

27641

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In the Circuit Court of the Eight Judicial Circuit of The
State of South Dakota, Within and for the County of Lawrence

DEC 30 1954

Application Of The Red Water Land and Canal Co. OFFICE OF STATE ENGINEER
for Restoration of Public Record. PIERRE, SOUTH DAKOTA

Comes now the Red Water Land and Canal Company, and states to this Honorable Court, upon information and belief, that on or about May 5, 1878 one James Newland located a water right on Red River, on what was then known as the "Tomlins Ranch," in Laurence County South Dakota, now being at N.W. 1/4 of S.E. 1/4 of Section 25 of Township 8 N., Range 2, E.B.H.M. in Butte County, South Dakota, and that thereafter, in proper time, he duly filed with the Register of Deeds, in and for Lawrence County, South Dakota, that being the County in which said water right was located, a copy of his location notice, claiming four thousand miner's inches of water of said Red Water River, to be used for irrigation and milling purposes.

That said notice was duly signed by the said James Newland as locator, and that he was a citizen of the United States and a settler on agricultural land and entitled to make said location and appropriation. That said location was duly recorded in the office of Register of Deeds, of Lawrence County, South Dakota, but that the same and the original was destroyed by fire on September 26, 1879, without any negligence or fault of said James Newland, or of the Redwater and Belle Fourche Milling and Irrigating Company, which subsequently became the owner of said water right and ditch.

That this applicant succeeded to all the rights of said James Newland and said Red Water and Belle Fourche Milling and Irrigating Company, and is now the owner of said water right and ditch.

That this applicant succeeded to all the rights of said James Newland and said Redwater and Belle Fourche Milling and Irrigating Company, and is now the owner of said water right and ditch.

That by the destruction of said record the Redwater Land and Canal Company has already been been subjected to great loss and heavy expense in proving the contents of said location notice, and that unless the record is supplied there may result greater damage to the said Redwater Land and Canal Company or the future owners of said property.

That said Newland located said water right in the month of May 1878, a copy of which location notice and the affidavit of James Newland attached thereto, is made a part of this application.

Wherefore, the applicant prays this court for an order fixing a time and place of hearing, and that upon such hearing the Court makes an order providing and directing that said copy made by said Newland and the affidavit accompanying the same be recorded in the Office of the Register of Deeds in and for Lawrence County, South Dakota, and that the Register of Deeds of said county be directed to enter the same upon the records of his office accordingly.

A. J. PLOWMAN
Atty.

State of South Dakota, :
County of Lawrence, : ss.

Stacy C. Thompson being first duly sworn upon oath, says he is the president of the Red Water Land and Canal Company; that he has read the foregoing petition, and knows the contents thereof and the same is true of his own knowledge, except as to those matters therein alleged upon information and belief, and as to those matters he believes it to be true.

STACY C. THOMPSON

Subscribed and sworn to before me this 4th day of May, 1908.

ADOMIRAM J. PLOWMAN
Notary Public

To All Whom It May Concern:

Know Ye, that I have this day appropriated and claim the right to take from Redwater Creek, four (4000) thousand miners' inches of water, to be used for irrigation and milling purposes:

Dated May 5, 1878.

JAMES NEWLAND

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State of South Dakota :
County of Butte : ss.

I, James Newland, upon oath say:

That I have read the above notice and location certificate and that the same is a substantial copy of the original notice and certificate of water location made by me sometime in the month of May, 1878.
and which was duly filed for record by me with the Register of Deeds in and for Lawrence County, then Dakota Territory. I further state that the original notice and water location certificate has been lost or destroyed and cannot be produced. Affiant further says upon information and belief, that he filed said water right location and notice for record, with the Register of Deeds for Lawrence County, Territory of Dakota, within a short time after the same was posted up upon the

east bank of said Red Water Creek, and that the same was so filed within the time then required by law.

Affiant further says that thereafter the said record of said water location and certificate, was destroyed by the fire that destroyed the Court House on the 26th of September, 1879: that affiant was one of the incorporators and a director of the Redwater and Belle Fourche Milling and Irrigating Company, which subsequently, became the owner of said water right and the ditch constructed in connection therewith.

Affiant further says that the destruction of the record and the loss of the original instrument occurred to the best of his knowledge, information and belief without fault of this affiant or his negligence or of the said Redwater and Belle Fourche Milling and Irrigating Company.

Affiant further says, that upon the third day of March, 1900 in a proceeding to perpetuate his testimony, at the Court House in Belle Fourche, Butte County, South Dakota, his testimony was taken as to the location of the said water right, and said evidence written out and filed therein; that in said testimony as so filed, this affiant is made to testify that said water right was located, and said notice of location was made in May 1879, and affiant says that if he did so testily, and if said testimony was taken down correctly, then he made a mistake in the year; That he has since that time, made an examination and investigation, and by refreshing his recollection from copies of the records of the Land Office and other data, he positively states that said appropriation and location of said water and said location certificate and notice were made sometime in the month of May, in the year 1878; and that the said testimony so perpetuated and now on file in the office of the Clerk of the Circuit Court in and for said Butte County, and taken as aforesaid is incorrect. Affiant further says that he owns no interest in the said water right or ditch; that this affidavit is made for the sole purpose of presenting the true facts in this matter.

JAMES NEWLAND

Subscribed and sworn to before me this 9th day of May, A. D. 1904.

(SEAL)

WILLIAM FRID.
Clerk of Courts in and for Butte County, S. D.

In the Circuit Court of The Eighth Judicial Circuit of The
State of South Dakota, Within and for the County of Lawrence.

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Order Permitting Redwater Land and Canal Company To Restore Record.

The written application of the Redwater Land and Canal Company, a corporation organized under the laws of the State of South Dakota, for an order permitting it to record in the office of the Register of Deeds in and for Lawrence County, a copy of the location of a water right by one James Newland on or about May 5, 1878. having been presented, said application being duly verified, as required by law.

Now, therefore, it is Ordered that said application be entered of record by the Clerk of this Court, and that Saturday June 13, 1908 at ten o'clock A.M. or as soon thereafter as the matter can be heard, be fixed as the day and time for hearing said application at the Court House in the city of Deadwood, Lawrence County, South Dakota, and that due notice of said application shall be given by publication for at least three successive weeks in the Weekly Pioneer Times, a legal newspaper published in said county, prior to said hearing.

Done in open Court this 9th day of May, 1908.

By The Court

(SEAL)

W. G. RICE
Judge

Attest: SOL STAR
Clerk.

In The Circuit Court of The Eighth Judicial Circuit of the
State of South Dakota, Within and for the County of Lawrence

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In the Matter of Application of The Redwater Land and Canal Company for an Order Directing the Recording of a Copy of a Location of the Newland Water-Right.

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This matter coming on before the Court to be heard, at the time heretofore fixed by an order of this Court, and due proof of the publication of the notice required by the statute and order of this Court having been made, and it appearing to the Court that due and proper notice has been given and the Court having heard the evidence in the matter, A. J. Plowman appearing for the applicant, and the Court being fully advised in the premises, and being satisfied that the statements contained in said written application are true, and that the copy of the original instrument attached to the application and submitted is substantially a true copy of the instrument originally recorded.

Now, Therefore, upon motion of A. J. Plowman, attorney for the applicant,
it is ordered that said copy be recorded in the office of the Register of Deeds
in and for Lawrence County, in lieu of the record destroyed, and that this order
be also recorded by the Register of Deeds

Done in open Court, this 13th day of June, A. D. 1908.

By The Court

Attest: SOL STAR,
Clerk.

W. G. RICE

STATE OF SOUTH DAKOTA)

County of Butte) ss

Office of REGISTER OF DEEDS.

Filed for record 25th day of February A.D. 1909 at 9:30 o'clock A.M., and
recorded in Book 31 on page 55.

By M. E. VAN HORN
Deputy

J. W. VAN HORN
Register of Deeds.

State of South Dakota }
County of Butte } ss
I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT
IS A TRUE, CORRECT AND COMPLETE COPY OF THE
ORIGINAL INSTRUMENT AS RECORDED IN MY OFFICE
ON THE 25th DAY OF February 1909
AT 9:30 O'CLOCK A.M.
IN BOOK 31 PAGE 55 NO 27641
DATED July 2 1954.
Nels L. Pedersen
Register of Deeds

By _____
Deputy

7/9/54

Register of Deeds No. 27641

Restoration of the Newland notice of appropriation, May 5, 1878, No. 27641
Book 31, Page 55, Miscel record Butte Co., 4,000 inches. (This information from copy of
letter in file from S. G. Mortimer dated 6/28/54).

261-1

SOUTH DAKOTA

VESTED WATER RIGHT NO. 1417-1 FOR IRRIGATION

Date of Receipt of Claim May 15, 1987.

Date of Validation May 7, 1992.

The Water Management Board validated Vested Water Right Claim No. 1417-1 for irrigation purposes for Redwater Irrigation Association, PO Box 351, Belle Fourche SD 57717 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1417-1 is validated for 149.0 cubic feet of water per second (cfs) to irrigate 5,215.9 acres for the Redwater Irrigation Association portion of the claim and 2.7 cfs to irrigate 95.1 acres for the "Jones" portion of the claim with priority dates of February 1, 1879 (44 cfs), December 2, 1885 (80 cfs) and August 7, 1889 (25 cfs) for the Redwater Irrigation portion of the claim; and May 28, 1876 (1.37 cfs) and December 2, 1885 (1.33 cfs) for the "Jones" portion of the claim.

The Redwater diversion point is located in the SW 1/4 NE 1/4 Section 36-T8N-R2E. The irrigated acreage is located in the NW 1/4 NE 1/4 Section 36; W 1/2 SE 1/4, NE 1/4 SE 1/4, NE 1/4 Section 25; SE 1/4, E 1/2 SW 1/4, NE 1/4, E 1/2 NW 1/4 Section 24; W 1/2 SE 1/4, NE 1/4 SW 1/4, N 1/2 NW 1/4 Section 13; SW 1/4, NW 1/4, NW 1/4 NE 1/4 Section 12; N 1/2 SE 1/4, NE 1/4 Section 11; SE 1/4, Section 2; SW 1/4, SE 1/4, SE 1/4 NW 1/4, NE 1/4 Section 1; all in T8N-R2E: N 1/2 SW 1/4, NW 1/4, NW 1/4 SE 1/4, NE 1/4 Section 6; N 1/2 SW 1/4, N 1/2 SE 1/4, NW 1/4, NE 1/4 Section 5; Section 4; NW 1/4, SW 1/4, S 1/2 SE 1/4, W 1/2 NE 1/4 Section 3; NE 1/4 NW 1/4, N 1/2 NE 1/4 Section 9; N 1/2 NW 1/4, N 1/2 NE 1/4, E 1/2 SE 1/4, SW 1/4 SE 1/4, Section 10; W 1/2 NW 1/4, SW 1/4, SE 1/4, S 1/2 NE 1/4 Section 11; W 1/2 SW 1/4 Section 12; NW 1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, SW 1/4, SE 1/4 Section 13; NE 1/4, SE 1/4, E 1/2 SW 1/4, N 1/2 NW 1/4, SE 1/4 NW 1/4 Section 14; N 1/2 NE 1/4 Section 23; Section 24; all in T8N-R3E: SW 1/4, SW 1/4 NW 1/4 Section 18; N 1/2 NE 1/4, SE 1/4 NE 1/4, E 1/2 SE 1/4 Section 19; W 1/2 SW 1/4, NE 1/4 SW 1/4, W 1/2 NW 1/4 Section 20; all in T8N-R4E: SE 1/4 SE 1/4 Section 25; NE 1/4, N 1/2 SE 1/4, SE 1/4 NW 1/4 Section 36; all in T9N-R2E: NW 1/4, N 1/2 SW 1/4, S 1/2 NE 1/4, SE 1/4 Section 31; S 1/2 SW 1/4 Section 30, S 1/2 NW 1/4, SW 1/4, S 1/2 SE 1/4 Section 32; S 1/2 SW 1/4, W 1/2 SE 1/4, Section 33; all in T9N-R3E.

2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: April 1- October 31.
3. The priority dates of the Vested Water Right are listed above.
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.

(continued)

QUALIFICATIONS

1. That Vested Right No. 1417-1 is subject to domestic use rights. Diversion of water under Water Right No. 1417-1 is contingent upon supplies being available first to domestic users.
2. That the flow measuring device on Redwater Ditch continue to be maintained and records of diversion be kept as directed by the Chief Engineer and reported to the Chief Engineer annually.
3. That the applicable portions of Water Right Filing Nos. 071-1, 0160-1, 0294-1, 0392-1 and 261-1 be incorporated into 1417-1 and that the abandoned portions of Nos. 071-1, 0160-1, 0294-1, 0392-1 and 261-1 be canceled.
4. Water for the "Jones" claim is delivered through the Redwater Irrigation Association Ditch. Permanent measuring devices must be installed to measure diversion from the Redwater Irrigation Association Ditch to the "Jones" claim. These measuring devices must be installed as soon as possible but not later than the beginning of the 1993 irrigation season.

WATER MANAGEMENT BOARD

By: John Hatch
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

AUG 18 1994
date