

No. 132-2

Office of State Engineer
DOCUMENT FILE

Name: Bond, A. D.

County: Luster

Date: November 22, 1881

Location: Beaver Creek

Possibly NW Sec 4
T 7 S E 7 E

C. 2. 2 - 2

Water Right

I the undersigned claim 400 min ers inches of water on Beaver Creek Custer Co. D.T. about one mile below Bolands House to be diverted from its course on the East side of said creek, to be carried one and one half miles down East side of said stream and used for Agricultural and Domestic purposes.

A.D. Bond
Locator.

The original of foregoing instrument was filed for regrd at 10.30 A.M.
Nov. 22, 1881 and recorded on page 153 Book 4 Locatio s.

E.H. Flynn
Regis ter of Deeds

ALL POWERED BY INSTRUMENT
GIVEN BY ME
I hereby certify that the foregoing is a true and correct copy of the original instrument filed for record in my office on the 22nd day of November 1881 and recorded on page 153 of the record in Custer Co. D.T. and that the above mentioned instrument is the original instrument filed for record in my office on the 22nd day of November 1881 and recorded on page 153 of the record in Custer Co. D.T.
this 22nd day of November 1881
E.H. Flynn

Deputy Reg
Bond, C. D.

Water Right.

I the undersigned claim 400 miners inches of water on Beaver Creek, Custer Co., D.T. about one mile below Boland's House to be diverted from its course on the East side of said creek, to be carried on and one half miles down East side of said stream and used for agricultural and domestic purposes.

A.D. Bond, Locator

The original of foregoing instrument was filed for record at 10:30 A.M. Nov. 22, 1881, and recorded on page 153 Book 4 Locations.

E.H. Flynn, Register of Deeds.

WALTER RISHI

Located by

A.D. Bond

Filed November 22, 1881

CUSTER COUNTY.

State of South Dakota (ss
County of Custer)

I hereby certify that the within and foregoing instrument is a true, correct and complete transcript of the instrument which it purports to be, as the same was filed for record in the office of the State Engineer.

Witness my hand and official seal, done at my office in Pierre, State of South Dakota, this _____ day of _____ 1908.

Samuel H. Lee
(seal) State Engineer.

FARRELL, FARRELL & GINSBACH

LAWYERS

441 NORTH RIVER STREET

HOT SPRINGS, SOUTH DAKOTA 57747

Martin P. Farrell

Jane M. Farrell

Patrick M. Ginsbach

(605) 745-5161

August 24, 1984



John Hatch, Chief Engineer
Water Rights Division
Joe Foss Building
523 East Capital
Pierre, SD 57501

RE: Cancellation of Water Right Filing #046-2;
Cancellation of Water Right Filing #0446-2
Water Right Riling #032-2
Floyd Simunek, Hot Brook Canyon, Box 178B Hot Springs, SD 57747

Dear Mr. Hatch:

By way of introduction, I am a lawyer in Hot Springs, South Dakota, who has been retained to represent Floyd Simunek concerning the cancellation of the above Water Right Filing and the application for Water Right Filing #032-2.

The purpose of my letter is to make some inquiries so that my client can determine what he wishes to do in regards to the above-referenced matter.

First, concerning cancellation of Water Right Filing #046-2, I am enclosing a copy of a map that was prepared by Delvin D. Broz in connection with Water Right Filing #032-2. It is my understanding from reading the Notice of Cancellation that you are requesting that Water Right Filing #046-2 be cancelled due to the fact that the land that was allowed to be irrigated under that Water Right Filing is no longer used for irrigation purposes. It is my client's understanding that the land covered by Water Right Filing #046-2 is located in Section Thirty-three, Township Six, South Range Seven East of the Black Hills Meridian, in Custer County, and includes the North Half of the Northwest Quarter of said Section and the Southeast Quarter of the Northwest Quarter of Section Thirty-three. My clients have marked out in red on the map of Delvin Broz' the sections of land that this Water Right Filing number applied to and if you examine the map and it is your understanding that this is the same area covered by Water Right Filing #046-2 my clients have no objection to the cancellation of this permit and agree that the Water Filing Permit has been abandoned. If my clients understanding of what

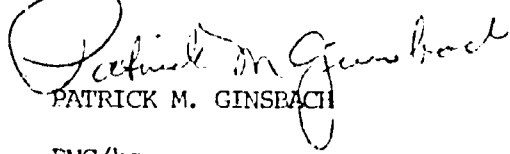
land is covered by Water Right Filing #046-2 is incorrect, please advise me.

The other matter concerns cancellation of Water Right Filing #0446-2. I am including a second copy of the map prepared by Delvin Broz for your use and information and answering my questions concerning cancellation of this permit. On the map #2 prepared by Delvin D. Broz it is my understanding that it was prepared for the purpose of identifying the lands which would be under irrigation under Water Right Filing #032-2. I wonder if you could indicate on the map what area of land Water Right Filing #0446-2 was for and if you could provide me with a copy of the chronological history of the water use under this filing. The other thing my clients were wondering is if the cancellation of Water Right #0446-2 had any connection with the application of Water for Beneficial Use Water Right Filing #032-2. It appears in the Notice of Cancellation that Water Right Filing #0446-2 is recommended for cancellation due to abandonment, forfeiture and modern permits have been obtained to cover the areas presently irrigated. It is for this reason that my clients were wondering if Water Right Filing #032-2 replaced Water Right Filing #0446-2.

The final matter concerns Water Right Filing #032-2. I had previously talked on the phone with Mr. Broz about this matter and perhaps this question should be referred to him. My clients have looked over the documents that he sent in connection with Water Right Filing #032-2 and it appears that 17 acres that they have under irrigation aren't included on the map that he prepared. (see Map #2). Mr. Broz had explained to me that it might be possible that this area had been abandoned or not covered by any Water Right Filing previously. My clients have owned the land since 1976 and have irrigated the areas Mr. Broz has on his map in addition to the 17 acres. The Simuneks predecessor, Alvin Merchen, also had this 17 acres under irrigation and according to the Gallentines who owned the land before Mr. Merchen, they indicated that they had the land under irrigation including the 17 acres and it was their understanding that their predecessors in interest also irrigated this land. If your files indicate otherwise would you please advise me. The other question my clients had was that in the Affidavit of Construction paragraph (E) it states that the amount of water originally applied to beneficial use was 8 cubic feet per second and that the present use is only 1.1 cubic feet a second. Mr. Broz explained to me that the 1.1 cubic feet a second was based upon the law allowing 1 cubic foot per second of water for every 70 acres that an individual has under irrigation. Simuneks, when they purchased the land, had the understanding that they were entitled to 8 cubic feet per second. According to the Custer County Clerk of Courts office a judgment entered in a civil case in that matter gave the Simunek's predecessors in interest the right to 4 cubic feet a second of water. I am enclosing a copy of an abstract of that judgment for your information. Can you tell me what rights to water the Simuneks have, and if judicial determination in 1961 that the Gallentines were entitled to 4 cubic feet per second of water is binding upon them. It is the Simuneks concern that in a dry year if they are limited to 1.1 cubic feet per second of water that they will not have enough water to irrigate their farm.

If you have any questions please feel free to contact me.

Yours Truly,

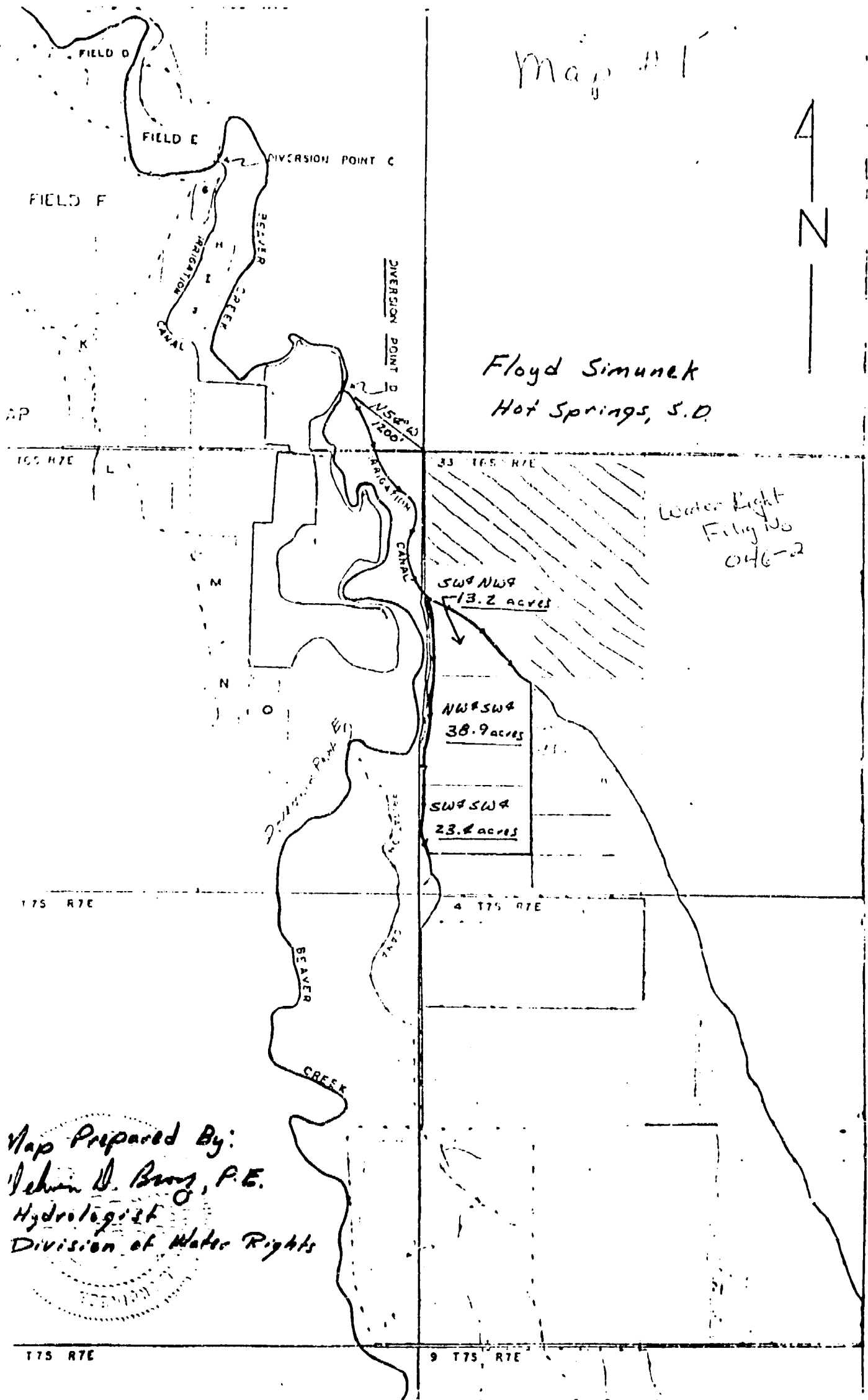

PATRICK M. GINSBACH

PME/bc

Enclosures

cc: Floyd Simunek
R.R. 1 Box 178B
Hot Springs, SD 57747

Map #1



Floyd Simunek
Hot Springs, S.D.

Water Right
Filing No
046-2

Map Prepared By:
John D. Benz, P.E.
Hydrologist
Division of Water Rights

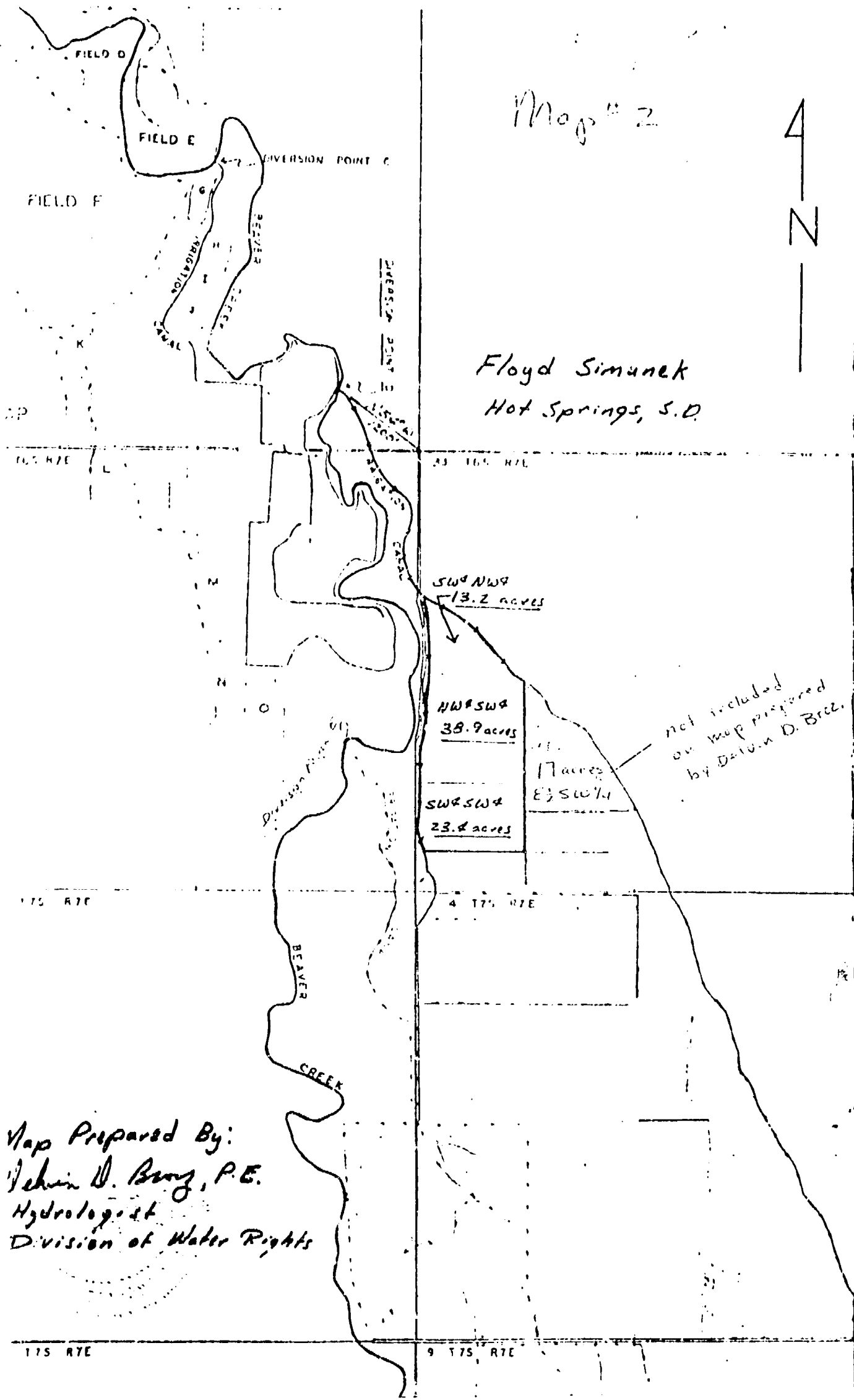


Map # 2



Floyd Simunek
Hot Springs, S.D.

not included
on map prepared
by Dalton D. Brz.



Map Prepared By:
John D. Brz, P.E.
Hydrologist
Division of Water Rights

ITEM NO. 76 (continued)

On March 13, 1961, on motion of plaintiffs through their attorneys, the Court dismissed the action against James Bowker.

This stipulation generally parallels the Court Judgment in this case summarized in more detail in ITEM NO. 77. Below.

ITEM NO. 77

Dated March 16, 1961

Filed March 16, 1961, Custer County Clerk of Courts Office.

Judgement in the case of Edward D. and Anita M. Gallentine vs. F.O. Butler Ranch, Inc., and James Bowker. Action against James Bowker having been dismissed.

ORDERED, ADJUDGED and DECREED

That, that certain stipulation of March 13, 1961 is in all things, confirmed

That F.O. Butler Ranch, Inc., is successor in interest to those water rights quoted in Poland, Reno and Cole in the 1904 Decree in the case of Brunschmid vs. Boland et. al.

The Gallentines are successors in interest to those water rights quoted in Joseph Brunschmid in this 1904 Decree.

The 1904 Decree is a valid adjudication of the water rights involved and by such Decree, the F.O. Butler Ranch, Inc., is entitled to use 2 1/2 or 3 c.f.s. of the waters of Beaver Creek and the Gallentines are entitled to use 1/3 or 4 c.f.s. of the waters of Beaver Creek.

If the flow at the F.O. Butler Ranch, Inc., diversion point is less than 12 c.f.s. the F.O. Butler Ranch, Inc., is to permit 4 c.f.s. to pass its point of diversion for the first ten days of a thirty day month and the first eleven days of a thirty one day month for the Gallentines use.

If the Gallentines are not using the water during the specified time, F.O. Butler Ranch, Inc., may use this water which Gallentines have lawful title to, being 1/3 of the water of Beaver Creek.

ITEM NO. 78

Dated April 5, 1961

File No. 093-2, State Water Resources Commission, Pierre, South Dakota.

Request, same wording as in ITEM NO. 75 that the State Water Resources Commission investigate and make a determination of the water rights of Beaver Creek. Signed by P.B. Conger, Cecil Harman, W.F. Holan, Albert Miller and William Miller.

ITEM NO. 79

Dated May 10, 1961

May 10, 1961 Minutes of the State Water Resources Commission, Pierre, So. Dakota.

Motion moved, seconded and passed, directing the Commission Staff to secure the factual and legal status of water rights on Beaver Creek as time permits.



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

September 10, 1984

Patrick M Ginsbach, Attorney
441 N River Street
Hot Springs SD 57747

RE: Cancellation of Water Right Filing No. 046-2
Cancellation of Water Right Filing No. 0446-2
Floyd Simunek Vested Right Application under Water Right Filing No. 032-2

Dea: Mr. Ginsbach:

Your analysis and understanding of Water Right Filing No. 046-2 is correct. We will proceed to cancel this Filing as noticed.

Regarding Water Right Filing No. 0446-2, identifying the location of this filing is somewhat difficult. According to Delvin Brosz' research, the diversion point for this filing could be at or near diversion point E on the map. The Filing states that the land to be irrigated is about one-half mile from the diversion point. With that vague description it is impossible to specifically identify the land that was to be irrigated. I am unable to provide you with the chronological history of the water use under this filing. The only thing on record for this filing in my office is the filing itself, which was provided with the cancellation notice. The only connection that cancellation of Filing No. 0446-2 has with Filing No. 032-2 is that it could have been a duplicate filing for some of the lands. Since we are proposing that Mr. Simunek's vested right be filed under 032-2 there is no need to retain No. 0446-2.

I am assuming that you have a copy of the summary of records collected by the State Water Resources Commission. You included a page from this summary in your letter. I refer you to item No. 52. This is an abstract of an agreement under which Mr. Simunek and others are presently irrigating. Item No. 52 ties directly to items No. 14, No. 15 and No. 16 which according to Mr. Brosz' investigations tie to Water Right Filing No. 032-2. Water Right Filing No. 032-2 does not replace Water Right Filing No. 0446-2. In our opinion, Mr. Simunek is presently irrigating under Water Right Filing No. 032-2.

It was Mr. Brosz' understanding that the 17 acres omitted from the Simunek application was owned by Paul & Carol Fugier. According to our records, this field is under irrigation. It was included in the Fugier's application. It will have to be deleted from that application and added to Mr. Simunek's application. The correct acreage is 17.3. We are sorry if this has caused an inconvenience to Mr. Simunek.

Equal Opportunity Employer

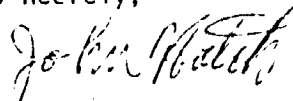
September 10, 1984
Patrick M Ginsbach, Attorney
Page 2

The 8 cfs stated in the affidavit of construction is the amount claimed in Water Right Filing No. 032-2. This Filing is now being shared by all irrigators operating under the agreement described in item No. 52. In analyzing the 4 cfs and 8 cfs described in item No. 77, one needs to review items No. 64, No. 65, No. 72 and No. 74. In reviewing items No. 64, No. 65 and No. 72, it clearly states that the 8 cfs was based on 560 acres. This equates to 1 cfs per 70 acres. In reviewing item No. 74, it described the land associated with the 4 cfs. The total acreage is not specified in this item and the acreage is also not specified in related items No. 39 and No. 57. The legal descriptions included in these items identify more acreage than Mr. Simunek is presently irrigating. Some of the irrigation has been abandoned.

We have no problem with the agreement which Mr. Simunek and the others are using with their water rights. The agreement provides a means to serve several water rights in a water short area. Enforcement of the agreement and sharing of water under the agreement is up to the parties involved. The Division of Water Rights will not enforce the agreement. If we are called upon to solve water right disputes, the matter would then be based on South Dakota Statutes.

If you have any disagreements with our analysis or have any other questions, please contact us.

Sincerely,



JOHN HATCH, Chief Engineer
Water Rights Division

cc. Floyd Simunek
Hot Brook Canyon, Box 178B
Hot Springs SD 57747

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

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

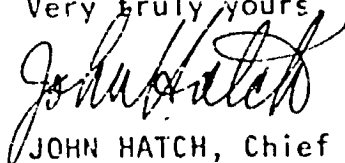
NOV 25 1986

Paul & Carol Fugier
RR 1, Box 104
Buffalo Gap SD 57722

Dear Mr. & Mrs. Fugier:

Enclosed are your Validated Vested Water Right and Water License No. 1971-2.
As long as you use the water beneficially, as stated in the Water License,
the State Water Laws provide that you have a continuing right to use the
water.

Very truly yours,



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

JH:ks

enclosures

NOTE: The applicable portions of Water Right Filing No. 032-2 have been
incorporated into this Vested Water Right No. 1971-2 with the
abandoned portions of the filing cancelled.

Equal Opportunity Employer