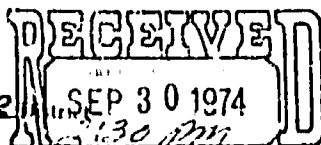


No. 1213-2Map No. V/R Water Division No. 2 SOUTH CHEYENNE RIVER
(Blank to be filled by the Engineer for the W. R. C.)STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

"VESTED RIGHT CLAIM"

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

1. Name of Applicant Marcus I. Dunbar
- Postoffice address Oelrichs, State South Dakota
- If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) completed
3. Name of diversion work Dunbar Spreader System
4. Amount of water claimed (cubic feet per second) 2.7 c.f.s.
5. Source of water supply Run off from rain and melted snow (Beef Creek)
6. Location of point of diversion between a point North 23° 30' West, 2250 West of the SW corner of Sec. 9 and a point North 40° West, 2505 feet from the SE Corner, Sec. 10, All 1/2 T11S, R7E
N 23° 30' W Sec 9 40° W Sec 10 County Fall River
7. Annual portion or periods during which water is to be used any as run off occurs
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) spreader irrigation
9. For irrigation use, irrigation Total number of acres to be irrigated 188.4

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.
SE 1/4 Sec. 8, T11S, R7E	22.5	SE 1/4, Sec. 10, T11S, R7E	19.9
SW 1/4, Sec. 9, T11S, R7E	51.5		
SE 1/4, Sec. 9, T11S, R7E	44.5		
SW 1/4, Sec. 10, T11S, R7E	50.0		

Attach sheet if more space is needed

N/A

10. Time required to complete construction of water supply system _____ years. Additional time required to complete application of water to the proposed beneficial use N/A years.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication N/A
12. Principal Features of the Proposed Water Supply System.

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

Twelve diversion dams on Beef Creek between the points of diversion as indicated above.

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

Flooded acres held by dikes with gated culverts

C. Works proposed to apply water to beneficial use.

Flooded acres held by dikes with gated culvertsEstimated Total Cost \$ completedAttachments: Attach Form 2 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 HughesI, Marcus I. Dunbar, 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.Signed Marcus I. DunbarSubscribed and sworn to before me this 30th day of September, 19 74

Notary Public (or other qualified officer)

Betty Westlund
BETTY WESTLUND, L/W clerk JJ

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1213-2
MARCUS I DUNBAR DELRICH
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57763 With the following modifications:
 (State)

'VESTED RIGHT' CLAIMED

Date of first receipt of application SEPTEMBER 30 19 74
 Date of return to applicant for correction, amendments or changes required --- 19 ---
 Date of receipt of corrected application --- 19 ---
 Approved NOVEMBER 13 19 74 Recorded in Book 13 Page 123
 WATER RIGHT PERMIT NO. 1213-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1213-2 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 1938 19 ---
2. The equivalent of at least one fifth of the work above specified is ~~not~~ completed ~~on or before~~ --- 19 ---
3. The whole of said work is ~~not~~ completed ~~on or before~~ --- 19 ---
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is COMPLETED 19 ---
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 2.7 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 JUNE 30 19 55; said water to be used during the following described annual period: AS RUN OFF OCCURS

Witness my hand this 27TH day of NOVEMBER 19 74

WATER RIGHTS COMMISSION

By Donald D. Russell
 Chief Engineer, Executive Officer

Certificate of Construction Issued NOVEMBER 27 19 74
 Water License Issued NOVEMBER 27 19 74

NOTE: This Form is supplemental to Form 2, and is to be used when an affidavit pertaining to construction and water use, already completed, is needed.

**AFFIDAVIT OF CONSTRUCTION OF WATER USE
SYSTEM AND APPLICATION OF WATER TO BENEFICIAL USE**

Name of Applicant (Same as Form 2) Marcus I. DunbarPost Office Address Calrichs, State South Dakota

If a Corporation show date and place of incorporation _____

13. Notice of Appropriation (If available)

Not available

Date of Posting _____ Date of Recording _____

Recording Date _____

14. Date of start of construction of water supply system 193815. Date that water was first applied to beneficial use 193916. Name of owner of original water supply system Victor Peterson17. Amount of water originally applied to beneficial use Total flow _____ c. f. s.18. Present Use of Water Diverting water from channel to flood plain.Amount of water now being used Total flow _____ c. f. s.Date that this amount of water was first used 11/1938

19. Chronological History of Water Use

1 and 9 built before 1930, builder unknown

7 and 8 built in 1938 by Robert Swigent

5 and 6 built in 1945 by Victor Peterson.

2, 3 and 4 built in 1948 by Hugh Miller

10, 11 and 12 built by Cannon Construction of Custer, S. Dak.

Dams were constructed as indicated above, and water has been used when available since their construction.

Attach to this Form 2B. any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

STATE OF SOUTH DAKOTA)
) ss.
County of _____)

I, _____, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed Marcus I. Dunbar

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

(Notary Public - or other qualified Officer)

I, the undersigned, do hereby certify that I know about the water use system described above that I have read the foregoing and that the matters therein stated are true.

Hugh Miller
Lloyd Warner

Form 15.

Permit No. 1213-2

Water Diversion No. 2 SOUTH CHEYENNE RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Marcus I. Dunbar

^{Vested Right}
Permit No. 1213-2, issued upon Application No. 1213-2, bearing date of priority of 1938 the holder of

 authorizing the diversion of 2.7 cu. ft. per second of the waters of
Beef Creek County of Fall River, State of South Dakota at
Between a point North 23° 30' West, 2250 feet from the SW Corner, Sec. 9 and a
point North 40° West 2505 feet from the SE Corner, Section 10, all in T11S, R7E
 , for irrigation

purposes, has complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are ^{recognized as} ~~found to be~~ satisfactory
condition for diverting and conveying to the place of intended use 2.7 cu. ft. per second of water.

Date November 27, 1974

By: WATER RIGHTS COMMISSION

DONALD DRISCOLL, Chief Engineer

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1213-2.

(1) WHEREAS, On the 30th day of September A. D. 19 74

Marcus L. Dunbar

made Water Right Application No. 1213-2 for Vested right permit to use 2.7 cubic feet per second of the waters of Reef Creek

County of Fall River, State of South Dakota, for Irrigation

purposes; and

(2) WHEREAS, On the 27th day of November A. D. 19 74

Vested Right Permit No. 1213-2 with a date of priority of 1938

was issued to said applicant for the diversion of said water recognizing for the completion of construction of the water supply system therein described on or before the XXXXXX day of XXXXXX XXXXXX and XX the application to beneficial use of said water on or before the XXXXXX day of XXXXXX XXXXXX

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 2.7 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent,

for irrigating the following land in T11S, R7E

		Acres
Section 8	SE $\frac{1}{4}$	22.5
Section 9	SW $\frac{1}{4}$	51.5
	SE $\frac{1}{4}$	44.5
Section 10	SW $\frac{1}{4}$	50.0
	SE $\frac{1}{4}$	19.9
Total		188.4 Acres

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to _____

Marcus I. Duntar

of Delrichs, S.D.

the holder _____ and owner Vested Right of said permit No. 1213-2 a water right, dating from 1938

to use of 2.7 cubic feet per second of the waters of Deef Creek

in the County of Fall River and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at Between a point North 23° 30' West, 2250 feet from the SW Corner, Section 9, and a point North 40° West 2505 feet from the SE Corner, Section 10, all in T11S, R7E

and conduct to and upon portions of Sections 8, 9, and 10, T11S, R7E more fully described on the face of this License

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 1213-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 27th day of November A. D.
Nineteen Hundred and Seventy-four

WATER RIGHTS COMMISSION

By:

Chief Engineer, Executive Officer DONALD DRISCOLL

This Water License No. 1213-2 is based on a "Vested Right" claim recorded and filed by the Water Rights Commission.

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

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

September 21, 1988

NOTICE

Marcus I. Dunbar
Oelrichs SD 57763

Dear Mr. Dunbar:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 1213-2 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

A staff member from the Division of Water Rights will be contacting you and scheduling an inspection of your water project. If we can answer any questions, please contact us.

Very truly yours,

for *Delvin H. Hatch*
JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352



SOUTH DAKOTA Department of
Water & Natural Resources

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

December 1, 1988

Vested Water Right
Claim No. 1213-2

Marcus I. Dunbar
Oelrichs SD 57763

Dear Mr. Dunbar:

Enclosed is a copy of a letter received from the U.S. Department of Interior, Bureau of Reclamation. The Bureau of Reclamation is opposing those vested water right claims in Pennington, Perkins, Butte and Fall River counties which have never been investigated by the Division of Water Rights. Earlier, you received a letter stating that I was opposing your claim until an investigation can be completed.

After the investigation has been completed, you and the Bureau of Reclamation will be notified as to the date, place and time of the hearing on your vested water right claim. At that time all parties of record will have an opportunity to testify on the validation.

If we can answer any questions, please contact us.

Very truly yours,



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

cc: Bruce Laymon, Bureau of Reclamation





Department of Water & Natural Resources

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

March 23, 1990

1213-2

NOTICE

TO: Marcus I. Dunbar
OELRICHS, SD 57763

FROM: *for Delvin W. Brosz*
JOHN HATCH, CHIEF ENGINEER
Water Rights Division
(605)773-3352

SUBJECT: Low Water Levels in Angostura Reservoir

The water level in Angostura Reservoir on March 6, 1990 was at 3171.1 feet above mean sea level (msl). This is approximately 16 feet below the full elevation of 3187.2 msl. The present estimates are that the Angostura Irrigation District will be able to deliver less than 50% of full service water to project lands during the 1990 irrigation season. We are contacting you to advise you of the actions we have taken due to the low water situation in Angostura Reservoir. Junior Water Right owners above Angostura have been ordered not to use water until Angostura fills.

Since your Water Right No. 1213-2 has a priority date that is senior to the April 11, 1941 priority for Angostura Irrigation Water Right No. 579-2, your permit is not directly affected by the Junior Priority Order. However, I am requesting that all Senior Water Right holders comply with any qualifications and limitations as stated on their water right. With the existing low runoff conditions, we expect to monitor all water rights above Angostura Reservoir.

I want to thank all Water Right Holders above Angostura for the cooperation that we have received up to this time. If you have any questions, please contact Del Brosz (605 773-3352).



UNITED STATES
DEPARTMENT OF THE INTERIOR

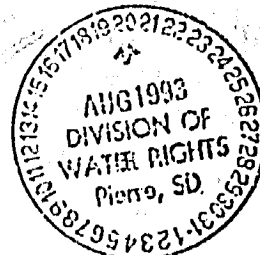
WTR 4.10
BF-430

United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
Belle Fourche Projects Office
P.O. Box 226
Newell, South Dakota 57760-0226

AUG 18 1993



Mr. John Hatch, Chief Engineer
Water Rights Division
South Dakota Department of Water and Natural Resources
523 E. Capitol
Pierre SD 57501-3181

Subject: Vested Water Right Claims in Western South Dakota (Your Letter
Dated April 20, 1993) (Water Rights)

Dear Mr. Hatch,

We have reviewed the vested water right claims located in Perkins, Pennington, Fall River, and Butte Counties as listed in your letter dated April 20, 1993. We have also discussed these rights with contract water users. We appreciate the assistance of your staff in providing documentation of inspections and validation proceedings for specific claims as we requested.

We are satisfied with all of the actions taken by the board. Our intent in opposing validation of the water rights was to assure that all of the rights were reviewed prior to validation. That review has been completed by your staff. Thank you for notifying us of the board's actions and extending the opportunity to reconsider the actions if it would have been deemed necessary. We understand that future notification will be made in advance of board actions.

If we can be of further assistance, please contact Craig Kjar or me at (605) 456-2695.

Sincerely,

Bruce M. Laymon
Project Manager

cc: Mr. Joe Kramer, Manager
Angostura Irrigation District
PO Box 346
Oral SD 57766

Mr. James E. Winterton, Project Manager
Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

1213-2

File No. 1213-2

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Marcus Dunbar

ADDRESS: Dulrichs, SD

COUNTY: Fall River

DATE: 6/6/91

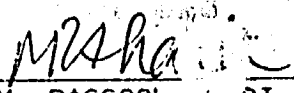
TELEPHONE: 535-6656

RE: Vested Right Claim Inspection

COMMENTS: On June 4, 1991, accompanied by Dave Dunbar, I inspected the land claimed under Vested Right No. 1213-2. Dam No. 2 (see accompanied map) seemed to have been reconstructed recently. According to Dave, it had been repaired early spring of this year. Later that day, Nick Bogner and myself flew over the area. The same dam (No. 2) had washed out on its north side and water was flowing through the opening. This was not visible from the ground level. Mr. Bogner pointed out that this dam had been washed out many times. Another plug (small dam), probably No. 9, had also an opening. The land, however, seemed to be the same as plotted on the map submitted with the original application.

** Recommend validation of Vested Right Claim No. 1213-2
contingent upon repairing the dams.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.


M. RASSOOL, DI
Natural Resources Engineer III
DENR, Water Rights Division

File No. 1213-2

**Water Rights Division -- DENR
File Documentation**

NAME: Dave Dunbar

ADDRESS: Oelrichs SD **COUNTY:** Fall River

SUBJECT: Repair of Spreader dams

DATE: June 16, 1993

On June 4, 1991, Rasool Ahadi, staff engineer, inspected the area described on Vested Water Right Claim No. 1213-2. Mr. Ahadi found that two of the spreader dams had breaches due to heavy runoff. Validation of the vested right was recommended contingent upon the spreader dams being repaired.

Dave Dunbar was contacted concerning the status of the dams. Mr. Dunbar indicated that the dams had not been repaired but would be later this year. The property is now being managed by Mr. Dunbar. I instructed Mr. Dunbar to contact us after the repair work is completed and also informed him about the forfeiture/abandonment provisions of South Dakota law. Mr. Dunbar indicated that we would be contacted upon completion of the repairs.



Ron Duvall, Natural Resources Engineer
Division of Water Rights

File No. 1213-2

FILE DOCUMENTATION
Water Rights Division -- DENR

NAME: Dave Dunbar

ADDRESS: Oelrichs SD

COUNTY: Fall River

DATE: November 23, 1993

RE: Completion of Repair of Spreader Dams

Dave Dunbar called concerning the status of the dams referred to in file documentation by Rassool Ahadi, staff engineer, dated June 6, 1991. Mr. Dunbar stated that the dams which washed out during flooding in 1991 have been repaired. I informed Mr. Dunbar that we could proceed with validation of the vested right claim since the repairs have been completed. The Bureau of Reclamation is a party to validation of Claim No. 1213-2 and will need to receive notice of hearing along with Mr. Dunbar.



Ron Duvall, Natural Resources Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 7, 1994

NOTICE

TO: Marcus Dunbar
Oelrichs SD 57763

Dave Dunbar
Oelrichs SD 57763

Bruce Laymon, Project Manager
Bureau of Reclamation
PO Box 225
Newell SD 57760-0226

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

SUBJECT: Hearing to Consider Validation of Recognized Vested Right Claim No. 1213-2

A Notice of Intent to validate Claim No. 1213-2 was published on June 7 and 14, 1988 in the Hot Springs Star. The Water Rights Division opposed validation of No. 1213-2 for purposes of completing on on-site inspection of the claim. The Bureau of Reclamation also filed a petition to become a party to the validation of the claim. The inspection of Claim No. 1213-2 was completed on June 4, 1991, by Rassool Ahadi, staff engineer. The inspection found the claim developed as specified on the original vested right claim, but two of the spreader dams had been breached due to heavy runoff. On November 23, 1993, Dave Dunbar contacted this office and stated the repairs to the two dams had been completed.

The Water Management Board will consider validation of Claim No. 1213-2 at 10:00 am, April 6, 1994 in the Floyd Matthews Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of the hearing may be later than 10:00 am due to prior agenda items.

Pursuant to the findings of the on-site inspection, validation of Claim No. 1213-2 is recommended for a diversion rate of 2.7 cfs from Beef Creek to irrigate 188.4 acres. Following the hearing, the Board is authorized to 1) validate the claim as recommended by the chief engineer, 2) validate the claim based on evidence presented at the public hearing, or 3) defer validation of the claim. Applicable provisions of the published notice of intent to validate Claim No. 1213-2 will still apply at this hearing. A copy of the June 7 & 14, 1988, publication is available upon request.

This hearing is an adversary proceeding. You have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 7, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 7, 1994, regarding Hearing to Consider Validation of Recognized Vested Right Claim No. 1213-2, addressed as stated below:

Marcus Dunbar, Oelrichs, SD 57763.

Dave Dunbar, Oelrichs, SD 57763.

Bruce Laymon, Project Manager, Bureau of Reclamation, P.O. Box 225, Newell, SD 57760-0226.

Copy Sent Inter-office to:

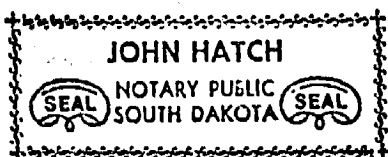
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of March, 1994.



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

SOUTH DAKOTA

VESTED WATER RIGHT NO. 1213-2 FOR IRRIGATION

Date of Receipt of Claim September 30, 1974.

Date of Validation April 6, 1994.

The Water Management Board validated Vested Water Right Claim No. 1213-1 for irrigation purposes for Marcus Dunbar, Oelrichs SD 57763 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1213-2 appropriates 2.7 cubic feet of water per second from Beef Creek located between points in the NE 1/4 SE 1/4 Section 8 and the NW 1/4 SE 1/4 Section 10; all in T11S-R7E to irrigate 188.4 acres. The lands irrigated are located in the SE 1/4 Section 8, S 1/2 Section 9, S 1/2 Section 10; all in T11S-R7E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: January 1 - December 31.
3. The priority date of the Vested Water Right is January 1, 1938.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: John Hatch
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

NOV 14

date



1213-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOV 14 1994

Marcus Dunbar
Oelrichs SD 57763

Dear Mr. Dunbar:

The Water Management Board has validated the enclosed Vested Water Right No. 1213-2. This validation gives legal status to the claim and is the final document for your vested right.

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

Very truly yours,

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

enclosure

c: Craig Kjar
Bureau of Reclamation



1213-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 15, 1995

Marcus Dunbar
HC 46 Box A48
Oelrichs, SD 57763

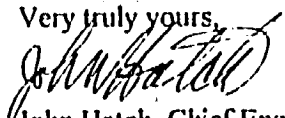
Dear Mr. Dunbar,

This letter is in response to a complaint regarding multiple diversion dams along Beef Creek located between NE 1/4 SE 1/4 Section 8 and the NW 1/4 SE 1/4 Section 10 all in T11S-7E. The dams are used to flood irrigate 188.4 acres. I am writing to clarify what maintenance and repair work Vested Water Right No. 1213-2 authorizes you to perform on these dams.

In accordance with your application and Water License No. 1213-2, twelve dams can be maintained between the above points on Beef Creek. These dams are not authorized for storage of water. During the inspection you mentioned putting gates on the road culverts. The use of the road as a dam was not included as part of the vested water right claim; therefore, they cannot be gated under this vested water right. The vested water right does not allow the dam sizes to be increased. However, the dams can and should be repaired and maintained. Maintenance of the dams can include putting in culverts to preserve the structural integrity of the dams. Dams that have been modified to divert more water than requested in the vested right claim need to be returned to the original size. In the case of these dams, it is not only the dam height but the length of the dam that must remain the same as it historically was in accordance with the vested water right claim.

If you have any questions, please contact DelRon Peters at (605)394-2229.

Very truly yours,


John Hatch, Chief Engineer
Water Rights Division
(605)773-3352

c: David Dunbar
Nick Bogner
DelRon Peters

L

TO: FILE DOC
 DATE: APRIL 27, 1995
 SUBJECT: MIKE AND NICK BOGNER COMPLAINT ON DAVID DUNBAR DAMS

The dams in question are located in Sections 8, 9, and 10 all in T11S-R7E.

I met with Mike and Nick Bogner to explain to them ~~the~~ what exactly water license 1213-2 covered. They (Mike and Nick Bogner) held that there were no recognizable dams located in section 9 that remained unbreached. In addition, they said that in the past 20 years lands were not irrigated except during flood conditions.

I informed them that water license 1213-2 allowed diversion of water from Beef Creek between points in the NE 1/4 SE 1/4 Section 8 and the NW 1/4 SE 1/4 Section 10; all in T11S-7E to irrigate 188.4 acres. They asked if the acres weren't irrigated for over 20 years then how could they legally go in and replace and repair dams at this point in time. Nick Bogner assured me that he had flown over the area many times on the way to his other place and had seen no dam in working order. I informed them that they did not necessarily have to have all of the dams in working order but they did have the legal obligation to irrigate the lands when they could within a three year period. I also informed them that the major limiting factor were the lands irrigated and that water needed to be available. I told them that they could not build dams that forced irrigation on new acres. They argued that lands were not irrigated by diverting from the creek and only flood conditions irrigated these lands. Now "all of a sudden" repairs of dams that have been breached for several years were being repaired, increased in size and gates were being installed. He also stated that the dam replaced in 1981 was washed out in 1982 and not replaced until just lately.

I then went out to look at the project with David Dunbar. First we went to Dam #1 in section 8. The spillway was eroding but under flooding conditions it may still divert water onto the land. Dam #2 (as numbered in the aerial photo) was gone. Mr. Dunbar said that he replaced this dam in 1981 with a dam upstream. The upstream dam was in excellent condition. Dam #3 was a plug in the creek about 2' above the land surface. It was in good condition. Dam #4 was also a plug in the creek about 2' above the land surface. It was also in good condition. Dam #5 was a plug in the creek. The spillway has been eating around the end causing water to bypass on the south side. Dam #6 was also breached on the south side but it may still divert water out of the creek under flooding onto lands to the North. Dam #7 was fixed in 1994 and two, 30" tubes were placed and are not currently gated. According to Mr. Dunbar dam #8 washed out in 1991 and repaired in 1993. It is in good condition. Dam #9 is gone. Dam #10 is intact and able to spread water. Dams 11 & 12 are breached at the spillway but the dugouts are still used for stock watering.

aerial photo - see map file

David Dunbar

TO: FILE DOC

DATE: APRIL 27, 1995

SUBJECT: MIKE AND NICK BOGNER COMPLAINT ON DAVID DUNBAR DAMS

The dams in question are located in Sections 8, 9, and 10 all in T11S-R7E.

I met with Mike and Nick Bogner to explain to them ~~the~~ what exactly water license 1213-2 covered. They (Mike and Nick Bogner) held that there were no recognizable dams located in section 9 that remained unbreached. In addition, they said that in the past 20 years lands were not irrigated except during flood conditions.

I informed them that water license 1213-2 allowed diversion of water from Beef Creek between points in the NE 1/4 SE 1/4 Section 8 and the NW 1/4 SE 1/4 Section 10; all in T11S-7E to irrigate 188.4 acres. They asked if the acres weren't irrigated for over 20 years then how could they legally go in and replace and repair dams at this point in time. Nick Bogner assured me that he had flown over the area many times on the way to his other place and had seen no dam in working order. I informed them that they did not necessarily have to have all of the dams in working order but they did have the legal obligation to irrigate the lands when they could within a three year period. I also informed them that the major limiting factor were the lands irrigated and that water needed to be available. I told them that they could not build dams that forced irrigation on new acres. They argued that lands were not irrigated by diverting from the creek and only flood conditions irrigated these lands. Now "all of a sudden" repairs of dams that have been breached for several years were being repaired, increased in size and gates were being installed. He also stated that the dam replaced in 1981 was washed out in 1982 and not replaced until just lately.

I then went out to look at the project with David Dunbar. First we went to Dam #1 in section 8. The spillway was eroding but under flooding conditions it may still divert water onto the land. Dam #2 (as numbered in the aerial photo) was gone. Mr. Dunbar said that he replaced this dam in 1981 with a dam upstream. The upstream dam was in excellent condition. Dam #3 was a plug in the creek about 2' above the land surface. It was in good condition. Dam #4 was also a plug in the creek about 2' above the land surface. It was also in good condition. Dam #5 was a plug in the creek. The spillway has been eating around the end causing water to bypass on the south side. Dam #6 was also breached on the south side but it may still divert water out of the creek under flooding onto lands to the North. Dam #7 was fixed in 1994 and two, 30" tubes were placed and are not currently gated. According to Mr. Dunbar dam #8 washed out in 1991 and repaired in 1993. It is in good condition. Dam #9 is gone. Dam #10 is intact and able to spread water. Dams 11 & 12 are breached at the spillway but the dugouts are still used for stock watering.

aerial photo - see map file

David Dunbar

1213-2

NORTH

90C

1.7 5.3 5.6 5.6 5.5 5.6 5.5 5.5 5.7 5.5 5.6

6.3 7.7 8.5 8.3 8.5

9

fixed with tube

fill

5.10 19.3

Probe

spiral out

on top

still there
spiral out

11-7

90C

39.0

37.1

19.5

20.3

20.6

20.9

21.0

21.1

18.7 18.7 18.9 19.1 19.0 19.2 18.6 18.7

90C

13.2 12.9 13.0 12.9 13.0 12.8 12.8 12.8

10.1

10

17.1

Gone

spreads
out across

11-7

90C

12.6 12.6 12.5 12.6 12.8 12.9

14.7 14.8 14.9 14.6 14.8

11.9

11.7

11.7

11.6

11.6

NORTH

90C

7.7 5.3 5.6 5.6 5.5 5.6 5.5 5.5 5.7 5.5 5.6

6.3 7.7 8.5 8.3 8.5

9

11-7

90C

39.0

37.1

19.5

20.3

20.6

20.9

21.0

21.1

18.7 18.7 18.9 19.1 19.0 19.2 18.6 18.7

90C

13.2 12.9 13.0 12.9 13.0 12.8 12.8 12.8

70.1

10

17.1

11-7

90C

12.6 12.6 12.5 12.6 12.8 12.9

14.7 14.8 14.9 14.6 14.8

11.9

11.7

11.7

11.5

10.9

V/A

App. # 1213-2

