

LA 1403-1

LA 403-1

KNOW ALL MEN BY THESE PRESENTS:

THAT August Tothol whose post office is  
Oshroft, South Dakota, a citizen of the United States, above the age of  
 31 years, being in possession of the following described land, to-wit: Section 31  
township Twenty North range Three East B. H. M.  
Handing County, South Dakota. Said lands comprising Desert Entry No. 412 #01225  
Land Dietler, availing himself of the right granted himself under the provisions  
 of Section 31 of Chapter 130 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 NE 1/4 of the SE 1/4 section 31  
township Twenty North range Three East 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.

Said locator claims for the above purpose Three cubic feet of water per second during the following  
 described annual periods April to October inclusive, each year.

Said location was made on the 25th day of October 1911.

Witness my hand and seal this 27th day of October 1911.

August Tothol Locator.

STATE OF SOUTH DAKOTA }  
 COUNTY OF Handing

On the 27th day of October 1911, before me B. L. Martin  
A. W. S. Commissioner, a Notary Public in and for the County and State aforesaid, personally  
 appeared August Tothol 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.

Little Missouri River Water District 10110201**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

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

I have this day made a thorough examination of the water use system constructed by Painter Inc.,  
Box 519, Buffalo, S.Dak. 57720 holder of  
 Permit No. LN # 403-1, bearing the priority of October 27 1981 authorizing  
 the diversion of 2.0 cu. ft. per second of the waters of Dry Draw  
 for Irrigation purposes, in Harding County.

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

## A. Works used to divert the water:

Diversion Dam, No Controls. Spillways Divert Water.  
Dam 15' High, 30' Wide 4:1 + 2:1 S.S. 6-0 Freshboard. 80 surface Ac.  
500' Long

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

Diversion Dikes 6-0' High 3:1 S.S. 4-0' Top width.

## C. Works used to apply water to beneficial use:

Dikes + Ditches to Spread Water

The system is in the following condition Good

The point of diversion is located it. #1 = 1950' N + 350' E of the S  $\frac{1}{4}$  Cor Sec. 7, Pt #2 =  
= 2060' S and 700' E of N  $\frac{1}{4}$  Cor of Sec. 7, T20N R3E

The works are capable of diverting and conveying to the place of use 10+cu. ft. per second of water which is to be used for IrrigationWater has been put to beneficial use to the maximum extent as follows: All in sec 7, T20N R3E

|                                                                        |                                                                      |                                                                      |
|------------------------------------------------------------------------|----------------------------------------------------------------------|----------------------------------------------------------------------|
| <u>NW<math>\frac{1}{4}</math> NW<math>\frac{1}{4}</math> - 13 Ac.</u>  | <u>SW<math>\frac{1}{4}</math> NE<math>\frac{1}{4}</math> - 15 Ac</u> | <u>NW<math>\frac{1}{4}</math> SE<math>\frac{1}{4}</math> - 9 Ac</u>  |
| <u>NE<math>\frac{1}{4}</math> NW<math>\frac{1}{4}</math> - 31 Ac.</u>  | <u>NW<math>\frac{1}{4}</math> SW<math>\frac{1}{4}</math> - 4 Ac.</u> | <u>SW<math>\frac{1}{4}</math> SE<math>\frac{1}{4}</math> - 7. Ac</u> |
| <u>SW<math>\frac{1}{4}</math> NW<math>\frac{1}{4}</math> - 4 Ac.</u>   | <u>NE<math>\frac{1}{4}</math> SW<math>\frac{1}{4}</math> - 20 Ac</u> |                                                                      |
| <u>SE<math>\frac{1}{4}</math> NW<math>\frac{1}{4}</math> - 1.2 Ac.</u> | <u>SE<math>\frac{1}{4}</math> SW<math>\frac{1}{4}</math> - 2 Ac.</u> |                                                                      |

comprising a total of 134 acres of land and the license should be issued for 1.91 cfsApplicable permit qualifications have been complied with X Yes        NoExceptions to compliance are:        Date July 17, 1984

LeRoy J. Mernough  
 (signature)

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

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

Water Rights Division  
605 773-3352

December 6, 1984

Location  
Notices No.  
297-1 & 403-1

Painter Inc.  
Box 57  
Buffalo SD 57720

Dear Sirs:

On July 17, 1984, Mr. LeRoy Mernaugh of this office made a final inspection of the water use system under Location Notices No. 297-1, 403-1 and 404-1. You were informed you would need to submit a Vested Right Application for the areas you were irrigating. Since that time, after discussion with staff and further interpretation of the South Dakota Water Laws, it was concluded a Vested Right Application would not have to be filed.

In order to update your location notices, a notice of transfer should be filed with our office to transfer ownership to Painter Inc. When the transfers are completed, water licenses will be issued for the lands you are actually irrigating. A water license will be issued for Location Notices No. 297-1 and 403-1 (Location Notice No. 404-1 will be incorporated into 403-1) This will bring your location notices up-to-date.

Enclosed are partially completed transfer forms for transferring each location notice. Please check over, date, sign before a notary public, and return them to this office with a \$2.50 filing fee for each one (total \$7.50).

South Dakota Water Law 46-5-30.3 now requires Notice of any sale, grant, lease, conveyance or other transfer of a Water Permit or Water Right to appropriate water to be filed with this office within ninety days.

If you have any questions concerning this procedure, please contact us.

Sincerely,

GENNY MCMATH  
Natural Resources Analyst

GM:ks

enclosures



# Department of Water & Natural Resources

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

Water Rights Division  
605 773-3352

September 17, 1985

Location Notice Nos.  
297-1 and 403-1

Painter Inc.  
Box 57  
Buffalo SD 57720

Dear Sirs:

December 6, 1984 you wrote to concerning updating of Location Notice Nos. 297-1 and 403-1. To date, we have not heard from you on this matter.

In order to update your location notices, a notice of transfer should be filed with our office to transfer ownership to Painter, Inc. When the transfers are completed, water licenses will be issued for the lands you are actually irrigating. A water license will be issued for Location Notices Nos. 297-1 and 403-1 (Location Notice No. 404-1 will be incorporated into 403-1). This will bring your location notices up-to-date.

Enclosed are partially completed transfer forms for transferring each location notice. Please check over, date, sign before a notary public, and return them to this office with a \$2.50 filing fee for each one (total \$7.50).

South Dakota Water Law 46-5-30.3, now requires Notice of any sale, grant, lease, conveyance or other transfer of a water permit or water right to appropriate water to be filed with this office within ninety days.

If you have any questions concerning this procedure, please contact us.

Sincerely,

GENNY MCMATH  
Natural Resources Analyst

GM:ks

enclosures

*Equal Opportunity Employer*

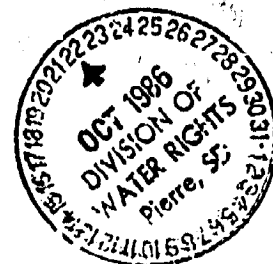
**South Dakota Department of  
Water & Natural Resources**

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

WATER RIGHTS DIVISION  
(605) 773-3352

LN Nos. 297-1  
403-1

September 25, 1986



Paul Painter  
Painter, Inc.  
Box 59  
Buffalo, South Dakota 57720

Dear Mr. Painter:

In reference to our September 25, 1986 telephone conversation, enclosed are partially completed transfer forms for use in transferring Location Notice Nos. 297-1, 403-1 and 404-1 to your name. Please check over the forms, date, and sign them in the presence of a notary. A \$2.50 filing fee is required for each (total of \$7.50).

Upon receipt of the completed forms and filing fees, Water Licenses will be issued for Location Notice Nos. 297-1 and 403-1. (Location Notice No. 404-1 will be incorporated into 403-1).

If you have any questions, please contact me.

Sincerely,

*Genny McMath*  
Genny McMath  
Natural Resources Analyst

GM:ms  
Enc.

*Thank  
You.*

NOTE: I have also enclosed copies of the Location Notices for your files.

*PLP*

*Equal Opportunity Employer*

## NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights  
Foss Building  
Pierre, SD 57501

Date: 10-15-86

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

Portions of: NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$  all in Section 7, T20N, R3E

formerly owned by August Tokola

has been transferred to Painters Inc., Box 59, Buffalo, SD 57720

(please include complete mailing address)  
together with any rights to the beneficial use of water thereon as evidenced by  
Location Notice

~~Water Right Permit~~ No. 403-1 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 Div. 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.

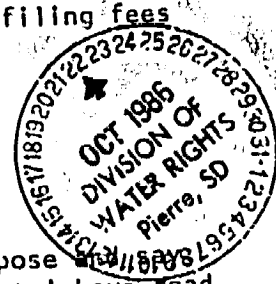
STATE OF SOUTH DAKOTA )  
County of Harding ) ss.

I, Paul L. Painter being first duly sworn on my oath depose 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.

Paul L. Painter President.  
(Signed)

Subscribed and sworn to before me this 15<sup>th</sup> Day of October, 1986.

Cynthia Louise Schulte Painter  
(Notary Public)



# RECEIPT

## Division of Water Rights South Dakota Department of Water and Natural Resources

Pierre, October 22, 1996

RECEIVED OF Painters Inc., Box 59, Buffalo, SD 57720

the following amount in fees for services rendered as provided for by law:

|                                                                                                                            |       |      |
|----------------------------------------------------------------------------------------------------------------------------|-------|------|
| Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____ |       |      |
| Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____                                         |       |      |
| Fee to retain Future Use Permit No. _____ after period of seven years.                                                     |       |      |
| Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____                        |       |      |
| Fee for Filing Transfer Form <u>LN 402-1</u>                                                                               | 1     | 50   |
| Fee for Filing Extension Request _____                                                                                     |       |      |
| Fee for Certified Copy of _____                                                                                            |       |      |
| Fee for Print Copy of Map _____                                                                                            |       |      |
| Fee for Certifying _____                                                                                                   |       |      |
| Fee for _____                                                                                                              |       |      |
| (Any Other Work Provided by Law)                                                                                           | Total | 2 50 |

By John Hatch  
Chief Engineer  
JOHN HATCH/ES

LN403-1

**WATER RIGHTS PROGRAM  
FILE DOCUMENTATION**

NAME OF PERSON OR FILE: Joe Painter

ADDRESS: HC 67 Box 57, Buffalo, SD 57720

COUNTY: Harding

DATE: October 8, 1997

TELEPHONE: 605 375-3718

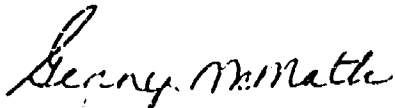
RE: status of irrigation under LN 403-1

**COMMENTS:**

On today's date, I spoke with Mr. Painter about LN403-1 & LN404-1. The location notices describe an irrigation project he has in portions of Section 7, T20N, R3E. I told him that the system was inspected for licensing purposes back in 1984 and then was never followed up on. He indicated they still own the land and the irrigation system still runs as it has for the past 75 years.

He felt the 134 acres that LeRoy Mernaugh found during his investigation was fairly accurate. I told Mr. Painter that he had done everything he needed to as far as updating his water right and the licensing portion was up to us to complete.

When reviewing the 1984 investigation report and the corresponding location notices, it was found that a portion of the acreage was not covered. This was the reason the license had not been issued in the past. Pursuant to SDCL 46-5-30.5, acreage can be licensed outside of the permitted area if no increase in permitted acreage or water is appropriated; it is contiguous to the permitted area; if it is owned by the same property owner; and, if it was developed prior to the end of the construction period. I believe after visiting with Mr. Painter that all of these criteria have been met.



Genny McMath  
Environmental Scientist

Approval of Location Change and/or Additional Diversion Point(s)

NAME: Joe Painter, Painter, Inc., HC 67 Box 57, Buffalo, SD 57720

COUNTY: Harding TELEPHONE: 605 375-3718 DATE: October 9, 1997

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- Developed water source same as permitted source and no additional water appropriated

Andrew Peterson and August Tokola filed Location Notice Nos. 403-1 and 404-1 with the State Engineer on October 30, 1911. Each location notice allowed a diversion rate of 2.00 cfs and both specified a dry draw in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 7, T20N, R3E. An additional dry draw diversion point was developed in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 7. Licensing of the location notices will result in a reduction of water appropriated.

- If irrigation, no new land is irrigated

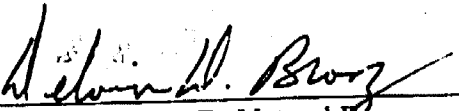
The legal descriptions specified in Location Notices did not include a 9 acre portion of land developed as part of the system. (See report "Licensing of Acreage Outside of the Permitted Area")

- Review of Existing Diversions

The nearest diversion point is a couple miles downstream and also owned by Painters Inc. There are no complaints on file and the current owner reports the system has been used for more than 75 years.

RECOMMENDED ACTION

Based on the above criteria, it is recommended that the diversion points be licensed as developed.

  
 Delvin D Brosz, PE, Natural Resources Engineer IV  
 Water Rights Program

The Chief Engineer makes a finding pursuant to SDCL 46-5-13.1 that:

This change in location does not increase the potential for interference with existing diversions. In making this finding, "does not increase the potential for interference" is interpreted to mean potential for adverse interference.

  
 John Hatch, Chief Engineer  
 Water Rights Program

10-9-97

**Licensing of Acreage Outside of the Permitted Area**

NAME: Joe Painter, Painter, Inc., HC 67 Box 57, Buffalo, SD 57720

COUNTY: Harding TELEPHONE: 605 375-3718 DATE: October 9, 1997

**AUTHORITY:**

Pursuant to SDCL 46-5-30.5 acreage developed for irrigation outside of the area described on the permit may be licensed provided the following conditions are met:

**NO INCREASE IN PERMITTED ACREAGE OR WATER APPROPRIATED:**

Andrew Peterson and August Tokola filed Location Notice Nos. 403-1 and 404-1 with the State Engineer on October 30, 1911. The location notices describe only legal descriptions and do not specify exact number of acres to be irrigated. Each location notice allowed a diversion rate of 2.00 cfs. Licensing of the location notices will result in a reduction of water appropriated.

**UNPERMITTED ACREAGE:****1) Contiguous to Permitted Acreage**

The land described under LN403-1 and LN404-1 is irrigated using a waterspreading type system. The water spreading system irrigates 9 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 7, T20N, R3E not described in the location notices. This land is contiguous to the remainder of the acreage.

**2) Owned by the Same Property Owner**

Both of the location notices were transferred to Painter, Inc. in October, 1986.

**3) Developed Prior to Expiration of Construction Period**

On October 8, 1997, Joe Painter was contacted concerning the irrigation system described in the location notices. Mr. Painter indicated the land has been irrigated the same way for more than 75 years.

**RECOMMENDED ACTION:** Based on the above criteria, it is recommended that the 9 acre area be included in the water license.

  
Delvin D Brosz, PE, Natural Resources Engineer IV

The Chief Engineer makes a finding that pursuant to SDCL 46-5-30.5 that:

This acreage change does not impair existing water rights and the overall project, as developed, is consistent with the original application. Licensing of the unpermitted acreage may occur without application or publication pursuant to SDCL 46-2A-4.

 10-9-97  
John Hatch, Chief Engineer  
Water Rights Program



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

NOV 12 1997

LN403-1

LN404-1

Joe Painter  
Painters Inc.  
HC 67 Box 57  
Buffalo, SD 57720

Dear Mr. Painter:

Enclosed is Location Notice Water License No. 403-1. The water license authorizes diversion of water from two dry draws via a water spreading system for irrigation of portions of Section 7, T20N, R3E, in Harding County.

Location Notice No. 403-1, originally filed by August Tokola and Location Notice No. 404-1, originally filed by Andrew Peterson, were transferred to Painters Inc. in 1986. The applicable portions of Location Notice No. 404-1 have been incorporated into Location Notice Water License No. 403-1.

As long as you use the water beneficially as described in the location notice water license, South Dakota Water Laws provide that you have a continuing right to the use of the water.

A copy of the map, prepared following the investigation, is enclosed. You may keep this for your records. If you have any questions concerning the enclosed license, please contact us.

Very truly yours,

John Haich, Chief Engineer  
Water Rights Program  
(605) 773-3352

enclosures

# STATE OF SOUTH DAKOTA

## LOCATION NOTICE WATER LICENSE NO. 403-1, FOR IRRIGATION

(1) August Tokola located and filed Location Notice No. 403-1, October 27, 1911 for a right to divert 2.0 cubic feet of water per second (cfs) from a dry draw, Harding County, South Dakota for irrigation purposes.

Andrew Peterson located and filed Location Notice No. 404-1, October 27, 1911, for a right to divert 2.0 cubic feet of water per second (cfs) from a dry draw, Harding County, South Dakota for irrigation purposes.

Location Notice Nos. 403-1 and 404-1 were later transferred to Painters Inc., Buffalo, SD.

On July 17, 1984, an investigation was conducted of the water use system for licensing purposes. The investigation found the project in place and water being placed to beneficial use. A review of the location notices and of the report prepared following the investigation found a portion of the acres were not described in the original notices. Pursuant to SDCL 46-5-30.5, the Chief Engineer makes a finding that existing water rights will not be impaired and the overall project, as developed, is consistent with the original application.

The investigation and review of the location notices found an additional diversion point had also been developed. The location notices described a dry draw diversion point located in the NW¼ SE¼ Section 7, T20N, R3E. An additional dry draw diversion point was developed in the SW¼ NE¼ Section 7. Pursuant to SDCL 46-5-13.1, the Chief Engineer makes a finding that the additional diversion point location does not increase the potential for interference with existing diversions.

The applicable portions of Location Notice No. 404-1 have been incorporated into this water license. A priority date of October 27, 1911 is retained.

(2) It is certified that the holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 1.91 cubic feet of water per second for beneficial use. The location of the diversion points are Point 1 - 1,950'N and 350'E of the S¼ corner of Section 7  
and Point 2 - 2,060'S and 700'E of the N¼ corner of Section 7, (SW¼ NE¼); all in T20N, R3E.

has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

| SECTION 7, T20N, R3E |             |         |             |         |             |
|----------------------|-------------|---------|-------------|---------|-------------|
| NW¼ NW¼              | 13.00 acres | NW¼ SW¼ | 4.00 acres  | SW¼ NE¼ | 15.00 acres |
| NE¼ NW¼              | 31.00 acres | NE¼ SW¼ | 20.00 acres | NW¼ SE¼ | 9.00 acres  |
| SW¼ NW¼              | 4.00 acres  | SE¼ SW¼ | 2.00 acres  | SW¼ SE¼ | 7.00 acres  |
| SE¼ NW¼              | 29.00 acres |         |             |         |             |
| TOTAL OF 134.0 ACRES |             |         |             |         |             |

continued

Page 2

Location Notice Water License No. 403-1  
Painters Inc.

(4) Pursuant to South Dakota Water Law 46-5-30.1 Painters Inc., % Joe Painter, HC 67 Box 57, Buffalo, SD 57720 the holder and/or owner of Incorporated Location Notice No. 403-1 is issued a license to appropriate water, the right to use 1.91 cubic feet of water per second from dry draws with a priority date of October 27, 1911 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Incorporated Location Notice No. 403-1 and subject to South Dakota State Law.

  
\_\_\_\_\_  
JOHN HATCH, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

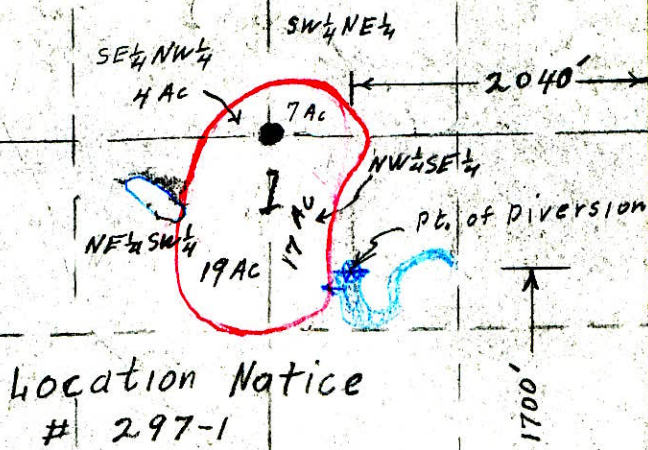
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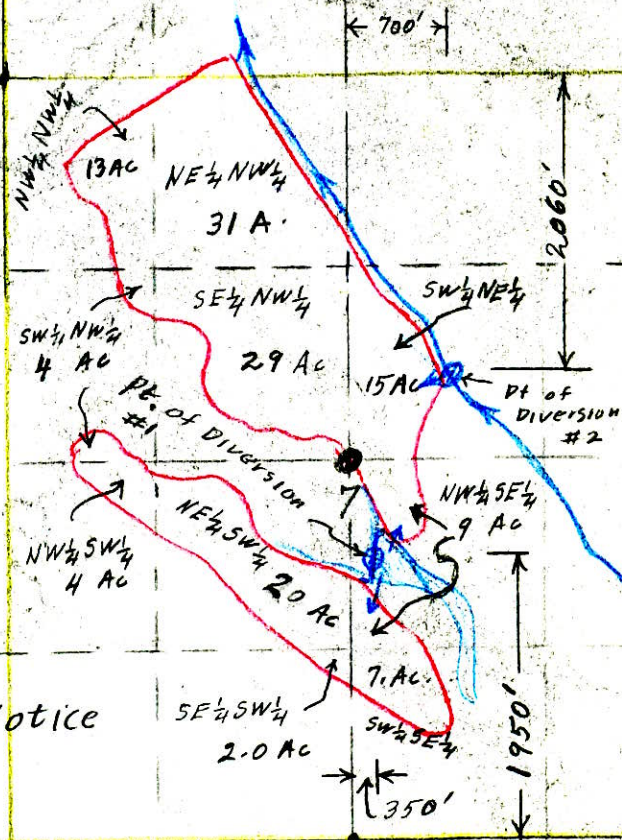
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Location Notice  
# 403-1



Painter Inc.

office copy

13

18

LN 403-1

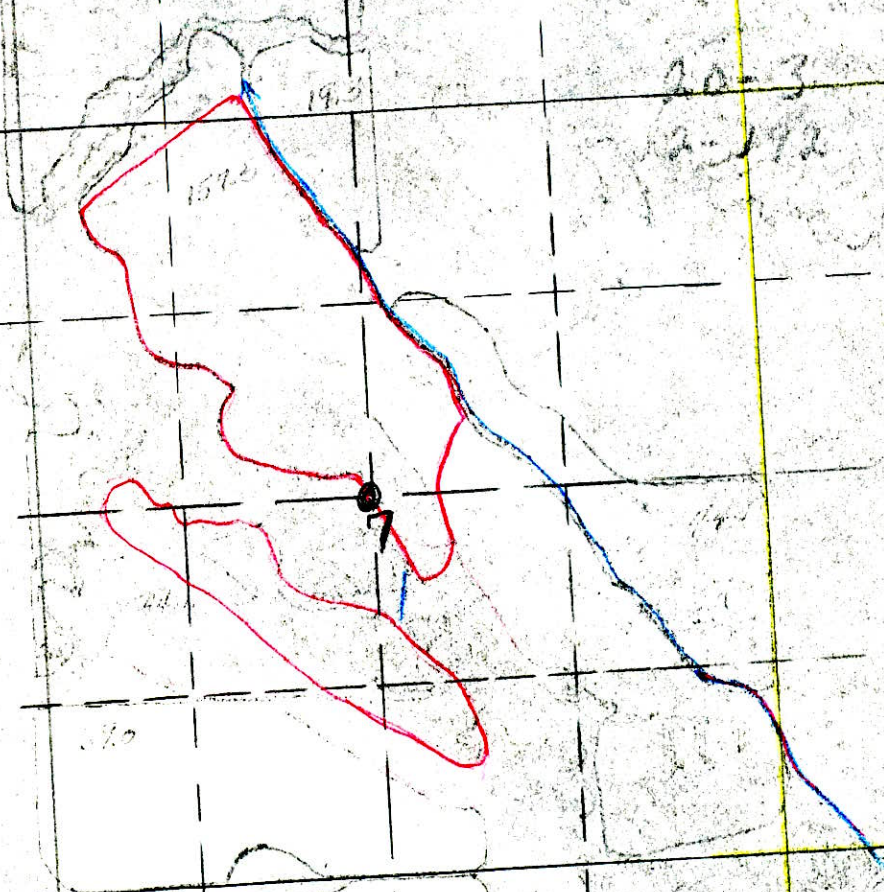
Paul Painter

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Painter Inc.