

No. 0486-2

Office of State Engineer
DOCUMENT FILE

Name: Overpeck, A. L.
et al

County: Pennington #7552

Date: October 23, 1890

Location: Spring Creek

et al: Overpeck, A. L.
Overpeck, A. L.

17552 Pennington, C.

Certified Copy

Water Right

Located By

A. L. Overpeck et al

SPRING CREEK

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 11 day of May 1899.

Samuel H. Lee
State Engineer.

By B. B. Lee

Deputy.

#7553

Water Right Location.

Overpeck Water Right

By

A.L. Overpeck et al

Notice is hereby given, to all whom it may concern that we, A.L. Overpeck and A.F. Overpeck, being residents of and being the owners of real property in the County of Pennington, State of South Dakota, and being citizens of the United States over the age of twenty-one years have this day located and claim under the laws of the United States and under the laws of the State of South Dakota eight hundred (800) inches, miners measurement under a six inch pressure of the water of Spring Creek in said County, being the whole of the waters of said Creek at the points hereinafter designated, to-wit: Such waters will be diverted from the bed of the stream of said Spring Creek at a point near and just West of the Northeast corner of the Northwest quarter (NW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) of section number eight (8) in Township two (2) South of range number nine (9) East of the Black Hills Meridian in said County and State, and will be conducted from said point in a Southeasterly and Easterly direction in ditches, flumes and pipes or in either thereof to a point just Southerly from the center line of section nine (9) in Township two (2) South of range nine East Black Hills Meridian. Such point being on or near the East line of said Section nine (9) and said waters will be conducted from said last point in a Southerly direction on or near the East line of said Section nine (9) to the natural channel of said Spring Creek and said waters so diverted will be used for mining, milling, manufacturing, agricultural and domestic purposes and particularly will such waters be used for the purpose of irrigating said Sections five (5) eight (8) and nine (9). Said water right is situate in no organized mining district in Pennington County, South Dakota. And shall be known as the Overpeck Water Right.

Dated this 22nd day of October 1890.

A.L. Overpeck

A.F. Overpeck

Filed for record this 23rd day of October A.D. 1890 at 9 o'clock A.M. recorded in Book G. page 629.

Lyman Lamb,

Register of Deeds.

By Jno. E. Halley, Deputy.

7552.
Revised Copy

Water Right
Granted by
A. L. Overpeck chie.

SPRING CREEK

OFFICE OF STATE ENGINEER
FILE COPY

STATE OF SOUTH DAKOTA
COUNTY OF YAMHISTON

I, J. M. Mathias, Register of Deeds,
do hereby certify that the within and foregoing is a full,
true, complete and correct copy of the original
Instrument as the same
appears of record in book 8, page 629
of Location Records in my office.

Witness my hand and official Seal this
8th day of July, 1907
J. M. Mathias,
Register of Deeds.

N

1125

State and Location

Overlook & its right to the water of Spring Creek in said County

By J. L. Overlook and J. E. Overlook, being residents of and

being the owners of real property in the

County of Hammington, State of South Dakota, and being citizens of

the United States and the age of twenty-one years have their day

located and claim under the laws of the United States and under

the laws of the State of South Dakota eight hundred (800)

inches, mineral measurement under a six inch pressure in

the water of Spring Creek in said County, being the whole of

the water of said Creek at the point hereinafter designated, to wit:

Such water will be diverted from the bed of the stream of said

Spring Creek at a point near and just West of the North East cor-

ner of the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4)

of section nine (9) in Township Two (2) South of range

number nine (9) East of the Black Hills Meridian in said County

and State, and will be conducted from said point in a South-

easterly and easterly direction in ditches, flumes and pipes or in

either thereof to a point just South of the center line of

section nine (9) in Township Two (2) South of range nine (9) East

of the Black Hills Meridian, such point being over or near the East line

of said section nine (9) and said water will be conducted from

said East point in a southerly direction over or near the East line

of said section nine (9) to the natural channel of said Spring Creek

and said water so divided will be used for mining, milling,

manufacturing, agricultural and domestic purposes and for

irrigation and such water be used for the purpose of irrigating said

section nine (9) eight (8) and nine (9), said water right is situated

in an organized mining district in Hammington County South

Dakota and shall be known as the Overlook Water Right.

Dated this 22nd day of October 1890.

A. L. Overpeck

A. E. Overpeck

Filed for record this 23rd day of October A. D. 1890 at 9 o'clock
A. M. Recorded in Book E page 629.

Lynnae Lamb

Register of Deeds

By Mrs. E. Hally Deputy

STATE OF SOUTH DAKOTA)
COUNTY OF BURNINGTON)

VS:

AFFIDAVIT

I, Harry Feltis, upon my oath depose and say that I was a tenant on and operated the West half of Section 9 from the spring of 1933 to the spring of 1938 and that I am well acquainted with the certain water right which has a point of diversion just west of the Northeast corner of the Northwest quarter of the Northwest quarter of Section 8, Township 2, South of Range 9, East of the Black Hills Meridian, which point of diversion was for irrigating Sections 5, 6 and 9, same Township and Range described as Overpeck water right.

And I have owned and operated my Ranch on Spring Creek a few miles up the creek since 1938 to 1950. And I know of my own knowledge that for the period of years above described that said water right was not in any way used for irrigating purpose or any other purpose. I also know of my own knowledge that during the above years water passed the point of diversion which could have been diverted and none of it was diverted through said point of diversion.

Further deponent sayeth naught.

Harry Feltis

Subscribed and sworn to before me this 30 day of
November, 1950.

MY COMMISSION EXPIRES
JUNE 18, 1951

Kay M. Guaidi
Notary Public

STATE OF SOUTH DAKOTA)

COUNTY OF PENNINGTON)

SS:

AMERZEE & CO.

I, Emma Gramberg Millner

Upon my oath depose and say:

I was well acquainted with the Overpeck Place in Pennington County, South Dakota, from the years 1912 to 1950 and that I was also acquainted with the water right for the Overpeck Place which has a point of diversion just west of the Northeast corner of the Northwest Quarter of the Northwest Quarter of Section Eight, Township Two, South of Range Nine, East of the Black Hills Meridian, which point of diversion was for irrigating Sections Five, Eight and Nine in the same Township and Range described as the Overpeck water right and I know of my own knowledge that for the period of years above described said water right was not in any way used for irrigating purposes or any other purposes and I also know of my own knowledge that during the above years water passed the point of diversion which could have been diverted and I know that none of it was diverted through said point of diversion.

Further deponent sayeth naught.

Emma Gramberg Millner

Subscribed and sworn to before me this 30 day of

November, 1950.

MY COMMISSION EXPIRES
JUNE 10, 1951

Kay M. G. Gued
Notary Public

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

SC:

A F F I D A V I T

I, Jesse D. Daughnerbaugh

upon my oath depose and say:

I was well acquainted with the Overpeck Place in Pennington County, South Dakota, from the years 1912 to 1950 and that I was also acquainted with the water right for the Overpeck Place which has a point of diversion just west of the Northeast corner of the Northwest Quarter of the Northwest Quarter of Section Eight, Township Two, South of Range Nine, East of the Black Hills Meridian, which point of diversion was for irrigating Sections Five, Eight and Nine in the same Township and Range described as the Overpeck water right and I know of my own knowledge that for the period of years above described said water right was not in any way used for irrigating purposes or any other purposes and I also know of my own knowledge that during the above years water passed the point of diversion which could have been diverted and I know that none of it was diverted through said point of diversion.

Further deponent sayeth naught.

Jesse D. Daughnerbaugh

Subscribed and sworn to before me this 29th day of
November, 1950.

My commission expires
5/5/51

Marvin D. [Signature]
Notary Public

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

SS:

A B E I D A V I T

I, Arthur Daughenbaugh, upon my oath depose and say I was a tenant on the Overpeck place in Pennington County, South Dakota from the spring of 1917 to the spring of 1919 and that I was well acquainted with that ranch during those years as I was operating it, and that I was also well acquainted with that certain water right which has a point of diversion just west of the Northeast corner of the Northwest quarter of the Northwest quarter of Section 8, Township 2, South of Range 9, East of the Black Hills Meridian, which point of diversion was for irrigating Section 5, 8 and 9, same Township and Range described as Overpeck water right. I also operated and owned West half of Section 9 from 1917 to 1932 and I know of my own knowledge that for the period of years above described that said water right was not in any way used for irrigating purposes or any other purpose. I also know of my own knowledge that during the above years water passed the point of diversion which could have been diverted and none of it was diverted through said point of diversion.

Further deponent sayeth naught.

Arthur Daughenbaugh
ARTHUR DAUGHENBAUGH

Subscribed and sworn to before me this 27 day of
November 1950.

MY COMMISSION EXPIRES
JUNE 12, 1951.

Ray McQuaid
Notary Public

STATE OF SOUTH DAKOTA)

COUNTY OF PENNINGTON)

SS:

A F F I D A V I T

I, J. GORDON BROWN, upon my oath depose and say that I was a tenant on the Overpeck place in Pennington County, South Dakota, from the Spring of 1912 to the Spring of 1917, and that I was well acquainted with that ranch during those years as I was operating it and that I am also well acquainted with that certain water right which has a point of diversion just west of the Northeast corner of the Northwest Quarter of the Northwest Quarter of Section Eight, Township Two, South of Range Nine, East of the Black Hills Meridian, which point of diversion was for irrigating Sections Five, Eight and Nine, same Township and Range, described as the Overpeck Water Right, and I know of my own knowledge that for the period of years above described that said water right was not in any way used for irrigating purposes or any other purposes.

I also know of my own knowledge that during the above years water passed the point of diversion which could have been diverted and none of it was diverted through said point of diversion.

Further deponent sayeth naught.

J. Gordon Brown

Subscribed and sworn to before me this 26th day of November, 1950.

Chas. H. H. H. H.
Notary Public

April 5, 1950

Sam Wedmore
Hermosa, S. Dak.

Re: Water Right 0436-2
Spring Creek

Dear Mr. Wedmore:

In accordance with your application and the Official Opinion of the Attorney General's Office, we are enclosing herewith our approval and certificate covering the change in the point of diversion of the above Overpeak Water Right.

I note your comments relative to the statement of the Soil Conservationist to the effect that because of the indefinite flow of Spring Creek it might require more than one second foot to irrigate 70 acres of land. However, the law requires that we do not grant an amount in excess of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time in each year. This rule is a part of the Statute and, of course, we would have no authority to grant a diversion in excess thereof. Trusting that this will clear the matter up for you, we are

Yours very truly,

DEAN W.
Enc.

DEAN W. LOUCKS
State Engineer

FILE COPY

April 1, 1950

APPLICATION

For

CHANGE OF POINT OF DIVERSION

WATER RIGHT LOCATION

No. 0456-2 (County No. 7552)

Overpeck Right

9:30 A.M.

APR 5 1950

Application is hereby made for the approval of the State Engineer to the establishment of a new point of diversion for diverting a proportionate share of the water established under the Overpeck Water Right which originally claims eight hundred (800) miners inches of the water of Spring Creek diverted at a point near and just west of the Northeast corner of the Northwest quarter (NW $\frac{1}{4}$) of Section eight Township two (2) South, Range nine (9) East of the Black Hills Meridian in Pennington County.

The new point of diversion is necessary because of the fact that the water right, after being acquired, became appurtenant to Sections (5), eight (8) and nine (9) and that I claim without loss of priority, my share of the water right by virtue of the purchase of land in Sections five (5), eight (8) and nine (9) to which lands a portion of the Overpeck right is now appurtenant.

The ownership of land upon which irrigable areas are located and the acres irrigable is now as follows:

G. W. Mielke W $\frac{1}{2}$ Section 8, Township 2 South, Range 9 East

Description

100 acres irrigable

Jan Wedmore SW $\frac{1}{4}$ Section 5, E $\frac{1}{2}$ Section 8, Section 9, Township 2 South, Range 9 East

Description

900 acres irrigable

The amount claimed in this application for the new point of diversion, in proportion to the irrigable acreage is therefore 87 1/2 of the total amount which can be claimed for the irrigable acreage or 700 miners inches (cu. ft./sec.) but not in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time in each year as provided under section 61.0110 of the SDC for 1939.

The new point of diversion to be located 2500 feet south 64°-30' west of the corner common to sections 5, 11, 3 and 9, Twp. 28, Range 9E.

This new point of diversion, to the best of my knowledge, will not injure or harm any other property owner.

State of South Dakota

County of Pennington

I Sam Wedmore being first duly sworn on my oath depose and say: That my relation to the above application is that of owner of land so described, that I have read the above and foregoing statement and that I know of my own personal knowledge that the matters therein stated are true.

Signed Sam Wedmore
Sam Wedmore

Subscribed and sworn to before me this 3 day of April 1950.

C. C. Carter
Notary Public

Water Right No. 0486-2 (County No. 7552)
Overpack Location
Water Division No. 2 Battle Creek Water District

CERTIFICATE OF APPROVAL OF CHANGE OF POINT OF DIVERSION

TO ALL WHOM IT MAY CONCERN:

STATE OF SOUTH DAKOTA

County of Hughes

Pierre, South Dakota, April 5, 1950

This is to certify that the Application for Change of Point of Diversion was received at this Office at 8:30 A.M., April 5, 1950, and that after previous discussions of the matter with Sam Wedmore and Representatives of the Attorney General's Office, an official opinion was requested and submitted by the Attorney General's Office. Said opinion is on file in the State Engineer's Office. The final conclusion is "that Mr. Wedmore may establish a new point of diversion as to his share of the water without loss of priority subject to the approval of the State Engineer as provided by S.D.C. 61.0123".

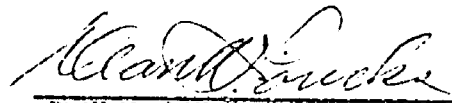
Therefore, consideration has been given by this Office to the application and the change in the point of diversion is hereby granted for a proportion of the original water right based on the proportional number of irrigable acres now owned by Sam Wedmore and the number of irrigable acres owned by G. W. Mielke on whose property the original point of diversion is located. The acreage reported in your application being 100 acres of irrigable land on the property of G. W. Mielke and 900 acres on the property of Sam Wedmore, this percentage would be 90%. You are, therefore, authorized to divert 90% of the total amount which can be claimed by virtue of the original right, but not in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time in each year as provided under Section 61.0140 of the South Dakota Code for 1939.

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The new point of diversion is to be located 2500 feet south 64°-50' west of the corner common to sections 5, 11, 8 and 9, Twp. 28, Range 9E.

Witness my hand this 5th day of April 1950

DWL:RG


DEAN W. LOUCKS, State Engineer

Water Right No. 0.36-2 (County No. 7552)
Overpact Location
Water Division No. 2 Battle Creek Water District

CERTIFICATE OF APPROVAL OF CHANGE OF POINT OF DIVERSION

TO ALL WHOM IT MAY CONCERN:

STATE OF SOUTH DAKOTA

County of Hughes

Pierre, South Dakota, April 5, 1950

This is to certify that the Application for Change of Point of Diversion was received at this Office at 3:30 A.M., April 5, 1950, and that after previous discussions of the matter with Sam Wedmore and Representatives of the Attorney General's Office, an official opinion was requested and submitted by the Attorney General's Office. Said opinion is on file in the State Engineer's Office. The final conclusion is "that Mr. Wedmore may establish a new point of diversion as to his share of the water without loss of priority subject to the approval of the State Engineer as provided by S.D.C. 61.0123".

Therefore, consideration has been given by this Office to the application and the change in the point of diversion is hereby granted for a proportion of the original water right based on the proportional number of irrigable acres now owned by Sam Wedmore and the number of irrigable acres owned by G. W. Melke on whose property the original point of diversion is located. The acreage reported in your application being 100 acres of irrigable land on the property of G. W. Melke and 900 acres on the property of Sam Wedmore, this percentage would be 90%. You are, therefore, authorized to divert 90% of the total amount which can be claimed by virtue of the original right, but not in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time in each year as provided under Section 61.0110 of the South Dakota Code for 1939.

- 2 -

The new point of diversion is to be located 2500 feet south 61°-50' west of the corner common to sections 5, 11, 8 and 9, Twp. 28, Range 2E.

Witness my hand this 5th day of April 1950

WEL:RT

DEAN W. LOUCKS, State Engineer

March 31, 1950

Sam Wedmore
Hermosa, S. Dak.

Re: Location Notice 0486-2
Overpeck Water Right

Dear Mr. Wedmore:

You no doubt have received a copy of the Official Opinion of the Attorney General's Office relative to your application for change in point of diversion of your share of the water under the above Right. The Opinion is to the effect that you may establish a new point of diversion as to your share of the water without loss of priority, subject to the approval of the State Engineer as provided by SDC 61.0123.

Since to the best of our knowledge and unless further information should indicate otherwise this new point of diversion will not injuriously effect rights of others, this Office will approve a new point of diversion for an amount in proportion to the acreage in the project under each ownership. However, in order to get this matter in proper form for record, we are sending you an application form applicable to the situation and would ask that you read it over carefully and if the information therein is correct, that you have it notarized and sign and return to this Office. Upon receipt of the application we will issue an official approval of the new point of diversion.

In connection with this water right and in view of the work which you may be contemplating doing and money you may invest in new construction, I believe it is only fair and proper that I should call to your attention old rights on Spring Creek of which we have files and which have priority dates earlier than the priority of the Overpeck Right, namely October 22, 1890. We have no way of knowing how many or if any of the rights listed are active or whether they may have been abandoned. Your local knowledge of the area will no doubt guide you to same. We are enclosing the list of such rights with priority dates for your information.

Yours very truly,

DAL:W
cc: Atty. Gen. Office
Enc.

DEAN W. LOUCKS
State Engineer

COPY



SIGURD ANDERSON
ATTORNEY GENERAL

STATE OF SOUTH DAKOTA
OFFICE OF
ATTORNEY GENERAL
PIERRE

RAY F. DREWRY
BENJAMIN D. MINTENER
CHARLES P. WARREN
E. D. BARRON
WILLIAM J. FLITTIE
W. O. KNIGHT, SR.
ASSISTANT ATTORNEYS GENERAL

March 30, 1950

OFFICIAL OPINION

Mr. D. W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

Your letter of the 6th instant requests my opinion as follows:

"The land comprising the above project was purchased by two parties. The 1/4 section upon which the point of diversion is located was purchased by Wm. Mielche of Iowa. The remainder of the land, including most of the irrigated land was purchased by Sam Wedmore. Mr. Wedmore wishes to irrigate his land. The less expensive way to do this would be to divert from a point downstream from the original point of diversion located just across the line on his own property.

"The question is - can this office change the point of diversion or authorize a second point of diversion on this same project and retain for Mr. Wedmore the original date of priority when the original right carries; namely, October 22, 1890."

The water right location notice attached to your letter is returned herewith. It claims "eight hundred (800) inches, miners measurement under a six inch pressure of the water of Spring Creek in said County, being the whole of the waters of said Creek at the points hereinafter designated, to-wit: Such waters will be diverted from the bed of the stream of said Spring Creek at a point near and just West of the Northeast corner of the Northwest quarter (NW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) of section number eight (8) in Township two (2) South

D. W. Loucks

-2-

March 30, 1950

of range number nine (9) East of the Black Hills Meridian in said County and State, and will be conducted from said point in a Southeasterly and Easterly direction in ditches, flumes and pipes or in either thereof to a point just Southerly from the center line of section nine (9) in Township two (2) South of range nine East Black Hills Meridian. Such point being on or near the East line of said Section nine (9) and said waters will be conducted from said last point in a Southerly direction on or near the East line of said Section nine (9) to the natural channel of said Spring Creek and said waters so diverted will be used for mining, milling, manufacturing, agricultural and domestic purposes and particularly will such waters be used for the purpose of irrigating said Sections five (5) eight (8) and nine (9)."

Certain information does not appear in your letter, and, therefore, certain assumptions must be indulged. These are that the water right, after being acquired, became appurtenant to Sections five (5), eight (8), and nine (9), and that Mr. Wedmore claims his share of the water right by virtue of his purchase of Sections five (5) and nine (9), to which lands a portion of the water right is now appurtenant. The general tenor of your letter read in conjunction with the quoted portions of the water right location notice, S.D.C. 61.0141 which provides,

"All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used . . .",

and the general law regarding passage of water rights appurtenant to land,

"The water right will pass as an appurtenance in parts on a sale of the land in parts. In subdividing a tract it will be presumed that a water right passes in proportion to the relative size of the subdivision." Wiel, Water Rights in the Western States, 3rd Edition, Section 553 Page 592,

makes it appear that these assumptions are probably what is in fact the actual situation.

S.D.C. 61.0142 provides:

"Any appropriator of water . . . may change the place of diversion . . . in the manner and under the conditions prescribed by this Chapter."

and, attesting that this is the general law, it is stated in 56 Am. Jur. 756,

"A prior appropriator of water from a stream may change the point of diversion and the place of use without affecting his right of priority so long as the rights of others are not thereby injuriously affected."

It must, I think, be conceded that a single appropriator may change his point of diversion without loss of priority. Our question becomes one of whether one of several users of water at a single point of diversion may establish a new point of diversion as to his share of the water without loss of priority.

At the outset it must be recognized that tenants in common in a single water right cannot partition the right.

Wiel, Water Rights in the Western States, 3rd Edition, Section 320, Page 343.

This, in effect, means that no second point of diversion could be had as among tenants in common. But when there is

D. W. Loucks

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March 30, 1950

a common point of diversion and the respective shares of the appropriated water are applied to separate lands, there is not such a unity of possession as will constitute tenancy in common, and the respective owners in the water right may thereafter obtain and have separate and distinct points of diversion, provided that the change does not damage or infringe the rights of others.

City of Telluride vs. Davis (Colo.) 80 Pac. 1051.

I therefore conclude, assuming the assumptions I have indulged are in order, that Mr. Wedmore may establish a new point of diversion as to his share of the water without loss of priority subject to the approval of the State Engineer as provided by S.D.C. 61.0123.

Yours very truly,

Sigurd Anderson
Sigurd Anderson
Attorney General

WJF:jb

UNITED STATES
MINERAL SURVEYOR

STEIN BANGS
CIVIL AND MINING ENGINEER
903 11TH ST. PHONE 538W
RAPID CITY, SOUTH DAKOTA

RECEIVED
March 26 1950 1950

Mr. D.W. Loucks,
State Engineer,

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Sir:-

Sam Wedmore, of Spring Creek, has called on me to outline his irrigation plans for you and to request your approval of same.

Sam has spread a lot of water over his land, is raising good hay and will make beneficial use of any water assigned to him.

Sam is not asking anything he is not entitled to nor any right which will be a loss to any other party.

I enclose a sketch showing what he proposes to do. Sam owns the old Overpeck water right, and nearly all the land under the Overpeck ditch. The Overpeck Right appropriates 800. miners inches or about 20. second feet. The point of diversion and presumably the point of appropriation is described as West of the N.E. Cor. of the N.W. of the N.W. of Sec. 8., T.2.S. R.9.E.

About 2000. ft. east of this point the ditch swings back to within 150. ft. of the channel. This 2000. ft. of ditch is in rough land, hard to irrigate and the ditch is costly to maintain.

The present occupant, a renter, does not maintain either the dam or the ditch. He states that he does not intend to use the irrigation system at all.

Now Wedmore proposes to use the natural bed of Spring Creek to carry water from the point of appropriation to the land on which he can make beneficial use of it. The only intervening right is that of the man who owns the 60. or 70 acres on which the original dam and ditch was situated. This man is still free to use his share of the water, but states that he does not consider it profitable.

Morrison Mining Rights states that water appropriated for mining can be used for irrigation. And that the same rules apply. Also that the point of diversion and the place of use may be changed without loss of rights. But such change must not be detrimental to other claimants.

If you can give Wedmore a permit to make this change it will harm no one, and will result in new construction and the development of an irrigation system which will increase hay and beef production and will add to the value of the property.

Yours Truly,

Stein Bangs
Stein Bangs.

March 6, 1950

MEMORANDUM REQUEST

FOR
OFFICIAL OPINION

Re: W. R. No. 0436-2, Secs. 5, 9, Twp. 23 Range 9E
Pennington County - Spring Creek
County No. 7552
Priority Date Oct. 22, 1890

The land comprising the above project was purchased by two parties. The 1/4 section upon which the point of diversion is located was purchased by Wm. Mielche of Iowa. The remainder of the land, including most of the irrigated land was purchased by Sam Wedmore. Mr. Wedmore wishes to irrigate his land. The less expensive way to do this would be to divert from a point downstream from the original point of diversion located just across the line on his own property.

The question is - can this Office change the point of diversion or authorize a second point of diversion on this same project and retain for Mr. Wedmore the original date of priority which the original right carries; namely, October 22, 1890.

A copy of the "Water Right Location" is herewith attached.

OFFICE OF STATE ENGINEER

Attachment
DVL:RG

-- Dean W. Loucks, State Engr.

0486-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 9, 1998

Jim Hollenbeck
Farm Credit Services
PO Box 3130
Rapid City, SD 57709

Dear Mr. Hollenbeck:

Enclosed, as we discussed, are copies of Water Right Filing Nos. 0486-2, 0536-2 and 0537-2. These filings describe irrigation of portions of land now owned by Brian Barber in Sections 4, 5, 8 and 9, T2S, R9E.

I have also included an application for filing a vested right claim. If the land Mr. Barber now owns has been continually irrigated, when water was available, he can file a vested right claim which will in affect, update the water rights. The old filings can be used as a basis for his claim for any portion that has not been abandoned or forfeited.

I included copies of affidavits for No. 0486-2 which reflect irrigation may not have been done from 1912 thru 1950. Under South Dakota Water Law, a water right holder must beneficially use all or any part of the water for the purpose it was appropriated, at least once every three years or the water reverts to the public and is regarded as unappropriated public water.

The Water Management Board rules provide that if legal excuse exists for nonuse of water, the permit is not subject to forfeiture. Legal excuses for nonuse of water include, but are not limited to the following: 1) unavailability of water to satisfy a permit or right; 2) legal proceedings which prevent the use of water and 3) water use under existing climatic conditions would result in a waste of water.

If you or Mr. Barber have any questions when reviewing the enclosed water right filings or with completion of the vested right application forms, please give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Genny McMath".

Genny McMath
Environmental Scientist
Water Rights Program
605 773-3352

Enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

OCT 25 2021

2827-2
0486-2

A & B Ranch Inc
c/o Brian Barber
15001 Lower Spring Creek Road
Hermosa SD 57744

Dear Mr. Barber:

Enclosed are your Validated Vested Water Right and Water License No. 2827-2. 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.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

Note: The application portions of Water Right Filing No. 0486-2 are incorporated into this water license.

enclosures