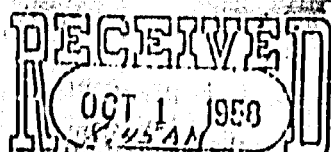


No. 353-1Water Division No. 1 District 13
(Blanks to be filled by the Engineer for the W. R. C.)

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

STATE WATER RESOURCES COMMISSION
SOUTH DAKOTA

(NOTE—Draw a line through items not applicable.)

1. Name of applicant
- Chanley J. Nicholas

Postoffice address Spaulding County Lawrence State South Dakota

I.—If a corporation

(a) Name of same

(b) Date and place of incorporation

(c) Amount of capital stock

(d) Amount paid in

(e) Names and addresses of directors

(NOTE—A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

(a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)

Completed by contract 1952

(b) Cash on hand, \$

(c) Treasury stock, \$

(d) Bonds to be issued, \$

(e) Other resources, \$

2. Name of diversion work
- Nicholas Dam and ditch #1

3. Amount of water claimed 1.1 cubic feet per second to fill pond of 2 acres at4. Source of water supply Runoff from 500 acres plus spring flow from springs on owned land.Between a point 140 rods N-1 west and a point 200 rods north-1 east5. Location of point of diversion both from the SE corner of the SW-1/4 Sec 32-Twp 7N-Rg 1Eon Lawrence County.6. Annual period or periods during which water is to be used spring, summer, fall

7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Gravity, Domestic use and combination irrigation(a) Number of acres to be irrigated 147 acres, 34 ac. in the NE 1/4 NW 1/4, 39 ac. in the NE 1/4 SE 1/4, 38 ac. in the NE 1/4 NE 1/4, 18 ac. in the NE 1/4 SE 1/4, 10 ac. in the NW 1/4 SE 1/4, 8 ac. in the NE 1/4

(b) Legal subdivisions to be irrigated

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

(c) Statement as to domestic use (giving location, etc.) Stockwatering from pond and ditch

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

(a) Nature of use Stockwatering, fish culture, fishing by permission, fire protection
Name any of the above uses claimed(b) Amount of power to be generated none horse power.

Amount claimed for engine cooling

(c) Location of plant

(d) Method of developing power

(e) Point where water will be returned to stream

8. Estimated cost of work:

(a) Head Gates, \$90.00.....

(c) Fluming, \$50.00.....

(e) Other structures Earth dam.....\$700.00...

(b) Pumping plant, \$1,500.00*

Rock, \$2,550.00

Total, \$5,000.00

9. Description of diversion works:

Same pump used on #2

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)

Reservoir, dam, ditch, flume, pumping plant

II. Dimensions of works:

(a) Dam: Height 14 feet; length at bottom 150 feet; length at top 150 feet; thickness at bottom 80 feet; thickness at top 10 feet; slope at front water face 3:1; slope at back face 2:1; material used in construction

(b) Reservoir: Capacity when filled 100 acre feet. Surface area at highwater mark 13 acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET-ACRES	FEET	ACRE-Feet CAPACITY

(c)* Head gate: Width feet; height feet; Material

(d) Canal: Total length miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER-LINE	GRADE PER MILE
At Mile	feet	feet	feet	feet
At Mile	feet	feet	feet	feet
At Mile	feet	feet	feet	feet
At Mile	feet	feet	feet	feet
At Mile	feet	feet	feet	feet
At Mile	feet	feet	feet	feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work Completed 1952 years.

11. Time required for complete application of water to the proposed beneficial use six years. in use.

12. Choice of newspaper for publication of notice of intention to appropriate

STATE OF SOUTH DAKOTA

County of Lawrence ss.

I, Chanley J. Nicholas, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters herein stated and shown are true.

Signed Chanley J. Nicholas

Subscribed and sworn to before me this 26 day of September 1958

Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.

Remarks by State Water Resources Commission:

"Vested Right" claimed

The diversion rate limitation of 1 cubic foot per second for each 70 acres irrigated shall not apply to this dry draw irrigation diversion during periods of flood flows, when such flows are in excess of the amount of water required to satisfy domestic use requirements and other water rights.

STATE OF SOUTH DAKOTA

County of

Flughes

ss.

Pierre, South Dakota,

October 3, 1958

This is to certify that the foregoing application was received by the Commission at 8:45 o'clock

a.m. upon the 1 day of October, 1958

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Number of permit 355-1

Date of first receipt of application October 1, 1958

Date of return to applicant for correction, amendments or changes required as follows: 10

Date of receipt of corrected application 10

Date from which applicant may claim right June 1952, 10

Approved October 9, 1958, Recorded in Book 5, Page 76

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before

Completed, 19

2nd. The whole of said work is to be completed on or before Completed, 19

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is

Completed, 19

4th. The water appropriated shall be used for the purpose of irrigation, stockwatering, fish culture, fishing by permission, and fire protection

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 10.1 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that expert may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before Completed, 19; said water to be used during the following described annual period:

April to October inclusive

Witness my hand this

30

day of

December

1958

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Certificate of Construction Issued

December 30, 1958

Water License Issued

December 30, 1958

STATE OF SOUTH DAKOTA

WATER LICENSE No. 355-1

WHEREAS, On the 1st day of October A. D. 1958

Chanley J. Nicholas

of Spearfish County of Lawrence and State of South Dakota duly made application (No. 355-1) to us for a Vested Right permit to use 1.1

cubic feet per second of the waters of springs and a dry draw

County of Lawrence, State of South Dakota, for irrigation, stockwatering, fish culture purposes; and fishing by permission and fire protection

WHEREAS, On the 30th day of December A. D. 1958

Vested Right Permit No. 355-1 was issued to said applicant for the diversion of said water, and recognizing

completion of the works of diversion therein described on or before the XXXXXX

in June 1952 and XXXXXX application to beneficial use of said

water XXXXXX XXXXXX in June 1952 XXXXXX and,

WHEREAS, On the 1st day of October A. D. 1958

the holder of said permit duly made proof of the completion of adequate works for the diversion of 1.1

cubic feet per second of said waters, as evidenced by our Certificate No. 355-1

dated December 30, 1958 confirming the completion of works of sufficient capacity for

diverting and conveying to the place of intended use 1.1 cubic feet per second of water, with date of

priority of June 1952 and, and,

WHEREAS, On the 1st day of October A. D. 1958

proof was duly made of the application to beneficial use of 1.1 cubic feet per second of said water;

for irrigation, stockwatering, fish culture, fishing by permission

and fire protection on 147 acres located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

and NE $\frac{1}{4}$ SW $\frac{1}{4}$, all in Sec. 32, T 7 N, R 1 E more particularly described

in Certificate of Completion of Works No. 355-1.

NOW, THEREFORE, by the virtue of the authority vested in us by the laws of the State of South Dakota,

We hereby grant and confirm to Chanley J. Nicholson Vested Right

of Spearfish, South Dakota the holder and owner of said permit No. 355-1

a water right, dating from June 1952 to the use of 1.1

cubic feet per second of the waters of springs and a dry draw

in the County of Lawrence and State of South Dakota, or so much thereof as may be

necessary for the purposes hereinbelow mentioned, to be diverted at between a point 140 rods, N 40° 0' W
and a point 200 rods, N 10° 0' E of the S 1/2 Cor., Sec. 32, T 7 N, R 1 E

and conducted to and upon the NE 1/4 NW 1/4, S 1/2 NW 1/4, N 1/2 SE 1/4, NE 1/4 SW 1/4, all in Sec. 32,
T 7 N, R 1 E, more particularly described in Certificate of Completion
of Works

for the purpose of irrigation, stockwatering, fish culture, fishing by
permission, and fire protection.

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and seal of our office at Pierre, South Dakota,
this 30th day of December A. D. Nineteen
Hundred and Fifty-eight.

State Water Resources Commission

By:

J. W. GRIMES, Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

Water License No. _____

To _____

Source of Supply _____

County _____

Acres _____ C. F. S. _____

Point of Diversion _____

Place of Use _____

Purpose _____

Date of Priority _____

Recorded _____

In Book _____ of _____ Page _____

Permit No. 355-1

Belle Fourche

Water Division No. 1 River Water District

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That Chanley J. Nicholas

of Spearfish, County of Lawrence, State of South Dakota, the holder of Permit No. 355-1, issued upon Application No. 355-1, bearing date of priority of June 1952, authorizing the diversion of

1.2 cu. ft. per second of the waters of a springs and a dry draw
County of Lawrence, State of South Dakota, at between a point 140 rods N 4° 0' W and a point 200 rods N 1° 0' E of the S 1/2 Cor., Sec. 32, T 7 N, R 1 E

by permission and for irrigation, stockwatering, fish culture, fishing purposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory condition for diverting and conveying to the place of intended use 1.1 cu. ft. per second of water; and that the lands proposed to be irrigated by the use of said water are described as follows,

to-wit: NE 1/4 NW 1/4) BA	34 acres
E 1/4 NE 1/4) A all in Sec. 32	39 acres
SE 1/4 NE 1/4) A T 7 N, R 1 E	38 acres
NE 1/4 SE 1/4) DA	18 acres
NW 1/4 SE 1/4) DB	10 acres
NE 1/4 SW 1/4) CA	8 acres
Total	147 acres

Witness my hand this 30th day of December A. D. 1958

State Water Resources Commission

By: J. W. GRIMES, Chief Engineer, Executive Officer

Location No. 355-1Belle FourcheWater Division No. 1Pierre Water District**Proof of Application of Water to Beneficial Use****PETITION OF HOLDER****RECEIVED**
OCT 1 1958

Ques. 1. State your name, residence, occupation, and postoffice address.

Ans. Stanley L. Nicholas, Spearfish, South Dakota Rancher PIERRE, SOUTH DAKOTA

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent,) your position with reference to same, and your authority for appearing in its behalf.

Ans. _____

Ques. 3. State date of posting and date of recording notice of appropriation.

Ans. None posted or recorded

Ques. 4. State source of water supply and give exact location of point of diversion.

Runoff from 300 acres, plus spring flow from springs on owned land.Ans. Between a point 140 rods N-4° west, and a point 200 rods north and 1° east, both from the SE corner of the SW $\frac{1}{4}$ -Sec. 32-Twp 7 N-Rg 1 E.

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.

Dam- Length 150 ft.Ans. Height 14 ft.Outlet capable of releasing 5 cfs, Nicholas Ditch #1Completed June 1952

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Stockwatering, fish culture, irrigation-34 acres in the NE $\frac{1}{4}$, 39 acres in theAns. SW $\frac{1}{4}$, 34 acres in the SW $\frac{1}{4}$, 12 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 10 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, 8 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, being a total of 147 acres irrigated.

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. _____

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. 1.1 cfs

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. _____

Ques. 10. State when, how, in what amount and to what extent, the water diverted under above mentioned permit has been used.

Ans. No This irrigation system has been in existence for at least fifty years.

June 1952 Dec 4 Bus 6, Hornet and
1.5.10, 1.5.12

(Sign) Charles J. Nicholas

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Spearfish, SD, County of Lawrence

State of South Dakota, on this 26 day of September A. D. 1958.

Witnesses.

I, the undersigned, do hereby certify that I am a duly qualified elector residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Sidney H. Nicholas
 Edgar Nicholas

Location No.

PROOF OF APPLICATION OF
WATER TO BENEFICIAL USE

SECTION OF HOLERS

Amount of Water _____ c. f. s.

Source

County

Purpose

Place of Use

Date of recording

Received and filed

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

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

WATER RIGHTS DIVISION
(605) 773-3352

January 2, 1987

Clara H. Nicholas
RR 1, Box 218A
Spearfish, South Dakota 57783

Dear Ms. Nicholas:

I am contacting you in regard to Water Right No. 355-1 listed in the name of Chanley J. Nicholas. Recently, Water Right No. 356-1 was transferred to your name. A review of the files found another water right (No. 355-1) also existed. Water Right No. 355-1 should also be transferred to your name.

I have enclosed a partially completed "Notice of Transfer". Please check over the form and sign in the presence of a notary. Upon completion of the form, return it to our office with a \$2.50 filing fee. Water Right No. 355-1 can then be transferred to your name.

I apologize for not catching this sooner and having you do both transfers at the same time. If I can answer any questions for you, please contact me.

Sincerely,

Genny McMath
Natural Resources Analyst

GM:ms
Enc.

NO. 355-1

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: _____

This is to notify you that the title to the lands described as follows:

147 Acres - NE1/4NW1, S1/4NE1, N1/4SE1, and NE1/4SW1, Section 32, T7N-R1E

formerly owned by Chanley J. Nicholas

has been transferred to Clara H. Nicholas, RR 1, Box 218A, Spearfish, SD 57783
(please include complete mailing address)

together with any rights to the beneficial use of water thereon as evidenced by

Water Right Permit No. 355-1 as provided for in SDCL 46-5-32 and 46-5-33.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Div. of Water Rights, Water Management Board as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is hereto attached to cover filing as required under SDCL 46-2-13.

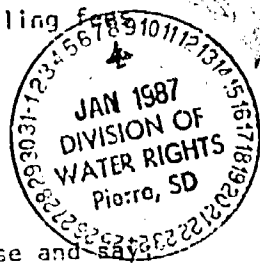
STATE OF SOUTH DAKOTA)
County of Minnehaha) ss.

I, Clara H. Nicholas being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

Clara H. Nicholas
(Signed)

Subscribed and sworn to before me this 16 Day of January, 1987

[Signature]
(Notary Public)



RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

410097

Pierre, January 7, 1936

RECEIVED OF Clara H. Nicholas, RR 1, Box 217A, 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 works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>355-1</u>	2	50
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certify _____		
Fee for _____		
(Any Other Work Provided by _____)		
Total	2	50

By J. L. Hatch
Chief Engineer JOHN HATCH

ms

SOUTH DAKOTA Department of
Water & Natural Resources
Joe Foss Building Water Rights Division
Pierre, South Dakota 57501 Phone (605) 773-3352

January 12, 1987

Clara H. Nicholas
RR 1, Box 218A
Spearfish, South Dakota 57783

Dear Mrs. Nicholas:

Enclosed is receipt No. 410697 in the amount of \$ 2.50 which you
paid for transfer of Water Right No. 355-1.

Our records now show you as the owner of this Water Right.

Sincerely,

Maxine Stirling
Secretary

ms/
Enc.

 **Department of
Water & Natural Resources**

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

September 21, 1968

NOTICE

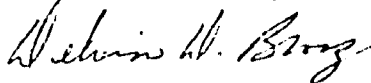
Clara H. Nicholas
RR 1, Box 218A
Spearfish SD 57783

Dear Ms. Nicholas:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 355-1, 356-1 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

A staff member from the Division of Water Rights will be contacting you and scheduling an inspection of your water project. If we can answer any questions, please contact us.

Very truly yours,



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



Water Rights Division - DWR
Conversation or File Documentation

File No. 355-1
357-1

NAME OF PERSON OR FILE: Arthur S. Nicholas

ADDRESS: RR#1, Box 220, Springfield, MO 65723 COUNTY Lawrence

DATE: 6-19-90 TELEPHONE 642-2358

RE: West Water Right Claim Cancellation!!

COMMENTS: On June 11, 1990 I contacted Mr. ^{Arthur} Nicholas re:

the above mentioned vested right claims. He said they
hadn't used them for a long time. I told him we
then have to cancel the claims, he said that was
fine.

> Cancel for abandonment.

Doravon Nicholas 642-3743

Duane 642-3171

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: MP 2 back

355-1

REPORT ON INSPECTION OF PERMIT NUMBER 355-1

DATE August 18, 1993

LOCATION OF THE DAM: Middle of Section 32, T7N-R1E

DAM INFORMATION:

- | | |
|--|--|
| a) height to crest <u>12</u> feet | k) outlet tubes: |
| b) height to primary spillway <u>**</u> feet | 1) diameter <u>24</u> inches |
| c) height to secondary spillway feet | 2) type <u>Corrugated</u> |
| d) crest width <u>10</u> feet | 3) valved <u>Y</u> (Y/N) |
| e) crest length <u>130</u> feet | 4) valve type <u>Screw</u> |
| f) spillway length <u>70</u> feet | 5) location on structure |
| g) spillway width feet | <u>Bottom-middle</u> |
| h) approximate storage <u>2</u> ac-ft | |
| i) approximate storage to crest <u>2</u> ac-ft | |
| j) date constructed <u>1952</u> | 1) category of dam <u>III</u> (I,II,III) |
| | m) inspection sheet completed <u>N</u> (Y/N) |
| | n) name of contractor: <u>NA</u> |

** See outlet Tube

355-1

File No. (355-1)
356-1
357-1

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Arthur Nicholas-Clara Nicholas

ADDRESS: RR1, Box 220, Spearfish, SD 57783 COUNTY: Lawrence

DATE: 26 Aug. 1993 TELEPHONE: 642-2258

RE: Relicensing and Water Rights Cancellation

COMMENTS: On Wednesday, August 18, 1993, accompanied by Mr. Art Nicholas and his son Donavon Nicholas, I inspected the area permitted by Water Right Nos. 355-1, 356-1, and 357-1. Mr. Art Nicholas stated that they have not irrigated since 1967.

The storage dam, authorized under Water Rights Nos. 356-1 and 357-1 had a big hole on the bottom of it and was not holding any water back. Mr. Donavon Nicholas stated that the dam had been out of operation since 1967. The irrigation ditch, constructed in the early '50's was very hard to find since it was covered with vegetation, indicating that it has not been used for a long period of time.

The dam, authorized under WR# 355-1 is still in good shape and is used only for stockwatering.

Recommend: Relicense WR# 355-1 for stockwatering. Cancel Water Rights Nos. 356-1 and 357-1 for abandonment and non-use.



H. RASSOOL AHADI
Natural Resources Engineer III
DENR, Water Rights Division



355-1

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 27, 1993

NOTICE

TO: Clara Nicholas
RR 1, Box 220
Spearfish SD 57783

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

SUBJECT: Hearing to Consider Validation of Recognized Vested Right Claim No. 355-1

A Notice of Intent to validate Claim No. 355-1 was published on June 15 and 22, 1988 in the Lead Daily Call. The Water Rights Division opposed validation of No. 355-1 for purposes of completing an on-site inspection of the claim. The inspection of Claim No. 355-1 was completed on August 18, 1993, by Hassool Ahadi, staff engineer. The inspection found the dry draw dam (2 acre-feet storage capacity) was used for stockwatering only and no longer used for irrigation purposes.

The Water Management Board will consider validation of Claim No. 355-1 at 9:30 am, December 1, 1993, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of the hearing may be later than 9:30 am due to prior agenda items.

Pursuant to the findings of the on-site inspection, validation of Claim No. 355-1 is recommended for 2 acre-feet of storage for stockwatering and domestic use. Following the hearing, the Board is authorized to 1) validate the claim as recommended for 2 acre-feet of storage, 2) validate the claim as licensed prior to the on-site inspection, 3) validate the claim based on evidence presented at the public hearing, or 4) defer validation of the claim. Applicable provisions of the published notice of intent to validate Claim No. 355-1 will still apply at this hearing. A copy of the June 15 and 22, 1988, publication is available upon request.

This hearing is an adversary proceeding. You have the right to be represented by a lawyer. There 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.

cc: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 27, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 27, 1993, regarding Hearing to Consider Validation of Recognized Vested Right Claim No. 355-1, addressed as stated below:

Clara Nicholas, RR 1, Box 220, Spearfish, SD 57783.

Copy Sent Inter-office to:

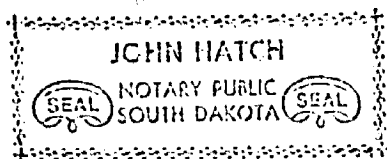
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 1st day of November, 1993.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

355-1



Spencer, S. Dak.
Nov. 3, 1993.

John Hatch, Dept. of Water
Pierre, S. Dak.

Dear Sir:

In regard to validation of claims 355-1 and 356-1, I am requesting that the two water rights be renewed. I feel I have legal excuse for non-use of water. We haven't been able to use our sprinkling system because there wasn't sufficient available water. If at all possible we flood irrigate a small field. These dry years that was even impossible.

We use and depend on water from both claims for our cattle as there is no other source of water. If these water rights are denied me, I will be forced to seek other sources. I feel I should be allowed to use what water that is there to supply stock water. I can not control natural resource as rain - snow - heat and wind.

Therefore I am asking you to renew my claims 355-1 and 356-1 instead of putting another hardship on a farmer trying to make an honest living.

I hope you see fit to renew my two water right claims.

Thank you.

Yours truly

Clara H. McPolas



355-1

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 8, 1993

Clara Nicholas
RR # 1, Box 218A
Spearfish, SD 57783

Dear Mrs. Nicholas:

I am writing in response to your letter on the validation of Recognized Vested Water Right Claim No. 355-1 and the cancellation of Right No. 356-1 which are scheduled for the December 1, 1993 Water Management Board meeting.

South Dakota Codified Law 46-5-37.1 states: "When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water".

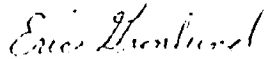
In the case of Recognized Vested Water Right Claim No. 355-1, the State Legislature directed that these type of claims be validated. In simple terms this means that the claim is to be inspected and a water right issued for the amount that the water is being beneficially used. An inspection was conducted of No. 355-1 and the dam was found being used for stock watering, however, no irrigation was being performed and from the appearance of the irrigation ditch no irrigation had taken place for numerous years. The validation of No. 355-1 will allow you to continue your use of water for stock watering has you have done in the past.

An inspection of Claim No. 356-1 found that the dam used for irrigation, stock watering and fish culture breached around 1967. This information was provided to Rassool Ahadi, staff engineer by Arthur and Donovan Nicholas during the inspection. Non-use of water with no attempt to repair the dam is the basis for our recommendation of cancellation of Claim No. 356-1 due to abandonment and forfeiture.

The hearing will be December 1, 1993 at 9:30 am in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD. You may attend this hearing and provide testimony at the hearing. If you choose not to attend, a copy of your letter will be provided to the Board.

If you have any questions, please feel free to contact me. Our intent is to have your water rights reflect the current beneficial use of water; and comply with state statutes. Your current use of water for stock watering will not be impacted by the action we are recommending to the Board.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Gronlund".

Eric Gronlund
Water Rights Division
605 773-3352



355-1

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

DEC 23 1993

Clara Nicholas
RR 1, Box 220
Spearfish SD 57783

Dear Mrs. Nicholas:

The Water Management Board has validated the enclosed Vested Water Right No. 355-1. This validation gives legal status to the claim and is the final document for your vested right. Enclosed is the reissued water license which reflects the amount of water beneficially used.

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

Very truly yours,

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

enclosure

SOUTH DAKOTA

VESTED WATER RIGHT NO. 355-1

Date of Receipt of Claim October 1, 1958.

Date of Validation December 1, 1993.

The Water Management Board validated Vested Water Right Claim No. 355-1 for Clara Nicholas, RR 1, Box 218A, Spearfish SD 57783 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 355-1 authorizes the storage of 2 acre-feet of water in a dry draw dam located in NE 1/4 SW 1/4 Section 32-T7N-R1E
2. The appropriated water is used for livestock watering and may not exceed the amount of water needed for beneficial use for domestic purposes.
The water is to be used during the following annual period:
January 1 - December 31
3. The priority date of the Vested Water Right is June 1, 1952.
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 may not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By:

John Hatch
John Hatch, Chief Engineer
Water Rights Division

DEC 23 1993

date

Department of Environment and Natural Resources

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 355-1

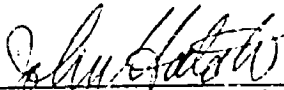
(1) Chanley J. Nicholas, of Spearfish SD 57733 made Application No. 355-1, October 1, 1958 for validation of vested right claim to appropriate 1.1 cubic feet of water per second from springs and a dry draw, Lawrence County, South Dakota for irrigation, stockwatering, fish culture, fishing and fire protection purposes. Vested Water Right No. 355-1 was validated December 1, 1993, with a priority date of June 1, 1952. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

Vested Water Right No. 355-1 was transferred January 8, 1987 to Clara Nicholas.

The original water license issued December 30, 1958 stated that 1.1 cubic feet of water per second was used for the above stated purposes. A field inspection conducted of the water use system found a 2 acre-feet dry draw dam being used for stockwatering purposes only.

(2) The vested right holder is entitled to store 2 acre-feet of water for beneficial use. The location of the dam is: NE 1/4 SW 1/4 Section 32-T7N-R1E.

(3) Pursuant to South Dakota Water Law 46-5-30.1 Clara Nicholas of RR 1, Box 218A, Spearfish SD 57783 the holder and owner of Vested Water Right No. 355-1 is issued a license to appropriate water, the right to store 2 acre-feet of water from a dry draw with a priority date of June 1, 1952 from the location specified in (2) of this license. The water is to be used for the purpose of stockwatering. This license is subject to any limitations or qualifications listed in Vested Water Right No. 355-1 and subject to South Dakota State Law.



JOHN HATCH, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

DEC 23 1993

date