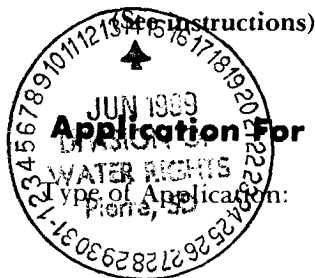


assigned on July 10, 1989 By [Signature]



No. 1463-1 Hydrologic Unit 10120203
Basin Belle Fourche River
Newspaper Belle Fourche Daily Post, 1004 5th Ave. 57717
Queen City, Mo., Box 7, (daily), Spearfish

Application For Soil/Water Compatibility Permit and Permit To Appropriate Water

- Type of Application: ☐ New ☒ Vested Right ☐ Amend Permit No. _____
- ☐ Change Acreage ☐ Change diversion point(s) ☐ Add diversion point(s)
- ☐ Add Acreage ☐ Increase diversion rate ☐ Other _____
- Name of Applicant Donald Kissack Phone No. 892-6466
642-3297
 - Post Office Address RR 1, Box 176B Spearfish State SD 57783
(Street, RR or Box) (City) Zip Code
 - Amount of water claimed (c.f.s) .62 Total acres irrigated 21.6
 - Source of Water supply Redwater River
 - Location of point of diversion NE¹/₄, SE¹/₄ Sec 5, T7N-R2E
1320' West, 2495' North of the SE corner of Sec 5, T7N-R2E
County Butte
 - Counties where water will be used Butte
 - Annual period during which water is to be used May 1 - October 31
 - List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.
SE ¹ / ₄ NE ¹ / ₄ Sec 5, T7N-R2E	2.0
NE ¹ / ₄ SE ¹ / ₄ Sec 5, T7N-R2E	19.6

Land Description	No. Acres Irr.

Attach sheet if more space is needed

- Type of Irrigation: Gravity: X Towline: _____ Center Pivot: _____ Gun: _____ Other: Pumped
(Specify)
- Crops to be Irrigated: Hay & Row Crops
- Give a description of proposed project. (Attach sheet if more space is needed)

Pursuant to 46-5-49, This application is to validate a vested right claim.



Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach maps, soils information and any other technical information.

STATE OF SOUTH DAKOTA)
County of Butte) ss

I, Donald Kissack, the applicant, certify that I have read this application and examined the attached maps, that the water sample, if needed, has been taken by the required procedures and has not been adulterated or tampered with and is truly representative of the water to be used, and that the matters stated in this application are true and correct.

Signed Donald Kissack

Subscribed and sworn to before me this 12th day of June 19 89

Annette L. Nelson
Notary Public

Affidavit of Water Use



No. _____

(Type or Print in Ink)

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

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

Name of Applicant (Same as Form 2) Donald Kissack

Post Office Address RR #1 Spearfish SD 57783
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation April 7, 1897 Date of Posting April 7, 1897

Date of recording May 25, 1897 Recording date Deadwood 123 103
Where Book Page

B. Date of start of construction of water supply system March 10, 1897

C. Date that water was first applied to beneficial use May 30, 1897

D. Name of owner of original water supply system S.D. Ralph

E. Amount of water originally applied to beneficial use 500 inches

F. Present Use of Water - Amount of water now being used Irrigation - 500 inches

Date that this water was first used May 30, 1897

G. Chronological History of Water Use

This land has always been irrigated since the irrigation system was developed in 1897.

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

State of South Dakota)
County of Baile) ss

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

Signed Donald Kissack

Subscribed and sworn to before me May 1, 1989
ANNETTE L. NELSON, Notary Public
My Commission Expires Mar. 24, 1993
Annette L. Nelson
Notary Public or other qualified officer

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

(Print name) 19____

(Print name) 19____

SOUTH DAKOTA
VESTED WATER RIGHT NO. 1463-1 FOR IRRIGATION

Date of Receipt of Claim May 3, 1989.

Date of Validation July 10, 2003.

The Water Management Board validated Vested Water Right Claim No. 1463-1 for irrigation purposes for Donald Kissack, RR 1 Box 176B, Spearfish SD 57783 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1463-1 appropriates 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres. The Redwater River diversion point is located in the NE ¼ SE ¼ and the irrigated acreage is located in the NE ¼ SE ¼, SE ¼ NE ¼; all in Section 5-T7N-R2E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: May 1 – October 31.
3. The priority date of the Vested Water Right is January 1, 1949.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

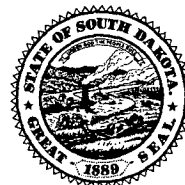
WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

AUG 28 2003

date



RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, May 3, 1989

RECEIVED OF Donald Kissack, RR #1, Box 177A, Spearfish, SD 57783

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

Fee for Application for Permit No. <u>1463-1</u> to Appropriate Water, to construct works and to put water to beneficial use _____	15	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
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/mra
Chief Engineer John Hatch/mra

NOT TO SCALE



Map Prepared By: *Thomas D. Van Helt*
Ag. Engineer, SCS



Transposed to Aid In Reading

Notice of right to water

The undersigned claims the water running in the Spearfish Stream to the extent of five hundred (500) inches for agricultural purposes to be conveyed by ditch from this point to and through the southwest quarter of section four township seven North of Range two East of the Black Hills Meridian commencing at a point on the north side for the stream where the same passes through the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 9 T7N R2E B. H. M. and thence through the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ Sec 8 thence through the Northwest corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ Sec. 9 to the SW $\frac{1}{4}$ Section 4 all in Township 7. N of Range 2 E. B. H. M. to be used for irrigation purposes located April 7th A.D. 1897.

E.D. Ralph

release all notes and chattel mortgages held by said second party against the party of the first part under the firm name of Knight & St. Croix, which when done shall be a relinquishment in full of all claims and damages held by each of the aforesaid parties against the other. It being further agreed that the party of the first part for and in consideration of the above presents hereby pays the party of the second part the sum of one hundred fifty (\$150) dollars on or before the 24th day of May A.D. 1897 making the total sum of four hundred (\$400) dollars. This agreement is binding on the heirs and assigns of the parties hereto. In Witness whereof the parties have hereunto set their hands the day and year first above written.

Louis St. Croix
John A. Seale

37/6

Water Right Location
by
C. D. Ralph
Filed for Record
May 25th 1897
at S. A. M.
J. H. Russell
Register of Deeds

Notice of right to water
The undersigned claims the water running in this Spearfish stream to the extent of five hundred (500) inches for agricultural purposes to be conveyed by ditch from this point to and through the South west quarter of section four township seven north of Range two east of the Black Hills Meridian commencing at a point on the north side of the stream where the same passes through the NW 1/4 of the NE 1/4 of Sec 9 T. 7 N. R. 2 E. B. H. M. and thence through the SE 1/4 of the NE 1/4 Sec. 8 thence through the Northwest corner of the NE 1/4 of the SE 1/4 Sec. 7 to the NW 1/4 Sec. 4 all in township 7 N. of Range 2 E. B. H. M. to be used for irrigation purposes Located April 7th A.D. 1897
C. D. Ralph

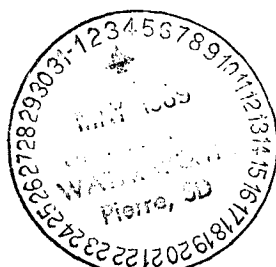
CERTIFIED COPY
I HEREBY CERTIFY THAT THIS IS A TRUE AND
CORRECT REPRODUCTION OF INFORMATION
APPEARING ON A RECORD FILED IN THE
REGISTER OF DEEDS OFFICE LAWRENCE
COUNTY, DEADWOOD, SOUTH DAKOTA

DATE ISSUED NOV 20 1987

REGISTER OF DEEDS

BY: J. R. Schumacher

DEPUTY



April 3, 1989

Donald Kissack
RR #1
Spearfish, S.D. 57783

RE: Application to Validate a Vested Right Claim.

Dear Mr. Kissack:

Enclosed you will find two copies of Form 2 and one copy of Form 2B. These forms are required to file for validation of your vested right claim. Please review the forms for accuracy, sign and notarize them, and return them to our office with \$15.00 filing fee.

If you have any questions, please contact me.

Sincerely,



M. RASSOOL AHADI
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

May 4, 1989

Donald Kissack
RR 1, Box 177A
Spearfish, SD 57783

Dear Mr. Kissack:

I am writing in response to the water permit application received from you May 3, 1989.

The application is incomplete for the following reason(s):

- (1) A map, signed by a South Dakota Registered Engineer, a South Dakota Licensed Land Surveyor, or by a government employee who normally prepares maps as part of their duties, that shows the location of the land irrigated and the point of diversion needs to be submitted.

The Water Management Board cannot consider a water permit application until it is complete. Please submit a signed map to begin processing of your water permit application.

Feel free to contact me if you have any questions.

Sincerely,

Susan A. Bowar

Susan A. Bowar
Natural Resources Engineer
Water Rights Division
(605) 773-3352



 **Department of
Water & Natural Resources**

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

July 10, 1989

Donald Kissack
RR 1, Box 177A
Spearfish SD 57783

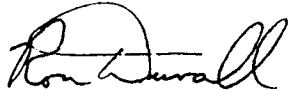
Dear Mr. Kissack:

This letter is in regard to the application and signed map you returned in response to Susan Bowar's letter dated May 4, 1989. The application and map were received on June 14, 1989.

The returned application specifies of a diversion rate of 0.62 cfs (280 gallons per minute) to irrigate the 21.6 acres. However, the Affidavit of water use submitted with the original application specifies a present use of 500 inches (4500 gallons per minute). I will proceed with the vested right claim for 280 gallons per minute unless you indicate that the application should be for 4500 gallons per minute. Please respond by July 28, 1989 if you want to claim some amount of water other than 280 gallons per minute.

If you have any questions, please contact me.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

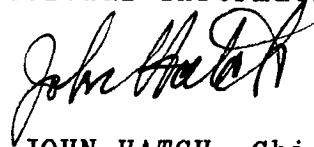


RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1463-1, Donald Kissack

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. 1463-1, Donald Kissack, RR 1, Box 177A, Spearfish SD.

The Chief Engineer is recommending DEFERRAL of Application No. 1463-1 until additional information documenting use of water for irrigation is obtained.

See the attached report for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", is written over the typed name.

JOHN HATCH, Chief Engineer
August 7, 1989

Report on Vested Water Right Application No. 1463-1
Donald Kissack
July 13, 1989

Background

Vested Water Right Application No. 1463-1 claims appropriation of 0.62 cubic feet of water per second from the Redwater River. The diversion point is a pumping station located in the NE1/4 SE1/4 Section 5, T7N-R2E, in Butte County. The water is used to flood irrigate 21.6 acres in the NE1/4 SE1/4 and SE1/4 NE1/4 Section 5, T7N-R2E. The applicant claims a priority date of April 7, 1897.

Discussion

There is no document or location notice pertaining to what the applicant claims. There is, however, a Water Right Location No. 3716, in Book 123, Page 103, Lawrence County Register of Deeds, in which E. D. Ralph filed a water right location and claimed 500 miner's inches of water from Spearfish Creek with a priority date of April 7, 1897.

Since this location notice is in the area that the applicant now owns, he believes that the irrigation system for Application No. 1463-1 was constructed at the same time.

Conclusions and Recommendations

1. According to the applicant, water had been used for irrigation since May of 1897, however the basis for the claim is questionable.
2. There are downstream water rights on Redwater River that may be affected by this application; however, no complaints have been received from downstream irrigators.
3. There is a question regarding the priority date which should be established on the vested right claim. The Division of Water Rights has no information which can establish a priority date for the claim. The applicant is basing the claim on a location notice which does not pertain to these specific lands.

4. It is recommended that Vested Water Right Application No. 1463-1 be deferred to determine if additional information can be obtained regarding when the use of water was established and to give the opportunity for other parties to be heard regarding the claim.

M. Rassool Ahadi

M. RASSOOL AHADI
Natural Resources Engineer II
(605)773-3352

Approved by:

James E. Winterton

JAMES E. WINTERTON, P.E.
Natural Resources Engineer IV
(605)773-3352

12/6/89 minutes

5354-3, Carl Soukup, Sioux Falls, SD

Application is for 0.50 cfs from one well 390 feet deep in the Sioux Quartzite Formation to irrigate 35 acres. Staff recommendation is for approval with the Well Interference Qualification and the Irrigation Water Use Questionnaire Qualification.

5355-3, Town of Seneca, Seneca, SD

Application is for 0.10 cfs from one well 275 feet deep. Water is used to supply the town of Seneca. Staff recommendation is for approval with the Well Construction Rules Qualification No. 1 and the Well Interference Qualification.

5356-3, Town of Tabor, Tabor, SD

Application is for 0.40 cfs from two wells 115 feet deep and 122 feet deep in the Niobrara Formation. Water is used as a standby source. Staff recommendation is for approval with the Well Interference Qualification.

Mr. Rollag MOVED, SECONDED by Mr. Freeman to APPROVE Water Permit Application Nos. 1468-1, 1469-1, 2053A-2, 2092-2, 2094-2, 2096-2, 2097-2, 2098-2, 2102-2, 2103-2, 2104-2, 2612A-2, 5143A-3, 5345-3, 5349-3, 5350-3, 5351-3, 5352-3, 5353-3, 5354-3, 5355-3, 5356-3. MOTION CARRIED.

Vested Right Claims (continued)

1463-1, Donald Kissack, Spearfish, SD

Application is for 0.62 cfs from the Redwater River to irrigate 21.6 acres with a claimed priority date of April 7, 1897. Staff recommendation is for deferral until additional information documenting use of water for irrigation is obtained.

MR. Rollag MOVED, SECONDED by Mr. Freeman to DEFER Vested Right Claim No. 1463-1. MOTION CARRIED.

768A-1, Arlene Cox (Roubaix Ranch), Deadwood, SD

Application is for 0.44 cfs from Elk Creek to irrigate 80 acres with a claimed priority date of May 11, 1881. Staff recommendation is for validation with the following qualifications:

1. Validation of Vested Water Right No. 768A-1 incorporates the applicable portions of Vested Water Right Claim No. 768-1 into No. 768A-1 and cancels the abandoned portions of No. 768-1.
2. That Vested Water Right No. 768A-1 is subject to domestic use rights. Diversion of water under Water Right No. 768A-1 is contingent upon supplies being available first to domestic users.

Mrs. Loucks MOVED, SECONDED by Mr. Rickenbach to VALIDATE Vested Right Application No. 768A-1. MOTION CARRIED.



Department of Water & Natural Resources

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

November 1, 1989

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

Donald Kissack
RR 1, Box 177A
Spearfish SD 57783

Dear Mr. Kissack:

Your Application No. 1463-1 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, Belle Fourche SD and the Queen City Mail, Spearfish SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your notice of hearing to validate a vested right and to arrange for payment. Early contact with the papers can eliminate delays. The publishers have been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. We must receive Proof of Publication before the application can be considered by the Water Management Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures



Department of Water & Natural Resources

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

November 1, 1989

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

ATTENTION: Legal Department

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1463-1 to be published twice. Please publish the notice on or before November 8, 1989 with the second publication 7 days later.

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 Donald Kissack, RR 1, Box 177A, Spearfish SD 57783.

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

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

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

CUT HERE

FIRST TRANSMITTAL NOTICE

TO: ATTN: Ron Duvall
Water Rights Division
523 E Capitol
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

SOUTH Dakota Department of
Water & Natural Resources

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

November 1, 1989

Queen City Mail
Box 7
Spearfish SD 57783

ATTENTION: Legal Department

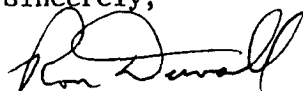
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Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

TO: ATTN: Ron Duvall
Water Rights Division
523 E Capitol
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 Notice on or before November 8, 1989 with 2nd publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 1463-1 to Appropriate Water

Notice is given that Donald Kissack, RR 1, Box 177A, Spearfish SD 57783 has filed an application to validate a vested water right claim to appropriate 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres with a claimed priority date of April 7, 1897. The Redwater River diversion point is located in the NE 1/4 SE 1/4 and the irrigated acreage is located in the NE 1/4 SE 1/4, SE 1/4 NE 1/4; all in Section 5-T7N-R2E.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends DEFERRAL of Vested Water Right Application No. 1463-1 until additional information documenting use of water for irrigation is obtained. This application will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD on December 6, 1989 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer or 4) deny validation of the application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by November 24, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by November 24, 1989.

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

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
 County Lawrence) ss.

I, Ramon C. Kissack) Perpet

certify that the attached printed Notice was taken
 from the The Spearfish City Mail

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

City of Spearfish

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

December 8, 1989

December 15, 1989

Ramon C. Kissack
 (Signature)

Accounts Receivable Clerk
 (Title)

December 15, 1989
 (Date Signed)

Cost of Printing: 38 75

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

Nov. 8, 15
 S-577

NOTICE OF HEARING

To Validate
 Vested Water Right
 Application No. 1463-1
 to Appropriate Water

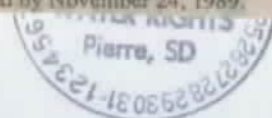
Notice is given that Donald Kissack, RR 1, Box 177A, Spearfish, SD 57783 has filed an application to validate a vested water right claim to appropriate 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres with a claimed priority date of April 7, 1897. The Redwater River diversion point is located in the NE 1/4 SE 1/4 and the irrigated acreage is located in the NE 1/4 SE 1/4, SE 1/4 NE 1/4; all in Section 5-T7N-R2E.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends DEFERRAL of Vested Water Right Application No. 1463-1 until additional information documenting use of water for irrigation is obtained. This application will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E. Capitol, Pierre, SD on December 6, 1989 at 10:00 a.m. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer or 4) deny validation of the application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by November 24, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for oppos-

ing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by November 24, 1989.



PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
 County Butte) ss.

I, Rhonda Schultz
 certify that the attached printed Notice 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 8 1989
November 15 1989

Rhonda Schultz
 (Signature)
Bookkeeper
 (Title)
11-15-89
 (Date Signed)

Cost of Printing: \$30.29

NOTICE OF HEARING
To Validate

Vested Water Right
 Application No. 1463-1
 to Appropriate Water

Notice is given that Donald Kiasack, RR 1, Box 177A, Spearfish SD 57783 has filed an application to validate a vested water right claim to appropriate 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres with a claimed priority date of April 7, 1897. The Redwater River diversion point is located in the NE 1/4 SE 1/4 and the irrigated acreage is located in the NE 1/4 SE 1/4, SE 1/4 NE 1/4; all in Section 5-T7N-R2E.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends DEFERRAL of Vested Water Right Application No. 1463-1 until additional information documenting use of water for irrigation is obtained. This application will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD on December 6, 1989 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer or 4) deny validation of the application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by November 24, 1989. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by November 24, 1989.

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

2/11/8-15

12/6/89 minutes

5354-3, Carl Soukup, Sioux Falls, SD

Application is for 0.50 cfs from one well 390 feet deep in the Sioux Quartzite Formation to irrigate 35 acres. Staff recommendation is for approval with the Well Interference Qualification and the Irrigation Water Use Questionnaire Qualification.

5355-3, Town of Seneca, Seneca, SD

Application is for 0.10 cfs from one well 275 feet deep. Water is used to supply the town of Seneca. Staff recommendation is for approval with the Well Construction Rules Qualification No. 1 and the Well Interference Qualification.

5356-3, Town of Tabor, Tabor, SD

Application is for 0.40 cfs from two wells 115 feet deep and 122 feet deep in the Niobrara Formation. Water is used as a standby source. Staff recommendation is for approval with the Well Interference Qualification.

Mr. Rollag MOVED, SECONDED by Mr. Freeman to APPROVE Water Permit Application Nos. 1468-1, 1469-1, 2053A-2, 2092-2, 2094-2, 2096-2, 2097-2, 2098-2, 2102-2, 2103-2, 2104-2, 2612A-2, 5143A-3, 5345-3, 5349-3, 5350-3, 5351-3, 5352-3, 5353-3, 5354-3, 5355-3, 5356-3. MOTION CARRIED.

Vested Right Claims (continued)

1463-1, Donald Kissack, Spearfish, SD

Application is for 0.62 cfs from the Redwater River to irrigate 21.6 acres with a claimed priority date of April 7, 1897. Staff recommendation is for deferral until additional information documenting use of water for irrigation is obtained.

MR. Rollag MOVED, SECONDED by Mr. Freeman to DEFER Vested Right Claim No. 1463-1. MOTION CARRIED.

768A-1, Arlene Cox (Roubaix Ranch), Deadwood, SD

Application is for 0.44 cfs from Elk Creek to irrigate 80 acres with a claimed priority date of May 11, 1881. Staff recommendation is for validation with the following qualifications:

1. Validation of Vested Water Right No. 768A-1 incorporates the applicable portions of Vested Water Right Claim No. 768-1 into No. 768A-1 and cancels the abandoned portions of No. 768-1.
2. That Vested Water Right No. 768A-1 is subject to domestic use rights. Diversion of water under Water Right No. 768A-1 is contingent upon supplies being available first to domestic users.

Mrs. Loucks MOVED, SECONDED by Mr. Rickenbach to VALIDATE Vested Right Application No. 768A-1. MOTION CARRIED.



Department of Water & Natural Resources

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

December 12, 1989

NOTICE

TO: Donald Kissack
RR 1, Box 177A
Spearfish SD 57783

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

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

SUBJECT: Deferral of Vested Water Right Claim No. 1463-1

On December 7, 1989, the Water Management Board deferred consideration of Vested Water Right Claim No. 1463-1 until additional information is provided to document use of water for irrigation. If we receive your information by February 16, 1990. Claim No. 1463-1 can be rescheduled for hearing at the March 7 & 8, 1990 Board meeting in Rapid City. Notice will be given of the hearing time and place.

Please contact Rassool Ahadi, staff engineer (605 773-3352) if you have any questions.

cc: John Haak, Assistant Attorney General

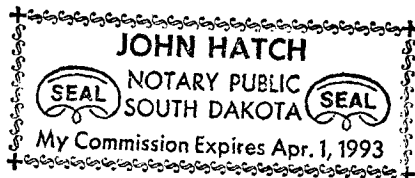
CERTIFICATION

I hereby certify that on December 12, 1989 I have personally deposited with the U.S. Mail a postage prepaid envelope containing a Notice on Deferral of Vested Water Right Claim No. 1463-1 addressed as stated on the notice.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of December, 1989.



John Hatch
Notary Public



August 27, 2001

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Donald Kissack
RR 1
Spearfish SD 57783

1463-1

Dear Mr. Kissack:

On May 3, 1989 you submitted Vested Water Right Claim No. 1463-1 seeking to validate an appropriation of 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres located in the SE ¼ NE ¼ and NE ¼ SE ¼ Section 5-T7N-R2E.

When the application was considered by the Water Management Board, they deferred action until you provided additional information to document use of water for irrigation back to the claimed priority date of April 7, 1897.

We are in the process of reviewing all permit applications that have been deferred for an extended period of time. The review indicates this permit still remains in deferred status.

This letter is to notify you of our intention to schedule a hearing before the Water Management Board to consider this permit application. If you are still irrigating this acreage, do you have any records to substantiate the claimed priority date other than what was submitted at the time the permit application was made?

I realize that documenting water use that began over 100 years ago may not be possible. However, are there any individuals that can attest to the irrigation system being in place in the 1940's or 1960's? In addition, when this application is brought before the Board, it would be in your best interest to attend the hearing to provide your knowledge on the history of irrigation of this property.

If you have any questions, please contact Karen Schlaak with this office.

Sincerely,

Garland Erbele, Chief Engineer
Water Right Program
605 773-3352

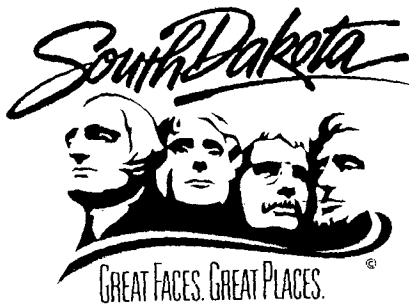
605

642-3297

10/24/01

talked w/ Mrs. Kissack
husband's truck

applicant was probably
his father.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 10, 2002

Donald Kissack
RR 1
Spearfish SD 57783

1463-1

Dear Mr. Kissack:

On August 27, 2001 we sent you a letter regarding Vested Water Right Claim No. 1463-1 (copy of letter and application enclosed). On October 24, 2001, Mrs. Kissack spoke with me indicating you were unavailable at that time. Mrs. Kissack stated she believed the original applicant for this claim was your father. Since she was uncertain about the land ownership, we decided I would wait to hear back from you.

The Butte County Equalization office records show that Donald and Lorraine Kissack own the land located in the SE ¼ NE ¼ and NE ¼ SE ¼ Section 5-T7N-R2E. Is this you or your father? If it is your father what is his mailing address? Do you have any knowledge regarding irrigation of this property?

Thank you for your assistance.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosure

June 24 03

To Whom it May concern:

My name is Mrs John D. Lisiack,
(age 84).

This is to verify the farm, now
owned by Donald Lisiack, did indeed
irrigate this place from the dam,
which was fed by Redwater, until
which time during the flood of 60's it
was washed out.

Phil & Donald Lisiack Sr. rented the
place in 1949 and were irrigating
from the dam then. They pumped
water from it & irrigated from it.

After the death of his father, Donald Jr.
continued to irrigate the place, which
he purchased from Anna Faybourns,
and still operates & owns.

The dam was indeed there until
the flood of 60's.

Mrs John D. Lisiack



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 3, 2003

Donald Kissack
RR 1, Box 176B
Spearfish SD 57783

1463-1

Dear Mr. Kissack:

On May 3, 1989 a Vested Water Right Application No. 1463-1 claiming a 1897 priority date was submitted by Donald Kissack seeking to validate an appropriation of 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5-T7N-R2E in Butte County.

When the application was considered by the Water Management Board, they deferred action until additional information to document use of water for irrigation back to the claimed priority date of April 7, 1897 could be provided.

On August 27, 2001, we wrote you regarding our intention to schedule a hearing before the Water Management Board to consider this permit application. In a subsequent phone conversation with Karen Schlaak of this office, Mrs. Kissack indicated she was uncertain about the land ownership. She believed the original applicant was your father. At that time, the decision was made to wait to hear back from you. Another letter was sent to you on January 10, 2002. The Butte County Equalization office records show that Donald and Lorraine Kissack own the land located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5-T7N-R2E.

Is the land in question owned by you and is any irrigation taking place on this property? If we do not hear from you **within 30 days**, I intend to schedule a hearing before the Water Management Board. Presently, our recommendation to the Board will be to deny the permit application because there has been no effort to document the historical use of water necessary to proceed with the application.

If you have any questions, please contact Karen Schlaak with this office at (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Right Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 25, 2003

NOTICE

TO: Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of the Hearing on deferred Vested Water Right Claim No. 1463-1

Vested Water Right Claim No. 1463-1 seeks to validate an appropriation of 0.62 cubic feet of water per second from the Redwater River to irrigate 21.6 acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5-T7N-R2E in Butte County. The claim was deferred by the Water Management Board in December, 1989 in order for you to provide additional information to document use of water for irrigation back to the claimed priority date of April 7, 1897.

The Chief Engineer is recommending denial of this vested right claim because there has been no effort made to provide clarification on the historical use of water necessary to proceed with the application. The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) allow to remain deferred, or 4) deny this permit application based on the facts presented at the public hearing.

The Water Management Board will consider Vested Water Right Claim No. 1463-1 on May 7, 2003, at 10:00 AM, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD.

Any party of record has the right to be present and to be represented by a lawyer for purpose of presenting testimony. 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.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

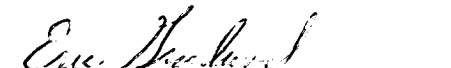
CERTIFICATION

I hereby certify that on March 25, 2003 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 25, 2003 regarding Scheduling of the Hearing on deferred Vested Water Right Claim No. 1463-1 addressed as stated below:

Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

A copy of the above described Notice was sent Inter-office to:

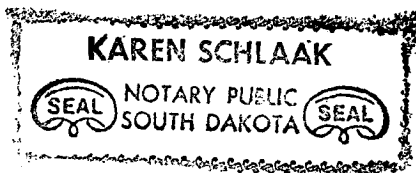
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of March , 2003.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Vested Water Right Application No. 1463-1

ADDRESS: COUNTY: Butte

DATE: April 11, 2003 TELEPHONE:

RE: Meeting with Mr. Donald Kissack

COMMENTS:

I met with Mr. Donald Kissack at his house to discuss deferred Application No. 1463-1 claiming 0.62 cfs from Redwater River for irrigation of 21.6 acres. Mr. Kissack is the son of the original applicant, Donald Kissack.

I explained some of the history regarding the application. The vested water right was filed on May 3, 1989. The application claims a 1897 priority date based largely on a Water Right Location filed by S. D. Ralph in 1897. This location filing does not list the irrigated acres and states the claim is for "... the water running in this Spearfish stream...". Based on this the Water Management Board deferred the application on December 6, 1989 until additional information documenting use of water for irrigation is obtained. The application has remained on deferred status since that time.

Mr. Kissack commented that Spearfish Creek could not have ever been the water source for irrigation of these acres. Also, Mr. Kissack pointed out that the Ralph location filing was obtained from the Lawrence County Register of Deeds. He thought that was odd because the irrigated land and the diversion point are located in Butte County. He did indicate that Mr. Ralph was a big irrigation developer in the valley in the late 1800's.

Mr. Kissack went on to state that by his recollection there was a dam in the river that provided head to divert water into the gravity ditch system. This dam washed out in approximately 1965. Since that time, Mr. Kissack and his father have used pumps from three different locations to water the acreage. The pump discharges water to specific locations and water is then allowed to spread over the area. Mr. Kissack said he had his own pump up until a few years ago but since it broke down he has rented a pump each year from a relative in Gillette Wyoming. He indicated that irrigation has taken place every year since he has had involvement with the property.

Mr. Kissack then took me out onto the property in question. The pump and irrigation pipe had not been put in place for the 2003 irrigation season. He showed me the old ditch. An unmaintained ditch is readily apparent. There are numerous trees in the bottom of the ditch indicating that it has not been maintained for a number of years (Mr. Kissack said that irrigation has taken place via pumping since the dam breached in or around 1965). Mr. Kissack showed me the approximate

location of the old dam. Remnants of the dam can not be seen but this location is where the ditch begins so it is logical to assume this is where a diversion dam was located. Attached are two pictures showing the old irrigation ditch (the ditch travels along the river's edge).

Finally, I discussed with Mr. Kissack what is necessary for him to "prove up" the vested water right claim. I made it clear the burden was on him to "prove up" the claim.

Mr. Kissack planned to go check at the Butte County Register of Deeds. His uncle, who is 85 years old, lives in Rozet Wyoming so he planned to visit with him on his recollection of irrigation on the property and try to get a letter. He will also write down his recollection of the history of irrigation on the property. Based on this information, the Chief Engineer will need to decide whether there's enough evidence for him to revise his recommendation. I asked if he wanted to continue the May meeting until July to allow him time to get information together. He thought he could get the information together and will try to get it to me soon.

NAME: Evan Hunsbarger
this document drafted 4/15/03

Pictures Taken on April 11, 2003 on Don Kissack's property located in the SE ¼ NE ¼
and NE ¼ SE ¼ of Section 5, T7N, R2E showing the old irrigation ditch applied for under
Vested Water Right Application No. 1463-1
(photos taken by Eric Gronlund, Water Rights Program, DENR)



May 05 03 09:47a Kissack

307-452-1639

p.1

P.01

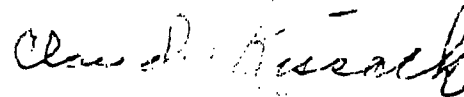
MAY-05-03 09:03 AM KISSACK "TRUCKING"

6056423297

TO WHOM IT MAY CONCERN,

I am Claude Kissack. Don W. Kissack is my deceased brother. Don J. Kissack is my nephew. I am familiar with their property on Red Water. As from when the dam washed out, I do not remember the exact year but I believe it to be early to mid sixties. From that time on they have used pumps of mine to pump irrigation water from Red Water to irrigate their property.

Sincerely, Yours



RECEIVED

MAY 05 2003

WATER RIGHTS
PROGRAM

TO WHOM IT MAY CONCERN,

I am Claude Kissack, Don W. Kissack is my deceased brother Don J. Kissack is my nephew. I am familiar with their property on Red Water. As from when the dam washed out, I do not remember the exact year but I believe it to be early to mid sixties. From that time on they have used pumps of mine to pump irrigation water from Red Water to irrigate their property.

Sincerely Yours

165092

PRE-EMPTION PATENT.

CERTIFICATE NO. 1292

The United States of America,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas, Claud E Ralph of Lawrence County Dakota Territory has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Deadwood Dakota Territory whereby it appears that full payment has been made by the said Claud E Ralph according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, "An Act making further provision for the sale of the public lands," for and the acts supplemental thereto for the South west quarter of the Northwest quarter of Section four and the North east quarter of the South East quarter and the South half of the Northeast quarter of Section five in Township seven North of range two East of Black Hills Meridian in Dakota Territory containing one hundred and sixty acres

according to the Official Plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said

Claud E Ralph

Now Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have Given and Granted, and by these presents do Give and Grant unto the said

Claud E Ralph

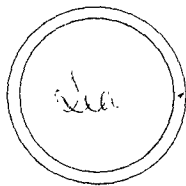
and to his heirs,

the said tract above described: TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said

Claud E Ralph

and to his heirs and assigns, forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted as provided by law.

In Testimony Whereof, I, Benjamin Harrison President of the United States of America, have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.



Given under my hand, at the City of Washington, the Seventh day of November in the year of our Lord one thousand eight hundred and eighty nine and of the Independence of the United States the one hundred and fourteenth

BY THE PRESIDENT,

Benjamin Harrison
By Ellen Macfarland Asst Secretary

Recorded, Vol. 4 Page 220

J H Townsend

Recorder of the General Land Office.

United States
TO
Claud E Ralph

Filed for Record

Feb 24th

A. D. 1889

at 11 15 o'clock A.M.

FOR Fuller

Register of Deeds.

S. H. Sellers Sept

RECEIVED
MAY 05 2003
WATER RIGHTS
PROGRAM



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 12, 2003

NOTICE

TO: Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Continuance on Deferred Status of Vested Water Right Application No. 1463-1
and Scheduling a July 10, 2003 Hearing to Reconsider Application

At their May 7th meeting, the Water Management Board continued the matter of deferred Vested Water Right Application No. 1463-1 until July 10th in order for the applicant to provide additional documentation to support the vested water right claim. This application seeks to validate a claim for 0.62 cubic feet of water per second (280 gallons per minute) from the Redwater River for irrigation of 21.6 acres.

The Board will now consider Vested Water Right Application No. 1463-1 on Thursday, July 10, 2003, at 10:00 AM, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate.

To obtain a vested water right in South Dakota, water use must have begun prior to 1955 and the use not abandoned or forfeited through nonuse. Two days prior to the May 7th scheduled hearing you provided two items to document the historic use of water necessary to qualify for a vested water right in South Dakota. Unfortunately neither of the documents provides proof of irrigation being developed prior to 1955.

- The Pre-Emption Patent you obtained from the Butte County Register of Deeds appears to be a land transfer from federal to private ownership. The reference to vested or accrued water rights is standard language in these type of documents basically saying that if there are any water rights established they go with the land. It is not a statement that water rights were in existence at the time of the land transfer.

- The letter from your uncle is more compelling documentation as it is a first hand account of irrigation. However, the letter only states the year when the dam washed out in the approximate 1960's and mentions nothing about irrigation taking place prior to 1955.

I realize it is difficult to find someone who viewed irrigation on the property at the turn of the century. However, it is likely that your uncle or some neighbor may be able to verify that irrigation occurred prior to 1955. That is the critical information we need. Please provide supplemental documentation to show a pre-1955 use of water for irrigation. This information must be submitted by June 27, 2003.

Mr. Kissack it is the applicant's responsibility to show that the water use qualifies for vested right status. Without adequate documentation or someone attesting to water use prior to 1955, it will be difficult for me to support this application as a vested water right. Ultimately, the Water Management Board will decide whether to approve the application and assign a priority date.

Based on SDCL 1-26-17, 1-26-18.3 and 1-26D-10, we are providing you notice that since a property right may be terminated, you may request the use of the Office of the Hearing Examiners to consider the vested right application. The request can be made by contacting the Chief Engineer by May 27, 2003. The Chief Engineer's address is Water Rights Program, 523 E. Capitol Avenue, Pierre SD 57501.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 12, 2003 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 12, 2003 regarding Notice of Continuance on Deferred Status of Vested Water Right Application #1463-1 addressed as stated below:

Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

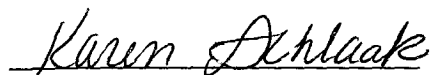
A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of May, 2003.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 16, 2003

Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

Dear Mr. Kissack:

This is just a reminder that we have not received the additional documentation to support your vested right claim No. 1463-1. As stated in the May 12, 2003 notice, this information must be submitted by June 27, 2003.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

To whom it may concern:

Please let me reiterate my brothers Phil Kissack Sr. and Donald Kissack Sr. rented this land beginning in 1949. They irrigated out of the dam in Redwater River up until the time the dam washed out in the 1960's. After the dam washed out they have been pumping water from Redwater River and are still currently pumping water.

Claude Kissack
Thank you,

RECEIVED
JUN 24 2003
WATER RIGHTS
PROGRAM



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June 27, 2003

Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

Dear Mr. Kissack:

Enclosed is the Chief Engineer's recommendation on Vested Water Right Application No. 1463-1 from Redwater River. You will see that the Chief Engineer is recommending validation of the claim with a priority date of January 1, 1949. This priority date is based on the letters provided by Mrs. John Kissack and Claude Kissack attesting to irrigation taking place in 1949. I assume their recollection is based on when your father took possession of the property.

As stated in previous notices, the vested right claim will be considered by the Water Management Board at 10:00 AM on July 10th in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD.

Mr. Kissack, this recommendation does not provide the 1897 priority date originally claimed by your father. The recommendation is for the date that you provided proof of irrigation. I have also enclosed a copy of water rights held from Redwater River. By reviewing this table you will see that the existing priority dates range from 1876 to 1890. So at the current time there are no priority dates between the 1897 date your father claimed and the 1949 date we are recommending. In simple terms, no one jumps ahead of you in priority date by getting the 1949 date. However this is not to say that someone else in the future may file for a vested water right claim and if they "prove it up" they may be entitled to a priority date that is senior to your water right.

Please feel free to contact me if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

enclosure



**DEPARTMENT of ENVIRONMENT
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**RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1463-1, Donald Kissack**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 1463-1, Donald Kissack, RR 1, Box 176B, Spearfish SD 57783.

The Chief Engineer is recommending VALIDATION of Application No. 1463-1 for 0.62 cfs (278 gpm) from Redwater River to irrigate 21.6 acres because 1) water has been appropriated as described for irrigation use with a priority date of January 1, 1949, 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.

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
June 26, 2003



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AUG 28 2003

Donald Kissack
RR 1 Box 176B
Spearfish SD 57783

Dear Mr. Kissack:

Enclosed is your Validated Vested Water Right No. 1463-1 authorizing your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Right.

We will schedule an inspection so that the Water License may be issued to you, thus completing your acquisition of a Water Right.

An informational sheet *?Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



1463-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
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www.state.sd.us/dennr

January 14, 2004

NOTICE

TO: DONALD KISSACK, RR 1 BOX 176B, SPEARFISH, SD 57783

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

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaire(s)

Our records indicate that the 2003 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 1463-1. The request for the Questionnaire was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 1463-1 qualification:

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

The hearing will be held at 8:30 am, March 3, 2004 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) 1463-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. 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 February 27, 2004, 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 at (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.



1463-1

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 22, 2004

1463-1

Donald Kissack
19425 Creekside Loop
Speafish SD 57783

Dear Mr. Kissack:

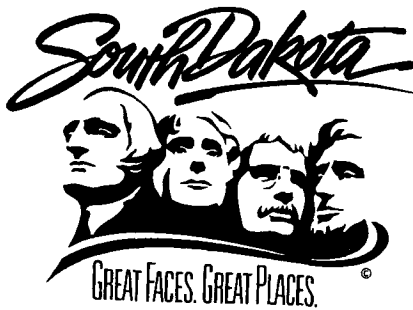
I am writing to acknowledge receipt of your 2003 irrigation questionnaire. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Permit No. 1463-1.

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



1463-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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www.state.sd.us/denr

January 20, 2005

NOTICE

TO: DONALD KISSACK, 19425 CREEKSIDE LOOP, SPEARFISH, SD 57783

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

SUBJECT: Reporting Requirement for 2004 Irrigation Questionnaire(s)

Our records indicate that the 2004 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 1463-1. The request for the Questionnaire was dated October 22, 2004. The Water Management Board has directed that owners of water permits who have not submitted the 2004 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 1463-1 qualification:

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

The hearing will be held at 8:30 am, March 2, 2005 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) 1463-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. 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 **February 25, 2005**, 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 at (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.



1463-1

Track & Confirm

Current Status

You entered 2301 3460 0000 8516 0537

Your item was delivered at 10:11 am on January 25, 2005 in SPEARFISH, SD 57783. The item was signed for by D KSSK.

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U.S. Postal Service Signature Confirmation Receipt

SIGNATURE CONFIRMATION NUMBER:
2301 3460 0000 8516 0537

DONALD KISSACK
19425 CREEKSIDE LOOP
SPEARFISH SD 57783

Waiver of Signature ☐ YES ☐ NO

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www.state.sd.us/denr

February 15, 2005

1463-1

Donald Kissack
19425 Creekside Loop
Spearfish SD 57783

Dear Mr. Kissack:

I am writing to acknowledge receipt of your 2004 irrigation questionnaire. You may disregard the January 20, 2005, "Notice" concerning reporting requirements for Water Permit No. 1463-1.

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



1463-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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www.state.sd.us/denr

January 18, 2008

NOTICE

TO: DONALD KISSACK, 19425 CREEKSIDE LOOP, SPEARFISH, SD 57783
FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2007 Irrigation Questionnaire(s)

Our records indicate that the 2007 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 1463-1. The request for the Questionnaire was dated October 19, 2007. The Water Management Board has directed that owners of water permits who have not submitted the 2007 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 1463-1 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) 1463-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. 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.

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Label/Receipt Number: 2303 2160 0000 0802 3110
Status: **Delivered**

Your item was delivered at 11:14 AM on January 19, 2008 in
SPEARFISH, SD 57783. The item was signed for by L KISSACK.

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	Waiver of Signature ☐ YES ☐ NO	
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www.state.sd.us/denr

January 28, 2008

1463-1

Donald Kissack
19425 Creekside Loop
Spearfish SD 57783

Dear Mr. Kissack:

I am writing to acknowledge receipt of your 2007 irrigation questionnaire. You may disregard the January 18, 2008, "Notice" concerning reporting requirements for Water Permit No. 1463-1.

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

1463-1

LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489
TEL (605) 892-2011
FAX (605) 892-4084
EMAIL: bellelaw@bellelaw.com

MAX MAIN*
DWIGHT A. GUBBRUD*
*LICENSED IN SOUTH DAKOTA AND WYOMING

EST. 1908

RECEIVED
OCT - 1 2008
WATER RIGHTS
PROGRAM

RETIRED
DONN BENNETT

September 30, 2008

Chief Engineer
Water Rights Program, DENR
Board of Water and Natural Resources
523 E. Capitol
Pierre, SD 57501-3182

RE: Water Right No. 1463-1.

Dear Chief Engineer:

Please find enclosed for filing an original and one copy of a Notice of Transfer of Ownership regarding title to described lands covered by the above-referenced Water Right. Also enclosed is a copy of the Warranty Deed transferring the described lands to Lorraine I. Kissack.

Also enclosed is our check payable to your order for \$2.50 to cover the filing fee.

Please let me know if you have questions, and if possible, could you please return a file-stamped copy of the Notice to me in the enclosed self-addressed stamped envelope.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.



Max Main

MM/njo
Encs.

cc: Client (w/o deed - w/ copy of Miller letter of 9/29)
Ronda Miller

RECEIVED

OCT - 1 2008

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

Water Right/Permit No. 1463-1 WATER RIGHTS PROGRAMDate: 5/15/2008

I/WE request that a portion of Water Right/Permit No. 1463-1 owned by:
DONALD KISSACK be transferred to:

New Owner Name: LORRAINE I. KISSACKAddress: 19439 CREEKSIDE LOOPCity, State, Zip SPEARFISH SD 57783 Telephone No. (605) 210-0285

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

TOWNSHIP 7 NORTH, RANGE 2 EAST, B.H.M., BUTTE COUNTY, SD
Section 5: SE1/4NE1/4.

☒ I understand that the validity of Water Right/Permit No. 1463-1 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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 included to cover the filing fee as required by SDCL 46-2-13.

I, LORRAINE I. KISSACK, the new owner, certify that the above information is true and correct.


(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.

**ATTACHMENT TO
VESTED WATER RIGHT NO. 1463-1**

Vested Water Right No. 1463-1 appropriates 0.62 cubic feet of water per second (cfs) from the Redwater River to irrigate 21.6 acres. The diversion point is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5 with the irrigated acreage located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5, all in T7N, R2E.

On October 1, 2008, an ownership change was filed for a portion of the land described in the vested water right.

The vested water right has been divided and reissued to reflect separate ownership as follows:

No. 1463A-1 Donald Kissack, 19425 Creekside Loop, Spearfish SD 57783: appropriates 0.563 cfs from Redwater River located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5 to irrigate 19.6 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5, all in T7N, R2E.

No. 1463B-1 Lorraine I Kissack, 19439 Creekside Loop, Spearfish SD 57783: appropriates 0.057 cfs from Redwater River located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 5 to irrigate 2.00 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5, all in T7N, R2E.