

594-1

- 1. Considered 11-8-1961
- 2. Name of Applicant Burke Bros
- 3. Post Office Address Rich
- 4. Amount of water claimed 5.9 (3.45 VR)
- 5. Source of water supply Wash Coal
- 6. Water to be used for irrigation
 Acres to be irrigated 414
- 7. Water to be diverted and use in Harling County about
8 W miles W of Rich
- 8. Proof of Publication Received
 Not Received
- 9. Application Approved
 Subject to _____
 Not approved
 Action deferred

10. Remarks:

8. Estimated cost of work:

(a) Head Gates, \$..... (b) Pumping plant, \$.....
 (c) Fluming, \$---500.00 (d) Canal earth, \$---2000.00 Rock, \$.....
 (e) Other structures ---bord. ring---/h---leveling\$---1000.00 Total, \$---3500.00

9. Description of diversion works:

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

Spreader dam and dikes, with ditches

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	FEET	ACRE- FEET CAPACITY

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

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of workyears.
 11. Time required for complete application of water to the proposed beneficial useyears.
 12. Choice of newspaper for publication of notice of intention to appropriate

The Times Herald, Buffalo, S.D.

STATE OF SOUTH DAKOTA

County of Harrison ss.

I, Durke Broe by William A. Durke 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 A. Durke

Subscribed and sworn to before me this 19th day of June 1961

Carl M. Cornell, Notary Public (or)

*Each diversion must have a headgate or measuring device.

Lands to be irrigated under Permit No. 594-1

All in T15N, R3E

		<u>Acres</u>
Section 11	NW $\frac{1}{4}$ NW $\frac{1}{4}$	25
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	24
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	20
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	18
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	(
Section 14	NW $\frac{1}{4}$ NW $\frac{1}{4}$	9
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	14
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	22
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	2
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	21
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	3
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	5
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	15
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	3
Section 15	NE $\frac{1}{4}$ NE $\frac{1}{4}$	7
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	17
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	12
Section 23	NW $\frac{1}{4}$ NE $\frac{1}{4}$	25
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	15
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	22
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	22
Section 25	NW $\frac{1}{4}$ NW $\frac{1}{4}$	15
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	17
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	17
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	30
Section 26	NE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>14</u>
Total		414 Acres

Remarks by State Water Resources Commission:

The 1913 priority is transferred from location notice 510-1, issued to Margaret & James Benson and claimed by Circuit Court for the 12th Judicial District under date of May 17, 1961. Transfer of priorities & pertinent data to this permit cancels loc. Notice 510-1. The 98 cfs granted a 1946 priority is a vested right. Operation of A.T.V's permit shall be in accordance with the agreement signed by William Lege & William Burke, dated May 6, 1961.

STATE OF SOUTH DAKOTA

County of Hughes ss.

Pierre, South Dakota, November 20, 1961

This is to certify that the foregoing application was received by the Commission at 8:30 o'clock a.m. upon the 24th day of July, 1961.

State Water Resources Commission

By: Arthur Jones
for Chief Engineer, Executive Officer

Number of permit 594-1

Date of first receipt of application July 24, 1961

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 2.5 cfs from Sept 11, 1913
98 cfs from 1946
2.42 cfs from July 24, 1961

Approved November 9, 1961, Recorded in Book 7 Page 6

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 _____

November 9, 1963

2nd. The whole of said work is to be completed on or before November 9, 1965

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

November 9, 1965

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 5.9 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 November 9, 1965; said water to be used during the following described annual period:

April 1 to November 1, inclusive

Witness my hand this 20th day of November, 1961.

State Water Resources Commission

By: John Hines
Chief Engineer, Executive Officer

Certificate of Construction Issued NOVEMBER 2, 1971

Water License Issued NOVEMBER 2, 1971

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 594-1

(1) WHEREAS, On the 24th day of July A. D. 1961
Burke Bros.

made Water Right Application No. 594-1 for a permit to use 5.9 cubic feet per second of the waters of Ash Coulee

County of Harding State of South Dakota, for irrigation purposes; and

(2) WHEREAS, On the 20th day of November A. D. 1961
Permit No. 594-1 with a date of priority of 1913, 1940 and July 24, 1961

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 9th day of November A. D. 1965 and for the application to beneficial use of said water on or before the 9th day of November A. D. 1965

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 5.9 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 portions of Sections 11, 14, 15, 23, 25 and 26, T15N, R3E, described on the attachment

(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 Burke Bros.

_____ of Hoover, S.D.
the holder _____ and owner _____ permit No. 594-1 a water right, dating from 1913, 1940 and
July 24, 1961 to use of 5.9 cubic feet per second of the waters
of Ash Coulee

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 Leger Dam, located N. 87° W, 760 ft. from the E½
Corner, Sec. 33, T16N, R3E, Spreader dams located between points S. 0° E, 33 ft.
from NW Corner, Sec. 11 and N. 90° W, 300 ft. from the S½ Corner, Sec. 25, both in
T15N, R3E

and conduct to and upon portions of Sections 11, 14, 15, 23, 25 and 26, T15N, R3E described
on the attached list

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 594-1 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 2nd day of November A. D.
Nineteen Hundred and Seventy-one

WATER RESOURCES COMMISSION

By: _____
Chief Engineer, Executive Officer, J.W. GRINES

Form 15.

Permit No. 594-1

Water Diversion No. 1 HORREAU RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Burke Bros.

_____ the holder _____ of
Permit No. 594-1 issued upon Application No. 594-1, bearing date of priority of 1913, 1949 and
July 24, 1961 authorizing the diversion of 5.9 cu. ft. per second of the waters of _____
Ash Coulee County of Harding, State of South Dakota at _____
Lager Dam, located N. 87° W. 760 ft. from the E $\frac{1}{2}$ Corner, Sec. 33, T16N, R3E, Spreader dams
located between points S. 0° E. 33' from NW Corner, Sec. 11 and N. 90° W. 300' from the
S $\frac{1}{2}$ Corner, Sec. 25, both in T15N, R3E _____
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 25 cu. ft. per second of water.

Date November 2, 1971

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

Permit No. 594-1

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 BURKE BROTHERS of REDIG holder of Permit No. 594-1, bearing date of priority of SEPT 11, 1913, 1940 & JULY 24, 1961 authorizing the diversion of 5.9 cu. ft. per second of the waters of ASH COULEE 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: STORAGE DAM (LEGER) PROPOSED 37 SURFACE ACRES WITH 180 AC. FT. STORAGE. (WHEN DAM WAS REBUILT IT APPEARS THE SIZE WAS INCREASED TO APPROX 60 S.A. WITH RESULTING INCREASE IN STORAGE) OVERFLOW STRUCTURE CONSISTS OF 4' SQ. INTAKE TO 3' TUBE THRU DAM. OVERFLOW GOES DOWN ASH COULEE, AND IS DIVERTED BY MEANS OF SMALL SPREADER DIKES BY LEGER & SUBSEQUENTLY BY BURKE'S ON FLATS ALONG STREAM. 12' TUBE THRU DAM CAN GO INTO LOWER DITCH, OR BE PUMPED BY RAIN MASTER
- B. Works used to transport water to place of use, 10" INLET - 10" OUTLET PUMP, POWERED BY CASE 900 DIESEL TRACTOR. UPPER DITCH APPROX 3 1/2 MILES LONG TO BURKE LAND. 40' 10" INTAKE PIPE & 150' 10" RUBBER HOSE TO DITCH. LAND IRRIGATED UNDER UPPER DITCH HAS BEEN LEVELLED & BORDER DIKED AND 6" 4" & 2" SYPHON TUBES TRANSFER WATER FROM DITCH TO FIELDS.
- C. Works used to apply water to beneficial use.

The system is in the following condition: VERY GOOD
The point of diversion is located LEGER DAM - LOCATED N87°W, 765 FEET FROM THE E 1/4 CORNER SECTION 33, T16N, R3E
SPREADER DAMS LOCATED BETWEEN POINTS S0°E, 33' FROM NW CORNER, SECTION 11 AND N90°W 300' FROM THE S 1/4 CORNER, SECTION 25, BOTH IN T16N, R3E
PUMP 5.77 CFS (2000 G.P.M.)

The works are capable of diverting and conveying to the place of use SPREADERS UP TO 20 cu. ft. per second of water which is to be used for IRRIGATION

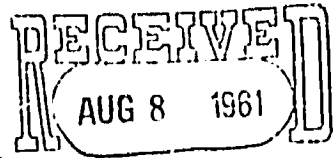
Water has been put to beneficial use to the maximum extent as follows:
SEE ATTACHED SHEET

comprising a total of 4.14 acres of land.

Date: AUGUST 25 1971
[Signature]
(Signature)
WATER RIGHT SPECIALIST
WATER RESOURCES COMMISSION

LANDS TO BE IRRIGATED UNDER PERMIT 594-1
 ALL IN T15N, R3E

SECTION 11	NW ⁴ NW ⁴	25 ACRES	SECTION 23	NW ⁴ NE ⁴	25 ACRES
	SW ⁴ NW ⁴	24 "		SE ⁴ NE ⁴	15 "
	NW ⁴ SW ⁴	20 "		NE ⁴ SE ⁴	22 "
	SW ⁴ SW ⁴	18 "		SE ⁴ SE ⁴	22 "
	SE ⁴ SW ⁴	6 "	SECTION 25	NW ⁴ NW ⁴	15 "
SECTION 14	NW ⁴ NW ⁴	9 "		SW ⁴ NW ⁴	17 "
	NE ⁴ NW ⁴	14 "		SE ⁴ NW ⁴	17 "
	SW ⁴ NW ⁴	22 "		NE ⁴ SW ⁴	14 "
	SE ⁴ NW ⁴	2 "		SE ⁴ SW ⁴	30 "
	NW ⁴ SW ⁴	21 "	SECTION 26	NE ⁴ NE ⁴	14 "
	NE ⁴ SW ⁴	3 "	TOTAL		414 ACRES
	SW ⁴ SW ⁴	5 "			
	SE ⁴ SW ⁴	15 "			
	SW ⁴ SE ⁴	3 "			
SECTION 15	NE ⁴ NE ⁴	7 "			
	SE ⁴ NE ⁴	17 "			
	NE ⁴ SE ⁴	12 "			



Location No. _____

Water Division No. _____

Water District _____

STATE WATER RESOURCES COMM.

PIERRE SOUTH DAKOTA

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

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

Ans. Rycke Bros. (William A. & Clifford T.) - Redig, S.D. - Stockmen, Redig, S.D.

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

Ans. XXXXXXXX

Ques. 3. State date of posting and date of recording notice of appropriation.
No record of notices but date of construction was 1940 or before.

Ans. _____

Ques. 4. State source of water supply and give exact location of point of diversion.
Ash Coulee; Dam #1 - 8 16' 45" E 1381' from the W & Cor. Sec. 11 T. 15 N., R. 3 E
to a point which lies N 86' 45" E 992' from the SE Cor. Sec. 11 T. 15 N.
R. 3 E. BHM in Harding County, So. Dak.

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.
Dam No. 1 - Length 300', Height 12' Bot. W. 00', Top 20'

Ans. Dam No. 2 - Length 70', Height 3.5', Bot. W. - 24', Top W. 6'
Entire flow of Ash Coulee, No ditches required for flooding flats.
Completed in 1939 or 1940.

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.)
For irrigation; NW-NW-25 ac., SW-NW-24 ac., NW-SW-20 ac., SW-SW-18 ac.,

Ans. SW-SW-6 ac., Sec. 11, T. 15 N., R. 3 E. - BHM Total 93 ac.

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

Ans. None

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

Ans. 1.18 SF.

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. By purchase

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

Ans. From 1940 to date entire flow of stream has been diverted across above described land every time the stream ran.
Water diverted by means of the dams described.

(Sign) *George Henry...*

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 Buffalo, S. Dak., County of Harding

State of South Dakota, on this 5th day of August A. D. 1961

CARL E. CORNELL
Notary Public, State of South Dakota, County of Harding
My Commission Expires April 18, 1967
Witnessed: Carl E. Cornell, 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.

Jane Nelson
Floyd Fox

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 _____

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
County Harding } ss.

RECEIVED
OCT 30 1961
STATE WATER RESOURCES COMMISSION
PIERRE SOUTH DAKOTA

Donald J. 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 itine 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:

- October 5, 1961
- October 12, 1961
- October 19, 1961
- October 26, 1961

in each and every issue of the full number thereof, the first publication being made on the 5th day of October 1961 and the last publication on the 26th day of October 1961, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was _____ the printer and publisher of the said newspaper.

Donald J. Cammack

Subscribed and sworn to before me this 27th day of October A. D. 1961

L. Ellis A. Cammack

Notary Public _____ County, S. D.

APPROPRIATION OF WATER
No. 594-1
Office of State Water Resources Commission, Pierre, S. Dak., September 21, 1961.

Notice is hereby given that the Burke Brothers whose postoffice address is Redig, 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 5.5 (of which 3.48 is a "vested right") cubic feet of water per second of time from Ash Coulee through the Burke Irrigation Project, the point of diversion of which is to be located on both banks of said stream between a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 11, and a point in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, Twp. 15N Range 3E. Said water to be used for the purpose of providing irrigation on portions of the following described land:

NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 11; NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 14; E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 15; NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 26; NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 25, all in T 15 N, R 3E. The "vested" portion of this application includes 24.81 acres in Sections 11, 14, 23 and 26.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 8th day of November, 1961, 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. JONES
Water Right Specialist

(Pub. Oct. 5-12-19-25)

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

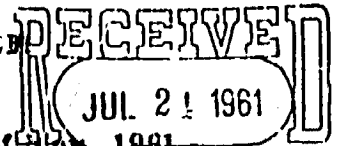
Does the Water Resources Commission have authority to cancel the Cook water right because of non-use and thereby over-rule the Court decisions?

BORKE BROTHERS

On August 18, 1961, we received an application from The Burke Brothers for a permit to appropriate 7.1 cfs to irrigate 598 acres in Harding & Butte Counties, with the source of water being Ash Coulee and South Moreau River. We returned the application with the request that the area in Butte County be separated from the other lands, as it was not contiguous, and the source of water was not the same. Too, it was our understanding that the Harding County lands to be irrigated qualified for a "vested right", both by use and a prior location notice 510-1 (issued to Benson). The application was split, with the "Butte County" lands ^(184 acres) assigned WR No 595-1, which was subsequently approved by the Commission 9-13-61. The Harding county lands ^(414 acres) were assigned No 594-1, and were not advertised because of the "vested right". Upon examining the old Benson File (510.1) I find a Certificate of Appropriation was issued 10-5, 1917 for 2.5 cfs to irrigate 150.81 acres in Sections 14, 23 & 26, T15N R3E. (Totaling the acreage noted in the Petition for Certificate submitted by Benson, I get 157.13 acres) THESE LANDS are included in the present application, plus additional lands totalling 164 acres in the same legal subdivisions. A Form 24 submitted with the application claims a vested right on 93 acres in Section 11, T15N R3E, dating from 1940, which acreage is also covered by this application.

Taking the 150.81 acres covered in 510-1 and the 93.0 acres covered in the firm 24, we have a total of 243.81 acres which qualify for a "vested right" as the application now stands. However, in our investigation in connection with the Leeger application, we gathered that approximately 507 acres had been irrigated by Burkes and possibly qualified for a "vested right".

AGREEMENT AS TO THE USE OF WATER



THIS AGREEMENT Made and entered into this 6th day of July, 1961,

STATE WATER RESOURCES COMM.

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 Redig, 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:

1. 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 16, 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.

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.

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.

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.

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.

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.



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

January 25, 1983

594-1
595-1

Lloyd Fox
Box 5
Redig SD 57776

Dear Mr. Fox:

This letter is in reference to the 1982 Irrigation Questionnaire you returned for Water Right No. 594-1 listed in the name of Burke Brothers. You indicated that you had bought the ranch from the Burke Brothers in 1971. Since you now own the land covered under Water Right No. 594-1, the Water Right should be transferred to your name.

Water Right No. 595-1 is also listed in the name of Burke Brothers. The following is a list of the land covered under Water Right No. 595-1:

184 acres - S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 1; N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
Section 2, T14N, R3E

If you also own this property, the water right should be transferred to your name.

Enclosed please find a partially completed transfer forms for Water Rights No. 594-1 and 595-1. These forms should be checked over, signed, dated and returned to this office with a \$2.50 filing fee for each transfer (total of \$5.00). If you do not own the land under Water Right No. 595-1, disregard the transfer form for 595-1 and write a note to that affect when returning the form and fee for Water Right No. 594-1.

If you have any questions, please advise.

Sincerely,

GENNY YOUNG
Water Right Specialist

GY:ks

enclosures

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: March 1 83

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

414 acres - W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 11, NW $\frac{1}{4}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14,
E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 23, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 25, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26 all in T15N, R3E
formerly owned by Burke Brothers

has been transferred to Lloyd Fox, Box 5, Redig SD 57776
(please include complete mailing address)
together with any rights to the beneficial use of water thereon as evidenced by
Water Right Permit No. 594-1 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, Water Management Board as
evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)
County of Harding) ss.

I, Lloyd Fox being first duly sworn on my oath depose and say:
That my relation to the above described undertaking is that of Owner, that I have read
the above foregoing statement, and I know of my own personal knowledge that the infor-
mation herein stated is true.

Lloyd Fox
(Signed)

Subscribed and sworn to before me this 1 Day of March, 1983.

Donald E. Mann
(Notary Public)



RECEIPT

WATER RIGHTS COMMISSION
State of South Dakota

No 4 9175

March 3 1983

PIERRE, _____, 19

Lloyd Fox, Box 5, Redie, South Dakota 57776

RECEIVED OF _____
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. _____ transfer of WR#554-1	2	50
Fee for filing _____		
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for _____ (any other work as provided by law)		
TOTAL	2	50

WATER RIGHTS COMMISSION
By *John Hatcher*
Chief Engineer, Executive Officer

No. 594-1

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

March 3, 1983

Lloyd Fox
Box 5
Reding, South Dakota 57776

Dear Mr. Fox:

Enclosed is receipt No. 4 9175 in the amount of \$ 2.50 which you
paid for transfer of Water Right No. 594-1.

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

Sincerely,

Genny Young
Water Rights Specialist

GY:ms
Enc.

SOUTH DAKOTA Department of
Water & Natural Resources

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

January 29, 1988

LLOYD FOX
BOX 5
REDIG, SD 57776

NOTICE

Re: Violation of Requirement To Submit 1987 Irrigation
Questionnaire

Our records indicate that the 1987 Irrigation Questionnaire has not been submitted for Permit No(s). 594-1. The request for the Questionnaire was dated October 8, 1987. The Water Management Board has directed that owners of water permits who have not submitted 1987 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 9:00 am, March 2, 1988 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

1. Amend Permit No(s). 594-1 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

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



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

NOTE: If the questionnaire(s) is received in this office before the March 2 hearing date, your name will be deleted from the agenda for the hearing.

SOUTH DAKOTA
**Department of
Water & Natural Resources**

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

February 10, 1988

594-1

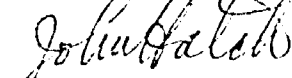
Lloyd Fox
Box 5
Redig SD 57776

Dear Mr. Fox:

I am writing to acknowledge receipt of your 1987 Irrigation Questionnaire(s). A notice was sent to you January 29, 1988 regarding the requirement to submit the Irrigation Questionnaire(s) for Water Permit No. 594-1 and the hearing date before the Water Management Board.

Since your questionnaire was received prior to the March 2, 1988 Water Management Board Meeting, your name has been deleted from the Board Meeting agenda. If you have any questions, please contact us.

Very truly yours,



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

KNOW ALL MEN BY THESE PRESENTS:

THAT Margaret F. Benson and James F. Benson whose post office is Harding, South Dakota, a citizen of the United States, above the age of

21 years, being in possession of the following described land, to-wit: S¹/₂ SW¹/₄, NW¹/₄ SW¹/₄ of section 14 and N¹/₂ NE¹/₄, SE¹/₄ NE¹/₄, NE¹/₄ SE¹/₄ ^{Sec 2²} township 15-7 range 3 E. B. H. M

in Harding County, South Dakota. Said lands comprising Desert Entry No. Belle Fourche Land District, availing themselves of the right granted them under the provisions

of Section 31 of Chapter 180 of the Session Laws of South Dakota of 1907, has located and claims the right to construct a certain dam across a dry draw situated in the SW 1-4 of the NW 1-4 section 14

township 15 range 3 E. B. H. M. and has located and claims the right to construct

ditches and flumes for the purpose of directing flood waters from said dam for irrigation of the land first above described, and claims the right of way across any land for the purpose of conveying said waters for said purpose. together with other dams located at intervals along said water course on the above land

Said locator claims for the above purpose four cubic feet of water per second during the following described annual periods March 1st to October 1st inclusive each year.

The location of the point of diversion of the reservoir is as follows:

From the northwest corner of the SW¹/₄ NW¹/₄ of Sec 14 of said township and range east along the north line of said forty 60 rods

The ditch is will run in a southeasterly direction to and on said land for a distance of 10,000 feet.

Said location was made on the 9th day of September 1913.

Witness my hand and seal this 9th day of September 1913.

Margaret F. Benson Locator.
James F. Benson Locator

State of South Dakota, }
County of Harding } ss.

On the 9th day of September 1913, before me the undersigned,

a notary public in and for the County and State aforesaid, personally appeared Margaret F. Benson and James F. Benson to me personally known to be the person who executed the foregoing instrument and acknowledged that he executed the same for the uses and purposes therein set forth

Witness my hand and official seal, the day and date above written.

(Seal) E. A. Gade Notary Public.

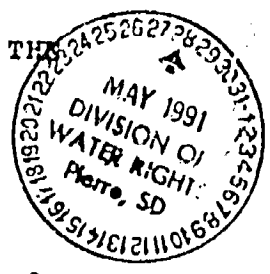
Pierre, South Dakota, Sept 12 1913.

This is to certify that the foregoing location notice was received at this office at 9 o'clock a M., upon the 11th day of Sept. 1913, and after examination it was filed for record

Homer M. Dev. State Engineer.

594-1

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 15th
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.)
Floyd Cook Defendant.)

J U D G M E N T

This cause was tried to the Court without a jury
at the regular October, 1920, term held at Buffalo, Harding
County, South Dakota, the plaintiffs appeared in person and
by their attorneys, L. M. Simons and Martin & Mason, and
the defendant appearing in person and by his attorneys, Dan
McCutchen and Hayes & Hefiron; 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 the 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 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 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, all 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 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 ($E\frac{1}{2}SE\frac{1}{4}$) 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 ~~AAA~~ 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 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 rebuilt and continued to maintain a large dam, costing about \$15,000, 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; *come from melting snows and rains and* that the waters thereof ^{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 plaintiffs' 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

594-1

1074

and otherwise on the lands described in his answer to the complaint herein; that plaintiffs are not entitled thereto, or to 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; that 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:

John A. Wilson
CLERK

Raymond L. Dillman
JUDGE

SOUTH DAKOTA

594-1

VESTED WATER RIGHT NO. 594-1 FOR IRRIGATION

Date of Receipt of Claim July 21, 1961.

Date of Validation September 27, 1989.

The Water Management Board validated Vested Water Right Claim No. 594-1 for irrigation purposes for Lloyd Fox, Box 5, Redig SD 57776 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 594-1 appropriates 3.48 cubic feet of water per second (cfs) from Leger Dam and Ash Coulee to irrigate 250 acres. The points of diversion are located in the SE1/4 NE1/4 section 33-T16N-R3E (Leger Dam) and between points in the NW1/4 NW1/4 section 11 and SE1/4 SW1/4 section 25; all in T15N-R3E (Ash Coulee). The irrigated acreage is located in the W1/2 NW1/4, W1/2 SW1/4, SE1/4 SW1/4 section 11-T15N-R3E (93 acres); W1/2, SW1/4 SE1/4 section 14; NW1/4 NE1/4, SE1/4 NE1/4, E1/2 SE1/4 section 23; NE1/4 NE1/4 section 26; all in T15N-R3E (157 acres).
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 - November 1.
3. The priority dates of the Vested Water Right are:
September 11, 1913 - 2.50 cfs to irrigate 157 acres
January 1, 1940 - 0.98 cfs to irrigate 93 acres
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 1913 priority date is transferred from Location Notice 510-1 issued to Margaret and James Benson and defined by Circuit Court for the 12th Judicial District under date of May 17, 1921. Transfer of priorities and pertinent data to this permit cancels Location Notice 510-1. The 0.98 cfs granted a 1940 priority date is a vested right. Operation of William Leger's storage dam under this vested right shall be in accordance with the agreement signed by William Leger and William Burke, dated May 6, 1961.

WATER MANAGEMENT BOARD

By: 
Chief Engineer

MAR 18 1993

date

Division of Water Rights
Dept. of Environment and Natural Resources

NOTE: Vested Water Right No. 594-1 is also included as part of Water License No. 594-1 for a total of 5.90 cfs to irrigate 414 acres.



MAR 18 1993

594-1

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

594-1

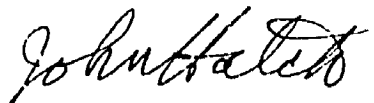
Lloyd Fox
Box 5
Redig SD 57776

Dear Mr. Fox:

The Water Management Board has validated the enclosed Vested Water Right No. 594-1. 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

L

594-1



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,

Genny McMATH

Genny McMATH
 Natural Resources Analyst
 (605) 773-3352

encl

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

July 29, 1998

594-1

Lloyd Fox
Box 5
Redig, SD 57776

Dear Mr. Fox:

I am writing to you in an effort to update your water right with regard to the type of irrigation system you use. Water Right No. 594-1 authorizes diversion of water from Ash Coulee to irrigate 414 acres in Sections 11,14, 15, 23, 25 & 26, T15N, R3E.

In 1971, an investigation of your water use system was conducted to allow for issuance of the water license. The investigation found the system to be a water spreading or flood type system with the capability of using a pump if needed (see enclosed copy of report).

On last year's irrigation questionnaire, you wrote that you have check dams used for flood irrigation. Do you still utilize a pump with your irrigation system or is it entirely a water spreading system? Please take a few minutes to write or call and let me know if your irrigation system has changed. You may make any necessary corrections on the enclosed report and send it back to me.

I appreciate any assistance you may give in this matter. If you have any questions, please get in touch with me.

Sincerely,

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

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

encl

Sept. 5 98

Dear Mr. McMath:

The land in [#]595-1 has never been irrigated by Burke or me.

The only irrigation we use is some spreader ditches all in Harding Co.

There is a ditch from the Lodgepole Dam but we have not used it in 28 years we have had the ranch
- (We want to keep water rights in Hard. Co.

Sincerely
Lloyd Fox

