

No. 0376-1

Office of State Engineer
DOCUMENT FILE

Name: W.D. Dept. of Interior
W.D. T. L.

By: Raymond P. Walker

County: Butte #18574

Date: July 25, 1904

Year: 1904

Location: Belle Fourche

Note: Water Right for
Belle Fourche Irrigation
Project.

310 cu. ft. of
Belle Fourche at 51,788.45.
and 200 cu. ft. at

Shinking Water Creek, 513,80.45

Chickasaw Creek, 512,70.55

diversion Cts.

Notice of Water Appropriation

Samuel S. Walter, Engineer, United States Geological Survey, thereunto duly authorized by the Secretary of the Interior, for and on behalf of the United States of America, under the provisions of the Act of Congress approved June 17, 1902 (32 Stat., 388), claims, at the point where this notice is posted, on the 13th

Fourche River, 310 cubic feet per second of the unappropriated water of said stream, and at the point where this notice is posted, on Stinking Water Creek, all of the unappropriated water of said stream, and at the point where this notice is posted, on Cottonwood Creek, all the unappropriated water of said stream, more specifically stated as amounting to 200 cubic feet per second from each of the above named creeks.

This notice is posted at the following points, to wit:
On the foot on the south bank of the Belle Eriache
River, about 300 feet west of the south W. corner of sec.
11, E. 8, N, R. 4 E. On a foot on the east bank of
Cottonwood Water Creek, about 500 feet southwest of the
north east corner of sec. 13, E. 8 N, R. 4 E. On a foot
on the east bank of Cottonwood Creek, in the NE 1/4, sec.
12, E. 7, N, R. 5 E. The water is to be used for irrigation,
domestic power, mechanical, and other beneficial
purposes in and upon lands situated in Butte and
Mead counties, and located in the following town-
ships; E. 8 N, R. 5, 6, and 7, E, R. 4 N. E. 7 N, R. 5, 6, and
7, E, R. 4 N.

The water hereby appropriated is to be used for direct irrigation, or to be stored in reservoirs to be hereafter located, and will be conducted to the points of intended use by means of canals, flumes, tunnels.

Antislavery 102

1857

Raymond & D. Walter

Birth

August

1022 A.

17. 12

See D. R.

Miller

1857

June 22

1857

1857

(See)

Raymond & D. Walter

August, 1904.

subscribed and returned to the office of the

Raymond & D. Walter

the east bank of the river, in the 1857, we are
 of striking water level, about 500 feet, with a
 of the 1857, we are 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

NOTICE OF WATER APPROPRIATION.

Raymond F. Walter, Engineer, United States Geological Survey, thereunto duly authorized by the Secretary of the Interior, for and on behalf of the United States of America, under the provisions of the Act of Congress approved June 17, 1902 (32 Stat.L., 333) claims, at the point where this notice is posted on the Belle Fourche River, 310 cubic feet per second of the unappropriated water of said stream and at the point where this notice is posted, on Stinking Water Creek, all of the unappropriated water of said stream and at the point where this notice is posted, on Cottonwood Creek, all the unappropriated water of said stream, more specifically stated as amounting to 200 cubic feet per second from each of the above named creeks.

This notice is posted at the following points, to-wit: On the post on the south bank of the Belle Fourche River, about 500 feet west of the south 1/4 corner of Sec. 11, T. 8 N., R. 4 E. On a post on the east bank of Stinking Water Creek, about 500 feet southwest of the northeast corner of Sec. 13, T. 8 N., R. 4 E. On a post on the east bank of Cottonwood Creek, in the NE 1/4 Sec. 12, T. 7 N., R. 5 E. The water is to be used for irrigation, domestic, power, mechanical and other beneficial uses in and upon lands situated in Butte and Yeal counties, and located in the following townships: T. 8 N., Rs. 5, 6 and 7 E. S.W. 1/4 T. 7 N., Rs. 5, 6, and 7 E. S.W. 1/4.

The water hereby appropriated is to be used for direct irrigation, or to be stored in reservoirs to be hereafter located, and will be conducted to the points of intended use by means of canals, flumes, tunnels or other appropriate means of conveying water, divisions of which are to be, 14 ft. wide on the bottom, and 6 feet deep, grade 2.11 feet per mile, or such other equivalent dimensions and grade as will give a capacity of 310 cubic feet per second. Work was begun on said canal on July 5th 1904.

Raymond F. Walter, being duly sworn, deposes and says that on the 3rd day of August, 1904, he did post a notice of the appropriation of water, of which the foregoing is a copy, for 310 cubic feet per second of the water of the Belle Fourche River, and 200 cubic feet per second each from Cottonwood and Stinking creeks, at the following described points: On a post on the south bank of the Belle Fourche River, about 500 feet west of the South 1/4 corner of sec. 11, T. 8 N. R. 4 E. On a post on the east bank of Stinking Water Creek about 500 feet southwest of the northeast corner of sec. 13, T. 8 N., R. 4 E. On a post on the east bank of Cottonwood Creek, in the NE 1/4 Sec. 12, T. 7 N. R. 5 E.

Raymond F. Walter.

Subscribed and sworn to before me this fifth day of August 1904.

(SEAL)

E. B. Penfield, Notary Public

My commission expires July 17, 1907.

1947

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... to get a full and complete of more the technical

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

I, James H. Lee, State Engineer,
do hereby certify that the within and
foregoing instrument is a true, correct and
complete transcript of the instrument when
it purports to be, as the same was filed for
record in the office of the State Engineer,
at my office in Pierre, State of South Dakota.

James H. Lee
State Engineer

NOTICE OF WATER APPROPRIATION.

U.S. 0376-1

Filed for record Mar. 7, 1912, at 11-A.M.
Recorded in Book 38, Page 51. C.D. Hill, Reg.
of Deeds, By Sara Avery, Deputy.

I, Glenn W. Shaw, being duly sworn, deposes and says that on the thirtieth day of December, 1911, he did post a notice of the appropriation of water for the Belle Fourche project, copy of which notice is attached hereto, at the following described points:

1. Section corner of sections 14, 16, 22, 23, T.8, R.5.
2. Vale Post-office, Vale, S.D.
3. Section corner of sections 14, 15, 22, 23, T.8, R.6.
4. Section corner of sections 25 & 26, T.8, R.6, and sections 30 & 31, T.8, R.7.
5. Section corner of sections 7, 6, 17, 18, T.7, R.7.
6. Section corner of sections 1 & 12, T.7, R.5, and sections 6 & 7, T.7, R.6.

Glenn W. Shaw.

Subscribed and sworn to before me this 30th day of December, 1911.

(Seal)

F.G. Humphrey, Notary Public.

My commission expires November 22, 1914.

Oro McDermith, being duly sworn, deposes and says that on the seventeenth day of January 1912, he did post a notice of the appropriation of water for the Belle Fourche Project, copy of which notice is attached hereto, at the following described points:

1. On bridge crossing Horse creek $\frac{1}{2}$ mile west of Horsecreek P.O.
2. On fence crossing Deadman creek 33 ft. east of $\frac{1}{4}$ corner between Secs. 19 & 20 T 9 N R 6 E B.H.M.
3. On bridge crossing Dry Creek on section line between secs. 27 & 34 T 9 N R 6 E.B.H.M.
4. On fence south of highway crossing of Deer Creek between secs. 23 & 25 T 9 N. R 6 E.B.H.M.
5. On fence south of highway crossing of Antelope Creek between secs. 24 & 25 T 9 N. R 6 E.B.H.M.
6. On bridge crossing Willow Creek between secs. 19 & 30 T 9 N R 7 E.B.H.M.

Oro Mc Dermith

Subscribed and sworn to before me this 18th day of January, 1912.

(Seal)

M.W. Read, Notary Public.

My commission expires March 14, 1915.

State of South Dakota)
(ss.
County of Butte)

Fred J. Barnes, Asst. Engineer, U.S.R.S., being duly sworn, deposes and says that on the thirtieth day of January 1912, he did post a notice of the appropriation of water for the Belle Fourche Project, copy of which notice is attached hereto, at the following described points;

1. On the County Highway Bridge across Indian Creek on the West side of Sec. 33, T. 10 N. R. 4 E.B.H.M.
2. On the County Highway Bridge across Owl Creek in the SW $\frac{1}{4}$, Sec. 21, T.9.N., R.4 E.B.H.M.

Fred J. Barnes

(Signature)

Orman, S.Dak.

(Post Office address)

Subscribed and sworn to before me this 30 day of Jan. 1912.

(Seal)

F.H. Smallidge, Notary Public.

My commission expires 6-7-13.

State of South Dakota)
(ss.
County of Butte)

L.E. Tanner, being duly sworn deposes and says that on the 23rd day of December, 1911, he did post a notice of the appropriation of water for the Belle Fourche project, copy of which notice is attached hereto, at the following described point: On telephone pole about fifty feet West of bridge on Red Water Creek, which bridge is about two hundred feet above the junction of the Red Water and Belle Fourche Rivers.

L.E. Tanner.

Subscribed and sworn to before me at Belle Fourche, South Dakota, this 23rd day of December, 1911.

(Seal)

L.M. Simons, Notary Public.

My commission expires March 11th 1913.

Water Appropriation.

Notice is hereby given that F.C. Magruder, Engineer, United States, Reclamation Service, thereunto duly authorized by the Secretary of the Interior for and on behalf of the United States of America, under the provisions of the Act of Congress, approved June 17, 1902 (32 Stat., L. 368), known as the Reclamation Act, claims and makes appropriation of water as follows, in addition to that heretofore made.

First: All unappropriated waters of the Belle Fourche River and all tributaries thereto, both surface and underflow.

Second. All excess waters arising from any and all sources flowing in all or either the Belle Fourche River, Crow Creek, Owl Creek, Indian Creek, Horse Creek, Dry Creek, Deadman Creek, Antelope Creek, Willow Creek, Cottonwood Creek, Nine Mile Creek and all other rivers, creeks, arroyos, gulches, ravines and depressions and drainage, channels of any nature, named or unnamed within the limits of the Belle Fourche South Dakota, Project of the United States Reclamation Service.

Third. All spring, surface, surplus, excess, waste, seepage, return, drainage, developed or undeveloped waters heretofore, now or hereafter arising in Townships 7, 8, 9, and 10, North, Ranges 2, 3, 4, 5, 6 and 7 East, Black Hill's Meridian, South Dakota.

The water hereby appropriated is to be used for irrigation, domestic, power, mechanical and other beneficial uses in and upon lands situated in Butte and Meade Counties, State of South Dakota, and located in Townships 7 North, Ranges 5, 6, 7 and 8 East, B.H.M., Townships 8, 9 and 10 North, Ranges 3, 4, 5, 6 and 7 East, B.H.M.

The water hereby appropriated is to be collected stored or conducted to the points of its intended use, by means of natural channels, reservoirs, flumes, pipes, tunnels, ditches, canals and other appropriate means of collecting, storing and conveying water for which appropriate right of way is claimed and the said water will be used together with and in connection (separate or intermingled) with other waters heretofore of hereafter appropriated for the benefit of the lands within the Belle Fourche Irrigation Project of the United States Reclamation Service.

Dated at Belle Fourche, South Dakota this 15th day of December, 1911.

F.C. Magruder, Engineer U.S.R.S.

For and on behalf of the United States
of America.

Filed with the County Recorder of Butte and Meade Counties, South Dakota, December 16th 1911.

State of South Dakota } ss
County of Butte }

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT
IS A TRUE, CORRECT AND COMPLETE COPY OF THE
ORIGINAL INSTRUMENT AS RECORDED IN MY OFFICE
ON THE 7 DAY OF May 1912
AT 11:00 O'CLOCK A.
BY BOOK 38 PAGE 51 NO. 33485
DATED April 14 1960.

Ethel Rosander
Recorder of Deeds

By _____
Deputy

Fee \$1.10

0376-1

January 13, 1976

Robert L. Donaldson, President
Belle Fourche Irrigation District
Newell, SD 57760

Dear Mr. Donaldson:

This acknowledges the receipt of your letter dated December 29, 1977 requesting information on Future Use Water Rights and the maintenance of an existing water right.

A water right can be cancelled or reduced by the Water Rights Commission if the owner of the land to which water has become appurtenant abandons the use of such water upon such land or has abandoned portions of those lands described on the Water License. (SDCL 46-5-36)

When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water. (SDCL 45-5-37).

Future Use appropriations of water can be obtained only by public bodies so authorized by SDCL 46-5-38. This includes a state institution facility or property, municipality or conservancy sub-district. This does not include water user districts, irrigation districts nor the federal government. The only way an application can be accepted by the Water Rights Commission is through a conservancy sub-district.

I am enclosing the General Rules of the Water Rights Commission, Chapter 52:01:01. This may answer additional questions which you may have concerning water rights and future use appropriations.

Please advise this office of any additional questions.

Very truly yours,

JANES WHITERTON, Water Resources Engineer
Water Rights Commission

JW/gy

ccol

OFFICERS
Robert L. Donaldson, President
William Kisiry, Vice-President
Alice D. Halmer, Secretary-Treasurer
Daryld M. Williamson, Assessor

BELLE FOURCHE IRRIGATION DISTRICT

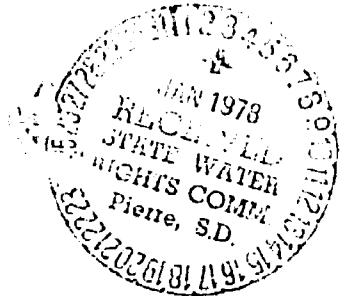
Belle Fourche Project of the Bureau of Reclamation
PHONE (605) 458-2791

NEWELL, SOUTH DAKOTA 57760

Hercld D. Skjoldzi, Project Manager

December 29, 1977

DIRECTORS
Cis.ence Fcos
Harvey Knuteson
Byron Schipke
Richard Schuldies
Daryld M. Williamson



John Hatch
Executive Officer
South Dakota Water Rights Commission
Pierre, SD 57501

Dear Mr. Hatch:

We have the Application For Future Water Use that we requested from you on December 7, 1977.

Would you please furnish us more information on this Future Water Use Application concerning federal water districts, such as whether or not pumping must be done each year (or how often), to maintain use certificate, etc. What other conditions, if any must be met to satisfy the requirements.

Thanking you for your attention to our request, we are,

Yours very truly,

Robert L. Donaldson
Robert L. Donaldson, President
Belle Fourche Irrigation District

RLD/ah



United States Department of the Interior

BUREAU OF RECLAMATION

Upper Missouri Region
Missouri-Oahe Projects Office
P.O. Box 825
Huron, South Dakota 57350

IN REPLY REFER TO: 400
511.

RECEIVED

JUN 20 1977

JUN 17 1977

DEPT. OF NATURAL
RESOURCE DEVELOPMENT

Mr. Vern W. Butler, Secretary
Department of Natural Resource Development
Pierre, South Dakota 57501

Dear Mr. Butler:

A release of Keyhole Reservoir water has been requested by the Belle Fourche Irrigation District under the provisions of contracts Nos. 14-06-600-6979 and 14-06-600-8970 and Amendment No. 1 thereto.

The release began June 15, 1977, at the rate of 100 c.f.s. and will likely continue at varying rates during the balance of the irrigation season.

We solicit your assistance in preventing any unauthorized diversion of the released water from the Belle Fourche River to insure proper delivery of the water to the Belle Fourche Irrigation District. We appreciate your cooperation in this matter.

Sincerely yours,

Preston L. Funkhouser, Jr.
By Preston L. Funkhouser, Jr.
Project Manager

cc: George L. Christopoulos, Wyoming State Engineer
Barrett Bldg. - Second Floor
Cheyenne, Wyoming 82002

Harold D. Skjoldal, Manager
Belle Fourche Irrigation District
Newell, South Dakota 57760



COMMISSION

John M. Garbutt, Spearfish
Fester Borg, Parker
Carl Cronin, Gettysburg
Lauren A. Davis, Belle Fourche
Milton E. Fischer, Milbank
Richard Loumen, Harrisburg
Clarence D. Mortenson, Hayes
Dick Fisher, Creel

South Dakota

WATER RESOURCES COMMISSION

State Office Building #2
PIERRE, SOUTH DAKOTA 57501

Belle Fourche Project
0246-1
0277-1
J.W. GRIMS

Chief Engineer
and
Executive Officer

PHONE
224-3584
Area Code 605

October 7, 1969

Mr. Martin H. Oleson, Jr.
Bureau of Reclamation
P.O. Box 825
Huron, South Dakota 57350

Refer 400

Dear Mr. Oleson:

I am sorry to be so tardy answering your letter of August 15, 1969, about perfecting the water rights for the Rapid Valley Project, Deerfield Dam (U.S.509-2) and the Rapid Valley Project, Pactola Dam (U.S.581-2).

In essence, acquisition of water rights by the United States pursuant to state law includes (1) notification on behalf of the United States that it intends to utilize water or to make a survey for later utilization and withdrawal of unappropriated waters by State Government, (2) filing of plans for the proposed work on behalf of the United States, and (3) upon completion of construction of the works by the United States, water license is to be issued.

Concerning the above items, water right records show the following (dates are dates of receipt or action by State Government):

U.S. 509-2

- (1) Notice of Intent filed Dec. 1, 1939, (Pactola Reservoir).
Certificate of Withdrawal issued Dec. 1, 1969.
Notice amended July 7, 1941 (Storage at Castle Creek).
Amended Notice acknowledged as amended to Withdrawal
No. 509, July 10, 1941.
Notice amended and supplemented Aug. 24, 1942.
Supplemental Withdrawal issued Aug. 24, 1942.
Notice of Aug. 24, 1942, corrected Oct. 8, 1942.
- (2) Print of Drawing 252-7, Deerfield Dam, filed Sept. 10, 1946.

Martin H. Oleson, Jr.

2.

October 7, 1969

(3) Water License not issued.

U.S. 581-2

(1) Notice of Intent filed Apr. 25, 1952, (Pactola Reservoir).
Certificate of Withdrawal issued May 5, 1952.

(2) No plans received.

(3) Water License not issued.

State law does not prescribe what constitutes "plans" which are to be filed on behalf of the United States. Nor does a search of records in this office reveal any prior designation as to what constitutes these "plans". Under state law, the following factors describe a water right: priority date, amount of water used beneficially, the purposes served, the periods of use, the places of use, and any conditions which may apply to the use of water.

For Bureau of Reclamation projects, each of these water right factors may be determined by the following "plans".

Priority date - Date of receipt of the notice on behalf of the United States that it intends to utilize certain specified waters or intends to make a survey with a view of later utilizing certain specified waters.

Amount of Water-The Definite Plan Report, or its equivalent, supplemented by "as built" drawings and tabulations showing storage capabilities, capacities of diversion works and the quantities and rates of water provided for the purposes served by the project works should provide the information needed.

Purposes Served-The Definite Plan Report, or its equivalent, supplemented by any changes which may have occurred on an "as built" basis should provide this information.

Periods of Use- The Definite Plan Report, or its equivalent, modified by any changes provided on an "as built" basis should provide the information needed for determination of periods of storage and beneficial use.

Martin Oleson, Jr.

3.

October 7, 1969

Places of Use - The Definite Plan Report, or its equivalent, supplemented by a drawing showing the irrigable lands and places of use for other than irrigation purposes should provide this information.

Conditions applied to use - Copies of contracts with water users should provide information for determination of this factor.

I hope that this summary will provide the information that you requested for the Deerfield and Pactola projects. This summary may be used to perfect the Bureau's water rights for Shadehill and Angostura projects, also. I believe that the Belle Fourche Project water right should be modernized, too, pursuant to this summary and the Keyhole Project filing in Wyoming, copy in South Dakota, should be perfected pursuant to this summary especially as to places of use.

Sincerely,

J. W. Grimes

JWG:ls

23 to 26, all; T 5 N, R 10 E, all; T 6 N, R 9 E, all; T 5 N, R 10 E, all; T 6 N, R 10 E, all; T 5 N, R 11 E, all; T 6 N, R 11 E, all.

FRED DENNETT,
Commissioner of the General Land Office.

FRANK PIERCE,
First Assistant Secretary
of the Interior.

DEPARTMENT OF THE INTERIOR, General Land Office, Washington, D. C., June 2, 1909.

Notice of Restoration of Public Lands to Settlement and Entry.

Notice is hereby given that the Secretary of the Interior has vacated departmental order of withdrawal in so far as the same affects the withdrawal for irrigation purposes under the act of June 17, 1902, (32 stat., 388), for use in connection with the Belle Fourche Project, South Dakota, of the following described lands in the State of South Dakota, and by his authority such of said tracts as have not been heretofore finally restored and are not otherwise withdrawn, reserved or appropriated, will be subject to settlement under the public land laws of the United States on and after September 28, 1909, but shall not be subject to entry, filing or selection until October 28, 1909, at the United States land office at Belle Fourche, South Dakota, warning being expressly given that no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after June 17, 1909, and prior to September 28, 1909, all such settlement or occupation being forbidden:

Black Hills Principal Meridian—
T 7 N, R 9 E, all; T 7 N, R 10 E, all; T 7 N, R 11 E, all.

FRED DENNETT,
Commissioner of the General Land Office.

FRANK PIERCE,
First Assistant Secretary
of the Interior.

101

DEPARTMENT OF THE INTERIOR, General Land Office, Washington, D. C., June 25, 1909.

Notice of Restoration of Public Lands to Settlement and Entry.

Notice is hereby given that the Secretary of the Interior has vacated departmental order of withdrawal in so far as the same affects the withdrawal for irrigation purposes under the act of June 17, 1902 (32 Stat., 388), for use in connection with the Belle Fourche Project, South Dakota, of the following described lands in the State of South Dakota, and by his authority such of said tracts as have not been heretofore finally restored and are not otherwise withdrawn, reserved, or appropriated, will be subject to settlement under the public land laws of the United States on and after September 28, 1909, but shall not be subject to entry, filing, or selection until October 28, 1909, at the United States land office at Rapid City, South Dakota, warning being expressly given that no person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after June 17, 1909, and prior to September 28, 1909, all such settlement or occupation being forbidden:

Black Hills Principal Meridian—
T 5 N, R 9 E, all Secs. 1 to 14.

File with So.

Notice of

Restoration of Public Lands to Settlement and Entry.

15 275 1376-10.



IN REPLY REFER TO
GP-2500

United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900



JUN 2 2000

Mr. Garland Erbele
Chief Engineer
South Dakota Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Subject: Belle Fourche Project Water Rights

Dear Mr. Erbele:

This is in regard to the water rights for our Belle Fourche Project. These water rights were adjudicated by the South Dakota Eighth Judicial Circuit Court in 1967, and confirmed by the State Supreme Court in 1970. The Supreme Court also concluded that the Circuit Court has jurisdiction to hear and determine questions necessary for adjudication of water rights in South Dakota (SDCL 46-10). This adjudication is contained in Belle Fourche Irrigation District v. R.A. Smiley, dated November 1, 1967. The Circuit Court determined that the Belle Fourche Irrigation District's (Plaintiff) rights were derived through contracts with the United States Bureau of Reclamation (Reclamation). Reclamation appropriated these rights by filings made August 5, 1904, pursuant to Chapter 142, Laws of Dakota 1881, and Chapter 105, Session Laws of 1890.

In its Conclusion of Law the Circuit Court stated:

"The Court concludes, as a matter of law, that the Plaintiff's water rights are as set forth below and subject to the following conditions, to-wit:

1.

1904 WATER RIGHT

Priority date.

August 5, 1904,

Amount of Water:

Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir.

Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes.

Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes.

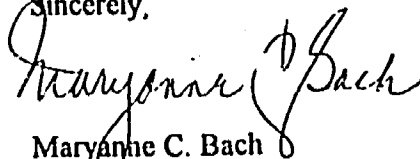
Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the Project works.

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use."

We concur with the findings of the Circuit Court and support their decision. We believe that the above is an accurate description of the water rights held in South Dakota by the United States Bureau of Reclamation for the Belle Fourche Project. We also believe this Court adjudication makes it unnecessary to review these rights under the ongoing water right claims validation process. We would, however, be willing to provide data on water use, place of use, and the diversion and storage facilities to assist in updating the water rights records for the Belle Fourche Project.

We hope this clarifies our position concerning the Belle Fourche Project water rights. If you have any questions, please contact Gordon Aycock at (406) 247-7756.

Sincerely,



Maryanne C. Bach
Regional Director

cc: Randy Oliver
Belle Fourche Irrigation District
P.O. Box 225
Newell, SD 57760



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 10, 2000

Maryanne C. Bach
Regional Director
U.S. Bureau of Reclamation
PO Box 36900
Billings, MT 59107-6900

Dear Ms. Bach:

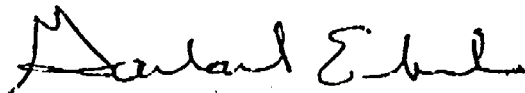
This letter is in reference to your June 12, 2000, letter discussing the water rights held by the Bureau of Reclamation for the Belle Fourche Irrigation Project. During the past several months, the Bureau of Reclamation and DENR have been discussing the need for validation of the water rights for the Belle Fourche Irrigation District. Your letter indicates Reclamation concurs with the 1967 Circuit Court decision that adjudicates these rights. The department agrees that there are valid reasons to accept this court decision and will acknowledge the adjudicated rights.

As you know, the state has jurisdiction over these water rights and as a part of that needs to quantify the claims from the Belle Fourche River. Therefore, we need to get current information on acreage and diversion rate for the Belle Fourche Irrigation District.

We would like to work with Reclamation and the Belle Fourche Irrigation District on this project. In order to facilitate the process, we believe it is appropriate for a representative from your Rapid City Field Office and the department to meet with the Belle Fourche Irrigation District Board of Directors. We need to discuss with them the effects this process has on the status of the water rights and to update our records. We have contacted the District and are scheduled to meet with their Board on August 1, 2000 at 10:00 am at the District office in Newell.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

A handwritten signature in dark ink, appearing to read "Garland Erbele". The signature is fluid and cursive, with the first name "Garland" being more prominent than the last name "Erbele".

Garland Erbele, Chief Engineer
Water Rights Program

cy: Renel Hall-Beck, Manager, Belle Fourche Irrigation District
Jeff Nettleton, Bureau of Reclamation, Rapid City
Diane Best, Attorney General's Office

Water Rights Program - DENR

File Documentation

File No. 0376-1 & 0377-1

County: Butte

Name of Person: Belle Fourche Irrigation District

Address: Newell SD

Date: 8/1/2000

RE: USBOR Water Right Status

Comments:

Garland Erbele and Mark Rath from Water Rights, from the Attorney General's Office and Curt Anderson and Gary Velder from the US Bureau of Reclamation met with the Board of Directors for the Belle Fourche Irrigation District to discuss updating water rights for the irrigation project. The Bureau of Reclamation holds a water right for the project dating back to 1904 for the irrigation of 57,183 acres, a diversion rate of 1440 cubic feet per second and storage of 185,170 acre-feet. Methods for updating this water right to current irrigation levels were discussed. It was explained to the Board that Reclamation holds the water rights for the project and there are three methods to update the water rights. First would involve a basin wide adjudication, which at this time, is not feasible. Second would involve Reclamation filing a vested right claim for the project. It was explained this method would be time consuming and could potentially open the issue up to outside opposition. Third would involve accepting the 1967 court adjudication from the Smiley Case then reviewing the past 33 years of information and updating the files. If problems exist between the 1967 adjudication and current levels of irrigation, a new permit(s) may need to be applied for. Garland Erbele told the Board that Reclamation and DENR have agreed the third method is the preferred alternative and that we would like a resolution from the District supporting this decision.



Mark D Rath
Natural Resources Engineer

RESOLUTION NO. 0002

Be it resolved that the Belle Fourche Irrigation Board of Directors moves to support the 1967 court decision for water based on 57,183 acres at 300 cfs.

Dated, at Newell, Butte County, South Dakota, this 5th day of September, 2000.

By order of the Board of Directors
Belle Fourche Irrigation District

Gary Brunner, President Gary Brunner
Darrel Cox Darrel Cox
Laurie Barnaud _____
John Heisler John Heisler
Robert Ruff Robert Ruff
Harlan Palo Harlan Palo
Del Raisanen _____

ATTEST:

Brenda Eichler
Brenda Eichler, Secretary



1967
Circuit Court

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

BELLE FOURCHE IRRIGATION DISTRICT,
A Corporation,
Plaintiff.

Plaintiff.

VS.

R. A. SMILEY,

Defendant,

and

VS.

STATE OF SOUTH DAKOTA and WATER
RESOURCES COMMISSION of the STATE
OF SOUTH DAKOTA.

Intervenors.

FINDINGS OF FACT

CONCLUSIONS OF LAW

* * * * *

The above entitled matter coming on regularly to be heard before the Court in the Courtroom in the Court House at Belle Fourche, South Dakota on the 4th day of November, 1964; the Plaintiff originally appearing by STERLING H. CLARK, Lawyer, of the law firm of CLARK & HILL, Belle Fourche, South Dakota, and WALTER MUELLER, Lawyer of the law firm of OVERPECK, HAMBLIN & MUELLER, Belle Fourche, South Dakota, and STEPHENS & BRANDENBURG, attorneys at law, Belle Fourche, South Dakota, the latter firm replacing former counsel of Plaintiff; the Defendant appearing by ROBERT E. DRISCOLL, Jr., Lawyer of the law firm of KELLAR, KELLAR & DRISCOLL, Lead, South Dakota, and WILLIAM E. ANDERSON, Lawyer of the law firm of SMILEY & ANDERSON, Belle Fourche, South Dakota; and Intervenors appearing by WALTER WEYGINT, Assistant Attorney General of the State of South Dakota, Pierre, South Dakota, witnesses having been sworn and evidence adduced; the Court having considered said evidence together with all the stipulations, files, records, and exhibits in said case, having heard the arguments of counsel, and being fully advised in these premises, makes the following:

FINDINGS OF FACT

The Court finds as a matter of fact:

6147 48 Judgment Rec'd. p. 95
Nov 28, 1967 Myrtle C. Arnold

I.

That the above entitled action is a controversy over which this Court has jurisdiction.

II.

That stipulations among the parties litigant state voluminous facts in this case and by reference such stipulations are made a part of these findings.

III.

That Plaintiff has valid water rights in the waters of the Belle Fourche River and its tributaries, Crow Creek and Owl Creek, through contracts with the United States Bureau of Reclamation for irrigation and other beneficial uses in the Belle Fourche Project under (1) appropriative water rights filing made August 5, 1904, pursuant to Chapter 142, Laws of Dakota 1881, and Chapter 105, Session Laws of 1890, and (2) application for permit made on April 25, 1950, and permit issued on May 22, 1950, by the State Engineer of the State of Wyoming for storage of water in Keyhole Reservoir pursuant to Chapter 117, Session Laws of Wyoming, 1943, and lawfully established for use of such stored water for irrigation and other beneficial uses in South Dakota pursuant to the Belle Fourche River Compact (Ch. 64, 58 Stat. 94).

IV.

A.

That the Defendant has no appropriative water rights of records pursuant to statute for irrigation of any of the lands which have come into issue and which are situated upon and adjacent to the Belle Fourche River and owned by the Defendant or the Defendant and his wife, Mary H. Smiley.

B.

That the Defendant did divert water from the Belle Fourche River and use the same for irrigation of lands owned and controlled by the Defendant, at his exclusive option and discretion as to time and amount and irrespective of regulatory orders issued to him by the Intervenor, and that said water would have been diverted and used beneficially by electors of Plaintiff, particularly those electors who irrigate lands in that portion of the Belle Fourche

Irrigation Project known as the "Inlet Canal and Johnson Lateral Lands", who depend entirely upon the flow of the Belle Fourche River or releases from Keyhole Dam of stored water for their irrigation water supply.

C.

The defendant has no riparian rights to use the water of the Belle Fourche River for irrigation purposes, except for domestic use as defined in South Dakota Code 1960 Supplement 61.0102 (4) , because his lands were patented after March 3, 1877.

D.

Defendant has no private ownership of water in the Belle Fourche River as shown by the evidence submitted.

E.

Defendant has failed to establish that he has any vested rights as defined by SDC 1960 Suppl. 61.0102 (7) to use the water of the Belle Fourche River by reason of claim of diversion and use of such water by his predecessors, evidence being too indefinite and vague to establish such rights, which would be prior to the rights of the Plaintiff in this action.

F.

The Defendant has valid vested rights as defined by SDC 1960 Suppl. 61.0102 (7) (a) and 61.0102 (7) (c), because of his diversion and beneficial use for irrigation purposes during the period May 1953 to June 30, 1955, inclusive, and July 1, 1955, to October 31, 1961, inclusive, the latter period being a reasonable time to construct the irrigation works and to put the water to beneficial use as provided by SDC 1960 Suppl. 61.0102 (7) (c), 61.0106 and 61.0113, the priority dates to be as found and determined by the Water Resources Commission which are as follows:

Priority Date:

May 1, 1953, (SDC 1960 Suppl. 61.0102 (7) (a), 61.0109) with a maximum diversion rate of 2.78 cubic feet per second, diverted at a number of locations along the reach of the Belle Fourche River contained within the limits of Defendant's land, and irrigation of 195 acres of his ownership, as described in the Stipulation in this case, during the annual period May to October, inclusive, subject to domestic use (SDC 1960 Suppl. 61.0101 (5) (b), (61.0107) and to prior rights

of the United States and Plaintiff, which latter rights preclude as a practical matter diversion by Defendant except during those periods when water is passing over the Belle Fourche Project Diversion Dam, located across the Belle Fourche River and subject to more specific determinations as to Defendants diversion points and lands irrigated.

G.

That Defendant does not share in the water rights acquired by the United States Bureau of Reclamation under provisions of the laws of the State of Wyoming and the Belle Fourche River Compact through contracts with the United States Bureau of Reclamation covering water service from Keyhole Dam and Reservoir.

CONCLUSIONS OF LAW

The Court concludes as a matter of Law:

I.

The State of South Dakota has authority under Chapter 430, Session Laws of 1955 (SDC 1960 Suppl. 6l. 01) to regulate and control the use of public water. The constitutionality of Chapters 430 and 431, Session Laws of 1955, (SDC 1960 Suppl. 6l. 01 and 6l. 04) has been upheld by the South Dakota Supreme Court in the case of Knight -vs- Grimes (124 NW (2) 708), specifically as these statutes apply to "ground water under the surface whatever the geologic reservoir in which it is standing or moving" and generally as these statutes apply to all of the water supply of the State.

The Court concludes that Chapter 430, Session Laws of 1955, (SDC 1960 Suppl. 6l. 01) is constitutional as it applies to the waters flowing in streams. Hence, Defendant has no riparian rights in the flows of the Belle Fourche River, except for domestic use and except as determined by Intervenor, the Water Resources Commission, under the law cited.

II.

The Court specifically finds and adjudges that the Defendant, R. A. Smiley, has water rights as found and determined by the South Dakota Water Resources Commission and subject to the following limitation, to-wit:

Priority date: May 1, 1953

Amount of water: Not to exceed diversion rate of 2.78 cubic feet per second.

Purpose: Irrigation

Periods of Use: May to October, inclusive, each year.

Place of Use: On a portion of the lands owned by Defendant, not exceeding 195 acres irrigated.

Conditions: Subject to domestic use and prior water rights requirements, including those of Plaintiff, which as a practical matter limits diversion and use by Plaintiff, to those periods of time when water is passing over Plaintiff's diversion dam, subject to proper record being made in the office of the Water Resources Commission as to specific location of Plaintiff's diversion points along the Belle Fourche River,

Subject to proper record being made in the office of the Water Resources Commission as to the specific tracts of irrigated land to which the water is appurtenant, and

Subject to continued beneficial use on said irrigated land by Plaintiff.

III.

That the use of water for irrigation purposes by Daniel L. Evans and others dating back to approximately 1900, established no right to the use of water by appropriation thereof, said persons having failed to comply with the laws of the State of South Dakota for acquiring water through a process of appropriation thereof, and the evidence as to use of water by prior owners is too uncertain to prove prior appropriations for use sufficient to establish any right to use of water upon said property by R. A. Smiley.

IV.

Plaintiff, in its first cause of action seeks a permanent injunction against Defendant's diversion and use of waters of the Belle Fourche River above the diversion point of Plaintiff. The Court concludes as a matter of law that a permanent injunction must be granted in favor of Plaintiff, prohibiting Defendant from diverting waters of the Belle Fourche River, except as authorized by the State Water Resources Commission and in the manner and within the limits and conditions set out in Conclusion Number II above.

V.

The Defendant has no right to use of water impounded in the Keyhole Dam and that Defendant has no right to divert any water which is being conveyed from the Keyhole Dam to the canal of the Belle Fourche Irrigation District and should be enjoined from diverting or using any of said water as the same may pass across property owned by Defendant.

VI.

The Court concludes, as a matter of law, that the Plaintiff's water rights are as set forth below and subject to the following conditions, to-wit:

1. 1904 WATER RIGHT

Priority date: August 5, 1904,

Amount of Water: Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir,

Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes,

Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes,

Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the project works,

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use.

2. KEYHOLE WATER RIGHT

Priority date: April 25, 1950,

Amount of Water: Not to exceed 130,000 acre feet of stored water for subsequent use or such portion thereof, as may be covered in contracts with the United States Bureau of Reclamation,

Purpose: Irrigation, municipal, domestic, stockwater, mining and industrial uses, or any of them,

Periods of Use: May to November, inclusive, for irrigation; entire year for other purposes,

Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the project works,

Conditions: Subject to domestic use and prior water rights, requirements, subject to continued beneficial use.

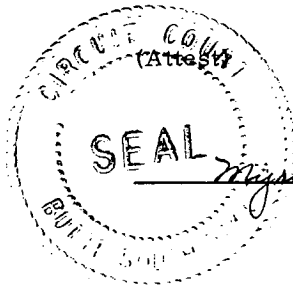
VII.

That Judgment should issue in favor of the Plaintiff and against the Defendant as to both causes of action, Number 1 and Number 2.

Dated this 28th day of November, 1967.

BY THE COURT:

Clarence P. Cooper
CLARENCE P. COOPER, JUDGE



Miguel C. Arnold
Clerk of Courts

STATE OF SOUTH DAKOTA, COUNTY OF BUTLER) ss
CASE 6147 FILED 48 RECORDED Judgment Rec 8 p. 101
FILED Nov 28, 1967 CLERK OF COURT Miguel C. Arnold

#10574-r & rem-EDR

Supreme
Court
1970
CASE

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA
* * * *

BELLE FOURCHE IRRIGATION DISTRICT,
a Corporation,

Plaintiff and Respondent,

and

STATE OF SOUTH DAKOTA and WATER
RESOURCES COMMISSION OF THE STATE
OF SOUTH DAKOTA,

Intervenors and Respondents,

vs.

R. A. SMILEY,

Defendant and Appellant.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
BUTTE COUNTY, SOUTH DAKOTA
HON. CLARENCE P. COOPER, JUDGE

Opinion Filed APR - 7 1970

STATE OF SOUTH DAKOTA, COUNTY OF BUTTE) ss

CASE 6147 FILE 47 RECORDED

FILED May 5, 1970 CLERK OF COURT Myrtle C. Arnold

#10574

Kellar & Kellar & Driscoll
Lead, South Dakota
Smiley & Anderson
Belle Fourche, South Dakota

Attorneys for defendant
and appellant.

Gordon Mydland, Attorney General
Pierre, South Dakota

Attorney for interveners
and respondents.

Stephens & Brandenburg
Belle Fourche, South Dakota

Attorneys for plaintiff
and respondent.

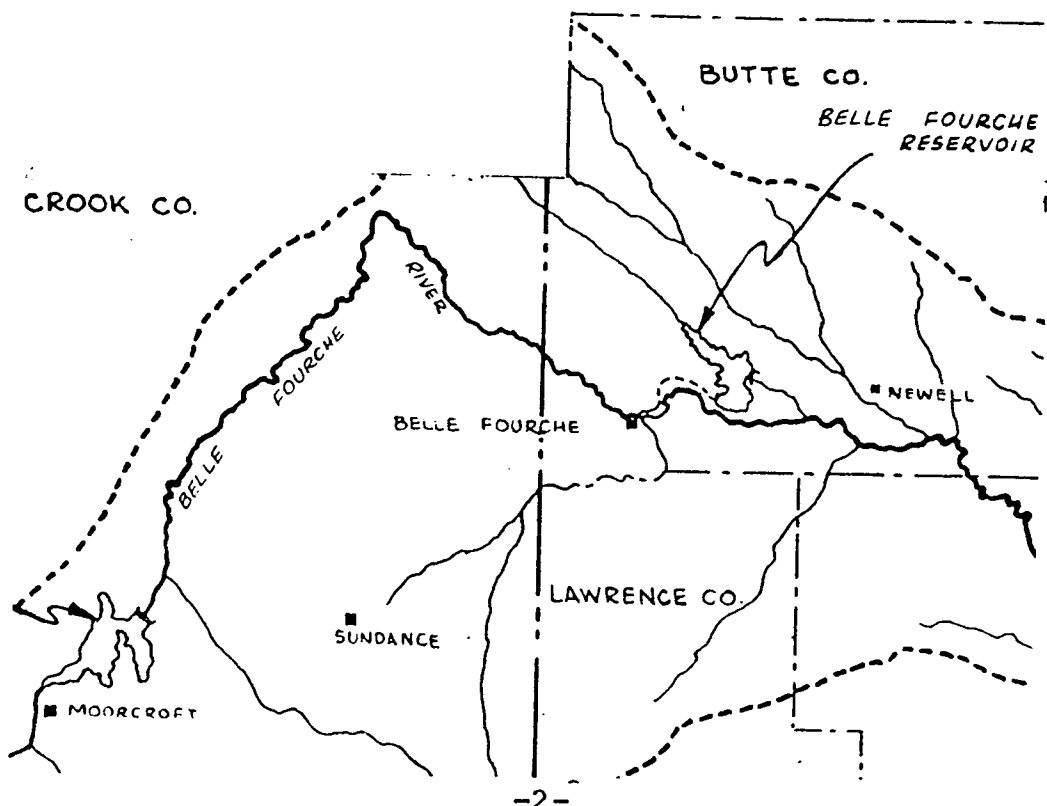
* * * *

ROBERTS, Presiding Judge.

This action was brought by plaintiff Belle Fourche Irrigation District against defendant R. A. Smiley to enjoin him from interfering with the rights of the plaintiff in the waters of the Belle Fourche River and from diverting for irrigation waters impounded by the Keyhole Dam in Crook County, Wyoming, and released by the Bureau of Reclamation through the channel of the Belle Fourche River for the use of the plaintiff. The State of South Dakota and the water resources commission, with leave of court, intervened and filed a complaint in intervention alleging that the commission is authorized by law to regulate and control the development, conservation and allotment of the waters of the state according to principles of beneficial use and priority of appropriation and that defendant without right of appropriation diverts waters from the Belle Fourche River for the irrigation of lands owned by him which are upstream from plaintiff's diversion point and thereby unlawfully interferes with the irrigation of lands in plaintiff district and with interveners in administering

the water laws of the state. Following trial, the court made findings of fact and conclusions of law and entered judgment enjoining defendant from diverting waters of the Belle Fourche River for the irrigation of land owned and controlled by him and his wife, except that the defendant has water rights with priority date of May 1, 1953, which entitle him to divert 2.78 feet per second of water from such river for the irrigation of a portion of his land not to exceed 195 acres during the period of May 1 to October 31, each year. From the judgment, defendant appeals.

The Belle Fourche River, a nonnavigable stream, whose headwaters are in the State of Wyoming, flows in this state southeasterly across Butte County to its junction with the Cheyenne River in Meade County. For an understanding of the locale, a photostatic copy of a sketch map of a part of the Belle Fourche River basin is here inserted.



The pertinent stipulated facts are summarized as follows:

The Belle Fourche Project is a federal irrigation works authorized by the Reclamation Act of June 17, 1902 (43 U.S.C.A. § 371 et seq.). The Secretary of Interior pursuant to the provisions of that act entered into a contract on October 25, 1905, with the Belle Fourche Valley Water Association, a corporation, for supplying water for the benefit of shareholders and for the guaranty of payment of construction costs and operation and maintenance charges apportioned to shareholders. The Belle Fourche Irrigation District was thereafter formed under the laws of this state providing for the organization and management of irrigation districts. Plaintiff entered into a contract with the Secretary of Interior, dated November 26, 1923, providing that cooperation with the United States thereafter be had through the district and that payments of construction costs and operation and maintenance charges be made through the district utilizing its powers of assessment and levy conferred by state law. Effective January 1, 1949, there was a transfer of the maintenance and operation of the irrigation works to plaintiff district. The operation of the project has continued under the 1949 agreement and water for domestic and municipal uses and the irrigation of lands of water users within the district is presently provided by plaintiff.

Plaintiff obtains most of its water supply from the Belle Fourche River. A concrete dam, situate one and one half miles down stream from the City of Belle Fourche, has a diversion capacity of

#10574

1440 cubic feet of water per second through an inlet canal, which is six and one half miles long, either into the Belle Fourche reservoir or into a canal known as the Johnson Lateral. Ormond Dam, which is situate about nine miles east and three miles north of Belle Fourche, is an earthen structure extending across Owl Creek. Waters of the Belle Fourche Reservoir are impounded behind this dam and the area irrigated by water so stored lies easterly of the reservoir.

The Keyhole Dam across the Belle Fourche River in Crook County, Wyoming, was authorized to be constructed under federal reclamation laws and was completed in 1952. A contract was entered into between the Federal Bureau of Reclamation and plaintiff district for the release of water stored in such reservoir for reasonable and beneficial use in plaintiff district.

The lands owned by appellant across which the Belle Fourche River flows are situate about four miles west of the City of Belle Fourche. The lands were purchased by appellant and conveyed to him in the years 1940, 1943 and 1951. All the lands in question were settled upon and patents issued to predecessors in interest subsequent to the enactment by Congress of the Desert Land Act of March 3, 1977 (43 U.S.C.A. § 321 et seq.).

The appellant since purchase of the land here involved has used varied amounts of water from the Belle Fourche River for domestic and livestock requirements and since 1953 has pumped water from the river, including waters released from the Keyhole Reservoir, for

irrigation of his lands. The waters diverted and used by the defendant would have been beneficially used by the plaintiff district during those times when the flow of water at the diversion dam did not exceed 1440 cubic feet of water per second except when the Belle Fourche Reservoir was full or there existed an emergent situation in the irrigation works. The appellant diverted water from the river at times when the flow at the diversion dam was below its capacity and the reservoir was not full and there was no emergency of the nature indicated.

The plaintiff district at all times herein material had ample storage facilities in the reservoir behind Ormond Dam to store and use for beneficial purposes all of the waters of the Belle Fourche River to which it claims a right. The plaintiff district and its water users have been and will continue to be deprived by the acts of the defendant of amounts of water to which they would otherwise have been or will be entitled to use for the annual wetting, irrigation and fertilization of their irrigable land.

It was further stipulated that A. M. Blackford, if called as a witness for the plaintiff, would testify as follows: "I came to the Smiley place in the Spring of 1946. I was there until the Fall of 1955. I was a partner in the livestock end of the farming operation and crops raised and on part of the equipment. However, when I came on the place, the equipment and machinery which was there belonged to Mr. Smiley. There was no pump or irrigation equipment or

#10574

irrigating being done at that time, namely, in 1946. There was an old ditch which came out of a reservoir across the road South and West of the buildings one mile. That ditch terminated in a field just North of and adjacent to the farm buildings. It did not appear to have been used for many years. It was washed out and filled up and part of it was obliterated. This field I would estimate was about 30 acres. I believe it was in 1952 when Mr. Smiley said we should get some irrigating going and he started looking into and investigating rights and so forth. In the Spring of 1953 he told me it was okay to go ahead and that he figured he had the right to pump water out of the Belle Fourche River. So we bought a pump, being either a 6 inch or 8 inch pump, I forget which, and about 800 feet of aluminum piping, fitted with about 35 or 40 sprinkler heads".

Appellant's witness, James N. Eaton, testified that an irrigation pump was hauled to the property possibly in 1902 and for a number of years he observed irrigation being carried on by prior owners. Appellant testified that he observed at the time of purchase ditches on a portion of the land and an engine and a pump near the river.

This court in Cook v. Evans, 45 S.D. 31, 185 N.W. 262, and Haaser v. Englebrecht, 45 S.D. 143, 186 N.W. 572, decided in 1924, held that the Desert Land Act of 1877 effected a severance of all waters upon the public domain and that a patent issued thereafter under the laws of the United States carried with it no common law

right to the waters flowing over the land conveyed. The Cook and Haaser cases were cited by the Supreme Court in California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 55 S.Ct. 725, 79 L.Ed. 1356 (1935). It was there established that the United States as owner of the public domain has the power to dispose of land and water together or separately and that the Act of 1877 did not pass title to appurtenant water rights. The court stated, however, that it did not intend to suggest that water rights shall not be determined by the laws of the respective states and territories. It said: "What we hold is that following the act of 1877, if not before, all non-navigable waters then a part of the public domain became publici juris, subject to the plenary control of the designated states, including those since created out of the territories named, with the right in each to determine for itself to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain." The Desert Land Act does not bind or purport to bind the states to any policy. It simply recognizes and gives sanction, in so far as the United States and its future grantees are concerned, to the state and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation."

It does not appear that appellant or any of his predecessors in interest ever sought under the laws of this state appropriation rights in the waters of the Belle Fourche River. Appellant contends

that as a riparian owner he is entitled to the natural flow of the river across his land and the rights of a riparian proprietor recognized by territorial and state statutes and decisions of this court.

The following amendment was added to the Constitution of this state, § 7, Art. XXI, by a proposal submitted by Chap. 229, Laws 1915, and adopted in 1916:

"The irrigation of agricultural lands is hereby declared to be a public purpose and the Legislature may provide for the organization of irrigation districts for the irrigation of land, and may vest the corporate authorities thereof and the corporate authorities of counties, townships and municipalities with the power to construct, operate and maintain irrigation dams, reservoirs, canals, flumes, ditches and laterals, and to keep in repair all irrigation dams, reservoirs, canals, flumes, ditches and laterals heretofore constructed, under the laws of the state, by special assessments upon the property benefited thereby, according to the benefits received."

The irrigation of agricultural lands is thus declared to be a public purpose and the legislature is expressly authorized to provide for the organization of irrigation districts. The Constitution contains no specific provision relating to the dedication or control of either surface or underground waters.

Section 255, Revised Civil Code 1877 (originated as § 256, Civil Code, Laws 1866) provided:

"The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same."

In Redwater Land & Canal Co. v. Reed, 26 S.D. 466, 128 N.W. 702, it is stated that this section was the same as section 256 of the New York Civil Code as proposed by the Code Commission of that state and is declaratory of the common law doctrine applicable to the rights of riparian owners. The section as combined with other statutes and revised for clarity was included in the South Dakota Code of 1939, § 61.0101.

Section 1, Chap. 142, Laws 1881(C.L. 1877, § 2029; Pol. Code 1903, § 2563) provided:

"That any person or persons, corporation or company, who may have or hold a title or possessory right or title to any mineral or agricultural lands within the limits of this Territory, shall be entitled to the usual enjoyment of the waters of the streams or creeks in said Territory for mining, milling, agricultural or domestic purposes; Provided: That the right to such use shall not interfere with any prior right or claim to such waters when the law has been complied with in doing the necessary work."

This court held that the Act of 1881 did not impliedly repeal the provisions of section 255, supra, and that a riparian owner had a right to use waters of a stream for irrigation not previously appropriated. Lone Tree Ditch Co. v. Cyclone Ditch Co., 15 S.D. 519, 91 N.W. 352, modified and remanded with directions on rehearing, 26 S.D. 307, 128 N.W. 596; see also Sturr v. Beck, 6 Dakota Rep. 71, 50 N.W. 486, affirmed 133 U.S. 541, 33 L.Ed. 761.

A statute was enacted in 1907 prescribing regulations for the appropriation, distribution and use of water for irrigation and other beneficial uses. Chap. 180, Laws 1907. Section 1 of the act

provided: "All the waters within the limits of the state from all sources of water supply belong to the public and, except as to navigable waters, are subject to appropriation for beneficial use." Section 19 of the act required a permit from the state engineer to authorize appropriation of waters to a beneficial use. These and other parts of the statute were declared unconstitutional to the extent that they infringed vested rights to use waters for domestic and irrigation purposes. *St. Germain Irrigating Ditch Co. v. Hawthorne Ditch Co.*, 32 S.D. 260, 143 N.W. 124. This court in that case said: "The right of a riparian owner to make a reasonable beneficial use of the waters of a flowing stream for domestic and irrigation purposes is a vested property right and is entitled to protection to the same extent as property rights generally." The act there considered contained no provisions comparable to existing statutory provisions defining, determining and protecting vested rights as we will hereinafter point out.

This court in *Platt v. City of Rapid City*, 67 S.D. 245, 291 N.W. 600, referred to many of the earlier decisions of this court pertaining to water rights and observed that under the territorial statutes, above quoted, water rights in the streams of the state could be acquired either by settlement or appropriation. This court concluded that it had erred in its holding in *Cook v. Evans*, *supra*, to the effect that the Desert Land Act prevented vesting of riparian rights as to lands settled upon or entered after March 3, 1877. *California-Oregon Power Co. v. Beaver Portland Cement Co.*, *supra*, held as

indicated that it is the right of each state to determine for itself to what extent the rule of riparian rights should obtain. Since predecessors in interest had under the laws of this state acquired riparian rights through settlements, it was the holding of this court that the vested rights of plaintiff Platt to use the waters of Lime Creek to irrigate her lands could not be impaired by defendant city. It should be noted that plaintiff in that case made beneficial use of the waters of the stream and riparian rights to unused waters were not involved.

The legislature enacted Chapter 430, Laws 1955, recognizing the right of riparian owners and other appropriators to continue use of water actually applied to beneficial use and amending and repealing prior statutory provisions. Using section numbers in the South Dakota Compiled Laws 1967, we refer to and quote pertinent provisions:

"46-1-1. Use of water of state--Paramount interest of people--Conversion to public use.--It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection."

"46-1-2. Development of water resources of state for public benefit.--It is hereby declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and

underground, should be developed for the greatest public benefit."

"46-1-3. Water as property of people--Appropriation of right to use.--It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation in the manner provided by law."

"46-1-4. Beneficial use of water resources--Prevention of waste--Right to water from natural stream or watercourse.--It is hereby declared that because of conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable * * *."

"46-1-6. Definition of terms.--Terms used in this title, unless the context otherwise plainly requires, shall mean: * * * (6) 'Beneficial use,' any use of water that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public in the best utilization of water supplies; * * *."

"46-1-8. Beneficial use--Measure and limit of right to use of waters.--Beneficial use is the basis, the measure and the limit of the right to the use of waters described in this title."

"46-1-9. Vested rights defined.--The term 'vested rights' used in this title, unless the context otherwise requires, shall mean:

- (1) The right of a riparian owner to continue the use of water

- having actually been applied to any beneficial use on March 2, 1955 or within three years immediately prior thereto to the extent of the existing beneficial use made thereof;
- (2) Use for domestic purposes as that term is defined in § 46-1-6;
 - (3) The right to take and use water for beneficial purposes where a riparian owner was engaged in the construction of works for the actual application of water to a beneficial use on March 2, 1955, provided such works shall be completed and water is actually applied for such use within a reasonable time thereafter;
 - (4) Rights granted before July 1, 1955 by court decree;
 - (5) Uses of water under diversions and applications of water prior to the passage of the 1907 water law and not subsequently abandoned or forfeited."

"46-5-5. Waters flowing in definite stream subject to appropriation--Beneficial use--Excessive appropriation not allowed. Subject to vested rights and prior appropriations, all waters flowing in definite streams of the state may be appropriated as herein provided. Such appropriation shall not constitute absolute ownership of such water, but shall remain subject to the principle of beneficial use. Appropriation in excess of the reasonable needs of the appropriators shall not be allowed."

As previously indicated riparian rights at common law exist independently of use or appropriation, and a riparian owner may

indefinitely retain riparian rights in a stream though he takes no water therefrom for irrigation of his abutting land. The right passes with title to the land and is not gained by use or lost by disuse. St. Germain Irrigating Ditch Co. v. Hawthorne Ditch Co., supra. The declared purpose of Chapter 430, Laws 1955, is the maximum utilization of the water resources of the state. The first section of that act expressly repealed §26-61-0101 containing the provisions originally enacted in 1866 and above quoted which were declaratory of the common law rights of riparian owners and thus modifying the doctrine of common law riparian rights and abrogating many decisions made thereunder the legislature has substituted the doctrine of prior appropriation and application to beneficial use of unused and unappropriated waters. It is clear that the commission and the water engineer in regulating and controlling irrigation perform ministerial duties only and must give full recognition and effect to existing vested rights as defined by the statute. From its decisions there is a right of appeal and review to the circuit court.

In Knight v. Grimes, 80 S.D. 517, 127 N.W.2d 708, this court held adversely to the claim that Chapter 431, Laws 1955, specifically providing that beneficial use shall be the basis and limit to the use of underground water, is invalid. The statute there considered also recognizes and affords protection to vested rights. Plaintiff therein was at the time of passage of the statute applying underground waters to the irrigation of a four acre tract. That was a right that had

under the statute become vested by reason of application to a beneficial use. This court held that the state could apply the doctrine of prior appropriation and application to beneficial use to unappropriated underground waters so long as protection was afforded to vested rights which a landowner had initiated and acquired at the time of passage of the statute. Decision in the Knight case concerned with underground waters is equally applicable to surface water. *Williams v. City of Wichita*, 190 Kan. 317, 374 P.2d 578; see also *Baeth v. Hoisveen*, N.D., 157 N.W.2d 728; *Hutchins, Riparian-Appropriation Conflicts in the Upper Midwest*, 38 N. Dak. L.Rev. 278 (1962); *Munro, South Dakota and the Water Impasse*, 11 S.D. L.Rev. 255 (1963).

The trial court found in substance that defendant has no appropriation rights of record for irrigation of lands owned by him and adjacent to the Belle Fourche River; that defendant diverts waters from the Belle Fourche River and uses the same for irrigation of his land "at his exclusive option and discretion as to time and amount and irrespective of regulatory orders issued to him by the Intervenor"; that such waters would have been diverted and used beneficially by water users in plaintiff district, particularly by users who irrigate lands in that portion of the irrigation project known as the "Inlet Canal and Johnson Lateral Lands", who depend entirely upon the flow of the Belle Fourche River or releases from the Keyhole Dam of stored water for their water supply and that "defendant does not share in the water rights acquired by the United States Bureau of Reclamation

under provisions of the laws of the State of Wyoming and the Belle Fourche River Compact (SDCL 1967, 46-30) through contracts with the United States Bureau of Reclamation covering water service from Keyhole Dam and Reservoir." The court further found that defendant has vested rights as defined by the provisions of SDCL 1967, Title 46, by reason of diversion and beneficial use for irrigation purposes during the period of May 1953 to June 30, 1955, inclusive, and that July 1, 1955 to October 31, 1961, inclusive, was a reasonable period of time within which to complete construction of works for the application of water to beneficial use. The evidence, as we view it, sustains the foregoing findings.

Appellant contends that the findings and judgment limiting the quantity of water that may be diverted by him during a specified period each year and to be used upon a portion of his land, not to exceed 195 acres, are not sustained by the evidence.

Water flowing in definite streams of the state may be appropriated through proper administrative procedure, subject to vested rights and prior appropriations. Section 46-5-5, supra. It is thus a prerequisite to the determination of the availability of unappropriated waters in approving applications for water right permits to recognize existing water rights. It is the contention of interveners that in the allotment of unappropriated waters the commission must necessarily make determinations of existing water rights including extent of vested rights. While rights may be regulated and supervised by administrative process for the protection of appropriators of water, we do

not think that such process can operate to divest rights that have already vested.

The trial court in a memorandum opinion states that the water resources commission has found "a vested right for irrigation dating back to May 1, 1953, based upon beneficial use by defendant, and set forth on pages 8 and 9 of Intervenor's brief, which in the view of this Court is fully supported by the evidence." The decision of the commission purporting to determine priorities and the quantity of water that may be diverted by appellant is not a part of the record and the basis of such action and adherence to statutory provisions do not appear. We are impelled to conclude that the findings in question are not sustained by the record.

The circuit court has jurisdiction to hear and determine questions necessary for the adjudication of water rights. SDCL 46-10. The statute is designed to afford a litigant in an action involving water rights adequate and complete relief.

We have previously held that an action may be remanded for determination of a single issue. *Petersen v. Kemper*, 70 S.D. 427, 18 N.W.2d 294; *J. H. Larson Electrical Co. v. Vander Vorste*, 81 S.D. 296, 134 N.W.2d 500. We think that the ends of justice will be better served by limiting the issue upon remand to an adjudication of the extent of the existing rights of appellant to the use of waters of the Belle Fourche River.

The judgment is reversed and the cause remanded for

#10574

introduction of evidence and further proceedings consistent with this opinion and for judgment accordingly. No costs to be taxed.

All the Judges concur.

t the initial reorganization of the executive branch contemplated by Section 8, Article IV of the Constitution is a matter of legislative rather than executive duty and authority, any answer by me to the questions propounded in your letter of February 8, 1973, would be academic. Accordingly, I must respectfully decline to answer those questions.

Respectfully submitted this 12th day of February, 1973.

ROGER L. WOLLMAN Associate Justice

87 S.D. 151, 204 N.W.2d 105 BELLE FOURCHE IRRIGATION DIST. V. SMILEY (S. Ct. 1973)

BELLE FOURCHE IRRIGATION DIST., Respondent

vs.

SMILEY, Appellant

No. 11099
 SUPREME COURT OF SOUTH DAKOTA
 87 S.D. 151, 204 N.W.2d 105
 February 07, 1973, Opinion filed

Appeal from Circuit Court of Butte County; Hon. Clarence P. Cooper, Judge.

COUNSEL

Kellar, Kellar & Driscoll, Lead, R. A. Smiley, Belle Fourche, for defendant and appellant.
 Stephens & Brandenburg, Belle Fourche for plaintiff and respondent.
 William J. Srstka, Jr., Sp. Atty. Gen., Gordon Mydland, Atty. Gen., Pierre, on the brief, for interveners.

JUDGES

HANSON wrote the opinion.
 All the Justices concur.

AUTHOR: HANSON

OPINION

{*153} HANSON, Justice.

This action was commenced in 1961 by the Belle Fourche Irrigation District to restrain defendant, R. A. Smiley, from diverting water from the Belle Fourche River for irrigation purposes. The State and the Water Resources Commission of the State were allowed to intervene and file a Complaint in Intervention. Following trial, the court entered findings of fact, conclusions of law and a judgment enjoining defendant from diverting waters of the Belle Fourche River except for limited irrigation purposes with a priority date of May 1, 1953. On appeal by defendant this court rendered its opinion reversing and remanding the action for the determination of a single issue, i.e., "to an adjudication of the extent of the existing rights of appellant to the use of waters of the Belle Fourche River." See Belle Fourche Irrigation Dist. v. Smiley, 84 S.D. 701, 176 N.W.2d 239. The limited remand was necessary because there was no evidence to sustain the findings of the trial court relative to priorities and quantity of water defendant could lawfully divert. Our prior opinion is referred to for a statement of the ultimate facts involved.

On remand, the parties entered into a supplemental stipulation of facts to cure the deficiency in the evidence as follows:

(1) The defendant, R. A. Smiley, has 207.8 described acres of land, and the water rights appurtenant are the subject of this action.

(2) That at all times pertinent to the subject matter of this action, and especially as of May 1, 1953, the defendant, {*/154} R. A. Smiley, had a pump that had a maximum capacity of 1200 gallons per minute, which converts to approximately 2.67 cubic feet per second.

(3) That at all times pertinent to this action, and especially as of May 1, 1953, the defendant was irrigating his property, shown by and limited to the land described in paragraph (1) above, at the rate of 1200 gallons per minute, which converted to approximately 2.67 cubic feet per second.

Based upon such additional facts the trial court entered its supplemental findings of fact, conclusions of law, and judgment enjoining defendant from diverting waters of the Belle Fourche River for the irrigation of real property owned by him, except defendant was determined to have a vested water right with a priority date of May 1, 1953, allowing him the right to divert not to exceed 1200 gallons of water per minute which converts to 2.67 cubic feet of water per second from the Belle Fourche River for irrigation purposes during the period May 1st to October 31st inclusive, each year, on not to exceed 207.8 acres of certain described property owned by defendant. The judgment further provided defendant's right to divert water was subject to domestic use of the public and to the prior appropriative rights of plaintiff.

Defendant has appealed from the Supplemental Judgment contending the trial court erroneously granted him a limited appropriative water right whereas he has a vested riparian right to use and divert water from the Belle Fourche River for domestic and irrigation purposes by virtue of his ownership of land contiguous to the river. This riparian right, defendant asserts, became an inseparable incident of his land when it was settled; use did not create it and disuse cannot destroy it; and to deny such right deprives him of property without due process of law and without just compensation.

The same contentions were presented and considered in the prior appeal of this action. All were determined adversely to defendant. No useful purpose would be served in reviewing and restating those settled issues. See Belle Fourche Irrigation District {*/155} v. Smiley, supra, in which the conclusion of the Court is distilled in the following portion of the opinion:

"In Knight v. Grimes, 80 S.D. 517, 127 N.W.2d 708, this court held adversely to the claim that Chapter 431, Laws 1955, specifically providing that beneficial use shall be the basis and limit to the use of underground water, is invalid. The statute there considered also recognizes and affords protection to vested rights. Plaintiff therein was at the time of passage of the statute applying underground waters to the irrigation of a four acre tract. That was a right that had under the statute become vested by reason of application to a beneficial use. This court held that the state could apply the doctrine of prior appropriation and application to beneficial use to unappropriated underground waters so long as protection was afforded to vested rights which a landowner had initiated and acquired at the time of passage of the statute. Decision in the Knight case concerned with underground waters is equally applicable to surface water."

Our decision again upheld and gave effect to the comprehensive water law enacted in 1955 (Chap. 430, Laws 1955, now SDCL 46-1-1 et seq.), which declares "all water within the state is

the property of the people of the state, but the right to the use of water may be acquired by appropriation in the manner provided by law." SDCL 46-1-3. Following the trend of several other western states the act, in effect, limits the riparian doctrine in this state to accrued rights thereunder. By nonrecognition it also prevents the accrual of unused riparian rights which have not become vested by actual appropriation to a beneficial use prior to the passage of the act. Therefore, the mere ownership of land contiguous to a stream no longer carries with it a vested right to divert water from a stream for irrigation. Appropriation and application to a beneficial use is now the basis, measure, and limit of the use of all waters in the state, SDCL 46-1-8. Accordingly, as a riparian claimant defendant's vested rights consist of those defined by SDCL 46-1-9(1) as follows:

{*156} "The right of a riparian owner to continue the use of water having actually been applied to any beneficial use on March 2, 1955 or within three years immediately prior thereto to the extent of the existing beneficial use made thereof".

On remand, the trial court correctly determined the extent of defendant's vested riparian right to use water from the Belle Fourche River for irrigation purposes in accordance with the above provision and granted him the right to continue using such waters for that purpose. In addition, as a riparian owner, defendant has a vested right to take and use water from the Belle Fourche River for domestic use which includes water for drinking, washing, sanitary, culinary purposes, and other ordinary household purposes; irrigation of a family garden, trees, shrubbery or orchard not greater in area than one-half acre; and stock watering. SDCL 46-1-9(2). Such use "takes precedence over all appropriative rights", SDCL 46-1-5(1).

Affirmed.

All the Justices concur.

Affirmed.

Water Rights Program - DENR

File Documentation

File No. 0376-1 & 0377-1

County: Butte

Name of Person: Belle Fourche Irrigation District

Address: Newell SD

Date: 8/1/2000

RE: USBOR Water Right Status

Comments:

Garland Erbele and Mark Rath from Water Rights, Diane Best from the Attorney General's Office and Curt Anderson and Gary Velder from the US Bureau of Reclamation met with the Board of Directors for the Belle Fourche Irrigation District to discuss updating water rights for the irrigation project. The Bureau of Reclamation holds a water right for the project dating back to 1904 for the irrigation of 57,183 acres, a diversion rate of 1440 cubic feet per second and storage of 185,170 acre-feet. Methods for updating this water right to current irrigation levels were discussed. It was explained to the Board that Reclamation holds the water rights for the project and there are three methods to update the water rights. First would involve a basin wide adjudication, which at this time, is not feasible. Second would involve Reclamation filing a vested right claim for the project. It was explained this method would be time consuming and could potentially open the issue up to outside opposition. Third would involve accepting the 1967 court adjudication from the Smiley Case then reviewing the past 33 years of information and updating the files. If problems exist between the 1967 adjudication and current levels of irrigation, a new permit(s) may need to be applied for. Garland Erbele told the Board that Reclamation and DENR have agreed the third method is the preferred alternative and that we would like a resolution from the District supporting this decision.



Mark D Rath
Natural Resources Engineer

RESOLUTION NO. 0002

Be it resolved that the Belle Fourche Irrigation Board of Directors moves to support the 1967 court decision for water based on 57,183 acres at 300 cfs.

Dated, at Newell, Butte County, South Dakota, this 5th day of September, 2000.

By order of the Board of Directors
Belle Fourche Irrigation District

Gary Brunner, President Gary Brunner

Darrel Cox Darrel Cox

Laurie Barnaud _____

John Heisler John Heisler

Robert Ruff Robert Ruff

Harlan Palo Harlan Palo

Del Raisanen _____

ATTEST:

Brenda Eichler
Brenda Eichler, Secretary





United States Department of the Interior

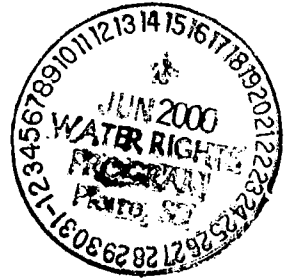
BUREAU OF RECLAMATION

Great Plains Region

P.O. Box 36900

Billings, Montana 59107-6900

IN REPLY REFER TO:
GP-2500



JUN 12 2000

Mr. Garland Erbele
Chief Engineer
South Dakota Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Subject: Belle Fourche Project Water Rights

Dear Mr. Erbele:

This is in regard to the water rights for our Belle Fourche Project. These water rights were adjudicated by the South Dakota Eighth Judicial Circuit Court in 1967, and confirmed by the State Supreme Court in 1970. The Supreme Court also concluded that the Circuit Court has jurisdiction to hear and determine questions necessary for adjudication of water rights in South Dakota (SDCL 46-10). This adjudication is contained in Belle Fourche Irrigation District v. R.A. Smiley, dated November 1, 1967. The Circuit Court determined that the Belle Fourche Irrigation District's (Plaintiff) rights were derived through contracts with the United States Bureau of Reclamation (Reclamation). Reclamation appropriated these rights by filings made August 5, 1904, pursuant to Chapter 142, Laws of Dakota 1881, and Chapter 105, Session Laws of 1890.

In its Conclusion of Law the Circuit Court stated:

"The Court concludes, as a matter of law, that the Plaintiff's water rights are as set forth below and subject to the following conditions, to-wit:

1. 1904 WATER RIGHT

Priority date: August 5, 1904,

Amount of Water: Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir.

Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes.

Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes.

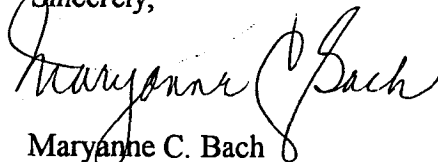
Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the Project works.

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use."

We concur with the findings of the Circuit Court and support their decision. We believe that the above is an accurate description of the water rights held in South Dakota by the United States Bureau of Reclamation for the Belle Fourche Project. We also believe this Court adjudication makes it unnecessary to review these rights under the ongoing water right claims validation process. We would, however, be willing to provide data on water use, place of use, and the diversion and storage facilities to assist in updating the water rights records for the Belle Fourche Project.

We hope this clarifies our position concerning the Belle Fourche Project water rights. If you have any questions, please contact Gordon Aycock at (406) 247-7756.

Sincerely,



Maryanne C. Bach
Regional Director

cc: Randy Oliver
Belle Fourche Irrigation District
P.O. Box 225
Newell, SD 57760