

RECEIVED
AUG 23 1960
S.D. COMM.

No. 504-1

Water Division No. 1 MOREAU RIVER
(Alaska to be Filled by the Engineer for the W. R. C.)

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 KENNETH DUNN
Postoffice address HARDING BUFFALO County HARDING State S.D. DAK.

1. 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 X X

(b) Cash on hand, \$ X X (c) Treasury stock, \$ X

(d) Bonds to be issued, \$ X X (e) Other resources, \$ X X

2. Name of diversion work THE DUNN IRRIGATION PROJECT

3. Amount of water claimed 8.7 cubic feet per second

XX Ash Coulee at a point S 40° E 2000' from the E 1/4 Cor. Sec. 28, T.16 N., R.3 E-BHM
Ward Gulch at a point N 90° W 700' and tributaries above this point (spreaders)
Adair Gulch at a point N 66° 30' E 229' from the SW Cor. Sec. 22, T.16 N., R.3 E-BHM
and tributaries above this point. (Thru spreaders)
on both bank Harding County.

6. Annual period or periods during which water is to be used April 1st thru Sept. 30th

7. To be used for: Gravity, overhead sprinkling or combination system? Gravity and pumps

(a) Number of acres to be irrigated 600

SE-SE 5 Ac., Sec. 8, T.16 N., R.3 E-BHM 5 Ac.
SE-NW 15 Ac., NW-NE 10 Ac., SW-NE 36 Ac., SE-NE 11 Ac.,
NE-SW 25 Ac., SW-SW 12 Ac., SE-SW 36 Ac., NW-SE 40 Ac.,
NE-SE 40 Ac., SW-SE 39 Ac., SE-SE 34 Ac., Sec. 9, T.16 N., R.3 E-BFM 298 Ac.
SW-NW 6 Ac., NW-SW 34 Ac., SW-SW 23 Ac., Sec. 10, T.16 N., R.3 E-BHM 63 Ac.
NE-SE 7 Ac., SW-SE 13 Ac., SE-SE 22 Ac., Sec. 15, T.16 N., R.3 E-BHM 49 Ac.
NW-SE 13 Ac., NE-SE 15 Ac., SW-SE 32 Ac., SE-SE 15 Ac., Sec. 21, T.16 N., R.3 E-BHM 75 Ac.
NW-NE 11 Ac., NE-NE 25 Ac., SW-NE 14 Ac., SE-NE 6 Ac., Sec. 22, T.16 N., R.3 E-BHM 56 Ac.
NW-NE 13 Ac., NE-NE 8 Ac., SW-NE 26 Ac., SE-NE 11 Ac., NE-SW 4 Ac.,
NW-SE 8 Ac., Sec. 28, T.16 N., R.3 E-BHM 70 Ac.

MAP No 424-1

REVIEWED
0701 18 00

6. 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.

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

This project is under the Great Plains Program and has not been laid out, at this time, but will be spreading from the several dry draws indicated which head in the Short Pine Hills near the boundaries of the project.

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.

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	BOTTO. I 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 ----- 4 ----- years

11. Time required for complete application of water to the proposed beneficial use ----- 4 ----- years.

12. Choice of newspaper for publication of notice of intention to appropriate -----
The Times-Herald, Buffalo, So. Dak.

STATE OF SOUTH DAKOTA
County of Harding } 85

I, Kenneth Dunn, 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 Kenneth Dunn

Subscribed and sworn to before me this 6th day of August, 1960

Carl M. Cornelius,

Notary Public (of South Dakota)

*Each diversion must have a headgate or measuring device

PLAT
OF
THE DUNN IRRIGATION PROJECT,
Sections 8, 9, 10, 21, 22 & 28, T.16 N., R.3 E-EDM
Harding County, South Dakota.

Scale; 1 inch = 360 feet.
8 inches = 1 mile.

SURVEYOR'S CERTIFICATE :-

I, Carl M. Cornell, Licensed Surveyor in and for the State of South Dakota, do hereby certify that at the request of Kenneth Dunn of Harding South Dakota, I have made a survey of the several irrigable tracts which are embraced in his "Application for a Permit to Appropriative Water for Irrigation Purposes," for the purpose of computing the total area contained in the said Application and for the further purpose of supplying the required map of said area as a part of his application.

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

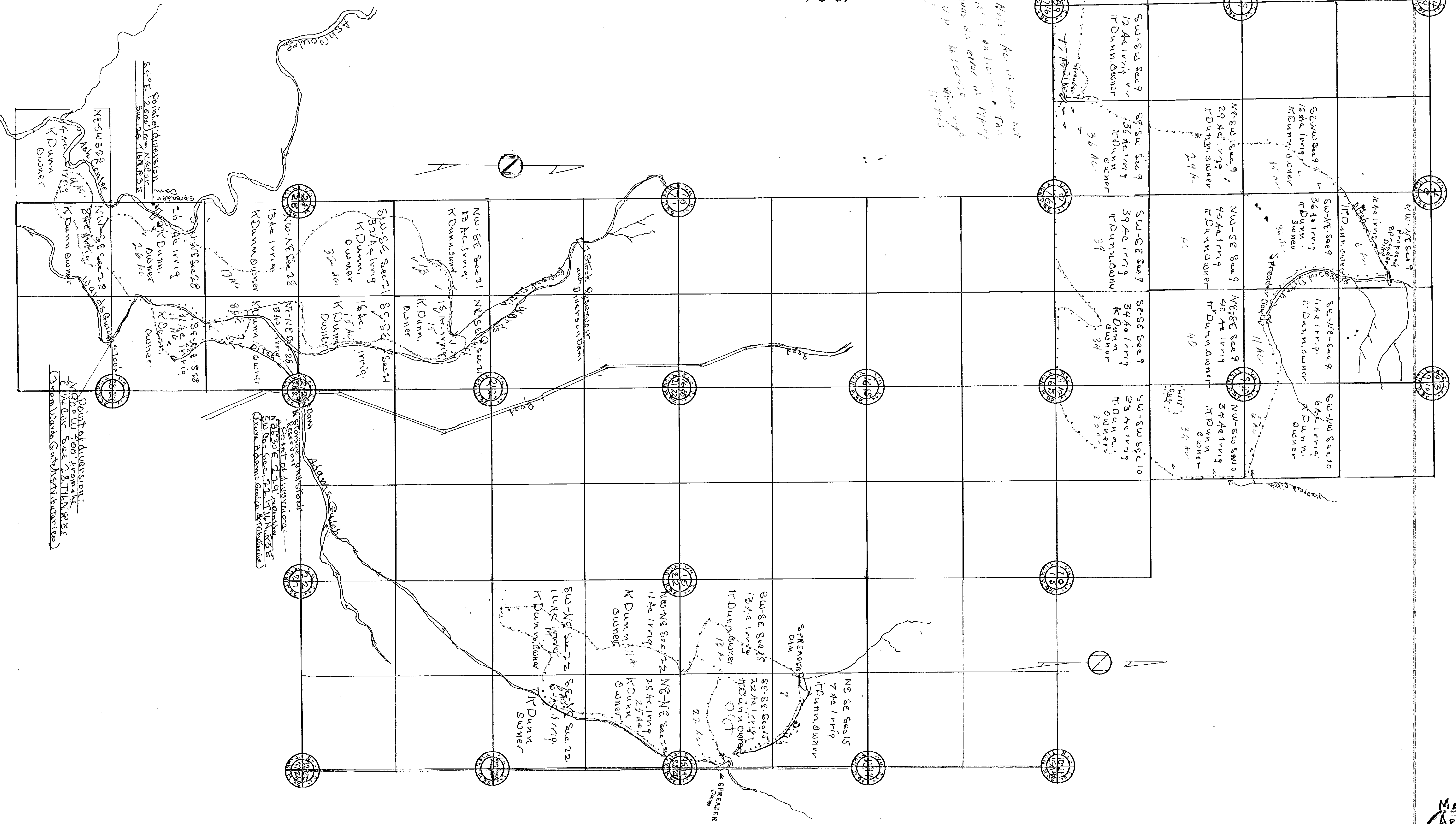
Subscribed and sworn to at Buffalo, South Dakota this 16th day of August 1930.

SIGNED: *Carl M. Cornell* (Seal 0)
Carl M. Cornell, Licensed Surveyor (No. 144)

Subscribed and sworn to before me at Buffalo, South Dakota this 16th day of August 1930.

Jane Henderson
Notary Public (SEAL)
1-5-61

Note: As the plat was on license, this was an error in typing. 11-9-33



Remarks by State Water Resources Commission:

Diversions of water under this Permit are subject to prior water rights. During low flow periods, waters must be ~~be~~ passed to satisfy such rights.

STATE OF SOUTH DAKOTA

County of Hughes

Pierre, South Dakota, August 10, 1961

This is to certify that the foregoing application was received by the Commission at 8:00 o'clock a.m. upon the 23rd day of August, 1960.

State Water Resources Commission

By:

Durton J. Jones
Chief Engineer, Executive Officer

Number of permit 504-1

Date of first receipt of application August 23, 1960

Date of return to applicant for correction, amendments or charges required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right August 23, 1960

Approved MARCH 15, 1961, Recorded in Book 6 Page 3.1

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 _____

MARCH 15, 1963

2nd. The whole of said work is to be completed on or before MARCH 15, 1965

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

MARCH 15, 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 appropriation herein granted shall not exceed 8.7 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 MARCH 15, 1969; said water to be used during the following described annual period:

April 1 Thru September 30

Witness my hand this 11th day of August, 1961.

State Water Resources Commission

By:

J. H. Jones
Chief Engineer, Executive Officer

Certificate of Construction Issued DECEMBER 15, 1970

Water License Issued DECEMBER 15, 1970

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 504-1

(1) WHEREAS, On the 23rd day of August A. D. 19 60

Kenneth Dunn

made Water Right Application No. 504-1 for a permit to use 8.7 cubic feet per second of the waters of Ash Coulee, Adams Gulch, Wards Gulch and local runoff

County of Harding State of South Dakota, for Irrigation purposes and

(2) WHEREAS, On the 11th day of August A. D. 19 61

Permit No. 504-1 with a date of priority of August 23, 1960

was 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 15th day of March A. D. 19 65 and for the application to beneficial use of said water on or before the 15th day of March 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 8.7 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 land in

T16N, R3R:

Acres			Acres		
Section 8	SE $\frac{1}{4}$ SE $\frac{1}{4}$	5	Section 21	NE $\frac{1}{4}$ SE $\frac{1}{4}$	15
Section 9	NW $\frac{1}{4}$ NE $\frac{1}{4}$	6		NW $\frac{1}{4}$ SE $\frac{1}{4}$	13
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	36		SW $\frac{1}{4}$ SE $\frac{1}{4}$	32
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	11		SE $\frac{1}{4}$ SE $\frac{1}{4}$	15
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	15	Section 22	NE $\frac{1}{4}$ NW $\frac{1}{4}$	25
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	40		NW $\frac{1}{4}$ NE $\frac{1}{4}$	11
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	40		SW $\frac{1}{4}$ NE $\frac{1}{4}$	14
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	39		SE $\frac{1}{4}$ NE $\frac{1}{4}$	6
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	34			
			Section 28	NE $\frac{1}{4}$ NE $\frac{1}{4}$	8
Section 10	SW $\frac{1}{4}$ NW $\frac{1}{4}$	6		NW $\frac{1}{4}$ NE $\frac{1}{4}$	13
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	34		SW $\frac{1}{4}$ NE $\frac{1}{4}$	26
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	23		SE $\frac{1}{4}$ NE $\frac{1}{4}$	11
Section 15	NE $\frac{1}{4}$ SE $\frac{1}{4}$	7		NE $\frac{1}{4}$ SW $\frac{1}{4}$	4
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	13		NW $\frac{1}{4}$ SW $\frac{1}{4}$	8
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	22			
TOTAL			603 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 Kenneth Dunn

of Buffalo

the holder _____ and owner _____ of said permit No. 504-1 a water right, dating from August 23, 1960

to use of 8.7 cubic feet per second of the waters of Ash Coulees, Adams Gulch, Warde Gulch and local runoff

in the County of Harding and State of South Dakota, or so much thereof as may be necessary for the purposes hereinafter mentioned, to be diverted at (1) S. 22° E. from N½ Cor. Sec. 21, T16N, R3E, 1530' to a point S. 4° E., 2000' from N½ Cor. Sec. 28, T16N, R3E; (2) N. 66° 30' E., 229' from SW Cor. Sec. 22, T16N, R3E, also from a point S. 54° 30' W., from E½ Cor. Sec. 15, T16N, R3E to a point N. 0° E., 530' from SE Corner, Sec. 15, T16N, R3E (3) from a point N. 90° W., 1320 ft. from NE Cor. Sec. 9, T16N, R3E to a point S. 75° E. from W½ Corner.

and conduct to and upon portions of Sections 8, 9, 10, 15, 21, 22 and 28, T16N, R3E, described on the face of this license

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 504-1 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

Permit No. 504-1Water Diversion No. 1 MOREAU RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Kenneth Dunn

_____ the holder _____ of
 Permit No. 504-1, issued upon Application No. 504-1, bearing date of priority of August 23,
1960 authorizing the diversion of 8.7 cu. ft. per second of the waters of Ash Coulee,
Adams Gulch, Wards Gulch and Local Run off _____ State of South Dakota at _____
County of Harding
 (1) S. 22° E. from N $\frac{1}{2}$ Cor. Sec. 21, T16N, R3E, 1530' to a point S. 4° E., 2000' from N $\frac{1}{2}$ Cor.
 Sec. 28, T16N, R3E; (2) N. 66° 40' E., 226' from SW Cor., Sec. 22, T16N, R3E, also from a point
 S. 54° 30' W. from E $\frac{1}{2}$ Cor. Sec. 15, T16N, R3E to a point N. 0° E., 530' from SE Corner, Sec. 15,
 T16N, R3E; (3) from a point N. 90° W., 1320 ft. from NE Cor. Sec. 9, T16N, R3E, to a point
 S. 75° E from W $\frac{1}{2}$ Corner. _____, for irrigation

purposes, has 8 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 8.7 cu. ft. per second of water.

Date December 15, 1970

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

See letter sent 10-21-70

Permit No. 504-1

Water 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 Kenneth Funn
of Buffalo, S.D. holder.

of Permit No. 504-1, bearing date of priority of August 23, 1960
authorizing the diversion of 8.7 cu. ft. per second of the waters of (1) Ash Coulee and (2) Adams Gulch,
for irrigation purposes, in Harding County.

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

The Water Use System consists of, (1) Dam on Wards Gulch for livestock & irrigation has concrete headgate and ditch to carry water to use area
A. Works used to divert the water: (2) Adams Gulch has spreader dam and ditch and dike to carry water to use area also dam with tube and headgate for another area.
(3) has 2 long ditches to catch runoff from Custer National Forest Hills.

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

numerous dikes and ditches

C. Works used to apply water to beneficial use.

Spreader dikes, ditches, some with tubes, come without.

Most of systems are in good condition, one small area in poor.
The system is in the following condition:
(1) S. 22° E. from N½ Cor. Sec. 21, T16N, R3E, 1530' to a point S. 4° E., 2000' from N½ Cor. Sec. 28, T16N, R3E; (2) N. 65° 30' E., 225' from SW Corner, Sec. 22, T16N, R3E, also from a point S. 54° 30' W. from E½ Cor. Sec. 15, T16N, R3E to a point N. 0° E., 530' from SE Cor. Sec. 15, T16N, R3E; (3) from a point N. 90° W., 1320' from NE Cor. Sec. 9, T16N, R3E, to a point S. 75° E. from W½ Corner.
The works are capable of diverting and conveying to the place of use 8.7

cu. 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: See attached list

comprising a total of 609 acres of land.

Date October 22, 1970

Marvin T. Knecht
(Signature)

MARVIN T. KNECHT, Engineer
Water Resources Commission

504-1 - Kenneth Dunn, Buffalo, S.D.

(1) Section 21, T16N, R3E

	Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	15
NW $\frac{1}{4}$ SE $\frac{1}{4}$	13
SW $\frac{1}{4}$ SE $\frac{1}{4}$	32
SE $\frac{1}{4}$ SE $\frac{1}{4}$	15

Section 28, T16N, R3E

NE $\frac{1}{4}$ NE $\frac{1}{4}$	8
NW $\frac{1}{4}$ NE $\frac{1}{4}$	13
SW $\frac{1}{4}$ NE $\frac{1}{4}$	26
SE $\frac{1}{4}$ NE $\frac{1}{4}$	11
NE $\frac{1}{4}$ SW $\frac{1}{4}$	4
NW $\frac{1}{4}$ SE $\frac{1}{4}$	8

(2) Section 15, T16N, R3E

NE $\frac{1}{4}$ SE $\frac{1}{4}$	7
SW $\frac{1}{4}$ SE $\frac{1}{4}$	13
SE $\frac{1}{4}$ SE $\frac{1}{4}$	22

Section 22, T16N, R3E

NE $\frac{1}{4}$ NE $\frac{1}{4}$	25
NW $\frac{1}{4}$ NE $\frac{1}{4}$	11
SW $\frac{1}{4}$ NE $\frac{1}{4}$	14
SE $\frac{1}{4}$ NE $\frac{1}{4}$	6

(3) Section 9, T16N, R3E

NW $\frac{1}{4}$ NE $\frac{1}{4}$	6	NE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>Acres</u> 40
SW $\frac{1}{4}$ NE $\frac{1}{4}$	36	NW $\frac{1}{4}$ SE $\frac{1}{4}$	40
SE $\frac{1}{4}$ NE $\frac{1}{4}$	71	SW $\frac{1}{4}$ SE $\frac{1}{4}$	39
SE $\frac{1}{4}$ NW $\frac{1}{4}$	15	SE $\frac{1}{4}$ SE $\frac{1}{4}$	34
NE $\frac{1}{4}$ SW $\frac{1}{4}$	29		
SW $\frac{1}{4}$ SW $\frac{1}{4}$	12		
SE $\frac{1}{4}$ SW $\frac{1}{4}$	36		

Section 8, T16N, R3E

SE $\frac{1}{4}$ SE $\frac{1}{4}$	5
-----------------------------------	---

Section 10, T16N, R3E

SW $\frac{1}{4}$ NW $\frac{1}{4}$	6
NW $\frac{1}{4}$ SW $\frac{1}{4}$	34
SW $\frac{1}{4}$ SW $\frac{1}{4}$	23

Total Acres 609

PROOF OF PUBLICATION

RECEIVED
OCT 26 1960

STATE WATER RESOURCES COMMISSION

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 Times-Herald 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 September

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.

APPROPRIATION OF WATER

No. 504-1
Office of State Water Resources
Commission, Pierre, S. Dak.,
August 24, 1960.

Notice is hereby given that Kenneth Dunn, 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 2.7 cubic feet of water per second of time from Ash Coulee, Wards Gulch, Adams Gulch and dry draws through the Dunn Irrigation Project, the points of diversion of which are to be located on both banks of said streams in the NE1/4 Sec. 15; SW1/4 Sec. 22; NW1/4 Sec. 21; and SE1/4 Sec. 9, all in Twp. 16N Range 32E. Said water to be used for the purpose of providing irrigation on portions of the following described land: SE1/4 Sec. 8; SE1/4 NW1/4; NW1/4; SW1/4 NE1/4; NE1/4 NW1/4; SW1/4; SE1/4 SW1/4; SE1/4 Sec. 9; SW1/4 NW1/4 and 1/4 SW1/4 Sec. 10; NE1/4 SE1/4; SW1/4 SE1/4; Sec. 15; NE1/4 Sec. 22; SE1/4 Sec. 21; NE1/4 NW1/4 and NE1/4 SW1/4, Sec. 23, all in T. 16N R. 32E, 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 19th 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.

State Water Resources Commission
By: Hurton F. Jorcs,
Water Right Specialist.
(Pub. Sept. 15-22-29-Oct. 6)

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

Donald L. Cammack
Notary Public Harding County, S. D.

(First Publication on or before September 23, 1960)

APPROPRIATION OF WATER

Office of State Water Resources Commission,

Pierre, S. Dak., August 24, 1960

Notice is hereby given that Kenneth Dunn 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 0.7 cubic feet of water per second of time from Spanish Coulee, Wards Gulch, Adams Gulch and dry draws through the Dunn Irrigation Project ^{are} the point of diversion of which is to be located on the both SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22; SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec 21, and bank of said stream in the SE $\frac{1}{4}$ $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 9, all in portions of Twp. 16N Range 3E. Said water to be used for the purpose of providing irrigation on the following described land:

SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 8; SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ and NE $\frac{1}{4}$, Sec 9; SW $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec 10; SE $\frac{1}{4}$ Sec 15; NE $\frac{1}{4}$ Sec 22; SE $\frac{1}{4}$, Sec 21; NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec 28, all in 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 19th 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-Herald
Buffalo, South Dakota

State Water Resources Commission

By:

~~State Water Resources Commission~~
Burton F. Jones
Water Right Specialist

OVERSIZE

DOCUMENT IS

SUPPLEMENTARY

TO MICROFILM FILE

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?