

ter Right Number 1650-2

1. Considered February 1, 1979
2. Name of Applicant Waterbury Bros.
3. Post Office Address Burke, S.D. 15/20/30/31-96-71
4. Amount of water claimed 25.81
5. Source of water supply Porca Creek & 5 Dams
6. Water to be used for Irrigation
- Acres to irrigate 1,807.50
7. Water to be diverted and used in Gregory County
about 1 W Miles of HERRICK
8. Proof of Publication Received 1-26-79
Not received _____
9. Application Approved 2-1-79
Subject to Low Flow By-Pass
Not approved _____
Action deferred _____

10. Remarks:

No. 1650-2*Application
originally received*Map No. 1414-2Water Division No. 2PONCA CREEK

District

September 7, 1977

(Blanks to be filled by the Engineer for the W. N. C.)

APPLICATION FOR PERMIT

8:55 am

To Appropriate Water within the State of South Dakota

(NOTE: Draw a line through items not applicable)

1. Name of Applicant Waterbury Bros., a partnership2. Postoffice address Burke, State South Dakota 57523

If a corporation show date and place of incorporation _____

3. Method of accomplishing work (contract, employment of others, or by direct labor) _____

4. Name of diversion work Waterbury Bros. Irrigation Project5. Amount of water claimed (cubic feet per second) 25.816. Source of water supply Ponca Creek Watershed Area7. Location of point of diversion 5 dams, #1-NW 1/4 E 1/4 Sec. 30; #2-NE 1/4 NE 1/4 Sec. 31, existing;#3-S 1/2 SW 1/4 Sec. 20; #4-SW 1/4 NE 1/4 Sec. 20; #5-SW 1/4 SW 1/4 Sec. 15, T96N, R71Wa) but dam #1 are existing _____ County Gregory8. Annual period of periods during which water is to be used Normal irrigation season, and such additional

times as water is available to be removed from Ponca Creek to fill the dams

9. Use to be made of water (irrigation, industrial, municipal, commercial, recreation, etc.) 1,807.5 acres

10. For irrigation use _____ 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

11. 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.12. Choice of newspaper for Notice of Intent to appropriate Water publication Burke Gazette, Burke, SD

13. Principal Features of the Proposed Water Supply System.

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

water will be pumped from Ponca Creek into storage dams for irrigation

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

pipe

C. Works proposed to apply water to beneficial use.

center pivot systemsEstimated Total Cost \$ 500,000.00

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 HughesI, Geo. Waterbury

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

Subscribed and sworn to before me this

15th

day of

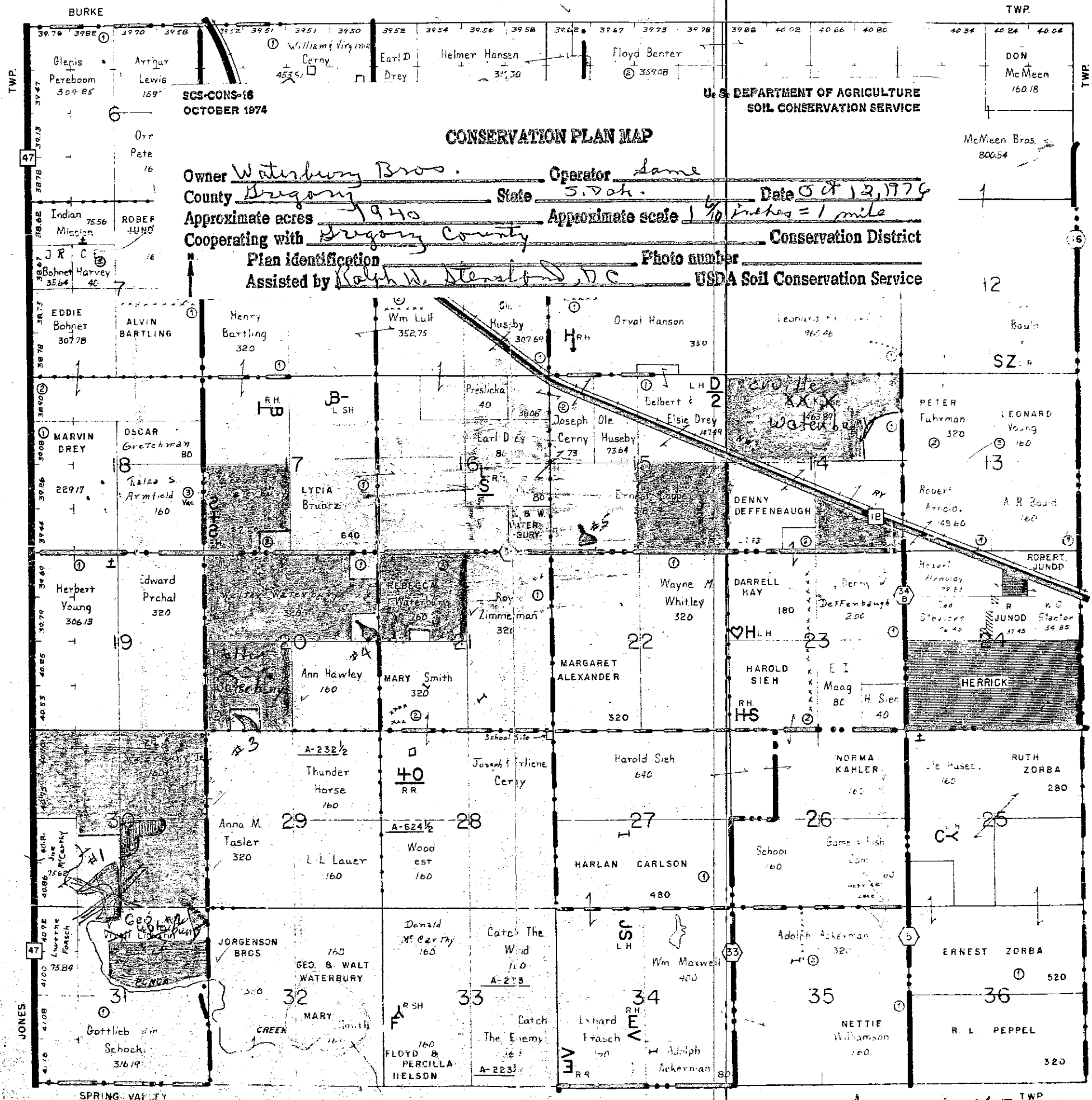
December1978Notary Public (or other qualified officer)Water Rights Specialist

UNION

TOWNSHIP 96 N

RANGE 71 W

CODE UN



MAP No. 1414-2 APPL No 1650-2

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1650-2
WATERBURY BROS. BURKE
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57523 With the following modifications:
 (State)

Low flows as needed for downstream domestic use, including livestock watering must be by-passed.

Date of first receipt of application SEPTEMBER 7 1976
 Date of return to applicant for correction, amendments or changes required OCTOBER 2, 1976 & JUNE 23 1976
 Date of receipt of corrected application JANUARY 12 1979
 Approved FEBRUARY 1 1979 Recorded in Book 20 Page 115

WATER RIGHT PERMIT NO. 1650-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1650-2 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 JANUARY 12 1979
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before AUGUST 1 1981
3. The whole of said work is to be completed on or before FEBRUARY 1 1984
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is FEBRUARY 1 1988
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 25.81 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 use served, and if for the 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 is actually and beneficially applied for irrigation on or before FEBRUARY 1 1988 said water to be used during the following described annual period: APRIL THRU OCTOBER & WHEN AVAILABLE

Witness my hand this 6th day of FEBRUARY 1979

WATER RIGHTS COMMISSION

By:

John Katch
 Chief Engineer, Executive Officer

Certificate of Construction Issued _____ 19 ____

Water License Issued _____ 19 ____

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

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.

1

Height = 45 FT
Water Depth = 40 FT
Surface Area = 300 ACRES
Storage Cap = 600 ACRES FT³ WATER

Waterbury Bros

Signature of Applicant
By John Waterbury

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

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

D. Well Information or Estimates

- (1) Drill Hole, Diameter _____, Depth _____
- (2) Casing, Type wood, concrete, steel, etc. Diameter _____ Thickness _____
- (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 Dam

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.

3

Height = 20 FT

Water Depth = 18 FT

Surface Area = 15 Acres

Storage Capacity = 120 Acre FT

Walter Bros. Inc.
John Walter
 Signature of Applicant

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

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.

4

Height = 15 FT

Water Depth = 12 FT

Surface Area = 12 ACRES

Storage Capacity = 12 ACRES FT

Walden Bros

Signature of Applicant

By John Walden

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

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 dimension: _____, 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.

5

Height = 20 FT

Water Depth = 18 FT

Surface Area = 20 Acres

Water Storage = 180 acre ft

Waterbury Bros

Signature of Applicant

By John Waterbury

CONSERVATION
COMMISSION
FORM W1 11

STATE CONSERVATION COMMISSION
SUPPORTING INFORMATION

FOR APPROPRIATION OF GROUND WATER IN ACCORDANCE
WITH SDCL 46-6-3 AS AMENDED
(THIS FORM REQUIRED FOR PROPOSED GROUND WATER IRRIGATION ONLY)

RECEIVED

JAN 10 1979

Dakota
Division of Conservation

NAME Waterbury Brothers

ADDRESS Burke, South Dakota 57523

COUNTY Gregory

LEGAL DESCRIPTION

1. WELL LOCATION None
2. LOCATION OF AREA TO BE IRRIGATED NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ of sec. 14; N $\frac{1}{2}$ SE $\frac{1}{4}$ of sec. 30; NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 31; SW $\frac{1}{4}$ of sec. 17; N $\frac{1}{2}$ SW $\frac{1}{4}$ of sec. 20; S $\frac{1}{2}$ of sec. 15; NW $\frac{1}{4}$ of sec. 21; NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ of sec. 32 all in T. 96N - R. 71W.
- TYPE OF IRRIGATION

3. GRAVITY None TOWLINE None CENTER PIVOT X GUN X

4. CROPS TO BE IRRIGATED corn, alfalfa, small grain.

WATER QUALITY

Water is from Ponca Creek.

5. SAMPLE NUMBER 78-1118

6. SALINITY (EC X 10⁶) 1050

7. SODIUM (SAR) 0.70 Adjusted SAR = 1.70

8. RESIDUAL SODIUM CARBONATE (meq/l.) 00

I do hereby certify that a chemical analysis of the ground water representative of that used to irrigate shall be acquired from South Dakota State University and: the soils information has been acquired from Gregory County Conservation District, County Extension office or Soil Conservation Service.

and: that the legal description for the location of the well and land to be irrigated is true and correct.

APPLICANT'S SIGNATURE

SUBSCRIBED AND SHOWN BEFORE ME THIS
8th DAY OF December 19 78.

Ernest E. Poggow
NOTARY PUBLIC

Robert A. Poggow

APPROVED/REAPPROVED

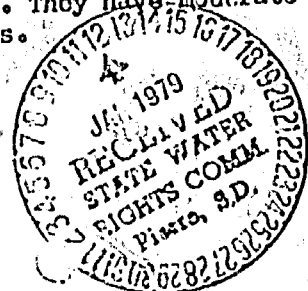
(SOILS INFORMATION ON REVERSE SIDE)

INTERPRETIVE GROUPING	LAND USES AND SOILS INFORMATION ON YOUR OPERATING UNIT
	Waterbury Brothers page 1 of 2
23C 8-3 23C 15-1	Doger VIc7-Deep, sandy and very sandy soils on gently undulating to rolling (2 to 15%) uplands. These soils have very severe wind erosion hazards. They are not suited for cultivation.
21B 8-2	Holt Anselmo Comp. IVe8-Deep and moderately deep, moderately sandy soils on undulating or sloping (6 to 9%) uplands, and eroded soils on gently undulating or gently sloping (2 to 6%) uplands. These soils have severe wind and moderate water erosion hazards.
8C 8-1 8C 4-2	Anselmo Ronso FSL IIIe8-Deep and moderately deep, moderately sandy soils on gently undulating (2 to 6%) uplands and eroded phases of these soils on nearly level (0 to 2%) uplands. They have a severe wind erosion hazard.
1B 4-2 2C 4-2	Tuthill Loam IIe1-Deep and moderately deep, loamy soils on gently sloping (2 to 6%) uplands. They have moderate wind and water erosion hazards.
2C 4-2 2C 8-2	Reliance SCL IIe1- (same as above)
18KG 1-1	Kolls C. Vw4-Very poorly drained and poorly drained loamy and clayey soils in depressions. These soils are ponded or have water tables at or near the surface. More than 50% of the vegetation is suitable for grazing.
21B 15-1	Holt-tassel comp. VIe6-Deep and moderately deep, moderately sandy soils on rolling to hilly (9 to 25%) uplands and eroded soils on undulating (6 to 9%) uplands. These soils have severe wind and water erosion hazards. They are not suited for cultivation.
8FG 8FH 1-1	Wann FSL IIIw5-Deep, moderately sandy, somewhat poorly drained soils on flood plains and in slight depressions. These soils have seasonal water tables. Tillage and choice of crops may be affected by wetness. These soils have moderate to severe wind erosion hazard.
17B- 15-1	Boyd C VIc4-Deep and moderately deep, clayey soils on rolling to hilly (9 to 25%) uplands. Excess runoff and severe water erosion hazards make these soils unsuited for cultivation.
16B 4-2	Millboro SCL IIIe4-Deep and moderately deep, clayey soils on gently sloping (2 to 6%) uplands. The clayey texture retards root growth and water intake. They have moderate to severe wind and water erosion hazards.

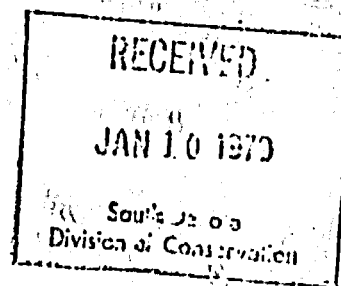
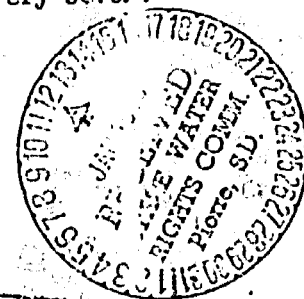
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South Dakota
Division of Conservation



INTERPRETIVE GROUPING	LAND USES AND SOILS INFORMATION ON YOUR OPERATING UNIT
	Waterbury Brothers page 2
16B 8-2	Millboro SCL IVe4-Deep and moderately deep, clayey soils on sloping (6 to 9%) uplands. The clayey texture retards root growth and water intake. These soils have severe water and moderate to severe wind erosion hazards.
1B 4-2	Tuthill Loam IIe1-Deep and moderately deep, loamy soils on gently sloping (2 to 6%) uplands. They have moderate wind and erosion hazards.
1E 1-1	Mobridge SL IIc3-Deep, loamy, well to moderately well drained soils in upland swales that receive beneficial moisture. However, moisture is still inadequate in most years.
25E 8-2	Meadin VIsh-Soils with 6 to 20 inches of loamy material over sand and gravel on nearly level to hilly (0 to 25%) slopes. The porous substrata limits rooting and water storage capacity. These soils are not suited for cultivation.
14E 4-1	O'Neill L. IIIe6-Soils with 20 to 40 inches of loamy material over sand and gravel on gently sloping (2 to 6%) uplands. The porous substrata limits water storage capacity and rooting depths. These soils have moderate wind and water erosion hazards.
13 1-1	Jansen SC IIIs2-Soils with 20 to 40 inches of loamy material over sand and gravel on nearly level (0 to 2%) uplands. The porous substrata limits water storage capacity and rooting depth. These soils have a moderate wind erosion hazard.
9C 8-2	Doger IVe9-Deep, sandy soils on nearly level and gently undulating (0 to 6%) uplands. They have very severe wind erosion hazards.



REPORT OF ANALYSIS
Water Quality Laboratory
Water Resources Research Institute
South Dakota State University
Brookings, South Dakota 57007

Submitted by: University of
 Address: o/o John A. Loomis
Attn: 1
Furke, SD 57523

Date Rec'd: December 23, 1972
 Sample No: 72-1118
 Identification: Iron Creek
N.E., Sec. 30, T. 26N, R. 71E

WATER ANALYSIS

Calcium (Ca)	167	ppm*	8.35	me/l**
Magnesium (Mg)	34	ppm	2.79	me/l
Sodium (Na)	38	ppm	1.65	me/l
Potassium (K)	13	ppm	0.34	me/l
Sulfate (SO ₄)	193	ppm	4.01	me/l
Nitrate (as N)		ppm		me/l
Chloride (Cl)	8	ppm	0.01	me/l
Bicarbonate (HCO ₃)	429	ppm	7.04	me/l
Carbonate (CO ₃)		ppm		me/l
Iron (Fe)		ppm		me/l
Fluoride (F)		ppm		me/l
Hardness (EDTA as CaCO ₃)		ppm		g.p.g.**
Alkalinity (Methyl Orange)	352	ppm (as CaCO ₃)		
Alkalinity (Phenolphthalein)	0	ppm (as CaCO ₃)		
Electrical Conductivity	1050	micromhos per cm at 25° C.		
Sodium Adsorption Ratio	0.79	Adjusted SAR	1.90	
Sodium	12.60	% of cations		
Residual sodium carbonate	0.00	me/l		
pH	7.53			
Others:				

*ppm=parts per million
 **me/l=millequivalents per liter

***g.p.g.=grains per gallon

COMMENTS: Total cations 13.13 me/l
 Total anions 11.26 me/l

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JAN 13 1973

South Dakota
 Division of Conservation

By: Shirley Litten

Service Performed	Amount Due
Iron Creek Analysis	15.00

Make checks payable to: Water Quality Laboratory

Cut along dotted line and return the lower portion with payment

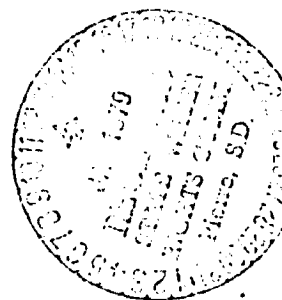
Sample No. 72-1118

Amount Enclosed \$

Signed

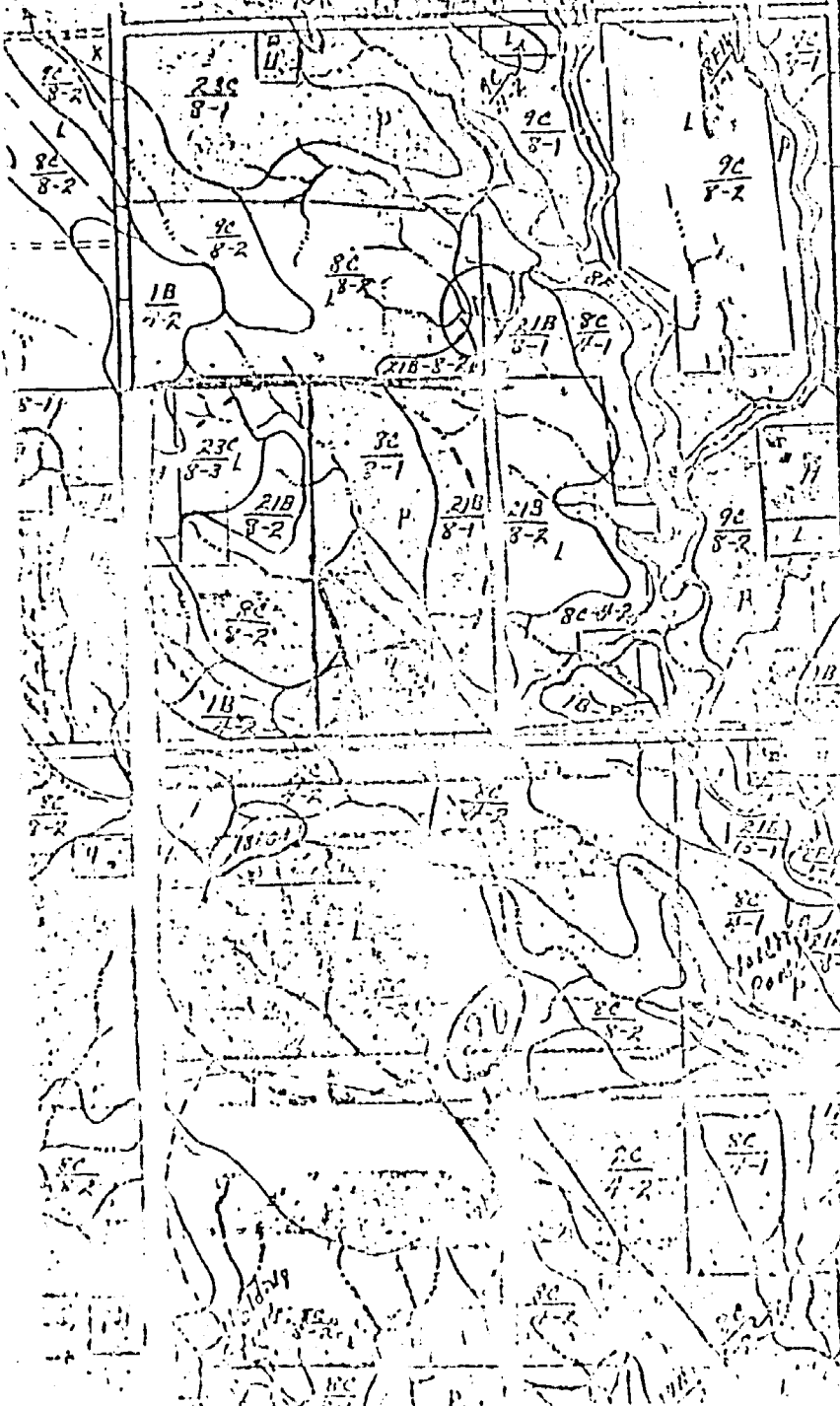
U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Waterbury Brothers Operator same
County Gregory State South Dakota
Soil survey sheet (s) or code nos. _____ Approximate scale 1" = 1 mile
Prepared by U. S. Department of Agriculture, Soil Conservation Service cooperating
with Gregory County Conservation District & _____

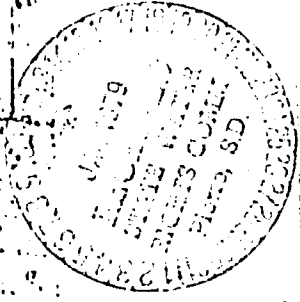


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NZ-16-99

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BWZ-16-20



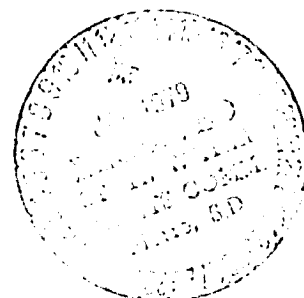
SOIL MAP

1-2186

Owner _____ Operator _____
 County _____ State _____
 Soil survey sheet(s) or code No.(s) _____ Approx. scale _____
 PREPARED BY U.S. DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE
 COOPERATING WITH _____ CONSERVATION DISTRICT.



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 Division of Conservation



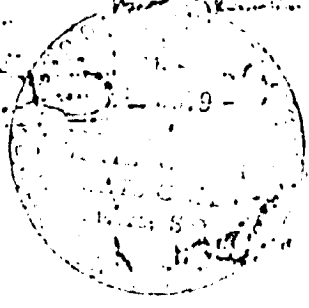
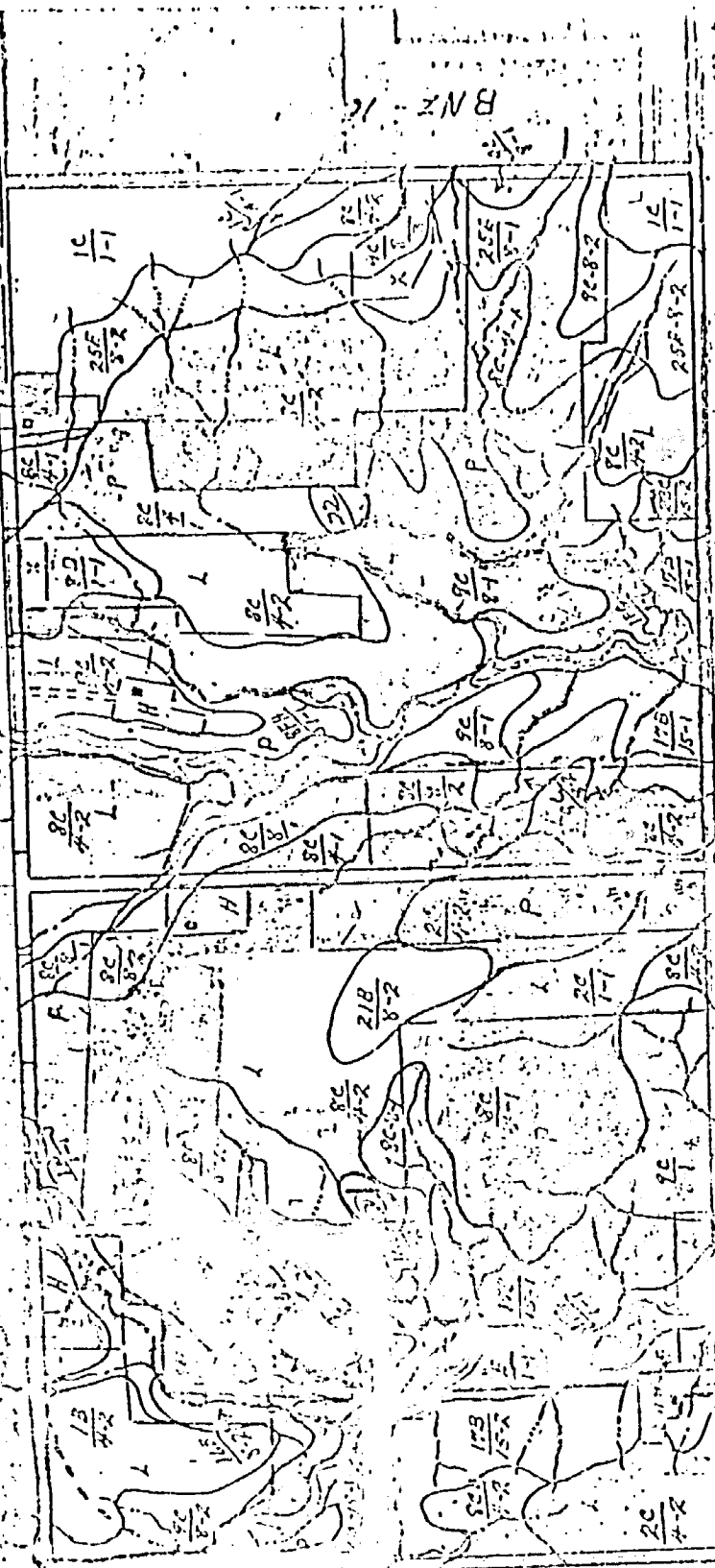
So. 30431

BNZ-16-23

BNZ-16

BNZ-16

BNZ-16



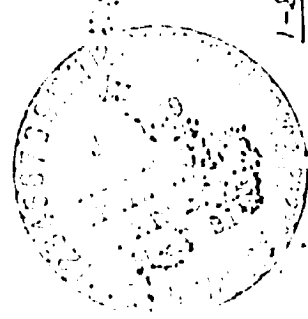


2017

8117-16-94

BNZ-1026

BN 2-264

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REC-MGMT/FORM
12/77
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CONDITIONAL

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF CONSERVATION



NAME OF APPLICANT Waterbury Bros. - John Waterbury, Burke, SD

SOIL RESTRICTIONS:

THE SOIL(S) LISTED BELOW CANNOT BE IRRIGATED:

- Sec. 15 - $\frac{25}{8-2} E$ - Headin - shallow to gravel & those excessive slopes over 9%
- Sec. 30 & 31 - $\frac{17B}{15-2}$ - Boyd - Clayey soils over unweathered shale; excessive slope.
- Sec. 20 - $\frac{17B}{15-1}$ - Boyd - Clayey soils over unweathered shale; excessive slope.
- $\frac{18 KG}{1-1}$ - Kolls - Depressional excessive c soils
- $\frac{21 B}{15-1}$ - Holt Tassel - sandy soils greater than 9%
- Sec. 14 - $\frac{23 c}{15-1}$ - Doger - Those sandy soils over 9%

RECOMMENDED MANAGEMENT:

1. Water should not be applied more than 2 or 3 times during the irrigation season. Pertains to Sec. 30 and 31.
2. Each uninterrupted application (one rotation of center pivot) should be of at least 2-3 inches of water. Pertains to Sec. 30 and 31
3. (x) Yes () No Surface drainage suggested on any area that tends to pond. water.
4. () Yes () No Subsurface drainage suggested on _____.
5. (x) Deep tillage (for the purpose of aiding movement of water through dense subsoils. COMMENTS: Pertains to heavy soils, mostly in Section 30 and 31
6. () Heavy fall application of irrigation water.
7. Type of irrigation system recommended for use on this application refer to condition sheet.

GENERAL COMMENTS:

See conditions sheet.attached.

Recommendations are the best we can do with soil survey maps. Actual field conditions, such as slope breaks and irregular field pattern will dictate the type of system and use and the areas to be kept in grass. Soil conservation practices need be kept in mind under irrigated conditions to enhance rather than harm the capability of each acre.

Copy to applicant
Copy to Water Rights
Copy on File

Waterbury Bros. Condition Sheet

<u>Legal</u>	<u>Soils</u>	<u>Description</u>	<u>Crop</u>	<u>Spec. Tillage</u>	<u>Spec. System</u>
SE $\frac{1}{4}$ -30	Millboro	Clayey 6-9% slope Irreg. field pattern	grass		yes- gun or field- hopper
NE $\frac{1}{4}$ -31	$\frac{16 B}{8-2}$				
NW $\frac{1}{4}$ -30	Millboro $\frac{16 B}{4-2}$	Clayey 2-6% slope Irreg. field pattern	grass or alfalfa	yes	yes-gun or field- hopper
NE $\frac{1}{4}$ -30	50%-Mill 50%-Tuthill	slow intake good intake	alfalfa regular	yes	swing pivot, sandy part will require more Irrigation applications
NW $\frac{1}{4}$ -21	-H-o-n-e-	- - - - -	- - - - -	- - - - -	- - - - -
NE $\frac{1}{4}$ -20	Holt-Tassel $\frac{21 B}{15-1}$	shallow soil 6-25% slope Irreg field pattern	slopes over 9% keep in grass	--	yes- gun or field- hopper
W $\frac{1}{4}$ -20	Kolls $\frac{10 KB}{1-1}$	Small depres- sional Heavy clays	permanent	drained or concentrated	modified pivot
SW $\frac{1}{4}$ -17	NONE	- - -	- - - -	- - - -	swing pivot to farmstead
SE $\frac{1}{4}$ 15	Meadin $\frac{25 E}{3-2}$	shallow to gravel 0-25%	permanent on over 9%	- - - -	Swing pivot to steep area
N $\frac{1}{2}$ -14	Doger $\frac{23C}{15-1}$	very sandy 2-15% slope	permanent on over 9%	- - -	swing pivot to steep area
NE $\frac{1}{4}$ - 14	None	- - - -	- - - -	- - - -	- - - -



9. For irrigation use:

LAND DESCRIPTION:

LAND DESCRIPTION:	NO. ACRES IRR.:
NE $\frac{1}{4}$ of Section 31-96-71	80 acres
SE $\frac{1}{4}$ of Section 30-96-71	160 acres
NE $\frac{1}{4}$ of Section 30-96-71	160 acres
NW $\frac{1}{4}$ of Section 30-96-71	160 acres
N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30-96-71	20 acres
SW $\frac{1}{4}$ of Section 17-96-71	147.5 acres
NW $\frac{1}{4}$ of Section 20-96-71	160 acres
NE $\frac{1}{4}$ of Section 20-96-71	140 acres
SW $\frac{1}{4}$ of Section 20-96-71	140 acres
NW $\frac{1}{4}$ of Section 21-96-71	150 acres
SE $\frac{1}{4}$ of Section 15-96-71	160 acres
NW $\frac{1}{4}$ of Section 14-96-71	160 acres
NE $\frac{1}{4}$ of Section 14-96-71	130 acres
SE $\frac{1}{4}$ of Section 14-96-71	40 acres

TOTAL

1,807.5 acres

Form 8 - Proof of Publication - Notice of
Intent to Appropriate Water

No. _____

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) ss.
County Gregory)

I, C. J. Fahrenbacher hereby
certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the Burke Gazette

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 Burke

County of Gregory and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

Wednesday, Jan. 17, 1979

Wednesday, Jan. 24, 1979

C. J. Fahrenbacher
(Signature)

(Publisher)
(Title)

Jan 24, 1979
(Date Signed)



NO. 1650-2
NOTICE OF HEARING ON
APPLICATION TO
APPROPRIATE WATER
PIERRE, SOUTH DAKOTA
57501
JANUARY 12, 1979

Notice is hereby given Waterbury Brothers whose post office address is Burke, South Dakota, has made an application in accordance with the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-14; 46-2-9 thru 46-2-11, 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22; 46-5-41, and Commission Rules ARSD 52:01:01:01 thru 52:01:01:13, for a permit to appropriate for beneficial use 25.81 cubic feet of water per second of time from dams through the Waterbury Bros. Irrigation Project, the point(s) of diversion of which are to be located Dam #1; NW¼ SE¼, Section 30, #2-NE¼ NE¼, Section 31, #3-S¼ SW¼ Section 20; #4-SW¼ NE¼, Section 20, #5-SW¼ SW¼ Section 15, (all but dam #1 existing) Twp. 96N, Range 71W. Said water to be used for the purpose of providing irrigation on portions of the following described land: N¼ and SE¼, Section 14; SE¼, Section 15; NW¼, Section 21; SW¼ Section 17; N¼ and SW¼ Section 20; Section 30 and N¼, Section 31 all in T96N. R71W.

This Application No. 1650-2 will be considered by the Water Rights Commission at SDEA Auditorium, 411 E. Capitol, Pierre, SD upon the 31st day of January, 1979, at 10 A.M. The Commission is authorized to make a determination on this application at the hearing. All interested persons may appear and be heard. Any person who may be affected by a Commission decision who desired to present evidence or cross-examine witnesses according to SDCL 1-26 may notify the Commission in writing prior to the hearing or orally at the hearing.

This hearing is an adversary proceeding. Any person 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 at the hearing. Decisions of the Commission may be appealed to the Courts as provided by law.

WATER RIGHTS COMMISSION
BETTY WESTLUND
Water Rights Specialist

Jan. 17-24

(66)

No. 1650-2

Publish first publication, on or before January 17, 1979

NOTICE OF HEARING ON
APPLICATION TO APPROPRIATE WATER

Pierre, South Dakota 57501

January 12, 1979

Notice is hereby given Waterbury Brothers whose post office

address is Burke, South Dakota, has made an application in accordance with the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-14; 46-2-9 thru 46-2-11, 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-41, and Commission Rules ARSD 52:01:01:01 thru 52:01:01:13, for a permit to appropriate for beneficial use 25.81 cubic feet of

water per second of time from ~~xxx~~ dams through the Waterbury Bros. Irrigation/Project, the point(s) of diversion of which ~~xx~~(are) to be located

~~xxxxxx~~ Dam #1; NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30, #2-NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 31, #3- S $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20;

#4-SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, #5-SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, (all but dam #1 are existing)

~~xxxxxxxxxx~~ , Twp. 96N, Range 71W. Said water to be used for the purpose of providing irrigation on portions of the following described land:

N $\frac{1}{2}$ and SE $\frac{1}{4}$, Section 14; SE $\frac{1}{4}$, Section 15; NW $\frac{1}{4}$, Section 21; SW $\frac{1}{4}$ Section 17; N $\frac{1}{2}$ and SW $\frac{1}{4}$

Section 20; Section 30 and N $\frac{1}{2}$, Section 31 all in T96N, R71W

This Application No. 1650-2 will be considered by the Water Rights Commission at SDEA Auditorium, 411 E. Capitol, Pierre, SD upon the 31st day of January, 1979

at 10 AM. The Commission is authorized to make a determination on this application at the hearing. All interested persons may appear and be heard. Any person who may be affected by a Commission decision who desires to present evidence or cross-examine witnesses according to SDCL 1-26 may notify the Commission in writing prior to the hearing or orally at the hearing.

This hearing is an adversary proceeding. Any person 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 at the hearing. Decisions of the Commission may be appealed to the Courts as provided by law.

WATER RIGHTS COMMISSION

BETTY WESTLUND
Water Rights Specialist

cc: Waterbury Brothers, Burke, SD 57523



Waterbury Bros
Burke
S.D. 57523

Department of Natural Resource Development
Water Rights Commission
Joe Foss Building
Pierre, South Dakota 57501

ATTN: Betty Westlund

Subject: Your letter dated June 28, 1978

Dear Ms Westlund

We do not intend to withdraw
our application for Water
Rights on the Porcha Creek water
flowage. We have communicated
with your office by telephone
and through our State Representative
Harold Sieh. We were told that
state engineers would be
sent to survey the project.

and help decide either the feasibility of the project proposal or an alternative water storage system. If the law does not provide for this to be accomplished by state engineers please inform us and we will arrange for a private engineering firm to complete the work needed. We would also like a list of papers needed to complete the application if it is to be done by a private firm

Thank you
John Waterbury



Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501
Phone 605/773-3151

October 31, 1978

John Waterbury
Waterbury Bros.
Surke, SD 57523

Dear Mr. Waterbury:

Regarding our phone conversation about your application for permit to appropriate water for irrigation.

We have located your map for irrigating the 251.4 acres. A penciled partially completed Form 2 is enclosed for your information in completing the form 2's.

The following will be needed for this application:

1. Complete the form 2's, sign and notarize.
2. ~~Filing fee of \$300.00 for the acreage specified.~~
3. The plans and specifications on the structure of the dam to be built.

We will retain the map in our office.

The Water Quality approval must be received before we can advertise the application for hearing before the Water Rights Commission. For procedures and required Water Quality forms, contact the State Conservation Commission, Anderson Building, Pierre, SD 57501, phone 773-3259.

I am enclosing our instruction sheet for your information. One of our engineers did go down and look over the area, but as I stated it is not his responsibility to make maps etc.

The process of acquiring a water right is as follows:

1. Application is received, Form 2, 2A (if required) map, fee, logs, plans, specifications and water quality approval.
2. When all correct information is received, it is advertised for hearing 2 weeks prior to the Water Rights Commission meeting.
3. The advertising notice is sent by our office to the newspaper in the county the application is in and a copy sent to you. You must clear with the paper for the advertising notice as payment of such is your responsibility.
4. After the hearing and approval of the application by the Water Rights Commission, the permit is issued.

page 2
October 31, 1978
John Waterbury

5. You then have, by requesting the limit of time granted by law, $2\frac{1}{2}$ years to complete the equivalent of $1/5$ of the works, 5 years to complete the works and 4 additional years for beneficial use of the water.
6. When the irrigation works have been completed and Form 10 (which is sent to you with the approved permit) is received an inspection is made by our office and a Water License and Completion of Works is issued.

The fee for inspecting the works is \$50.00.

I hope this information will clarify some of your questions. If you have any further questions, please feel free to contact this office.

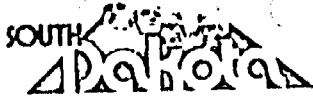
Sincerely,

BETTY WESTLUND
Water Rights Specialist I

DW/gy

encl

P.S. The \$8.00 fee sent with the original application will be returned to you as soon as the Auditors office processes the voucher.



Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501
Phone 605/773-3151

November 1, 1978

Rep. Harold Sieh
Herrick, SD 57538

Dear Representative Sieh:

This letter is in reference to our conversation October 26, 1978 concerning Waterbury Brothers' Water Right application. An application was originally received September 7, 1976 for one dam on Ponca Creek and 4 other dams for off stream storage. Waterbury Brothers were advised by letter October 4, 1976 that they must submit the necessary fee and their map was returned for the required signature by their engineer. One of the Waterbury Brothers was told verbally that the Commission probably would not allow a dam to be constructed on Ponca Creek due to downstream water rights. Waterbury Brothers were advised at that time that they should submit an amended application for storage in dams located off of Ponca Creek which could be pumped into during periods of high Ponca Creek flows. Apparently Waterbury Brothers also had the understanding at that time that someone from this office would visit the site concerning possible construction of a dam on Ponca Creek. With the large number of water rights applications being received and processed at that time, unfortunately someone from this office did not get down to look at the site.

No additional progress was made on this application or any contact until June, 1978 when we started reviewing several older water right applications which had not been processed previously. In answer to our letter, John Waterbury contacted us by letter and explained the situation. September 18, 1978, Waterbury Brothers' engineer then provided a map showing the location of a proposed off Ponca Creek dam and 251.4 acres which they want to irrigate as compared to 1807 acres requested in the original application.

We are now waiting for a new application and filing fee to be submitted. Mr. Waterbury was advised of this in a letter dated October 31, 1978. One of our staff members did stop at the site of the proposed dam a few weeks ago.

Thank you for advising me of this matter.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH/gy

cc: Waterbury Brothers

STATE OF SOUTH DAKOTA

Do not use this space.

DIRECT VOUCHER

AGENCY VOUCHER No.	DATE
7/1/78	11/1/78

PAYEE .

STAPLE
HERE

John Waterbury
Waterbury Bros.
Burke, SD 57523

DEPT. .

DNRD - Water Rights
Foss Bldg.
Pierre, SD 57501

AGENCY .

ADDRESS .

Agency	Fund	Sub Fund	Prog. Act.	Obj. Sub. Obj.	Agency Coding	Amount	Contract No.
040201	290	01	0100	0801		8.00	1
							2
							3
							4
							5
							6
							7
							8
							9
							10
TOTAL 22						8.00	

NOTE: Vendors invoice must be attached.

11-7-78
W# 79083711
AC # 081280

Invoice No.(s)	Date Delivered	QUAN.	DESCRIPTION OF SERVICE OR COMMODITY	UNIT PRICE	AMOUNT	MEMO
			Return fee for water rights application. Water Right application never completed. Priority date lost. Receipt #4 6070		8.00	
TOTAL					8.00	

I declare and affirm under the penalties of perjury that this claim has been examined by me, and to the best of my knowledge and belief is in all things true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to non-discrimination in Federally assisted programs.

John Hatch
Claimant Signature

JOHN HATCH, Director

11-1-78
Date

AGENCY VERIFICATION

I hereby certify that the within account is just and true, and that no part of same has been paid, and the same is hereby approved.

John Hatch
DIVISION APPROVAL
JOHN HATCH, Director
Div. of Water Rights

11-1-78
DATE

APPROVAL SIGNATURE

DATE

AUTHORIZED AGENT

DATE

November 13, 1978

John Waterbury
Waterbury Bros.
Burke, SD 57523

Dear Mr. Waterbury:

Please find enclosed your Water Right Application and money. These are being returned to you as the application was never completed and the priority date was lost.

If you have any questions, feel free to contact this office.

Sincerely,

Barbara Templeton
Staff Assistant III

Enclosures: application, voucher,
and check

Form 10.

No. _____

NOTICE OF COMPLETION OF WORKS AND/OR
APPLICATION OF WATER TO BENEFICIAL USE

Post Office Burke, S.D.

Date May 9, 1981

TO: Water Rights Commission
Joe Foss Building
Pierre, South Dakota 57501

Dear Sirs:

This is to inform you that I have completed the construction of the water diversion system and/or that I have put the water to beneficial use to the maximum extent it is going to be used, not exceeding the amounts as specified in Water Right Permit No. 1650-2.

Water Right Permit No. 1650-2 states that the diversion system is to be constructed by _____, 19____ and that the water is to be put to beneficial use by _____, 19____.

The diversion system was completed on _____, 19____. Applying the water to beneficial use was completed on _____, 19____.

You may schedule an inspection so that the Certificate of Construction and/or the Water License may be issued, thus completing my acquisition of a water right.

Due to lack of water run off we have been unable to irrigate or complete the total diversion system. Would you please inform us if we need to apply for an extension of time. Part of the first phase of construction is completed.

W. L. Storking Bros.
(Signature)

Water Rights Division (605) 773-3352

May 13, 1981

Waterbury Brothers
Burke, SD 57523

Gentlemen:

This letter is in reference to your letter received this date, in which you inquired whether or not an extension of time would be needed for your Permit.

As issued, your Permit states that you have until August 1, 1981 to complete 1/5 of the works. The whole of the work is to be completed by February 1, 1984 and the time limit for proof of beneficial use is February 1, 1988. As long as you have a start on the project now, there should be no difficulty in getting the project completed by 1984.

The Permit is already issued for the maximum amount of time allowed by Statutes. The only reasons a permit can be extended past the five year time limit for completion is for physical and/or engineering difficulties beyond the control of the applicant.

If you have any questions, please contact this office.

Sincerely,

GENNY YOUNG
Staff Assistant

gy

 **Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

August 11, 1981

Waterbury Bros.
%John Waterbury
Burke SD 57523

Dear Mr. Waterbury:

During this summer, I visited with you concerning a complaint about diversions of water during low flow periods. On the day of the investigations, there was adequate water downstream, however as flows decrease water must be bypassed to serve domestic uses and prior water rights.

According to your water permit, the qualification states that low flows as needed for downstream domestic use, including livestock watering must be bypassed. The dike which you have placed in the channel will not bypass low flows during times when you are pumping. In addition, the dike stores a certain quantity of water.

I realize the dike was placed in the channel to raise the water above your suction line, however the dike should not cause any overflowing of the banks as it did on the day of the investigation.

A means for bypassing low flows must be provided which can be utilized when flows are needed downstream for prior water rights and domestic use. Therefore, by this letter, you are required to install a culvert in the dike capable of bypassing low flows. The dike must not cause overtopping the bank of the stream. All flow must remain within the stream channel unless natural factors would cause overtopping. This would be the case in a flow of such a magnitude that the banks would overtop whether the dike was there or not.

The culvert bottom must be placed not more than one foot above the natural gradient of the stream.

In our discussions, you indicated to me that work would commence to place a culvert in the dike and the dike would be made of a more permanent nature as soon as it would be practicable to work in the channel.

Equal Opportunity Employer

August 11, 1981

Waterbury Bros.

Page 2

All work must be accomplished prior to the 1982 irrigation season. Please submit your plans of construction to us for review. The existing dike must be cut out of the channel completely within 30 days of the date of this letter.

Please advise this office, if you have any questions concerning this matter.

Very truly yours,

JAMES E WINTERTON
Water Resources Engineer

JEW:kw

bcc: Logan Thoene
Bonesteel SD



Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

August 24, 1981

Waterbury Bros.
c/o John Waterbury
Burke SD 57523

Gentlemen:

In response to your questions regarding the letter dated August 11, 1981, I will attempt to clarify the action which you must take in order to be in compliance with your water permit and to provide assurances for downstream water rights and domestic uses.

If a dike is to be used to raise the water level above the suction line, the requirements are that a culvert be installed through the dike. The culvert must be not less than 15 inches in diameter, the bottom of which will not be located more than one foot above the natural grade line of the streambed. The culvert can be gated to allow for opening and closing of the culvert. This will allow you to maintain a head above your suction line during sufficient flows. While you are pumping water will be overtopping the dike. If downstream flows are insufficient to meet the needs, then up to 5 cfs must be allowed to overtop the structure. During lower flows the culvert must be opened in order to allow flows downstream when needed and to prevent instream storage of water. The dike can not exceed a height of three feet above the bottom of the stream channel.

If the dike is not practical, then you could consider some other means of maintaining the water level above the suction line, such as placing the intake into a sump hole in the stream bed or constructing an intake lower than the stream bed into which the water could flow as long as about 5 cfs is capable of being bypassed.

Your water permit No. 1650-2 states that "low flows as needed for downstream domestic use, including livestock watering must be bypassed". Flows for prior downstream water rights must also be bypassed. The permit does not allow instream storage of water on Ponca Creek.

The construction of the diversion can probably be accomplished by other means which will allow bypassing 5 cubic feet per second downstream as needed and not storing water. Please submit any different plans (other than dike or sump hole) to this office for our review before accomplishing the work.

If there are any additional questions, do not hesitate to call or write this office.

Very truly yours,

JAMES E WINTERTON
Water Resources Engineer

JEK:kw

bcc: Harold Sieh

IR-101-9/79

Equal Opportunity Employer



DEPARTMENT OF THE ARMY
OMAHA DISTRICT, CORPS OF ENGINEERS
6014 U.S. POST OFFICE AND COURTHOUSE
OMAHA, NEBRASKA 68102

OCT 22 1981

*Jim W. Linton from
Murphy*

MROOP-N

20 October 1981

SUBJECT: Enforcement No. E3 0022 09705 - George Waterbury

South Dakota Dept. of Environmental Protection
Foss Bldg.
Pierre, SD 57501

Gentlemen:

By the inclosed correspondence you are hereby notified of an activity performed without proper Department of the Army authorization pursuant to:

- () Section 10 of the River and Harbor Act of 1899
- (xx) Section 404 of the Clean Water Act
- ()

In accordance with final regulations published in the Federal Register, Volume 42, No. 138 on 19 July 1977, governing the permit program of the Corps of Engineers, we are required to solicit the views of appropriate Federal, State and local agencies. This information will be evaluated in conjunction with prescribed policy and guidelines to determine what further administrative and/or legal action will be taken.

Accordingly, we request your comments on or before 19 November 1981.

Any questions concerning this matter should be directed to the attention of Mr. John Owens, Monitoring and Surveillance Section, telephone number (402) 221-5085 or FTS 864-3085.

Sincerely,

RALPH J. MILLER
Chief, Regulatory Functions Branch,
Operations Division

Inclosures
As stated

The following activity was performed without proper authorization pursuant to Section 404 of the Clean Water Act.

ENFORCEMENT ACTIVITY NO. E3 0022 00705

Name: George Waterbury
Address: Burke, South Dakota 57523
Phone: (605) 775-2951
Location: Ponca Creek, NE $\frac{1}{4}$ of Section 31, Township 96 North,
Range 71 West, Gregory County, South Dakota
Activity: Fill

Permits Branch
PO Box 5, Omaha, NE 68101

MEMOP-N

0 1:06T-1931 1981

Mr. George Waterbury
Burke, SD 57523

Dear Mr. Waterbury:

I am in receipt of our returned certified letter No. 999978 that was refused either by you or others. The letter was dated 8 September 1981. The following reiterates the letter's content:

It has come to my attention that you have constructed an earthen structure across Ponca Creek for the purpose of impounding water for your irrigation facilities. The site is in Section 32, Township 96 North, Range 71 West, Gregory County, South Dakota.

In accordance with regulations pursuant to Section 404 of the Clean Water Act, any work involving the discharge of dredged or fill materials into streams, lakes and wetlands requires Department of the Army authorization prior to start of work.

Our records indicate the above activity was not authorized, therefore, it is an apparent violation of the Act and all persons responsible for and/or involved are subject to enforcement procedures. Accordingly, you are hereby directed to cease and desist any further filling activity in Ponca Creek until this matter is resolved.

In accordance with regulations, I am required to conduct an investigation which includes soliciting the views of the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and other appropriate Federal, State, and local agencies. The information and views developed during this investigation will be evaluated to determine what further appropriate administrative and/or legal action will be taken. In addition, any further information which you wish to be considered should be submitted in writing to the Chief Regulatory Functions Branch, Operations Division, at the above address within 15 days from the date of this letter.

MEMOP-W

Mr. George Waterbury

Hintz/jer/1128

01 OCT 1981

Any questions should be directed to Mr. Ralph Miller, Chief, Regulatory Functions Branch, telephone number (402) 221-4133.

Sincerely,

(s) V. D. STIPO

V. D. STIPO
Colonel, Corps of Engineers
District Engineer

Hintz *eg*

Brooks *eg*

Miller *eg*

Bywater *Lib-9-29*

Ofc of *Mur* Counsel

Rudlo *eg* INDEX

Fredrick *eg* / MRODD

Stiop *eg* / MRODD

November 13, 1981

Ralph J. Miller, Chief
Regulatory Functions Branch
Operations Division
U. S. Army Corp of Engineers
6014 U. S. Post Office and Courthouse
Omaha, Nebraska 68102

Dear Mr. Miller:

We are in receipt of notice of a violation enforcement number E3 V 0022 00705 George Waterbury. We are enclosing correspondence that the South Dakota Department of Water and Natural Resources has had with the Waterbury Brothers regarding the construction of the earthen dam on Ponca Creek. We are opposed to the issuance of an after the fact permit for this activity unless the conditions specified in the two letters are met.

If you have any questions, please call me at 605-773-4067.

Sincerely,

Duane G. Murphey
Environmental Specialist IV
Office of Water Quality
Phone: (605) 773-3351

cc: Bob Hanen, Game, Fish & Parks
Tom O'Brien, United States Fish & Wildlife Service
Jim Winterton, Water Rights

Enclosures

cn1201dm.wq

11/16/81

Waterbury DIVERSION DAM - PONCA CREEK

The Dam is located in the SE⁴NE⁴ 31-96-71 on Ponca Creek. It is approximately 10 feet high, measured from the channel bottom to the top. The top of the dam is level with the top of the creek channel.

The dam is equipped with a 16 inch culvert which is about 3 feet above the channel bottom.

Water is held behind the dam to a depth of 2-3 feet. The water is backed up several hundred yards upstream from the dam. There was no water running through the culvert at the time of the inspection.

F. Smith

- (1) Diversion dam
than 3' above bottom
of channel
- (2) Culvert required, through
the dam, not less than
16" in diameter.
- (3) Bottom of the culvert
not more than 1 foot
above bottom of the channel

Water Rights Division
605 773-3352

November 18, 1981

Waterbury Bros.
c/o John Waterbury
Burke SD 57523

Gentlemen:

One of our engineers on November 16, 1981 inspected the work accomplished by you on Ponca Creek for the diversion of water. The diversion works located in the SE 1/4 NE 1/4 of Sec 31, T96N, R71W are still not in compliance with the letter sent to you on August 24, 1981.

It was found that the dam in the channel is approximately ten feet high, measured from the channel bottom to the top. The letter indicated not over three feet. Your dam is presently at a level equal to the top of the creek channel which I do not believe is necessary. The culvert through the dam is of sufficient size, however the culvert was to be placed such that the culvert bottom was not more than one foot above the channel bottom. It is presently 3 feet above the channel bottom.

Failure to comply with the orders of this office could mean suspension of your permit to divert up to one year. If compliance is not made within thirty days, this matter will be brought before the Water Management Board at the February hearings.

If there are any questions, do not hesitate to contact me.

Very truly yours,

JAMES WINTERTON
Water Resources Engineer

JW:ks

PS Form 3811, Jan 1975

1. ☒ **SENDER.** Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

☐ Show to whom and date delivered.....

☐ Show to whom, date and address of delivery.....

☐ **RESTRICTED DELIVERY**
Show to whom and date delivered.....

☐ **RESTRICTED DELIVERY.**
Show to whom, date, and address of delivery.....

(CONSULT POSTMASTER FOR FEES)

2. **ARTICLE ADDRESSED TO:**
Waterbury Bros
c/o John Waterbury
Burke SD 57523

3. **ARTICLE DESCRIPTION:**

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	4381371	

(Always obtain signature of addressee or agent)

I have received the article described above.
Signature: [Signature] (Name, Title, Date, Initials)

4. **POSTMAN'S RECEIPT** (If required)

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

CLERK INITIALS: [Signature]

PS Form 3811, Jan 1975

4381371

RECEIVED BY ADDRESSEE

WATERBURY BROS
c/o John Waterbury
Burke SD 57523

CONSULT POSTMASTER FOR FEES

OPTIONAL SERVICES

RETURN RECEIPT SERVICE

TOTAL POSTAGE AND FEES

POSTMAN OR DATE

11-15-81

PS Form 3811, Jan 1975



United States Department of the Interior

FISH AND WILDLIFE SERVICE
AREA OFFICE: SOUTH DAKOTA--NEBRASKA--KANSAS
POST OFFICE BOX 250
PIERRE, SOUTH DAKOTA 57501

March 12, 1982

RECEIVED

MAR 15 1982

DEPT. OF WATER &
NATURAL RESOURCES

Colonel Vito D. Stipo
Corps of Engineers, Omaha District
Permits Branch
P.O. Box 5
Omaha, Nebraska 68101

Dear Colonel Stipo:

This responds to the Section 404 after-the-fact permit application of the Waterbury Brothers (SD 2SB OXT 2 004151, E3 0022 00705) dated February 26, 1982. The applicant requests after-the-fact authorization for the placement of fill material in Ponca Creek in conjunction with a road crossing project in Section 31, Township 96 North, Range 71 West, Gregory County, South Dakota. The following comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et. seq.).

We have no objection to issuance of this after-the-fact permit provided requirements of the Waterbury Brother's State Water Right permit are met and the following conditions are incorporated in the permit.

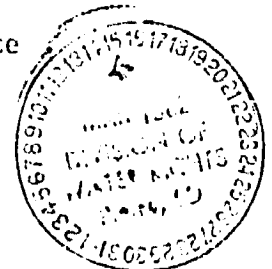
1. All erodible surfaces on the structure are riprapped or otherwise protected against erosion and washouts.
2. Areas disturbed during construction are reseeded to native grass vegetation.

These comments represent the views of the Department of the Interior. We would appreciate a copy of the permit, if issued.

Sincerely yours,

Kent D. Keenlyne
Field Supervisor, ES
South Dakota Field Office

cc: EPA; Denver, CO
FWS/ENV; Denver, CO
SDDWNR; Pierre, SD --
SDDGFP; Pierre, SD





US Army Corps
of Engineers
Omaha District

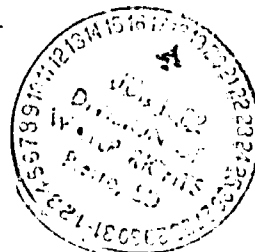
Public Notice

Reply to:
Permits Branch
PO Box 5
Omaha, NE 68101

Application No: SD 2SB OXT 2 004151
Date: 16 June 1982
Expiration Date: 1 July 1982

MROOP-N-1
Enforcement No. E3 0022 00705
Waterbury Brothers
Fill
Ponca Creek

15-DAY NOTICE



REVISION NO. 1 NOTICE OF PERMIT PENDING

The original Notice of Permit Pending dated 26 February 1982 is being revised to:

- a. Incorporate conditions submitted by interested parties during the initial comment period;
- b. Revise the drawings to reflect the above changes, and;
- c. Extend the comment period.

The following is a list of changes submitted by the applicant in order to comply with the Federal and State agencies' comments:

- a. A low flow bypass tube will be placed within 2 feet of the bottom of the creek bed. The tube will be at least 15 inches in diameter and contain a valve which will allow the tube to be closed to permit cleaning of the tube;
- b. The tube will be positioned so that minnows and other small fish will be allowed to pass through the tube;
- c. Approximately 20 cubic yards of riprap will be used to cover both sides of the dike at approximately 1 foot thick;
- d. The applicant will also design and construct the grade in such a manner that the natural depression upon the lower south bank will be utilized to allow overflow water to bypass the structure without causing structural damage or erosion;
- e. All disturbed areas of the surrounding upland area will be reseeded to vegetate the area.

A revised drawing depicting the proposed work is attached to this notice.

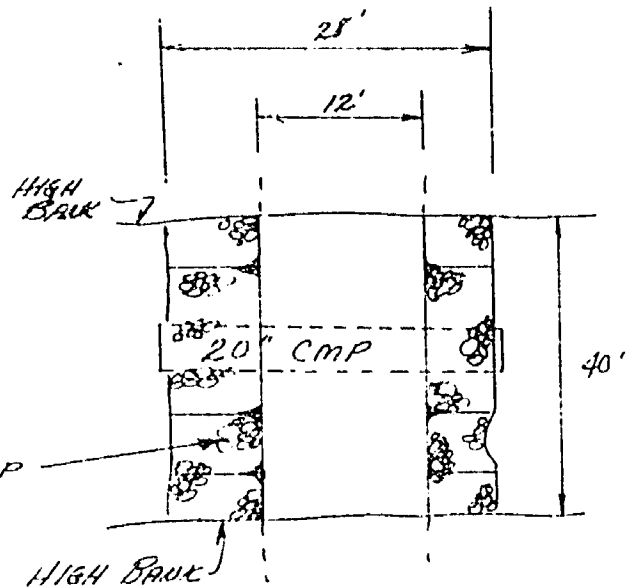
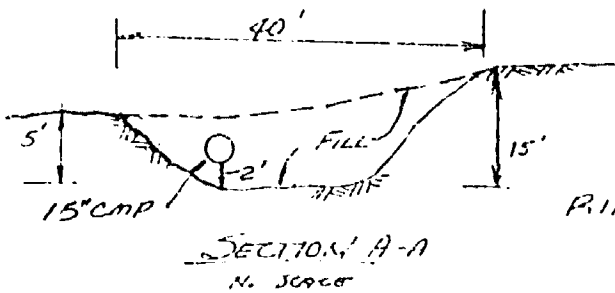
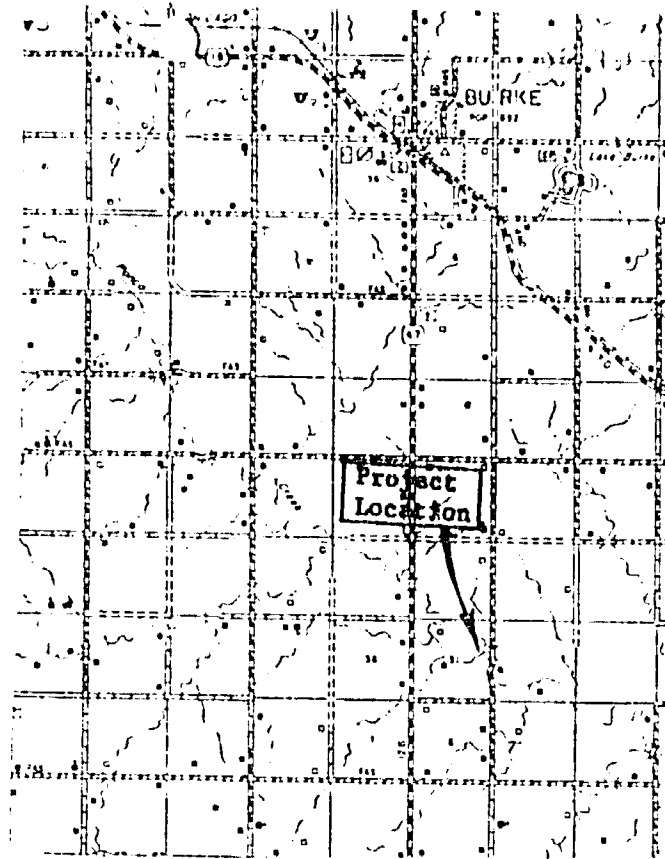
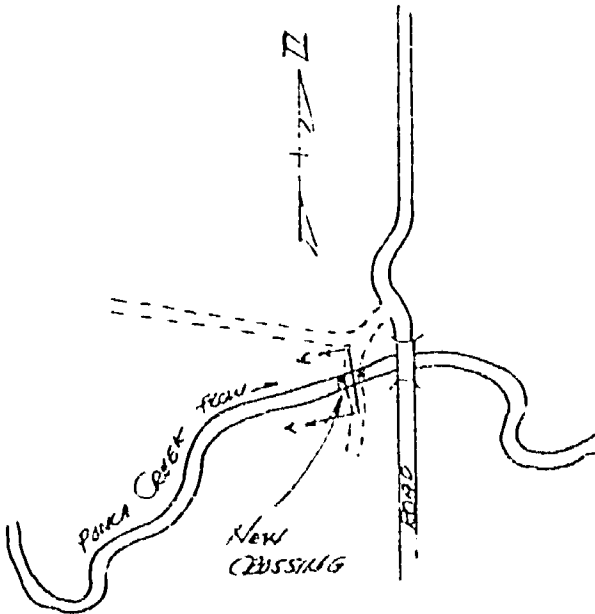
The comment period has been extended 15 days from the date of this notice.

The remainder of the original Notice of Permits Pending remains unchanged.

A handwritten signature in cursive script, appearing to read "Ralph J. Miller".

Attachment
As stated

RALPH J. MILLER
Chief, Regulatory Functions Branch
Operations Division



PURPOSE: FILL-CROSSING
 DATUM: PPSC
 ADJACENT PROPERTY OWNERS:
 1
 2

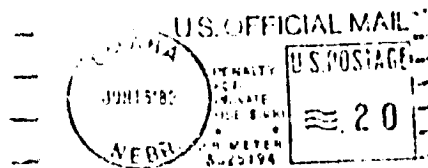
T96W, R71W, Sec 31
 IN POMER CREEK
 AT
 COUNTY OF GREGORY STATE S.D.
 APPLICATION BY GEORGE WATERBURY
 SHEET 1 OF 1 DATE 1-18-82

DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, OMAHA
CORPS OF ENGINEERS

6014 U. S. POST OFFICE AND COURTHOUSE
OMAHA, NEBRASKA 68102

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

MR00P-N-1



PUBLIC NOTICE

John Hatch, Chief Engineer
Division of Water Rights
Dept. of Water and Natural Resources
Foss Building
Pierre, SD 57501

APPLICATION FOR EXTENSION OF TIME

TO: Water Rights
Foss Building
Pierre, South Dakota 57501

Date 10-4-83

Dear Sirs:

In Water Right Permit No. 1650-2 it is specified that the water diversion system is to be completed by February 1, 1984 and that the water is to be put to the limit of beneficial use by February 1, 1988.

I hereby request that the date for completing the diversion system be extended to Feb 1, 1989 and that the date for putting the water to the limit of beneficial use be extended to Feb 1, 1993.

The extension of time for the completion of these works is requested for the following reasons: 1) First Two years of permit were years of the drought and there was no water available to irrigate with. 2) Economic conditions of the farm community have precluded the financing of new projects of this magnitude. 3) Delays in construction of diversion system by unavoidable circumstances. Enclosed herewith is a fee of Two Dollars and Fifty Cents (\$2.50) to pay the cost of filing this request for extension of time.

John Waterbury
(Signed)
1650-2
Permit Number

February 15, 1984
for 3 years:

APPROVED: Construction completion - February 1, 1987
beneficial use - February 1, 1991

Board of Water Management

BY:



RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

№ 4 9383

Pierre, October 21, 1983, 19

RECEIVED OF John Waterbury, RR#1, Box 9, Burke, SD 57523
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 _____

Fee for Filing Extension Request for #1650-2 _____

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

2 50

By

John Hatch
Chief Engineer JOHN HATCH/ms

Water Rights Division
605 773-3352

October 26, 1983

1650-2

John Waterbury
RR #1, Box 9
Burke SD 57523

Dear Mr. Waterbury:

The next Water Management Board Meeting will be held in Pierre on November 30 and December 1, 1983. It will be held in the Joe Foss Building, Conference Room #216, 523 East Capitol. Requests for Extension of Time will be at 9:00 am, November 30, 1983.

If you have any questions, please contact this office.

Sincerely,

TIMOTHY G SCHAAL
Water Resources Engineer

TGS:ks

enclosure: receipt for \$2.50

Water Rights Division
605 773-2352

February 28, 1984

John Waterbury
RR #1, Box 9
Burke SD 57523

Dear Mr. Waterbury:

This is to inform you that your request for extension of time dated September 4, 1983 for Water Right No. 1650-2 has been approved by the Water Management Board as follows:

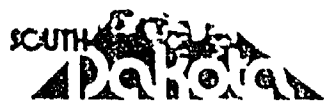
The date for completing construction of the water system has been extended to February 1, 1987, and the date for putting the water to the limit of beneficial use has been extended to February 1, 1991.

If you have any questions, please contact this office.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

ks



Department of Water & Natural Resources

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

February 17, 1989

Waterbury Brothers
RR 1, Box 9
Burke, SD 57523

Dear Sirs:

On October 6, 1988, the Water Management Board adopted rules to implement a 1988 law for application of chemicals through irrigation systems. The rules establish equipment standards, performance standards and installation requirements for irrigation systems that apply chemicals (fertilizers, insecticides, or herbicides) with irrigation water.

You have indicated on your 1988 Water Management Board Irrigation Questionnaire that you do apply chemicals with irrigation water. A copy of the new rules for chemigation are enclosed for your information.

The new standards include:

- * a check valve between the irrigation pump and the point of chemical injection;
- * a vacuum relief valve on top of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a low-pressure drain on the bottom of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a chemical injection line check valve between the chemical injection pump and the point at which the chemical is injected into the irrigation line; a second check valve is required if the chemical injection pump is not a positive displacement pump;
- * an interlock system which ensures that the chemical injection pump will stop whenever the irrigation pump stops;
- * an inspection port between the irrigation pump and the check valve on the irrigation line;



Each of these equipment requirements are discussed more thoroughly in Sections 74:02:09:05 through 74:02:09:10 of the enclosed rules. Appendix A contains diagrams of the arrangements of these anti-pollution devices.

The equipment must be installed according to the manufacturer's specifications, calibrated, and maintained in good working condition. All chemical product labels must be followed and warning signs must be posted. These rules also require reporting of all spills, accidents, and system malfunctions. A 24-hour telephone number is provided.

The chemigation rules contain notification and record keeping requirements. Prior to using chemigation, notification must be given to the Chief Engineer on the enclosed Form 1C. Information that must be provided in this notification includes the water permit or right number, the name, address, and telephone number of the water permit or right holder and of the system operator, and the legal description of the lands on which the system is located. A record of the name, quantity, dates and hours of each chemical applied must be provided to the Chief Engineer on Form 2C. A copy of this form is also enclosed for your information. It will be mailed with the annual irrigation questionnaire and must be returned with the questionnaire by the date specified. If you have any questions regarding these rules or need additional copies of the forms, please contact Susan Bowar, Water Rights Engineer (605-773-3352).

Very truly yours,

for 
JOHN HATCH, Chief Engineer
Water Rights Division



January 29, 1993

1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NOTICE

TO:

WATERBURY BROTHERS
RR 1, BOX 9
BURKE, SD 57523

FROM: Ron Duvall, Natural Resources Engineer IV
for JOHN HATCH, Chief Engineer
Water Rights Division

RE: Failure to Report Chemical Use under Water Permit No(s) 1650-2

The first notice to file chemigation report(s) for Permit No(s) 1650-2 was dated October 16, 1992. Our records indicate that we have not received the 1992 chemigation report for Permits No(s) 1650-2. The Water Management Board has directed that owners of water permits who have not submitted the 1992 chemigation report(s) be given notice of violation and of hearing before the Board. The hearing held by the Board is to determine what action is to be taken concerning violation of Administrative rule 74:02:09:02(3). This rule requires chemigation users to report the type of chemical applied, the dates, hours and amount of chemical application.

The hearing will be held at 9:30 A.M. on March 3, 1993, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol, Pierre, SD and will be conducted pursuant to SDCL 34A-2A through 34A-2A-5; 46-1-12, 46-1-14, 46-2-11, 46-2-17. These are contested case hearings pursuant to SDCL 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation or up to three years for the second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s). 1650-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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. Prior to February 22, 1993, contact the Water Rights Division, 523 E. Capitol, Pierre, SD 57501-3181 (605 773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

NOTE: If the chemigation report(s) is(are) received by this office prior to the March 3, 1993 hearing, you will no longer be in violation and your name will be deleted from the Board agenda.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. ☐ Addressee's Address
- 2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Waterbury Brothers
RR# 1 Box 9
Burke SD 57523

4. Article Number

2906560234

5. Service Type

- ☐ Registered ☐ Insured
- ☒ Certified ☐ COD
- ☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

1-30-93

5. Signature (Addressee)

Waterbury Bros.

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 11, 1993

No. 1650-2

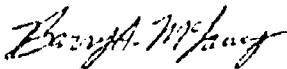
Waterbury Bros.
RR 1 Box 9
Burke, SD 57523

Dear Sir:

I am writing to acknowledge receipt of your phone call concerning the 1992 chemigation questionnaire. You may disregard the January 29, 1993 notice of "Failure To Submit Chemigation Questionnaire." I have filled out the questionnaire for permit No. 1650-2 with the information you provided over the phone and your name is deleted from the Water Management Board agenda.

If you have any questions, please contact me at 605-773-3352.

Sincerely,


Barry A. McLaury
Natural Resources Analyst
Water Rights Division

Permit No. 1650-2

1650-2

Ponca Creek Water District**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWRN, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by Waterbury Brothers
 of Rt. 1 Box 9 Burke SD holder of
 Permit No. 1650-2, bearing the priority of January 12 19 79 authorizing
 the diversion of 25.81 cu. ft. per second of the waters of Ponca Creek
 for Irrigation purposes, in Gregory County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

See Attachment

B. Works used to transport water to place of use:

2 miles - 18" Buried PVC from Dam to Booster Pumps
Approx. 5000ft. - 12" Buried PVC from Booster Pumps to Pivots

C. Works used to apply water to beneficial use:

2 - 8 tower Valley & 1 - 9 tower Electra for Center PivotsThe system is in the following condition GoodThe point of diversion is located Ponca Creek - 700 ft. North & 300 ft. West of
the East 1/4 Corner of Sec. 31-T96N-R71W (SE1/4 NE1/4)

The works are capable of diverting and conveying to the place of use

cu. ft. per second of water which is to be used for IrrigationWater has been put to beneficial use to the maximum extent as follows: NE1/4 Sec. 30 & W1/2 Sec. 20-96-71Sec. 30 - NW1/4 NE1/4 - 32.5 Ac. Sec. 20 - NW1/4 NW1/4 - 32.5 Ac. NW1/4 SW1/4 - 32.5 Ac.NE1/4 NE1/4 - 32.5NE1/4 NW1/4 - 32.5NE1/4 SW1/4 - 32.5SE1/4 NE1/4 - 32.5SE1/4 NW1/4 - 32.5SE1/4 SW1/4 - 32.5SW1/4 NE1/4 - 32.5SW1/4 NW1/4 - 32.5SW1/4 SW1/4 - 32.5comprising a total of 390 acres of land and the license should be issued for 13.33 cfs from Ponca Creek &Applicable permit qualifications have been complied with ☒ Yes ☐ No 5.57 cfs from Dam

Exceptions to compliance are:

Date July 31, 1991

Timothy L. Schane
 (signature)

LICENSE FOR PERMIT NUMBER 1650-2

1. Legal location of wells: Dam 1700 ft North & 600 ft West (NE 1/4 NE 1/8)
of the SE corner of Sec. 31-T96N-R71W
 dams & structures: _____

2. Well Information: Well Drilling Firm _____

Completion Report Yes ___ No ___ No. of Wells _____ Depth _____

Casing a) diameter _____ Screen a) type _____
 b) length _____ b) length _____
 c) type _____ Static Water Level _____

Pump a) make See Attachment Motor a) make _____
 b) model _____ b) model No. _____
 c) size _____ c) horsepower rating _____
 d) capacity _____ gpm
 e) turbine pump - no. of stages _____
 f) operating PSI _____

3. Distribution lines or canals

a) size 18" 12"
 b) type Buried PVC Buried PVC
 c) length 2 miles ≥ 5000 ft.

4. Dam Information:

a) height to crest 60 ft m) Outlet tubes:
 b) height to primary spillway 54 ft 1) diameter N/A
 c) height to secondary spillway NA 2) type _____
 d) crest width 12 ft 3) valved (Y/N) _____
 e) crest length 1100 ft 4) valve type _____
 f) spillway length 120 ft 5) location on structure _____
 g) spillway width 75 ft
 h) approx. storage 750 A. Ft n) Category of Dam 3-Low Hazard
 i) approx. storage to crest 900 A. Ft
 j) date constructed 1976
 k) inspection sheet completed (Y/N) No
 l) Name of Contractor Schrieger Construction

5. System Type a) sideroll:

- 1) length _____ feet
- 2) diameter of pipe _____
- 3) make, model & number of
sprinklers _____
- 4) spacing of sprinklers _____
- 5) nozzle size _____

c) gun

- 1) make _____
- 2) nozzle size _____
- 3) capacity (GPM) _____
- 4) hose size _____
- 5) hose length _____

e) gated pipe

- 1) length _____
- 2) diameter _____
- 3) spacing of gates _____

f) portable boom

- 1) make _____
- 2) nozzle size _____
- 3) capacity (GPM) _____

b) towline:

- 1) length _____ feet
- 2) make, model & number of
sprinklers _____
- 3) spacing of sprinklers _____
- 4) nozzle size _____

d) center pivot

- 1) make See Attachment
- 2) number of towers _____
- 3) distance between towers _____
- 4) overall length _____
- 5) end gun (Y/N) _____
- 6) high or low pressure _____
- 7) make & size of nozzles _____
- 8) capacity (GPM) _____

g) siphons

- 1) size _____
- 2) number _____

NOTE: For Permits with additional wells or changes in well locations, record the following for each well: pumping capacity, date constructed, well driller and if a well log is available.

Indicate any other permit(s) which are associated with project _____

Yes	No	Check Items
<u>X</u>	___	1. Soil and water permit lands agree with lands being irrigated and lands listed on permit?
<u>X</u>	___	2. Special qualifications to permit being abided by?
<u>X</u>	___	3. All structures, wells and lands on map?
<u>X</u>	___	4. Irrigation Questionnaires checked to determine if permit owner started irrigation by end of construction period?
___	<u>X</u>	5. Is chemigation used?
___	<u>NA</u>	6. If yes, does equipment comply with chemigation rules?

REMARKS:

ATTACHMENT

WATER PERMIT NO. 1650-2
WATERBURY BROTHERS

Pump Site at Ponca Creek

Pump: 2 Valley 6 stage 70 Hp turbine pumps with Amarillo Right Angle Drives
Serial No.: 14 XHE-1A 14-1293-1 &
14 XHE-1A 14-1293-2
Capacity: 3000 gpm/each
Motor: 6 cylinder 90 Hp Perkins Diesel

Pump Site at Dam

Pump: Berkeley Centrifugal Pump
Model: B5E QBH
Serial No.: 6290 590
Size: 10 7/16 inch
Motor: 6 cylinder 100 to 120 Hp Isuzu Diesel

Booster Pump Site for NE 1/4 Sec. 30-T96N-R71WCenter Pivot

Pump:	Berkeley Centrifugal Pump	Make: 8 tower Valley
Model:	B4E QM3	Length: 1300 ft.
Serial No.:	7850 724	End Gun: Yes
Size:	10 7/16 inch	High Pressure
Capacity:	800 gpm	Capacity: 800 gpm
Motor:	4 cylinder 60 Hp Isuzu Diesel	

Booster Pump Site for W 1/2 Sec. 20-T96N-R71WCenter Pivots

Pump:	Berkeley Centrifugal Pump	Make: 8 tower Valley & 9 tower Electragator
Model:	B4E QM3	Length: 1300 ft./each
Serial No.:	7850 723	End Gun: Yes
Size:	10 7/16 inch	High Pressure
Capacity:	800 gpm	Capacity: 800 gpm/each
Motor:	4 cylinder 60 Hp Isuzu Diesel	

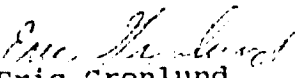
REPORT ON WATER PERMIT NO. 1650-2
WATERBURY BROTHERS
May 11, 1992

Water Permit No. 1650-2 appropriates 25.81 cubic feet of water per second (cfs) from 5 dams located NW1/4 SE1/4 Section 30, NE1/4 NE1/4 Section 31, S1/2 SW1/4 and the SW1/4 NE1/4 Section 20, SW1/4 SW1/4 Section 15; all in T96N, R71W to irrigate 1,807.5 acres. The irrigated acreage was to be located in portions of the N1/2 and SE1/4 Section 14; SE1/4 Section 15; NW1/4 Section 21; SW1/4 Section 17; N1/2 and SW1/4 Section 20; Section 30 and N1/2 Section 31; all in T96N, R71W. Readvertisement of the notice of hearing published January 17 and 24, 1979, in the Burke Gazette is necessary to state that water is pumped from Ponca Creek into the storage dam.

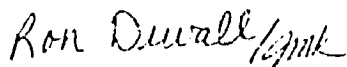
An inspection of Water Permit No. 1650-2 found 390 acres of developed irrigation located in the NE1/4 Section 30, W1/2 Section 20, T96N, R71W. The works are capable of diverting 13.33 cubic feet of water per second (cfs) from Ponca Creek located in the SE1/4 NE1/4 Section 31, T96N, R71W to one dam (900 acre feet storage capacity) located in the NE1/4 NE1/4 Section 31, T96N, R71W. The dam impounds water in the N1/2 NE1/4 Section 31 and the E1/2 SE1/4 Section 30; all in T96N, R71W. The authorized diversion rate from the dam to irrigate the 390 acres is 5.57 cfs.

Conclusion

1. This is a readvertisement of the Notice of Hearing for Water Permit No. 1650-2.
2. This readvertisement is necessary to specify that water will be diverted from Ponca Creek to supply water to the dam as specified on the permit application.
3. The location of the one dam (900 acre feet storage capacity) used for irrigation is the NE1/4 NE1/4 Section 31, T96N, R71W.
4. The developed diversion rate from Ponca Creek to the dam is 13.33 cfs and the authorized diversion rate from the dam for irrigation on 390 acres is 5.57 cfs


Eric Gronlund
Natural Resources Engineer

Approved by:


Ron Duvall
Natural Resources Engineer IV

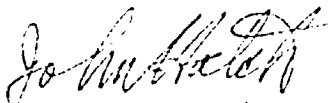
RECOMMENDATION OF CHIEF ENGINEER FOR READVERTISED WATER
PERMIT NO. 1650-2, Waterbury Brothers

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 1650-2, Waterbury Brothers, Rt. 1, Box 9, Burke SD 57523.

The Chief Engineer is recommending APPROVAL of Readvertised Permit No. 1650-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion has been developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed.
2. Approval of this Permit authorizes storage of 900 acre feet of water in one dam.

See report on application for additional information.


JOHN HATCH, Chief Engineer
June 26, 1992

1650-2



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

July 1, 1992

George Waterbury
Waterbury Brothers
Rt 1 Box 9
Burke, SD 57523

Dear Mr. Waterbury:

The original notice of hearing for Water Permit Application No. 1650-2 was published with an error. Therefore, the notice of hearing needs to be readvertised to correct the error. A notice of hearing has been sent to the Publisher of the Burke Gazette printed at Burke, SD (Ph # 775-2612). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the readvertisement are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The cost of publication of this notice will be paid by the Division of Water Rights. Please contact us if you have any questions.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

1650-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 1, 1992

Burke Gazette
Box 359
Burke, SD 57523

Attn: Legal Department

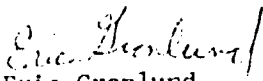
Enclosed is a Readvertisement of Notice of Hearing on Permit No. 1650-2 to be published twice. Please publish the first notice on July 8, 1992, with the second publication 7 days later.

Please bill the Water Rights Division for the cost of the advertisement.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----
FIRST TRANSMITTAL NOTICE

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Readvertisement of Notice of Hearing to Appropriate Water by Permit No. _____ which was first published in an issue of _____. ENCLOSED IS A COPY OF THIS FIRST TRANSMITTAL

Name _____

1650-2

Instruction to Newspaper - Publish first Notice on or before July 8, 1992, with the second publication 7 days later.

Readvertisement of NOTICE OF HEARING on Application No. 1650-2 to Appropriate Water

Notice is given that Waterbury Brothers, Rt. 1, Box 9, Burke, SD 57523 filed an application September 7, 1976, for a water permit to appropriate 25.81 cubic feet of water per second (cfs) from 5 dams to be located NW1/4 SE1/4 Section 30, NE1/4 NE1/4 Section 31, SW1/4 SW1/4 and the SW1/4 NE1/4 Section 20, SW1/4 SW1/4 Section 15; all in T96N, R71W to irrigate 1807.5 acres. The irrigated acreage was to be located in portions of the N1/2 and SE1/4 Section 14; SE1/4 Section 15; NW1/4 Section 21; SW1/4 Section 17; N1/2 and SW1/4 Section 20; Section 30 and N1/2 Section 31; all in T96N, R71W. Readvertisement of the notice of hearing published January 17 and 24, 1979, in the Burke Gazette is necessary to state that water is pumped from Ponca Creek into the storage dam. An inspection of Water Permit No. 1650-2 found 390 acres of developed irrigation located in the NE1/4 Section 30, and the W1/2 Section 20; all in T96N, R71W. The works are capable of diverting 13.33 cfs from Ponca Creek located in the SE1/4 NE1/4 Section 31, T96N, R71W to one dam (900 acre feet storage capacity) located in the NE1/4 NE1/4 Section 31, T96N, R71W. The dam impounds water in the N1/2 NE1/4 Section 31 and the E1/2 SE1/4 Section 30; all in T96N, R71W. Diversion rate from the dam to irrigate the 390 acres is 5.57 cfs.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of readvertised Application No. 1650-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the permit as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by July 27, 1992. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

For purposes of publishing 1) the notice of hearing on Application No. 1650-2 and 2) the chief engineer's recommendation, a special Board meeting is scheduled for August 4, 1992, at 9:00 am in Room 413, Joe Foss Building, 523 E Capitol, Pierre SD. If this application is opposed or the recommendation is contested, the August 4, 1992, hearing date may be rescheduled for another Board meeting. If the hearing is rescheduled, notice of the time and place will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The August 4, 1992, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by July 27, 1992.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence and cross-examine witnesses according to SDCL 1-26. The hearing will be held at the

be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact the Water Rights Division to request copies of information pertaining to this application or to assure access to the hearing by the handicapped.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

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Publication

PROOF OF PUBLICATION

H DAKOTA)
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attached printed Notice was taken
Burke Gazette

ich during the whole time of publication of
n after stated, has been and is printed and
City of

of Burke

Gregory and State of South Dakota;
ce was published in said newspaper on the
tes:

July 8, 1992

July 15, 1992

Readvertisement of
NOTICE OF HEARING
On Application No. 1650-2
to Appropriate Water

Notice is given that Waterbury Brothers, Rt. 1, Box 9, Burke, SD 57523 filed an application September 7, 1976, for a water permit to appropriate 25.81 cubic feet of water per second (cfs) from 5 dams to be located NW¼ SE¼ Section 30, NE¼ NE¼ Section 31, S¼ SW¼ and the SW¼ NE¼ Section 20, SW¼ SW¼ Section 15; all in T96N, R71W to irrigate 1807.5 acres. The irrigated acreage was to be located in portions of the N¼ and SE¼ Section 14; SE¼ Section 15; NW¼ Section 21; SW¼ Section 17; N¼ and SW¼ Section 20; Section 30 and N¼ Section 31; all in T96N, R71W. Readvertisement of the notice of hearing published January 17 and 24, 1979, in the Burke Gazette is necessary to state that water is pumped from Ponca Creek into the storage dam. An inspection of Water Permit No. 1650-2 found 390 acres of developed irrigation located in the NE¼ Section 30, and the W¼ Section 20; all in T96N, R71W. The works are capable of diverting 13.35 cfs from Ponca Creek located in the SE¼ NE¼ Section 31, T96N, R71W to one dam (900 acre feet storage capacity) located in the NE¼ NE¼ Section 31, T96N, R71W.

[Signature]
(Signature)

Publisher
(Title)

7-15-92
(Date Signed)

68.83



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 10, 1992

Mr. and Mrs. Floyd Nelson
RR
Herrick, SD 57538

Dear Mr. and Mrs. Nelson:

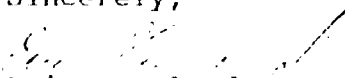
I am writing at the request of Senator Miner to provide you information regarding Water Permit Application No. 1650-2, Waterbury Brothers. I have enclosed a copy of the report and recommendation on this application in which is a readvertisement of an issued water permit (copy enclosed). This permit was issued back in 1979, however, in reviewing the file prior to issuance of their water license it was discovered that the notice of hearing failed to state that water is pumped from Ponca Creek into the storage dam. For this reason, readvertisement of Water Permit Application No. 1650-2 is necessary.

Petitioning to intervene as a party in opposition to this water permit is simple. Simply send a letter to the Chief Engineer, Water Rights Division, 523 E. Capitol Ave., Pierre, SD 57501 postmarked by July 27, 1992. The letter should state your reasons for opposing the application. This letter will cause a hearing before the Water Management Board to be held.

If you file a petition, the August 4, 1992 hearing stated in the notice of hearing will not take place. Instead the hearing will be scheduled for an upcoming Water Management Board meeting, likely to be held September 30 and October 1, 1992 or December 2 and 3, 1992.

If I may be of any further assistance, please feel free to contact me.

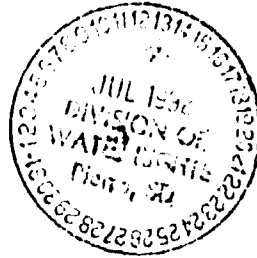
Sincerely,


Eric Gronlund
Water Rights Division
605 773-3352

enclosure

cc: Senator Doris Miner, RR 2, Box 132, Gregory, SD 57533

1650-2



RR 1, Box 7A
Fairfax, SD 57335
July 9, 1992

Dept. of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

To Whom it may concern:

I Dalen Baker, wish to express my opposition to the Waterberry water permit application #1650-2. I pasture 100 head of stock cows near Herrick on the Ponca Creek. (parts of sections 2 and 3, township 95, range 71) The Ponca Creek is the main source of water for most of this land. I am very concerned that the Waterberry water project would deplete most if not all of the water currently in the creek.

Sincerely,

Dalen Baker

Dalen Baker

1650-2



Rt. 1, Box 40
Bonesteel, SD 57317
July 9, 1992

Dept. of Enviroment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

To Whom it may concern:

I, Lloyd Baker, wish to express my opposition to the Waterberry water permit application #1650-2. I pasture 100 head of stock cows near Herrick on the Ponca Creek. (parts of sections 2,3 and 10, township 95, range 71) The Ponca Creek is the main source of water for most of this land. I am very concerned the the Waterberry water project would deplete most if not all of the water currently in the Ponca Creek.

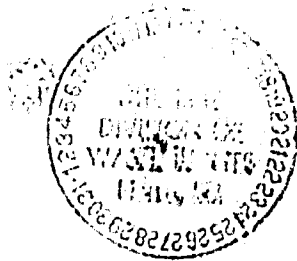
Sincerely,

Lloyd Baker

Lloyd Baker

7/11/92

1650-2

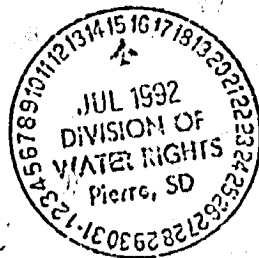


Dear Chief Engineer
Water Rights Division.

I object taking water out
of the Ponca. I need the
water in the Ponca for
my Finestock. I need the
water in the Ponca for
my Cattle.

Sincerely

Dan Bruntz



1650-2

7-13-92

Sir:

I wish to express the approval of Application No. 1650-2 and the appropriate water from the Ponca Creek

I believe there are a lot of people that don't know about this, or even sign it in the paper.

There are people that say the power will go there tonight, and what about the wild life along the ponca creek?

I believe that people living in Nebraska see the water too. I'm sure they do.

I am very much opposed to this. I don't think it's

11650-2

2

Admitted through,

By-passed;

Severely

Drac Holguin

May 194

St. Charles, S. D. 57571

1650-2



Herrick, South Dakota
July 22, 1992

Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, S. D. 57501

Re: Advertisement (1979)
and Readvertisement (1992)
of Notice of Hearing on
Application No. 1650-2
To appropriate Water

Sir:

We would like to oppose approval of Application No. 1650-2 and Readvertisement (1979 and 1992) of Notice of Hearing to appropriate water from the Ponca Creek.

My reasons for opposing the applications and approvals are that the 1979 advertisement was improperly advertised because it FAILED TO MENTION that the water was to be pumped from the Ponca Creek, thereby misrepresenting the intentions of the applicants. (2) The storage facility has drastically reduced the flow of the Ponca, so much last year that the cattle had to be moved and we like everyone else ~~along~~ use the Ponca as a source of water for livestock. Not to mention wildlife. The Ponca now is a trickle that will dry up as soon as the recent abundant rains cease.

(3) Further, I believe that the applications should have been more widely advertised so that everyone living along the Ponca could have been advised-The Ponca flows into Nebraska so it is not entirely a South Dakota stream.

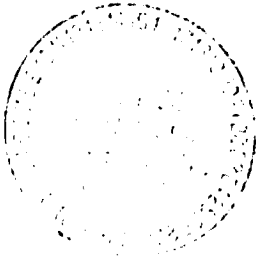
(4) We live only a few miles downstream from the storage facility and if the dam should burst, for any reason, the ensuing flood would be life-threatening, not only to humans but to livestock and wildlife as well.

We thank you for your consideration

Fercilla Nelson
Fercilla Nelson (Mrs Floyd)

CC: Waterbury Bros
Rte 1 Box 9
Burke, S. D.
57523

Floyd M Nelson
Floyd Nelson
Rte 2, Box 23 Herrick, S. D.
57538



July 13, 1992

Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, SD 57501

Re: Waterbury Brothers application #1650-2

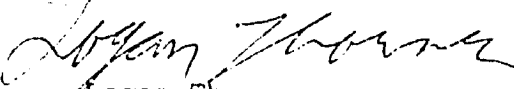
Dear Sir:

I am writing this letter to inform you of a situation which occurred in the early 1980's. There was a spring in which the Ponca Creek had very little flow. I went to visit the Waterburys and discovered that they were pumping from the Ponca to fill their dam and diverting enough of the flow so that I was unable to get sufficient water to fill my dam. I informed them that I have a prior claim to this flow and asked that they refrain from pumping until I was able to get sufficient water for my needs. They flatly refused my request and continued to take water from the Ponca.

Under normal circumstances, there should be enough water for everyone. However, since my permit predates theirs, it is my concern that there should be some way to enforce my right to this water because of my earlier permit.

If there is no enforcement procedure in place to protect my rights in this matter, then I would like to express my opposition to the granting of this permit.

Very truly yours,


Logan Thoene

1650-2



July 15, 1992.

To Whom it May Concern:

I, Rex Tietgen, Rt. 2, Box 7,
Herrick, S.D. 57538, am opposing-
Application No. 1650-2 to -
Appropriate Water, by The Water-
bury Brothers, Rt. 1, Box 9, Burke,
S.D. 57523.

This is the only source of
my water supply for the watering
of my livestock in the summer
and winter months.

Sincerely,
Rex Tietgen

Rex Tietgen
Rt. 2, Box 7
Herrick, S.D. 57538

1650-2



Water Rights Division
Foss Building
523 E Capitol
Pierre, SD 57501

Sirs :

We are opposed to the application NO. 1650-2 to appropriate water. This proposal was first published in January of 1979, it failed to state that the water was to be pumped from the Ponca Creek. The ~~or~~ readvertisement in July of 1992 states that the water will come from the Ponca Creek. The advertisement also states unappropriated water is available. Our operation alone has 1300 acres of the pasture that rely on the Ponca Creek for water. Furthermore it states it is a beneficial use of water and it is in the public interest. The only benefit would be to the Waterbury Brothers. I cannot see where it would be to anyone's interest but the Waterbury Brothers.

Since the construction of the

1650-2

clam the flow of water in the Ponca Creek has been less & less. When the creek dries up it costs us an additional \$2500 to \$5000, for ~~pasture~~ extra pasture.

Not only is the water a value to the ~~an~~ numerous farmer ranchers on the Ponca Creek but also the Wildlife. The Domestic animals can rely on man to ~~supply~~ supply an alternative water source, but not the wildlife. When the Ponca Creek dries up the wild animals must move to find a fresh water supply.

For these reasons we are opposed to the application NO. 1650-2. Thank You.

Merle & Jolene Nelson.

Merle & Jolene Nelson
RR2 Box 22A
Herrick SD 57538-9216

1650-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3191

July 20, 1992

Logan Thoene
Rt 2 Box 40
Bonesteel, SD 57317

Dear Mr. Thoene:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

The following addresses concerns raised in the letters of opposition to this application.

1. This is a readvertisement of Water Permit No. 1650-2 issued in February, 1979. Diversions from Ponca Creek to the storage dam authorized under this Permit have been taking place for several years. This readvertisement serves only to correct the deficiency in the public notice. No increase in the diversion rate or acres developed for irrigation is requested by this application.
2. The Permit is qualified to protect the rights of domestic users and holders of prior rights. The qualification on the Permit states, "low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed." Pumping from Ponca Creek under this permit may not take place if adequate flows are not provided for livestock watering or prior water right holders are adversely impacted.

If you have any questions on the readvertised water permit application or the scheduling of the hearing before the Water Management Board, please contact Eric Gronlund at (605) 773-3352.

Very truly yours,

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

cc: John Jacobsen



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 20, 1992

Mr. & Mrs. Floyd Nelson
Rte 2 Box 23
Herrick, SD 57538

Dear Mr. & Mrs. Nelson:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

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Very truly yours,

John Hatch, Water Rights Division
Water Rights Division
(505) 773-3352

cc: John Jacobsen



1650-2

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

July 20, 1992

Dan Bruntz
R 2 Box 24
Herrick, SD 57538

Dear Mr. Bruntz:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

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Very truly yours,

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(605) 773-3352

cc: John Jacobsen



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 20, 1992

Dalen Baker
RR 1 Box 7A
Fairfax, SD 57335

Dear Mr. Baker:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

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Very truly yours,

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

cc: John Jacobsen



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 20, 1992

Lloyd Baker
Rt 1 Box 40
Bonesteel, SD 57317

Dear Mr. Baker:

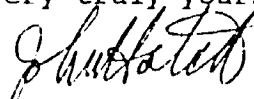
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Very truly yours,


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

cc: John Jacobsen



1650-2

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

July 20, 1992

Mae Holquin
Box 174
St. Charles, SD 57571

Dear Ms. Holquin:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

The following addresses concerns raised in the letters of opposition to this application.

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2. The Permit is qualified to protect the rights of domestic users and holders of prior rights. The qualification on the Permit states, "low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed." Pumping from Ponca Creek under this permit may not take place if adequate flows are not provided for livestock watering or prior water right holders are adversely impacted.

If you have any questions on the readvertised water permit application or the scheduling of the hearing before the Water Management Board, please contact Eric Gronlund at (605) 773-3352.

Very truly yours,

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

cc: John Jacobsen

1650-2



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

July 20, 1992

Merle and Jolene Nelson
RR 2 Box 22A
Herrick, SD 57538-9216

Dear Mr. & Mrs. Nelson:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

The following addresses concerns raised in the letters of opposition to this application.

1. This is a readvertisement of Water Permit No. 1650-2 issued in February, 1979. Diversions from Ponca Creek to the storage dam authorized under this Permit have been taking place for several years. This readvertisement serves only to correct the deficiency in the public notice. No increase in the diversion rate or acres developed for irrigation is requested by this application.
2. The Permit is qualified to protect the rights of domestic users and holders of prior rights. The qualification on the Permit states, "low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed." Pumping from Ponca Creek under this permit may not take place if adequate flows are not provided for livestock watering or prior water right holders are adversely impacted.

If you have any questions on the readvertised water permit application or the scheduling of the hearing before the Water Management Board, please contact Eric Gronlund at (605) 773-3352.

Very truly yours,

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

cc: John Jacobsen

1650-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 20, 1992

Rex Tietgen
Rt 2 Box 7
Herrick, SD 57538

Dear Mr. Tietgen:

I am writing regarding the letter of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Notice of the time, date and place of the hearing will be sent to all parties who filed letters after the July 27, 1992 date to intervene is past. The August 4, 1992 hearing date listed in the published notice will no longer be held.

The following addresses concerns raised in the letters of opposition to this application.

1. This is a readvertisement of Water Permit No. 1650-2 issued in February, 1979. Diversions from Ponca Creek to the storage dam authorized under this Permit have been taking place for several years. This readvertisement serves only to correct the deficiency in the public notice. No increase in the diversion rate or acres developed for irrigation is requested by this application.
2. The Permit is qualified to protect the rights of domestic users and holders of prior rights. The qualification on the Permit states, "low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed." Pumping from Ponca Creek under this permit may not take place if adequate flows are not provided for livestock watering or prior water right holders are adversely impacted.

If you have any questions on the readvertised water permit application or the scheduling of the hearing before the Water Management Board, please contact Eric Gronlund at (605) 773-3352.

Very truly yours,

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

cc: John Jacobsen

1650-2

ALEX LUNDERMAN
President

NORMAN WILSON
Vice President

Rosebud Sioux Tribe

ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57370

Incorporated Under Act of June 18, 1934, 48 Stat. - 984

P.O. Box 430
Phone 605-747-2381 - Fax 605-747-2243

CHARLES WHITE PIPE, JR.
Treasurer

GERALDINE GORDON
Secretary

JOHN ARCOREN, SR.
Sergeant at Arms

July 21, 1992



John Hatch, Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, South Dakota 57501

Waterbury Brothers
Route 1
Box 9
Burke, South Dakota 57523

Dear Sirs:

On behalf of the Rosebud Sioux Tribe the Office of Water Resources formally requests an automatic delay of the hearing on the Readvertisement of NOTICE OF HEARING On Application No. 1650-2 to Appropriate Water.

This delay is requested to collate existing data, gather new information and coordinate opposition testimony that will be presented at the future hearing.

Your cooperation with this matter will be deeply appreciated.

Respectfully;


Alex J. Lunderman, President

AJL/jdw

cc/file

Dr. Alonzo Spang, Superintendent

Rosebud Agency

Rosebud, South Dakota 57570

Elton Hawk Wing, Land Operations Officer

Rosebud Agency, Mission Office

Mission, South Dakota 57555

Mrs. Floyd (Percilla) Nelson

Route 2, Box 23

Herrick, SD 57238

Verne D. Ellston

HC7 Box 7A

Reliance, SD 57569

1650-2

1-297701-1

July 16, 1992

Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, S. D. 57501



Re: Application and
Reapplication No. 1650-2
To appropriate water
by Waterbury Bros.
Rte 1, Box 9
Burke, S. Dak. 57522

We, the undersigned, are opposed to the application (dated 1979) and
Reapplication dated (1992) No. 1650-2, to appropriate water from the
Ponca Creek.

We oppose this because the Ponca Creek Basin drainage system has
reduced in recent years so that by late summer it does not provide
enough water for domestic use (livestock) Pumping water to fill
these dams would result in less flow downstream of these dams, the
result being less or no water for those that depend on it.

Name	Address
Jay R. Ellston	St. Libory Neb. ^{land owner on} Ponca Creek
Charles Ellston	St. Libory Neb. - - - -
Louise L. Star	Star Ranch ^{current residence} Kansas City, KS
Moner B. O'Brien	142 Br 7A Herrick SD. ^{like along Ponca} Creek
Mae Halgren	St. Charles, S.D. 57571
Aloren McBrider	Herrick, S.D. 57538
Cheryl DeLong	Herrick, SD 57538
Carol Beck	Herrick, SD 57538
Narcisse Hodgson, Sr.	Herrick, SD 57538
H.D. de Chene	St. Charles SD
Ethel Hansen	Herrick S.D.
Sharon Ellston	St. Libory ne 68872
Dwyla Emma	St. Charles SD 57571
Maria Halgren Long	Rosebud, SD 57570
Maile R. Marshall	Melk's Camp Community
Ret. Tutgen	Melk's camp comm.
Bernice Tutgen	Melk's camp comm.
Sydney Merrill	Melk's Camp Comm.
Anna Brunkley	Melk's Camp Comm.

EXHIBIT

SECOND PAGE

re: Application &

Registration 1650-2

NAME

ADDRESS

Russell Hick	St. Charles, S.D. 57571
Russell Hick	St. Charles, S.D. 57571
Paul Stans	Pierre, S.D. Land owner on Ponca Creek
Lisa (Stans) Pickner	Pierre, S.D. Land owner on Ponca Creek
Josephine La Pointe	Bonesteel, S.D.
Caroline Andrews	Bonesteel, S.D.
Wally Stone Adams	Bonesteel, S.D.
Joyce Andrews	Pierre, S.D.
Charmaine Chasing Hawk	Bonesteel, South Dakota
Katherine Reinwater	Herrick S.D.
Timothy Harmon	
Patricia Herman Sr.	Herrick S.D.
Beverly La Pointe	Box 21 Bonesteel S.D.
Margaret Skellern	Box 308 Bonesteel S.D.
Alene La Pointe	Box 112 Bonesteel, S.D.
Shirley Old Lodge	R.R. 2 Box 205 Bonesteel S.D.
Margaret Andrews	R.R. 2 Box 32 Bonesteel S.D.
Barbara Old Lodge	R.R. 2 Box 209 Bonesteel S.D.
Judy Hanson	R.R. 2 Box 8 Herrick S.D.
Dennis Marshall	1628 E 16th Gregory S.D.
Nest Hanson	R.R. 2 Box 8 Herrick, S.D.
Christy Yellow Hawk	St. Charles, S.D. 57571
Steve Yellow Hawk	St. Charles, S.D. 57571
Vilma Bearbush	Miller Camp, Gregory, S.D.
Howard Zeiler	Box 6 St. Charles, S.D.

1650-2

PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 1650-2, WATERBURY BROTHERS

Applicant

Waterbury Brothers
Rt 1, Box 9
Burke, SD 57523

Attorney

John Jacobsen
First Fidelity Bank Bldg.
Burke, SD 57523

Opposition

Mr. and Mrs. Floyd Nelson
Rt 2, Box 23
Herrick, SD 57538

Logan Thoene
Rt 2, Box 40
Bonesteel, SD 57317

Dan Bruntz
RR 2, Box 24
Herrick, SD 57538

Dalen Baker
RR 1, Box 7A
Fairfax, SD 57335

Lloyd Baker
Rt 1, Box 40
Bonesteel, SD 57317

Mae Holquin
Box 174
St. Charles, SD 57571

Merle and Jolene Nelson
RR 2, Box 22A
Herrick, SD 57538-9216

Rex Tietgen
Rt 2, Box 7
Herrick, SD 57538

Alex Lunderman, President
Rosebud Sioux Tribe
P.O. Box 430
Rosebud, SD 57570

Jay R. Ellston
St. Libory, NE 68872

Darlene Ellston
St. Libory, NE 68872

Lorenzo L. Stars
Stars Ranch
Kansas City, KS

PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 1650-2, WATERPURY BROTHERS

OPPOSITION CONTINUED

Marla Bull Bear
Rt 2, Box 7A
Herrick, SD 57538

Mae Holquin
RR
St. Charles, SD 57571

Doreen McBride
Herrick, SD 57538

Cheryl DeLong
Herrick, SD 57538

Carol Beck
Herrick, SD 57538

Narcisse Godfrey, Sr.
Herrick, SD 57538

Dale Cane
St. Charles, SD 57571

Ethel Hanson
Herrick, SD 57538

Sharon Ellsten
St. Libory, NE 68872

Twila Emme
RR
St. Charles, SD 57571

Marla Holgreen Long
Rosebud, SD 57570

Marilyn R. Marshall
422 Felton Ave.
Gregory, SD 57533

Rex Tietgen
Milks Camp Community
Herrick, SD 57533

Rex Tietgen
Milks Camp Community
Herrick, SD 57538

Bernice Tietgen
Milks Camp Community
Herrick, SD 57538

Roxine Merrills
Milks Camp Community
Herrick, SD 57538

Anna Brokenleg
Milks Camp Community
Herrick, SD 57538

Rena Heck
St. Charles, SD 57571

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St. Charles, SD 57571

Opal Stars
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Lisa (Stars) Pickner
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Bonesteel, SD 57317

Caroline Andrews
Bonesteel, SD 57317

Wally Stone Arrow
Bonesteel, SD 57317

Joyce Andrews
Pierre, SD 57501

Charmayne Chasing Hawk
Bonesteel, SD 57317

Katherine Rainwater
Herrick, SD 57538

Timothy Herman
no address or city listed

PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 1650-2, WATERBURY BROTHERS

OPPOSITION CONTINUED

Patrick Herman, Sr.
Herrick, SD 57538

Pierre LaPointe
Box 21
Bonesteel, SD 57317

Margaret Williams
Box 208
Bonesteel, SD 57317

Alemedia LaPointe
Box 112
Bonesteel, SD 57317

Shirley Old Lodge
RR 2, Box 205
Bonesteel, SD 57317

Mercedes Andrews
RR 2, Box 32
Bonesteel, SD 57317

Barbara Old Lodge
RR 2, Box 209
Bonesteel, SD 57317

Judy Hanson
RR 2, Box 8
Herrick, SD 57538

Denise Marshall
628 E. 6th
Gregory, SD 57533

Neil Hanson
RR 2, Box 8
Herrick, SD 57538

Chris Yellow Hawk
St. Charles, SD 57571

Dora Yellow Hawk
St. Charles, SD 57571

Velda Bearshield
Hillb Camp
Gregory, SD 57533

Leonard Zeisler
Box 6
St. Charles, SD 57571

No. 1650-2Application No. 1650-2
legally receivedMap No. 1414-2 Water Division No. 2 PONCA CREEK District
(Blank to be filled by the Engineer for the W. R. C.)

September 7, 1978

S. S. S. a m



APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

(NOTE: Draw a line through items not applicable)

1. Name of Applicant Waterbury Bros., a partnership
 Postoffice address Burke State South Dakota 57523
 If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) _____
3. Name of diversion work Waterbury Bros, Irrigation Project
4. Amount of water claimed (cubic feet per second) 25.81
5. Source of water supply Ponca Creek Watershed Area
6. Location of point of diversion 5 dams, #1-NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 30; #2-NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 31, existing;
#3-S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 20; #4-SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 20; #5-SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 15, , T96N, R71W
all but dam #1 are existing County Gregory
7. Approx. period or period during which water is to be used Normal irrigation season and such additional
times as water is available to be removed from Ponca Creek to fill the dams
8. Use to be made of water (irrigation, industrial, municipal, commercial, recreation, etc.) 1,807.5 acres
9. For irrigation use, 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

10. 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.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication Burke Gazette, Burke, SD
12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source

water will be pumped from Ponca Creek into storage dams for irrigation

B. Works proposed to transport water to place of use

pipe

C. Works proposed to apply water to beneficial use

center pivot systems

Estimated Total Cost \$ 500,000.00

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, Geo. Waterbury

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

Subscribed and sworn to before me this 15th day of December, 19 78

Notary Public (or other qualified officer)

Water Rights Specialist

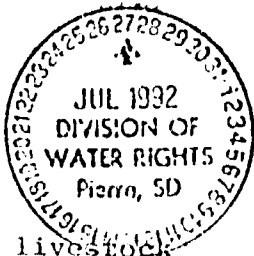
WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1650-2

WATERBURY BROS.
(Applicant)

BURKE
(Post Office Address)

SOUTH DAKOTA 57523 With the following modifications
(State)



Low flows as needed for downstream domestic use, including livestock watering must be by-passed.

Date of first receipt of application SEPTEMBER 7, 1976

Date of return to applicant for correction, amendments or changes required OCTOBER 4, 1976 & JUNE 23, 1978

Date of receipt of corrected application JANUARY 12, 1979

Approved FEBRUARY 1, 1979, Recorded in Book 20 Page 115

WATER RIGHT PERMIT NO. 1650-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1650-2, 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 JANUARY 12, 1979

2. The equivalent of at least one-fifth of the work above specified is to be completed on or before AUGUST 1, 1981.

3. The whole of said work is to be completed on or before FEBRUARY 1, 1984.

1. The limit of time from proof of beneficial use of water appropriated in accordance herewith is FEBRUARY 1 1988

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 25.81 cubic feet per second, neither shall exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial use served, and if for the irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and 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

actually and beneficially applied for irrigation on or before FEBRUARY 1, 1988; said water to be used during the following described annual period: APRIL THRU OCTOBER & WHEN AVAILABLE

Witness my hand this 6th day of FEBRUARY 1979

WATER RIGHTS COMMISSION

By:

John Kall
Chief Engineer, Executive Officer

Certificate of Construction Issued _____, 19____

Water License Issued _____ 19____

1650-2



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

July 28, 1992

NOTICE

TO: Waterbury Brothers
Rt. 1, Box 9
Burke, SD 57523
and Parties of Record (see attached list)

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

SUBJECT: Automatic Delay of Hearing For Readvertised Water Permit
Application No. 1650-2, Waterbury Brothers

Petitions in opposition to Readvertised Water Permit Application No. 1650-2 have been filed with the Water Rights Division. Copies of the petitions are attached. The petition submitted by the Rosebud Sioux Tribe also requested a postponement of the hearing. Therefore, the meeting at the Division of Water Rights office to hear this application is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will no longer be held on August 4, 1992.

A hearing on this readvertised application will be scheduled for the September 30, 1992 and October 1, 1992 Water Management Board meeting to be held in Pierre. Notice of the time, date and location of the hearing to be held by the Water Management Board will be provided to all parties of record.

If you have any questions regarding this application or future scheduling before the Water Management Board, please contact Eric Gronlund at 773-3352.

cc: Diane Best, Assistant Attorney General
John Jacobsen

CERTIFICATION

I hereby certify that on July 28, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 28, 1992, regarding Automatic Delay of Hearing for Readvertised Water Permit Application No. 1650-2, Waterbury Brothers, along with a copy of the Parties of Record addressed as stated below and on the attached list:

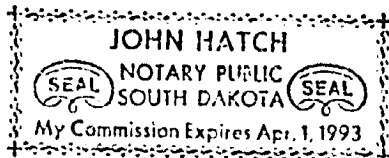
Copy Sent Inter-office To:

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 29th day of July, 1992.



John Hatch
Notary Public

1650-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 28, 1992

Alex J. Lunderman, President
Rosebud Sioux Tribe
P.O. Box 430
Rosebud, SD 57570

Dear Mr. Lunderman:

I am writing regarding the petition of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Enclosed is a Notice automatically delaying the August 4, 1992 hearing. The August 4, 1992 hearing date listed in the published notice will no longer be held.

The following addresses concerns raised in the letters of opposition to this application.

1. This is a readvertisement of Water Permit No. 1650-2 issued in February, 1979. Diversions from Ponca Creek to the storage dam authorized under this Permit have been taking place for several years. This readvertisement serves only to correct the deficiency in the public notice. No increase in the diversion rate or acres developed for irrigation is requested by this application.
2. The Permit is qualified to protect the rights of domestic users and holders of prior rights. The qualification on the Permit states, "low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed." Pumping from Ponca Creek under this permit may not take place if adequate flows are not provided for livestock watering or prior water right holders are adversely impacted.

If you have any questions on the readvertised water permit application or the scheduling of the hearing before the Water Management Board, please contact Eric Gronlund at (605) 773-3352.

Very truly yours,

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

cc: John Jacobsen



July 28, 1992

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

TO: Petitioners in the matter of Water Permit Application No. 1650-2

Dear Petitioner:

I am writing regarding the petition of opposition you submitted to Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. A hearing will now be scheduled before the Water Management Board. Enclosed is a Notice automatically delaying the August 4, 1992 hearing. The August 4, 1992 hearing date listed in the published notice will no longer be held.

The following addresses concerns raised in the letters of opposition to this application.

1. This is a readvertisement of Water Permit No. 1650-2 issued in February, 1979. Diversions from Ponca Creek to the storage dam authorized under this Permit have been taking place for several years. This readvertisement serves only to correct the deficiency in the public notice. No increase in the diversion rate or acres developed for irrigation is requested by this application.
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If you have any questions on the readvertised water permit application or the scheduling of the hearing before the Water Management Board, please contact Eric Gronlund at (605) 773-3352.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'John Hatch', is written over the typed name.

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

cc: John Jacobsen



1650-2

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

August 7, 1992

NOTICE

TO: Waterbury Brothers
Rt. 1, Box 9
Burke, SD 57523
and Parties of Record (see attached list)

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

SUBJECT: Rescheduling of Hearing For Readvertised Water Permit
Application No. 1650-2, Waterbury Brothers

The Water Management Board will consider readvertised Water Permit Application No. 2221-2 on September 30, 1992 at 11:00 am in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501. The agenda time is an estimate. The actual time of the hearing may be later than 11:00 am due to prior agenda items. The August 4, 1992 meeting on this readvertised application was automatically delayed by a petitioner in opposition to the application. Applicable provisions of the Notice of Hearing published July 8 and 15, 1992 in the will still apply at this hearing.

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 State Supreme Court as provided by law.

Contact Eric Gronlund by September 18, 1992 at 773-3352 to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

cc: Diane Best, Assistant Attorney General
John Jacobsen

PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 1650-2, WATERBURY BROTHERS

OPPOSITION CONTINUED

Marla Bull Bear
Rt 2, Box 7A
Herrick, SD 57538

Mae Holquin
RR
St. Charles, SD 57571

Doreen McBride
Herrick, SD 57538

Cheryl DeLong
Herrick, SD 57538

Carol Beck
Herrick, SD 57538

Narcisse Godfrey, Sr.
Herrick, SD 57538

Dale Cane
St. Charles, SD 57571

Ethel Hanson
Herrick, SD 57538

Sharon Ellsten
St. Libory, NE 68872

Twila Emme
RR
St. Charles, SD 57571

Marla Holgreen Long
Rosebud, SD 57570

Marilyn R. Marshall
422 Felton Ave.
Gregory, SD 57533

Rex Tietgen
Milks Camp Community
Herrick, SD 57533

Rex Tietgen
Milks Camp Community
Herrick, SD 57538

Bernice Tietgen
Milks Camp Community
Herrick, SD 57538

Roxine Merrills
Milks Camp Community
Herrick, SD 57538

Anna Brokenleg
Milks Camp Community
Herrick, SD 57538

Rena Heck
St. Charles, SD 57571

Russell Heck
St. Charles, SD 57571

Opal Stars
1011 N. Garfield Ave.
Pierre, SD 57501

Lisa (Stars) Pickner
1011 N. Garfield Ave.
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Josephine LaPointe
Bonesteel, SD 57317

Caroline Andrews
Bonesteel, SD 57317

Wally Stone Arrow
Bonesteel, SD 57317

Joyce Andrews
Pierre, SD 57501

Charmayne Chasing Hawk
Bonesteel, SD 57317

Katherine Rainwater
Herrick, SD 57538

Timothy Herman
no address or city listed

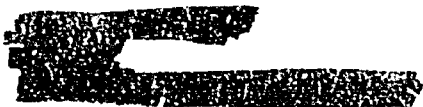
PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 1650-2, WATERBURY BROTHERS

OPPOSITION CONTINUED

Marla Bull Bear
Rt 2, Box 7A
Herrick, SD 57538

Bernice Tietgen
Milks Camp Community
Herric, SD 57538


Doreen McBride
Herrick, SD 57538

Roxine Merrills
Milks Camp Community
Herrick, SD 57538

Cheryl DeLong
Herrick, SD 57538


Rena Heck
St. Charles, SD 57571

Carol Beck
Herrick, SD 57538

Russell Heck
St. Charles, SD 57571

Narcisse Godfrey, Sr.
Herrick, SD 57538

Opal Stars
1011 N. Garfield Ave.
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Herrick, SD 57538

Josephine LaPointe
Bonesteel, SD 57317

Sharon Ellsten
St. Libory, NE 68872

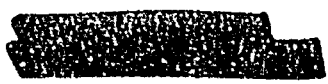
Caroline Andrews
Bonesteel, SD 57317

Twila Emme
RR
St. Charles, SD 57571

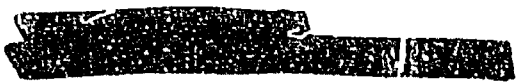
Wally Stone Arrow
Bonesteel, SD 57317

Marla Holgreen Long
Rosebud, SD 57570

Marilyn R. Marshall
422 Felton Ave.
Gregory, SD 57533


Charmayne Chasing Hawk
Bonesteel, SD 57317

Katherine Rainwater
Herrick, SD 57538



PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 1650-2, WATERBURY BROTHERS

OPPOSITION CONTINUED

Patrick Herman, Sr.
Herrick, SD 57538

Pierre LaPointe
Box 21
Bonesteel, SD 57317

Margaret Williams
Box 208
Bonesteel, SD 57317

Alemeda LaPointe
Box 112
Bonesteel, SD 57317

Shirley Old Lodge
RR 2, Box 205
Bonesteel, SD 57317

Mercedes Andrews
Rk 2, Box 32
Bonesteel, SD 57317

Barbara Old Lodge
RR 2, Box 209
Bonesteel, SD 57317

Judy Hanson
Rt 2, Box 8
Herrick, SD 57538

Denise Marshall
628 E. 6th
Gregory, SD 57533

Neil Hanson
RR 2, Box 8
Herrick, SD 57538

Chris Yellow Hawk
St. Charles, SD 57571

Dora Yellow Hawk
St. Charles, SD 57571

Velda Bearshield
Milks Camp
Gregory, SD 57533

Leonard Zeisler
Box 6
St. Charles, SD 57571

1650-2

CERTIFICATION

I hereby certify that on August 7, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 7, 1992, regarding Rescheduling of Hearing for Readvertised Water Permit. Application No. 1650-2, Waterbury Brothers, along with a copy of the Parties of Record list addressed as stated on the attached list, and also below:

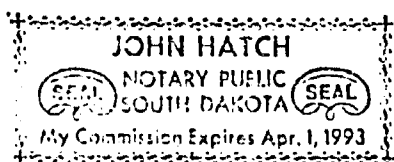
Copy Sent Inter-office To:

Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

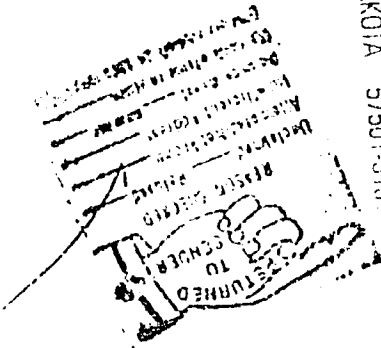
Sworn to, before me, this 11th day of August, 1992.



John Hatch
Notary Public



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

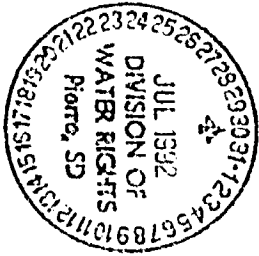


Anna Brokenleg
Milks Camp Community
Herrick, SD 57538

1650-2

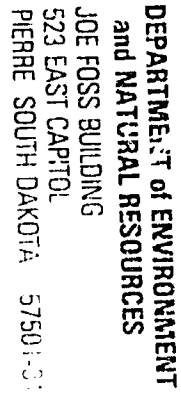


DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3178

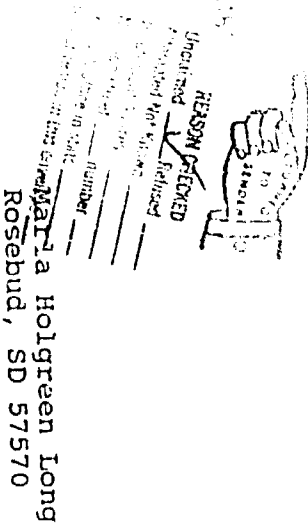


INSUFFICIENT ADDRESS
TO SENDER
Joyce Anderson
Pierre, SD 57501

1650-2

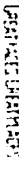


DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3101



Maria Holgreen Long
Rosebud, SD 57570

1650-2



and NATURAL RESOURCES

PIERRE SOUTH DAKOTA 57501-3161



10



ROSEBUD SD 57570

1650-2

1650-2

REPORT ON
READVERTISED WATER PERMIT APPLICATION NO. 1650-2
WATERBURY BROTHERS
AUGUST 19, 1992

Water Permit Application No. 1650-2 was approved on February 1, 1979 to appropriate 25.81 cfs of water from Ponca Creek and 5 storage dams to irrigate 1807.5 acres in Gregory County. The advertised Notices of Hearing for Water Permit Application No. 1650-2 only referenced the 5 storage dams as the source of water. This Readvertisement is being made to correct the omission of Ponca Creek from the original Notice of Hearing.

Discussion:

Water Permit Application No. 1650-2 was originally received on September 7, 1976. The original application indicated that a dam would be located directly on Ponca Creek. The Waterburys were told that the Water Rights Commission probably would not allow a dam on Ponca Creek and were advised they should submit an amended application for storage in dams located off stream of Ponca Creek. It was returned to the applicant for corrections and the corrected application was received on January 12, 1979. The application states "Ponca Creek Watershed Area" as the source of water supply, and also on the application states "water will be pumped from Ponca Creek into storage dams for irrigation". The application was approved on February 1, 1979 with the low flow by-pass qualification. The 5 year time limit for development ended February 1, 1984 and the additional 4 year period to put water to beneficial use ended February 1, 1988.

The Waterbury Brothers filed an Application for Extension of Time on October 4, 1983 requesting an additional 5 years for development. At that time they had their irrigation dam constructed and 3 center pivots developed. The Water Management Board approved their application for Extension of Time on February 15, 1984 for an additional three years for development.

Water Permit Application No. 1650-2 was inspected for licensing purposes on July 31, 1991. The inspection found that only one dam had been constructed and 390 acres developed for irrigation thru 3 center pivots. The dam, which can store 750 acre-feet of water, is filled by pumping water from Ponca Creek with pumps capable of diverting up to 13.33 cfs.

There are two Water Rights on Ponca Creek located downstream of the Waterbury Brothers. Both have senior priority dates and are located about 10 miles downstream of the Waterbury's and about 2 miles upstream of the Nebraska border.

Water Right No. 1008-2, Leonard Zeisler, has a priority date of October 16, 1969 and appropriates 0.30 cfs to irrigate 20 acres located in Section 22-T95N-R70W.

Water Right No. 1320-2, Logan Thoene, has priority dates of September 5, 1975 and December 15, 1975 and appropriates 3.87 cfs to irrigate 271 acres in Sections 19 & 30-T95N-R69W and Section 25-T95N-R70W. Water Right No. 1320-2 also has an off stream storage dam that stores approximately 600 acre-feet of water. Water Right No. 1320-2 has a June 1 cutoff date for diverting from Ponca Creek, unless written authorization is issued by the Chief Engineer.

Water Permit No. 2127-2, Lillian Thoene, has a priority date of March 26, 1990 to appropriate 0.86 cfs from the irrigation dam authorized by Water Right No. 1320-2 to irrigate 60 acres in Sec. 24-T95N-R70W.

The total drainage area for the portion of Ponca Creek located within South Dakota is approximately 457 square miles. This figure is comprised of 267 square miles in Gregory County, 170 square miles in Tripp Co. and 20 square miles in Nebraska. There are 332 square miles of drainage above the Waterbury Brother's point of diversion (72% of the total) and 125 square miles below (28% of the total).

The recorded historic flow data for Ponca Creek in South Dakota is limited; however, Figure 1 and Figure 2 represent hydrographs for two USGS gaging stations on Ponca Creek. Figure 1 is a duration hydrograph for the mean monthly flows in Ponca Creek for the gaging station located at Anoka, Nebraska. This station is located approximately 15 miles downstream of the state line. This graph indicates that 50% of the time during March thru June, flows in Ponca Creek are at least 35 to 70 cfs. It also indicates that 50% of the time during August thru December, flows could range from 0 to less than 10 cfs.

Figure 2 represents the median of mean monthly flows in Ponca Creek for a gaging station located near Naper, Nebraska. This station was located approximately 3 miles upstream of the state line during 1962 thru 1968. This graph indicates that 50% of the time during March thru June, the flows are at least 18 to 32 cfs; and during August thru December, the flows are less than 2 cfs.

Figure 3 represents the Annual Volume in acre-feet recorded at the Naper station.

The following table represent annual surface yield runoff estimates for the 457 square mile drainage area.

ANNUAL SURFACE YIELD
(Acre-Feet)

	Chance of Occurrence	Total Drainage	Above Waterbury	Below Waterbury
CN 70	10%	44,000	31,680	12,320
	20%	24,400	17,568	6,832
	50%	7,300	5,256	2,044
	80%	2,500	1,800	700

CN 75	10%	58,500	42,120	16,380
	20%	34,125	24,570	9,555
	50%	12,650	9,108	3,542
	80%	4,900	3,528	1,372

Comparing this data with Figure 3, it would appear that the 50% chance of occurrence runoff estimates using a SCS Soil Cover Complex Number (CN) 75 would compare closely to the recorded data.

Using this data, one could estimate that 50% of the time, the flows in Ponca Creek at the State line would be at least 18 to near 70 cfs during March thru June and 0 to less than 10 cfs from August to December. Also, 50% of the time the Annual Yield would produce about 12,000 acre-feet of water at the State line.

It would appear that Ponca Creek maintains a flow large enough to accommodate the off stream storage permits that exist during the Spring runoff months, and flows naturally diminish during the Summer and Fall months.

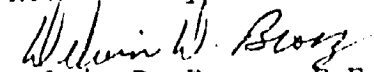
Conclusions:

1. This is a Readvertisement of Water Permit No. 1650-2 issued on February 1, 1979. It does not increase the diversion rate or number of acres irrigated.
2. The Permit is already qualified to protect downstream domestic use and prior water rights. The qualification on Water Permit No. 1650-2 states, "low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed."
3. To satisfy downstream domestic use and prior water rights and to be consistent with Water Right No. 1320-2, Water Permit No. 1650-2 should have a June 1 cutoff date for pumping from Ponca Creek, unless written authorization is issued by the Chief Engineer.



Timothy G. Schaal, P.E.
Natural Resources Engineer III

Reviewed by:



Delvin D. Brosz, P.E.
Natural Resources Engineer IV

References:

Division of Water Rights, 1992, Water Right/Permit Files, DENR, Joe Foss Building, Pierre, SD.

PONCA CREEK AT ANOKA, NEBR.

Water Years 1950-1990

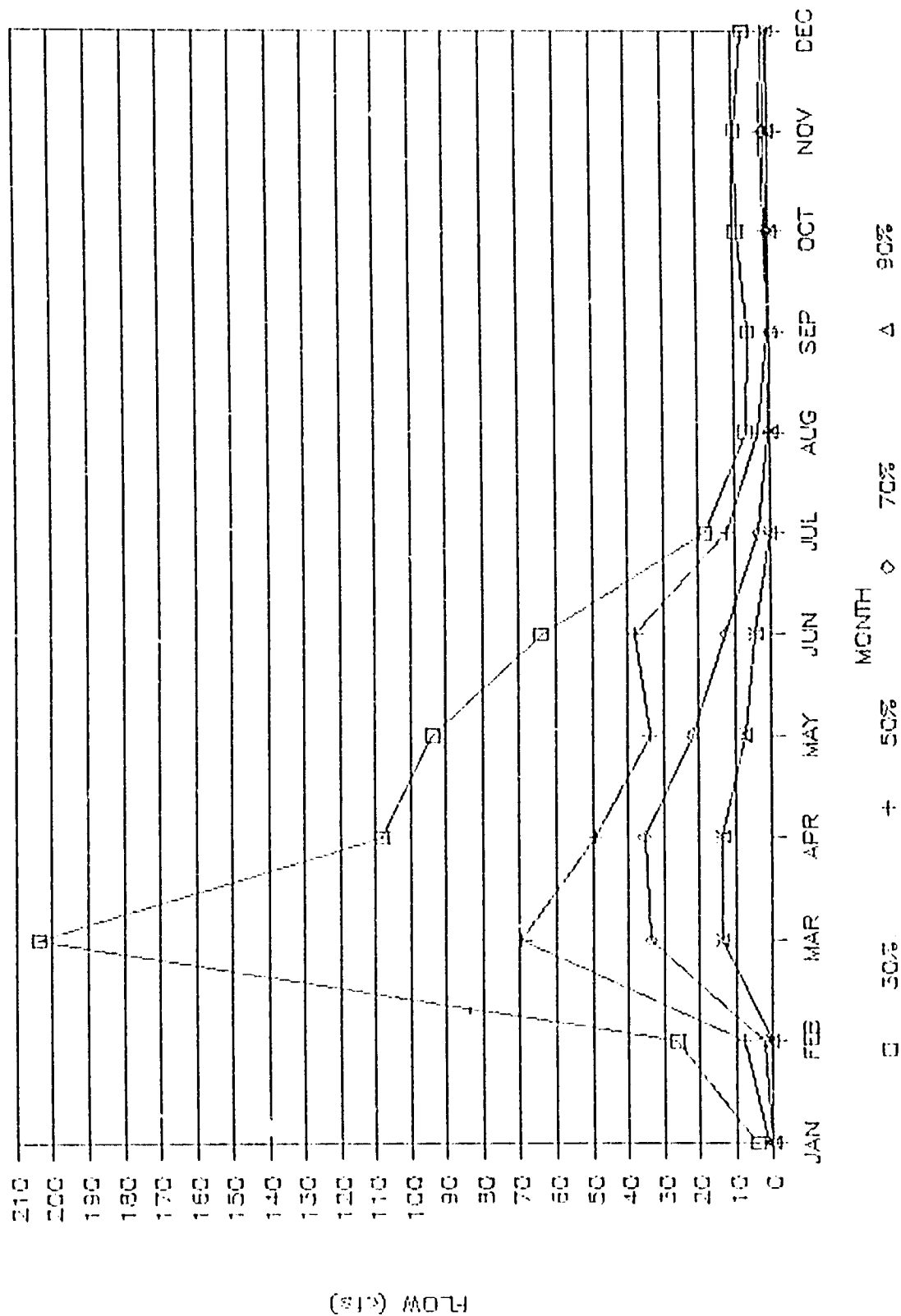


FIGURE 1

PONCA CREEK NEAR NAPER, NEBR.

MEDIAN MEAN MONTH FLOW 1962-1968

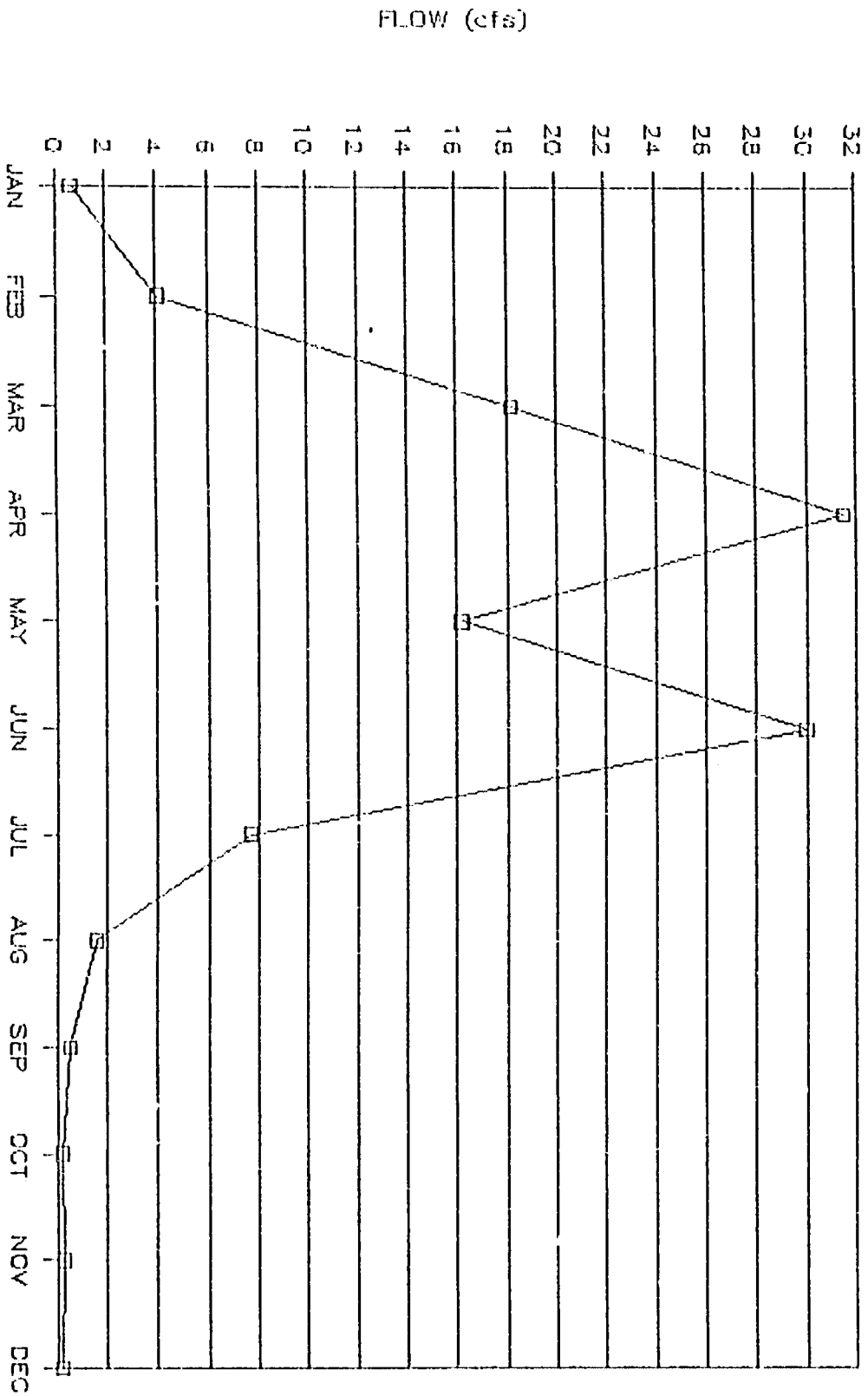


FIGURE 2

PONCA CREEK NEAR NAPER, NEBR. ANNUAL VOLUME (acre-feet)

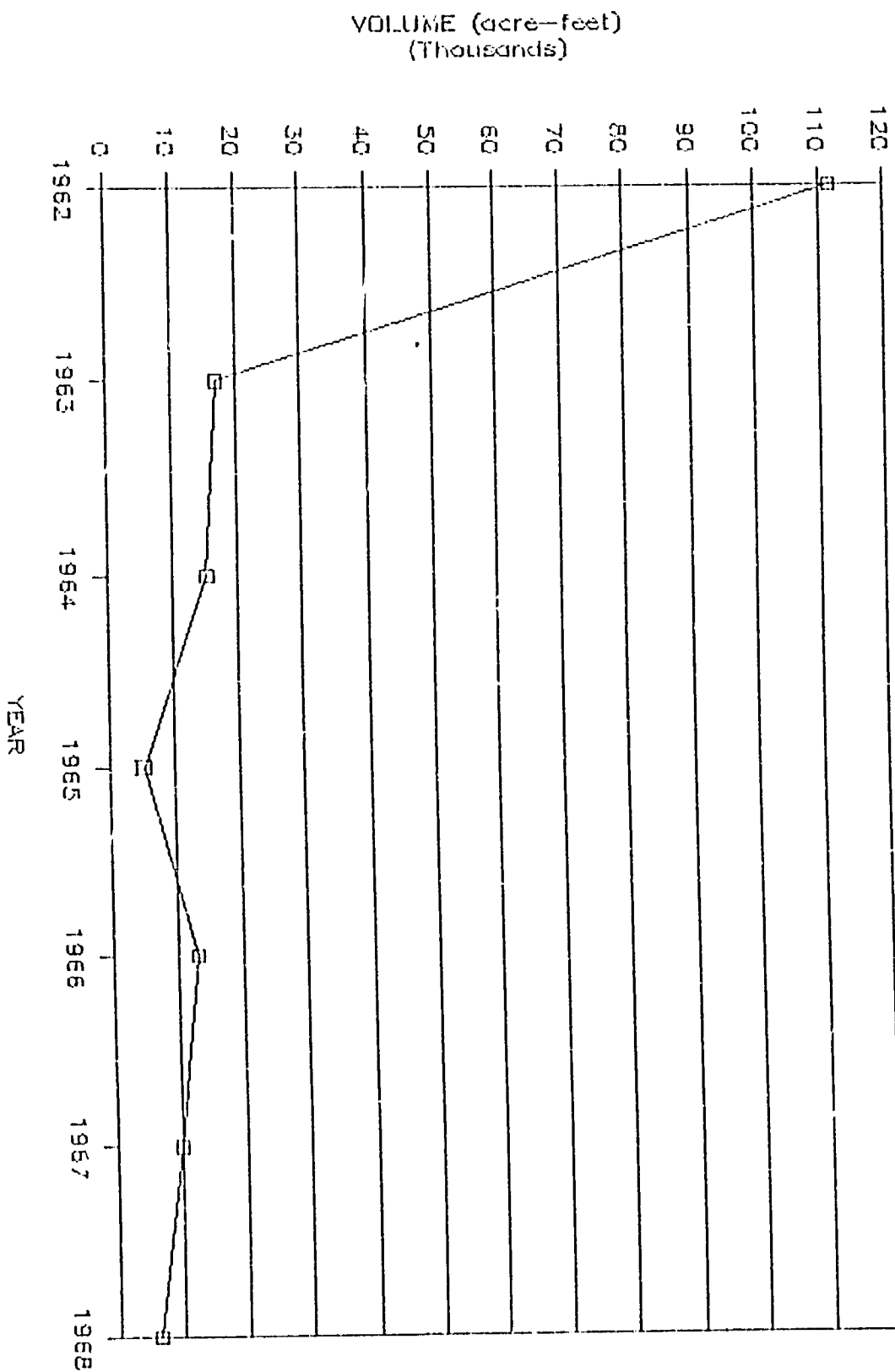


FIGURE 3

1650-2

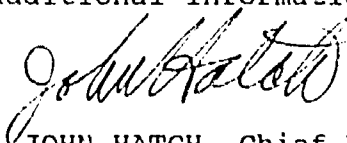
REVISED RECOMMENDATION OF CHIEF ENGINEER FOR READVERTISED WATER
PERMIT NO. 1650-2, Waterbury Brothers

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 1650-2, Waterbury Brothers, Rt. 1, Box 9, Burke SD 57523.

The Chief Engineer is recommending APPROVAL of Readvertised Permit No. 1650-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion has been developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit does not authorize diversion of water from Ponca Creek after June 1 of each calendar year, nor at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. Approval of Readvertised Permit No. 1650-2 authorizes a diversion rate of 13.33 cfs from Ponca Creek into the dam and a diversion rate of 5.57 cfs from the dam for irrigation of 390 acres.
3. Approval of this Permit authorizes storage of 900 acre feet of water in one dam.

See report on application for additional information.



JOHN HATCH, Chief Engineer
August 19, 1992

South Dakota

1650-2

GREAT FACES. GREAT PLACES.

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

August 25, 1992

George Waterbury
Waterbury Brothers
Rt. 1, Box 9
Burke, SD 57523

Dear Mr. Waterbury:

Please find enclosed a copy of the report and a revised recommendation for readvertised Water Permit Application No. 1650-2. This enclosure is also being sent to all petitioners in opposition to your water permit application.

Once again, the Water Management Board will consider readvertised Water Permit Application No. 1650-2 on September 30, 1992 at 11:00 am in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501.

If you have any questions, please feel free to contact Tim Schaal or myself.

Sincerely,

Eric Gronlund

Eric Gronlund
Water Rights Division
605 773-3352

enclosure

cc: John Waterbury
John Jacobsen



1650-2

GREAT FACES. GREAT PLACES.

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 25, 1992

TO: Petitioners in the Matter of Water Permit Application No. 1650-2

Dear Petitioner:

Please find enclosed a copy of the report and a revised recommendation for readvertised Water Permit Application No. 1650-2. The revised recommendation amends the low flow qualification to not authorize diversion of water from Ponca Creek after June 1 of each calendar year unless written orders have been issued by the Chief Engineer.

Once again, the Water Management Board will consider readvertised Water Permit Application No. 1650-2 on September 30, 1992 at 11:00 am in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501.

If you have any questions, please feel free to contact Tim Schaal or myself.

Sincerely,

A handwritten signature in cursive script that reads "Eric Gronlund".

Eric Gronlund
Water Rights Division
605 773-3352

enclosure



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

GREAT FACES. GREAT PLACES.

August 27, 1992

Logan Thoene
Rt. 2, Box 40
Bonesteel, SD 57317

Dear Mr. Thoene:

I am writing in response to the petition to intervene you submitted in response to the readvertisement of Water Permit Application No. 1650-2, Waterbury Brothers. Your petition stated that in the past, Mr. Waterbury had failed to by-pass low flows from Ponca Creek sufficient to satisfy your senior water right.

I am recommending the following qualification to approval of readvertised Water Permit No. 1650-2:

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit does not authorize diversion of water from Ponca Creek after June 1 of each calendar year, nor at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

If readvertised Water Permit No. 1650-2 is approved with the above qualification, the Waterburys' must comply with the qualification. Failure of the Waterburys' to adhere to the permit conditions will result in an investigation, and if necessary, enforcement of the permit qualifications. However, you need to let us know that Waterburys' are not bypassing sufficient water to satisfy your senior water right.

Ponca Creek should provide sufficient flows to satisfy all existing rights in the spring of most years. However, later in the summer, Ponca Creek water may only be available for domestic use (livestock watering).

If you have any questions regarding our enforcement procedure or the upcoming hearing, please feel free to contact Eric Gronlund at 773-3352.

Very truly yours,

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

cc: Waterbury Brothers - with copy of Logan Thoene letter

1650-2

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Read, Water Permit Appl. No. 1650-2, Waterbury Bros.

ADDRESS: _____ COUNTY: _____

DATE: 9/16/92 TELEPHONE: _____

RE: Discussion with John Jacobson, Waterbury's Attorney

COMMENTS:

Mr. Jacobson regarding the upcoming hearing on Readvertised Water Permit Application No. 1650-2, Waterbury Brothers. He had questions about how the hearing procedures and I went through the standard staff report and then both the applicant and opposition would be given time to present testimony and cross examine witnesses. I said that FF, CL & FD would be adopted if persons opposing the application provided testimony.

He asked about Logan Thoene's objection and I stated that I thought Mr. Thoene's main concern was that his prior right status be known. I explained to Mr. Jacobson that I had a conversation with Mr. Thoene (prior to petitions of opposition being filed) that lead me to this conclusion. I could not find any file documentation of my conversation with Mr. Thoene. We have written Mr. Thoene to state that his prior right will be protected.

Mr. Jacobson then asked if I'd talked to a Vern Ellston regarding this readvertised application. I stated I had talked with a retired Corps of Engineer's employee (Mr. Jacobson said that was Vern Ellston) back sometime in July about the application. I stated that as I recall (I did not document this conversation because the gentlemen never gave his name) Mr. Ellston claimed to be a dam expert and stated Waterbury's dam was unstable because it was built improperly (too much sand).

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.

NAME: Eric Thorne

PARTIES OF RECORD
(September 30, 1992)

John Waterbury
Waterbury Brothers
Rt 1 Box 9
Burke, SD 57523

John D. Jacobsen
PO Box 301
Burke, SD 57523

Mae Holquin
Box 174
St. Charles, SD 57571

Dick Grosch
RR 1 Box 77J
O'Neill, NE 68763

Velda Bearshield
422 Felton
Milks Camp
Gregory, SD 57533

John Whiting
RST Water Resources
PO Box 430
Rosebud, SD 57570

Syed Y. Hug
RST Water Resources
PO Box 430
Rosebud, SD 57570

Percilla Nelson
RR 2 Box 23
Herrick, SD 57538

Verne D. Ellston
Box 119
Dallas, SD 57529



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 5, 1992

NOTICE

TO: Waterbury Brothers
Rt 1 Box 9
Burke, SD 57523
and Parties of Record (dated September 30, 1992)

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

SUBJ: Preparation of Findings of Fact, Conclusions of Law and
Final Decision

The Water Management Board has directed Harold Deering, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision for approval of readvertised Water Permit Application No. 1650-2. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 pm, December 2, 1992, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record and their attorneys by November 12, 1992. Pursuant to Administrative Rule 74:02:01:12.02, any person filing a petition who does not participate in the Board hearing waives the right to receive further notices, unless the petitioner makes a written request to the chief engineer to receive further notices. The enclosed Parties of Record list dated September 30, 1992, was prepared in accordance with this rule.

Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by November 23, 1992.

October 5, 1992
Waterbury Brothers
Page 2

The public hearing was completed September 30, 1992. No additional testimony will be received on December 2, 1992.

cc: Harold Deering, Assistant Attorney General
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 5, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 5, 1992, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision on Water Permit Application No. 1650-2 addressed as stated below:

John Waterbury, Waterbury Brothers, Rt 1, Box 9, Burke, SD 57523.

Harold Deering, 300 N. Dakota Ave., Suite 409, Sioux Falls, SD 57102.

John D. Jacobsen, P.O. Box 301, Burke, SD 57523.

Mae Holquin, Box 174. St. Charles, SD 57571.

Dick Grosch, RR 1, Box 77J, O'Neill, NE 68763.

Velda Bearshield, 422 Felton, Milks Camp, Gregory, SD 57533.

John Whiting, RST Water Resources, P.O. Box 430, Rosebud, SD 57570.

Syed Y. Huq, RST Water Resources, P.O. Box 430, Rosebud, SD 57570.

Percilla Nelson, RR 2, Box 23, Herrick, SD 57538.

Verne D. Ellston, Box 119, Dallas, SD 57529.

Copy Sent Inter-office To:

John Guhin, Deputy Attorney General, Capitol Building.

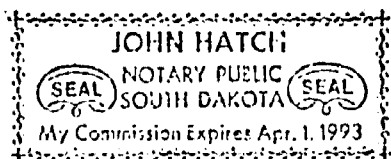
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl A. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of October, 1992.



John H. H. H.
Notary Public

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
READVERTISED APPLICATION	)	FINDINGS OF FACT,
OF WATERBURY BROTHERS FOR	)	CONCLUSIONS OF LAW, AND
WATER PERMIT NO. 1650-2	)	FINAL DECISION

FINDINGS OF FACT

I

This is a readvertised application by Waterbury Brothers for a permit to appropriate water from Ponca Creek for the irrigation of land in Gregory County, South Dakota. Under the readvertised application, the water is to be diverted from Ponca Creek at a rate not to exceed 13.33 cfs, placed in a storage dam capable of holding 750 acre-feet of water, and diverted from the dam at a rate not to exceed 5.57 cfs to irrigate 390 acres by use of three (3) center pivots.

II

The Application for Water Permit No. 1650-2 was originally received on September 7, 1976. That application sought permission to construct a dam directly in Ponca Creek. The Division of Water Rights advised the applicant that the storage dams for irrigation should be constructed off stream, and the application was sent back for corrections.

III

The corrected application was received on January 12, 1979, and was for a permit to appropriate 25.81 cfs of water from Ponca Creek, to construct 5 storage dams, and to irrigate 1807.5 acres in Gregory County from those dams. The application stated that the source of water supply was the Ponca Creek Watershed, and also stated that water would be pumped from Ponca Creek into

the storage dams for irrigation. The application was approved by the Water Rights Commission on February 1, 1979 with a low flow by-pass qualification.

IV

On October 4, 1983, Waterbury Brothers filed an Application for Extension of Time to construct the works seeking an additional five years for development. At that time, Waterbury Brothers had constructed the storage dam and had developed three center pivots. The Water Management Board approved an additional three years for development on February 15, 1984. No additional development after that date occurred because of the market prices and interest rates.

V

Water Permit Application 1650-2 was inspected for licensing on July 31, 1991. The inspection found that one storage dam capable of storing 750 acre-feet of water had been constructed. The dam is filled by pumping water from Ponca Creek, with pumps capable of diverting at a rate of up to 13.33 cfs. 390 acres had been developed for irrigation from the dam using three center pivots.

VI

The advertisement by publication of the Notice of Hearing for the 1979 Corrected Application only referred to the storage dams as the source of water, and did not list Ponca Creek as the source of water, even though the application on file listed Ponca Creek as the source of water. The 1979 Corrected Application contained the correct information but the

advertisement did not. This Readvertised Application is being made to correct the omission of Ponca Creek as the source of water.

VII

The Readvertised Application seeks no increase in diversion rate or in acreage from the diversion rate and acreage found to have been used and developed during the licensing inspection on July 31, 1991.

VIII

Ponca Creek has a drainage area within the State of South Dakota of approximately 457 square miles. Approximately 322 square miles of the drainage into Ponca Creek is above the Waterbury Brothers' point of diversion and 125 square miles of drainage is below the diversion point.

IX

There is limited recorded historic flow data available for Ponca Creek. There is a USGS gauging station on Ponca Creek located at Anoka, Nebraska, approximately 15 miles downstream from the state border. For water years 1950 to 1990, data from this station indicates that 50% of the time during the months of May through June, flows in Ponca Creek are at least 35 to 70 cfs. and 50% of the time during August through December, flows are from 0 to less than 10 cfs.

X

There was also a USGS gauging station located on Ponca Creek near Naper, Nebraska, approximately 3 miles upstream from the state border. Data from the Near Naper station is limited to

water years 1962 through 1968, but the data available indicates that at this station 50% of the time during the months of March through June, flows are at least 18 to 32 cfs. During the months of August through December, the flows are less than 2 cfs.

XI

The data on the Annual Volume of Water in acre-feet for Ponca Creek at the Near Naper station, closely compares with the 50% chance of occurrence runoff estimates of Annual Surface Yield in acre-feet for the 457 square mile drainage area, using SCS Soil Cover Complex Number(CN) 75.

XII

Data submitted by the Field Technician, Office of Water Resources, Rosebud Sioux Tribe, using a correlation between flow data at the Near Naper and Anoka USGS stations for 1962 through 1968, and projecting back using the 1969 to 1991 data from the Anoka station, showed that in 11 out of 23 years from 1969 forward, there would not be 13.33 cfs available at the point of diversion.

XIII

Based upon the data presented by all parties, the Board finds that 50% of the time the flows in Ponca Creek near the state line would be at least 18 to near 70 cfs during March through June, and from 0 to less than 10 cfs from August to December. These flows are large enough to accommodate the diversion and off stream storage sought in the application during the Spring runoff months.

XIV

There are two existing Water Rights on Ponca Creek approximately 10 miles downstream from the point of diversion which have senior priority dates. Water Right No. 1008-2, Leonard Zeisler, appropriates 0.30 cfs to irrigate 20 acres located in Section 22, Township 95N, Range 70W, Gregory County, and has a priority date of October 16, 1969.

XV

Water Right No. 1320-2, Logan Thoene, appropriates 3.87 cfs to irrigate 271 acres in Sections 19 and 30, Township 95N, Range 69W, and in Section 25, Township 95N, range 70W, Gregory County, with priority dates of September 5, 1975 and December 15, 1975. This Water Right has an off stream storage dam which stores approximately 600 acre-feet, and has a diversion cutoff date of June 1, unless written authorization is obtained from the Chief Engineer, Division of Water Rights. That dam also serves Water Permit No. 2127-2, Lillian Thoene, for 0.86 cfs for irrigation, which has a priority date of March 26, 1990, junior to the Waterbury permit.

XVI

There are also domestic users of Ponca Creek downstream from the Waterbury diversion point, and the Director of Water Resources, Rosebud Sioux Tribe, testified that there is also downstream irrigation by tribal members. The only complaint received by the Division of Water Rights concerning the Waterbury diversion was from Logan Thoene, senior water right holder located downstream in the early 1980's. That complaint was

resolved. The Director of Water Resources for the Rosebud Sioux Tribe testified that the tribe had received complaints of interference with domestic use from tribal members downstream from the diversion point, but no evidence was offered as to when the complaints were made, or whether the complaints were attributable to the Waterbury diversion.

XVII

The Waterbury Brothers have made use of water pursuant to the permit approved February 1, 1979 since the system was developed in 1980. They spent \$320,000 developing the system.

XVIII

Opponents to the Readvertised Application testified there was confusion because the readvertisement set forth the diversion rate, number of dams and irrigated acres sought in the 1979 Corrected Application, and it was not clear that the Readvertised Application was for a lower diversion rate, one dam and less acreage. Opponents testified that there would have been less opposition if only the latter information had been advertised. The Board finds that the Readvertisement was not misleading, and that any confusion resulted in prejudice to the Applicant, not the opponents.

XIX

The Rosebud Sioux Tribe expressed concern about the safety of the storage dam for downstream residents. The storage dam has almost no drainage basin, and is classified as a Category 3, low hazard dam, the failure of which would result in limited damage to lands and roads or minimum economic damage. The Board

finds that the storage dam does not pose a safety risk of loss of life to residents downstream.

XX

The Rosebud Sioux Tribe requested that an Environmental Impact Statement be done on the project, and that the Board establish a diversion start date of March 1, and a diversion end date of May 1 for this application as sufficient to satisfy the needs of the applicant. No evidence was offered as to why an EIS was required, except for public input.

XXI

The Board finds there has been adequate opportunity for public input through the Board's own procedures, as indicated by the number of protests to the readvertised application. The Board further finds that the permit qualifications and diversion cutoff date recommended by the Chief Engineer will protect the downstream users without more restrictive cutoff dates.

CONCLUSIONS OF LAW

I

The Board has jurisdiction over this matter.

II

There is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

III

The proposed diversion has been developed without unlawful impairment of existing rights.

IV

The use of water for irrigation is a beneficial use.

The proposed use of water is in the public interest.

FINAL DECISION

The Readvertised Application for Water Permit # 1650-2, Waterbury Brothers, to appropriate water from Ponca Creek at a diversion rate of 13.33 cfs, to store up to 750 acre-feet of water in a storage dam, and to divert water from the dam at a rate of 5.57 cfs to irrigate 390 acres in Gregory County, South Dakota as described in the Readvertised Application is hereby approved with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit does not authorize diversion of water from Ponca Creek after June 1 of each calendar year, nor at any time when the stream flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

2. Approval of this Readvertised Permit authorizes a diversion rate of 13.33 cfs from Ponca Creek into the dam and a diversion rate of 5.57 cfs from the dam for irrigation of 390 acres.

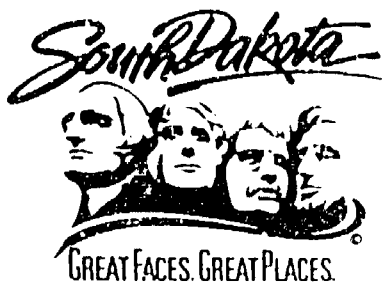
3. Approval of this Readvertised Permit authorizes the storage of 750 acre-feet of water in one dam.

Dated this 11th day of December, 1992.

BY THE BOARD

Francis E. Brink
Chairman

1650-2



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

December 14, 1992

NOTICE

TO: Waterbury Brothers
Rt 1 Box 9
Burke, SD 57523
and Parties of Record (dated September 30, 1992)

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

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and
Final Decision

This is to notify you that a Final Decision, including Findings of Fact and Conclusions of Law, was adopted by the Water Management Board for Water Permit Application No. 1650-2 at the December 2, 1992, meeting.

A copy of the signed final Decision, Findings and Conclusions is enclosed for the applicant. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that decisions of the Board may be appealed to the Courts.

cc: Harold Deering, Assistant Attorney General
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

1650-2



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

December 15, 1992

Tom Young
Bureau of Indian Affairs
115 Fourth Avenue SE
Aberdeen, SD 57401

Dear Tom:

Enclosed is a copy of the Findings of Fact, Conclusions of Law and Final Decision for Waterbury Brothers readvertised Water Permit Application No. 1650-2. You had previously requested a copy of the findings once adopted by the Water Management Board.

The findings for the United States Fish and Wildlife Service applications for the Lacreek National Wildlife Refuge will not be ready for distribution until mid-January. I will send a copy of these findings once they are formally signed.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, which appears to read "Eric Gronlund".

Eric Gronlund
Water Rights Division
605 773-3352

enclosure

1650-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

MAR 16 1993

John Waterbury
Waterbury Brothers
Rt 1 Box 9
Burke, SD 57523

Dear Mr. Waterbury:

Enclosed is Reissued Water Permit No. 1650-2 authorizing your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

The final inspection has been completed on this Permit, and we are ready to issue the Water License. Statutes require we charge \$50 for the inspection and issuance of the final papers. Upon receipt of this amount the Water License will be sent to you.

Very truly yours,

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

enclosures

1650-2

REISSUED SOUTH DAKOTA WATER PERMIT NO. 1650-2 FOR IRRIGATION

Date of first receipt of application September 7, 1992.

Date Soil/Water Compatibility Permit received January 12, 1979.

Date original application was approved February 1, 1979.

The Water Management Board approved Readvertised Water Permit Application No. 1650-2 on December 2, 1992 for Waterbury Brothers, Rt 1, Box 9, Burke SD 57523 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1650-2 was filed on September 7, 1976, to appropriate 25.81 cubic feet of water per second (cfs) from 5 dams to be located in the NW 1/4 SE 1/4 Section 30, NE 1/4 NE 1/4 Section 31, S 1/2 SW 1/4 and the SW 1/4 NE 1/4 Section 20, SW 1/4 SW 1/4 Section 15; all in T96N-R71W to irrigate 1807.5 acres. Readvertisement of the notice of hearing published January 17 and 24, 1979, in the Burke Gazette, was necessary to state that water is pumped from Ponca Creek into the storage dam. An inspection of Water Permit No. 1650-2 found 390 acres of developed irrigation located in the NE 1/4 Section 30, and the W 1/2 Section 20; all in T96N-R71W. The works are capable of diverting 13.33 cfs from Ponca Creek located in the SE 1/4 NE 1/4 Section 31-T96N-R71W to one dam (750 acre feet storage capacity) located in the NE 1/4 NE 1/4 Section 31-T96N-R71W. The dam impounds water in the N 1/2 NE 1/4 Section 31 and the E 1/2 SE 1/4 Section 30; all in T96N-R71W. Diversion rate from the dam to irrigate 390 acres is 5.57 cfs. No increase in the developed diversion rate or irrigated acres developed is authorized by this readvertisement.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: January 1 - December 31.
3. The date from which applicant may claim right is January 12, 1979.
4. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed. This permit does not authorize diversion of water from Ponca Creek after June 1 of each calendar year, nor at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

(continued)

2. Approval of this readvertised permit authorizes a diversion rate of 13.33 cfs from Ponca Creek into the dam and a diversion rate of 5.57 cfs from the dam for irrigation of 390 acres.
3. Approval of this readvertised permit authorizes the storage of 750 acre-feet of water in one dam.

WATER MANAGEMENT BOARD

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

MAR 16 1993
date

RECEIPT

Division of Water Rights

South Dakota Department of Environment and Natural Resources

41369c

Pierre, _____ March 24, 19 93

RECEIVED OF Waterbury Bros., RR 1 Box 9, Burke, SD 57523

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct 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. <u>1650-2</u> (<u>2</u> \$25.00 checks)	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	50 00

By *John H. K. [Signature]*
Chief Engineer



APR 2 1993

1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

1650-2

George Waterbury
Waterbury Brothers
RR 1, Box 9
Burke, SD 57523

Dear Mr. Waterbury:

Enclosed is Water License No. 1650-2 and Receipt No. 413699 for \$50.00 which was assessed for an inspection and issuance of the license. Water License No. 1650-2 is the final document which completes the process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, 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

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 1650-2

(1) Waterbury Brothers of RR #1 Box 9, Burke, SD 57523 made Application No. 1650-2, September 7, 1976 for a water permit to appropriate 25.81 cubic feet of water per second from Ponca Creek, Gregory County, South Dakota for irrigation purposes. Permit No. 1650-2, with a priority date of January 12, 1979 was approved February 1, 1979 and issued to the applicant(s) for diversion of water with construction of the described water supply system to be completed on or before February 1, 1984 and for the application to beneficial use of said water on or before February 1, 1988.

The original notice of hearing, published on January 17 & 24, 1979 did not accurately reflect the source of water being used as Ponca Creek. The "Notice" stated water was being diverted from dams. Water Permit No. 1650-2 was readvertised on July 8 & 15, 1992 to state that water is being pumped from Ponca Creek into a storage dam. The readvertisement was approved on December 2, 1992.

(2) It is certified that the applicant has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 13.33 cubic feet of water per second from Ponca Creek to the storage dam. Diversions from the storage dam may not exceed 5.57 cubic feet of water per second. The location of the diversion point on Ponca Creek is 700 feet north and 300 feet west of the E 1/4 corner Section 31, T96N, R71W (SE 1/4 NE 1/4). The location of the storage dam (750 acre feet capacity) is in the NE 1/4 NE 1/4 Section 31, T96N, R71W. The dam impounds water in the N 1/2 NE 1/4 Section 31 and the E 1/2 SE 1/4 Section 30, T96N, R71W.

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

T96N, R71W	Section 30	NW 1/4 NE 1/4	32.5 acres
		NE 1/4 NE 1/4	32.5 acres
		SE 1/4 NE 1/4	32.5 acres
		SW 1/4 NE 1/4	32.5 acres
	Section 20	NW 1/4 NW 1/4	32.5 acres
		NE 1/4 NW 1/4	32.5 acres
		SE 1/4 NW 1/4	32.5 acres
		SW 1/4 NW 1/4	32.5 acres
		NW 1/4 SW 1/4	32.5 acres
		NE 1/4 SW 1/4	32.5 acres
		SE 1/4 SW 1/4	32.5 acres
		SW 1/4 SW 1/4	32.5 acres
Total		390.0 acres	

(4) Pursuant to South Dakota Water Law 46-5-30.1 Waterbury Brothers of RP. #1 Box 9, Burke, SD 57523 the holder(s) and/or owner(s) of Water Permit No. 1650-2 is issued a license to appropriate water, the right to use 13.33 cubic feet of water per second when pumping from Ponca Creek to the storage dam and 5.57 cubic feet of water per second when pumping from the storage dam to the irrigated acres with a priority date of January 12, 1979 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Water Permit No. 1650-2 and subject to South Dakota State Law.



APR 2 1993

JOHN HATCH, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

1650-2

SENDER COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WATERBURY BROTHERS
JOHN WATERBURY
PO BOX 762
ONFILL NE 68763

COMPLETE THIS SECTION ON DELIVERY

- A. Received by (Please Print Clearly) John Waterbury B. Date of Delivery 01-22-01
- C. Signature John Waterbury ☐ Agent ☐ Addressee
- ☒ Is delivery address different from item 1? ☐ Yes
- If YES, enter delivery address below: ☐ No

3. Service Type
- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7000 0600 0026 9814 2805

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952



1650-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 19, 2001

NOTICE

TO: WATERBURY BROTHERS, JOHN WATERBURY, PO BOX 762, ONEILL, NE 68763

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2000 Irrigation Questionnaire(s)

Our records indicate that the 2000 Irrigation Questionnaire has not been submitted for Permit No(s) 1650-2. The request for the Questionnaire was dated October 20, 2000. The Water Management Board has directed that owners of water permits who have not submitted the 2000 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 10:00 am, March 7, 2001, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1650-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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.

If the questionnaire(s) is(are) received in this office on/or before March 2, 2001, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 23, 2001

John Waterbury
PO Box 762
O'Neill, NE 68763

RE: Water Right No. 1650-2 (Waterbury Brothers)
Water Right Nos 1509-3, 1512-3, 2367-3 & 5671-3 (Grosch Brothers)

Dear Mr. Waterbury:

I am writing to acknowledge receipt of your 2000 irrigation questionnaires. You may disregard the January 19, 2001, "Notice" concerning reporting requirements for Water Right Nos. 1650-2, 1509-3, 1512-3, 2367-3 and 5671-3.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

You inquired about adding the legal descriptions to the forms. We used to put the county designation on the label but since we started using window envelopes for mailing, the post office did not appreciate the added notations on the label. We are trying to work out a solution and hopefully in the coming years we can get the task accomplished. In the meantime, I have written up a list of legal descriptions for the above water rights and included them with this letter.

Thanks again John for stopping by the office. If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

enclosure



1650-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 16, 2002

NOTICE

TO: WATERBURY BROTHERS, JOHN WATERBURY, PO BOX 762, ONEILL, NE 68763

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2001 Irrigation Questionnaire(s)

Our records indicate that the 2001 Irrigation Questionnaire has not been submitted for Permit No(s) 1650-2. The request for the Questionnaire was dated October 12, 2001. The Water Management Board has directed that owners of water permits who have not submitted the 2001 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 10:00 am, March 13, 2002, in the Visitor Center (west bank of Capitol Lake), 650 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1650-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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.

If the questionnaire(s) is(are) received in this office on/or before March 8, 2002, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

1650-2

SENDER COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WATERBURY BROTHERS
JOHN WATERBURY
PO BOX 762
ONEILL NE 68763

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Toni Waterbury 1-22-02

C. Signature

X Waterbury ☐ Agent ☐ AddresseeD. Is delivery address different from item 1? ☒ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Registered ☐ Insured Mail
☐ Return Receipt for Merchandise
 WATER RIGHTS PROGRAM
 1-23-02
 1118120212232425262728293031
4. Restricted Delivery? (Enter ZIP Code) ☐ Yes

2 7001 2510 0004 4797 4678



1650-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 29, 2002

John Waterbury
Waterbury Brothers
PO Box 702
O'Neill, NE 68163 0762

RE: Water Right/Permit No. 1650-2 (Waterbury Brothers) and
Nos. 1509-3, 1512-3, 2367-3 & 5671-3 (Grosch Brothers)

Dear Mr. Waterbury:

I am writing to acknowledge receipt of your 2001 irrigation questionnaires. You may disregard the January 16, 2002, "Notice" concerning reporting requirements for Water Permit or Right Nos. 1650-2, 1509-3, 1512-3, 2367-3 & 5671-3.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 22, 2002

1650-2

John Waterbury
Waterbury Brothers
PO Box 762
O'Neill, NE 68763-0762

Dear John:

Enclosed, as you requested, is a partially completed Notice of Transfer of Ownership form for use in filing an ownership change with Water Right No. 1650-2. I have also included a copy of the water right in the event you needed one.

Please review the transfer form and make any necessary corrections. The form will need to be completed and then signed in the presence of a notary by the new owner. Upon completion, please return the form to us with a required filing fee of \$2.50. The check or money order for the fee can be made payable to the "Water Rights Program".

If I can answer any questions for you, please give me a call.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

enclosures

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

1650-2

NR 4171.52

Pierre, April 30

, 20 02

RECEIVED OF Robert Waterbury, RR 1 Box 73, Herrick, SD 57538
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct
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 1650-2

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

2 50

2 50

By

Chief Engineer

Darland Ebele

NOTICE OF TRANSFER OF OWNERSHIP

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

RECEIVED
APR 30 2002
WATER RIGHTS
PROGRAM

No. 1650-2

Date: 4-15-02

I/We request that Water Right No. 1650-2

formerly owned by: Waterbury Brothers

be transferred to: (name & address) Robert O. Waterbury - BRI Bldg 73
Heidelberg, SD 57538 Telephone No. 605-725-2502

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

390 acres - NE 1/4 Section 30, T96N, R71W and the W 1/2 Section 20, T96N, R71W

I/We understand that the validity of Water Right No. 1650-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

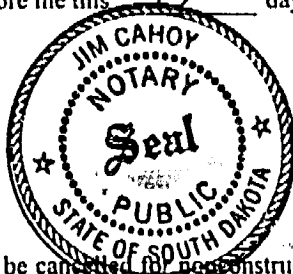
STATE OF SOUTH DAKOTA)

County of Gregory)

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

Robert O. Waterbury
(Signed by new owner)

Subscribed and sworn to before me this 15 day of April, 20 02



Jim Cahoy
(Notary Public)

NOTE: Water permits may be canceled after construction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

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



April 30, 2002

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

1650-2

Robert O. Waterbury
RR 1 Box 73
Herrick, SD 57538

Dear Mr. Waterbury:

Thank you for following up on the ownership change for Water Right No. 1650-2. The transfer has been completed. The water permit formerly listed in the name of Waterbury Brothers is now listed in the name of Robert O. Waterbury.

Enclosed is your Receipt No. 417152 in the amount of \$2.50. If I can answer any questions for you, please contact me.

Sincerely,

Glenda Marks
Secretary
Water Rights Program
(605) 773-3352

enclosure



1650-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 17, 2003

NOTICE

TO: ROBERT O WATERBURY, RR 1 BOX 73, HERRICK, SD 57538

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2002 Irrigation Questionnaire

Our records indicate that the 2002 Irrigation Questionnaire has not been submitted for Permit No. 1650-2. The request for the Questionnaire was dated October 11, 2002. The Water Management Board has directed that owners of water permits who have not submitted the 2002 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 8:30 am, March 5, 2003, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1650-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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.

If the questionnaire(s) is(are) received in this office on/or before **February 28, 2003**, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



1650-2

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Delivery Status

You entered 2301 0370 0000 7540 6444

Your item was delivered at 1:25 pm on January 21, 2003 in HERRICK, SD 57538. The item was signed for by R WATERBURY.

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ROBERT O WATERBURY
RR 1 BOX 73
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www.state.sd.us/denr

February 3, 2003

1650-2

Robert O Waterbury
RR 1 Box 73
Herrick SD 57538

Dear Mr. Waterbury:

I am writing to acknowledge receipt of your 2002 irrigation questionnaire. You may disregard the January 17, 2003, "Notice" concerning reporting requirements for Water Right No. 1650-2.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

1650-2



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and NATURAL RESOURCES

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www.state.sd.us/denr

January 14, 2004

NOTICE

TO: ROBERT O WATERBURY, RR 1 BOX 73, HERRICK, SD 57538

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaire(s)

Our records indicate that the 2003 Irrigation Questionnaire has not been submitted for Permit No(s) 1650-2. The request for the Questionnaire was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 8:30 am, March 3, 2004, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1650-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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.

If the questionnaire(s) is(are) received in this office on/or before February 27, 2004, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



1650-2

Track & Confirm

Current Status

You entered 2301 3460 0000 8515 8992

Your item was delivered at 1:10 pm on January 15, 2004 in HERRICK, SD 57538. The item was signed for by R WATERBURY.

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SIGNATURE CONFIRMATION NUMBER:
2301 3460 0000 8515 8992

ROBERT O WATERBURY
RR 1 BOX 73
HERRICK SD 57538

mailing.

Waiver of Signature ☐ YES ☐ NO

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www.state.sd.us/denr

January 21, 2004

1650-2

Robert O Waterbury
29389 349th Ave
Herrick SD 57538-5127

Dear Mr. Waterbury:

I am writing to acknowledge receipt of your 2003 irrigation questionnaire. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Right No. 1650-2.

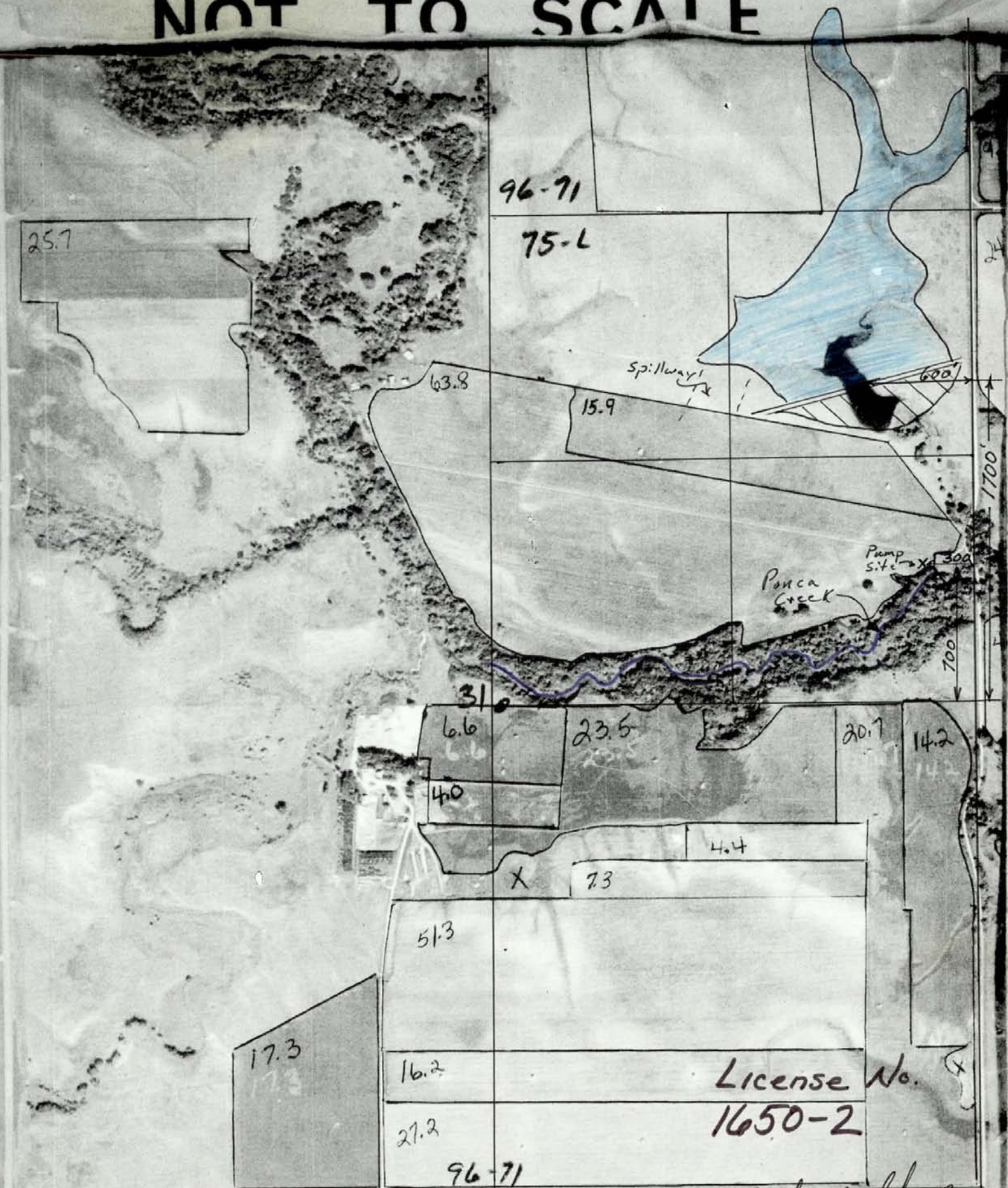
The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

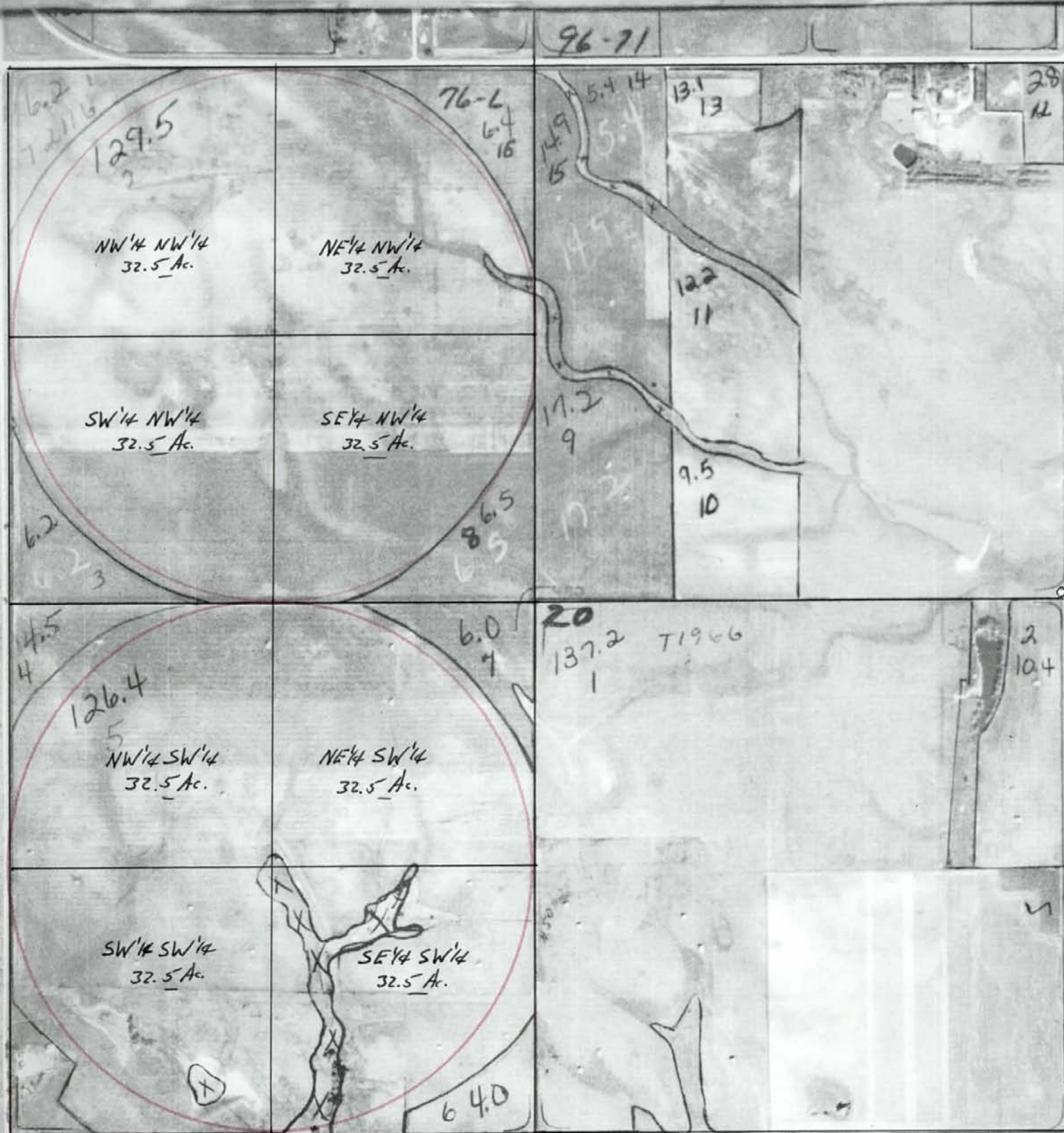
NOT TO SCALE



NOT TO SCALE



NOT TO SCALE



Timothy L. Schaal
July 31, 1991

SCS-CONS-15
OCTOBER 1974

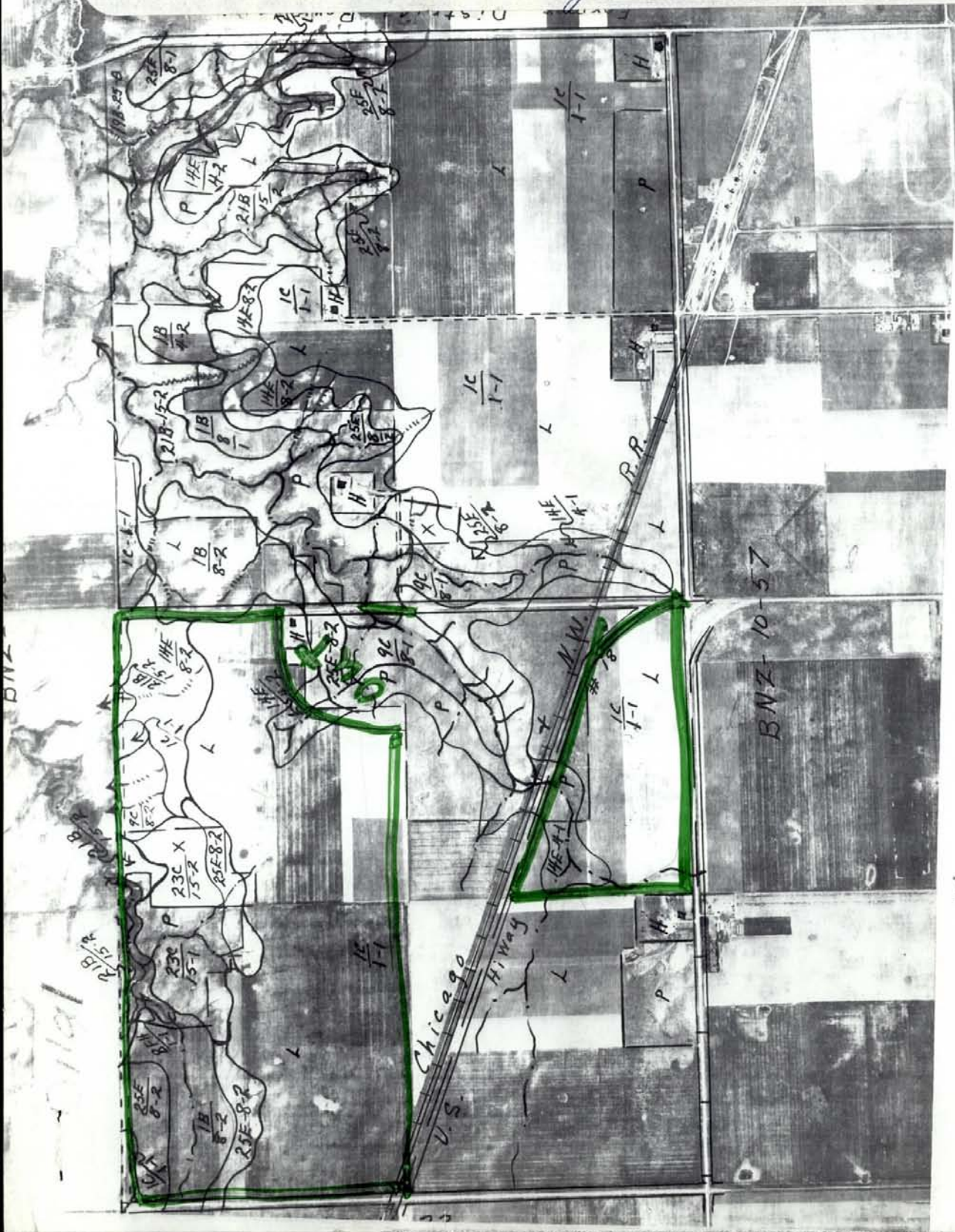
U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

SOIL MAP

Owner Waterbury Brothers Operator same
County Gregory State South Dakota
Soil survey sheet (s) or code nos. _____ Approximate scale 4" = 1 mile

Prepared by U. S. Department of Agriculture, Soil Conservation Service cooperating
with Gregory County Conservation District &

field route lat. SCS



13

14

Map # 1414-2 App# 1650-2

1-9186

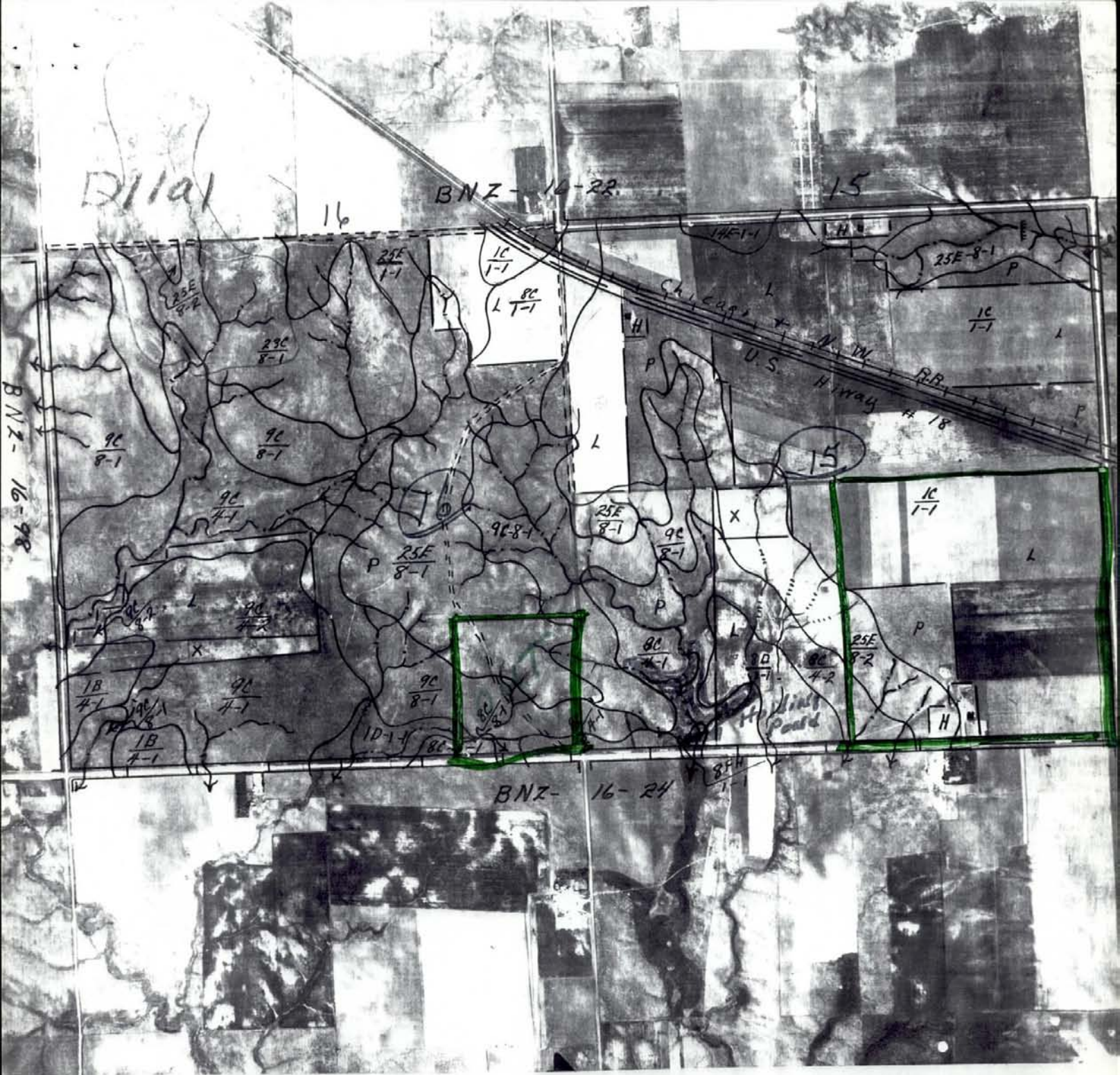
County _____ State _____

Soil survey sheet(s) or code No.(s) _____ Approx. scale 4" = 1 mile

PREPARED BY U.S. DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE
COOPERATING WITH Oregon CONSERVATION DISTRICT.



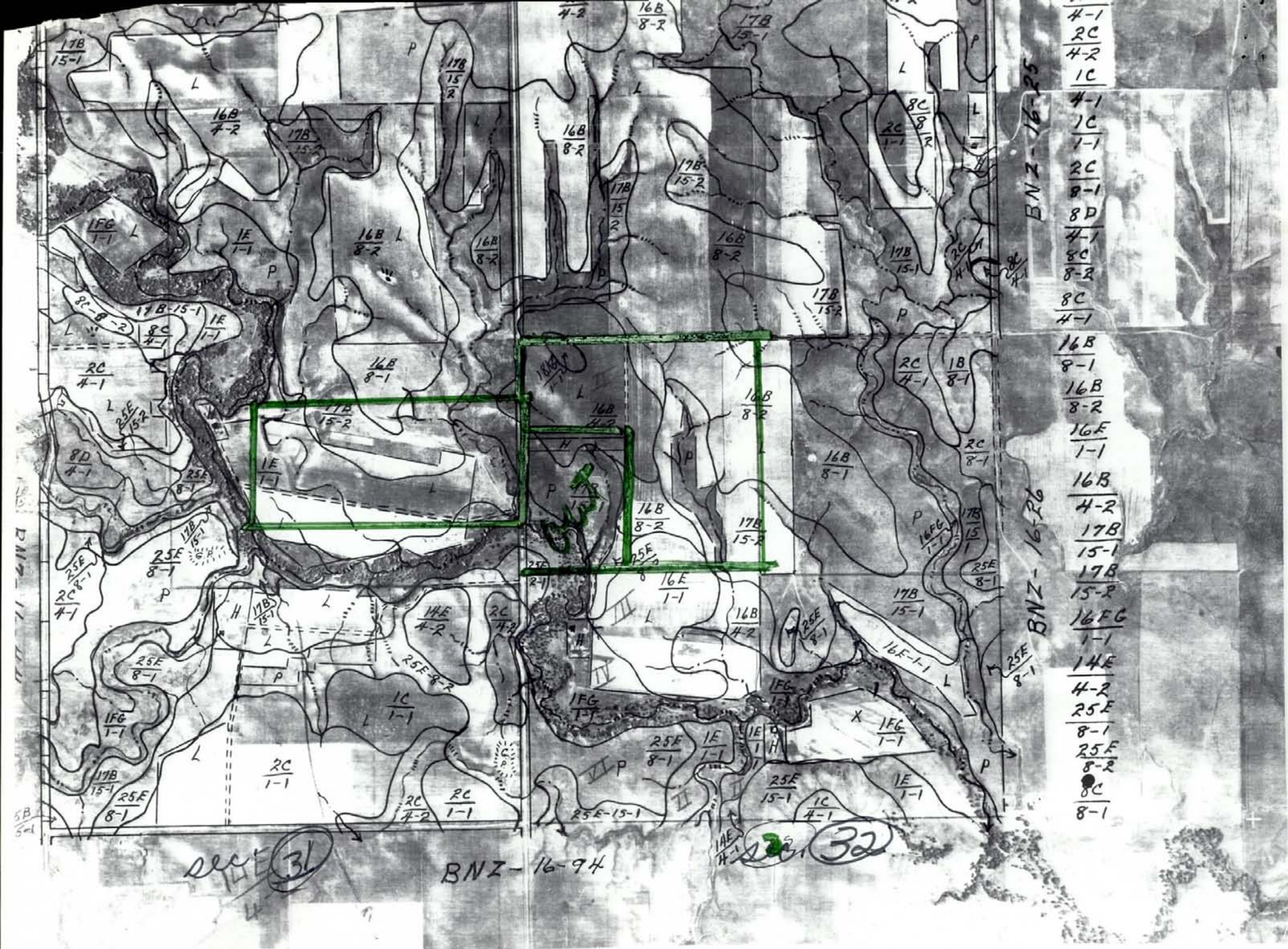
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BNZ-16-23



BNZ-16-25





1650-2

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January 24, 2006

NOTICE

TO: ROBERT O WATERBURY, 29389 349TH AVE, HERRICK, SD 57538 5127

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2005 Irrigation Questionnaire(s)

Our records indicate that the 2005 Irrigation Questionnaire has not been submitted for Permit No(s) 1650-2. The request for the Questionnaire was dated October 28, 2005. The Water Management Board has directed that owners of water permits who have not submitted the 2005 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 10:30 am, March 2, 2006, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1650-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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.

If the questionnaire(s) is(are) received in this office on/or before February 24, 2006, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



Track & Confirm

Current Status

You entered 2303 2160 0000 0799 4565

Your item was delivered at 10:17 am on January 25, 2006 in HERRICK, SD 57538. The item was signed for by R WATERBURY.

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SIGNATURE CONFIRMATION NUMBER:
2303 2160 0000 0799 4565

ROBERT O WATERBURY
29389 349TH AVE
HERRICK SD 57538 5127

Waiver of Signature ☐ YES ☐ NO

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www.state.sd.us/denr

January 27, 2006

1650-2

Robert O Waterbury
29389 349th Ave
Herrick SD 57538-5127

Dear Mr. Waterbury:

I am writing to acknowledge receipt of your 2005 irrigation questionnaire. You may disregard the January 24, 2006, "Notice" concerning reporting requirements for Water Right No. 1650-2.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



1650-2

DEPARTMENT of ENVIRONMENT
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January 18, 2013

NOTICE

TO: ROBERT O WATERBURY, 29431 439TH AVE, HERRICK, SD 57538

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2012 Irrigation Questionnaire(s)

Our records indicate that the 2012 Irrigation Questionnaire has not been submitted for Permit No(s) 1650-2 as required by administrative rule 74:02:01:14.02. The request for the Questionnaire was dated October 12, 2012. The Water Management Board has directed that owners of water permits who have not submitted the 2012 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at **8:30 am, March 7, 2013**, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1650-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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.

If the questionnaire(s) is (are) received in this office on/or before **March 4, 2013**, you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



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www.denr.sd.gov

January 31, 2013

1650-2

Robert O Waterbury
29431 439th Ave
Herrick SD 57538

Dear Mr. Waterbury:

I am writing to acknowledge receipt of your 2012 irrigation questionnaire.

You may disregard the January 18, 2013, "Notice" concerning reporting requirements for Water Right No. 1650-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us