

No. 503-1Water Division No. 1 MOREAU RIVER District
(Blanks to be filled by the Engineer for the W. R. C.)AUG 16 1959
8:00 a. m.
STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTAAPPLICATION FOR PERMIT
To Appropriate Water within the State of South Dakota

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

1. Name of applicant WILLIAM T. LEGER (Phone Camp Creek-5-F-31)
Postoffice address HARDING, County HARDING, State SO. DAK.

I. If a corporation

- (a) Name of same _____
- (b) Date and place of incorporation _____
- (c) Amount of capital stock _____
- (d) Amount paid in _____
- (e) Names and addresses of directors _____

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

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

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

X X(b) Cash on hand, \$ X X(c) Treasury stock, \$ X X(d) Bonds to be issued, \$ X X(e) Other resources, \$ X X2. Name of diversion work THE LEGER IRRIGATION PROJECT3. Amount of water claimed 3 cubic feet per second

4. Source of water supply Ash Coules and Thomas Creek (Dry Drains)
Between a point N 87°W 760' from the E 1/4 Cor. Sec. 33 and a point N 165'
5. Location of point of diversion From the SEC. Cor. S. 1/4, T. 15 N., R. 3 E-BHM (Both Banks)
also from a point S 198' from the W 1/4 Cor. Sec. 26, T. 16 N., R. 3 E-BHM
on the Rt. (west bank.) Harding Co.

6. Annual period or periods during which water is to be used April 1st thru Sept. 15th.

7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system: Gravity(a) Number of acres to be irrigated 210 acresNW-NW 16 Ac., NE-NW 8 Ac., SE-NW 27 Ac., SW-NE 5 Ac., NE-SW 15 Ac.NW-SE 25 Ac., NE-SE 3 Ac., SW-SE 5 Ac., SE-SE 26 Ac., Sec. 3, T. 15, R. 3 ESE-NE 4 Ac., NE-SE 18 Ac., SE-SE 8 Ac., Sec. 33, T. 15 N., R. 3 E-BHMNW-NW 7 Ac., SW-NW 15 Ac., SW-SW 28 Ac., Sec. 34, T. 16 N., R. 3 E-BHMTotal - 210 Ac.Amount claimed for engine cooling None(c) Location of plant None

(d) Method of developing power _____

(e) Point where water will be returned to stream XXXXXX

MAP NO. 423-1

8. Estimated cost of work:

(a) Head Gates, \$----- (b) Pumping plant, \$-----
 (c) Fluming, \$----- (d) Canal-earth, \$----- Rock, \$-----
 (e) Other structures ----- \$----- Total, \$-----

9. Description of diversion works:

1. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)
 This project is to be designed by the Soil Conservation Service, under the Great Plains Program, with storage and spreader dams on the dry draws indicated, embracing a part of the original Floyed Cook Application 085-1

(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.

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

(c)* Head gate: Width-----feet; height -----feet;
 Material -----
 (d) Canal: Total length -----miles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work ----- years.
 11. Time required for complete application of water to the proposed beneficial use ----- years.
 12. Choice of newspaper for publication of notice of intention to appropriate -----
The Times-Herald, Buffalo, South Dakota

STATE OF SOUTH DAKOTA
 County of **Harding** } ss.

I, **William T. Leger**, 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 **William T. Leger**

Subscribed and sworn to before me this **5th** day of **August** 19**60**.

Carl M. Cornell

Notary Public (or **Notary Public** Officer.)

*Each diversion must have a headgate or measuring device.

PLAT
OF
THE LEGER IRRIGATION PROJECT
Sections 33 & 34, T.15 N., R.3 E-DEM
and
Section 3, T.15 N., R.3 E-DEM
Harding County, South Dakota.

Scale: 1 inch = 600 feet.
6 inches = 1 mile.

SURVYOR'S CERTIFICATE -

I, Carl M. Cornell, Licensed Surveyor in and for the State of South Dakota, do hereby certify that, at the request of William T. Leger of Harding County, South Dakota, I have made a survey of the irrigable tracts shown hereon, for the purpose of indicating the irrigable areas contained in this project shown hereon and for the further purpose of furnishing the required map for filing as a part of the applicant's Application for a Permit to appropriate water for irrigation purposes.

I further certify that the bearings and lengths of the several lines shown hereon, and their location with reference to the Government Land corners shown, are correct, to the best of my knowledge and belief.

Subscribed and sworn to at Buffalo, South Dakota this 2nd day of July, 1930.

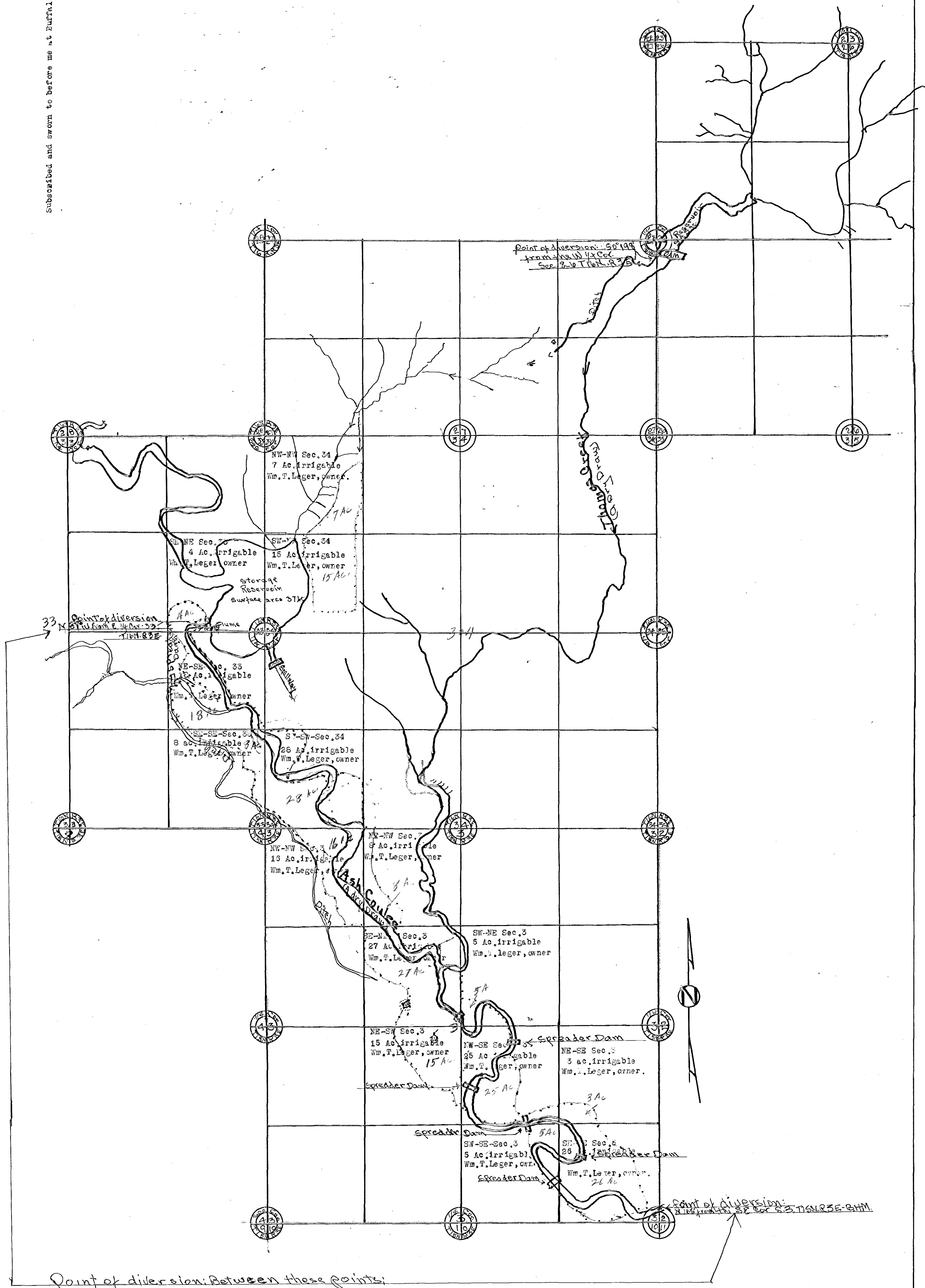
SIGNED: *Carl M. Cornell*
Carl M. Cornell, Licensed Surveyor

No. 144 (S.M.)

Subscribed and sworn to before me at Buffalo, South Dakota this 2nd day of July, 1930.

M. R. Henn
Notary Public. (T.M.)

MAP NO. 122-1
APPL. NO. 503-1



Point of diversion: Between these points:

Remarks by State Water Resources Commission:

THE PRIORITY FOR THIS Permit is established under the Flood Control Act (1935-1) as upheld by the Circuit Court & Supreme Court. In granting this permit, the Commission recognizes a transfer of 26 acres to be irrigated in the W 1/2 NW 1/4 ~~Section 34~~ ^{Section 34 and Section 45} ~~Section 33~~ T154 R3E from a portion of the NE 1/4 NE 1/4 Section 34 formerly included under 085-1. This Permit (503-1) supplements the water rights under 085-1 as established by Court decisions dated July 18, 1921 and January 8, 1925. Operation of the storage dam under this permit (503-1) shall be in accordance with the conditions of the agreement signed by Uman ss. Leper & William Burke, dated May 6, 1961.

STATE OF SOUTH DAKOTA
County of Hughes

Pierre, South Dakota, August 18, 1961

This is to certify that the foregoing application was received by the Commission at 8:00 o'clock a.m. upon the 18th day of August, 1960

State Water Resources Commission

By:

Arthur J. Jones
for Chief Engineer, Executive Officer

Number of permit 503-1

Date of first receipt of application August 18, 1960

Date of return to applicant for correction, amendments or changes required as follows: ---, 19---

Date of receipt of corrected application ---, 19---

Date from which applicant may claim right August 8, 1963

Approved May 10, 1961, Recorded in Book 6 Page 346

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 May 10, 1963

2nd. The whole of said work is to be completed on or before May 10, 1965

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is May 10, 1969

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 3.0 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 May 10, 1969; said water to be used during the following described annual period:

April 1 thru September 15

Witness my hand this 21st day of September, 1961

State Water Resource Commission

By:

John L. Jones
Chief Engineer, Executive Officer

Certificate of Construction Issued DECEMBER 15, 1970

Water License Issued DECEMBER 15, 1970

WATER LICENSE NO. 503-1

(1) WHEREAS, On the 18th day of August A. D. 19 60William T. Iegermade Water Right Application No. 503-1 for a permit to use 3.0 cubic feet per second of the waters of Ash Coulee and Thomas CreekCounty of Harding State of South Dakota, for irrigation

purposes; and

(2) WHEREAS, On the 21st day of September A. D. 19 61Permit No. 503-1 with a date of priority of August 8, 1913was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water supply system therein described on or before the 10th day of May A. D. 19 65 and for theapplication to beneficial use of said water on or before the 10th day of May A. D. 19 69

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 3.0 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent:

for irrigating the following described land:

		Acres
T16N, R3E, Section 34	SW $\frac{1}{4}$ NW $\frac{1}{4}$	7
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	15
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	28
Section 33	SE $\frac{1}{4}$ NE $\frac{1}{4}$	4
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	18
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	8
T15N, R3E, Section 3	SW $\frac{1}{4}$ SE $\frac{1}{4}$	5
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	8
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	16
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	27
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	15
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	3
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	25
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	5
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	26
Total		210 Acres

(5) 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 _____

William L. Taper

of Spearfish, S.D.

the holder _____ and owner _____ of said permit No. 503-1 a water right, dating from August 8, 1913

_____ to use of 1.0 cubic feet per second of the waters

of Ash Coulee and Thomas Creek

in the County of Harding

and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at between points North 87° West, 760 feet from the NW Corner, Section 33, T16N, R3E, and North 165 feet from SE Corner, Sec. 3, T15N, R3E,

and from a point South 195' from NW Corner, Section 26, T16N, R3E

and conduct to and upon portions of Section 3, T15N, R3E, and Sections 33 and 26, T16N, R3E
described on the face of this License

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 503-1 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota

this 15th day of December A. D.

Nineteen Hundred and Seventy

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer J.W. GRIMES

THE PRIORITY FOR THIS PERMIT IS ESTABLISHED UNDER THE FLOYD COOK FILING (085-1) ^{AND} ~~AND~~ UPHOLD BY THE CIRCUIT COURT AND SUPREME COURT. IN GRANTING THIS PERMIT, THE COMMISSION RECOGNIZES A TRANSFER OF THE 26 ACRES TO BE IRRIGATED IN THE NW 1/4, Section 34, and SE 1/4 NE 1/4, Section 33, T16N, R3E, FROM THE LANDS CONTAINED UNDER 085-1.

OPERATION OF THE STORAGE DAM UNDER THIS PERMIT SHALL BE IN ACCORDANCE WITH THE CONDITIONS OF THE AGREEMENT SIGNED BY WILLIAM LEGIER & WILLIAM BURKE, DATED MAY 6, 1961. ~~SUCH AGREEMENT IS HEREBY MADE A PART OF THIS LICENSE RIGHT.~~

This Permit (503-1) supplements the water rights under 085-1 as established by Court decisions dated _____ and _____

Permit No. 503-1Water Diversion No. 1 MOREAU RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That William T. Leger

_____ the holder _____ of
Permit No. 503-1, issued upon Application No. 503-1, bearing date of priority of August 9, 1913
_____ authorizing the diversion of 3.0 cu. ft. per second of the waters of _____
Ash Coulee and Thomas Creek County of Harding, State of South Dakota at _____
_____ between points North 87° West, 760 ft. from the E $\frac{1}{2}$ Corner, Section 33, T16N,
R3E, and North 165 feet from SE Corner, Sec. 3, T15N, R3E, and from a point
South 198' from W $\frac{1}{2}$ Corner, Section 26, T16N, R3E
_____, for _____
_____ irrigation _____

_____ purposes, has _____ complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use up to 50 cu. ft. per second of water.

Date December 15, 1970

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

Permit No. 503-1Water Division 1 Moreau River Water District

**REPORT OF EXAMINATION OF WORKS
AND/OR APPLICATION OF WATER TO BENEFICIAL USE**

TO: Water Resources Commission, State Office Building No. 2, Pierre, South Dakota 57501

I have this day made a thorough examination of the water use system constructed by William T. Leger of Spearfish, South Dakota holder of Permit No. 503-1, bearing date of priority of August 8, 19 13 authorizing the diversion of 3.00 cu. ft. per second of the waters of Ash Coulee & Thomas Creek for irrigation purposes, in Harding County.

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

The Water Use System consists of,

A. Works used to divert the water:

Spreader irrigation system on 117 acres
Gravity irrigation from dam on 93 acres
Dam with surface area of about 37 acres and volume of about 180 acre feet

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

Spreader dikes and ditches

C. Works used to apply water to beneficial use.

Spreader dikes and land level

The system is in the following condition: Good

The point of diversion is located Between points located N87°W 760' from E $\frac{1}{4}$ Corner of Sec. 33, T16N, R3E & North 165' from SE Cor. of Sec. 3, T15N, R3E.
Also a point S 198' from W $\frac{1}{4}$ Cor. Sec. 26, T16N, R3E.

The works are capable of diverting and conveying to the place of use Normal flood flows up to 50 c.f.s.
cu. ft. per second of water which is to be used for Spreader and gravity system

Water has been put to beneficial use to the maximum extent as follows: See attachmentcomprising a total of 210 acres of land.

In addition approximately 75 acres of land in the SE $\frac{1}{4}$ of Section 27, T16N, R3E have a contour spreader type of irrigation not applied for in Water Permit No. 503-1.

Notice:

Mail to: William T. Leger
1009 Jonas Blvd.
Spearfish, SD

Date October 29, 1970

Marvin T. Knecht
(Signature)

Marvin T. Knecht
Engineer
Water Resources Commission

NW $\frac{1}{4}$	NW $\frac{1}{4}$	Section 34,	Township 16N,	Range 3E	7 acres
SW $\frac{1}{4}$	NW $\frac{1}{4}$	Section 34,	Township 16N,	Range 3E	15 acres
SW $\frac{1}{4}$	SW $\frac{1}{4}$	Section 34,	Township 16N,	Range 3E	28 acres
SE $\frac{1}{4}$	NE $\frac{1}{4}$	Section 33,	Township 16N,	Range 3E	4 acres
NE $\frac{1}{4}$	SE $\frac{1}{4}$	Section 33,	Township 16N,	Range 3E	18 acres
SE $\frac{1}{4}$	SE $\frac{1}{4}$	Section 33,	Township 16N,	Range 3E	8 acres
SW $\frac{1}{4}$	NE $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	5 acres
NE $\frac{1}{4}$	NW $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	8 acres
NW $\frac{1}{4}$	NW $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	16 acres
SE $\frac{1}{4}$	NW $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	27 acres
NE $\frac{1}{4}$	SW $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	15 acres
NE $\frac{1}{4}$	SE $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	3 acres
NW $\frac{1}{4}$	SE $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	25 acres
SW $\frac{1}{4}$	SE $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	5 acres
SE $\frac{1}{4}$	SE $\frac{1}{4}$	Section 3,	Township 15N,	Range 3E	<u>26 acres</u>
					210 acres

OVERSIZE

DOCUMENT IS

SUPPLEMENTARY

TO MICROFILM FILE

PROOF OF PUBLICATION

RECEIVED
OCT 26 1960

STATE WATER RESOURCES COM.
PIERRE, SOUTH DAKOTA

STATE OF SOUTH DAKOTA }
County Harding } ss.

Donald L. Cammack being duly sworn, deposes and says the annexed printed copy of Notice of Intention to Appropriate Water was taken from the _____

Buffalo TimesHerald a newspaper which during the whole time of publication of said notice herein after stated, has been and is printed and published in the _____
Town _____ of Buffalo County of _____

Harding and State of South Dakota; that the said notice was published in said newspaper on the following dates:

Sept. 15, 1960

Sept. 22, 1960

Sept. 29, 1960

Oct. 6, 1960

in each and every issue of the full number thereof, the first publication being made on the 22nd day of Sept. 1960 and the last publication on the 6th day of

October 1960, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was Publisher the printer and publisher of the said newspaper.

Donald L. Cammack

Subscribed and sworn to before me this 20th day of October A. D. 1960

Le Ella A. Cammack
Notary Public Harding County, S. D.

APPROPRIATION OF WATER

No. 503-1

Office of State Water Resources
Commission, Pierre, S. Dak.,
August 22, 1960.

Notice is hereby given that William T. Leger, whose postoffice address is La Harding, S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 3.0 cubic feet of water per second of time from Dry Draw through the Leger Irrigation Project, the point of diversion of which is to be located on both banks of said stream between a point in the SE1/4 Sec. 3, T 15N R 3E, and a point in the SE1/4 Sec. 33, T 16N, R 3E, plus a point in the NW1/4 of the SW1/4 of Section 26, Twp. 16N Range 3E. Said water to be used for the purpose of providing irrigation on portions of the following described land: SE1/4, NE1/4SW1/4, SW1/4NW1/4 and NW1/4 Sec. 3, T 15N R 3E; E1/4SE1/4 and SE1/4NE1/4, Sec. 33, and W1/4NW1/4 and SW1/4SW1/4, Sec. 34, T 16N R 3E, and for stockwater purposes.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 19 day of October, 1960, at 1 P. M. All interested persons may appear and be heard. Appropriate action will be taken by the Water Resources Commission after suitable time has elapsed for the consideration of any or all information presented.

State Water Resources Commission
By: Burton F. Jones
Water Right Specialist.

(Pub. Sept. 15-22-29-Oct.)

on or before
(First Publication September 23, 1960)

APPROPRIATION OF WATER

Office of State Water Resources Commission,

Pierre, S. Dak., August 22, 1960

Notice is hereby given that William T. Leger whose postoffice address is Harding S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 3.0 cubic feet of water per second of time from the Dry Draw through the Leger Irrigation Project, the point of diversion of which is to be located on the both bank of said stream in the SE 1/4 Sec 3, T15N R3E, and a point in the SE 1/4 NE 1/4 Sec 33, SW 1/4 of the 26 portions of Twp. 16N Range 3E. Said water to be used for the purpose of providing irrigation on the following described land:

SE 1/4, NE 1/4 SW 1/4, SW 1/4 NE 1/4 and NW 1/4, Sec 3, T15N R3E, E 1/4 SE 1/4 AND SE 1/4 NE 1/4, Sec 33, and

W 1/4 AND SW 1/4 SW 1/4, Sec 34, T16N R3E

and for stockwater purposes.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 32 day of October, 1960, at 2 P.M. All interested persons may appear and be heard.

Appropriate action will be taken by the Water Resources Commission after suitable time has elapsed for the consideration of any or all information presented.

cc: D. L. Cammack - Publisher
Times Her In
Buffalo, South Dakota

State Water Resources Commission

By: BURTON F. JONES

~~Chief Engineer, Executive Officer~~
Water Right Specialist

Investigation and Analysis

Protested Water Right Applications No's. 503-1 and 504-1

Factual Situation

Application 503-1, William T. Leger

1. Mr. Leger proposes to irrigate 210 acres (shown in brown on map) by spreader systems from Ash Coulee and its tributary Thomas Creek. Irrigation of the low-lying portions of these lands is accomplished by the usual spreader diversion dams across the creeks and spreader ditches. Such "Spreader" systems are designed to use natural creek flows only. Under dry-draw conditions such natural flows are intermittent resulting from run-off from snow melt and heavy rains.

2. Irrigation of the higher-lying lands is accomplished by diversion from a reservoir which stores run-off from snow melt and heavy rains. Irrigation through such a system is independent of natural flow timing, since through storage whatever flows occur naturally may be held in the storage reservoir until irrigation water is needed. This may be called a "Conventional" irrigation system.

3. The drainage area of Ash Coulee and Thomas Creek above Mr. Leger's lowermost diversion point totals about 19 sections of land. Average annual run-off from such a drainage area may be expected to yield about 470 acre feet. However, the fluctuation from the average during "wet" or "dry" years is a very significant occurrence for both "spreader" and "conventional" irrigation systems. Although individual evaluations differ for the kind of irrigation here proposed, an average

annual run-off of 470 acre feet may irrigate roughly 900 acres of "spreader" system lands. As mentioned above Mr. Leger proposes to irrigate a total of 210 acres, of which about 117 acres may be considered "spreader" system lands and 93 acres may be considered "conventional" system lands. Average annual water requirements will approach 150 acre feet. This figure represents "consumptive use" as differentiated from "amount diverted" from the streams.

4. Mr. Leger's water right application states that his application includes part of Water Right No. 085-1 consisting of a water right filing of May 11, 1901 claiming 5000 miners inches to irrigate land in Sec. 33, T 16 N, R 3 E and in Sec's. 3, 10 and 15, T 15 N, R 3 E. Mr. Leger's application 503-1 proposes irrigation in above Sec's. 33 and 3 but not in above Sec's. 10 or 15. However, Water Right No. 085-1 was a matter of record at the time of Circuit Court consideration in October 1920 (discussed later in this report), consequently it is presumed that any water rights accruing under Water Right No. 085-1 were recognized in the Court decision.

5. Mr. Leger's irrigation system, including reconstruction of the dam, has been built.

Application 504-1, Kenneth Dunn

Mr. Dunn proposes irrigation of 609 acres (yellow on map) by spreader systems. About 370 acres in Sec's. 8, 9 and 10 are in a drainage area separate from Ash Coulee or Thomas Creek, water from the latter areas being the problem herein discussed. The remainder, 239 acres, proposes use of Ash Coulee waters.

No storage of water is proposed.

The drainage area of Ash Coulee above the lowermost of Mr. Dunn's diversion point totals about 11 sections which under average annual runoff conditions will yield about 275 acre feet of water or enough to irrigate about 550 acres by spreader systems. Mr. Dunn's system will consumptively use about 130 acre feet during an average water yield year.

Mr. Dunn's irrigation system has been built.

Water Right 510-1, (Margaret F. and James F. Benson), William Burke, Protestor

Mr. Burke's existing irrigation is shown in green on the map. His irrigation is entirely by spreader systems. Water right 510-1 provides for irrigation of 157.11 acres. Additional works have been built bringing the total acreage irrigated to 507 acres (no water right record for increase of 350 acres).

Mr. Burke does not object to the spreader systems upstream. He does object to the reconstruction of the storage dam and reservoir by Mr. Leger, claiming that such storage stops the flow of the creek thereby depriving him of water to irrigate his lands. He also states that

the dam washed out about 35 years ago, was rebuilt about 4 years ago, and that it was not used for irrigation purposes during this period. Mr. Leger does not deny this statement.

Legal Situation

In Circuit Court decree (James F. Benson and Margaret Benson vs. Floyd Cook, May 31, 1921), the defendant Floyd Cook (land now owned by Mr. Leger) was granted a superior and prior right, August 8, 1913 over plaintiff Benson (land now owned by Burke and others) for 30 cubic feet per second of Ash Coulee waters including storage of same in his (Cook's) dam and reservoir.

The Court decreed that no riparian rights existed, that plaintiff Benson (Burke) was not damaged by construction and enlargement of the Cook (Leger) dam and that sufficient water originating from other flows for Bensons's (Burke) lands was available if properly impounded.

Lands covered by this Court decision as are outlined on the map in black for Cook (Leger) lands and in red for Benson (Burke) lands.

This Circuit Court decision was affirmed by the Supreme Court of South Dakota, October 1924.

Shortly after these Court decisions the Cook dam washed out. Mr. Leger rebuilt this dam about 1956, has invested additional monies in preparing land for irrigation without apparent objection from Burke until Mr. Leger made application for water rights which application upon examination and investigation by the Water Resources Commission requests recognition of the water rights established by the above Court decrees with minor exceptions.

Section 61.0102 (7) (d) and Section 61.0106, 1960 Supp. SDC 1939, provides that the Water Resources Commission shall recognize vested rights granted by Court decree.

Also, Section 61.0125, 1960 Supp. SDC 1939, provides that non-use of appropriated water for a period of 3 years water rights thereto are forfeit.

Question

Does the Water Resources Commission have authority to cancel the Cook water right because of non-use and thereby over-rule the Court decisions?

STATE OF SOUTH DAKOTA

Circuit
IN ~~805039~~ COURT, Harding COUNTYSTATE OF SOUTH DAKOTA,
County of Harding } ss.I, Sylvia L. Curliss ^{Circuit} Clerk of the ~~County~~ Court in and for the County of Harding State of South Dakota, do hereby certify that I have compared the foregoing ~~Harding~~ and hereto annexed copies of Findings of Facts and Conclusions of Law, Judgment and transcript of Judgment of Supreme CourtRe: File No. 280

(Supreme Court File No. 5194)

James F. Benson and Margaret Benson, Plaintiffsversus Floyd Cook, Defendant,

with the original, of record in said Court, and that the same is a true, full and correct transcript and copy therefrom and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the
seal of said County Court, at Buffalo, this 1st
day of December 19 60Sylvia L. Curliss
Clerk of Courts

By _____ Deputy

James F. Benson and Margaret Benson, O
Plaintiffs,)
VS.)
Floyd Cook, Defendant.)

TAKE NOTICE, That the defendant, having been directed by the Court to prepare findings, will submit to the Court at Timber Lake, South Dakota, forthwith, the following Findings of Fact and Conclusions of Law in the above entitled case, and ask their adoption as provided by law.

Fred W/ Wilson
Clerk of Circuit Court

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF THE
STATE OF SOUTH DAKOTA, WITHIN AND FOR
HARDING COUNTY
- - - - -

James F. Benson, and Margaret Benson,)		
Plaintiffs,)		
	)	FINDINGS OF FACT
vs.)		AND
	)	CONCLUSIONS OF LAW.
Floyd Cook,)		
Defendant.)		

This action having been tried to the Court, without a jury, at the October, 1920 term of the Circuit Court of Harding County, South Dakota, and the Court having considered the briefs of Messrs. L. M. Simons and Martin & Mason, attorneys for the plaintiffs, and of Dan McCutchen, and Hayes & Heffron, attorneys for the defendant, now makes and files this, its decision as follows:

FINDING OF FACT ONE.

The Court finds that the plaintiffs are, and they and their grantors have been the owners, in possession of the following described lands, to-wit:

The South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$), the Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$), the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$), of Section Fourteen (14), and the North Half of the Northeast quarter ($N\frac{1}{2}NE\frac{1}{4}$), the Southeast Quarter of the Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$), the Northeast Quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) of Section Twenty-three (23), all in Township Fifteen (15) North of Range Three (3), B.H.M. in Harding County, South Dakota; since the first day of May, 1905,

FINDING OF FACT TWO.

The Court finds that the defendant is, and he and his grantors have been the owners, and in possession, since the 22nd day of November, 1899, of the following described lands, to-wit:

The South Half of the Northwest Quarter ($S\frac{1}{2}NW\frac{1}{4}$), the North Half of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}$), the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$), of Section Three (3), and the Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section Four (4), the North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$), the South Half of the Northwest Quarter ($S\frac{1}{2}NW\frac{1}{4}$), the North Half of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}$), the South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$), the Southwest Quarter of the Southeast Quarter ($SW\frac{1}{4}SE\frac{1}{4}$), of Section Ten (10); the Northeast quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$) of Section Fifteen (15), all in Township Fifteen (15) North, of Range Three (3) East of the Black Hills Meridian, containing 640 acres; that defendant is, and he and his grantors have been for more than ten years last past; the owners and in possession of

The Southwest Quarter of the Southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$), the East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$), of Section Thirty four (34), the Southeast Quarter ($SE\frac{1}{4}$) of Section Thirty-five (35), all in Township Sixteen (16) North of Range Three (3) East B.H.M., also of the North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$), the Northeast Quarter ($NE\frac{1}{4}$), the Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$), and the Southeast Quarter ($SE\frac{1}{4}$) of Section Three (3), the North Half ($N\frac{1}{2}$), the Northwest quarter of the Southwest quarter, ($NW\frac{1}{4}SW\frac{1}{4}$), the North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$), the Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section Two (2), the Northeast quarter of

the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Eleven (11), the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$), the Southeast quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section One (1), the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twelve (12), all in Township Fifteen (15) North of Range Three (3) East of the Black Hills Meridian; all those parts and portions of the east half of the Southeast Quarter of Section Thirty-three (33), and the West Half of the Southwest quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Thirty-four (34), Township Sixteen (16) North of Range Three (3) East, covered by defendant's dam, ditches and other improvements thereon.

FINDINGS OF FACT THREE.

The Court finds that what is known as "Ash Coulee" or draw, passes through the bodies of the Cook lands, and on southerly about three miles to and through the Benson lands.

FINDINGS OF FACT FOUR.

The Court finds that Ash Coulee can be traced above defendants' lands to its head in the Short Pine Hills; that the Spring seasons of heavy snows the water will flow down the length of Ash Coulee from the melting snows for two or three weeks; years of little snow there is no Spring run-off of water in the coulee; at times of heavy rains in the summer water will run from two or three hours to ten or twelve hours; the maximum flow for the season is two or three weeks in early spring and several days in the summer. Some seasons no waters flows down Ash Coulee from either rains or snows.

FINDING OF FACT FIVE.

The Court finds that the waters of "Ash Coulee" do not constitute a definite stream; that Ash Coulee is a dry draw or ravine not having a flow of twenty miners' inches of water during the greater part of the year; that the waters thereof are storm flood and surface waters only.

FINDING OF FACT SIX.

The Court finds that the defendant, Floyd Cook, located as storm and flood waters of said Ash Coulee for stock and irrigation purposes on the 8th day of August, 1913,, thirty (30) cubic feet per second, and duly posted and filed notice thereof as required by law, and proceeded, within a reasonable time, to erect and maintain a sufficient dam for the retention of waters thus claimed, and has since continued to apply the same to beneficial uses; that said application to beneficial uses; the said application to beneficial uses of said waters was made within a reasonable time after location thereof.

FINDING OF FACT SEVEN.

The Court finds that the Plaintiffs, on the 9th day of September, 1913, and subsequent to the location by defendant of the storm and floodwaters of said Ash Coulee, posted and filed Notice of appropriation of the storm and flood waters of said Ash Coulee, and at a point some three miles below defendant's dam, and there made beneficial use by means of little check dams of a portion of the waters of Ash Coulee, which might accumulate at that place as waste from defendant's dam, or from intervening dry draws connecting with Ash Coulee below defendant's dam.

FINDING OF FACT EIGHT

The Court finds that the defendant, from the year 1900, under location then made, to August 8, 1913, and the plaintiffs and their grantors, from May 1905 to September 9, 1913, made limited use by means of small dams of portions of the storm, flood and surface waters of Ash Coulee available at localities of their respective lands.

FINDING OF FACT NINE.

The Court finds that the defendant, and about the year 1913, did construct and has since rebuilt and continued to maintain a large dam, costing about \$15,000.00, for the purpose of empounding the surface storm and flood waters of Ash Coulee, and of irrigating some 640 acres of land owned by him; that this appropriation was made in the manner permitted and required by Section 31, of Chapter 180, of the Laws of 1907; that none of said waters constitute a definite water course, or flowed in a definite stream, to, upon or across the lands of plaintiff, either before or after the dam of defendant had been erected.

FINDING OF FACT TEN.

The Court finds that the re-building and enlargement of the Cook dam, and the construction of an extensive distributing system, covered considerable portions of each year from 1913 to the time of the bringing of this action in August, 1919; that the plaintiffs has full knowledge thereof as the work progressed and made no objection thereto, and gave to defendant no notice of any adverse claims on their part to said waters so sought to be empounded by defendant's said dam.

FINDING OF FACT ELEVEN

The Court finds, as a fact, that the location and appropriation of the flood and storm waters of Ash Coulee by defendant was prior in time to that of plaintiffs.

FINDING OF FACT TWELVE

The Court finds that the defendant has not, by the erection of said dam, obstructed the flow of any waters of a definite stream that would have, but for said dam, flowed to or over plaintiff's lands.

FINDING OF FACT THIRTEEN.

The Court finds that part of the waters used by plaintiffs in the irrigation of a portion of their lands, by means of check dams in Ash Coulee, had found their way into Ash Coulee from the Thompson and other flood water draws emptying into the said Coulee below defendant's dam, and if properly impounded by plaintiffs, said waters would have been sufficient for Plaintiff's uses.

C O N C L U S I O N S O F L A W

FIRST CONCLUSIONS OF LAW.

The Court concludes, as a matter of law, that the waters of Ash Coulee, at the point of appropriation by defendant, do not form a definite stream formed by nature, but are surface, flood and storm waters only.

SECOND CONCLUSION OF LAW.

The Court concludes, that the rights acquired by the plaintiffs by virtue of their appropriation of the flood and storm waters of Ash Coulee, on September 9, 1913, were subordinate in time and inferior in right to the prior location and appropriation and user of thirty cubic feet per second of such waters by the defendant on August 8, 1913 at a point three miles above.

THIRD CONCLUSION OF LAW

The Court concludes that the waters of Ash Coulee are not; and were not at any time, subject to riparian rights or claims of either plaintiff or defendant; that neither plaintiff's nor defendant ever acquired, by virtue of location or user, any riparian rights therein or thereto.

FOURTH CONCLUSION OF LAW.

The Court concludes that the defendant is entitled to empound, under his location of August 8, 1913, thirty (30) cubic feet per second of the storm and flood waters of Ash Coulee, at and in his said dam, and to use said waters for irrigation and otherwise on the lands described in his answer to the amended complaint herein; that plaintiffs are not entitled thereto, or to any part thereof.

SIXTH CONCLUSION OF LAW

The Court concludes that the plaintiffs have in no manner been damaged or injured by the acts of defendant in the erection of said dam and the use of the waters empounded thereby.

FIFTH CONCLUSION OF LAW.

The Court Concludes that the plaintiffs are not entitled to a judgment requiring the removal of defendant's dam.

SEVENTH CONCLUSION OF LAW.

The Court concludes that the plaintiffs were, by their conduct, estopped to ask the relief prayed for in the amended complaint.

EIGHTH CONCLUSION OF LAW

The Court concludes that the plaintiffs waived, by their location of September 9, 1913, of the storm and flood waters of Ash Coulee, the right or privilege of asserting any riparian rights therein.

NINTH CONCLUSION OF LAW.

The Court concludes that this action should be dismissed on the merits, and at plaintiffs' costs.

DONE IN OPEN COURT this 31st day of May, A.D. 1921.

BY THE COURT:

Raymond L. Dillman
JUDGE

ATTEST:

Fred W. Wilson
CLERK

(SEAL)

FILED this 21 day of June A.D. 1921.

Fred W. Wilson
Clerk of Circuit Court

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF THE
STATE OF SOUTH DAKOTA, WITHIN AND FOR
HARDING COUNTY.

AT A REGULAR TERM OF SAID COURT, Held at the Court room of the Court House
in the City of Buffalo on the 18th day of July A.D. 1921, being a day of
a regular term of said Court;

PRESENT: Hon. Raymond L. Dillman, Judge, and the officers of said Court.

- - - -

James F. Benson and Margaret Benson,)
Plaintiffs,)

vs.)

J U D G M E N T

Floyd Cook,)
Defendant.)

This cause was tried to the Court without a jury at the regular term
October, 1920 term held at Buffalo, Harding County, South Dakota, the
plaintiffs appeared in person and by their attorneys, L. M. Simons and
Martin and Mason, and the defendant appearing in person and by his attorneys,
Dan McCutchen and Hayes and Heffron; the Court having heard the evidence
adduced in behalf of the parties respectively, beginning October 8, 1920, and
concluding on October 11, 1920, and thereafter considered and written briefs
and arguments of counsel; the Court having made and filed its findings of
fact and conclusions of law, and being fully advised, it is

ORDERED, ADJUDGED AND DECREED

that the allegations of defendant's answer to the amended complaint, his
affirmative answer and counterclaim are true; that the defendant and his
grantors have owned since the 22nd day of November, 1899, the following
described lands:

The South Half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$), the
North half of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}$), the Southwest
quarter of the Southwest quarter ($SW\frac{1}{4}SW\frac{1}{4}$) of Section Three (3),
the Southeast quarter of the Southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of
Section Four (4), the North Half of the Northwest quarter ($N\frac{1}{2}NW\frac{1}{4}$)
the South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$), the North
half of the Southwest quarter ($N\frac{1}{2}SW\frac{1}{4}$), the South Half of the
Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$), the Southwest quarter of the South-
east quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of Section Ten (10); the Northeast quar-
ter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$) of Section Fifteen (15),
all in Township Fifteen North (15), of Range Three (3) East
of the Black Hills Meridian, containing 640 acres;

that the defendant and his grantors have owned for more than
ten years prior to the commencement of this action, the following
lands, to-wit:

The Southwest quarter of the Southeast quarter
($SW\frac{1}{4}SE\frac{1}{4}$), the East half of the Southeast quarter ($E\frac{1}{2}SE\frac{1}{4}$) of
Section Thirty-four (34), the Southeast quarter ($SE\frac{1}{4}$) of
Section Thirty-five (35), in Township Sixteen (16) North of
Range Three (3) East, B.H.M., also the North half of the
Northwest quarter ($N\frac{1}{2}NW\frac{1}{4}$), the Northeast quarter ($NE\frac{1}{4}$), the
Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$), and the
Southeast quarter ($SE\frac{1}{4}$) of Section Three (3), the North half
($N\frac{1}{2}$), the Northwest quarter of the Southwest quarter ($NW\frac{1}{4}SW\frac{1}{4}$)
the North half of the Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$), the Southeast
quarter of the Southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section Two (2),
the Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of
Section Eleven (11), the West Half of the Southwest quarter
($W\frac{1}{2}SW\frac{1}{4}$), the Southeast quarter of the Southwest quarter ($SE\frac{1}{4}SW\frac{1}{4}$)
of Section One (1), the Northwest quarter of the North-
west quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Twelve (12), all in Township
Fifteen (15) North of Range Three (3) East of the Black Hills
Meridian;

all these parts and portions of the East half of the Southeast quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Thirty-three (33), and the West half of the Southwest quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Thirty-four (34), Township Sixteen (16) North of Range Three (3) East, covered by defendant's dam, ditches and other improvements thereon;

that the Defendant located as storm and flood waters of Ash Coulee, for stock and irrigation purposes on the 8th day of August, 1913, thirty cubic (30) feet per second, and duly posted and filed notice thereof as required by law, and proceeded within a reasonable time to erect and maintain a sufficient dam for the retention of said waters thus claimed, and has since continued to apply the same to beneficial uses; that said application to beneficial uses of said waters was made within a reasonable time after the location thereof; that the defendant about the year 1913, did construct and has since built and continued to maintain a large dam, costing about \$15,000.00, for the purpose of impounding the surface, storm and flood waters of Ash Coulee, and of irrigating some 640 acres of land owned by him; that this appropriation was made in the manner permitted and required by Section 31, of Chapter 180 of the Laws of 1907; that none of said waters constitute a definite water course, or flowed in a definite stream, to, upon or across the lands of plaintiff, either before or after the dam of defendant had been erected; that the waters of Ash Coulee do not constitute a definite stream; that Ash Coulee is a dry run not having a flow of twenty miners' inches of water during the greater part of the year; that the waters thereof come from melting snows and rains and are storm, flood and surface waters only; that the location and appropriation of the flood and storm waters of Ash Coulee by the defendant was prior in time and superior in right to the claim or location of the plaintiffs thereof; that the defendant has not by the erection of his said dam obstructed the flow of any waters of a definite stream that would have flowed, but for said dam, to or over plaintiff's lands; that the defendant is entitled to impound, under his location of August 8, 1913, thirty (30) cubic feet per second of the storm and flood waters of Ash Coulee, at and in his said dam, and to use said waters for irrigation and otherwise on the lands described in his answer to the amended complaint herein; that plaintiffs are not entitled thereto, or any part thereof.

That the plaintiffs, on the 9th day of September, 1913, and subsequent to the location by defendant of the storm and flood waters of said Ash Coulee, posted and filed notice of appropriation of the storm and flood waters of said Ash Coulee, and at a point some three miles below defendant's dam, and there made beneficial use by means of little check dams of a portion of the waters of Ash Coulee, which might accumulate at that place as waste from defendant's dam, or from intervening dry draws connecting with Ash Coulee below defendant's dam; that whatever rights the plaintiffs may have acquired by means of this storm and flood water location of the waters of Ash Coulee three miles below defendant's dam were subordinate to the prior location right and appropriation of defendant made August 8, 1913 for thirty cubic feet per second thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs take nothing by this action; and whatever rights plaintiffs have in or to the waters of Ash Coulee are, and are here adjudged to be, subordinate and inferior to the right of defendant to impound in his said dam and beneficially use thirty cubic feet per second thereof for stock and irrigation purposes; that the prayer of the plaintiffs be denied and that defendant have and recover of plaintiffs his costs herein expended in the sum of \$88.00 to be taxed by the clerk of this Court.

DONE IN OPEN COURT this 18th day of July A.D. 1921.

BY THE COURT:

ATTEST:

Raymond L. Dillman
JUDGE

Fred W. Wilson
CLERK

(SEAL)

FILED July 25 A.D. 1921 and
recorded in Vol. 2 pages 23-26
Judgment Record.
Fred W. Wilson
Clerk of Circuit Court

IN THE SUPREME COURT)
) ss.
STATE OF SOUTH DAKOTA)

BE IT REMEMBERED, That at a term of the Supreme Court of the State of South Dakota, begun and held at Pierre, State of South Dakota, on the first Tuesday of October A.D. 1924, To-wit: On the 18th day of December A.D., 1924.

Present: Carl G. Sherwood, Presiding Judge; Samuel C. Polley, John Howard Gates, Frank Anderson, Judges of said Court. The following proceedings were had and the following judgment was entered, to-wit:

File No. 5194

IN THE SUPREME COURT)
) ss.
State of South Dakota)

October Term A.D. 1924

Present: Carl G. Sherwood, Presiding Judge; Samuel C. Polley, John Howard Gates, Frank Anderson, Judges of said Court and the officers thereof.

James F. Benson and Margaret F. Benson,)
Plaintiffs and appellants,)
vs.)
Floyd Cook, Defendant and Respondent.)

This action coming on to be heard at the October A.D. 1923 Term of this Court at the Supreme Court Room, in the City of Pierre, State of South Dakota, upon the merits of the case and argued orally by counsel, and the Court having advised thereon and filed its decision in writing.

IT IS CONSIDERED, ORDERED AND ADJUDGED, that the Judgment and Order of the Circuit Court, within and for Harding County, appealed from herein, be and the same are hereby affirmed.

AND IT IS FURTHER ORDERED, that this action be and it is hereby remanded to said Circuit Court for further proceedings according to law and the decision of this Court.

AND IT IS FURTHER ORDERED AND ADJUDGED, That respondent have and recover of the appellants costs and disbursements on this appeal, extended, taxed and allowed at One Hundred Thirty-nine and 75/100 Dollars.

Dillon, J., not sitting)

(SEAL)

By the Court,

Attest:

Carl G. Sherwood
Presiding Judge

E. F. Swartz
Clerk

STATE OF SOUTH DAKOTA)
) ss.
County of Hughes)

I, E.F. Swartz, Clerk of the Supreme Court, within and for the State of South Dakota, do hereby certify that the above and foregoing is a full, true, correct and complete transcript and copy of the JUDGMENT of the Supreme Court of the State of South Dakota, in the above entitled action, wherein James F. Benson, et al., plaintiffs and appellants,
versus

Floyd Cook, Defendant and respondent,

as the same remains of record in said Court.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of said Court this 8th day
of January A.D. 1925.

/s/ E. F. Swartz
Clerk

Costs and disbursements taxed and allowed as follows:

Before Argument	\$ 5.00
For Argument	15.00
Clerk's Fees to Perfect Appeal Record	
Printing Brief	119.75
Fees Clerk of Supreme Court	
Total	\$ 139.75

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HARDING)

FILED this 17 day of January A.D. 1925
and recorded in Vol. 2 pages 136-7
Judgment records.

Fred W. Wilson
Clerk of the Circuit Court

AGREEMENT AS TO THE USE OF WATER

THIS AGREEMENT Made and entered into this 6th day of May, 1961, by and between William T. Leger, Post Office Address Harding, South Dakota, hereinafter referred to as First Party, and William A. Burke and Clifford T. Burke, doing business as Burke Brothers, by William A. Burke, whose Post Office is Kedig, South Dakota, hereinafter referred to as Second Party's witness. Whereas First Parties and Second Parties now own or control real estate lying along a water course commonly referred to as Ash Coulee with headwaters in Harding County, South Dakota, said Ash Coulee extending across Township 16 North, Range 3 East of the Black Hills Meridian, Harding County, South Dakota, and Township 15 North, Range 3, East of the Black Hills Meridian in Harding County, South Dakota, and

Whereas, First Party has constructed a dam across Ash Coulee in Section 33, Township 16 North, Range 3 East of the Black Hills Meridian, Harding County, South Dakota, and

Whereas, Second Parties own and control property downstream from said dam and have heretofore developed and used a water spreading system for flooding hay meadows and lands adjacent to said Ash Coulee, and

Whereas, a controversy arose between First Party and Second Parties as to whether First Party had a right to maintain a dam in Section 33, and

Whereas, the Parties hereto have reached an Agreement for the Use of the Water which First Party is impounding in the dam in Section 33, Township 16 North, Range 3 East,

NOW THEREFORE, the Parties hereto hereby agree as follows, to-wit:

- L First Party hereby agrees to continue to maintain the dam as the same now exists on Section 33, Township 16, Range 3, and that he will construct from said dam an irrigation canal which will follow along Ash Coulee through a portion of Sections 33 and 34 of Township 16, Range 3, and into Township 15, Range 3, and across Section 3 and a portion of Section 2 to a point just north of Section 11 of Township 15, Range 3, said Section 11 being part of the property belonging to Second Parties

hereto. First Party further agrees to allow Second Parties to come upon his property or property which he controls so that they can connect up an irrigation ditch to the lower end of the irrigation ditch which is to be constructed by First Party and to convey water therefrom over onto Sections 11, 14, 23 and 25 of Township 15 North, Range 3 East of the Black Hills Meridian, Harding County, South Dakota.

2. It is further mutually understood and agreed that each of the parties hereto will maintain their irrigation canals from this date forward and as soon as the same have been constructed, so that water can be carried through said canals, spread upon the land, adjacent thereto.
3. It is further mutually understood and agreed that the water which will be impounded in the dam on First Party's property shall be used in such a manner by First Party so that there will be water available in the canal to irrigate approximately forty (40) acres of hay meadows situated in Sections 11, 14, 23 and 25 of Township 15 North, Range 3, East of the Black Hills Meridian, Harding County, South Dakota.
4. It is further specifically understood and agreed that in the event there is not sufficient water impounded in the dam above described to properly irrigate the property which First Party intends to irrigate and to also irrigate the 40 acres which Second Parties intend to irrigate, that the parties hereto will prorate the water in an endeavor to irrigate approximately equal amounts on the respective properties.
5. It is further mutually understood and agreed that in the event that the dam which is situated in Section 33 is washed out or destroyed that the First Party, his heirs, executors or assigns and the Second Parties their heirs, executors or assigns or successors in interest shall share equally the cost of restoring the dam to at least its present condition.
6. It is further mutually understood and agreed that in the event that the parties hereto should deem it advisable to increase the size of said dam to make it possible for them to impound more water, that they will share equally in the cost of raising and increasing the size of said dam.

8. It is further mutually understood and agreed that First Party will not construct any other dam above the dam in Section 33 which would shut off the water in Ash Coulee from Section 33, or in any other respect render this agreement inoperative or of no consequence whatsoever.

This Agreement shall be binding upon the heirs, executors and assigns of the parties hereto.

William F. Leger
William Leger

Burke Brothers

By: William A. Burke
William A. Burke

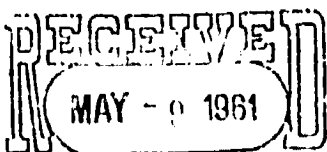
STATE OF SOUTH DAKOTA)
) ss.
County of Butte)

On this the 6th day of May, 1961, before me, Harry R. Stephens, personally appeared William T. Leger and William A. Burke, known to me to be the persons who executed the above and foregoing agreement and acknowledged to me that they executed the same for the purposes therein contained.

Witness my hand and seal the day and year last above written.

Harry P. Stephen
Notary Public

Harry R. Stephens
Notary Public
Butte County, South Dakota
Commission Expires March 5, 1968



STATE WATER RESOURCES COMM.

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THIS IS TO CERTIFY THAT THE MICROPHOTOSTATIC IMAGE AFTERING ON THIS DATE OF THE ABOVE NAMED ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SOUTH DAKOTA COMPILATION LAW 1-27-4. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTOGRAPHY AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF THE NATIONAL BUREAU OF STANDARDS FOR PERMANENT MICROPHOTOGRAPHY.

REDUCTION 25X ROLL NO. 19 3-9-82

DATE MICROFILMED

Special Agent in Charge

503-1



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

March 24, 1992

Dr John Ismay
PO Box 396
Sturgis, SD 57785

Dear Dr Ismay:

Enclosed, as we discussed, are copies of Water Rights or Vested Right Claims for No. 387-1, Donald & Nancy Turbiville, No. 503-1, William T Leger; and No. 599-1 Philip & Joyce Burke. I don't believe the one for Burke's is in the area you were concerned with.

I was unable to find Vested Right No. 594-1 for Lloyd Fox. One of the Staff members may have it out for review. I will send a copy of it soon.

If you have any questions concerning the enclosed water rights, please contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Genny McMath'.

Genny McMath
Natural Resources Analyst
(605) 773-3352

encl

3-27-92 - sent copy of 594-1 to Dr. Ismay.

SOUTH DAKOTA

VESTED WATER RIGHT NO. 503-1 FOR IRRIGATION

Date of Receipt of Claim August 18, 1960.

Date of Validation September 27, 1989.

The Water Management Board validated Vested Water Right Claim No. 503-1 for irrigation purposes for William T Leger, Box 1268, Rozet WY 82727 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 503-1 appropriates 3.0 cfs (cubic feet of water per second) from Ash Coulee and Thomas Creek to irrigate 210 acres. Water is diverted, in part by a dam (180 acre-feet storage capacity), to the irrigated acreage via spreader and gravity systems. Water is diverted between points in the SE1/4 NE1/4 section 33-T16N-R3E and the SE1/4 SE1/4 section 3-T15N-R3E and at a point in the NW1/4 SW1/4 section 26-T16N-R3E. The irrigated acreage is located in the W1/2 NW1/4, SW1/4 SW1/4 section 34; SE1/4 NE1/4, E1/2 SE1/4 section 33; all in T16N-R3E and in the SW1/4 NE1/4, N1/2 NW1/4, SE1/4 NW1/4, NE1/4 SW1/4, SE1/4 section 3-T15N-R3E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: April 1 - September 15.
3. The priority date of the Vested Water Right is August 8, 1913.
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

The priority for this permit is established under the Floyd Cook filing (085-1) as upheld by the Circuit Court and Supreme Court. In granting this permit, the Commission recognizes a transfer of 26 acres to be irrigated in the W1/2 NW1/4 section 34 and SE1/4 NE1/4 section 33-T15N-R3E from a portion of the NE1/4 NE1/4 section 34 formerly included under 085-1. This permit (503-1) supplements the water rights under 085-1 as established by Court decisions dated July 18, 1921 and January 8, 1925. Operation of the storage dam under this permit (503-1) shall be in accordance with the conditions of the agreement signed by William Leger and William Burke, dated May 6, 1961.

WATER MANAGEMENT BOARD

By: John H. Hest
Chief Engineer

MAY 21 1992

date

Division of Water Rights
Dept. of Environment and Natural Resources



MAY 21 1992

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

William T Leger
Box 1268
Rozet WY 82727

Dear Mr. Leger:

The Water Management Board has validated the enclosed Vested Water Right No. 503-1. This validation gives legal status to the claim and is the final document for your 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, Chief Engineer
Water Rights Division
605 773-3352

enclosure