

WATER PERMIT NO. 1738-1

Name of Applicant: John H Bruch

Address: HC 77, Box 36, Sturgis SD 57785 Phone: 605 347-5269

Amount of Water Claimed: 1.0 cfs Total Acres: 59.3 acres

Source of Water Supply: runoff

Water to be used for: irrigation County: Meade

Type of Waste Disposal System:

Location: 7 miles northwest of Sturgis

PRIORITY Date Received: 10-4-00 Fee: \$150

Corrected Application Received:: Period of Annual Use: March 1 – November 30

Remarks: this is a waterspreading system

Diversion Point: NW ¼ SW ¼ Sec 5-T6N-R6E

Land to be Irrigated: SW ¼ Sec 5 and
NE ¼ NW ¼, W ½ NE ¼, SE ¼ NE ¼ Sec 6
all in T6N-R6E

Depth of Well: NA

Well Driller: : NA

Remarks:

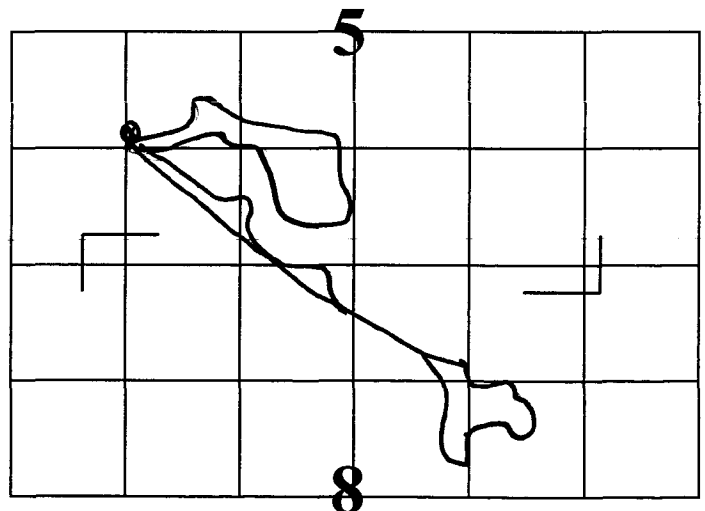
Type of Map: aerial

Prepared by: Darrell Vig, NRCS

Reviewed and the Number Assigned on: 10-4-00

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



SOUTH DAKOTA
WATER PERMIT NO. 1738-1 FOR IRRIGATION

Date of first receipt of application September 25, 2000.

The Water Management Board approved Water Permit Application No. 1738-1 on March 7, 2001 for John H. Bruch, HC 77 Box 36, Sturgis SD 57785 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1738-1 authorizes 1.0 cubic feet of water per second from runoff located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5 to irrigate via a waterspreading system 59.3 acres located in portions of the SW $\frac{1}{4}$ Section 5 and NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8; all in T6N-R6E.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: March 1 – November 30 (see Qualification No. 1).
3. The date from which applicant may claim right is September 25, 2000.
4. One-fifth of the construction is to be completed on or before September 7, 2003.
5. All construction is to be completed on or before March 7, 2006.
6. Water is to be put to beneficial use on or before March 7, 2010.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Except as authorized by written order issued by the Chief Engineer, Permit No. 1738-1 does not authorize diversion of water after June 1st of each calendar year, nor at any time when the river flows are low. Diversion of water under this Permit shall, in any case, be in accordance with any written orders issued by the Chief Engineer.
2. Pursuant to SDCL 46-5-6, which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 1738-1 authorizes a maximum diversion rate of 1.0 cfs for the irrigation of 59.3 acres, with an annual volume not to exceed 2 acre-feet of water per acre per year.

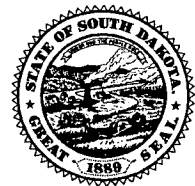
WATER MANAGEMENT BOARD

By: Garland Erbele

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

MAY 09 2001

date



Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)	
	No. <u>1738-1</u>	Hydrologic Unit <u>10120202</u>
	Basin <u>Belle Fourche River</u>	
	Newspaper <u>Meade Co. Times-Tribune, Sturgis</u>	



Application For Permit To Appropriate Water For Irrigation

Type of Application: X New Vested Right Amendment/Correction to Permit No.

(Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

1. Name of Applicant John H. Bruch Phone 605-347-5269
(check one) X Owner Tenant/lessee
- Mailing Address HC 77 Box 36 Sturgis State S.D. 57785
(Street, RR, or Box and City) (Zip Code)
2. Amount of water claimed 1.0 *CFS or **GPM ***AF Total Acreage 59.3
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Run off
4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) 1450 Feet North
of the SW corner of Section 5 T6N R6E
(NW 1/4 SW 1/4) County Meade
5. County or counties where water will be used Meade
6. Annual period during which water is to be used March Through November 30
7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
NWSW Section 5 T6N R6E	7.0	NENW Section 8 T6N R6E	3.7
SWSW Section 5 T6N R6E	5.8	NWNE Section 8 T6N R6E	4.0
NESW Section 5 T6N R6E	2.8	SWNE Section 8 T6N R6E	8.0
SESW Section 5 T6N R6E	17.9	SENE Section 8 T6N R6E	10.1

8. Give a description of the project. (Attach sheet if more space is needed)

Water will be diverted by a fill across existing creek with a control gate in the bottom to allow low flow to pass by. Diversion ditches will be installed on both sides of creek to carry water to a system of level lip ditches which will spread water on the land.

STATE OF SOUTH DAKOTA)

County of Meade SS

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, John H. Bruch, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

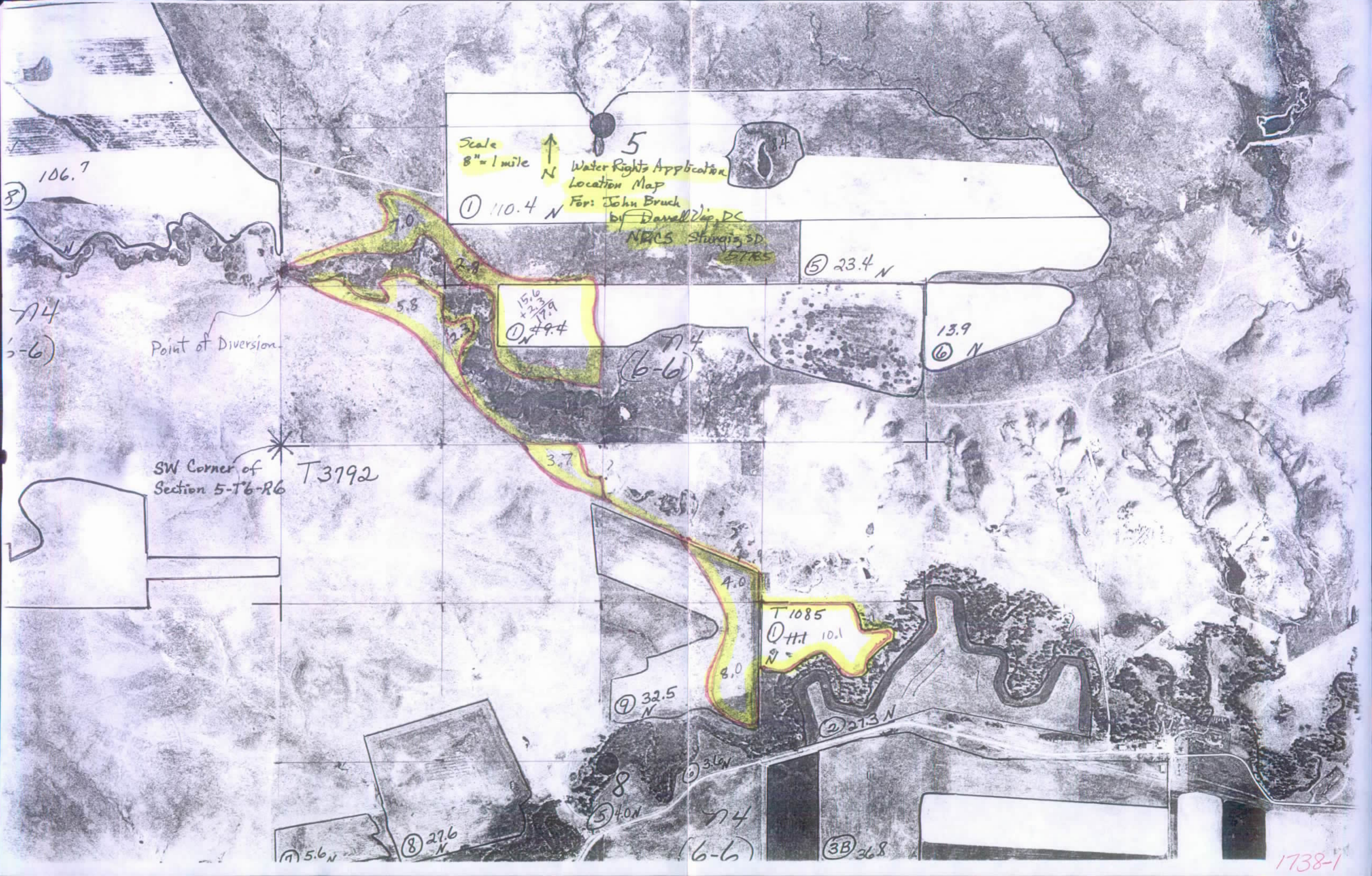
Applicant's signature

John H. Bruch

Subscribed and sworn to before me this 22nd day of September 2000

Carlene M. Rosenbaum
Notary Public signature

Commission Expires 8/19/04



Scale
8" = 1 mile



5
Water Rights Application
Location Map

① 110.4 N
For: John Bruch
by Danell Zip, DC
NRCS Sturgis, SD
5/18/85

⑤ 23.4 N

13.9
⑥ N

Point of Diversion

SW Corner of
Section 5-T6-R6
T3792

15.6
x 2.3
7.9
① 9.4 N

⑨ 32.5 N

T1085
① Ht 10.1
N

② 21.3 N

⑤ 40.1 N

⑧ 27.6 N

③ 36.8 N

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

NC 416544

Pierre, September 25, 2000

RECEIVED OF John H Bruch, HC 77 Box 36, Sturgis, SD 57785
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 _____

15000

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. _____

5000

Fee for Filing Transfer Form _____

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

20000

By Garrald Erbele
Chief Engineer

GARRALD ERBELE

Pictures from Stacy Johnson's site investigation 10-19-2000









19 10 2000



19 10 2000





19 10 2000



19 10 2000



19 10 2000



19 10 2000











**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

October 23, 2000

James Reed
20780 132 Ave
Sturgis, SD 57785

John Bruch
HC 77
Box 36
Sturgis, SD 57785

Dear Mr. Reed and Mr. Bruch:

I have talked to Eric Gronlund about the questions that each of you had on October 19, 2000. He told me that the Department of Environment and Natural Resources will likely proceed with cancellation of Mr. Bruch's old water right. If Mr. Bruch's new water permit application is approved it will be junior to Mr. Reed water permit if it is approved.

There was some discussion whether there were changes to the South Dakota Codified Law (SDCL) in regard to water rights laws in 1983. If either of you would like copies of laws to see what laws did change, please let me know.

Mr. Reed, in regards, to the well on your land, state law requires that if a well is abandoned it must be plugged. If you have any questions about this please talk to Jim Goodman or Ken Buhler at (605) 773-3352.

I am enclosing copies of the pictures that I took on October 19, 2000.

When attending the December Water Management Board Meeting you have the right to have your attorney there with you.

If you have any questions, feel free to contact me at (605) 773-3352 or via email at stacy.johnson@state.sd.us.

Mr. Reed
Mr. Bruch
Page 2
October 23, 2000

Sincerely,

Stacy J. Johnson

Stacy J. Johnson
Natural Resources Engineer

Enclosures (4)

REPORT ON WATER PERMIT APPLICATION NO. 1738-1

John H. Bruch

October 24, 2000

Application No. 1738-1, John H. Bruch, proposes to appropriate 1.0 cubic feet of water per second (cfs) from an unnamed creek to irrigate 59.3 acres of farmland. The land to be irrigated is in NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8; all in T6N-R6E. The diversion point will be located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5; all in T6N-R6E. The proposed project is located seven miles northeast of Sturgis in Meade County.

Review of the Proposed Project and Existing Water Rights

There is a pending water permit application for irrigation located approximately 4, 200 feet west of this project. This water permit application filed by James Reed proposes to take 1.0 cfs of water from the same unnamed tributary as this project. If the Reed water permit application is approved it will have a senior priority date to the Bruch's application. If both these applications are approved they should contain a qualification allowing the diversion of water only during spring runoff and high flows conditions.

There is an existing water right filing for irrigation of some of the same lands in Section 8 T6N-R6E that are proposed to be irrigated by this application. Water Right Filing No. 0426-1 is for 2.0 cfs of water from a spring located on the east side of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of land mentioned above. The water right filing states a use for agricultural and domestic purposes dating back to 1894. Based upon an inspection in 1981, it was determined that this water right filing has not been used or maintained since 1967. This water right filing was scheduled for cancellation by the Water Management Board on June 10, 1982, but was never formally brought before the Board for cancellation.

The source of water for this irrigation project is from an unnamed tributary to Spring Creek. Water is proposed to be diverted from the unnamed tributary using a low head dam and control gate into irrigation ditches located on both sides of the unnamed tributary. The applicant is proposing to irrigate 59.3 acres at a diversion rate of 1 cfs. The diversion rate proposed is greater than the statutory limit of 1 cfs per 70 irrigated acres. South Dakota Codified Law (SDCL) 46-5-6, gives the Water Management Board the option of allowing for a greater diversion rate if the method of irrigation requires it. The applicant intends to irrigate the land utilizing a waterspreading system.

The unnamed creek is an intermittent stream that is a tributary to Spring Creek which is a tributary to Bear Butte Creek. There are four existing water rights appropriating 5.03 cfs located on Bear Butte Creek 10 to 20 miles downstream from this project. The United States Geological Survey operated a continuous recording gauging station on Bear Butte Creek from 1945 through 1972. This gauging station was located at a point on Bear Butte Creek just below the confluence with Spring Creek and above the existing four Bear Butte Creek water rights. Table 1. Indicates

that water availability for this project is a concern. There is a 50 percent probability that there will be enough flow in Bear Butte Creek only for the months May and June to fully satisfy these senior water rights, downstream domestic use and this project, if it is developed.

Table 1. Probability of flow based upon mean monthly data collected at the USGS gauging station on Bear Butte Creek near Sturgis for years 1945 – 1972.

Flow Probability	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
90 %	0	0	1	0	0	0	0	0	0	0	0	0
75 %	1	1	1	2	2	3	1	0	0	0	0	1
50 %	1	2	3	6	13	10	2	0	0	1	2	2
25 %	2	5	8	15	41	39	9	2	1	3	3	3
10 %	5	11	19	41	98	110	19	4	3	5	6	6

The wet cycle which the area has been experiencing over the past 8 years has produced unusually high amounts of runoff. This higher flow cannot be considered normal. In the normal to dryer times, water availability would become questionable.

Water for this project can only reasonably be expected to be available in the spring following the snow melt and spring thunderstorms. If this application is approved it should be qualified such that diversions must cease by June 1 each year unless the Chief Engineer authorizes diversions beyond that date. This project when diverting must also bypass flow for senior water rights and downstream domestic use which includes livestock watering. There will be years when water is not available for use by this project.

Conclusions

1. This application proposes to appropriate 1 cubic feet of water per second (cfs) to irrigate 59.3 acres of farmland.
2. There is a pending water permit application for irrigation located approximately 4, 200 feet west of this project. If the pending water permit is approved it will be a senior water right to this application. If both these applications are approved they should both contain a qualification allowing diversion of water only during spring runoff and high flows conditions.
3. There is an existing water right filing for irrigation in Section 8 T6N-R6E. A 1981 inspection found that irrigation had not occurred since 1967. This water right filing has never been brought before the Water Management Board for cancellation.
4. The applicant is proposing a diversion rate greater than the statutory limit of 1 cfs per 70 irrigated acres. South Dakota Codified Law (SDCL) 46-5-6, gives the Water Management Board the option of allowing for a greater diversion rate if the method of irrigation requires it.

5. There are existing water rights located downstream from this project that would have first claim to this water.
6. Water for this project can only reasonably be expected to be available in the spring following the snow melt and spring thunderstorms.
7. If approved, this application should be qualified such that diversions must cease by June 1 each year unless the Chief Engineer authorizes diversions beyond that date.



Stacy J. Johnson
Natural Resources Engineer

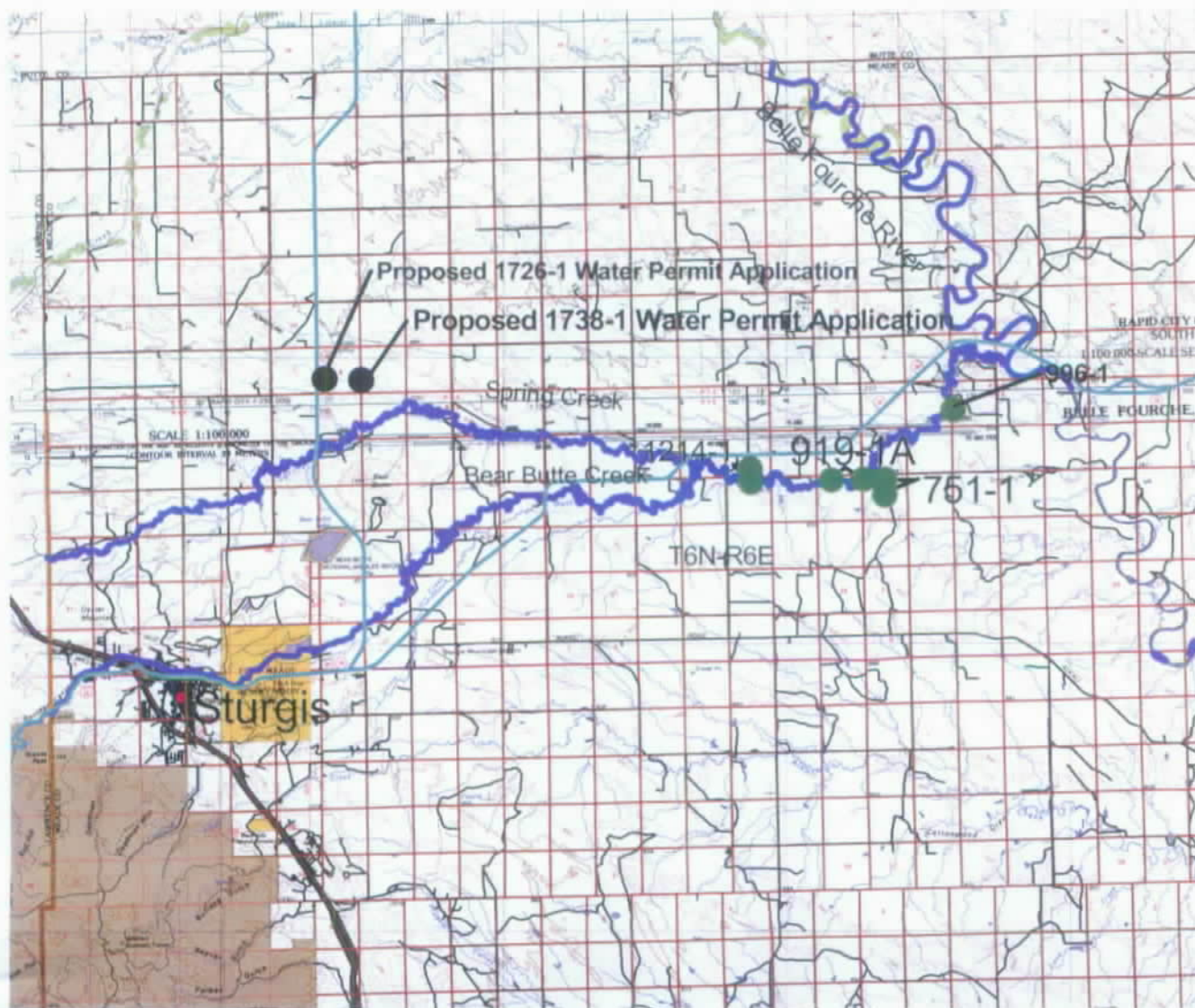


Mark D Rath
Natural Resources Engineering Specialist

References

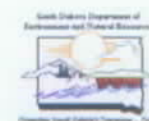
Water Rights Program files, "Water Permits No. 751-1, 919-1A, 996-1, 1214-1, & 1726-1", DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.

United States Geological Survey, Water Resources Data for South Dakota. USGS 1608 Mt. View Road, Rapid City, SD 57702.



● Water Rights

SJ
November 30, 2000



7 0 7 Miles



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1738-1, John H. Bruch**

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 Water Permit Application No. 1738-1, John H. Bruch, HC 77, Box 36, Sturgis, SD 57785.

The Chief Engineer is recommending APPROVAL of Application No. 1738-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Permit No. 1738-1 does not authorize diversion of water after June 1st of each calendar year, nor at any time when the river flow is low. Diversion of water under this Permit shall be in accordance with any written orders issued by the Chief Engineer.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 1738-1 authorizes a maximum diversion rate of 1.0 cfs for the irrigation of 59.3 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. By approval of Permit No. 1738-1, Water Right Filing No. 0462-1 is hereby cancelled.

See report on application for additional information.

Garland Erbele, Chief Engineer
October 30, 2000

NOTE: This unnamed creek can not be considered a reliable source of water for irrigation. Wet conditions in recent years have provided good flows in drainages throughout the West River area. There will likely be years of dry weather when water may not be available from this source. Additionally, there are downstream prior water rights that must be satisfied before you can divert water for irrigation. This application, if approved, will provide you an opportunity to irrigate with annual snowmelt runoff. However, you also have to realize that Mr. Reed's upstream water right permit, if approved, will have a senior priority date.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

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

October 31, 2000

John H Bruch
HC 77 Box 36
Sturgis SD 57785

Dear Mr. Bruch:

Water Permit Application No. 1738-1 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Meade Co. Times-Tribune printed at Sturgis, SD (Ph # 605 347-2503). 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 prior to publication 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 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. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

October 31, 2000

Meade Co. Times-Tribune
Box 69
Sturgis SD 57785-0069

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 1738-1 to Appropriate Water to be published twice. Please publish the first notice on November 8, 2000 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 John H Bruch, HC 77 Box 36, Sturgis SD 57785 (Ph # 605 347-5269).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CU T HERE-----

No. 1738-1

TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of October 31, 2000 enclosing Notice of Hearing to Appropriate Water by Application No. 1738-1 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

Instruction to Newspaper - Publish first Notice on November 8, 2000 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 1738-1 to Appropriate Water

Notice is given that John H Bruch, HC 77, Box 36, Sturgis SD 57785 has filed an application for a water permit to appropriate 1.0 cubic feet of water per second from runoff located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5 to irrigate via a waterspreading system 59.3 acres located in portions of the SW $\frac{1}{4}$ Section 5 and NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8; all in T6N-R6E. This notice also serves as notice of cancellation of Water Right Filing No. 0462-1. This filing lists some of the same lands listed under Water Permit Application No. 1738-1.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 1738-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 27, 2000. 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 the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 1:30 pm, December 6, 2000, Floyd Mathew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The December 6, 2000 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by November 27, 2000.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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. Contact Eric Gronlund by November 27, 2000, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 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-20, 46-2A-21; 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; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

STATE OF SOUTH DAKOTA)

STATE OF SOUTH DAKOTA)
) SS

County of Maui

I, Joan M. Lewis

certify that the attached printed Notice was
taken

from the Meade County Times

printed and published in Sturgis

County of Meade and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

November 8, 2000

November 15, 2000

Cost of Printing 56.91

Joan M. Lewis
(Signature)

Bookkeeper
(Title)

11-24-00
(Date Signed)



NOTICE OF HEARING on Application
No. 1738-1 to Appropriate Water

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The Water Management Board will consider this application at 1:30 pm, December 6, 2000, Floyd Mathev Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The December 6, 2000 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by November 27, 2000.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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. Contact Eric Gronlund by November 27, 2000, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 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-20, 46-2A-21; 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; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Publ Nov. 8 and 15, 2000
Meade County Times-Tribune



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 31, 2000

James Reed
20780 132th Avenue
Sturgis, SD 57785

Dear Mr. Reed:

I am sending you a copy of the notice of hearing, report and recommendation on John Bruch's water right permit application. This information is being sent to you because Mr. Bruch is the neighboring downstream landowner and this application is to divert from the same source as your pending application.

Information on the hearing before the Water Management Board and the procedure for filing a petition are included in the enclosed notice. It is intended that Mr. Bruch and your application will be considered by the Board at the same time.

Please feel free to contact Stacy Johnson or myself at (605) 773-3352 if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 31, 2000

Earl Bachand
HC 77, Box 152
Sturgis, SD 57785

Dear Mr. Bachand:

Last August I sent you information on a pending water right application filed by James Reed for irrigation from a tributary to Bear Butte Creek. Since that time we received another application filed by John Bruch to divert from this same source. I am now sending you a copy of the notice of hearing, report and recommendation on Bruch's water right permit application. This information is being sent to because a downstream water right from Bear Butte Creek is on file in your name.

Information on the hearing before the Water Management Board and the procedure for filing a petition are included in the enclosed notice.

Please feel free to contact Stacy Johnson or myself at (605) 773-3352 if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 31, 2000

Tom Lien
Mt. View Ranch
P.O. Box 771
Rapid City, SD 57709

Dear Mr. Lien:

Last August I sent you information on a pending water right application filed by James Reed for irrigation from a tributary to Bear Butte Creek. Since that time we received another application filed by John Bruch to divert from this same source. I am now sending you a copy of the notice of hearing, report and recommendation on Bruch's water right permit application. This information is being sent to because a downstream water right from Bear Butte Creek is on file in your name.

Information on the hearing before the Water Management Board and the procedure for filing a petition are included in the enclosed notice.

Please feel free to contact Stacy Johnson or myself at (605) 773-3352 if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



Oscar Walthall
HC 77, Box 206
Sturgis, SD 57785

October 31, 2000

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Dear Mr. Walthall:

Last August I sent you information on a pending water right application filed by James Reed for irrigation from a tributary to Bear Butte Creek. Since that time we received another application filed by John Bruch to divert from this same source. I am now sending you a copy of the notice of hearing, report and recommendation on Bruch's water right permit application. This information is being sent to because a downstream water right from Bear Butte Creek is on file in your name.

Information on the hearing before the Water Management Board and the procedure for filing a petition are included in the enclosed notice.

Please feel free to contact Stacy Johnson or myself at (605) 773-3352 if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



Leo Weyrich
HC 77, Box 236
Sturgis, SD 57785

October 31, 2000

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Dear Mr. Weyrich:

Last August I sent you information on a pending water right application filed by James Reed for irrigation from a tributary to Bear Butte Creek. Since that time we received another application filed by John Bruch to divert from this same source. I am now sending you a copy of the notice of hearing, report and recommendation on Bruch's water right permit application. This information is being sent to because a downstream water right from Bear Butte Creek is on file in your name.

Information on the hearing before the Water Management Board and the procedure for filing a petition are included in the enclosed notice.

Please feel free to contact Stacy Johnson or myself at (605) 773-3352 if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 30, 2000

John Bruch
HC 77
Box 36
Sturgis, SD 57785

Dear Mr. Bruch:

I just wanted to let you know that we have been doing some checking to see if your old water right filing nos. 0462-1 and 0558-1 had been canceled or not. These water right filings listed some of the same acres that are on your pending application. These water right filings were canceled by the Water Management Board Meeting on October 5 & 6, 1983. I am enclosing a copy of the October 5 & 6, 1983, meeting minutes. I wanted you to be aware of this fact before the December 6, 2000, Water Management Board Meeting.

If you have any questions, feel free to contact me at (605) 773-3352 or via email at stacy.johnson@state.sd.us.

Sincerely,

Stacy J. Johnson
Natural Resources Engineer

Enclosures (1)

October 5 & 6, 1983 meeting minutes

water applied previous to 1907. The 1907 law itself recognizes vested rights previous to that and we believe that this riparian right would be one of those. Even under the statutes that they object to being applied here, they think that 0503-1 is a valid vested right. The State is saying that the previous owner abandoned the vested right. You have to have an intent to abandon. They have a stipulated question and answer with Mr. Veren where he stated that he did not intend to abandon the right. He did not have a chance which is necessary for abandonment. He did plow over some of the ditches but not all of them. Ms. Huber stated it is their position, that is not sufficient to show abandonment of this type of a right. They feel Mr. Bruch has a valid right whether or not Mr. Bruch has irrigated the land. It is a vested right, the rule use it or lose it does not apply.

Mr. Harms MOVED, SECONDED by Mr. Decker that Water Right Filing No. 0503-1 be CANCELLED for abandonment and forfeiture. MOTION CARRIED.

0509-1, Truman Quall

In answer to a question from Mr. Doyle, Mr. Mernaugh stated he investigated the permit. He and Mr. Winterton stepped at Mr. Quall's house. Mr. Quall stated he did not irrigate, but he would like to keep the right.

Mr. Decker MOVED, SECONDED by Mr. Waldner that 0509-1 be CANCELLED for abandonment and forfeiture. MOTION CARRIED.

0462-1, John Bruch

Mr. Mernaugh stated he investigated the filing and Mr. Bruch stated he did not irrigate.

Mr. Decker MOVED, SECONDED by Mr. Harms that Water Right Filing No. 0462-1 be CANCELLED for abandonment and forfeiture. MOTION CARRIED.

0558-1, John Bruch

Mr. Mernaugh stated he investigated the filing. Mr. Bruch showed him where there might have been irrigation quite a few years ago, but Mr. Bruch had never irrigated.

Mr. Decker MOVED, SECONDED by Mr. Harms that Water Right Filing No. 0558-1 be CANCELLED for abandonment and forfeiture. MOTION CARRIED.

0561-1, Bernard Bruch

Mr. Mernaugh stated he stepped and talked with Bernard Bruch on the same day as the others, May 13, 1981. Mr. Bruch indicated he did not even know he had any water rights and he did not irrigate.

Mr. Decker MOVED, SECONDED by Mr. Harms that Water Right Filing No. 0561-1 be CANCELLED for abandonment and forfeiture. MOTION CARRIED.

0505-1, Henry Bruch

STATE OF SOUTH DAKOTA - BUREAU OF ADMINISTRATION - OFFICE OF RECORDS MANAGEMENT - CERTIFICATE OF AUTHENTICITY
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 DAKOTA COMPILLED
LAW 1-2-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER
AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTOGRAPHIC
REPRODUCTIONS. REDUCTION 25:1 ROLL NO. 7 DATE MICROFILMED 2/27/80 CAMERA OPERATOR [Signature]



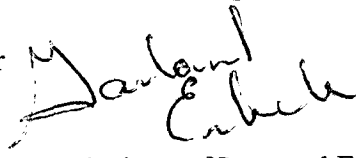
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 18, 2000

NOTICE

TO: James Reed John Bruch
20780 132th Avenue HC 77, Box 36
Sturgis, SD 57785 Sturgis, SD 57785

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

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

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application Nos. 1726-1 and 1738-1 filed by James Reed and John Bruch, respectively. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 PM on March 7, 2001 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Parties of Record (names listed above) by February 15, 2001. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) and all Parties of Record by February 26, 2001.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on March 7, 2001. The public hearing was completed December 6, 2000. No additional testimony will be received on March 7, 2001.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I, hereby certify that on December 18, 2000, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 18, 2000 regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Applications Nos. 1726-1 and 1738-1 addressed as stated below:

James Reed
20780 132th Avenue
Sturgis, SD 57785

John Bruch
HC 77, Box 36
Sturgis, SD 57785

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

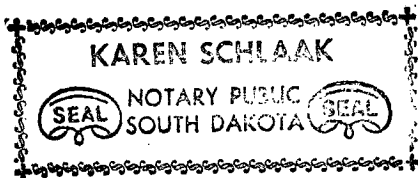
Diane Best, Assistant Attorney General, Capitol Building
John Guhin, Deputy Attorney General, Capitol Building

Eric Gronlund
Eric Gronlund
Natural Resource Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of December, 2000.

Karen Schlaak
Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

CERTIFICATION

I hereby certify that on March 26, 2001 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 26, 2001 regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision addressed as stated below:

James Reed	John Bruch
20780 132th Ave	HC 77 Box 36
Sturgis, SD 57785	Sturgis, SD 57785

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

Diane Best, Assistant Attorney General, Capitol Building
John Guhin, Deputy Attorney General, Capitol Building

Eve Brundage

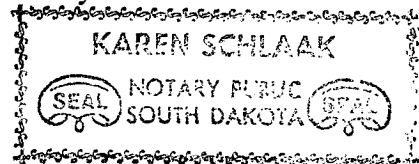
Eric Gronlund
Natural Resource Engineer
Water Rights

[illegible]

Sworn to, before me, this 27th day of March, 2001.

Karen Schlaak

Karen Schlaak
Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION NO. 1738-1,	)	FINDINGS OF FACT,
JOHN H. BRUCH	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate 1.0 cfs of water from an unnamed creek in Meade County to irrigate 59.3 acres of farmland.

2. There is a former water right filing with regard to certain portions of the properly involved in this application. Water Right File No. 0462-1 is for 2.0 cfs of water from a spring located on the east side of the land for which the present permit is sought. Water Right File No. 0462-1 was cancelled, in its entirety, at the October 5 and 6, 1983, meeting of the Water Management Board, indicated by evidence in the record.

3. As noted, the source of water for the present application as an unnamed tributary is an unnamed creek. The unnamed creek is a tributary to Spring Creek, which, in turn, is a tributary to Bear Butte Creek. Water is proposed to be diverted from the unnamed tributary using a low-speed dam and control gate into irrigation ditches located on both sides of the unnamed tributary.

4. The applicant proposes to irrigate 59.3 acres at a diversion rate of 1.0 cfs. Applicant proposes to utilize flood irrigation. The Board takes judicial notice that the use of flood irrigation is common in the Black Hills area. The Board also finds, from the evidence presented, that the type of soil

involved in the project is a heavy clay. The Board finds that, in these circumstances, it is appropriate to allow a diversion rate greater than the statutory limit of 1.0 cfs per seventy irrigated acres.

5. There are four existing water rights appropriating 5.03 cfs located on Bear Butte Creek ten to twenty miles downstream from this project.

6. The evidence indicates that water is available for this project. The Board relies upon data collected between 1945 and 1972 at a United States Geological Survey gauging station on Bear Butte Creek. The gauging station was located on Bear Butte Creek just above the confluence of Spring Creek. The gauging station was located above the four existing Bear Butte Creek water rights.

7. Based on that evidence, there is slightly less than a 50 percent probability that there will be enough flow in Bear Butte Creek only for the months of May and June to fully satisfy the four existing senior water rights, Water Permit No. 1726-1, approved today with an earlier priority date than this Application, downstream domestic use, and this project, if it is developed.

8. There may, however, be cycles in which there is substantially more water available. The wet cycle which the area has been experiencing over the past eight years, for example, has produced unusually high amounts of runoff. In such cycles, more water will be available to the Applicant.

9. Taken as a whole, however, the evidence indicates that water from this project can only reasonably be expected to be available in the spring following snow melt and spring thunderstorms. Availability of water after the end of May is problematic, especially given the needs of prior appropriators and downstream domestic use.

10. The Board finds that there is water available for the project but that the permit must be qualified such that diversions must cease by June 1 each year unless the Chief Engineer authorizes diversions beyond this date.

11. If the water right is developed and the permit is qualified as set forth below, it can be developed without unlawful impairment of existing rights.

12. The proposed use of water for irrigation is a beneficial use and is in the public interest as qualified below.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.

2. Cancellation of Water Right File No. 0462-1 in 1983 does not affect the issue of whether the present application should be granted.

3. Pursuant to SDCL 46-5-6, the Board concludes that a greater diversion than 1.0 cfs for each seventy acres is appropriate in this case because the method of irrigation and the type of soil so require, as set out in the findings above. The Board concludes that it is reasonable to allow an appropriation of 1.0 cfs for the irrigation of 59.3 acres.

4. The Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

5. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing rights, when developed in accordance with the Final Decision.

6. The Board concludes that the proposed use for irrigation is a beneficial use.

7. The Board concludes that the project is in the public interest, as qualified in the final decision.

FINAL DECISION

The application for Water Permit No. 1738-1 is granted subject to the following qualifications:

1. Except as authorized by written order issued by the Chief Engineer, Permit No. 1738-1 does not authorize diversion of water after June 1 of each calendar year, nor at any time when the river flows are low. Diversion of water under this permit shall, in any case, be in accordance with any written orders issued by the Chief Engineer.

2. Pursuant to SDCL 46-5-6, which allows a greater diversion rate if the method of irrigation, time constraints, or the type of soil so requires, Permit No. 1738-1 authorizes a maximum diversion rate of 1.0 cfs for the irrigation of

59.3 acres, with an annual volume not to exceed two acre-feet of water per acre per year.

Dated this 20th day of March, 2001.

BY THE BOARD:

Francis E. Brink

p1d31501.jpg(nan)

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

MARK BARNETT
ATTORNEY GENERAL

LAWRENCE LONG
CHIEF DEPUTY ATTORNEY GENERAL

February 6, 2001

MEMORANDUM

TO: Members of the Water Management Board and Interested Parties

FROM: John P. Guhin, Deputy Attorney General

A handwritten signature in dark ink, appearing to read "John P. Guhin".

RE: In the Matter of the Application for Water Permit
No. 1738-1, John H. Bruch

Pursuant to the direction of the Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law, and Final Decision. Please see the Notice of the Chief Engineer dated December 18, 2000, for further information.

Please note that the proposed Final Decision, paragraph 1, has been written to accord with what appears to be the intent of the Board, and is somewhat different from the language actually approved by the Board at the hearing.

JPG:nan
Enclosure

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION NO. 1738-1,	)	FINDINGS OF FACT,
JOHN H. BRUCH	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate 1.0 cfs of water from an unnamed creek in Meade County to irrigate 59.3 acres of farmland.

2. There is a former water right filing with regard to certain of the property involved in this application. Water Right Filing No. 0462-1 is for 2.0 cfs of water from a spring located on the east side of the land for which the present permit is sought. Water Right File No. 0462-1 was cancelled, in its entirety, at the October 5 and 6, 1983, meeting of the Water Management Board, indicated by evidence in the record.

3. As noted, the source of water for the present application as an unnamed tributary is an unnamed creek. The unnamed creek is a tributary to Spring Creek, which, in turn, is a tributary to Bear Butte Creek. Water is proposed to be diverted from the unnamed tributary using a low-head dam and control gate into irrigation ditches located on both sides of the unnamed tributary.

4. The applicant proposes to irrigate 59.3 acres at a diversion rate of 1.0 cfs. Applicant proposes to utilize flood irrigation. The Board takes judicial notice that the use of flood irrigation is common in the Black Hills area. The Board also finds, from the evidence presented, that the type of soil

involved in the project is a heavy clay. The Board finds that, in these circumstances, it is appropriate to allow a diversion rate greater than the statutory limit of 1.0 cfs per seventy irrigated acres.

5. There are four existing water rights appropriating to 5.03 cfs located on Bear Butte Creek ten to twenty miles downstream from this project.

6. The evidence indicates that water is available for this project. The Board relies upon data collected between 1945 and 1972 at a United States Geological Survey gauging station on Bear Butte Creek. The gauging station was located on Bear Butte Creek just above the confluence of Spring Creek. The gauging station was located above the full existing Bear Butte Creek water rights.

7. Based on that evidence, there is slightly less than a 50 percent probability that there will be enough flow in Bear Butte Creek only for the months of May and June to fully satisfy the four existing senior water rights, Water Permit No. 1726-1, approved today with an earlier priority date than this Application, downstream domestic use, and this project, if it is developed.

8. There may, however, be cycles in which there is substantially more water available. The wet cycle which the area has been experiencing over the past eight years, for example, has produced unusually high amounts of runoff. In such cycles, more water will be available to the Applicant.

9. Taken as a whole, however, the evidence indicates that water from this project can only reasonably be expected to be available in the spring following snow melt and spring thunderstorms. Availability of water after the end of May is problematic, especially given the needs of prior appropriators and downstream domestic use.

10. The Board finds that there is water available for the project but that the permit must be qualified such that diversions must cease by June 1 each year unless the Chief Engineer authorizes diversions beyond this date.

11. If the water right is developed and the permit is qualified as set forth below, it can be developed without unlawful impairment of existing rights.

12. The proposed used of water for irrigation is a beneficial use and is in the public interest as qualified below.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.

2. Cancellation of Water Right File No. 0462-1 in 1983 does not affect the issue of whether the present application should be granted.

3. Pursuant to SDCL 46-5-6, the Board concludes that a greater diversion than 1.0 cfs for each seventy acres is appropriate in this case because the method of irrigation and the type of soil so require, as set out in the findings above. The Board concludes that it is reasonable to allow an appropriation of 1.0 cfs for the irrigation of 59.3 acres.

4. The Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

5. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing rights, when developed in accordance with the Final Decision.

6. The Board concludes that the proposed use for irrigation is a beneficial use.

7. The Board concludes that the project is in the public interest, as qualified in the final decision.

FINAL DECISION

The application for Water Permit No. 1738-1 is granted subject to the following qualifications:

1. Except as authorized by written order issued by the Chief Engineer, Permit No. 1738-1 does not authorize diversion of water after June 1 of each calendar year, nor at any time when the river flows are low. Diversion of water under this permit shall, in any case, be in accordance with any written orders issued by the Chief Engineer.

2. Pursuant to SDCL 46-5-6, which allows a greater diversion rate if the method of irrigation, time constraints, or the type of soil so requires, Permit No. 1738-1 authorizes a

maximum diversion rate of 1.0 cfs for the irrigation of
59.3 acres, with an annual volume not to exceed two acre-feet of
water per acre per year.

Dated this _____ day of _____, 2001.

BY THE BOARD:

pld2100.jpg(nan)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of proposed Findings of Fact, Conclusions of Law, and Final Decision in In the Matter of the Application for Water Permit No. 1738-1, John H. Bruch, was served by United States mail, first class, postage prepaid upon:

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Marian Gunderson
811 W. 3rd
Yankton, SD 57078-3702

Dwayne Rollag
320 Lincoln Lane S.
Brookings, SD 57006

Francis E. Brink
1214 S. Wells Street
Aberdeen, SD 57401-7351

James Reed
20780 132nd Avenue
Sturgis, SD 57785

John Bruch
HC 77, Box 36
Sturgis, SD 57785

by hand delivery upon:

Diane Best
Assistant Attorney General
500 E. Capitol Avenue
Pierre, SD 57501-5070

and by interoffice mail upon:

Garland Erbele, Chief Engineer
Department of Environment and
Natural Resources
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501-3182

on this 6th day of February, 2001.


John P. Guhin
Deputy Attorney General



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

MAY 09 2001

John J. Bruch
HC 77 Box 36
Sturgis, SD 57785

Dear Mr. Bruch:

Enclosed is Water Permit No. 1738-1 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the 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,

A handwritten signature in black ink, appearing to read 'Garland Erbele', written in a cursive style.

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

enclosures

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 1738-1

I have this day, Aug 4, 2016, made a thorough examination of the water use system constructed by John Bruch, 20073 Colony Place, Sturgis, So. Dak. 57785 of Permit No. 1738-1, bearing the priority of 9/25/2000 authorizing 59.3 acres of irrigation from a dry draw tributary to Spring Creek in Meade County.

Inspection contact & relationship to permit holder, if applicable: **John Bruch, owner**
605-347-5269

A1. Works used to divert the water: Section 5

Level Lip Ditch:

- 1) Approx. depth 1.0 ft.
- 2) Length 1,400 ft.
- 3) Date constructed: 2001

Comments: The level lip ditch collects and spreads runoff from the adjacent hillside area of 40 acres.

B1. Works used to transport water to place of use:

- 1) Type level lip ditch
- 2) Length 1,400 feet

Comments:

C1. Works used to apply water to beneficial use:

- 1) Irrigation type Waterspreading system
- 2) Spreading method level lip ditch
- 3) area spread 23.5 acres

A2. Works used to divert the water: Section 8

Dam Information:

- 4) Height to crest 7 feet
- 5) Height to primary (earth) spillway 4 feet
- 6) Height to secondary (earth) spillway 5 ft
- 7) Crest width 10 feet
- 8) Crest length 250 feet
- 9) Spillway length 290 feet
- 10) Spillway width 10 feet
- 11) Approx. storage <1 ac-ft
- 12) Date constructed: 2001

Comments: The embankment is currently breached. When the operator repairs the fill, an 18" cmp pipe with control gate will be installed. The fill as originally constructed has a primary earth spillway constructed on the north side of the draw one foot below the graded diversion ditch leading to the spreading area (south side of draw).

B2. Works used to transport water to place of use:

- 1) Type graded diversion ditch 2) Length 1,330 feet

Comments:

C2. Works used to apply water to beneficial use:

- 1) Irrigation type Waterspreading system 2) Spreading method graded diversion ditch
3) area spread 15.9 acres

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes

If no, describe:

- 2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period N/A

List any extended period of nonuse: **none**

- 3) Exceptions to compliance are: **none**

E. Condition and Location:

1. The system is in fair condition with the points of diversion located as follows:

25.3 acre area-

427' N and 637' E of the SW corner Section 5 T 6N R 6E (44.504741, -103.425363)

15.9 acre area-

583' S and 2,076' W of the NE corner Section 8 T 6N R 6E (44.501914, -103.415690)

2. The works are capable of diverting and conveying to the place of use water which is to be used for surface irrigation (water spreading). Water has been put to beneficial use to the maximum extent as follows:

Section 5 T6N R6E

NW ¼ SW ¼ 0.3 ac.

SW ¼ SW ¼ 23.5 ac.

SE ¼ SW ¼ 1.6 ac.

Section 8 T6N R6E

NW ¼ NE ¼ 3.1 ac.

NE ¼ NE ¼ 0.6 ac.

SW ¼ NE ¼ 3.3 ac.

SE ¼ NE ¼ 8.9 ac.

comprising a total of 41.3 acres of land and the license should be issued for 1.0 cfs. All structures, diversions and lands on map Yes

F. Comments or other permit(s) associated with the project: none

SDCL 46-5-6 allows a greater diversion rate if the method of irrigation so requires. This system requires a greater diversion rate due to the method of irrigation. During peak flows this system is capable of diverting in excess of 1.0 cfs., however the maximum licensed diversion rate is 1.0 cfs.



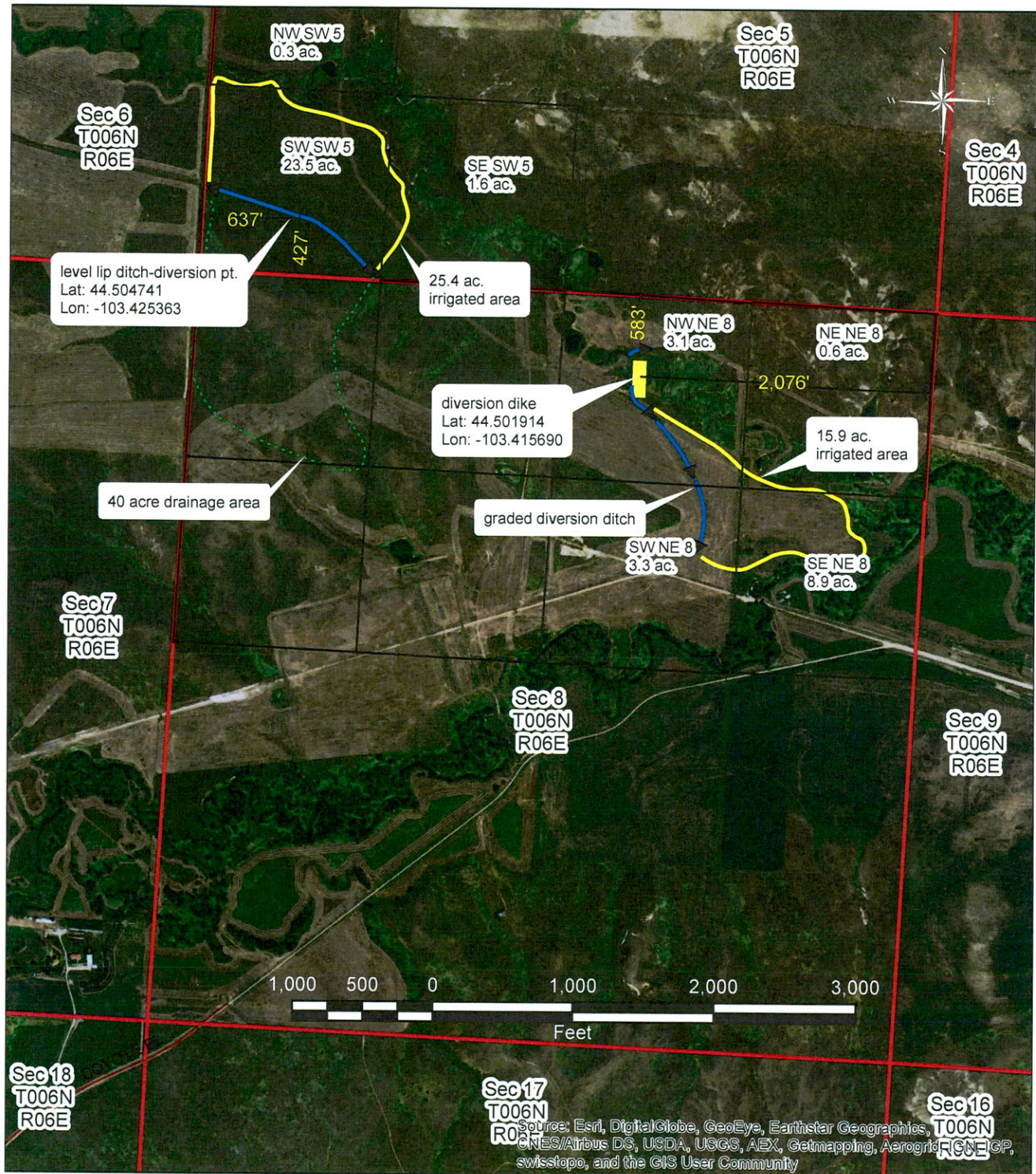
Steven Quissell
Water Rights Inspector
DENR, Water Rights Program

Date report completed: 8/8/2016



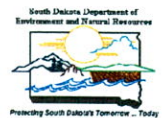
Irrigated area in Section 5 below level lip ditch

Water Right #1738-1
John Bruch
8/4/2016



Steven Quissell

Steven Quissell
Water Rights Inspector
DENR Water Rights Program



Licensing of Acreage Outside of Permitted Area

NAME: John H. Bruch

ADDRESS: 20073 Colony Place, Sturgis SD 57785

DATE: August 17, 2016 **COUNTY:** Meade **TELEPHONE:** (605) 347-5269

AUTHORITY

Pursuant to SDCL 46-5-30.5, acreage developed for irrigation outside of the area described on the permit may be licensed provided the following conditions are met:

NO INCREASE IN PERMITTED ACREAGE OR WATER APPROPRIATED:

The acreage developed for irrigation is 41.3 acres as compared to 59.3 acres authorized by the permit. Licensing of the permit will result in no increase in the amount of water appropriated.

UNPERMITTED ACREAGE:

- **Contiguous to Permitted Acreage**

17.7 acres developed in the SW¼ SW¼ Section 5-T006N-R06E and 0.6 acres developed in the NE¼ NE¼ Section 8- T006N-R06E are contiguous to the permitted acres. A total of 18.3 contiguous acres.

- **Owned by Same Property Owner**

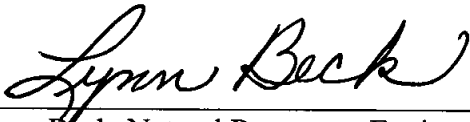
Yes

- **Developed Prior to Expiration of Construction Period**

Yes

RECOMMENDED ACTION

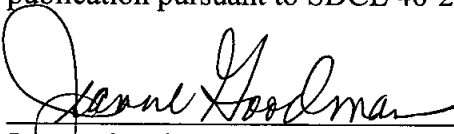
Based on the above criteria, it is recommended that the 17.7 acre area and the 0.6 acre area be included in the water license.



Lynn Beck, Natural Resources Engineer III
Water Rights Program

The Chief Engineer makes a finding pursuant to SDCL 46-5-30.5 that:

This acreage change does not impair existing water rights and the overall project, as developed, is consistent with the original application. Licensing of the unpermitted acreage may occur without application or publication pursuant to SDCL 46-2A-4.



Jeanne Goodman, Chief Engineer
Water Rights Program

Department of Environment and Natural Resources

Approval of Location Change and Additional Diversion Point

NAME: John H. Bruch

ADDRESS: 20073 Colony Place, Sturgis SD 57785

DATE: August 17, 2016 **COUNTY:** Meade **TELEPHONE:** (605) 347-5269

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- **Developed water source same as permitted source and no additional water appropriated**

Yes, runoff water that flows to Spring Creek in Meade County. The licensing inspection for 1738-1 revealed a change in location for the authorized diversion point and an additional diversion point.

- **If irrigation, no new land is irrigated**

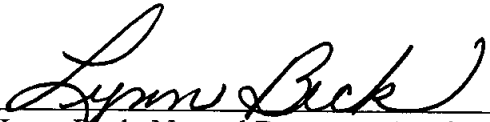
A contiguous acre document for 18.3 acres had been approved by the Chief Engineer.

- **Review of Existing Diversions**

1726-1 authorizes diversion of 1.0 cfs of runoff from the same drainage as 1738-1. 1726-1 is located one mile upstream of 1738-1 diversion point from the ditch and two miles upstream of 1738-1 diversion point at the diversion dike. Both permits have the same qualifications however, 1726-1 has an earlier priority date than 1738-1.

RECOMMENDED ACTION

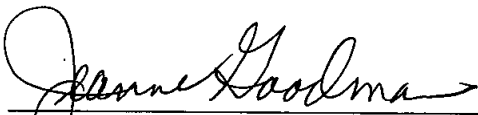
Based on the above criteria, it is recommended that the diversion points be licensed as developed.



Lynn Beck, Natural Resources Engineer III
Water Rights Program

The Chief Engineer makes a finding pursuant SDCL 46-5-13.1 and ARSD 74:02:01:14.01 that:

This change in location and/or additional diversion point(s) does not increase the potential for adverse effects to existing diversions.



Jeanne Goodman, Chief Engineer
Water Rights Program

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1738-1

(1) John H Bruch, 20073 Colony Place, Sturgis SD 57785 made Application No. 1738-1, September 25, 2000 for a water permit to divert 1.00 cubic feet of water per second from runoff, Meade County, South Dakota for irrigation purposes. Permit No. 1738-1, with a priority date of September 25, 2000 was approved March 7, 2001 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 7, 2006 and for the application to beneficial use of said water on or before March 7, 2010.

An investigation of the water use system found acreage developed outside of the permitted area; an additional diversion point and also a change in the location of the permitted diversion point. Pursuant to SDCL 46-5-30.5, the Chief Engineer made a finding the change in acreage did not impair existing water rights and the overall project as developed was consistent with the original application. The Chief Engineer also made a finding pursuant to SDCL 46-5-13.1 and ARSD 74:02:01:14.01 the change in location of the existing diversion point and the additional diversion point did not increase the potential for adverse effects to existing diversions.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 1.00 cubic feet of water per second for beneficial use. The location of the diversion points are:

- 427 feet N & 637 feet E of the SW corner of Section 5, T6N, R6E (SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5)
- 583 feet S and 2,076 feet W of the NE corner of Section 8, T6N, R6E (NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8)

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 5, T6N, R6E		Section 8, T6N, R6E	
NW $\frac{1}{4}$ SW $\frac{1}{4}$	0.3 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$	3.1 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	23.5 acres	NE $\frac{1}{4}$ NE $\frac{1}{4}$	0.6 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	1.6 acres	SW $\frac{1}{4}$ NE $\frac{1}{4}$	3.3 acres
		SE $\frac{1}{4}$ NE $\frac{1}{4}$	8.9 acres
Total 41.3 acres			

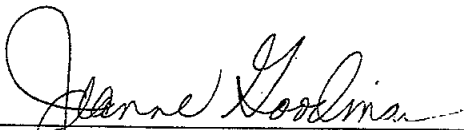
Note: Water is diverted through ditches to irrigate the above land.

(4) Pursuant to South Dakota Water Law 46-5-30.1 John H Bruch, 20073 Colony Place, Sturgis SD 57785 the holder and/or owner of Water Right No. 1738-1 is issued a license to appropriate water, the right to use 1.00 cubic feet of water per second from runoff with a priority date of September 25, 2000 from the locations specified in (2) of this license for irrigation purposes.

continued

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 1738-1 and subject to the following qualifications:

- Except as authorized by written order issued by the Chief Engineer, Water Right No. 1738-1 does not authorize diversion of water after June 1st of each calendar year, nor at any time when the river flows are low. Diversion of water under this Water Right shall be in accordance with any written orders issued by the Chief Engineer.
- Pursuant to SDCL 46-5-6, which allows a greater diversion rate if the method of irrigation, time constraints, or type soils so requires, Water Right No. 1738-1 authorizes a maximum diversion rate of 1.00 cfs for the irrigation of 41.3 acres with an annual volume not to exceed 2 acre-feet of water per acre per year. *The permit originally authorized irrigation of 59.3 acres. The water license was reduced to the acres actually developed.*



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

SEP 06 2016

date





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

SEP 06 2016

1738-1

John H Bruch
20073 Colony Place
Sturgis SD 57785

Dear Mr. Bruch:

Enclosed is Water License No. 1738-1. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

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.

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures