

No. 472-1
Water Division No. 1
(Blanks to be filled in by the Engineer for the W. D. C.)

Tested Right

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of applicant Jacob Nemmen, Timothy Reich, 1001 Kegon Dr.
Postoffice address Belle Fourche, County Butte, State S. Dak.

I. If a corporation NO

- (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: Not applicable

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor) _____
- (b) Cash on hand, \$ _____
- (c) Treasury stock, \$ _____
- (d) Bonds to be issued, \$ _____
- (e) Other resources, \$ _____

2. Name of diversion work Glingman Ditch

3. Amount of water claimed 2XXXxi 2 cubic feet per second

4. Source of water supply Belle Fourche River TAN 22E,
Between a point in the SE 1/4 SE 1/4, Sec. 25A and a point
in the NE 1/4 NW 1/4, Sec 31, TAN R 3E North side
SE 1/4 NE 1/4 of Section 31 on East side bank Butte County.

5. Location of point of diversion Approximate center of SW 1/4 of SW 1/4 of Section 30,

6. Annual period or periods during which water is to be used Summer months

7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Pumped into metal pipes, then into ditch, then onto lands by gravity

(a) Number of acres to be irrigated 146.4778 acres.

(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.) Not applicable

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

(a) Nature of use Not applicable
Name any of the above uses claimed

(b) Amount of power to be generated 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: None- pump and pipes already installed
 (a) Head Gates, \$..... Has on farm when I bought it. (b) Pumping plant, \$.....
 (c) Fluming, \$..... (d) Canal-earth, \$..... Rock, \$.....
 (e) Other structures \$..... Total, \$.....

8. Description of diversion works:

I. Nature of works: (Reservoir, drain, ditch, flume, pumping plant, etc.)
Centrifugal pump run by tractor power into metal pipes

II. Dimensions of works:

(a) Dam: Height _____ feet; length at bottom _____ feet; length at top _____ feet; thickness at bottom _____ feet; thickness at top _____ feet; slope at front water face _____; slope at back face _____ material used in construction _____

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

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

(d) *Canal*: π

(d) Canal. Total length _____ millimeters.

(Give dimensions where reductions in size are made.)

10. Time required for completion of work .. nil .. years.

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

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

...Felle Fourche Daily Post, Felle Fourche, S. Dak.

STATE OF SOUTH DAKOTA

County of Butte..... 85.

I, Jacob Herman, 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 therein stated and shown are true.

Signed

Subscribed and sworn to before me this 21st day of June, 1860.

Stanley H. Clark
Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.

My commission expires
October 21, 1966

NOT TO SCALE

300

100 E-18

100 F-13

- ② Diversions Point
- Lane being regraded
- Pipe
- Batch
- Gated Pipe

ND Shad

Natural Resources Engineer

May 23, 89

025

141

HEL 54

7-2

19.0

11.0

02 HEL

15.0

11.0

02 HEL

15.0

11.0

02 HEL

030

141

20.3

11.0

02 HEL

20.3

11.0

02 HEL

20.3

11.0

02 HEL

20.3

472-1

NOT TO SCALE

Remarks by State Water Resources Commission:

"Vested right claimed"

STATE OF SOUTH DAKOTA
County of Hughes } ss.

Fierre, South Dakota, June 25, 1960

This is to certify that the foregoing application was received by the Commission at 8:00 o'clock a.m. upon the 3rd day of June, 1960.

State Water Resources Commission
By: Burton J. Morris
Chief Engineer, Executive Officer

Number of permit 472-1

June 3, 1960

Date of first receipt of application

Date of return to applicant for correction, amendments or changes required as follows: 1960

Date of receipt of corrected application 1960

Date from which applicant may claim right 1924

Approved June 25, 1960, Recorded in Book 6, Page 92

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 1960

2nd. The whole of said work is to be completed on or before 1960

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is Completed, 1960

4th. The water appropriated shall be used for the purpose of Irrigation

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 2.0 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 experience 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 June 30, 1955; said water to be used during the following described annual period:

during irrigation season

Witness my hand this 25th day of June, 1960

State Water Resources Commission

By: Burton J. Morris
Chief Engineer, Executive Officer

Certificate of Construction issued June 25, 1960

Water License issued June 25, 1960

STATE OF SOUTH DAKOTA

WATER LICENSE No. . . . 472-1 . . .

WHEREAS, On the 3rd day of June A. D. 1960 Jacob Herman

of Belle Fourche County of Butte and State of South Dakota duly made application (No. 472-1) to us for a permit to use 2.0 cubic feet per second of the waters of the Belle Fourche River County of Butte, State of South Dakota for irrigation purposes purposes; and

WHEREAS, On the 25th day of June A. D. 1960 vested right Permit No. 472-1 was issued to said applicant for the diversion of said water, and ~~providing~~ the completion of the works of diversion therein described ~~XXXXXX~~ ~~XXXXXX~~ and for the application to beneficial use of said water ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ and, ~~XXXXXX~~

WHEREAS, On the 3rd day of June A. D. 1960 vested right the holder of said permit duly made proof of the completion of adequate works for the diversion of 2.0 cubic feet per second of said waters, as evidenced by our Certificate No. 472-1 dated June 25, 1960 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 2.0 cubic feet per second of water, with date of priority of 1924 XXX nd,

WHEREAS, On the 3rd day of June A. D. 1960 proof was duly made of the application to beneficial use of 2.0 cubic feet per second of said water, to be used for irrigation 167.8 acres in Section 25, T9N R2E, and sections 30 and 31, T9N R3E

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 Jacob Herman _____ vested right
of Belle Fourche _____ the holder and owner of said permit No. 172-1.
a water right, dating from 1924 _____ to the use of 2.0 _____
cubic feet per second of the waters of the Belle Fourche River _____
in the County of Butte _____ and State of South Dakota, or so much thereof as may be
necessary for the purposes hereinbelow mentioned, to be diverted ~~at~~ ^{between} points in SE 1/4, Sec. 25,
T9N R2E, and in the NE 1/4, Sec. 31, T9N R3E _____
and conducted to and upon portions of Sec. 25, T9N R2E, and Sec. 30 & 31, T9N
R3E, more specifically described in the certificate of completion
of works _____
for the purpose of Irrigation _____

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 25th day of June A. D. Nineteen
Hundred and Sixty.

State Water Resources Commission

By:

Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

Water License No.-----

To _____	Source of Supply _____	County _____	Am't _____	Point of Diversion _____	Place of Use _____	Purpose _____	Date of Priority _____	Recorded in Book _____ of _____ Page _____
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Permit No. 472-1.

Helle Fourche
Water Division No. 1 River Water District

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That Jacob Herman

of Helle Fourche, County of Butte, and State of South Dakota, the holder of Permit No. 472-1, issued upon Application No. 472-1, bearing date of priority of 1924, authorizing the diversion of 2.0 cu. ft. per second of the waters of the Helle Fourche River, County of Butte, State of South Dakota, ~~between a point in the SE¹ SE¹ Sec 25 T9N R2E, and a point in the NE¹ NE¹ Sec 31, T9N R3E~~, for Irrigation.

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 ~~now~~ ^{recognized as} satisfactory ~~for~~ ^{for} diverting and conveying to the place of intended use 2.0 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:

T9N R2E Sec 25 SE¹ SE¹ 40 acres

T9N R3E Sec 30 Lot 4 36.19 acres

SE¹ SW¹ 26.40 acres

Sec 31 Lot 1 40.25 acres

NE¹ NW¹ 25.0 acres

184

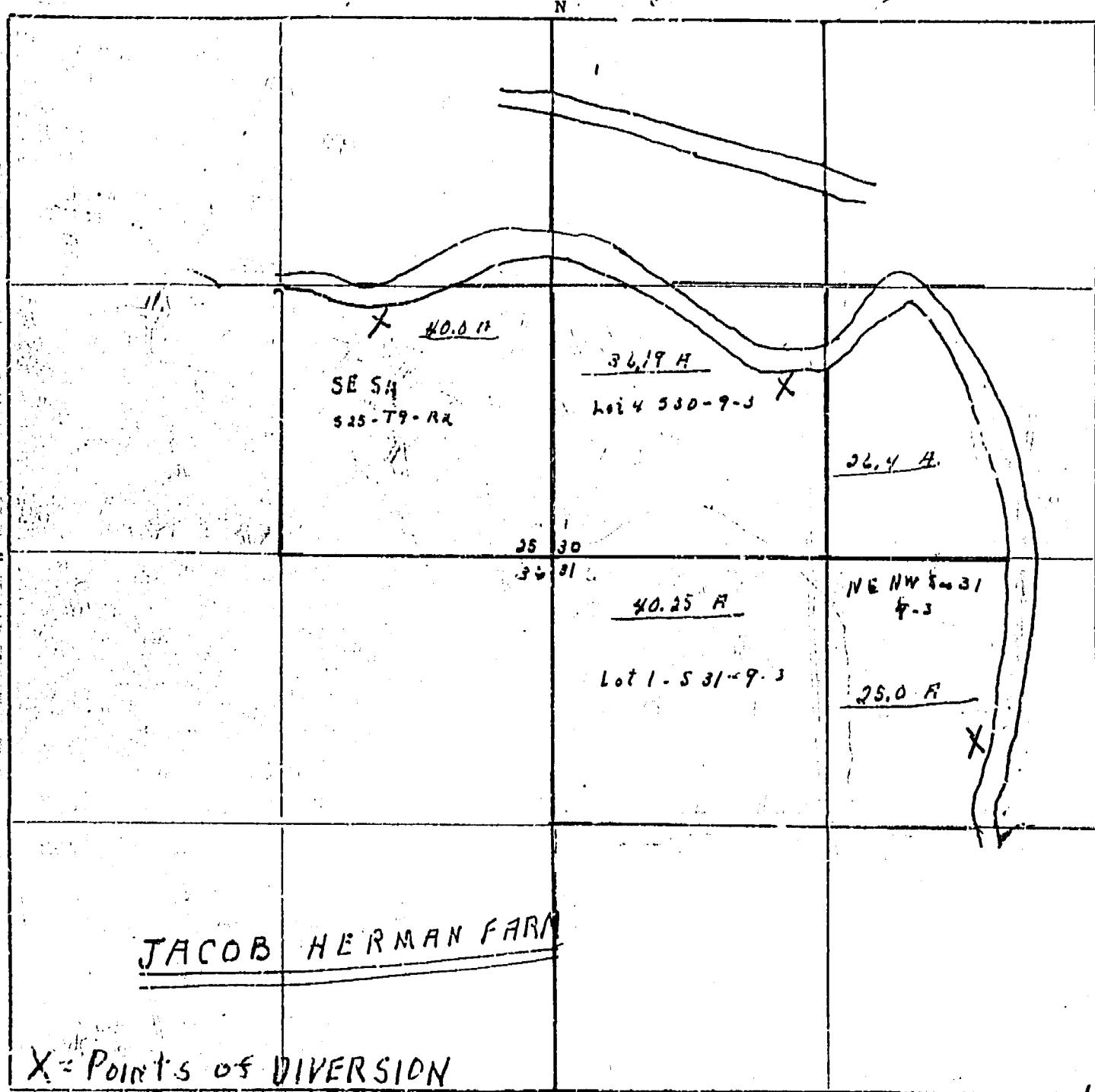
Witness my hand this 25th day of June A. D. 1960.

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Operator _____ Cropland _____ W. S. No. _____
 Legal Description _____ Photo No. _____



Crop	Acreage	Crop	Acreage	Crop	Acreage
Field		Field		Field	
Field		Field		Field	
Field		Field		Field	
Field		Field		Field	
Field		Field		Field	
Field		Field		Field	
Field		Field		Field	

Location No.

Water Division No. Water District

Proof of Application of Water to Beneficial Use**PETITION OF HOLDER**

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

Ans. Jacob Herman, Belle Fourche, South Dakota, Farmer.

Ques. 2. If acting in beh. If 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. Not applicable

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

Ans. June 2, 1960

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

Ans. Belle Fourche River. Approximate center of SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 30; same in NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31

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.

Ans. Centrifugal pump run by tractor; Clingman ditch. Water is pumped out of Belle Fourche River into metal pipes, thence into a system of irrigation ditches.

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.)

Ans. Irrigation of crops 140 acres. Lots 3, 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30; Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township 9 North of Range 3, E.B.H.M. and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 9 North of Range 2, E.B.H.M., Butte County, South Dakota

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

Ans. Not applicable

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

Ans. 2 cubic feet of water per second of time

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. Not applicable

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

Ans. The present permit is just being applied for. However, the applicant and predecessors have pumped water from the Belle Fourche River on the acreage specified and from the points indicated since 1924.

(Sign)

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 Belle Fourche, County of Butte.

State of South Dakota, on this 2nd day of June A. D. 1960.

Witnesses.

After being H. C. Clark
1900

Notary Public

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.

Visited the
Old Observatory

Location No.-----	PROOF OF APPLICATION OF WATER TO BENEFICIAL USE	
PETITION OF HOLDER		
Amount of Water ----- c. f. s.	Source -----	County -----
Purpose -----	Place of Use -----	Date of recording -----
		Received and filed -----

STATE OF SOUTH DAKOTA }
COUNTY OF BUTTE } SS.

A F F I D A V I T

Jacob Herman of Belle Fourche, Butte County, South Dakota
being first duly sworn on his oath deposes and says:

That he is the owner of the following described land:

Lots 3, 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30;
Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township
9 North of Range 3, E.B.H.M. and SE $\frac{1}{4}$
SE $\frac{1}{4}$ of Section 25, Township 9 North of
Range 2, E.B.H.M., Butte County, South
Dakota.

That he bought the above described premises from the Clingman
family in the year 1960. That he farmed and operated it for them
the previous year. That when he farmed it and when he bought it
there was a pump and irrigating ditches adjacent to said pump from
which waters of the Belle Fourche River were pumped by the under-
signed to irrigate the lands described above.

That he has continued to use said pump in irrigating the
above described lands with water pumped out of the Belle Fourche
River every since.

Jacob Herman

Subscribed and sworn to before me this 2nd day of June, 1960.

Sterling H. Clark
Notary Public

My commission expires

Dec. 21, 1966

STATE OF SOUTH DAKOTA)
COUNTY OF BUTTE) SS.

A F F I D A V I T

Neilie Haltiner of Lead, Lawrence County, South Dakota being first duly sworn on her oath deposes and says:

That she is a daughter of Mr. and Mrs. B. W. Clingman, both now deceased, who were the owners of the following described lands:

Lots 3, 4, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30;
Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township 9 North of Range 3, E.B.H.M. and SE $\frac{1}{4}$ of Section 25, Township 9 North of Range 2, E.B.H.M., Butte County, South Dakota.

That affiant was raised on said place and knows of her own knowledge that her father B. W. Clingman pumped water out of the Belle Fourche River to irrigate the lands described above for many years. That to the best of affiants knowledge and recollection such pumping of water out of said River was started in 1924 and continued until 1941.

Neilie Haltiner

Subscribed and sworn to before me the 13 day of May, 1960.

M. R. Parker
Notary Public

My commission expires
May 13, 1986

STATE OF CALIFORNIA)
COUNTY OF EL DORADO)
SS.

A F F L D A V E T.

GLIMMERT

Leonard ~~Kingman~~ of Whitewood, Lawrence County, South Dakota being first duly sworn on his oath deposes and says:

That he is a son of Mr. and Mrs. B. W. Klingman, both now deceased, who were the owners of the following described lands:

Lots 3, 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30;
Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township
9 North, Range 3, E.B.H.M and SE $\frac{1}{4}$ SE $\frac{1}{4}$
of Section 25, Township 9 North, Range
2, E.B.H.M., Butte County, South Dakota.

That affiant was raised on said place and knows of his own knowledge that his father, B. W. ~~McLaughlin~~^{Christensen} pumped water out of the Belle Fourche River to irrigate the lands described above for many years. That to the best of affiant's knowledge and recollection such pumping of water out of said River was started in 1924 and continued until 1958.

Howard Flory

Subscribed and sworn to before me the 19 day of May,
1960.

WD Redfield
Secretary Public

Commission expires

© 1963

STATE OF SOUTH DAKOTA)
COUNTY OF BUTTE) SS.

A F F I D A V I T

Evelyn Bortach of Lead, Lawrence County, South Dakota being first duly sworn on her oath deposes and says:

That she is a granddaughter of B. W. Clingman and a daughter of John Clingman, both now deceased. That her grandfather E. W. Clingman owned, and her father farmed with and for her grandfather B. W. Clingman the following described land:

Lots 3, 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30;
Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township 9 North of Range 3, E. B. H.M. and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 9 North of Range 2, E. B. H.M., Butte County, South Dakota.

That affiant lived on said place for many years and that during the period 1941 to 1950, when she was not away attending school she spent summer on said place.

That affiant knows of her own knowledge that her grandfather B. W. Clingman and her father John Clingman pumped water out of the Belle Fourche River to irrigate the lands described above during each of the years 1941 to 1950. That Mr. Jake Herman purchased the property about that time.

Ms Evelyn Bortach

Subscribed and sworn to before me this 24 day of May, 1960.

M. R. Parker
Notary Public

My commission expires
May 13, 1966

RECEIVED
JUL 21 1961

STATE WATER RESOURCES COMM.
AFFIDAVIT
SOUTH DAKOTA

STATE OF SOUTH DAKOTA)
COUNTY OF LAWRENCE) ss

EVELYN BERTSCH, being first duly sworn on oath, states: That she is a resident of Lead, Lawrence County, South Dakota, and that she is a granddaughter of B. W. Clingman and a daughter of John Clingman, both now deceased; that her grandfather, B. W. Clingman, owned, and her father farmed with and for her grandfather, B. W. Clingman, the following described land:

Lots 3, 4 and the Southeast Quarter of the Southwest Quarter of Section 30; Lot 1 and the Northeast Quarter of the Northwest Quarter of Section 31, Township 9 North of Range 3 East, B. H. M., and, the Southeast Quarter of the Southeast Quarter of Section 25, Township 9 North of Range 2 East, B. H. M., Butte County, South Dakota.

Affiant further states that she lived on the described premises for many years, and lived there specifically during the summer months for the period of 1941 to 1950; that on the 24th day of May, 1960 Affiant made an affidavit in which she stated that B. W. Clingman, her grandfather, and John Clingman, her father, pumped water out of the Belle Fourche River to irrigate the land described above during each of the years 1941 to 1950.

Affiant now states that by her previous affidavit she did not mean to infer that all of the land above described was irrigated from the Belle Fourche River, for the reason that practically all of the land so described was irrigated from the Redwater Ditch, which had no connection with the Belle Fourche River; that to affiant's best recollection, a very small tract of land, not exceeding 4 or 5 acres, was irrigated from the River by a small pump that B. W. Clingman had on the premises, which pump took a small amount of water from the River and put it on a garden patch close to the River.

Affiant further states that this Affidavit is made to set the records straight to show that this Affiant had no intention of indicating or stating that all of the land described above was irrigated from the River and to reiterate that a small portion thereof was the only portion irrigated from the River.

Dated this 22nd day of June, 1961.

Evelyn Bertsch
Evelyn Bertsch

Subscribed and sworn to before me this 22nd day of June, 1961.

Richard A. Furze
Richard A. Furze, Notary Public

My Commission expires May 8, 1966.

STATE OF CALIFORNIA)
COUNTY OF ELDORADO) ss

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AFFIDAVIT
JUL 21 1961
STATE WATER RESOURCES COMM.

LEONARD CLINGMAN, being first duly sworn on oath, states: That he is at present a resident of Placerville, Eldorado County, State of California, having moved to California from South Dakota during the latter part of the year 1960; that he is the son of Mr. and Mrs. B. W. Clingman, both now deceased, who were the owners of the following described lands:

Lots 3, 4 and the Southeast Quarter of the Southwest Quarter of Section 30; Lot 1 and the Northeast Quarter of the Northwest Quarter of Section 31, Township 9 North of Range 3 East, B.H.M., and, the Southeast Quarter of the Southeast Quarter of Section 25, Township 9 North of Range 2 East, B.H.M., Butte County, South Dakota.

Affiant further states that he lived on the described place for the period from 1924 to 1938, and that on the 19th day of May, 1960, affiant made an affidavit stating that B. W. Clingman pumped water out of the Belle Fourche River to irrigate the lands described above during each of the years 1924 to 1938.

Affiant further states that he did not mean to infer that all of the land above described was irrigated from the Belle Fourche River, because practically all of the land was irrigated from the Redwater Ditch, which had no connection with the Belle Fourche River; that to affiant's best recollection, a very small tract of land, not exceeding 4 or 5 acres, was irrigated from the Belle Fourche River by a small pump that B. W. Clingman had on the premises, which pump took a small amount of water from the Belle Fourche River and put it on the small tract of land near the Belle Fourche River.

Affiant further states that this affidavit is made to set the records straight to show that this affiant had no intention of indicating or stating that all of the land described above was irrigated from the Belle Fourche River, and to reiterate that a small portion thereof was the only portion irrigated from the Belle Fourche River.

Dated this 1st day of July, 1961.

Leonard Clingman
Leonard Clingman

Subscribed and sworn to before me this 1st day of July, 1961

Albert P. Clegg
Notary Public
Eldorado County
California

My Commission expires: July 21, 1961.

STATE OF SOUTH DAKOTA)
COUNTY OF LAWRENCE) ss

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JUL 21 1961
AFFIDAVIT
STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

NELLIE HALTNER, being first duly sworn on oath, deposes and states:
That she is a daughter of Mr. and Mrs. B. W. Clingman, both now deceased,
who at one time were the owners of the following described lands:

Lots 3, 4, and the Southeast Quarter of the Southwest Quarter of
Section 30; Lot 1 and the Northeast Quarter of the Northwest Quarter
of Section 31, Township 9 North of Range 3 East, B.H.M., and, the
Southeast Quarter of the Southeast Quarter of Section 25, Township 9
North of Range 2 East, B.H.M., Butte County, South Dakota.

Affiant further states that she was raised on and lived on the described
premises; that on the 13th day of May, 1960, Affiant made an affidavit in
which she stated that her father, B. W. Clingman, pumped water out of the
Belle Fourche River to irrigate the lands described above for many years.
Affiant further stated in said Affidavit that to the best of her knowledge and
recollection such pumping of water out of said River was started in 1924 and
continued until 1941.

Affiant now states that by the said Affidavit dated May 13, 1960 she did
not mean to infer that all of the land above described was irrigated from the
Belle Fourche River, for the reason that practically all of the said land was
irrigated from the Redwater Ditch, which had no connection with the Belle
Fourche River; that to affiant's best recollection, a very small tract of land,
not any larger than four or five acres, was irrigated from the Belle Fourche
River; that this irrigation was accomplished by a small pump that B. W. Cling-
man had on the premises, which pump took a small amount of water from the
Belle Fourche River and put it on the small tract of land close to the River.

Affiant further states that this Affidavit is made to set the records
straight to show that this Affiant had no intention of indicating or stating
that all of the land described above was irrigated from the Beile Fcurche
River; that the complete facts are as stated herein, and that only a small
portion of the entire described lands were irrigated from the belle Fourche
River.

That affiant now lives at Blacktail, in Lawrence County, South Dakota, and
is still relatively well acquainted with the property above described.

Dated this 23 day of June, 1961.

Nellie Haltner

Nellie Haltner

Subscribed and sworn to before me this 23 day of June, 1961.

Richard A. Furze
Richard A. Furze, Notary Public

My Commission expires May 8, 1966.

472-1

OVERPECK, HAMBLIN & MUELLER
ATTORNEYS AT LAW
BELLE FOURCHE, S. DAK.

LEN OVERPECK
LARRY M. HAMBLIN
WALTER MUELLER

July 18, 1961

RECEIVED
JUL 21 1961
STATE WATER RESOURCES COMM.
PIERRE SOUTH DAKOTA

Mr. J. W. Grimes
State Water Resources Commission
Pierre, South Dakota

Dear Mr. Grimes:

This is in regard to the Jacob Herman matter in which he claimed a vested right which vested right was based upon the affidavits of Jacob Herman, Leonard Clingman, Nellie Haltiner and Evelyn Bertsch.

As attorney for Marion R. Wilson of Belle Fourche, South Dakota, who also has certain rights in the Belle Fourche River, the claimed right of Jacob Herman is protested as to the amount of water and acreage. Such protest is based upon the enclosed affidavits of Leonard Clingman, Nellie Haltiner and Evelyn Bertsch.

If there is any other form of notice or protest necessary, please advise what is required of Mr. Wilson to further protest this and he will do so; otherwise, I trust this matter will be taken up by the Commission and appropriate action taken.

Very truly yours,

OVERPECK, HAMBLIN & MUELLER


Len Overpeck

LO
gms
enc

OVERPECK, HAMBLIN & MUELLER
ATTORNEYS AT LAW
BELLE FOURCHE, S. DAK.

LEM OVERPECK
LARRY M. HAMBLIN
WALTER MUELLER

July 28, 1961

RECEIVED
JUL 31 1961

STATE WATER RESOURCES COMM.
PIERRE SOUTH DAKOTA

South Dakota Water Resources Commission
State Capitol Building
Pierre, South Dakota

Attention: Mr. Burton F. Jones

Dear Mr. Jones:

I have your letter of July 27th in regard to Vested Right Permit 472-1 issued to Jacob Herman.

It was my understanding that this vested right was based upon the affidavits of certain people, to-wit: Leonard Clingman, Nellie Haltiner and Evelyn Bertsch. It is not readily apparent to me what a public hearing in this area possibly late this Fall could do to clarify this vested right. The right was based upon affidavits and now you have in your possession affidavits made by the same people correcting and pin-pointing the use made of the water from the Belle Fourche River and limiting it to four or five acres. What a public hearing has to do with this I cannot understand.

I talked with Mr. Grimes and he advised me that he was going to set out a show cause order ordering Jacob Herman to show cause why his vested right should not be changed to comply with the true facts upon which said vested right is based.

Now to postpone this matter until late this Fall for a public hearing does not appear to be proper procedure or fair. If you could summarily grant a vested right No. 472-1 as you did to Mr. Herman upon the affidavits you received from him, general and uncertain as they were, it is difficult to see why the same procedure could not be followed when true explicit affidavits contrary to the original affidavits are presented and, for you to state that no further action will be taken pending findings at a public hearing is difficult procedure to understand.

I would like to have you take this matter up with Mr. Grimes and proceed with the show cause hearing immediately.

Very truly yours,

OVERPECK, HAMBLIN & MUELLER

Lem Overpeck

1.0
SWS

AUGUST 1, 1961

Mr. Jake Herman
Belle Fourche, S. Dak.

Dear Mr. Herman:

Enclosed are copies of affidavits which this office have received from protesters to your "vested right" record 472-1. These affidavits are at variance with those you submitted with your application for recognition of your claim for a "vested right" for use of water from the Belle Fourche River.

Since the enclosed affidavits cast considerable doubt upon the validity of your "vested right" water right record you have established with the Water Resources Commission under provisions of the State Water Laws (61.0102 (7) (a), 61.0104, 61.0106, 1960 Supp. S.D.C.1939), it is necessary to request the following information from you:

1. (a) When was water first used from the Belle Fourche River for irrigation of land now owned by you?
(b) How much irrigated acreage was developed during the five year period immediately following the water use under 1.(a)?
(c) What is the legal description of this irrigated acreage?
(d) Has water been used by pumping from the Belle Fourche River during the period since the initial diversion to beneficial use without a lapse of three years on any portion of the above acreage?
2. (a) Has additional irrigated land been added to those listed under 1, above? If so, when was water first diverted for use on this additional acreage?
(b) How much irrigated land was developed by this enlargement during the five year period immediately following the diversion of water for use on this additional acreage?

Mr. Jake Herman

August 1, 1961

- (c) What is the legal description of this additional irrigated acreage?
- (d) Has water been used by pumping from the Belle Fourche River during the period since the diversion to this additional acreage without a lapse of three years on any portion of this additional acreage?

3. (a) How much land did you irrigate during the period July 1, 1952 to July 1, 1955?

(b) Has the water use been continuous on this land since July 1, 1955?

The State Water Laws recognize any "vested right" that you may have under provisions of the law. However, it is up to you to prove the validity of your claims to such water rights and to fully document the record of such water rights that you establish with the Water Resources Commission. Apparently, other water users do not consider that your present "vested right" water right is determined under provisions of the State Water Laws. It is up to you to support your claim to your "vested right" as recorded with the Commission against those who claim that your "vested right" record is not correct. Please furnish whatever proof you may consider pertinent at the time that you furnish the answers to the questions stated above.

The above information should be sent to this office on or before August 15th, 1961.

Sincerely,

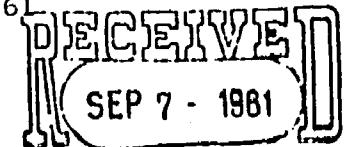
J. W. GRINES
Executive Officer

JW:mf
CC: Overpeck, Hamblin and Mueller,
Belle Fourche, S. Dak.

STERLING H. CLARK
STANTON L. CLARK

CLARK & CLARK
ATTORNEYS AT LAW
516½ STATE STREET
BELLE FOURCHE, S. D.

September 6, 1961



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

State Water Resources Commission
State Office Building
Pierre, South Dakota

RE: Jake Herman

Gentlemen:

Mr. Herman has asked me to reply to your letter of August 31. wherein certain information was requested from him. The questions were stated in your previous letter to him dated August 1.

Replies to question 1A the answer is 1924 or earlier. As to question 1B, 1C and 1D he states that this is unknown to him personally since he was not there on the premises until 1950.

With reference to question 2A he says the answer is no. That he has irrigated the irrigatable parts of Section 30 and 31 from 1950 on but that he abandoned the ditch on Section 25 and has not used them recently. Question 2B does not seem to be applicable in view of the answer to 2A and the same applies to 2C and 2D.

The answer to question 3A he tells me is approximately 110 acres. His answer to question 3B is yes. That in some years there has been more used and in some years less used depending on Redwater and rains but that there was always some irrigation.

Mr. Herman asks me to remind you that he paid for 167 inches of water, holding your receipt for the same, and of course if he is not to be given that much water he should be charged for the smaller amount allocated to him.

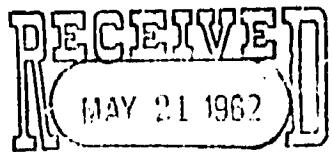
Yours very truly,

CLARK & CLARK

By: *Sterling H. Clark*
DRE

SHC:dre

C-14



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

STERLING H. CLARK
STANTON L. CLARK

CLARK & CLARK
ATTORNEYS AT LAW
516½ STATE STREET
BELLE FOURCHE, S. D.

May 18, 1962

Mr. Lem Overpeck
Attorney at Law,
City.

Dear Lem:

Re: Jacob Herman water right
472-1

With reference to your clients protest of the water right claimed by my client I have now reviewed the matter and the map sent out by the State Water Resources Commission, with Mr. Herman.

As you know he was awarded a vested right under date of June 27, 1960, with a priority of 1924 based upon documents submitted by him to the Commission.

About a month later, July 21, 1961 - which would be a year and a month rather - you sent in some counter showing purporting to negative or refute the showing previously made by Mr. Herman. You were then advised that no further action would be taken on your protest of the action taken in awarding Mr. Herman a vested right until a public hearing was held.

Mr. Herman advises me that while he did not apply for irrigation rights for 167 acres - only for 140 acres - nevertheless the Water Resources Commission billed him for 167 acres and he paid them for that amount. This under the license (water) issued to him along with his vested water right in June of 1960. He further advises me that he has never used all the water allowed him and that last year upon request of the Commission he voluntarily agreed to cooperate with them and divide up the water.

We question the right of your client to question our vested right. Minnie H. Clingman conveyed to Jake or Harry Herman as joint terants with right of survivorship, the following lands by Warranty Deed reading as follows: " Lots 3 and 4, SE 1/4 of SW 1/4 of Section 30; Lot 1, NE 1/4 of NW 1/4 of Section 31, all in Twp. 9, Range 3; and SE 1/4 of SE 1/4 of Section 25 in Twp. 9, Range 2; except that portion of land in the SE 1/4 of SW 1/4 of Section 30, NE 1/4 of NW 1/4 of Section 31, Twp. 9, Range 3, being and lying east of the Belle Fourche river, which has heretofore been conveyed to John H. Durr by Warranty Deed." The Clingman to Herman deed, dated June 23, 1950 is recorded in Book 137 on page 548. The Clingman to Durr deed is recorded in Book 137 on page 175.

Hence Mr. Herman owns all of the Belle Fourche river to the east bank thereof. We are informed that Mr. Durr, wishing to be taxed for dry land only and not irrigable land, requested that his title be issued in that manner. Your client can of course only have such rights in his purchase from Mr. Durr as Mr. Durr had.

CLARK & CLARK
ATTORNEYS AT LAW
510½ STATE STREET
BELLE FOURCHE, S. D.

STERLING H. CLARK
STANTON L. CLARK

Mr. Overpeck p.2

Mr. Herman further advises me that while he has continued to use the old 4 inch pump and has always pumped from the same place, which pumping never dries up the river, your client has been increasing the size and capacity of his pumps and equipment until he now has a 10 inch or 12 inch pump, with electric motor, which can pump the river dry in a matter of four hours or so.

Each of these parties has another source from which to get irrigation water on a part of their lands; Mr. Herman from his ownership of stock in the Pedwater Irrigating Association and Mr. Johnson from his entitlement under the John Lateral of the Belle Fourche Irrigation District. But Mr. Herman feels that neither of these rights has any bearing on the question of a right to irrigate from the Belle Fourche river- that being another matter entirely.

While we have no desire for costly litigation it has to be Mr. Herman's position that he will not voluntarily surrender any of his established rights. That if a public hearing is required because of your clients protests he will appear with witnesses to defend himself and his rights. Further, that should he get an adverse decision following such public hearing he will avail himself of his rights to an appeal to the Courts for redress.

Yours very truly,

Clark & Clark

By: *Henry J. Clark*

SHC/e

472-1 JACOB HERMAN - BELLE FOURCHE RIVER

June 3, 1960.

Form 2 received. Form 2₄ and affidavits probably received at same date.

Form 2₄ and original on form 2 specified 140 acres and 2 c.f.s. of water.

Form 2₄ and the four affidavits all have same legal description of land.

Affidavits - Irrigation from Belle Fourche River.

Nellie Haltner signed May 13, 1960.

The lands described started to be irrigated in 1924 and she knows this irrigation continued until 1938.

Leonard Clineman, signed May 19, 1960.

(Likewise) 1924 to 1938

Evelyn Bertsch, signed May 24, 1960.

She knows the lands described were irrigated during each of the years 1941 to 1950.

Jacob Herman, signed June 2, 1960

That he has irrigated the land described since 1950 - maybe 1949.

June 22, 1960.

B.F. Jones letter suggests that sketch showing irrigated area be sent.

June 25, 1960

Sketch received from Sterling Clark, Attorney. Sketch shows 5 forties - total irrigated 167.8 acres.

Form 2 has change in red to 167.8 acres and change in red of diversion point to correspond to sketch.

June 27, 1960.

Vested Right, Priority 1924.

2.c.f.s., 167.8 acres - Cert. of Completion and Water License sent.

Page 2.

July 21, 1961

Letter received from Lem Overpeck, Attorney for Marion R. Wilson enclosed affidavits signed by:

Evelyn Bertsch	June 22, 1961
Leonard Clingman	July 1, 1961
Nellie Haltiner	June 23, 1961

In each of these new affidavits, the signers state in their previous affidavits they did not infer that all of the land described had been irrigated and in actual fact the land they know to be irrigated was not larger than 4 or 5 acres.

July 27, 1961.

B.F. Jones in letter to Lem Overpeck states no further action will be taken on letter protesting vested right of Jacob Herman until Public Hearing is held.

July 31, 1961.

Reply from Overpeck suggests that a show cause order should be issued to Jacob Herman immediately.

August 1, 1961

J.W. Grimes letter to J. Herman informs him of protest and asks specific questions about his irrigation.

August 5, 1961/

Letter received from Sterling Clark, Attorney for J. Herman asks for copies of the new affidavits, which had been omitted from the August 1, 1961 letter.

August 7, 1961.

Affidavits sent.

August 31, 1961.

Follow up letter sent to J. Herman. September 8, 1961 deadline set for answering August 1, 1961 letter.

September 7, 1961.

Reply received from Clark for Herman. In effect his letter states that while irrigation from the Belle Fourche River on land now owned by J. Herman, started in 1924, Mr. Her. in fact did not know the size or description of lands irrigated, or the periods of time the land was irrigated, until 1950 when he was on the premises. That he has abandoned irrigation in Section 25 and since 1950 he has irrigated approximately 110 acres on what could be considered as a continuous basis.

Page 3.

September 7, 1961, Continued:

Note: Subtract' on of the land shown as being irrigated in Section 25 on the sketch received June 25, 1960 would leave 127.8 acres of land being irrigated.

LAW OFFICES OF
RICHARDS & RICHARDS
20 LEE STREET - P. O. BOX 373
DEADWOOD, SOUTH DAKOTA 57732

CLINTON G. RICHARDS
REED C. RICHARDS

AREA CODE 605
PHONE 570-2572

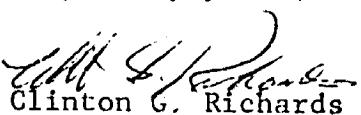
May 9, 1978

Mr. J. W. Grimes
Chief Engineer
State Water Resources Commission
Pierre, South Dakota 57501

Dear Sir:

I am representing the purchaser of some land in Butte County owned by Jacob Herman. Mr. Herman holds Water License No. 472-1 for the use of certain water from the Belle Fourche River. The purchaser, of course, is very much interested in acquiring this water right. I would appreciate very much your telling me if this water right is in force and effect and good standing, and what documents are required to transfer it on the record from Mr. Herman to my client. I will appreciate receiving your advice as soon as convenient as the transaction must be closed in the near future.

Very truly yours,


Clinton G. Richards

CGR/vh



NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights Commission
Foss Building
Pierre, SD 57501

Date: 2 May 79

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

168.24 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, T9N, R2E and Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of

Section 30, Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31 of T9N, R3E

formerly owned by Jacob Herman, Belle Fourche, SD

has been transferred to Timothy Reich, 1007 Kingsbury, Belle Fourche, SD 57717

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

Water Right Permit No. 472-1 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 Office of Water Rights Commission as evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)
County of BUTTE) ss.

I, TIMOTHY REICH being first duly sworn on my oath despose 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.

Subscribed and sworn to before me this 2ND Day of MARCH 19 79.

H. E. Conley
(Notary Public)



H. E. Conley, Notary Public
Butte County, South Dakota
Commission Expires Nov. 16, 1983

SOUTH DAKOTA



Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division (605) 773-3352

June 10, 1981

Timothy Reich
1007 Kingsbury
Belle Fourche, SD 57717

Mr. Reich:

The rules adopted by the Water Management Board for establishing a water use control area on the Belle Fourche River, Whitewood Creek and Owl Creek requires that the water right holder be assessed a fee of ten dollars for each cubic foot per second or portion thereof of the diversion capability of the diversion works plus twenty-five cents for each acre irrigated as shown by the water rights of record in the Division of Water Rights. These fees are required to be paid to the Division of Water Rights by July 1, 1981.

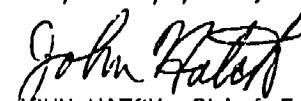
Permits for which fees have not been paid by July 1, 1981 shall be refused the right to divert water for the remainder of the year. The fees paid will be used to defray the costs of providing water master services within the water use control area. The following is a tabulation of your assessment.

<u>Permit No.</u>	<u>Diversion Rate</u>	<u>Acreage</u>	<u>Fee</u>
472-1	2.0 cfs	167.84	\$62.00
			TOTAL
			\$62.00

Please make check or money order payable to the Dept. of Water and Natural Resources and send to the Division of Water Rights, Joe Foss Building, Pierre, SD 57501.

If you have any questions, do not hesitate to contact this office.

Very truly yours,


JOHN HATCH, Chief Engineer
Water Rights Division

JH/JW/gy

Equal Opportunity Employer

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 8275

PIERRE, _____ June 17, 1981

RECEIVED OF ... Timothy D. Reich, 1007 Kingsbury, Belle Fourche SD 57717
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit to Appropriate Water No. _____ (examination, processing, recording and filing) _____		
Fee for inspecting Construction, and issuing Cert. of Construction No. _____		
Fee for inspecting Beneficial Use, and issuing Water License No. _____		
Fee for issuing Location Certificate-Dry Draw, No. _____		
Fee for filing _____		
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for water master services on WR# 472-1 (any other work as provided by law) _____	62	00
TOTAL		62 00

WATER RIGHTS COMMISSION

By *John Hatch*
Chief Engineer, Executive Officer
JOHN HATCH *dw*

Belle Fourche River and Tributaries

472-1

Water Use Control Area

Financial Report

1981

Summary of Receipts and Expenditures

June, 1981 - July, 1981

	<u>Receipts</u>	<u>Disbursements</u>	<u>Balance</u>
Collections (Water User's fees)	\$7,379.37	\$	\$
Watermaster (Salary and Mileage)		2,028.62	5,350.75
	<u>\$7,379.37</u>	<u>\$2,028.62</u>	<u>\$5,350.75</u>

Detailed Report of Receipts

No.	Name	Diversion Rate	Acreage	Receipts (total fee)	Amount Returned
789-1	Louis Budmayr	0.90	95.50	\$ 34.00	\$ 30.10
429-1	Ed Brunner & Son	1.43	106.00	46.50	41.16
429-1A	Hal Pittman	1.07	79.00	40.00	35.41
506-1	Bob Bartels	.23	17.00	14.25	12.61
892-1	Bob Bartels	1.00	70.00	27.50	24.34
417-1A	Quinten & Karen Watson	.53	76.00	29.50	26.11
417-1B	Clarence Anderson	1.43	206.00	64.00	56.65
417-1C	Mrs. Eddie (Vivian) Anderson	1.15	69.00	69.50	61.52
531-1	Ruby Dillinger	1.27	89.29	42.50	37.62
1152-1	Charles & Dorothy Shaykett	4.61	324.70	131.00	115.96
1210-1	Charles & Dorothy Shaykett	1.80	128.30	52.00	46.03
1132-1	Ezra Pauley	4.00	285.00	111.25	98.48
1204-1	Art Heitz, Jr.	2.19	153.00	68.25	60.41
1205-1	Harlan K Schnell	1.88	132.00	53.00	46.91
1215-1	H L & Mildred Brunner	3.00	264.50	96.12	85.08
418-1	Alex Miller	1.67	117.00	49.25	43.59
1213-1	Robert W Grant	1.43	100.00	45.00	39.83
419-1	Herman Stark	2.50	179.00	74.75	66.17
421-1	Lee Dutton	2.50	175.00	73.75	65.28
1049-1	Thorval Jensen	1.47	103.00	45.75	40.50
1122-1	Thorval Jensen	4.88	324.14	135.75	120.16
1160-1	Thorval Jensen	1.90	133.49	53.50	47.36
1029-1	Homestake Mining	1.39	97.00	44.25	39.17
910-1	Donald Halbmaier	2.50	175.00	73.75	65.28
1165-1	Tom Bowen	2.85	200.00	80.00	70.81
722-1	Edith Anderson & Tom Bowen	2.80	196.00	79.00	69.93
1148-1	Homestake Mining	13.50	948.00	377.00	333.71
430-1	Gerald Wetz	1.65	116.00	49.00	43.37
432-1	Roy Casteel	4.30	307.00	126.75	112.20
414-1	Mary Ann Schummer	3.40	239.00	99.75	88.30
411-1	Edward Poss	5.10	452.00	173.00	153.13
440-1	David A Richards	5.00	416.00	154.00	136.32
1149-1	Homestake Mining	3.20	226.00	96.50	85.42
1150-1	Homestake Mining	7.60	534.00	213.50	188.98
437-1	McNenny Ranch Inc.	5.90	418.00	164.50	145.61
1151-1	Homestake Mining	5.50	390.00	157.50	139.41
821-1	George Levin & Sons	7.00	490.00	192.50	170.40
1136-1	George Levin & Sons	3.07	215.00	93.75	82.98

Detailed Report of Receipts Cont.

No.	Name	Diversion	Receipts (total fee)	Amount Returned
		Rate	Acreage	
1152-1	Homestake Mining	6.60	462.00	\$ 164.20
449-1	George Wurnig	5.00	365.00	151.59
1153-1	Homestake Mining	6.10	428.00	156.68
311-1	Lester Clark	15.61	1,163.60	408.06
310-1	Lester Clark	6.76	473.20	166.85
248-1	Lawrence Burke	0.90	64.00	23.01
1077-1	Charles M Arneson	1.44	131.00	52.75
165-1	Trigg Ranches Inc.	4.30	301.00	275.00
122-1	Trigg Ranches Inc.	3.75	263.00	243.42
1146-1	Trigg Ranches Inc.	1.89	336.00	
928-1	Charles Wennberg	2.20	155.00	60.86
912-1	Gilbert Alan	1.46	101.80	40.28
926-1	Donald Berger	2.04	143.00	58.20
1176-1	Arthur J Odekoven	2.30	163.00	62.63
1190-1	Neil Shuck	3.53	247.00	101.75
611-1	Alex Miller	3.35	235.00	98.75
569-1	Ramona McFarland	0.97	68.00	23.90
870-1	Eugene C Bishop	0.70	49.00	19.70
401-1	Kenneth & Dorothy Aker	1.88	132.00	53.00
135-1	Walter Hoffman	3.11	220.00	95.00
408-1	James A Mickelson	3.10	218.00	94.50
469-1	Raymond Garness	1.30	91.00	42.75
1218-1	William Dillinger	.40	42.70	20.75
1222-1	John Ismay(Norman)	1.11	79.00	39.75
1154-1	Homestake Mining	4.50	319.00	129.75
285-1	Edgar Colin Smart	1.42	150.00	67.50
331-1	Anna Stetta (Louis Budmayr)	1.87	131.00	52.75
472-1	Timothy Reich	2.00	167.84	62.00
275-1	John Durr	1.90	133.00	53.25
271-1	Herbert Clarkson	.06	43.00	20.75
296-1	Robert Helmer	2.50	179.00	74.75
308-1	Lewis Bertolotto	.64	45.00	21.25
282-1	James Jeffrey	1.05	73.70	38.50
1182-1	George Leach	1.60	108.00	47.00
228-1	Thornton Vallery	.72	54.17	23.75
290-1	Thornton Vallery	5.50	386.00	156.50
264-1	Thornton Vallery	.22	15.30	14.00
321-1	Clarence & Lawrence Foos	1.64	115.00	48.75
962-1	Ione A Shevling	3.00	251.00	92.75
960-1	Thornton & Gwenivere Vallery	.50	35.00	18.75
289-1	Thornton & Gwenivere Vallery	1.02	75.00	38.75
273-1	Ruben & Esther Kling	.46	32.60	18.25
273-1A	Ruben & Esther Kling	1.54	108.40	47.25
1177-1	Ruben & Esther Kling	3.30	231.00	97.75
416-1	Creta & Leslie Miner	2.66	198.00	79.50
865-1	Solomon Stark	2.14	150.00	67.50
287-1	David G Rathbun	2.20	154.00	68.50
1126-1	John Lewis	3.11	339.00	124.75

SOUTH DAKOTA

Department of Water & Natural Resources

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

June 21, 1988

472-1

NOTICE

TO: Timothy D. Reich
1007 Kingsbury
Belle Fourche SD 57717

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

SUBJECT: Notice of Shutoff Order to Belle Fourche River
Irrigators Above Belle Fourche Irrigation Project
Diversion Canal

The Belle Fourche Irrigation District has ordered releases of water from the Keyhole Reservoir in Wyoming. As a Belle Fourche River Irrigator, you are ordered to Shutoff any irrigation pumping from the Belle Fourche River effective immediately.

Contact us, if you have any questions.

cc: Belle Fourche Irrigation District



CERTIFICATION

I hereby certify that on June 21, 1988 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice of Shutoff Order to Belle Fourche River Irrigators Above Belle Fourche Irrigation Project Diversion Canal addressed as follows:

Timothy D Reich
1007 Kingsbury
Belle Fourche SD 57717

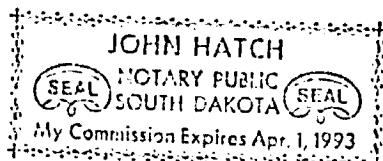
Harold Skjoldah, Manager
Belle Fourche Irrigation District
PO Box 225
Newell SD 57760



KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of June, 1988.


John Hatch
Notary Public



Department of Water & Natural Resources

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

June 24, 1988

NOTICE

TO: Timothy Reich
1007 Kingsbury
Belle Fourche, SD 57717

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

SUBJECT: Rescission of Shutoff Order Dated June 21, 1988 for
Water Permit No. 472-1



The shutoff order was mistakenly issued to you. A review of the locations of the water rights showed that your water right is below the Belle Fourche Irrigation District's diversion dam. Therefore, the shutoff order issued to you is rescinded. We apologize for any inconvenience that the order may have caused you.

cc: Belle Fourche Irrigation District



CERTIFICATION

I hereby certify that on June 24, 1988 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice to Rescind Shutoff Order dated June 21, 1988 addressed as follows:

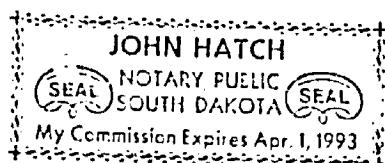
Timothy D Reich
1007 Kingsbury
Belle Fourche SD 57717

Harold Skjoldah, Manager
Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

Karen Schlaak
KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of July, 1988.



John Hatch
Notary Public

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

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

September 21, 1988

NOTICE

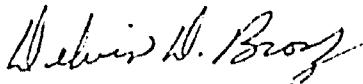
Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

Dear Mr. Reich:

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). 472-1 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,



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



SOUTH DAKOTA

Department of Water & Natural Resources

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

December 1, 1988

Vested Water Right
Claim No. 472-1

Timothy Reich
1607 Kingsbury
Belle Fourche SD 57717

Dear Mr. Reich:

Enclosed is a copy of a letter received from the U.S. Department of Interior, Bureau of Reclamation. The Bureau of Reclamation is opposing those vested water right claims in Pennington, Perkins, Butte and Fall River counties which have never been investigated by the Division of Water Rights. Earlier, you received a letter stating that I was opposing your claim until an investigation can be completed.

After the investigation has been completed, you and the Bureau of Reclamation will be notified as to the date, place and time of the hearing on your vested water right claim. At that time all parties of record will have an opportunity to testify on the validation.

If we can answer any questions, please contact us.

Very truly yours,



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

cc: Bruce Laymon, Bureau of Reclamation



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

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3191

February 17, 1989

Timothy Reich
1007 Kingsbury
Belle Fourche, SD 57717

Dear Mr. Reich:

On October 6, 1988, the Water Management Board adopted rules to implement a 1988 law for application of chemicals through irrigation systems. The rules establish equipment standards, performance standards and installation requirements for irrigation systems that apply chemicals (fertilizers, insecticides, or herbicides) with irrigation water.

You have indicated on your 1988 Water Management Board Irrigation Questionnaire that you do apply chemicals with irrigation water. A copy of the new rules for chemigation are enclosed for your information.

The new standards include:

- * a check valve between the irrigation pump and the point of chemical injection;
- * a vacuum relief valve on top of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a low-pressure drain on the bottom of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a chemical injection line check valve between the chemical injection pump and the point at which the chemical is injected into the irrigation line; a second check valve is required if the chemical injection pump is not a positive displacement pump;
- * an interlock system which ensures that the chemical injection pump will stop whenever the irrigation pump stops;
- * an inspection port between the irrigation pump and the check valve on the irrigation line;



Each of these equipment requirements are discussed more thoroughly in Sections 74:02:09:05 through 74:02:09:10 of the enclosed rules. Appendix A contains diagrams of the arrangements of these anti-pollution devices.

The equipment must be installed according to the manufacturer's specifications, calibrated, and maintained in good working condition. All chemical product labels must be followed and warning signs must be posted. These rules also require reporting of all spills, accidents, and system malfunctions. A 24-hour telephone number is provided.

The chemigation rules contain notification and record keeping requirements. Prior to using chemigation, notification must be given to the Chief Engineer on the enclosed Form 1C. Information that must be provided in this notification includes the water permit or right number, the name, address, and telephone number of the water permit or right holder and of the system operator, and the legal description of the lands on which the system is located. A record of the name, quantity, dates and hours of each chemical applied must be provided to the Chief Engineer on Form 2C. A copy of this form is also enclosed for your information. It will be mailed with the annual irrigation questionnaire and must be returned with the questionnaire by the date specified. If you have any questions regarding these rules or need additional copies of the forms, please contact Susan Bowar, Water Rights Engineer (605-773-3352).

Very truly yours,

John W. Hatch
for JOHN HATCH, Chief Engineer
Water Rights Division



South Dakota Department of Water & Natural Resources

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

July 12, 1990

472-1

NOTICE OF SHUT OFF ORDER

TO: Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717 *Delvin D. Brosz*

FROM: Delvin D. Brosz, P.E.
Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Division

SUBJECT: Shut Off Order, Effective Immediately.

Due to the lack of natural flows in Belle Fourche River, you are ordered to cease any diversion from the Belle Fourche River until the natural flow in the river improves.

Present flows in the river are water being bypassed by the Belle Fourche Irrigation District for downstream domestic users and water purchased by the Belle River Pumpers Association.

If flow conditions do improve, notices will be issued, based on senior priority dates, to allow pumping from the river.

If you have any questions, please contact Rassool Ahadi, Division of Water Rights, Joe Foss Building, Pierre, SD 57501, phone (605)773-3352.

cc: Belle Fourche Irrigation District
Belle River Pumpers Association, c/o Thornton Vallery

CERTIFICATION

I hereby certify that on July 12, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Shutoff Order for Water Right No. 472-1 addressed as stated on the notice with a copy sent to:

Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

Belle River Pumpers Association
c/o Thornton Valley
HCR 76, Box 188
Niobrara SD 57762

Karen Schlaak
KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 15th day of July, 1990.

John Hatch
JOHN HATCH
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires April 1, 1993

John Hatch
Notary Public

South Dakota
Department of
Water & Natural Resources

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

August 2, 1990

472-1

RESCISSON OF SHUTOFF ORDER

TO: Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

FROM: Delvin D. Brosz, P.E. *Delvin D. Brosz*
Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Division

SUBJECT: Rescission of July 12, 1990 Shutoff Order to Belle
Fourche River Water Right Holders

Since the flows in Belle Fourche River have improved and the
Belle River Pumpers Association is not ordering water from
Keyhole Reservoir, I am rescinding the July 12, 1990 shutoff
order, effective immediately.

Diversion of water from Belle Fourche River must be based on
priority date. Flows must still be bypassed for downstream
domestic use.

If you have any questions, please contact Rassool Ahadi, Division
of Water Rights, Joe Foss Building, Pierre, SD 57501, Phone
(605)773-3352.

cc: Belle Fourche Irrigation District
Belle Fourche Pumpers Association, c/o Thornton Vallery

CERTIFICATION

I hereby certify that on August 2, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Recission of Shutoff Order for Water Right No. 472-1 addressed as stated on the notice with a copy sent to:

Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

Belle River Pumpers Association
c/o Thornton Vallery
HCR 76, Box 188
Nisland SD 57762

Karen Schlaak
KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of August, 1990.

John Hatch
JOHN HATCH
NOTARY PUBLIC
STATE COURT DAKOTA
My Commission Expires Aug. 1, 1993

John Hatch
Notary Public

South Dakota

GREAT FACES. GREAT PLACES.

DEPARTMENT OF WATER & NATURAL RESOURCES
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

April 24, 1991

472-1

Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

Dear Mr. Reich:

The Water Management Board has validated the enclosed Vested Water Right No. 472-1. This validation gives legal status to the claim and a water license will be issued for the vested right at a later date. You will be contacted regarding the licensing of the vested right.

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

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

enclosure

SOUTH DAKOTA

VALIDATION OF VESTED WATER RIGHT CLAIM NO. 472-1 FOR IRRIGATION

Date Claim Accepted For Filing June 3, 1960.

Date of Validation September 27, 1989.

Pursuant to SDCL 46-2A-17 the Water Management Board validated Vested Water Right Claim Permit No. 472-1 for irrigation purposes for Timothy Reich, 1007 Kingsbury, Belle Fourche SD 57717 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 472-1 appropriates 0.97 cubic feet of water per second from the Belle Fourche River to irrigate 68.2 acres. The Belle Fourche River diversion point is located in the NE1/4 SE1/4 section 25-T9N-R2E and the irrigated acreage is located in Lot 4, SE1/4 SW1/4 section 30-T9N-R3E; SE1/4 SE1/4 section 25-T9N-R2E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per acre per year for each acre of irrigated land. The water is to be used during the following annual period: April 1 - October 31.
3. The priority date of the Vested Water Right is January 1, 1924.
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.

QUALIFICATIONS

1. Vested Water Right No. 472-1 is subject to domestic use rights.
2. The right is validated for 0.97 cfs for irrigation purposes only to the extent that it is used on the 68.2 acres of land set out in the "Report of Examination of Works and/or Application of Water to Beneficial Use," dated March 17, 1989, and signed by Rassoul Ahadi.

WATER MANAGEMENT BOARD

By:


John M. Hatala
Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

APR 24 1991

date

Mr. Herbert M. Clarkson
RR 1, Box 224
Belle Fourche, SD 57717

August 30, 1988.



South Dakota Dept. of Water
& Natural Resources
Joe Foss Building
523 East Capital
Pierre, SD 57501-3181

Re: Vested Water Right Claim #472-1

Ladies & Gentlemen:

I wish to oppose validation of the above named Claim #72-1 on the following grounds.

I have been a resident of Butte County South Dakota on the same location, Section 34-9N-3E, since 1932 and am located roughly three miles downstream from the mentioned location.

To the best of my knowledge the mentioned irrigated land has been furnished water by the Redwater Ditch Company continuously since my arrival in the Belle Fourche Valley in 1932 and for many years prior.

In all of my years in this area, the only time that any effort was made to pump from the Belle Fourche river was on a dry year in the early 1950's. I feel that it is inconceivable to believe that this permit has been used beneficially every three years when a reliable source of water is available and paid for.

A group of farmers in the valley organized as the Belle Fourche River Pumpers Association and have purchased storage in the Keyhole Dam in Wyoming. This water is delivered down the Belle Fourche river at our request in conjunction with delivery to the Belle Fourche Irrigation District and Orman Dam. We do not intend to have this water used during critical dry periods by irrigators who have other sources of water.

As a permit holder of Permit #271-1 which is the only water available to irrigate my lands, I feel I must protest the validation of Permit #472-1.

Sincerely yours,

Sincerely yours,

Herbert M. Clarkson

eg



Department of Water & Natural Resources

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

September 6, 1988

Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

Dear Mr. Reich:

Enclosed is a copy of a letter received from Herbert M. Clarkson opposing the validation of your Vested Water Right Claim No. 472-1. Mr. Clarkson believes that the claim has been forfeited due to nonuse as outlined under SDCL 46-2A-18 and 46-5-37. A vested water right claim can be lost when the 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.

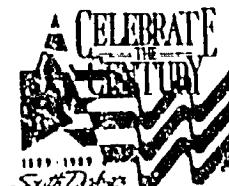
You and Mr. Clarkson will be notified as to the date, place and time of the hearing on vested Water Right Claim No. 472-1. At that time you and Mr. Clarkson will have the opportunity to present evidence as to why the claim should be validated or should be cancelled. If you agree that the claim has been forfeited and can be cancelled, please let us know. A validation hearing will not be necessary if No. 472-1 may be noticed for cancellation.

If you have any questions or need additional information, please contact us.

Very truly yours,

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

cc: Herbert M Clarkson



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

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3161

September 27, 1988

472-1

Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

Dear Mr. Reich:

Enclosed is a copy of a letter received from R. Thornton Vallery opposing the validation of your vested Water Right Claim No. 472-1. Mr. Vallery states the reasons for this opposition in the letter.

You and Mr. Vallery will be notified as to the date, place and time of the hearing on vested Water Right Claim No. 472-1. At that time, you and Mr. Vallery will have the opportunity to present evidence as to why the claim should be validated or should be cancelled. If you agree that the claim has been forfeited and can be cancelled, please let us know. A validation hearing will not be necessary if your claim can be noticed for cancellation.

If you have any questions or need additional information, please contact us.

Very truly yours,

John D. Hatch
John D. Hatch, Chief Engineer
Water Rights Division
605 773-3352

cc: R. Thornton Vallery



Water District

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

TO: Chief Engineer, Division of Water Rights, DWNR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by Jacob Herman (X-owner)
Timothy Reich-present owner of 1007 Kingsbury Belle Fourche SD holder of
Permit No. 472-1, bearing the priority of 1924 19 authorizing
the diversion of 2.0 cu. ft. per sec. of the waters of Belle Fourche River
for irrigation purpose, in Butte County.

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

A. Works used to divert the water:

A pump: Rainmaster, 600 gallons per minute capacity.

A motor: International Harvester, 50 horse power.

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

Approximately 1 miles of irrigation ditches.

1200 feet of 8 inch Aluminum pipes.

C. Works used to apply water to beneficial use:

Gravity system of irrigation using irrigation ditch and gated pipes.

The system is in the following condition goodThe point of diversion is located 550 feet west, 1400 feet north from the Southeast corner of
Section 25, T9N-R2E (NE $\frac{1}{4}$ SE $\frac{1}{4}$)The works are capable of diverting and conveying to the place of use 1.3cu. ft. per second of water which is to be used for irrigation

Water has been put to beneficial use to the maximum extent as follows:

<u>Section 25, T9N-R2E</u>	<u>Section 30, T9N-R3E</u>
<u>SE$\frac{1}{4}$ SE$\frac{1}{4}$ 22.9 ac.</u>	<u>SW$\frac{1}{4}$ SW$\frac{1}{4}$ 29.2 ac. (Lot 4)</u>
	<u>SE$\frac{1}{4}$ SW$\frac{1}{4}$ 16.1 ac.</u>

comprising a total of 68.2 acres of land and the license should be issued for 0.97 ctsApplicable permit qualifications have been complied with X Yes NoExceptions to compliance are: _____ Date 4/17/89

(Signature)

McShack

LICENSE FOR PERMIT NUMBER 472-1

1. Legal location of wells: NA

~~structures~~: NE1 SE1 Section 25, T9N-R2E

2. Well Information: Well Drilling Firm NA

No. of wells _____ Depth _____

Casing a) diameter _____ Screen a) type _____

b) length _____ b) length _____

c) type _____ Static Water Level _____

Pump a) make Rainmaster Motor a) make International Harvester

b) model 8 DP b) model no. 544

c) size 8 inches c) horsepower rating 50

d) capacity 600 GPM d) motor efficiency rating

e) turbine pump. no. of stages _____

3. Distribution lines:

Irrigation Ditch: 2 feet wide, 1.5 feet
deep, $\frac{1}{2}$ mile long.

a) size of lines 8 inches

b) type Aluminum

c) length 1200 feet

4. Dam information:

a) height to crest _____

i) outlet tubes:

1) diameter _____

b) height to spillway _____

2) type _____

c) crest width _____

3) valued (Y/N) _____

d) crest length _____

4) valve type _____

e) spillway length _____

5) location on structure

f) spillway width _____

g) approx. storage _____

h) Distribution lines or canals:

1) size _____

1) diameter _____

2) type _____

2) type _____

3) length _____

3) valve type _____

5. System Type: a) sideroll:

1) length _____ feet

b) towline:

2) diameter of pipe _____

1) length _____ feet

3) make, model & number of sprinklers

2) make, model & number of sprinklers

4) spacing of sprinklers _____

3) spacing of sprinklers _____

5) nozzle size _____

4) nozzle size _____

5. System Type: c) center pivot

- 1) make _____
- 2) number of towers _____
- 3) distance between towers _____
- 4) overall length _____
- 5) End gun (Y/N) _____
- 6) high or low pressure _____
- 7) make & size of nozzles _____
- 8) PSI reading while system is running _____
- 9) GPM _____

d) Gate Pipe

- 1) length 1000 feet
- 2) diameter 8 inches
- 3) spacing of gates 24 inches

e) Siphons

- 1) number _____
- 2) size _____

f) Portable boom

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____

g) Gun

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____
- 6) hose size _____
- 7) hose length _____

h) Hydromatic

- 1) make _____
- 2) model _____
- 3) serial number _____
- 4) length _____
- 5) nozzle size _____
- 6) spacing _____
- 7) PSI _____
- 8) capacity (GPM) _____

YES NO Check Items

NA _____

1. Soil and water permit lands agree with lands being irrigated and lands listed on permit.
2. Special Qualifications to permit being abided by.
3. All Structures, wells and lands on map.

REMARKS:

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

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-1313

July 5, 1989

TO: Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

Herbert M. Clarkson
RR 1, Box 224
Belle Fourche SD 57717

R. Thornton Vallery
HCN 76, Box 138
Nisland SD 57762

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

SUBJECT: Validation of Vested Right Claim No. 472-1, Timothy Reich

The Water Management Board will consider Validation of Vested Right Claim No. 472-1 at 10:00 am, July 26, 1989 at the Hilton Inn, Deerfield Room, 445 Mt. Rushmore Road, Rapid City SD. The agenda time is an estimate. The actual time of hearing may be later than 10:00 am due to prior agenda items.

This hearing is being held because Herbert M. Clarkson and R. Thornton Vallery oppose validation of Vested Right Claim No. 472-1. The hearing is an adversary proceeding. Any person having filed a petition and the Vested Right Claim holder have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

The applicable provisions of the Notice of Intent to Validate Vested Water Right Claims published in the Belle Fourche Daily Post, Belle Fourche SD on June 21 and 23, 1988 will still apply at this hearing.

cc: John Haak, Assistant Attorney General



Mr. [REDACTED] of [REDACTED] have personally deposited
one (1) large, stamped envelope containing a Notice
of Non-Reliance on the Second Right, Claim No. 374-1, addressed to
[REDACTED].

Timothy Rech
1007 Kingsbury
Belle Fourche SD 57717

Herbert M. Clarkson
R# 1, Box 224
Belle Fourche SD 57717

R. Thornton Valley
HCR 76, Box 188
Nisland SD 57762

Karen Schlaak
KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of July, 1989.

JOHN HATCH
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires Apr. 1, 1993



South Dakota Department of Water & Natural Resources

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

July 3, 1989

NOTICE

TO: Timothy Reich
1001 Kingbury
Belle Fourche SD 57717

Mike Rickey, Attorney
P.O. Box 2670
Rapid City SD 57701

Herbert M. Clarkson
P.O. Box 22
Belle Fourche SD 57717

Richard Brodt
US Bureau of Reclamation
P.O. Box 227
Ness City SD 57760

R. Thornton Waller
HC# 76, Box 188
Nisland SD 57760

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

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

John Hatch, M.C.

The Water Management Board has directed John Gohm, the Board's attorney to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision or Validation of Vested Right, Claim No. 472-1. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:30 pm, September 27, 1989 in Room 216, Joe Foss Building, Pierre SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record (those listed above) and their attorneys (copy enclosed) by September 7, 1989. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by September 15, 1989.

The public hearing on Vested Right Claim No. 472-1 was completed July 26, 1989. No additional testimony will be received on September 27, 1989.



CERTIFICATION

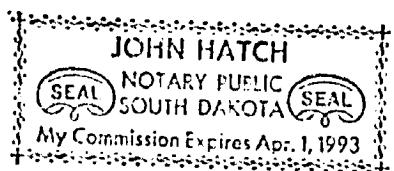
I hereby certify that on July 31, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice to Prepare Findings of Fact, Conclusions of Law and Final Decision on Vested Right Claim No. 472-1 addressed as stated on the notice.

Plants & Fungi

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 1st day of August, 1989.



John Batale
Notary Public

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

George A. Bangs
W. A. McCullen (1943-1987)
Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Ronald E. Clabaugh
Charles L. Riter

818 St. Joe Street
Mailing Address P.O. Box 2670
Rapid City, South Dakota 57709
605-343-1040
Telecopier 605-343-1503

Allen G. Nelson
James P. Hurley
Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Rebecca A. McMahon
Patrick K. Duffy

July 28, 1989



Water Rights Division
South Dakota Department
of Water & Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Timothy E. Reich
Permit No. 472-1

Dear Sir:

As you know, our offices represent Mr. Timothy Reich in connection with vested water right no. 472-1. At your convenience, I would appreciate it if you would supply me with a copy of the Division's file and the investigation done on this vested right.

I thank you in advance for your assistance and cooperation, and if you have any questions or comments, please do not hesitate to contact me. Thank you.

Sincerely,

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

Michael M. Hickey
Michael M. Hickey

MMH/dcc
cc: Timothy Reich

SOUTH DAKOTA

Department of Water & Natural Resources

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

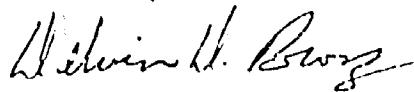
August 1, 1989

Michael M Hickey
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City SD 57709

Dear Mr. Hickey:

Enclosed are copies of the file for Timothy Reich's Vested Water Right Claim No. 472-1. You requested these in your letter of July 28, 1989.

Sincerely,



DELVIN D. BROSZ, P.E.
Hydrologist
605 773-3352

enclosures



STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION) FINDINGS OF FACT,
TO VALIDATE VESTED WATER RIGHT) CONCLUSIONS OF LAW
CLAIM NO. 472-1, TIMOTHY REICH) AND FINAL DECISION

FINDINGS OF FACT

三

This is an application to validate Water Right
No. 472-1.

11

Water Permit No. 472-1 has a priority date of January 1, 1924, for 2.0 cfs of water from the Belle Fourche river for irrigation purposes.

III

The Department has recommended, and the applicant has apparently acquiesced, in the application being reduced to allow irrigation of 68.2 acres of land at a rate of .97 cfs, for the reason that the remaining water has not been consistently used.

IV

On June 3, 1960, Jacob Herman was granted a water license for Water Right No. 472-1.

v

The application by Herman for this water license in 1960 constitutes an assertion by Herman that the water had been validly used from 1924 through 1960 without a

three-year period of impermissible nonuse and thus constitutes some evidence of historical use.

VI

Jack Herman bought a pump to continue irrigation in the 1960s. This purchase itself is indicative of continued irrigation.

VII

In 1977, Timothy Reich purchased the land and one year thereafter himself began irrigation.

VIII

The evidence opposing validation comes by way of Mr. Clarkson, who stated that he had not seen the pumping on the river by the previous owners. There is no evidence in the record, however, of any regular or systematic inspection by Mr. Clarkson of the property during the period in question.

IX

Other evidence opposing the validation comes by way of Mr. Thornton Vallery. Mr. Vallery indicated that Jack Herman had bought a yellow pump in the 1960s. Vallery is of the view that if the pump had been used the gears would be knocked out of the pump. Therefore, since the gears have not been knocked out of the pump, Mr. Vallery reasons that the pump has not been used. The Board, however, finds that evidence that Jack Herman bought the pump in the 1960s is persuasive of Herman's continued irrigation and not of Herman's lack of irrigation.

X

Mr. Vallery also indicated that Mr. Reich had been pumping water purchased by others from the Keyhole Reservoir and not water to which Reich was legally entitled under his permit. However, neither Vallery nor his group has taken any action against Mr. Reich during the period within which this wrongful use of water supposedly occurred. This evidence is therefore not credible.

CONCLUSIONS OF LAW

I

The Board has jurisdiction of this matter.

II

To succeed in validating a claim pursuant to SDCL 46-2A-17, it is necessary for the proponent to show, by a preponderance of evidence, that irrigation has occurred from the time of the priority date claimed to the present without a three-year hiatus of nonuse without legal excuse. Although the evidence is sketchy as to both use and nonuse the Board, in weighing the evidence, finds that the proponent has carried his burden.

III

There has been no showing of a three-year interruption of use of water without legal excuse so as to bring into play the forfeiture statutes.

IV

The use has been developed without unlawful impairment of existing rights.

The use for irrigation purposes is a beneficial use and is in the public interest.

FINAL DECISION

The application for validation of Vested Right Claim No. 472-1 is granted subject to the following conditions.

1. Vested Water Right Claim No. 472-1 is subject to domestic use rights.
2. The right is validated for .97 cfs for irrigation purposes only to the extent that it is used on the 68.2 acres of land set out in the "Report of Examination of Works and/or Application of Water to Beneficial Use," dated March 17, 1989, and signed by Rassool Ahadi.

BY THE BOARD

Marian J. Gunderson

10-5-89



**Department of
Water & Natural Resources**

**Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3161**

October 11, 1989

NOTICE

TO: Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717 Mike Hickey, Attorney
PO Box 2670
Rapid City SD 57701

Herbert M. Clarkson
RR 1, Box 224
Belle Fourche SD 57717 Richard Brohl
US Bureau of Reclamation
PO Box 226
Newell SD 57760

R. Thorton Vallery
BCR 76, Box 188
Nisland SD 57762

FROM: *for* John Hatch, Chief Engineer Water Rights Division
605 773-3352 *Delwin D. Brohl*

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

This is to notify you that a Final Decision, including Findings of Fact, Conclusions of law were adopted by the Water Management Board for validation of Vested Right Claim No. 472-1 which was considered at the July 26, 1989 meeting.

A copy of the signed final Decision, Findings and Conclusion is enclosed. South Dakota Statutes provide that the decision of the Board may be appealed to the Courts.

enclosure



PLEASE FILL OUT AND RETURN AT CHICE

This is the Water Management Board data
sheet for recording 1986 irrigation estimates.

472-1
TIMOTHY REICH
1907 KINGSBURY
BELLE FOURCHE
SD 57717

BU/BF

SURFACE WATER
GROUNDWATER

(check one)

For Dept. use only

Number of acres actually irrigated 250

If you did not irrigate during 1986 check this box

If your system has not been constructed check this box

Type of Power	No. acres irrigated	Type of System		
1. Electric	<u>200</u>	1. Hand Moved Sprinklers	_____	_____
2. Gravity	<u>50</u>	2. Portable Booms	_____	_____
3. Gasoline	<u>50</u>	3. Center pivots (# of)	_____	_____
4. Nat. Gas pipeline	<u>0</u>	4. Gated pipes	_____	_____
5. Diesel	<u>0</u>	5. sidewheel	_____	_____
6. Propane	<u>0</u>	6. Towlines	_____	_____
7. Other	<u>0</u>	7. Big gun	_____	_____
		8. Siphons	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		9. Flood	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		10. Other	<input type="checkbox"/>	<input type="checkbox"/>

November, 1986

Month	# days pumped	Average # hours per day	Average pump rate (gpm)	Acres of Crop Irrigated and Estimate Water Use		
				Crop	Acres Water Used	Acres Water Used
April						
May						
June	<u>27</u>	<u>24</u>	<u>500</u>	all	<u>85</u>	<u>3600</u>
				corn	<u>60</u>	<u>120</u>
July	<u>20</u>	<u>12</u>	<u>500</u>	corn	<u>60</u>	<u>130</u>
				all	<u>55</u>	<u>90</u>
August	<u>25</u>	<u>15</u>	<u>500</u>	corn	<u>60</u>	<u>170</u>
				all	<u>55</u>	<u>170</u>
Sept.						
Oct.						
Other months						

Comments:
Complete and return to: WATER MANAGEMENT BOARD
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181



Owner or address change, if any:

PLEASE FILL OUT AND RETURN AT ONCE

This is the Water Management Board data sheet for recording 1967 irrigation estimates.

October, 1987

472-1
TIMOTHY REICH
1007 KINGSBURY
BELLE FOURCHE
SD 57717

804/3F

For Dept. use only

SURFACE WATER
 GROUNDWATER

47

- If you did not irrigate during 1987-check this box
- If your system has not been constructed-check this box

Number of acres actually irrigated 250

卷之三

If you did not immigrate during 1987-check this

If your system has not been constructed-choosing

卷之三

Type of Power	No. Acres irrigated
1. Electric	_____

1. Electric	<u>Electric</u>
2. Gravity	<u>Gravity</u>
3. Gasoline	<u>Gasoline</u>
4. Nat. Gas	<u>Natural Gas</u>

4. Nat. Gas
Pipeline _____
5. Diesel _____
6. Propane _____

6. Propane _____
7. Other _____

Type of System

1. Hand Moved Sprinklers -

2. Name Moved Sprit
2. Pantahla boost

- 2. Portable booms
- 3. Center pivots (# of)
- 4. Gated pipes
- 5. Gated booms

- 5. Sidewheel
- 6. Towlines
- 7. Big gun

7. Big gun
8. Siphons
9. Blood
10. Other

Owner or address change, if any:

Type of Power	No. acres irrigated	Month	# days pumped	Average hours per day	Average # pump rate (gpm)	Acres Crop	Water Used	Acres Crop	Water Used	Acres	Water Used	Acres	Water Used
1. Electric	200	April											
2. Gravity	200	May											
3. Gasoline	50	June	15	24	500	corn	57	57	57	57	57	57	57
4. Nat. Gas Pipeline		July	25	15	500	corn	100	100	100	100	100	100	100
5. Diesel		August	25	15	500	corn	57	57	57	57	57	57	57
6. Propane		Sept.				self							
7. Other		Oct.				self							
		Other Months				self							
Type of System													
1. Hand Moved Sprinklers													
2. Portable booms													
3. Center pivots (# of)													
4. Gated pipes	X												
5. sidewheel													
6. Towlines													
7. Big gun	X												
8. Siphons	X												
9. Flood													
10. Other													
Season Static Water level: beginning _____ ft. end _____ ft. (groundwater only)													
Complete and return to: WATER MANAGEMENT BOARD Water Rights Division Joe Foss Building Pierre SD 57501-3181													
COMMENTS: _____													

Complete and return to
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181



CERTIFICATION

I hereby certify that on October 11, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Adoption of Findings of Fact, Conclusions of Law and Final Decision on Vested Right Claim No. 472-1 addressed as stated on the notice.

Karen Schlaak
KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of October, 1989.

JOHN HATCH
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires Apr. 1, 1993

John B. Falot
Notary Public



United States Department of the Interior



BUREAU OF RECLAMATION

Great Plains Region

Belle Epoque Projects Office

PC, Reg. 222

Sioux City, Iowa 51101-0226

WTF 4.10

187-430

AUG 13 1993

Mr. John Hatch, Chief Engineer
Water Rights Division
South Dakota Department of Water and Natural Resources
523 E. Capitol
Pierre SD 57501-3181

Subject: Vested Water Right Claims in Western South Dakota (Your Letter
Date April 20, 1993) (Water Rights)

Dear Mr. Hatch,

We have reviewed the vested water right claims located in Perkins, Pennington, Fall River, and Butte Counties as listed in your letter dated April 20, 1993. We have also discussed these rights with contract water users. We appreciate the assistance of your staff in providing documentation of inspections and validation proceedings for specific claims as we requested.

We are satisfied with all of the actions taken by the board. Our intent in opposing validation of the water rights was to assure that all of the rights were reviewed prior to validation. That review has been completed by your staff. Thank you for notifying us of the board's actions and extending the opportunity to reconsider the actions if it would have been deemed necessary. We understand that future notification will be made in advance of board actions.

If we can be of further assistance, please contact Craig Kjar or me at (609) 456-2665.

REFERENCES

Bruce H. Laymon
Project Manager

cc: Mr. Joe Kramer, Manager
Angostura Irrigation District
PO Box 346
Oral SD 57766

Mr. James E. Winterton, Project Manager
Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

South Dakota:				
264-1, 1483-1	Thornton Vallery	1-01-1925	0.58	40.0
273-1A, 1233-1	Esther Kling	7-17-1932	0.22	15.8
282-1, 1470-1	James & Muriel Jeffcley	1-01-1921	1.05	73.7
287-1, 287A-1	David Rathbun	1-01-1930	3.65 2.70	73.7 154.8
442-1	Dan Heck	6-01-1946	0.29	20.1
472-1	Timothy Reich	1-01-1924	2.00	167.84
1258-1	Frank & Marilyn Dobesh	7-20-1891 1-01-1920	4.90 3.27	345.0 229.0
Total:			18.53	1,327.14

Downstream surface water rights with an earlier priority than Keyhole Reservoir may need a portion of the reservoir inflow bypassed to them if accretions below the dam, along with the reservoir seepage from the dam, are not adequate to meet the needs of the prior rights. Should it become necessary to release water through Keyhole Dam to satisfy prior rights, the release should not exceed the inflow into the reservoir. Administration and enforcement of water rights on the Belle Fourche River below Keyhole Dam is the responsibility of the respective states. In Wyoming, the Wyoming State Engineer's Office, Division 2 Superintendent, carries out those duties. In South Dakota, the Water Management Board and the Department of Environment & Natural Resources, Water Rights Division oversee those duties.

IV-2

264-1 Applied for 11.3 acres SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10 T8N-R4E
 4.0 " SE $\frac{1}{4}$ " 15.3 acres
 0.22 cfs

273-1 Priority date - April 28, 1956
 Applied for 24.7 acres - SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12 T8N-R4E
 7.9 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$ " 11

Licensed for SW $\frac{1}{4}$ SW $\frac{1}{4}$ 24.7 acres
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 7.9 acres 0.46 cfs

472-1

licensed 6/25/1960

1924 priority date

167.8 ac 2.04 ds Belle Fourche River

SE^{1/4} SE^{1/4} Sec 25 - T9N - R2E

Lot 4, SE^{1/4} SW^{1/4} Sec 30 - T9N - R3E

Lot 1, NE^{1/4} NW^{1/4} Sec 31 - T9N - R3E

trans 3/7/79 to Timothy, Reich

Validated 9/27/89

68.2 ac 0.97 ds

(SW^{1/4} SW^{1/4}) Lot 4, SE^{1/4} SW^{1/4} Sec 30 - T9N - R3E

SE^{1/4} SE^{1/4} Sec 25 - T9N - R2E

Based on Ahadi inspection 4/17/89

Had findings for validation



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

www.state.sd.us/denr

AUG 13 2001

Timothy Reich
1007 Kingsbury
Belle Fourche SD 57717

Dear Mr. Reich:

Enclosed is Reissued Vested Right Water License No. 472-1. A review of the file indicates Water License No. 472-1 should have been reissued to reduce the number of acres irrigated and the amount water claimed as validated on September 27, 1989 by the Water Management Board.

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

If you have any questions, please contact this office.

Sincerely,

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

enclosure

REISSUED STATE OF SOUTH DAKOTA
VESTED RIGHT WATER LICENSE NO. 472-1 FOR IRRIGATION

(1) Jacob Herman was issued Vested Water Right License No. 472-1, June 25, 1960 for a right to appropriate 2.0 cubic feet of water per second (cfs) from the Belle Fourche River, Butte County, South Dakota, for irrigation purposes. Vested Water Right No. 472-1 with a priority date of 1924 was issued for the water supply system and application of water to beneficial use.

On March 7, 1979, Vested Water Right No. 472-1 was transferred to Timothy Reich.

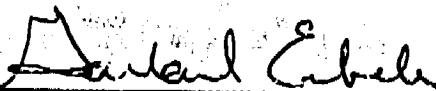
On September 27, 1989, the Water Management Board adopted Findings of Fact, Conclusions of Law and a Final Decision validating Vested Water Right No. 472-1 for 0.97 cfs to irrigate 68.2 acres. Vested Water Right No. 472-1 is being reissued to reduce the number of acres irrigated and the amount of water claimed to the actual amount applied to beneficial use, based on an April 17, 1989 inspection of the system.

(2) It is certified that the vested right owner is entitled to divert 0.97 cubic feet of water per second for beneficial use. The location of the diversion point is: 550 feet west and 1,400 feet north from the southeast corner of Section 25-T9N-R2E (NE 1/4 SE 1/4).

The location of the irrigated acreage is:

Section 25-T9N-R2E	SE 1/4 SE 1/4	22.9 acres
Section 30-T9N-R3E	SW 1/4 SW 1/4 (Lot 4)	29.2 acres
SE 1/4 SW 1/4		
Total 68.2 acres		

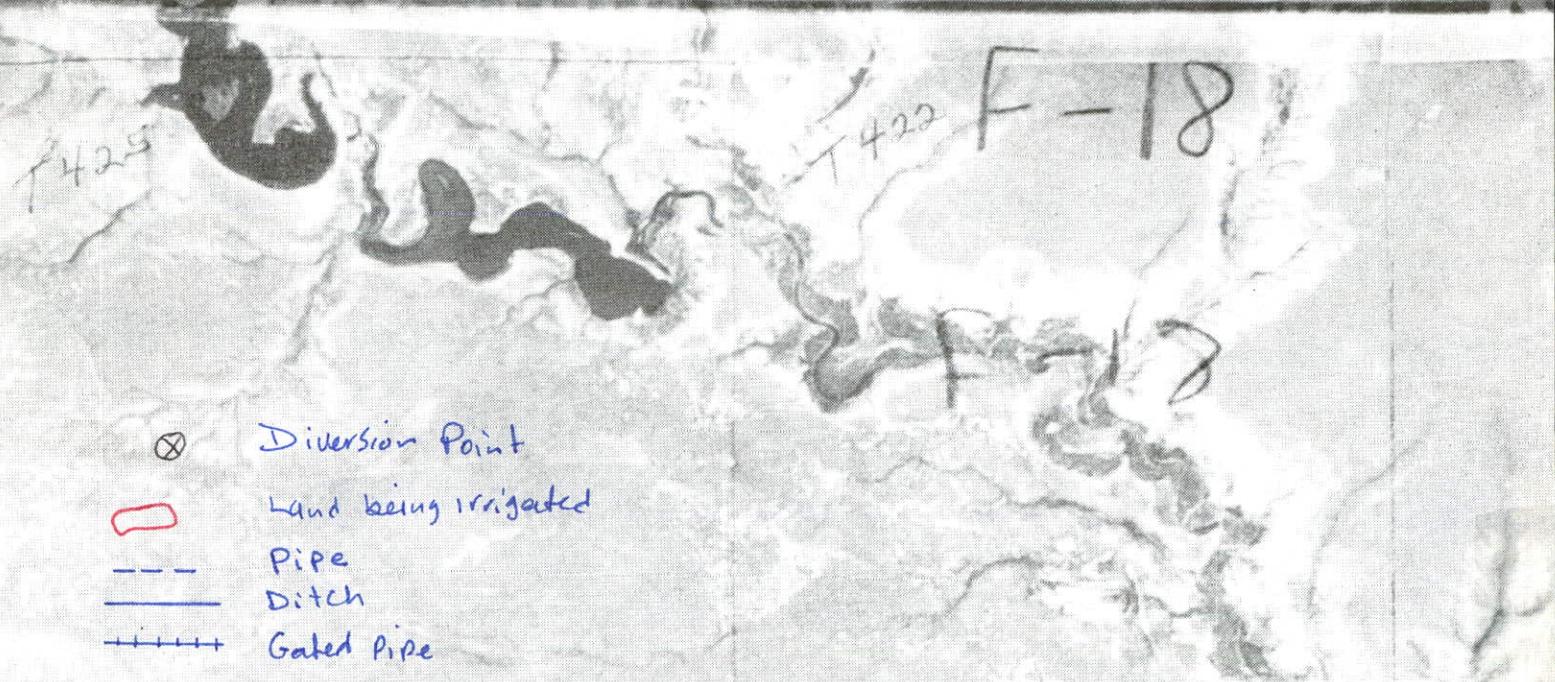
(3) Pursuant to Section 46-5-30.1 Timothy Reich, 1007 Kingsbury, Belle Fourche SD 57717 the holder and/or owner of Vested Water Right No. 472-1 is issued a license to appropriate 0.97 cubic feet of water per second from the Belle Fourche River with a priority date of January 1, 1924 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 472-1 and subject to South Dakota State Law.


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

AUG 13 2001

date



NOT TO SCALE

NDS/ahdi

Natural Resources Engineer

May 23, 89

**NOT TO SCALE**