

778-1

1. Considered May 17, 1967
2. Name of Applicant Penn Bros
3. Post Office Address Buffalo
4. Amount of water claimed 1.7 (0.6 Wested Right - 1.1 New)
5. Source of water supply Penn Draw & S. Draw
6. Water to be used for Irrigation
Acres to be irrigated 122
7. Water to diverted and used in Harding County
about 55 miles SE of Camp Creek
8. Proof of Publication Received May 10
Not Received _____
9. Application Approved X
Subject to _____
Not Approved _____
Action deferred _____
10. Remarks:

No. 798-1Water Division No. 1 Little Missouri River District
(Blanks to be filled by the Engineer for the W. R. C.)

MAR 24 1967

8:15 am

STATE WATER RESOURCES COMMISSION
PERMIT SOUTH DAKOTA

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

(NOTE—Draw a line through item if not applicable.)

1. Name of applicant ~~THEY~~ Albert Penn and Daniel PennPostoffice address EL DAPAO, County HARDING, State S.D. DAKI. If a corporation ~~A PRIVATE PERSON~~

(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)

BY DIRECT LABOR AND THE EMPLOYMENT OF OTHERS

(b) Cash on hand, \$

(c) Treasury stock, \$

(d) Bonds to be issued, \$

(e) Other resources, \$

2. Name of diversion work THE PENN BROTHERS SPREADER PROJECT3. Amount of water claimed 1.7 cubic feet per second4. Source of water supply PENN DRAIN AND SLUTE DRAIN Between a point S. 60° W. 1534' from the E 1/4 Cor. Sec. 31 and a point5. Location of point of diversion N 66° 30' E 990' from the W 1/4 Cor. Sec. 31 (Panna draw) also from South Draw at a point N 54° 30' E 1632' from the SE Cor. Sec. 31 (Panna draw) (located at Rock P. 30 SE Sec. 31) on North 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:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Spreading(a) Number of acres to be irrigated 122 acres

SW-NW-3 ac., SE-NW-7 ac., NW-SW-5 ac., NE-SW 33 ac., SW-SW-1 ac., SE-SW-25 ac.

(b) Legal subdivisions to be irrigated

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

NW-SE-35 ac., SW-SE-10 ac. Sec. 31, T. 18 N., R. 3 E-BHM Total 122 ac

(c) Statement as to domestic use (giving location, etc.)

Stockwater and irrigation only

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

(a) Nature of use Stockwater and irrigation only

Name any of the above uses claimed

(b) Amount of power to be generated None horse power.Amount claimed for engine cooling None(c) Location of plant None(d) Method of developing power None(e) Point where water will be returned to stream X X X X

MAP # 670-1

8. Estimated cost of work:

(a) Head gates, \$145.00 (b) Pumping plant, \$.....
 70' 12" (c) Plumbing, \$75.00 (d) Canal-earth, \$100.00 Rock, \$.....
 (e) Other structures: Muzzetta, \$300.00 Total, \$.....

9. Description of diversion works: Land leveling \$500.00

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

One combination stock reservoir, arreder and storage reservoir

II. Dimensions of works. 3500 ft. ditch from reservoir

(a) Dam: Height 16 feet; length at bottom 550 feet; length at top 530 feet; thickness at bottom 82 feet; thickness at top 12 feet; slope at front water face 3:1; slope at back face 12:1 material used in construction earth

(b) Reservoir: Capacity when filled 7 acre feet. Surface area at highwater mark 3 acres. With 70ft of 12" CM with metal headgate

We expect to find witnesses to establish vested right on dam

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

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

(d) Canal: Total length 2500 feet m (1/2 X)

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 5 years.

11. Time required for complete application of water to the proposed beneficial use 5 years.

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

The Buffalo Times Herald, Buffalo, So. Dak.

STATE OF SOUTH DAKOTA

County of Harding ss.

I, Penn Brothers (Walter and Bernard) by Walter Penn, 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 Walter and Bernard Penn

Subscribed and sworn to before me this 7th day of February

Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.

CARL M. CORNELL
 Harding Co., S. D.

PLAT
OF
THE PENN BROS. SPRINKLER PROJECT, IN S.E. 31, T.18 N., R.2 E., Harding Co., SD.
SCALE 8 inches = 1 mile

- SURVEYOR'S CERTIFICATE -

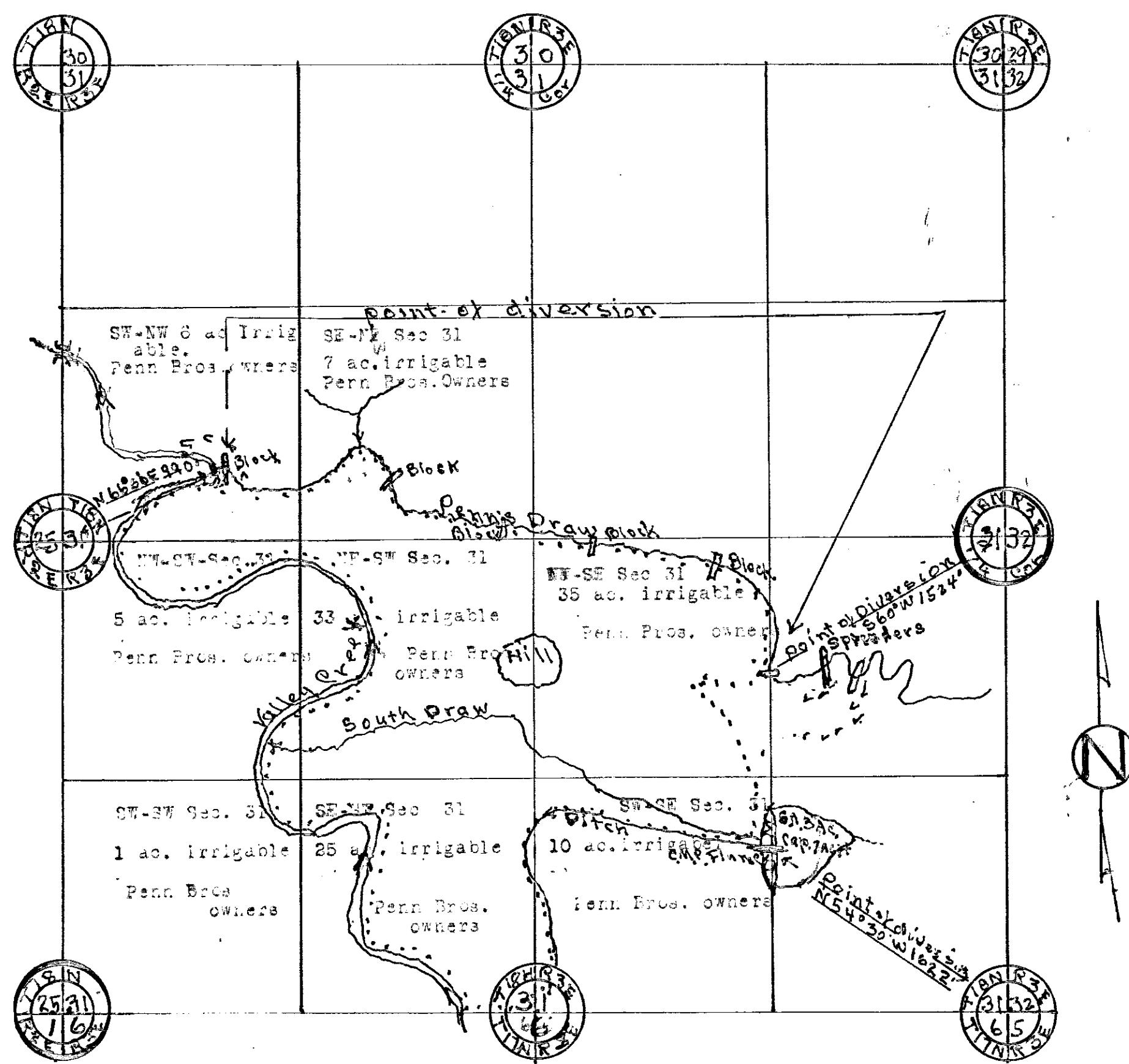
I, Carl M. Cornell, Licensed Surveyor in and for the State of South Dakota do hereby certify that at the request of Penn Brothers of Buffalo South Dakota I have made a survey and prepared this plat of Section 31, T.18 N., R.2 E. for the purpose of showing the irrigable areas contained in the several 1-100 subdivisions as shown hereon and for the further purpose of furnishing necessary plat of their proposed irrigation project as a part of their "APPLICATION FOR RIGHT 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 Corner shown, are correct, to the best of my knowledge and belief.

Subscribed and sworn to at Buffalo, South Dakota this 8th day of March 1967

Carl M. Cornell
CARL M. CORNELL, LICENSED
SURVEYOR #144

Subscribed and sworn to before me at Buffalo, South Dakota this 8th day of March, 1967.

M. R. Ham
Notary Public. SEAL



MAP # 670-1 (App # 798-1)

Remarks by State Water Resources Commission:

Partial "Vested Right" Claimed.

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

STATE OF SOUTH DAKOTA

County of Hughes ss.

Pierre, South Dakota, May 19, 1967

This is to certify that the foregoing application was received by the Commission at 8:15 o'clock A.m. upon the 24th day of March, 1967.

State Water Resources Commission

By: Richard D Schroyer
for Chief Engineer, Executive Officer

Number of permit 298-1

Date of first receipt of application March 24, 1967

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 0.6 CFS 1953
1.1 CFS March 24, 1967

Approved May 17, 1967, Recorded in Book 9 Page 255

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 17, 1967

2nd. The whole of said work is to be completed on or before May 17, 1972

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is May 17, 1972

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 1.7 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 May 17, 1972; said water to be used during the following described annual period:

April 1st through November 1st

Witness my hand this 19th day of May, 1967

State Water Resources Commission

By: Geo Guinney
Chief Engineer, Executive Officer

Certificate of Construction Issued 12-30, 1974

Water License Issued 12-30, 1974

Form 15.

Permit No. 798-1

Water Diversion No. 1 LITTLE MISSOURI RIVER Water District

ALSO LOCATION OF WATER NOTICE NO. 0277-1

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Penn Brothers of Buffalo, South Dakota

the holder S of
Permit No. 798-1 / and Location of Water No. 0277-1
issued upon Application No. 798-1, bearing date of priority of July 21, 1904,
1953 & March 24, 1967 authorizing the diversion of 1.7 + cu. ft. per second of the waters of
Valley Creek & Dry Draw County of Harding State of South Dakota at
1904 Priority - in N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 6, T17N, R3E, 1967 Priority - S. 51 $^{\circ}$ W., 1120 ft.
from E $\frac{1}{2}$ Cor. Sec. 31, T18N, R3E. 1953 Priority - N. 54 $^{\circ}$ 30' W., of SE Corner
of Sec. 31, T18N, R3E, for spreader and gravity irrigation

purposes, have 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 30 cu. ft. per second of water.

Date _____

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

In addition this irrigation system includes a portion constructed under
Location of Water Notice No. 0277-1, dated July 21, 1904.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 798-1

(1) WHEREAS, On the 24th day of March A. D. 1967
Penn Brothers of Buffalo, South Dakota

made Water Right Application No. 798-1 for a permit to use 1.7 cubic feet per second of the waters of Valley Creek and Dry Draws

County of Harding State of South Dakota, for spreader and gravity irrigation

(2) WHEREAS, On the 19th day of May A. D. 1967

Permit No. 798-1 with a date of priority of 1953 and March 24, 1967

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 17th day of May A. D. 1972 and for the

application to beneficial use of said water on or before the 17th day of May A. D. 1972

In addition this irrigation system includes a portion constructed under

Location of Water Notice No. 0277-1, dated July 21, 1904.

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 3.11 cfs cubic feet per second of water for beneficial use and, trans. to 798-1A

(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 Section 31, T18N, R3E

1904 Priority		1967 Priority	
SW $\frac{1}{4}$ SW $\frac{1}{4}$	39 acres	SW $\frac{1}{4}$ NW $\frac{1}{4}$	6 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	15 acres	SE $\frac{1}{4}$ NW $\frac{1}{4}$	7 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	7 acres	NE $\frac{1}{4}$ SW $\frac{1}{4}$	18 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	30 acres	SW $\frac{1}{4}$ SW $\frac{1}{4}$	1 acres
Sub-Total	91 Acres	NW $\frac{1}{4}$ SE $\frac{1}{4}$	35 acres <u>trans. 798-1A</u>
		SW $\frac{1}{4}$ SE $\frac{1}{4}$	7 acres <u>trans. 798-1A</u>
1953 Priority		NW $\frac{1}{4}$ SW $\frac{1}{4}$	45 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	2 acres <u>trans. 798-1A</u>	NE $\frac{1}{4}$ SE $\frac{1}{4}$	5 acres <u>trans. 798-1A</u>
SE $\frac{1}{4}$ SW $\frac{1}{4}$	25 acres	Sub-Total	84 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	15 acres		
Sub-Total	43 Acres		

Comprising a total of 218 acres of land.

part transferred to 798-1A, Louis Penn, 50 acres & 17 cfs

(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 Penn Brothers

of Buffalo, South Dakota
the holder S and owner S of said permit No. 798-1 a water right, dating from July 21, 1904, 1953 and March 24, 1967 to use of 5.11 (2.4) cubic feet per second of the waters of Valley Creek and dry draws

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 1904 Priority - in N $\frac{1}{2}$ NW $\frac{1}{2}$, Sec. 6, T17N, R3E.
1967 Priority - E. 51 W., 1120 ft. from E $\frac{1}{2}$ Cor. Sec. 31, T18N, R3E.

1953 Priority - N. 54⁰ 30' W., of SE Corner of Sec. 31, T18N, R3E.

and conduct to and upon portions of Section 31, T18N, R3E. more fully described on the face of this License.

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 798-1 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 30TH day of DECEMBER A. D.
Nineteen Hundred and SEVENTY-FOUR

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer J.W. GRIMES

The pertinent portions of Water Location Notice No. 0277-1 as constructed have been incorporated into this water license No. 798-1 and therefore the record of Water Location Notice No. 0277-1 is placed in a cancelled status.

PROOF OF PUBLICATION

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 Appropriation 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:

April 6 - 13 - 20 - 27

In each and every issue of the full number thereof, the first publication being made on the 6th day of April 1967 and the last publication on the 27th day of April 1967, 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.

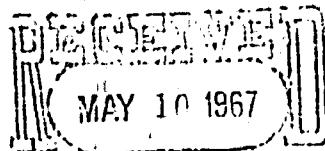
Subscribed and sworn to before me this 1st day of May A. D. 1967

Notary Public Leola A. Cammack County, S. D.

APPROPRIATION OF WATER

No. 199-1
 Office of State Water Resources Commission, Pierre, S. Dak.
 March 29, 1967
 Notice is hereby given that the Penn Brothers, whose principal office address is Buffalo, S. Dak., have filed an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 1.7 (one and seven tenths) cubic feet of water per second of time from the Penn Draw and South Draw through the Penn Brothers Spreader Project, the points of diversion of which are to be located on both banks of said stream between a point in the NW 1/4 SE 1/4 and a point in the SW 1/4 NW 1/4 and at a point in the SW 1/4 of the SE 1/4 of Section 31, Twp. 18N Range 1E. Said water to be used for the purpose of providing irrigation on portions of the following described land:

SW 1/4 NW 1/4 and SW 1/4 SE 1/4, Section 31, T. 18N. R. 1E.
 This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 17th day of May, 1967, 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
 PIERRE SOUTH DAKOTA

On or before **April 20**, 19**67**
 (First Publication, 19..)

APPROPRIATION OF WATER

Office of State Water Resources Commission,

Pierre, S. Dak., **March 28**, 19**67**

Notice is hereby given that **the Penn Brothers** whose postoffice address is **Buffalo** 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 **1.7 (0.6 Vested Right)** cubic feet of water per second of time from the **Penn Draw and South Draw** through the **Penn Brothers Sprender Project** the point of diversion of which is to be located on the **xxx both** between a point in the **NW 1/4 SE 1/4** and a point in the **SW 1/4 NW 1/4**, and at a point banks of said stream in the **SW** 1/4 of the **SE** 1/4 of Section **31** portions of Twp. **18N** Range **3E**. Said water to be used for the purpose of providing irrigation on the following described land:

8 1/2 NW 1/4, SW 1/4, and W 1/2 SE 1/4, Section 31, T18N, R3E

makfor purposes.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the **17th** day of **May**, 19**67**, 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:

RICHARD D. SCHMIDT
 Chief Engineer, Executive Officer
 Water Right Specialist

CC: **D. L. Carmack**, Publisher
Times-Herald
Buffalo, S.D.

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

August 26, 1980

Robert L. Tschetter
STEPHENS, QUINN, CARR
TSCHETTER & BUCKMASTER
117 Fifth Avenue
Belle Fourche, SD 57717

Dear Mr. Tschetter:

Enclosed are receipt Nos. 4 7660, 4 7661, & 4 7662, which you paid for the transfer of Water Right No. 798-1.

The Water Right has been split into 798-1 and 798-1A. 798-1 is under the names of Albert and Daniel Penn of Buffalo, SD. It authorizes irrigation of 168 acres at a rate of 2.4 cfs. 798-1A is under the name of Louis Penn, and authorizes irrigation of 50 acres at a rate of .71 cfs.

If you have any questions concerning this matter, please contact this office.

Sincerely,

GENNY YOUNG
Staff Assistant

gy

encl

cc: Louis Penn
Albert and Daniel Penn

Equal Opportunity Employer

Permit No. 798-1Water Division 1 LITTLE MISSOURI Water DistrictREPORT 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 Penn Bros.

0277-1 of Buffalo, S.D. holder 0277-1, July 21, 1904
 of Permit No. 798-1, bearing date of priority of 798-1, 1953 & March 24, 1967, XX
 authorizing the diversion of 1.7 + cu. ft. per second of the waters of Valley Creek & Dry Draws
 for spreader and gravity 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:

0227-1, Two dams in N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 6, T17N, R3E.798-1, 1967 Priority, Diversion dams S. 51 $^{\circ}$ W., 1120 ft. from E $\frac{1}{2}$ Corner of Sec. 31, T18N, R3E.1953 Priority, Storage dam (7 acre-feet capacity) N. 54 $^{\circ}$ 30' West of SE corner of Section 31, T18N, R3E.

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

One mile of canal

C. Works used to apply water to beneficial use.

Small ditches and spreader dikesExcellent

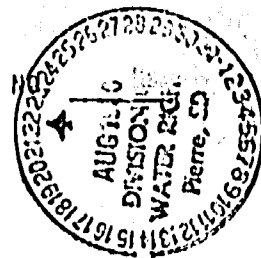
The system is in the following condition:

1904 Priority, N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 6, T17N, R3E. 1967 Priority, S. 51 $^{\circ}$ W., 1120 ft. from E $\frac{1}{2}$ Cor. of Section 31, T18N, R3E. 1953 Priority - North 54 $^{\circ}$ 30' Westof SE Corner of Section 31, T18N, R3EThe works are capable of diverting and conveying to the place of use up to 30cu. ft. per second of water which is to be used for Spreader and gravity irrigationWater has been put to beneficial use to the maximum extent as follows: All in Section 31, T18N, R3E

1904 Priority		1953 Priority		1967 Priority	
SW $\frac{1}{4}$ SW $\frac{1}{4}$	39 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$	15 acres	SW $\frac{1}{4}$ NW $\frac{1}{4}$	6 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	15 acres	SE $\frac{1}{4}$ SW $\frac{1}{4}$	25 acres	SE $\frac{1}{4}$ NW $\frac{1}{4}$	7 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	7 acres	NE $\frac{1}{4}$ SW $\frac{1}{4}$	15 acres	NE $\frac{1}{4}$ SW $\frac{1}{4}$	18 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	30 acres	Sub-total	43 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$	1 acre
Sub Total	91 acres			NW $\frac{1}{4}$ SE $\frac{1}{4}$	35 acres
Comprising a total of 91 acres of land.				SW $\frac{1}{4}$ SE $\frac{1}{4}$	7 acres
				NW $\frac{1}{4}$ SW $\frac{1}{4}$	5 acres
				NE $\frac{1}{4}$ SE $\frac{1}{4}$	5 acres
Comprising a total of 218 acres of land				Sub-total	84 acres

Date December 21, 1972Marvin Knecht
(Signature)

MARVIN KNECHT, Engineer, Water Resources Comm.



NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: April 2, 1980

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

West Half of Section 31, Township 18 North, Range 3 East, Black Hills Meridian,
Harding County, South Dakota

formerly owned by Penn Brothers of Buffalo, South Dakota

has been transferred to Albert Penn and Daniel Penn, as Tenants in Common, P.O.
Buffalo, South Dakota.

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

Water Right Permit No. 798-1 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 the Board of Water Management 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)
) ss.
County of Butte)

I, Bernard Penn and Walter Penn being first duly sworn of my own despose and say: That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

Penn Brothers of Buffalo, South Dakota.

Walter Penn

Bernard Penn
(Signed)

Subscribed and sworn to before me this 2nd Day of April, 1980.

[Signature]
(Notary Public)

ERT L. TSCHETILR
Notary Public, South Dakota
My Commission Expires January 12, 1984

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 7660

August 25, 1980

PIERRE,

RECEIVED OF Stephens, Quinn, Carr, Tschetter & Buckmaster; 117 5th Ave; Belle Fourche, SD
the following amount in fees for services rendered as provided for by law: 57717

Fee for Application for Permit to Appropriate Water No. _____ (examination, processing, recording and filing) _____

Fee for Inspecting Construction, and Issuing Cert. of Construction No. _____

Fee for Inspecting Beneficial Use, and Issuing Water License No. _____

Fee for Issuing Location Certificate-Dry Draw, No. _____

Fee for filing _____

Fee for certified copy of _____

Fee for Print copy of map _____

Fee for Certifying _____

Fee for transfer of WR # 798-1 Penn Bras to

(any other work as provided by law)

Albert & Daniel Penn

2 50

TOTAL

2 50

WATER RIGHTS COMMISSION

By

John Hatch
Chief Engineer, Executive Officer
JOHN HATCH /bt

Permit No. 798-1Water Division No. 1Water District 2 with Missouri River**NOTICE OF COMPLETION OF WORKS**

This blank must be filled out by the holder of permit and forwarded to the Executive Officer at least 60 days before the time set for completion of works

(P. O.) Buffalo, S. Dak.(Date) Sept 20, 1971

TO THE STATE WATER RESOURCES COMMISSION
OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given of the completion of the works for the diversion of 1-1

cu. ft. per second of the waters of the state from Pine Draw
through the diversion dam and dike with 8 inch culverts in both
for stock water and irrigation purposes
and In accordance with the terms and con-
ditions of a certain permit heretofore issued by the Water Resources Commission of the State of South Dakota.

1. The name of the person or corporation holding said permit is Walter & Bernard Penn

2. The postoffice address of such person or the place of business of such corporation is Buffalo
County of Harding State of S. Dak.

3. The number of such permit is 798-1 and the date set for the completion of such work is
May 17, 1972

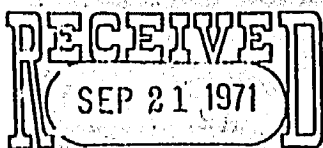
4. Said water to be used for irrigation and stock water purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of
water which said works are capable of conducting to the place of intended use, in accordance with the plans ac-
companying the application for such permit, is 1-1 cubic feet per second.

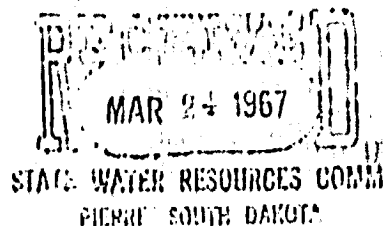
6. The amount of land for which said water is available is 122-4 acres,
particularly described as follows: SW-7W-6 ac., SE-7W-7 ac., NW-
SW-5 ac., NE-SW 3.3 ac., SW-SW-1 ac., SE-SW-25 ac.,
NW-SW-3.5 ac., SW-SE-10 ac. Sec 31, T.18 N., R.3 E., B4M
Total 122 ac.

I hereby certify that the facts set forth in the above notice are true.

(Signature of Owners)



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Location No. 798-1Water Division No. 1 Water District 

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

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

Ans. PENN. BROTHERS (WALTER AND BERNARD) BUFFALO S.D. STOCKMEN?
BUFFALO, HARDING COUNTY, SOUTH DAKOTA.

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

Ans. THIS IS A PRIVATE ENTERPRISE.

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

Ans. NONE

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

Ans. SOUTH DRAW, N. 54° 30' W. 1632 ft. from the SE Cor, Sec. 31 T18 N
R. 3 E-BHM

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 work by which water is conducted to such place of use, and date of completion of same.

Ans. One combination stock reservoir, spreader and storage reservoir,
earthen dam 850 ft. long, height 18 ft., capacity when filled
7 ac. ft., 3500 ft of ditch, Penn's ditch
70 ft. of O.M. pipe with metal head gate.

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

Ans. Stockwater and irrigation, SW-SE-3 ac., SE-SW-25 ac., NE-SW-15 ac

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

Ans. Irrigation and stockwater only

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

Ans. Much more than the watershed provides

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. Construction was done by present owners with the assistance of
the old CCC agricultural assistance program.

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

Ans. We believe this dam was constructed and the ditch dug in 1953. It was constructed by the Ginebach Brothers, who operated dam building equipment in 1953, 1954 and disposed of their dam building equipment in 1954, operate ditch digging equipment only, there after. Water was used whenever available since the dam was constructed.

(Sign) Bernard Penn (Printed)
Walter Penn (Printed)
Penn Brothers

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, County of Harding

State of South Dakota, on this March day of 1967 A. D. 10.

Witnesses, Bud Ginebach
Gerald Ginebach

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. Personally appeared before me, at my office,

Penn Brothers, Bud Ginebach and Gerald Ginebach and acknowledged
that they signed the above statement and said that they know of
their own knowledge that the statements are true.

Dated and signed at Buffalo, So. Dak. this 22nd day of March 1967

Carl M. Cornell
Notary Public, Harding Co., S. D.
My commission expires April 13, 1968 Carl M. Cornell, Notary Public

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

**OVERSIZE
DOCUMENT IS
SUPPLEMENTARY
TO MICROFILM FILE**

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

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

September 21, 1988

NOTICE

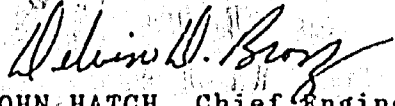
Albert/Daniel Penn
Buffalo SD 57720

Dear Mr. Penn:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 798-1 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

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

Very truly yours,

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



Water Rights Division - DWR
Conversation or File Documentation

File No. 798-1

NAME OF PERSON OR FILE: Albert/Daniel Penn

ADDRESS: Buffalo, S.D. 57720 COUNTY Harding

DATE: 6-14-89 TELEPHONE (Albert) 375-3491

RE: Vested Right Inspection

COMMENTS:

On Tuesday June 6, 1989, the area authorized under VR#798-1

was inspected. Accompanied by Mr. Albert Penn, 9 land and 12

sprinklers were inspected. The sprinklers and the dam were in good

shape. The layout of the sprinklers and the dam matched the ones

plotted on Map# 672 for Applicant No. 798-1

Recommended validation

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: MR. Penn

SOUTH DAKOTA

(PARTIAL) VESTED WATER RIGHT NO. 798-1 FOR IRRIGATION

Date of Receipt of Claim March 24, 1967.

Date of Validation September 27, 1989.

The Water Management Board validated Vested Water Right Claim No. 798-1 for irrigation purposes for Albert and Daniel Penn, Buffalo SD 57720 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 798-1 appropriates 1.87 cubic feet of water per second (cfs) from Valley Creek and dry draws to irrigate 131 acres. Water is diverted via dams located in the SW1/4 SE1/4 (7 acre-feet storage capacity) section 31-T18N-R3E and in the N1/2 NW1/4 section 6-T17N-R3E to the irrigated acreage in the SW1/4 section 31-T18N-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 - November 1.
3. The priority dates of the Vested Water Right are:
July 21, 1904 (1.31 cfs -- 91 acres)
January 1, 1953 (0.56 cfs -- 40 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 diversion rate limitation of 1 cfs for each 70 acres irrigated shall not apply to this dry draw irrigation diversion during periods of flood flows, when such flows are in excess of the amount of water required to satisfy domestic use requirements and other water rights.

WATER MANAGEMENT BOARD

By: _____

John H. Hest
Chief Engineer

MAY 21 1992

date

Division of Water Rights
Dept. of Environment and Natural Resources



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

Albert and Daniel Penn
Buffalo SD 57720

Dear Mr. Penn:

The Water Management Board has validated the enclosed Vested Water Right No. 798-1. This validation gives legal status to your claim.

An error has been discovered concerning the diversion rate established under the July 21, 1904, priority date. The diversion rate was published incorrectly as 1.41 cubic feet of water per second (cfs) for irrigation of 91 acres. The correct diversion rate is 1.31 cfs based on a statutory provision allowing 1 cfs for each 70 irrigated acres (91 acres divided by 70 = 1.31 cfs). The enclosed validation specifies the correct diversion rate of 1.31 cfs. However, you may divert at a greater rate than 1.31 cfs during flood flows based on the qualification listed on No. 798-1. If you do not agree with the 1.31 cfs diversion rate, please contact us immediately.

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