

# Fuller & Tellinghuisen

A.P. FULLER  
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341B-1

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SPEARFISH OFFICE  
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SPEARFISH, SOUTH DAKOTA 57783  
TELEPHONE (605) 642-8080

Please reply to the Lead office.

July 24, 1992

Mr. John Hatch  
Department of Environment &  
Natural Resources  
Water Rights Division  
Joe Foss Building  
523 E. Capitol  
Pierre, SD 57501-3181



Re: Petition of Paul M. Miller, Sr., Paul M. Miller, Sr.  
Trust, Cris D. Miller and Dianne K. Miller

Dear John:

Enclosed please find original Application for Transfer of Water Rights and Change of Beneficial Use. I believe the Petition as well as the documents attached to the Petition are self-explanatory. However, Cris and Dianne Miller purchased some property from Paul M. Miller, Sr. There are two wells on the property which they purchased and there remains two wells on the property that Paul M. Miller, Sr., deeded to the Paul M. Miller, Sr. Trust. The parties agreed in the Water Agreement that they would join together in applying for the water right transfer as well as for the change of the beneficial use asked for by Paul M. Miller, Sr. Trust on Section 29.

I have joined all of the transfers and the applications in one Petition because I believe they are all related and interrelated.

Hopefully, this can be handled administratively, but if it will require a hearing, please advise. We are willing to meet with you at any time concerning explanation of the Paul M. Miller, Sr. Trust project on Section 29.

Respectfully yours,

FULLER & TELLINGHUISEN

A. P. Fuller

APF/slc  
Enc.  
c: Clients

DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES  
DIVISION OF WATER RIGHTS



APPLICATION FOR TRANSFER AND CHANGE  
OF BENEFICIAL USE

COMES NOW, your Petitioners, PAUL M. MILLER, SR., PAUL M. MILLER, SR. TRUST, CRIS D. MILLER and DIANNE K. MILLER, and respectfully Petition the Department and Water Management Board as follows:

1. On the 31st day of March, 1992, Paul M. Miller, Sr., purchased from MSM Farms, Inc., the real property described in the Water Agreement between your Petitioners.
2. Paul M. Miller, Sr., has transferred the property described in Paragraph 2 of said Water Agreement to Cris D. Miller and Dianne K. Miller, your Co-Petitioners.
3. Paul M. Miller, Sr., transferred the remaining portion of the property described above to the Paul M. Miller, Sr., Trust.
4. A copy of a aerial topographic map is attached to this Petition and incorporated herein by reference. The property outlined in yellow is a graphic description of the property sold to Cris D. Miller and Dianne K. Miller.
5. The property sold to the Paul M. Miller, Sr. Trust is graphical depicted in red.
6. Upon information and belief, the real estate has a Vested Water Right for irrigation purposes.
7. All water rights existing in Sections 19 and 20 of

is requested to be transferred to Cris D. and Diane K. Miller.

8. All waters contained in Section 29, be transferred to the Paul M. Miller, Sr. Trust.

9. It is requested that all water rights in Section 29 be changed to the beneficial uses of irrigation, recreation and commercial (fish propagation).

10. Attached to this Petition is a Topographical Map and Proposed Improvements of the Paul M. Miller, Sr. Trust property located in the north half of Section 29, T7N, R1E, Black Hills Meridian, prepared by Arleth and Associates of Deadwood, South Dakota, dated July 9, 1992, accompanied by an engineering study done by Jerry Pontius.

11. It is the intent of the Paul M. Miller, Sr. Trust to construct a fishery/fish culture for commercial and sport propagation, development and rearing, of fish as shown by that Topographical Map and Proposed Improvement prepared by Arleth & Associates.

12. There are two wells located in the NE 1/4 of Section 29. The wells presently are used for irrigation purposes in Section 29 and also in Section 19 and 20.

13. The Paul M. Miller, Sr. Trust wishes to change the diversion point of the wells located in Section 29 to irrigate land in the N 1/2 of Section 29 and to hold water in a proposed dam and to divert water to a series of ponds for the rearing of fish for commercial and sport purposes.

14. The primary use of the waters over the long range

the use of the waters for irrigation purposes for the raising of grains as feed for the fish.

15. It is the intent of the Paul M. Miller, Sr. Trust to continue to divert water from the wells located in the NE 1/4 of Section 29 for irrigation purposes upon Section 29 and for irrigation purposes upon Section 20 owned by Cris and Diane Miller.

16. During the construction season of 1993 it is the intent of the Paul M. Miller, Sr. Trust to construct, as shown by the topographical map, Ponds 1, 2, 3, 4, 5, 6, 7 and 8. The construction schedule for those ponds is 1993 through and including 1995.

17. Also during those same construction seasons, 1993 through 1995, it is planned that the Paul M. Miller, Sr. Trust will construct the proposed dam in the northeast section of Section 29 and construct the two proposed dams which are in a westerly direction approximately in the northwest quarter of Section 29. All construction as shown on the topographically maps attached hereto.

18. Upon the completion of the construction of the ponds and the dams it is then the intent of the Paul M. Miller, Sr. Trust to divert the water from the wells to the proposed dam furthest west in the northwest quarter and upon reaching a certain elevation that water will then drain into the dam to the east as shown in the plan. Further, the dam in the northeast quarter upon its construction shall trap and hold water that will enter it as shown by the contours on the topographical map. It is also anticipated

by the contours on the topographical map. It is also anticipated that subsurface springs and oozes will also be a source of water to the dam in the northeast quarter.

19. At a certain elevation in the proposed dam in the northeast quarter the water will then be diverted from that dam at a certain elevation to the existing irrigation transport line from Section 29 to Section 20.

20. It is anticipated that the only waters that will be available to Section 20, owned by Cris D. Miller and Dianne K. Miller, will be excess waters from the proposed dam in the NE 1/4.

21. Attached hereto and incorporated herein by reference is the water right agreement between Paul M. Miller, Sr., Paul M. Miller, Sr. Trust and Cris D. Miller and Dianne K. Miller and the Warranty Deed from Paul M. Miller, Sr. to the Paul M. Miller, Sr. Trust.

22. The Paul M. Miller, Sr. Trust and Cris D. and Dianne K. Miller jointly petition that the water rights associated with the Cris D. Miller property be transferred to Cris D. Miller and Dianne K. Miller. The Paul M. Miller, Sr. Trust and Paul M. Miller, jointly petition that the water rights associated with the Paul M. Miller property be transferred to Paul M. Miller, Sr. Trust and the beneficial uses be changed and the diversion points be changed as set out herein.

23. This Petition is presented under Title 46 of the South Dakota Codified Laws and the applicable sections thereof under Chapter 46-2A entitled "Administrative Procedures"; Chapter

46-4 entitled "Dry Draw and Nonnavigable Stream Dams"; Chapter 46-5 entitled "Appropriation of Water" Chapter 46-6 entitled "Ground Water and Wells" and Chapter 46-7 entitled "Storage, Diversion and Irrigation Works"

DATED this 21 day of July, 1992.

Paul M. Miller, Sr. Trustee  
Paul M. Miller, Sr. Trust  
By: Paul M. Miller, Sr. -- Trustee

Paul M. Miller, Sr.  
Paul M. Miller, Sr.

Cris D. Miller  
Cris D. Miller

Dianne K. Miller  
Dianne K. Miller

STATE OF South Dakota  
COUNTY OF Lawrence

On this the 21 day of July, 1992 before me, the undersigned officer, personally appeared Paul M. Miller, Sr. Trustee of Paul M. Miller, Sr. Trust, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

James D. Clevinger  
Notary Public  
My Commission Expires: 10/19/98

(SEAL)

STATE OF South Dakota  
COUNTY OF Lawrence

On this the 21 day of July, 1992, before me, the undersigned officer, personally appeared Paul M. Miller, Sr. known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Donald D. Clevinger  
Notary Public  
My Commission Expires: 10/19/98

(SEAL)

STATE OF South Dakota  
COUNTY OF Lawrence

On this the 21 day of July, 1992, before me, the undersigned officer, personally appeared Cris D. Miller and Dianne K. Miller, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Donald D. Clevinger  
Notary Public  
My Commission Expires: 10/19/98

(SEAL)

Water Rights Division - DENR  
Conversation File Documentation

NAME OF PERSON OR FILE: Paul Miller Trust -- WP Application No. 1582-1

ADDRESS: COUNTY: Lawrence

DATE: 10/8/93 TELEPHONE:

RE: Discussion with Cris Miller

COMMENTS:

Mr. Cris Miller called this office regarding the report and recommendation on Water Permit Application No. 1582-1 for Paul Miller Trust. Cris Miller purchased those acres north of the Interstate 90 from Paul Miller. The two parties were in the process of transferring the respective portions of Right Nos. 341-1 and 648-1 when Paul Miller filed Application No. 1582-1 to include fish propagation. As part of their water agreement Cris Miller was to have the right to overflow of water from the dams (which discharges into Crow Creek) for irrigation of portions of his land. The Chief Engineer's recommendation on Application No. 1582-1 did not permit any diversion of water from Crow Creek. Cris Miller was concerned that this would prohibit his irrigation of land.

I explained that we were not supportive of water that is being discharged into Crow Creek being diverted back out of the creek for irrigation. Our reasoning was that Crow Creek is a tributary to Redwater River which is a fully appropriated stream and any water discharged into Crow Creek becomes unappropriated water subject to prior appropriation. Additionally, our qualifications included a statement that overflow from the dams be kept to a minimum required to sustain the fishery.

Cris Miller seemed primarily concerned that through Paul Miller's Application No. 1582-1 that he'd lose the right to irrigate approximately 40 acres in the SE $\frac{1}{4}$  Section 20, T7N, R1E.

I told Cris Miller that he had options: 1) that he could pump water from the two wells currently on his property that are authorized by Right Nos. 341-1 and 648-1; 2) could apply for a permit to pipe water from the dams to the land to be irrigated; or 3) could irrigate from the wells located on Paul Miller's property as has been historically done - this would mean that water from the wells location the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 29 could be diverted into the canals that had historically transported the water to portions of Section 20. Option 3 must be agreed to by Paul Miller and water is not to be discharged into Crow Creek and then diverted back out. Cris Miller seemed agreeable to Option 3 and just wanted a mechanism to irrigate the acre as has been historically done under Right Nos. 341-1 and 648-1.

Cris Miller stated he may file as an intervenor just to ensure his rights are protected.

Cris Miller and I also discussed a spring on his property that flows at about 300 400 gpm which flows into Redwater River (via Crow Creek - I think). He stated that this water used to irrigate some acreage but it hasn't been used for numerous years. I asked him if this meant it hadn't been irrigated in the past three years and he responded it hadn't been irrigated for a number of years more than three years. I said that if there had been a permit that existed it is likely that the permit would be subject to cancellation and the water is unappropriated water subject to prior appropriation. Since this water is in a fully appropriated system, I stated that it is unlikely that this office would come out with a favorable recommendation on a application. (Discussing this later with Jim Goodman - Jim stated that this was probably not a spring but instead an old uncontrolled well.)

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Greenland

**STATE OF SOUTH DAKOTA  
WATER LICENSE NO. 341B-1  
DIVISION OF WATER RIGHT NO. 341-1 INTO 341A-1 AND 341B-1**

(1) George Papousek, of Spearfish, SD 57783 was issued Water License No. 341-1, May 18, 1964 for a water right to appropriate 4.99 cubic feet of water per second (cfs) from groundwater (four wells), Lawrence County, South Dakota for irrigation purposes. Water License No. 341-1, with priority dates of May, 1955 (3.33 cfs) & August 18, 1958 (1.66 cfs) was issued to Mr. Papousek for diversion of water with construction of the described water supply system completed and application of water to beneficial use completed.

January 19, 1978, Water Right No. 341-1 was transferred to MSM Farms. On July 27, 1992, a "Notice of Transfer of Ownership" was filed to transfer a portion of the land described in Water Right No. 341-1 to Cris D and Dianne K Miller with the remaining portion of the water right transferred to Paul M Miller, Sr, Trust. Water Right No. 341-1 is being divided and reissued as No. 341A-1 (Cris D and Dianne K Miller) and 341B-1 (Paul M Miller, Sr, Trust) to reflect separate ownership of the land.

(2) It is certified that the applicant 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 1.60 cubic feet of water per second for beneficial use. The location of the diversion points are: (Well #2) S 33°12'W 1560 ft from the NE corner Section 29 and (Well #3) S 32°15'W, 1537 ft from the NE corner Section 29, all in T7N, R1E. (These two wells can be used for irrigating land in Section 20, T7N, R1E described in Water Right No. 341A-1, held by Cris & Dianne Miller)

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

|          |            |               |           |
|----------|------------|---------------|-----------|
| T7N, R1E | Section 29 | NW 1/4 NE 1/4 | 23 acres  |
|          |            | NE 1/4 NE 1/4 | 38 acres  |
|          |            | SW 1/4 NE 1/4 | 20 acres  |
|          |            | NE 1/4 SW 1/4 | 28 acres  |
|          |            | NW 1/4 SE 1/4 | 30 acres  |
|          |            | SE 1/4 NW 1/4 | 15 acres  |
|          | Section 30 | NE 1/4 NE 1/4 | 19 acres  |
|          |            | Total         | 173 acres |

(4) Pursuant to South Dakota Water Law 46-5-30.1 Paul M Miller, Sr., Trust of 867 Main Street, Deadwood, SD 57732 the holders and/or owners of Water Right No. 341B-1 is issued a license to appropriate water, the right to use 1.60 cubic feet of water per second from groundwater (two wells) with a priority date of May, 1955 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Water Right No. 341-1 and subject to South Dakota State Law.



NOV 14 1994

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JOHN HATCH, Chief Engineer

Water Rights Division

Department of Environment and Natural Resources



NOV 14 1994

**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

341A-1  
341B-1

Cris D & Dianne K Miller  
RR #2 Box 395 M  
Spearfish, SD 57783

Paul M Miller Sr., Trust  
867 Main Street  
Deadwood, SD 57732

Enclosed are your Water License Nos. 341A-1 (Cris & Dianne Miller) and 341B-1 (Paul Miller).

Water Right No. 341-1, formerly MSM Farms, was divided and reissued as Nos. 341A-1 and 341B-1, to reflect separate ownership. The applicable portions of Water Right No. 648-1 were incorporated into No. 341A-1 for Cris & Dianne Miller.

It is our understanding that a portion of the original acreage described in No. 341-1 is no longer irrigated. Water License Nos. 341A-1 and 341B-1 were divided according to ownership records only. Specific acreage that may or may not be irrigated were not addressed at this time. A field inspection of the entire acreage will be done at a later date. If needed, the water licenses can be updated after the field inspection.

Copies of the water licenses and the receipts for the filing fees paid for transferring Nos. 341-1 and 648-1 will be forwarded to Fuller & Tellinghuisen Law Offices. If you have any questions concerning your enclosed water license, please contact us.

Very truly yours,

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

c: A P Fuller, Fuller & Tellinghuisen, PO Box 898, Lead, SD  
57754-0898

**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

January 24, 1995

341B-1

Paul M Miller Trust  
867 Main Street  
Deadwood, SD 57732

Dear Mr. Miller:

Enclosed is your 1994 irrigation questionnaire. When reviewing the form I noticed that you marked "yes" (that you did irrigate), but did not fill out the back side of the form.

In order for me to calculate how much water was used in 1994 under your specific water source, you will need to complete the back part of the form dealing with crop type, acres irrigated, pump rate, days per month and average hours per day. The data does not have to be exact, but as close as possible.

Please complete the form and return it to our office by February 10, 1995. If you have any questions, please call me and I will attempt to work through the form with you over the phone. Thank you for your help in this matter.

Sincerely,

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

enclosure

**Permit No. 341B-1**  
Belle Fourche River - Water District

**Report Of Examination Of Works And/Or Application of Water To Beneficial Use**

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, 6/22/1995, made a thorough examination of the water use system owned by Paul M. Miller, Sr. Trust of 867 Main Street, Deadwood, SD 57732 holder of Permit No. 341B-1, bearing the priority of May 1955, authorizing the diversion of 1.6 cu. ft. per second of groundwater for irrigation purposes, in Lawrence County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

Two flowing wells.

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

5000 feet of earthen irrigation ditches.

C. Works used to apply water to beneficial use:

Gravity system of irrigation is used to apply water to the land.

The system is in the following condition Good. The point of diversion is located: Well No. 2: About 750 feet west, 1250 south from the northeast corner of Section 29; Well No. 3: about 700 feet west, 1250 feet south from the northeast corner of Section 29, all in T7N-R1E (both in the NE1/4 NE1/4). The works are capable of diverting and conveying to the place of use 1.6\* cu. ft. per second of water which is used for irrigation purposes. Water has been put to beneficial use to the maximum extent as follows:

|             |          |                            |
|-------------|----------|----------------------------|
| NE1/4 NE1/4 | 24.0 ac. |                            |
| NW1/4 NE1/4 | 8.5 ac.  |                            |
| SW1/4 NE1/4 | 24.0 ac. | All in Section 29, T7N-R1E |
| NW1/4 SE1/4 | 17.5 ac. |                            |
| NE1/4 SW1/4 | 6.5 ac.  |                            |
| SE1/4 NW1/4 | 3.0 ac.  |                            |

comprising a total of 83.5 acres of land and the license should be issued for 1.19 cfs.

Applicable permit qualifications have been complied with: Yes ☒ No ☐

Exceptions to compliance are: None

Date Report Completed: 7/24/1995



M. Rassool Ahadi  
Natural Resources Engineer  
DENR, Water Rights Program

\* During the inspection of Water Permit No. 341B-1, Mr. Paul Miller stated that NRCS staff had measured the flows from Well Nos. 2 and 3 this year. The flows were 475 gallons per minute (gpm) and 375 gpm respectively.

# **REPORT ON INSPECTION OF PERMIT NO. 341B-1**

**DATE OF INSPECTION:** 6/22/95

**NAME & ADDRESS OF PERMIT HOLDER:** Paul M. Miller, Sr. Trust, 867 Main Street, Deadwood, SD 57732

**DIVERSION POINT LEGAL LOCATION:** NE1/4 NE1/4 Section 29, T7N-R1E

## **WELL INFORMATION:**

- 1) Well Drilling Firm: Unknown
- 2) No. of Wells 2( Wells #2/Well #3)
- 3) Depth(s) 450/415 feet
- 4) Well log is available Y/Y
- 5) Comment:

### **Casing:**

- 1) Diameter 8/8 inches
- 2) Length 400/380 feet
- 3) Type

### **Screen: Unknown**

- 1) Type
- 2) Length feet
- 3) Static water level: Flowing wells

## **DISTRIBUTION LINES OR CANALS:**

- 1) Type Earthen
- 2) Size about 3-4 feet deep, 3-5 feet wide
- 3) Length 5000 feet

## **PERMIT QUALIFICATIONS AND REGULATIONS:**

- 1) Soil and water permit lands agree with lands being irrigated and lands listed on permit NA
- 2) Special qualifications to permit being abided by NA
- 3) All structures, wells and lands on map Y
- 4) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period NA

# DRILLER'S LOG OF WELL

Artesian well No. 3

Location of Well:  $N\frac{E}{4}$   $\frac{1}{4}$ ,  $SE\frac{1}{4}$ , Section 29, Township 7 N., Range 1 E.

Well to be drilled for: George Papousek, Spearfish, So. Dak.  
(Name) (Address)

Owner of land (if other than above) \_\_\_\_\_  
(Name) (Address)

Date well drilling started May 1955 finished May 1955

Purpose of well Irrigation  
(domestic, irrigation, municipal, industrial, other)

| Diameter   |   |                                                                            |  |
|------------|---|----------------------------------------------------------------------------|--|
| 10" inches |   |                                                                            |  |
| Feet       | ↑ | Ground Surface Elevation: 3330<br>(If Available)                           |  |
| Feet       | ↓ | Kind and thickness of casing to be installed:                              |  |
| Feet       | ↑ | Steel 8" I.D. 8½ O.D.                                                      |  |
| Feet       | ↓ | 9" for 380', 35' open.                                                     |  |
| Feet       | ↑ | Size of casing to be installed:                                            |  |
| Feet       | ↓ | _____ feet of _____ inches diameter                                        |  |
| Feet       | ↑ | _____ feet of _____ inches diameter                                        |  |
| Feet       | ↓ | _____ feet of _____ inches diameter                                        |  |
| Feet       | ↑ | Type of seal between casing sizes:                                         |  |
| Feet       | ↓ | Concrete                                                                   |  |
| Feet       | ↑ | Kind of perforated screen to be installed:                                 |  |
| Feet       | ↓ | Material None<br>(steel, wood, concrete, etc.)                             |  |
| Feet       | ↑ | Size of screen:                                                            |  |
| Feet       | ↓ | Diameter _____ inches                                                      |  |
| Feet       | ↑ | Length _____ feet                                                          |  |
| Feet       | ↓ | Size openings _____ inches                                                 |  |
| Feet       | ↑ | Casing to 380 ft.                                                          |  |
| Feet       | ↓ | 15 ft. Water bearing material.                                             |  |
| Feet       | ↑ | 415'                                                                       |  |
| Feet       | ↓ | Depth below ground surface to which water rises<br>Flows with 25 ft. head. |  |
| Feet       | ↑ | in well _____ feet.                                                        |  |
| Feet       | ↓ | 250 GPM.                                                                   |  |

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPHIC IMAGE APPEARING ON THIS SLIP 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 COMPILATION LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROFILMING. REPRODUCTIONS. REDUCTION 25X. ROLL NO. 5. DATE MICROFILMED 3-8-82. OPERATOR

# DRILLER'S LOG OF WELL

Artesian well No. 3

Location of Well: NW 1/4, SE 1/4, Section 29, Township 7, Range 1 E.

Well to be drilled for: George Papousek (Name), Spearfish, So. Dak. (Address)

Owner of land (if other than above) (Name) (Address)

Date well drilling started April 1955 finished April 1955

Purpose of well Irrigation (domestic, irrigation, municipal, industrial, other)

| Diameter |        | Describe kind of materials drilled through (add layers on back of form if necessary) | Ground Surface Elevation: 5330 (If Available)   |
|----------|--------|--------------------------------------------------------------------------------------|-------------------------------------------------|
| 8        | inches |                                                                                      |                                                 |
| Feet     |        |                                                                                      | Kind and thickness of casing to be installed:   |
| Feet     |        |                                                                                      | Steel 6.5/8" ID 7" O.D.                         |
| Feet     |        |                                                                                      | 50 ft. open.                                    |
| Feet     |        |                                                                                      | Size of casing to be installed:                 |
| Feet     |        |                                                                                      | feet of inches diameter                         |
| Feet     |        |                                                                                      | feet of inches diameter                         |
| Feet     |        |                                                                                      | feet of inches diameter                         |
| Feet     |        |                                                                                      | Type of seal between casing sizes:              |
| Feet     |        |                                                                                      | Concrete                                        |
| Feet     |        |                                                                                      | Kind of perforated screen to be installed:      |
| Feet     |        |                                                                                      | None - Bottom 50 ft. open.                      |
| Feet     |        |                                                                                      | Material (steel, wood, concrete, etc.)          |
| Feet     |        |                                                                                      | Size of screen:                                 |
| Feet     |        |                                                                                      | Diameter inches                                 |
| Feet     |        |                                                                                      | Length feet                                     |
| Feet     |        |                                                                                      | Size openings inches                            |
| Feet     |        |                                                                                      | Depth below ground surface to which water rises |
| Feet     |        |                                                                                      | Well flows to 35 ft. head.                      |
| Feet     |        |                                                                                      | in well feet.                                   |
| Feet     |        |                                                                                      | 750 GPM.                                        |

Spearfish Rbd Beds-Minnelusa  
Opelika Sand

Bottom of casing. 400 ft.

Minnelusa Sand  
50 ft. Water bearing material

LAW 1-17-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR FILMOGRAPHY OF THE ABOVE RECORDS WAS MADE IN ACCORDANCE WITH THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROFILM RECORDS. REPRODUCTIONS. REDUCTION 25X ROLL NO. 5 DATE MICROFILMED 3-8-82 OPERATOR: [Signature]

T1063  
M1100

T28

8.500

24  
ac

#2

#3

700

720

5000

29

3000

36.4 16.0 ac

6500

17500

7.9

25.3

21.6

21.0

22.5

32.3

(21.9)

7-1 T17

8.4

2000

N-2

4.2

34

DIV. POINT

IRRIGATED LAND

IRRIGATION DITCH

7-24-95

M. Shadi, Nat. Res. Engineer

341B-1

15.5

T1062  
M1100

30.0

32.0

33.9



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

February 9, 2015

denr.sd.gov

John R Frederickson  
Frederickson Law Office  
PO Box 583  
Deadwood SD 57732-0583

Dear Mr. Frederickson:

I am writing in follow-up to your inquiry regarding water rights/permits held in the name of the Paul M Miller Sr Trust. There are three water rights held in the name of the Trust.

Water Right No. 341B-1 appropriates 1.19 cubic feet of water per second (534 gpm) from two wells completed into the Minnelusa Formation to irrigate 83.5 acres in portions of Section 29, T7N, R1E.

Water Permit No. 1582-1 authorized diversion from the well water into ponds, raceways and three dams for fish propagation prior to being used for irrigation of the acres authorized by No. 341B-1.

Water Permit No. 1582A-1 added the use of commercial use for a bottle water operation. It is DENR's understanding the bottled water component was never developed.

South Dakota Codified Law 46-5-37 provides that if a person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water. Water rights deemed to be forfeited for nonuse are subject to cancellation.

Both Water Right No. 341B-1 and Permit No. 1582-1 are conditioned as being subject to submittal of the irrigation water use questionnaire sent annually by DENR each fall. Since the early 1990's when the Trust acquired the land for irrigation, Mr. Miller has been diligent in timely filing his irrigation questionnaire and has reported irrigation taking place. Please note that it was common for Mr. Miller to report for both rights under just one of the irrigation questionnaires. This is perfectly acceptable.

Based on the history of irrigation occurring, there is no basis at this time for DENR to pursue cancellation of Water Right No. 341B-1 or Water Permit No. 1582-1.

If you have any further questions, do not hesitate to contact me.

Sincerely,

Eric Gronlund  
Water Rights Program, DENR  
605 773-3352  
[Eric.gronlund@state.sd.us](mailto:Eric.gronlund@state.sd.us)

## NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

RECEIVED

MAY 04 2015

WATER RIGHTS  
PROGRAM

Mail to: PMB 2020  
DENR - Water Rights Program  
523 E Capitol Ave  
Pierre, SD 57501-3182

Water Right/Permit No. 341B-1Date: May 1, 2015

I/We request that Water Right/Permit No. 341B-1 formerly owned by:  
Paul M. Miller, Sr. Trust, dated March 12, 2002 and Restated July 2, 2010 be transferred to:

New Owner Name: Bear Butte Wildlife, LLC, a South Dakota limited liability companyAddress: 11904 Crook City RoadCity, State, Zip Whitewood SD 57793 Telephone No. 605-578-1222

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

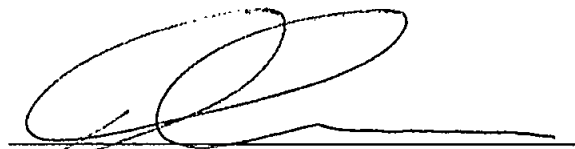
by Trustee's Warranty Deed

☒ I understand that the validity of Water Right/Permit No. 341B-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 Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, David Ciani, Manager of Bear Butte Wildlife, LLC, 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.

# RECEIPT

## WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 5/4, 20 15

RECEIVED OF Hood & Nies PC 109 Main St Spearfish SD 57783

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 | 50    | 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 <u>341B-1</u>                                                                     |       |       |
| Fee for _____                                                                                                  |       |       |
| Fee for Issuing New Well Driller's License No. _____ for C.Y. _____                                            |       |       |
| Fee for Renewal of Well Driller's License No. _____ for C.Y. _____                                             |       |       |
| Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____                                         |       |       |
| Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____                                      |       |       |
| (Any Other Work Provided by Law)                                                                               | TOTAL | 50 00 |

No. 07380

By J. Jamie Goodman  
Chief Engineer

**McMath, Genny**

---

**From:** McMath, Genny  
**Sent:** Monday, May 11, 2015 10:16 AM  
**To:** 'High Prairie'  
**Subject:** RE: Miller legal descrip.

Thank you - this should work.

As you requested, I will go ahead and include your mailing address of PO Box 1150, Spearfish SD 57783 with our records.

Genny McMath  
 Water Rights Program  
 605.773.5455

-----Original Message-----

**From:** High Prairie [<mailto:highprairie@basec.net>]  
**Sent:** Monday, May 11, 2015 10:10 AM  
**To:** McMath, Genny  
**Subject:** Miller legal descrip.

Parcel One –

NW1/4SE1/4, NE1/4SW1/4, S1/2SE1/4NW1/4, S1/2SW1/4NE1/4, the South 190' of N1/2SE1/4NW1/4 and the South 190' of N1/2SW1/4NE1/4, containing 131.5 acres more or less, all located in Section 29, T7N, R1E, B.H.M., Lawrence County, South Dakota, including all improvements, mineral rights and water rights but subject to easements, reservations and mineral rights of records.

And

Parcel Two -

N1/2SE1/4NW1/4 of Section 29, EXCEPT the South 190' of N1/2SE1/4NW1/4;  
 N1/2SW1/4NE1/4 of Section 29, EXCEPT the South 190' of N1/2SW1/4NE1/4;  
 N1/2NE1/4 of Section 29, EXCEPT Lot X of the N1/2NE1/4 as set out in Plat Document No. 82-612 and EXCEPT Lot H-1 of N1/2NE1/4 deeded in Book 276 Page 327 and EXCEPT Lot H-2 of N1/2NE1/4 as set out in Plat Book 6 page 154;  
 N1/2NW1/4 of Section 29, EXCEPT Lot H-1 of N1/2NW1/4 deeded in Book 276 page 327 and EXCEPT Lot H-2 of the N1/2NW1/4 as set out in Plat Book 6 Page 153; all in Township 7 North, Range 1 East, B.H.M.; and NE1/4NE1/4 of Section 30, EXCEPT Lot H-1 of NE1/4NE1/4 deeded in Book 276 Page 327 and EXCEPT Lot H-2 of NE1/4NE1/4 as set out in Plat Book 6 Page 152, Township 7 North, Range 1 East, B.H.M., Lawrence County, South Dakota, including all improvements, mineral rights and water rights but subject to easements, reservations and mineral rights of records, containing 140.41 acres, more or less

341B-1



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

May 11, 2015

341B-1  
1582-1  
1582A-1

David Ciani  
Bear Butte Wildlife LLC  
PO Box 1150  
Spearfish SD 57783

Dear Mr. Ciani:

I am writing to acknowledge receipt of the transfer forms and filing fees submitted for changing ownership on Water Right No. 341B-1 and Water Permit Nos. 1582-1 and 1582A-1.

The ownership changes have been completed. The above referenced water right and water permits are now listed in the name of "Bear Butte Wildlife LLC, a South Dakota Limited Liability Company."

For informational purposes, each year we mail out irrigation questionnaires to irrigators in SD for reporting annual water use. They are typically mailed out in mid-October and are due back by the first week in December. I am including a copy of one of the forms from 2013 to give you an idea of what type of information to keep track of during the season and how to report the information.

The receipts for the filing fees paid for the ownership changes are being forwarded by copy of this letter to Hood & Nies PC in Spearfish SD. If you have any questions, please contact me.

Sincerely,

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

enclosure

c: Hood & Nies PC w/Receipt Nos. 07380, 07381 and 07382



341B-1  
DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
PMB 2020  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 15, 2016

NOTICE

TO: BEAR BUTTE WILDLIFE LLC, DAVID CIANI, PO BOX 1150, SPEARFISH, SD 57783  
FROM: Ron Duvall, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2015 Irrigation Questionnaires

Our records indicate your 2015 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2015. The Water Management Board has directed that owners of water permits who have not submitted the 2015 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 341B-1 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 1582-1 qualification:

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

The hearing will be held at **Thursday, March 3, 2016 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 1582-1 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 341B-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 3, 2016** hearing you will no longer be in violation of your permit and your name will be removed 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 or email at [genny.mcmath@state.sd.us](mailto:genny.mcmath@state.sd.us). If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

denr.sd.gov

February 24, 2016

341B-1  
1582-1

Bear Butte Wildlife LLC  
c/o David Ciani  
PO Box 1150  
Spearfish SD 57783

Dear Mr. Ciani:

I am writing to acknowledge receipt of your 2015 irrigation questionnaires.

You may disregard the January 15, 2016, "Notice" concerning reporting requirements for Water Right No. 341B-1 and Water Permit No. 1582-1. 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  
Water Rights Program  
(605) 773-3352  
email: genny.mcmath@state.sd.us