

Water Right Number 1108-2

1. Considered ① MAY 17, 1972
2. Name of Applicant KENNETH SARGENT
3. Post Office Address CLEARFIELD, S.D.
4. Amount of water claimed 6.00
5. Source of water supply KEYAPAH RIVER & DRY DRAWS
6. Water to be used for IRRIGATION
Acres to be irrigated 595.80
7. Water to be diverted and used in TRIPP County
about 17 S 12 W Miles of WINNER
8. Proof of Publication Received 5-15-72
Not received _____
9. Application Approved _____

10. Remarks:

June 15

1108-2 Kenneth Sargent *W Manager*
11/17/76 Dam Sargent 720 AF, Height 54 ft.
Length 640 ft, Perimeter 50 ft.
No primary spillway or diversion dam.

Pump: Berkeley Model B4T Slingshot pump
Model B3TORN-CW 1/2 hp.
1/2 HP 5001 Serial # N 01546X
Inlet 5" Outlet 4" approx 1200 gpm.

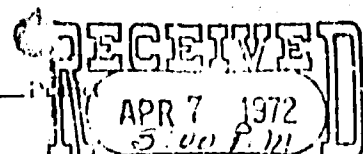
Engine - Allis Chalmers Model 2700
Serial # 2D-52189 Horse 6 Cyl.

2400 ft 8" dia aluminum pipe.
Pipe & pump and to fill reservoir, then
to operate CP.

Blowers full width on NE 1/4 17 and on
NW 1/4 16 & partial Corral.

Well done south of Keyapah.
Federal application no longer than 1178

Map No. 941-2 Water Division No. 2 KEYAPAH RIVER
(Blanks to be Filled by the Engineer for the W. R. C.)



STATE WATER RESOURCES COMM
PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To Appropriately Water within the State of South Dakota

(NOTE-Draw a line through items not applicable)

- Name of Applicant Kenneth Sargent
Postoffice address Clearfield, State South Dakota
If a corporation show date and place of incorporation _____
- Method of accomplishing work (contract, employment of others, or by direct labor) Contract and Direct Labor
- Name of diversion work Sargent Irrigation Project
- Amount of water claimed (cubic feet per second) 6.0
- Source of water supply Keyapaha River and Dry Draw
- Location of point of diversion From Keyapaha River, Between points, S. 47° 30' E., 6930 ft. and S. 55° E, 4026 ft. both from the SW Corner, Section 16, T96N, R78W. and from a dry draw at a point N. 50° E., 2310 Ft, from the Same Corner County Tripp
- Annual period or periods during which water is to be used April thru October
- Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation
- For irrigation use, 595.8 Total number of acres to be irrigated

List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
see attachment			

Attach sheet if more space is needed

- Time required to complete construction of water supply system 5 years. Additional time required to complete application of water to the proposed beneficial use 4 years.
- Choice of newspaper for Notice of Intent to Appropriately Water publication Winner Advocate, Winner, S.D.
- Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.

Pump, Motor

B. Works proposed to transport water to place of use.

Mainline

C. Works proposed to apply water to beneficial use.

Sprinkler System

Estimated Total Cost \$ 50,000.00

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water is proposed. Attach map.
(See instructions concerning preparation.)

STATE OF SOUTH DAKOTA

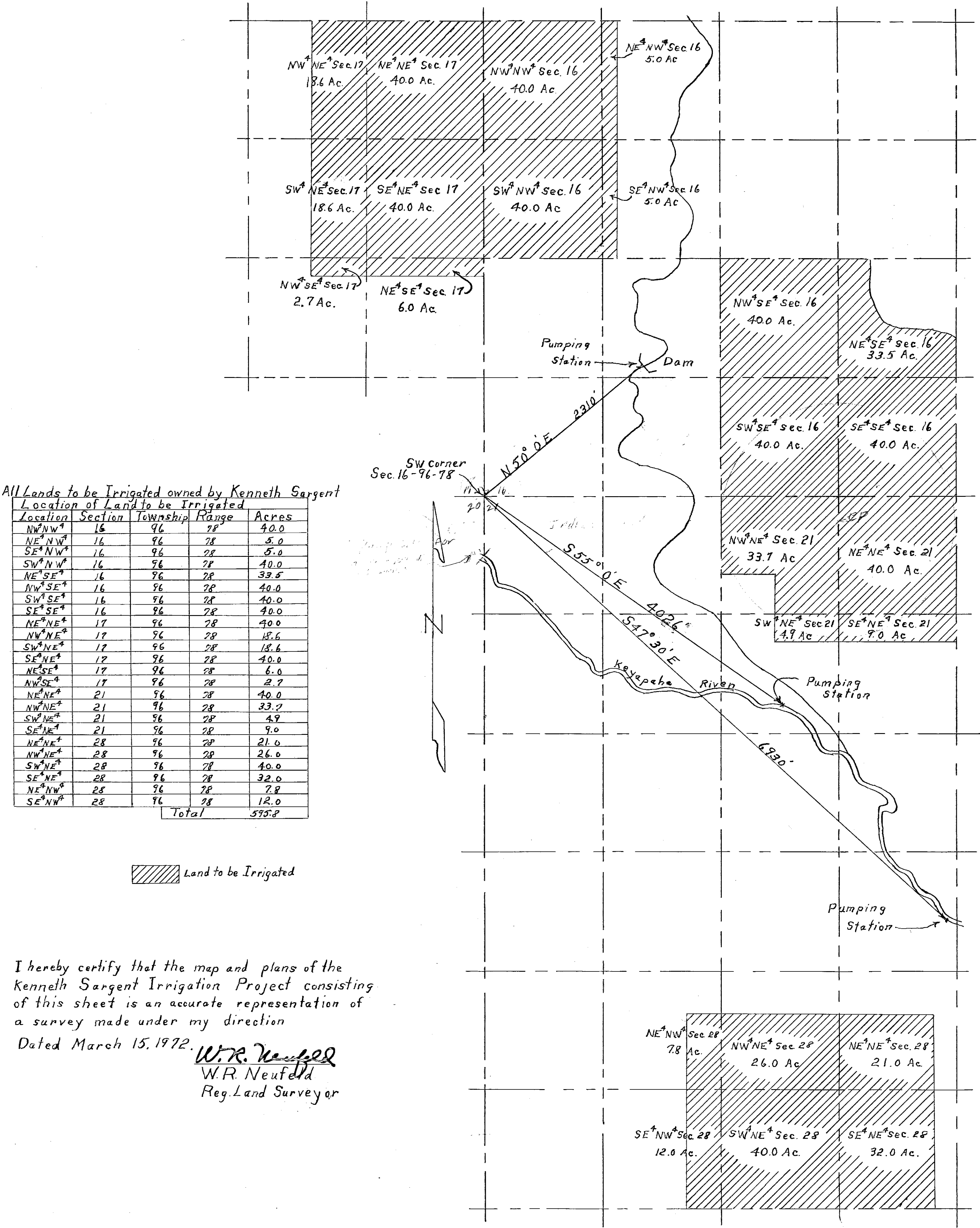
County of Hughes

I, Fenneth Sargent the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend and am able to complete the necessary construction.

Subscribed and sworn to before me this 7th day of April, 1972

Betty Westlund
Notary Public (or other qualified officer)
Betty Westlund, Technical Assistant
Water Resources Commission

Kenneth Sargent Irrigation Project
 Located in Sections 16, 17, 21, & 28 - T 96 N - R 78 W, Tripp County, S. D.
 Scale 1"=660'



MAP NE 94-1-2 (APP. 15-1108-2)

WATER RIGHT APPLICATION APPROVAL

The Water Resources Commission hereby approves Water Right Application No. 1108-2

KENNETH SARGENT
(Applicant)

CLEARFIELD
(Post Office Address)

SOUTH DAKOTA With the following modifications:
(State)

THIS PERMIT AUTHORIZES THE DIVERSION OF WATER FROM THE KEYAPAH RIVER FOR EITHER IRRIGATION TO THE LAND DIRECTLY OR FOR OFF-STREAM STORAGE UNTIL JUNE 15TH OF EACH CALENDAR YEAR. AFTER JUNE 15TH THERE SHALL BE NO DIVERSION OF WATER FROM THE KEYAPAH RIVER UNDER THIS PERMIT UNLESS SUCH WRITTEN AUTHORIZATION IS ISSUED BY THE STATE WATER RESOURCES COMMISSION, OR ITS LEGALLY APPOINTED REPRESENTATIVE. DIVERSIONS UNDER THIS PERMIT SHALL BE IN ACCORDANCE WITH ANY WRITTEN ORDERS ISSUED BY THE COMMISSION OR ITS REPRESENTATIVE. APPROVAL OF THIS PERMIT AUTHORIZES 240 ACRE FEET OF WATER ANNUALLY STORAGE

Date of first receipt of application APRIL 7 19 72

Date of return to applicant for correction, amendments or changes required --- 19 ---

Date of receipt of corrected application --- 19 ---

Approved MAY 17 19 72 Recorded in Book 12 Page 111

WATER RIGHT PERMIT NO. 1108-2

The Water Resources Commission hereby grants and issues this Water Right Permit No. 1108-2 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is APRIL 7 19 72
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before NOVEMBER 17 19 74
3. The whole of said work is to be completed on or before MAY 17 19 77
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is MAY 17 19 81
5. The water appropriated shall be used for the purpose of IRRIGATION

6. 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.

7. The amount of the appropriation herein granted shall not exceed 6.0 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 and if for the irrigation purposes said appropriation must be limited to not more than 3 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 is actually and beneficially applied for irrigation on or before MAY 17 19 81; said water to be used during the following described annual period: APRIL THRU OCTOBER

Witness my hand this 23RD day of JUNE 19 72

WATER RESOURCES COMMISSION

By

McClintock
Chief Engineer, Executive Officer

Certificate of Construction Issued --- 19 ---

Water License Issued --- 19 ---

All lands to be irrigated owned by Kenneth Sargent:

Location	Section	Township	Range	Acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	16	96	78	40.0
NE $\frac{1}{4}$ NW $\frac{1}{4}$	16	96	78	5.0
SE $\frac{1}{4}$ NW $\frac{1}{4}$	16	96	78	5.0
SW $\frac{1}{4}$ NW $\frac{1}{4}$	16	96	78	40.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	16	96	78	33.5
NW $\frac{1}{4}$ SE $\frac{1}{4}$	16	96	78	40.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	16	96	78	40.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	16	96	78	40.0
NE $\frac{1}{4}$ NE $\frac{1}{4}$	17	96	73	40.0
NW $\frac{1}{4}$ NE $\frac{1}{4}$	17	96	78	18.6
SW $\frac{1}{4}$ NE $\frac{1}{4}$	17	96	78	18.6
SE $\frac{1}{4}$ NE $\frac{1}{4}$	17	96	78	40.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	17	96	78	6.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	17	97	72	2.7
NE $\frac{1}{4}$ NE $\frac{1}{4}$	21	96	78	40.0
NW $\frac{1}{4}$ NE $\frac{1}{4}$	21	95	78	33.7
SW $\frac{1}{4}$ NE $\frac{1}{4}$	21	96	78	4.9
SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	96	78	9.0
NE $\frac{1}{4}$ NE $\frac{1}{4}$	28	96	78	21.0
NW $\frac{1}{4}$ NE $\frac{1}{4}$	28	96	73	26.0
SW $\frac{1}{4}$ NE $\frac{1}{4}$	28	96	78	40.0
SE $\frac{1}{4}$ NE $\frac{1}{4}$	28	96	78	32.0
NE $\frac{1}{4}$ NW $\frac{1}{4}$	28	96	78	7.8
SE $\frac{1}{4}$ NW $\frac{1}{4}$	28	96	78	12.0
Total				595.8

12. Principal Features of the Proposed Water Supply System (continued.)

D. Well Information or Estimates

- (1) Drill Hole, Diameter _____, Depth _____
- (2) Casing, Type _____ Diameter _____ Thickness _____
(wood, concrete, steel, etc)
- (3) Perforated Screen.
Type _____, Diameter _____, Length _____
- (4) Gravel Pack, Thickness _____, Length of gravel pack _____

E. Dugout Information or Estimates.

- (1) Surface dimensions _____, Depth _____

F. Fill out for Either a Well or a Dugout.

- (1) Water Bearing Materials. (Please attach a copy to test well log if available.)

Character of Water bearing materials _____

Depth to top of water bearing material _____

Depth to bottom of water bearing material _____

Thickness of water bearing material _____

Depth to water (ground surface to water level) _____

- (2) Distance to nearest existing household or livestock watering wells.

On same owner's property _____ rds. On property owned by others _____ rds.

G. Water Storage Dams.

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, maximum water depth, surface area and storage capacity of each storage dam. The location of each water storage dam should be shown on the water right map.

Surface Area	25 Acres
Depth	25 Feet
Storage	240 acre feet


Signature of Applicant

No. 1108-2

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Tripp) ss.

No. 1108-2

I, D. L. Johanson hereby

certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the Winnipeg Advocate

A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the

city of Winnipeg

County of Tripp and State of South Dakota:
that the said notice was published in said newspaper on the following
four dates:

April 12, 1972
April 19, 1972
April 26, 1972
May 3, 1972

D. L. Johanson
(Signature)

Publisher
(Title)

May 3, 1972
(Date Signed)

NOTICE
INTENT TO
APPROPRIATE WATER

Pierre, South Dakota 57501

April 10, 1972

Notice is hereby given that
Kenneth Sargent, whose post
office address is Clearfield,
South Dakota, has made an
application in accordance with
the provisions of the water laws
of South Dakota for a permit to
appropriate for beneficial use
6.00 cubic feet of water per
second of time from the
Keyapaha River and a dry draw
through the Sargent Irrigation
Project, the point of diversion of
which is to be located from the
Keyapaha River between points
in the SE $\frac{1}{4}$ E $\frac{1}{2}$ N, and in the SW $\frac{1}{4}$
NE $\frac{1}{4}$, Section 21, and from a dry
draw at the point in the NE $\frac{1}{4}$
SW $\frac{1}{4}$, of Section 16, Twp. 86N,
Range 78W. Said water to be used
for the purpose of providing
irrigation on all or portions of the
following described land: SE $\frac{1}{4}$,
NW $\frac{1}{4}$, Section 16; NE $\frac{1}{4}$ And N $\frac{1}{4}$
SE $\frac{1}{4}$, Section 17; NE $\frac{1}{4}$, Section
21; NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$, Section
28, all in T86N, R78W.

This application No. 1103-2 will
be considered by the Water
Resources Commission at their
office at Pierre upon the 17th day
of May, 1972, at 2:00 P.M. All
interested persons may appear
and be heard.

WATER RESOURCES
COMMISSION

By: Burton F. Jones
BURTON F. JONES, Water
Rights Specialist. (15-18)

RECEIVED
MAY 15 1972

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Publish first publication, on or before April 20, 19 72NOTICE
INTENT TO APPROPRIATE WATER

Pierre, South Dakota 57501

April 10, 19 72Notice is hereby given that Kenneth Sargentwhose post office address is Clearfield, South Dakota, has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use Keyspaha River and a
6.00 cubic feet of water per second of time from the dry draw through theSargent Irrigation Project, the point of diversion of which is to be located in the
from the Keyapaha River between points in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, and in the SW $\frac{1}{4}$ NE $\frac{1}{4}$,
Section 21, and from a dry draw at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,of Section 16, Twp. 96N, Range 78W. Said water to be used for the purpose
of providing irrigation on all or portions of the following described land:SE $\frac{1}{4}$, NE $\frac{1}{4}$, Section 16; NE $\frac{1}{4}$ And N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 17; NE $\frac{1}{4}$, Section 21; NE $\frac{1}{4}$ and
E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 28, all in T96N, R78W.This application No. 1108-2 will be considered by the Water Resources Commission at their office at
Pierre upon the 17th day of May, 19 72, at 2:00 P. M. All interested
persons may appear and be heard.

WATER RESOURCES COMMISSION

By:

BURTON F. JONES, Water Rights Specialist

cc: Kenneth Sargent, Clearfield, S.D. 57581

1108-2

June 17, 1975

Tel 605 557 3537

Mr. Kenneth Sargent
Clearfield, SD 57581

Dear Mr. Sargent:

On June 17, 1975, you made an oral request via telephone to be allowed to divert water from the Keyapaha River, as specified in Water Permit 1108-2.

You may consider this letter as authorization to divert water from the Keyapaha River until July 15, 1975, except that you are to stop such withdrawals at an earlier date if you are so instructed by a representative of the Water Rights Commission.

Sincerely,

Vern W. Butler
Acting Chief Engineer
Water Rights Commission

VWB/tjb

TRIIPCO.

NO TPO

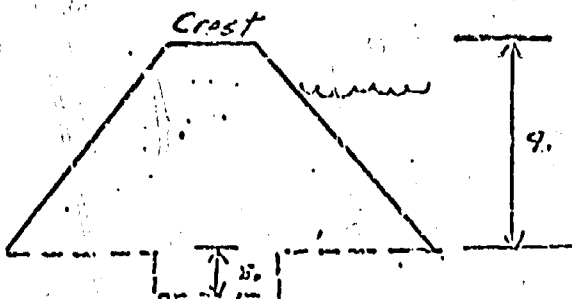
2187

3

SAFETY OF DAMS QUESTIONNAIRE NR 1108-2

1. Name of dam - *Sargent Irrigation Project*
2. Popular name - *none*
(if different from above)
3. Name of impoundment - *none*
(official name of reservoir)
4. River or stream - *dry draw (pump) from Keyapaha River*
5. Type of dam - *earth*
(earth, concrete, etc.)
6. Year completed - *1972*
7. Use (Irrigation, etc.) - *in*
- * 8. Trench depth - *30'*
(if part of design)
- * 9. Hydraulic height - *47'*
10. Impounding acre feet *~ 30 surface acres*
a. maximum - *870*
b. normal - *720* *75' freeboard*
11. Crest length -
(includes spillway(s))
12. Spillway
a. type - *grass-saddled uncontrolled* *15' A*
b. width - *300'*
13. Volume of dam - *50,000*
(in cubic yards)
14. Owner - *Kenneth Sargent* *557-2537*
15. Designed by - *owner*
16. Construction by - *Schweigert*
17. Legal description - *150' SW 1/4, SE 1/4, 16-96-78*
(section - township - range) *93' wide*

18. *No. 300 assistance in any way.*



1108-2

**SOUTH DAKOTA Department of
Water & Natural Resources**
Joe Foss Building
Pierre, South Dakota 57501
Division of Water Rights
(605) 773-3352

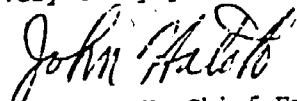
August 11, 1980

Because of the existing deficient supply of water in the Keyapaha River (2.3 cfs at Wewela gage August 6, 1980) to provide water for domestic use including livestock watering, it is ordered that all withdrawals of water from the Keyapaha River for irrigation purposes cease effective 12:00 noon August 14, 1980 until January 1, 1981 or until further notice.

This order is issued in accordance with the South Dakota Water Laws which require the Water Management Board to control and regulate all waters of the State to assure water for domestic supplies and prior water rights.

Please govern your use of irrigation water under your Water Right in accordance with this order. You will be notified if the water supplies of the Keyapaha River become sufficient to permit irrigation water withdrawals again during 1980. If there are any questions on this order, please let me know.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH/gy

Equal Opportunity Employer

**Department of
Water & Natural Resources**

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Division of Water Rights
605 773-3352

No. 1108-2

November 7, 1986

Garnet Sargent
Clearfield, South Dakota 57581

Dear Mrs. Sargent:

Please find enclosed a copy of a Notice of Transfer of Water Permit form. This form must be signed by the owner before a notary and returned to this office with a filing fee of \$2.50.

Upon receipt of the enclosed form and the \$2.50 filing fee the permit will be transferred to the proper name. 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.

Please advise if you have any questions.

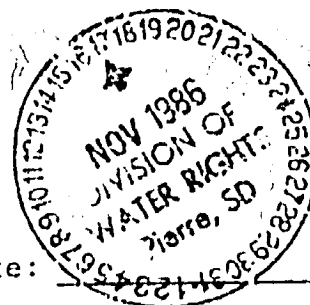
Sincerely,

Maxine Stirling
Secretary

ms/

DWNR-820A-8/83

NOTICE OF TRANSFER OF WATER PERMIT



Date: _____

TO: Water Rights
Foss Building
Pierre, SD 57501

This is to notify you that the title to the lands described as follows:

595.8 Acres NW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 16, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 17, NE $\frac{1}{4}$ Section 21,

NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 28, all in T96N-R78W

formerly owned by Kenneth Sargent

has been transferred to Garnet Sargent, Clearfield, South Dakota 57581

(please include complete mailing address)

together with any rights to the beneficial use of water thereon as evidenced by

Water Right Permit No. 1108-2 as provided for in SDCL 46-5-32 and 46-5-33.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Div. of Water Rights, Water Management Board as evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)

County of TRIPP) ss.

I, Garnet Sargent 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.

Garnet Sargent
(Signed)

Subscribed and sworn to before me this 13 Day of November, 1986

Conny L. Verita
(Notary Public)

11-12-86

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

410618

Pierre, November 17, 1986

RECEIVED OF Garnet Sargent, Clearfield, South Dakota 57581

the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form 1105-2	2	50
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	2 50

By

J. H. Hatch
Chief Engineer JOHN HATCH ms

**Department of
Water & Natural Resources**

Joe Foss Building Water Rights Division
Pierre, South Dakota 57501

Phone (605) 773-3352

November 21, 1986

Garnet Sargent
Clearfield, South Dakota 57581

Dear Mrs. Sargent:

Enclosed is receipt No 410618 in the amount of \$ 2.50 which you
paid for transfer of Water Right No. 1108-2.

Our records now show you as the owner of this Water Right.

Sincerely,

Maxine Stirling
Secretary

ms/
Enc.

South Dakota

DEPARTMENT OF WATER & NATURAL RESOURCES
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

GREAT FACES. GREAT PLACES.

January 11, 1991

1108-2

NOTICE

TO: Garnet Sargent
Clearfield, SD 57531

FROM: John Hatch, Chief Engineer
Water Rights Division
605 773-3352

John Hatch

SUBJECT: Amendment of Water Permit No. 1108-2 Qualification Regarding
Cut Off Periods

Notice is given that the Water Management Board will consider deleting and adding the following qualifications to Water Permit No. 1108-2.

Qualification to be deleted:

This permit authorizes the diversion of water from the Keya Paha River for irrigation directly to the land until June 15 of each calendar year. After June 15 there shall be no diversion of water from the Keya Paha River under this permit unless written authorization is issued by the Water Resources Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by this commission or its representative.

Note - the qualification authorizing diversion directly for irrigation or for off-stream storage will remain as a part of the water permit.

Qualification to be added:

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 10 cfs or less, unless written authorization is received from the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

The hearing to consider amendment of Water Permit No. 1108-2 to delete and add the above qualifications will be held February 27, 1991 at 11:30 am, Meeting Room, Governors Inn, 700 West Sioux Avenue, Pierre, SD 57501. The agenda time is an estimate and may be delayed due to prior agenda items. The hearing will be held pursuant to the provisions of SDCL 46-1-14 and 46-2-17.

The hearing is based on the review of Keya Paha River Water Permits/Rights and historic flow records of the Keya Paha River. The attached report summarizes the current water permits/rights on the Keya Paha River and contributing tributaries. Also enclosed is a notice of hearing that will be published in the Winner Advocate for two consecutive weeks. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-9 and 46-2-11.

After all evidence is taken at the hearing, the Board may issue a decision to delete and add the above qualifications, postpone any action or take no action. This hearing is an adversary proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Attachment

1168-2

CERTIFICATION

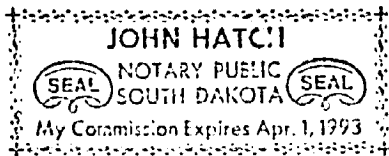
I hereby certify that on January 14, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Amendment of Water Permit No. 1108-2 addressed as stated below.

Garnet Sargent, Clearfield SD 57581

D 57581
Marie R. Arthur
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of January, 1991.



John H. Bates
Notary Public

1168-2

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION	)	FINDINGS OF FACT
TO AMEND WATER PERMITS AND WATER	)	CONCLUSION OF LAW
RIGHTS WHOSE WATER SOURCE IS THE	)	AND FINAL DECISION
KEYA PAHA RIVER, IN PARTICULAR,	)	
WATER PERMITS AND RIGHTS NOS. 281-2	)	
282-2 AND 710-2, CHARLES RICHEY;	)	
NO. 369-2, VICTOR WEICKUM; NO. 414-2	)	
H.W. CARLSON; NO. 465-2 LUCILE RICHEY;	)	
NOS. 835-3 AND 959-2 ALVA WILEY;	)	
NO. 1530-2, VERN KESZLER; NO. 879-2,	)	
RICHARD KIRSCH; NO. 931-2,, LLOYD	)	
BLOMSTROM NO. 1107-2, STANLEY HANSON;	)	
NO. 1108-2, GARNET SARGENT;	)	
NO. 1128-2, CHARLES HELLMANN; AND	)	
NO. 2122-2 RODNEY HOFELDT	)	



FINDINGS OF FACT

I

This is an application by the Chief Engineer to establish a more manageable "cutoff" system on the Keya Paha River.

II

The existing water permits and water rights on the Keya Paha River have various cutoff dates. The first three permits issued on the Keya Paha River have a 10 cfs bypass at the Wewela Gauging Station. Eight permits, issued in the 1950s and 1960s, do not have a specific low flow bypass or cutoff date, but do have a requirement to bypass water for downstream domestic use and prior water rights. Three permits, issued in the 1970's, have a June 15 cutoff date. The most recent permit granted in the Keya Paha system provides a May 20 cutoff date.

III

Keya Paha system includes not only diversions from the Keya Paha River itself, but from its tributaries.

IV

The Keya Paha River is a spring fed river.

V

The Wewela Gaging Station is located at a point downstream of most of the water permits at issue. Statistics developed at the Wewela Gaging Station demonstrate that for the past thirty-nine years there were at least 10 cfs water at Wewela 90% of the time during the driest months of July, August and September. The same gaging station statistics indicate that there was a 70% chance that there would be at least 20 cfs of water at Wewela during the driest months of August and September.

VI

That Wewela Gaging Station thus reflects the situation which has existed given actual diversions. The Wewela station statistics do not reflect, however, the withdrawals of the latest appropriator whose Water Permit Application No. 2122-2 was approved May 23, 1990. That permit was for 4.57 cfs of water from a dug out located on a spring fed draw and supplemental water from Lost Creek, a tributary of the Keya Paha River. That permit has a May 20 cutoff for the portion of the diversion from Lost Creek.

VII

At least one domestic user downstream of the Wewela Gaging Station has testified that even when there are 18 cfs of water in the stream, there is insufficient water for his livestock. His cattle are located several miles below Wewela.

VIII

The Board finds that a 10 cfs bypass at Wewela is insufficient to provide reasonable protection to downstream domestic use, including livestock watering and prior water rights. The Board finds, furthermore, that reasonable protection is provided, on the basis of data now available, by a 15 cfs bypass requirement.

IX

The Board of Water Management has jurisdiction to impose amendments on existing permits to protect downstream domestic use, including livestock watering and to protect prior water rights. Such amendments are justified by the Water Management Board's statutory authority and duty to protect such prior rights.

X

The rights of the prior appropriators are not unlawfully impaired by the exercise of this authority by the Board, especially when the amendment provides for exceptions upon written authorization from the Chief Engineer. Moreover, when it is reasonable to allow exceptions despite the 15 cfs bypass requirement, senior appropriators will be

allowed by the Chief Engineer to irrigate beyond the cutoff date before junior appropriators.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. The Board has general authority to amend existing water permits pursuant to SDCL 46-2A-12.
3. The amendment set out in the Final Decision does not unlawfully impair existing rights. This is so because the existing rights are all subject to downstream domestic use including livestock watering and, of course, prior water rights. Moreover, even when the flow is 15 cfs or less, any appropriator may receive written permission from the Chief Engineer to appropriate water and such permission shall be granted, insofar as reasonably possible under the circumstances, first to senior appropriators and then to later appropriators.
4. The cutoff requirement set out in the Final Decision provides reasonable direction to the Chief Engineer in his management of the Keya Paha system. The proposed amendment to the permits is for beneficial purposes and is in the public interest.
5. The Board has jurisdiction to provide for a 15 cfs bypass requirement despite the fact that the advertisement provided for a 10 cfs requirement. The Chief Engineer's recommendation, as advertised and served upon the present water right holders, authorized the Board to approve the recommendation with "additional qualifications. . . ."

This language vests the Board with the power to make reasonable modifications in the recommendation.

6. The Department of Game, Fish and Parks requested a 16 cfs bypass for fish and wildlife purposes. The Board, having determined to adopt a 15 cfs requirement, concludes that it is unnecessary to consider whether it is appropriate or lawful to impose new bypass requirements on existing permits for fish and wildlife purposes and therefore declines to act upon the GF&P suggestion.

FINAL DECISION

Each of the rights and permits identified in the caption of this proceeding is herewith amended to remove any previous cutoff dates and bypass requirements and the following qualification is hereby added to each of the above-identified water rights and water permits.

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be bypassed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 15 cfs or less, unless written authorization is received from the chief engineer. Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.

BY THE BOARD

Chairman
Water Management Board

m-pld51.jpg



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 13, 1991

NOTICE

Garnet Sargent
Clearfield SD 57581

Dear Ms. Sargent:

This letter is in response to action taken by the Water Management Board to amend Water Permit No. 1108-2. The Board amended Water Permit No. 1108-2 by deleting and adding the qualifications on the enclosed "Attachment" which should be placed with the water permit. The action was taken pursuant to the notice to you dated January 11, 1991.

Very truly yours,

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

enclosure

ATTACHMENT TO WATER PERMIT NO. 1108-2

GARNET SARGENT

The Water Management Board amended Water Permit No. 1108-2 at the February 27, 1991 Board meeting to delete and add the following qualifications:

Qualification deleted:

This permit authorizes the diversion of water from the Keya Paha River for irrigation directly to the land until June 15 of each calendar year. After June 15 there shall be no diversion of water from the Keya Paha River under this permit unless written authorization is issued by the Water Resources Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by this commission or its representative.

NOTE: The qualification authorizing diversion directly for irrigation or for off-stream storage will remain as a part of the water permit.

Qualification added:

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 15 cfs or less, unless written authorization is received from the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

CERTIFICATION

CERTIFICATION

I hereby certify that on June 17, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of action taken by the Water Management Board to amend Water Permit No. 1108-2 addressed as stated below:

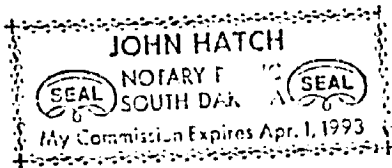
Garnet Sargent, Clearfield, SD 57581.

Cheryl F. Frost
Cheryl F. Frost
Secretary

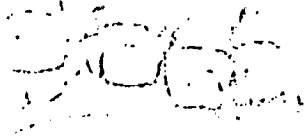
STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of June, 1991.

John Hatch
Notary Public



South Dakota



GREAT FACES. GREAT PLACES.

JUL 23 1991

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

2141-2

(1108-2)

Garnet Sargent
Clearfield, SD 57581

Dear Ms. Sargent:

Enclosed are your Water Right and Water License No. 2141-2. As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Hatch".

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

enclosures

The applicable portions of Water Permit No. 1108-2 are incorporated into Water License No. 2141-2.



1108-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

August 29, 1991

NOTICE

PERMIT NO(S). 2141-2 and 1108-2

TO: Garnet Sargent
RR
Clearfield, SD* 57581

FROM: *for* JOHN HATCH, Chief Engineer
Water Rights Division
(605) 773-3352

Delvin D. Brosz

SUBJECT: Shutoff Order for Water Diversions from the
Keyapaha River.

The flows in the Keyapaha River are below 15 cubic feet
per second (cfs) at the Wewela gaging station. Therefore,
to protect domestic use (livestock watering), effective
immediately, no pumping of water is authorized from the
Keyapaha River or contributing tributaries until January
1, 1992 or until further notice.

The following is the latest flow (cfs) information on the
river:

GAGE	3/27/91	3/28/91	3/29/91
Wewela	15.9	13.5	12.6

If you have any questions, please contact Tim Schaal or
Del Brosz, Division of Water Rights, Joe Foss Building,
Pierre, SD 57501, phone (605) 773-3352.

110P-2

CERTIFICATION

I hereby certify that on August 29, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Shutoff Order for Water Diversions from the Keyapaha River addressed as stated below:

Garnet Sargent, RR, Clearfield, SD 57581

Rodney Hofeldt, RR 5, Box 89, Millboro, SD 57554

Stanley Hanson, RR 5, Box 63, Millboro, SD 57554

Lloyd Blomstrom, P.O. Box 623, Winner, SD 57580.

Vern Keszler, HC 88, Box 12, Clearfield, SD 57581.

~~Dale Heese, SR Box 36, Millboro, SD 57554.~~

Charles Hellman, RR 5, Box 84, Millboro, SD 57554.

Alva Wily, SR 10, Box 34, Millboro, SD 57554.

Richard Kirsch, HC 80, Box 49, Springview, NE 68778.

Charles Richey, HC 88, Box 47, Wewela, SD 57578.

Lucile Richey, RR 10, Box 46, Wewela, SD 57578.

Victor Weickum, Wewela, SD 57578.

H. W. Carlson, RR 1, Box 32, Colome, SD 57528.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 30th day of August, 1991.

John Hatch
Notary Public

