

WATER PERMIT NO. 1687-2A

MAP No. 1687-2A

Outdated
Name of Applicant Rittberger Beef and Dairy, Inc.

Post Office Address Hermosa, SD 57744

Amount of Water Claimed .50 Total Acres 50.00

Source of Water Supply 2 dugouts near Grace Coolidge Creek

Water to be used for RR County Custer

About 3 3/4 S 5 miles west of Hermosa

PROOF OF PUBLICATION: Received 1st 11-7-84 Not Received

APPLICATION: Approved Subject to

F.F.S.C.L. Adopted Not Approved Deferred

PRIORITY

10/22/79

Date Received 11/30/83

application to be withdrawn upon approval of the rewritten application
1687-2A

Remarks Orig. deferred

Corrected Application Received 11/30/83 Period of Annual Use 6/1 to 8/20

WATER QUALITY APPROVAL RECEIVED original 11/5/79 APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES NO REMARKS Letter from SCC/stares dugout
source of Grace Coolidge Creek originally approved meets W/Q standards. If any other
source is used, be it surface or ground a new application will be needed Letter received
December 5, 1983.

Diversion Point:

SW 1/4 SW 1/4 & NE 1/4 SW 1/4 Section 16-T3S-R7E

Land to be Irrigated N 1/2 SW 1/4, SW 1/4 SW 1/4, Section 16;

SE 1/4 SE 1/4, Section 17; NE 1/4 NE 1/4, Section 20 and NW 1/4 NW 1/4,

Section 21 all in T3S R7E

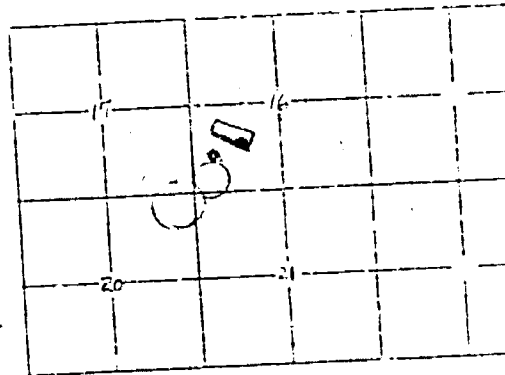
Well Log: Driller _____ Licensed YES NO

Depth of Well _____ REMARKS

Type of Map Aerial PREPARED BY Tim Schaal, W/R's Reviewed and the Number

assigned on 12/12/83

By Betty Westlund
Natural Resource Analyst III



Thurs. Custer County Chronicle, Box 551, Custer 57730
Considered:

WATER PERMIT NO. 1687-2A

MAP No. 1687-2A

Outdated
Name of Applicant Rittberger Beef and Dairy, Inc.

Post Office Address Hermosa, SD 57744

Amount of Water Claimed .50 Total Acres 50.00

Source of Water Supply 2 dugouts near Grace Coolidge Creek

Water to be used for IRR County Custer

About 3 3/4 S 5 miles west of Hermosa

PROOF OF PUBLICATION: Received 1st 11-7-84 Not Received

APPLICATION: Approved Subject to

F.F. & C.L. Adopted Not Approved Deferred

PRIORITY

Date Received 11/30/83

Fee

Remarks Orig. deferred

10/22/79

application to be withdrawn upon approval of the rewritten application
1687-2A

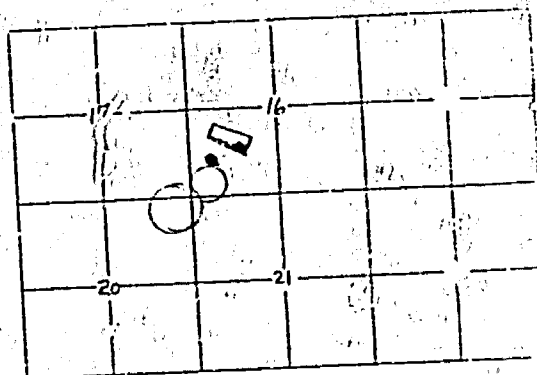
Corrected Application Received 11/30/83 Period of Annual Use 6/1 to 8/20

WATER QUALITY APPROVAL RECEIVED original 11/9/79 APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES NO REMARKS Letter from SCC states dugout source of Grace Coolidge Creek originally approved meets W/Q standards. If any other source is used, be it surface or ground a new application will be needed Letter received December 5, 1983.

Diversion Point

SW 1/4 SW 1/4 & NE 1/4 SW 1/4 Section 16-T3S-R7E



Land to be Irrigated N 1/2 SW 1/4, SW 1/4 SW 1/4, Section 16;

SE 1/4 SE 1/4, Section 17; NE 1/4 NE 1/4, Section 20 and NW 1/4 NW 1/4,

Section 21 all in T3S R7E

Well Log: Driller Licensed YES NO

Depth of Well REMARKS

Type of Map Aerial

PREPARED BY Tim Schaal, W/R's

Reviewed and the Number

assigned on 12/12/83

By Betty Westlund

Natural Resource Analyst III

No. 1687-2A Hydrologic Unit 10120109
Map No. 1687-2A Basin Upper Cheyenne
Newspaper Custer Co Chronicle, Bx 551, Custer**Application For Permit To Appropriate Water Within The State Of South Dakota**This is a Rewrite of deferred Application No. 1687-2 (no change in number or priority)
Type of Application: Check one or more of the following:New ☐ Vested Right ☐ Future Use ☐☐ Application to amend Permit No. _____ with old priority date retained☐ Change diversion point(s) ☐ Add diversion point(s) ☐ Change acreage ☐ Other ☐☐ Application to: ☐ Change use ☐ Change diversion point(s) ☐ Add diversion point(s)☐ Add Acreage ☐ Increase diversion rate ☐ Other _____ See Permit No. _____☐ Application to: ☐ Use ☐ Transfer water reserved by Future Use Permit No. _____1. Name of Applicant Rittberger Beef & Dairy, Inc. Phone No. 255-4430Post Office Address Hermosa State SD 57744
Street RR or Box Zip Code2. Amount of water claimed (c.f.s.) 0.57 Total acres irrigated 503. Source of Water supply 2 dugouts near Grace Coolidge Creek4. Location of point of diversion Dugout #1 1420 ft. south 990 ft. each of NW corner,
Section 16, T3S, R7E (SW $\frac{1}{2}$ SW $\frac{1}{2}$) Dugout #2 1320 ft. south 1450 ft. east of NW
corner Section 16, T3S, R7E (NE $\frac{1}{2}$ SW $\frac{1}{2}$) County Custer5. Counties where water will be used Custer6. Annual period during which water is to be used May 1st to October 15th June 1st to August

7. 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.
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16	4
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16	4
SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16	24
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17	8

Land Description	No. Acres Irr.
NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20	7
NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21	3
all in T3S, R7E	

Attach sheet if more space is needed

8. Give a brief description of proposed project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Applicant plans on pumping from the dugouts instead of directly from Grace Coolidge Creek. Plan on using 2 small center pivots and traveling gun.

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)

STATE OF SOUTH DAKOTA
County of _____I, Rittberger Beef & Dairy Inc. by Robert Rittberger the applicant, certify that I have read the foregoing application, 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 Robert RittbergerSubscribed and sworn to before me this 28 day of November 1983Carlyle H. Hambrub

WATER PERMIT

The Water Management Board hereby approves Water Permit Application No. _____

(Applicant) (Post Office Address)

(State) (Zip Code) With the following qualifications.

Date of first receipt of application _____, 19____

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

Date of receipt of corrected application _____, 19____. Approved _____, 19____

The Water Management Board hereby approves this Water Permit No. _____ authorizing the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Water Permit approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is _____, 19____.
2. One-fifth of the work is to be completed on or before _____, 19____.
3. The whole of said work is to be completed on or before _____, 19____.
4. The time limit for proof of beneficial use of water is _____, 19____.
5. The water appropriated shall be used for the purpose of _____.
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 unlawfully impaired by this appropriation.
7. The amount of the appropriation herein granted shall not exceed _____ cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served. For irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one-seventieth ($\frac{1}{70}$) 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 _____, 19____; said water to be used during the following described annual period: _____.

WATER MANAGEMENT BOARD

By: _____
Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

_____, 19____

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth of Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well: _____
- On applicants property _____ On property owned by others _____

2. Dugout Information Estimates

- a) Surface Dimensions 100 ft by 30 ft Depth 20 ft
- b) Depth to water (ground surface to water level) 2 to 3 ft.

3. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below. The locations of each dam should be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam please give their name and address

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Outlet Dimensions:
Pipe diameter _____

Spillway width _____

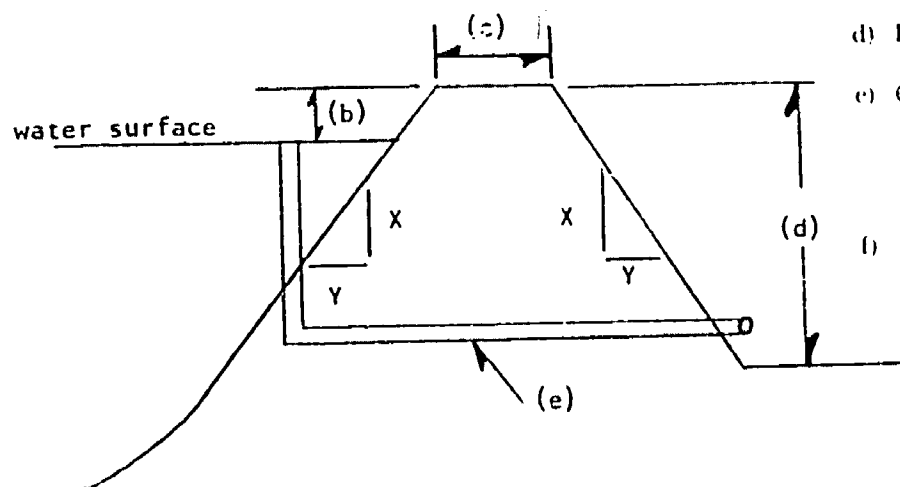
f) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage _____ acre feet

Drainage area above dam _____



1687-2A

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 1687-2A

(1) Rittberger Beef & Dairy, Inc., HCR 83, Box 13, Hermosa SD 57744 made Application No. 1687-2A, September 26, 1984 for a water permit to divert 1.18 cubic feet of water per second from Grace Coolidge Creek (Squaw Creek), Custer County, South Dakota for irrigation purposes. Permit No. 1687-2A, with a priority date of October 22, 1979 was approved May 15, 1985 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 15, 1990 and for the application to beneficial use of said water on or before May 15, 1994.

(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 0.96 cubic feet of water per second for beneficial use. The location of the diversion points are: between a point located 1,320 feet west and 300 feet north of the southeast corner of Section 17-T3S-R7E (SE 1/4 SE 1/4) and a point located 1,550 feet east and 1,100 feet north of the southwest corner of Section 16-T3S-R7E (SE 1/4 SW 1/4).

(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:

all in T3S-R7E		
Section 16	SW 1/4 SW 1/4	30 acres
Section 16	NW 1/4 SW 1/4	2 acres
Section 17	SE 1/4 SE 1/4	15 acres
Section 20	NE 1/4 NE 1/4	18 acres
Section 21	NW 1/4 NW 1/4	2 acres
Total		67 acres

(4) Pursuant to South Dakota Water Law 46-5-30.1 Rittberger Beef & Dairy, Inc., HCR 83, Box 13, Hermosa SD 57744 the holder and/or owner of Water Permit No. 1687-2A is issued a license to appropriate water, the right to use 0.96 cubic feet of water per second from Grace Coolidge Creek (Squaw Creek) with a priority date of October 22, 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. 1687-2A and subject to South Dakota State Law.


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

OCT 17 1996

date



RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT

APPLICATION NO. 1687-2A, Rittberger Beef & Dairy, Inc.

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 1687-2A, Rittberger Beef and Dairy, Inc., Hermosa SD.

The Chief Engineer is recommending Approval of Application No. 1687-2A because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be 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. No diversions may be made unless there is a flow of at least 2.5 cubic feet per second* in Grace Coolidge Creek for downstream domestic use, during diversion, at the lower end of the Lintz property in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 3, T3S, R7E.
2. Any diversions from Grace Coolidge Creek are subject to the prior rights of Mrs. Helen Callan, Minnie Bender Burns and James A Lintz.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Approval of this permit authorizes storage of up to 103 acre feet annually.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
Water Rights Division
October 18, 1984

* The Chief Engineer will arrange for installation of a Staff Gauge in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3. A staff gauge is a graduated scale mounted on a plank, wall or other like object from which the water surface elevation may be read.

Instruction to Newspaper - For first publication of the following notice on or before October 25, 1984 with 2nd publication 1 week later. The applicant is responsible for payment.

**NOTICE OF HEARING on Application No. 1687-2 to Appropriate Water
and/or to Amend Water Permit or Water Rights No. _____**

Notice is hereby given that Rittberger Beef & Dairy whose mailing address is Pt 3, Box 13, Hermosa, South Dakota has made an application for a permit

to appropriate 1) water from a dry draw and 3.0 cubic feet per second of water from Grace Coolidge Creek to fill a 103 acre feet dry draw storage dam located in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, T3S, R7E; and 2) 1.18 cubic feet per second of water from Grace Coolidge Creek at a location between points in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16 both in T3S, R7E and the above dry draw storage dam located in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 20, T3S, R7E; to irrigate 82.5 acres located in the N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 16, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 21, N $\frac{1}{2}$ NE $\frac{1}{4}$ Sec 20 and S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 17 all in T3S, R7E. This application was originally advertised December 20 & 27, 1979. It was deferred at that time, resubmitted and advertised again January 5 & 12, 1984 as application number 1867-2A. It was again deferred and will now be considered as described above.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends

APPROVAL of Application No. 1687-2A because 1) unappropriated water is available, 2) will be no unlawful impairment of existing rights, 3) is beneficial use of water and 4) is in the public interest.

This application will be considered by the Water Management Board at Joe Foss Building Room 216, 523 E Capitol, Pierre SD on December 15, 19 84 at 11:15 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by November 23, 1984. The petition may be informal, but it must include a statement describing the petitioners interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-16, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; (ground) ~~46-6-3, 46-6-3.1, 46-6-5.1, 46-6-10, 46-6-13, 46-6-14, (future use) 46-5-38 thru 46-5-40, (transfer lands) 46-5-30.4, 46-5-33 thru 46-5-35, (10,000 AFA) 46-5-20.1, 46-5-8.1, and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; (future use) 74:02:01:24 thru 74:02:01:25, (10,000 AFA) 74:02:01:15.02 thru 74:02:01:15.05.~~

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, 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.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWR, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by November 23, 1984.

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

Notice of Hearing

NOTICE OF HEARING on Application No. 1667-2 to Appropriate Water.

Notice is hereby given that Ritsberger Beef & Dairy whose mailing address is Rt. 2, Box 13, Hermosa, South Dakota has made an application for a permit to appropriate 1) water from a dry draw and 3.0 cubic feet per second of water from Grace Coolidge Creek to fill a 103 acre foot dry draw storage dam located in NW 1/4 SE 1/4 Section 20, T3S, R7E; and 2) 1.18 cubic feet per second of water from Grace Coolidge Creek at a location between points in SE 1/4 SE 1/4 Section 17 and SE 1/4 SW 1/4 Section 16 both in T3S, R7E and the above dry draw storage dam located in NW 1/4 SE 1/4 Sec 20, T3S, R7E; to irrigate 82.5 acres located in the NE 1/4 SW 1/4, SW 1/4 SW 1/4 Sec 16, NW 1/4 NW 1/4 Sec 21, NE 1/4 NE 1/4 Sec 20 and SW 1/4 Sec 17 all in T3S, R7E. This application was originally advertised December 20, 21, 27, 1979. It was deferred at that time, resubmitted and advertised again January 5 & 12, 1984 as application number 1667-2. It was again deferred and will now be considered as described above.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends APPROVAL of Application No. 1667-2A because 1) unappropriated water is available, 2) will be no unlawful impairment of existing rights, 3) is beneficial use of water and 4) is in the public interest.

This application will be considered by the Water Management Board at Joe Foss Building Room 216, 523 E Capitol, Pierre SD on December 15, 1984 at 11:15 a.m.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by November 23, 1984. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

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

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, has the right to be present or to be represented by a lawyer. Those and other persons who wish to be heard at the hearing should call Hill City.

For all your plumbing
and heating
Sports Plumbing
and Heating

508 S. 4th St.
Hill City, SD 57731

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Custer) ss.

I, Randall O'Neill hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Custer County Chronicle

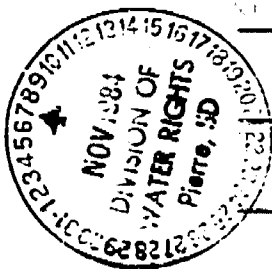
A newspaper which during the whole time of publication of said notice herein after stated, has been and is printed and published in the

City of Custer

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

October 25, 1984

November 1, 1984



Randall O'Neill
(Signature)

Publisher
(Title)

11/2/84
(Date Signed)

Cost of Printing: \$43.83 -- Total

October 25, 1984 \$24.35

November 1, 1984 --\$19.48

On this 2nd day of October, 1957, before me, M. A. Frange, a Notary Public within said County and State, personally appeared B. A. Doss, United States Marshal, for the District of South Dakota, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

M. A. Frange
Notary Public
(Name of Officer)

My commission expires Jan. 31, 1960.
Notarial Seal.

A-29020

DEEDS

October 27, 1957

Deeds
Joyce Phillips

Lawrence Weiners, a single man Grantor, of Pennington County, State of South Dakota, for and in consideration of One Dollar and other valuable considerations, to-wit: JOHN HITTBERGER and Helen Hittberger, husband and wife, as joint tenants and not as tenants in common, with full rights of survivorship, grantees of Hermosa, South Dakota P.O., the following described real estate in the County of Custer in the State of South Dakota:

The North Half of the Southwest Quarter (N1/2 S1/2) and the Southeast Quarter of the Southwest Quarter (SE1/4) of Section Sixteen (16); the South Half of the Northeast Quarter (S1/2 NE1/4), the North Half of the Southwest Quarter (N1/2 S1/2) and the Southeast Quarter of the Southwest Quarter (SE1/4) of Section Seventeen (17), including lot 1 of the S1/2 NE1/4 of said Section 17, as shown on plat recorded in Book 2 of Plats, on page 10, in the office of the Register of Deeds, Custer County, South Dakota, the North Half (N1/2), the Southeast Quarter (SE1/4) and the North Half of the Southwest Quarter (N1/2 S1/2) of Section Twenty-one (21); and the North Half of the Northeast Quarter (N1/2 NE1/4) and the Northeast Quarter (NE1/4) of Section Twenty-eight (28), all in Township Three (3) South, Range Seven (7) East of the Black Hills Meridian, except that certain tract of land containing 22.77 acres, more or less designated as Tract Borglum, which is a portion of the North Half of the Southwest Quarter of Section 16, Township 1 South, Range 7 East of the Black Hills Meridian, according to the plat of said Tract Borglum, filed in the office of the Register of Deeds, Custer County, South Dakota, on June 19, 1951, at 1 P. M., as recorded in Book 2 of Plats, on Page 1.

Excepting a one-fourth interest in and to all of the minerals, oil and gas in or upon the premises herein conveyed, and a one-fourth interest in and to all of the mineral, oil and gas rights appurtenant to said premises, reserved to Lincoln Borglum in that certain warranty deed recorded in Book 23 of Deeds, on Page 196, in the office of the Register of Deeds of said Custer County; and excepting water rights appurtenant to Tract Borglum and the right to use of water for said tract.

Revenue Attached: \$22.00.

Dated this 30th day of September, 1957.

Lawrence Weiners

ACKNOWLEDGMENT BY INDIVIDUAL

ST. LOUIS, MISSOURI }
County of Pennington }

On this the 30th day of September, 1957, before me, John G. Potter, the undersigned officer, personally appeared Lawrence Weiners, a single man known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

John G. Potter
Notary Public
(Title of Officer)

My commission expires June 9, 1961.
Notarial Seal.

A-29024

DEEDS

October 27, 1957

Deeds
Joyce Phillips

Lawrence L. Lewis, Grantor of Pennington County, State of South Dakota, for and in consideration of \$1.00 and other valuable consideration - - - - - to-wit: Mary Dowling, the grantee of Rapid City, South Dakota P.O., all interest in the following described real estate in the County of Custer & Pennington in the State of South Dakota:

and described more particularly as follows, to-wit: 1,500 ft. on said lode running 1,500 ft. North and 300 ft. Southeast from the center of the discovery shaft, and 300 ft. Northeast and 200 ft. running South west from said center of discovery shaft, said discovery shaft being situated upon the said lode within the lines of said claim, in Custer & Pennington County, State of South Dakota, being more particularly described as follows, to-wit: 1 1/2 miles North west of Spokane Mine and 1/2 mile from Gideon ranch on Iron creek. The name of this claim being BIG BOY and recorded in Book 19 Lods. on page 339.

Dated this 27 day of September, 1957.

Lawrence L. Lewis

ACKNOWLEDGMENT BY INDIVIDUAL

ST. LOUIS, MISSOURI }
County of Pennington }

On this the 27th day of Sept., 1957, before me, James Bailey, Jr., the undersigned officer, personally appeared Lawrence L. Lewis known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

James Bailey, Jr.

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF CONSERVATIONNAME OF APPLICANT Ritterberger Beef & Dairy, Inc. - Hermosa, SDSOIL RESTRICTIONS:THE SOIL(S) LISTED BELOW CANNOT BE IRRIGATED:

Spearfish, 3-15% slope - shallow soil

$$\frac{2m^4Ka1}{6-1} + \frac{2m^4Ka1}{9-1} + \frac{2m^4xf3}{2-1}$$

RECOMMENDED MANAGEMENT:

1. Water should not be applied more than HA times during the irrigation season.
2. Each uninterrupted application (one rotation of center pivot) should be of at least HA inches of water.
3. (x) Yes () No Surface drainage ~~XXXXXXXXXXXX~~ or land shaping suggested on low lying areas that are subject to flooding.
4. () Yes () No Subsurface drainage suggested on _____
5. (x) Deep tillage (for the purpose of aiding movement of water through dense subsoil)
6. () Heavy fall application of irrigation water. Occasional use on fine-textured soil areas that tend to compact or seal with successive irrigations.
7. Type of irrigation system recommended for use on this application gun.

GENERAL COMMENTS:

Corn and/or alfalfa will have limited production wherever siltstone bedrock is at a shallow depth.

You may already know where these areas are. If these areas are large enough to eliminate, you can do that with a gun system.

It would appear that you could find close to 80 acres of irrigable soils, without the Spearfish complex.

SOIL/WATER COMPATIBILITY APPLICATION FORM
STATE CONSERVATION COMMISSION
SOUTH DAKOTA DEPARTMENT OF AGRICULTURE



OWNER NAME: Rittberger Beef & Dairy, Inc. OWNER'S ADDRESS: Hermosa

COUNTY LAND LOCATED IN: Custer PHONE: 255-4430 South Dakota 57745

TENANT'S NAME AND ADDRESS: (If Other Than Owner)

In accordance with State Law SDCL 46-5-6.5, if a water right is granted with a conditional permit (Soil/Water Compatibility), a copy of such conditional permit must be filed with the County Register of Deeds.

This action must be taken by the holder of a water right within 6 months of receipt of such water right.

LEGAL DESCRIPTION: (Show legal Description to Nearest 10 Acres.)

1. WELL LOCATION OR DIVERSION POINT: In southern half of NW1SW1, Sec. 16, T3S, R7E or the northern half of SW1SW1, Sec. 16, T3S, R7E

2. SURFACE WATER SOURCE Grass (Coolidge) Creek

3. LOCATION OF AREA TO BE IRRIGATED: Sec. 17, 18, 20, 21, T3S, R7E 80 acres as shown on maps

4. INDICATE NON-IRRIGATED AREAS AND (APPROX.) ACRES ON MAP: (Farmstead, shelterbelts, wetlands, etc.)

TYPE OF IRRIGATION: (Show approximate acres under each type of system)

5. GRAVITY TOWLINE CENTER PIVOT RAIN SO OTHER (Specify)

6. CROPS TO BE IRRIGATED Corn, Alfalfa

7. SHOW ANY PORTION OF LAND THAT PRESENTLY HOLDS AN IRRIGATION PERMIT: YEAR OBTAINED: IN WHAT NAME:

WATER QUALITY: (TO BE COMPLETED BY SDSU WATER QUALITY LABORATORY)

8. SAMPLE NUMBER:

9. SALINITY (EC X 10⁶)

10. SODIUM (SAR) 2 ADJUSTED (SAR) 4.32

I hereby certify that I personally obtained or that I personally observed the taking of a sample of the water to be used in irrigating the above-described land. I also hereby certify that the required procedures for the taking of the sample (see back) were followed, and that the sample was taken at 2 A.M./P.M. on Oct. 20, 1979, at the following location: Grass Creek, Sec. 17, 18, 20, 21, T3S, R7E

John C. Morrell (individual who took sample if other than applicant). I also hereby certify that the water sample taken has NOT been adulterated or tampered with in any manner, and is TRULY REPRESENTATIVE of the water which will be used in irrigating the above-described land.

I also hereby certify that a chemical analysis of the irrigation water representative of that used to irrigate shall be acquired from South Dakota State University and the soils information has been acquired from Conservation District, County Extension Office or Soil Conservation Service; and further, that the legal description for the location of the well and land to be irrigated is true and correct.

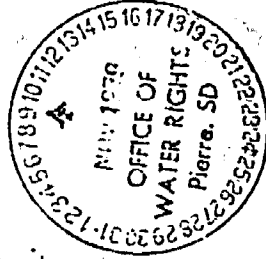
I understand that the Division of Conservation or agents thereof may obtain another water sample for the purpose of validating the water sample analysis taken at the time of application (SDCL 46-5-6.4).

SUBSCRIBED AND SWORN BEFORE ME THIS
19th DAY OF October, 1979.

John C. Morrell
(NOTARY PUBLIC)

My Commission Expires:

(SEAL) JOHN C. MORRELL
Notary Public, South Dakota
My Commission expires March 14, 1981



By: John C. Morrell Pres
APPLICANT'S SIGNATURE

Director, Division of Conservation

APPROVED

DISAPPROVED

☒ CONDITIONALLY APPROVED

IMPORTANT

Action by the Department of Agriculture or the State Conservation Commission is not the final action on any application.

REPORT ON PERMIT APPLICATION NO. 1687-2A
RITTBERGER BEEF & DAIRY, INC.
DECEMBER 22, 1983

October 22, 1979 Rittberger Beef and Dairy Inc. submitted Permit Application No. 1687-2 to irrigate 80 acres from Grace Coolidge Creek in Custer County. January 30, 1980 the Water Management Board deferred action on the application pending submission of an amended application by Rittberger Beef & Dairy, Inc. November 30, 1983 an amended application was received which proposed to irrigate 50 acres from two dugouts along Grace Coolidge Creek. There are no other irrigation permits on Grace Coolidge Creek from the location of this application to its confluence with Battle Creek. This permit application is located downstream from the area where Grace Coolidge Creek flows over the Madison and Minnekahta limestone outcrops. Therefore this application will not interfere with the amount of water lost by the creek to the limestone outcrops. Flow measurements of Grace Coolidge Creek for three years were published in a report of investigation No. 107 "Large Springs in the Black Hills, South Dakota and Wyoming" by Rahn & Gries. These measurements were taken between 1967 and 1970 at a site approximately 3 miles west of Hermosa. They indicate an average flow of 1.03 cubic feet per second.

Conclusions & Recommendations

The flow of Grace Coolidge Creek and water stored in the alluvium along the creek would indicate water is available. Soil/water compatibility approval has been obtained. There are no other irrigation permits on Grace Coolidge Creek between this application and Battle Creek.

Recommend approval of Permit Application No. 1687-2A with the low flow bypass qualification. If Permit Application No. 1687-2A is approved then No. 1687-2 will be withdrawn.

Kevin C. Larson

KEVIN C LARSON
Water Resources Engineer

Gries, J.P. and Rahn, Perry H., 1973, Large Springs in the Black Hills, South Dakota and Wyoming; Project No. A-021-SDAK

Outcrop maps of the Madison and Minnekahta Limestone prepared by South Dakota Geological Survey.

CORRECTION TO REPORT ON RITTBERGER BEEF & DAIRY, INC.

PERMIT APPLICATION NO. 1687-2A

January 10, 1984

In the report I prepared for the above application I stated that no other irrigation permits exist between this application and Battle Creek. There is one permit on file to irrigate 39 acres from Squaw Creek, which is the same as Grace Collidge Creek. Permit No. 106-2 was approved August 12, 1901 and the lands to be irrigated are as follows: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, N $\frac{1}{2}$ NE $\frac{1}{4}$ & SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, T3S, R7E. This is to correct the original report but does not change the conclusions and recommendations.

Kevin C. Larson

KEVIN C LARSON

Water Resources Engineer

out of Date

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION
NO. 1687-2A, Rittberger Beef and Dairy, Inc.

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 1687-2A, Rittberger Beef and Dairy Inc.

The Chief Engineer is recommending APPROVAL of Application No. 1687-2A because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) that the proposed diversion can be developed without unlawful impairment of existing rights, 3) that the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

Low flows as needed for downstream domestic use, including watering and prior water rights must be by-passed.

This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

The attached report is a part of this recommendation.

John Hatch

JOHN HATCH, Chief Engineer
December 29, 1983

Water & Natural Resources
Joe Foss Building
623 East Capitol
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
(605) 773-3352

FD December 29, 1983

NOTE:

TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT THE
NEWSPAPER RIGHT AWAY.

Rittberger Beef & Dairy, Inc.
Hermosa, South Dakota 57744

Dear Sir:

You are hereby notified that your Application No. 1687-2A for a permit to appropriate water for Irrigation use, has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your intent to appropriate water has been sent to the Publisher of the

Custer County Chronicle printed at Custer, South Dakota. For your information, a copy of this notice and the recommendation of the Chief Engineer is enclosed. Please review and contact this office, if you have any questions.

Be sure to contact the above newspaper to authorize publication of your notice of intent to appropriate water and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur at least thirty days before the board meeting. We must receive Proof of Publication before the application can be considered by the Water Management Board.

Very truly yours,

Kevin C. Larson
Water Resources Engineer

KCL:ms

Encl. Forms 6&7

Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

605 773-3352
Water Rights Division

December 29, 1983

Custer County Chronicle
Box 551
Custer, South Dakota

Dear Editor:

Enclosed is a Notice of Intent to Appropriate Water by Rittberger Beef & Dairy, Inc.
Application No. 1867-2A, in Custer County, South Dakota. Please
publish this notice once each week for two consecutive weeks in your paper. The first
publication should be on, or before January 5, 1984.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make
the first publication. The applicant is to pay the cost of publication and should
make the necessary arrangements with you to pay these costs.

Please receipt for this notice IMMEDIATELY after first publication attaching thereto
a copy of the first publication so that it may be compared with the records. For
your convenience, you may use the printed form below for this purpose.

After final publication please complete and mail to this office, the enclosed Form
8 to furnish Proof of Publication. The permit to appropriate water cannot be con-
sidered by the Water Management Board until proof of publication has been received.

Very truly yours,

KCL:ms

enclosures

Kevin C. Larson
Water Resources Engineer

cc: applicant

* * * * *

NO. _____

Date _____

TO: Water Rights Division
Joe Foss Building
Pierre SD 57501

We are in receipt of your letter of _____, 19____ enclosing Notice of Proposed
Appropriation of Water, as proposed in Application No. _____ which was first
published in our issue of _____, 19____. ENCLOSED IS A COPY OF THIS FIRST
PUBLICATION.

NAME _____

NEWSPAPER _____

WNR-807-4/83

Instruction to Newspaper - Publish first publication of the following Notice on or before January 5, 1984 with 2nd publication 1 week later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 1867-2A to Appropriate Water and/or to Amend Water Permit or Water Rights No. _____

Notice is hereby given that Rittberger Beef & Dairy, Inc. whose mailing address is Hermosa, _____, South Dakota has made an application for a permit

to appropriate 0.50 cubic feet per second from two dugouts along Grace Coolidge Creek to irrigate 50 acres located in SW $\frac{1}{4}$, Section 16, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20 and NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21 all in Twp. 3S, Range 7E. The points of diversion will be located in SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, Twp. 3S, Range 7E. The original application submitted October 29, 1979 was for direct diversion from Grace Coolidge Creek to irrigate 80 acres. This application was deferred and has been resubmitted with the above change.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends Approved of Application No. 1867-2A because 1) unappropriated water is available, 2) will be no unlawful impairment of existing rights, 3) is beneficial use of water and 4) is in the public interest.

This application will be considered by the Water Management Board at the Civil Defense Room, basement, State Capitol Building, Pierre, SD, February 15 19 84 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by February 3, 1984. The petition may be informal, but it must include a statement describing the petitioners interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-16, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; (ground) 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14; (future use) 46-5-38 thru 46-5-40; (transfer lands) 46-5-30.4, 46-5-33 thru 46-5-35; (10,000 AFA) 46-5-20.1, 46-5-8.1; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; (future use) 74:02:01:24 thru 74:02:01:25; (10,000 AFA) 74:02:01:15:02 thru 74:02:01:15:05.

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, 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.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWRN, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by February 3, 1984.

PROOF OF P Notice of hearing

STATE OF SOUTH DAKOTA)
County _____) ss.

I, Charlotte M. Omer

certify that the annexed printed copy of Notice of Intent

Water was taken from the _____

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

_____ of _____

County of _____ and State of _____
that the said notice was published in said newspaper on
two dates:

Charlotte M. Omer

(Signature)

Editor

(Title)

Feb 13 - 1984

(Date Signed)

Cost of Printing: \$20.22

NOTICE OF HEARING on Application No. 1867-2A to Appropriate Water
Notice is hereby given that Rittberger Beef & Dairy, Inc. whose mailing address is Hermosa, South Dakota has made an application for a permit to appropriate 0.50 cubic feet per second from two dugouts along Grace Coolidge Creek to irrigate 50 acres located in SW¼, Section 16, SE¼SE¼ Section 17, NE¼NE¼ Section 20 and NW¼NW¼ Section 21 all in Twp. 35, Range 7E. The points of diversion will be located in SW¼SW¼ and NE¼SW¼ Section 16, Twp. 35, Range 7E. The original application submitted October 19, 1979 was for direct diversion from Grace Coolidge Creek to irrigate 50 acres. This application was amended and has been resubmitted with the above change.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends Approved of Application No. 1867-2A because 1) unappropriated water is available, 2) will be no unlawful impairment of existing rights, 3) is beneficial use of water and 4) is in the public interest.

This application will be considered by the Water Management Board at the Civil Defense Room, basements, State Capitol Building, Pierre, SD, February 15, 1984 at 10:00 a.m. The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by February 3, 1984.

The petition may be informal but it must include a statement describing the petitioner's interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-1, 46-2-9, 46-2-11, 46-2-17, 46-5-1 thru 46-5-6, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; and Board Rules ARSD 74:02:01 thru 74:02:01:15.

This hearing is an adversary proceeding. The applicant or any person, after filing a petition 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.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWRNR, Joe Rose Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by February 3, 1984.

No. 81601-05-84
01-12-84

WATER RIGHTS DIVISION

(605) 773-3352

September 21, 1983

Rittberger Beef & Dairy, Inc.
Hermosa, South Dakota 57744

ATTENTION: Fred Rittberger

Dear Mr. Rittberger:

Enclosed is a copy of the original permit application and a couple maps of the area. I am not sure yet how we will handle this, I think if you still want to go to a pit next to the creek we can add it onto the original application. We may need to work something out to keep your neighbors happy, probably require an early cutoff date or a bypass requirement.

Please indicate on the map the location of the pit and the estimated size and depth, also the land which you plan on irrigating. If you could estimate the total amount of water that you would need, either in acre-feet or inches/acre and return this information along with the map to our office within a couple weeks, I think we can have something ready for the Water Management Board meeting that is going to be held in Pierre on November 31 and December 1, 1983.

Sincerely,

TIMOTHY G. SCHAAL
Water Resources Engineer

TGS:ms
Enc.

Dep of Water & Natural Resources
Water Rights Division



Timothy Schaal,

I am returning the map that you sent me. I outlined in blue ink the land we would water.

We will use center pivots instead of fowline. There is one rectangular field that would have to be watered by a big gun.

I marked with an X where we would dig pits and set up our pumping stations.

If I could dig a pit thirty feet wide by a hundred feet long and twenty feet deep, I am sure there would be one half cubic feet of water per second which is all I need. By using pits we will not take any water from the creek. The land above these

pits has a very high water level and is unsuitable for farming. I want to lower that water table by pumping.

The number of acres under the center pivots is forty-two. The acres watered by the gun would be seven making a total of forty-nine acres.

If you have any questions either write or call me.

Rittberger Beef & Dairy
Hermosa, S. Dak.

by Fred Rittberger
Rt 1 Box 13

November 15, 1983

Darrell Bishop
Hermosa,
South Dakota 57744

Dear Mr. Bishop:

Enclosed are the necessary forms for obtaining a water permit. The soil/water Compatibility Form should be completed and sent to the Department of Agriculture, Division of Conservation. The Application for Permit to Appropriate Water should be completed and sent to the Division of Water Rights along with the filing fee of \$150.00. If you would like this to come before the Water Management Board in February, with the Rittberger application, we will need to have these forms back within a couple weeks.

If you have any questions concerning this matter, please contact this office.

Sincerely,

TIMOTHY G SCHAAL
Water Resources Engineer

TGS:ks

enclosures

cc: Division of Conservation

Water Rights Division
605 773-3352

November 15, 1983

Fred Rittberger
RR #1, Box 13
Hermosa SD 57744

Dear Mr. Rittberger:

Enclosed please find a rewrite of your Water Permit Application No. 1687-2 that was deferred in January, 1980. Please look it over and make any corrections you find. The application forms should then be signed and notarized and returned to our office within a couple of weeks so we can get it on the agenda for the Water Management Board Meeting in February.

If you have any questions, concerning this matter, please contact this office.

Sincerely,

TIMOTHY G SCHAAL
Water Resources Engineer

TGS:ks

enclosure

Tim Schaal
Joe Foss Bldg
Pierre So Dak

Dear Mr Schaal:

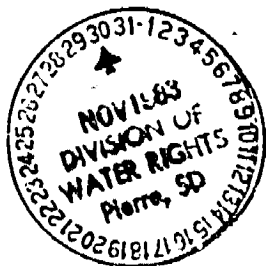
Enclosed are the water application forms you sent us to look over. There are two corrections which I feel are real important in getting this application passed.

1. We will design our pump to use only .5 cfs, instead of claiming 71 cfs

2. The water use period will be shortened to June 1st to Aug 20 due to the fact that we will only be irrigating silage corn.

If there are any questions please contact us.

Yours truly,
Bob Rittberger



Department of Agriculture

DIVISION OF CONSERVATION

Anderson Building, Room 322 ● Pierre, South Dakota 57501
Phone 606/773-3258

December 2, 1983

TO: Tim Schaal

FROM: Jim Stukel, Irrigation Program Administrator

Re: Construction of a dugout along Grace Coolidge Creek for
 irrigation by Rittburger Beef and Dairy

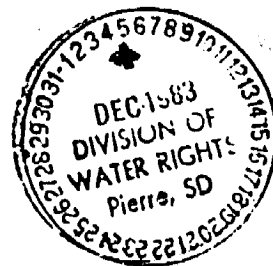
Per our discussion and a review of the soil and water compatibility permit to irrigate portions of Sec 16,17,20 and 21 all located in T3S, R7E using the surface source of Grace Coolidge Creek, a dugout with waters from Grace Coolidge Creek is acceptable.

Note if any other source is used, be it surface or ground water a new application is required.



Jim Stukel

cf



Conversation or File Documentation

NAME OF PERSON OR FILE: Jim LintyADDRESS: Hemlock COUNTY _____DATE: 1-11-84 TELEPHONE _____RE: 1687-2A Rittberger Beef & Dairy Application

COMMENTS:

Jim Linty called concerning this application. He has permit for 1.5 cfs about 2 miles below Rittberger. He does not have enough water to pump 1.5 cfs from creek, only uses $1\frac{1}{2}$ inch pump.

Helen Callan (Tom is deceased) has a 2nd permit between Rittberger & Linty. He says a spring originates on Rittberger, supposed to be supplied by Minnelusa. Do not get runoff from hills that they used to. Believes sink holes in Custer Park have gotten larger. Callan's flowing well that flows into creek thru $1\frac{1}{2}$ inch hose.

He is questioning if there is unappropriated water when he does not have enough for his right.

Only source of livestock water in July is flow in creek. Has always flowed at his place.

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: John H. H. H.

Conversation or File Documentation

NAME OF PERSON OR FILE: Bob RittbergerADDRESS: Hermosa COUNTY _____DATE: 1-17-84 TELEPHONE 833-6805RE: 1687-2A

COMMENTS:

I called Bob to talk about his application & the problems he is having with his neighbor Jim Lintz. He said he may keep the original application deferred. He said Mrs. Callan was in bad health and is pretty upset about this. Lintz told him he has not irrigated in the past 3 years. Bob thought that both Lintz & Callan would start to irrigate this summer if we came out to check. Wants us to check on them now or early in the spring. I told Bob I sent Lintz a letter and said we should wait to see what kind of action Lintz makes (if he sends in a petition). Bob said they will install a flume or weir on their property if that would help.

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: Tim School

Conversation or File Documentation

NAME OF PERSON OR FILE: Bob Pittberger

ADDRESS: _____ COUNTY _____

DATE: 1-18-84 TELEPHONE _____

RE: _____

COMMENTS:

Pittberger called today and asked that his amended application not be on the February Water Management Board meeting. Wants me to come out and make an inspection of Lintz & Callen's property sometime in February or March. He thinks they will start irrigating early this spring. I told him I would make it out there sometime after the board meeting.

1-19-84

Called Bob and told him to send us a letter and request an automatic continuance.

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: Tim Schaal

WATER RIGHTS DIVISION

January 18, 1984

Jir. A. Lintz
Box 106
Hermosa, South Dakota 57744

Dear Mr. Lintz:

Our records indicate that you are the holder of Water Right No. 106-2 and Thomas Callan is the holder of Water Right Filing No. 021-2. Enclosed is a copy of each of these. Your Water Right was issued for 1 cfs to irrigate 40 acres and has a priority date of June 6, 1911. Callans Water Right Filing has a diversion rate of 1500 miners inches (30 cfs) and a priority date of April 15, 1887.

Rittbergers application has a diversion rate of 0.5 cfs to irrigate 50 acres and a priority date of October 22, 1979. This application also has the low flow bypass qualification, which means he will be required to bypass water for downstream domestic use and prior water rights.

According to SDCL 46-5-6, which became effective in 1907, appropriation of water for irrigation shall not be in excess of 1 cfs for each 70 acres irrigated. According to this, your water right should have been issued for 0.57 cfs, we will need to make this correction in the future. We are currently trying to update old water right filings that were filed prior to 1907. Many of these have been abandoned and as a result of this are cancelled from our records. There is some question whether Callans water right filing is still effective, if it is, we will need to update it and assign a diversion rate according to the amount of land that is actually being irrigated.

We do not have very good records on Grace Coolidge Creek because of its characteristics. I was in the area several times during the last couple of years and plan on continuing to observe this area. The several times I was out there last summer, the flow rate of Grace Coolidge Creek through the Rittberger property was approximately 3 or 4 cfs. I explained the low flow bypass qualification to Mr. Rittberger and he understood its meaning and indicated he also used the creek for domestic use. I had planned on making another trip last fall and stop in to visit you, but because of weather conditions did not make it. I plan on being out there this spring and hope to get in touch with you to answer any questions you may have, and to take a look at your irrigation.

If you have any questions on this matter, please contact us.

Sincerely,

Timothy G. Schaal
Water Resources Engineer

TGS:ms Enc. cc: Rittberger Beef & Dairy, Inc.

Water Rights Division - DWNR
Conversation or File Documentation

File No. _____

NAME OF PERSON OR FILE: Jim Hintz

ADDRESS: Hermosa COUNTY _____

DATE: 1-19-84 TELEPHONE _____

RE: _____

COMMENTS:

Jim Hintz called to talk about Rittberger application. Said they are good friends and get along well, Mrs. Callen old & ill and gets excited about things. He plans on pumping this summer with 4" pump & 4 cly. motor. Wants to monitor creek & wells (shallow household downstream). Said he will have good flow at his place but a couple miles downstream none, it will disappear before campground. He has thought about trying to bypass sink holes in the park.

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: Tim School

January 31, 1987

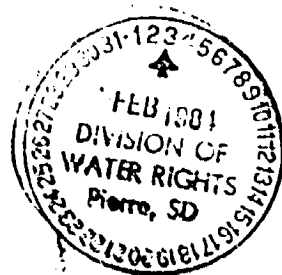
Timothy G School
Water Rights Division
Pierre, S D.

Dear Mr School:

In regards to our conversation, I am submitting
a written request to withdraw our water
rights application with an option of automatic
continuance.

Thank you for all your time and information.

Sincerely
Bob Wattberger



Water & Natural Resources

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

WATER RIGHTS DIVISION
(605) 773-3352

February 6, 1984

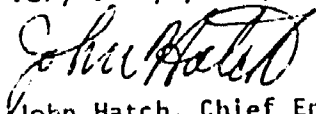
Robert Rittberger
Rittberger Beef & Dairy, Inc.
Rural Route #1, Box 19A
Hermosa, South Dakota 57744

RE: Water Permit Application No. 1687-2A

Dear Mr. Rittberger:

This will acknowledge your request for an automatic continuance on the hearing February 15, 1984 to consider your Water Permit Application No. 1687-2A. You will be notified when the hearing is rescheduled.

Very truly yours,



John Hatch, Chief Engineer
Water Rights Division

JH:ms

cc: Water Management Board

Equal Opportunity Employer

WATER RIGHTS DIVISION
(605) 773-3352

March 30, 1984

Bob Rittberger
Rittberger Beef & Dairy, Inc.
RR#1, Box 19A
Hermosa, South Dakota 57744

Dear Mr. Rittberger:

Enclosed are copies of the two old water right filings which are described as being located on your property. I plan on bringing all of the old water right filings along Grace Coolidge Creek and Battle Creek before the Water Management Board in July to determine their current status. Also, we will need a letter from you requesting the withdrawal of your water permit application No. 1687-2A.

If you have any questions, please contact me.

Sincerely,

Timothy G. Schaal
Natural Resources Engineer

TGS:ms
Enc.

June 29, 1984

MEMO TO: Tim Schaal, Water Resources Engineer
FROM: Ron Koth, Natural Resource Specialist *RK*
SUBJECT: Irrigation Permits on Grace Coolidge Creek

Following our discussion and review of the files on June 27, 1984, regarding the 3 parties participating in the Rittberger Water Right application on Grace Coolidge Creek, I have the following comments. It appears to me that the situation that has developed will necessitate approving all the "new" water right applications (Rittberger and 2 downstream users) with their associated changes in withdrawal methods or cancel all old water rights due to lack of flow and disapprove Rittberger's new application.

After reviewing the data presented by Perry Rahn, the mean monthly flow information from the USGS, your measurements this year, and all the letters on file regarding water rights on the creek, it does not appear to me that enough flow is present to support domestic use, 3 pumping operations, and still maintain a viable fishery in the lower portion of the creek below the sinkholes. Fishes in Grace Coolidge will need 6" of water across the channel to be able to move from place to place in the creek and to withstand higher temperatures that will occur during the summertime.

If Rittberger's application is approved and the 2 downstream users are allowed to modify their withdrawal works to pumping type withdrawal, the threshold quantity of flow in the creek when irrigation becomes feasible will be lowered from present day levels when withdrawals are made via ditches. The mean flow in the creek is probably only about 6-8 inches deep now so that if pumping is permitted, a conservative guess would be that the creek would be lowered by 4 inches.

If the creek is lowered by even 2 inches, the beneficial uses of fish life propagation and domestic use may be jeopardized or eliminated. At best, the creek supports domestic uses and fish life propagation perhaps 50% of the time. These uses will probably be reduced even further if pumping is permitted. If a low flow bypass is written into the permits, the permits themselves may become essentially useless because the base flow of the creek is very low. My recommendation in the case of a very low flow stream with uses like Grace Coolidge supports is to not allow any further withdrawal of water and to cancel out of the old water rights that depend on ditch structures for diversion. In this way domestic use, fish life propagation, and the aesthetics of the area will be preserved in accordance with several letters already present in the file.



Received by John Hatch at 1:30 p.m.
hand carried to John Hatch by
his calling messenger.

Theresa, S. D.
July 2, 1954

John Hatch
Water Rights Div.
Dept. of National Resources
New Building
Pierre, S.D. 57501

Dear Mr. Hatch

I hereby protest the application
of the Rutledge Beef Dairy Irrig.
Project, because it will interfere
with the water needed to accommodate
this proposed irrigation without
jeopardizing sub-irrigation of crops
and hay ground, wells, ~~land~~^{stock}
watering and the environment
of a scenic valley's trout stream.
This creek has not accommodated
present irrigation permits to full
capacity for the past 20 yrs.

The legal description of the pro-
posed irrigation project was follows -
The point of diversion to be located in
Sec. 16 TWP. 35 Range 7E. The water to be
used for irrigation in section 16, 20 and



Hermosa S.D.
July 2 1984

John Hatch

Water Rights Div.

Dept. of Water & Natural Resources

Post Building

Pierre, S.D. 57501

Dear Mr. Hatch

I wish to contest the issuance
of a Water Right Permit - the point
of diversion to be located in Sec. 16 TWP.
3 S. Range 7 E. The water used for
irrigation in 16, 20 and 21 T3S R7E.

The application submitted by Rittberger
Belt & Dairy Inc. Hermosa, S.D. 57744
from Grace Coolidge Creek.

Sincerely,
Helen McCallan
Hermosa, S.D.

and 21, T35 R7E on Grace Coolidge
Tract.

Thank you Mr. Hatch.
Lester M. Callan
Rt 2 Box 41
Vermont, A.B. 57744

Hermosa, S. D.
July. 2, 1984

Ritberger Beef & Dairy.
Rt. 3.
Hermosa, S. D. 57744.



Dear Ritbergers.

I hereby protest the application
for irrigation rights submitted
by you for following legal description
Sec. 16 T10P33. R.T.F.

The objections are based on lack
of water in subject (Grace Coolidge-
Guan Creek. to accommodate the
irrigation without jeopardizing such
irrig. of my crops & hay ground well
a livestock watering. This Creek
has not accommodated even present
irrigation in past 20 years.

Sincerely
Helen M. Callan
Rt. 1 Box 41
Hermosa, S. D. 57744





Received by John Hatch at 1:30 p.m.
Hand carried to John Hatch by Mrs.
Catherine H. Hanger.

Hermosa, S.D.
July 2, 1984

John Hatch
Water Rights Div.
Dept. of Natural Resources.
Doss Building
Pierre, S.D. 57501

Re Rutberger Beef & Dairy
State Route 3
Hermosa, S.D. 57742

I hereby protest the application
of Rutberger Beef & Dairy. Irrig. Project.
The point of diversion to be located
in Sec. 16 Twp. 3 S Range 7E. The
water to be used for irrigation in
Sections 16, 20 and 21 T3S R7E on
Grace Cossidge Creek (Squaw Creek)
because it will interfere with water
need to accommodate this proposed
irrigation without jeopardizing sub.
irrigation of crops and hay ground
wells, livestock watering and the en-
joyment of a scenic valley & trout stream.
This creek has not & will not accede.

mediate irrigation projects, as
has been researched since 1971
when Custer State Park found
it was not feasible to irrigate
a 50 acre golf course that they
had planned to build.

Sincerely,
Helen M. Callan
R. J. B. & Co.
Terrebonne, La.

57744

Received
in mail - JH



Hermosa, S.D.
July 2, 1984

John Hatch
Water Rights Div.
Dept. of Natural Resources.
Jones Building
Pierre, S. D. 57501

Dear Mr. Hatch -

I hereby petition the Water Rights
Management Board that I wish to
contest the removal of my water
rights - The legal description being
as follows:

The middle of S. 10. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of
Sect. 16 in township 3 South of Range
7 East of Black Hills Meridian. &
S.E. of Sect. 9 and thru the n. Half of
S.W. $\frac{1}{4}$ of Sect. 10 township 3 S. of Range 7
East of Black Hills Mer.

The water rights or appropriation
from Square Creek or Grass Coolidge Creek.

Thank you.

Allen M. Callan

Hermosa, S. D.
July 2, 1984

John Hatch.
Water Rights Div.
Dept. of Natural Resources.
Foss Building
Pierre, S. D. 5950

Dear Mr. Hatch -

I would like to ask for
a postponement of the hearing
on Rittberger Beef, Dairy &
also the hearing on Lutz & Callan
water rights. Because at this
time it will be a severe
hardship to attend.

Sincerely,
Helen M. Callan
Rt. 1, Box 41
Hermosa, S. D. 57741



Sierrona, S. D.
July 2, 1954

John Hatch
Water Rights Div
Dept. of Natural Resources.
Doss Building
Pierre, S. D. 5950.



Dear Mr. Hatch

I hereby protest the application
for irrigation rights submitted by
Rutthergh-beef & dairy - legal description
Grace Coolidge Creek. The point of
diversion located in Sec. 16 Twp. 35
Range 7E. Sections 16, 20 and 21 T35
R 7E.

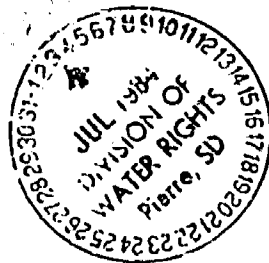
The objections are based on lack
of water in subject creek to ac-
commodate this irrigation without
jeopardizing sub-irrigation of dry
crops & hay ground, wells & livestock
watering. This creek has not ac-
commodated even present irrigation
in past 20 years

Helen M. Callan
R. H. 1 Box 4
Sierrona, S. D. 57744

Sincerely,
Helen M. Callan

Helen M. Callan
Rt. 1 Box 41
Lumosa, S.D. 57744

John Hatch
Water Rights Div.
Dept of Natural Resources.
Fuss Building.
Pierre, S.D. 57501



Received by John
Hatch 11:30 p.m.
Hand carried to John
Hatch by Mrs. Callan
m.s.d.



Received in mail - Jff

R. R. 1, Box 100
July 27, 1984

S. D. Dept. of Water & Natural Resources
Water Rights Div.

Dear Sirs:

We wish to protest the removal of our water rights for
the S. $\frac{1}{4}$ of th. S. $\frac{1}{4}$ of section 9, Twp. 3 S., R. 7E BHM
Custer County, S. D.

Also we wish to attend the hearing on the application of
the Ritterberger Beef & Dairy, Inc.

Very truly yours,

Minnie B. Burns

MBB/EB

Minnie Berdick Burns



Dear Sir

I would like to protect the Rittberger Water Right on Square Creek. I am willing to work out some concessions to them. I feel the only time there is sufficient flow is when ~~water~~ water is flowing from their gravel bed. This could be monitored from where their road crosses the creek.

As for my own water right I have used them through the years consistent with the laws of the state. Although I find I can only use them about 4 of every 10 years. The rest of the time I feel it would be too detrimental to people down stream. I am planning to be at the meeting.

Sam Smith

Rt. 1 Box 40
Hermosa, South Dakota 57714
July 9, 1984

To Timothy G. Schoal, WRE
Re: Irrigation Permits on Grace Cooledge Creek

From your letter of June 18, 1984, I see you are going to DISCUSS Rittberger's water application. I assume you will not make a decision at this meeting.

As I have told you in conversation, I am primarily opposed to issuing a permit for the following reasons:

1. I was told about 12 years ago by your office when I tried to apply that no more permits were available.
2. There are lots of unanswered questions on normal creek flow, who has legal rights now, who would monitor the amount of water removed from stream, etc.
3. I am afraid that issuing a permit would cause a neighborhood feud, unless your office has meetings out here to let us all discuss this problem and work out our solution and then you issue permits to satisfy these solutions.

I know you have Department of Water and Natural Resource meetings at different locations in the state. Why don't you have this one in Rapid City where we can attend. July 11 is a very poor time for a rancher to travel that far. This has drug out for over a year now so time must not be that important.

Respectively submitted,

Darrell J. Bishop
Darrell J. Bishop



Conversation or File Documentation

NAME OF PERSON OR FILE: Rittberger Beef & Dairy, Inc.ADDRESS: HCR-83 Box 13 Hermosa SD COUNTY 57744DATE: July 10, 1984 TELEPHONE _____RE: Ron Koth's June 29, 1984 Memo

COMMENTS:

Ron Koth stated in his memo that Grace Coolidge Creek supports fish life "at best" only 50% of the time. He stated the fish will need 6 inches of water to be able to move from place to place. Cross-sections taken during stream flow measurements indicate a depth of approximately 6 inches with a flow of 2.5 cfs.

There was some discussion of using two gaging stations. A gage at the lower end of Rittberger's property & one at the lower end of Hintz's property. It was also discussed to place a 2.5 cfs by-pass requirement at the Hintz gage and because of pull up from springs, a 1.5 cfs by-pass requirement at the Rittberger gage. It was decided that the one gage at Hintz with the 2.5 cfs by-pass requirement would be just as effective as two gages and easier to monitor.

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: _____

Water Rights Division - DWNR
Conversation or File Documentation

File No. _____

NAME OF PERSON OR FILE: _____

ADDRESS: _____ COUNTY _____

DATE: _____ TELEPHONE _____

RE: _____

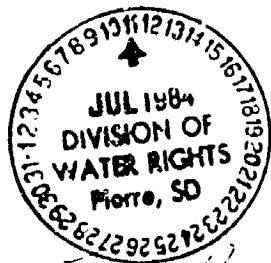
COMMENTS:

Dr. Perry Rahn testified in 1969 against a G.F.P application (#996-2) to divert 0.5 cfs from Grace Coolidge Creek. He conducted a survey & determined that downstream users needed 2.49 cfs. This included the people living along Grace Coolidge Creek & Battle Creek below the mouth of Grace Coolidge Creek. His 2.49 cfs figure included 1.09 cfs for domestic use and 1.40 cfs for sub-irrigation.

We arrived at the 2.5 cfs by-pass requirement using Dr. Rahn's testimony and the data from the cross-sections taken during flow measurements of Grace Coolidge Creek. We believe that this a conservative figure because of the amount of pick up flow from springs and the amount Dr. Rahn included for sub-irrigation. There are no Water Rights on either Grace Coolidge Creek or Battle Creek appropriating water for instream flows, but we believe the 2.5 cfs by-pass requirement for domestic use covers this.

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: _____



CHARLES S. STANSBERRY
Route 1, Box 3
Hermosa, SD 57744

9-July-84

To: South Dakota State Water Board
S. D. Pierre,

I am located on Rt 36 two miles west of its intersection with Rt. 79.

We purchased this land, drilled the well and built the house in 1969. Since that time the creek that runs through our property (Square Creek or Green Carledge Creek) has dried up completely about five or six times in the fifteen years since we bought
(OVER)

have. In dry years when the
creek flow is low it gets
into the ground and dries
up completely here.

Our well is forty (40') feet
deep. As long as the creek keeps
running we have no problem
with our water supply, however,
shortly after the creek dries
up our well water gets low
and we are unable to water
our grass or garden and my
wife has to take our clothes
to a Laundromat in Rapid
City to wash them.

Because of this I am
(next page)

strongly opposed to anyone
doing anything to shut stop
or divert any water from
this creek at any time
for any reason.

Sincerely,
Charles S. Stansbury

LAW OFFICE OF
CURT IRELAND
429 Kansas City Street Suite No. 8
Rapid City, South Dakota 57701

TELEPHONE
341-2337
AREA CODE
605

July 12, 1984

Mr. Timothy Schaal
Dept. of Water and Natural Resources
Water Rights Division
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

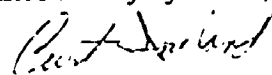
Re: Rittberger Water Rights Matter

Dear Mr. Schaal:

Thank you for your courtesies at the hearing before the Water Management Board yesterday. I was disappointed that we were not able to present any information to the Water Board, but would like to now follow up with an amended application based on the old water right filings claiming a "vested right" to appropriate water out of Grace Coolidge Creek on behalf of Rittberger Beef and Dairy, Inc. In that application, we would request that the diversion point be moved downstream (to the east) approximately 1/8th mile (more exact information as to point of diversion should be obtained from Bob Rittberger) and that we be allowed to draw water for 70 acres at the rate of 1 cfs.

My clients also feel that the suggested domestic bypass of 2½ cfs is excessively high if you're going to have a weir established at both the Rittberger property and on Jim Lintz' property. What would be your reaction to a 1½ cfs domestic bypass provision? Again, thank you for your assistance and will be looking forward to hearing from you concerning the amended application. It was my understanding from the chief engineer that notice will be given and published in compliance with the statute and that this will be scheduled for the September Board meeting.

Sincerely yours,



CURT IRELAND

GI/km

cc - Mr. John L. Rittberger



Ellsworth Associates

ROBERT LINCOLN ELLSWORTH
DIRECTOR

P. O. Box 165
HERMOSA, SOUTH DAKOTA 57744

(605) 255-4675
(512) 991-5783

July 20, 1984

Board of Water Resources
Secretary's Office
Joe Foss Building
Pierre, South Dakota

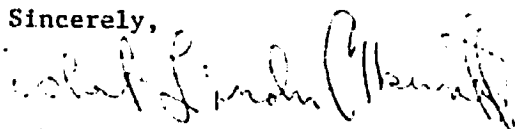
Dear Mr. Secretary:

The purpose of this letter is to express my concern for the creek that runs through my property.

If use is to be made of the creek, guidelines for that use should be set by all who have a stake in it. The first effort of these guidelines should be to insure the preservation of the creek, and secondly, to distribute this resource fairly and legally.

Will await your response.

Sincerely,



Robert Lincoln Ellsworth

RLE:md

RECEIVED

JUL 24 1984

SOUTH DAKOTA DEPARTMENT OF
WATER AND NATURAL RESOURCES
OFFICE OF WATER QUALITY

WATER RIGHTS DIVISION
(605) 773-3352

July 27, 1984

Robert Lincoln Ellsworth
PO Box 165
Hermosa, South Dakota 57744

Dear Mr. Ellsworth:

Thank you for your letter. You mentioned a creek that flows across your property. If the name of the creek is Grace Coolidge, the Water Management Board will conduct hearings September 26, 1984 concerning existing and proposed water rights on Grace Coolidge Creek. Grace Coolidge is also known as Squaw Creek.

We will notify you of the time and place of the hearings here in Pierre.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:ms

Water Rights Division
605 773-3352

October 26, 1984

Jack Little, Supervisory Hydrologist
U.S. Geological Survey
Room 317, Federal Building
200 4th St
Huron CO 57350

Dear Mr. Little:

This letter is in response to our conversation concerning the installation of a staff gage on Grace Coclidge Creek. We proposed to install the gage below the three irrigators and thought it should be located somewhere in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T3S, R7E or the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T3S, R7E. There is a concrete crossing in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and maybe the gage could be installed near this. We would like to be informed when this work will be accomplished and maybe we will be able to participate.

If you have any questions, please contact this office.

Sincerely,

TIMOTHY G SCHAAL
Water Resources Engineer

TGS:ks

WATER RIGHTS DIVISION
(605) 773-3352

November 5, 1984

Andrew Reid, Attorney
SR#1, Box 338,
Chadron, Nebraska 69337

Dear Mr. Reid:

As you requested by phone on November 5, 1984, enclosed are copies of all items included in the Rittberger Application File No. 1687-2A. We have also enclosed a copy of the South Dakota Water Laws and General Rules.

If you have any further questions do not hesitate to contact us.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:JW:ms

Enc. Water Laws, General Rules, Itemized list of enclosures from
Rittberger file, Copy of items from Rittberger file.

Nov. 5, 1984

Contesting Rittburgers Appl.

John H.

Andrew Reid, Atty

Rep. Shirley Carlson

Star Rt. 1

Box 338

Chadron, Neb. 69837

He wants Copy of Whole File on Rittburgers

Jim Winter

Laurie & Pige

- 1-8-79 Memo on phone call from Rittberger Beef
- 11-30-83 Letter from Bob Rittberger
- 10-5-83 Letter from Fred Rittberger
- 9-21-83 Letter to Rittberger Beef (enc. orig. permit app.)
- 11-15-83 Letter to Fred Rittberger encl. rewritten application.
- Copy of Conditional Approval from Soil Conservation Service
- Copy of Water Analysis (South Dakota State University)
- Copy of Map by SCS
- 12-2-83 Memo from T. Schaal to J. Stukel
- 12-22-83 Report on Permit Appl. #1687-2A
- 12-29-83 Letter to Custer County Chronicle enclosing publication notice
- 12-29-83 Letter to Rittberger Beef-enclosing copy of publication notice
- Copy of Notice sent to Custer Chronicle
- 12-29-83 Recommendation of Chief Engineer for Water Permit Appl. # 1687-2
- 1-9-84 Copy of notice as printed in Chronicle
- Copy of Correction of Report on Rittberger Beef App. #1687-2A
- 1-11-84 Memo on phone conversation with Jim Letz
- 1-17-84 Memo on phone conversation with Bob Rittberger
- 1-18-84 Memo on phone conversation with Bob Rittberger
- 1-19-84 Memo on phone conversation with Jim Lentz
- 2-6-84 Letter to Robert Rittberger
- 3-30-84 Letter to Robert Rittberger
- 1-18-84 Letter to Jim A. Lentz
- 1-31-84 Letter from Bob Rittberger
- 11-30-83 Copy of Application (Form 2 and 2A)
- Map
- 2-15-84 Notice published in Custer Chronicle (with change)
- 9-26-84 Application - Rittberger Beef (revised) (Form 2 & 2A)
- 10-18-84 Letter to Custer Chronicle enclosing notice to publisher
- 10-18-84 Letter to Rittberger with copy of notice to Chronicle
- 10-18-84 Report on Water Permit Application
- Recommendation for 1687 2A
- Map

WATER RIGHTS DIVISION
(605) 773-3352

November 3, 1984

Curt Ireland, Attorney
429 Kansas City Street
Suite No. 8
Rapid City, South Dakota 57701

Dear Mr. Ireland:

Enclosed for your information is a copy of the Notice of Hearing advertisement for Rittberger Beef and Dairy, Inc., Water Permit Application No. 1687-2A, Mrs. Helen Callan and Minnie Bender Burns, Water Permit Application No. 1900-2, and James Lintz, Water Permit Application 106A-2. Also enclosed is a copy of the report and recommendation on the above applications.

If you have any questions on this matter, please contact this office

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:TS:ms
Enc.

WATER RIGHTS DIVISION
(605) 773-3352

November 9, 1984

Darrell J. Bishop
Route #1, Box 40
Hermosa, South Dakota 57744

Dear Mr. Bishop:

Enclosed for your information is a copy of the Notice of Hearing advertisement for Rittberger Beef and Dairy, Inc., Water Permit Application No. 1687-2A, Mrs. Helen Callan & Minnie Bender Burns, Water Permit Application No. 1900-2, and James Lintz, Water Permit Application No. 106A-2. Also enclosed is a copy of the report and recommendation on the above applications.

If you have any questions on this matter, please contact this office.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

WATER RIGHTS DIVISION
(605) 773-3352

November 9, 1984

Charles S. Stansbery
Route #1, Box 8
Hermosa, South Dakota 57744

Dear Mr. Stansbery:

Enclosed for your information is a copy of the Notice of Hearing advertisement for Rittberger Beef and Dairy, Inc., Water Permit Application No. 1687-2A, Mrs. Helen Callan and Minnie Bender Burns, Water Permit Application No. 1900-2, and James Lintz, Water Permit Application No. 106A-2. Also enclosed is a copy of the report and recommendation on the above applications.

If you have any questions on this matter, please contact this office.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:TS:ms
Enc.

WATER RIGHTS DIVISION
(605) 773-3352

November 9, 1984

Robert Lincoln Ellsworth
P.O. Box 165
Hermosa, South Dakota 57744

Dear Mr. Ellsworth:

Enclosed for your information is a copy of the Notice of Hearing advertisement for Rittberger Beef and Dairy, Inc., Water Permit Application No. 1667-2A, Mrs. Helen Callan & Minnie Bender Burns, Water Permit Application No. 1900-2, and James Lintz, Water Permit Application No. 106A-2. Also enclosed is a copy of the report and recommendation on the above applications.

If you have any questions on this matter, please contact this office.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:TS:ms
Enc.

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

Joe Foss Building
522 East Capitol
Pierre, South Dakota 57501-3189

Water Rights Division
605 773-3352

November 19, 1984

N O T I C E

TO: Rittberger Beef & Dairy
Rt 3, Box 13
Hermosa SD 57744

FROM: John Hatch, Chief Engineer
Water Rights Division *John Hatch*

SUBJECT: Consideration of Water Permit Application No. 1687-2

Due to a typing error the hearing date for consideration of Water Permit Application No. 1687-2 was advertised for December 15, 1984. The scheduled hearing date is December 5, 1984 at 11:15 am in Conference Room 216, Joe Foss Building, Pierre SD. This hearing date and time is the same as for the Callan Application No. 1900-2 and Lintz Application No. 106A-2.

cc: James Lintz
Helen Callan and Minnie Bender Burns

Hermosa, S. D.

Nov. 19, 1984

S. D. Dept of Water & Natural Resources
Joe Ross Building
523 East Capitol
Pierre, S. D.



Dear Sir:

We would like to ask for a post-
ponement of Water Approp. application
H 1687-2 Ritbarger's bdy, Dairy &
1900-2 for Marine Bender Burns
and Helen Callan.

Due to the fact that until the
Ritbarger's application for 3 C.F.S. approp.
water to be pumped from Grace Coolidge
Creek to fill a 103 acre foot dry dam
appeared in the Custer Chronicle, we
were not aware of their intent to do
so.

Before such time as the Water
Commission meets again we would
like to familiarize ourselves with
the Ritbarger's need for an additional
3 C.F.S. plus their previous approp. for
1.18. to water 87 acres.

Also, we feel a need for Rittbergers
to advantage their intent to pump only
during high water, as Tim Schall
states & what constitutes high water.
Previously, at our July meeting
we were informed that should we
all agree on the .54 for Jim Lintz
1.18 Cts. for Rittbergers & .94 for Bender
Callan, these permits would all be
approved and there would no longer
be any cause for concern. However
in the meantime Tim Schall met
with Rittbergers & suggested said
storage dam.

It is our belief that Grace Creek
could not accommodate such a
volume of irrigation & still allow irriga-
tion by other landowners downstream
without severely damaging the water
table and future water resources.

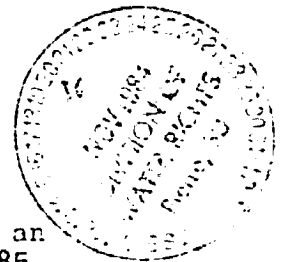
We also dispute the fact that it is
mutually beneficial use of water
and is in the public interest.

Thank you kindly for your
patience in this matter. Also I request
permission to attend. Sincerely

R.R. 1, Box 29
Hermosa, S. D.
57744

Re: Water Appropriation
Application 1687-2
Rittberger Beef & Dairy,
Rt. 3, Box 13, Hermosa,
S. D. 57744

Chief Engineer
S. D. Dept. of Water &
Natural Resources
Joe Foss Bldg, 525 E. Capitol
Pierre, S. D. 57501-3181



Dear Sir:

As an interested downstream resident, I hereby request an extension of the above application until the March, 1985 meeting of the Board, and also request permission to attend the hearing.

In view of the amount of water requested, we feel it necessary to thoroughly review all aspects of this application by our qualified people.

Trusting that this request will be favorably honored, I am

Very truly yours,

Minnie E. Burns
Minnie E. Burns
R. R. 1, Box 29
Hermosa, S. D. 57744

cc/
Rittberger Beef & Dairy
Mrs. Helen Callan

R. R. 1 Bx. 29
Hermosa, S. Dak
57744

Re: Water Appropriation
Application #1900-2

Chief Engineer
S. D. Dept. of Water &
Natural Resources

Joe Foss Bldg.
523 E. Capitol
Pierre, S. D. 57501-6181



Dear Sir:

I hereby request an extension of the above application No. 1900-2
until the March, 1995 meeting of the Board.

We feel that additional time is needed for us to examine all
the aspects connected with this application.

Trusting this will meet with your approval, I am

Yours very truly,

Minnie B. Burns
Minnie B. Burns

R. R. 1, Box 29
Hermosa, S. Dak. 57744

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

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3111

Water Rights Division
605 773-3352

November 21, 1984

N O T I C E

TO: Mrs. Helen Callan
Rt 1, Box 41
Hermosa SD 57744

Mrs. Minnie B Burns
Rt 1, Box 29
Hermosa SD 57744

James A Lintz
Rt 1, Box 23
Hermosa SD 57744

Rittberger Beef & Dairy
Rt 3, Box 13
Hermosa SD 57744

FROM: John Hatch, Chief Engineer
Water Rights Division



SUBJECT: Automatic Extension of Time on Water Permit Application Nos.
1687-2 and 1900-2 and Recommended Delay of No. 106A-2

Pursuant to petitions received from Mrs. Helen Callan and Mrs. Minnie B. Burns and SDCL 46-2A-4 and 46-2A-5 the time of hearing for consideration of Water Permit Applications No. 1687-2 (Rittberger Beef & Dairy) and 1900-2 (Mrs. Helen Callan and Mrs. Minnie Burns) is automatically extended. The Water Management Board will now consider Water Permit Applications No. 1687-2 and 1900-2 at 1:15 pm, March 6, 1985 in Room 216, Joe Foss Building, Pierre SD. The Chief Engineer will also recommend to the Water Management Board on December 5, 1984 that consideration of Water Permit Application No. 106A-2 for James A Lintz be considered March 6, 1985 at the above stated place and time.

cc: Dan Doyle, Assistant Attorney General

BROKEN PLOW LAW OFFICE
Star Route 1, Box 33B
Chadron, Nebraska 69337
Phone: (308) 432-4259

November 23, 1984

Mr. John Hatch, Chief Engineer
Water Rights Division, DWR
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Re: Permit Application No. 1687-2

Dear Mr. Hatch:

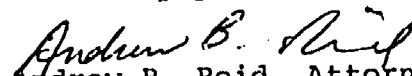
Please find enclosed the original of a Petition to Intervene, to Contest, and to Oppose the above Application. Also enclosed is a check for \$2.50 to cover the filing fee of the petition if one is required. If not, please return the check.

My clients and I would further request that the time for the hearing be extended for at least twenty days to enable us time to adequately prepare. Due to the protracted nature of the application and the confusion between the application and vested water rights, and the involvement of significant natural resources and property values, I believe I will need a substantial amount of time to prepare. I will not be able to work on this between Christmas and New Years due to vacation plans. Please inform me of the proposed new date before a final decision if at all possible so that I can make arrangements in my schedule or let you know if there will be a conflict.

I would appreciate it if you would place me on your mailing list for copies of any future documents supplied by anyone to the file in this matter. By this, I am formally requesting that as parties to this matter we receive copies of anything filed by either the state or the applicant.

Thanks for your attention.

Sincerely yours,


Andrew B. Reid, Attorney

cc: Heler M. Callan, Mr. & Mrs. Burns
Rittberger Beef & Dairy, Inc.

BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

IN THE MATTER OF APPLICATION NO. 1687-2)
OF RITTBERGER BEEF & DAIRY, INC. TO)
APPROPRIATE WATER FROM GRACE COOLIDGE CREEK)

PETITION TO INTERVENE, TO CONTEST, AND TO OPPOSE APPLICATION

COME NOW Helen M. Callan, E.L. "Babe" Burns, and Minnie Bender Burns, by and through their attorney, Andrew B. Reid, on behalf of themselves and their children, and aver and allege as follows in the Matter of Application No. 1687-2 of Rittberger Beef & Dairy, Inc. to appropriate water from Grace Coolidge Creek and a dry draw:

- (1) That Petitioners are citizens and residents of South Dakota.
- (2) That Petitioners are owners in fee of riparian real property lying along and/or over Grace Coolidge Creek and immediately downstream from the property and points of diversion and appropriation described in Application No. 1687-2.
- (3) That Petitioners are owners and possessors of right of vested water rights to the water of Grace Coolidge Creek which predate and have priority over those, if any, of Rittberger Beef & Dairy, Inc.
- (4) That Petitioners use and have used for many years for domestic, irrigation, and other purposes, the water from Grace Coolidge Creek which flows naturally by and through their property when sufficiently available and appropriate for said purposes.
- (5) That the water from Grace Coolidge Creek which flows naturally by, through, and over the property of Petitioners significantly contributes to and enhances the scenic enjoyment and fair market value of said property.
- (6) That Grace Coolidge Creek is an important fishery, wildlife, water, and public resource protected by the environmental, wildlife, and water laws of the State of South Dakota and the United States of

America.

(7) That the Application at issue herein is improperly vague, is insufficient, and is otherwise improper by reason of each of the following:

(a) The proposed method of use is unreasonable and wasteful in violation of SDCL 46-1-4.

(b) The appropriation is unreasonable for the proposed beneficial use in violation of SDCL 46-1-4.

(c) The appropriation would be contrary to the interest of the people of South Dakota and to the public welfare and therefore in violation of SDCL 46-1-4.

(d) The appropriation would not be "beneficial use" as defined by SDCL 46-1-6(6), in that it would not be consistent with the interests of the public of this State in the best utilization of water supplies.

(e) The Applicant, known hereinafter as "the Corporation", has failed to file a proper location notice with the county as required by SDCL 46-4-3 and SDCL 46-4-4.

(f) The Application fails to state the total number of acre feet claimed for all purposes, the acre feet storage capacity of the reservoir, the estimated surface area of the storage basin, or the number of acres of watershed above the proposed dam as required by SDCL 46-4-4.

(g) The Corporation has failed to file a petition pursuant to SDCL 46-4-7.

(h) The proposed appropriation by the Corporation is in excess of one cubic feet per second per each seventy acres and therefore in violation of SDCL 46-5-6.

(i) The Corporation has failed to concurrently file a proper application for a soil-water compatibility permit from the Department of Agriculture which correctly describes each correct diversion point, method of diversion, use of appropriated water, and acreage, or, in the alternative, has failed to properly amend its application for the above making appropriate changes in said description, as required by SDCL 46-5-6.2 et seq.

(j) The Corporation has failed to provide the Department of Agriculture with all the information and documents required by SDCL 46-5-6.3.

(k) No proper, sufficient, or appropriate soil-water compatibility study and report has been completed or filed with the Department of Agriculture, nor has there occurred any proper, sufficient, or appropriate review and approval of any application for a soil-water compatibility permit by the Department of Agriculture and the Conservation Commission as required by SDCL 46-5-6.2 et seq. and ARSD 74:02:01:09.

(l) The Application is defective and improper because it refers to more than one water use system in violation of SDCL 46-5-12.

(m) The Corporation has failed to file a proper map containing each of the requirements found in ARSD 74:02:01:07.

(n) The amount proposed by the Corporation for appropriation would be in excess of that necessary for the proposed beneficial use.

(o) The Application fails to contain the information concerning amount of storage, depth and characteristics of groundwater, and other pertinent data required by ARSD 74:02:01:08.

(p) The proposed appropriation by the Corporation would be in excess of two acre feet annually per each acre as provided by ARSD

74:02:01:05:01.

(q) The description of the point(s) of diversion in the Application is unreasonably vague.

(r) There exists no reasonable probability that the amount of water proposed by the Corporation for appropriation is currently available as unappropriated Grace Coolidge Creek water as required by SDCL 46-2A-9.

(s) There exists no reasonable probability that the proposed diversion can be developed without unlawful impairment of existing rights as required by SDCL 46-2A-9, 46-5-30.4, 46-5-24, 46-5-9, 46-5-10, 46-5-2.

(t) There exists no reasonable probability that the proposed diversion is a beneficial use and in the public interest as required by 46-2A-9, 46-1-4, 46-1-6(6).

(u) The Application is so changed and different from that originally filed by the Corporation that the priority date cannot reasonably and lawfully be extended back to the original filing and, therefore, that the application by the Corporation lacks lawful priority over those of other downstream users.

(v) The notice is improper and defective as described below.

(w) The Application fails to demonstrate compliance with all state and federal laws protecting the environment, fisheries, wildlife, and other natural resources.

(8) The notice herein is defective and improper for the following reasons:

(a) The described point(s) of diversion is unreasonably

vague.

(b) The notice fails to sufficiently describe the purpose for which the water or facility is to be used, specifically the water in the dam, as required by SDCL 46-2A-4(2).

(c) The statement in the notice of the reasons for the recommendation of the Chief Engineer is unreasonably vague and in violation of SDCL 46-2A-4(3).

(d) The notice fails to state specifically where copies of the Application may be obtained as required by SDCL 46-2A-4(5).

(e) The notice fails to state that interested persons may file petitions in this matter up to ten days prior to the published date for the hearing as required by SDCL 46-2A-4(4) and thereby deprives interested persons of their full time of review and right to intervene.

(f) The notice fails to state that the recommendation is "subject" to the approval of the Water Management Board and thereby inform the public that the recommendation is clearly subordinate to the Board's opinion as required by SDCL 46-2A-4(7).

(9) That the Water Management Board is without jurisdiction to hear this matter until each and every requirement mentioned in paragraphs (7) and (8) has been met.

(10) That the Corporation has previously acted in bad faith in the matter and in violation of the laws of the State of South Dakota by diverting and appropriating water from Grace Coolidge Creek without, and prior to obtaining, any vested water right or permit as required by SDCL Chapters 46-1, 46-2A, 46-4, and 46-5.

(11) That should the proposed permit issue to the Corporation, Petitioners would suffer great and serious harm, including but not limited to: loss of vested water rights, loss of priority in water use, loss of the full use and enjoyment of their real property, loss of income to their cattle and farming enterprises, loss of water for domestic purposes, and loss in the fair market value of their properties.

FOR THE ABOVE REASONS, Petitioners respectfully request that the Water Management Board refuse to accept jurisdiction over the application of the Corporation or, in the alternative, deny the application in full.

Submitted by:

Andrew B. Reid
Andrew B. Reid, Attorney

BROKEN PLOW LAW OFFICE
Star Route 1, Box 33B
Chadron, Nebraska 69337
Phone: (308) 432-4259

CERTIFICATE OF SERVICE BY MAIL

I, Andrew B. Reid, attorney for Petitioners herein do hereby certify that on this 23rd day of November, 1984, served the above Petition upon the Applicant and filed the above Petition with the Chief Engineer by depositing same with the United States Post Office, first-class postage prepaid, in Chadron, Nebraska, addressed as follows:

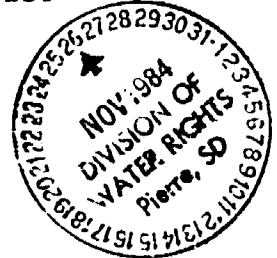
Rittberger Beef & Dairy, Inc.
Route 3, Box 13
Hermosa, SD 57744

Mr. John Hatch, Chief Engineer
Water Rights Division, DWNP
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

BROKEN PLOW LAW OFFICE
Star Route 1, Box 33B
Chadron, Nebraska 69337
Phone: (308) 432-4259

November 23, 1984

Mr. John Hatch, Chief Engineer
Water Rights Division, DWNR
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181



Re: Permit Application No. 1900-2
Water Right Filing No. 021-2

Dear Mr. Hatch:

This is a formal request on behalf of my clients, Helen M. Callan and Mr. & Mrs. Burns, in regard to the above that any action upon them be extended for at least twenty days for the reasons given in my letter to you regarding the Rittberger permit application.

I am somewhat confused as to what is scheduled to occur on these as I have not seen the notices or files on them and am not aware of their current status with your office. I have also been informed that a notice published on them was defective by stating that a hearing would be held on December 5, 1984, rather than on December 15, 1984. Irregardless, if you can, please see that any consideration of these matters is continued at the present time.

Your attention is appreciated.

Yours truly,

Andrew B. Reid
Andrew B. Reid, Attorney

cc: Helen M. Callan
Mr. & Mrs. Burns



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

November 26, 1984

Andrew B Reid, Attorney
Broken Plow Law Office
St Rt 1, Box 33B
Chadron NE 69337

Dear Mr. Reid:

We have received the petition submitted on behalf of Mrs. Helen Callan. Enclosed is your check in the amount of \$2.50. There is no fee for filing a petition.

Mrs. Callan and Mrs. Minnie Burns have already requested continuance. Enclosed are copies of the November 19, 1984 Notice on the typing error in the publication notice for Water Permit Application No. 1687-2 and the November 21, 1984 Notice for the Automatic Extension of Time on Water Permit Applications No. 1687-2 and 1900-2 and Recommended Delay for No. 106A-2.

If you have questions, please contact us.

Very truly yours,

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

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

enclosures

cc: Dan Doyle, Assistant Attorney General

WATER RIGHTS DIVISION
(605) 773-3352

December 5, 1984

Rittberger Beef & Dairy, Inc.
Route #3, Box 13
Hermosa, South Dakota 57744

Dear Mr. Rittberger:

Enclosed is a Soil/Water Compatibility application that is needed for diversion of water from your proposed dam. This should be signed and notarized and returned to the Department of Agriculture as soon as possible so they can handle it at their January meeting. A water sample is not needed. Also enclosed, is a copy of a Petition to Intervene submitted by Mrs. Callan's attorney.

Sincerely,

Tim Schaal
Natural Resources Engineer

TS:ms
Enc. 2

SOIL/WATER COMPATIBILITY PERMIT APPLICATION FORM

Office Use Only

Division of Conservation

WR#

OWNERS NAME: Edith Margaret Seef & Daley, LLC OWNERS ADDRESS: Box 42, Hwy 12Hermosa, South Dakota 57031COUNTY LAND LOCATED IN: Custer PHONE: 255-4400

TENANT'S NAME AND ADDRESS: _____

LEGAL DESCRIPTION: (Show Legal Description to Nearest 10 Acres)

1. WELL LOCATION _____

Depth: _____

SURFACE WATER SOURCE AND DIVERSION LOCATION: T3S-R7E - Source of Water2. SURFACE WATER SOURCE AND DIVERSION LOCATION: T3S-R7E - Source of WaterDiversion Location: Grass Cowlidge Creek and local runoff

Legal Description	Acres	Legal Description	Acres
NE1/4 Sec. 16 T3S R7E	4.5	NE1/4 Sec. 20 T3S R7E	13.5
NW1/4 Sec. 16 T3S R7E	5.0	NW1/4 Sec. 20 T3S R7E	2.0
SW1/4 Sec. 16 T3S R7E	28.5	SE1/4 Sec. 17 T3S R7E	19.5
NW1/4 Sec. 21 T3S R7E	2.0	SW1/4 Sec. 17 T3S R7E	1.5

3. SHOW ANY PORTION OF LAND THAT PRESENTLY HOLDS AN IRRIGATION PERMIT: YEAR OBTAINED _____

LEGAL DESCRIPTION: above described land covered under SaltwaterIN WHAT NAME: Compatibility Permit No. 2462-CU4. LOCATION OF AREA TO BE IRRIGATED NOTE: SOILS INFORMATION FOR THIS AREA MUST AC-
COMPANY THE APPLICATION. (See instruction sheet) OTHER: _____5. TYPE OF IRRIGATION: GRAVITY: X TOWLINE: _____ CENTER PIVOT: _____ GUN: X (Specify) _____6. CROPS TO BE IRRIGATED: Corn & Alfalfa

WATER QUALITY: (TO BE COMPLETED BY SDSU WATER QUALITY LABORATORY)

7. WATER SAMPLE NUMBER: _____ 10. ADJUSTED (SAR): _____

8. SALINITY (EC X 10⁶): _____ 11. PERCENT SODIUM _____

9. SODIUM (SAR): _____

I hereby certify that I personally obtained or that I personally observed that taking of a sample of the water to be used in irrigating the above-described land. I also hereby certify that the required procedures for the taking of the sample (see instruction sheet) were followed, and that the sample was taken at _____ a.m./p.m., on _____

I also hereby certify that the water sample taken has NOT been adulterated or tampered with in any manner, and is TRULY REPRESENTATIVE of the water which will be used in irrigating the above-described land.

Signature

I understand that the Division of Conservation or agents thereof may obtain water samples from wells and surface bodies to be used for irrigation purposes to validate water samples taken at the time of application. The Department of Agriculture may also gather technical information necessary to protect the land. (46-5-6.4).

SUBSCRIBED AND SWORN BEFORE ME THIS _____

DAY OF _____, 19 _____

APPLICANT'S SIGNATURE: _____

Director, Division of Conservation

(NOTARY PUBLIC)

Date _____

APPROVED _____

DISAPPROVED _____

IMPORTANT

Action by the Department of Agriculture or the State Conservation Commission is not the final action on any application. In all cases a WATER RIGHT must be obtained from the Board of Water Management, Foss Building, Pierre.

CONDITIONALLY APPROVED
Conditional soil/water permits will be recorded by the Department of Agriculture, with the County Register of Deeds.

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF CONSERVATIONNAME OF APPLICANT: Rittburger Beef & Dairy
LEGAL DESCRIPTION: Portions of Sec's 16, 17, 20 & 2103-7= 82.5 acresSOIL RESTRICTIONS:THE SOIL(S) LISTED BELOW CANNOT BE IRRIGATED:

Irrigation is limited to areas of 9% slope or less. The areas of
Spearfish 9-15% slope-shallow soil shall not be irrigated.

THE SOILS(S) LISTED BELOW CAN BE IRRIGATED
WITH THE FOLLOWING RESTRICTIONS:RECOMMENDED MANAGEMENT:

We recommend the use of a form of conservation tillage and
contour farming to control soil erosion and conserve soil
moisture.

SIGNATURE

DATE

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

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-7181

Water Rights Division
605 773-3352

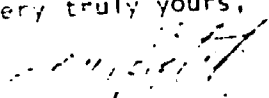
January 16, 1985

Andrew B. Reid, Attorney
Broken Plow Law Office
St Rt 1, Box 33B
Chadron NE 69337

Dear Mr. Reid:

Enclosed please find a copy of the soil/water compatibility permit Rittbergers received from the Conservation Commission at the January 10, 1985 meeting. This permit covers diversion from their proposed dry draw dam. Also enclosed is a copy of the soil/water compatibility permit Rittbergers received in October, 1979 for diversion from Grace Coolidge Creek. We believe this should clear up any questions concerning appropriate soil/water approval from the Department of Agriculture.

Very truly yours,


JOHN HATCH, Chief Engineer
Water Rights Division

JH:TS:ks

enclosures

cc: Dan Doyle
Assistant Attorney General

J. M. COSTELLO
WILLIAM G. PORTER
DENNIS H. HILL
JAMES S. NELSON
R. L. HEISTERKAMP
GENE R. BUSHNELL
RICHARD D. SHARPE
EDWARD C. CARPENTER
THOMAS H. BARNES
DONALD A. PORTER
THOMAS W. STANTON
ROBERT L. LEWIS

COSTELLO, PORTER, HILL, NELSON, HEISTERKAMP & BUSHNELL
ATTORNEYS AT LAW
200 SECURITY BUILDING
704 ST JOSEPH STREET
MAILING ADDRESS: P. O. BOX 290
RAPID CITY, SOUTH DAKOTA 57709

TELEPHONE 343-2410
AREA CODE 605

February 28, 1985

John Hatch
Chief Engineer
Water Rights Division
Water Management Board
Department of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501



Re: Our File No. 85-100-13
Jim Borglum
Water Permits Re: Grace
Coolidge Creek

Dear John:

Yesterday, February 27, 1985, I telephoned you with regard to Mr. Jim Borglum and Applications #1867-2A, #1900-2, and 106A-2. Today, February 28, 1985, I just received a copy of the applications and the notice of the hearing. In addition, you advised that the hearing was going to be held in Pierre on Wednesday, March 3, 1985.

It is too late for Mr. Borglum, who lives in Texas, to intervene as a party or formally oppose the application by way of filing a petition. I am, accordingly, in his behalf, writing you this letter and requesting that you submit the letter to members of the Water Management Board for their consideration at the Board meeting to be held next Wednesday.

Mr. Borglum, who is the grandson of Gutsom Borglum, and now owns the Gutsom Borglum Ranch on Grace Coolidge Creek, is concerned about maintaining Grace Coolidge Creek as a trout fishing stream. He would like the Board to keep this consideration in mind when deciding upon the aforesaid applications and particularly with regard to the Rittberger Dairy application to appropriate water.

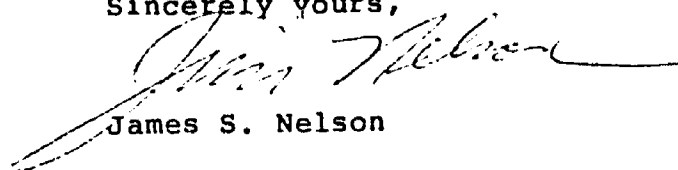
You have advised me that the 2.5 cubic feet per second bypass amounts to five or six inches of stream flow required before Rittberger can divert water. Hopefully, this would be enough to maintain adequate trout fishing in the stream. If

Mr. John Hatch
Page -2-
February 28, 1985

there is a danger that this cannot be done, then Mr. Borglum would respectfully request that the Board only approve the application upon the condition that enough water will be maintained in the creek to sustain trout and trout fishing.

In behalf of Mr. Borglum I want to thank the Water Management Board in advance for their consideration. With best regards I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James S. Nelson", written over a horizontal line.

James S. Nelson

JSN:ckh

cc: Attorney Byron Chrisman

PETITION TO HALT WATER APPROPRIATIONS FROM
GRACE COOLIDGE CREEK UNTIL ENVIRONMENTAL IMPACT STATEMENT

We the undersigned residents and owners of land along Grace Coolidge Creek do hereby petition the South Dakota Department of Water and Natural Resources, the South Dakota Department of Game, Fish and Parks, and the South Dakota Water Management Board to refuse and withhold any approval of any permit or license, including the pending application of Rittberger Beef & Dairy, Inc. for 1.18 cfs for irrigation and 3.0 cfs for a 103 acre feet dry draw storage dam, until said state agencies and board conduct an environmental impact statement pursuant to SDCL Chapter 34A-9 for the reason that we strongly believe from our experience and knowledge of the Creek that said appropriations are likely to have significant effect on the environment of the Creek including subirrigation, grazing, fish, and wildlife.

NAME

ADDRESS

DATE

JAMES BORGLUM

Box 165 Heemost. S. DAKOTA 57744

I strongly feel that all implications of this permit have not been considered, and that a more complete study should be done before such a major change in the local farming practices should be allowed.

I am concerned not only with adequate water levels for wildlife and downstream use, but also with the increased fertilizer residue that will drain from these small fields just upstream.

JAMES G. Borglum

Feb. 28. 1985



SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
DIVISION OF CONSERVATIONNAME OF APPLICANT: Rittburger Beef & Dairy
LEGAL DESCRIPTION: Portions of Sec's 16, 17, 20 & 21 83-7m 82.5 acresSOIL RESTRICTIONS:THE SOIL(S) LISTED BELOW CANNOT BE IRRIGATED:

Irrigation is limited to areas of 9% slope or less. The areas of Spearfish 9-15% slope shallow soil shall not be irrigated.

THE SOILS(S) LISTED BELOW CAN BE IRRIGATED
WITH THE FOLLOWING RESTRICTIONS:RECOMMENDED MANAGEMENT:

We recommend the use of a form of conservation tillage and contour farming to control soil erosion and conserve soil moisture.

SIGNATURE

DATE

1-11-85

March 1, 1985
Andrew Reid
Page 2

Jim Lintz Original Permit No. 106-2

Record of Proceedings from State Engineers Office
application form dated June 1, 1911
water license dated October 21, 1912
proof of publication
transfer form and receipt

Jim Lintz Application No. 106A-2

application form dated September 18, 1984
recommendation of Chief Engineer
proof of publication and receipt

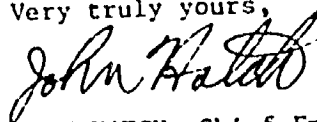
Callan & Burns Application No. 1900-2

application form 2 & 2B
recommendation of Chief Engineer
receipt from Callan & Burns
proof of publication
copy of Water Right Filing No. 021-2
statement by Thomas Callan dated January 11, 1980
transfer and receipt dated January 11, 1980

copy of micro-fische file Water Right Filing No. 0349-2
copy of micro-fische file No. 1645-2, Hermosa Water Users Association
copy of micro-fische file No. 1747-2, Assad Barari
copy of micro-fische file No. 1635-2, Oliver Purbaugh

If we can be of further assistance, please advise.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:TS:ks

enclosures



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

April 4, 1985

NOTICE

TO: Mrs. Helen Callan, Rt 1, Box 41, Hermosa SD 57744
Mrs. Minnie Bender Burns, Rt 1, Box 29, Hermosa SD 57744
James A Lintz, Rt 1, Box 23, Hermosa SD 57744
Rittberger Beef & Dairy, Inc., Rt 3, Box 13, Hermosa SD 57744

FROM: John Hatch, Chief Engineer *John Hatch*
Water Rights Division

SUBJECT: Rescheduled Hearings on Water Permit Application Nos. 1687-2A,
1900-2 and 106A-2 and Rescheduled Cancellation Considerations
of Water Right Filing Nos. 0138-2 and 0185-2.

The hearings on the above Water Permit Applications and Water Right Filings were postponed pursuant to a request from Andrew Reid, attorney representing Mrs. Callan and Mrs. Burns. The hearings before the Water Management Board will now be at 11:00 am, May 15, 1985 in the Civil Defense Room, located in the basement of the Capitol Building, Pierre SD.

We are recommending the following addition to qualification No. 1 for Water Permit Application Nos. 1687-2A, 1900-2 and 106A-2:

"The 2.5 cfs flow bypass may be changed by the Water Management Board, if flow measurements indicate a need for change."

JH:TS:ks

cc: Daniel D Doyle, Assistant Attorney General
Andrew Reid, Attorney
Curt Ireland, Attorney

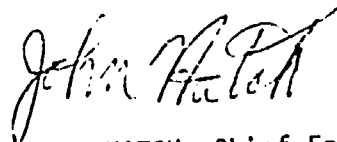
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1687-2A, Rittberger Beef & Dairy, Inc.

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 1687-2A, Rittberger Beef and Dairy, Inc., Hermosa SD.

The Chief Engineer is recommending Approval of Application No. 1687-2A because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be 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. No diversions may be made unless there is a flow of at least 2.5 cubic feet per second* in Grace Coolidge Creek for downstream domestic use, during diversion, at the lower end of the Lintz property in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 3, T3S, R7E.
2. Any diversions from Grace Coolidge Creek are subject to the prior rights of Mrs. Helen Callan, Minnie Bender Burns and James A Lintz.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Approval of this permit authorizes storage of up to 103 acre feet annually.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
Water Rights Division
October 18, 1984

* The Chief Engineer will arrange for installation of a Staff Gauge in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3. A staff gauge is a graduated scale mounted on a plank, wall or other like object from which the water surface elevation may be read.

RECOMMENDATION OF CHIEF ENGINEER FOR WATER.

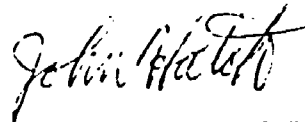
PERMIT APPLICATION No. 1900-2, Mrs. Helen Callan &
Minnie Bender Burns

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application NO. 1900-2, Mrs. Helen Callan and Minnie Bender Burns, Rt. 1, Box 41, Hermosa SD.

The Chief Engineer is recommending APPROVAL of Application No. 1900-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) in the public interest with the following qualifications:

1. No diversions may be made unless there is a flow of at least 2.5 cubic feet per second* in Grace Coolidge Creek for downstream domestic use, during diversion, at the lower end of the Lintz property in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T3S, R7E.
2. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
3. That approval of Permit No. 1900-2 recognizes and incorporates the applicable portions of Water Right Filing No. 021-2 into Permit No. 1900-2 and cancels the abandoned portions of Water Right Filing No. 021-2.

See attached report for additional information.



JOHN HATCH, Chief Engineer
Water Rights Division
October 18, 1984

* The Chief Engineer will arrange for installation of a Staff Gauge in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3. A Staff Gauge is a graduated scale mounted on a plank, wall or like object from which the water surface elevation may be read.

RECOMMENDATION OF CHIEF ENGINEER FOR
WATER PERMIT APPLICATION NO. 106A-2, James A Lintz

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 106A-2, James A Lintz, Rt 1, Box 23, Hermosa SD.

The Chief Engineer is recommending APPROVAL of Application No. 106A-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) in the public interest with the following qualifications:

1. No diversions may be made unless there is a flow of at least 2.5 cubic feet per second* in Grace Coolidge Creek for downstream domestic use, during diversions, at the lower end of the Lintz property in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T3S, R7E.
2. Any diversions from Grace Coolidge Creek are subject to the prior rights of Mrs. Helen Callan and Minnie Bender Burns.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. That approval of Permit No. 106A-2 incorporates the applicable portions of Water Right No. 106-2 into No. 106A-2 and cancels the abandoned portions of Water Right No. 106-2.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
Water Rights Division
October 18, 1984

* The Chief Engineer will arrange for installation of a Staff Gauge in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3. A staff gauge is a graduated scale mounted on a plant, wall or other like object from which the water surface elevation may be used.

Report on Water Permit Applications
on Grace Coolidge Creek
October 13, 1984

Water Permit Application No. 1900-2 submitted by Mrs. Helen Callan and Minnie Bender Burns is an amendment to change the diversion point, method of diversion, and method of irrigation for Water Right Filing No. 021-2. Water Permit Application No. 106A-2 submitted by James A. Lintz is an amendment to change the diversion point, method of diversion, and method of irrigation for Water Right No. 106-2. Water Permit Application No. 1687-2A submitted by Rittberger Beef and Dairy Inc., requests 1.18 cfs from Grace Coolidge Creek to irrigate 82.5 acres, plus a 3 cfs diversion rate from Grace Coolidge Creek during high flow periods and local runoff to fill a 103 acre feet dry draw storage dam.

Discussion

Callan and Burns Application No. 1900-2

Water Right Filing No. 021-2 with an April 15, 1887 priority date was filed to divert 1500 miners inches (30 cfs) of water from Squaw Creek (Grace Coolidge Creek). The diversion point was to be near the middle of the SW1/4 NE1/4 of Section 16-T3S-R7E to irrigate land in the SE1/4 of Section 9-T3S-R7E and the NE1/2 SW1/4 of Section 10-T3S-R7E. The diversion dam was abandoned in approximately 1972. The ditch system is still in existence, although it is evident that it has not been used for years. Mrs. Callan's husband, Thomas (deceased) stopped in the Water Right Division Office in January 1980. He stated he had not been able to irrigate for several years because no water was available. Mr. Callan mentioned an interest in irrigating when water became available and asked about changing the point of diversion. Mrs. Callan has stated some irrigation was accomplished whenever enough water was available. The ditch system was not used, but water was pumped from the creek in 1980, 1983, and 1984.

Lintz Application No. 106A-2

Water Right No. 106-2 has a priority date of June 6, 1911 and was licensed in 1912 for a diversion rate of 1.0 cfs to irrigate 39.3 acres. The diversion rate does not comply with the 1907 law which said the maximum diversion rate cannot exceed 1.0 cfs for every 70 acres and should be changed. The diversion point is located in the SW1/4 NE1/4 Section 10-T3S-R7E and the irrigated lands are located in the SE1/4 SE1/4 of Section 3 and the NE1/2 NE1/4 and the SW1/4 NE1/4 of Section 10-T3S-R7E. The system consists of a diversion dam, wood flume, and ditches. The dam and flume would need major repair in order to function properly. Mr. Lintz reported water was diverted into the ditches in 1976, 1978, and some in 1980. Water was also pumped during 1984.

The Lintz and Callan systems were designed for gravity flow and would require a large flow in order to function properly. The applicants are requesting a change in diversion to modify the systems from gravity flow to systems that will pump water directly from Grace Coolidge Creek. The change will enable the applicants to utilize Grace Coolidge Creek during periods of flow which are considerably less than what is required for the old systems.

Rittberger Beef and Dairy Inc. Application No. 1687-2A

Rittberger Beef and Dairy Inc. submitted an application October 23, 1979, but requested the application be deferred pending amendment of the application. The reason for this request was to work something out with downstream neighbors. The neighbors believed no unappropriated water was available because they have not been able to irrigate for several years. The Rittberger amended application includes a 103 acre feet dry draw storage dam which will collect local runoff and store water diverted from Grace Coolidge Creek during high flow periods. They will be able to irrigate from the dam when any by-pass requirements for the creek cannot be met. The dam will be located in the NW1/4 SE1/4 of Section 20. The diversion from Grace Coolidge Creek will be between a point located in the SE1/4 SE1/4 of Section 17 and a point located in the SE1/4 SW1/4 of Section 16. They plan to irrigate 82.5 acres in the SW1/4 Section 16, SE1/4 Section 17, NE1/4 Section 20 and the NW1/4 Section 21 all in T3S-R7E.

Table No. 1 is a listing of old Water Right Filings on Grace Coolidge Creek. The Filings are listed from upstream to downstream starting at the Rittberger property. Rittbergers have stated they would like to keep their old Filings. They believed if Mrs. Callan's filing is still valid theirs should be valid. Rittbergers stated their systems have not been used for many years and could point out only a small area that resembled a ditch. The remaining ditch system has been plowed over. We are recommending that Rittbergers' Water Right Filing. No. 0138-2 and 0185-2 be cancelled. The other four Filings No. 0250-2, 0349-2, 0287-2, and 0285-2 are located further downstream and close to the confluence with Battle Creek. Although some areas still have old ditches, most of the land has been subdivided for housing and has not been irrigated for many years. We are recommending that these filings be cancelled.

Table I
Old Water Right Filings on
Grace Coolidge Creek
listed Upstream to Downstream

Filing No.	Present Owner	Priority Date	Diversion Rate	Recommended Board Action
0138-2	Rittberger	October 15, 1891	20 cfs	cancel
0185-2	Rittberger	October 15, 1891	4 cfs	cancel
021-2	Callan & Burns	April 15, 1887	30 cfs	approve amendment to change diversion point and rate
0250-2	Ahrlin	February 17, 1902	2 cfs	cancel
0349-2	Ahrlin	September 1, 1980	2 cfs	cancel
0287-2	Abright Powers	November 21, 1885	40 cfs	cancel
0285-2	Oien	October 5, 1881	4 cfs	cancel

The portion of Grace Coolidge Creek, which runs through the Rittberger, Callan and Lintz properties, is below a large sink hole area located approximately 1 mile inside the Custer State Park boundary. The creek is usually dry between the sink hole area and just upstream of where Rittbergers want to irrigate. There are several springs along the creek on Rittberger's property and Mrs. Callan's property which contribute to the flow. Mrs. Callan also has a flowing Minnelusa well that is controlled.

We do not have good records of flow on Grace Coolidge Creek. There is a USGS gaging station located upstream of the sink hole area in the SW1/4 NE1/4 of Section 26-T3S-R6E. There were two gaging stations located below the sink holes in the SE1/4 SE1/4 of Section 24-T3S-R7E but these were discontinued because little or no flow was getting past the sink holes. Table No. 2 shows the flow records since 1950 for a gaging station located on Battle Creek approximately 2 miles downstream of the mouth of Grace Coolidge Creek. The table shows that in the months of May, June, and July there would be enough flow to irrigate at least 50 percent of the time. This data is misleading because Grace Coolidge Creek contributes one-third of the drainage area above the gaging station; however, this year the flows in Grace Coolidge Creek were approximately twice as large as Battle Creek flows.

Investigations were made in Grace Coolidge Creek area several times late in the summer of 1983. In the area where Rittbergers want to divert water, the estimated flow was 3 or 4 cfs. June 6, 1984, the flow using a Marsh McBirney flow meter was measured at 5.5 cfs just upstream from where Rittberger wants to divert water (Site No. 1). A flow of 6.0 cfs was measured at the lower end of Rittbergers property (Site No. 2), 6.6 cfs on Mrs. Callan's property (Site No. 3) and 7.7 cfs on Jim Lintz's property (Site No. 4). During several visits to the area since June 6, the flow appeared to be the same or higher. The flows in Grace Coolidge Creek appear to be greater this year than in previous years. The increased flows could be attributed to the increased precipitation resulting in an increase in groundwater levels and spring flow.

Conclusion and Recommendation

In order to establish some flow records on Grace Coolidge Creek and to maintain a flow for downstream domestic use, we are recommending the installation of a staff gage with a by-pass requirement of 2.5 cfs at the lower end of Lintz's property.

Application No. 1900-2

We are recommending approval of Water Permit Application No. 1900-2 with the following qualifications.

- 1) That a low flow by-pass of 2.5 cfs be required at the lower end of Lintz's property for downstream domestic use.
- 2) That the irrigation water use questionnaire be submitted each year.
- 3) That approval of No. 1900-2 recognizes and incorporates the applicable portions of water Right Filing No. 021-2 into Permit No. 1900-2 and cancels the abandoned portions of Water Right Filing No. 106-2.

021-2

Application No. 106A-2

We are recommending approval of Water Permit Application No. 106A-2 with the following qualifications.

- 1) That a low flow by-pass of 2.5 cfs be required at the lower end of Lintz's property for downstream domestic use.
- 2) That the irrigation water use questionnaire be submitted each year.
- 3) That approval of No. 106A-2 incorporates the applicable portions of Water Right No. 106-2 into No. 106A-2 and cancels the abandoned portions of Water Right No. ~~021-2~~
106-2

Application No. 1687-2A

We are recommending approval of Water Permit Application No. 1687-2A with the following qualifications.

- 1) That a low flow by-pass of 2.5 cfs be required at the lower end of Lintz's property for downstream domestic use.
- 2) That the irrigation water use questionnaire be submitted each year.

Timothy G. Schaal

Timothy G. Schaal
Water Resources Engineer

BATTLE CREEK AT HERMOSA
Mean Monthly Flow (cfs)

Table 2

Year	April	May	June	July	Aug	Sept
1950	4.6	8.5	4.5	5.1	1.3	2.6
1951	3.0	3.0	12.9	16.2	4.7	5.7
1952	2.6	125.0	31.6	9.3	2.2	1.3
1953	3.3	7.5	13.3	2.5	12.3	1.1
1954	2.7	1.5	0.8	0.4	0.2	0.2
1955	1.4	0.7	1.3	0.7	0.2	0.1
1956	0.9	15.1	3.5	5.8	3.3	0.2
1957	2.2	88.0	97.7	49.7	25.5	5.2
1958	11.7	20.9	13.1	5.2	2.6	1.8
1959	2.2	2.2	4.8	5.3	0.7	0.7
1960	1.1	4.0	4.7	0.8	0.3	0.1
1961	0.9	0.9	3.2	3.9	0.2	0.1
1962	0.3	47.5	93.5	75.5	17.3	2.1
1963	17.3	26.5	100.0	25.5	5.6	5.8
1964	3.8	9.0	23.4	21.3	2.5	1.5
1965	3.0	129.0	102.0	46.5	13.6	5.6
1966	7.1	6.0	3.3	2.5	3.1	1.6
1967	2.9	3.8	158.0	25.8	9.0	6.9
1968	5.4	4.8	13.8	5.1	5.3	5.8
1969	4.2	3.3	2.8	29.5	3.2	3.7
1970	4.2	7.0	26.6	2.9	2.3	1.7
1971	31.9	57.2	80.8	14.3	6.1	5.0
1972	4.9	9.3	142.0	29.5	17.1	8.8
1973	28.7	31.8	19.0	8.1	6.4	8.8
1974	5.6	5.3	3.3	2.4	1.5	1.8
1975	9.0	6.6	18.6	2.6	2.0	1.7
1976	3.6	44.4	107.0	17.2	11.1	1.0
1977	6.1	5.0	2.5	4.1	3.6	2.9
1978	4.1	86.5	30.3	11.8	8.1	4.6
1979	5.3	4.9	2.1	19.6	16.5	9.6
1980	4.9	3.9	2.4	1.5	1.9	2.0
1981	1.9	38.5	4.8	2.9	2.2	2.0
1982	3.2	9.0	23.6	9.9	10.0	7.2
TOTAL	194.0	816.6	1151.2	463.4	201.9	114.2
Ave.	5.9	24.7	34.9	14.0	6.1	3.5
Median	3.8	7.5	13.3	5.8	3.3	2.1



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

April 4, 1985

NOTICE

TO: Mrs. Helen Callan, Rt 1, Box 41, Hermosa SD 57744
Mrs. Minnie Bender Burns, Rt 1, Box 29, Hermosa SD 57744
James A Lintz, Rt 1, Box 23, Hermosa SD 57744
Rittberger Beef & Dairy, Inc., Rt 3, Box 13, Hermosa SD 57744

FROM: John Hatch, Chief Engineer *John Hatch*
Water Rights Division

SUBJECT: Rescheduled Hearings on Water Permit Application Nos. 1687-2A,
1900-2 and 106A-2 and Rescheduled Cancellation Considerations
of Water Right Filing Nos. 0138-2 and 0185-2.

The hearings on the above Water Permit Applications and Water Right Filings were postponed pursuant to a request from Andrew Reid, attorney representing Mrs. Callan and Mrs. Burns. The hearings before the Water Management Board will now be at 11:00 am, May 15, 1985 in the Civil Defense Room, located in the basement of the Capitol Building, Pierre SD.

We are recommending the following addition to qualification No. 1 for Water Permit Application Nos. 1687-2A, 1900-2 and 106A-2:

"The 2.5 cfs flow bypass may be changed by the Water Management Board, if flow measurements indicate a need for change."

JH:TS:ks

cc: Daniel D Doyle, Assistant Attorney General
Andrew Reid, Attorney
Curt Ireland, Attorney

STATE OF SOUTH DAKOTA

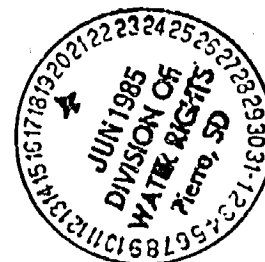


OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
Pierre, South Dakota 57501-5090
Phone (605) 773-3215

MARK V. MEIERHENRY
ATTORNEY GENERAL

June 19, 1985



MEMORANDUM

TO: Members of the Water Management Board and Others

FROM: John P. Guhin *John P. Guhin*
Assistant Attorney General
Attorney for Water Management Board

RE: Cancellation of Water Right Filing Nos. 0138-2 and 0185-2;
Proposed Findings of Fact and Conclusions of Law prepared
by the attorney for the Board

I am enclosing copies of the proposed Findings of Fact and Conclusions of Law in the above-entitled matter.

Pursuant to the Order of the Board, any objection to the Findings and Conclusions must be received by each of the Board members, by any other party and the attorney for any party, and by the attorney for the Board five days before the meeting at which this matter will be heard. This matter will be heard on July 10, 1985. By the term "received" is meant actual receipt of the objections at the mailing address.

This memo and the proposed Findings and Conclusions are today being sent to all those listed in Appendix A.

JPG:do

Enclosure

APPENDIX A

Mr. Robert R. Arend, Chairman
Post Office Box 1187
Aberdeen, South Dakota 57401

Mr. David Waldner
Milbrook Colony
Post Office Box 265
Mitchell, South Dakota 57301

Dr. Leland Harms
3630 West Main
Rapid City, South Dakota 57701

Mr. Dennis C. Decker
930 Idaho, S.E.
Huron, South Dakota 57350

Ms. Marian B. Gunderson, Secretary
811 West Third
Yankton, South Dakota 57078

Mr. Merwyn H. Walter, Vice-Chairman
Rural Route #1
Post Office Box 57R
Howard, South Dakota 57349

Mr. Daniel J. Doyle
Assistant Attorney General
Natural Resource Section
Office of Attorney General
Room B-102, Anderson Building
Pierre, South Dakota 57501

Mr. Andrew B. Reid, Esq.
Star Route 1
P.O. Box 33B
Chadron, Nebraska 69337

Mr. Melvin Wedmore, Esq.
P.O. Box 2183
Rapid City, South Dakota 57709

Mrs. Helen Callan
Route 1, Box 41
Hermosa, South Dakota 57744

Mrs. Minnie Bender Burns
Route 1, Box 29
Hermosa, South Dakota 57744

Mr. James A. Lintz
Route 1, Box 23
Hermosa, South Dakota 57744

Rittberger Beef & Dairy, Inc.
Route 3, Box 13
Hermosa, South Dakota 57744

✓
Mr. John Hatch
Chief Engineer
Division of Water Rights
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)
CANCELLATION OF WATER RIGHT)
FILINGS NO. 0138-2 AND)
0185-2)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND FINAL DECISION

FINDINGS OF FACT

1. On October 15, 1891, a water right was located on Squaw Creek now known as Grace Coolidge Creek, for 1000 miners inches, the equivalent of 20 cfs. This filing is known as No. 0138-2.

2. Also on October 15, 1891, a second water right was located on Squaw Creek, now known as Grace Coolidge Creek, for 200 miners inches, the equivalent of 4 cfs. This filing is known as No. 0185-2.

3. In 1956, Rittberger Beef and Dairy, Inc. purchased the property on which these water filings had been made. Rittberger thereupon succeeded to any rights in those water rights filings which then existed.

4. Rittberger did not utilize the water located under the filings for irrigation at any time during 1956 to 1983.

5. By 1983, Rittberger had plowed over most of the ditches identified in the filings.

6. Rittberger made no showing of legal excuse for failure to irrigate during the period 1956 to 1983. Specifically, Rittburger failed to show that there were not three years during that period when water was not available for irrigation.

7. Rittburger did irrigate between 40 to 60 acres in 1984, allegedly relying on the old filings.

8. Notice of the proposed cancellation of the filings was given to Rittberger by letter dated October 12, 1984.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.

2. All notices required by the Constitution and statute have been given.

3. A water right located before 1907 under statutory law can be forfeited or abandoned consistently with statutory law and consistent with the Constitution.

4. A water right located under the statutory law before 1907 is forfeited when three years of nonuse occur without legal excuse.

5. The burden is on the holder of the water right to show the existence of legal excuse including failure to irrigate because of lack of water.

6. Rittberger failed to show the existence of any legal excuse for failure to irrigate between 1956 and 1983; specifically, Rittberger failed to show that there were not at least three years during this period, during which water was not available for irrigation.

7. A forfeiture under South Dakota statutory law is effective upon the passing of the three year period of nonuse without legal excuse. No agency or judicial action is required to make the forfeiture effective; the forfeiture

statute is self-executing. The hearing of the Board under SDCL 46-5-37.1, enacted in 1983, merely tests whether the forfeiture took place at all.

8. The plowing over of many of the ditches formerly used for the conveyance of water under the old filings together with the failure to use the water for irrigation for over twenty-five years indicates that the water rights in question were intended to be abandoned and were abandoned.

9. Abandonment, like forfeiture, is effective upon the occurrence of the statutory prerequisites without agency or judicial action: the abandonment statute is self-executing. In the case of abandonment the hearing of the Board under SDCL 46-5-37.1, enacted in 1983, merely tests whether the abandonment took place at all.

10. The doctrine of laches does not apply in this case. First, allegation of the State is that the water in question was returned to the public over a decade ago. Therefore the right sought to be vindicated is a public one. The State cannot be barred by laches from enforcing a public right. Second, the State cannot be barred by laches from failing to seek a declaration of this right, one actually not used between 1956 and 1983 was forfeited or abandoned. The State had no notice that a valid right was asserted after 1956. The State did commence an action within a reasonable period after the irrigation in 1984 was commenced. Third, there is no laches shown by the failure to use the administrative process before 1984. Although the Board could cancel rights before 1983, the Legislature put in

place a clearly defined administrative remedy only in 1983 and this action was commenced in 1984. Furthermore, the extremely high number of "paper" and riparian rights which might be asserted will necessitate a very lengthy period before each claim can be discovered and litigated. In 1984 alone, over five hundred old location notices and water rights filings were cancelled by the Board.

11. SDCL 46-5-36 and 37, insofar as they are self-executing statutes, are consistent with both the due process clause of the South Dakota Constitution and the due process clause of the United States Constitution.

12. South Dakota water statutes are designed to maximize the beneficial uses of water. South Dakota statutes do not contemplate that water rights not used for substantial periods of time may be revived at the whim of the former water right holder. A contrary result to that adopted here would be opposed to the clear meaning of South Dakota water law and would set off a rush to revive water rights presumed to be lost for decades. A minimum of hundreds of water rights could be revived and the water rights regime in the Black Hills area would be severely disturbed. The result would be contrary to the spirit and letter of South Dakota water law.

DECISION

The water right filings No. 0138-2 and No. 0185-2 are declared to be both abandoned and forfeited.

BY THE BOARD:

MELVIN D. WEDMORE

ATTORNEY AT LAW

P. O. BOX 2183

RAPID CITY, SOUTH DAKOTA 57709

304B CLOCK TOWER PLAZA
2525 WEST MAIN STREET

AREA CODE 605
TELEPHONE
343-9040

July 2, 1985

TO: Members of the Water Management Board and Others
FROM: Melvin D. Wedmore
RE: Proposed Findings of Fact and Conclusions of Law of
Rittberger Beef and Dairy

Enclosed please find "Memorandum Objecting to Proposed Findings of Fact and Conclusions of Law and Final Decision" which contains my clients proposed Findings of Fact and Conclusions of Law. The enclosed document is today being sent to all those listed in Appendix "A".

Respectfully,

Melvin D. Wedmore

Melvin D. Wedmore

MDW/dlw

Enclosure



BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA



IN THE MATTER OF THE)
CANCELLATION OF WATER RIGHT)
FILINGS NO. 0138-2 AND 0185-2)

MEMORANDUM
OBJECTING TO PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND FINAL DECISION

This Memorandum is submitted by Rittberger Beef & Dairy, Inc., by and through its attorney of record, Melvin D. Wedmore, concerning objection to the proposed Findings of Fact and Conclusions of Law and Final Decision.

The following objections to specific Findings of Fact are made:

1. Proposed Finding of Fact No. 5 should be stricken and modified to state as follows:

"Prior to 1983, some, but not all, of the ditches to be used for irrigation were plowed over."

This modification is based upon the record of the hearing held May 15, 1985, wherein it was established that the ditch leading from the diversion point was in existence. In addition, proposed Finding of Fact No. 5 is a generalization which is unsupported by the record and so broad as to be misleading.

2. Proposed Finding of Fact No. 6 should be stricken and modified to state as follows:

"Rittberger has shown that the point of diversion was usually dry and had and still has insufficient flow to allow use of the water from the original point of diversion."

This modification is based on the uncontradicted statements of the witnesses at the hearing held on May 15, 1985.

Legal excuse does exist when there is physical cause beyond the appropriators control which prevents appropriation of the water. Rocky Ford Irrigation, Co. v. Kents Lake Reservoir Co., Utah, 135 P.2d 108 (1943); Scherck v. Nichols, Wyo., 95 P.2d 74 (1939); and Yentzer v. Hemenway, Wyo., 440 P.2d 7 (1968), stating ". . . nonavailability as well as other factors not under the appropriators control, is properly a matter of defense, and contestants in a water abandonment case are not obligated to show availability over a period of nonuse. . . .". In the case under consideration, the contestants have shown that water was not available in that the diversion point was usually dry or had very minor flow.

Sentence Number Two of Proposed Finding of Fact No. 6 is irrelevant to the case at hand, for the reason that the statute under consideration, SDCL 46-5-37, requires "a period of three years". In other words, three consecutive years of nonuse without legal excuse. The record in the case tends to establish there were periods of three consecutive years when water was not available for use either because the diversion point was dry or the water flow was so minimal as to be insufficient for irrigation. If the second sentence of Proposed Finding of Fact No. 6 were accepted, then, for example, if an appropriator irrigated in 1950 thru

1956, but not in 1957, and again in 1958 thru 1965, but not in 1966, and again in 1967 thru 1971, but not in 1972, and then 1973 thru 1985, that water right would be forfeited. Clearly, that is not an accurate statement of the law, either its letter, spirit or intent.

3. Proposed Finding of Fact No. 7 should be stricken and modified to state as follows:

"Rittberger did irrigate between 40 to 60 acres in the summer of 1984, under the valid water rights in existence at that time."

This modification is based on the record and the law. Proposed Finding of Fact No. 7 is a misstatement and is misleading.

Until a declaration of forfeiture has been made, the owner of the water still retains the title to it and is justified in its use. Sturgeon v. Brooks, Wyo., 281 P.2d 675, 683 (1955) citing Horse Creek Conservation District v. Lincoln Land Co., Wyo., 92 P.2d 572 (1939); See also Carrington v. Crandall, Idaho, 147 P.2d 1009 (1944); Wheatland Irrigation District v. Laramie River Co., Wyo., 659 P.2d 561 (1983); and Beaver Brook Reservoir and Canal Co. et al v. St. Vrain Reservoir and Fish Co., Colo., 40 P.1066 (1895).

All of these cases, and others not cited, hold that if use occurs under a water right prior to the action for forfeiture, then there can be no forfeiture.

In the case under consideration, irrigation in the summer of 1984 prior to the Notice of Cancellation, makes forfeiture nonapplicable as against the appropriator. (Emphasis added.)

The following objections to specific Conclusions of Law are made:

1. Proposed Conclusion of Law. No. 3 should be stricken and modified to state as follows:

"An appropriated water right located before 1907 under statutory law can be forfeited or abandoned consistently with statutory law and consistent with the Constitution." (Emphasis added.)

This modification is based upon the very wording of SBCL 45-5-37 where it states in part "when any person entitled to the use of appropriated water. . .".

2. Proposed Conclusion of Law. No. 4 should be stricken and modified to state as follows:

"An appropriated water right located under the statutory law before 1907 is forfeited when three years of nonuse occur without legal excuse."

This modification is made for the same reason as modification to proposed Conclusion of Law No. 3 which is set out above.

3. Proposed Conclusion of Law. No. 5 should be stricken and modified to state as follows:

"The burden is on the proponent of water rights cancellation to show that no legal excuse exists."

This modification is based upon the case of Yentzer v. Hemenway, Wyo., 440 P.2d 7 (1968), wherein the Court held that contestants in a water abandonment case are not obligated to show availability over a period of nonuse. In other words, the Court put the burden of proof on those who would try to show that the water right had in fact been abandoned and/or forfeited. In this case, the burden lies with the State Engineer.

4. Proposed Conclusion of Law. No. 6 should be stricken and modified to state as follows:

"Rittberger has shown that for most of the period between 1956 and 1983 the point of diversion as to the water rights under consideration, was dry or had such a minimum flow of water that it was not feasible to attempt irrigation therefrom."

The reason for this modification is based upon the record in this case, and additionally, the second part of the proposed Conclusion of Law No. 6 is a clear misstatement of the law and is only meant to confuse and mislead the trier of fact in this case. The statute requires nonuse for a period of three consecutive years, not nonuse for any three years during an extended period of time. See argument concerning objection to proposed Finding of Fact No. 6.

5. Proposed Conclusion of Law. No. 7 should be stricken and modified to state as follows:

"A water right is not forfeited or abandoned upon the mere passage of three years without a declaration of

forfeiture by the Board or a judicial body. In addition, prior to a Board declaration of forfeiture, the owner of water right still retains title to it and is justified in its continued use thereof. A lack of water at the point of diversion is a substantive fact to be considered by the Board in determining whether or not the water right has been forfeited or abandoned. Water Right Filings No. 0138-2 and No. 0185-2 were not forfeited because the mere passage of time does not result in forfeiture. Prior to a declaration of forfeiture, the owner of water right may put the water to beneficial use. Since the right has continued in existence, no revival of the right is necessary. If the owner of the water right puts the water to beneficial use prior to a declaration of forfeiture, the water right cannot be deemed abandoned or forfeited."

This modification is based upon the administrative rules of the Board which require notice and an opportunity to be heard regarding the cancellation of a water right. ARSD 74:02:01:40. Additionally, the Court of Wyoming has concluded "that until a declaration of forfeiture has been made, the owner of the water still retains title to it and is justified in its continued use." Sturgeon v. Brooks, Wyo., 281 P.2d 675 (1955). In addition, Idaho and Colorado take the same view when deciding this issue, and it is interesting to note that Garton in his Law Review Article has taken a consistent position in stating, after a comprehensive review of the water law of South Dakota, that the

loss of rights by forfeiture or abandonment is not automatic upon the failure to apply water to beneficial use. Garton went on to state in his Law Review Article that if a bonafide purchaser for value without notice purchases land which has water right appurtenant to it, that the individual would take the right unaffected by claim that had been abandoned or forfeited by his predecessors. In addition, the statement implies that unless a person is put on notice that a water right is under consideration for cancellation, he is justified in its use and if he applies it to beneficial use prior to notice of cancellation, the water right is not lost. Garton, South Dakota's System of Water Management in its Relation to Land Use and Economic Development, 21 S.D.L Rev. 1(1976).

6. Proposed Conclusion of Law. No. 8 should be stricken and modified to state as follows:

"The plowing over of many of the ditches formerly used for the conveyance of water under old filings is not dispositive of the question of whether or not there was intent to abandon a water right given the fact that under modern irrigation practices, pumps and pipes are used for irrigation rather than ditches."

This modification is based upon the record in this case.

7. Proposed Conclusion of Law. No. 9 should be stricken and modified to state as follows:

"Abandonment like forfeiture is effective upon the occurrence of statutory prerequisites which require agency or judicial action; the abandonment statute is not self-executing."

This modification is based upon the law of South Dakota and the laws of various western states. SDCL 46-5-36 states "If the owner of the land to which the water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation." Clearly there is no way under the wording of this statute that it can be determined to be self-executing. If it was in fact determined to be self-executing, then how would one know if it were abandoned. There is nothing in the statute to put a person on notice as to what constitutes abandonment, therefore, there has to be some type of action either by the Board or through a judicial body which decides whether or not abandonment has occurred. As the Supreme Court of South Dakota has stated in Cundy v. Weber, 300 N.W.17 (1941), "the abandonment of a property right results from a concurrence of an intention to surrender and the actual relinquishment thereof." Clearly the Court has set out that this statute is not self-executing. There has to be a determination of intent to surrender along with an actual relinquishment, for abandonment of a water right.

8. Proposed Conclusion of Law. No. 10 should be stricken and modified to state as follows:

"The doctrine of laches does apply in this case. The State had notice that there are valid water rights being asserted. The State has consented to these valid water rights and did not commence action until after an extremely large number of years had passed and after appropriation under the right. (Emphasis added.) The State cannot be excused for their unreasonable delay in bringing this action merely because the Legislature put in a clearly defined administrative remedy in 1983 into the statute. The abandonment and forfeiture statutes have been in existence since 1907 and therefore, the State is on notice, and in particular, the Department of Natural Resources through the Water Management Board is put on notice that abandonment and forfeiture can occur in this state. The Agency had procedures set up for conducting its business. An agency was set up long before 1983 and the statute was on the books long before 1983. They cannot now say that because the statute did not give a defined administrative remedy, that the agency could not pursue forfeiture and abandonment cancellations in this state.

This modification is further based upon the fact that the second sentence of Proposed Conclusion of Law No. 10 is a misstatement of the law. The last two sentences of Proposed Conclusion of Law No. 10 are clearly irrelevant and have absolutely no basis in the record and therefore, should be stricken. They tend to mislead, confuse and cloud the issues before the Board in this case.

9. Proposed Conclusion of Law. No. 11 should be stricken as a misstatement of the law. The statutes are not self-executing as has been set out in case authority cited hereinbefore and due process does apply as everyone is entitled to notice and an opportunity to be heard and the Board has recognized this in its own administrative rules. ARSD 74:02:01:40.

10. Proposed Conclusion of Law. No. 12 should be stricken and modified to state as follows:

"South Dakota Water Statutes are designed to maximize the beneficial uses of water. Beneficial use of the water prior to notice of cancellation is consistent with South Dakota law and prevents the water right from being abandoned or forfeited."

The reasons for this modification include the fact that under the law as set out numerous times hereinbefore, water rights which are used prior to notice of cancellation are rights which are in existence at the time of their use. They are in existence and therefore it is irrelevant to state that they are revived at the whim of the former water right holder. The water rights are in existence; we have a current and present water right holder. No revival is necessary. In addition, the last three sentences of the proposed Conclusion of Law No. 12 are clearly irrelevant and have no basis in the record.

The following objection to the Final Decision is hereby made.

The Proposed Final Decision is clearly erroneous in that it is not based upon the law or the record in this case and is not consistent with the factual background of this case. In addition, the Board's decision relates to forfeiture and abandonment of a water right. The water rights which were under consideration dealt with appropriation of water. Rittberger has a riparian right to this water which was founded and fixed under the law of 1907 and a riparian right cannot be lost for nonuse. Germain Irrigating Ditch Co. v. Hawthorne Ditch Co., 143 NW 124 (1913).

Further objection is made to the Proposed Final Decision of the Water Right Board for the reason that the water right cannot be forfeited for domestic uses. Domestic uses included gardening and watering of livestock and other uses as set out in the statutes and the case laws. If the decision as proposed entails forfeiture or abandonment of a domestic use of a riparian right, then the decision is void against the law of the State of South Dakota.

Respectfully submitted,

Melvin D. Wedmore

Melvin D. Wedmore

APPENDIX "A"

Mr. Robert R. Arend, Chairman
Post Office Box 1187
Aberdeen, South Dakota 57401

Mr. David Waldner
Milbrook Colony
Post Office Box 265
Mitchell, South Dakota 57301

Dr. Leland Harms
3630 West Main
Rapid City, South Dakota 57701

Mr. Dennis C. Decker
930 Idaho, S.E.
Huron, South Dakota 57350

Ms. Marian B. Gunderson, Secretary
811 West Third
Yankton, South Dakota 57078

Mr. Merwyn H. Walter, Vice-Chairman
Rural Route #1
Post Office Box 57R
Howard, South Dakota 57349

Mr. Daniel J. Doyle
Assistant Attorney General
Natural Resource Section
Office of Attorney General
Room B-102, Anderson Building
Pierre, South Dakota 57501

Mr. Andrew B. Reid, Esq.
Star Route 1
P.O. Box 33B
Chadron, Nebraska 69337

Mrs. Helen Callan
Route 1, Box 41
Hermosa, South Dakota 57744

Mrs. Minnie Bender Burns
Route 1, Box 29
Hermosa, South Dakota 57744



Mr. James A. Lintz
Route 1, Box 23
Hermosa, South Dakota 57744

Mr. John Hatch
Chief Engineer
Division of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

John P. Guhin
Assistant Attorney General
State Capitol
Pierre, SD 57501-5090

MELVIN D. WEDMORE

ATTORNEY AT LAW

P. O. BOX 2183

RAPID CITY, SOUTH DAKOTA 57709

1048 CLOCK TOWER PLAZA
2025 WEST MAIN STREET

AREA CODE (605)
TELEPHONE
444-0040

August 22, 1985

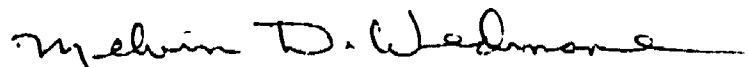
Water Rights Division
South Dakota Department of
Water and Natural Resources
Joe Foss Building
Pierre, SD 57501

Gentlemen:

Please forward to me a copy of the water rights issued to
Rittberger Beef and Dairy at the June hearing of the water
rights board.

Thanking you and with best regards, I am,

Very truly yours,



Melvin D. Wedmore

MDW/dls





1687-2A

Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

NOV 19 1985

Rittberger Beef & Dairy, Inc.
Rt 3, Box 13
Hermosa, South Dakota 57744

Dear Sir:

Enclosed herewith is your Water Permit No. 1687-2A as approved by the Water Management Board authorizing you to construct your water diversion system and the water to beneficial use, not exceeding the limits as specified in said Water Permit No. 1687-2A

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that your Water License may be issued to you, thus completing your acquisition of a Water Right.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ms

enclosure

PLEASE NOTE: Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period-i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.

Water Rights Division
605 773-3352

November 19, 1985

Melvin D Wedmore, Attorney
PO Box 2183
Rapid City SD 57709

Dear Mr. Wedmore:

As requested, enclosed is a copy of Water Permit No. 1687-2A, Rittberger
Beef and Dairy.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

enclosure

Permit No. 1687-2A
Upper Cheyenne - Water District

Report Of Examination Of Works And/Or Application of Water To Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, July 9, 1996, made a thorough examination of the water use system constructed by Rittberger Beef & Dairy, Inc. of HCR 83, Box 13, Hermosa, SD 57744 holder of Permit No. 1687-2A, bearing the priority of October 22, 1979 authorizing the diversion of 1.18 cu. ft. per second and the storage of 103 acre-feet of the waters of Grace Coolidge Creek (Squaw Creek) for irrigation purposes, in Custer County.

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

- A. Works used to divert the water:
9 inch Berkeley Centrifugal pump. Model B6ZRH CW, Serial No. 6240795
mounted on a 4 cyl. Datsun pickup
- B. Works used to transport water to place of use:
several hundred feet of 10 inch aluminum and PVC pipe
- C. Works used to apply water to beneficial use:
10 inch gated aluminum and PVC pipe

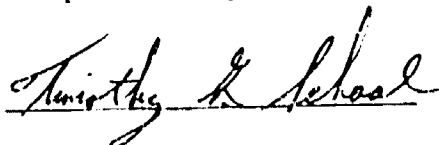
The system is in the following condition Good. The point of diversion is located Between a point located 1320 feet west & 300 feet north of the SE corner of Section 17-T3S-R7E (SE 1/4 SE 1/4) and a point located 1550 feet east & 1100 feet north of the SW corner of Section 16-T3S-R7E (SE 1/4 SW 1/4). The works are capable of diverting and conveying to the place of use 0.96 cu. ft. per second of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

SW 1/4 SW 1/4 Section 16-T3S-R7E-- 30 Acres
NW 1/4 SW 1/4 Section 16-T3S-R7E-- 2
SE 1/4 SE 1/4 Section 17-T3S R7E-- 15
NE 1/4 NE 1/4 Section 20-T3S-R7E-- 18
NW 1/4 NW 1/4 Section 21-T3S-R7E-- 2

comprising a total of 67 acres of land and the license should be issued for 0.96 cfs.

Applicable permit qualifications have been complied with: Yes X

Exceptions to compliance are: Storage dam was not constructed Date Report Completed: July 17, 1996



Timothy G. Schaal, P.E.
Natural Resources Engineer
DENR, Water Rights Program

REPORT ON INSPECTION OF PERMIT NO. 1687-2A

Other permit(s) associated with the project: XXXX

DATE OF INSPECTION: July 9, 1996

NAME & ADDRESS OF INSPECTION CONTACT/ Fred Rittberger
RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: owner

NAME & ADDRESS OF PERMIT HOLDER: Rittberger Beef & Dairy, HCR 83, Box 13, Hermosa,
SD 57744

DIVERSION POINT LEGAL LOCATION: Between a point located 1320 feet west & 300 feet north
of the SE corner of Section 17-T3S-R7E (SE 1/4 SE 1/4) and a point located 1550 feet east & 1100
feet north of the SW corner of Section 16-T3S-R7E (SE 1/4 SW 1/4).

Pump:

- 1) Make Berkeley Centrifugal
- 2) Model B6ZRH CW, Serial No. 6240795
- 3) Size 9 inch
- 4) Capacity XXX GPM

Motor:

- 1) Make 4 cyl. Datsun Pickup
- 2) Model No. XXX
- 3) Horsepower rating XXX hp

DISTRIBUTION LINES OR CANALS:

gated 10 inch aluminum and PVC pipe

CHEMIGATION EQUIPMENT:

- 1) Does chemigate NO

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Soil and water permit lands agree with lands being irrigated and lands listed on permit yes
- 2) Special qualifications to permit being abided by yes
- 3) All structures, wells and lands on map yes (No dam constructed)
- 4) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period yes (irrigation depends on downstream bypass)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 25, 1996

1687-2A

Fred Rittberger
Rittberger Beef & Dairy, Inc.
HCR 83, Box 13
Hermosa, SD 57744

Dear Mr. Rittberger:

The inspection of your water use system and the inspection of the extent of application of water to beneficial use, as developed under Water Permit No. 1687-2A, has been completed. Your final water right document, the Water License, can now be issued.

Statutes require that we charge a \$50.00 fee for the inspection and issuance of the Water License. Upon receipt of the \$50.00 fee from you, we will begin processing your Water License.

Please remit fee to:
Department of Environment & Natural Resources
Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Program
(605) 773-3352

NOTE: On check or money order, please specify your permit number. This will insure proper handling of the fee.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

OCT 17 1996

1687-2A

Fred Rittberger
Rittberger Beef & Dairy, Inc.
HCR 83, Box 13
Hermosa, SD 57744

Dear Mr. Rittberger:

Enclosed is Water License No. 1687-2A and Receipt No. 415046 for \$50.00 which was assessed for an investigation and issuance of the license. Water License No. 1687-2A 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 Program
(605) 773-3352

ks
enclosures

RECEIPT

Division of Water Rights
South Dakota Department of Environment and Natural Resources

1687-2A
415046

Pierre, _____

RECEIVED OF Rittberger Beef & Dairy, Inc., HCR 83, Box 13, I
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. 1687-2A

Fee for Filing Transfer Form _____

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

50 00

50 00

By

John Hatcher
Chief Engineer



1687-2A

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

January 9, 1998

NOTICE

TO: RITTBERGER BEEF & DAIRY INC, FRED RITTBERGER, RR 3 BOX 13, HERMOSA, SD 57744

FROM: Ron Duvall, Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 1997 Irrigation Questionnaire(s)

Our records indicate that the 1997 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 1687-2A, 1923-2 & 2061-2. The request for the Questionnaire was dated October 17, 1997. The Water Management Board has directed that owners of water permits who have not submitted the 1997 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 1687-2A, 1923-2 & 2061-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 9:45 am, February 25, 1998 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. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a 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) 1687-2A, 1923-2 & 2061-2 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.

If the questionnaire(s) is(are) received in this office on/or before February 20, 1998, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in 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.



1687-2A

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 22, 1998

1687-2A
1923-2
2061-2

Fred Rittberger
RR 3 Box 13
Hermosa, SD 57744

Dear Mr. Rittberger:

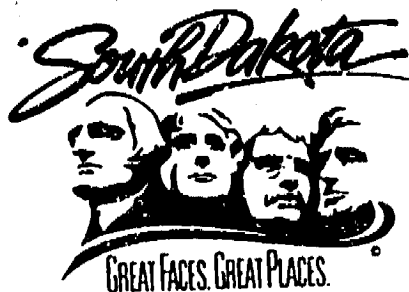
I am writing to acknowledge receipt of your 1997 irrigation questionnaires. You may disregard the January 9, 1998, "Notice" concerning reporting requirements for Water Permit Nos. 1687-2A, 1923-2 and 2061-2.

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



1687-2A
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

January 14, 2000

NOTICE

TO: RITTBERGER BEEF & DAIRY INC, FRED RITTBERGER, HCR 83 BOX 13, HERMOSA,
SD 57744

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

SUBJECT: Reporting Requirement for 1999 Irrigation Questionnaire(s)

Our records indicate that the 1999 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 1687-2A, 1923-2 & 2061-2. The request for the Questionnaire was dated October 7, 1999. The Water Management Board has directed that owners of water permits who have not submitted the 1999 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 1687-2A, 1923-2 & 2061-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 1:30 pm, March 1, 2000 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. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a 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) 1687-2A, 1923-2 & 2061-2 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.

If the questionnaire(s) is(are) received in this office on/or before February 28, 2000, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in 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.



1687 2A
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

January 24, 2000

1687-2A

1923-2

2061-2

Fred Rittberger
Rittberger Beef & Dairy, Inc
HC 83 Box 13
Hermosa, SD 57744

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 1999 irrigation questionnaires. You may disregard the January 14, 2000, "Notice" concerning reporting requirements for Water Permit/Right Nos. 1687-2A, 1923-2 and 2061-2.

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



1687-2A

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

August 11, 2003

Dear Water Right Holder;

The SD Department of Environment and Natural Resources is alerting Grace Coolidge Creek water right holders of low flows in the stream. On July 30, 2003 a staff engineer measured the flow in the creek at less than two (2) cubic feet per second (cfs) on the Lintz property. Water rights on Grace Coolidge Creek have the qualification that no diversions from the stream are authorized unless the flow at the lower end of the Lintz property is at least 2.5-cfs.

South Dakota water law gives the highest priority to domestic use, which includes livestock watering. If levels become critically low, the department must issue shut-off orders to protect domestic water uses. Once these orders are issued, the department will continue to monitor water availability and should conditions improve, the shutoff orders would be rescinded.

This is not a shutoff order. This letter is only intended to give you advanced warning that flow in Grace Coolidge Creek is quite low and water right holders need to closely monitor water usage. If shut-off orders are issued, you will receive another letter from the department.

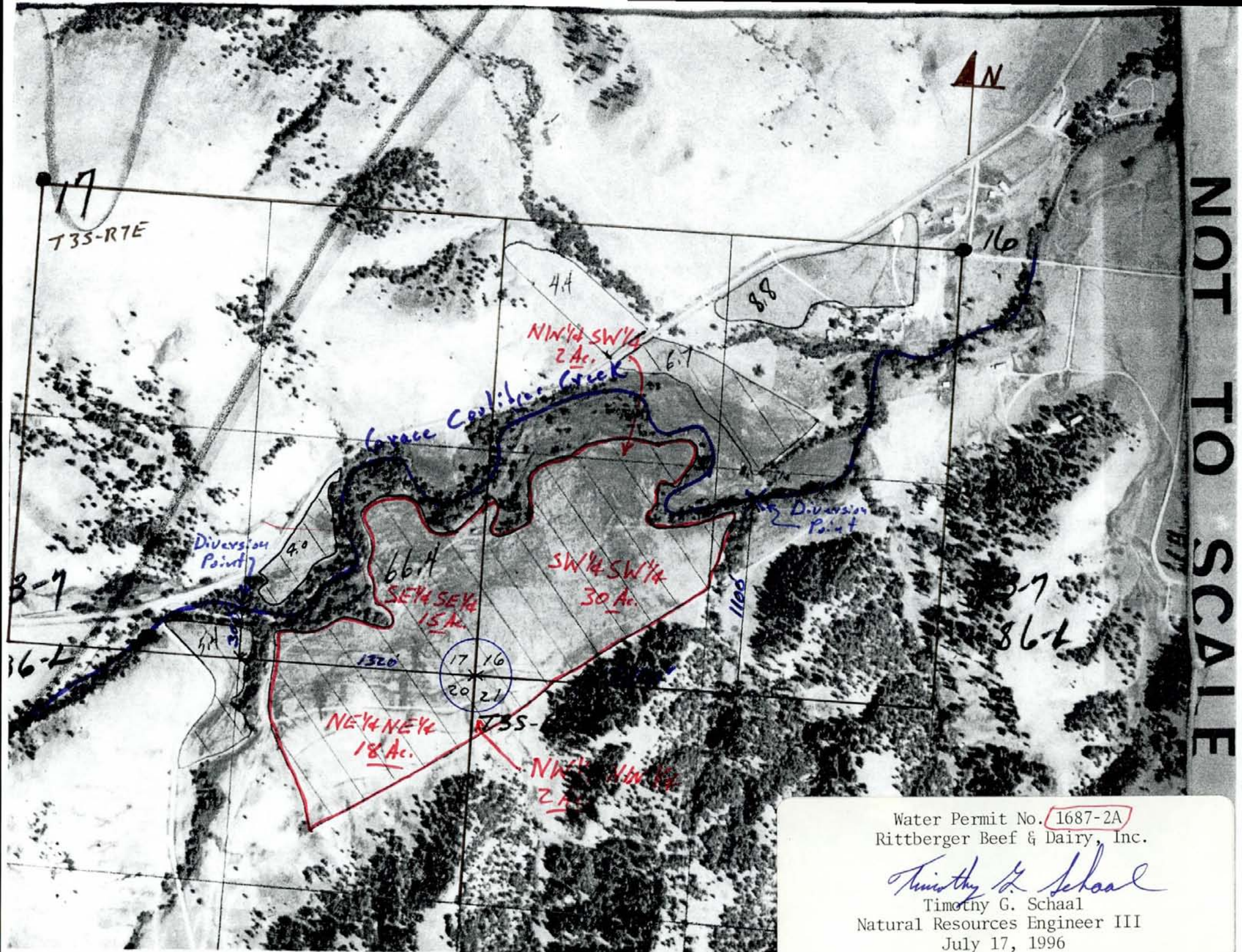
If you are interested, the US Geological Survey has an Internet site showing river flows at 150 stream gauging stations across the state. Go to sd.water.usgs.gov and click on "Realtime streamflow data via satellite".

Thank you for your cooperation. If you have any questions, please contact Mark Rath or Don Stroup at (605) 773-3352.

Sincerely,

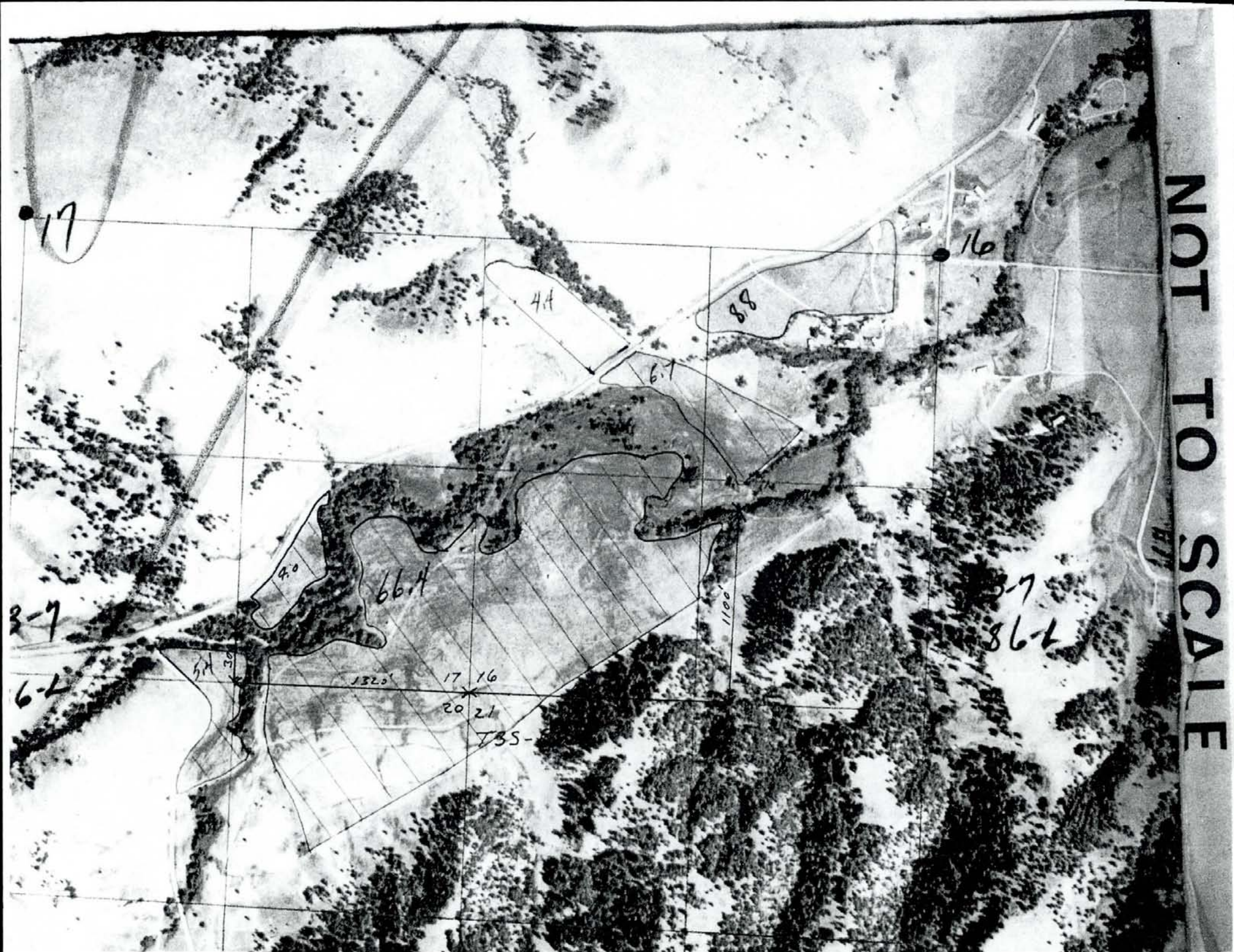
Donald E. Stroup
Natural Resources Project Engineer
DENR Water Rights Program

NOT TO SCALE

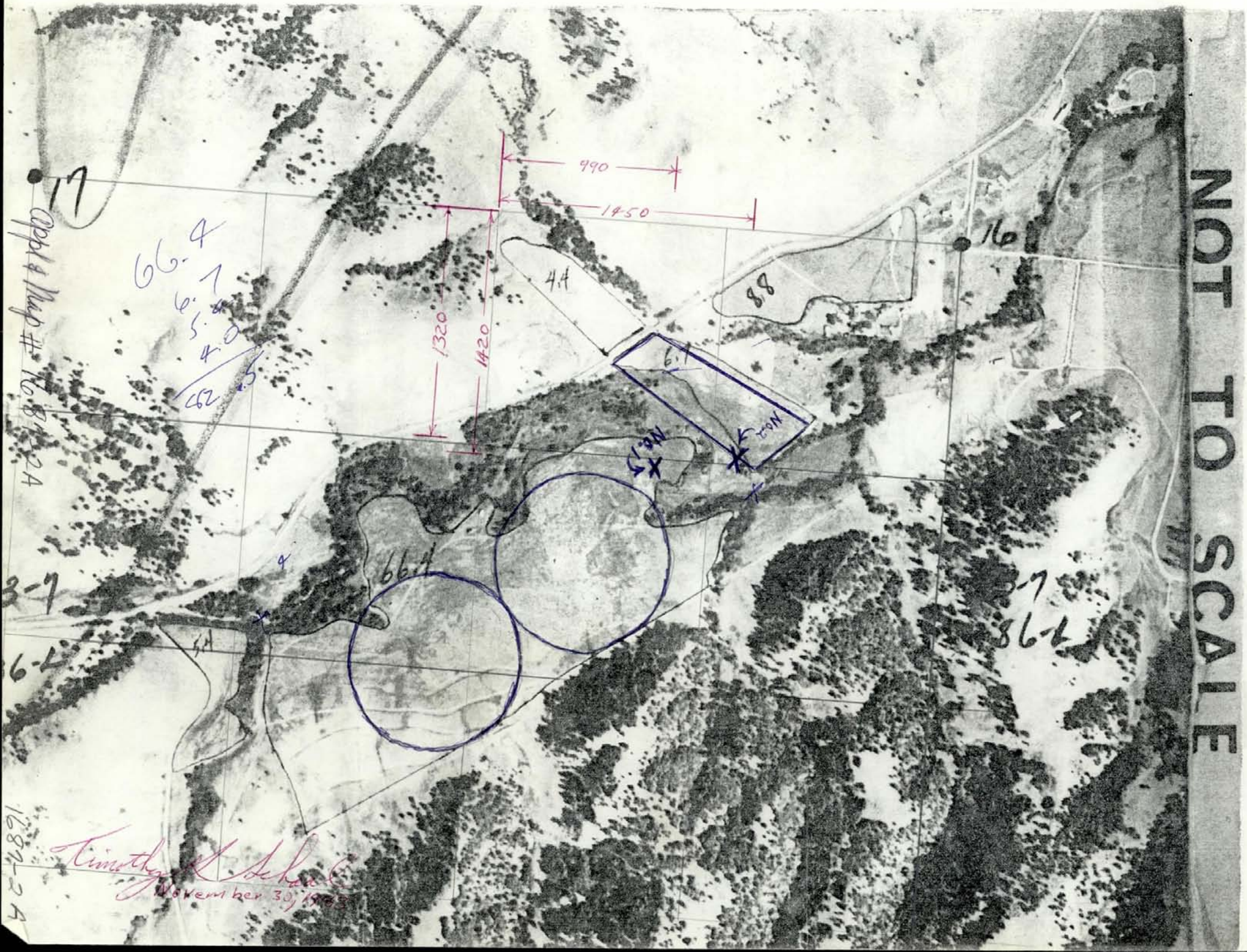


[illegible]

NOT TO SCALE



NOT TO SCALE

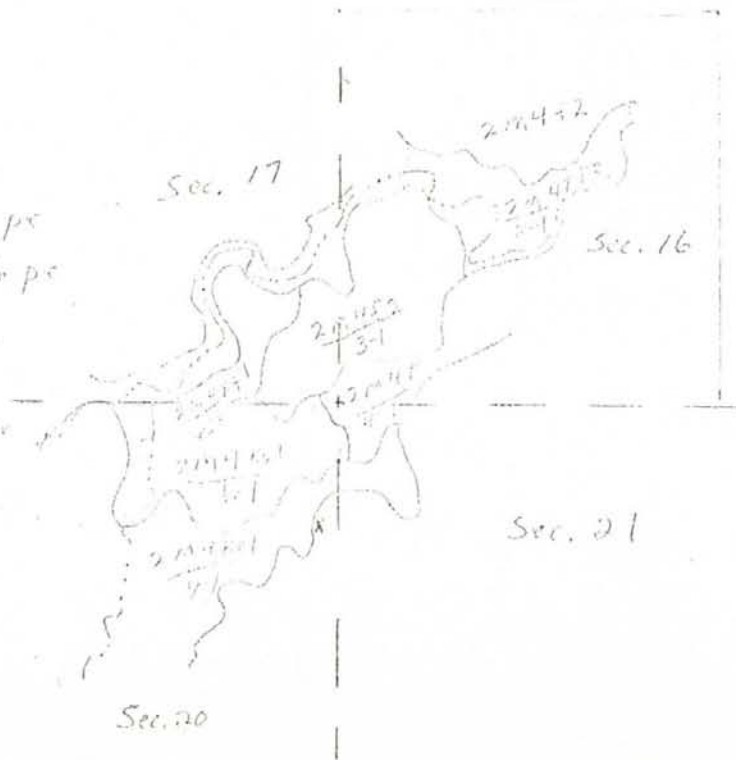


1687-27A



Legend

- 2m4x11 - Sweet Corn 3% slope
- 2m412 - St. Onge " 3% slope
- 2m47 - Vole " 3% "
- 2m4 R1 - Newseed Spearfish Complex
Horse - 6% slope
Spearfish 9-15% slope
- 2m413 - Marshdale 2% slope
- See attached S.D. Soil 58



Intaker Rates

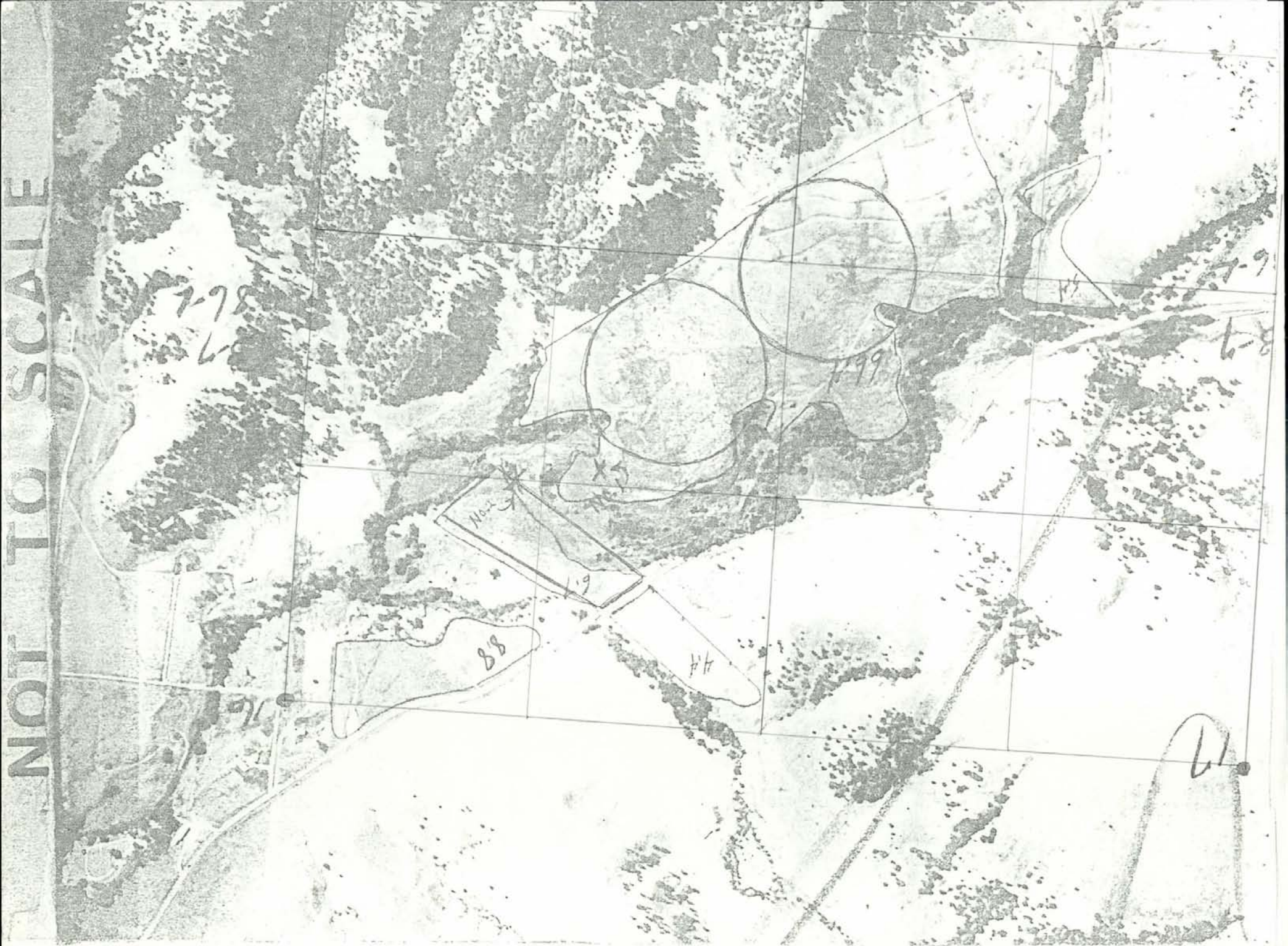
- Sweet - 1.0 2.4, 7
- St. Onge - .5 1.4, 1.5
- Vole - .5 1.4, 1.5
- Newseed - 1.0 2.4, 7
- Spearfish - Not Sailed 2.4, 7
- Marshdale - Not Sailed 2.4, 7

T3S R7E

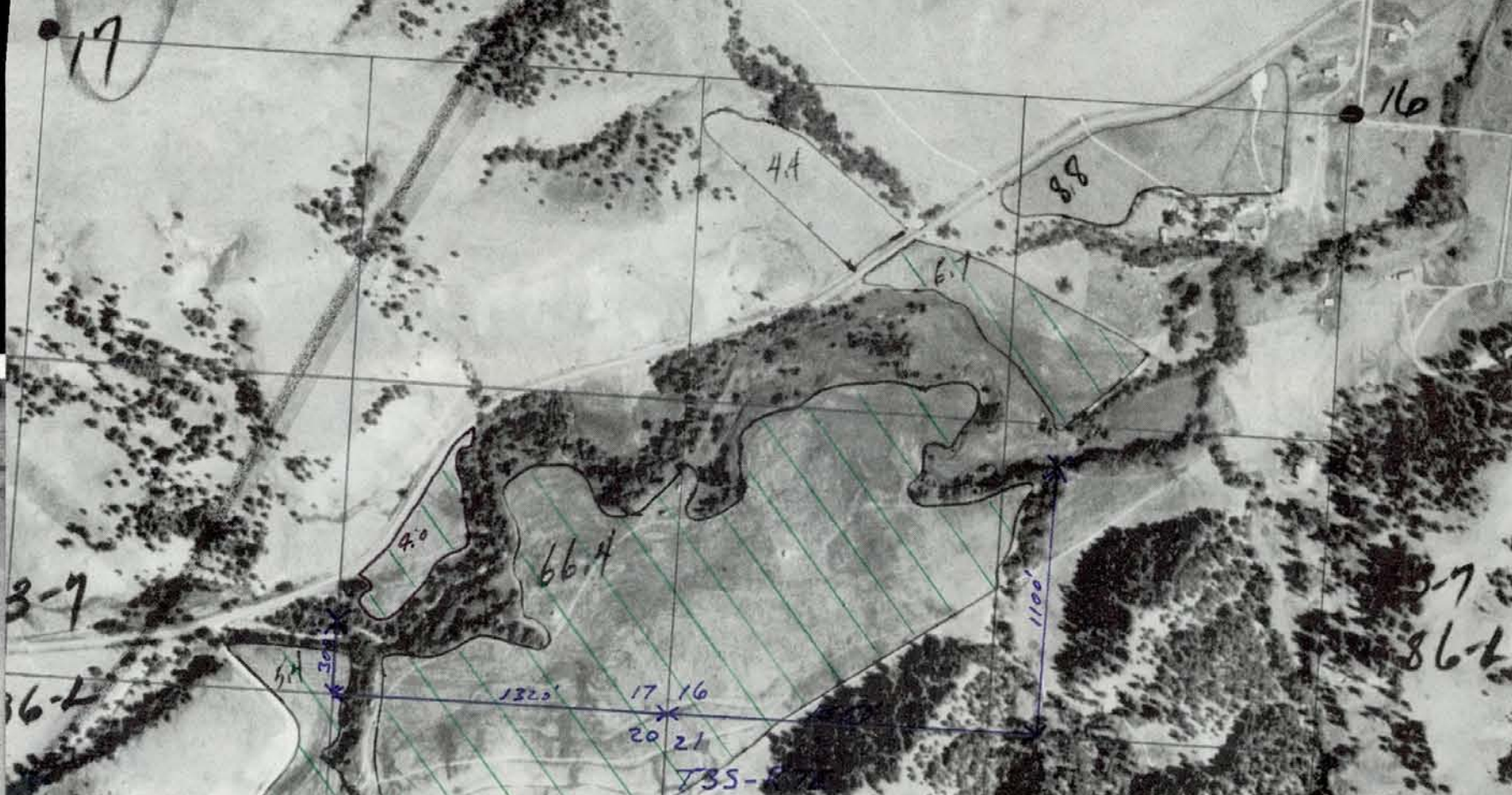
Scale: 4" = 1 mi

prepared by Soil Cons. Service
Kenny Shiner

NOT TO SCALE



NOT TO SCALE



Timothy K. Schaal
September 21, 1989

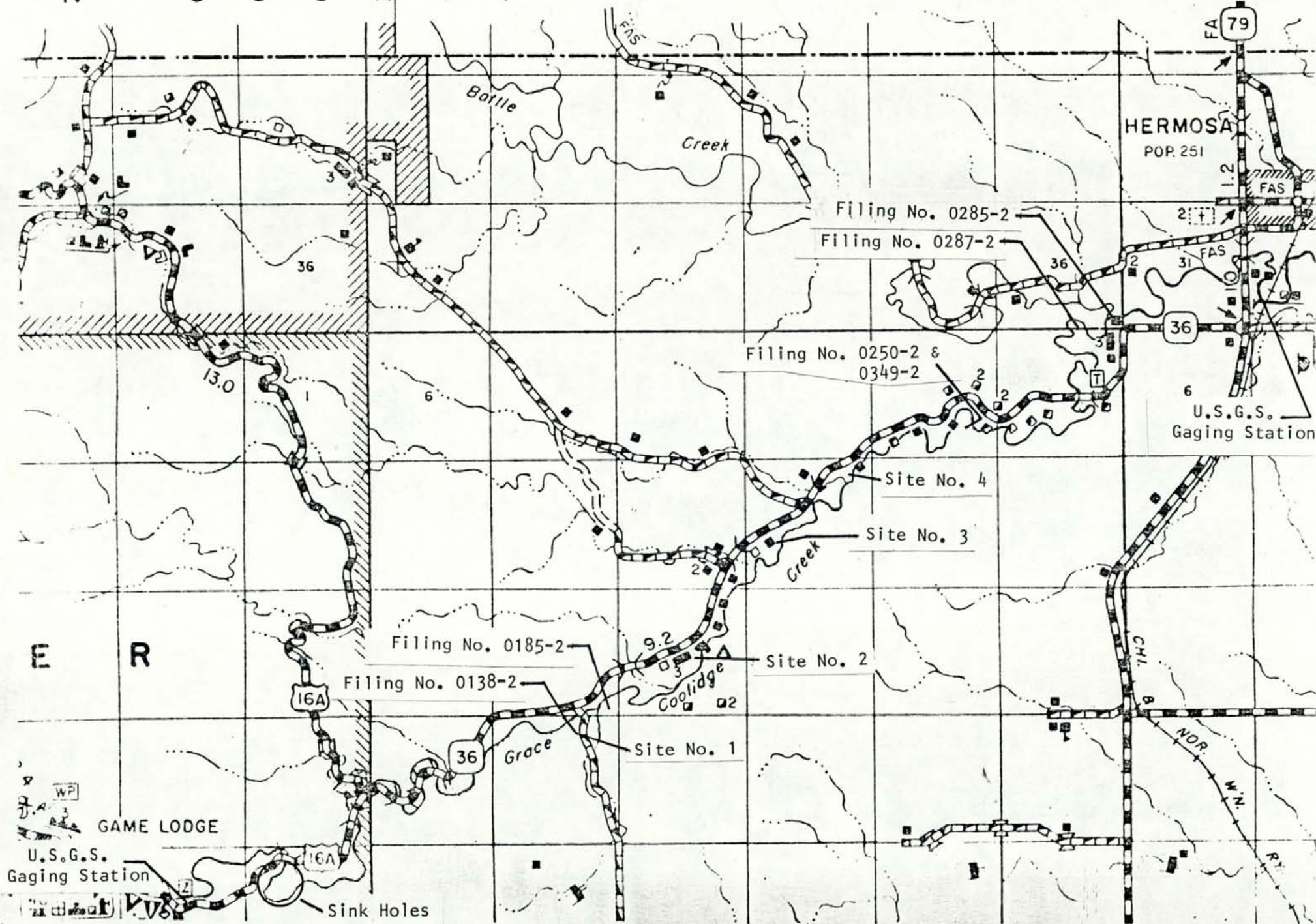
3-7

1687-2A

R 7 E

1687-2A

N C O U N T Y



2005 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 2, 2005**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501-3181 (605) 773-3352 or send your form(s) electronically over the internet at <https://www.state.sd.us/eforms/secure/eforms/E0455V4-IQ.pdf>

Permit No. 1687-2A
FRED RITTBERGER
RITTBERGER BEEF & DAIRY INC
HC 83 BOX 13
HERMOSA SD 57744

Any address/ownership corrections?

New ownership should be
Fred Rittberger & Sons Inc

Telephone No. 605 255 4175

1. Is the system constructed? *yes ☒ no ☐

*Type of system used (check all that apply):

center pivots ☐ towlines ☐ big gun ☐
flood ☒ sprinklers ☐ other ☐

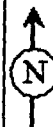
2. Did you irrigate in 2005? *yes ☐ **no ☒

*If yes, number of acres irrigated _____

**If no, list reason(s) in comment box and answer No. 3:

Comment Box

Creek is dry.



BB	BA	AB	AA
B			A
BC	BD	AC	AD
CB	CA	DB	DA
C			D
CC	CD	DC	DD

1 square mile

Office use only

RECEIVED

NOV 21 2005

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 1687-2A (see above section map for help reading legal descriptions)

sec 16-T003S-R07E, CC -- 30.00 acres
sec 16-T003S-R07E, CB -- 2.00 acres
sec 17-T003S-R07E, DD -- 15.00 acres
sec 20-T003S-R07E, AA -- 18.00 acres
sec 21-T003S-R07E, BB -- 2.00 acres

Please provide your 2005 water use to irrigate the above acreage on the REVERSE side of this form.

For an updated example questionnaire, please refer to the reverse side of your cover letter.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

November 30, 2005

No. 1687-2A

Fred Rittberger & Sons Inc.
HC 83 Box 13
Hermosa SD 57744

Dear Sirs:

Enclosed is a partially completed "Notice of Transfer" form for use in filing an ownership change on Water Right No. 1687-2A. The water right is currently listed in the name of Rittberger Beef & Dairy Inc.

The transfer form should be checked over for accuracy and signed by the new owner. Upon completion, return the form to our office with a required filing fee of \$2.50.

South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of a water permit or water right to appropriate water to be filed with this office within ninety days.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
email: karen.schlaak@state.sd.us

enclosure

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 1687-2A

Date: 12-30-05

I/We request that Water Right/Permit No. 1687-2A

formerly owned by: Rittberger Beef & Dairy, Inc.

be transferred to: (name & address) Fred Rittberger & Sons Inc.

25113 Rittberger Rd.

Hermosa, S. D. 57744

Telephone No. 255-4175

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

67 acres - W 1/2 SW 1/4 Sec 16; SE 1/4 SE 1/4 Sec 17; NE 1/4 NE 1/4 Sec 20 and NW 1/4 NW 1/4 Sec 21;

all in T3S-R7E

I/We understand that the validity of Water Right/Permit No. 1687-2A 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.

I/We Fred Rittberger & Sons Inc., the new owner, certify that the above information is true and correct.


(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction 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.

RECEIVED
JAN - 3 2006
WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date January 3, 20 06

RECEIVED OF Fred Rittberger & Sons, 25113 Rittberger Rd, Hermosa SD 57744

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 <u>1687-2A</u>	2	50
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No. **002130**

By

Darland Elbe
Chief Engineer
gm



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 4, 2006

1687-2A

Fred Rittberger & Sons Inc
25113 Rittberger Rd
Hermosa SD 57744

Dear Sirs:

I am writing to acknowledge receipt of the ownership change for Water Right No. 1687-2A. The transfer has been completed. The water right formerly listed in the name of Rittberger Beef & Dairy Inc., is now listed in the name of Fred Rittberger & Sons Inc.

Enclosed is your Receipt No. 002130 in the amount of \$2.50. If I can answer any questions for you, please contact me.

Sincerely,

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

enclosure

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT

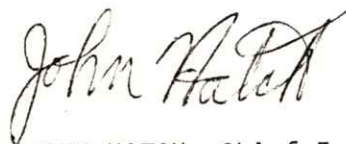
APPLICATION NO. 1687-2A, Rittberger Beef & Dairy, Inc.

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 1687-2A, Rittberger Beef and Dairy, Inc., Hermosa SD.

The Chief Engineer is recommending Approval of Application No. 1687-2A because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be 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. No diversions may be made unless there is a flow of at least 2.5 cubic feet per second* in Grace Coolidge Creek for downstream domestic use, during diversion, at the lower end of the Lintz property in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 3, T3S, R7E.
2. Any diversions from Grace Coolidge Creek are subject to the prior rights of Mrs. Helen Callan, Minnie Bender Burns and James A Lintz.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Approval of this permit authorizes storage of up to 103 acre feet annually.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
Water Rights Division
October 18, 1984

* The Chief Engineer will arrange for installation of a Staff Gauge in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3. A staff gauge is a graduated scale mounted on a plank, wall or other like object from which the water surface elevation may be read.

Report on Water Permit Applications
on Grace Coolidge Creek
October 18, 1984

Water Permit Application No. 1900-2 submitted by Mrs. Helen Callan and Minnie Bender Burns is an amendment to change the diversion point, method of diversion, and method of irrigation for Water Right Filing No. 021-2. Water Permit Application No. 106A-2 submitted by James A. Lintz is an amendment to change the diversion point, method of diversion, and method of irrigation for Water Right No. 106-2. Water Permit Application No. 1687-2A submitted by Rittberger Beef and Dairy Inc., requests 1.18 cfs from Grace Coolidge Creek to irrigate 82.5 acres, plus a 3 cfs diversion rate from Grace Coolidge Creek during high flow periods and local runoff to fill a 103 acre feet dry draw storage dam.

Discussion

Callan and Burns Application No. 1900-2

Water Right Filing No. 021-2 with an April 15, 1887 priority date was filed to divert 1500 miners inches (30 cfs) of water from Squaw Creek (Grace Coolidge Creek). The diversion point was to be near the middle of the SW1/4 NE1/4 of Section 16-T3S-R7E to irrigate land in the SE1/4 of Section 9-T3S-R7E and the NE1/2 SW1/4 of Section 10-T3S-R7E. The diversion dam was abandoned in approximately 1972. The ditch system is still in existence, although it is evident that it has not been used for years. Mrs. Callan's husband, Thomas (deceased) stopped in the Water Right Division Office in January 1980. He stated he had not been able to irrigate for several years because no water was available. Mr. Callan mentioned an interest in irrigating when water became available and asked about changing the point of diversion. Mrs. Callan has stated some irrigation was accomplished whenever enough water was available. The ditch system was not used, but water was pumped from the creek in 1980, 1983, and 1984.

Lintz Application No. 106A-2

Water Right No. 106-2 has a priority date of June 6, 1911 and was licensed in 1912 for a diversion rate of 1.0 cfs to irrigate 39.3 acres. The diversion rate does not comply with the 1907 law which said the maximum diversion rate cannot exceed 1.0 cfs for every 70 acres and should be changed. The diversion point is located in the SW1/4 NE1/4 Section 10-T3S-R7E and the irrigated lands are located in the SE1/4 SE1/4 of Section 3 and the NE1/2 NE1/4 and the SW1/4 NE1/4 of Section 10-T3S-R7E. The system consists of a diversion dam, wood flume, and ditches. The dam and flume would need major repair in order to function properly. Mr. Lintz reported water was diverted into the ditches in 1976, 1978, and some in 1980. Water was also pumped during 1984.

The Lintz and Callan systems were designed for gravity flow and would require a large flow in order to function properly. The applicants are requesting a change in diversion to modify the systems from gravity flow to systems that will pump water directly from Grace Coolidge Creek. The change will enable the applicants to utilize Grace Coolidge Creek during periods of flow which are considerably less than what is required for the old systems.

Rittberger Beef and Dairy Inc. Application No. 1687-2A

Rittberger Beef and Dairy Inc. submitted an application October 23, 1979, but requested the application be deferred pending amendment of the application. The reason for this request was to work something out with downstream neighbors. The neighbors believed no unappropriated water was available because they have not been able to irrigate for several years. The Rittberger amended application includes a 103 acre feet dry draw storage dam which will collect local runoff and store water diverted from Grace Coolidge Creek during high flow periods. They will be able to irrigate from the dam when any by-pass requirements for the creek cannot be met. The dam will be located in the NW1/4 SE1/4 of Section 20. The diversion from Grace Coolidge Creek will be between a point located in the SE1/4 SE1/4 of Section 17 and a point located in the SE1/4 SW1/4 of Section 16. They plan to irrigate 82.5 acres in the SW1/4 Section 16, SE1/4 Section 17, NE1/4 Section 20 and the NW1/4 Section 21 all in T3S-R7E.

Table No. 1 is a listing of old Water Right Filings on Grace Coolidge Creek. The Filings are listed from upstream to downstream starting at the Rittberger property. Rittbergers have stated they would like to keep their old Filings. They believed if Mrs. Callan's filing is still valid theirs should be valid. Rittbergers stated their systems have not been used for many years and could point out only a small area that resembled a ditch. The remaining ditch system has been plowed over. We are recommending that Rittbergers' Water Right Filing. No. 0138-2 and 0185-2 be cancelled. The other four Filings No. 0250-2, 0349-2, 0287-2, and 0285-2 are located further downstream and close to the confluence with Battle Creek. Although some areas still have old ditches, most of the land has been subdivided for housing and has not been irrigated for many years. We are recommending that these filings be cancelled.

Table I
Old Water Right Filings on
Grace Coolidge Creek
listed Upstream to Downstream

Filing No.	Present Owner	Priority Date	Diversion Rate	Recommended Board Action
0138-2	Rittberger	October 15, 1891	20 cfs	cancel
0185-2	Rittberger	October 15, 1891	4 cfs	cancel
021-2	Callan & Burns	April 15, 1887	30 cfs	approve amendment to change diversion point and rate
0250-2	Ahrlin	February 17, 1902	2 cfs	cancel
0349-2	Ahrlin	September 1, 1880	2 cfs	cancel
0287-2	Albright Powers	November 21, 1885	40 cfs	cancel
0285-2	Oien	October 5, 1881	4 cfs	cancel

The portion of Grace Coolidge Creek, which runs through the Rittberger, Callan and Lintz properties, is below a large sink hole area located approximately 1 mile inside the Custer State Park boundary. The creek is usually dry between the sink hole area and just upstream of where Rittbergers want to irrigate. There are several springs along the creek on Rittberger's property and Mrs. Callan's property which contribute to the flow. Mrs. Callan also has a flowing Minnelusa well that is controlled.

We do not have good records of flow on Grace Coolidge Creek. There is a USGS gaging station located upstream of the sink hole area in the SW1/4 NE1/4 of Section 26-T3S-R6E. There were two gaging stations located below the sink holes in the SE1/4 SE1/4 of Section 24-T3S-R7E but these were discontinued because little or no flow was getting past the sink holes. Table No. 2 shows the flow records since 1950 for a gaging station located on Battle Creek approximately 2 miles downstream of the mouth of Grace Coolidge Creek. The table shows that in the months of May, June, and July there would be enough flow to irrigate at least 50 percent of the time. This data is misleading because Grace Coolidge Creek contributes one-third of the drainage area above the gaging station; however, this year the flows in Grace Coolidge Creek were approximately twice as large as Battle Creek flows.

Investigations were made in Grace Coolidge Creek area several times late in the summer of 1983. In the area where Rittbergers want to divert water, the estimated flow was 3 or 4 cfs. June 6, 1984, the flow using a Marsh McBirney flow meter was measured at 5.5 cfs just upstream from where Rittberger wants to divert water (Site No. 1). A flow of 6.0 cfs was measured at the lower end of Rittbergers property (Site No. 2), 6.6 cfs on Mrs. Callan's property (Site No. 3) and 7.7 cfs on Jim Lintz's property (Site No. 4). During several visits to the area since June 6, the flow appeared to be the same or higher. The flows in Grace Coolidge Creek appear to be greater this year than in previous years. The increased flows could be attributed to the increased precipitation resulting in an increase in groundwater levels and spring flow.

Conclusion and Recommendation

In order to establish some flow records on Grace Coolidge Creek and to maintain a flow for downstream domestic use, we are recommending the installation of a staff gage with a by-pass requirement of 2.5 cfs at the lower end of Lintz's property.

Application No. 1900-2

We are recommending approval of Water Permit Application No. 1900-2 with the following qualifications.

- 1) That a low flow by-pass of 2.5 cfs be required at the lower end of Lintz's property for downstream domestic use.
- 2) That the irrigation water use questionnaire be submitted each year.
- 3) That approval of No. 1900-2 recognizes and incorporates the applicable portions of water Right Filing No. 021-2 into Permit No. 1900-2 and cancels the abandoned portions of Water Right Filing No. ~~106-2~~.

021-2

Application No. 106A-2

We are recommending approval of Water Permit Application No. 106A-2 with the following qualifications.

- 1) That a low flow by-pass of 2.5 cfs be required at the lower end of Lintz's property for downstream domestic use.
- 2) That the irrigation water use questionnaire be submitted each year.
- 3) That approval of No. 106A-2 incorporates the applicable portions of Water Right No. 106-2 into No. 106A-2 and cancels the abandoned portions of Water Right No. ~~021-2~~.

106-2

Application No. 1687-2A

We are recommending approval of Water Permit Application No. 1687-2A with the following qualifications.

- 1) That a low flow by-pass of 2.5 cfs be required at the lower end of Lintz's property for downstream domestic use.
- 2) That the irrigation water use questionnaire be submitted each year.

Timothy G. Schaal

Timothy G. Schaal
Water Resources Engineer

BATTLE CREEK AT HERMOSA
Mean Monthly Flow (cfs)

Table 2

Year	April	May	June	July	Aug	Sept
1950	4.6	8.5	4.5	5.1	1.3	2.6
1951	3.0	3.0	12.9	16.2	4.7	5.7
1952	2.6	125.0	31.6	9.3	2.2	1.3
1953	3.3	7.5	13.3	2.5	12.3	1.1
1954	2.7	1.5	0.8	0.4	0.2	0.2
1955	1.4	0.7	1.3	0.7	0.2	0.1
1956	0.9	15.1	3.5	5.8	3.3	0.2
1957	2.2	88.0	97.7	49.7	25.5	5.2
1958	11.7	20.9	13.1	5.2	2.6	1.8
1959	2.2	2.2	4.8	5.3	0.7	0.7
1960	1.1	4.0	4.7	0.8	0.3	0.1
1961	0.9	0.9	3.2	3.9	0.2	0.1
1962	0.3	47.5	93.5	75.5	17.3	2.1
1963	17.3	26.5	100.0	25.5	5.6	5.8
1964	3.8	9.0	23.4	21.3	2.5	1.5
1965	3.0	129.0	102.0	46.5	13.6	5.6
1966	7.1	6.0	3.3	2.5	3.1	1.6
1967	2.9	3.8	158.0	25.8	9.0	6.9
1968	5.4	4.8	13.8	5.1	5.3	5.8
1969	4.2	3.3	2.8	29.5	3.2	3.7
1970	4.2	7.0	26.6	2.9	2.3	1.7
1971	31.9	57.2	80.8	14.3	6.1	5.0
1972	4.9	9.3	142.0	29.5	17.1	8.8
1973	28.7	31.8	19.0	8.1	6.4	8.8
1974	5.6	5.3	3.3	2.4	1.5	1.8
1975	9.0	6.6	18.6	2.6	2.0	1.7
1976	3.6	44.4	107.0	17.2	11.1	6.0
1977	6.1	5.0	2.5	4.1	3.6	2.9
1978	4.1	86.5	30.3	11.8	8.1	4.6
1979	5.3	4.9	2.1	19.6	16.5	9.6
1980	4.9	3.9	2.4	1.5	1.9	2.0
1981	1.9	38.5	4.8	2.9	2.2	2.0
1982	3.2	9.0	23.6	9.9	10.0	7.2
TOTAL	194.0	816.6	1151.2	463.4	201.9	114.2
Ave.	5.9	24.7	34.9	14.0	6.1	3.5
Median	3.8	7.5	13.3	5.8	3.3	2.1

R 7 E

N C O U N T Y

