

No. 14384

Office of State Engineer
DOCUMENT FILE

Name: Thomas, Thomas

County: Santa

Date: October 27, 1904

Filed: January 14, 1905

Location: Spring Creek

No. 013811-12

Water Division No. 7

(Blanks to be filled by the Engineer for the S. D. E.)

District

STATE WATER RESOURCES COM. PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To appropriate Water within the State of South Dakota

(NOTE--Draw a line through items not applicable.)

1. Name of applicant J. D. Miller
 Postoffice address Hermosa, County Custer, State S. D.

I. If a corporation

- (a) Name of same _____
 (b) Date and place of incorporation _____
 (c) Amount of capital stock _____
 (d) Amount paid in _____
 (e) Names and addresses of directors _____

(NOTE--A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)
Completed
 (b) Cash on hand, \$ _____ (c) Treasury stock, \$ _____
 (d) Bonds to be issued, \$ _____ (e) Other resources, \$ _____

2. Name of diversion work G. D. Miller No. 13. Amount of water claimed 1.71 cubic feet per second4. Source of water supply Spring Creek5. Location of point of diversion SW 1/4 Sec. 15, T. 23 S., R. 11 E.,line of the SE 1/4, SW 1/4, Sec. 16, T. 23 S., R. 11 E. and conveyed to the6. Annual period or periods during which water is to be used on both bank of Custer County.

7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Combination(a) Number of acres to be irrigated 120 acres(b) Legal subdivisions to be irrigated NE 1/4 of Sec. 15, T. 23 S., R. 11 E.

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

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

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

(a) Nature of use Stockwatering

Name any of the above uses claimed

(b) Amount of power to be generated _____ horse power.

(c) Amount claimed for engine cooling _____

(d) Location of plant _____

(e) Method of developing power _____

(f) Point where water will be returned to stream _____

8. Estimated cost of work:

(a) Head Gates, \$-----

(b) Pumping plant, \$-----

(c) Fluming, \$-----

(d) Canal-earth, \$-----

Rock, \$-----

(e) Other structures, \$-----

Total, \$-----

9. Description of diversion works:

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

II. Dimensions of works:

(a) Dam: Height ----- feet; length at bottom ----- feet; length at top ----- feet; thickness at bottom ----- feet; thickness at top ----- feet; slope at front water face -----; slope at back face -----
material used in construction -----

(b) Reservoir: Capacity when filled ----- acre feet. Surface area at highwater mark ----- acres.

DEPTH AT OUTLET- FEET	SURFACE AREA AT EACH DEPTH AT OUTLET- ACRES	FEET	ACRE FEET CAPACITY

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

(d) Canal: Total length ----- miles.

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

(Give dimensions where reduction in size are made.)

10. Time required for completion of work ----- Completed ----- years.

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

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

STATE OF SOUTH DAKOTA

County of -----

E. D. Miller

ss.

I, E. D. Miller, being first duly sworn, on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed

E. D. Miller

Subscribed and sworn to before me this

15th

day of

December, 1916

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission:

This is a partial transfer of the original location No. 0438-2 by Thomas Thomson. Water transported to the point of use in the SW 1/4 Sec 15, T 35, R 15E through a ditch described in the Original Location No. 0438-2.

STATE OF SOUTH DAKOTA
County of Hughes } ss.

Pierre, South Dakota, January 5, 1957

This is to certify that the foregoing application was received by the Commission at 11:12 o'clock a.m. upon the 19 day of December, 1956

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Transfer
Number of permit 0438-2.4

Date of first receipt of application December 19, 1956

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right March 15, 1957

Approved January 7, 1957, Recorded in Book 3, Section 2, Page 30

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before _____

Completed, 19____

2nd. The whole of said work is to be completed on or before Completed, 19____

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

Completed, 19____

4th. The water appropriated shall be used for the purpose of irrigation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 1.71 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-hundredth (1/100) of one cubic foot of water per second of time for each acre of land to which water is actually

beneficially applied for irrigation on or before Completed, 19____; said water to be used during the following described annual period:

April to November inclusive

Witness my hand this 7 22nd day of January, 1957

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Certificate of Construction issued January 12, 1957

Water use issued January 12, 1957

STATE OF SOUTH DAKOTA

WATER LICENSE No. 0438-2A

WHEREAS, On the 19th day of December A. D. 1956
O. D. Miller

of Hermosa County of Quatar and State of
South Dakota duly made application (No. 0438-2A) to us for a Transfer permit to use 1.71
cubic feet per second of the waters of Spring Creek
County of Quatar, State of South Dakota, for irrigation
purposes; and

WHEREAS, On the 22nd day of January A. D. 1957
Transfer Permit No. 0438-2A was issued to said applicant for the diversion of said water, and recognizing
completion of the works of diversion therein described on or before the 15th day of
March A. D. 1903 and for the application to beneficial use of said
water on or before the 15th day of March A. D. 1903
and,

WHEREAS, On the 19th day of December A. D. 1956
Transfer the holder of said permit duly made proof of the completion of adequate works for the diversion of 1.71
cubic feet per second of said waters, as evidenced by our Certificate No. 0438-2A
dated January 7, 1957, confirming the completion of works of sufficient capacity for
diverting and conveying to the place of intended use 1.71 cubic feet per second of water, with date of
priority of March 15, 1903 ~~and~~

WHEREAS, On the 19th day of December A. D. 1956
proof was duly made of the application to beneficial use of 1.71 cubic feet per second of said water;
on 120 acres in the NE $\frac{1}{4}$ and SE $\frac{1}{4}$, Sec. 15, T 3S, R 11E

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,
We hereby grant and confirm to O. D. Miller
of Harrison, South Dakota the holder and owner ^{Transfer} of said permit No. 0438-2A
a water right, dating from March 15, 1903 to the use of 1.71
cubic feet per second of the waters of Spring Creek
in the County of Custer and State of South Dakota, or so much thereof as may be
necessary for the purposes hereinbelow mentioned, to be diverted at 1 rod south of the north line
line of the SE 1/4 SW 1/4, Sec. 16, T. 38, R. 11E and conveyed to the point of use
through ditch described in the original location #0438-2
and conducted to and upon parts of the NE 1/4 and SE 1/4, Sec. 15, T. 38, R. 11E.

for the purpose of irrigation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and seal of our office at Pierre, South Dakota,
this 22nd day of January A. D. Nineteen
Hundred and Fifty-seven.

State Water Resources Commission

By.

J. W. Grimes, Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

Water License No. _____

To _____

Source of Supply _____

County _____

Amt. _____ c. f. s.

Point of Diversion _____

Place of Use _____

Purpose _____

Date of Priority _____

Recorded _____

In Book _____ of _____ Page _____

Permit No. 0438-2AWater Division No. 2-Battle Creek Water District**Certificate of Completion of Works**

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That C. D. Millerof Hermosa, County of Custer, and State ofSouth Dakota, the holder of Transfer Permit No. 0438-2A, issued upon ApplicationNo. 0438-2A bearing date of priority of March 15, 1903 authorizing the diversion of1.71 cu. ft. per second of the waters of Spring CreekCounty of Custer, State of South Dakota, at 1 rod South of theNorth line and 15 rods West of the East line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 16,T. 38. R. 11E and conveyed to the point of use through ditches described inthe original Location #0438-2, for irrigationpurposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use 1.71 cu. ft.

per second of water; and that the lands proposed to be irrigated by the use of said water are described as follows,

to-wit: parts of the NE $\frac{1}{4}$ and SE $\frac{1}{4}$, Sec. 15, T. 38, R. 11E - 120 acresWitness my hand this 27th day of January A. D. 1957

State Water Resources Commission

By:

J. W. Grimes, Chief Engineer, Executive Officer

Pre-emptive of Right of Way for Ditch at Location of Water.

To whom these presents may concern. Know ye, that I, Thomas Thomson of Custer County, South Dakota, a citizen of the United States, do hereby declare and publish as a legal notice to all the world, that I claim, and have a valid right to the occupation, possession and enjoyment of all and singular, that tract or parcel of land lying and being in the County of Custer in the State of South Dakota, for the exclusive right of way for the purpose of constructing a flume or water ditch from Spring Creek to the land owned by me in the SE $\frac{1}{4}$ of Section 15 in Township 3 South of Range 11 East BHM, more particularly described as follows:

Commencing at the Thomson Dam on the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 16 in said T.3 S. at a point about 1 rod South of the North line and about 15 rods West of the East line of said SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and running thence S. Easterly to near the S.E. corner of Section 16. Thence Easterly about 80 rods, thence N. Easterly and across the S.E. of the SW $\frac{1}{4}$ of Section 15 about 85 rods, ~~thence~~ thence Easterly to the SE. corner of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 15 T.3 S. R.11 E. BHM. there to empty into Spring Creek, a total distance of about 1 $\frac{1}{2}$ miles, which said Ditch shall be known as and called the Thomas Thomson Water Ditch.

Said Ditch crosses over ^{the} lands owned by this claimant and over the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 15 owned by Edward Peterson.

I also claim and have a valid right to the enjoyment and use of 3000 inches of water from said Spring Creek for irrigating and domestic uses and purposes to be conveyed through such flume or water ditch or by pipe to the lands owned by me in the SE $\frac{1}{4}$ of said Section 15, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal this 27th day of October 1904.

Thomas Thomson (Seal)

Notice posted at the Thomson Dam, October 25, 1904.

Ditch commenced at the head near ~~the~~ the Dam, on the 15th day of March 1903

State of South Dakota.) ss
County of Custer

On this 27th day of October 1904 before me the County Judge in and for the County aforesaid, in the State aforesaid, personally appeared Thomas Thomson, well known to me to be the same person who executed the foregoing written instrument and acknowledged that he executed the same for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

Alfred T. Feay

County Judge in and for Custer County, South Dakota.

SEAL

STATE OF SOUTH DAKOTA } ss
COUNTY OF CUSTER

This instrument of writing was filed
for record on the 1st day of January
A. D. 1905 at 3 o'clock P. M. and
is recorded in book 45 of
Placer Map on page 45
Henry E. Wray

to Racer
45
July 1906
Henry E. Wray

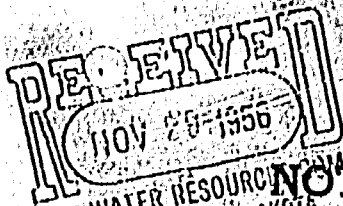
WATER RIGHT.
Located by Thomas Thomson
October 27, 1904.
CUSTER COUNTY.

State of South Dakota
County of Hughes

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 30th day of

January 1908.
Daniel H. Lea
(seal) State Engineer



Permit No. 0438-2 A

NOTICE OF TRANSFER OF WATER PERMIT

November 29, 1956

TO: Office of State Water Resources Commission
Pierre, South Dakota

This is to notify you that Thomas Thomson and others

who previously owned the land described below has sold his interests to C. D. Miller, Hermosa,
South Dakotatogether with any rights to the beneficial use of water thereon as evidenced by State Water Permit No. 0438-2
and as provided for in section 61.0141 of the SDC of 1939 and elsewhere for irrigation on the
NE 1/4 and the S 1/4 of the SE 1/4, Sec. 15, T. 3 S., R. 11 E., B.H.M.You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at
the OFFICE OF WATER RESOURCES COMMISSION as evidence of the change of ownership.

A fee of one dollar is hereto attached to cover filing fees as required under Section 55.1806 of the SDC of 1939.

STATE OF SOUTH DAKOTA

County of Custer

ss.

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

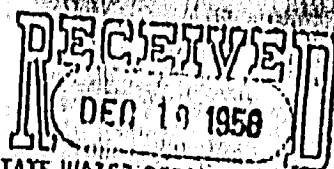
Signed

C. D. Miller

Subscribed and sworn to before me this 29 day of November, 1956

Notary Public

J. Engstrom

Location No. 0137-2A

Water Division No. _____ Water District _____

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

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

Ans. C. D. Miller, owner, Hermosa, South Dakota.

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

Ans. _____

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

Ans. Filed in Custer County January 14, 1905.

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

Ans. Spring Creek SW 1/4 Sec. 15, T 3 S, R 11 E.

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.

Ans. Dam and spreader ditches

About three quarters of a mile of ditches.

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

Ans. Irrigation of 120 acres in the SE and NE 1/4, Sec. 15, T 3 S, R 11 E.

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

Ans. Only stock watering.

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

Ans. 750 - 800 G. P. H.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. _____

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

Ans. Original location and use began in 1905. Flooded from ditches September of 1956 on the 120 acres described in question #46.

(Sign)

C. D. Miller

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Rapid City, County of Pennings

State of South Dakota, on this 15th day of December, A. D. 1956

Witnesses.

I, the undersigned, do hereby certify that I am a duly qualified elector residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Location No. _____

PROOF OF APPLICATION OF
WATER TO BENEFICIAL USE

PETITION OF HOLDER

Amount of Water _____ c. f. s.

Source _____

County _____

Purpose _____

Place of Use _____

Date of recording _____

Received and filed _____

SOUTH DAKOTA

VESTED WATER RIGHT NO. 0438-2A FOR IRRIGATION

Date of Receipt of Claim December 19, 1956.

Date of Validation May 6, 1992.

The Water Management Board validated Vested Water Right Claim No. 0438-2A for irrigation purposes for Orrin Sundquist, Box 97, Wasta SD 57791 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 0438-2A appropriates 1.71 cubic feet of water per second from Spring Creek located in the SE 1/4 SW 1/4 Section 16 to irrigate 120 acres located in the NE 1/4, S 1/2 SE 1/4 Section 15: all in T3S-R11E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: April 1- November 30.
3. The priority date of the Vested Water Right is March 15, 1903.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: _____

John H. Hated
Chief Engineer

JUN 29 1992

date

Division of Water Rights
Dept. of Environment and Natural Resources



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

JUN 29 1992

Orrin Sundquist
Box 97
Wasta SD 57791

Dear Mr. Sundquist:

The Water Management Board has validated the enclosed Vested Water Right No. 0438-2A. This validation gives legal status to the claim and is the final document for your vested right.

As long as you use the water beneficially, as stated in the validation, State Water Laws provide that you have a continuing right to use the water.

Very truly yours,


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

enclosure

South Dakota



GREAT FACES. GREAT PLACES.

DEPARTMENT OF WATER & NATURAL RESOURCES

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

September 9, 1992

0438-2A

Orrin Sundquist
Box 97
Wasta, SD 57791

Dear Mr. Sundquist:

I am contacting you in regard to ownership of Vested Water Right No. 0438-2A. The claim, originally filed by C D Miller, was validated by the Water Management Board May 6, 1992. The claim was validated in your name, however it has never been legally transferred to you.

Enclosed, is a partially completed "Notice of Transfer of Ownership" for use in filing the ownership change. Please check over the form for accuracy, complete and sign in the presence of a notary public. Upon completion, return the form to our office with the required filing fee of \$2.50.

Upon receipt of the form and filing fee, the transfer of Vested Water Right No. 0438-2A will be processed. If you have any questions, please contact me.

Sincerely,

Genny McMath

Genny McMath
Natural Resource Analyst
(605) 773-3352

enclosure



0438-2A

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

November 18, 1992

SECOND NOTICE
PERMIT NO. 0438-2A

Orrin Sundquist
Box 97
Wasta, SD 57791

Dear Mr. Sundquist:

On September 9, 1992, notice was sent to you concerning the transfer of Vested Water Right No. 0438-2A in the name of C. D. Miller. To date, we have not heard from you on this matter.

A transfer form was previously sent to you, enclosed is an additional form. Please sign, have notarized and return the form to this office with the required filing fee of \$2.50. The vested water right can then be transferred to your name. If you are not the present owner of the land covered under this vested water right, please notify this office. It is very important that ownership records be kept current. South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of a Water Permit or Water Right to appropriate water to be filed with this office within ninety days.

If you have any questions, please contact Genny McMath, (605) 773-3332.

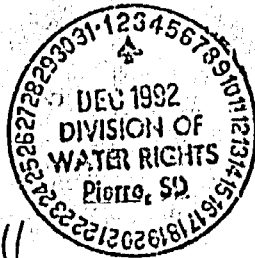
Very truly yours,

RON DUVAL
Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Division

enclosure

SENDER'S INFORMATION Complete items 1 and/or 2 for additional services. 1. Complete items 3, 4, 5a & b. 2. Fill in your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece or on the back if space does not permit. • When "Return Receipt Requested" on the mail label below the article number. • The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. ☐ Addressee's Address 2. ☒ Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: Orrin Sundquist Box 97 Wasta, SD 57791		4a. Article Number: 0438-2A 4b. Service Type: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise	
5. Signature (Addressee) 		7. Date of Delivery: 11-19-92	
6. Signature (Agent) 		8. Addressee's Address (Only if requested and fee is paid)	

0438-2A



Orrin Sundquist
Box 97
Wasta, S.D.
57791

Ron DuVall
Natural Resources Engineer
Water Rights Division

Dear Mr. DuVall:

We no longer own the piece of property which you claim has water rights to it. This vested water right was never a part of the sale to us as far as we know. This place had been sold to at least 3 other people, ~~before~~ other than C.D. Miller, before we bought it. We had no idea there were water rights. The ~~current~~ current owner is Pat. Brown Black Hawk S.D. . We don't want anything to do with these water rights, simply because we never knew they were available. Sincerely Orrin Sundquist



0438-2A

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3131

January 20, 1993

No. 0438-2A

Pat Brown
Black Hawk, SD 57718

Dear Mr. Brown:

Enclosed is a partially completed "Notice of Transfer" form for use in filing an ownership change on Vested Water Right No. 0438-2A. The vested water right is currently listed in the name of C. D. Miller.

The transfer form should be checked over for accuracy and signed by the new owner in the presence of a notary public. Upon completion, return the form to our office with a required filing fee of \$2.50.

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

If you have any questions, please contact me.

Sincerely,

Cheryl F. Frost

Cheryl F. Frost
Secretary
Water Rights Division
(605) 773-3352

enclosure

NOTICE OF TRANSFER OF OWNERSHIP

0438-2A

To: Chief Engineer
Water Rights Division, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 0438-2A

Date: _____

I/We request that Vested Water Right No. 0438-2A

formerly owned by: C D Miller

be transferred to: (name & address) _____

(Telephone No.) _____

Title to the following described land(s)/property has been transferred as described above:

120 acres - NE 1/4, S 1/2 SE 1/4 Section 15, T3S, R11E

I/We understand that the validity of Vested Water Right No. 0438-2A has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file at the Division of Water Rights, as evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)

County of _____)

I/We _____ being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and that I know of my own personal knowledge that the information herein stated is true.

(Signed)

Subscribed and sworn to before me this _____ day of _____, 19____.

(Notary Public)

NOTE:

Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

April 12, 2007

Frank O'Neil
816 South Custer
Miles City MT 59301

Dear Mr. O'Neil:

Over the past months you have inquired about Vested Water Right No. 0438-2A. The water right appropriates 1.71 cubic feet of water per second from Spring Creek located in the SE ¼ SW ¼ Section 16 to irrigate 120 acres located in the NE ¼, S ½ SE ¼ Section 15, all in T3S, R11E. The water right is currently in the name of Orrin Sundquist. You've indicated that some of the land authorized for irrigation is on property that has been in your family. In addition, the ditch that would be necessary to carry the water to the irrigated land would have to cross O'Neil land and you are not aware of the existence of any ditch.

South Dakota Water Laws specify that water must be placed to beneficial use for the purpose it was appropriated at least once every three years unless legal excuse exists for the period of non-use. I am enclosing excerpts of the water laws and Water Management Board Rules dealing with issues of abandonment and/or forfeiture. The excerpts include information on legal excuse.

If legal excuse does not exist for the years of non-use, Vested Water Right No. 0438-2A may be subject to cancellation for abandonment or forfeiture for nonuse. The Water Management Board is the entity who determines if water rights or permits have legal standing. Simply transferring a water right and beginning to irrigate does not cure past years of non-use. I would caution anyone from making a capital investment in a irrigation system prior to seeking a ruling from the Board on the status of the water rights.

I hope this information is helpful, please contact me if I may be of further assistance.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

enclosure

Statutes:

46-5-36. Abandonment of use of water appurtenant to land - Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

46-5-37. Failure to use beneficially appropriated water - Forfeiture for nonuse - Reversion to public. 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.

46-5-37.1. Abandonment or forfeiture of permits or rights - Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if he can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of SDCL 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Rules:

74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

74:02:01:37. Invalid water permit, right, or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions:

- (1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;
- (2) Use of water has been abandoned as specified in SDCL 46-5-36;
- (3) Use of water has been forfeited for nonuse as specified in SDCL 46-5-37.

74:02:01:37.01. Legal excuse for nonuse of water. Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

- (1) Unavailability of water to satisfy a permit, right, or vested right;
- (2) Legal proceedings which prevent the use of water;
- (3) Water use under existing climatic conditions would result in a waste of water.