

No. 0527-2

Office of State Engineer
DOCUMENT FILE

Name: Lt. Germain, Placer
"St. Germain Water Right"

County: Cunningham "7620"

Date: July 1, 1883
Amended: Oct. 30, 1890
Filed: Oct. 31, 1890

Location: Rapid Creek

7625

"Certificate of Location. St. Germain Water Right".

To all whom it may concern: Take Notice, That I, the undersigned citizen of the United States and State of South Dakota claim a Water Right under the laws of the United States and of said State of South Dakota, of One Thousand miners inches of the water of Rapid Creek, for mining, milling, manufacturing, agricultural and domestic uses and purposes, and conducted by means of ditches, dykes, flumes, piping and other usual water way appurtenances, as follows, to-wit: beginning at a point on said Rapid Creek N. $87^{\circ} 12'$ W. 553.74 feet from the South East corner of the North East quarter of Section number Thirty four(34) in Township number one(1) North of Range number Nine(9) East of the Black Hills Meridian; and raising the water of said Creek at said point four feet from low water mark; Running thence in a south easterly direction on the North side of said Rapid Creek a distance of eight miles and crossing the N.E. $\frac{1}{4}$ and the S.E. $\frac{1}{4}$ of said Section Thirty four, and the South Half of Sections numbered Thirty five and Thirty six in said Township No. 1. North of Range No. 9 East B.H.M., and the N.E. $\frac{1}{4}$ of Section number Two and the N.E. $\frac{1}{4}$ of Section No. 1 in Township No. 1 South of Range No. 9 E.B.H.M. This being an amended location of said water right, made for the purpose of more fully describing the same. Original location made July 1st, 1883. This amended location made this 30th day of October 1890, and dated on the ground.

Oliver St Germain

Locator

Filed for record this 31st day of October A.D. 1890, at 11

o'clock A.M. Recorded in Book "G" page 652

Lyman Lamb Register of Deeds

By Jno. E. Halley Deputy

STATE OF SOUTH DAKOTA }
COUNTY OF PENNINGTON } ss.

I, M.K. Steele Register of Deeds,
in and for said County and State, do hereby
certify that the within and foregoing is a true,
true, complete and correct copy of the original
Location Certificate as the same
appears in book G page 632
of Location Records in my office.

Witness my hand and official Seal the
29 day of Location A.D. 1927

M.K. Steele
REGISTER OF DEEDS

39-A

05272

**In the Circuit Court of the Seventh Judicial Circuit, Within and for the County of
Pennington, State of South Dakota.**

The St. Germain Irrigating Company, a corporation, *Plaintiff.*

vs.

The Hawthorne Ditch Company, a corporation; the South Side Ditch and Water Company, a corporation; the Cyclone Ditch Company, a corporation; the Rapid Valley Irrigating Company, a corporation; the Lore Tree Ditch Company, a corporation; the Iowa Ditch Company, a corporation; the Dakota Power Company, a corporation; the Rapid River Light, Power and Transit Company, a corporation; William Strong, Maurice Keiber, Charles Morris, John Z. Reed, Sr., Arthur Jones, Diones Birnbaum, Joseph Birnbaum, and Frederick Birnbaum, doing business as the Little Giant Ditch Company; W. H. Tompkins, Edwin Swinehart, Charles R. Taylor, Peter Lemley, Peter Sweeney, Thomas W. Fotheringham, Harry Wentzy, trustee, Clover Sickler, George P. Bennett, John R. Brennan, George H. Sanders, Barney E. Smith, F. W. Brown, Victor T. Jepson, Harry Hammerquist, Ida F. Skipton, Fred A. Hammerquist, Arton W. Hammerquist, Earl M. Hammerquist, Charlie L. Hammerquist, Erna M. Hammerquist, Helen C. Hammerquist, heirs at law of Peter Hammerquist, deceased; Edward Fowler, E. F. Hdd, James J. Kotlera, Robert H. Robertson, David J. Brown, Marietta Nowlan, Joseph Jolly, Robert B. Lee, George G. Ware, Frances Ware, Albert Edward Riland Bedford, John C. Barber, Maria Blair Chase, Paul P. Rochim, Angus W. Kerr, Virginia Savage, John F. Savage, Alma Bollman, Anna Mohlman, Ernest Bollman, August Bollman, Orley L. Dawkins, Cleveland L. Lawrence, Fred Lawrence, Absolom Otis, Emma A. Anderson, Victor C. Anderson, Jane Sanders, W. F. Boland, Maria N. Jones, Hugh H. Jones, George Buckingham, Eugene Holcomb, Maurice Keiber, Clayton E. Heavilan, Robert L. Holcomb, John Z. Reed, George H. Lange, Arthur Jones, William Strong, Diones Birnbaum, Joseph Birnbaum, Frederick Birnbaum, Samuel J. Morris, William S. Wood, Laura B. Lewis, John C. Read, William Morris, Herbert N. Johnson, Magnus W. Bergh, Clara C. Bergh, Joseph Jay, Edward W. Johnson, Fritz Schleuning, Pennington County, a public corporation; P. A. Johnson, Louise Sickler, Russell J. Madison, Preston C. Woods, George R. Allison, Ulysses S. Allison, Sylvester Allison, Joseph N. Allison, Joseph Maier, Gertrude R. Smith, United States of America and all other persons or corporations having or claiming to have any interest whatsoever in the waters of Rapid Creek, *Defendants.*

SUMMONS

THE STATE OF SOUTH DAKOTA SENDS GREETING TO THE ABOVE NAMED DEFENDANTS:

You and each of you are hereby summoned and required to answer the complaint of the above named plaintiff, which is on file in the office of the Clerk of the above entitled court, in the City of Rapid City, South Dakota, and to serve a copy of your answer thereto on the subscriber at his office, in Rapid City, South Dakota, within thirty days after the completed service of this summons upon you, exclusive of the day of such service;

And if you fail to answer the complaint within the time aforesaid, plaintiff will apply to the court for the relief demanded therein, besides costs.

Dated at Rapid City, South Dakota this 23rd day of September, 1911.

(Signed:)

FRANK D. BANGS,
Attorney for Plaintiff.

STATE OF SOUTH DAKOTA, COUNTY OF PENNINGTON, IN CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT.

The St. Germain Irrigating Company,
a Corporation,

Plaintiff,

The Hawthorne Ditch Company,
a Corporation, et al.,

Defendants.

COMPLAINT.

Plaintiff complains, and for cause of action against the defendants alleges as follows, viz:

I.

That this plaintiff is a corporation organized and existing under and by virtue of the laws of the State of South Dakota, its principal business being to divert water from Rapid Creek and distribute the same among its stockholders for irrigation purposes.

II.

That said Rapid Creek is a non-navigable stream of water rising in the mountains about forty miles westerly of Rapid City, South Dakota; thence flowing to and through said city and in a southeasterly direction to its confluence with the Cheyenne River, all in Pennington County, South Dakota.

III.

That plaintiff is the owner and in the possession and entitled to the possession of the following described tract of land, to-wit: Commencing at the southeast corner of the northeast quarter of Section Thirty-four (34) Township One (1) North, Range Nine (9) East, B. H. M.; thence running north on the section line sixty feet; thence west and parallel with the south line of said quarter section two hundred forty yards; thence south sixty feet to the south line of said quarter section; thence east two hundred forty yards to the place of beginning, across which tract of land the said Rapid Creek flows; also a certain dam constructed thereon together with a ditch and right of way extending from said dam in an easterly direction about eight miles in length on the north side of said creek; also a water right appurtenant thereto appropriating and entitling the plaintiff to divert from said Rapid Creek through said dam and ditch one thousand (1000) miner's inches of water under a six inch pressure, for purposes of mining, milling manufacturing, agricultural and domestic use. That plaintiff's predecessor in interest duly located said water right and appropriated and diverted four hundred (400) miner's inches of said water on the first day of July, 1883, and thereafter and on the first day of June, 1890, appropriated and diverted an additional 600 inches of water and on the 30th day of October, 1890, filed and posted an amended notice thereof claiming said additional 600 inches of water. And at all times since said appropriation this plaintiff and its predecessor in interest have diverted the full amount of the same from the waters of said creek, and have at all times applied the whole thereof to beneficial use, to-wit: Irrigation of lands requiring irrigation for agricultural purposes.

IV.

That some of the defendants either are or claim to be the owners of lands riparian to the said creek; that the other defendants either are or claim to be entitled as appropriators to divert the waters of said creek from their natural channel, and all of the defendants are proper parties to this action which is brought under the provisions of Section 16 of Chapter 180 of the Session Laws of the State of South Dakota for the year 1907. That each of said defendants claim some rights to use of the waters of said creek adverse to the rights of this plaintiff, which claim is unfounded in fact and without authority of law.

V.

That the claims of each of the defendants constitute a cloud upon the title of the plaintiff in

and to its said water right and work irreparable damage and detriment to plaintiff. That plaintiff has no plain, speedy or adequate remedy at law, and that it is necessary that the several claims of right to said water be adjudicated by this court in order to avoid a multiplicity of suits.

VI.

That the defendants, the Hawthorne Ditch Company; the South Side Ditch and Water Company; the Cyclone Ditch Company; the Rapid Valley Irrigating Company; the Lone Tree Ditch Company; the Iowa Ditch Company; the Dakota Power Company and the Rapid River Light, Power and Transit Company, are each of them corporations duly organized and existing under and by virtue of the laws of the State of South Dakota.

VII.

That the defendants William Strong, Morris Keliher, Charles Morris, John Z. Reed, Sr., Arthur Jones, Diones Birnbaum, Joseph Birnbaum and Frederick Birnbaum are co-partners associated together and doing business as the Little Giant Ditch Company, and as such diverting certain waters from the channel of said Rapid Creek.

VIII.

That the defendant Harry Wentzy is the duly elected, qualified and acting trustee in bankruptcy of the Downie-Wright Manufacturing Company, a corporation, Bankrupt.

WHEREFORE, plaintiff respectfully prays:

1. That the court direct the State Engineer of the State of South Dakota to make and furnish for the purpose of adjudicating the various water rights on the said Rapid Creek a complete hydrographic survey of said stream.
2. That the defendants and each of them be required to set forth the nature of their respective claims, if any, in and to the waters of said stream, and the use thereof, together with the amount of water so claimed by them the date of the accrual of their pretended rights, and such other facts as may be necessary to a full determination and adjudication of such pretended rights.
3. That the various rights, if any, of the defendants and each of them, to the beneficial use of water from said stream as well as the rights of this plaintiff, be in this action adjudicated by the court; that the court fix the date of priority and the amount of water, and nature of the water right, if any, to which each of the parties hereto is entitled.
4. That the defendants be permanently restrained and enjoined from any unlawful appropriation or use of the waters of said stream system, and from claiming adversely to this plaintiff any such waters except such as they shall be found to be entitled to by the decree of this court.
5. For such other and further relief in the premises as to the court may seem just and equitable, and for its costs and disbursements on this behalf expended.

(Signed:)

FRANK D. BANGS,
Attorney for Plaintiff.

STATE OF SOUTH DAKOTA, }
COUNTY OF PENNINGTON. } SS.

John W. Hansen
VICTOR C. ANDERSON being first duly sworn, deposes and says: That he is the ~~secretary~~ ^{*President*} of the St. Germain Irrigating Company, a corporation, which is plaintiff in the above entitled action. That he has heard the foregoing complaint and knows the contents thereof and that the same is true, except as to those matters therein stated upon information and belief, and as to them he believes it to be true.

(Signed:)

John W. Hansen
VICTOR C. ANDERSON,

Subscribed and sworn to before me this 23rd day of September, 1911.

(Signed:)

(Seal.)

FRANK D. BANGS,
Notary Public.

St. Germaine Irrigating Co
vs
Hawthorne Ditch Co. et al

RECEIVED

SEP 28 1911

OFFICE OF STATE ENGINEER,
PIERRE, S. DAK.

35-2
157-2
0578-2

No. 223. -a- "1."

.....

IN THE SUPREME COURT,

STATE OF SOUTH DAKOTA.

.....

THE ST. CECILIA IRRIGATION COMPANY, APPELLANT,

vs.

THE HANTHORN DITCH COMPANY, *Et al*, RESPONDENT.

.....

JUDICIAL DISTRICT THE CIRCUIT COURT OF PENNINGTON COUNTY,

HON. WILLIAM C. RICE, JUDGE.

.....

OPINION FILED SEP 23 1913

.....

Frank B. Bangs, of Rapid City, for Appellant,
Buell, Gardner & Denu, and
Schrader & Lewis, of Rapid City, for Respondents.
McCoy, J.

The complaint, in substance, was as follows:

That plaintiff is a corporation organized under the laws of the State of South Dakota, its principal business being to divert water from Rapid Creek and distribute the same among its stockholders for irrigation purposes; that Rapid Creek is a non-navigable stream of water rising in the mountains about forty miles westward from Rapid City, thence flowing eastward to the Cheyenne River; that plaintiff is the owner and in possession of certain real estate (60 feet by 240 yards, containing less than one acre) across which tract of land said Rapid Creek flows, also a certain dam constructed thereon together with a ditch and right of way extending from said dam in an easterly direction about eight miles in length on the north side of said creek; also a water right appurtenant thereto appropriating and entitling plaintiff to divert from said Rapid Creek through said dam 1000 miner's inches of water under a six inch pressure for purposes of mining, milling manufacturing, agriculture and domestic use; that plaintiff's predecessor duly located said water right and appropriated and diverted 400 miner's inches of said water on the first day of July 1883, and thereafter on the 1st day of June, 1890, appropriated and diverted an additional 600 inches of said water, and at all times since said appropriation plaintiff and its predecessor have diverted the full amount of the same from the waters of said creek and have at all times appropriated the whole thereof for beneficial use, to-wit, irrigation of land requiring irrigation for agricultural purposes; that none of the defendants either are or claim to be owners of lands riparian to said creek; that the other defendants either

are or claim to be entitled as appropriators to divert the waters of said creek from their natural channel, and all of the defendants are proper parties to this action under section 16, Chap. 120, Laws of 1907; that each of said defendants claims some right to use the waters of said creek adverse to the rights of this plaintiff, which claim is unfounded in fact and without authority of law; that the claims of each of the defendants constitute a cloud upon the title of plaintiff in and to its said water right, and work irreparable damage and detriment to plaintiff; that plaintiff has no speedy or adequate remedy at law and that it is necessary that the several claims of the right to said water be adjudicated by this court in order to avoid a multiplicity of suits. Wherefore, plaintiff prays: (1) That the court direct the State Engineer to make and furnish, for the purpose of adjudicating the various water rights on said Rapid Creek, a complete hydrographic survey of said stream; (2) That the defendants and each of them be required to set forth the nature of their respective claims, if any, in and to the waters of said stream, and the use thereof, together with the amount of water so claimed by them, the date of the accrual of their pretended rights, and such other facts as may be necessary to a full determination and adjudication of such pretended rights; (3) That the various rights, if any, of the defendants and each of them, to the beneficial use of water from said stream as well as the rights of this plaintiff be in this action adjudicated by this court, - that the court fix the date of priority and the amount of water, and the nature of the water right, if any, to which each of the parties hereto is entitled; (4) That the defendants be permanently restrained and enjoined from any unlawful appropriation or use of the waters of said stream system, and from claiming adversely to this plaintiff any such waters except such as they shall be found to be entitled to by the decree of this court;

(b) For such other and further relief as may be just and for the costs.

To the foregoing complaint none of the defendants demurred upon the ground that the same does not state facts sufficient to constitute a cause of action in favor of plaintiff and against defendants. The demurrer was sustained, but with leave to amend the complaint within thirty days. Thirty days having expired and plaintiff not having served an amended complaint, final judgment, on motion, dismissing said complaint, was entered. From the order sustaining said demurrer and said judgment of dismissal plaintiff appeals. We are of the opinion that the demurrer was properly sustained.

It is contended by respondents that Chap. 150, Laws of 1907, is unconstitutional and void and in conflict with Sec. 21, Art. 3, State Constitution, in that it embraces more subjects than are expressed in its title. While we are of the opinion that this act does contain many things not expressed by or germane to the title, still we are not sure but that the objectionable features may be separated from the matters clearly within the title. The only theory upon which any part of this act can be sustained is that the invalid portions may be segregated from that which is valid. (36 Cyc 1033) The title is "An Act prescribing regulations for the appropriation and distribution and use of water for irrigation, mining, water power and other beneficial uses". The subject of this title is purely regulatory and will not carry legislation confiscatory of vested property rights; nor legislation establishing new rules of evidence or of pleading; nor legislation tending to interfere with the constitutional jurisdiction and powers of the courts. We shall only refer to such objectionable sections of this act as we deem material to a disposition of this particular case. We believe there is a proper field for regulation of water for beneficial use, provided for by this act, outside of what we term objectionable features, -objection-

able because in conflict with various constitutional provisions.

Section 1 of this act provides as follows: "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", and section 19 provides that before any person shall use any of such water for beneficial use application must be made to the State Engineer for a permit to appropriate the same; and section 10 provides that the applicant for such permit shall pay certain fees, which in no case would amount to less than seven dollars. The provisions of these sections in so far as they relate to or interfere with certain vested property rights are clearly in conflict with Section 2, Art. 6, Const., providing that "No person shall be deprived of life, liberty or property without due process of law", and also are in conflict with section 13, Art. 6, providing that private property shall not be taken for public use without just compensation. "Every person through whose land a natural water course runs has a right, quodlibet jure, to the benefit of it for all useful purposes to which it may be applied, and no proprietor of land on the same water course either below or above, has a right to unreasonably divert it from flowing upon and onto his premises, or to obstruct it in passing from them or to corrupt or destroy it. This riparian right is inseparably annexed to the soil, not as an easement nor as an appurtenance, but as a part and parcel of the land itself. One does not create it, and disuse cannot destroy or suspend it." *Johnson vs. Jordan* (1888.) 2 etc. 239, 37 Am. Dec. 265. *St. Helena Water Co. vs. Forben*, 62 Cal. 182; 46 Am. Rep. 659. *Chasleffer vs. Council Hill Co.* 18 Vnn. 24. *Higley vs. Takoma L. & W. Co.* (Wash.) 36 Pac. 147, 26 L.R.A. 425. *Lux vs. Higgens*, (Cal.) 10 Pac. 674. *Scriven vs. Smith*, 100 N.Y. 471; 33 Am. Rep. 224; 3 N.E. 675. *Whitney vs. Council Hill Co.* (Mass.) 24 N.E. 774; 7 L.R.A. 613. *Duckworth vs. Water Co.*, 150 Cal. 620; 85 Pac. 336. *Turner vs. James Canal*

Co., 155 Cal. 82; 17 Ann. Cases 833 and note. Redwater Canal Co.,
 vs. Jones, 27 S.D. 194; 130 N.W. 85. Redwater Canal Co. vs. Reed, 26
 S.D. 466; 278 N.W. 705. Lone Tree Ditch Co. vs. Cyclone Ditch Co.,
 15 S.D. 319, 91 N.W. 353. Stenger vs. Thorp, 17 S.D. 13, 94 N.W. 402.
 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.
 It is within the purview of a constitutional provision
 prohibiting the taking of property for public use without
 compensation. McCook Irrigation Co. vs. News, (Neb.) 96 N.W. 896.
 Crawford Co. vs. Hathaway (Neb.) 96 N.W. 751; 60 L.R.A. 853.
 Vested property rights in waters in this state whether held
 as riparian or by prior appropriation, could not thus be taken
 or confiscated or interfered with by any such act of the
 legislature. The private owner of real estate who sinks an
 Artesian well on his premises is the absolute owner of the
 water flowing therefrom and may control the whole thereof as
 he may see fit, so long as he does no injury thereby to others;
 the private owner of real estate who constructs an artificial
 reservoir on his premises in which he collects and retains
 surface waters wholly on his own premises, is the absolute
 owner thereof and may use and control the whole thereof as he
 may see fit, so long as he does no injury thereby to others.
 The right to use such waters cannot be thus confiscated or
 interfered with by the state or the public and placed in the
 custody and control of a State Engineer any more than could
 the land itself upon which such water happened to be. The
 rightful owners of riparian lands cannot be thus deprived of,
 or made to pay for a permit to use what, under the law,
 rightfully belongs to them. If the provisions of this statute
 were to be enforced according to its terms the owner of a
 large farm could not sink an Artesian well, or even dig an

ordinary well thereon for the purpose of domestic use without first obtaining and paying for a permit to do so. In a certain limited sense water flowing in a natural stream belongs to the public, but the right to the use thereof is the subject of private property and ownership by riparian owners or others who have lawfully appropriated the same, but the use thereof may be regulated by law and by the courts, to the end that each rightful user and appropriator may acquire no more thereof than his fair and equitable share.

It is contended by respondents that section 19 is unconstitutional and void on the ground that it interferes with the free use of private property by the owner thereof. We are of the opinion that in so far as the vested property rights in and to the use of water is concerned that this section of the statute is void. The private owners of Artesian wells and artificial reservoirs and ponds, and riparian owners and other lawful appropriators having a vested right to appropriate and use certain waters cannot be required to pay for and secure a permit to use that to which they have a vested right. The constitutionality of a law is to be determined from what may be done thereunder, not from what has or is being done thereunder. *Stearns v. Young*, (Wyo.) 52 Pac. 946; 4 L.R.A. (N.S.) 160. There may be streams and other bodies of water in this state containing a surplus over and above what might be legally used by riparian owners and other lawful appropriators, which might be the subject of permit under the provisions of this statute.

It is also contended that section 46 of the act in question, which provides that when a party entitled to the use of water fails to beneficially use all or any portion of the waters claimed by him for a period of three years such unused waters shall revert to the public, is void for the same reasons.

We are of the opinion that this section is void as to a riparian owner, but valid as to one who is no more than an appropriator without riparian right. A riparian right to use such waters of a flowing stream cannot be lost by disuse.

It is also contended that section 10 is void as tending to deprive individuals of property rights and property, by way of costs and expenses, without due process of law. We are also of the opinion that this contention is well taken. This section among other things provides that when a suit to determine water rights has been filed the court shall by order direct the State Engineer to make a complete hydrographic survey of said stream system and that the costs and expenses thereof be apportioned pro rata among all the parties taking waters from said stream in proportion to the amount of water allotted to each. It is a matter of common knowledge that there are many streams in this state, including the stream in question, where it would take many thousands of dollars to make such a survey. A riparian or other lawful appropriator lawfully using no more of the waters of said stream than justly entitled to could not be required without his consent to pay any portion of such expense without being deprived of his property without due process of law. Simply the filing of such a suit is not sufficient authority to so deprive him of his property. Such a procedure could only result in a fat benefit to some civil engineer.

It is further contended by respondents that, disregarding the unconstitutionality of said portions of said act, plaintiff's complaint is wholly insufficient for any purpose. We are of the opinion that this complaint fails to state any kind of a cause of action upon any possible theory. It will be observed that there is contained in this complaint the allegation that plaintiff is entitled to divert from said stream 1000 miner's inches of water, and that at all times since 1890 plaintiff and its predecessors have diverted the

full amount off the same from the waters of said creek and have at all times appropriated the whole thereof to beneficial use. If this allegation is true it is wholly immaterial to plaintiff whether other appropriators of the waters of said stream appropriate water lawfully or not, - the use thereof under such circumstances in no manner conflicts with any right of plaintiff. Under such circumstances it is none of plaintiff's business how much water, or under what right others appropriate the waters of said stream, so long as plaintiff obtains the full amount coming to it, which it alleges it does. It is only conflicting water rights that the courts are authorized to determine. Again, ^{be} it will ^{be} observed that this is not an action to determine adverse claims of title to real estate. There is no allegation or claim that any of defendants are claiming any kind of title to plaintiff's acre of land. It is not sufficient, in the character of action sought to be pleaded here, to state that plaintiff has a water right and that defendants have some water right adverse to plaintiff, but which right of defendants is without lawful foundation. This character of pleading is only permitted in actions to determine adverse claims to realty by virtue of a local statute upon that subject. In an action to determine conflicting water rights the facts which show such conflict must be stated in the pleading.

Finding no error in the record the order and judgment appealed from are affirmed.

3352

VESTED WATER RIGHT

The Water Management Board hereby validates Vested Water Right No. 2037-2

St. Germaine Ditch HCR 36, Box 34, Caputa
 (applicant) (post office address)
SD 57725
 (state) (zip code)

Date of receipt of Application October 6, 1987.

Validated December 2, 1987.

The Water Management Board hereby validates the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Vested Water Right, subject, however, to the following limitations and conditions:

1. The date from which the applicant may claim right is ^(8cfs) Nov. 1, 1883 ^(20cfs) Oct. 30, 1890.
2. The whole of said work has been completed and water has been applied to beneficial use as described on Form 2B of this application.
3. The water appropriated is used for the purpose of irrigation.
4. The prior rights 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 unlawfully impaired by this appropriation.
5. The amount of the appropriation hereby validated shall not exceed 28 cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served. For irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water has been actually and beneficially applied for irrigation. The water is to be used during the following described annual period Apr 15 - Nov 1.

The applicable portions of Water Right Filing Nos. 0527-2 and 0528-2 have been incorporated into No. 2037-2 and the abandoned portions of Water Right Filing Nos. 0527-2 and 0528-2 have been cancelled.

Vested Water Right No. 2037-2 was validated subject to the qualifications listed in Attachment A.

WATER MANAGEMENT BOARD

By: John Hatch
 (Chief Engineer)

Division of Water Rights
 Dept. of Water and Natural Resources

MAY 2 1988, 1988.