.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

NOTICE OF CONDITIONAL ASSIGNMENT OF OWNERSHIP

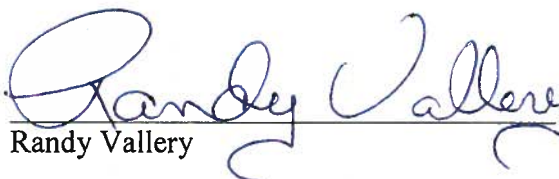
To: Chief Engineer
Water Rights Division
Department of Environment & Natural Resources
523 East Capitol
Pierre, South Dakota 57501-3181

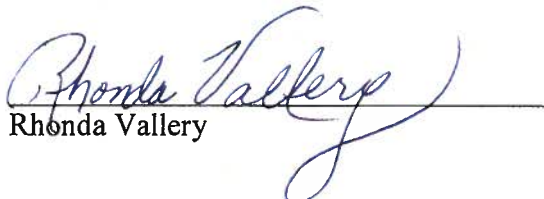
Date: September 25, 2013

Please take notice that Randy Vallery and Rhonda Vallery, husband and wife, have granted to AXA Equitable Life Insurance Company, c/o AXA Equitable Agrifinance, LLC, 4333 Edgewood Road NE, Cedar Rapids, IA 52499-5223 (the "Lender") a security interest in certain easements, water rights, water permits, and water licenses, evidencing water rights appurtenant to certain real property more fully described in Exhibit "A" attached to this Notice and incorporated herein by this reference, including without limitation the following water permits and licenses:

Water Permit Nos. 1423-1, 1203-1 and 960-1

You are requested to file this Notice of Conditional Assignment in the appropriate file at the Division of Water Rights as evidence of the security interest granted to the Lender in all such water permits and water rights.


Randy Vallery


Rhonda Vallery

COUNTY OF Butte

(SEAL)

REAL)

James M. Mott

My commission expires: June 12, 2017



COUNTY OF Butte

(SEAL)

King Math

My commission expires: June, 2017



Exhibit "A"

Legal Description

Township 8 North, Range 4 East of the Black Hills Meridian, Butte County, South Dakota:

Section 10: That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ lying South of the center line of the Belle Fourche River

Section 11: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying South and West of the Belle Fourche River, except that portion thereof conveyed by deed recorded in Book 25 on Page 203;

That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ lying South and West of the Belle Fourche River, except that portion conveyed by deed recorded in Book 93 on Page 630;

That portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying East of the center line of the Belle Fourche River

Section 14: NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$

Section 15: That portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$, lying South and West of the Belle Fourche River; W $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$



1423-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 25, 2019

NOTICE

TO: RANDY & RHONDA VALLERY, 12287 VALLERY RD, NISLAND, SD 57762
FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2018 Irrigation Questionnaires

Our records indicate your 2018 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 30, 2018. The Water Management Board has directed that owners of water permits who have not submitted the 2018 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 960-1 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1203-1 & 1423-1 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 6, 2019 at 10:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1203-1 & 1423-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 960-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office before the **March 6, 2019** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



1423-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 7, 2019

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery

I am writing to acknowledge receipt of your 2018 irrigation questionnaires.

You may disregard the January 25, 2019, "Notice" concerning reporting requirements for Water Right Nos. 960-1, 1203-1 and 1423-1. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



1423-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 23, 2020

NOTICE

TO: RANDY & RHONDA VALLERY, 12287 VALLERY RD, NISLAND, SD 57762

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2019 Irrigation Questionnaires

Our records indicate your 2019 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 18, 2019. The Water Management Board has directed that owners of water permits who have not submitted the 2019 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 960-1 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1203-1 & 1423-1 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, February 26, 2020 at 8:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1203-1 & 1423-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 960-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office before the **February 26, 2020** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: XMCETH**

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

1423-1



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 30, 2020

960-1
1203-1
1423-1

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

Dear Mr. & Mrs. Vallery:

I am writing to acknowledge receipt of your 2019 irrigation questionnaires.

You may disregard the January 23, 2020, "Notice" concerning reporting requirements for Water Right Nos. 960-1, 1203-1 and 1423-1. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

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

DANR-Water Rights Program

Please Send The 2023 water
rights Questionnaire to :

Brian Mills + Codi Vallery-Mills
18865 Turkey Track Ln.
Nisland, S.D. 57762

Thank you very much.

Randy Vallery

RECEIVED

JAN 09 2023

OFFICE OF
WATER



1423-1

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 23, 2023

Randy & Rhonda Vallery
12287 Vallery Rd
Nisland SD 57762

1423-1

Dear Mr. & Ms. Vallery:

I am writing in regard to your Water Right No. 1423-1. The water permit authorizes diversion of water from the Belle Fourche River, for the irrigation of 63 acres within SE ¼ Section 10 & N ½ Section 15, T08N, R04E.

In reviewing your 2022 irrigation questionnaire, we have found discrepancies in the amount of water used and have some concerns. Enclosed is a copy of your questionnaire for reference purposes.

Water Right No. 1423-1 allows you to use up to three acre-feet (ac-ft) (36 inches) of water, per acre, per year. On the questionnaire you reported substantially more water use. The following information is what was reported and what is authorized:

- 63 acres irrigated
- Reported water use – 291.6 ac-ft of water (approximately 56 inches)
- Authorized water use – 189 acre-feet (63 acres x 3 ac-ft per year)

We realize that water use depends greatly on climactic conditions and may vary year to year. However, it is very rare that irrigators come close to the 36 inches per acre that is authorized. Typical water use is between 8 and 12 inches per acre. Often, irrigators do not keep track of their days or hours actually pumped and estimate numbers for the questionnaires in an effort to get them completed and back in on time. While we appreciate returning the forms in a timely manner each year, we need the forms to reflect accurate information to ensure everyone is limiting their use to the amount of water appropriated to them.

The information we receive each year from irrigators across the state is very valuable. The water use data supplied by irrigators is one of the tools we use to help determine whether an aquifer or stream is nearing full appropriation.

If you do in fact apply as much water as claimed on your questionnaire, you are exceeding the limits of your water license and will have to reduce your discharge to stay within the authorized limit. If you simply estimated your water use, we ask that you please ensure the information reported is as accurate as possible. As stated before, the information you provide to us is very valuable. If you have any questions, please contact me.

Sincerely,

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us