PERMITS TRANSFERRING WATER AND ACREAGE

WATER RIGHT NO.1727-2, RAPID VALLEY WATER CO. INC. (MURPHY DITCH)

PRIORITY DATE: **APRIL 6, 1878** **APRIL 26, 1893**
LICENSED FOR: **17.0 CFS 1,148 AC** **3.0 CFS 189 AC**

		REDUCED BY:		REMAINING:		PERMIT APPROVED
2142-2	CITY OF RAPID CITY (TYLER PROPERTY	0.64 CFS	49 AC	16.36 CFS	1,099 AC	5-1-91
2142-2	AMENDED	0.62 CFS	49 AC	16.38 CFS	1,099 AC	
2199-2	CITY OF RAPID CITY (PELLE PROPERTY)	0.05 CFS	4 AC	16.33 CFS	1,095 AC	5-7-92
2201-2	CITY OF RAPID CITY (LONG PROPERTY)	0.13 CFS	10 AC	16.20 CFS	1,085 AC	5-7-92
2316-2	CITY OF RAPID CITY (MORRIS PROPERTY)	0.81 CFS	64 AC	15.39 CFS	1,021 AC	5-1-96
2399-2	CITY OF RAPID CITY (WILEMAN PROPERTY)	0.35 CFS	27.3 AC	15.04 CFS	993.7 AC	5-7-98
2469-2	CITY OF RAPID CITY (MURPHY PROPERTY)	0.34 CFS	27 AC	14.70 CFS	966.7 AC	12-5-01
2512-2	CITY OF RAPID CITY (CARLEY PROPERTY)	1.84 CFS	145 AC	12.86 CFS	821.7 AC	12-3-03
2586-2	Rapid Valley Sanitary Dist. (Harney Peak Ranch – David Lamb property)	5.05 CFS	368 AC	7.81 CFS	453.7 AC	8-23-06
2641-2	Rapid Valley Sanitary Dist. (Higgins Ranch)	1.66 CFS	121 AC	6.15 CFS	332.7 AC	3-10-10
2670-2	Rapid Valley Sanitary Dist. (Olson property)	0.12 CFS	9 AC	6.03 CFS	323.7 AC	11-30-11
2671-2	Rapid Valley Sanitary Dist. (Gravatt property)	0.60 CFS	45.6 AC	5.43 CFS	278.1 AC	11-30-11
2672-2	Rapid Valley Sanitary Dist. (Rypkema property)	0.47 CFS	36 AC	4.96 CFS	242.1 AC	11-30-11
2807-2	Rapid Valley Sanitary Dist. (Lytle property) (continued)	0.53 cfs	45 AC	4.43 cfs	197.1 AF	02-26-20

	PRIORITY DATE:			**APRIL 26, 1893**		
	LICENSED FOR:			**3.0 CFS 189 AC**		
2526-2	DONALD & VIRGENA JUNDT (STROMER PROPERTY)	0.71 CFS	50 AC	2.29 CFS	139 AC	3-2-05
2877-2	Rapid Valley Sanitary District	0.06 CFS	5 AC	2.23 CFS	134 AC	6-24-24
2885-2	Rapid Valley Sanitary District	0.8 CFS	68.4 AC	1.43 CFS	65.6 AC	04-14-25

Water Right No. 1727-2
VESTED RIGHT

1. Considered SEPT. 25 1980
2. Name of Applicant RAPID VALLEY WATER CO. INC.
3. Post Office Address RR 2, Box 223, RAPID CITY 57701
4. Amount of Water Claimed 29.0
5. Source of Water Supply RAPID CREEK
6. Water to be used for IRR.
7. Acres to be irrigated 1425 maximum acre feet
8. Water to be diverted and used in PENNINGTON County about ____ miles EAST of RAPID CITY
9. PROOF OF PUBLICATION: Received ____
   Not Received ____
   APPLICATION: Approved 9/25/80
   Subject to ____
   Not Approved ____
   Action deferred ____

Priority ____

Date Received 1-7-80 Application Complete yes ____ no ____ FEE 13.00

17 CFS = 1878
2 CFS = 1893

Remarks The 1878 and 1893 priorities may be used to irrigate any of the described ~~lands when natural flows are available in Rapid Creek. However~~ during periods when water purchases are being made by the Rapid Valley Water Conservancy ~~District users at the lower end of the ditch they will have to contract with~~ the district to obtain water.

Date information and/or fee or corrected Application received ____

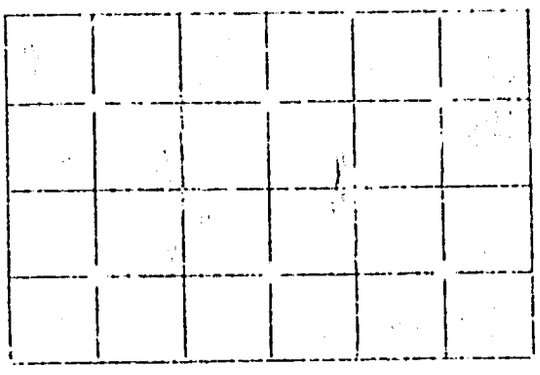
Period of Annual use APRIL 15TH THRU NOVEMBER

WATER QUALITY N/A WR

Received yes ____ no ____ APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as application yes ____ no ____ Remarks ____

Disapproved ____ Returned ____



Diversion Point ON RAPID CREEK IN SW¼ SEC. 8-T1N-R8E

Lands to be irrigated 9/10/15/22/14/13/23/19/20/ and 30 -T1N-R8E all along Rapid Creek.

WELL LOG

Remarks ____

Driller ____ Licensed yes ____ no ____

Depth ____

Water Right No. 1727-2

MAP Map No. 991-2 Map located in Water Right X Map File _____

Type of Map Drawn Prepared by John Hamrak, W/R

+ + + +

Form 2 - Application for Permit to Appropriate Water-Original (Includes Approval and Permit)

No. 1727-2

Map No. 191-2 Water Division No. 2 UPPER CHEYENNE District

Above for Office Use 10120110

JAN 1 1 OFFICE OF WATER RIGHTS Pierre, SD

APPLICATION FOR PERMIT
To Appropriate Water within the State of South Dakota

Check one of the following:

New _____ Vested Right X Future Use _____

Change in Diversion _____ Additional Diversion _____

Change in Acreage X Additional Acreage _____

1. Name of Applicant KAPID VALLEY WATER Co. INC Phone No. 343-5412.
   Post Office Address RR#2 Box 223 (Street, RR, or Box) Rapid City (Town) State So. DAK (Zip Code) 57701
   If a corporation show date and place of incorporation Nov. 28th, 1978, Rapid City, S.DAK.
2. Method of accomplishing work (contract, employment of others, or by direct labor) N/A
3. Name of diversion work KAPID VALLEY IRRIGATION DITCH
4. Amount of water claimed (cubic feet per second) 17cfs 1879 & 3cfs 1893
5. Source of water supply KAPID CREEK
6. Location of point of diversion SW¼ NE¼ SECTION 8, T1N, R8E
   County PENNINGTON
7. Annual period or periods during which water is to be used APR. 15th thru NOV.
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) IRRIGATION
9. For irrigation use, Total number of acres to be irrigated 1425

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

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
SEE ATTACHED SHEET			

Attach sheet if more space is needed

10. Time required to complete construction of water supply system N/A years. Additional time required to complete application of water to the proposed beneficial use N/A years.
11. Choice of county newspaper for publication of Notice of Intent to Appropriate Water N/A
12. Principal Features of the Proposed Water Supply System.
    A. Works proposed to divert water from its natural source.
    HEADGATE
    B. Works proposed to transport water to place of use.
    DITCH - 4' WIDE 2' Deep 10 MILES Long
    APR 30' easement of Rapid Creek.
    C. Works proposed to apply water to beneficial use.
    MEASURING BOXES FOR DIVERSION OF WATER
    LOCKS
    Clean Main Canal
    Estimated Total Cost $ 3000 (ENHANCEMENTS)

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

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

I, Rapid Valley Water Co, Inc. the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.

Signed David Thueler, President

Subscribed and sworn to before me this 20 day of Dec., 1990

Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Board of Water Management hereby approves Water Right Application No. 1727-2

RAPID VALLEY WATER CO. INC. (Applicant) RR 2, BOX 223 RAPID CITY (Post Office Address) SOUTH DAKOTA (State) 57701 With the following qualifications.

"VESTED RIGHT" CLAIMED

The 1878 and 1893 priorities may be used to irrigate any of the described lands, when natural flows are available in Rapid Creek. However during periods when water purchases are being made by the Rapid Valley Water Conservancy District, users at the lower end of the ditch will have to contract with the district to obtain water.

Date of first receipt of application JANUARY 7, 1980

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

Date of receipt of corrected application _____, 19____

Approved SEPTEMBER 26, 1980, Recorded in Book 22 Page 44

WATER RIGHT PERMIT NO. 1727-2

The Board of Water Management hereby grants and issues this Water Right Permit No. 1727-2 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as qualified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is 17 CFS. FROM 1878 & 3 CFS. FROM 1893
2. The equivalent of at least one-fifth of the work above specified is [redacted] completed [redacted]
3. The whole of said work is [redacted] completed [redacted]
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is COMPLETED.
5. The water appropriated shall be used for the purpose of IRRIGATION.
6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.
7. The amount of the appropriation herein granted shall not exceed 20 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial uses served, and if for irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before THIS DATE, [redacted]; said water to be used during the following described annual period: APRIL 15TH THRU NOVEMBER

Witness my hand this 31ST day of MARCH, 1981

THE BOARD OF WATER MANAGEMENT

By John Hoff
Chief Engineer, Water Rights

Certificate of Construction Issued MARCH 31, 1981

Water License Issued MARCH 31, 1981

Rapid Valley Water Company

1	Guy Simons	45 acres E½ SW¼, 9, T1N, R8E
2	C.E. Morris	64 acres W½ SE¼, 9, T1N, R8E
13	C.E. Morris	66 acres Sec. 24, T1N, R8E
14	C.E. Morris	(3.3)½ of the 76 acres in Sec. 24, T1N, R8E
3	R.W. Lamb	SW¼ SW¼, Sec. 10, NW¼ & N½ SW¼ Sec. 15, T1N, R8E, 187 acres
4	R.W. Lamb	130 acres in the S½ NE¼ & N½ SE¼ Sec. 15, 90 acres in the S½ Section 15, NW¼ NE¼ Sec. 20, T1N, R8E
4	R.W. Lamb	38 acres in the NW¼ SW¼, Sec. 14, T1N, R8E
5	A.K. Walker	8 acres in the SW¼ NW¼ Sec. 14, T1N, R8E
7	Jim Long	10 acres in the NE¼ SW¼ & SE¼ NW¼, Sec. 14, T1N, R8E
6	David Murphy Estate	43 acres in the W½, Sec. 14, T1N, R8E
8 & 9	Cora & Kenneth Buckholz	10 acres in the W½ of center quarter of Sec. 14, T1N, R8E
10	Elsie Higgins	121 acres in the SE¼ of Sec. 14, and SW¼ SW¼ Sec. 13, T1N, R8E
11	Wayne Anderson	12 acres in the SE¼ SW¼ Sec. 13, T1N, R8E
12	Dale Wileman	6 acres in the SW¼ SE¼ of Sec. 13, T1N, R8E
16	John Sweeney	1 acres NW¼ NE¼ of Sec. 24, T1N, R8E
15	Doug Peters	(28)½ of 6 & 48 acres in the W½ NE¼ of Sec. 24, T1N, R8E
17	Raymond Tyler	65 acres in the W½ NW¼ Sec. 19, T1N, R9E
19	M.P. Carley	145 acres in Sec. 19, T1N, R9E
20	Bruce Webber	63 acres in SW¼ Sec. 19, NW¼ Sec. 30, T1N, R9E
21	Dr. Ahrlin	51 acres in SE¼ Sec. 19, NE¼ Sec. 30, T1N, R9E
23	Rosanne Heavlin	41 acres in the SE¼ SE¼ Sec. 19, and NE¼ NE¼ Sec. 30, T1N, R9E
24	Merlin Stromer	125 acres in the SW¼ of Sec. 20, and N½ NW¼ Sec. 29, T1N, R9E
25	James Bloom	38 acres SW¼ SE¼ Sec. 20 and NW¼ NE¼ Sec. 29, T1N, R9E

TOTAL 1425 ACRES

Additional irrigation occurs through the Rapid Valley Ditch under the Little Giant Priority:

C.E. Morris	½ the 76 acres in the S½ of the NW¼ Sec. 24, T1N, R8E
Irene Bausch	½ the 8 & 48 acres in the ½ NE¼ Sec. 24, T1N, R8E
Arland Holcomb Estate	SE¼ Sec. 24, T1N, R8E

Not involved in this Application

Total acres under
Rapid Valley Water Right = 1,425 acres

~~Total acres under Little Giant carried by Rapid Valley = 150 acres~~

Form 2B - Affidavit of Water Use (Supplement to Form 2)

No. _____

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

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

Name of Applicant (Same as Form 2) Rapid Valley Water Co. Inc.

Post Office Address R.F.D. 2 Box 223, Rapid City, State South Dakota

If a Corporation show date and place of incorporation Nov. 28, 1978 Rapid City, SD

13. Notice of Appropriation (If available) Apr. 26, 1883

Date of Posting April 6, 1878 Date of Recording April 9, 1878

Recording Data Location Notice - copy attached

14. Date of start of construction of water supply system April 1878

15. Date the water was first applied to beneficial use 1878 + 1879

16. Name of owner of original water supply system Rapid Valley Irrigating Co.

17. Amount of water originally applied to beneficial use See attached judgement c. f. s.

18. Present Use of Water

Amount of water now being used 20 c. f. s.

Date that this amount of water was first used 1883's

19. Chronological History of Water Use - See attached documents

1. Location notice - April 6, 1878
2. Amended location notice - April 26, 1883
3. Amended judgement - March 14, 1896
4. Transcript - 1894
   A. Testimony of Freeman Lewis
   B. 1893 by-laws (note Article XI)
5. Acres to be vested - approx. 1925 acres (map attached)
6. Certificate of extention
7. Copy attached of Special Meeting May 21, 1979
8. Rapid Valley Water Co. carries 120 inches of water for Little Giant Water Co.
9. If available, water is sold to other lands under or past this ditch.

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

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

I, Rapid Valley Water Co. Inc., the applicant, certify that I have read the foregoing and that the matters therein stated are true

Signed Ronald L. Lawler, President

AUTINE HANSEN
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires September 18, 1983

Subscribed and sworn to before me this 21 day of October, 19 80

Autine Hansen
(Notary Public or other qualified Officer)

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

_____

_____

Permit No. 1727-2

Water Diversion No. 2 Upper Cheyenne Water District.
10120120

CERTIFICATE OF CONSTRUCTION

This is to Certify, That the Rapid Valley Water Company Inc.

the holder of

Vested Right

Permit No. 1727-2, issued upon Application No. 1727-2, bearing date of priority of 17 cfs from 1878 and 3 cfs from 1893 authorizing the diversion of 20 cu. ft. per second of the waters of Rapid Creek County of Pennington, State of South Dakota at a point in the SW¼, Section 8 - T1N - R8E

, for irrigation

purposes, has/~~have~~ complied with the provisions of the laws of the State of South Dakota relating to proof of completion of the works of diversion set out and described in said Permit; that said works are ~~for~~ recognized as satisfactory condition for diverting and conveying to the place of intended use 20 cu. ft. per second of water.

Date March 31, 1981

John Hatch

JOHN HATCH, Chief Engineer
Water Rights Division

WRR-815-7/79
Certificate of Construction

Form 16.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1727-2

(1) WHEREAS, On the 7th day of January A. D. 19 80

Rapid Valley Water Company, Inc.

made Water Right Application No. 1727-2 Vested Right for a permit to use 20 cubic feet per second of the waters of Rapid Creek

County of Pennington, State of South Dakota, for Irrigation purposes; and

(2) WHEREAS, On the 25th day of September A. D. 1980

Vested Right Permit No. 1727-2, with a date of priority of 17 cfs from 1878 and 3 cfs was issued to said applicant s for the diversion of said water, and recognizing the completion of construction of the water supply system therein described and for the application to beneficial use of said water

and,

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 20 cubic feet per second of water for beneficial use and,

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

1) Guy Simons — 45 acres E½ SW¼, Sec.9-T1N-R8E
2) C.E. Morris — 64 acres W½ SE¼, Sec.9-T1N-R8E
13) C.E. Morris — 66 acres Sec.24-T1N-R8E
14) C.E. Morris — 38 acres ½ of the 76 acres in Sec.24-T1N-R8E
3) R.W. Lamb — 187 acres SW¼ SW¼ Sec.10, NW¼ & W½ SW¼ Sec.15, T1N-R8E
4) R.W. Lamb — 130 acres in the S½ NE¼ and W½ SE¼ Sec.15; 90 acres in the S½ Sec.15, NW¼ NE¼ Sec.20-T1N-R8E
) R.W. Lamb — 38 acres in the NW¼ SW¼, Sec.14, T1N, R8E
5) A.K. Walker — 8 acres in the SW¼ NW¼ Sec.14-T1N-R8E
7) Jim Long — 10 acres in the NE¼ SW¼ and SE¼ NW¼, Sec.14-T1N-R8E
6) David Murphy Est. — 43 acres in the W½, Sec14-T1N-R8E
8 & 9) Cora & Kenneth Buckholz — 10 acres in the W½ of center quarter of Sec.14-T1N-R8E
10) Elsie Higgins — 121 acres in the SE¼ of Sec.14; and SW¼ SW¼ Sec.13-T1N-R8E
11) Wayne Anderson — 12 acres in the SE¼ SW¼ Sec.13-T1N-R8E
12) Dale Wileman — 6 acres in the SW¼ SE¼ of Sec.13-T1N-R8E
16) John Sweeney — 1 acre NW¼ NE¼ of Sec.24-T1N-R8E
15) Doug Peters — 28 acres ½ of 8 and 48 acres in the W½ NE¼ of Sec.24-T1N-R8E
17) Raymond Tyler — 65 acres in the W½ NW¼ Sec.19-T1N-R9E
19) M.P. Carley — 145 acres in Sec.19 T1N-R9E
20) Bruce Weiber — 63 acres in SW¼ Sec.19, NW¼ Sec.30-T1N-R9E
21) Dr. Ahrlin — 51 acres in SE¼ Sec.19, NE¼ Sec.30, T1N-R9E

1893 Priority:

23) Rosanne Heavlin- 41 acres in the SE¼ SE¼ Sec.19, and NE¼ NE¼ Sec.30-T1N, R9E
24) Merlin Stromer- 125 acres in the ~~SW¼ of Sec.20, and N½ NW¼ Sec.~~ 29-T1N-R9E
25) James Bloom- 38 acres SW¼ SE¼ Sec.20 and NW¼ NE¼ Sec.29 T1N-R9E

Total- 1425 acres

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Rapid Valley Water Company Inc. of Rapid City, South Dakota the holder s and owner s of Vested Right No. 1727-2 a water right, dating from 17 cfs from 1878 and 3 cfs from 1893 to use of 20 cubic feet per second of the waters of Rapid Creek in the County of Pennington and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point on Rapid Creek in the SW¼, Section 8 -- T1N -- R8E and conducted to and upon lands described on the face of this License for the purpose of irrigation

This Water License No. 1727-2 is based on a Vested Right claim recorded and filed by the Water Management Board.

Subject to any limitations listed in Water Right Permit No. 1727-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota this 31st day of March A. D. Nineteen Hundred and Eighty-one

WATER MANAGEMENT BOARD

By: John Hatch

Chief Engineer, Executive Officer

JOHN HATCH

Filed for record this 26th April A.D. 1893 at 8:30 A.M. Recorded in Book K. at page .335

L.D. Hall

Register of Deeds

Water Right
By
Rapid Valley Irrigating
Company

Amended Location Notice. The undersigned Rapid Valley Irrigation Company, a Corporation duly organized under the laws of the Territory of Dakota, having purchased of the original locators, and now being the owner and in the actual possession of that certain Water Right Location Ditch and appurtenances, mentioned and described in that certain location notice dated on the 6th day of April, 1878 signed by C. Lewis, F. Lewis, Thomas F. Poinsett and J. T. Davis, and duly recorded in the Office of the Register of Deeds of Pennington County on the 9th day of April, 1878 in Book B. page 596 of Location Certificate records, reference to which is hereby made; and said Corporation having in the year of 1879 extended their line of ditch from a point on their located ditch under said Water Right commencing at a point on the line of said ditch as it crosses the North West quarter of the South East quarter in Section Nine, Township One, North of Range Eight, E.B.H.M. in said Pennington County, and extended the same in a South Easterly direction down the devide on the North side of said Rapid Creek for the distance of ten (10) miles from said point of diversion, and from hence in a Southerly direction to Rapid Creek; and said land at that line being Public lands of the United States, and not surveyed, and the course of said ditch not being particularly specified, and the amended location notices claiming an increased appropriation of 3,000 inches (miners measurement) of the waters of Rapid Creek, and an extension of said ditch as aforesaid for ten (10) miles additional from the point of divergence having been duly made in writing and posted at a point on said Rapid Creek at the head of said ditch, and also at the point of divergence during the year 1879 and said Corporation having under said last named amended appropriation constructed about six (6) miles of said extended ditch, all of which they are in the actual and peacable possession, use and enjoyment of, and said amended location notices having been destroyed by the elements and by mistake or inadvertance, no record having been made there of in the Office of the Register of Deeds of the said Pennington County, now, therefore, the undersigned, waiving no rights acquired under, and by virtue of said prior location, appropriation and continued possession and work thereunder by retaining and insisting upon the same, makes this its amended Water Right location for the purpose of increasing the amount of water to be appropriated by it, and so extend the line of said ditch on the North side of said Creek from the point of divergence as aforesaid in a South-Easterly direction about ten (10) miles to the East side of Section thirty-two, Township one, North of Range ten (10) E.B.H.M., and from thence South by the most practical route to Rapid Creek in Section sixteen, Township one, South of Range ten E.B.H.M., all in Pennington

County, South Dakota, and to more particularly describe the same and to cause the same to be duly recorded as required by law, and to correct all other mistakes in the manner of said amended appropriation; therefore Notice is hereby given so all whom it may concern, that the Rapid Valley Irrigation Company, a Corporation duly organized under the laws of Dakota Territory, hereby claims and, appropriates, and has a valid right to the possession, occupation and enjoyment, over, and through the following lands lying and being in the County of Pennington, State of South Dakota, for the exclusive right of way for the purpose of constructing and using a flume or water ditch from a point on the North side of Rapid Creek about two and one half (2 1/2) miles East of the original townsite of Rapid City, Pennington County, South Dakota, near the center of Section Eight (8), Township One (1), North of Range Eight (8), E.B.H.M., said point being place where the water is diverted from said Rapid Creek, under said original Water Right location above described, referred to, and running from thence East in said original ditch about one and one-half (1 1/2) mile through the north half of the South East quarter and South half of North East quarter of Section Eight and the North half of South West quarter of Section Nine, to about the center of the North West quarter of South East quarter of Section Nine, in Township One, North of Range Eight, E.B.H.M., at which last named point the extended ditch as aforesaid diverges from the original located ditch as aforesaid, and from thence in a general South Easterly direction on the North side of Rapid Creek through Section Nine (9) Ten (10) Fifteen (15), Fourteen (14), Thirteen (13), and Twenty-four (24) in Township One (1) North of Range Eight (8), E.B.H.M., and through Sections Nineteen (19), Twenty (20), Tweaty-one (21), Twenty-two (22), Twenty-eight (28), Twenty-seven (27), Twenty-six (26), and Twenty-five (25), in Township One (1) North of Range Nine (9), E.B.H.M., and through Sections Thirty (30), Thirty-one (31), and into Section Thirty-two (32), to a point between the center and the East side of said last named Section in Township One (1), North of Range Ten (10), E.B.H.M., and from hence nearly due South by the most practiable route to Rapid Creek on Section Sixteen (16), Township One (1), South of Range Ten (10), E.B.H.M., all in Pennington County, South Dakota, said ditch to be of sufficient dimensions to carry three thousand (3,000) miners inches of water under six inch pressure. And said Corporation also claims, and has appropriated, and does hereby appropriate and has a valid right to the enjoyment and use of three thousand (3,000) miners inches of the water under a six (6) inch pressure, of said Rapid Creek, for Agricultural, Irrigating, domestic, and other useful purposes, the same to be diverted from said Rapid Creek at the head of said ditch in Section Eight (8) Township One (1) North of Range Eight (8), E.B.H.M. as aforesaid to be conveyed from thence through the above described flume or water ditch, along the divide on the North side of Rapid Creek about ten (10) miles South Easterly to the East side of Section Thirty-two (32) in Township One (1) North of Range Ten (10), E.B.H.M., and from thence South to be returned to Rapid Creek in Section Sixteen (16), Township One (1), South of Range Ten (10), E.B.H.M., together with all and singular the rights hereditaments and appurtenances thereunto belonging this notice was duly posted on Rapid Creek at the head of said ditch and at the point where the water is diverted from Rapid Creek into said ditch and also at the point on the old original ditch on the North West quarter of the South East quarter of Section Nine (9) Township One (1) North of Range Eight (8), E.B.H.M., where the extended ditch under this amended location and appropriation diverges from the original ditch on the 26th day of April A.D., 1893.

Date of Amended Location Notice April 26, 1893.

This amended location notice is duly made on behalf of said Corporation by the directors thereof duly authorized to make the same and under the Seal of said Corporation.

The Rapid Valley Irrigating Company

By

Francis M. Murphey

SEAL

Francis M. Morris

Freeman J. Lewis — Directors

State of South Dakota

Samuel Morris

County of Pennington

James M. Woods

William F. Morris being first duly sworn on oath deposes and says, that he is a native born citizen of the United States over the age of 21 years, and that on the 26th day of April A.D. 1893 he posted a duplicate of the foregoing and annexed amended location notice at the point of diversion of the water to wit: at the head of the water flume or ditch where the water is diverted into said ditch in Section Eight (8), Township One (1), North of Range Eight (8), E.B.H.M. Also on the same date he posted a duplicate of said notice at the point on the old original ditch on the Northwest quarter of the South East quarter of Section Nine (9), Township One north of Range Eight, E.B.H.M., where the extended ditch under the amended location and appropriation diverges from the original ditch. That said notice so posted as aforesaid were true and complete duplicates of the annexed notice, and were each signed as is the said annexed notice. That each of said notices so as aforesaid posted were posted by affiant in conspicious places where the same could readily be seen, and were duly posted as required by law. Affiant further says that said first notice posted as aforesaid was posted by him in the presence of one Albert Morris, and that affiant posted the other said notice in the presence of Francis M. Morris.

W.F. Morris

Subscribed in my presence and sworn to before me this 27th day of April A.D. 1893.

SEAL

H.P. Lewis

Notary Public.

B54408JH

	Maximum allowable	Inches Claimed	Acres
Guy Simons	32"	41"	45
C. E. Morris	46	59	64
	74	22	104
Warren Lamb	33.5	100	187
	113.0	125	156
	64.0		30
Frank Walker	7	8	10
Murphy Estate	10	25	22
Jim Long	5.7	10	8
Bucholz's	7	15	20
Higgins Estate	107	120	150
Wayne Anderson	8.6	10	12
Dale Wileman	3	4	6
Doug Peters	30	17	28
John Sweeney	0.7	1	1
Raymond Tyler	46.1	36	65
Jerry Gleson	5	5	7
M. P. Carley	128.5	140	180
Bruce Weber	81	88	114
Dr. Arblin		47	
Rose Ann Beavlin	36	25	50?
Hallie Stromer	89	50 115"	125
Dr. Bloom	27	40 30"	38
TOTALS	1070	913 892	1498 1474

Total using lesser of two #'s. given = 343

RECEIPT

WATER RIGHTS COMMISSION **№ 4 7273**

State of South Dakota

PIERRE, January 29, 19 80

RECEIVED OF Rapid Valley Water Co., Rt #2, Box 223, Rapid City SD

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

Fee for Application for Permit to Appropriate Water No. [illegible] (examination, processing, recording and filing)	8	00
Fee for inspecting Construction, and issuing Cert. of Construction No.	2	50
Fee for inspecting Beneficial Use, and issuing Water License No.	2	50
Fee for issuing Location Certificate-Dry Draw, No.		
Fee for filing		
Fee for certified copy of		
Fee for Print copy of map		
Fee for Certifying		
Fee for (any other work as provided by law)		
TOTAL	12	00

WATER RIGHTS COMMISSION

By [signature]

Chief Engineer, Executive Officer

JOHN HATCH kw

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

July 2, 1981

Jim Bloom
2946 Country Club
Rapid City SD 57701

Dear Mr. Bloom:

Your water rights as indicated on the "vested" right filed by the Rapid Valley Water Co., Inc. hold a priority date of 1893 for a total of .54cfs. This right would be junior to any water rights dating prior to 1893.

Therefore, during times when senior water rights are purchasing water, you would also be required to purchase. Otherwise, the ditch must bypass the water to the senior appropriators downstream.

Presently the Rapid Vally Water Company Ditch (Murphy) holds two priorities. It is allowed up to 17 cfs with a priority of April 6, 1878 and up to an additional 3 cfs with a priority of 1893. Please advise this office if you have any questions.

Very truly yours,

James Winterton

JAMES WINTERTON
Water Resources Engineer

JW:kv

cc: Duane Scott
Water Master

Equal Opportunity Employer

South Dakota Department of
Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

July 2, 1981

Merlin Stromer
837 E Tallent
Rapid City SD 57701

Dear Mr. Stromer:

Your water rights as indicated on the "posted" right filed by the Rapid Valley Water Co., Inc. hold a priority date of 1893 for a total of 1.78cfs. This right would be junior to any water rights dating prior to 1893.

Therefore, during times when senior water rights are purchasing water, you would also be required to purchase. Otherwise, the ditch must bypass the water to the senior appropriators downstream.

Presently the Rapid Valley Water Company Ditch (Murphy) holds two priorities. It is allowed up to 17 cfs with a priority of April 6, 1878 and up to an additional 3 cfs with a priority of 1893. Please advise this office if you have any questions.

Very truly yours,

JAMES WINHELTON
Water Resources Engineer

JW:kw

cc: Duane Scott
Water Master

Equal Opportunity Employer

AR-101-9/79

SOUTH DAKOTA
Department of
Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-5367

July 7, 1981

Rosanne Heavlin
Rapid Valley
Rapid City SD 57701

Dear Ms. Heavlin:

Your water rights as indicated on the "west-d" right filed by the Rapid Valley Water Co., Inc. hold a priority date of 1893 for a total of .58 cfs. This right would be junior to any water rights dating prior to 1893.

Therefore, during times when senior water rights are purchasing water, you would also be required to purchase. Otherwise, the ditch must bypass the water to the senior appropriators downstream.

Presently the Rapid Valley Water Company Ditch (Murphy) holds two priorities. It is allowed up to 17 cfs with a priority of April 6, 1878 and up to an additional 3 cfs with a priority of 1893. Please advise this office if you have any questions.

Very truly yours,

James E Winterton

JAMES WINTERTON
Water Resources Engineer

JW:kw

cc: Duane Scott
Dale Marker

Equal Opportunity Employer

NR-101-9/76

L. D. Fall being produced and sworn as a witness on behalf of the defendants, testified as follows:-

I have here the Mining Deed Location Certificate Records, Book "B" page 596 (offered and read in evidence) which is as follows:-

No.129.

Location Notice.

The undersigned claim by right of location and prior appropriation a water ditch, commencing on the north side of Rapid Creek about two and a half miles east of Rapid City in Pennington County, Dakota Territory, running thence down fthe valley of the Rapid in a general easterly direction, cressing the creek about one mile and a half from the place of beginning, thence easterly on the south side a mile further, with right of extension at any time. Said ditch is to be used for irrigation of land for farming purposes and is to be four feet wide by two feet deep and the flume carrying said ditch across the creek is to be the same dimensions and we claim the water flowing in the said creek and here diverted in our said ditch to the extent of one thousand inches measured under a four inch pressure. This location was made on April 6,A.D.1878 and location notice duly posted at the place of diversion of the water, said notice stating the amount of water claimed and the purpose for which it is to be used and we expect to begin construction of said ditch within ten days and continue the same diligently to completion.

Witness our hands this 6th day of April,A.D.1878.

C. Lewis,
F. Lewis,
Thomas F. Poinsett.,J.T.Davis.

Filed for record in this office this 9th day of April,A.D

1878. at the hour of 8: o'clock P.M.

J. R. Hanson, Register of Deeds.

Ex.5. by Wm.T. Maguire, Deputy.

Exhibit 5 is one of the original records of my office.

Exhibit 5 is the offered and read in evidence.

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

Isaac Cramer, George W. Kentch, James Halley, Trustee, Julia Seese, Ole O. Stromsness, Isaac P latt, William H. Gould, George Buckingham, Maruice Keliher, James Brennan, Henry C . Blanchard, David Jolly, Elmir Kimball, John E. Hunt, Etta H. Gould and the Lone Tree Ditch Company, a Corporation, Plaintiffs,

Versus

The Rapid Valley Irrigating Company, Francis M. Murphy, Francis M. Morris, Freeman J. Lewis, Samuel Morris, James M. Woods, and the Rapid Valley Water Company, a corporation, Defendants.

JUDGMENT

This action having been brought to a trial by the Court, and a decision therein having been rendered for the Plaintiffs, Isaac Platt, Etta H. Gould, Julia S eese, Henry C . Blanchard, George Buckingham, Ole O. Stromsness, John E. Hunt, James Halley, trustee, Maurice Keliher, George W. Kentch, and James Brennan, against the defendants James M. Woods, Freeman J. Lewis, Francis M. Murphy, Francis M. Morris, S amuel Morris, and the Rapid Valley Water Company and in favor of the said defendants last named, as against the Plaintiffs, Isaac Cramer, William H. Gould, D avid Jolly, Elmir Kimball, and the Lone Tree D itch Company, and the said decision having been duly filed; and the Court having in its said decision found among other things, that the Water Right and Location of the Plaintiffs, Isaac Platt, Etta H. Gould, Julia Seese, Henry C. Blanchard, George Buckingham, Ole O. Stromsness, John E. Hunt, James Halley, trustee, Maurice Keliher, and James Brennan, in and to the waters of Rapid Creek in said Pennington C ounty, described in the said decision, is a good and valid water Right and Location to the extent of the appropriation made by them and their predecessors in interest to-wit: to the extent of fifteen hundred miner's inches of water, measured under a six inch pressure, subject only to the right of the defendants, the Rapid Valley Water Company, James M. Woods, Freeman J. Lewis, Francis M. Murphy, Francis M. Morris, and Samuel Morris, to the use of the said waters of Rapid Creek, to the extent of eight hundred and fifty inches measured under a four inch pressure, for irrigation and for agricultural and domestic purposes, under and by virtue of that certain Water Right originally located by C. Lewis, F. Lewis, Thomas F. Poinsett, and J. T. Davis, and now owned by the said Rapid Valley Water Company; and the Court being fully advised in the premises:-

Now on Motion of James W. Fowler and Charles W. Brown, Plaintiffs' attorneys, it is considered, ordered and adjudged, that the defendants the Rapid Valley Water Company, James M. Woods, Freeman J. Lewis, Francis M. Murphy, Francis M. Morris and Samuel Morris, and each of them, their servants, agents and employes, and all persons claiming under them or either of them, be, and they hereby are, perpetually enjoined and restrained from divesting, appropriating or using under or by virtue of the said Water Right originally located by the said C. Lewis, F. Lewis, Thomas F. Poinsett and J. T. Davis and now owned by the said Rapid Valley Water C ompany, the waters of said Rapid Creek, for agricultural or other purposes, eight hundred and fifty inches thereof measured under a four inch pressure, but the defendants shall forever have the right so far as the plaintiffs, their successors in interest or assigns are concerned, to carry so much of the said Eight Hundred and Fifty inches of water so as aforesaid appropriated by them and not used by them upon their said lands, above the head of Plaintiffs' D am by ditch, and flume below the said Dam and lands of the Plaintiffs, to be by them used or sold to others for profit or irrigation and other useful purposes, as against any right or claim which the said Plaintiffs, their successors in interest or assigns may have thereto.

And it is further considered and adjudged that the Plaintiffs, Isaac Platt, Etta H. Gould, Julia Seese, Henry C. Blanchard, George Buckingham, Ole O. Stromsness, John E. Hunt, James Halley, trustee, Maurice Keliher, George W. Kentch, and James Brennan recover of the defendants, the Rapid Valley Water Company, James M. Woods, Freeman

BEST IMAGE POSSIBLE
FROM POOR ORIGINAL

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

Isaac Crozier, George W. Norton, James Bailey, Trustee, Julia Seese, Ole O. Stromsness, Isaac Platt, William H. Gould, George Buckingham, Maurice Kelliher, James Freeman, Henry C. Blanchard, David Jolly, Elvin Kimball, John E. Hunt, Ella A. Gould, and the Lone Tree Ditch Company, a Corporation, Plaintiffs,	)
- Vers us -	) JUDGMENT.
The Rapid Valley Irrigating Company, Francis M. Kirley, Francis M. Morris, Freeman J. Lewis, Samuel Morris, Jr., A. Woods, and the Rapid Valley Water Company, a Corporation, Defendants.	)

This action having been brought to a trial by the Court, and a decision thereon having been rendered for the plaintiffs, Isaac Platt, Ella A. Gould, Julia Seese, Henry C. Blanchard, George Buckingham, Ole O. Stromsness, John E. Hunt, James Bailey, trustee, Maurice Kelliher, George W. Norton and James Freeman, against the defendants, James A. Woods, Freeman J. Lewis, Francis M. Kirley, Francis M. Morris, Samuel Morris, and the Rapid Valley Water Company, and in favor of the said defendants last named, as against the plaintiffs, Isaac Crozier, William H. Gould, David Jolly, Elvin Kimball, and the Lone Tree Ditch Company, and the said decision having been duly filed; and the Court having in its said decision found, among other things, that the water right and location of the plaintiffs, Isaac Platt, Ella A. Gould, Julia Seese,

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FROM POOR ORIGINAL

Henry C. Blanchard, George Buckingham, Ole O. Gronsness, John E. Hunt, James Talley, trustee, Maurice Kelliher and James Brennan, in and to the waters of Rapid Creek in said Pennington County, described in the said decision, is a good and valid water right and location to the extent of the appropriation made by them and their predecessors in interest, to wit, to the extent of fifteen hundred miner's inches of water, measured under a six inch pressure, subject only to the right of the defendants, the Rapid Valley Water Company, James M. Woods, Freeman J. Lewis, Francis M. Murphy, Francis M. Morris and Samuel Morris, to the use of the said waters of Rapid Creek, to the extent of eight hundred inches, measured under a four inch pressure, for irrigation and for agricultural and domestic purposes, under and by virtue of that certain water right originally located by C. Lewis, F. Lewis, Thomas F. Poindexter and J. T. Davis, and now owned by the said Rapid Valley Water Company; and the Court being fully advised in the premises:-

Now, on motion of Jerde W. Voorhees and Charles W. Bromley, plaintiffs' attorneys, it is Considered, Ordered and Adjudged that the defendants, the Rapid Valley Water Company, James M. Woods, Freeman J. Lewis, Francis M. Murphy, Francis M. Morris and Samuel Morris, and each of them, their servants, agents and employes, and all persons claiming under them or either of them, or, and by reason thereof, perpetually enjoined and restrained from diverting, appropriating or using, under or by virtue of the said water right originally located by the said C. Lewis, F. Lewis, Thomas F. Poindexter and J. T. Davis, and now owned by the Rapid Valley Water Company, the

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waters of said Rapid Creek, for agricultural or other purposes, except eight hundred inches thereof, measured under a four inch pressure, and that the said last named defendants, their servants, agents and employes, and all persons claiming under them, or either of them, be, and they, and each of them hereby are, perpetually enjoined and restrained from carrying or conveying the said eight hundred inches of the waters of said Rapid Creek, measured under a four inch pressure, in their ditches or flumes, to any point beyond or west of the west line of the Northeast Quarter of the Northwest Quarter of Section thirty in Township one North of Range nine East of the Black Hills meridian in said County, or from carrying and conveying the said waters to any point easterly of the said line of said last named plaintiffs.

And it is further Considered and Adjudged that the plaintiffs, Isaac Platt, Etta S. Gould, Julia Reese, Henry C. Blanchard, George Buckingham, Ida O. Stevenson, John F. Hunt, James Talley, trustee, Maurice Leither, George W. Veitch and James Brennan, recover of the defendants, the Rapid Valley Water Company, James H. Woods, Fremont J. Lewis, Francis M. Murphy, Francis M. Morris and Samuel Morris, One Hundred and sixty-three and 15/100 dollars for the costs and disbursements of this action, to be taxed and adjusted by the Clerk of this Court and inserted by him herein.

And it is further Considered and Adjudged that as to the said plaintiffs, Isaac Platt, David Jolly, Blair Kimball, William H. Gould and the Lone Tree Ditch Company, the complaint be dismissed upon the merits of the action, as against the defendants, Francis M. Murphy, Francis M. Morris, Samuel

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J. Lewis, James K. Woods, and the Rapid Valley Water Company,
and that the said Plaintiff recover of the said
Irwin, Isaac Cramer, Levin Tully, Chris Hansen, William R.
Gould, and the Lone Tree Ditch Company,
Defendants for their
costs and disbursements of this action, to be taxed and col-
lected by the Clerk of this Court and directed by him herein.

Done in said County, this 4th day of May, 1895.

By the Court:

William Gardner, Judge.

Attest:

Frank P. Corn, Clerk.

x------x
: seal :
x------x

Copy.

IN CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT,
Pottington County.

James Froman et al., Plaintiffs,

--vs--

James K. Woods et al., Defendants.

J U D G M E N T.

BEST IMAGE POSSIBLE
FROM POOR ORIGINAL

By-Laws of The Rapid Valley ~~Irrigating~~ Water Company.

Article-I-

The officers shall consist of a President, Vice-President, Treasurer and Secretary, who shall be chosen by the Board of Directors from among themselves.

Article -II-

Section-I. A Board of Directors shall be elected at the Annual meeting of the Stock-holders. The Directors elect shall serve for one year from the first Saturday in November of each year, and until their successors are elected and qualified.

Sec.2. No Stock-holder shall be eligible for election as a member of the Board of Directors unless he is a bona-fide owner of at least two(2) Shares of the Capital Stock of the Company at the time of his election.

Article-III-

Section-I.President. The President shall preside at all meetings of the Directors and Stock-holders. He shall sign, as President, all Certificates of stock, and all contracts, and other instruments in writing, which have been first approved by the Board of Directors. He shall draw all checks and warrants upon the Treasurer. He shall call the Directors together whenever he deems it necessary; and, he shall have, subject to the advice and control of the Directors, the general superintendence of the affairs of the Company. In the absence of the President the Vice-President shall perform his duties.

Sec.2. Treasurer. It shall be the duty of the Treasurer to keep safely all money's belonging to the Company, and disburse the same under the direction of the Board of Directors on Warrants

By-laws of The Rapid Valley ~~Irrigating~~ Water Company.

Article-I-

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Article-III-

Section-I.President. The President shall preside at all meetings of the Directors and Stock-holders. He shall sign, as President, all certificates of stock, and all contracts and other instruments in writing, which have been first approved by the Board of Directors. He shall draw all checks and warrants upon the Treasurer. He shall call the Directors together whenever he deems it necessary; and shall have, subject to the advice and control of the Directors, the general superintendence of the affairs of the Company. In the absence of the President the Vice-President shall perform his duties.

Sec.2. Treasurer. It shall be the duty of the Treasurer to keep safely all money's belonging to the Company, and disburse the same under the direction of the Board of Directors or Warrants

signed by the President and Secretary. At each Annual Meeting of the Stock-holders he shall submit a complete statement of his accounts for the past year, with the proper vouchers for their information. He shall discharge such other duties pertaining to his office as shall be prescribed by the Board of Directors.

Sec.3.-Secretary:-It shall be the duty of the Secretary to keep a record of the meetings of the Board of Directors and of the Stock-holders. He shall keep the Book of Blank Certificates of Stock, fill up and countersign all certificates issued, and make the corresponding entries on the margin of each book on such issuance. He shall keep a proper Transfer Book and a Stock Ledger in debit and credit form, showing the number of Shares issued to and transferred by any Stock-holder, and the dates of such issuance and transfer. He shall countersign all checks, keep proper books of account, and discharge such other duties as pertain to his office, or prescribed by the Board of Directors.

Article-IV.-

The Board of Directors shall have power:-

1st. To call meetings of Stock-holders when deemed necessary, giving not less than two weeks notice thereof, in manner as hereinafter provided; and they shall call meetings of the Stock-holders at any time, upon a written request for that purpose of persons representing one fifth(1/5) of all the Capital Stock.

2nd. To make rules and regulations not inconsistent with the laws of the State of South Dakota, or the By-Laws of the Company, for the guidance of the Officers and the conduct of the affairs of the Company.

3rd. To declare dividends out of the Surplus profits whenever they shall deem it expedient.

4th. To incur such indebtedness as may may deem necessary; provided, however, that no indebtedness over five Hundred Dollars($500.) shall at any time be incurred by the Company;and to authorize the execution by the President and Secretary of any note for such indebtedness.

Article-V-.

It shall be the duty of the Board of Directors:-

1st. To cause to be kept a complete record of all their meetings and acts,and also of the proceedings of the Stock-holders,and to present a full statement at the Regular annual meetings of the Stock-holders,showing in detail the assets and liabilities of the Company,and generally the condition of its affairs. A similar state ent shall be presented at any other meeting of the Stock-holders,when thereto required by persons representing at least one fifth (1/5) of the Capital Stock of the Company.

2nd. To supervise all the acts of the Officers and employees,requiring the Secretary and Treasurer to keep full and accurate books and accounts,and to prescribe the form and mode of keeping such books.

3rd. To cause to be issued to the Stock-holders,in proportion to their several interests,certificates of stock not to exceed in the aggregate the Capital Stock of the Company.

4th. To cause the Money's of the Company to be safely kept,directing, from time to time,where they shall be kept or deposited.

Article-VII.-

The members of the Board of Directors shall receive no compensation for their services,as such,but shall be allowed by resolution for each meeting or attendance at meetings of the Board of Directors all their reasonable traveling expenses incurred in the business of the Company,to be audited and

allowed as in other cases of demand against the Company.

Article-VIII.-

No contract by any Officer of the Company shall be valid without the previous authorization, or subsequent ratification, of the Board of Directors.

Article-IX.-

S.1. The Regular Annual Meeting of the Stock-holders shall be held on the First Saturday of December of each year at the office of the Company in Rapid City, Pennington County, South Dakota. A representation of a majority of the capital stock shall be necessary for the transaction of the business of all the meetings of Stock-holders. At such meetings a representation by proxy, duly appointed, shall be allowed, provided to be in writing and filed with the Secretary of the Company.

Sec.2. All meetings of Stock-holders shall be called by written notice from the Secretary, designating the time and place of such meetings, at least two weeks prior to such meeting.

Article-X.-

The Board of Directors of this Company shall consist of Five (5) members, elected from among the Stock-holders as aforesaid.

Article-XI.-

The Board of Directors shall have power to fix and establish the rate and price at which water may be furnished for Irrigating or other purposes, and to so fix said rate, or price, on or before the first day of April each year in advance. And all applications for water for such Irrigating or other purposes must be filed by the person, or persons, desiring to use the same on or before the 1st day of April A.D. of each year, and the application of persons

ompire Land Charting Co. Ltd" of this Company is to be pre-
ferred.

Article-XII.-

Certificates of Stock shall be of such form and device as the Board of Directors may from time to time adopt; they shall be signed by the President and Secretary, and express on its face their number, date of issuance, number of shares for which, and the person to whom issued. Several Certificates may be issued to the same person, or persons, provided, that in the aggregate they do not exceed the number of shares belonging to such person, or persons.

The Certificate Book shall contain a margin on which shall be entered the number, date, number of shares, and the name, or names, of the person, or persons, expressed in the corresponding certificates.

Article-XIII.-

Shares of the Company may be transferred at any time by the holders thereof, or by Attorney legally constituted, or by legal representatives; but no transfer shall be valid except as between the parties thereto, until entered in the proper form on the books of the Company. The surrendered certificate shall be cancelled before a new certificate shall be issued in lieu thereof.

The receiver of the new certificate shall be required to signify his assent to the by-laws of the Company, in writing; and no transfer of any shares of Stock shall be valid upon which any assessments or fines are due and unpaid, or the notice of which is ignored by the Company on any account whatever.

Article-XIV.-

The books and papers in the office of the Secretary and Treasurer

shall, at all their said Annual Meetings, be open to the inspection of the Board of Directors, and of any Stock-holder.

Article-XV.-

These By-Laws may be altered or repealed at any Annual Meeting of the Company, or at any Special meeting called for that purpose, by a vote of two thirds (2/3) of the subscribed Stock.

Article-XVI.-

These By-laws shall always be and remain in the possession of the Secretary of the Company.

C E R T I F I C A T E.

We, the undersigned, a majority of the Board of Directors of the Rapid Valley Irrigating Company, hereby certify, That the foregoing By-Laws, consisting of Sixteen Articles, have been duly adopted as the By-Laws of said Company.

Witness our hands this 17th day of August, A.D. 1895.

W. H. Beardsley, Director.

W. M. Murphy, Director.

D. J. Lacey, Director.

Samuel Shurtz, Director.

_____, Director.

Exhibit B

Freeman Lewis being produced and sworn as a witness on behalf of the defendants, testified:

My age is forty-three, residence, Rapid Valley, occupation a famer. I have lived on Rapid Valley ever since the spring of 1878 but I located my place the year previous to that. The place I located is the West Half of the North West Quarter of Fifteen and the North-west Quarter of the Southwest Quarter of Fifteen and the South-west Quarter of the South-east Quarter of Ten. Rapid Creek crosses across the South-west of the South-east of ten and also on the North-west of North West of Fifteen. It strikes the place on the South-west of South-west of Ten and leaves the place on the North-west of North-east of Fifteen, runs corner-wise across it. I settled upon my land as a homestead. It is the sae land covred by final homestead entry by me on March 10th, 1882. I am still living on that land. My brother Clarke Lewis owned the adjoining piece of ground on the east. I could not give the numbers of his land, he has the four inside forties of the section. He does not run to the section line at any place. He took up his land as a preemption; has proved up on it. He took up his land at the same time I did. Thomas Poinsett took up a piece of land directly west of me. J.C.Peel afterward owned that piece of land. Rapid Creek runs directly through that. A man by the name of J.T.Davis took up the place directly west of that. Osa Chase subsequently filed on that. Rapid Creek runs through it. I do not know who afterwards took it up. W.W.Morris owns the Chase place now. In April, 1879, myself, brother, Poinsett, who had the Reed place, and Davis, who had the Chase place, surveyed claims of fifty about a month before we filed our claims. We had run back and forth there several times. We did the surveying. Poinsett claimed to be a kind of surveyor, a Engineer and we made a plat, he and put a level on it and done [illegible] plat. The plat is diver-

ation was the west side of the McElroy place. It was next above Osa Chase's. With reference to making a water right location in April , 1878, we came up to town after we had been the surveying and got Van Cise to draw up the water-right location and also the copy to put on file and I took the notice down and put it on a board and put it up at a stake and set it at the head of the ditch by the bank of the creek.

In the way of constructing a ditch and making a dam we took three yoke of cattle in the Spring of 1878 and we plowed six furrows from the forks of the ditch to the creek about a mile ad a half . We used a Sixteen inch plow, the only plow they had on Rapid Valley. We dug out the cut there so we could drive the cattle through. Poinsett and my brother held the plow and I drove the cattle. We completed the ditch from the point where we took the water out to the forks of the ditch. The grade was level and we threw the dirt out on each side of the ditch so it made a border on both sides of the ditch. We made a border on both sides of the ditch to the forks of the ditch. The forks of the ditch is on F.M.Mackie's place. It is in section Nine I think. I think it is the east half of the South west Quarter and the West Half of the South East quarter of Sec ten Nine. J.T.Davis was there. He was one of the boys We kept on to work at the ditch till the water was in the ditch and we kept it cleaned out all the time except a little of the ditch and then David Wells & Poinsett, the [illegible] did work the rest of the [illegible]. T[illegible] Wells [illegible]. D[illegible] S.L[illegible]

H[illegible] S[illegible] [illegible] [illegible] [

spring of 1878. We did not construct a dam until we got the ditch cleaned out and flumed and ready to keep the water. We were taking the water out between here the ol creek channel was and where it is now and there come a freshet and washed through to the west of our channel and the creek channed and it all went down the draw and then all the water in the creek ran down the ditch for Sixty or Seventy rods. It went east until it camem up into what we call the Narrows and then it dropped back onto the old channel. That is not the same as is called the Narrows now. The Creek makes adifferent channel now. It changed afterward. This was in the month of May, 1878. I could not give the day of the month that the creek changed. The water of Rapid Creek ran down this new channel before 't returned again into Rapid Creek from sixty to seventy rods in the ditch that we had constructed. We pated our notice right on the bank where we cut through, or where the creek cut out from the bank, and we took the water out at the point called the Narrows. It is near the west part of McElroy's place. In the year 878 we constructed this ditch with these three yoke of cattle down as far as the point where the ditch forks to the F.H.Morris place, a mile and a hulf from the head of the ditch. That is what we called the forks of the ditch. There we ran the south ditch, or south-side ditch, which runs across the creek and supplies water to the land lying on the south side of the creek. In 1878 we built the ditch from the points of diversion to the point known as the forks of the ditch, about one and a half miles. After the freshet had turned the water into this channel of ours in May, 1878, we did no more at that time in the way of construction or work upon this ditch. It come rainy in the months of June and July and it was not necessary and we did not have it quite finished when the freshet came

and cut through there about seven feet for about twenty rods long. This cut is on what is now the pitler place. In 1878 the water ran sixty rods down the ditch of ours by reason of its breaking through the banks of the creek In 1879 we started in as the forks of the ditch and ran down as far as Marshall's place. That was on Section ten, the next place east. I could not tell for how great a distance we constructed that ditch by the forties, I judge its about one mile. From the point of diversion to the Marshall place it would be two miles and a half. I judge the size of the ditch we constructed in 1878 was at least six feet wide. From the point of diversion dom to the forks of the ditch it was between six and seven feet wideand two furrows deep. We piled the sod we took out of the ditch on the side to maken the border. It was two plow furrows deep. The two plow furrows were taken out of the upper side. The last two we plowed were on the pper side. Two courses; on the lower side there was but one course and we pled the sod out on the lower side. There was a border there about one and ahalf to two feet high above the ground wth the dirt that was taken out. We cut the side six or seven inches and the last of the furrows I think we let the plow down a litle further. We plowed one furrow deep on the lower side.

To Mr. Schrader.

Including our border made on the lower side and adding to the depth of the upper side by the plowing of two furrows, the depth of the ditch from the point of diversion down to the Morris place was about 18 inches counting the border and all. It was about six feet wide. In 1879,I thinz, the ditch constructed along the north side of the creek from the forks down to the Marshall place would be about five feet wide. I am speaking of the north fork al

it would be twenty inches to two feet deep.It was made in the summer of 1879. The work was done by Charlie Marshall, John Reed, william Reed, Clarke Lewis and myself, and Jo Jolly worked on it some. In 1879 we put in a small dam just to allow enough water into the ditchjust back of the narrows where the ditch left this old creek channel where the water ran down through the turn what water we wanted down through the ditch. In 1879 we kept it full. It ran full. It was flumed and over-flowed down all theeast line of the Ditler place. We had a head gate there and what we called and over-flow. We first surveyed for the ditch and we got t through as I said and then it filled up some and we got Chase to go throw t back into the creek. He turned it back into the creek there and then we left it. As I stated the creek turned from the old channel and run through the ditch for a distance. It made the main part of the stream. It cut through where we had made the ditch and the water all ran through there. It went through on the falls. In 1879 all the creek passed through the first 60 rods of our ditch. We put in a flood gate on the McElroy place so the Creek would run so much and no more so that the creek would carry about all that we did not want in the ditch. The flood-gate is in the same place that the witness for plaintiff here have been testifying about but it is a new gate. There was another gate put in there since 1879. In 1879, Chase, Reed, Marshall and myself irrigated from this ditch. Clarke Lewis did not irrigate in 1879. Reed irrigated in 1879 probably five acres to the best of my recollection. Chase, twenty acres, it might have been more or less. I irrigated about Ten acres. Marshall abouth five acres, I guess.

This notice was posted on the bank of the creek in [illegible] and a copy of that was filed in the Register of Deeds' office. I think it was filed three or four days before the

the notice was posted. I took one copy to the Register of Deeds' office and the other I took home with me and I did not post it on the ground till may be two or three days afterward. I don't know what season it was I filed on my land as a homestead. It was as soon as it came into market in 1880. Prior to the making of the filing I held the land under what we called a squatter's right. I first entered upon the land in the spring of 1877. In 1880 we put the flume across the creek, in the spring of 1880 about the first work we did and it was extended down to Murphy's on the north side. From Murphy's down to Morris' place it was about three and a half miles. The depth and width of this creek that was constructed from the Marshall place to Murphy's place was about six feet wide about one foot in the ground and the border would be about one foot. The border would be about one foot beyond the foot in the ground. It was taken out with plows an' scrapers by Murphy and myself. I think Jolly worked on the ditch some at that time. I would not be positive whether he didor not . The width of this extension would be about six feet. I could not tell how many furrows were plowed. I did not do the plowing. Morris did the plowing. I did the work that was done with the scraper. It was in the spring of 1880. Murphy's place was east of Marshall's.There is another place lying between the two. It was Government land at that time. Maurice Kelliher owns it now. A man by the name of Camp proved up on it. Will Burgess was dirdctly east of my brother's place. James M. Woods owns that place now. The Murphy who assisted in plowing the ditch in 1880 is one of the defendants in this case. In 1880, Chase, Redd,Joseph Jolly,Clarke Lewis, David Jolly and myself irrigated from this ditch. I do not know whether Al Burgess did or not. I hardly think he did.For the year 1880 I think Chase irrigated about thirty acres.

It's hard to remember so far back. I think Reed had thirty acres under our ditch. He had land under our ditch, land on both sides of the creek under the ditch. I think he irrigated it all. I irrigated 100 acres if not more. My brother, about one hundred acres. Marshall, I guess, about twenty acres. David Jolly, about sixty acres and Joseph Jolly about fifty. Frank Murphy irrigated from that ditch in 1880. I couldn't tel how many acres he did irrigate. He had over one hundred acres under the ditch. I do not know whether he irrigated it all or not. I do not know how many acres he irrigated. In 1880 we extended the ditch down to Murphy's. In our ditch in 1880, in the spring of the year, after we got through irrigating, we went up above the forks of the ditch and turned the water out of the ditch and we cut in deeper from the forks of the ditch to the head. That was in June or July, 1880. We cut it deeper for a mile and a half. Somewhere about one foot deeper. We also cut it out. Made it possibly one foot wider. Besides extending that ditch down to Murphy's place and deepening and widening the channel from the head down a mile and a half to the forks of the ditch in 1880 we also put in a head gate and a flood-gate in that year. I do not remember whether we put in the head gate or not that year. I do not know whether we put in the gate at the creek or notand there was one or two years we did not run it out of the channelof the creek and afterward we made a contract with McElroy to carry it over his place and take it out above the narrows, take it out above where the falls were and turn the water from the creek into the lake at the upper end of the lake on McElroy's place. With reference to where we put the location notice, we took the water out close to the point of the head-gate or dam on the creek at the head of the lake. It was near the same point. I think we run the water

There is nothing else that I remember of that we did in the year 1880. In 1881, we turned the water around through the lake and built the dam at the head of the lake. We put the dam across the creek and another across the lake at the lower end of the lake. I think the dam at the head of the lake cost about $300.00 and we put in a head-gate there and had a head of water standing there. That is the place Willsie spoke of having measured, the dam and head-gate, but that is not the dam. We made it out of brush but it caught fire and burned up two or three years afterward but we still took the water out through the lake and then we made a cut there and a head-gate about ten feet long. That was done in 1881. Think that was when we put in the head-gate and took the water out of the lake. That was the head-gate Willsie took the measurment of that was put in in 1881, some time in the spring, probably in May or June. We took this head-gate out in 1882 or 1883 to lower it about three or four inches and then back again. That is the only change that has been made in it. The head-gate has not been changed. It is the same box or headegate except it has been lowered a little. The occasion for lowering it was that the musk-rats dug in around it and we took it out and fixed it up and filled in the sides and lovered it a little. That repairing was done on our head-gate. The dam that is at the inlet of the lake was put in in 1881. The head-gate that turns the water into the lake was put in there in 1881. But n changes have been made since that time. There has been repairing done on the dam and head-gate at the head of the lake but no material changes made. The dam or head-gate that turns the water into the McElroy lake, there have been no changes made in that. We had all the water running into the ditch, all we wanted and more and we put in a flood-gate down this way, down below the head gate from

the lake and turned the waste water back into the creek. That was put in in 1882. I think the second one was put in 1881 or 1882. It was put in at the same time we turned the water through the lake. There was no change made at the head-gate that we put in in 1882 at the head of the lake till the channel of the creek changed and we moved it over to the creek. In 1882 we constructed a dam across the creek at the point where we had put our original notice and turned the water around there to the lake. The dam that we put there in 1881washed out. To keep the water going into the lake before going into the ditch we put in a head-gate at the head of the lake where the channel of the creek run and turned the waters of the creek into the lake from the creek. That was in the spring of 1882. We turned the water from its natural channel from where we had first put in our ditch. In 1881 all the parties I have mentioned irrigated from this ditch. I do not think Burgess did in 1881. They irrigated in 1881 more land than they did in 1880. I do not know anything about how many acres Chase irrigated in 1881. Reed could not irrigate more than thirty acres. I didnot irrigate but a very little more and my brother twenty or thirty acres more. Marshall, I think, irrigated about th same, David Jolly the same, Jo Jolly the same. I could not state whether Murphy irrigated at al or not. He had about one hundred twenty acres under the ditch. The main ditch ran in a Southw-sterly direction in 1881, and when we built the dam the ditch from the lake came straight west or perhaps Northwest and we ran it out until it struck the line of the main ditch, that was done in the spring of 1881. The distance from the channel of the ditchto h the head-gate from the out-let of the lake to where it is connected with the main ditch is ten or fifteen rods. The width and depth of that channel as constructed was

eight feet wide and two feet deep. In the channel running from the out-let of the lake to the main ditch there have been no changes made there except that the ditch has been cleaned out and when it washed out it left some big boulders in there. Since 1881 there have been no changes made in that ditch down about fifteen rods. The flood gate is about twenty rods below the point where it connects with the main channel of the main ditch.

Prior to running the water through the McElroy Lake the water from the creek ran down our ditch for sixty rods and the ditch became the bed of the creek for that distance and in 1881 we diverted it through the lake. We took it in at the pper end of the lake and out at the lower end of the lake and turned it into the ditch from the lake. The upper end of the lake comes right around where the stake stood which we put up for our location. If I had a map of it I could explain it better. The stream did not then cease to flow through our ditch. The water still flowed through our ditch until three or four years afterward for fifty or sixty rods. After we had turned it into the lake, it followed the old creek bed. The McElroy lake is on the farther side of the new channel. It makes a long bend, it comes around by McElroy's house. We turned the water just back of where the narrows were. I think the new head-gate was put in there just where the narrows were just where the location notice was put in the first place at the dam and that was just a little bit below where the waters were turned into the lake.

To Mr. Schrader.

At the time we turned through thereabout 1000 inches of water, I guess. I do not think Sam Morris irrigated in 1881. In 1882 I don't think we did any work except just to keep it clean. There was work done through [illegible]'s place to Sam Morris' place. That I do not know any-

thing about.. I did not have anything to do with it. In 1883 I do not think we did any work only cleaned it out in the spring before we turned in the water. I do not remember doing any work on it in 1884. In 1882 besides the persons I have already mentionedirrigated, I don 't remember whether Burgess did or not. I could not remember whether Sam Morris did or not. No work was done in 1883 that I know of. In 1885 we did a lot of work upon it. I could not remember and it might have been in 1884 but themoss got to growing in the ditch and we could not get as much water down as we wanted without over-flowing Osa Chas's and so we went to work an cleaned out from the forks of the ditch clear up to the Ditler place and we made it two and a half to three feet deep up there. I do not remember of any mue work that we done at that time. I don't think there was any more work done on it until it was enlarged for years after to make it larger that is at the upper end of the ditch. Before the enlargement it was surveyed by Oscar A. Wicker. He was a surveyor, I think hewas County Surveyor at that time. He was a surveyor any way. The enlargement was commenced in the fall of either 1890 or 1891. The work was doen by contract. I think it was not put in writing. I do not think it was. I had a contract for a mle, F.M.Morris for a half amile, Murphy one half mile and Thomas Carroll had the rest. My division ran across my land and on to Marshall's and about over one of the Peel's placed. Sam Morris division was next mine. Francis Morris' was on his own placed. Murphy's division was on his place and run up on to Maurice Kelliher's place. As a matter of fact on my division the ditch was widened probably one and a half feet. It might have been deepened three or four inches. Part of it was dredged, we did the work with a plow and scraper. It was run out by a surveyor to see if it was

down to grade. The ditch was to be two feet deep and eight feet wide. Eight feet across at the bottom. Where it was level we did not make any slopes except on Ditler's in the cuts and there were some in the Murphy's There was a cut there and slopes for a short distance. The slope there was about one third I think. In 1879 when we did our work there and turned our water in after the first notice which had been postedon the ground had been washed away, I posted another notice in the spring of 1879.

(Witness shown paper marked Ex.I.) That is the Charter we took out. We got it from the Territory at the time we incorporated. I posted these two notices some time before we got the charter back from Yankton. It was right away after we incorporated. It was posted right on the north side of the bank of the creek where the first one was posted. The other notice washed away and we posted this notice. We put it on the north bank just the other side of the creek when it was running down our ditch thru through the new channel. It was on a stake driven in the ground and I took a piece of board and nailed it on the stake and kind of boxed it and the notice was put on it and it was covered over with shellac. I put that on it to keep it from being weather-beaten. Nobody helped me post it.

Q. And who composed this Rapid Valley Irrigating Company?

Objected to as incompetent, irrelavant and immaterial and not the best evidence. Objection sustained. Excepted to This is a certificate of the corporate existence of the Company.

Exhibit 1 being a paper marked by the stenographer for identification and being identified by the witness, offered in evidence, read to witness. Objected to as incom-

competent, irrelevant and immaterial and not the best evidence. Objection overruled, excepted to.

TERRITORY OF DAKOTA.
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CERTIFICATE OF CORPORATE EXISTENCE.

WHEREAS, David Wells, Clarke Lewis and Freeman Lewis have filed in this office a certificate or declaration in writing as provided by Section 389 of the Civil Code of this Territory, setting forth all the facts required to be stated in Sections 386 and 389 of the said Civil Code and have in all respects complied with the requirements of the law governing the formation of private corporations as contained in the Civil Code of this Territory;

Now, THEREFORE, I George H. Hand, Secretary of the Territory of Dakota, in virtue and by authority of the law do hereby certify that said parties their heirs and successors have become a body politic and corporate under the corporate name of the Rapid Valley Irrigating Company and by that name have the right to sue and be sued, purchase, hold and convey real and personal property and to have and enjoy all the rights and privileges granted to private corporations under the laws of this Territory, subject to the articles of theirincorporation and all the legal restrictions and liabilities thereof.

In Testimony thereof, I have hereunto set my hand and affixed the great seal of the Territory of Dakota.

Done at Yankton this 7th day of February,1873.

George H. Hand.

Secretary of Dakota Territory

SEAL.

Q. Mr. Lewis, who beside David Wells, Clarke Lewis and yourself composed the Rapid Valley Irrigating Company? Objected to for [illegible] irrelevant and immaterial. Exception noted. Excepted to.

I posted this second notice upon the ground before we received that paper back(E.A.L.) It was after we had incorporated and the notice was posted before we had received the charter.(Witness shows paper.) These are the articles of incorporation of the Rapid Valley Irrigating Company.

Paper marked Ex. C. Offered in evidence; admitted without objection. Read in evidence.

ARTICLES OF INCORPRATION.

Article I.This corporation shall be known by the name of the Rapid Valley Irrigating Company?

Article II. The purpose for which said Corporation is organized isnto convey water through their ditch for the use of persons engaged in agriculturalpursuits along the line of said ditch, for pecuniary profits to the stockholders in said Company.

Article III. The Office of the Company shall be held and its principal business transcated at Rapid City, Pennington County, Dakota Territory.

IV. The duration of this Corporation is expressly limited to fifteen years and no longer.

V. The stream from which said water is to be taken is known as Rapid Creek. The point on said Creek at which the water is to be taken out is aboutntwo miles East of Rapid City,D.T., near an elm tree known as the lone tree, which stands on the North bank about twelve rods from said stream in Pennington County, D.T., the course of said ditch is as follows, to-wit:

Commencing about thirty rods Southwest from said elm tree on the north side of said Rapid Creek and extending in an easterly direction on the North side of the Creek a distance of Twelve miles crossing the valley and reaching the high ground at a distance of about two miles from the point of beginning, thence following the high ground

nearly parallel to said Rapid Creek for a distance of ten miles, thence discharging its waters into said Rapid Creek all of which said line of ditch is situated in the County of Pennington and territory of Dakota. Said waters are to be used for the purpose of irrigating the agricultural lands adjacent to and along the line of said ditch.

VI. The number of directors of said Corporation shall be three until the first election, which election shall be held at Rapid City, Pennington County, D.T. on the second Tuesday of March A.D.1879? After the first election the number of directors may be increased to five, but no person shall be a director who, at the tme of his election, shall not be a stockholder in an amount of at least ten shares of the Capital Stock of said Corporation. David Wells, Clark Lewis and Freeman Lewis each of whom reside in the town of Rapid City, Pennington County, D.T. shall be directors and serve as such until the first election.

VII. The amount of the capital stock of sad Corporation is fifteen thousand dolars($15000) divided into three hundred shares(300) of the par value of $50.00 each.

These articles of incorporation made and entered into this 27th day of January,1879.

(Signed). David Wells.
Clark Lewis.
Freeman Lewis.

Acknowledgment.

Certificate of Secretary of State.

Q. Now, Mr. Lewis, I will ask you if any other person than those mentioned in the charter and articles of incorporation were members of the Rapid Valley Irrigating Company? A. No, Sir. Objected to as immaterial, irrelevant and incompetent. Objection sustained. Exception to.

I am the identical person named as Freeman Lewis in the

articles of incorporation and charter. The Clark Lewis mentioned in the articles of incorporation is my brother and the person to whom I have referred as David Wells, a the person on the witness stand the other day, is the same David Wells named in the articles of incorporation and a charter. We had John W. Mosklin to get up our articles of incorporation and he had to xxxxx do all the work except the posting of the notice. He had the notice written out. He wrote out the notice to be pated and we had to do the balance. He sent the papers to Vanatenand then received them back again. I don't remember whether I took the copy of that paper to the Register of Deed's office or whether he did. I did not know until about five or six years ago that the copy of the notice that I posted on the ground there in 1879 was not of record. I think it was in 1888 or 1889 I first learned of it. I think the orighal notice that I posted on the ground there in 1879 has been washed away. It was there for several years. I think it was there three or four years. The last time I saw it there was when I went there to turn the water in through the lake in 1881. That was the last time I seen it. The paper was gone. The board was still there. I can remember of seeing a hard lying there on the side of the hill at the time. The paper was gone but it was the same board. and the same stake. The board was nailed to the stake. I do not think there was any portion of the paper left. The notice that I posted on the ground there in 1879, to the best of my recollection stated the names as I have given them of the incorporators. The naes of the parties and number of miner's inches of water claimed and the name of the location that I has been described here. I do not know whether it gave the numbers of the ground it was on or not. I don't think I knew that the numbers of had yet been at that time.

It claimed three thousand inches and the names of the incorporators upon it were David Wells, Clark Lewis and Freeman Lewis who were the incorporators of the Rapid Valley Irrigating company. The course of the ditch as it was set out in that notice is a northeasterly course until it strikes the bluff then in a southeasterly direction along the foot of the bluff, that is the northerly branch. The south branch running in a southeasterly direction for two and a half miles where it was wasted in the creek. Two and a half miles from the forks of the ditch would bring it to where it was wasted on what is known as the Tom Taylor place, it was then known as the Al Burgess place, owned by J.M.Woods. There it is to be wasted according to this notice. On the north side according to the new notice I don't remember where it was to be turned back. I know where we did turn it back on the north side . It was to be run down to a lake about twelve miles from the notice but it was first turned down a draw on the north side of the creek. It was in a draw on the north side of the creek, it was a draw more than a lake. We turned the waste water in there. We posted the second noticeas near as we could to where the first notice was posted and all of Rapid Creek was then turned and going down the ditch. At that time it did and for four or five years afterward. After we posted the second notice we took a second location and put it there in the same place. At that time the creek was connected with the ditch by this new channel that was running through there. We used the new channel for a couple of years and after that we run it through the Mc Elroy place and turned it through the lake. At that time we put in a dam upon the creek and turned the water into the lake. We put in a headgate there. I think we turned the water in through the lake in 1911 and that was the time we put

the head-gate in at the lake. We put one in at the upper end of the lake where we took the water out of the creek. Since then an amended location has been posted. I saw it after it was posted.

Q. When was that posted with reference to the time the original notice of 1878 was posted? Plaintiff here objects to the introduction of any evidence with regard to the amended location notice as incompetent, irrelevant and immaterial. Objection sustained. Excepted to.

I know the plaintiffs in this action. Have known them ten or fifteen years. I guess I have known most of them as long as they have been here. At the time of thelocation of the defendant's ditch I don't hink any one of the plaintiffs was in the country. At the time of posting th notice I don't remember of any one of them living on the Valley unless it was John Hunt. It seems to me that he was somewhere in the country. I think that he was living over at his father's place. On the day of the incorporation of the Rapid Valley Irrigating Company, February 7th 1878 there were a few scattering persons lived in Rapid Valley. I recollect Thomas and Charles Allen and George W Thorpe. They were twenty miles below the end of ditch. In the fore part of 1879 when the defendants commenced to irrigate their land under this ditch I could not swear postively whether any of the plaintiffs or their predecessors in interest were living in Rapid Valley at the time or not. My recollection is that George Hench and Blanchard were. I could not say whether any of the balance were or not. With those two exceptions I don't think there were any of them living there. I don't remember of the others living there. I could not say positively. With reference to the public highway from Rapid City down Rapid Valley, the ditch crossed the highway first then the old trail was on my place but after we built the ditch

then travelled a little further East between my place and Marshall's. That would be the southwest corner between the Southwest quarter of the southwest and southeast of southwest of Section Ten and north of range eight, E.B.W. In 1879 the ditch crossed the public highway at the same place. In 1879 it also crossed the highway between ten and fifteenon Mr. Hays' place. It crossed the road out of ten into fifteen. In 1880 it crossed it in the same places and I think the end of the ditch was below the road in 1880. I think the crossings were all in the same places in 1880 and are all in the same places now. The plaintiffs or their predecessors in interest settled down the Valley shortly afterward. I think I met most of them when they first came there. In 1883 all of the defendants whom I have mentioned and Al Burgess and Sam Morris or their predecessors in interest irrigated their lands from the defendants' ditch. In 1884 I don't remember of any one else unless there was Charles Hunt and John Foreman. Hunt got twenty-five and Foreman forty inches of water. Since 1880, in addition to the persons I have mentioned Eastman got water but he used it upon the same landForeman bought for and there was Ellwood Williams and Seivert Neif. They got water from that ditch last year. Williams got fifty inches, neif twenty-five. Of the original locators that I have named Jo Jolly has used more water durhg the time. He has used seventy-five inches. Ellwood Williams and Seivert Neif are all that I remember of who have received any water in excess since 1880 of what they received prior thereto from the defendants' ditch. Jo Jolly has received more water from defendants' ditch since 1880 than prior thereto. In 1880 he received seventy-five inches. In 1878,1879,1880,1881,1882, 1883, 1884, the condition of the land thereon under the defendants' ditch was=, during those years he put it all

under cultivation and in grain and in the last few years a large portion of it has been set back into grass again, meadow. When the defendants' ditch was first constructed on the land claimed by the defendants, two thirds of that cultivated in 1894 was set back into meadow by the defendants in the year 1900. Set back since about 1896. Since 1900 I think there is about one third less of water used by the defendants out of their ditch than prior thereto. It does not take so much water to irrigate the landnow as it did when it was all grain land though we use about the same amount of water and when we irrigate we turn it off. There is some of it that don't require much water. It don't require to be irrigated so often. When we irrigate we use a full head of water and when we get through we turn it off. Q. Now, what amount of water, how many miner's inchesof water would be necessary to the defendants to use?The whole three thousand inches of water that they claim or a less amount? Objected to as immaterial and irrelevant. It is not the questón of how many iches they need but the amount they appropriated prior to the plaintiff's claim. Objection sustained. Excepted to. The experience I have had in using water for irrigation purposesother than that which I have described on the witness stand this morning is, I have helped to put in head-gates and I have worked on the defendants' ditch. I have made measurements of the head gates and dam. I have made measurements of this ditch. Q. How many miner's inches of water will flow through there under a six inch pressure, if you know,or a four inch pressure? Objected to for the reason that the witness has not qualified himself. Objection sustained. Excepted to. The size of the opening in the sai gate I think is a little over seven feet and eight inches. My recollection is that the box is eight feet wide. There were some strips put in there for the gate to shut against. The box is three feet deep I think but the head-gate under does not think,

that I think there would be about fourteen or fifteen inches that would pass through it. Fourteen or fifteen inches of water in depth that would pass through it and the stream would be seven feet and eight inches wide. The size of the box that we put the head gate in is twelve feet long three feet xxxx deep and eight feet wide. Q. Give me the grade of the box? A. I don't think I can give you the grade of the box. The ditch was surveyed one-fourth of an inch to the rod. Plaintiff moves to strikeout the last statement of the witness as not responsive to the question. Motion granted; excepted to. At the point where the box was put down the ditch was not surveyed at all from the ditch up to the lake. We just made the cut over there and it was a very heavy fall. From our ditch up to the head-gate at the lake it was not surveyed at all. We just put in the cut there to carry the water through. The fall was four or five feet in the whole distance of about two hundred feet. The dimensions of the head gate at thelake are eight feet wide. The size of the box at the inlet of the lake is eight feet wide and there is some strips for the gate to shut against. The strips are four inches wide I think. The size of the opening through the head-gate into the lake is large enough so we could take in four or five thousand inches if we want to. We take in fifteen or eighteen inches of water in depth there, I think. The size of the box is seven feet and eight inches wide and twelve feet long. I don't know what the grade is. Its a good heavy fall. The capacity of the ditch below the head-gate leading from the lake down to the flood gate would carry three thousand inches of water. There is a good heavy fall to the ground all the way down there. There are two cuts. They extend for about three hundred feet, I guess, both of them. The first cut is about seventy

rods east of the flood-gate the second ninety or one hundred rods east. For the flood-gate directly east the banks of either side of the ditch are two and a half feet at least deep. For the first seventy rods until you come to the first cut about three feet deep. The ditch at the flood-gate has not been over-flowed except by freshet. The head-gate could not over-flow except by freshets. It has been over-flowed by freshets from the creek. The head-gates have been over-flowed by the creek during a freshet and so has all the country around there.

Q. Mr. Lewis, who is the Rapid Valley Irrigating Company? Objected to as not the best evidence. Objection sustained. Excepted to.

The dimensions of that head-gate, the one that was first put in, at the inlet of the lake, was eight feet wide twelve feet long, four feet high. The dimensions of the opening in that gate was seven feet eight inches wide, four feet deep when the head-gate was not in. When the head gate was in it was the same width and fifteen or eighteen inches deep, that was the size of the opening through which the waters passed. The one that was put in there after the fire was exactly the same size. The one put in after the fire must have been in 1881 or 1882. In 1882, I think. The first one was put in there in 1879. With reference to the time when the certificate of location was filed at the register of deeds office to the posting of the notice, we come up to town and I had Van Clue draw up the papers and the notices and we took that down and I got some shellac and Tom Poinsett and me, he was down there living with me, we put on the shellac and we put it on a stake and set it into the ground and put it at the head of the ditch and where I saw it afterward. It might have been a week, it was some time afterward we came into town

and had it filed. We filed our notice after we had posted it. I am sure of that. We had both notices down t the e with us and we put one of them on a board and posted it on the ground there and we brought the other one up to town and filed it. (Witness shown paper marked, Ex. 3 for identification. This is the charter for the last company. Exhibit 3 offered in evidence by the defendants. Admitted without objection. Read in evidence.

Hermann Chatlin & Del Co.

Offered in evidence. Objected to as incompetent and immaterial. Objection overruled. Excepted to. Read in evidence.

Know all men by these presents:-

That we Francis M.Murphy;Francis M. Morris; Freeman J. Lewis; Samuel J. Morris and Jay P. Eastman, all citizens of the United States, over the age of 21 years and bona-fide residents of the County of Pennington,State of South Dakota, have this day associated themselves together for the purpose of incorporating under and by virtue of the laws of the State of South Dakota, as a corporation, do hereby make, sign and acknowledge the following as the

-:ARTICLES OF INCORPORATION:-
of the

RAPID VALLEY WATER COMPANY.

-I-

This corporation shall be known by the name and style of the Rapid Valley Water Company.

-II-

This corporation is formed for the purpose of acquiring by purchase and appropriation, and taking and using the waters of Rapid Creek in Pennington County, State of South Dakota, by ditch or flume on one or both sides of said creek from Rapid City to the Cheyenne River in said County and State for Agricultural, Irrigating, Milling, Domestic and other purposes, for the use of parties engaged in agricultural, milling and other useful pursuits and for the pecuniary profits of the Stock-holders of said Corporation.

-III-

The place where its principal place of business is to be transacted shall be the city of Rapid City, Pennington

-2-

County, State of South Dakota.

-IV-

The term for which this corporation is to exist is Twenty (20)years from the date of incorporation, reserving the right in said corporation to renew the charter for a longer period, as provided by law.

-V-

The number of directors shall be Five(5), who shall carry on the business and manage the affiars of the Corporation and have such other powers as provided by law, at least three of whom shall be residents of pennington County South Dakota; and such Directors shall hold their offices until the first annual meeting in June 1894, or until their successors are elected and qualified; and the names and residences of such who are to serve until the election and qualification of their successors are as follows, to-wit;

Francis M. Murphy,Rapid City,Pennington County,South Dakota
Francis H.Morris, Rapid City,Pennington County,South Dakota
Freeman J.Lewis,Rapid City,Pennington County,South Dakota.
Samuel J.Morris,Rapid City, Pennington County, South Dakota.
Jay P.Eastman,Rapid City, Pennington County,South Dakota.

The qualifications of the Directors shall be defined and prescribed by the By-laws of this corporation.

-VI-

The Directors of said Cororation are empowered to make Prudential By-Laws as they may deem necessary for the management of the affiars of the Corporation.

-VII-

The Capital Stock of said Corporation shall be Fifteen Thousand Dollars($15,000.00) divided into Three Hundred (300) Shares of the Par value of Fifty Dollars($50.00) for each share, and shall be assessable, for the total assess-

ments that may be levied on said Stock by said Corporation any one year shall exceed in the aggregate and amount equivalent to thirty per cent of the Capital Stock of said Corporation actually paid in, to wit: $5,000.00.

In testimony whereof the above named incorporators have set their hands and seals to these articles of incorporation this 20th day of January, A.D. 1894.

(Signed.) Francis M.Murphy. (Seal)

Francis M. Morris, (Seal)

Freeman J. Lewis. (Seal)

Samuel J. Morris, (Seal.)

Jay P. Eastman, (Seal.)

Acknowledgement of Notary.

Certificate of Secretary of State.

The waste ditch upon the defendants' line is on the west line of the Eastman place, it used to be the Forman place. I do not know where that section line is. The water is there conducted by the main ditch by a dam and ditch to Rapid Creek. I think it is about five feet wide, one foot or fifteen inches deep, five feet wide at the bottom. It is carried down the Little Giant ditch in a flume. It runs on John Grady's place perhaps one hundred yards. It might be a little more and it might be a little less. From there it goes out into the ditch and runs out into the Creek. Eastman gets his water out of the main ditch. He takes out one of his laterals at his west line and there is a kind of a sag down in the middle of his place and he takes out another lateral on the east side of his place. He uses seventy-five inches. I do not know how long a time he has been using seventy-five inches. Foreman used forty inches of water on it when he owned it. I don't remember just how many Eastman did get. I think he got thirty inches of water for that land. He bought the land from John Forman about two years ago I think, two or three

years ago. Williams and Reif get their water out of a lateral. They take it out at the end of our ditch. Reif gets twenty-five inches and Williams, Fifty. The water is measured out to these people out of a box and a head-gate. We plant the head-gate so you have to raise the water up so far so as to get the amount of water and it is right in the end of the ditch and it is set there so the opening is fixed for the amount of water just the same as the others get it, I think the head-gate is raised five inches for 125 inches of water or it may be five and a quarter inches. Below Charlie Hunt's place there is no more water taken out except that taken by Eastman, Williams and Reif. The water in the ditch that does not go down this lateral ditch to Reif and Williams goes into the waste water ditch and is emptied into Papid Creek about one mile above the dam of the Lone Tree Ditch. The waste water ditch runs on the east line of the Foreman place between the Eastman and Foreman places, south of the creek. Prior to the enlargement of this ditch I got one hundred twenty-five inches from the defendant's ditch. Since the enlargement I get the same. I never saw the ditch more than half full and that was the time of the big rain. I hold fifty shares of stock. I can give as near as I know the number of inches of water used by each customer along the line of this ditch and the number of shares of stock held by each member and the number of acres they have under the ditch. W.H.Murphy is the first man, he has got about one hundred twenty to one hundred thirty acres under the ditch, he gets one hundred twenty-five inches of water, he owns seventy-five shares. The next man is John C. Reed. He has twenty-acres, receives thirty inches of water and has no stock. I am the next man. I have got one hundred fifty or one hundred sixty acres under the ditch. I get one hundred and twenty-five inches of

water, and fifty shares of stock. The next man is J.W. Woods;he gets one hundred fifty inches, has forty shares of stock. The next man is F.M.Murphy. He has one hundred twenty or twenty-five acres under the ditch. Gets one hundred twenty five inches of water, has sixty shares of stock. The next man is Sam Morris. I don't know positively how many acres he has got, about one hundred fifty.Somewhere about One hundred forty or fifty. I think he gets one hundred forty inches. I think so, I don't know. He has fifty shares of stock.The next man is Charlie Hunt. I guess he has about twenty five acres. Gets about twenty-five inches of water. Has no stock. He got two and a half for the right of way and twenty-two and a half is what he buys. The next man is Eastman. He irrigates I don't know how many acres. He uses seventy-five inches of water. He has fifteen shares of stock.. The next man is Seivert Rief and he only got water last year. He got twenty-five inches. I could not tell how many acres. He has no stock. The next man is Ellwedd Williams.He gets fifty inches. He hasn't any stock. No one on the south side of the creek has any.There are three hundred shares of stock in the company. Jolly got water there one or two years after the ditch was enlarged. He got seventy-five inches; Joseph Jolly. You could not water any ground at all with five inches. You would have to have fifteen or twenty inches to do anything at all. We have only measured it through the boxes for about five years. Before the boxes were established I cannot remember how many acres I did pay for. Before the measuring of the water in the boxes I think I irrigated all but one year. I just irrigated my own place and after I bought my brother out I irrigated that it seems to me. I am not positive whether I did or not. When I speak of the one hundred sixty I owned and purchased I mean part of the I purchased from him. -30-

While I was irrigating my land the portion owned by him, he was irrigating it. It was getting the same amount of water then as now. After I bought Clark Lewis out I sold the east half of it. The excess of any of the water that is carried along in this ditch that is not used by the consumers all goes down the waste water ditch down into the creek above the plaintiff's dam.

Q' Now you may state if during any of the years since the location of this water right and up to the present time that defendants or their predecessors in interest have used to exceed one thousand inches of water. Objected to as leading and suggesting anxx opinion. Sustained; exception.

CROSS EXAMINATION.

In 1883 I irrigated just as much land as I do now. I don't know how many acres Clark Lewis irrigated in 1883. With reference to the amount of new irrigaton on this land there is just as much irrigated and no more than he irrigated. I don't know howmuch David Jolly irrigated in 1883. I think he irrigated somewhere from thirty to fifty acres. Wood is irrigating the same amount of land that Burgess and Jolly irrigated. He bought the Burgess land too and turned it all into the same field. He turned the Burgess field into the same place with the Jolly land. He waters some sixty or seventy acres there on the south side. Jolly did not water that much but that is the Jolly and Burgess places together. Jolly had forty or fifty acres and bewatered it all I think. I do not know how much he did water. I know what he had there but I do not know whether he got water on all of it or not. I think he watered it all. I think there is one piece of that land there that is not in shape to be watered. I do not think Wood has been following the Marshall plow

as much as Marshall did. I don't know exactly how much Marshall did irrigate. He could not get water on all of it. I do not know how much Sam Morris is irrigating. I don't know exactly how many acres, he irrigated in 1883. In 1884 I think he irrigated all he had under the ditch. I do not really know whether he irrigated all or not. I am not positive what year the ditch was built down the Charlie Hunt' place. Before John Foreman sold out I think he irrigated forty acres. I do not know what year he first began irrigating. I couldnot tell you without referring to our records. It's as far back as 1882 I think. It was probably 1885 or 1886. I do not think it was so late as 1887 or 1888. I can refer to the books and tell you when he got the water. I could not tell you without our books. I have been studying about when Sam Morris first got water and I looked it up, he got the water in 1881. I think he made the ditch from the Morris place himself. Just enough to carry water for him the first year. And this continued along until it was enlarged and extended. It was the size he made it until that time. No, that was from Murphy's he made that ditch. I think Murphy took the first two miles of the waterway his place and Sam Morr's took it down from there and made it big enough to do that year and then it was enlarged afterward. I don't remember what year we put it down to Charle Hunt's place. I could not tell you without referring to the books. When it was built to Charle Hunt's place it was sufficient to carry the amount of water he wanted. I think it would be about five feet wide. All the waste water is turned into the waste ditch. It runs through a draw there and out through the ditch into the creek. I think the water runs into a draw before it is turned into the ditch that runs down below to Hunt's and wastes on the Foreman place. It would be one half mile I think beyond the Sam Morris

The Charlie Hunt place is about the same distance from Rapid Creek. The Charlie Hunt place is just opposite the Foreman place. The tree claim there is about one half mile. The other runs close to the creek. The Foreman place lies north of the creek. It is about forty or fifty rods from the south line of the Foreman place to the creek. It lies north of the Aleck Shoemaker place, north of the Grady placethat is one quarter wide and one mile long. The creek runs through the north eighty of the Shoemaker land. There is not more than forty acres of it on the north side of the creek and of that I think there is about twenty acres here on the south side. I don't know any such a place as the Porter place. I didn't know there was a man named Porter who lived on the Valley. I guess he must have lived somewhere else if there was such a man. He did not live there. There is a timber claim there of somebody's south of the Rosson place.

Eastman uses seventy-five inches of water on the north side of the Creek on the Foreman and his place. I do not know how many acres he has. His place is on theLittle Giant Ditch. I do not know whether he runs the water from this ditch into the little Giant ditch or not. He might run his lateral ditch into the Little Giant, he bought his water and he can do as he pleases about it. The place that the water runs back into the creek is north of the Grady place and west of the Foreman place. It is just as close to the fence as we could run it. That ditch is for three fourths of a mile on the Foreman place and then it runs on the Grady place. The ditch runs from the Foreman place on to the Plunkett & Lynch place and runs from the Plunkett and Lynch . Notaing more than the tree claim on the Emma Jones place. It is on theother sideof the valley. It is not there at all. It is north of the creek and farther this way. Plunkett & Lynch have never

had any water to my knowledge from our ditch. They have not got any head gate in the ditch. I know we do not supply the Little Giant ditch. We used to drop the water into a draw at a point on the Eastman place. All we did not use of the water we let it runnofff in that way. That was at the corner of the Plunkett & Lynch place. I know we turned the water up there and when it goes into thewaste ditch and there is none turned out up there except the seventy five inches that goes to Eastman and the water that goes to Williams and Reif, that is all there is taken out there at the end of the ditch and the rest that comes down there is in the waste ditch. The box that measures out the water to them is on the Foreman land. It is a half mile in a straight line from the township line. The ditch crosses the township line just north of the public road on the north side of the road above the inside field of Eastmans. It is above the field. That is above the road and about six or eight rods in the field. It comes out on the north side of the road. We dropped some water for a coulp of years into a draw there that was some distance from the Foreman place. It was about a half mile I guess. I could not say how far it is across the Foreman place to the Shoemaker place from the west line of the Foreman place. I guess the west side of the Shoemaker homestead is about a quarter of a mile. It is a quarter of a mile across the Shoemaker land to the township line. I do not mean the west line of the Foreman place. I did not figure from the west line. The terminus of that ditch is a little below the township line and it is west one half mile of the eastman place. It is one quarter of a mile from the east line of the Foreman place to the township line. The east line of the Foreman place is the township line. It is south over a half mile as you come down the road from

Read's place to the township li[illegible] not know how many inches of water was used on the F. Morris place in 1[illegible] W[illegible] to measure the amount of water [illegible] went to each man. He got his share of the water that was in the ditch for the number of acres he had. I could not remember at all without referring to the books that were kept at that time. Thirty acres were watered by Osa Chase at that time. In 1883 I sold him the same amount he had all the time until he sold out I think. At that time I guess, Hunt's did not have a piece large enough to have any water upon. Read wanted water for thirty acres. That was in 1881, 1882, 1883. There was one year that he did not use any water. I could not say that year was 1883. I know there was a wet summer thathe did not use any water. In 1883, 1884 1885, I could not say as to the amount of water there was those years. I know he got water for every year but one year and I could not say what year that was.He got and used it for all the ground. In 1881, 1882, I irrigated about one hndred acres. I think it was pretty well over my place in 1880 and since that time we have watered all the land we have under the ditch. I think Hunt irrigated all the land on the Morris place under his ditch. I think he watered it all the second or third year he ran theplace. I don't think I have any means of knowing from the books the amount of water that was used on our place while Hunts owned it. I am not sure whether I have or not.We all paid for the water we got. Before we measured it we sold it from $1.50 to 75¢ an acre. That is $1. 0 for grain land and 75¢ for hay land. I do not know whether all the transactions got into the books of the corporation or not. In the early days instead of paying for the water we would go and work so many days on the [illegible] ditch, [illegible] of the work we did and the

ever work we did on the ditch there was a bill put in for it and we were then allowed that much of a water bill and I do not know how much we did pay. If a man bought water from the company he was charged with it and was credited on the books for it when he paid it. From our books I am not able to tell what all these transactions were so far back as that.

Book is produced and shown the witness. That is the book Q. Does this book show the amount of wateryou sold to Hunt when he was on the Morris place or on the Chase place? A. I guess you had better give me until morning to answer that question. It is not in my handwriting. There were different ones Secretary and there is a lot of books to look over here. I think Murphy irrigated as much in 1881 as he irrigates now. I do not know whether or not in 1880 he put the water all over his place. We do not keep a book showing the number of acres the water is used for. I will look it up and say what the book does show. Sam Morris, I think, the first year he got water down there was in 1881 and he only watered twenty acres that year but the next year he put it all over his lace. I don't know whether the books of the second company show the number of inches of water that has been consumed by ours company. I will look it up and give it to you in the morning. The south ditch below the flood gate was from five to six feet across below the head gate down on the Marshall place prior to the time of the enlargement in 1881. Now, it is about eight feet. Above the flood gate I think the ditch was let down a little deeper in one place where the ditch made a short turn in the creek. I think we made it a little deeper there. There was a turn in the creek there and the current made a kind of a bar there that had to be taken out and there was some boulders in there that

had to be cleaned out and the head-gate at the lower end of the lake was taken out and lowered a little like. It was simply cleaned out and there was no change made in the ditch to speak of. It was not intended to make it any larger. It would carry all the water as it was.

Tuesday morning.

There is not any flume on the Ditler place except xxxxx the head-gate or flood gate where it makes the overflowing of the waste water and that is only twelve feet long. The flood-gate is on the McElroy place. There is no flume on the Ditler place. The head-gate is on the McElroy place. The first flume there is the flume where you go over the creek with the south branch of the ditch. I have testified that in 1880 Reed, myself, Clark Lewis, Charley Marshall, Jo Jolly and David Jolly each irrigated a certain quantity of land. I do not know as to all the quantity of land that was irrigated by each of them up to the time the ditch was enlarged. Below the head-gate the ditch was enlarged from five feet to about eight feet wide at the bottom for three hundred yards below the Ditler place. I remember that in 1873 and along there that was the narrowest part of the ditch. It was not so wide on the bottom but it ran deeper. It would run two and a half feet deep there and it would run so swift it cut out a narrow channel and there were places in there it cut out so that the water was probably not xxx xxxx more than two or three feet wide and in 1878 we ran the water right around the bank of the creek and a freshet came and washed it all away and then we ran it through up over the hill and making this cut there it was so much deeper and we put the cut in there from the lake and it had a heavy fall in it and then turned it into the lake and cut across. We have a head-gate at the inlet of the lake. The size of the head-gate in there as the flood-gate is eight feet wide, previous to the enlargement. I do not

just remember its width but I think we have had the same flood-gate in there before and since the enlargement of the ditch. It seems to me that at first the water only ran through there six or seven feet wide and it seems to me that we made the box out of fourteen foot stuff at first. The waste gate of the ditch is above thepoint where they use the water for irrigating a half mile and that is where they use it on the Morris land. The land is so high as the head of the ditch that we can't use the water to irrigate there and there comes down through the lake four or five hundred inches of water that is not used at all. It goes back into the creek above the flood gate. The Morris land is firstland that is irrigated under this ditch. Pitler did take out a ditch there but that is his own ditch and not our ditch. He took it out for only three acres and then he used that for only one year. That is wasted on the Morris place. In my judgment all the parties using water and all the land used by our ditch has been watered every year since and before the enlargement of the ditch except on the Marshall place. There the place has been rented to parties who never used any water at all. I have been along the commencement of the ditch since its enlargement. I have been along the whole length of it. It run full before the enlargement down to the forks of the ditch at the time we were using it and since the enlargement it has never been half full. In places it was made deeper and was enlarged. It will carry two thousand inches of water. We have never run it full since the enlargement. Below the Marshall place it is running about half full when there are no dams full. The dams in the ditch will back the water a quarter of a mile. I have been to the upper end of it during the [illegible] time. I have been there during the season on an av-

crage once a week and the lower end I have not been there for some time. Only just when I happened to be down there. I was down there a couple of times last summer and during theyear before would not be down there more than two or three times during the summer. I have been at the waste ditch a few times. I know about what it is. This ditch down through the Morris place and down from the floodgate is an eight footnditch and then it gets to be a six foot ditch down to the lower end of the ditch.After the water isnturned out of it we do not need so large a ditch. I could not tell you how much of my time I put in on the upper end of the ditch from the General Morris place to the head of the ditch in the summer of 1892. I do not know now how much work was done on it. I could not say how much of the time I did put in up there myself. I most always sent a hired man up there. I don't know anything about measuring water at all. I always took notice of what water was in the creek and ditch both. I could not say what proportion of the timeI spent on the General Morris place where he turns the water out. I have no recollection whether I worked up there a day or not. I have been up there several times every year on that portion of the ditch in 1892 and after its enlargement. I was up there at the time I examined to ,let the water in the ditch. It was always in June or July that we had the shortage and it was those months I would be up there. I might have been upt there once or twice in July, 1892, I could not say whether I was or not. I used to go up into the field to work and I sometimes crossed the field and ditch both. That is two miles below the dam and below the forks of the ditch. All I know of the relative size of the streams of water in the creek and the ditch is from crossing the ditch below the forks of the ditch and when I would go up to the head of the ditch and then I always took notice

of what was running below the dam. I could not say whether I was up there this year or not. I might have been there once or twice in 1893. I have no recollection. I know nothing about the relative flow of the water in the creek and in the ditch above the forks in 1893 until I was up there to help them out a day. I am not sure whether I was there with them or not. I do not know whether I worked up there repairing the dam or not. They may have repaired it and I not been there. I would send a man and sometimes two or three. I think I was p there a day in May, 1894. That was during the dry weather. I think we had about half in the creek and half in the ditch. I judged that from the size of the streams as I saw them rnning right at the west line of the McElroy place. We were to have what we wanted and let the rest go and I think there was half in the creek. I made no measurements. We were repairing the dam to turn more water into the ditch. It was during the dry weather in the latter part of May. Was not up there after we fixed the dam. I do not remember what time it was we turned the water in last year. It was in April or May. I would not be certain when it was. I think it was the last of April or the first of May. I guess it was about one month after the water was turned in I was up there.? I think t was in May I was up there. I was above the forks in 1890. That was the only time I noticed the creek carefully up there. we wantdd enough water in the ditch. I have examined the books. They do not show who irrigated from the ditch prior to 1890 or 1891. I did not look at the books of the Rapid Valley Company. Murphy looked that up and I looked at this other one.

Re-DIRECT EXAMINATION.

At the flood-gate there is no head-gate designating the quantity of water turned back into the creek.

Francis M. Murphy, a witness on behalf of the defendants, testified as follows:--

I live on Rapid Valley. I am a farmer and stock-grower. I have lived on Rapid Valley since 1879. In 1879 I took up the land that I am living on now but I did not bring my family out here until the spring of 1880. I pre-empted my land. It is the north-west quarter of Section Fourteen Township One North of Range Eight.

I know where the dam and head-gate of the Rapid Valley Irrigating Company ditch is. My land is west of the head-gate about three miles. I have known defendant's ditch since the spring of 1880 or 1879 when it was located. I have known it ever since 1880. I have been connected with the ditch since 1880. I am one of the defendants in this action, and one of the stock-holders in the company.

The point called the forks of the ditch is on the Morris place, what was the Hecht place or the Chase place, owned by F.M.Morris. The ditch, from the place known as the~~xxxxx~~ floodgate down to the forks was not in 1880 a very large ditch. It was about five feet wide to the best of my knowledge. It was about twelve inches deep. From the forks of the ditch down to my place in 1880 it was a small ditch. It was perhaps three or four feet wide down to Reed and Lewis' place. I think it was a little narrower than that where it turned off from the Marshall place. In 1880 I extended the ditch down through the F.M.Morris place from the Marshall place to my place and a little more than half way across my land. If I remember right, when I constructed the ditch in 1880, I plowed five furrows and turned out one and then plowed

ed the other four and threw them outside and then plowed it the second time and scraped it out. I do not remember the numbe of the scraperm I think it was a number one or number two scraper. I think it was thirty-seven inches wide. The width of a number three scraper is thirty-seven inches and the length or depth is four feet and ten inches. The ditch I~~x~~ constructed in 1880 was perhaps a foot deep. The way I scraped this ditch out-- I did not use the scraper as we use it now. I had a team that was very good to back and we backed the team back and drove them across the ditch and dumped the dirt on the side of the ditch to make the border on the lower side of the ditch. We drove across the ditch and it would fill and we dumped it at the edge of the ditch. I would start in and hold the scraper handles straight up and would dig in as far as I could to fill the scraper and when we got to the edge of the ditch I would dump it. I think the ditch was about four feet wide on the bottom. I think alongi in June 1880, we had a rain. I remember it fell on the 7th day of June, 1880. The reason I remember it so well I had some oats sowed and it had not come up and so this rain came and sprouted the oats and before I could get the water down there the oats dried up again and when I got the water there it was in the latter part of June I commenced to irrigate. During the season of 1880, I irrigated perhaps twenty-five or thirty acres of land. About fifteen acres of oats and some grass land. In 1880 to worked on this ditch through the Geo Chase place and the Marshall place, widening it and making it a little deeper. That was some-time in the latter part of the summer. I think Freeman Lewis and Clark Lewis worked on yhat ditch in 1880, to connect it with myself.

I would not be sure whether Jow Jolly did some of it, We did some work on the ditch in 1881. I think it was in the fore part of the season in the spring . I think Morris did some of the work though I would not be sure whether Clark Lewis did or not. I did some of the work. I think we worked some on the Oce Chase place and some on the Reed place and I can't remember whether we did any work on the Lewis place or not. On the Chase place we cut it out and made it some deeper. It was extended to Sam Morris place I think from where I left it. I would not be sure whether we did that work in 1881 or 1882. In 1881 it was completed in the draw east of my house. That is the Shoemaker ranch. The Morris place is lying between them. We run it down inton a draw there. Maybe I am mistaken about that. May be we did not drop that into a draw there at that time. I think we took it down near the west bank of the draw. We run it along on the west bank of the creek and on his place. That extension was about a half mile more inlength. I think the ditch was about the three and a half or four feet wide on the bottom and I guess it was about twelve inches deep. In 1882 we enlarged the ditch principally all the way down. From the draw on the center of my place up to the head of the ditch, , in Section fourteen. We widened it some. I do not remember exactly how much and in some places we cut it down a little deeper as it was not in some places down to grade. I did some of the work and I think Lewis, Jolly and Sam Morris did some of the work. In 1881 I irrigated all of my land under the ditch except three acres. I think it is below the little Giant ditch. I irrigated in 1881 about one hundred five or one -

hundred ten acres. In 1882 I irrigated all the land under th the ditch except the threeacres I spoke of., being about one-hundred twenty-acres. In 1883 we did a good deal of work in the way of enlarging the ditch, from Sam Morris' place up to the Mc Elroy lake, a distance of about four miles. I think we extended it a little way down on the Sam Morris place. In 1884 I irrigated about the same amount. In 1885 I do not remember & any enlargements of the ditch thatyear at all. Aboutnall we did was to clean out the weeds. And that continued up to 1887 I think. In 1887 w extended the ditch to the west side of ths Joe Foreman land. , I do not know the section, I could not tell you. I think it is about one half mile west of the township line. We took the ditch a little beyond there. We extended it along perhaps an eighth of a mile. There was the land Lewis sold to Wood that we ran across. We gave him some water for the right of way. That was in the summer of 1887. There is a waste gate at the Foreman place. It was constructed in 1887. The waste ditch we constructed there in 1887 was two or three feet wide. I do not know the distance from the ditch to the creek. The Company did not build the ditch. Grady built that ditch and the company made a contract with him to waste the water for the right to use a portion of the water from the ditch and he was to waste the water. He constructed the ditch under that contract. He was to build the ditch and we were to procure the right of way along the line . That is, he was to turn th water into the creekand we were to furnish the right of way & for the ditch.

I know where the Lone Tree dam is on Rapi.. Creek. I do not know the exact distance. It is about a mile below the

defendant's dam. I mean the waste water ditch is a mile abov the Lone Tree dam. The dam of the Rapid Valley Company is about six or seven miles above the Lone Tree dam. The point where the water of the Rapid Valley ditch is turned back into the creek again is about a mile above the plaintiff's dam. I never measured it. I should judge it was about a mile. In 1880, to my knowledge, the following persons used water from the Rapid Valley Ditch;-Occ Chase, John C. Reed, Freeman Lewis, Joe Jolly and I think Dave Jolly, Clark Lewis and Marshall besides myself. These same persons used in 1881, 1882, 1883. The parties who used water in 1883 by reason of the extension of the ditch was I think Sam Morris. I would not be positive about the year though. I do not remember any other persons in 1882, besides myself. In 1882, I think Al Burgess besides the others named. In 1884 I do not know of any using water except the persons I have named. Up to 1887 besides the persons I have named I would not be sure whether Charley Hunt used it before that time on the tree claim. I do not recollect that he did. I could not state postively. After Hunt's came Eastman's or the Foreman place. That is Eastman's place now. He owns the Eastman and the Foreman place. And since that time I know of no others except Ellwood Williams and Sievert Rief.

I became acquainted with the head-gate of the defendant's ditch in the spring of 1880. The flood-gate on the line of the defendant's ditch on the McElroy place was put in in 1880 or 1881, I think. I do not think I could tell the size of the head-gate that was put in there in 1880. The head-gate at the inlet of the lake near Rapid Creek, I think was put in in 1882.

I do not think there is any difference in the size of the head-gate that was put in there at that time and the head-gate that is there now. The head-gate was put in there at the out-let of the lake in 1880 or 1881. The head-gate that was put in there then is the same head-gate that is there now. The flood-gate was put in there in 1880 or 1881, it is the same size now that it was then. The distance between the flood-gate and the head-gate at the outlet of the lake is a couple of hundred yards. It may be a little more and it might be a little less. The flood-gate that wasnput in then at that time as the flood-gate if it is there now is just the same. The ditch was enlarged to a considerable extent in 1883. It was enlarged since in 1890. I commenced some work on it in 1890 in the Fall. It was surveyed prior to that time. Oscar Ricker did the surveying. The work of enlarging was let by contract to the lowest bidder. Francis Morris took a half mile, Freeman Lewis a half mile, Sam Morris a half mile and I took a half mile. The half mile I worked on was Section Six as the survey gave it to us, Section Six as we had it surveyed. My section commenced at a point near the east line of the Marshall place and west of the Maurice Kelliher place and its terminus was just east of the black-smith shop, perhaps three hundred yards from my west line. The contract called for the ditch to be eight feet wide from the flood-gate to the dam, running through the north-east quarter of Section Fourteen. That was for the Sam Morris place. Its terminus below was the Lynch place and then it was to be six feet wide and two feet deep with the same natural fall of the ditch. I went along with the surveyor there and measured the distances and set

stakes and there were many places along theditch about one ad a half feet. I judge it was about a foot and a half from the bakk of the ditch back to the stakes on the bank of the ditch. I assisted Ricker in making that survey. I think Sam Morris and another man was with me. On Section Six near the east terminus of this section there was a little pl placein the ditch. Before we went to work, Ricker went to work and run the survey for the ditch of one quarter of an inch to the rod and he wanted it down to grade and as I said there was one place there that he had a great deal of work done on. It was where we had to keep it backed up to have the water run in the ditch, so the water would run in the ditch instead of running out over the land anjoining the ditch. It was a low place and water would not run over the hill without raising the water. When it was surveyed we run it with a triangle and a plumb-bob and the wind was blowing and for that reason we got it nearly on a level ther and so we had to cut down here on my place and we cut one place quite a good deal. In the cutnthere he made the bank of the ditch with a slope of one half to one. The average width of the ditch that we took out of the cut from th forks of the ditch to the east terminus of my section was about two and a half feet, I judge. Possibly three feet. From the flood-gate up to the head-gate at the out-let of the lake on the McElroy place there were no changes made just there. There was some work done there, cleaning out and some rock that had to be thrown out that had fallen in from the walls of the ditch. And there was some large boulders and we took them out. We went up there and cleaned these all out and that was all we did there at that time. We did not enlarge that part of that all. That part is

practically the same as it was before the enlargement of the ditch with that exception. Before the enlargement we ran the ditch pretty nearly full most of the time and since the enlargement I do not know of any time it has been more than half full. I have been along this ditch since the enlargement a good deal of the time. I had charge more or less of the ditch and my work would call me all over it. I had to travel up and down the ditch very often. I had to go and look after it to a certain extent from 1880 up to the present time. Before the enlargement we did not measure the water for the number of inches. We used to water by the acre. I had been accustomed to that plan in Colorado and we adopted it here. We started in with it here. I had been using water in Colorado since 1863. In the Platte River, Clear Creek, Pickett River all in Colorado, in South Park, on the Limeroon and Dead Limeroon, New Mexico.

In 1880, Joe Chase irrigated about twenty-acres. I think Reed had about twenty-acres and may be more than that. The next was Lewis and he irrigated fifty or sixty acres. Possibly a hundred, I do not remember exactly about that. Clark Lewis about the same, I should judge. Joe Jolly irrigated about thirty or thirty-five acres and Marshall about twenty-acres. In 1881, I irrigated about a hundred and five or ten acres. Marshall a little more than the previous year, about thirty acres. I do not remember but Joe Jolly might have had a little more. I would think he irrigated all he had under the ditch. I have no recollection of irrigating more myself. I do not know that Reed irrigated any more Joe Jolly irrigated in 1881. I could not state how much, pos-

sibly fifteen or twenty acres. In 1883 Sam Morris irrigated all the land that was under the ditch. I do not know as we irrigated a great sight. There was a great deal more rain that year but all the land was irrigated that year that was irrigated prior to that time. I mean all in 1884 that was under the ditch. Joe Jolly is the only person receiving any water from the ditch since its enlargement who did not receive water prior to its enlargement. We alluse the same water since the enlargement that we did before. We have irrigated about the same amount of land. I remember having seen the notice that Lewis spoken of having posted on the ground at the head of the dam in 1879.

Cross-Examination by Mr. Fowler.

Q. Where was that waste-gate that you stated was made in 1887 at, I think it was 1887. A. Yes, sir.

The ditch flowing from our ditch to the creek is about three feet, from two to three feet. I think the ditch was made larger. I mean the waste ditch. Yes, sir, I know about it. The ditch was enlarged by Grady. He was under contract to waste the water from the Rapid Valley Irrigating ditch and when it was not large enough he had to make it larger. The ditch was made wider in some places and deeper in 1891 and 1892. I think it was close to four feet wide and perhaps eighteen inches deep. It runs on his west line. He had a lateral ditch from that waste ditch to irrigate his land. He has got ten or twelve acres on the north side of the creek. That is all he irrigates from our ditch. We made a contract with Grady to irrigate out of the waste water ditch, to take water out of there for irrigating purpose

He irrigated ten or twelve acres. The contract with Grady was in 1887 and we have been furnishing him water for the ten or twelve acres ever since out of the waste ditch. The There is no agreement or guaranty as to the amount of water he shall use, just enough to irrigate ten or twelve acres. There has been but very little time during the irrigating season that there has been no water running in the waste ditch. A good portion of the time there has been but very little. There was not a large quantity of water in that ditch before it was enlarged. There has not been a large quantity since the enlargement. I do not think there has been any more water carried down the waste water ditch since the enlargement than before. Before the enlargement the water ran up on the ground and against the border of the ditch, and there is on the surface of the ground in this country six inches or a foot and in some places may be two feet, that the soil will not hold water. It seeps through and by cutting down we could get the water to run in the hard pan. Before the enlargement the water would seep thro' and run out on the ground and alkali it and for that reason also it was necessary that the water run below the surface of the ground. And I will state that we were troubled a good deal with these rolling weeds from the prairie. They would come down and lodge in the ditch and they made a dam in the ditch and having a small ditch it would cause an over flow from the ditch and stop the water running. They would wash along until they formed a kind of dam cause an overflow. And we would have to stop our work and go up and repair it. But by having a good large ditch we did not have to clean it out so often as it will not fill up and will

carry off these weeds and a small ditch will fill up. And another thing,-when a rain comes and there is a lotmof water running off the ground it will not over-flow the ditch and wash out the border. The intention they had in making it larger was not to make it so it would carry more water so much, as to carry off the weeds. There was all the water in the ditch before that we needed. And if we had a good sized ditch it would carry all the water below the surface of the ground and would not over-flow the ground so. Our intention was not to carry the water deep but to carry it all below the surface of the ground. Except where it is in a cut the ditch was contracted to be two feet deep. The surface soil on the land here is not more than six inches deep in various places on this valley land. Along the creek there you find the soil much deeper than you do where you strike the higher land. Where the ditch isnconstructedI I think it is a little thicker, it is as good as down the valley anywhere. Before the enlargement a portion of the wa ter ran below the surface soil. Along nearthe creek the soil is deeper. As the ditch is constructed now the surface of the water runs below the surface of the ditch-below the surface soil in the ditch- in some placees. At the upper end of the ditch it does not. The damage to the sides of the ditch would be just the same to a large ditch as it would be in a small one. With reference to the rolling weeds and other brush getting into the ditch, a larger ditch would carry them away better than a smaller one.

I know where the ormendorff place is. It is south-east of my place. It is below the Little Giant dam, all of it. It is below the Little Giant ditch, all of it. It is south of it. No portion of it is irrigated by the Little Giant

ditch, that I know of. There never has been any that I know of. No part of the Taylor place runs across the Little Giant ditch. No part of the Taylor place is irrigated by the defendant's ditch. None at all. There is a little place there in the north-east corner of the Taylor land where, in running the water on the land some of it did run down on the land and they kicked about the water running on it. None of the water from our ditch runs through the Little Giant ditch. No part of it escapes or runs through or into the Little Giant ditch or below the Little Giant ditch at any point. I have no stock in the Little Giant ditch. I do not irrigate from the Little Giant ditch. Charley Morris' land is right south of my land. The south-west corner of my timber claim runs within at least a qarter of a mile of the creek. But I guess it is just a quarter to the sedtion line and there on that side it is perhaps one hundred yards. My timber claim is south of my preemption. It lies between the creek and my preemption. There is eighty acres in one claim and one hundred sixty in the other. I have two hundred forty acres in all. Of the two hundred forty acres about one hundred twenty is below the defendant's ditch and about one hundred twenty lying north of it, makingin all one hundred twenty acres that can be irrigated from defendant's ditch. All of my land but one hundred twenty acres lies north of defendant's ditch. There is one hundred twenty acres between the ditch and the creek. One half of may land is on the north side of the ditch and one half on the south side of the ditch. John McElroy owns the Tom Gee place. At least he claims it. It is north of Rapid Creek. It is north of the Little Giant ditch. It is not irrigated from the defendant's ditch except about five acres. Most of it

is on the north side of the ditch. There is only five acres under the ditch. There has been some talk about the water being carried east of the draw and being taken up again and carried through the ditch. That is by the Eastman land. That is the Foreman place and the Shoemaker place and the Losson place. There is three hundred and twenty acres of the Shoemaker place. There is a small narrow strip of the six hundred and forty between the Little Giant and the defendant's ditch. I never paid much attention to see how much there was in it. , May be twenty acres, may be more, may be less that is under the defendant's ditch. I do not know as there is any of the Shoemaker land. The Little Giant ditch runs east. I could not say postively. I think it is on the west quarter section of the Shoemaker section. I could not state whether there was any of that land above the Little Giant or not, The Shemaker place is a mile long and a quarter wide. It is a mile north and south. I could not state with reference to the section line I am not familiar with the lines of it. There may be a section line along there. I have not paid any attention to it. The quarter section I have referred to- it lies west of the township line. There may be a quarter section here above the Little Giant ditch. It may be so. I would not say so. As to the lines of the land, I do not know of course I know the general course of the ditch through there but as to the lines I could not say where it is.

The defendant's ditch is, I think, extended to the east line of the Leslie Thompson place. I do not think I could give the number. It is east of the township line. It must be a half mile from Ellwood Williams' place.I do not remember just how far. The ditch was extended down that far in

1894. I do not remember just whereabouts it isn on the Leslie Thompson place. I think it runs close to it or may be by it. I could not say. It runs across the Plunkett and Lynch timber claim. Reif and Williams wanted it and we took it down there. We furnish them seventy-fiveinches of water. The Ellwood Williams place is east of the ~~Xix~~ Lone Tree dam. East and north. That would be down the creek.

Re-Direct Examination by Mr. Schrader.

Q. Does this extension extend to the east line or the west line of the Thompson place? A. I made a mistake about that I think it is west of that. That would be west and north of the Lone Tree ditch in the neighborhood of half a mile . The waste ditch flows through the Grady place. It runs from the ditch to the creek at a fall of about seventy-five feet to the mile. I would say fifty feet to the mile anyhow from the head of the waste water ditch to the creek and sine the enlargement of the ditch there has never been the amount of seepage from the ditchthat there was before he enlargement. We have not had to clean it out any to speak of since it was enlarged.

Re-Cross Examination by Mr. Fowler.

Reif and Williams take out a lateral ditch there at the headgate from the main ditch.

Re-Direct Examination by Mr. Schrader.

They take Seventy-five inches. We turn it out to them. They get and pay for seventy-five inches of water, no more.

Examination by the Court.

There are two waste ditches on the line of this ditch. One is at the flood-gate below the head-gate and the other is the waste ditch we have just been talking of on the west side of the Foreman place. What I said with reference to

turning the water from oneinto the Little Giant ditch, I said there is a small place where they were irrigating a little timber claim there that they turned the water on ar as they turned the water on some of it run overathe groun on the Little Giant ditch and Matt Woods kikked about the water running over his land and he come up and said he wi ed me to take care of my waste water and I had no other w of wasting the water but to let it run on down. There was nothing to do with it except to empty it into the Little Giant ditch . That was just a little water that wasted from the tree claim. Whatever water run into the Little Giant ditch there wasted from the tree claim, was what the tree claim had failed to absorb.

ReBirect Examination resumed by Mr. Schrader.

The waste ditch is a south extension of this ditch as I understand it.

Re-Cross Examination by Mr. Fowler.

When we built this ditch through the draw and waste water ditch near the tonship line, when we turned into the waste water ditch we also put in a head-gate there. Eat was on the Grady place, in the waste water ditch so that these parties that bought water had it measured out to them out of t the head-gate at the waste water ditch. We took it out of the main ditch, at the head-gate at the head of the waste water ditch. There was no water used out of there whatever except what was measured out there from that head gate. Eastman took his water out thereand run it down to the Foreman place. The water was not dumped into the draw. I think there was a flume across the Little Giant Ditch for the wa waste water ditch, and into the creek above the head of the Lone Tree ditch. It was the intention of the Company to let

line of the ditch the same way. It backed up that way on the Chase place, also on the east side of the Marshall place On the east side of the Marshall place there for nearly a mile to the section line where the road crosses the section line from, there for quite a distance it backed up. Marshall objected to having the water baked up on his land. He said it damaged some of his land on the north side of the creek. I think he talked something of sueing the company for it.

Francis M. Murphy re-called as a witness on behalf of the defendant.

Examined by Mr. Schrader.

This Book marked Exhibit 6is the Minute Book of the Rapid Valley ~~Irrigating~~ Water Company. Pages from "1" to "22" contain a record of all the minates. I am the Secretary of the company.

Defendant offers in evidence pages 16 to 17 and the first seven lines of page 18 which have just been identified by the witness, and also page 13 and the first fourteen lines of page 19 in the same book.

Plaintiff objects to the introduction of pages 16-17-18 and the first fourteen lines of page 19 and interposes the same objection to pages 7 to 15. The first objection is over-ruled, the last objection is sustained to which defendant excepts. The part of the record admitted, which is hereto attached, marked Ex.6. and made a part hereof, is then read in evidence.

all the water run down there but the water that was bought of the Company. No water was permitted to run east of the waste water ditch except what the Company sold to the customers there and that was measured out of the main ditch by the head-gate. I spoke of a draw on the Plunkett and Lynch timber claim east of the township line. I could not say if there was any water running down there into the Little Giant ditch as I never followed the line down there. I followed itndown there enough to see where all the water run from the main ditch and I know all the water that run east of the waste ditch was measured out to the parties that bought it. I never measured the distance from the defendant's ditch across to the little Giant ditch.

Re-Examination by Mr. Schrader.

There is some land at the draw in the Plunkett and Lynch place irrigated by these parties.

Francis M. Murphy re-called as a witness on behalf of defendants, testified as follows:-

On the original surface of the ground prior to the time of the enlargement of the ditch, the south side bank was lower than the north bank. Where we were doing the excavating along the ditch the material that was taken out of the ditch was placed on the south side for a border. As to the height that it was piled up on the south side that would depend on the width of the ditch and the amount of dirt. I should think that the average height of the dirt above the bank was about six or seven inches. The water in the ditch was in places backed over the bank of the ditch on the north side by the soil being placed on the south side. In some places as much as two rods in width and for a distance of one hundred fifty yards. There were four places along the

Oscar A. Ricker being produced and sworn as a witness on behalf of the defendant, testified as follows on direct examination:--

My name is Oscar A. Ricker, I am thirty-three years of age and at present reside in Huron and I occupy a position in the Surveyor General's office. I have charge of the mineral business. I was in the Mining Engineering business in this city and county from 1885 to 1894. I graduated from Lafayette College in Civil Engineering. All of my experience in Civil Engineering has been in the Black Hills Country since I came here in 1885.

I know the ditch known as the Rapid Valley Irrigating Company Ditch. I think the first work I did on it was some finishing work, widening it out after it had been constructed. I think that was in November, 1890. I cross-sectioned it just below the waste gate and continued to cross-sections down about a mile. I have the cross-section notes. I mean the point where they back the water in from McElroy's lake through the ditch there into the main ditch. It is five hundred thirty-six feet east. I made the starting point below the flood-gate. That waste gate there is a waste weir. In the ditch allowing the water that does not pass through the ditch to pass back into the creek, if they have any. I commenced the survey from that point. I commenced the reading right at the box where the water was allowed to pass through into the ditch and at that point I took the reading at the bank and at the bottom of the ditch and then I measured the width of the ditch and our purpose was to make it eight feet wide. We were to have it two feet deep. I found at this cross section that the sides were very near vertical and the sides of the ditch would make it about the same at top and bottom of the ditch. That will explain the fact

that I have only the reading for the bottom and top of the ditch at this point. If there were any slope I would have taken the reading for both the top and bottom of the ditch. I found for the first hundred feet from the initial point that I had to go three feet north from the side of the ditch to make it eight feet and three feet into the north bank to make it eight feet wide. That is, the ditch would measure five feet wide for the first hundred feet. We had to go three inches deeper. I have got the record here. Three inches deeper would make a depth of two feet. At the next hundred feet it was necessary to widen it three feet to get it to that width. I have got it marked two inches of a cut on the bottom deeper. At the end of three hundred feet I found that I had to go one and a half feet to make the eight feet wide and it shows four inches deeper on the bottom.

The fourt hundred feet I found I had to extend the wi widtj three and a half feet and had a cut of four inches on the bottom.

At the 5th section it shows I widened it out two feet, nd three inches on the bottom.

At the 6th Section I had to extend it two feet and there was four inches on the bottom.

At the 7th Section I had to widen it a foot and a half onnthe bottomnand the bottom was about right there.

At the 8th Section I had to widen it a foot and a half and make it six inches on the bottom.

At the 9th Section I had ton widen it one and a half feet, three inches cut on the bottom.

At the 10th Section I had to widen it eighteen inches and two inches on the bottom.

At the 11th Section I had to widen it two feet and cut it five inches on the bottom.

At the 12th Section I had to widen it a foot and a half and cut six inches on the bottom.

By the Witness:)) Do you want me to go through the whole ditch with this? A. Yes.

Witness:--I have got it sectioned for each section or half mile. I have given you the first half milefor the reason that whatever water would run through the ditch there if it once goes into the ditch it would have to run through and a half mile at the upper end of the ditch will measure all the water that will run through it.

At the 13th Section I increased the width two feet and made it five inches deeper on the bottom.

At the 14th Section there was a cut beginning there. The cut I think begun at the 12th and it is seven and a half wide in the cut and 11 inches cut on the bottom.

At that point on the course it would be a great deal wider on the top than on the bottom. I think it extended down to sections 17 and 18.

At 15, I had eight inches on the bottom and at 16 there was eight inches on the bottom and at 17 there was one inch on the bottom and I increased it three and a half feet wider and two inches on the bottom.

At Section 19, I increased it two and a half feet and two inches on the bottom.

At Section 20, I had an increased width of four feet and I think there was two inches of a cut on the bottom.

At Section 21, I guess that was on grade there as I have only an increase in width of four feet and three inches.

A At Section 22, I had four feet and three inches on the bottom.

At Section 23, I had four feet.

Section 24 has an increase of three and a half feet in width.

At section 25, I had it five feet wider. It was deep enough there.

At Section 26, widened it two feet, it was deep enough. By the Court:-- Except where it is in the cuts it is the bottom measurements. The idea was to put the ditch in there eight feet wide between the sides and then where there was mud we made it less so there was a chance for the banks to slope and where the banks were vertical we made it eight feet. By my measurements the width of the original ditch where we enlarged it would be the difference between eight feet and what the measurement of the increase was. The inside depth would vary as I have given it down from three or four inches on an average. I think the additional excavation in the cuts would not indicate an increase in the carrying capacity of the ditch. In fact, it does not increase the carrying capacity a single gallon. If it had a lake of water it would not carry any more because it could not pass through the head of the ditch. I am giving top and bottom both except four or five places. The top at 24 I think is eight and a half wide. At 12 there is no difference. That measurement is for both top and bottom. The sides of the ditch are nearly vertical. I would not allow there for the sloping of the banks. At 21, when I gave four and a half, in that case it would be the beginning of a cut and would be the increase, the top measurement. The increase of the size of the ditch at that point would not increase the carrying capacity of the ditch. After it had passed through the head of the ditch it would run on down the ditch. It could not go back up to the head of the ditch again, it

would have to go through the ditch. If it were two hundred feet wider it would not carry any more water. I widened it thirty inches on the bottom, was all I think I widened it the first half mile. Compared with the other sections I think it was about the same. It was about the same general width all the way down there for a half mile below this. At the end of the ditch at that point the water was dropped into a gulch and then carried out through another little ditch. The size of the ditch when I passed through the part of the ditch which was to be eight feet wide was to be six feet wide on the bottom and I am not certain whether it was two feet and a half or two feet deep there.

When I spoke of a place where they dropped the water into a gulch it was not where it runs over on the south side of the creek. I couldn't tell you much about that. The grade of the ditch there would be, I think, very regular, the total drop of the ditch for the first half mile is four and a half feet. The grade of the remainder of the ditch was very regular in some places, if my recollection serves me right. It was in some places under the grade and that I think in some places continues up until you come to the Dorb Mowsha place and there was a place there where there was a straight grade, a very little more than level and we proposed to correct that by this ditch. They had been deepening it. Taking out and backing the water up long that was the only way they were able to get the water up. Then there was something of a grade down there on Murphy's place. The average widening or width of this ditch for the entire length of the ditch, was at the top a little more than eight feet in places and at the bottom eight feet and in some places I found it run three and a half feet.

The average increase in width and depth for the first half mile is from nothing to 11 inches. From my old papers this morning I take the average for the first quarter of a mile. I took the measurements and from this work the average width and average depth and for the first quarter of a mile or rather thirteen hundred feet and from that I made an estimate of the carrying capacity of the ditch under a four inch pressure. And my understanding of a four inch pressure which I estimated and calculated by Cutter's formula and about the proportions as given by Troutline and my estimate was about One thousand inches under four inch pressure; the average size of the ditch was five feet wide in the bottom. The depth was 1.57 feet and the fall was .177 per hundred feet. I think that estimate would compare very favorably with the remainder of the ditch but I think of you would turn the water into it, it would go through whether it would be more or less. I know it had run down there and did not notice any place where it had over-flowed the bank of the ditch.

In making my calculations, I calculated the ditch should be bank full. I took both cross-sections and I took all the cross-sections for that distance and I made an average cross-section and I estimated that the cross-section would be full of water. I have no knowledge of the water running out-side of the banks at all.

(Witness makes diagram showing how he measured carrying capacity of ditch.) That would be about it and the dotted line there would indicate the water level. I could not say how high above the original surface of the country and above the surface of the ground the water was on the south side of the ditch. Of course when the ditch was full the water would be above the surface of the ground to run to its

full capacity. As compared with the original surface of the ground the water would be about on a level with the north side of the ditch. I could only guess how high thewater would be above the surface of the ground on the south side or lower side of the ditch. I heard the witnesses Morris, Lewis and Chase testify that the border on the south side of the ditch backed the water for two rods on the north side It might be six inches higher than the other side. That I could not say and It might be a fourt to a half a foot more. That I could not tell from my cross-sections. That's guess work. It would over-flow it. If it was up on the border of the other side far enough. When I made the survey in 1890 I did not make the measurement of the head-gate. I was on the plaintiff's dam, the Lone Tree dam, at one time. Some time in the summer of 1893. I presume it was the time that Williams talked about. I can not remember whether Williams was there or not. The ditch Company or the members of the ditch Company, Mench and Cramer were diverting more water some of them said and the others were not getting their share of the water and they wanted me to adjust the matter. Iwent down there to measure the apertures through which they were taking water and re-adjusted ir and then put the box where it had originally been. Some of the weir there had been taken away and allowed more water to escape than they were entitled to. They put it in so that he would get water in proportion to the stock he held in the ditch. I did not see the dam there. It is a little way to it and I did not notice it. James Brennan was there. He was down with me My memory does not serve me, I could not say what Brennan said regarding the scarcity of water in the ditch on account of the leakage of the dam. I think there was something in

said. I do not know by whom or what it was. There was something said about that. I do not know how many inches of water was running in Rapid Creek at that time. I remember taking the grade of the ditch at that time. I think it was taken at the difference of the grade of the ditch and the grade of the dam. The ditch was of the grade of one quarter of an inch to the rod. That was the distance of the point. The grade I mean of the ditch where Manch took the water out of the ditch. The water was measured in a box twelve by fifteen inches in length. I do not just remember the length of it. I was down the valley several years before. I do not remember when. I was down the valley and made a survey for Nowlin for the ditch company. I made a survey of the typography of the ~~xxxxxxx~~ country to ascertain where the water of the ditch would run and where with reference to the creek channel. I was upon the line of this ditch before simply for the purpose of locating a line of ditch nor for the purpose of determining the width or depth of it.

Cross Examined by Mr. Fowler.

I state that I found the ~~fixed-gate~~ grade low down about Murphy's on this ditch. The grade from Murphy's to the Corb Horse is very little, it is about level. The grade of the ditch there since the enlargement, I made no minutes of that, no estimates, I run the line and put in the stakes and I put the depth of the cut on the stakes and that was th purpose of establishing a grade line and I measured the ditch to continue that line, I think it was one fourth of an inch to the rod. I would not be positive of that. It would be six and six tenths feet to the mile on that portion of the ditch. I think the grade of the new ditch for the first hundred feet from the waste gate is about the same as

it is farther down. They were meant to be about the same. There may be a little difference. I think the ditch was all the way down there about a like. I do not remember that there was any difference. The first quarter of a mile by the sections and grade is between stations One and Two and between Two and Three, 3/10; between Three and Four, 2/10 between Four and Five, 1/10; between Five and Six, 1/10; between Six and Seven, 8/10; between Seven and Eight, 8/10; the grade was four times greater between Eight and Nine, it is 4/10, between Nine and Ten is 2/10; and between Ten and Eleven is 1/10; between eleven and Twelve is 2/10 for the first half mile. Between Twelve and Thirteen was 3/10; Seven Hundred Twenty-eight feet is twenty-four hours discharge for one miner's inch of water under a four inch pressure. It would be one and two tenths cubic feet per minute andnto reduce the inches to gallons it would be about seven and a half gallons innthe cubic feet, that would be about nine gallons a minute. As to giving the cross-sections of the respective sections from Corb Morse' place to Murphy's taking it from the end of the sections, it would be difficult for me to do so. I could give it to you by sections. From the point where there was a cut I think it was three or four feet deep. The length of my sections there were half a mile. I could not tell from my notes where the section lines were. I did not notice where any lines were on the ditch. I know there were lines there but I could not identify the lines on the ground from my notes. I noticed it perhaps at the time but I made no note of it and could not say where the lines were with reference to the sections.

The cross-section and NO.5 station or section, 4-1/2 feet wide and 4 inches on the bottom in the first instance. Beginning at zero at every previous section, I commenced with

zero at the beginning of the section and the first hundred feet would be my stake number One on that section, and the section the first one hundred feet it was 4/1/2 on the side and we cut it four inches on the bottom and at #2 it was four four feet wide. The total depth of the cut in the bank in the first instance was 17 inches and the slope was meant to be vertical.

The 2nd. section was four feet wide and nineteen inches total cut and four inches on the bottom.

#3 was four and ahalf feet and twenty-two inches cut on h banks and five inches on the bottom.

#4 was five feet, twenty-four on the top, four inches on the bottom.

#5 was 24 inches on the top, 4 inches on the bottom.

#6 was 5-1/2 feet, twenty-eight inches on top, 4 inches on the bottom.

#7 was four feet, 24 inches on top, 3 inches on the bottm

#8 was 4-1/2 feet, twenty-four inches on top, 19 inches on the bottom.

#9 was 4-1/2 feet, 24 inches on top and 10-1/2 on the bottom.

#12 was 3 feet, 17 inches.

#13 was 3 feet, 24 inches on the top and 3 inches on the bottom.

#14 was 3-1/2 feet, 32 inches cut and 17 inches on the bottom.

17 was 3-1/2 feet wide, 32 inches cut on top and 13 inches on the bottom.

18 was 4-1/2 feet wide 31 inches cut on top and 13 inches on the bottom.

19 was 3-1/2feet wide, 32 inches cut on top and 13 inches on the bottom.

20 was three feet wide 32 in. cut on top and 17 on the bottom.

21 was four feet wide,29 inches cut on top,17 on the bottom.

22 was three feet wide, 32 inches cut on top and 17 inches on the bottom.

23 was 3-1/2 feet wide,29 inches cut on top,15 on the bottom.

24 was 3-1/2 feet wide 30 inches cut on top and 15 on the bottom.

25 was 3-1/3 feet wide,24 inches cut on top 16 on the bottom.

26 was 3-1/2 feet wide,31 inches cut on top and15 on the bottom.

Of the Sixth Section it was,

1was 2-1/2 feet wide,31 inches cut on top and 19 inches on bottom.

2 was 3-1/2 feet wide,3& inches cut on topand 18 inches on the bottom.

3 was 3-1/2 feet wide 32 inches cut on top and 16 inches on the bottom.

& was 3 feet wide 31 inches cut on top and 17 inches on the bottom.

5 was three feet wide,31 inches cut on top and 15 inches on bottom.

6 was 3 feet wide 29 inches cut on top and 18 inches on the bottom.

7 was 3 feet wide,32 inches cut on top and 20 on the bottom.

8 was 3 feet wide,32 inches cut on top and 21 on the bottom.

9 was 2-1/2 feet wide,35 inches cut on top,25 on the bottom.

10 was 2 feet wide,35 inch cut on top, 24 on the bottom.

11 was 3 feet wide,36 inch cut on top,25 on the bottom.

12 was 3-1/2 feet wide,37 inch cut on top, 26 on the bottom.

13 was 3 feet wide,38 inch cut on top, 26 on the bottom.

14 was 3 feet wide,40 inch cut on top, 25 on the bottom.

15 was 3 feet wide,41 inch cut on top, 28 on the bottom.

16 was 3 feet wide,39 inch cut on top, 28 on the bottom.

17 was 3 feet wide, 42 inch cut on top, 29 on the bottom.

18 there was no addit there it was 42 inch cut and 27 inches on the bottom.

19 was 2 feet wide, 50 inch cut on top,and 32 inches on bottom.

20 was 2 feet wide,52 inch cut on top,31 inch on the bottom.

21 was 2 feet wide,54 inch cut on top and 30 inch on bottom.

22 was 1-1/2 feet wide,53 inches wide and 31 inches on bottom.

23 was 2 feet wide, 51 inches wide and 31 inches on bottom

24 was 1-1/2 ft wide,51 inches wide,and 31 inches on bottom.

25 was 3 feet wide,47 inches wide and 30 inches on the bottom.

26 was 2-1/2 feet wide,53 inches wide and 30 inches on bottom.

26 was about two feet,54 inches cut on top and 28 inches.

The slope of the section just give is 1-1/2 to 1, that would be of the cut in that section. I have surveyed a

great many ditches and they claim it is better or just as well to make the sides bertical until it goes to a depth of two or two and a half feet. They say it will stand vertinal all right. In the cut there it is on the side. It is cut in the bottom four inches and on the side seventeen inches. It would be a vertical cut and the width of this ditch is to be eight feet on the bottom and continues down to Sam Morris' place at eight feet. And continues to be about the same depth and nowhere is it any deeper. And from there the dith is about six feet wide and about the same depth on the west side of the Foreman place. I think the depth down there is a foot and a half, may be two feet. I do not remember as to that. I think it was about Section 7 the water was dropped into this draw. That Section is as follows:-

1 was 2 feet wide,50 inches deep and 36 inches on bottom.

2 was 2-1/2 feet wide 52 inches deep and 38 inches on bottom.

3 was 4 feet wide, 46 inches deep and 26 inches on the bottom:

4 was 4-1/2 feet deep,40 inches deep,25 inches on the bottom.

5 was 4 feet wide,43 inches deep and 25 inches on the bottom.

6 was 4 feet wide,43 inches deep and 25 inches on the bottom.

7 was 4 feet wide,40 inches deep, and 24 inches on the bottom.

8 was 4-1/2 feet wide,33 inches deep,17 inches on the bottom.

9 was 4-1/2 feet wide,36 inches deep and 15 inches on the bottom.

10 was 4-1/2 feet wide,43 inches deep,13 inches on the bottom.

11 was 4 feet wide, 31 inches deep,14 inches on the bottom.

12 was 4 feet wide,34 inches deep and 8 inches on the bottom.

13 was 4-1/2 feet wide,34 inches deep and 8 inches on the bottom.

14 was 4 feet wide, 31 inches deep and 8 inches on the bottom.

15 was 4-1/2 feet wide,32 inches deep and 8inches on the bottom.

16 was 4-1/2 feet wide,32 inches deep,8 inches on the bottom.

17 was 4 feet wide, 31 inches deep, 12 inches on the bottom.

18 was 4 feet wide, 32 inches deep, 8 inches on the bottom.
19 was 4 feet wide, 32 inches deep, 12 inches on the bottom.
20 was 4 feet wide, 29 inches deep, 10 inches on the bottom.
21 was 2 feet wide, 30 inches deep, 12 inches on the bottom.
22 was 3½/2 feet wide 29 inches deep, 10 inches on the bottom.
23 was 4 feet wide, 28 inches deep, 8 inches on the bottom.
24 was 3 feet wide, 25 inches deep, 8 inches on the bottom.
28 was 4 feet wide, 25 inches deep, 8 inches on the bottom

On 26-40 there is no grade there. The grade on the half mile of Section 5; well, the elevation in the bottom is 85.67 that was the elevation in the beginning of the section and at the end of Section 5 the elevation was 72.5. It is a matter of subtraction. Of Section 6, it begins with 72 and the last is 70.9. That is 70/9and of Section 7 is 70.9 nd 65.6.

Re-Examined by Mr. Schrader.

The reason that Sections 5-6-7- were leas than thirty inches deep is this. They had raised the bank there from material out of the ditch. It had backed the water up there in places and made a lake of it. There was on place right east of Murphy's where it runs over the land right next to the ditch on the north and I cut the ditch through there. I intended to get it all onnthe grade. The reason why I hae at one place deepened the grade 11 inches is this: there were a number of places where the ditch was not on grade and we made it so we would continue the same line of grade thro' out the line of the ditch. As I have shown you that is on one hundred feet the drop was 3/10 feet and then there was 4/10 feet the second hundred feet. And in some of the places there was some little grade the water would not run thro' the ditch until it was backed up on the north side of the ditch. Cross-Examined by Mr. Fowler.

tween the two points being porous or otherwise ot whether there would be any waste of water I could not say. I do not think there would be much loss. I do not think there would be much loss of water in that creekthere.

Re-Cross Examination by Mr. Fowler.

The water from the Feigel ditch is returned to the creek above the head of the defendant's ditch. In consequence of the dry times there would be more water consumed.

Re-called and Cross Examined by Mr. Brown.

We want all the cross sections except 5-6-7- giving the width of the cut at the top and bottom and the total depth from the surface to the bottom.

It is stipulated and agreed by and between the parties to this action by their attorneys in open Court that the witness may answer these questions to the stenographer ad that the same be taken by him out of Courtand made a part of the testimony and records of this case with the same force and effect as though given in the usual way.

The following is all of the crosssections referred to with the width and depth.

0 was 3 feet wide, 0 on the bottom and 2 feet deep.
1 was 3 feet wide, 3 inches on the bottom and 1.8 feet dp
2 was 3 feet wide,3 inches on bottom and 22 inches deep.
3 was 1-1/2 feet wide,3inches on bottom,28inches deep.
4 was 3-1/2 feet wide,4inches on bottom,28 fnhes deep.
5 was 3-1/2 feet wide, 3inches on the bottom,20 inches deep.
6 was 2 feet wide,4 inches on bottom,25 inches deep.
8 was 1-1/2feet wide,6inches on bottom,27inches deep.
9 was 1-1/2 feet wide,3 inches on bottom,24 inches deep.
10 was 1.8 feet wide,2 inches on bottom, 27 inches deep.
11 was 2 feet wide, 5 inches on bottom, 28 inches deep.
12 was 1½/2 feet wide,6 inches on bottom,39 inches deep.
13 was 2 feet wide,5 inches on bottom,54 inches deep.
14 was 8 feet wide,11inches on bottom,7.5 inches deep.
15 was 7-1/2 feet wide,2 inches on bottom,7-1/2 inches dep
16 was 6 feet wide,8 inches on bottom,6-1/3 inches deep.
17 was 3 feet wide,1 inch on bottom,30 inches deep.
18 was 3-1/2 feet wide,2 inches on bottom28 inches dep.
19 was 2-1/2 feet wide,2 inches on bottom, 2 feet deep.
20 was 4 feet wide,1 inch on bottom,2 feet deep.
21 was 4 feet wide,0 inches on bottom,32 inches deep.

22 was 4 feet wide,3 inches on bottom 3 feet deep.
23 was 4 feet wide,0 inches on bottom,5,8 feet deep.
24 was 4 feet wide,0 inches on bottom, 5 feet deep.
25 was 5 feet wide,0 inches on bottom,31 inches deep.
26 was 2 feet wide,0 inches on bottom,34 inches wide.
26-40 30 inches wide0 inches on bottom32 inches deep.
1 was 3 feet wide 0 inhes on bottom30 inches deep.
2 was 0 feet wide,.0 inches on bottom,1-5/6 feet deep.
3 was 0 feet wide,0 inhes on bottom,24 inches deep.
4 was 2 feet wide,0 inches on bottom,32 inches deep.
5 was 2 feet wide,0 inches on bottom,29 inches deep.
6 was 4 feet wide,0 inches on bottom,29 inches deep.
7 was 4-1/2 feet wide,0 on bottom,36 inches deep.
8 was 3 feet wide,3 inches on bottom,39 inches deep.
9 was 2½/2 feet wide,1 inch on bottom33 inches deep.
10 was 4 feet wide,0 inches on bottom,25 inches deep.
11 was 4 feet wide,0 inches on bottom,38 inches deep.
12 was 4 feet wide,0 inches on bottom,3-2/3feet deep.
13 was 3-1/2 feet wide,0 inches on bottom,37 inches deep.
14 was 3 feet wide,0 inches on bottom, 20 inches deep.
15 was 3 feet wide,0 inches on bottom,26 inches deep.
16 was 4 feet wide, 4 inches on bottom26inches deep.
17 was 3 feet wide,2 inches on bottom,28 inches deep.
18 was 3 feet wide,2 inches on bottom/28 inches deep.
19 was 3 feet wide,3 inches on bottom,30 inches deep.
20 was 2-1/2 feet wide,5 inches on bottom and 3 feet deep.
21 was 2-1/2 feet wide,5 inches on bottom and 38inches dep
22 was 2.5 feet wide,5 fnches on bottom,37 inches deep.
23 was 4 feet wide,5 inches on bottom,32 inches deep.
24 was 2.5 feet wide,6 inches on bottom,38 inches deep.
25 was 2.5 feet wide,6 inches on bottom,39 inches deep.
26 was 3 feet wide,6 inches on bottom,42 inches deep.
26 - 40 was 3 feet wide,8 inches on bottom,43inchesdeep.
1 was 2.5 feet wide,8 inches on bottom,25 inches deep.
2 was 3.5 feet wide,8 inches on bottom, 38 inches deep.
3 was 3 feet wide,7 inches on bottom,34 inches deep.
4 was 3 feet wide,9 inches on bottom,36 inches deep.
5was 3 feet wide, 6 inches on bottom,38 inchdeep.
6 was 3 feet wide, 6 inches on bottom,40 inches deep.
7 was 3 feet wide,6inches on bottom,47 inches deep.
8 was 4 feet wide,6 inches on bottom,34 inches deep.
9 was 3.5 feet wide,5 inches on bottom,36 inches deep.
10 was 3 feet wide,3 inches on bottom,32 inches deep.
11 was 4.5 feet wide,3 inchesn on bottom,24 inches deep.
12 was 4.5 feet wide,0 inches on bottom,24 inches deep.
13 was 4.5 feet wide,0 inches on bottom,28 inches deep.
14 was 3 feet wide,0 inches on bottom,25 inches deep.
15 was 3.5 feet wide,0 inches on bottom,24 inches deep.
16 was 4 feet wide, 0 inches on bottom,28 inches deep.
17 was 3.5 feet wide,0 inches on bottom,26 inches deep.
18 was 4 feetwide,0 inches on bottom; 26 inches deep.
19 was 3.5 feet wide,0 inches on bottom, 28 inches deep.
20 was 4 feet dnnw wide,0 inchesnen bottom,27inches deep.
21 was 4.5 feet wide,0 inches on bottom,27 inches deep.
22 was 3.5 feet wide,0 inches on bottom, 24 inches deep.
23 was 4 feet wide, 0 inches on bottom, 22 inches deep.
24 was 1 foot wide, 0 inches on bottom, 20 inches deep.
25 was 4 feet wide 0 inches on bottom,18 inches deep.
26 was 4 feet wide,0 inches on bottom,29 inches deep.
26-40 was 4 feet wide,1inch on bottom,24 inches wide.
1 was 4 feet wide,0 inches on bottom,25 inches deep.
2 was 3 feet wide, 0 inches on bottom,24 inches deep.

3 was 3 feet wide, 0 inches on bottom,24 inches deep.
4 was 4 feet wide, 0 inches on bottom, 25 inches deep.
5 was 4 feet wide, 0 inches on bottom, 22 inches deep.
6 was 2 feet wide, 0 inches on bottom,24 inches deep.
7 was 4 feet wide, 0 inches on bottom, 22inches deep.
8 was 4.5 feet wide, 0 inches on bottom,22 inches deep.
9 was 4.5 feet wide, 0 inches on bottom,22 inches deep.
10 was 3.5 feet wide,0 inches on bottom, 22 inches wide.
11 was 4.5 feet wide, 0 inches on bottom, 22inches deep.
12 was 4.5 feet wide, 0 inches on bottom,25 inches deep.
13 was 3 feet wide, 0 inches on bottom, 22 fnches deep.
14 was 4 feet wide, 0 inches on bottom,22 inches deep.
15 was 3.5 feet wide, 0 inches on bottom,23 inches deep.
16 was 3 feet wide, 0 inches on bottom,22 inches deep.
17 was 4.5 feet wide, 0 inches on bottom,22 inches deep.
18 was 4 feet wide, 8 inches on bottom,22 inches deep.
19 was 4.5 feet wide,0 inches deep, 22 inches deep.
20 was 4 feet wide, 0 inches on bottom, 18 inches deep.
21 was 4.5 feet wide,3inches on bottom,20inches deep.
22 was 3 feet wide, 4 inches on bottom,22 inches deep.
23 was 3 feet wide, 0 inches on bottom,18 inches deep.
24 was 5.5 feet wide, 0 inches on bottom, 15 inches deep.
25 was 5 feet wide, 2 inches on bottom, 15 inches deep.
26 was 5.5 feet wide, 3 inches on bottom,15 inches deep.
26-40 was 5 feet wide,2 inches on bottom, 15 inches deep.

Eighth Section.

1 was 1.5 feet wide,6 inches on bottom,24 inches deep.
2 was 2 feet wide,6 inches on bottom,24inches deep.
3 was 1.5 feet wide,6 inches on bottom,24 inches deep.
4 was 1.5 feet wide,6 inches on bottom,24 inches deep.
5 was 2 feet wide, 8 inches on bottom,21 inches deep.
6 was 1/5 feet wide,0inches on bottom,39 inches deep.
7 was 2.5 feet wide,0 inches on bottom, 56inches deep.
8 was 1 foot wide,0 inches on bottom,34 inches deep.
9 was 2 feet wide, 0 inches on bottom,32 inches deep.
10 was 2 feet wide,0 inches on bottom,29 inches deep.
11 was 1.5 feet wide,0 inches on bottom,22 inches deep.
12 was 2 feet wide,5 inches on bottom,24 inches deep.
13 was 2 feet wide, 6 inches on bottom,24 inches deep.
14 was 2 feet wide,6 inches on bottom,24 inches deep.
15 was 2 feet wide,12 inches on bottom,24 inches deep.
16 was 2 feet wide,10 inches onnbottom,24 inches deep.
17 was 2 feet wide, 11 inches on bottom,24 inches deep.
18 was 2 feet deep,10 inches on bottom,28 inches deep.
19 was 2 feet wide, 10 inches on bottom,24 inches deep.
20 was 2 feet wide 8 inches on bottom,25 inches deep.
21 was 2 feet wide,7 inches on bottom,30 inches deep.
22 was 1.5 feet wide,10 inches deep,24 inches deep.
23 was 3 feet wide,9 inches on bottom,24 inches deep.
24 was 2 feet wide, 5 inches on bottom,25 inches deep.
25 was 3 feet,on bottom,12 inhhes, 13 inches deep.
26 was 2.5 feet wide,12 inches on bottom,27 inches deep.
2640 was 2 feet wide,10 inches on bottom,31 inches deep.
1 was 2 feet wide,10 inches on bottom,24 inches deep.
2 was 2 feet wide,10 inches on bottom,24 inches deep.
3 was 2 feet wide,12 inches on bottom, 24 inches deep.
4 was 2 feet wide,7 inches on bottom,32 inches deep.
5 was 2 feet wide, five inches on bottom,25 inches deep.
6 was 3 feet wide, 4 inches on bottom,24 inches deep.
7nwas 3 feet wide,8 inches on bottom,21 inches deep.

8 was 3 feet wide,10 inches on bottom,24 inches deep.
9 was 3 feet wide,8 inches on bottom, 26 inches deep.
10 was 2 feet wide, 8 inches on bottom,27 inches deep.
11 was 1 foot wide, 7 inches on bottom, 24 inches deep.
12 was 3 feet wide,10 inches on bottom, 24 inches deep.
13 was 3 feet wide, 8 inches on bottom,24 inches deep.
14 was 2 feet wide, 7 inches on bottom,27 inches deep.
15 was 2.5 feet wide,2 inches on bottom,24 inchesdeep.
16 was 2.5 feet wide,3 inches on bottom,24 inches deep.
17 was 2 feet wide, 0 inches on bottom, 29 inches deep.
18 was 2 feet wide, 0 inches on bottom, 28 inches wide.
19 was 1 foot wide,0 inches on bottom, 24 inches deep.
20 was 1 foot wide, 12 inches on bottom,24 inches deep.
21 was 2.5 feet wide, 12 inches on bottom,24 inches deep.
22 was 1 foot wide,11 inches on bottom,24 inches deep.
23 was 2 feet wide, 12 inches on bottom, 24 inches deep.
24 was 2 feet wide,11 inches on bottom, 35 inches deep.
25 was 0 feet wide,10 inches on bottom, 0 inches deep.
26 was 0 feet wide, 8 inches on bottom,0 inches deep.
26 - 40 was 1 foot wide,8 inches on bottom,26 inches deep.

1 was 2 feet wide, 10 inches on bottom, 26inches deep.
2 was 2.5 feet wide,11 inches on bottom.26 inches deep.
3 was 2.5 feet wide,13 inches onebottom,24 inches deep.
4 was 2.5 feet wide,13 inches on bottom,24 inches deep.
5 was 2.5 feet wide, 11 inches on bottom,24 inches deep.
6 was 2.5 feet wide,12 inches on bottom,28 inches deep.
7 was 2 feet wide,6 inches on bottom,24 inches deep.
8 was 2.5 feet wide,8 inches on bottom,24 inches deep.
9 was 2.5 feet wide,&2inches deep, 24 inches deep.
10 was 4 feet wide, 11 inches on bottom,31 inches deep.
11 was 4 feet wide,10 inches on bottom,37 inches deep.
12 was 4 feet wide,13 inches on bottom,42 inches deep.
13 was 4.5 feet wide,12 inches on bottom,25 inches deep.
14 was 5 feet wide,12 inches on bottom,22 inches deep.
15 was 4 feet wide,7 inches on bottom,2oinches deep.
16 was 4 feet wide, 8 inches on bottom,23 inches deep.
17 was 5 feet wide,12 inches on bottom,24 inches deep.
18 was 5 feet wide,16 inches on bottom,25 inches deep.
19 was new ditch beginning at that point is 6 feet wide and 2 feet deep, the grade for each half mile, first half, 4.6 feet, next,half mile,4.5; 5.7 feet next half mile;6.3 feet next half mile; 6.9 feet 8th half mile, 8 to 16 is 2.2 feet, balance grade 6.6 feet to the mile to the end of the ditch,

Francis M. Morris, being sworn as a witness on behalf of the defendants, testified as follows:--

I live on Rapid Valley. I am farming it all I can. I have two places on Rapid Valley. I have lived on my present place since 1891. I moved there in 1891 in the spring, February or March, Section Nine I think it is.

I know where the dam of the defendant's ditch is. I think it is between three-fourths of a mile and a mile, it would be a little over three-fourths of a mile straight up from my land to the dam. The first time I ever saw the defendant's ditch was in September or October, 1888. I first became acquainted with it in 1890. I am one of the defendants in this action. I bought the land of William Hecht and I think he purchased it and that Oce Chase proved up on it. It was called the Oce Chase place. I moved on the place in February or March. Somebody had been at work on the defendant's ditch before I came there. There had been no enlargement of the ditch before I went there. I did part of the enlargement myself, I and my boys. As to the enlargement my judgment is, I did not measure it myself, that was done by the Engineer who surveyed it, it was all surveyed out and I did not know how much ground was moved. He figured that out, the amount that was to be moved, how much it was to be widened and deepened and all that. My judgment is that it was made about two feet wider on the average. There was one place where there was a cut, I think we cut it down to three feet deep and some places along there it had to be deepened to three feet. That would be about three inches deeper than it was in the first place. I was up on the flood gate of the defendant's ditch on the McElroy place in 1890.

Thomas Carroll had the contract for widening the

ditch there. I could not say when the work was started. I think the next work was done in April. I was up there at the flood gate of the defendant's ditch the summer before the enlargement. The main channel of the ditch up to the flood-gate from my section was widened by the enlargement. I would say about the same as down there. I would not say for certain about that. I t might not have been so much. I do not think it was deepened any through there. It was deepened there on my place. I think that was the second place it was deepened and I think the stakes of the engineer there called for a three inch lowering or sinking. Prior to the enlargement in 1890 I was at the head-gate, at the outlet of the lake known as the McElroy lake, and I was at the dam and down below Murphy's. I do not think there was any enlargement of the ditch between the head-gate in the outlet of the lake and the flood-gate, in 1890 when this enlargment was made. I think it was just cleaned out. I think they did clean out the ditch leading from the head-gate to the flood-gate. I was at the head-gate, I think it was in August, 189w, I was up there at that time. It was justm after there had been a heavy hail and I met Murphy and Sam Morris and a hired Man and we were up there an hour or two. They cleaned out the mud there where it had filled up, ad cleaned out the ditch there where it had filled up and they threw out some stone. I did not do anything at all. I thought it would cost quite a large amount of money to clean it all out. In fixing the time of my visit, my recollection is that the big hail storm was on the second and that shortly after the hail storm I went up there. I would not be sure whether there was a head-gate in there at that time.

I would not be positive that the flood had not washed it out. I know that it was filled up there and that they had to work to get it out. The size of the head-gate in the inlet to the lake is the same size as when I first saw it. The flood-gate is the same size as when I first saw it. It is the same size. I would not be positive as to its being the same head-gate. I think they were working there and took out one of the head-gates and put it in again. I know there were strips on it. I think the size of it was eight feet wide. But there were these strips in it, four inches I think that would come out of it and would leave the opening eight inches narrower than eight feet, the size of the box. That was the size of the timber, Ace and me cut the timber. That would be the aperture. I knew the timbers were big enough anyhow and I did not pay much attention to it. I never was along the ditch when it was running water but it was full before the enlargement. I was never along it after the enlargement when it was full. It has never been over half full since the enlargement. Prior to the enlargement I do not know how many inches of water runin it.

I have used since the enlargement one hundred twenty-five inches. Reed has got since the enlargement thirty inches. On this land here and last summer he got a little more water than that. He got a hole down under the head-gate and I never discovered it until I turned the water out. I guess he got a little more than that. That was what he contracted for. Leslie got one hundred twenty-five inches. J.L. Woods got one hundred fifty inches, Murphy one hundred twenty-five inches. On the Marshall place part of the time we have been getting nothing. Sam Morris got one hundred forty

inches and Hunt got twenty-five inches out of our ditch. My understanding is that Eastman gets eighty inches. He get some and buys some and Hunt gets some too. I do not know how much. Eastman gets five inches for right of way. Reif and William's get seventy-five inches. There are men getting water there part of the time for some land that belongs to Corb Morse and some on the Manjee Kelliher land and to another man. I understand so, it was before I came there. It was enough to irrigate a little piece of land, from two to four acres. Nobody else that I remember of at present got water. Since 1891 I have had charge of that ditch myself mostly. I have irrigated with the one hundred twenty-five inches of water I got about one hundred thirty acres. I have been accustomed to the use of water since 1864 in Colorado. Down on the Platte River from ten to twelve miles northeast of Denver.

Francis Morris re-called on behalf of the defendants, testified as follows:--

Examined by Mr. Schreder.

I was present at the time this amended location notice, (referring to Ex. 5.) was posted on the 6th day of April, 1893 There were two posted, one down below the forks of the ditch and the other was posted on the east side of the head-gate about six or eight feet of the upper head-gate where it come out of the head-gate, where they did the first work.

Q. Did you ever make final proof and receive a Recorder's receipt therefore?

Objected to as immaterial and not the best evidence. Objection sustained. Defendant excepts.

Myron Willsie, recalled as a witness on behalf of the plaintiff, testified as follows, in rebuttal:--

Q. Give us the number of miner's inches under a four inch pressure in a box 12X 10-1/2 under a grade for 1/4 or 1/2 mile of 4.6 and the pressure of the water being at five inch es above the aperture. The box being 12 inches wide,10-1/2 deep and a pressure of at least five inches above the aperture, I want the number of miner's inches under a four inch pressure? A. ~~Xxxxx~~ 4.6 for 1/2 mile would be 9.2 feet per mile. I have calculated the discharge of the water through a flume or box and when it comes to the grade that height of the water determines the pressure of the water. If I have calculated it correctly it is 92.2 inches, I have not check- ed it over.

Q. Is the amount or flow of water through a box 12 inch es wide 10/5 inches deep on a grade of 9.2 and the box set parallel in the ditch. The box will only discharge its cap- acity on that grade.

Q. I also want the miner's inches of water in a box,5 boxes 23 inches wide in the flume at the bottom and the op- ening four inches high and the grade there is about 8.5 feet to the mide and one of them is 7.2 and the other is 12.9 per mile or two of them , I should say , and one of them 4.8 per mile and there is a dam below the point of diversion how much will flow through the box, 12x12 setting in a ditch 6 feet wide with the water 18 inches in depth and the water being 6 inches above the aperture and the grade for a half mile being 6.6 feet, all this I want under a four inch pres- sure. Also will you please give us the number of miner's inches under a six inch pressure in a flume six feet eight and a half inches wide,12.2 inches in depth with a free di-

charge. Also the capacity under a six inch pressure of a box, being the plaintiff's head-gate, 7.25 feet in width and 1.98 in depth and figure the water at six inches above the opening and grade 1/4 of an inch to the rod. You may figure this out and report the result of the calculation in the morning.

Cross-examined by Mr. Schrader.

When you are computing these boxes Mr. Fowler called your attention to, I wish you would give me the difference between a free discharge and when it is not a free discharge.

Re-Examined by Mr. Fowler.

Q. Hartgering figured the dimensions 7.25 by 1.98 and the real aperture under the gate was .71, that is it was 1.98 below the head-gate and under the head-gate it was .71 and above the head-gate it was 2.45. The depth of the water under the head-gate is .71 and below the head-gate is 1.98. A. A box 7.25 would have a discharge of 4140 cubic feet per minute and if the aperture under the headgate was .71 feet and the depth of the water 2.46 above the head-gate and the grade approximated to be 1/4 inch to the rod.

Q. By Mr. Fowler: That is it. I want the discharge. The height of the water below the gate is 1.98.

Cross-examined by Mr. Schrader.

Q. Now, Mr. Willsie when you calculate these quantities of these boxes Mr. Fowler has just give you for the first four boxes, take the first five boxes. I wish you would give me the difference between a free discharge and not a free discharge.

Myron Willsie re-called.

I have made the computations on the questions proposed to me last night. I am ready to answer. I will give the solu-

tions as I have it as I understood the questions. I was asked to give the discharge or capacity of a box 12 inches wide and 10.5 inches deep and a grade of 4.6 feet per mile or per half mile, 9.2 feet per mile, the carrying capacity of that box under a six inch pressure is 92.2. That is what it will carry and I computed the carrying capacity under a four inch pressure to be 193.9 miner's inches. And under a five inch pressure 166. miner's inches and under a six inch pressure 143. miner's inches. 2nd: I was asked to give the discharge in a box 23 x4 and a grade of 8.5 per mile, also the carrying capacity or discharge of a box 23x4 with a free discharg under a four inch pressure and I found that the box will carry 42 miner's inches. The carrying capacity or discharge of one inch would be 2280 feet in 24 hours with a free discharge and a four inch pressure above the opening would give 112 miner's inches of water, under a five inch pressure, 104 3/10 miner's inches and under a six inch pressure 95.4 miner inches. 3rd: The next question was a box 23x4 and a grade 12.9 feet per mile. This will discharge 52.4 miner's inches on a basis of 2280 cubic feet to the miner's inch, in 24 hours this with a pressure of four inches above the aperture would give 112.9 miner's inches and a five inch pressure 104.3 miner's inches and under a six inch pressure 95.4 miner's inches. 4th:I was also asked to give the discharge in a box 25x4 and a grade of 4.8 per mile, the capacity of this box is 147.6 miner's inches on a basis of 2280 cubic feet in 24 hours. The result under a four inch pressure is 112.9 miner's inches. Under five inch pressure 104.3 miner's inches and under six inch pressure 95.4 miner's inches.
5th: And again I was asked to give the discharge of an opening 12x12 and the water standing above the opening six inches

and to give the discharge under a four inch pressure with rthe water four inches above the opening it would be 184 miner's inches. Five inch pressure, 204 miner's inches and under a four inch pressure 228 miner's inches. I was given no grade here, the same is figured with a six inch pressure 6th: I was given a proposition to determine the discharge of water through an aperture 6 feet 8.5 inches wide and 12.2 deep with a six inch pressure above the opening and I had not the ——. Excuse me I have made the pressure here 12. I have not calculated this. I can giveyou the 7th. I was asked to give you the discharge of water under a six inch pressure that would be discharged from an aperture 7.25 wide and the depth of the water 1.93 and the grade 1/4 of an inch to the rod. It would be 3061 miner's inches.

Q. From a flume 7.25 and 1.93 deep. A. Yes, sir. By a free discharge I mean a discharge through an opening under a four, five or six inch pressure or any other which it may be discharged from an aperture into a larger box or where it would be discharged into the air.

Cross-Examined by Mr. Schrader.

I get the grade of the boxes from the question, sir. The pressure was given at a certain grade and I figured it from the grade given in the question. If the first proposition had been a grade of .2 to the rod there would not be much difference in my computation. Well .2 per hundred feet is quite a different thing from .2 per rod. I made no estimates or measurements on the grade in the lateral ditch.

Q. Now, Mr. Willsie, I will ask you as an engineer incomputing the di scharge of these boxes it would be necessary to get the grade of the lateral ditch? It depends on how th water was taken from the main ditch. I took it with a free

discharge and under a six inch pressure. It is supposed to pass through the main ditch without pressure and the grade would not make very much difference.

Q. Now, if I understand you, to be a free discharge it would have to be a discharge intonthe air?, how far below the aperture would the other box be, about four inches? A. Not, necessarily. It wuld have to be two inches. I want to explain the last answer. If the grade were excessive at that particular point it would require perhaps more or less, it would make a difference as to the velocity of the water, if the grade was not heavy there would not be any back pressure from it and it would be a free discharge but it being heavy there would be a back pressure and it wild retard the flowing of the water and would not be a freedischarge unless the escape were more open.

Defendant moves to striken out all the testimony of the witness Willsie for the reason that the computations were made by him without figuring in the grade of the lateral ditches and there is no evidence that it would be a free discharge and he was not governed in his computations bythe question whether it was or not in fact a free discharge and as it was given he could not tell anything about it. Motion denied. Defendant excepts.

Plaintiff rests.

James Hartgering being re called as a witness on behalf of the defendants in sur-rebuttal, testified as follows:--

I made calculations from the notes furnished by the stenographer on the self-same propositions that were proposed to Mr. Willsie. The result ofmy computations:1st,one was 12 inches wide and 10.5 inches deep and a grade of 9.2 and I find that the amount of water it will carry under a four inch pressure is 102 miner's inches and under a five inch pressure 92 miner's inches and under a six inch pressure, 81 miner's inches, under a four inch pressure, 102 miner's inches.

2nd box. On this grade 12.9 that would carry under a four inch pressure 74.5 miner's inches and five inch,66 miner's inches, under six inch, 66 miner's inches and under the next [illegible] under [illegible] pressure and the other 41 under a five inch pressure and 36.4 under a six inch pressure. I have the [illegible]de of that box, 3.02 that would be 6.06 to the half mile. The other one [illegible]12, 144 miner's inches under a four inch pressure,129 under a [illegible] pressure and 115.2 under a 6 inch pressure.

Cross-Examination by Mr. Forder.

Mr. Hartgering, your answer to the 1st, 2nd and 3rd propositions is based upon the fact that it is a flume or box and smooth for carrying water and that the grade used was the grade of the flume A. Yes, sir. The boxes would not carry any more water than would go through the gate. If it were a free discharge there would not be any difference? I reached the result by the usual method of computation. I have consulted Flynn. Troutwine has some 8 or 10: I took first the square of the opening, it made .875 feet. Then we found the wet perimeter, the area and the mean hydraulic

radius. I found the wet perimeter by adding the sides and bottom. I found it to be 2/77 feet. I then found the mean hydraulic radius. That was 32. feet. The mean rad : is the area divided by the wet perimeter. I next extracted the square root of the mean radius. Idid it to reduce it to cubic feet. It is necessary to do so. I used my judgment in doing so. That is the method they all use. It is right. It is substantially as all engineers calculate and according to the authorities on hydraulics, and to my judgment from an experience of twenty years.? After I extracted the square root I found the coeficcient. I did that toget the velocity I used the coefficient I usually use.I have not told you what the square root of the radius is. It is 56.2. As I said I then got the coeficcient. I did it because it is part of th formula. It would be for no other reason that I could see. I exercised my judgment in doing so.I could have used other methods in determining the velocity. I use the coeficcient in proportion to thedepth and width and mean hydraulic radius. The coeficcient changes with every channel. It would not be the same with a swift or sluggish stream. In determining the coeficcient I take into consideration the depth, width and mean hydraulic radius and to determine the frictin I have to consider whether it is a box or ditch or a rough or smooth bottom and sides and the slope of the sides. That has to be taken into consideration. There is a difference in authors as to the percentage allowed for that. It would be the same proportion in the stream where the conditions are the same. I used my judgment as to the friction in making this calculation. After that I found the velocity to be 2.23 feet per second. That would be the velocity. I then multiplied the velocity by the area to get the dis-

charge per second and that by 50 gave me the moner's inches under a four inch pressure. I multiplied it by 50 because that is approximately correct, practically correct. I did not get that from Kutter. Leifell gives it as a kind of approximation. The same Leifell that make s the water wheel Flynn makes the same approximation. He gets it from Leiffel. I do not know where Leiffel gets it.

Both sides rest.

It is agreed and stipulated in open Court that the abstract on the part of the defendants be admitted and also n behalf of the plaintiffs subject to motions to strike out or any objection that might be made to the introduction of the evidence and that it be admitted by the Court in evidence, the parties waiving no objections and reserving the right to move to strike out hereafter with the same force and effect as if made at this time.

James M. Woods, sworn as a witness on behalf of the defendants, testified;

Residence, Rapid City, occupation, farming. That is a oone of my occupations. I know the Rapid Valley Ditch and am interested in it. One of the defendants here. First became acquainted with the ditch in 1889. In the spring of 1889, I bought prop rty along that ditch. In the spring of 1889, I was buying some land along there and with other ditches I examined that ditch, the size of it. I expected to irrigate land from that ditch. I purchased the Al Burgess land. Freeman Lewis' land lies west of it. Murphy's east of it. Rapid Creek runs through the lower end of it. From the point of diversion it is possibly two miles to this land. The land is about two miles below the forks of the ditch. It lies just south of Charles Marshall's place. The water is conducted th through a lateral ditch from the main ditch. The lateral ditch runs up to the main ditch and crosses the land there and conducts the water from the main ditch. The lateral dith is connected with the main ditchwhere the line comes of Maurice Kelliher's land and the land I purchased from Burgess. During the year 1889 I was frequently along the line of this ditch from the point where my lateral ditch connects with it. I was there once a month sometimes. I have got land on the south side of the creek. In coming to town from the ranch I should say we crossed the ditch three times. After we come out into the road we cross it twice. Where I took out my lateral ditch the main ditch was about five feet wide at that place and three and a half or four feet deep. I could not tell the exact width. I could not say how high the sides of

the ditch were. I had to raise the water some there to get it out into my lateral ditch. From that point west up the creek toward the head of the ditch the bottom of the ditch would be on an average of four and a half feet wide and the depth of it would be about what it is now, two feet. Two feet and one inch would be about the depth of it. From that point to the forks of the ditch it would be for a distance about one fourth or one half. I am giving what size the ditch would be for one half mile west of that lateral ditch and from there one half mile that would be on Fredman Lewis', I suppose it would be about the same. From the forks of the ditch to the head of the ditch in 1889, I never looked at the ditch with the view of taking the dimensions of it. I would say it was about five feet. I could not say only from observation. I would say it was about five feet on the bottom. It looked that it might be that. I think it was about two feet deep, an average of two feet. In 1889 from the point where my lateral ditch connects with the main ditch it extended down on the north side of the creek below Sam Morris' place at that time to my knowledge. It extended down below Morris' place to Murphy's. It was about the same size down to Murphy's place. About the same below Morris' place, about the same as it was now. I could not say that I took particular notice of that after you got down to that point as to the ditch being smaller from there or not. I never worked on it. I never took any particular interest in that ditch. I do not think I could say the exact width of the ditch there at that time. In 1889 I irrigated 80 or 90 acres on the south side. At the forks of the ditch a part goes on the south side. I irrigated from

this ditch on the south side of the creek in 1889. I irrigated the Jolly place, the place I purchased from Jolly. I think I bought the Lewis land the next fall and I irrigated that year out of that ditch. I irrigated the Jolly land that year and a portion of the Burgess land on the other side of the creek. There ware fifty or sixty acres on the south side. In 1890 I had purchased from Freeman Lewis. I purchased land from Freeman Lewis. I think it was in the fall I purchased that and I think I irrigated from that ditch that year about one hundred seventy-five acres of land on both sides of the creek. I was present at the time the contract was made to enlarge this ditch. I think it was enlarged in 1891, or 1892. There was a survey made of it with a view to ascertain how much dirt would have to be removed. Oscar A. Ricker made the survey. From the spring of 1889, when I first became acquainted with it and up to the time of the enlargement I had a man there several days. Murphy seen to having h the moss and weeds cut and cleaned out of the ditch. In 1889 when I became acquainted with that ditch I could not see much difference in going along the ditch. The work all looked to me that the ditch had all been built at one time and the grass and weeds along the sides of the ditch would indicate that there was not much new work done on it except to take out the grass and weeds and I suppose there had been very little work done on it for some time from the time itmwas built. In 1890, 1891 it was four and a half feet and at some places on further up the ditch it was about eight feet wide. It was at the top about eight feet and then at the time the contract was let it was to be made eight feet.

That was the contract with this gentleman who did this work. It was to be two feet deep, Eight feet wide and two feet deep. I know particularly as to its width. I had to measure it. I was not superintending the work but I was present and was anxious to have the ditch enlarged. Iwas anxious to see the work done and to have it properly done. In 1891, after the enlargement of the ditch, I irrigated the same number of acres as I did before it was enlarged on both the north and south sides of the creek.

I have not at any time irrigated more land and I have not any more land under the ditch since that time that was not under the ditch before it was enlarged. I have not irrigated any land that I did not irrigate before the enlargement was made. I bought some land from Freeman Lewisthat I irrigated in 1890 and have irrigated that since that time. Except that there was ten acres or possibly fifteen of the Lewis land that was not put under the ditch until last year. That is now covered by lateral ditches subject to this ditch and also I irrigated about four acres more land on one place than had been irrigated before the enlargement was made. I think there was four or five acres that was irrigated there and that was all. All the land I have under that ditch is irrigated now. There is about one hundred sixty-five acres and that is all with possibly the exception of twenty- or twenty-five acres that can be irrigated. There may be a little more land than I have stated. I irrigate all that I have got that can be irrigated except about fiftee acres. It was all irrigated before I went there. The Company was the owner of this ditch at the time I bought the land. I owned for

ty shares of stock at that time and I own the same now. I am a stock-holder in the Rapid Valley Water Company. I own forty shares of stock. I may be an officer of the company. I could not tell whether I am or not. I do not know whether I am a director or not.

I know where the head gate at the inlet of the lake is. I do not know anything about the head-gate being changed sine 1889. I know there is a new head-gate. I have not been up t there. I do not know when it was put in. I did not work much at that end of the ditch. I know where the head-gate is at the outlet of the lake. I do not know if there has been any changes in that head-gate since 1889. There has not been any to my knowledge. I know where the waste gate is. I can't say if there has been any change in that.

Q. When this contract was let in 1890 or 1891, state whether there was any enlargement of that portion of the dith between the flood-gateand the head-gate in the channel of the ditch. I do not know anything much about that. I think it was said that was filled up there. I think there was some talk about some mud in there and that it was cleaned out. I could not say about that. I had a man there and it took two or three days. I went up there to look into it. The contract did not apply to opening that part of the ditch. We took that out ourselves. Whatever was done on the ditch at that point was done by the days work after the contract was done. That was in 1890 or 1891. It was at the time the enlargement of the ditch was done.

Redirect Examination by Mr. Schrader.

I am interested in the ditch known as the south side ditch. I am a stock holder in that ditch. Thirty-five

shares. It is the same ditch referred to in the evidence. George Mench is one of the owners. I think he was superintendent one year. They have worked on that ditch every year cleaning and fixing it up since 1889. They have made aheavy cut there. Wide at the top and the sides of the cut are sloping and they enlarged the cut and cut it down so it is on a level with the channel of the creek. I was a stockholder in the ditch and know about the work being done. It was not satisfactory and andam was built across the creek and the cut put in there and I was assessed tpmpay my share of putting it in and I paid it.I saw them when they were doing it. I might have been there. My land was close to this dam. Perhaps a half a mile away. Since that change had been made inthe head gate and ditch of the south side ditch company, it has made a difference in the supply of water in Rapid Creek. It would take off some of the water. It takes a good deal,more water than it did before without running any of it over. During all of these years there has been one exceptionally dry one but there has been generally plenty of water in the south side ditch. Since we built the new dam there has been a good deal more water than before if we want to use it. In the dry season I spoke of I do not think there was any water running in the creek below the Little Giant and there was very little there. Not enoughk to cover my land that season until the rain commenced. I now remember coming in when it was so dry that there was no water in it.

I know where the Little Giant ditch is. I own about 5/12 of it. In 1882, 1883, 1884 there was some water used I think to rough the little Giant ditch. The water from the south

side ditch was turned into the Little Ginat ditch which was used as a collateral ditch. At the time the ditch was repaired at this south side dam Rapid creek did not have any water in it to amount to anything. It had just a little water in it. I have never measured the water in the south side ditch. All I know about the water in that ditch is from observation of the landling of thisnditch and from what an engineer might tell me. Except the water that has been turned out of this ditch I judge there was last year going through that ditch, close to one thousand inches of water. I have frequently shut it off there. The south side ditch was about four and a half feet wide. It was more at my place but now it is about two and a half or thirty inches there. It is filled up at my place now. It is thirty inches deep where it comes out of the creek. It is about eight feet wide and it is a very little higher there where it is taken out of the creek. Then is a cut at the head of the ditch. Once or twice I was up at the head of the south side ditch and shut the head-gate down to keep the water outside of the ditch. There was so much water coming in. There was a large head-gate there. There were possibly two of themx. I had a man go there and shut them down to keep out the water from flooding the ground. It was two and a half feet deep I should say. I shut it down or sent a man there to do it. There was a bank there about two feet high where we take the lateral out. It might be more or less. The water is measured out to us there through boxes with the amount of water in them we are entitled to and it is necessary to raise the water to get the amount of water we are entitled to. In raising the water it flooded the grxn

ground so we had to raise the banks of the stream two feet to hold the water. We have never had any trouble about water from the south side ditch. I have had no trouble from the little Giant. There are some below me that have not had the water they ought to. I have had sufficient most of the time. After we had moved the dam in the creek at the south side ditch and turned the water into the cut there and enlarged the south side ditch there was not at times over fifty inches of water flowing down Rapid Creek into the Little Giant ditch I know it lacked a good deal of what we wanted at that time. None of the members of the south side ditch company were ever arrested for having turned the water off from their ditch. There was one gentlemen I do not know whether he had anything about the ditch or not. He did not stop me. I told him I wanted water and was going to have it and was going to have what water I actually needed anyway. The waste gate of the defendant's ditch where the water is again turned back into the creek, I can't say exactly if it is below Sam Morris'. I do not know who owns the land it is on. I do not know where the dam of the Lone Tree Ditch Company is only from what they told me. I know where Eastman's place is. The waste gate of the defendant's ditch is on the west side of it. As for the means of carrying the water back into the creek from the line of our main ditch there is a place for a ditch and flume to take it over the Little Giant ditch. To let the waste water pass over that and back into the creek. No one uses water from the defendant's ditch since 1889 that did not use water therefrom prior to that time. I do not know whether the defendant company has been selling water since 1889 to

persons that did not use it prior to that time of my own personal knowledge. I do not know of any person to my own personal knowledge that was using water in 1889 that is not now. Or that is using it since 1889 that is not now. Or that was using it since 1890 that was not in 1889. There was one man who took water one year and then he took out a ditch of his own and he did not get any water there since that time. I do not know just how much he took. He does not get any now. About forty acres of land that I have under ditch was put into grain in 389. Since that time I have about twenty acres in grain except the Lewis place. We cultivate some more there. I have got that all in alfalfa and grass except about twenty acres. All the land I have is adjacent toRapid Creek. The creek passes through all of it except three or four quarters out on the hills. There is about eight hundred acres all told. The creek runs through every forty. That is the reason I bought it. I bought along the creek except where I made a mistake on the Jolly place. The creek runs along by the Jolly land. My land is not all in one body. Some of it is separate. There is a man by the name of Keliher and Sam Morriscomes in between two portions of my land. It comes together after that. There are seven quarters that lie adjacent to the creek. Some of this land I have mentioned is my wife's land, some of it is hers and some mine.

I think the size of the bridge that was used by the public on the public highway crossing this ditch in 1889 on the premises I speak of was about six planks. The plank was one foot in width. I think the bridge was taken up at the time of the enlargement. After the enlargement was made I think

there was another plank added to it. I think we put in new bridges.

Cross-Examined by Mr. Fowler.

In 1889 I bought the Jolly place. Two of them. I do not remember how many acres in the Davis Jolly place. Both pieces lay on the south side of the creek. They adjoin the creek. Of these two forty or fifty acres, possibly sixty are under this ditch. I do not know how much land had be irrigated by Jolly previously. He irrigated it all/ In 1889 I irrigated all of the Jolly land I am irrigating now. About fifty or sixty acres. And then there was the Burgess place . I raise thirty or forty acres of alfalfa on this land. A good deal of the land is bottom land. There is about two hundred fifty or three hundred acres of it under the Cyclone Ditch. The north part of the Jolly place is adjacent to Rapid Creek. The creek does not run through it at all. It runs about a quarter or half a quarter from it. Five or six hundred feet possibly. Rapid Creek runs through the Burgess land, just about through the middle. A little more to the north side than to the south. The Clark Lewis place lies west of the Burgess. Rapid Creek runs through that also. Besides those I have mentioned I purchased from Tom Taylor a quarter. I water it from the south ditch. There sixty or seventy acres is under ditch. The Morris place lies east of the Tom Taylor place. Rapid Creek runs through it. I bought another portion of land from Armendorff a couple of years later. I irrigate that from the little Giant. That land is on the north side of the creek. Rapid creek runs through th Armendorff land. The land lies mostly on the north side about

ten acres being on the south side of the creek. I next purchased the Maurice Keliher land and some other land under the Hawthorne ditch. We do not have plenty of water in the Hawthorn ditch. We shut that down when they told us to. I water from this ditch through both branches about one hundred sixty-five acres. I irrigate now about fifteen acres more. I got fifteen acres from Freeman Lewis. I do not know how many acres Freeman Lewis or J.C.Reed irrigate from that ditch. I judge I irrigate one hundred sixty-five acres. I should think J.C.Reed irrigated about forty acres from the looks of the plowed ground there. General Morris irrigates, I think, about one hundred twenty-five acres from the south side ditch. The ditch runs north of his land. There is between thirty and forty acres irrigated on the Marshall place from the ditch. I had that and irrigated it myself this year. Marshall claims to own it but it is in litigation. Morris irrigates from the ditch between One hundred twenty-five and one hundred thirty-five acres. Sam Morris about from one hundred to one hundred fifteen acres. I do not know how much Charley Hunt irrigates nor Ellwood William I do not know how much is irrigated on the Joe Foreman land. I never looked that place over or the next one there. I could not say how much there is. I never examined. I never looked it over with a view to forming an estimate of how much there is on it. I know something about extending the line from the Sam Morris place to the east line. I know the work was done and paid for. I think it was at the time the contract was let for the enlargement of the rest of the ditch. I think it was at the same time as the other. I think the contract was let to the same parties at the same time. It was the same contract.

That now runs to the Joe Forera place. I think that the line is north of the Shoemaker place. Am not sure. It is this side of the place I spoke of it, the waste gate where we turn the water back into the creek. My understanding is that Carroll had the contract for extending it on the the east from there. The exact lines of extension I do not know. I understand the is a head gate in there at the waste gate to let these parties edown there have what water is coming to them., and the balance of the water runs back into the creek. I do not know how much either of these parties irrigate. I have forty shares of stock in the company. I understand there is three hundred in all. The water I take out is all measured. I get one hundred and fifty inches. The number of shares owned has nothing to do with the proportion of water. I buy the water every year. I receive one hundred fifty inches of water and pay for that amount. Just the same as the rest. I buy all the water I use and get no water from my stock. I buy the same as everybody else. We all pay for it. Or if a man has share he gets credit for the amount if there is any coming in after paying the expenses. It is the same with the stockholders as anybody else. They are charged with all the water they get. If there was anybody along the line of the ditch that wanted water and they were entitled to it and would pay for it, they would get it. No matter who it is they have to pay for it. The stock of the company is held separately from the land. It is transferred separately. If you buy the land of course you can get the stock for so much money. The water stock was transferred when the land was transferred to me. Freeman Lewis uses twenty-five inches I think. Murphy uses one hundred twenty-five inches, I think. I do not know how much Charley

Hunt and Eastman use. Sam Morris uses one hundred twenty or one hundred forty inches. I think there was one hundred fifty inches I bought for the Marshall place. Understand me one hundred forty acres but a good deal of it was not very wet. General Morris uses something over onehundred inches. I remember about the time Morris moved on the Chase place. I do not remember theyear. I do not remember how much of the Chase place was irrigated prior to his moving there. I do know there was some irrigating there and that is all I know about it. I do not think anybody said anything about a waste gate there. There is a head gate at the point where the water turns off into the creek through the waste gate. I could not give you the distance below the McElroy lake. The size of the box~~xxx~~ in that head-gate is about six feet. Possibly wider than that. I could not say. I never looked at it particularly. I would say it was about four feet deep. It lies flat in the water. I do not remember the height of the top plank above the bottom or floor and the gate above. Indo not remember what it was when I was there to help take out the jmaterial I spoke of. I think the amount of water going through the opening could be regulated by the gate. I do not think they lower or raise the gate to regulate the water. The size of the aperture through which the water passes at the head gate of the McElroy place must be six or seven feet wide. It is about the size of the ditch. I think the size of the ditch above this flood gate is some larger than below. It is some larger between them. I think the ditch was enlarged a couple of feet below the head-gate since its enlargement as compared with the ditch before that time. Between the flood gate and the head-gate there was nothing done but clean out some stuff that had

fallen in there. And below the head-gate the ditch was enlarged to the contract as I understand it. It was enlarged from about six or seven feet. It was enlarged to eight feet. I do not think it was made but a little deeper. It was about low enough as it was. It was cut deeper where it was not down to grade, to put it on the grade. That ditch was always large enough to carry the water. Only when the ditch was so full the land was over-flowed and damaged. And we enlarged the ditch so it wouldn carry the water easily and protect us from damage from over-flow of the water from the ditch. And that state of facts applies to the whole ditch. We did not enlarg it for the purpose of carrying more water in it. We are using no more water than we did before it was enlarged. On the north side we enlarged it from what we call the forks in the ditch. The south side has not been changed at all. The eigh feet in width does not continue down on the Foreman land. It is six feet wide from this side of Hunts. That is below Murphy's and continues that width to Ellwood William's place and to Feiff's. It is six feet wide all the way down there. That was the contract. In the cuts some of it is between four and five feet deep. We had to cut it down to put it level and to have it on the grade. I do not think there was any slope to the ditch under the contract except at the cuts. I know the cut on the Foreman place was about ten feet wide on the top and it was sloping down on the ditch. I do not know what the slope is though. I do not know what the grade of the ditchis. I have had considerable experience in that line of business. I have in Colorado. I saw some irrigating there. I know enough to know that the Rapid Valley irrigating Company's dit ditch is a light grade. I do not know whether the grade of th ditch was changed at the time it was enlarged. The grade of

the ditch by Morris' and Murphy's some of it, has considerable grade. There is not much fall past his house? At Marshall's place the ditch has a heavy grade The water runs very swift there. At Lewis' place the grade is light. There is more grade when it gets down into the Morris field. The next crossing of the ditch is at the Marshall place. It crosses the public highway there. It is a very heavy grade there I would not call it a very heavy grade. No, sir, it is not. It has a swift current. Comparing the present grade with what it was before the enlargement I should say it run most as swift before the enlargement as it does how. I do not think it runs any more swiftly now. There is no difference, the grade has been changed very little. As to the quantity of water it takes to irrigate this country per acre for a yea I can only speak from my own experience, what I have irrigated. If it is plow land it takes more water to irrigate plow land. It takes more to irrigate the first year than it does the second and third. It depends more upon the season of course. If it rains it will require less water and there is also more in the creek. If you want to irrigate you have got to have a head of water to getnit over the land and you will have to use so much water to cover it over. And then you will not have to use it so often. That is about the only difference in different years. I can irrigate with one hundred fifty inches about one hundred twenty-five acres. In 1889 I irrigated it all but about fifteen acres I bought from Lewis. In 1890 about the same. From yearn to year I have used about the same quantity of land. As compared with 1890 I irrigate about the same amount of alfalfa

or grass. There was more alfalfa there in 1885 and from that time on. I am now irrigating every part of theland under the ditch. More for pasture land than for any other purpose. I think it takes about the same amount of water to go over it for that purpose as for anything else. It does not take as much water to irrigate that as cultivated land. On cultivated land it sinks in the groundquickly and dries up faster and evaporates more. The amount of water to irrigate an acres of cultivated land would depend upon the season. I do not know as I culd tell how much water it would take to irrigate an acre of corn in this country. I have not planted much corn. They do not irrigate much for corn where I have been. My idea about corn is that it ought not to have so much wateras it would get by irrigateion. It would not mature. If it was a dry season of course it would require much more water than if it were a wet season. Fifty inches of water would probably irrigate fifty acres of land. Twenty-five inches of water would not irrigate twenty-five acres of land. You have got to have the flow of water to carry the water over the land and you could not do much with less than fifty inches. Fifty inches would come nearer irrigating seventy-five acres than twenty-five inches would to irrigating twenty-five acres.

I testified that they had made a cut there at the head of the ditch and ~~xxx~~ changed the dam in the creek. The only work that was ever done on the ditch except that was in cleaning it out. Sometimes the banks would wash out or something of that kind and we would have to keep the ditch up. We did not get water enough into the ditch so this enlargement was made at the head of the ditch. We put the cut

through there and let the water have a straight shoot into the ditch. It catches the water below and it is right in the bend so when there is a current it runs right into the mouth of the ditch. I could not say how high a dam we put in there. It was not a high dam at all. Possibly four feet from the bottom of the creek. And then they put a board there above the surface of the water. It would be about four feet above the natural surface of the creek. It is not put in there square across the creek. It is put cross-wise so as to turn the water into the ditch. It is along the way of the creek so that the water running against it would be thrown against the ditch. The head-gate located there is below the dam. Possibly thirty feet. The gate stands right there in the ditch. The water runs as swift through the head-gate as it run at my place. The velocity of the water is about the same all the way down there. The current is not very swift. It is not so swift as the south ditch of the Rapid Valley. It is not at my place. I am speaking of the water that comes out of the south ditch and runs through my place. I say it runs very rapidly. Those were the only two places I saw down the ditch and it does not run very much faster there than it does on the north ditch. It comes across Lewis' land fifteen or twenty feet before it reaches mine. With reference to this ditch the Little Giant is below this ditch. About one hundred yards below it. It is on the north side of the creek. The south ditch is about four and a half feet wide I should say. Where the water comes into it it is a good deal wider than that in a good many places. I think four and a half feet would be the average width, from as far as I have

been, from four and a half to five feet wide. It runs deeper in the south ditch than it does in the north ditch. The water over-flowed from the south ditch upon some of them .down there. The over-flow was probably one quarter of a milem from the head of the ditch. On my land below the over-flow it was up to within about one foot of the topof the ditch and that part of it was afterward deepenedso that it would go out into the lateral ditch at the point of the over-flow which was a point where I had raised it up to get water into my lateral ditch and between the dam of the ditch and the head of the ditch. The side of the ditch at that point was raised about two feet. I measured the water in the ditch. I fell into it. I measured it in that way. I did not measure th depth of the water for the purpose of ascertaining the same. I fell into it enough times I guess to knowto know what it was and it came up to about here (indicating about three and a half feet)

Re-Examined by Mr. Schrader.

Q. You spoke about enlarging this north ditch in 1891. I willmask you to state from what source if any, during the years 1891, 1892, 1893, 1894, after the south side ditch had taken out all the water from the creek and there was not fifty inches of water in the Little Giant ditch, where did th people of the Lone Tree ditch get their water from. A. If they got any they got it out of the north ditch. I do not know whether they got any. As to how they got it out of the north side ditch after eight hundred and odd inches of water had been used, I do notthink we all use more than that, it would waste through the waste ditch back into the creek. We did not have much more than that. I would not say the amount but it was whatever we sold and they would get the bal-

ance back into the ditch where it wastes back into the creek belowthe other ditch and above the Lone Tree ditch. Whatever we sold out of that ditch we measured the water and we did not get any more water than we bought. My 150 inches was measured to me in that way and everybody got the water they bought and was satisfied with it and let the rest flow back into the creek. We measured by inches. My understanding of a miner's inch is the amount of water that will flow through an inch opening under certain pressure. I mean that the amount of water has been measured there since theenlargement of the ditch so that though the ditch was largerand capable of carrying more water that there was only so much water used and the remainder of the water wasted back into the creek. They measured the opening so as to have it the size of the number of inches we were to have and I do not know whether we got that in miner's inches or not. It might be more and it might be less. We were well satisfied with it. So that supposing there was one thousand inches of water flowing into the ditch and we used eight hundred inches of water then thee would be about two hundred inches of water flowing down through the waste gate. There was more water below Murphy's after the enlargement of the ditch than there was before the enlargement of the ditch but I had the same flow of water in my lateral ditch as before. I had the same one hundrdd fifty inches that I had before and Reed and Morris had the same amount of water that they had before the enlargement of the ditch. So far as these persons are concerned I know they got the same before the enlargement as after. do not know the exact amount of water they eachgot but they all irrigate

about the same amount of ground that they did before the enlargement. I mean that though there was more water flowing in the ditch that we took no more water out of the ditch than we had taken before. There is considerable more water in the ditch since its enlargement than before. The additional amount of water goes down the ditch and out of the waste gate that is beyond Morris' place. The additional amount of water must flow down there and go back into the creek becausen we are all irrigating the same amount of land as we did before. We all get the same amount of water in this way but we get it more regularly now than before this enlargement was made in our ditch and we are, I think, all using about the same amount of water that we did before the enlargement of the ditch. I know I do not use any more water than I did. It goes down the waste ditch that is below Morris' there and goes back into the creek. The object in taking outnthe water was not to use any morewater than they did before but with a regular flow ofnwater in the ditch it would give a steadier flow and we would get it more regularly than we did before. We flumed the waste water over the other ditch there so it could go back into the creek above the ditch they have there. There is as much water flowing in Rapid Creek now as there was before the enlargement, down below the waste ditch. Below that point there would be more water than there was the other way.

Re-Cross Examination by Mr. Fowler.

I was president of the company the year the ditch was enlarged. I was president a year. I am not certain. Could not say whether it was one year or more. Possibly not more than one year. I know as soon as the ditch was enlarged and we settled up our account I left it and did not have anything

about the same amount of ground that they did before the enlargement. I mean that though there was more water flowing in the ditch that we took no more water out of the ditch than we had taken before. There is considerable more water in the ditch since its enlargement than before. The additional amount of water goes down the ditch and out of the waste gate that is beyond Morris' place. The additional amount of water must flow down there and go back into the creek becausen we are all irrigating the same amount of land as we did before. We all get the same amount of water in this way but we get it more regularly now than before this enlargement was made in our ditch and we are, I think, all using about the same amount of water that we did before the enlargement of the ditch. I know I do not use any more water than I did. It goes down the waste ditch that is below Morris' there and goes back into the creek. The object in taking outnthe water was not to use any morewater than they did before but with a regular flow ofnwater in the ditch it would give a steadier flow and we would get it more regularly than we did before. We flumed the waste water over the other ditch there so it could go back into the creek above the ditch they have there. There is as much water flowing in Rapid Creek now as there was before the enlargement, down below the waste ditch. Below that point there would be more water than there was the other way.

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more to do with it. In was a member of the company of course but I did not have anything to do with it. I have not been one of the managing stockholders and directors since I was pe president. I do not know whether Elmer Kimball was on the Foreman place while I was president or not. I do not remember Kimball now. I do not remember shutting the water down on the Foreman place because Kimball was in arrears for water rent. It might have been somebody else, I do not remember it. I do not know whether there were any boxe s on theForeman and Eastman places to measure the amount of water they received. I do not know anything about how those thing were down there. I do not know what there is down there sine the enlargement of the ditch. I know there is no more water taken out by them down there than they buy and pay for. I know it is measured out to them in some way. There is no water taken out by them from the waste water ditch. The water received by them does not exceed the amount purchased by them. I do not know how much water flows back into Rapid Creek. With reference to the amount of water that flows into Rapid Creek I do not know how much there is. I am simply swearing that there is a waste gate there. I know that for I have seen it a d have see water flowing down there and I know that was the purpose for which that was built. I think at one time I have seen five or four hundred inches of water flowing down there. I could not say what year it was. It was after the enlargement of the ditch. As to whether it was after it was carried by Ellwood Williams and Seivert Reif's I told you I did not know anything about that down there. I do not know anything about that extension at all.

I have stated that myself, Morris, Reed and others were getting more water than we did before theenlargement of the ditch. We were anxious to have the ditch enlarged. The object of the enlargement was as I statedto you a while ago. We got water sufficient to irrigate all our lands and we irrigated the same lands now that we did before. The object was as I said before that with the ditch full ofwater it was breaking over and there would be damage done by the over flow and the wasting of the water would be an item and to save looking after the sidesm of the ditch so much of the tim time and to prevent the overflow of the water as I stated, we enlarged the ditch. It carried all the water we wanted before but it would not do it so easily as this does now. At the time we made the enlargement of the ditch we did not deepen it only to make it down to grade. And besides when the water would overflow the land it would damage the land. It would become alkalied and that was because it would overflow and so we commanded it would be better to build the ditch so it would carry the water easily and besides it saved the expense of having a man on the ditch and we had to go along the ditch and clean it out every spring before we commenced to work. Our object was to fix that ditch so we could have plenty of water all the time without overflowing and without damaging anybody along the line of the ditch. That we might have the pressure to give us the amount of water that was measured out to us and no matter what we were doing in the spring if anything happened to the ditch we would have to drop everything and go and fix it up. There was a weed that used to get into it and fill it up. So we would have to go and clean it out. We wanted it so it would do the work

wAnk and so it would carry more water. And then too a lat- ditch would not carry so much water. We deepened it in some places. We would not deepen it for the reason that our lat- eral ditcheswere there so they would not fill if the ditch was any deeper. I understand there were a few places deep- ened to put it on the gra . We did not make it deeper so it would carry the water. It was wider and would not have to be so high. We could c rry considerably more wa er I do not know how much more. The waste gate I have been talking a- bout is down by Sam Morris' a d west of the Foree place. I u derstand that is where it is. I am not familiar with the lines of the land down there. I have not paid much attention to the water since the ditch was enlarged. I do not have to. From there we turned the water out of our ditch on the other side of Sam Morris' place to the creek is about a mile. I am guessing at that. I do not think in going that mile it would cross Eastman's land. I have not been down to it. In going that mile the evaporation would not be anything. I do not think the evaporation amounts to anything until you get it on the ground. I do not think there would be any evaporation going down the draw. I do not think it would be more than go- ing down the natural channel of the creek. I know they all told me that when I took out that Hawthorne ditch that the water would all seep down and I would not get any of it on the land. And it is as good as can be wanted. It does not.

Q. You were speaking about a ditch there but here you have run that waste water down a draw there? A. Yes, but if it keep going on down there it would make a ditch. It would not take long to make one of these draws a ditch. It would be all right after ne season.

Q. If it was done first in 1898 it would take all that season to flow out? I do not think it would hinder it. It is not a rough draw it would not hinder it. It would not lower the water much wither. I could not say where the Little Giant ditch is with reference to where we turn the water into the draw. I tell you I was never down there. I do not know anything about it down there only what persons told me. I do not know anything about it, turning the water into the little Giant ditch down there. I supposed that was the Little Giant , I have heard how it was but I never saw it below Sam Morris'. I never saw either of the ditches below there except when we went down there once and saw the water running in that waste ditch. I have been to Charley Hunt's place several times, I was there last summer and I was there the year before. I never saw the ditch running full of water at his place. That ditch has never been full of water. I do not remember the 12th of September how much water was in that ditch at Charley Hunt's place. If it was runningfull I did not see it. I have been along there every day in the summer mostly and I know it is a large ditch and it has never been full of water when I saw it. It would take all the water there was in the creek. We have not taken all the water in the creek, nly something over eight hundred inches measured out. We have our boxes for measuring the water into the lateral ditch. I have got three boxes. The size of them is two feet wide and they stand there in that way(showing with hands); the box is about twelve inches high. They are all the same size. You do not suppose we run them full do you? We take a piece of timber and nail it down there so as to allow the number of inches we are entitled to. We measure

the aperture for miner's inches, four inches high and twenty-two inches long for 100 inches of water. And as I take out in three places it would be one, two and three inches of water. The size of these boxes are two feet, that would be twenty-two inches on the inside and we all measure the same way so it don't make any difference. It is four inches high for 100 inches and six inches high for 150 inches.

Q. And what is the pressure? A. That is the purpose of putting the boxes in there so we could all get the same amount of water and it is fixed so that it cannot be changed. The flow of the ditch there as compared with what it was before the enlargementof the ditch was not more than twice as much. No, it was not twice as much as it was before. It had been running about 1000 inches of water. We have been using about the same amount of water as compared with what it was before. I said we had been using about eight hundred inches of water and I know we turned in about one thousand inches of water and it runs about two thousand inches of water. I could not say as to the exact amount of increase.

Q. What is going in the main ditch? I understand you turned it back before the Foreman place? A. I think there was running in that ditch more than four hundred inches. There is more water running in there than there was before. There is more in the waste ditch I would say. I would say one half to one third more. That much more than there was before we enlarged. Yes, sir, we have run more water. I would have you to understand that we do not run as much water at any timebecause the ditch will carry two thousand inches of water when it is full. I do not think we hadmitmore than

half full of water.

Re-Examination by Mr. Schrader.

That ditch has run about one half full. I know our dam where we took the water out. I know that I have to raise the water there to get it to the latcral ditch. When I do that it backs up until it is full. When we make the raise to take out the water in my lateral ditch, it banks it to Marshall's place. One of his fields is just below the Marshall bridge. It banks it up to the Marshall bridge. So if on the 12th of September I were taking water out of that ditch it would have been banked up there by my raising the water to get it out on the lateral ditch. The effect uponnthe water there is that it would be full. Sometimes when we are done running it we shut itnoff and then the water will be up to the banks. In the morning, before we run the water in again, it would be filled, and I guess it must have been the time that we saw it full of water. That must have been the time. I do not know much about that draw at the Foreman place. I never noticed any particular draw there. I do not know what place it is on. I could not say what the length of it is. I do not know hommuch of the waste water ditch the defendant company constructed. I know they did construct one.

Witness excused.

Osa Chase testified on behalf of the defendants as follows o n direct examination:--

I reside in Rapid City. I know the ditch known as the Rapid Valley Irrigating Company ditch. I have known it sine 1878. During the year 1879 and for the five years subsequent thereto I lived not over a half mile from thenhead of the ditch. I sold the place now owned by Morris. Francis Morris owns it now. I obtained title to it by commuting a homestead. I first saw the defendants' ditch in 1878 in the fall. From the dam on the McElroy place it was made down just about one and a half miles from the head of the ditch. It would not be more than that and we run the ditch may be two mides. As I saw it in 1878 the ditch would run about six feet in width to three and a half feet and from one and a half to two feet deep. In 1879 it extended some on the south branch of the ditch. Not a great deal. And the north half was extended for about half to three quarters of a mile to the Marshall place. In 1880 I think it was extended. I am not sure about that. It was extended some, I know that I would not say just where to. I think soon it would carry water to Francis Murphy's place. It was extended in 1881, to Sam Morris' place. I irrigated a little patch in 1879. I think I worked on the extension in 1878 and 1879. I would not be sure about that. I have worked on it some. I know I did some on it in 1882. I worked on the north branch of the ditch on the north side of the creek and extended it further south. I think I sold out and left the valley in July or August, 1884. At that time I think the water was running out through the waste water ditch below Sam Morris' place. I would not be positive in regard to how deep it was

In 1884 the ditch was always running full when they used it. They were using it a portion of theyear. It was down the south side I think as far down as the survey had been run. The ditch was out of its banks on my place it was so full. The grade was kind of level there innsome places and in some places it would not carry the water over them until it was raised to run over and it would fill up the banks and run back over the sides of the ditch. It was on the north side of the ditch and it would cover the ground for quite a ways. In 1880 I irrigated probably twenty or twenty-five acres of ground from this ditch. One year I think I irrigated thirty five acres. I do not know exactly what year that was. I know it was a very dry season. I havembeen on the head-gate I have been to three head-gates in there. There are two places but there were two different ones in one place. In 1879 I was at one or near the head-gate on the creek near the inlet to the McElroy lake. Freeman Lewis, Clarke Lewis, and David Wells were there at that time. I do not know whether there were any more on it or not. I saw the old notice of location ofnthe water right there at that time. The names of the parties I have named were on it. I do not know whether there were any more names on it or not. Ixkk think the name of the Rapid Valley Irrigating Company; some such name as that was on the notice. I cant tell you what kind of a notice it was. I do not remember what was on it. It was in a box six or eight inches square and the names were in that box on the paper. I do not remember what was on the paper. I read the notice at the time. I have not been there since. I have not paid much attention to it. I do not know how much the ditch is larger than it was in 1884.

Charles Morris, being called as a witness on behalf of the defendants, testified as follows on Direct Examination.

My name is Charles C. Morris, I am thirty-five. Residence Chenelle River. I have seen the ditch known as the defendant's ditch. I am not much acquainted with it. I first became acquainted with it in the spring of 1881. I was there then residing down the Valley about six miles, on the Sam Morris land. He and I were partners that summer. I did not notice the ditch so much except above Murphy's place. They crossed it at a crossing on the Marshall place I crossed it quite often there. Along the Sam Morris place and the Marshall place I should say it was about six feet wide. It was possibly a foot to a foot and a half deep. From there to the Sam Morris place it was about a half mile. The ditch there was about five feet wide and a foot and a half to two feet deep.

I remained on the Sam Morris place there one summer and I stayed there up until about December, 1881. Sam Morris irrigated from that ditch.

I could not say that there was anybody else irrigated because I did not see them irrigating from it. I did some work on that ditch in that spring, a few days, between Sam Morris' place and Murphy's where it runs into the Van Doe place. It is probably two miles and a half or three miles from the head of the ditch. From where I understand the head of the ditch to be. I was never at the head of the ditch. I do not think I ever worked on the ditch up there. I have crossed the ditch every year since 1881. On my place and the place south. I moved from that place to

my own place south of there which is possibly a little over half a mile from the ditch and I lived there until the sprig of 1884. I think the ditch was extended then down to Charley Hunt'sm place. That was three or three and a half miles from the head of the ditch to the McElroy place. I do not know who was getting water in 1884 from that ditch except Sam Morris there and Murphy and Charley Hunt. I could not say as to Foreman. I do not think I was ever at the head-gate. I have a faint recollection of being there in 1881. I could not state postively.

I have been at the dam of the Lone Tree ditch. I couldn not say when I was first there. I can't give the year. I have been down there at the Isaac Cramer place and seen this dam there and I could not say what year it was. I think I had something to do with putting the bridge in at the Marshall place in connection with Sam Morris. I do not remember. The width of the bridge on the Marshall place in 1882 and 1883 was about six feet I think. The width ofnthe channel of the ditch at that time was about the same and the depth was possibly a foot or a foot and a half.

Cross-examined by Mr. Fowler.

All the land I own there is below the defendant's ditch. It is south of it.

Re-Examined by Mr. Schrader.

I never irrigated from this ditch.

Joseph E. Allen being sworn as a witness on behalf of the defendants, testified as follows:--

During the latter part of 1893 and all of 1894 and up to December 25th I resided on Rapid Creek on the J.P.Eastman place. I lived on J.P.Eastman's all of that time. I know the defendant's ditch, the Rapid valley ditch. The Lone Tree dam was right adjoining my field, joining the field that it is in. I know where the south side ditch is. I was on the south side ditch in 1893 and 1894. I have been irrigating here. I irrigated where I was onnthe Eastman place. And I have irrigaed since 1880 in Colorado, Denver and on the Platte River and Rapid Creek run through the ranch where I was living in 1893 and 0894 and in one place it was within a stone's throw of thehouse. While we were irrigating I was at this ditch half a dozen times a day. All of 1894 while I was there there was a good deal of water in the south side ditch. In the spring of 1894 there was a good fair head of water in Rapid Creek and later on to the first of June it dropped off some and then in a short time there was plenty of water in the creek. That dry time lasted about a week. I can't tell about what time in June it was. During the excessive dry season in my judgment there was two or three hundred inches of water running in Rapid Creek by my place during that excessive dry time. I could not tell the depth of it. I could not give the depth, I would think it was three or four inches. I could not say exactly how wide the stream was. I could not tell you the width of it exactly. I could not say the time of year it was, it was during the summer. As to the depth of the stream I could not say the and the width of it would be eight or ten feet. I could not say how deep it was. The width of it might be about fifteen feet.

It was sometime during 1893 or 1894, the time of year when the water would be as I have stated, in June, about the first of JuneI think. I could not tell what time in June. No, it was a foot or two feet in depth. I could not say what time it was.

John C. Reed, being sworn as a witness on behalf of h the defendant, testified as follows on direct examination:-

My name is John C. Reed, ar. forty-seven years old, occupation, farming, residence on Rapid Valley.? I have resided there since February, 1879. The land on which I live is the East half northeast quarter and the east half southeast quarter of Section Nine Township one North of Range east

I know the defendant's ditch. Have known it since the spring of 1879. In 1879 with reference to Rapid Creek and my place this ditch ran across the south eighty. It run in a southeast course across the south eighty. The length of the ditch at that time was probably one and a half miles.

The width of the ditch at that time was probably four to five feet. I do not know as I can Tell. The average depth was about eight or ten inches. I irrigated from that ditch in 1879. I think thirteen or fourteen acres. In 1879 it wa extended from where the forks of the ditch are now, I think it was taken on the north side of the creek to Marshall's place in 1879. That would be about one half mile. The width of that extension made in 1879 was four or five feet. The depth of it somewhere from eight to twelve inches. In 1880 I do not remember whether the ditch was enlarged on my place. I know they worked on it right along most every year. I worked on it in the summer of 1879. I think it was extended in 1880 down to Sam Morris'. I do not know with reference to 1881, about any extension. They might have made one. I know it was extended eigther in 1880 or 1881, During the year 1880, I irrigated from this ditch twenty-two or twenty-three acres. In 1881 about ten or twelve acres. I d'd not irrigate any in 1882 nor 1883, neither in1884. As to 1885, there were two years there I irrigated, I do not kn

know which they were. I do not remember whether I irrigated any in 1890. I do not know whether I irrigated any before the ditch was enlarged. I could not say. When I did irrigate before the enlargement of the ditch I irrigated about twenty-five acres. Since the enlargement of the ditch about thirty acres. Since the enlargement of the ditch at my place it is from one to two feet wider than it was before. I think it is about six to twelve inches deeper through there. Six to twelve inches lower. That six to twelve inches was needed for the purpose of the water running through. It was flat there and would not run so well. I do not think it was made any deeper there by the enlargement. I mean that it was washed out deeper.

I am not acquainted with the head-gate. I never saw either that or the flood-gate. I have been using water every year since the enlargement. Before the enlargement the ditch ran nearly full of water. It come probably three to six inches from the edge of the bank. Since the enlargement I do not think it run over half full. I do not cross the ditch coming from my place to Rapid City. I live northwest from there but I have land below there.

John Haas was a witness on behalf of the defendants, testified as follows on direct examination.

My name is John Haas, age 29, occupation, school teacher this winter. I know where the defendants' ditch is. I have known it since last June. I commenced working for them on the 7th of last June. I was employed as ditch boss. My duty was to keep the water running in the ditch and see that the ditch was in repair and condition for carrying water. I acted as such ditch boss from the 7th of June for one month. During the time I was ditch boss in 1894, the quantity of water used out of the ditch was the following; F.M.Morris, 125 inches; John Reed, 35 inches; James Wood, 150 inches; Freeman Lewis, 125 inches; F.M.Murphy, 125 inches; Sam Morris, 140 inches; Charles Hunt, 25 inches; Eastman, I do not know exactly what he had, I think it was 85 inches and Reif and Williams was 75 inches. That is all. Eastman's was 85 inches. Charley Hunt's 25 inches. John C. Reed 35 inches, the balance of the water goes down the waste ditch with one exception. When Reif and Williams were subject to a shortage of water there were some days when Eastman got none at all and then by reason of not getting what was due them when the water came down they then would have a little more other days. But I do not think they ever got their full amount.

I do not know where the Lone Tree dam is. The water went back into Rapid Creek at Charley Hunt's place. East of there I do not know who owns the land there where it runs in Grady owns someland there I do not know where the lines are. He lives south of this, south of the section line as I understand it, South of the waste gate. If the ditch ran north and south he would be on the east side of it. I do not know exactly where the township line is between Light and Nine.

I do not know the number of the section Hunt's land is in.

Cross-Examination by Mr. Fowler.

The time I was there was June 7th for one month. From June 7th to July 7th except I lost a day or two.

Re-Examination by Mr. Schrader.

Aside from the persons we mentioned as using the water from this ditch at that time, there was a little water used by Reuter and McElroy he got some that was not recorded. He irrigated a small potato patch. It come from the ditch. It was south of the lake on the ditch. I would not be certain I think it was below the lake. There was no record made of the amount of water he got. I can't approximate it. It started at the head-gate. It was close by the flood-gate. It was below the flood-gate. I never measured it. I do not know how far it is. It is only a few rods. I could not say the size of the ditch he took the water through. I have not any idea or recollection of tyhe size of the potato patch. There was not over an acre. There was a man on what is known as the Corb Morse place and he uses a little water that he got there on the south side of the ditch, I judge he irrigated in the neighborhood of an acre. I do not know how much he got. I could not approximate it. There was not much because he got a very small piece of land. Nobody else uses water that I knew of.

Cross-Examination by Mr. Fowler.

I never made any measurements of these boxes used for measuring water. I kept a record. I kept no record of that so I could not say. I do not know the size of the boxes that J.C.Reed uses. I kept no record of it. I kept no record of the boxes, I kept no record of the area. I have a record of the number of inches each was entitled to. I

were four or five boxes used for running out the water to F.M.Morris, and they were at different places along the ditch ditch. Sometimes there would be one of them in a place and sometimes two of them. IN keeping my measurements, I had the U.S.standard rule and that I was to take along and measure the depth of the boxes. I do not know anything about miner's inches of water. I measured to ascertain the amount of water they were using. I do not know the grade of any of the boxes on the ditch. How I would measure the amount of water would depend upon the width of the boxes. I would measure the height of the water in the box. One hundred twenty-five inches of water would be twelve inches high and twelve inches wide.

Q. Would that be it? A. No, sir.

Q. Would it not be the quotient from dividing 125 by 12?

A. Yes, sir.

Q. What would that be? A. I think it would be 125 --square It would be the quotient of 125 by 12. The height of the box would be 10-1/2 incheshigh or 5/12. 12 inches wide and 10-5/12 inches high would be 125 square inches, I think. It would be the size of the area through which the water would pass. That was the rule with reference to the other customers I do not know what a miner's inch is, only what I have heard here in court. I heard the testimony. I do not know Rickher, I mean the other gentleman.

John Haas recalled for further cross-examination by Mr. Fowler.

The boxes from which we measured water to the respective customers during the time I was in charge were placed in the sides of the ditch. We would put in the obstruction or

dam in the ditch to raise the water — run the water on the level located at different points on the ditch. The height of the aperture inthe boxes where the water was discharged, they would have it so as to regulate it about a five inch pressure. It was to raise the water five inches above the aperture and I put it there as near as I could. And I was to give Morris about the same as the rest as near as I could approximate it. Where Morris first takes out the water from the ditch is within half a mile of the flood-gate and the heaight and pressure of the water was regulated by placing in the ditch a temporary dam below the point of diversion. The dam was placed in the ditch just below the discharge so as to raise the water below the discharge and make the pressure so it would carry the measured amount of water. John C. Reed diverted the water just below the Morris place. It would be about three-quarters of a mile below the dam. I do not know where the section line is there. Fromwhere Morris gets his water to the flood-gate would be about three miles from the flood-gate, I think Jim Woods had three boxes in the main ditch to carry out his amount of water that he took. I think two of them were in the main ditch and one of them in the south branch. Two in the north side and one in the south side of the ditch. I do not thik the boxes were of uniform size. I do not know just where Woods boxes were placed with reference to the ditch and distance from the flood-gate. I do not just know the distance there or where the section lines are. I can't answer that correctly. I do not think I could state where Woods' lines are. I can't say where Woods' boxes are with reference to the west portion of his land. I think the first one is on the Morris place. That was the first box in the main ditch.

I do not remember the size of that box. I couldn't tell how I succeeded in measuring the water. I have forgotten. I do not suppose I could remember the amount of water charged to each of the customers without a record of it. I did not try to remember it and it passed out of my mind. I charged them with the amount of water they got. I ascertained the number of inches as I measured it. I kept no record of this water contract only just the amount of water that run through the gates. I did not have the books of the company showing the amount of water each man was to have and to pay for. The Company informed me how I was to measure the water that was meted out to each of their customers, respectively. I jogged that down in my memory, I do not know what I mean by anything. I do not pretend to have kept anything else except the size of the boxes. I do not know as I could swear what was everything. I kept no account of anything else. I can't remember much about it. I do not carry everything in my memory that I do. I remember the number of inches that I sold by the memorandum book that I kept. I have not got the memorandum book here. I copied it out to another one which I have here. I did not set down the size of the opening through which the water passed. I do not know howit is that I remember some things andnot all. I remember Charley Marshall getting water. I had nothing to do with it but I remember it. I never paid any attention to the size of the boxes through which thewater is measured except to measure it in the ditch. I did not think anybody would ask me about it. I simply kept the record of howmuch each one got. I do not know how much a miner's inch is. They told me how much to measure and I measured it. I put down the number of inches. I couldn't say now how they told me to measure it. They told me to figure up the square inche

I did that. I kept no memorandum of it. In the memorandum book which I have copied into another book has in it the number of inches each man got. That was all I put in the book. I have the numbers there just as I kept it in the book I do not know that . I did not do that.

The deposition of Michael Thiel, a witness on behalf of the defendant, introduced and read in evidence, who testified as follows:--

My name is Michael Thiel, residence, Lancaster County, Neb. On the 19th day of April, 1880 I was living in Pennington County, South Dakota. I had resided in that county sine the year 1878. On the 19th day of April, 1880 I was acquainted with the location and condition of the North-east 1/4 of the North-east 1/4 of Section 30 and the North-west 1/4 of the North-west 1/4 of Section 29 Township One, North of Range 9, E.B.H.M. in Pennington County. The said lands were then vacant public lands subject to preemption. I settled on said lands on or about said date for the purpose of preempting the same. I thereafter resided uponand cultivated the same. I continued to reside upon andcultivate them I think four years.

Q. Did you ever make final proff and receive a Receivers receipt therefore? Objected to as immaterial and not the best evidence. Objection sustained. Defendant excepts.

My patent is dated the 9th day of August, 1884 and I received the same shortly thereafter. I am the Michael Thiel described as the grantee in the U.S.Patent for the lands described as the North-east quarter of the North-east quarter of Section 30 and the North-west quarter of the north-west quarter of Section 29, Township One, North of Range 9, E.B.H.M. in said Pennington County and other lands, said Patent being dated the 9th day of August, 1884 and filed for record in the Register's office in and for the County of Pennington, Territory of Dakota on the 1st day of May, 1886 at 9:o'clock and 45 minutes A.M. and recorded in Book A on page 234 of Final Receipts and Patent Records of said County

On the 19th day of April, 1880, I was 23 years old and a single man. I do not remember that I ever saw a location notice referred to in the 11th paragraph of the answer of the defendants. I do not remember whether such a notice or one similar thereto and signed by the same parties was posted upon said lands in the year 1881 while I occupied them. If such noticewas posted I never gave the parties therein named or any other person or corporation permission to post said notice that I remember of. There was one dam built across Rapid Creek by said parties and washed away. Then there was another one built the next spring. I think that was in 1881. The first one was built on theeast Forty and the second one was built on the west Forty. The waters of Rapid Creek were diverted by means of a dam and ditch built at that pooint. The parties who erected said dam and ditch called themselves the Lone Tree Ditch Company.

Q. Did you ever give to said Lone Tree Ditch Company any deed or lease to build or maintain said ditch and dam or to appropriate the ~~xxxx~~ waters of Rapid Creek for any purpose on said lands owned by you? Objected to as leading and incompetent. Objection sustained. Defendant excepts.

Q. Were you ever asked to give your consent to the erection of that second dam and ditch? A. Yes.

Q. Were you ever paid anything by said company or anyone representing them for the privilege of diverting the waters of Rapid Creek. A. Why, no, sir.

Q. Was any amount agreed upon to be paid you for said privilege? A. No, sir,

Q. Has the said Company or any one in their behalf ever agreed to pay you anything for the right of way or any other matters pertaining tox the appropriation and location of said water right? Objected to as incompetent and immaterial

Objection sustained. Defendant excepts.

Q. Calling your attention now particularly to the second dam and ditch which I have spoken of as having been erected on your said land I will ask you if you ever granted anyone permission either orally or in writing to erect said dam and ditch or to divert the water at said point. A. No, sir. I was in possession of said land at the time said dam was erected and water diverted by the Lone Tree Company. The first dam was erected in 1881, I think. The second dam was erected the coming spring. The first dam washed out; the banks would not stand the pressure. The second dam was located and erected about fifteen or twenty rods from the first one. The first dam was erected on the South-east forty of my land The second dam waserected onthe south-west forty of my land. Rapid Creek runs through my land. It commences on the west run east about seventy rods and then turned south.

Cross Examination by Plaintiff.

Q. Did you work upon the construction and erection of either of the dams? Objected to as irrelevant and immaterial Objection over-ruled. Defendant excepts. A. I think I worked on both of them. I do not think I made any objection to the construction and erection of thenfirst dam. I think I made an objection to Jackson on the construction and erection of the second dam if the water would flow over my hay land and he said something if there was any damage the Companywould be good for it and would pay for the damages.

Q. At the time that the first and second dams were builtupon your said lands did you have a patent for your land from the U.S.? Objected to as incompetent, immaterial and irrelevant and not the best evidence. Objection sustained. Defendant excepts. A. The first dam was constructed in

L. D. Fall being produced and sworn as a witness on behalf of the defendants, testified as follows:-

I have he. the Mining Deed Location Certificate Records, Book "B" page 596 (offered and read in evidence) which is as follows:-

No.129.

Location Notice.

The undersigned claim by right of location and prior appropriation a water ditch, commencing on the north side of Rapid Creek about two and a half miles east of Rapid City in Pennington County, Dakota Territory, running thence down the valley of the Rapid in a general easterly direction, crossing the creek about one mile and a half from the place of beginning, thence easterly on the south side a mile further, with right of extension at any time. Said ditch is to be used for irrigation of land for farming purposes and is to be four feet wide by two feet deep and the flume carrying said ditch across the creek is to be the same dimensions and we claim the water flowing in the said creek and here diverted in our said ditch to the extent of one thousand inches measured under a four inch pressure. This location was made on April 6,A.D.1878 and location notice duly posted at the place of diversion of the water, said notice stating the amount of water claimed and the purpose for which it is to be used and we expect to begin construction of said ditch within ten days and continue the same diligently to completion.

Witness our hands this 6th day of April,A.D.1878.

C. Lewis,
F. Lewis,
Thomas F. Poinsett.,J.T.Davis.

Filed for record in this office this 9th day of April,A.D

-1-

1878. at the hour of 8: o'clock P.M.

J. R. Hanson, Register of Deeds.

by Wm.T. Maguire, Deputy.

Ex.5.

Exhibit 5 is one of the original records of my office.

Exhibit 5 is the offered and read in evidence.

J.P.Eastman, testified on behalf of the defendants as follows:--

I know the ditch known as the Rapid Valley Water Company ditch. I have known it since 1892. In 1892-3-4 I lived on what is known as the Billy Hecht place. I lived about a mile west of the Lone Tree dam I guess. I am one of the defendants in this case, I know the ditch known as the South side ditch. I am interested in that ditch. In 1892 we had plenty of water in the ditch of the Lone Tree ditch Company. Well , the entire season there was a good supply of water going down the creek all the summer. The place I spoke of borders on the creek. There was not very much difference in the supply of water in 1893. We had a fair head of water all the summer. In 1894 the creek was lower of course but it was never dry. It was running of course all the summer. During 1892, 1893, 1894 there was plenty of water in it when we would turn it into our ditch. There was some water in the south side ditch always. There was plenty of water except in 1894 for a short time, then again there was plenty of water. All there was needed in the ditch. I think we put in the dam in the south side ditch in 1893. In the spring I think. We put a dam in there and we worked on the ditch a good deal. Since 1893 we tore out the dam that was in there and put in another and we run a cut in there to catch the water from the creek. I think that was a year ago this fall. In 1894, about the middle of June, there was a good supply of water going down Rapid Creek above the plaintiffs' dam. I was there almost every day., in 1894. In 1892, 1893 I got from the defendants' ditch 35 inches and in 1894, 75 inches. Nobody had water in connection with me in 1892,3. In 1895 I run the Foreman place myself. Fore-

man used water there I think in 1892. Parties in the east now own the Foreman place. As to the number of acres I irrigated from the defendants' ditch it would be hard for me to tell for I irrigated out of this ditch and also at the same time out of the Little Giant ditch. I irrigated more out of theLittle Giant ditch than I did out of this ditch. Part of the time I run the water from this ditch into the Little Giant ditch and I could not tell just how much it was. Part of my land is on the south side and part on the north side of Rapid Creek. I think there is a little more on the nrth side. I think there is in the neighborhood of 300 acres on thenorth side of the creek and as to the south side, well, there is 720 acres down there in a body. I was a director of the south side ditch in 1892-3. During 1892/ 1893 while I was a director of the Company we all complained It was because we did not get up there to work on the dam ad the dam had got to leaki ng and when we got the dam fixed there was plenty of water in it. There was no complaint after we fixed the dam.

Cross-examined by Mr. Fowler.

We got the water we used out of the defendant's ditch out of the ditch. Up at the end of the ditch. We got it during, 1892, 1893, out of the draw there. The draw east of the Grady place. East of the township line. It was measured out of the lateral into a lateral at the waste ditch where it runs downbelow Charley Hunt's place. The box in the flum where the water was measured out in 1892-3 was a box four by six inches with an opening of that size cut through the plankeninto the main ditch. That was regulated for letting the required amount of water through the gate. We did not raise it up when we wanted any more water. The top was

nailed down so there was no way of raisingit up. We could not. I was getting just so much water. I was getting the water that would flow through that size aperture and there was no way of lowering or raising the opening. The size of the ditch where they were they were measuring the water, it was four inches one way. I could not tell you whether it was four inches across the bottom or the sides. I think it was four inches across the bottom. Part of the time there was not any water in the ditch. I never got any pressure. I could not tell you the depth of the water, it might have been six or seven inches deep. I was on the north side of the ditch. I do not know what the size of the waste box is. The width of the box in my ditchwas the size of the ditch. It was planked up the width of the ditch six feet wide and there was measured out to me what I was to receive in this way. It was supposed to be what I got but I never got it. It was measured out of the box and in 1892 by raising the plank in the ditch we took the water out higher in the ditch. We took it out through theopening. I guess I could go out andmeasure it. I could not say that it would raise an inch above the opening. I was buying water by the inch. I do not know as I am apt to be so careless in spending money for other things. I try to deal pretty close. When I got it I was satisfied I got all the water I paid for. In 1893 they gave me other boxes to measure the water in and supplied me out of the Plunkett & Lynch draw. That was two inches high and about six feet wide. It was raised high enough to admit eighty-five inches of water. To do that it would have to be set between two and three inches. I am not very well posted on that part of it. I would not say how high it was raised. It was not over three inches. It was about 2-3/4 I

suppose. I do not think it was more. The size of the ditch at that end where I take the water from is about three feet wide on the bottom. I did not hear Ellwood Williams testify that it was six feet. I know I can step across it at any time. It might be a little more thanthree feet. I do not think it was more than that on the bottom. The box is put on the bottom of the ditch. We have got a dam in the ditch there and it raises the water in the main ditch. The box is at the end of the ditch. I think it was at the end of the ditch. I know it is where it comes on the Plunkett & Lynch timber claim. I put in a dam to raise the water in the dith I raise it up to get our six or seven inches if I can. I take the water out of the dam there and carry it in a lateral ditch and turn it into the Little Giant ditch and carry it in there until it gets into my field. I never measured th land I irrigated from the two ditches. From my best judgment I would say two or three hundred acres. I could not say how much I irrigate from the Little Giant. I irrigate from them both tgether. I turn it down the Little Giant without measuring it and use it. I get more water out of the Little Giant more out of than than I did out of the other ditch. I never took out 35 inches out of this ditch until this year. Sometimes we have got quite a good deal out of the Little Giant and sometimes we would not get any. I irrigate about 250 acres of land all told. I irrigate that quantity from the two ditches. I have some two or three hundred acres. I do not know just howmuch land there is there. I had no knowledge of the plaintiffs' ditch in 1894 only hear-say. I was not along it in 1894. I was along it in 1892, the lower end of it. I do not know whether the plaintiffs' ditch had any water in it or not. I was never down there to inform

myself and had no knowledge of it from my own observation. There was very little water in the creek a portion of last year before there came the heavy rains. Until there came the heavy rains in July there was not so much water as there had been in the creek. I should say there was three or four hundred inches going down on my place. There was more the last of the month. I used the water to start from. I took all I could get. As to the rain and the farmers feeling good over it, I do not see anything to feel good over. I did not feel good over it.

Ellwood Williams, a witness on behalf of the defendant, testified as follows on direct examination:--

I reside nine miles down Rapid Creek, I have lived there on and off since 1883. I live right at the head of the plaintiffs dam. Half a mile north in Section Twenty-nine. A portion of that ditch passes through my ground. It is the South forty of the South-west quarter of the South-west quarter of Section twenty-nine. I got the ground from Michael Thiel. I never gave the plaintiff ditch Company nor any of the plaintiff's right of way through my ground. I got the land from Thiel I think it was in 1882. I have forgotten the time in1882, I think it was in the fall though, I am not positive. I think it was October or November, 1882. That forty acres is the Northeast half of the Northwest quarter of Section twenty-nine, township One, north of Range Nine, E.B.H.M. It is a portion of the eighty I purchased from Thiel. I have been the owner of and occupied that ground ever since , and I own it now. The plaintiff's ditch runs through the forty in a southeasterly direction. I have known the plaintiff's ditch since about 1883. I know the place known as the Rosson ranch. It is about three-eighths of a milex east of the plaintiff's dam and ditch.

I know the J. Dunning place. It is half a mile east of the plaintiff's ditch. I leased these two ranches in 1891, 1892, 1893. There was no scarcity of water that I know of during those years. I use water on my places. In 1891, on the Rosson place I used probably fifty inches. Something like that. On the Dunning and Cease places probably fifty or seventy-five inches. On the Dunning place in 1891, I irrigated probably seventy acres and on the Rosson place about thirty acres. I think the Rosson place now is in

James Halley's hands, as Trustee. And the Sease place is owned by the Dunning heirs.

The supply of water in the Lone Tree ditch in 1892 was good so far as I saw it. I used water on both places that year. I had all I wanted to use. All I could utilize. In 1893 at one time there was a scarcity of water in the Lone Tree Ditch. I think it was about the latter part of June. The scarcity of water in the ditch at that time, well I had noticed it on two or three occasions. For two or three years I have noticed it and I have seen plenty of water in the ditch. I have seen the stream there when it was small and I haveseen it often when there was plenty of water in it. I know season that there was not much water in the ditch on account of the water running through the dam when there was plenty of water running through the creek In June 1893, the people of the Lone Tree ditch company were having trouble with some of its stockholders. George Mench and Isaac Cramer got to taking water out through the lateral ditch on my land and they were to determine by a survey of Ricker's to settle the question and while they were surveying there they got to talking about the scarcity of water in the Lone Tree ditch and Jim Brennan said "I think, boys we had better use the water we have got as long as it goes down the creek before we go to hunting for it in other places." John Hunt was present at the conversation. It was in June, 1893. I think Burkett was there and Ricker himself. I am not sure whether he was there or not. I remember in particular John Hunt and Buckingham were there.

I should judge there was at least four or five hundred inches escaping through the the plaintiff's dam in 1895. At the time of the conversation referred to in June, 1893,

the dam was made of logs and rocks and there was dirt piled in there and I was informed there was brush inn there. I never saw any brush. I presume that was the way it was built. There was considerable water in the creek, I do not know how much. The ditch was carrying about two thirds of a head. I know where the waste water way of the defendant's ditch is situated. It runs in a southerly direction on the Joe Foreman place and down the Grady place and down th Rapid Creek. That waste water ditch is about amile in lenght. The fall from the defendant's waste water ditch to the creek is about seventy-five feet. Since the enlargement of the defendant's ditch, I got water there last summer, Reif and I I got fifty inches. The water is carried from the main ditch to my ground, through a kind of naturla lake for about one hundred fifty yards. It crosses from the public highway and then through this ditch and empties into the Little Giant ditch and we take it from that. The little Giant ditch is a part of my ditch. The wat . from the defendant's ditch first comes out into the natural lake there and is conducted from there down to the little Giant ditch which I use as a lateral ditch until it is carried up on the ground. In that way I carried the water on to my place. After this fifty inches of water is turned out by me the balance of the water in the defendant's ditch goes down the waste ditch and that part of the fifty inches not used by me goes into the plaintiff's ditch. The plaintiff's complained to me that I was wasting my water in there ditch. That was last spring. Blanchard was the person who made the complaint. He says,"You are raising hell with our fellows down there." "You are running your water into our ditch and we can't work

our ditch". They were cleaning up their ditch and fixing it up at the time. All of the waste water of the fifty x inches that I received from the defendant's ditch wasted back into the plaintiff's ditch. As to the twelve inches th Reif got it runs into the creek just above the plaintiff's dam. My father and me own two hundred acres there and my wife 160. That comprises all the land I have. The south west forty borders on Rapid Creek. Thenditch runs through it close to the creek. My lateral ditch wastes into my field into the plaintiff's ditch. The plaintiff's main and lateral ditches run across my land. I never gave either of thesex gentlemen right of way across my land for the lateral ditches that are there. Menkh's and Cramer's lateral ditches are taken out on my land.

Q. Did all the balance of the plaintiffs divert their water from the plaintiffs' ditch below your land.

Objected to as leading, objection sustained. Defendant excepts.

With reference to my place all the other plaintiffs divert the water from the maindditch below my land.

Cross-examined by Mr. Fowler.

I get the water out of the defendant's ditch and convey it onto my land through the Little Giant ditch. We were takingSeventyfive inches of water used by the defendants last summer, turned irto the little Giant ditch. It was measured in boxes. The size of the boxes, I think, was about one foot square. It was just one through the boxes from the main ditch. It runs through the boxes and then runs throughthis natural draw I spoke of. The boxes are right at the end of the main ditch within a few feet of it.

The ditch at this point, I think, was about six feet wide. I never measured it. It was probably sixteen inches deep. The box is right in the lower end of the ditch and the water just runs through this ditch and the box and there is no water runs through this box at the end of the ditch except what Rolf and I use and in all I use seventy-five inches and irrigate along down to the plaintiff's ditch. I irrigate about one hundred forty acres, below the Little Giant ditch. I irrigate my land partly from the de endant's ditch and partly from the Little Giant Ditch as a lateral ditch. I have one hundred forty acres that I irrigate there altogether. Eighty acres of the land is my father's.

The conversation I spoke of in 1893 occurred just about the bridge there. On the bridge that goes down to Cramer's about an eight of a mile below the dam. They were talking about the scarcity of water and what they were going to do about water. James Brennan, Buckett, I think Mench and Blanchard were present. I think I was at the dam that day. There was a crowd there. The same bunch was there. They went up there to survey down. At the creek below the dam was where we were when the conversation took place. I judge there was five hundred inches of water in the creek.

I do not know anything about the Germain ditch. I think it was constructed after that. I do not know anythig about it. I suppose there was water enough going in the creek to fill it. There was four or five hundred of inches of water in the stream. I do not know exactly how wide the creek was at that point. I could not say how deep. I could not tell if it was two hundred feet deep, but I could not give the depth of it.

A should judge there was five hundred inches of water in the creek from my knowledge, of water. I have no knowledge of how far it was from the surface of the water to the bottom only by observation. I pretend to know something about it. In a general way I know. I did not sound the stream nor in any other way measure it. I do not know the depth of it at any point nor the width of it only in a general way. I do not know how deep the water was in the head of the ditch at the dam. I didn not take particular notice of it. I do not remember that in 1893 all the water was shut off and prevented from passing through the dam at the creek. I do not know anything about it. I did not work on the dam. I saw it pretty nearly every day. I could not say just how many days during the month of June I saw it. The creek always run below the defendant's dam. It run from four hundred to five hundred or one thousand inches all the time. It never run less than that. I did not make an ex amination of it as an experiment to see. I do not know as I made any examination in particular the day I mention. I know the volumne of water there was in the creek. I had occasion to notice it. I did not notice anyone in my presence measure it that day. I know in a general way by looking at it, the width, depth and velocity of the water. I did not measure it. I was the third to use the water from that ditch, besides the man Morris. There was nothing to prevent my getting all the water I wanted if it were in the ditch but the ditch boss. I do not known a. I got what water I wanted regularly of the amount of water that was coming down the ditch or that I used half the water that was in the ditch. I had all the water I needed. That season I raised my dam

nd turned more water into my ditch by planks on the top of the dam. That was not because there was a scarcity of water The dam was lower than the ditch and they had to raise the ket. I did not dam up the lateral ditch to turn all the water into the lateral ditch. We had to raise the water in the ditch to get it to run through the boxes. I know when the water was running half full in the ditch I could not get the water on my land through the boxes without damming up the ditch a little and raising the water in the ditch. Itnwould be necessary in order to get the water into the lateral ditch to raise the water in the ditch. I have got to raise it. Everybody damned up the ditch to take the water into his ditch. They had to put a dam acros the main ditch, and have the water raised to the level of th boxes in the lateral ditch just the same as I do. In June, 1894, there was water enough in the Lone Tree ditch. Previous to June there were rains that I know of that made plenty of water. I could not say if there was any scarcity of water in the ditch previous to the heavy rains of that month I do not know whether there was any scarcity or not. I do not know anything about it. I know there was a complaint made. It was a general complaint from the ditch company. I do not know any particular one. I think Blanchard omplained. I suppose Hunt did. There was a general complaint frm from the plaintiffs as to the scarcity of water. The water in the creek last summer before the rains was low, very low. All along the line of the creek. I know how it run up to this end. It was just the same. It was very low. I lived within three fourths of a mile of the creek. I did not farm the Dunning or Rosson places last year. The water con-

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tinued through June and July, 1893 about the same, the whole season if I remember right. Early in the season the defendants had a low depth of water but they worked on the dam nd then they had plenty of water for the balance of the year They raised the dam and turned more water into the ditch. They raised it until it flowed through the head-gate into the lake.

Samuel Morris called as a witness on behalf of the defendants, testified as follows:- DirectnExamination.

My name is Samuel Morris, age about fifty-five years, occupation farmer, residence Rapid Valley. I have lived there since the winter of 1880. I can't describe my land exactly, it is in Section Fifteen, Township One Northof Range Eight. I homesteaded the land and proved up seven years after the filing. It is the same land I now live upon. I have known the defendant's ditch ever since it was first started in 1879. I was there before the ditch wa started. The upper end of it was constructed during the year 1878, to Uncle F.M.Morris' place. In 1879 there was some work done on it. It was extended that year to Marshall's place. About three miles and a half I judge from the head of the ditch. In 1880 it was extended to the east end of my place about a mile and a half further. I n 1880 it was extended into my place half a mile further or such a matter. I think it was there for two years, 1881 and 1882. In 1883 it was extended to Charley Hunt's place about a quarter of a mile further. In 1883 it was extended to Charley Hunt's place if I remember. That would make about four and a half miles of ditch all told. Up to 1884 the following persons irrigated land from thatnditch: Reed, Chase, the two Jollys, the two Lewis', Murphy, myself and I think a little part of Charley Hunt's and a little part of Tom Goe's place. J.M.Woods owns the Tom Goe place now. Thenhere is the Marshall place. I think the waste ditch was built on th Grady place in 1886.

The size of the ditch as near as I can remember it at the MacElroy lake from there down was quite large and pecht got through there to him and to Geo Chase. I never worked on it

but I know how large it was. What I know is by walking a- long and looking at it. It was I think, about six feet wide on the bottom. It may have been a little more, per- haps seven feet. I am speaking of 1878, at the time the ditch was first constructed. In 1878 it was probably about six feet, may have been a little bit better. From my un- cle's place down to the Marshall place in 1879 it was about four or five feet wide. They were plowing it with a heavy plow and it was probably about five feet wide at the surface and from there down it was about four feet wide and ten or fifteen inches deep.

Prior to the enlargement in 1890 I would judge the aver- age width at the bottom and depth of the ditch from the forks of the ditch down to the flood-gate to be six feet wide and two feet deep. And from the forks of the ditch to my place prior to the enlargement it was not more than four and a half or five feet wide and about one foot deep. And from my place to the waste gate prior to the enlargement it was four and a half or five feet wide and about two feet deep. Before the ditch was enlarged it was surveyed by Ricker. Murphy and myself assisted him. We carried pins and measured across the ditch. The main ditch was widened down from the head-gate to the forks of the ditch by rea- son of the enlargement all the way from one to two feet. It was lowered very little from its original depth. From the forks of the ditch down to the point where it was to be made six feet in width by reason of the enlargement. It was widened to eight feet down past my place. From the for forks of the ditch down to my place I do not think there was any place widened to exceed two feet. Between those points through Murphy's place it was lower. There was a kind of straight place in the ditch. It was not to grade and it

was cut out there to get it to the grade and there it was cut down from three inches to a foot I think. And from my place down it was widened to six feet.

I have been interested in the defendant's ditch since June, 1884. I bought the David Jolly stock. There have been no changes made in the ditch that runs on the south side of Rapid Creek. I know where the head is situated at the McElroy lake. In the channel of the ditch leading down from that head-gate to the flood-gate of the defendant's ditch, the ditch has been changed but very little. There has been a little cleaning out done. It was pretty wide though. It was large enough there to carrynthe creek. The nature of the cleaning out was this. There were a few boulders fell in there and we got them out and there was some brush got in and we took out the few boulders and cleaned out the ditch. The distance between the head-gate and the outlet of the lake is about one hundred fifty yards, I guess. At the head-gate at the Creek and the inlet of the lake there was a little work done there. I did some work there myself. There has been no change made in the size of that headgate. It is the same one. The same head-gate. It is the same head-gate there since the enlargement. I think the head-gate at the flood-gate since the enlargement is intended be the same size. That is the one where they made a mistake in cutting the timbers. I think the flood-gate since the enlargement is a little larger there. I do not know anything about the flood-gate being run down the creek a little way, I was not helping fix that. The whole crek was run down the ditch part of the way at first before the enlargement. I could not say anything about what part of the creek, I do not know anything about that. Since the

enlargement of the ditch it has been some down inside the banks. I never saw it except when it was way down inside th banks of the ditch. May be it would carry one or one and a half feet. Prior to the enlargement of the ditch I irrigated from the defendant's ditch just the same as I have now. About one hundred twenty or one hundred thirty acres.

With reference to persons who have taken water on the east of me, Hunt, I think irrigated just the same as he does now. With Eastman, there has been but very little more with him if any. With Reif and Williams they paid for water sometimes and did not get any. Before the enlargement they paid for seventy-five inches. On the west of me Foreman got water. I think he does not irrigate any more than he did prior to theenlargement of the ditch. I do not know of any of the defendants using any more water than they did prior to 1890 unless it is Woods. He may irrigate a few more acres,, on the Clark Lewis place than he used to. I would not be certain whether they built another ditch down there last summer? Reed still irrigates from that ditch. The Marshall place is irrigated and the Lewis place is irrigated. Joe Jolly used water for irrigation before the enlargement who does not irrigate now. He received prior to the enlargement of the ditch seventy-five inches of water.

Samuel Morris being recalled as a witness on behalf of the defendants, testified as follows:-- Direct Examination.

Prior to the time of the enlargement of the ditch the material that was taken out of the same at the time of the excavation was thrown to the side ofthe ditch to make a border on the south side, the lower side, next the creek. The border was built up on the south side of the creek all the way from five inches to a foot and a half. When the dith

was full prior to the enlargement of the ditch there was very little water on the border only we would go along ad dam it up in the low places and that would raise the water ad it would run from five inches to a foot and a half above the original surface of the ground. The ditch did not have sufficient capacity to carry the water in it between the bottom and the original surface of the ground. It would run over the north bank for quite a distance and for some places along it would be two to three rods wide. The work I did on the original ditch prior to the enlargement was all the way from Oce Chase's place to my place. It is not much higher on the north side than it is on the south side. It is considerably higher all the way down on one side than it is on the other. As you get away from the bluffs it is much more level. When I spoke of the depth of the ditch I did not refer to the south side. I would give the depth of the ditch. It was usually the depth of the north side of the ditch. The border or selvage is that much higher that the south side a good part of the way along it is higher. Along by Murphy's place down to the forty on his place it is fifteen inches higher, west of his place. It would be west. The ditch runs in a southerly or southeasterly direction before it reaches his place. The side of the ditch I referred to would be the south side. The low side is the side next the creek. It would not be the southeast side. The ditch runs in a southeasterly direction. On the Charley Hunt place we put the border on the South side.

I.

RAPID VALLEY WATER COMPANY--Incorporated.

Filing: Filed in Volume 8 of Location Certificate Records on page 696, on April 9, 1878.

Location date: April 6, 1878.

Amount of water claimed: 1000 miner's inches.

Point of diversion: About 8½ miles east of Rapid City, exact point not given.

Locators: C. Lewis, F. Lewis, Thos. F. Ponicott, and O. T. Davis.

Officers: President:----------Maurice Higgins, Rapid City, S. D.
Vice president:-------Maurice Keliher, Rapid City, S. D.
Secretary-Treasurer:--Edna Schuster, Rapid City, S. Dak.

This ditch has the earliest recognized claim to water from Rapid Creek below Rapid City. There has been one or more extensions of this ditch.

Water users were assessed $2.00 per miner's inch until 1940 when it was raised to $2.50 per miner's inch. This ditch also supplies or furnishes 200 inches of water to a group who previously received water through the Little Giant Ditch. They pay only $2.00 per miner's inch. After O & M and other expenses are deducted, the shareholders receive a dividend, if there is a balance. The Secretary of the Ditch Company states that the Murphy Estate has been receiving enough dividends to pay for their water charges and taxes.

The assessment is the same on stock and non-stockholders. There is no contract between the non-stockholder water user and the ditch company.

Some are of the opinion that there might be considerable question as to the legality of the Rapid Valley Water Company's practice of assessing the water users to the extent that it has yielded a dividend for distribution among its shareholders.

The Rapid Valley Water Company does not supply water to all of the water users under the Little Giant Ditch, nor does it furnish water at the headgate of the Little Giant Ditch.

For Location Notices, see Exhibit IA, IB, and IC, attached.
For Contract for Right of Way, see Exhibit ID attached.
For List of Shareholders, see Exhibit IE attached.
For Articles of Incorporation, see Exhibit IF.
Copy of By-Laws (Not included).

Location Notice #129

The undersigned, claim by right of location and prior appropriation a water ditch, commencing on the north side of Rapid Creek about two and a half miles east of Rapid City in Pennington County Dakota Territory--running thence down the Valley of the Rapid in a general easterly direction, crossing the creek about one mile and a half from the place of beginning, thence easterly on the south side a mile farther, with right of extension at any time, said ditch is to be used for irrigation of land for farming purposes and is to be four feet wide by two feet deep, and the flume carrying said ditch across the creek is to be of same dimensions, and we claim the water flowing in said creek and here diverted in our said ditch to the extent of one thousand inches, measured under a four inch pressure. This location was made on April 6th AD 1878, and location notice duly posted at the place of diversion of the water--said notice stating the amount of water claimed and the purpose for which it is to be used and we expect to begin the construction of said ditch within 10 days and continue the same diligently to completion. Witness our hands this 6th day of April, AD 1878.

C. Lewis
F. Lewis
Thomas F. Penisett
O. T. Davis

Filed for record in this office this 6th day of April AD 1878, The hour of 8 o'clock P.M.

J. R. Hanson, Register of Deeds
By
Wm. Maguire, Deputy

Book 2 Location Certificate Records
Page 506

Exhibit 14

Water Right
by
Rapid Valley Irrigating Company

Amended Location Notice.

The undersigned, Rapid Valley Irrigating Company, a corporation duly organized under the laws of the Territory of Dakota, having purchased of the original locators, and now being the owners and in the actual possession of that certain water right location ditch and appurtenances mentioned and described in that certain location notice dated on the 6th day of April, 1878, signed by C. Lewis, F. Lewis, Thomas F. Poniseet and J. F. David, and duly recorded in the office of the Register of Deeds of Pennington County on the 9th day of April, 1878, in Book B page 596 of Location Certificate Records, references to which is hereby made and said corporation having in the year 1879 extended their line of ditch from a point on their located ditch under said water right commencing at a point on the line of said ditch as it crosses the NW¼ of the SE¼ in section 9 township one north of range eight east B.H.M. in said Pennington County, and extending the same in a southeasterly direction down the divide on the north side of said Rapid Creek for the distance of ten miles from said point of diversion and from thence in a southerly direction to Rapid Creek; and said land at that line being public lands of the United States and not surveyed and the course of said ditch not being particularly specified and the amended location notices claiming an increased appropriation of three thousand (3000) miners inches of the waters of Rapid Creek and an extension of said ditch as aforesaid for ten miles additional from the point of divergence having been duly made in writing and posted at a point on said Rapid Creek at the head of said ditch and also at the point of divergence during the year 1879 and said corporation having under said last named amended appropriation constructed about six miles of said extended ditch all of which they are in the actual possession, use and enjoyment of and said amended location notices having been destroyed by the elements and by mistake or inadvertence no record having been made thereof in the office of the Register of Deeds, of the said Pennington County, now, therefore, the undersigned, waiving no rights acquired under and by virtue of said prior location, appropriation, and continued possession and work thereunder by retaining and insisting upon the same, makes this its amended water right location for the purposes of increasing the amount of water to be appropriated by it and so extend the line of said ditch on the north side of said creek from the point of divergence as aforesaid in a southeasterly direction about ten miles to the east side of section 32, township one north of range ten east B.H.M., and from thence south by the most practical route to Rapid Creek all in Pennington County, South Dakota, and to more particularly describe the same and to cause the same to be duly recorded as required by law, and to correct all other mistakes in the manner of said amended appropriation, therefore notice is hereby given to all whom it may concern that the Rapid Valley Irrigating Company, a corporation duly organized under the laws of Dakota Territory, hereby claims and appropriates and has a valid right to the possession, occupation, and enjoyment

over and through the following lands lying and being in the county of Pennington, State of South Dakota, for the exclusive right of way for the purpose of constructing and using a flume or water ditch from a point on the north side of Rapid creek about two and one-half (2½) miles east of the original townsite of Rapid City, Pennington County, South Dakota, near the center of section eight, township one, north of range eight east, B.H.M., said point being place where the water is diverted from said Rapid Creek under said original water right location above described referred to, and running from thence east in said original ditch about one and one half miles through the north half of the southeast quarter and south half of the northeast quarter of section 8 and the north half of the southwest quarter of section 9 to about the center of the northwest quarter of the southeast quarter of section 9 in township one north of range 8 east B.H.M., at which last named point the extended ditch as aforesaid diverges from the original located ditch as aforesaid and from thence in a general southeasterly direction on the north side of Rapid creek through section 9, 10, 15, 14, 13, 24, in township one north of range eight east B.H.M., and through sections 19, 20, 21, 22, 23, 27, 26, 25 in township one north of range 9 east B.H.M., and through section 30, 31, and into section 32 to a point between the center and the east side of said last named section in township one north of range ten east B.H.M., and from thence nearly due south by the most practicable route to Rapid Creek on section 16 township one south of range 10 East P.H.M. all in Pennington County, South Dakota and said ditch to be of sufficient dimensions to carry three thousand (3000) miners inches of water under six inch pressure, and said corporation also claims, and has appropriated and does hereby appropriate and has a valid right to the enjoyment and use of three thousand (3000) miners inches of the water under a six inch pressure of said Rapid Creek for agricultural, irrigating, domestic and other useful purposes, the same to be diverted from said Rapid Creek at the head of said ditch insection 8 township one north of range eight east B.H.M., as aforesaid to be conveyed from thence through the above described flume, or water ditch along the divide on the north side of Rapid Creek about ten miles southeasterly to the east side of section 32 in township one north of range ten east B.H.M., and from thence south to be returned to Rapid Creek in section 16 township one south of range ten east B.H.M., together with all and singular the rights, hereditamentsm and appurtenances thereunto belonging. This notice was duly posted on Rapid Creek at the head of said ditch and at the point where the water is diverted from Rapid Creek into said ditch and also at the point on the old original ditch on the NW¼ of the SE¼ of section 9, township one north of range eight east B.H.M., where the extended ditch under this amended location and appropriation diverges from the original ditch on the 26th day of April A.D., 1893. Date of Amended location notice April 26, 1893.

This amended location notice is duly made on behalf of said corporation by the directors thereof, duly authorized to make the same and the seal of said corporation.

(SEAL)

The Rapid Valley Irrigating Company
Francis M. Murphy
Francis M. Morris
Freeman J. Lewis — Directors
Samuel Morris
James M. Woods

State of South Dakota)
) ss.
County of Pennington)

William F. Morris being first duly sworn on oath depo[illegible]s and says, that he is a native born citizen of the United States, over the age of 21 years and that on the 26th day of April, AD, 1893 he posted a duplicate of the foregoing and annexed amended location notice at the point of diversion of the water to wit: At the head of the water flume or ditch where the water is diverted into said ditch in section 8 township one north of range 8 east B.H.M. also on the same date he posted a duplicate of said notice at the point on the old original ditch on the northwest quarter of the southeast quarter of section 9 township one north of range 8 east B.H.M., where the extended ditch under this amended location and appropriation diverges from the original ditch. That said notice so posted as aforesaid were true and complete duplicates of the annexed notice, and were each signed as is the said annexed notice. That each of saidhotices so as aforesaid posted, were posted by affiant in conspicuous places where the same could readily be seen and were duly posted as required by law. Affiant further says that said first notices posted as aforesaid also posted by him in the presence of one Albert Morris, and that affiant posted the other said notice in the presence of Francis M. Morris.

W. F. Morris

Subscribed in my presence and sworn to before me this 27th day of April, A.D., 1893.

H. P. Lewis
Notary Public

(SEAL)

Book K Location Certificate Records
Page 333

Surprise Water Right #4777
By-Francis Murphy etal.

Location notice of Surprise water right notice is hereby given to whom it may concern, that we; Francis M. Murphy, Francis M. Morris, Freeman J. Lewis; James M. Woods and Samuel J. Morris, all citizens of the United States, and residents of Pennington county, State of South Dakota, hereby claim by right of location and appropriation 2000 miners inches of the waters of Rapid Creek measured under a six inch pressure for agricultural, irrigating, domestic , and other useful purposes, to be diverted from said creek at a point where this notice is posted on the NE¼ of the NE¼ of Section 30, township one north of range 9 east B.H.M., in Pennington County, State of South Dakota, at the Head of the ditches hereafter described, and conveyed from thence by ditch and flume on both sides of said creek as follows: The ditch on the North side running from thence in a general southeasterly direction through section 30, 29, 28, 27, 34, and 35, in township one north of range 9 east B.H.M., and from thence in a general southerly direction through section two in township one, south of range 9 east B.H.M., to Rapid Creek, and the ditch on the south side of said creek running in a general southerly direction from the point of diversion through sections 30, 31, 32, 33, 29, and 34, in township one north of range 9 east B.H.M., and section 4, 3, and 2 in township one south of range 9 east B.H.M., to be returned to said Rapid Creek in said last named section; and we hereby claim and appropriate, and have a valid right to the possession, occupation and enjoyment, over and through all of the lands lying and being in said above named section, all being in Pennington county, State of South Dakota, for the exclusive right of way, for the purpose of constructing and using a flume or water ditch of a size of sufficient capacity to carry 2000 miners inches of water measured under a six inch pressure per second on each side of said creek from the point of diversion as aforesaid on section 30 township one north of range 9 east B.H.M. to said section 2, townships one, south of range 9 east B.H.M., the place where the water is returned to said creek; together with all and singular the rights and appurtenances thereunto belonging. This notice was duly posted on Rapid Creek at the head of said ditches, and at the point where the water is diverted from said Rapid Creek and the same on the 20th day of September, 1894. Date of location and appropriation, September 20, A.D., 1894.

Locators:
Francis M. Murphy
Francis M. Morris
Freeman J. Lewis
James M. Wood
Samuel J. Morris

Filed for record this 22nd day of Sept. A.D., 1894, at 10:40 o'clock A.M. and recorded in Book K of Locations at page 530.

L. D. Fall, register of deeds.

BOok K Location Certificate Records
Page 530

Exhibit IC.

#11303

Contract
John P. McElroy and
H. C. Blanchard
with
The Rapid Valley
Irrigating Ditch Company
Filed
May 31, 1886- 10:16 A.M.
J.S. Gantz
Register
By Z. Taylor, Deputy

Know all men by these presents; That we, John P. McElroy, of Pennington County Dakota Territory the former owner of the $W\frac{1}{2}$ of the $SE\frac{1}{4}$ and the $W\frac{1}{2}$ of the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $E\frac{1}{2}$ of the $SA\frac{1}{4}$ of the $NW\frac{1}{4}$ of section 8 township 1 north of range 9 east of the Black Hills Meridian in said county and territory and Henry C. Blanchard of the same place and grantee of said McElroy and his wife of the lands above described by deed not yet of record Have this 25th day of May, 1886 for and in consideration of the sum of $50 in hand paid by the Rapid Valley Irrigating Ditch Company, a corporation organized under the laws of said Territory, the receipts whereof is hereby acknowledged, released, and relinquished and do hereby release and relinquish all claims and cause of action which we or either of us may or do have against said company by reason of the right of way appropriated and now occupied by said company for the irrigating ditch owned by said company over and across the lands above described and do hereby further release and execute said company from performing thereof the acknowledgments enumerated and specified in that certain right of way deed made and executed by John P. McElroy and Catherine McElroy his wife on the 23rd day of May, 1884 and recorded in Book F on page 298, 299, and 300 of the quit claim deed records in said county and hereby confessed and acknowledged tthe force and validity of said deed as conveying to said company a right of way over and across the land above described for the purpose of keeping, maintaining and operating, that certain irrigating ditch aforesaid belonging to said company, provided however, that said company shall keep it complete and maintain a good and sufficient headgate at the point where the waters of Rapid Creek are diverted and turned into said ditch and also where the waters are turned out of that certain Lake known as the McElroy Lake and through which said right of way passes into the irrigating ditch of said company and provided further that nothing herein contained shall be construed as releasing said company from any future cause of action by the acts of said company in raising the water of said Lake by running more water therein than said irrigating ditch will carry.

Witness our hands this 25th day of May, 1886.

John P. McElroy
Henry C. Blanchard

Witness:
C. L. Wood

Territory of Dakota)
Pennington County) ss.

Be it remembered that on this 25th day of May, 1886 before me Chauncey L. Wood, a notary public in and for said county and territory, personally appeared John P. McElroy and Henry C. Blanchard well known to me to be the same persons whose names are subscribed to and who executed the foregoing instrument of writing and they each acknowledged to me that they executed the same freely, in testimony whereof, I have hreunto set my hand and official seal the day and year above written.

SEAL

Chauncey L. Wood, Notary Public

Book D Miscellaneous Records page 77

Exhibit D

Rapid Valley Water Company. Incorporated.

Share-Holders:

Maurice Higgins Estate		60 shares
Francis L. Morris		60 shares
D. M. Murphy)		
Mary E. Haas)	Murphy estate	60 shares
Edna Schuster)		
Warren Lamb Lumber Co.		40 shares
Maurice Keliher		30 shares
Bert Lewis		50 shares
	Total	300

Water Users:

(S) Shareholder
(P) Purchaser

S	Maurice Higgins	120 inches
S	Francis L. Morris	100 inches
S	Murphy Estate	70 inches
S	Warren Lamb Lumber Co.	100 inches
S	Maurice Keliher	170 inches
S	Bert Lewis	100 inches
P	A. P. Frank	36 inches
P	Clay Havilon	50 inches
P	Alfred Jones	13 inches
P	Henry Lang	15 inches
P	C. E. Morris	29 inches
P	Irene Bausch	17 inches
P	Roy Dean	30 inches.
	Total	850

FILED

STATE OF SOUTH DAKOTA

DEPARTMENT OF STATE

UNITED STATES OF AMERICA)
) SECRETARY'S OFFICE
STATE OF SOUTH DAKOTA)

This is to certify that the attached instrument of writing is a true, correct and examined copy of

ARTICLES OF INCORPORATION OF RAPID VALLEY WATER COMPANY, and

APPLICATION FOR EXTENSION OF CORPORATE EXISTENCE, and

CERTIFICATE OF EXTENSION

and the whole thereof, and has been carefully compared with the original now on file in this office and found correct.

The within document, book, instrument, paper or law shall not be received in evidence in any court of this state unless this certificate is countersigned by the state treasurer with a statement of the fees received.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at the City of Pierre, the Capital, on this Twenty-ninth day of May 19 42.

(SEAL)

FEES, $ 5.00
Countersigned by

W. O. Douglas
State Treasurer.

OLIVE A. RINGSRUD
Secretary of State

Know all men by these presents:

That we, Francis M. Murphy; Francis M. Morris; Freeman J. Lewis; Samuel J. Morris, and Jay D. Eastman, all citizens of the United State, over the age of 21 years, and bona fide residents of the County of Pennington, State of South Dakota, have this day associated ourselves together for the purpose of Incorporating under and by virtue of the laws of the State of South Dakota, as a Corporation, do hereby make, sign and acknowledge the following as the

ARTICLES OF INCORPORATION

-of the-

RAPID VALLEY WATER COMPANY.

-I-

This Corporation shall be known by the name and style of the Rapid Valley Water Company.

-II-

This Corporation is formed for the purpose of acquiring by purchase and Appropriation, and taking and using the waters of Rapid Creek in Pennington County, State of South Dakota by Ditch and flume on one or both sides of said creek from Rapid City to the Cheyenne River in said county andState, for Agricultural, Irrigating, Milling, Domestic and other useful purposes, for the use of parties engaged in agricultural, milling and other useful pursuits, and for the pecuniary profits of the Stock-holders of said Corporation.

-III-

The place where its Principal place of business is to be transacted shall be the city of Rapid City, Pennington County, State of South Dakota.

-IV-

The Term for which this Corporation is to exist is Twenty (20) years from the date of Incorporation, reserving the right in said Corporation to renew its Charter for a longer period, as provided by law.

-V-

The number of its Directors shall be Five (5), who shall carry on the business and manage the affairs of the Corporation and have such other powers as provided by law, at least three of whom shall be residents of Pennington County, South Dakota; and such Directors shall hold their offices until the first annual meeting in June 1894, or until their successors are elected and qualified; and the names and residences of such who are to serve until the election and qualification of their successors are as follows, to-wit:

Francis M. Murphy,	Rapid City,	Pennington County,	South Dakota.
Francis M. Morris,	Rapid City,	Pennington County,	South Dakota.
Freeman J. Lewis,	Rapid City,	Pennington County,	South Dakota.
Samuel J. Morris,	Rapid City,	Pennington County,	South Dakota.
Jay P. Eastman,	Rapid City,	Pennington County,	South Dakota.

The qualifications of the Directors shall be defined and prescribed by the By-Laws of this Corporation.

-VI-

The Directors of said Corporation are empowered to make such Prudential By-Laws as they may deem necessary for the management of the affairs of the Corporation.

-VII-

The Capital Stock of said Corporation shall be Fifteen Thousand Dollars ($15,000.00), divided into Three Hundred (300) Shares of the Par value of Fifty Dollars ($50.00) for each Share, and shall be assessable, but the total assessments that may be levied on said Stock by said Corporation any one year shall not exceed in the aggregate an amount equivalent to thirty per cent of the Capital Stock of Corporation, to-wit:- the sum of $4500.00.

In testimony whereof, the above named Incorporators have set their hands and seals to these Articles of Incorporation this 20th day of January A.D. 1894.

Francis M. Murphy (seal)
Francis M. Morris (seal)
Freeman J. Lewis (seal)
Samuel J. Morris (seal)
Jay P. Eastman (seal)

State of South Dakota)
) ss
County of Pennington)

Before me, H. P. Lewis, a Notary Public, within and for said County and State, personally appeared Francis M. Murphy; Francis M. Morris; Freeman J. Lewis, Samuel J. Morris, and Jay P. Eastman, to me known to be the identical persons whose names are subscribed to the above and foregoing Articles of Incorporation, and acknowledged to me that they made, signed and executed the said Articles of Incorporation for the uses and purposes therein mentioned.

Witness my hand, and Notarial Seal hereto attached, at Rapid City, Pennington County, South Dakota, this 27th day of January, A.D. 1894.

H. P. LEWIS
Notary Public

(SEAL)

State of South Dakota } ss
County of Pennington. }

Francis M. Murphy, Francis M. Morris, Freeman J. Lewis, Samuel J. Morris and Jay P. Eastman, being first duly sworn, each for himself and not one for the other, deposes and says: That he is one of the Incorporators mentioned and described in the foregoing Articles of Incorporation and know the contents thereof, andthat such Corporation is not being formed for the purpose enabling several Corporations to avoid the provisitons of Chapter 154 of the Session Laws of 1890 of the State of South Dakota, approved March 7th 1890 andEntitled "An Act to Declare Certain Combinations, Agreements or Trusts unlawful, and to Restrain and Punish the same," and that the signatures of Francis M. Murphy, Francis M. Morris, Freeman J. Lewis, Samuel J. Morris, and Jay P. Eastman attached to said Articles are genuine, and that it is their intention in good faith to carry on the business therein provided for.

Francis M. Murphy
Francis M. Morris
Freeman J. Lewis
Samuel J. Morris
Jay P. Eastman

Subscribed and sworn to before me this 24th day of January, A. D. 1894.

H. P. LEWIS
Notary Public

(SEAL)

STATE OF SOUTH DAKOTA } ss
OFFICE OF SECRETARY OF STATE. }

I hereby certify that the within instrument was filed for record on the 30 day of Jan. A. D. 1894 at 3 o'clock P M. and recorded in Vol. 6 on page 160 Record of Dom. Corpns of this office.

H. B. GILLETT
Asst. Secretary of State

Application of Rapid Valley Water
Company for an Extension
of its Corporate Charter,
For Fifty Years.

Rapid Valley Water Company, a corporation, organized and existing under the laws of the State of South Dakota, incorporated on the 31st day of January, 1894, and whose charter was on the 19th day of January 1914 by certificate issued by the Secretary of State of the State of South Dakota, under the seal of the State of South Dakota, extended for a period of twenty years from and after the 31st day of January, 1914.

In Testimony Whereof the stockholders of said corporation, owning more than three fourths of its capital stock, have hereunto set their hands and seals and opposite the signature of each stockholder is set the number of shares of stock owned by said stockholder:

Name	No. of Shares.
Marsh Higgins	Sixty (60) shares.
Sarah J. Murphy Estate By Edna Schuster, Manager and Agent	Sixty (60) shares.
Mrs. Laura B. Lewis	Fifty (50) shares.
Warren-Lamb Lumber Co. By C.C.Warren, President	Forty (40) shares.
Maurice Kelliher	Ten (10) shares.
Nellie Kl Kelliher	Ten (10) shares.
Alice Lenore Kelliher By Nellie K. Kelliher	Ten (10) shares.
Frances L. Morris	Sixty (60) shares.

State of South Dakota, :
ss
County of Pennington :

Be it Remembered that on this 10th day of January, 1914 before me, William G. Buell, Notary Public within and for said County and State personally appeared Marsh Higgins, Edna Schuster, manager and agent of the Sarah J. Murphy estate; Laura B. Lewis; C. C. Warren, President of the Warren-Lamb Lumber Company; Nellie B. Kelliher, Maurice Kelliher and Alice Lenore Kelliher, to me personally known to be the stockholders in the Rapid Valley Water Company and the persons who described in and who executed the foregoing application and duly andseverally acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and seal the day and year last above written.

(SEAL)

WILLIAM G. BUELL
Notary Public,
Pennington County,
South Dakota

State of California)
) ss
County of Los Angeles)

Be it remembered that on this 16th day of January, 1934 before me, the undersigned a Notary Public within and for said county and state personally appeared Frances L. Morris, to me personally known to me to be one of the stockholders in the Rapid Valley Water Company and the person who is described in and who executed the foregoing application and duly acknowledged to me that she executed the same.

In Witness Whereof I have hereunto set my hand and seal the day and year last above written.

MABEL C. BERRY
Notary Public

(SEAL)

Exhibit "A"
Financial Statement
and
Names and Addresses of
Directors.

DIRECTORS

Names	Addresses
Marsh Higgins	Scenic, S. D.
Maurice Keliher	Rapid City, S. D.
Laura B. Lewis	Rapid City, S. D.
Edan Schuster	Rapid City, S. D.

Financial Statement.

1. The assets of said corporation consist of that certain water-right located and acquired on the 6th day of April, 1873, by one Freeman J. Lewis, Thomas E. Ponisett, C. Lewis and J.F. Davis, the predecessors in interest of the said Rapid Valley Water Company, and the point of diversion of the waters thereunder is situate on the North Side of Rapid Creek about two and one-half miles east of Rapid City, Pennington County, South Dakota, near the center of Section Eight (8) in Township One (1) North of Range Eight (8) East of the Black Hills Meridian, Pennington County State of South Dakota, together with the dam located and constructed at said point of diversion for the purpose of diverting the water of said Rapid Creek into the ditches and flumes of the said Rapid Valley Water Company, and under and by virtue of said water-right the said Rapid Valley Company claim and has right to appropriate one thousand inches, miners measurement, of the waters of said creek, measured under a four inch pressure, and which said water is carried by ditch and flume over and across the lands of the stockholders of the said Rapid Valley Water Company, running down the valley of said Rapid Creek in a generally easterly

direction, one branch of which crossing said Rapid Creek about one and one-half miles from the place of beginning; thence easterly on the south side of said Rapid Creek for several miles, the ditches owned and operated by the said Rapid Valley Water Company in connection with said dam and water-right, and now in use, amounting in all to about eleven miles, and which said water is used by the said Rapid Valley Water Company for the irrigation of the lands of the stockholders of said Rapid Valley Water Company, such irrigation being absolutely necessary for the successful production of crops.

That the said dam, water-right, ditches and flumes, and appurtenances, used in connection therewith, are of the estimated value of more than $20,000.00

Cash on hand 400.00

Making total assets of 20,400.00

2. The liabilities of said corporation are None

3. The nature of its business is to divert the waters of said Rapid Creek from the said point of diversion, and by means of ditches, flumes and canals, conduct and distribute the same over the lands of the stockholders of the company, amounting in area to several hundred acres.

4. The number of shares of capital stock issued and outstanding are three hundred.

5. The number of shares of stock subscribed and not outstanding are None. All the capital stock is issued and outstanding.

6. The names and postoffice addresses of the stockholders and number of shares owned by each are as follows:/-

Names	Postoffice address	No. of Shares
Frances L. Morris	Long Beach, Calif.	60 shares
Sara J. Murphy Est.	Rapid City, S. D.	60 shares
Laura B. Lewis	Rapid City, SS. D.	50 shares
Marsh Higgins	Scenic, S. D.	60 shares
Maurice Keliher	Rapid City, S. D.	10 shares
Nellie B. Keliher	Rapid City, S. D.	10 shares
Lenore Keliher	Rapid City, S. D.	10 shares
Warren-Lamb Lumber Company	Rapid City, S. D.	40 shares
Total shares issued and outstanding		300 shares

7. The names and postoffice addresses of the Directors are as follows:

Names	Postoffice Address
Marsh Higgins	Scenic, S. Dak.
Maurice Keliher	Rapid City, S. Dak.
Laura B. Lewis	Rapid City, S. Dak.
Edna Schuster	Rapid City, S. Dak.

State of South Dakota, :
County of Pennington. :

Marsh Higgins, President of the Rapid Valley Water Company, and Edna Schuster,

Secretary of the Rapid Valley Water Company, each being severally, duly and solemnly sworn upon his oath states that the statement hereto attached marked Exhibit "A" and made a part hereof, is a true statement of the assets and liabilities of the Rapid Valley Water Company, of the nature of its business, of the number of its shares of stock issued and outstanding, of the number of its shares of stock subscribed and not issued, and the names and postoffice address of each stockholder, and of the number of shares owned by each, and of the names andpostoffice addresses, of each and all of its directors.

Marsh Higgins,
President
Edna Schuster
Secretary

(CORPORATE SEAL)

Subscribed and sworn to before me this 10th day of January, A.D. 1934.

William G. Buell
Notary Public

(SEAL)

STATE OF SOUTH DAKOTA)
) SS
OFFICE OF SECRETARY OF STATE)

I hereby certify that the within instrument was filed for record on the 25th day of January, A.D. 1934, at 10 o'clock A.M. and recorded in Vol. 128 on Page 323 Record Domestic Corporations of this office.

MYRTLE MORRISON
Secretary of State.

S T A T E O F S O U T H D A K O T A

DEPARTMENT OF STATE

CERTIFICATE OF EXTENSION OF CORPORATE EXISTENCE.

WHEREAS, Rapid Valley Water Company, a Corporation, existing under the laws of this State, Incorporated on the 31st day of Jan. 1894 and whose term of existence will expire on the 31st day of Jan. 1914 has filed in this Department an application for extension of its corporate existence as provided by an act, entitled, "An Act to Provide for the Extension of Corporation Charters", being Chapter 106 of the Session Laws of 1907; said application being accompanied by a statement, duly sworn to by the proper officers, setting forth all the facts required to be stated, and has in all respects complied with said act above referred to.

NOW, THEREFORE, I, Frank Glasner, Secretary of State, of the State of South Dakota do hereby certify that the corporate existence of said corporation shall be extended andis hereby extended for the term of 20 years from and after January 31st-1914 and said corporation shall continue in all respects the same corporation that it was under its original incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal, at Pierre, the Capital, this 19 day of Jan. 1914.

FRANK GLASNER
Secretary of State

By - J. V. Nelson,
Asst. Secy.

(GREAT SEAL)

XVII.

RAPID VALLEY DITCH COMPANY--Incorporated.

Filing: Book A Miscellaneous Records, page 416, June 23, 1877.
Date of Location: June 23, 1877.
Amount of water claimed: 4000 miner's inches.
Point of diversion: At a point on Rapid Creek on what is known as George Milner's ranch.
Locators: Fabrion Charles, J. G. & W. S. Smith, P. Mounton, W. F. Steele, Nicholson & Brennan, Charles N. Allen, N. S. Bliss, W. W. Eggleston, H. Newbanks, L. M. Legro, and Rufus Madison.

- and -

Filing: Volume F Location Certificate Records, page 326, Dec. 31, 1885.
Date of Location: Dec. 30, 1885.
Amount of water claimed: 4000 Miner's inches.
Point of diversion: South Side of Rapid Creek about two and one-fourth miles above the center of the Rapid City townsite.
Locators: Herbert S. Hall, Jacob Lampert, and Giles S. Congdon.

Two location notices are presented here because of the indefinite designation for the point of diversion from Rapid Creek in the location that was made on the 23rd of June, 1877. A group of men associated themselves as a ditch company on that date for the purpose of building a ditch for irrigation, milling, and for supplying Rapid City with water. This ditch claimed 4000 inches of water out of Rapid Creek "to commence at a point on Rapid Creek on what is known as George Milner's Ranch." Mr. Milner's ranch holdings were located somewhere in section 3, T. 1 N., R. 7 E., which is in the valley above Rapid City.

Although the Rapid Valley Ditch Company made its location, claiming 4000 inches of water, in 1877 which was filed for record on the 17th of February 1878, a more definite point of diversion was designated in a location notice filed by three men, Messrs. Herbert S. Hall, Jacob Lampert, and Giles Congdon on the 30th of December, 1885. Our informant, Mr. George B. Mansfield, is of the opinion that their location notice pertained to this ditch known as the Rapid Valley Ditch.

This ditch should not be confused with that of the Rapid Valley Water Company, whose location was made at a point on Rapid Creek below Rapid City on April 6, 1878.

Mr. Mansfield advises that the Rapid Valley Ditch Company preceded what later came to be known as the Gate City Roller Mill Canal. In other words this canal, as platted on the map prepared by the office of the State Engineer following the hydrographic survey made of Rapid Creek in 1908, is one the the same as built by the Rapid Valley Ditch Company.

This canal or ditch was later sold to the Donor Wright Foundry Company. The Company having failed, the ditch was then acquired by a banking institution in Pennsylvania on a foreclosure proceeding. The ditch was then later acquired by the Dakota Power Company, of Rapid City.

In later years this ditch came to be known as the Mill Ditch which supplied water to what was known as the "Old White Mill". That mill was torn down within the last six years. A portion of this ditch has been abandoned, leaving only a small part of the original ditch which is still used to some extent for irrigation purposes only.

No doubt additional information could be obtained in time which would give a more complete picture of this particular ditch. We believe that the main story as given in the foregoing paragraphs is correct.

In the case of "George Wells vs. Rapid Valley Ditch Company", Mr. Wells brought suit against the Rapid Valley Ditch Company on September 29, 1886, for damages incurred from the ditch overflowing and flooding his meadow and hay land below, damaging the grass and causing the production of inferior quality hay, also for causing trash to be deposited on the grass.

Mr. Wells owned a tract of land above Rapid City, some of which was under the ditch built by the Rapid Valley Ditch Company.

Location notice, see Exhibit XVIIA, attached.
Certificate of corporate existence, see Exhibit XVIIB, attached.
Articles of incorporation, see Exhibit XVIIC, attached.

A-416

This agreement made and entered into this 23rd day of June, 1877 by and between W. W. Eggleston, L. H. LeGro, W. E. & J. G. Smith, Moulton & Steel, Brennan & Nicholson, N. Newbanks, Charles N. Allen, H. S. Bliss, Fabin Charles, and Rufus Madison, as follows to wit: The above named persons do agree to associate themselves as ditch company, and to procure articles of incorporation for the same for the purpose of building a ditch for irrigation, milling, and for supplying Rapid City with water, said ditch to commence at a pointon Rapid Creek on what is known as George Milnors ranch from thence down the Rapid Valley to the eastern line of Noah Newbanks ranch in said Valley. It is further agreed that each of the above named share holders shall be liable to one tenth of all expenses appertaining to the construction of the said ditch and to repairs of the same and in consideration of the same shall own an undivided one tenth (1/10) interest in said ditch. It is also understood and agreed by and between the above named parties heretofore mentioned that each owner of a one tenth interest shall be entitled to and shall receive his proportion, that is one tenth of all proceeds derived from the sale of water from said ditch after deducting the actual expenses of building and keeping the same in repair. Said ditch company claiming (4000) four thousand inches of water out of Rapid Creek.

Witness my hand and seal this 23rd day of June, 1877.

Fabrien Charles
J. G. & W. E. Smith
F. Moulton, & W. F. Steel
Nicholson & Brennan
Charles N. Allen
H. S. Bliss
W. W. Eggleston
N. Newbanks
L. H. Legro
Rufus Madison

Filed for record in this office this 17th day of February 1878 at the hour of 7 AM

J. R. Hanson, Reg. of deeds
By Wm. S. Maguire, Deputy

Book A Miscellaneous Records page 416

Water Right Location
by
Rapid Valley Ditch Company #9816

Know all men by these presents that we Herbert S. Hall, Jacob Lampert, and Giles S. Congdon, being citizens of the United States and residents of the County of Pennington and Territory of Dakota have located and hereby appropriated a water right claiming and appropriating four thousand inches of the waters of Rapid Creek in addition to the water heretofore appropriated by the Rapid Valley Ditch Company or any other corporation or person or association of persons whomsoever. This water right is located at a point on the south side of Rapid Creek about two and one-fourth miles above the center of the Rapid City townsite in the County of Pennington and Territory of Dakota on the northeast quarter of the southwest quarter of section three in township one north of range seven east B.H.M., at the point now occupied by the dam at the head of that certain ditch known as the Rapid Valley Ditch Company's Ditch. The purpose for which this location and appropriation is made is for milling, manufacturing, irrigating, and domestic uses and purposes. Dated at the point of location on this 30th day of December, 1886.

Herbert S. Hall
Jacob Lampert
Giles S. Congdon

Attest:
H. H. Mitchell

Filed for record this 31st day of December A.D. 1887 the hour of 4:40 P.M. and duly recorded in Book F page 326.

J. S. Gantz
Register

Book F of Location Certificate Records
page 326.

Certificate of Corporate
Existence of the Rapid Valley
Ditch Company.

#250

Certificate of corporate existence whereas, John R. Brennan, Charles N. Allen, and John C. Smith, have filed in this office a certificate or declaration in writing as provided in section 389 of the civil code of this territory, setting forth all the facts required to be stated in section 386 and 519 of said civil code and have in all respects complied with the requirements of the law governing the formation of private corporations as contined in the civil code of this territory, now therefore, I, George H. Hand, Secretary of the Territory of Dakota, in virtue and by authority of law, do hereby certify that said parties, their associates and successors have become a body politic and corporate under the corporate name of the Rapid Valley Ditch Company and by that name have a right to sue and be sued, Purchase, hold and convey real and personal property and to have and enjoy all the rights and priveleges granted to private corporations, under the laws of the Territory subject to their articles of incorporation all legal restrictions and liabilities in relations thereunto.

In testimony whereof I have hereunto set my hand and affixed the great seal of the Territory of Dakota.
Done at Yankton, this 8th day of March A.D., 1878.

Geo. H. Hand
Secretary of Dakota Territory

(GREAT SEAL OF DAKOTA)

Filed for record this 9th day of December A.D., 1882 at 3:20 o'clock P.M. and recorded in Book C 112 of miscellaneous records.

A. P. Sterling,
Register of Deeds

Book C Miscellaneous Records
page 112

#5251

ARTICLES OF INCORPORATION
OF
THE RAPID VALLEY DITCH COMPANY

Know all men by these presents: That the undersigned hereby associate themselves together for the purpose of becoming a body corporate, under and by virtue of the laws of the United States and the Territory of Dakota, and for that purpose do declare:

First: That the name of this corporation shall be "The Rapid Valley Ditch Company."

Second: That the purpose for which this corporation is formed is for irrigation, and milling; and for furnishing Rapid City with water.

Third: That the place where its principal business is to be transacted shall be at Rapid City, Pennington County, Dakota Territory.

Fourth: That the term for which this corporation shall exist shall be twenty years.

Fifth: The number of its directors shall be five, and the names of such of them who are to serve as said directors until their successors are elected and qualified, are as follows: John R. Brennan, J. G. Smith, W. W. Eggleston, W. F. Steele, Charles H. Allen, all of whom reside at Rapid City, in this Territory and qualify that they are citizens of the United States and residents of the Territory of Dakota.

Sixth: The capital stock of this corporation shall be five thousand dollars ($5,000) which shall be divided into ten shares of five hundred dollars ($500) each.

Seventh: The ditch to be constructed by this corporation for the purpose aforesaid, is to commence on the south side of Rapid Creek, two and one quarter miles above the center of the townsite of Rapid City on what is known as George Milner's Bank running from and in a southeasterly direction to the west boundary line of the townsite of Rapid City. Thence in an easterly direction to the terminus on the east side of North Newbanks ranch one mile and a half east of the eastern line of the townsite. Said ditch when completed to have a capacity of carrying four thousand inches of water to be taken out of Rapid creek on the above named ranch of George Milner now owned by James Simonson.

In witness whereof, we have hereunto set our hands this first day of March, A.D., 1878.

John R. Brennan
Charles N. Allen
John G. Smith

Territory of Dakota)
County of Pennington) ss.

Be it remembered that on this first day of March A.D., 1878, before me, a Justice of the Peace, personally appeared John R. Brennan, C. N. Allen, and J. G. Smith, to me personally known to be the persons who are described in and who executed the above and within instrument and acknowledged to me that they executed the same freely and for the use and purpose therein stated in witness whereof I have hereunto set my hand the day and year last above written.

S. A. Burleigh, J.P. in & for
Pennington County, Dakota Territory

Filed this 8th day of March A.D., 1878, and certificate of corporate existence issued same day, recorded on page 182 of Corporations.

Geo. H. Hand
Secretary of Dakota Territory

United States of America)
Territory of Dakota) ss. Secretary's office.

I, George H. Hand, Secretary of the Territory of Dakota, do hereby certify that I have carefully compared the foregoing copy of the Articles of Incorporation of the Rapid Valley Ditch Company, filed March 8, 1878 with the original now on file in this office and that the same is a correct transcript therefrom and of the whole thereof.

(Great Seal of Dakota)

In testimony whereof, I have hereunto set my hand and affixed the great seal of the Territory of Dakota in Yankton this 29th day of June, 1880.

Geo. H. Hand
Secretary of Dakota Territory

Filed for record this 9th day of December A.D., 1882, at 3:20 P.M.
Recorded in book C, page 113 & 114 of Miscellaneous Records

A. P. Sterling
Register of deeds.

Book C of Miscellaneous Records
page 113-114

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

Water Rights Division
605 773-3352

March 22, 1983

1727-2
Rapid Valley Water Co.
RR#2, Box 223
Rapid City, SD 57701

Dear Sir:

Water Permit No. 1727-2 was approved with the qualification that the irrigation questionnaire be submitted each year. To date we have not received the 1982 questionnaire from you.

Please complete the enclosed questionnaire and return to this office. Failure to return the questionnaire is in violation of the conditions under which the permit was approved.

Please advise, if you have any questions.

Very truly yours,

John Hatch

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks
enclosure

South Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501
Water Rights Division
605 773-3352

August 1, 1983

NOTICE

(1727-2)
Rapid Valley Water Co.
RR#2, Box 223
Rapid City, SD 57701

Dear Sir:

July 19, 1983, the Water Management Board passed a motion directing that those persons with water permits that have the qualification:

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

be notified of this requirement.

Our records do not show we have received the 1982 Irrigation Questionnaire for Permit No. 1727-2. The questionnaire was requested on the following dates:

1. September 1982 initial request
2. December 1982 followup request
3. March 22, 1983 Notice that submittal of questionnaire is a qualification to water permit

The Board has directed that owners of permits not in compliance with the Irrigation Questionnaire qualification be given until August 30, 1983 to submit the 1982 questionnaire. Any person not submitting the Questionnaire is to be noticed for hearing before the Board to consider disiplinary action including suspension of the permit.

Another questionnaire is enclosed. Please advise if there are any questions or if you believe our records are not correct.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

enclosure

17272

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

March 12, 1993

NOTICE

TO: Steve Murphy
Rapid Valley Water Company
P.O. Box 125
Rapid City, SD 57701

FROM: JOHN HATCH, CHIEF ENGINEER
Water Rights Division
(605) 773-3352

SUBJECT: Request for Continued Sealing and Maintenance of Rapid Valley Irrigation Ditches.

Pursuant to SDCL 46-2-3, 46-2-17 and 46-7-3, I am contacting the Rapid Valley Water Company to remind the Ditch owners of the need to continue with irrigation ditch and lateral maintenance. The Water Management Board is concerned with water loss from and the maintenance of Rapid Valley Ditches. Targeted areas include: repair and sealing of identified high seepage areas within the ditch, small tree and brush removal, and ditch channel cleaning and shaping.

I am requesting that Rapid Valley Water Company submit, to the Division of Water Rights by August 1, 1993, a list of repairs and improvements performed on the ditch since August 1, 1992.

If you have any questions, please contact Mark Rath or Del Brosz, Division of Water Rights, 523 E Capitol Ave, Pierre, SD 57501. Phone (605) 773-3352.

cc: Rapid Valley Water Conservancy District
US Bureau of Reclamation

1782 T-2

CERTIFICATION

I hereby certify that on March 12, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 12, 1993, requesting Request for Continued Sealing and Maintenance of Rapid Valley Irrigation Ditches addressed as stated below, and the attached:

Jerry Hammerquist, Rapid Valley Water Conservancy District, Box 26, Caputa, SD 57725.

Bruce Taylor, U.S. Bureau of Reclamation, P.O. Box 226, Belle Fourche, SD 57717-0226.

Blind Copy Sent To:

John Frost, Pennington County Extension Office, 601 Centre, Rapid City, SD 57701.

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

Subscribed to, before me, this 15th day of March, 1993.

JOHN HATCH
NOTARY PUBLIC
SEAL SOUTH DAKOTA SEAL
My Commission Expires April 1, 1995

Notary Public

1127-2

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

August 23, 1993

NOTICE

TO: Steve Murphy
Rapid Valley Water Company
Rt 5 Box 125
Rapid City, SD 57701

FROM: JOHN HATCH, CHIEF ENGINEER
Water Rights Division
(605) 773-3352

SUBJECT: Failure to submit list of completed ditch repairs and maintenance for the past year that was due August 1, 1993.

Our records indicate that Rapid Valley Water Company has failed to submit a list of repairs and improvements performed on the ditch since August 1, 1992 as required per the March 12, 1993 Notice. Please submit this list to the Division of Water Rights by September 10, 1993

If you have any questions, please contact Mark Rath or Del Brosz, Division of Water Rights, 523 E Capitol Ave, Pierre, SD 57501. Phone (605) 773-3352.

cy: Rapid Valley Water Conservancy District
US Bureau of Reclamation

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

August 11, 2000

Steve Murphy
5666 E Hwy 44
Rapid City, SD 57703

Dear Mr. Murphy:

I am responding to your telephone call concerning an additional diversion point for the Rapid Valley Water Company water right No. 1727-2. State water law SDCL 46-5-13.1 allows the Chief Engineer to grant an additional diversion point administratively if he determines that the potential for interference with other existing diversions is not increased, it is from the same source of water as the original, and no new land is being irrigated. If the Chief Engineer determines the conditions cannot be met, then a water permit would need to be applied for.

I am suggesting that ditch company submit an application for the additional diversion point. I am enclosing water permit application forms. Please fill these out completely, describing the proposed diversion point, the amount of water to be diverted at this point, and the specific acres that will be irrigated from this diversion point. Submit the signed and notarized application along with a signed map. At this time do not submit an application fee. We will use the information you provide in determining if the proposed diversion point can be added administratively, or whether a water permit is required to amend the existing water right. If the Chief Engineer determines a new permit is needed we will then contact you for the application fee.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineer
Water Rights Program
enclosures:

At a meeting of the Directors and the Stockholders of Rapid Valley Water Company held at the city of Rapid City, Pennington Co., South Dakota, on Saturday, February 3, AD 1894. Present at the meeting, Francis M. Murphy, Francis M. Morris, Freeman J. Lewis, Samuel J. Morris and J.P. Eastman. Upon a motion of Mr. Murphy, seconded by Mr. Eastman, Mr. Francis M. Morris was elected chairman, and Freeman J. Lewis was elected secretary. Upon a motion of Mr. Samuel J. Morris, seconded by Mr. J. P. Eastman, the following by-laws were unanimously adopted for the government of this corporation in order to spread upon their minutes book of this company.

By-laws of the Rapid Valley Water Company

-ARTICLE I-

The officers of this corporation shall consist of a President, Vice President, Treasurer and Secretary who shall be chosen by the Board of Directors from among themselves.

-ARTICLE II-

SECTION I: A Board of Directors shall be elected at the annual meeting of the Stockholders to be held at the office of the company in the city of Rapid City, Pennington County, South Dakota on the first Thursday of June, AD 1894 and annually there after. The Directors elect shall serve until the first Thursday of June, AD 1894 and until their successors are elected and qualified.

SECTION II: No stockholder shall be eligible for election as a member of the Board of Directors unless he is a bonified owner of at least 2 shares of capital stock of the company at the time of his election.

-ARTICLE III-

SECTION I: President. The President shall preside at all meetings of the Directors and Stockholders. He shall sign as President all certificates of stock and all contracts and other instruments in writing which have been first approved by the Board of Directors. He shall draw checks and warrants upon the treasurer. He shall call the directors together whenever he deems it necessary, and he shall have subject to the advice and control of the Directors the general superintendents of the affairs of the company. In the absence of the President, the Vice President shall perform his duties.

SECTION II: Treasurer. It shall be the duty of the Treasurer to keep safely all monies belonging to the company and dispurse the same under the direction of the Board of Directors on warrants signed by the President and Secretary. At each annual meeting of the stock holders he shall submit a complete statement of his accounts for the past year with the proper vouchers for their information, he shall discharge such other duties pertaining to his office as shall be prescribed by the Board of Directors.

SECTION III: Secretary. It shall be the duty of the Secretary to keep a record of the meetings of the Board of Directors and of the Stockholders. He shall keep the book of blank certificates of stock, free up and countersign all certificates issued and make the corresponding entries on the margins of each book on each issuance. He shall keep a proper transfer book and a stock ledger in debit and credit form, showing the number of shares issued to and transferred by any stockholder and the dates of such issuance and transfer. He shall countersign all checks, keep proper books of account, and discharge such other duties as pertaining to his office or prescribed by the Board of Directors.

-ARTICLE IV-

The Board of Directors shall have power:

1. To call meetings of Stockholders when deemed necessary, giving not less than 2 weeks notice thereof, in a manner as hereinafter provided, and they shall call meetings of Stockholders at any time upon a written request for that purpose of persons representing 1/5 of all the capital stock.

2. To make rules and regulations not inconsistent with the laws of the State of South Dakota and with the by-laws of this company, for the guidance of the officers and management of the affairs of the company.

3. To declare dividends out of surplus profits whenever they shall deem it expedient.

4. To incur such indebtedness as they may deem necessary: provided however that no indebtedness over $500.00 shall at any one time be incurred by the company; and to authorize the execution by the President and Secretary of any note for such indebtedness.

-ARTICLE V-

It shall be the duty of the Board of Directors:

1. To cause to be kept a complete record of all their meetings and acts and also of the proceedings of the Stockholders and to present a full statement at the regular annual meetings of the Stockholders showing in detail the assets and liabilities of the company and generally the condition of its affairs. A similar statement shall be presented at any other meeting of the Stockholders when, there to, required by persons representing at least 1/5 of the capital stock of the company.

2. To supervise all the acts of the officers and employees. Require the Secretary and Treasurer to keep full and accurate books and accounts and to prescribe the form and mode of keeping such books.

3. To cause to be issued to the Stockholders in proportion to their several interests, certificates of stock not to exceed in the aggregate the capital stock of the company.

4. To cause the monies of the company to be safely kept directing from time to time where they shall be kept or deposited.

-ARTICLE VI-

Members of the Board of Directors shall receive no compensation for their services, as such, nor shall the company be held liable for any services rendered: but the members of the Board should be allowed the reasonable traveling expenses when actually engaged in the business of the company to be audited and allowed as in other cases of demand against the company.

-ARTICLE VII-

No contract by any officer shall be valid without the previous authorization or subsequent ratification of the Board of Directors.

-ARTICLE VIII-

SECTION I: Regular annual meetings of the Stockholders shall be held on the first Saturday of June of each year at the office of the company in Rapid City, Pennington County, South Dakota. A representative of a majority of the capital stock shall be necessary for the transaction of the business of all the meetings of the Stockholders. At such meetings a representation by proxy, dully appointed shall be allowed. Such proxy to be written and filed with the Secretary of the company.

SECTION II: All meetings of the Stockholders shall be called by written notice from the Secretary designating the time and place of such meetings at least two weeks prior to such meetings.

-ARTICLE IX-

The Board of Directors of this Company shall consist of 5 members elected mong the Stockholders as afore said.

-ARTICLE X-

The Board of Directors shall have power to fix and establish the rate and price at which water may be furnished for irrigating or other purposes and to so fix such rate or price on or before the first day of April each year in advance. And all applications of water for such irrigating and other purposes must be filed by the person or persons desiring to use the same on or before the first day of April, AD, of each year and the application of persons owning land abutting on ditches of this company is to be preferred.

-ARTICLE XI-

Certificates of stock shall be of such form and device as the Board of Directors may require and such certificates shall be required by the President and Secretary and express on its face their number, date of issuance, number of shares for which, and the person to whom issued. Several certificates may be issued to the same person or persons provided that in the aggregate they do not exceed the number of shares belonging to such person or persons.

The certificate books shall contain a margin of which shall be entered the number, date, number of shares and the name or names of the person or persons expressed in the corresponding certificates.

-ARTICLE XII-

Shares of the company may be transferred at any time by the holders thereof, or by attorney legally constituted or by legal representatives, but no transfer shall be valid except as between the parties thereto until entered in the proper form of the books of the company. The surrendered certificates shall be cancelled before a new certificate shall be issued in lieu thereof.

The receiver of the new certificate shall be required to signify his accent to the by-laws of the company in writing and no transfer of any shares of stock shall be valid upon which any assessments or fines are due and unpaid for the holder of which is indebted to the company on any account whatever.

-ARTICLE XIII-

The books and papers in the office of the Secretary and Treasurer shall at all times during business hours be open to the inspection of the Board of Directors and any Stockholder.

-ARTICLE XIV-

The corporate seal shall bear upon its face the name of the company and within a circle the words "Corporate Seal".

-ARTICLE XV-

These by-laws may be altered or amended at any annual meeting of the company or at any special meeting called for that purpose by a vote of 2/3 of the subscribed stock.

-ARTICLE XVI-

These by-laws shall always be and remain in possession of the Secretary of the Company.

Resolution by the Corporation

Upon motion the following resolution was unanimously adopted.

Be it resolved that the following be and hearby are adopted as rules and regulations and conditions for the furnishing of water to consumers and users in the terms and conditions for payment therefore.

1. All users of water, shall leave written orders or application for same at the office of the Secretary of the Company prior to April 1, of each year.

2. The Board of Directors of this Company are hearby given authority to require each applicant and user of water to pay for the same in advance or to furnish satisfactory security for such payment. And in the event any user of water should fail or refuse to pay the same in advance, or secure the payment therefore by security satisfactory to the Board, then and in that event the Board of Directors are hearby authorized to refuse to supply water to such user or users.

There being no further business, upon a motion the meeting adjourn.

Chairman E. M. Higgins

Attested Edna Schluster, Acting Secretary

This is at the Directors Meeting of the Rapid Valley Water Company, January 3, 1927.

NOTICE

Notice is hereby given that under and by virtue of that certain resolution the Board of Directors of the Rapid Valley Water Company, a corportation, passed at the meeting of the Board of Directors thereof on January 24, 1927. Fixing the rules, regulations and conditions for the furnishing of water to consumers and users: and persuant to the action to the Board of Directors of said corporation made on March 14, 1939, you as a user of water to be furnished by said corporation for the year 1939 are and shall be required to leave your written order or application for the use of such water at the office of the Secretary of the Corporation prior to April 1, 1939: and you are and shall be further required to pay for such water in advance or furnish to the Board of Directors of said corporation satisfactory security for the payment thereof.

You are further notified that the rate and price of said water for the year 1939 shall be the sum of $2.30 per miners inch for Rapid Valley Ditch Water, and the sum of $2.00 per miners inch for carrying Little Giant Ditch Water.

You are further notified that all delinquent accounts due to said corporation from you must be paid in full prior to April 1, 1939.

You are further notified that if you fail to comply with the foregoing requirements, regulations and conditions prior to April 1, 1939 no water will be turned on and furnished to you for the year 1939.

You are further notified that said corporation will not undertake or guarantee to furnish water in unlimited or in even sufficient quantities for irrigation purposes for the coming season, by that amount so furnished to users will be governed by the weather and drought conditions and availability of water.

Dated at Rapid City, South Dakota this 15th day of March, 1939.

Signed: Rapid Valley Water Company, a corporation, by the Secretary

History of Ownership

3-22-78
by JW
Division of Water Rights

1894 — 3-30-1908 — 4-17-36 — 8-21-51

Francis M. Murphy (60 shares) — Sarah J. Murphy (60 shares) — Edna Schuster, Mary E. Haas, David M. Murphy (60 shares) — Elmer Humphrey (5 shares)

David Murphy, Alice B. Murphy (55 shares) 11-14-51 — 1-14-57 — David M. Murphy, Alice B. Murphy (92 shares) — David Murphy, Alice Murphy, Joan Zakuiski (32 shares) 2-27-65 — Ted and Olive Jacobs (5 shares) 2-27-65

— William Buchholtz (8 shares) — C.E. Buchholz (8 shares) 2-1-71

— George Beaman (5 shares) — Frank M. Walker (5 shares) 2-12-57

Francis M. Morris (75 shares) — W.S. Lee (60 shares) 2-11-07 — William Morris (60 shares) 2-19-07 — C.E. Morris (60 shares) 9-9-48

— Elwood Williams (15 shares) 1900 — Maurice Keliher (15 shares) — Add to Jay Eastman original stock (15 shares)

Freeman J. Lewis (50 shares) — Bert F. Lewis (50 shares) 4-21-36 — Lucille Tinsley (Lewis Corp.) (50 shares)

Samuel J. Merris (60 shares) — Elsie M. Higgins (60 shares) — Joane Mumford, Janet Thompson, Elsie Jean Bradley, Joyncll Higgins (60 shares) 7-27-51

James M. Woods (40 shares) — Conklin Gordon (40 shares) 4-8-21 — Warren Lamb Lumber Co. (40 shares) 6-20-34

M.P. Carley

— Ray Keliher (5 shares) 6-20-44 — Willis Jones (5 shares) 4-24-50

Jay P. Eastman (18 shares) — Peter Dubamd (15 shares) 12-2-96 — Corbin Morse (15 shares) 5-1-00 — Robert Holcomb (15 shares) — Maurice Keliher (15 shares) 4-5-12 + 15 shares from Francis Morris stock — Nellie K. Keliher (15 shares) 5-12-30 (15 shares) 6-8-36 — M. Keliher (28 shares) 4-14-48 — M. Keliher (25 shares) 6-20-44 — Cont. next row

— Earl DeMaranville, Jr. (2 shares) 4-14-48 — W.R. Anderson (2 shares) 4-25-48

M. Keliher (8 shares) 2-16-51 — Mabel Keliher (8 shares) 3-9-59 — Paul Berry (8 shares) 10-18-60

Maurice Keliher (15 shares) 4-9-49 — Walt Taylor (7 shares) 2-16-51 — Harold E. Taylor (2 shares) 11-18-57

— Earl DeMaranville (8 shares) 4-4-49 — Paul Stromer (8 shares) 7-27-51 — Richard Taylor (2 shares) 11-18-57

Hallie Stromer — Walter C. Taylor (3 shares) 11-18-57

Note: Documents Show No Transfers Since 1972 — As of this date the Corporation no longer exists. — Plans are to re-incorporate

Shares Total 300 — Does not indicate all users of the Rapid Valley Ditch

OTHER USERS: A.P. Frank 36 in — Clay Herron 30 in — Alfred Jaap 15 in — Henry Long 15 in — C.E. Mann 22 in — Jack Roach 17 in — Ray Dean 30 in

RAPID VALLEY WATER CO., INC.

APRIL 79

Key to Map

No.	Name	Acres	Miners Inches
1	Guy & Blanche Simons, formerly Ted Jacobs	45	41
2	C. E. Morris	64	59
3	David Lamb, formerly Lucille Tinsley	187	100
4	David Lamb	248	125
5	Frank Walker	8	8
6	David Murphy	30	25
7	Jim Long	10	10
8	Cora Buckholz	9	15
9	Buckholz	9	
10	Janet Thompson	121	120
11	Wayne Anderson	12	10
12	Dale Wileman	5	4
13	C. E. Morris	142÷2	29
14	Alfred Jones	20	15
15	Doug Peters	56÷2	17
16	John Sweeney	1	1
17	Ray Tyler	65	36
18	Jerry Olson	4	3
19	M. P. Carley	145	50
20	Bruce Weber	63	7
21	Dr. Ahrlin	51	35
22	?	38	25
23	Rose Ann Heavlin	38	25
24	Hallie Stromer	125	50
25	Lucille Heavlin	38	40
		1435	850

This list does not include the water carried for the Little Giant lands.

RAPID VALLEY WATER CO; INC.
IRRIGATED LANDS 1979
DNRD

N

9 10 11 12

16 15 14 13 18

21 22 23 24 19 20

T1N

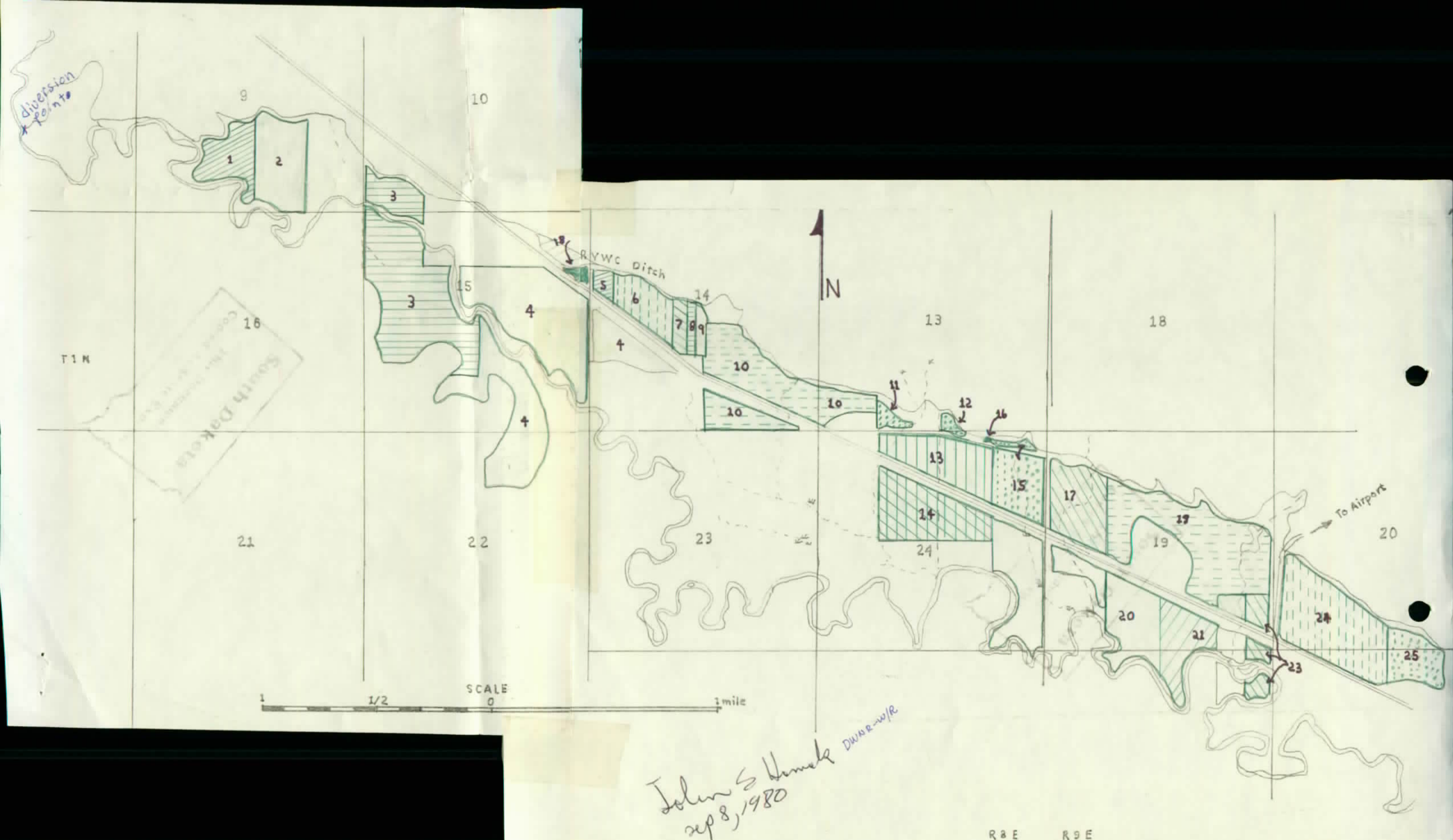
R V W C Ditch

Rapid Creek

To Airport

SCALE
1 1/2 0 1 mile

R8E R9E



[redacted]

John S Hamek DWNR-W/R
sep 8, 1980

MAP No 991-2 APPL 1727-2 W/R

Rapid Valley Water Company Land Legal Description and Acreage

1878 PRIORITY DATE

Parcel Number	Legal Description	Acreage
1	NE1/4 SW1/4, SE1/4 SW1/4 S9-T1N-R8E	45
2	NW1/4 SE1/4, SW1/4 SE1/4 S9-T1N-R8E	64
3	SW1/4 SW1/4 S10-T1N-R8E NW1/4 NW1/4, SE1/4 NW1/4, SW1/4 NW1/4, SE1/4 NE1/4, SW1/4 NE1/4, SW1/4, SE1/4 S15-T1N-R8E NW1/4 NE1/4, NE1/4 NE1/4 S22-T1N-R8E	380
4	SE1/4 SW1/4 S10-T1N-R8E NE1/4 NW1/4, NW1/4 NE1/4 S15-T1N-R8E	36
5	SW1/4 NW1/4 S14-T1N-R8E	5
6	SW1/4 NW1/4, SE1/4 NW1/4, NE1/4 SW1/4, NW1/4 SW1/4 S14-T1N-R8E	32
7	SE1/4 NW1/4, NE1/4 SW1/4 S14-T1N-R8E	10
8	SE1/4 NW1/4, NE1/4 SW1/4 S14-T1N-R8E	5
9	SE1/4 NW1/4, NE1/4 SW1/4 S14-T1N-R8E	5
10	SE1/4 S14-T1N-R8E SW1/4 SW1/4 S13-T1N-R8E	121
11	SE1/4 SW1/4 S13-T1N-R8E	2
12	SW1/4 SE1/4 S13-T1N-R8E NW1/4 NE1/4 S24-T1N-R8E	6
13	NE1/4 NW1/4, SW1/4 NE1/4, NW1/4 NE1/4 S24-T1N-R8E	66
13	1/2 OF THE 76 ACRES COVERED UNDER LITTLE GIANT NE1/4 NW1/4, SE1/4 NW1/4, SW1/4 NE1/4 S24-T1N-R8E	38
14	NW1/4 NE1/4 S24-T1N-R8E	1
15	1/2 OF THE 56 ACRES COVERED UNDER LITTLE GIANT NE1/4 NE1/4, SE1/4 NE1/4 S24-T1N-R8E	28
16	NW1/4 NW1/4, SW1/4 NW1/4 S19-T1N-R9E	49
17	NE1/4 NW1/4, SE1/4 NW1/4, SW1/4 NE1/4, SE1/4 NE1/4, NE1/4 SE1/4, SW1/4 SE1/4, NW1/4 SE1/4, NE1/4 SW1/4 S19-T1N-R9E	145

Parcel Number	Legal Description	Acreage
18	NE1/4 SW1/4, SE1/4 SW1/4 S19-T1N-R9E NE1/4 NW1/4 S30-T1N-R9E	63
19	SW1/4 SE1/4 S19-T1N-R9E NW1/4 NE1/4, SW1/4 SE1/4 S30-T1N-R9E	51
1893 PRIORITY DATE		
20	SE1/4 SE1/4 S19-T1N-R9E NE1/4 NE1/4 S30-T1N-R9E	26
21	SW1/4 S20-T1N-R9E NW1/4 NW1/4, NE1/4 NW1/4 S29-T1N-R9E	125
22	SW1/4 SE1/4 S20-T1N-R9E NW1/4 NE1/4 S29-T1N-R9E	38
	TOTAL	1341

1727-2

South Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

December 18, 1989

**NOTICE OF REQUEST TO
REMOVE TREES FROM DITCH**

TO: Rapid Valley Ditch Company, Inc.
c/o David Lamb
Rt 2, Box 160
Rapid City SD 57701

FROM: JOHN HATCH, Chief Engineer
Water Rights Division

SUBJECT: REQUEST To Remove Trees And Brush FROM RAPID VALLEY DITCH COMPANY AND/OR RIGHTS OF WAY

Pursuant to SDCL 46-1-4, 46-2-17 and 46-7-3 Rapid Valley Ditch Company is REQUESTED to remove trees and brush from Rapid Valley Ditch, canals, laterals and/or rights of way prior to diverting water from Rapid Creek for the 1990 irrigation season. The roots of larger trees located within the ditches or on ditch embankments need to be removed and resulting holes backfilled with impervious material. Smaller trees and brush need to be trimmed to the ground and treated to prevent regrowth. Trees and brush consume water and contribute to water loss from a ditch. Decayed roots of trees located within ditches or on embankments can provide channels for water to leak or seep from the ditch. Where ditch embankments could fail and cause flooding, decaying tree roots provide channels ("piping") which can result in embankment failure.

All trees and brush that may be located within a ditch, or on ditch embankments, and/or within approximately five feet of the edge of the ditch need to be removed. Where wider rights of way exist, it may be prudent to leave older trees and shrubs that are important to adjacent property owners.

Please advise by February 2, 1990 if your Ditch Company intends to comply with this request or if you would like to have a hearing before the State Water Management Board. The Board will be meeting in Rapid City March 7 & 8, 1990.

If you have questions on this request, please contact Del Brosz (605 773-3352) or myself.

cc: Janet Thompson, Vice-President
Merlin Stromer, Secretary/Treasurer

CERTIFICATION

I hereby certify that on December 18, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Request to Remove Trees From Ditch addressed as stated below:

Rapid Valley Ditch Co., Inc.	c/o David Lamb Rt 2, Box 160 Rapid City, SD 57701
Vice President:	Janet Thompson Rt 5, Box 850 Rapid City, SD 57701
Secretary/Treasurer:	Merlin Stromer RR 2, Box 630 Rapid City, SD 57732

Karen Schlaak

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of December, 1989.

JOHN HATCH
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA
My Commission Expires Apr. 1, 1993

John Hatch
Notary Public

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

January 9, 1990

1727-2

Merlin Stromer
RR #2 Box 4550
Rapid City, SD 57701

Dear Mr. Stromer:

Enclosed, as you requested, is a copy of Vested Water Right Claim No. 1727-2, Rapid Valley Water Company, Inc.

If you have any questions, please contact me.

Sincerely,

Genny McMath

GENNY MCMATH
Natural Resources Analyst
(605) 773-3352

enclosure

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

818 St. Joe Street
Mailing Address P. O. Box 2670
Rapid City, South Dakota 57709
605-343-1040
Telecopier 605-343-1503

George A. Bangs
W. A. McCullen (1943-1987)
Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Ronald E. Clabaugh
Charles L. Riter

Allen G. Nelson
James P. Hurley
Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Rebecca A. McMahon
Patrick K. Duffy

January 25, 1990

Mr. John Hatch, Chief Engineer
Water Rights Division
SD Dept. of Water and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Notice of Request to Remove Trees from Ditch

Dear Mr. Hatch:

Pursuant to your Notice dated December 18, 1989, this is to request a formal hearing before the State Water Management Board concerning your request to remove trees and brush from the various ditches, canals, laterals and rights of way prior to diverting water from Rapid Creek for the 1990 irrigation season. This request for hearing is made on behalf of Hawthorne Ditch, St. Germaine Ditch, South Side Ditch, Lonetree Ditch, Little Giant Ditch, Cyclone Ditch and Rapid Valley Ditch Co., Inc. Additionally, I would appreciate it if you would supply me with copies of any investigations, reports, memoranda or correspondence dealing with any of the issues raised by this Notice.

I thank you in advance for your anticipated assistance and cooperation, and if you have any questions or comments, please do not hesitate to contact me. Thank you.

Sincerely,

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

Michael M. Hickey

MMH/dcc
cc: St. Germaine Ditch
South Side Ditch
Lonetree Ditch
Hawthorne Ditch
Little Giant Ditch
Cyclone Ditch
Rapid Valley Ditch Co., Inc.

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

February 2, 1990

NOTICE

TO: Rapid Valley Ditch Company, Inc.
c/o David Lamb
Route 2, Box 160
Rapid City SD 57701

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

SUBJECT: Hearing Concerning Chief Engineer's Request to Remove Trees and Brush from Rapid Valley Ditch Company and/or Rights of Way

Pursuant to the Notice from the Chief Engineer dated December 18, 1989, a request was made to remove trees and brush from Rapid Valley Ditch, canals, laterals and/or rights of way prior to diverting water for the 1990 irrigation season. On January 26, 1990, a letter was received from Michael Hickey, attorney, requesting a hearing before the Water Management Board concerning removal of trees and brush from Rapid Valley Ditch.

The Water Management Board will consider this matter during a hearing scheduled for 1:30 pm on March 7, 1990, in the Roosevelt/Jefferson Room, Howard Johnson's, 2211 LaCrosse Street, Rapid City SD. The agenda time is an estimate. The actual time of hearing may be later than 1:30 pm due to prior agenda items.

After all evidence is taken at the hearing, the Board is authorized to: 1) order removal of trees and brush from Rapid Valley Ditch as outlined in the Notice dated December 18, 1989, 2) take no action, 3) amend Vested Water Right No. 1727-2 to add qualifications, 4) defer action or do some combination of the above. The Board has legal authority and jurisdiction to consider this matter and may amend Vested Water Right No. 1727-2 pursuant to SDCL 46-1-4, 46-1-14, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17 and 46-7-3.

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

cc: John Haak, Assistant Attorney General
Janet Thompson, Vice President
Merlin Stromer, Secretary/Treasurer
Michael M Hickey, Attorney

CERTIFICATION

I hereby certify that on February 2, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Hearing to Consider the Request to Remove Trees From Ditch addressed as stated below:

Rapid Valley Ditch Co., Inc.	c/o David Lamb Rt 2, Box 160 Rapid City, SD 57701
Vice President:	Janet Thompson Rt 5, Box 850 Rapid City, SD 57701
Secretary/Treasurer:	Merlin Stromer RR 2, Box 630 Rapid City, SD 57732
	Michael M Hickey, Attorney PO Box 2670 Rapid City SD 57709

Karen Schlaak
KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of February, 1990.

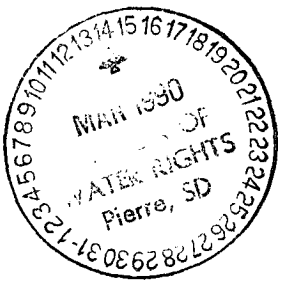
John Hatch
Notary Public

JOHN HATCH
NOTARY PUBLIC
SOUTH DAKOTA
SEAL SEAL
My Commission Expires Apr. 1, 1993

LAW FIRM OF
LESLIE JAMES ENGLAND
SUITE 102, WESTERN MUTUAL BUILDING
731 ST. JOSEPH STREET
RAPID CITY, SOUTH DAKOTA 57701

LESLIE J. ENGLAND
(ALSO ADMITTED IN COLORADO)

TELEPHONE (605) 341-7600
FAX (605) 343-4131



March 13, 1990

Mr. Delvin Brosz
Department of Water and Natural Resources
Division of Water Rights
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

Dear Delvin:

Enclosed please find the Report of Investigation of Rapid Valley Water Company, Inc. Ditch prepared by Lyndell Petersen and Banner Associates, Inc. as requested. This will also confirm that we will have a conference call Tuesday, March 20, 1990 at 2:30 p.m. with you and John Hatch in his office. John Haak indicated he would be there as well. This will be to discuss Rapid City water matters. Thank you for all your assistance in these regards.

Yours very truly,

Leslie J. England

LJE/cs

Enclosure

cc: John Haak
Assistant Attorney General

John Hatch
Chief Engineer

Mike Strub
Public Works Director

Dan Bjerke
Waste/Wastewater Division Manager

REPORT
OF
INVESTIGATION
RAPID VALLEY WATER CO., INC.
DITCH
Court File No. 81-156

FOR
Circuit Court
Seventh Judicial Circuit
Honorable Jeff Davis, Judge

Prepared by

Lyndell Petersen
Pennington County Extension Agent
and
Harry Richardson
Banner Associates, Inc.
Consulting Engineers

INTRODUCTION

On July 7, 1981 by order of the Honorable Jeff Davis, Circuit Court Judge, Seventh Judicial Circuit, Lyndell Petersen, Pennington County Extension Agent, and Harry Richardson, Banner Associates, Inc., Consulting Engineers, were appointed as experts to investigate the condition of the ditch owned by the Rapid Valley Water Company, Inc. We have completed our investigation and herewith present a report of our findings.

Quoting from the "Judgment For Permanent Injunction" dated July 10, 1981 the items to be investigated are:

(a) The need for a uniform system for measuring devices to insure an equitable delivery of water supply to all users entitled to water along the ditch, with recommendations as to the type of measuring devices to be constructed or applied to insure uniform delivery of water to all users;

(b) to investigate the waste ditch located upon the main ditch owned by the defendant corporation which main ditch is located adjacent to or across from property owned by C.E. Morris along the ditch, for the purpose of determining repairs, renovations or other construction is necessary along the course of the waste ditch to permit it to serve as a release for excess water in the main ditch owned by the defendant corporation; and

(c) to investigate the main ditch along its entire course to determine the type of repairs that may be necessary to insure adequate delivery of water in the main ditch to the extent of eight hundred fifty (850) miners inches under four (4) inches of pressure.

In this report the existing conditions found by field inspections are recorded and results of investigations and computations are reported. These are followed by recommendations for corrective action.

INSPECTION AND INVESTIGATIONS

On October 1 and 2, 1981 Lyndell Petersen and Harry Richardson made a field inspection of the Rapid Valley Water Company main ditch and wasteways. They were acccompanied by James Winterton, Water Resources Engineer, South Dakota Department of Water and Natural Resources, Water Rights Division, and representatives of the plaintiffs and defendants. Early in 1982 main ditch condition and repair recommendations were furnished to the plaintiffs and defendants. From then to 1986 we were available to the parties to discuss any problems or conflicts and have monitored the operation and maintenance of the main and waste ditches. In 1985 we received a written report of the main ditch condition from Janet Thompshon and visited the Higgins property to observe standing water. In May, 1986 field inspections were made by Harry Richardson and Dennis Odens, both of Banner Associates, Inc. and changes from earlier inspections were noted. This was supplemented by a field inspection in June, 1986 of the head gate and several diversions. In addition to personal observations, information was obtained from individuals and by measurements. Supplemental information was collected by individual observations, measurements and from existing records. The findings that have developed from the inspections, other field work, investigations, computations, and consultations by Lyndell Pertersen and Harry Richardson are presented herein and in the Appendix of this report.

Lands associated with the Rapid Valley Water Company, Inc. ditch have been identified in records of the State of South Dakota, see Ref. No. 2, and are listed in Table No. 1 in the Appendix. To identify locations along the ditch and wasteways, diversion points were assigned numbers which are also listed in Table No. 1.

MEASURING DEVICES

In Table No. 2, of the Appendix, the existing devices used to check the flow of water in the main ditch and to divert flow from the main ditch into farm ditches are described. Our observations indicate that the diversion devices are intended to also serve as flow measuring devices. The "head" or "pressure" needed to divert the water is being created in several ways. Where the diversion device and farm ditch are below the level of the unobstructed flow in the main ditch that head is used. Where this is not the case, the main ditch flow is obstructed by ditch checks until sufficient head is created. From observations and information supplied by the irrigators there is usually an attempt to maintain 4" of head above the diversion device opening and to make the area of the opening in square inches equal to the flow in miner's inches to be diverted. Pumps and some other diversion locations have no measuring devices that make it possible to determine flow rate.

The Rapid Valley Water Company, Inc. uses the Miner's Inch as the unit of measurement of water, see Ref. No. 3. The measurement units of cubic feet per second and miner's inches are used in this report. The use of different units and the relationship between them are described by the items listed below.

1. The judgment For Permanent Injunction states in the order "It is further understood that the requirement of Eight Hundred Fifty (850)

miner's inches is under four (4) inches of pressure."

2. The miner's inch "is defined as the quantity of water which will flow through an orifice 1 inch square under a stated head...", see Ref. No. 1.

3. It is stated in the water laws of the State of South Dakota that "The standard of the measurement of the flow of water shall be the cubic foot per second of time; and..." and "The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been especially stated by the contract or has been established by actual measurement or use, or by Court decree."

In this report "pressure" is considered to mean depth of water. Head is also considered to be depth of water.

The ability of the diversion devices to serve as measuring devices was evaluated. The evaluations are explained in the Discussion and Recommendations later in the report. The physical condition of ditch checks and diversion devices was found to vary from excellent to deteriorated beyond repair. Comments on individual structures are included in Table No. 2, in the Appendix, for both inspections.

WASTE DITCH

The waste ditch in question is presently used for two functions. It is used to drain excess water from the main ditch and dispose of it at Rapid Creek. Also, it is used to supply irrigation water to 4 diversions on the C.E. Morris property. The diversion structure inlet is a 12" wide by 24" high opening which transitions within a concrete headwall into a 24" diameter corrugated metal pipe. There are angle iron guides on the upstream face of the headwall which were used to hold a shut off gate, these are damaged. Presently loose boards are used over the 12" inlet opening but do not provide complete shut off. The waste ditch is narrow and shallow in several places between the main ditch and Pennington County Highway No. C234-Morris Lane, where there is a 24" equivalent arch corrugated metal pipe.

The waste ditch has been altered at the north and south borrow ditches of the county highway to allow flow to be diverted from the waste ditch. A 30" diameter reinforced concrete pipe in the waste ditch on the south side of the county highway is used as a ditch check by placing a wooden check board over more than 50% of the inlet. On the north a 15" diameter reinforced concrete pipe allows diverting water west along the highway to a drainage swale. A highway bridge over the swale allows the diverted water to follow the swale southwest to SD Highway No. 44. On the south diversion checks and ditches allow diversions both east and southwest from the waste ditch.

When the waste ditch is checked water backs up in the highway culvert which reduces the amount of water the culvert and waste ditch can carry without overtopping. The culverts under Highway 44 and the railroad tracks are 24" round corrugated metal pipes. The waste ditch at these locations is deeper than further upstream and the greater water depth will increase flow through

DISCUSSIONS AND RECOMMENDATIONS

The discussions and recommendations contained herein address the subjects as directed and attempt to consider all of the information and comments presented by the interested parties. There is a recommendation that is applicable to all three of the subjects.

DITCH RIDER

Each of the subjects has a common concern with the functions of operation, maintenance and enforcement of operating rules. We recommend that a ditch rider be appointed by the Rapid Valley Water Company, Inc. Daily operation of the main ditch will remain the responsibility of the Rapid Valley Water Company, Inc. The ditch rider will be used when the ditch operation is not allowing irrigators access to all the irrigation water they are entitled to or when other water delivery problems develop. The ditch rider will coordinate water delivery with the Water Master and irrigators to assist them in the beneficial use of all available water. Further, that the ditch rider be given the responsibility and necessary authority to act in the Company's behalf to perform the above stated functions with impartial treatment for all the irrigators. The instructions of duties, responsibilities and procedures of the ditch rider will be prepared in writing by the Rapid Valley Water Company, Inc. and will be subject to approval by the Court. After approval the instructions will be distributed to the ditch rider and irrigators.

When legitimate requests for water exceed the amount available the ditch rider will be responsible to apply the policies of the Rapid Valley Water Co., Inc. to determine the equitable distribution of the flow. The ditch rider will routinely monitor the operation, investigate complaints or problems reports, maintain required records and periodically patrol the ditches so improper diversions and operations can be reported to the Rapid Valley Water Co., Inc.

MEASURING DEVICES

Discussions

Measuring devices are used to determine that the correct amount of water is being diverted. This information will make it possible to have equitable distribution of the available flow to the users. As stated previously the existing diversion devices are also used to measure the amount of flow being diverted. Engineering and technical criteria for flow measuring devices is in part stated below.

1. Quoting from Chapter 1 of Ref. No. 1.

   "3. General Units of Measurement.--Two types of units are used in measuring water: units of discharge and units of volume.

   Discharge, or rate of flow, is defined as the volume of water that passes a particular reference section in a unit of time. The unit of discharge now in general use in irrigation practice in the West is the cubic foot per second, also known as the second-foot (sec.-ft.).

The term miner's inch, formerly used in hydraulic mining and irrigation in the western United States, is practically obsolete. It is defined as the quantity of water which will flow through an orfice 1 inch square under a stated head which varies from 4 to 6 1/2 inches in different localities. The use of this unit has led to much confusion; its value in terms of cubic feet per second has been fixed by statute in most of the Western States, as follows:

(1) 50 miner's inches = 1 second-foot in Idaho, Kansas, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Washington."

"4. (b) Nonstandard Devices. Almost anything that partially restricts the flow in a ditch can be used as a measuring device--if it is properly calibrated. Most of the possible restrictions are nonstandard devices and no discharge tables or curves are available for determining the discharges. Similarly, weirs, flumes and other measuring structures that have not been built, installed, or maintained correctly and therefore do not measure in a standard manner are nonstandard devices.

A truly standard device is one which has been fully described, accurately calibrated, correctly installed, and sufficiently maintained to fulfill the original requirements. Standard discharge tables or curves for the device may then be relied upon to provide accurate water measurements. Accurate discharge measurements from nonstandard structures can be obtained only from specially prepared curves or tables based on calibration tests such as current-meter ratings. Calibration tests can be costly because ratings must be made at fairly close discharge intervals over the full operating range, and curves or tables prepared from data. It is often less costly and usually not difficult to install standard devices and maintain them in good condition. Then standard dischage tables may be used with full confidence."

2. In order for a measuring device to consistently provide accurate water measurements certain conditions must exist.

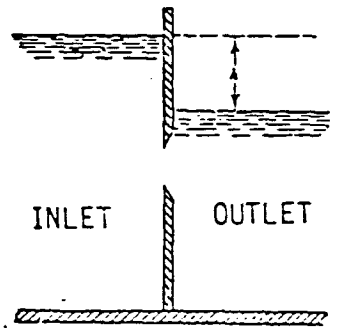
   (a) The water to be measured must be flowing directly into the measuring device. For a diversion this can be done by use of a main ditch check to create a pool of water or by setting the measuring device out of the main channel flow.

   (b) A minimum difference in head must exist between the water surface upstream and downstream of the measuring device. The amount of difference will depend on the type and size of measuring device.

   (c) The velocity of the water entering the measuring device must be low or be considered in computing the flow.

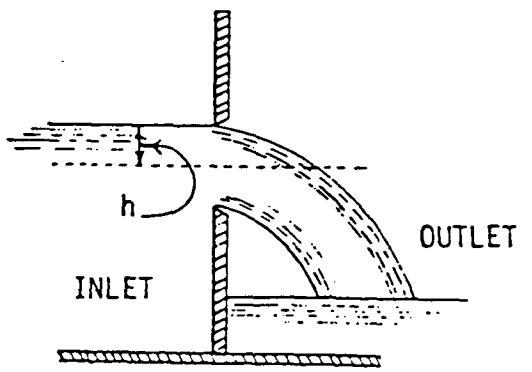
3. When a device is to be used to measure water flow rate in miner's

inches the head must be maintained at 4" and the measurement orifice must have an area equal to the miner's inches to be measured. The 4" head is the difference in the water level upstream and downstream of the measuring orifice. The water level on the downstream side of the measuring orifice must be above the top of the orifice. This describes a Submerged Discharge condition as indicated in the sketch below. The head (h) must be 4 inches to measure the miner's inch as defined in the references noted previously.



***Submerged Discharge

This is in contrast to the way some of the existing measuring devices are used which is a Free Discharge condition as indicated in the sketch below.



**Free Discharge

4. A measuring device should be constructed so once it is calibrated it is possible by visual inspection to tell that the correct amount of flow is being diverted through the device.

None of the existing diversion devices satisfy all of the technical criteria for use to accurately measure diversion flow in miner's inches or cubic feet per second. Until the measuring devices are modified to conform to the criteria and, if necessary, calibrated the accuracy of their flow measurements is unknown. Reliable flow mea-

surements can be used by the Rapid Valley Water Co., Inc. to determine that diversions are made in the correct amounts for equitable distribution of the available water.

There are several types of standard measuring devices used to measure the rate of flow of irrigation water. These include weirs, Parshall flumes, submerged orifices, meters and miner's inch boxes. With the first three of these devices water flow measurement is accomplished by measuring upstream and downstream water levels and using the difference and a standard table of values to compute the flow. These devices do not have to be commercially constructed or installed. Dimensions and tables for weirs, Parshall flumes and submerged orifices are available in Ref. No. 1. The miner's boxes existing at diversion points 15 and 16 nearly conform to the criteria if the outlet water level submerges the measuring orifice. If water pumps are to be used to divert water, measurement by a commercial meter in the discharge line or one of the standard devices discussed above ahead of the intake line can be used.

Canal checks are necessary where the diversion is higher than the unobstructed flow in the main ditch. Checks should have walls and floor that conform to the ditch shape or have wingwalls to transition from the check box to the soil channel. They should be constructed in a manner to reduce erosion, leakage and maintenance problems. There are new and older existing checks that meet these requirements.

Recommendations

We recommend the following policies for measuring diversions from the Rapid Valley Water Co., Inc. irrigation ditch.

A. The Rapid Valley Water Co., Inc. accepts the United States Department of the Interior, Bureau of Reclamation, "Water Measurement Manual" Water Resources Technical Publication, Second Edition - 1981 Revised Reprint as a standard reference for criteria for flow measuring devices and may adopt necessary additional criteria.

B. The location and construction of check, diversion, measuring and other structures in the main and waste ditches are subject to approval by the Rapid Valley Water Co., Inc.

C. Diversions will only be made at locations approved by the Rapid Valley Water Co., Inc.

D. The Rapid Valley Water Co., Inc. will determine the flow that may be diverted at each diversion point and will require the flow be measured by an approved device.

E. Diversion water rights may be expressed in miner's inches under 4 inches pressure or cubic feet per second. A miner's inch is regarded as one-fiftieth of a cubic foot per second.

F. Diverted water flow may be measured in miner's inches if the

measuring device meets the criteria and is approved.

G. Diverted water flow may be measured in cubic feet per second using a standard measuring device as defined and described in the standard reference, if the device meets the criteria and is approved. Standard reference tables developed for that type of measuring device will be used to determine the flow.

H. Diverted water may be measured in cubic feet per second using a nonstandard measuring device as defined in Reference No. 1, if the device is calibrated using a standard measuring device, meets the criteria and is approved. Only measurement values determined by calibration may be used to determine the flow.

I. The Rapid Valley Water Co., Inc. will develop a record for each measuring device that through the use of measurements, sketches, photographs, written descriptions and tables will indicate the location, type, condition and measurement criteria for the device.

The measurement devices will be inspected annually by an authorized representative of the Rapid Valley Water Co., Inc. to determine that the device meets the criteria and to confirm the water levels and other physical dimensions necessary to measure the allowed diversion flow.

J. Pumps that draw irrigation water directly from the main ditch will be equipped with an approved meter and flow control device to measure and maintain the correct amount of flow.

WASTE DITCH

Discussions

We estimated the capacity of the waste ditch structures and evaluated how they effect the waste ditch performance.

1. The turnout structure does not have a standard opening so standard capacity tables are not available. We estimate that when the main ditch is full the turnout capacity is 9 cubic feet per second (sec.-ft.) which converts to 450 miner's inches (MI). When 20 sec.-ft. (1,000 MI) is carried unchecked in the main ditch the head on the turnout is reduced so it would flow less than half full and we estimate the flow would be 2.7 sec.-ft. (137 MI). If the main ditch flow is checked to raise the water surface elevation the turnout flow will increase.

2. The 24" equivalent arch corrugated metal pipe culvert under Morris Lane is a standard installation. Using standard charts we estimate the capacity is 20 sec.-ft. (1,000 MI). When the influence of the 30" diameter reinforced concrete pipe check below the culvert is considered we estimate the capacity of the culvert is reduced to 13.5 sec.-ft. (675 MI).

3. The 24" Round Corrugated metal pipe under SD Highway No. 44 is a standard installation and water can pond about 1.5' deep over the inlet. We estimate the capacity is 11.5 sec.-ft. (575 MI).

The waste ditch turnout structure limits the amount of flow in the waste ditch to 9 sec.-ft. (450 MI). Field observation indicates that at several locations between the main ditch and Morris Lane and between Morris Lane and SD Highway No. 44, the waste ditch channel and dikes may not be capable of containing that amount of flow.

In order to define excess water in the main ditch we have related it to irrigation flows not storm drainage that may enter the main ditch as surface runoff.

> Excess Water - The Rapid Valley Water Company, Inc. is authorized to divert water from Rapid Creek for beneficial use for irrigation. Any diverted Rapid Creek water that is not needed to meet the legitimate demands for irrigation water is excess water and is to be returned to Rapid Creek.

Excess water can be returned to Rapid Creek by the waste ditch discussed above and by the waste ditch at the end of the main ditch. We estimate that the maximum flow that can be diverted from Rapid Creek to the main ditch is 20 sec.-ft. (1,000 MI). We also estimate that the two waste ditches combined are capable of returning the 20 sec.-ft. to Rapid Creek without allowance for any irrigation diversions from the main ditch.

In regards to other uses of the waste ditch we offer the following comments.

1. Storm water in the main ditch can be diverted through the waste ditch which will reduce the flow so overtopping of the main ditch will be reduced or eliminated.

2. In the event of a main ditch wash out downstream of the waste ditch the check at Wilemans diversion can be plugged to force flow in the main ditch out of the waste ditch turnout. The 9 sec.-ft. (450 MI) and any irrigation diersions upstream will deplete most if not all of the main ditch flow.

3. The waste ditch is being used as a lateral to carry water from the main ditch to the C.E. Morris diversions. Other places in the system with similar conditions the lateral maintenance is the responsibility of the irrigator. The C.E. Morris check in the waste ditch, under normal conditions, will allow more water to pass than can enter the waste ditch. Should the check become partially plugged it could cause overtopping of the waste ditch.

Recommendations

We recommend the following actions for the waste ditch.

1. The Board of Directors of the Rapid Valley Water Co., Inc. decide what rate of flow capacity is required for the waste ditch.

2. The turnout structure be repaired or replaced so it is possible to divert the above rate of flow into the waste ditch and control the amount of flow diverted.

3. The waste ditch be cleaned and the dikes repaired where necessary so the ditch capacity is greater than the capacity determined by the Board of Directors.

We recommend the following policies for waste ditches of the Rapid Valley Water Co., Inc.

1. The purpose of the waste ditch is to return excess water diverted for irrigation purposes to Rapid Creek.

2. Any use of the waste ditch for purposes other than that stated above will be subject to approval of the Board of Directors of the Rapid Valley Water Co., Inc.

3. Authorized users of the waste ditch will be responsible for maintaining any portions affected by the use. The waste ditch will be maintained so it is capable of performing its intended purpose.

4. The location and construction of any structures in the waste ditch will not reduce the capacity of the waste ditch below the amount determined by the Board of Directors and will be subject to approval by the Rapid Valley Water Co. Inc.

5. Policies regarding devices for measuring diversions from the Rapid Valley Water Co. Inc. irrigation ditch apply also to the waste ditch.

MAIN DITCH

Discussions

In "Table No. 3 - Main Ditch Conditions and Repairs" in the Appendix we have described the conditions observed in 1981, made recommendations for programmed maintenance and immediate repairs and have indicated changes observed in 1986. This table was presented to the plaintiffs and defendants early in 1982 for their use and comment.

During the 1986 inspections we found that some of the recommended repairs and maintenance have been completed, others have been started and some have had no action. We found that some items are reoccurring or continuing such as debris accumulations at obstructions, silting where the flow is not confined and seepage from the ditch to the extent adjoining areas become saturated.

We address only the work necessary to allow the Rapid Valley Water Co. Inc. to fulfill its purpose, improvements to reduce maintenance or improve service are not included. Our recommendations for maintenance are classified as operation or programmed maintenance. Operational maintenance is to correct or prevent immediate problems such as debris accumulations, washouts, and other occurrances that prevent proper delivery of water. Programmed maintenance is

scheduled work to correct long term conditions that can create operation problems. This would include ditch cleaning, dike repairs, structure repairs, pipe repair or replacement and tree or other larger obstruction removals.

Recommendations

Our current recommendations for repairs to the main ditch are included in Table No. 3 in the Appendix.

We recommend the following policies for the main ditch of the Rapid Valley Water Co., Inc.

1. The Rapid Valley Water Co., Inc. will operate and maintain the Diversion Dam, Head Gate, Flow Measuring Device and Main Ditch in condition to allow the irrigators access to all the available Rapid Creek flow that they are entitled to and can benefically use.

2. Distribution of available irrigation water to irrigators will be equitable and in accordance with applicable court orders, laws and regulations.

3. The Rapid Valley Water Company, Inc. will not allow known conditions to remain in their facilities that create potential or actual damages to others' property.

4. The Rapid Valley Water Company, Inc. will keep the irrigators informed of changes in operation and will be responsive to questions and comments from them.

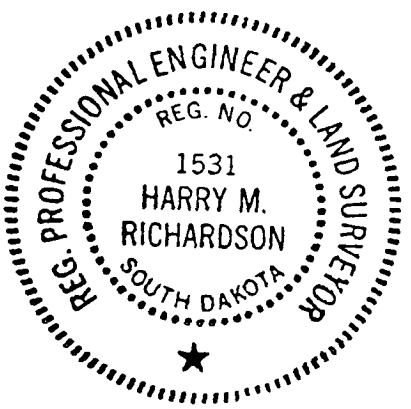
The preceding text and tables included herewith constitute the report of our investigation. We are available to discuss the report in the event questions or comments need to be addressed.

BANNER ASSOCIATES, INC.

Harry M. Richardson, P.E.-L.S.

PENNINGTON COUNTY

Lyndell Petersen, Extension Agent



APPENDIX

TABLE NO. 1 - DIVERSIONS FROM RAPID VALLEY WATER COMPANY CANAL

DIVERSION NUMBER	DIVERSION IDENTIFICATION (1)	LAND PARCEL NUMBER (1)	AREA AND LAND DESCRIPTION (1)
RAPID VALLEY WATER COMPANY WATER RIGHT			
1	Guy Simons	1	45 acres in E½ SW¼, Sec. 9, T1N, R8E
2	C. E. Morris	2	64 acres in W½ SE¼, Sec. 9, T1N, R8E
3	R. W. Lamb	3 & 4	187 acres in SW¼ of SW¼, Sec. 10; NW¼ & N½ of SW¼, Sec. 15, T1N, R8E 80 acres in S½, Sec. 15; NW¼ of NE¼, Sec. 22, T1N, R8E
4	R. W. Lamb	4	130 acres in S½ of NE¼ & N½ of SE¼, Sec. 15, T1N, R8E
5	R. W. Lamb	4	38 acres in NW¼ SW¼, Sec. 14, T1N, R8E
6 & 7	A. K. Walker	5	8 acres in SW¼ NW¼ Sec. 14, T1N, R8E
8, 9 & 10	David Murphy Estate	6	43 acres in W½, Sec. 14, T1N, R8E
11 & 12	Jim Long	7	10 acres in NE¼ SW¼ & SE¼ NW¼, Sec. 14, T1N, R8E
13	Kenneth Buckholz	8	½ of 10 acres in W½ of center quarter of Sec. 14, T1N, R8E
14	Cora Buckholz	9	½ of 10 acres in W½ of center quarter of Sec. 14, T1N, R8E
15, 16, 17 & 18	Elsie Higgins	10	121 acres in SW¼ of Sec. 14; SW¼ SW¼ Sec. 13, T1N, R8E
19	Wayne Anderson	11	12 acres in SE¼ SW¼ Sec. 13, T1N, R8E
20	Dale Wileman	12	6 acres in SW¼ SE¼ of SEc. 13, T1N, R8E
21, 22 & 23	C. E. Morris	13	66 acres Sec. 24, T1N, R8E
24	C. E. Morris	14	½ of the 76 acres in Sec. 24, T1N, R8E
25	Doug Peters	15	½ of 8 and 48 acres in W½ NE¼ of Sec. 24, T1N, R8E
26	John Sweeney	16	1 acre NW¼ NE¼ of Sec. 24, T1N, R8E
27 & 28	Raymond Tyler	17	65 acres in W½ NW¼ Sec. 19, T1N, R9E
29, 30, 31 & 32	M. P. Carley (Dave Schroeder)	19	145 acres in Sec. 19, T1N, R9E
33	Bruce Webber	20	63 acres in SW¼ sec. 19; NW¼ Sec. 30, T1N, R9E
33	Dr. Ahrlin	21	51 acres in SE¼ Sec. 19; NE¼ Sec. 30, T1N, R9E
34	Rosanne Heavlin	23	41 acres in SE¼ SE¼ Sec. 19; NE¼ NE¼ Sec. 30, T1N, R9E
32	Merlin Stromer	24	125 acres in SW¼ of Sec. 20; N½ NW¼ Sec. 29, T1N, R9E
32	James Bloom	25	38 acres SW¼ SE¼ Sec. 20; NW¼ NE¼ Sec. 29, T1N, R9E
	Total		1,415
LITTLE GIANT WATER RIGHT			
24	C. E. Morris		½ of the 76 acres in S½ of NW¼ Sec. 24, T1N, R8E
25	Irene Bausch (Doug Peters)		½ of 8 and 48 acres in E½ NE¼ Sec. 24, T1N, R8E
33	Arland Holcomb Estate (Schriener)		64 acres in SE¼ Sec. 24, T1N, R8E 20 acres W½ of SW¼, Sec. 19, T1N, R9E
	Total		150
	Total Acreage Irrigated		1,565

(1) Source: South Dakota Department of Water and Natural Resources, Water Rights Division, Pierre, South Dakota

(2) Source: Field Investigations - July 1, July 6, October 1, October 2, 1981 and February 17, 1982

TABLE NO. 2 - DESCRIPTION OF EXISTING CHECK AND DIVERSION STRUCTURES

DIVERSION NUMBER	DIVERSION IDENDIFICATION (1)	CANAL CHECK (2)	DIVERSION (2)	COMMENTS (2)
1	Guy Simons	Timber with timber check planks. *Concrete and timber with timber check planks	Open field ditch	Canal check inoperable due to deteriorated structural condition. *New check installed.
2	C.E. Morris	Concrete & timber with timber check planks.	Two 8" round corrugated metal pipes in diversion ditch. *Changed to one 19" mortar lined steel pipe.	Canal check subject to overtopping due to head required to irrigate land.
3	R.W. Lamb	Timber with timber check planks.	One 8" round PVC plastic pipe and one timber tube 9" x 1'-10" with 1 1/2" center partition.	Diversion is through canal bank in a widened portion of canal. *Timber tube is silted shut.
* 3.1	R.W. Lamb	* Precast concrete with timber check planks.	One 14" PVC pipe with head gate. *Supplies land north and south of Rapid Creek.	New diversion point since 1982 field inspection. *Water flows under check floor.
4	R.W. Lamb	Precast concrete with timber check planks.	10" x 23" orifice in the side of the precast concrete check. *One 15" pvc plastic pipe with headgate for gravity flow and one 15" pvc plastic pipe into pump concrete wetwell.	Canal check is inoperable due to errosion and unequal settlement. *Check removed and 48" round concrete pipe is being used as a check.
5	R.W. Lamb	Precast concrete with timber check planks.	10" x 23" orifice in the side of the precast concrete check.	Canal check is operable and stable.
6 & 7	A.K. Walker	Steel fence posts with plywood check.	One 10" pipe and one 10" corrugated metal pipe.	Diversion no. 6 is operable with some silting. Diversion no. 7 is operable with a closure device that leaks.
8	David Murphy Estate	Concrete culvert with timber check planks.	One 10" round PVC plastic pipe.	Canal check for diversion no. 8 is operable.
9 & 10	David Murphy Estate	Timber with concrete wingwalls with timber check planks.	One 9 1/2" x 22 1/4" timber tube. One 6" x 18" timber tube	Canal check for diversion 9 and 10 is in good repair and is operable.
11 & 12	Jim Long	Timber with timber check planks.	One 7 1/2" x 5 1/2" timber box; One 5 1/4" x 5 3/4" timber box; One 3 1/2" x 4" timber box and one pump.	Diverson no. 11 does not have a canal check. Canal check at diversion point no. 12 is inoperable. It appears the pump has replaced the two small timber boxes at diversion point no. 12.
13	Kenneth Buckholz	None	One 2" round pipe; one 4" round pipe.	Land adjoining canal is used for corral and residential housing.
14	Cora Buckholz	Steel fence posts with timber check planks	One 4" round pipe.	Canal check is operable.
15, 16, 17, & 18	Elsie Higgins	Timber with timber check planks at diversions no. 15, 16, 17 and 18	One 10" x 20" timber box; one 5 3/4" x 18 1/2" timber box; one 6" x 18" timber box; one 6" x 18 1/2" timber box.	Canal checks for diversions no. 15, 16, 17 and 18 are in good condition and are operable.
19	Wayne Anderson	None	None *Small pump	Does not have diversion at the present time. *Diversion may be for livestock watering.
Unnumbered	C.E. Morris	Timber with timber check planks	Open ditch	Check is operable

TABLE NO. 2 - DESCRIPTION OF EXISTING CHECK AND DIVERSION STRUCTURES (CONTINUED)

DIVERSION NUMBER	DIVERSION IDENTIFICATION (1)	CANAL CHECK (2)	DIVERSION (2)	COMMENTS (2)
20	Dale Wileman	48" reinforced concrete pipe with plywood check	2 1/2" x 5 1/8" orifice cut in steel plate covering upstream end of 21" reinforced concrete pipe.	Evidence that overflow from canal has occurred at diversion.
21	C.E. Morris	Diverting from waste ditch same check as #22 & #23	15" reinforced concrete pipe in County road borrow ditch.	Diverts water into a natural drainage way.
22 & 23	C.E. Morris	30" reinforced concrete pipe with timber check board in waste ditch, used for 21, 22 & 23	2 field laterals with lateral checks.	Wasteway and lateral checks are in County road right of way.
24	C.E. Morris	Temporary check in waste ditch	Field lateral no checks.	Corrugated metal pipe in field entrance possibly is used as a check.
25	Doug Peters	None	One 8" round pipe that runs underground.	Diversion is operable.
26	John Sweeney	None	None.	Does not have diversion at the present time.
27 & 28	Raymond Tyler	Concrete with timber check planks	Pump with 3" discharge; timber diversion box dimensions not available. *Perforated metal barrel for pump sump in main ditch.	* Timber diversion box is damaged and there is a canal leak around the box. *Diversion box has been removed.
29, 30 & 31	M.P. Carley (Dave Schroeder)	Steel fence posts with metal check for diversion 29	One 6 1/4" x 12" timber box; one 10 1/2" x 11 " timber box; diversion on waste ditch dimensions not available.	Canal check for diversion 29 is operable.
32	M.P. Carley (Dave Schroeder)	Waste ditch check, timber with timber check planks.	Timber check with timber planks in lateral.	Diverts water into a lateral used by Schroeder, Stromer and Bloom.
33	Bruce Webber Dr. Ahrlin	None	8" corrugated metal pipe.	Diverts water into a lateral that irrigates land for Shriener, Webber and Ahrlin.
34	Rosanne Heavlin	None	None	Does not divert water at the present time.
32	Merlin Stromer	Waste ditch check, timber with timber check planks.	Timber check with timber planks in lateral.	Diverts water into a lateral used by Schroeder, Stromer and Bloom.
32	James Bloom	Waste ditch check, timber with timber check planks.	Timber check with timber planks in lateral.	Diverts water into a lateral used by Schroeder, Stromer and Bloom.
24	C.E. Morris	Temporary check in waste ditch. *18" round concrete pipe	Field lateral, no checks.	Diverts water into lateral on south side of 44.
25	Irene Bausch (Doug Peters)	None	One 8" round pipe that runs underground.	Diversion is operable.
33	Arland Holcomb Estate (Schriener)	None	8" corrugated metal pipe.	Diverts water into a lateral that irrigates land for Schriener, Webber and Ahrlin.

(1) Source: South Dakota Department of Water and Natural Resources, Water Rights Division, Pierre, South Dakota

(2) Source: Field Investigations - July 1, July 6, October 1, October 2, 1981 and February 17, 1982

* Change between 1981 and 1986 Field Inspections

TABLE NO. 3 - MAIN DITCH CONDITION AND REPAIRS

DIVERSION NUMBER	LOCATION	PRESENT CONDITION	RECOMMENDED ACTION
Rapid Creek	Head Gate	Good. *Silt in channel above head gate, erosion of fill at head gate	None *Clean channel, fill erosion cuts
		Ditch stable and adequate to carry 850 MI	None
	100 yards downstream of Valley Drive	4" tree leaning over ditch potential debris buildup.	*Remove tree
		Ditch stable and adequate to carry 850 MI	None
1	Guy Simons		
		Ditch adequate to carry 850 MI - several areas ditch meanders	Reshaped ditch and dikes to correct meanders
	Farm Crossing outlet.	Ditch 15' wide, culvert 30" Dia., erosion at	Install larger culvert (Programmed Maintenance) - *Installed new 48" Dia. R.C. Pipe
	900' - 1,500' Downstream	Trees and debris in ditch, ditch damage and evidence of seepage.	Clean and repair ditch (1982) (1986)
2	C.E. Morris	Adequate to carry 850 MI.	None
3	R.W. Lamb	2 water pumps on ditch bank.	Act to stop illegal diversion (1982) (1986)
	Pioneer Drive	Pump house and garden sprinkler irrigation system on ditch banks.	Act to stop illegal diversion (1982) (1986)
		Water pump on ditch bank.	Act to stop illegal diversion (1982) (1986)
	Jolly Lane	Debris in ditch at fence crossings.	Clean ditch (1982) *Removed debris (1986)
*3	R.W. Lamb (New Location)		
	Rypkema	Driveway crossing culvert damaged. *Debris at culvert inlet.	Repair or replace culvert (Programmed Maintenance) - *Remove debris
	Railroad Crossing	Silt obstructs east pipe inlet.	Clean ditch (Programmed Maintenance) (1986)
	Pennington County Highway No. C232	Inlet end of culvert damaged, culvert depressed under highway, reduces capacity.	Repair Culvert (Programmed Maintenance) (1986)
		North dike low, ditch spills.	Raise north dike (Programmed Maintenance) (1986)

TABLE NO. 3 - MAIN DITCH CONDITION AND REPAIRS (CONTINUED)

DIVERSION NUMBER	LOCATION	PRESENT CONDITION	RECOMMENDED ACTION
4	R.W. Lamb	Check and diversion box tilted, causes ditch erosion. *Check and box removed.	Re-set or remove box (1982) - *Removed
		Ditch adequate to carry 850 MI.	None
5	R.W. Lamb		
	Pennington County Highway No. C209	Ditch adequate to carry 850 MI.	None
6	A.K. Walker	Plank across main ditch catching debris	Clean out debris (Operational Maintenance) (1986)
7	A.K. Walker	Ditch is wide and shallow, adequate to carry 850 MI.	None
8, 9 & 10	David Murphy Estate	Ditch adequate to carry 850 MI. Reported ditch seepage.	None
11 & 12	Jim Long	Ditch adequate to carry 850 MI.	Clean out debris (Operational Maintenance) (1986)
13 & 14	Kenneth & Cora Buckholz	Ditch adequate to carry 850 MI.	Trim trees and bushes, remove debris (Operational Maintenance) (1986)
		Tree overhangs ditch.	Trim tree (Programmed Maintenance) (1986)
15	Elsie Higgins		
	Natural Drainage Crossing	North dike low, water spills out of ditch into drainage areas. Pipe line from ditch to buildings.	Raise north dike (Programmed Maintenance) (1986) Act to stop illegal pumping (1982) (1986)
16, 17 & 18	Elsie Higgins	Ditch adequate to carry 850 MI.	Trim trees and bushes, remove debris
19	Wayne Anderson	South dike low, livestock damage.	Act to have dike raised (1982)
	Upstream of waste ditch	Ditch 15'± wide	None
*Unnumbered	C.E. Morris	Ditch Adequate to carry 850 MI.	None
21 & 22	Waste Ditch	See waste ditch inspection investigation in Report	See Discussions and Recommendations in Report
23 & 24	Driveway Crossing	Adequate to carry 850 MI.	None
20	Dale Wileman	North and south dikes are narrow and low. Also dike damage due to livestock	Raise dikes (Programmed Maintenance) (1986) Act to have dike repaired (1982) (1986)

TABLE NO. 3 - MAIN DITCH CONDITION AND REPAIRS (CONTINUED)

DIVERSION NUMBER		LOCATION	PRESENT CONDITION	RECOMMENDED ACTION
		Farming Crossing	Adequate to carry 850 MI.	None
25		Doug Peter seepage.	Adequate to carry 850 MI. Reported ditch	None
			Outlet pipe from dam drains natural runoff and Hawthorne return flows into ditch.	*Clean out debris and trees
	*	Just upstream of County road 212	Main ditch bank has been washed out immediately upstream of diversion pipe.	Repair washout (1986)
27 & 28		Raymond Tyler	North dike is low, water spills over. Timber bridge has collapsed into ditch. Ditch leaks around diversion tube in south dike.	Raise north dike (Programmed Maintenance) (1986) Remove bridge debris (1982) *Bridge removed Repair dike to stop leak (1982) *Tube removed
29		M.P. Carley (Dave Schroeder)	South dike narrow and low at fence. Debris in ditch at fence posts used for ditch check.	Raise dikes (Programmed Maintenance) *Raised 1986 Clean ditch (1982) *Cleaned 1986
			Ditch silted on sides, reduces capacity.	Remove silt and debris (Programmed Maintenance) *Removed 1986
30		M.P. Carley (Dave Schroeder)	Ditch silted on sides, reduces capacity.	Remove silt and debris (Programmed Maintenance) *Removed 1986
			North dike low, water spills.	Raise north dike (Programmed Maintenance) *Raised 1986

*Change between 1981 and 1986 field inspections

REFERENCES

1. United States Department of the Interior, Bureau of Reclamation, "Water Measurement Manual" Water Resources Technical Publication, Second Edition - 1981 Revised Reprint

2. South Dakota Department of Water and Natural Resources, Water Rights Division "Map and List of Water Rights on the Rapid Valley Water Company, Inc. Irrigation Ditch".

3. Rapid Valley Water Co., Inc. "INCOME FOR 1981 LEDGER SHEET", furnished by W. Alan Wyman, Attorney At Law.

LAW FIRM OF
LESLIE JAMES ENGLAND
SUITE 102, WESTERN MUTUAL BUILDING
731 ST. JOSEPH STREET
RAPID CITY, SOUTH DAKOTA 57701

LESLIE J. ENGLAND
(ALSO ADMITTED IN COLORADO)

TELEPHONE (605) 341-7600
FAX (605) 343-4131

August 29, 1990

Ms. Jenny McMath
Department of Water and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Water License No. 1727-2

Dear Ms. McMath:

Enclosed please find the Affidavit of Construction of Water Use System and Application of Water to Beneficial Use for Water License No. 1727-2.

Section 19 (Chronological History of Water Use) of this document contains a list of several other documents that should be in your possession. Please send us a copy of each document numbered 1-7 of this section.

If you have any questions regarding this matter please feel free to contact us at 341-7600. Thank you kindly for your assistance.

Sincerely,

Carolyn Seidler

Carolyn Seidler
Paralegal

CS/tb

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

September 18, 1990

1727-2

Carolyn Seidler
Paralegal
Western Mutual Bldg, Suite 102
731 St Joseph Street
Rapid City, SD 57701

Dear Ms. Seidler:

Enclosed, as you requested, is a copy of Vested Water Right Claim No. 1727-2, Rapid Valley Water Company, Inc. Also enclosed are copies of documents 1-7 described in the "Affidavit of Construction of Water Use System and Application of Water to Beneficial Use".

If you have any questions concerning the enclosed information, please contact me.

Sincerely,

Genny McMath

Genny McMath
Natural Resources Analyst
(605) 773-3352

enclosures

South Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

September 20, 1990

David Lamb
Route 2, Box 160
Rapid City SD 57701

Dear Mr. Lamb:

Enclosed is a copy of Water License No. 1727-2 for the Rapid Valley Water Company and a map showing the irrigated areas covered by Murphy Ditch.

The total acreage listed on the water license and on the attachment to the map are not the same. The water license indicates 1,425 acres are being irrigated and the map attachment indicates 1,435 acres are being irrigated.

Please review the areas being irrigated and contact me about any changes that may need to be made.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

Water Rights Division - DWNR File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: RAPID VALLEY ~~DITCH~~ WATER Co (MIKE HICKY)

ADDRESS: _____ COUNTY PENNINGTON

DATE: 9/28/90 TELEPHONE (605)343-1040

RE: VALIDATION OF WATER RIGHTS FOR RAPID VALLEY ~~DITCH~~ WATER Co

COMMENTS:

I CALLED MIKE HICKY CONCERNING ANY DOCUMENTATION CONCERNING MARTY RUDKEMA AND JERRY OLSON CLAIMS TO ~~BEING~~ HAVING WATER RIGHTS UNDER THE ~~[redacted]~~ THE ORIGINAL RAPID VALLEY WATER Co WATER RIGHTS

MR HICKY SAID THAT HE WOULD CHECK THE FILES TO SEE IF ANY THING PERTINENT ~~[redacted]~~ WAS AVAILABLE WHICH HE WOULD THEN SEND IN

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: [signature]

4/82

Water Rights Division - DWNR File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: David Lamb

ADDRESS: _____ COUNTY Pennington

DATE: 9/28/90 TELEPHONE _____

RE: Correction of Lands Covered Under Rapid Valley Water Co Water Rights

COMMENTS:

Mr Lamb Wanted To know What [redacted] Documents were needed To Support his claim That The Lands Listed As Having Water Rights in Sec 14 T1N-R8E Actually [redacted] was not [redacted] Entitled To Having A Water Right.

I Told Him a Possibility Was Documentation of Land Transfer Without Water Rights Being Transferred. He Thought That He Would Try To Find This

Also He Said That He Would Try To Contact Bruce Webber Concerning His Property covered under The Water Right. I Told Him That I would List The Lands As Previously Listed

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: Mark L Roth

4/82

Water Rights Division - DWNR File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: DAVID LAMB

ADDRESS: RAPID CITY COUNTY PENNINGTON

DATE: 10/5/90 TELEPHONE _____

RE: RVWC VESTED RIGHT

COMMENTS:

CALLED DAVID LAMB TOLD HIM WE WERE SENDING OUT THE APPLICATION FOR THE VESTED RIGHT FOR THEM TO CHECK OVER. I TOLD THEM WE WOULD LIKE TO HAVE THE APPLICATION SIGNED AND NOTARIZED BY WED OCT 10

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: Mark Dietz

4/82

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

October 5, 1990

Michael M. Hickey
Bangs, McCullen, Butler, Foye and Simmons
Lawyers
PO Box 2670
Rapid City, SD 57709

Dear Mr. Hickey,

Enclosed is the Vested Right Application for Rapid Valley Water Company. If there are no problems, we would like to have these signed and notarized before the Wednesday October 10 meeting. If there are any problems or questions contact Del Brosz or myself.

Sincerely,

Mark Rath
Natural Resources Engineer
Water Rights Division

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

October 5, 1990

Michael M. Hickey
Bangs, McCullen, Butler, Foye and Simmons
Lawyers
PO Box 2670
Rapid City, SD 57709

Dear Mr. Hickey,

This is a copy of the Vested Right Application for Rapid Valley Water Company. These documents are for you and the ditch company to review. The originals are being mailed to you. If there are no problems, we would like to have these signed and notarized before the Wednesday October 10 meeting. The acreage listed is based on information I received from ditch company members when I visited with them on September 25 thru September 27. If there are any problems or questions contact Del Brosz or myself.

Sincerely,

Mark Rath
Natural Resources Engineer
Water Rights Division

the culverts. The waste ditch south of Highway 44 and the railroad tracks is deeper than at most locations north of Highway 44 and appears adequate to carry any water from the Highway 44 and railroad track culverts. There is an 18" diameter reinforced concrete culvert in the waste ditch south of S. D. Highway 44 for a field crossing but may also be used as a ditch check.

Water Rights Division - DWNR File No._____

Conversation or File Documentation

NAME OF PERSON OR FILE: MIKE HICKEY (RUWC - ATTORNEY)

ADDRESS: RAPID CITY COUNTY PENNINGTON

DATE: 10/9/90 TELEPHONE 343-1040

RE: VESTED RIGHT APPLICATION

COMMENTS:

CALLED MIKE HICKEY ABOUT APPLICATION TOLD HIM THAT WE HAD THE ATTACHMENTS AS LISTED FROM PREVIOUS APPLICATION 1777-2.

HE WONDERED ABOUT JERRY OLSON PROPERTY I TOLD HIM 0.2 CFS W/ PRIORITY OF 1878 WAS COVERED UNDER WP-1788-2. HE WONDERED IF ~~THE~~ THE WP.1788-2 COULD BE AMENDED SO THAT THE 0.2 CFS WAS INCLUDED UNDER RUWC - WATER RIGHT INSTEAD OF BEING SEPERATED.

I CALLED HIM BACK TOLD HIM IF THEY WISHED THEY COULD PUT THE OLSON PROPERTY ON THE WATER RIGHT APPLICATION AND WE WOULD LET THE WATER MANAGEMENT BOARD DECIDE HOW TO HANDLE THE MATTER

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: Mark Rath

4/82

Water Rights Division - DWNR File No. 1727-2

Conversation or File Documentation

NAME OF PERSON OR FILE: Mike Hickey (RVWC Lawyer)

ADDRESS: Rapid City COUNTY Pennington

DATE: 10/10/90 TELEPHONE

RE: RVWC Vested Right Application

COMMENTS:

Mr Hickey wanted to find out if we were going to be at the Oct 10, 1990 meeting between Rapid City & Rapid Valley Water Co. I told him that we were.

He said that they would have the application there with some changes. He wanted to meet with us after the meeting to get the application cleaned up.

Mr Hickey was concerned about which Water Management Board meeting to schedule the hearings for. I told him we could discuss that at the meeting.

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: Mark D Rath

4/82

Water Rights Division - DWNR File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: DAVID LAMB

ADDRESS: RAPID CITY COUNTY PENNINGTON

DATE: 10/12/90 TELEPHONE 605 393-0093

RE: VESTED RIGHT CLAIM

COMMENTS:

I CALLED MR LAMB ASKED FOR A LIST OF DITCH BOARD MEMBERS AND ADDRESSES.

HE WANTED TO KNOW THE LEGALITY OF THE WATER RIGHT TRANSFER TO THE CITY. I TOLD HIM THAT SDCL [redacted] 46-5-34.1 ALLOWS FOR THE TRANSFER, BUT THE WATER BOARD NEEDS TO DETERMINE IF THE TRANSFER WILL CAUSE A DETRIMENT TO EXISTING RIGHTS

HE WANTED TO KNOW IF RAPID CITY COULD TAKE THE WATER SINCE RWWC believes THAT THE WATER RIGHTS ARE NOT TIED TO THE LAND BUT HELD BY THE DITCH COMPANY. I TOLD HIM THE LAWYERS AND COURTS MAY HAVE TO FIGURE THAT OUT.

I ASKED HIM TO GET THEIR APPLICATION IN AS SOON AS POSSIBLE BECAUSE WE WOULD NEED TIME TO LOOK AT IT BEFORE THE OCT 31 MAILING DEADLINE

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: [signature]

4/82

File No.

Water Rights Division -DWNR
Conversation or File Documentation

NAME OF PERSON OR FILE: Les England

ADDRESS: Rapid City SD COUNTY: Pennington

DATE: 10/19/90 TELEPHONE: 341-7600

RE: Rapid Valley Water Company (RVWC) Vested Right application

COMMENTS:

I called Mr. England and told him that RVWC had not submitted their vested right application yet and that we would need it fairly soon so it could be considered at the December Board meeting.

He said that he had not heard anything but would call RVWC's attourney to find out what the status is, and get back to me.

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.

Mark D. Rath
Natural Resources Engineer II
DWNR, Water Rights Division

File No.

Water Rights Division -DWNR
Conversation or File Documentation

NAME OF PERSON OR FILE: David Lamb (RVWC)

ADDRESS: Rapid City COUNTY: Pennington

DATE: 10/22/90 TELEPHONE: 605-393-0093

RE: Vested Right Claim Application

COMMENTS:

I called David Lamb concerning whether or not the ditch company was planning on getting their vested right application in so it would be up before the December Water Board Meeting. He said that they were planning to. I told him that we would need the signed application by Thursday October 22, 1990, in order to give ourselves enough time to review it and make a recommendation on it.

Mr. Lamb called back to make a request to add 9 acres of the Jerry Olson property to the application. He also requested that we list the lands as parcels of land and not as individuals property since they do not have an up to date list of the landowners. He also said that the ditch company was planning to come back in at a later date to try to make an amendment in the amount of water claimed.

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.

Mark D. Rath
Natural Resources Engineer II
DWNR, Water Rights Division

South Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

October 26, 1990

David Lamb, President
Rapid Valley Water Company
Rt 2, Box 160
Rapid City, SD 57701

Dear Mr. Lamb:

I am writing to explain the procedure that will be used to validate Vested Water Right Claim No. 1727-2, Rapid Valley Water Company.

The application that was filed for Vested Water Right Claim No. 1727-2 on January 7, 1980, will be readvertised to correct errors and discrepancies in legal descriptions and acreages of the irrigated land. The readvertisement will be for a hearing before the Water Management Board on December 5, 1990.

After Claim No. 1727-2 has been validated by the Water Management Board, Rapid Valley Water Company is free to submit an application to amend No. 1727-2 to add land and water that is believed to have been omitted from the original application. We believe that validation of the original claim and the addition of land and water are separate matters and should be handled as such.

As you requested, I have enclosed copies of the attachments that were filed with the 1980 application.

If you have any questions, please contact Del Brosz or Mark Rath, Division of Water Rights, 523 East Capitol, Pierre, SD 57501. Phone: 773-3352.

Very truly yours,

John Hatch

John Hatch, Chief Engineer
Division of Water Rights

enclosures

cc: Michael M. Hickey

Report on Readvertisement of
Vested Water Right Claim No. 1727-2
Rapid Valley Water Company, Inc.
October 23, 1990

Vested Water Right Claim No. 1727-2, Rapid Valley Water Company, Inc. (a.k.a. Murphy Ditch) appropriates 20 cubic feet of water per second (cfs) from Rapid Creek. The point of diversion from the creek is in the SW1/4 of Section 8-T1N-R8E. There are two priority dates associated with the claim, April 6, 1878 for 17 cfs and April 26, 1893 for 3 cfs.

On September 25, 26 and 27, 1990 an inspection of the irrigated lands for the vested water right claim was performed. At that time discrepancies in the legal description of the irrigated lands were found. Because of this, readvertisement to correct the legal description of the irrigated lands is necessary.

The following table lists the legal description of the lands, acreage involved and associated priority dates.

1878 PRIORITY DATE

Land Parcel Number	Legal Description	Acreage
1	NE1/4 SW1/4, SE1/4 SW1/4 S9-T1N-R8E	45
2	NW1/4 SE1/4, SW1/4 SE1/4 S9-T1N-R8E	64
3	SW1/4 SW1/4 S10-T1N-R8E NW1/4 NW1/4, SE1/4 NW1/4, SW1/4 NW1/4, SE1/4 NE1/4, SW1/4 NE1/4, SW1/4, SE1/4 S15-T1N-R8E NW1/4 NE1/4, NE1/4 NE1/4 S22-T1N-R8E	380
5	SW1/4 NW1/4 S14-T1N-R8E	5
6	SW1/4 NW1/4, SE1/4 NW1/4, NE1/4 SW1/4, NW1/4 SW1/4 S14-T1N-R8E	32
7	SE1/4 NW1/4, NE1/4 SW1/4 S14-T1N-R8E	10
8	SE1/4 NW1/4, NE1/4 SW1/4 S14-T1N-R8E	5
9	SE1/4 NW1/4, NE1/4 SW1/4 S14-T1N-R8E	5

10	SE1/4 S14-T1N-R8E SW1/4 SW1/4 S13-T1N-R8E	121
11	SE1/4 SW1/4 S13-T1N-R8E	2
12	SW1/4 SE1/4 S13-T1N-R8E NW1/4 NE1/4 S24-T1N-R8E	6
13	NE1/4 NW1/4, SW1/4 NE1/4, NW1/4 NE1/4 S24-T1N-R8E	66
13	1/2 OF THE 76 ACRES COVERED UNDER LITTLE GIANT NE1/4 NW1/4, SE1/4 NW1/4, SW1/4 NE1/4 S24-T1N-R8E	38
14	NW1/4 NE1/4 S24-T1N-R8E	1
15	1/2 OF THE 56 ACRES COVERED UNDER LITTLE GIANT NE1/4 NE1/4, SE1/4 NE1/4 S24-T1N-R8E	28
16	NW1/4 NW1/4, SW1/4 NW1/4 S19-T1N-R9E	49
17	NE1/4 NW1/4, SE1/4 NW1/4, SW1/4 NE1/4, SE1/4 NE1/4, NE1/4 SE1/4, SW1/4 SE1/4, NW1/4 SE1/4, NE1/4 SW1/4 S19-T1N-R9E	145
18	NE1/4 SW1/4, SE1/4 SW1/4 S19-T1N-R9E NE1/4 NW1/4 S30-T1N-R9E	63
19	SW1/4 SE1/4 S19-T1N-R9E NW1/4 NE1/4, S30-T1N-R9E	51
	Total	1116

1893 PRIORITY DATE

20	SE1/4 SE1/4 S19-T1N-R9E NE1/4 NE1/4 S30-T1N-R9E	26
21	SW1/4 S20-T1N-R9E NW1/4 NW1/4, NE1/4 NW1/4 S29-T1N-R9E	125
22	SW1/4 SE1/4 S20-T1N-R9E NW1/4 NE1/4 S29-T1N-R9E	38
	Total	189

Conclusions

1. An inspection of the lands irrigated under Vested Water Right Claim No. 1727-2 found discrepancies in the legal descriptions.

2. Readvertisement of the vested water right claim is necessary to correct the legal description of the lands.

Mark D. Rath
Natural Resources Engineer II

Approved by:

Delvin D. Brosz
Natural Resources Engineer IV

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER RIGHT CLAIM NO. 1727-2, Rapid Valley Water Company, 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 Validation of Vested Water Right Claim No. 1727-2, Rapid Valley Water Company, Inc.

The Chief Engineer is recommending VALIDATION of Application No. 1727-2 for 20.0 cfs because 1) water has been appropriated as described for irrigation use with a priority date of April 6, 1878 for 17.0 cfs and April 26, 1893 for 3.0 cfs, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

See report on Vested Right Claim for additional information.

JOHN HATCH, Chief Engineer
October 29, 1990

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

October 31, 1990

Rapid Valley Water Company, Inc.
c/o David Lamb
RR 2, Box 160
Rapid City SD 57701

Dear Mr. Lamb:

The original notice of hearing to Validate Vested Water Right Claim No. 1727-2 was published with an error. Therefore, the notice of hearing needs to be readvertised to correct the error. A notice of hearing has been sent to the Publisher of the Rapid City Journal printed at Rapid City SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the readvertisement are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

October 31, 1990

Rapid City Journal
Box 450
Rapid City SD 57709-0450

ATTN: Legal Publications:

Enclosed is a Notice of Hearing to Validate Vested Water Right Claim No. 1727-2 to be published twice. Please publish the first notice on or before November 8, 1990 with the second publication 7 days later.

Please BILL the Water Rights Division for the cost of publication.

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

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

Sincerely,

Eric Gronlund

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

---CUT HERE---

FIRST TRANSMITTAL NOTICE

No._____

Date_____

TO: Eric Gronlund
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

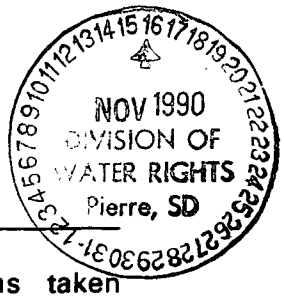
We are in receipt of your letter of _____ enclosing Notice of Hearing to Validate Vested Right Claim No. 1727-2 which was first published in our issue of_____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

_____ _____
Name Newspaper

Form 8 - Proof of Publication

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) ss.
County _____)



I, Mary K. Garness

certify that the attached printed Notice was taken from the Rapid City Journal

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

City of Rapid City

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

November 8, 1990

November 15, 1990

Mary K. Garness
(Signature)

Bookkeeper
(Title)

November 15, 1990
(Date Signed)

Cost of Printing: Ran 13 4/16 inches legal advertising in the Rapid City Journal on November 8 & 15 @ $4.20 per inch = $111.30

Ran public notice of hearing L449

5-88

Nov. 8, 15 L449

—READVERTISEMENT OF NOTICE OF HEARING TO VALIDATE VESTED WATER RIGHT NO. 1727-2

Notice is given that the Rapid Valley Water Company, Inc., RR 2, Box 160, Rapid City, S.D. 57701 filed an application for a vested water right on January 7, 1980. Vested Right Claim No. 1727-2 was noticed for validation on June 23 & 30, 1988 in the Rapid City Journal with all the vested right claims in Pennington County which were eligible for validation pursuant to SDCL 46-2A-16 thru 46-2A-17. Readvertisement of Vested Water Right Claim No. 1727-2 is necessary to correct the legal description of the irrigated lands described in the original notice. State Statutes do not provide a procedure for readvertisement of an uncontested vested right claim filed prior to July 1, 1986. Therefore, the applicable publication procedures contained in SDCL Chapter 46-2A for claims filed after June 30, 1986 are being followed to correct the legal description of lands irrigated under Vested Water Right Claim No. 1727-2.

Vested Water Right Claim No. 1727-2 appropriates 20 cubic feet of water per second (cfs) from Rapid Creek to irrigate 1305 acres. The point of diversion from the creek is in the SW¼ Section 8 T1N-R8E into the Rapid Valley Water Company Ditch commonly known as Murphy Ditch. The priority claim dates are April 6, 1878 for the first 17 cfs and April 26, 1893 for the remaining 3 cfs. This readvertisement is to correct the legal description which omitted Section 22 T1N-R8E and mistakenly included Section 20 T1N-R8E in the description of lands being irrigated in the original notice. The correct legal description of all the lands irrigated under Vested Water Right Claim No. 1727-2 is the E½ SW¼, W½ SE¼ Section 9, SW¼ SW¼ Section 10, S½ SW¼, SW¼ SE¼ Section 13, S½ NW¼, N½ SW¼, SE¼ Section 14, portions of Section 15, N½ NE¼ Section 22, portions of N½ Section 24; all in T1N-R8E and portions of Section 19, SW¼, SW¼ SE¼ Section 20, N½ NW¼, NW¼ NE¼ Section 29, N½ NE¼, NE¼ NW¼ Section 30; all in T1N-R9E.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Claim No. 1727-2 because 1) water has been appropriated as described for irrigation with an April 6, 1878 priority claim date for 17 cfs and April 26, 1893 for 3 cfs, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest. This validation will be considered by the Water Management Board in the Hilton Inn, Deerfield Room, 445 Mt. Rushmore Road, Rapid City, S.D., on December 5, 1990 at 10:00 a.m. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer or 4) deny validation based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the Rapid Valley Water Company and Chief Engineer by November 26, 1990. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre, S.D. 57501, (605) 773-3352." The petition may be informal, but must include a statement describing the petitioner's interest in the vested right claim, the petitioner's reasons for opposing or supporting the validation and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The Rapid Valley Water Company need not file a petition. Contact the Water Rights Division to request information on this vested right claim or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the Rapid Valley Water Company have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the Rapid Valley Water Company or a petitioner. The request for a delay must be received by November 26, 1990.

This vested right claim is made pursuant to 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; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-6.10, 46-5-7 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01, 74:02:01:-12.02, 74:02:01:13.01 thru 74:02:01:-15 and 74:02:01:19 thru 74:02:01:22.

Instruction to Newspaper - Publish first Notice on or before November 8, 1990 with 2nd publication 7 days later.

Readvertisement of NOTICE OF HEARING To Validate
Vested Water Right No. 1727-2

Notice is given that the Rapid Valley Water Company, Inc., RR 2, Box 160, Rapid City, SD 57701 filed an application for a vested water right on January 7, 1980. Vested Right Claim No. 1727-2 was noticed for validation on June 23 & 30, 1988 in the Rapid City Journal with all the vested right claims in Pennington County which were eligible for validation pursuant to SDCL 46-2A-16 thru 46-2A-17. Readvertisement of Vested Water Right Claim No. 1727-2 is necessary to correct the legal description of the irrigated lands described in the original notice. State Statutes do not provide a procedure for readvertisement of an uncontested vested right claim filed prior to July 1, 1986. Therefore, the applicable publication procedures contained in SDCL Chapter 46-2A for claims filed after June 30, 1986 are being followed to correct the legal description of lands irrigated under Vested Water Right Claim No. 1727-2.

Vested Water Right Claim No. 1727-2 appropriates 20 cubic feet of water per second (cfs) from Rapid Creek to irrigate 1305 acres. The point of diversion from the creek is in the SW1/4 Section 8 T1N-R8E into the Rapid Valley Water Company Ditch commonly known as Murphy Ditch. The priority claim dates are April 6, 1878 for the first 17 cfs and April 26, 1893 for the remaining 3 cfs. This readvertisement is to correct the legal description which omitted Section 22 T1N-R8E and mistakenly included Section 20 T1N-R8E in the description of lands being irrigated in the original notice. The correct legal description of all the lands irrigated under Vested Water Right Claim No. 1727-2 is the E1/2 SW1/4, W1/2 SE1/4 Section 9, SW1/4 SW1/4 Section 10, S1/2 SW1/4, SW1/4 SE1/4 Section 13, S1/2 NW1/4, N1/2 SW1/4, SE1/4 Section 14, portions of Section 15, N1/2 NE1/4 Section 22, portions of N1/2 Section 24; all in T1N-R8E and portions of Section 19, SW1/4, SW1/4 SE1/4 Section 20, N1/2 NW1/4, NW1/4 NE1/4 Section 29, N1/2 NE1/4, NE1/4 NW1/4 Section 30; all in T1N-R9E.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Claim No. 1727-2 because 1) water has been appropriated as described for irrigation with a April 6, 1878 priority claim date for 17 cfs and April 26, 1893 for 3 cfs, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest. This validation will be considered by the Water Management Board in the Hilton Inn, Deerfield Room, 445 Mt. Rushmore Road, Rapid City SD on December 5, 1990 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer or 4) deny validation based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the Rapid Valley Water Company and Chief Engineer by November 26, 1990. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the vested right claim, the petitioner's reasons for opposing or supporting the validation and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The Rapid Valley Water Company need not file a petition. Contact the Water Rights Division to request information on this vested right claim or to assure access to the hearing by the handicapped.

(continued)

This hearing is an adversary proceeding. Any person filing a petition and/or the Rapid Valley Water Company have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the Rapid Valley Water Company or a petitioner. The request for a delay must be received by November 26, 1990.

This vested right claim is made pursuant to 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; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-6.10, 46-5-7 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; and Board Rules ARSD 74:02:01:01, 74:02:01:12.02, 74:02:01:13.01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

November 7, 1990

Leslie J. England
Attorney At Law
Suite 102, Western Mutual Building
731 St. Joseph Street
Rapid City, SD 57701

Dear Mr. England:

Attached is the copy of the file from Vested Water Right Claim No. 1727-2, Rapid Valley Water Company, which you requested. If you need any further information feel free to contact me.

Sincerely,

Mark D. Rath
Natural Resources Engineer II
Water Rights Division
(605) 773-3352

attachment

Water Rights Division - DWNR File No. 1727-2

Conversation or File Documentation

NAME OF PERSON OR FILE: DAVID LAMB

ADDRESS: RAPID CITY COUNTY PENNINGTON

DATE: 11/14/91 TELEPHONE 393-0093

RE: DIVERSION RATES ON MURPHY DITCH

COMMENTS:

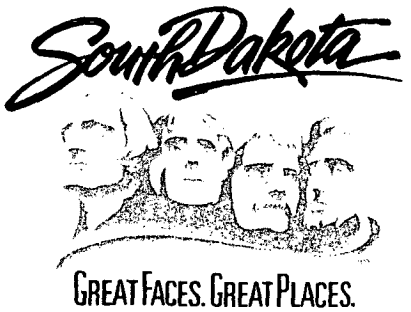
I RETURNED CALL TO MR LAMB. HE WAS WONDERING ABOUT THE LIST I SENT HIM CONCERNING ~~RATE~~ WATER ASSOCIATED WITH THE SEGREGATE PROPERTIES ON MURPHY DITCH. HE WAS NOT SURE WHERE THE DISCREPANCIES WERE OCCURRING BETWEEN THE 10.24 MINER'S INCHES REPORTED AND THE 20 CFS CLAIMED. I TOLD HIM DUE TO THE REPORTED TRANSFERS THAT WE HAVE ON FILE AND ANY FUTURE TRANSFERS, WE WOULD LIKE TO HAVE A DIVERSION RATE FOR THE PROPERTIES THAT THE DITCH COMPANY FEELS COMFORTABLE WITH. I TOLD HIM IT COULD BE THE MINER'S INCHES REPORTED OR 1 CFS / 70 ACRES. I TOLD HIM WE WOULD LIKE A LETTER FROM THE DITCH COMPANY STATING THEIR POSITION.

HE REQUESTED A COPY OF THE AFFIDAVIT FILED BY THE PECK'S

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: [signature]

4/82



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

November 14, 1991

David Lamb, President
Rapid Valley Water Company, Inc.
Rt 2 Box 160
Rapid City, SD 57701

Dear Mr. Lamb:

I have enclosed a copy of the affidavit filed by Donald J. Pelle and Joan L. Pelle. This is for 4 acres located in Section 19 T1N-R9E.

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

Sincerely,

Mark D. Rath
Natural Resources Engineer II
Division of Water Rights
(605) 773-3352

enclosure

STATE OF SOUTH DAKOTA

DEPARTMENT OF WATER & NATURAL RESOURCES

IN THE MATTER OF VALIDATION OF APPLICATION FOR VESTED WATER RIGHT 1727-2.	)))	**OBJECTION**

Comes now Rapid Valley Conservancy District and hereby files its objection to the Application for Validation of Vested Water Right 1727-2 filed by the Rapid Valley Water Company, Inc. Said protest and objection is based upon the following grounds:

(1) That the application is improper as it attempts to validate in part the water rights of the Little Giant Ditch Company and assign an inaccurate priority date to said Little Giant water right.

(2) That the legal notice of validation was legally improper and insufficient.

Dated this 26 day of November, 1990.

RAPID VALLEY CONSERVANCY DISTRICT

BY: Jerry Hammerquist
President

LAW FIRM OF
LESLIE JAMES ENGLAND
SUITE 102, WESTERN MUTUAL BUILDING
731 ST. JOSEPH STREET
RAPID CITY, SOUTH DAKOTA 57701

LESLIE J. ENGLAND
(ALSO ADMITTED IN COLORADO)

TELEPHONE (605) 341-7600
FAX (605) 343-4131

November 26, 1990

VIA FASCIMILE

Mr. John Hatch
Chief Engineer
Water Rights Division
Department of Natural Resources
523 East Capitol
Pierre, SD 57501

RE: Validation of Vested Water Right Claim No. 1727-2,
Rapid Valley Water Co., Inc.

Dear Mr. Hatch:

On behalf of the City of Rapid City, this letter is intended as an informal petition pursuant to SDCL 46-2A-4(5). The City of Rapid City holds water rights on Rapid Creek, storage rights in Deerfield and Pactola Reservoirs, and has applied for a change of use on the Tyler property associated with the above referenced Vested Water Right Claim No. 1727-2. The City is interested in the above referenced validation and intends to attend the hearing and participate, if necessary, as an interested party, either in opposition to or in support of the validation with regard to impairment of existing rights, beneficial use and public interest.

Please provide copies of any inspection reports in support of this application. Thank you for your kind assistance in these regards.

Yours very truly,

Leslie J. England

LJE/kmr

cc: Michael M. Hickey, Attorney for Applicant
Michael Strub, Public Works Director
Daniel Bjerke, Water/Waste Water Reclamation Division Mgr.

Report on the Inspection of Vested Water Right Claim No. 1727-2
Rapid Valley Water Company, Inc.
November 29, 1990

Vested Water Right Claim No. 1727-2, Rapid Valley Water Company Inc. (a.k.a. Murphy Ditch) is scheduled for validation by the Water Management Board on December 5, 1990 pursuant to South Dakota Codified Law (SDCL) 46-2A-16. The advertisement for NOTICE OF INTENT TO VALIDATE VESTED WATER RIGHT CLAIMS for Permit 1727-2 was published in the Rapid City Journal on June 23 and 30, 1988. The notice listed the claim as appropriating 20 cubic feet of water per second (cfs) from Rapid Creek and the point of diversion from the creek in the SW1/4 of Section 8-T1N-R8E. The notice listed two priority dates associated with the claim, January 1, 1878 for 17 cfs and January 1, 1893 for 3 cfs. The notice listed 1425 acres of irrigated land in portions of Sections 9, 10, 13, 14, 15, 20 and 24 T1N-R8E and Sections 19, 20, 29 and 30 T1N-R9E. There was no petition of intent to oppose the validation of recognized Vested Water Right Claim No. 1727-2 filed within ninety days of the date of the last publication of the notice, pursuant to SDCL 46-2A-16. SDCL 46-2A-17 states that if no petition opposing validation of the recognized water right claim is filed pursuant to SDCL 46-2A-16, the board shall issue an order validating the vested water right claim.

On September 25, 26 and 27, 1990 an inspection of the vested water right claim was performed. At that time discrepancies in the legal descriptions of the irrigated land were found. The inspection found that lands located in Section 20-T1N-R8E are not being irrigated from the ditch. Also portions of lands located in Sections 13, 14 and 24 T1N-R8E and Sections 19 and 30-T1N-R9E are no longer being irrigated.

The following table lists the legal description, acreage irrigated and associated priority dates, of the lands which are presently irrigated by the vested water right claim.

1878 PRIORITY DATE

Land Parcel Number	Legal Description		Acreage
1	NE1/4 SW1/4	S9-T1N-R8E	20
	SE1/4 SW1/4	S9-T1N-R8E	25
2	NW1/4 SE1/4	S9-T1N-R8E	29
	SW1/4 SE1/4	S9-T1N-R8E	35

1878 PRIORITY DATE (cont.)

Land Parcel Number	Legal Description		Acreage
3	SW1/4 SW1/4	S10-T1N-R8E	25
	NW1/4 NW1/4	S15-T1N-R8E	30
	SW1/4 NW1/4	S15-T1N-R8E	37
	NW1/4 SW1/4	S15-T1N-R8E	30
	SE1/4 NW1/4	S15-T1N-R8E	29
	NE1/4 SW1/4	S15-T1N-R8E	27
	SW1/4 NE1/4	S15-T1N-R8E	38
	NW1/4 SE1/4	S15-T1N-R8E	27
	SE1/4 NE1/4	S15-T1N-R8E	25
	NE1/4 SE1/4	S15-T1N-R8E	37
	SW1/4 SW1/4	S15-T1N-R8E	1
	SE1/4 SW1/4	S15-T1N-R8E	11
	SW1/4 SE1/4	S15-T1N-R8E	22
	SE1/4 SE1/4	S15-T1N-R8E	13
5	SW1/4 NW1/4	S14-T1N-R8E	5
6	SW1/4 NW1/4	S14-T1N-R8E	32
7	SE1/4 NW1/4	S14-T1N-R8E	6
	NE1/4 SW1/4	S14-T1N-R8E	4
8	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
9	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
10	NW1/4 SE1/4	S14-T1N-R8E	28
	SW1/4 SE1/4	S14-T1N-R8E	31
	SE1/4 SE1/4	S14-T1N-R8E	32
	NE1/4 SE1/4	S14-T1N-R8E	3
	SW1/4 SW1/4	S13-T1N-R8E	27
11	SE1/4 SW1/4	S13-T1N-R8E	2
12	SW1/4 SE1/4	S13-T1N-R8E	5
13	NE1/4 NW1/4	S24-T1N-R8E	28
	NW1/4 NE1/4	S24-T1N-R8E	32
	SW1/4 NE1/4	S24-T1N-R8E	6

13	1/2 OF THE 76 ACRES COVERED UNDER LITTLE GIANT		
	NE1/4 NW1/4	S24-T1N-R8E - 8ac	
	SE1/4 NW1/4	S24-T1N-R8E - 40ac	
	SW1/4 NE1/4	S24-T1N-R8E - 28ac	
			38
15	1/2 OF THE 56 ACRES COVERED UNDER LITTLE GIANT		
	NE1/4 NE1/4	S24-T1N-R8E - 31ac	
	SE1/4 NE1/4	S24-T1N-R8E - 25ac	
			28
16	NW1/4 NW1/4	S19-T1N-R9E	12
	SW1/4 NW1/4	S19-T1N-R9E	37
17	NE1/4 NW1/4	S19-T1N-R9E	2
	SE1/4 NW1/4	S19-T1N-R9E	32
	NE1/4 SW1/4	S19-T1N-R9E	10
	SW1/4 NE1/4	S19-T1N-R9E	25
	NW1/4 SE1/4	S19-T1N-R9E	24
	SW1/4 SE1/4	S19-T1N-R9E	2
	SE1/4 NE1/4	S19-T1N-R9E	11
	NE1/4 SE1/4	S19-T1N-R9E	39
18	NE1/4 SW1/4	S19-T1N-R9E	12
	SE1/4 SW1/4	S19-T1N-R9E	39
	NE1/4 NW1/4	S30-T1N-R9E	12
19	SW1/4 SE1/4	S19-T1N-R9E	31
	NW1/4 NE1/4	S30-T1N-R9E	20
		Total	1086

1893 PRIORITY DATE

20	SE1/4 SE1/4	S19-T1N-R9E	14
	NE1/4 NE1/4	S30-T1N-R9E	12
21	NW1/4 SW1/4	S20-T1N-R9E	25
	SW1/4 SW1/4	S20-T1N-R9E	34
	NE1/4 SW1/4	S20-T1N-R9E	7
	SE1/4 SW1/4	S20-T1N-R9E	39
	NW1/4 NW1/4	S29-T1N-R9E	2
	NE1/4 NW1/4	S29-T1N-R9E	18
22	SW1/4 SE1/4	S20-T1N-R9E	18
	NW1/4 NE1/4	S29-T1N-R9E	20
		Total	189

A review was made of the Vested Water Right Claim No. 1727-2 file and the Pennington County NOTICE OF INTENT TO VALIDATE VESTED WATER RIGHT CLAIMS file. It was found that there is a discrepancy in the priority dates listed on the Affidavit of Construction of Water Use System and Application of Water to Beneficial Use filed by Rapid Valley Water Company, Inc., Water License No. 1727-2, and the Notice. The water license and the notice list the priority dates as being January 1, 1878 and January 1, 1893, while the affidavit claimed priority dates of April 6, 1878 and April 26, 1893. Because this was not found within the ninety day period specified by SDCL 46-2A-16, the Chief Engineer could not file a petition of intent to oppose the validation of a recognized water right claim. After the Water Management Board validates the vested water right claim, the water license will be reissued by the Chief Engineer with the correct priority dates and the correct lands.

Conclusions

1. An inspection of Vested Water Right Claim No. 1727-2 found that lands were listed that are not being irrigated.

2. The inspection determined that there are 1086 acres irrigated under the 1878 priority date at a diversion rate of 17 cfs and 189 acres irrigated under the 1893 priority date at a diversion rate of 3 cfs.

3. A review of the Division of Water Rights files found a discrepancy in the priority dates.

4. After the Water Management Board validates the vested water right claim, the water license should be reissued by the Chief Engineer with the correct priority dates and the correct lands.

Mark D. Rath
Natural Resources Engineer II

Approved by,

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

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

November 29, 1990

Leslie J. England
Western Mutual Building
731 St. Joseph Street, Suite 102
Rapid City, South Dakota 57701

RE: Validation of Vested Water Right Claim No. 1727-2, Rapid Valley Water Co., Inc.

Dear Mr. England:

I am writing in response to your informal petition letter dated November 26, 1990. Vested Water Right Claim No. 1727-2 was noticed for validation on June 23 and 30, 1988, in the Rapid City Journal with all of the vested right claims in Pennington County which were eligible for validation pursuant to SDCL 46-2A-16 through 46-2A-17. The vested right claim was not contested; however, during a recent inspection we found that certain lands listed in the claim are not being irrigated. Also, there are other lands that are being irrigated which were not included in the claim.

John Haak, Assistant Attorney General, has advised that our readvertisement of No. 1727-2, November 8 and 15, 1990, was not a legal advertisement. The reason is that state statutes do not provide a procedure for readvertisement of an uncontested vested right claim filed prior to July 1, 1986. Therefore, Vested Water Right Claim No. 1727-2 will be presented as an uncontested claim to the Water Management Board December 5, 1990. The Board is required to issue an order pursuant to SDCL 46-2A-17 validating claim No. 1727-2.

Following validation of No. 1727-2, we expect to issue a water right license for No. 1727-2 with those lands, based upon our inspection, that are not irrigated deleted from the license. The 20.0 cfs claimed will not be changed. When the license is issued, we also expect to correct the priority dates from January 1, 1878, and January 1, 1893, to April 6, 1878, and April 26, 1893, based upon the affidavit submitted with the claim. Rapid Valley Water Co., Inc. will need to file a new vested right claim application for those lands that are being irrigated and not included in the original claim.

Since the City of Rapid City did not file a petition within 90 days as specified in the June 23 and 30, 1988, notice, your petition of November 26, 1990, is not valid. The 90 days was up long before the

readvertisement. Therefore, the improper readvertisement did not cause you any prejudice. Since the publication error caused you no prejudice, I am treating your request as not being timely. My decision is not binding upon the Board. You can renew your request to the Board.

Very truly yours

John Hatch, Chief Engineer
Division of Water Rights

cc: Michael M. Hickey, Attorney
Michael Strub, Director of Public Works
Daniel Bjerke, Water/Waste Water Reclamation Division Manager
John Haak, Assistant Attorney General

SOUTH Dakota Department of
Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

November 29, 1990

Jerry Hammerquist, President
Rapid Valley Water Conservancy District
Box 26
Caputa, South Dakota 57727

RE: Validation of Vested Water Right Claim No. 1727-2, Rapid Valley Water Co., Inc.

Dear Mr. Hammerquist:

I am writing in response to your petition dated November 26, 1990. Vested Water Right Claim No. 1727-2 was noticed for validation on June 23 and 30, 1988, in the Rapid City Journal with all of the vested right claims in Pennington County which were eligible for validation pursuant to SDCL 46-2A-16 through 46-2A-17. The vested right claim was not contested; however, during a recent inspection we found that certain lands listed in the claim are not being irrigated. Also, there are other lands that are being irrigated which were not included in the claim.

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Following validation of No. 1727-2, we expect to issue a water right license for No. 1727-2 with those lands, based upon our inspection, that are not irrigated deleted from the license. The 20.0 cfs claimed will not be changed. When the license is issued, we also expect to correct the priority dates from January 1, 1878, and January 1, 1893, to April 6, 1878, and April 26, 1893, based upon the affidavit submitted with the claim. Rapid Valley Water Co., Inc. will need to file a new vested right claim application for those lands that are being irrigated and not included in the original claim.

Since Rapid Valley Conservancy District did not file a petition within 90 days as specified in the June 23 and 30, 1988, notice, your petition of November 26, 1990, is not valid. The 90 days was up long

before the readvertisement. Therefore, the improper readvertisement did not cause you any prejudice. Since the publication error caused you no prejudice, I am treating your request as not being timely. My decision is not binding upon the Board. You can renew your request to the Board.

Very truly yours

John Hatch, Chief Engineer
Division of Water Rights

cc: Michael M. Hickey, Attorney
John Haak, Assistant Attorney General

LAW FIRM OF
LESLIE JAMES ENGLAND

LESLIE J. ENGLAND
(ALSO ADMITTED IN COLORADO)

SUITE 102, WESTERN MUTUAL BUILDING
731 ST. JOSEPH STREET
RAPID CITY, SOUTH DAKOTA 57701

TELEPHONE (605) 341-7600
FAX (605) 343-4131

December 5, 1990

HAND DELIVERED

Mr. John Hatch, Chief Engineer
Division of Water Rights
SD Department of Water and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

RE: Validation of Vested Water Right Claim No. 1727-2. Rapid Valley Water Company, Inc.

Dear Mr. Hatch:

This is in response to your letter dated November 29, 1990 concerning the City of Rapid City's informal petition letter filed November 26, 1990. The City's informal petition was made in reliance upon the public notice in the above-captioned matter which stated that "an interested person that intends to participate in the hearing before the board ... must file a written petition with the both the Rapid Valley Water Company and Chief Engineer by November 26, 1990." It was further based upon the fact that the above-referenced application to validate the vested water right claim is a new application and not the one filed prior to July 1, 1986 as required by SDCL 46-2A-16. Since the "new" application for validation of a vested water right was filed after July 1, 1986, SDCL 46-2A-16 and 17 do not appear to apply. Instead, the new application, accompanied by the recommendation of the Chief Engineer, is governed by SDCL 46-2A-4 which requires notice, as was accomplished by your "readvertisement" allowing filing of petitions of interested parties at least 10 days before the published date for the hearing.

The City of Rapid City wishes to offer the following statement on the record at the time the Water Management Board considers validation of Vested Water Right Claim No. 1727-2 on December 5, 1990:

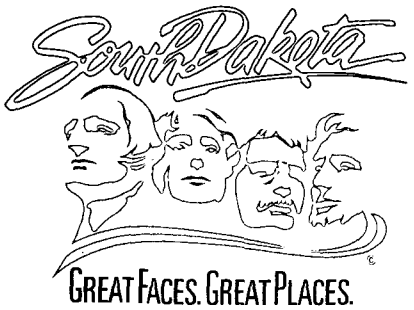
The Water Management Board should recognize that by any action it takes in validating Vested Water Right Claim No. 1727-2, that a controversy exists as to whether the water rights represented by said Claim No. 1727-2 are owned by the individual landowners as appurtenant to the land upon which the water is applied to a beneficial use for irrigation, or by the Rapid Valley Water Company, Inc. Any validation of Claim No. 1727-2 should not constitute a resolution of that issue by the Water Management Board. The parties intend to resolve this controversy by settlement negotiations if possible, in lieu of declaratory action.

Yours very truly,

Leslie J. England
Attorney for City of Rapid City

LJE/kmr

cc: Michael M. Hickey, Attorney
Rapid Valley Water Company, Inc.
John Haak, Assistant Attorney General
Michael Strub, Director of Public Works
Tamara Pier, City of Rapid City



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

December 11, 1990

Michael M. Hickey, Attorney
Bangs, McCullen, Butler, Foye and Simmons
P.O. Box 2670
Rapid City, SD 57709

Dear Mr. Hickey:

Enclosed is a copy of the file for Vested Water Right Claim No. 1727-2 held by Rapid Valley Water Company, Inc. as you requested on December 5, 1990.

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

Sincerely,

Eric Gronlund
Water Right Division
605 773-3352

enc.

January 11, 1991

MEMO

TO: File

FROM: Mark Rath
Natural Resources Engineer II

SUBJECT: Report on January 10, 1991 Meeting With Rapid Valley Water Company (a.k.a. Murphy Ditch), Rapid Valley Conservancy District and Little Giant Ditch Company, Concerning Water Right Claims by Murphy Ditch and Little Giant Ditch.

The reissuing of Vested Water Right No. 1727-2, Rapid Valley Water Company, for the actual lands irrigated was discussed. I indicated that the inspection which I performed in September 1990 found that some land covered under the license was no longer irrigated and that some land which has been irrigated does not have the correct legal description. I explained to them that the lands which are not irrigated would be removed and a new application would have to be filed to correct the legal descriptions of the other lands. They indicated that they would also file an application for lands which they felt were left off the license.

The Rapid Valley Conservancy District said that a portion of the land covered under Vested Water Right No. 1727-2 should also be covered under the Little Giant water right based on a map drawn by the State Engineer's Office in 1911. I explained that Vested Water Right Claim No. 653-2, Little Giant Ditch Company, which was applied for in 1960 and issued in 1961 did not claim the lands in question. I told them that if the Little Giant Ditch Company wishes to make a claim on those land that they would have to file an application to do this and that they would probably need additional evidences to support this application.

The application to transfer Rapid Valley Water Company irrigation water rights to Rapid City Municipal use was discussed. They felt that our staff was being biased towards the City on our recommendation for the approval of the transfer. I explained that the staff's position was that the application was made in accordance with South Dakota Water Law and that the amount of water to be transferred was reasonable based on the information that we had. I indicated that the ownership of the water right was a legal matter and would have to be addressed as such. The Rapid Valley Water Company indicated that they may apply for a change of use for their water right, so that leasing of water for other uses along with irrigation would be included.

Water Rights Division - DWNR

File No. 17272

Conversation or File Documentation

NAME OF PERSON OR FILE: Mike Hickey

ADDRESS: Rapid City COUNTY Pennington

DATE: 1/14/91 TELEPHONE 343-1040

RE: Rapid Valley Water Co & Little Giant Water Rights

COMMENTS:

I called Mr Hickey told him that portions of land which Little Giant Ditch Co claimed in 1960 was not on the 1971 water license.

He said that the meeting between Rapid City and Murphy Ditch brought about a problem that Murphy Ditch leases water to the City. I told him that an application for change of use of water would need to be filed. Also there maybe legal problems. I told him I would be talking to John Hahn (Asst Attorney General) about this. He said to have @ Mr Hahn call him.

I asked if this would cause the City to withdraw their lease transfer he thought that it might.

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.

4/32

NAME: Mark Rath

GREAT FACES. GREAT PLACES.

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

January 15, 1991

Michael M. Hickey
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709-2670

Dear Mr. Hickey:

I am enclosing a list of the legal descriptions and acreages of land irrigated under Vested Water Right No. 1727-2, Rapid Valley Water Company, based on my September 1990 inspection. Our intent is to reissue the water license with these corrected acreages. At this time we also intend to correct the priority dates from January 1 of 1878 and 1893 to April 6, 1878 and April 26, 1893. This is to make the dates conform with what Rapid Valley Water Company claimed on the affidavit for the vested water right claim.

There were some discrepancies between the legal descriptions of lands listed on the water license and the actual locations. As we had discussed previously a new application to claim these lands needs to be filed. The legal descriptions for these parcels of land are as follows:

Parcel owned by David Lamb

NW1/4 NE1/4	Section 22-T1N-R8E	31 acres
NE1/4 NE1/4	Section 22-T1N-R8E	7 acres

Parcel owned by Dale Wileman

NW1/4 NE1/4	Section 24-T1N-R8E	1 acres

Also there were two parcels of land which you and your clients indicated should also be irrigated under Vested Water Right No. 1727-2. An application would also need to be filed to claim these. The legal descriptions for these lands are:

Parcel owned by Jerry and Donna Olson

NW1/4 NE1/4	Section 15-T1N-R8E	3 acres
NE1/4 NE1/4	Section 15-T1N-R8E	2 acres
SE1/4 NE1/4	Section 15-T1N-R8E	4 acres

Parcel owned by Marty Rypkema

NE1/4 NW1/4	Section 15-T1N-R8E	22 acres
NW1/4 NE1/4	Section 15-T1N-R8E	9 acres
SE1/4 SW1/4	Section 10-T1N-R8E	5 acres

Please review the information provided, if you have any questions or comments concerning this information, feel free to contact me. I will be in contact with you before we proceed with reissuing of the water license.

Sincerely,

Mark D. Rath
Natural Resources Engineer II
Water Rights Division
605 773-3352

enclosures

1878 PRIORITY DATE

Land Parcel Number	Legal Description		Acreage
1	NE1/4 SW1/4	S9-T1N-R8E	20
	SE1/4 SW1/4	S9-T1N-R8E	25
2	NW1/4 SE1/4	S9-T1N-R8E	29
	SW1/4 SE1/4	S9-T1N-R8E	35
3	SW1/4 SW1/4	S10-T1N-R8E	25
	NW1/4 NW1/4	S15-T1N-R8E	31
	SW1/4 NW1/4	S15-T1N-R8E	38
	NW1/4 SW1/4	S15-T1N-R8E	30
	SE1/4 NW1/4	S15-T1N-R8E	32
	NE1/4 SW1/4	S15-T1N-R8E	31
	SW1/4 NE1/4	S15-T1N-R8E	38
	NW1/4 SE1/4	S15-T1N-R8E	29
	SE1/4 NE1/4	S15-T1N-R8E	25
	NE1/4 SE1/4	S15-T1N-R8E	38
	SW1/4 SW1/4	S15-T1N-R8E	1
	SE1/4 SW1/4	S15-T1N-R8E	11
	SW1/4 SE1/4	S15-T1N-R8E	24
	SE1/4 SE1/4	S15-T1N-R8E	15
5	SW1/4 NW1/4	S14-T1N-R8E	5
6	SW1/4 NW1/4	S14-T1N-R8E	32
7	SE1/4 NW1/4	S14-T1N-R8E	6
	NE1/4 SW1/4	S14-T1N-R8E	4
8	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
9	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
10	NW1/4 SE1/4	S14-T1N-R8E	28
	SW1/4 SE1/4	S14-T1N-R8E	31
	SE1/4 SE1/4	S14-T1N-R8E	32
	NE1/4 SE1/4	S14-T1N-R8E	3
	SW1/4 SW1/4	S13-T1N-R8E	27
11	SE1/4 SW1/4	S13-T1N-R8E	2
12	SW1/4 SE1/4	S13-T1N-R8E	5

13	104 ACRES OF THE TOTAL 142 ACRES		
	NE1/4 NW1/4	S24-T1N-R8E	36
	SE1/4 NW1/4	S24-T1N-R8E	40
	NW1/4 NE1/4	S24-T1N-R8E	32
	SW1/4 NE1/4	S24-T1N-R8E	34
14	NW1/4 NE1/4	S24-T1N-R8E	1
15	28 ACRES OF THE TOTAL 56 ACRES		
	NE1/4 NE1/4	S24-T1N-R8E	31
	SE1/4 NE1/4	S24-T1N-R8E	25
16	NW1/4 NW1/4	S19-T1N-R9E	12
	SW1/4 NW1/4	S19-T1N-R9E	37
17	NE1/4 NW1/4	S19-T1N-R9E	2
	SE1/4 NW1/4	S19-T1N-R9E	32
	NE1/4 SW1/4	S19-T1N-R9E	10
	SW1/4 NE1/4	S19-T1N-R9E	25
	NW1/4 SE1/4	S19-T1N-R9E	24
	SW1/4 SE1/4	S19-T1N-R9E	2
	SE1/4 NE1/4	S19-T1N-R9E	11
	NE1/4 SE1/4	S19-T1N-R9E	39
18	NE1/4 SW1/4	S19-T1N-R9E	12
	SE1/4 SW1/4	S19-T1N-R9E	39
	NE1/4 NW1/4	S30-T1N-R9E	12
19	SW1/4 SE1/4	S19-T1N-R9E	31
	NW1/4 NE1/4	S30-T1N-R9E	20
		Total	1103

1893 PRIORITY DATE

20	SE1/4 SE1/4	S19-T1N-R9E	14
	NE1/4 NE1/4	S30-T1N-R9E	12
21	NW1/4 SW1/4	S20-T1N-R9E	25
	SW1/4 SW1/4	S20-T1N-R9E	34
	NE1/4 SW1/4	S20-T1N-R9E	7
	SE1/4 SW1/4	S20-T1N-R9E	39
	NW1/4 NW1/4	S29-T1N-R9E	2
	NE1/4 NW1/4	S29-T1N-R9E	18
22	SW1/4 SE1/4	S20-T1N-R9E	18
	NW1/4 NE1/4	S29-T1N-R9E	20
		Total	189

1722-2

Water Rights Division - DWNR File No. ~~1722-2~~

Conversation or File Documentation

NAME OF PERSON OR FILE: Mike Hickey

ADDRESS: _____ COUNTY Pennington

DATE: 2/6/91 TELEPHONE _____

RE: Reissuance of RVWC Vested Water Right

COMMENTS:

Mr Hickey said that he would be meeting with the Murphy Ditch people concerning the legal descriptions and acreages associated with the vested water right 1727-2 and would get their comments to me

He also indicated that their water consultant was HRS - Water Consultant from Colorado and that they may have some changes to suggest. He said he would try to get me a report from them

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: Mark Rabb

4/82

Water Rights Division - DWNR File No. 1727-2

Conversation or File Documentation

NAME OF PERSON OR FILE: Mike Hickey

ADDRESS: COUNTY Pennington

DATE: 2/7/91 TELEPHONE

RE: Reissuing Vested Water Right 1727-2

COMMENTS:

I Called Mike Hickey And Told Him That We Would Proceed With The Reissuing on VWR-1727 with the corrected Acres That I had Sent Him, If we do not hear back from him by the morning of February 11, 1991.

He Said That he was meeting with the Murphy Ditch People Today And Should have Any Comments that they might have back to me by that time.

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:

4/82

GREAT FACES. GREAT PLACES.

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

1727-2

February 20, 1991

Mike Hickey
BANGS MCCULLEN BUTLER FOYE & SIMMONS
PO Box 2670
Rapid City SD 57709-2670

Dear Mr. Hickey:

Enclosed are the Validated Vested Water Right and Water License No. 1727-2 for Rapid Valley Water Company, Inc. As long as the Rapid Valley Water Company uses the water beneficially, as stated in the Water License, State Water Laws provide that the company has a continuing right to use the water.

Very truly yours,

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

enclosures

cc: Les England, 731 St. Joseph St, Rapid City, SD 57701
w/copy of license

File No.

1727-2, 2142-2

Water Rights Division -DWNR
Conversation or File Documentation

NAME OF PERSON OR FILE: Les England

ADDRESS: COUNTY: Pennington

DATE: 2/21/91 TELEPHONE:

RE: Murphy Ditch Water Right and Transfer

COMMENTS:

Les England wanted to know what acreages would be added to the Murphy Ditch water right if the application is filed and approved. I gave him the legal locations Sec22-T1NR8E, Sec 10-T1NR8E, Sec15-T1NR8E and Sec24-T1NR8E approximately 85 acres.

He said that the Rapid Valley ditches and conservency district lawyer felt that there would not be any opposition by them towards the transfer based on technical problems. Les England felt that there may be opposing it on personal reasons.

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.

Mark D. Rath
Natural Resources Engineer II
DWNR, Water Rights Division

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
500 EAST CAPITOL
Pierre, South Dakota 57501-5070
Phone (605) 773-3215

MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

February 22, 1991

TO: John Hatch, Chief Engineer
Mark Rath, Engineer
Department of Water and Natural Resources

FROM: Diane Best, Assistant Attorney General

RE: Interpretation of SDCL 46-5-34.1

As we have previously discussed, attorneys for both the Murphy Ditch Company and for the City of Rapid City have contacted you concerning the issue of whether irrigation rights leased from the Murphy Ditch Company to the City of Rapid City need authority from the Water Management Board. The question focuses on the meaning of SDCL 46-5-34.1:

> The provisions of §§ 46-5-33 and 46-5-34 notwithstanding, irrigation rights may be transferred apart from the land to which they are appurtenant if they are transferred for domestic use or use within a water distribution system. Such irrigation rights may be transferred or leased in whole or in part and may be acquired only through the exercise of powers possessed independently of this section. No transfer, however, may be approved by the water management board unless the transfer can be made without detriment to existing rights having a priority date before July 1, 1978, or to individual domestic users (emphasis added).

The third sentence of this statute requires approval by the water management board of any "transfer." The attorneys involved have questioned whether approval is necessary when a mere "lease" is involved. The idea, apparently, is that a lease of irrigation rights cannot be a transfer within the meaning of SDCL 46-5-34.1 because the second sentence of

that statute refers to rights that may be "transferred or leased." Under this rationale, a lease would not be a type of transfer but would, instead, be a separate legal concept. Then, a lease would not be required to be approved by the water management board since the third sentence of SDCL 46-5-34.1 applies only to transfers and not leases.

The above rationale is, as a matter of statutory construction, certainly arguable. I do not feel, however, that SDCL 46-5-34.1 should be construed so narrowly. There are three reasons for my opinion. First, the word "transfer" is generally recognized to be a very broad term that includes sales, leases and other conveyances. While it might be argued that SDCL 46-5-34.1 refers to a "transfer by sale" because it mentions leases separately, I would not adopt such an interpretation. In other words, I do recognize that there may be some dispute with regard to whether the word "transfer" within SDCL 46-5-34.1 is intended to include the word "lease," but I would argue that it does include the words lease.

Secondly, and perhaps more significantly, the individuals involved are attempting to lease irrigation rights, a governmental grant of authority. Frankly, I do not see how the parties can claim that the governmental grant of authority may be rented to another entity without the permission of the governmental entity involved.

Thirdly, even if an individual was persuaded that the third sentence of SDCL 46-5-34.1 did not pertain to leases, such interpretation would not avoid the need for approval of a lease by the water management board. Assuming that the third sentence applies only to transfers, it sets out two different conditions which must be met before the board can approved a transfer. Imposing two conditions on transfer authority would not avoid the need for approval of a lease.

DB:mas

File No. 1727-2

Water Rights Division -DWNR
Conversation or File Documentation

NAME OF PERSON OR FILE: Bruce Webber

ADDRESS: COUNTY: Pennington

DATE: 3/21/91 TELEPHONE: 605-348-4036

RE: Water Right transfer to Rapid City

COMMENTS:

Mr. Webber called concerning Murphy Ditch water right transfer. He wanted to know whether the land owners owned the water right or the ditch company. I told him that I would check and get back with him.

I called Mr. Webber back. I told him that the water right is held by the ditch company, but the water is tied to specific lands. If the ditch company would wish to change lands irrigated or transfer use they would be required to come in with an application. If challenged, the matter would come before the Water Management Board and if a person wished he could voice his concerns before the Board. He asked me if about the Murphy Ditch claim and validation of the vested right. I explained the legal procedure involved. I told him I was not qualified to make any any statement about how the Rapid Valley Water Company Corporation operated.

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.

Mark D. Rath
Natural Resources Engineer II
DWNR, Water Rights Division

LAW FIRM OF
LESLIE JAMES ENGLAND

LESLIE J. ENGLAND
(ALSO ADMITTED IN COLORADO)

SUITE 102, WESTERN MUTUAL BUILDING
731 ST. JOSEPH STREET
RAPID CITY, SOUTH DAKOTA 57701

TELEPHONE (605) 341-7600
FAX (605) 343-4131

April 4, 1991

Mr. Mark Rath
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

RE: Rapid Valley Water Company, Inc. Validated Water Right

Dear Mark:

Please provide a copy of the list of landowners represented by the parcels of land irrigated on the Murphy Ditch. I recall that in earlier drafts of the validated water permit, such a list existed. Is it still a part of the latest water permit? Please feel free to call with any questions in these regards.

Yours very truly,

Leslie J. England

LJE/nmm
cc Michael Strub, Public Works Director
Robert Jackson, Acting City Attorney

Water Rights Division - DWNR File No. 1727-2

Conversation or File Documentation

NAME OF PERSON OR FILE: LES ENGLAND

ADDRESS: RAPID CITY COUNTY PENNINGTON

DATE: 4/8/91 TELEPHONE 341-7600

RE: LANDOWNER LIST TO MURPHY DITCH

COMMENTS:

I CALLED LES ENGLAND'S OFFICE, TALKED TO HIS SECRETARY. I TOLD HER THAT THIS WAS IN REFERENCE TO THEIR APRIL 4 LETTER.

I TOLD THEM WE DO NOT HAVE AN OFFICIAL LAND OWNERS LIST SINCE THERE ARE NO LANDOWNERS LISTED ON THE MURPHY DITCH VESTED WATER RIGHT. I TOLD THEM THAT I DID HAVE A TENTATIVE LIST WHICH WAS NOT OFFICIAL. I GAVE HER THE NAMES OFF OF THIS LIST.

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: [signature]

4/82

Water Rights Division - DWNR File No. 17273

Conversation or File Documentation

NAME OF PERSON OR FILE: Les England (City of Rapid City)

ADDRESS: Rapid City COUNTY Pennington

DATE: 5/30/91 TELEPHONE 341-7600

RE: Irrigated Acreage w/ Murphy Ditch

COMMENTS:

Mr England called said Mr Pelle who owns 4 ac adjacent to Tyler property wishes to sell [redacted] water rights to City. He asked why it was not included on [redacted] the reissued license.

I told him that during my inspection the officials with Murphy Ditch never mentioned this particular land owner when we went over each parcel of land [redacted] when the license was reissued the acreage associate with the Tyler property was reduced from 65 acres to 49 acres since that was all that was claimed by Tyler and the Ditch Company.

Mr England said that this property has always been irrigated, most recently with the same side roll system that was used to irrigate the Tyler property.

I said that when I figured acreage I used an A.e photo and a Digitizer which gives a good estimate I told him I estimated to within a few acres of what Tyler was claiming so we went with the claim.

I asked if Mr Pelle ever contacted the Ditch Company concerning [redacted] transferring irrigation rights to himself.

He said he was not sure but would check into it.

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: Mark D Rath

4/82

Water Rights Division - DWNR File No. 1727-2

Conversation or File Documentation

NAME OF PERSON OR FILE: LES ENGLAND (SPOKE WITH SECRETARY)

ADDRESS: RADIO CITY COUNTY PENNINGTON

DATE: 5/31/91 TELEPHONE 341-7600

RE: PELLE WATER RIGHTS ON MURPHY DITCH

COMMENTS:

I SPOKE WITH LES ENGLANDS SECRETARY TOLD HER I THOUGHT WE COULD [redacted] REISSUE THE LICENSE [redacted] INCLUDING PELLE'S LAND BECAUSE IT WAS ORIGINALLY VALIDATED. WE WOULD NEED A NOTARIZED AFFIDAVIT FROM STATING THAT HE HAD CONTINUED TO IRRIGATE SINCE HE HAD PURCHASED THE LAND.

LES ENGLAND RETURNED MY CALL, I EXPLAINED THE VALIDATION OF THE LAND AT THE DEC 1990 W.M. BOARD MEETING AND THAT the REISSUED LICENSE DID NOT INCLUDE IT. I THOUGHT THAT WE COULD REISSUE THE LICENSE TO INCLUDE THE LAND BUT WOULD NEED THE AFFIDAVIT FOR OUR FILES.

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: [signature]

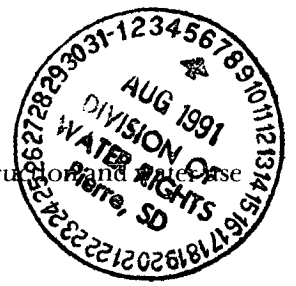
4/82

Form 2B

Affidavit of Water Use

No. 1727-2

(Type or Print in Ink)



Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use already constructed is needed, primarily with vested right claims.

Affidavit Of Construction Of Water Use System And Application Of Water To Beneficial Use

Name of Applicant (Same as Form 2) Donald J. Pelle and Joan L. Pelle, husband and wife

Post Office Address Route 2, Box 4010, Rapid City, SD57701
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation See No. 1727-2 Date of Posting _____

Date of recording _____ Recording date _____
Where Book Page

B. Date of start of construction of water supply system See No. 1727-2

C. Date that water was first applied to beneficial use See No. 1727-2

D. Name of owner of original water supply system See No. 1727-2

E. Amount of water originally applied to beneficial use See No. 1727-2

F. Present Use of Water - Amount of water now being used approximately 1.59 acre feet per irrigated acre

Date that this water was first used See No. 1727-2

G. Chronological History of Water Use Purchased Lot B-3 of Lot B of Government Lot 1 of Section 19 in Township 1 North, Range 9 East of the Black Hills Meridian as shown on Plat filed inPlat Book 23, Page 62 in Office of Register of Deeds, Pennington County, South Dakota. Irrigated with side roll sprinkler system last summer as has been done at least each of the last 4 years.

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

State of South Dakota)
ss
County of Pennington)

I/~~We~~, Donald J. Pelle and Joan L. Pelle ~~we~~ the applicant, certify that I/~~have~~ read the foregoing
(print or type)
and that the matters therein stated are true.

Signed (X) Don J Pelle

Signed (X) Joan L Pelle

Subscribed and sworn to before me 7/23, 19 91

seal expires 8/27/93
Notary Public or other qualified officer

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

Don J. Pelle 7/23 19 91
(Print name)

Joan L Pelle 7/23 19 91
(Print name)

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

December 9, 1991

David Lamb, President
Rapid Valley Water Company, Inc.
Rt 2 Box 160
Rapid City, SD 57701

Dear Mr. Lamb:

This letter is a follow-up to the November 6, 1991 letter requesting information concerning the diversion rate for Rapid Valley Water Company's Vested Water Right No. 1727-2. As I indicated we are concerned with the diversion rate associated with the separate parcels of irrigated land. The information that we have concerning the separate rates is as follows:

Appropriation Owner's Name	1878 Priority (miner's inch)	1893 Priority (miner's inch)
Joseph M. Lytle	41	
C.E. Morris	105	
David S. Lamb	230	
Marty Rypkema	36	
Jerry L. Olson	9	
Rapid Valley Fire Dept.	8	
Arlene J. Murphy	38	
James K. Long	10	
Cora Buckholtz	9	
Kenneth Buckholtz	6	
Higgins Ranch	120	
Wayne R. Anderson	12	
Dale A. Wileman	7	
Rick L. Whiting	1	
Wes Wileman	33	
Bruce Weber	46	
H. Lee Ahrlin	47	
Dorothy J Tyler *	36	
Merrill P. Carley	50	
Roseanne Heavlin		25
Merlin Stromer		114
James A. Bloom		41

* transferred under Water Permit No. 2142-2

The total number of miner's inches listed is 1024, with 844 miner's inches being under the April 6, 1878 priority, and 180 miner's inches under the April 26, 1893 priority.

We need to know if this list is correct, and if so how it relates to the 20 cfs approved under Vested Water Right No. 1727-2. I would appreciate an early response concerning this.

If you have any questions concerning this matter feel free to contact me.

Sincerely,

Mark D. Rath

Mark D. Rath
Natural Resources Engineer II
Division of Water Rights
(605) 773-3352

cc: Michael M. Hickey
Leslie J. England

Water Rights Division - DWNR File No. 1727-2

Conversation or File Documentation

NAME OF PERSON OR FILE: LES ENGLAND (CITY OF RAPID CITY)

ADDRESS: RAPID CITY COUNTY PENNINGTON

DATE: 12/10/91 TELEPHONE

RE: DIVERSION RATES FROM MURPHY DITCH

COMMENTS:

MR ENGLAND CALLED, SAID HE GOT A COPY OF THE LETTER WE SENT MURPHY DITCH. HE SAID THAT HE WAS IN CONTACT WITH MIKE HICKEY (MURPH DITCH ATTORNEY) AND WELL BE TALKING TO HIM FURTHER. MR ENGLAND WANTS TO KNOW WHAT WE WANT OUT OF THIS I TOLD HIM THAT WE NEED TO CLARIFY AN ACCEPTABLE DIVERSION RATE SO THAT AS TRANSFER OCCUR WATER AVAILABILITY WOULD BE A PROBLEM TO THE IRRIGATORS WHO ARE LEFT, ALSO WE WANT TO HAVE A DIVERSION RATE THAT MURPHY DITCH WILL ACCEPT

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: [signature]

4/82

GREAT FACES. GREAT PLACES.

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

August 8, 1994

NOTICE OF SHUTOFF ORDER

TO: Merlin Stromer
RR 2 Box 4550
Rapid City, SD 57701

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

SUBJECT: Diversion of water from the Rapid Valley Water Company ditch.

On August 4, 1994, you were contacted by Mark Rath, staff engineer, in response to an inquiry concerning your diversion of water from the lower end of the Rapid Valley Water Company ditch. You indicated that you were diverting "return flows" from the ditch that are available to you based on a court decision issued several years ago. A search of Division files does, indeed, indicate the existence of a court decree issued in 1896 in the case of Cramer, et al. v. Rapid Valley Water Company et al. After consulting with the office of Attorney General, I am of the opinion that the 1896 court decision does not allow for such use, particularly in light of the subsequent 1990 vested right validation proceeding. I am unaware of any other court decree which would be applicable.

"Return flows" are considered natural flow water and are available for senior water right use. The priority date assigned to your use of water from the ditch is April 26, 1893. There are four downstream water rights that have water rights for 31.92 cubic feet of water per second with priority dates predating April 26, 1893. Water may not be diverted by an upstream water user with a junior priority date when there is insufficient water available to meet demands by downstream senior water right holders. Sufficient natural flows are not available to satisfy your use and the downstream senior water rights.

Therefore, I am ordering you to stop diverting natural flow water pursuant to South Dakota Codified Law 46-2-18. If the demand for natural flow water by downstream senior water users is satisfied or if sufficient natural flows become available, then the shutoff order may be rescinded. Written notice will be given of any permanent or temporary rescission of the shutoff order.

It may be possible for you to continue to irrigate this year if you make arrangements to purchase water through the Rapid Valley Water Conservancy District's Pactola and Deerfield contracts. You will need to contact the Rapid Valley Water Conservancy District Board on this matter.

Please contact Mark Rath or Del Brosz, phone 605-773-3352, if you have any questions concerning this shutoff order.

cy: Jerry Hammerquist, RVWCD
Duane Scott, Water Master
Steve Murphy, RVWC
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on August 8, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 8, 1994, regarding Diversion of Water from the Rapid Valley Water Company Ditch, addressed as stated below:

Merlin Stromer
RR 2, Box 4550
Rapid City, SD 57701

Jerry Hammerquist
Rapid Valley Water
Conservancy District
Box 26
Caputa, SD 57725

Duane Scott
3155 Anderson Rd.
Rapid City, SD 57701

Steve Murphy
Rapid Valley Water Co.
Rt 5, Box 125
Rapid City, SD 57701

Copy Sent Inter-office to:

Diane Best
Assistant Attorney General
Capitol Building

Delvin D. Brosz

Delvin Brosz
Natural Resources Engineer IV

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of August, 1994.

JOHN HATCH
NOTARY PUBLIC
SEAL SOUTH DAKOTA SEAL

John Hatch

Notary Public

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

MEMO

August 17, 1994

To: File

From: Mark Rath

Subject: Diversion of water from Murphy Ditch by Merlin Stromer.

8/2/94 - Duane Scott, Water Master called, he said that Jerry Hammerquist, Rapid Valley Water Conservancy District (RVWCD) had contacted him concerning Merlin stromer. Mr. Stromer was diverting water from Rapid Valley Water Company (Murphy) ditch but was delinquent in his ditch fee payment to the RVWCD. Mr. Scott said that Mr. Stromer was being charged for the water he was using. Mr. Scott asked if the Division of Water Rights had concerns in this matter. I told him that I thought that this was an internal matter between him and the RVWCD. I told him I would check for sure. On 8/3/94 I called Duane Scott, after conferring with Del Brosz, I left a message on his answering machine saying I thought it was still an internal matter between RVWCD and Mr. Stromer.

8/4/94 - Jerry Hammerquist, RVWCD called said that I had misunderstood what was happening with Mr. Stromer. He said Mr. Stromer was irrigating with water from Murphy ditch without purchasing it from the RVWCD. I told him Mr. Stromer could not irrigate with natural flow water if downstream senior water rights needed it. I told him I would call Mr. Stromer, and if need be we could issue a shutoff order.

8/4/94 - I called Merlin Stromer and asked him if he were irrigating from Murphy ditch. He said that he was but he was irrigating with "return flows" off of Murphy ditch and that an old court case had ruled that this was allowed. I told him that I was not aware of any court case that allowed this and that I believed he were in violation by irrigating when downstream senior rights needed this water. I told him I would talk with Duane Scott about this.

8/4/94 - I called Duane Scott and asked him if he was aware of the court case that Mr. Stromer was referring to. Mr. Scott said that he was not. He would do some checking. I told him I would check our records too.

8/4/94 - I contacted Diane Best, Assistant Attorney General, and briefed her about the situation. She said she would for any supreme court decisions. I checked Water Right file No. 1727-2 (Murphy ditch water right) and found two circuit court decisions but none referenced the return flow use.

8/5/94 - I called Duane Scott and told him that the Division of Water Rights was considering on issuing a shutoff order for natural flow use to Mr. Stromer. Mr. Scott said that we may want to reconsider issuing this order. He said that he had talked with Mr. Stromer on 8/4/94 and that Mr. Stromer reminded him about the court decision and Mr. Scott did recall seeing a court decision.

8/5/94 - I contacted Diane Best and briefed her about the latest developments. She recommended that we postpone issuing the shutoff order until we make a more complete search for the court decision that Mr. Stromer was referring to.

8/5/94 - I contacted Diane Best told her I thought I found the court case (Cramer et al. v. Rapid Valley Water Company et al., 1896). We reviewed the case and consulted with Harold Deering, AG's office in Sioux Falls. It was their opinion that the portion of the judgement concerning a junior appropriator using excess water from Murphy Ditch no longer applied due to the 1955 water right statutes and the subsequent 1990 vested water right validation by Murphy ditch that did not include excess water use as a use.

8/8/94 - Jerry Hammerquist called and asked why we had not sent a shutoff order. I explained to him that a shut off order was not sent on Friday 8/5/94 based on Duane Scott's suggestion to postpone issuing the shutoff order until we reviewed the court case. I told him I would talk with John Hatch about issuing the shutoff order. He said the District was planning on meeting with Mr. Stromer.

8/8/94 - I called Jerry Hammerquist and told him that I had talked with John Hatch and that the Chief Engineer would be issuing a shutoff order to Mr. Stromer. He said the District would postpone the meeting with Mr. Stromer until Tuesday afternoon.

8/8/94 - The shutoff order was sent to Mr. Stromer, with copies going to Jerry Hammerquist, Steve Murphy, Duane Scott and Diane Best.

8/10/94 - Merlin Stromer called concerning the shutoff order. I explained that we had reviewed the court case with the attorney generals office and it was our opinion the use of excess natural flow no longer applied. He said he had been irrigating this way since 1951 and thought that it was included with his irrigation right. I told him he could make an application for a vested water right claim for this use. I told him that he is a junior appropriator and is subject to senior downstream rights. I told him he should contact the District and Duane Scott about purchasing water. He said he would.

8/17/94 - Duane Scott called and said that Jerry Hammerquist had contacted him about Merlin Stromer's irrigating. He said Mr. Stromer had sent a check to the District but that the District was not going to accept the late payment. He said Mr. Hammerquist wanted him to stop Mr. Stromer from irrigating.

8/17/94 - I called Duane Scott and told him that I had discussed the matter with John Hatch. I asked him if he thought the District would be receptive to Mr. Stromer petition to become a permanent member of the District. He said he thought that would probably work. I told him I would try to call Jerry Hammerquist.

8/17/94 - Jerry Hammerquist called me concerning Merlin Stromer's irrigation. I told him that Mr. Stromer had told me he would be contacting the District and Duane Scott about purchasing water. I asked him if Mr. Stromer had sent a check to the District. He said that the District's secretary did have a check but the District did not know if they were going to accept the late payment. I asked him if the District would be receptive to having Mr. Stromer petitioning to become a member of the district. He said he did not see where this had anything to do with Mr. Stromer using senior priority water with the shutoff order having been issued. I told him I was trying to work the matter out between the District and Mr. Stromer. I asked him if the District planned on being consistent with any new requests to purchase water, or were they being harder on Mr. Stromer because of his dealings with Rapid City with selling irrigation rights. He said "bad blood" did not enter into this and that he was offended for my suggesting this. I told him I would discuss this matter with John Hatch.

8/17/94 - Mr. Hammerquist called me and asked what John Hatch's position was on this matter. I asked him if the District had returned the check to Mr. Stromer. He said the District still had it. I indicated that Mr. Stromer may be under the impression that the District had accepted his payment. I told him that the Chief Engineer did not intend to pursue this matter until after the District's board met on August 18, 1994. I told him that I might even suggest to Mr. Stromer to attend this meeting. Mr. Hammerquist said he wanted to talk to John Hatch. (John Hatch, Mr. Hammerquist and I then participated in a 3 person phone call). Mr. Hammerquist asked if we could attend the District's board meeting. Mr. Hatch indicated he would be able to. Mr. Hammerquist told us that Mr. Stromer had made arrangements several years ago to purchase water from the District. He said that Mr. Stromer had been paid up through 1993, but had failed to make the May 1994 payment to the District until this past week. He said the District board would rule on whether they would accept the late payment or pursue cancellation of his contract pursuant to SDCL 46A-9-62. He said that although Mr. Stromer had made a late payment to the District he had made no order for purchased water to Duane Scott and that Mr. Stromer was currently irrigating in violation of the 8/8/94 shutoff order. Mr. Hatch said that we would be issuing a shutoff order to Mr. Stromer and

also order Duane Scott to take appropriate action. Mr. Hammerquist said that we did not need to issue the order at this time but wait until after the board meeting. John Hatch said that we would issue the order.

8/17/94 - A shutoff order was issued to Merlin Stromer directing Duane Scott to take appropriate action to verify that the order was adhered to. A copy was faxed to RCRO so DelRon Peters could hand deliver this to Mr. Scott.

8/17/94 - I contacted Merlin Stromer and told him we were issueing a shutoff order. He said he would be willing to pay and that he had contacted Duane Scott and that he had tried calling Jerry Hammerquist 3 times but was unable to get ahold of him. I told him about the District Board meeting and that I suggested that he maybe should attend.

GREAT FACES. GREAT PLACES.

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

August 17, 1994

NOTICE OF SHUTOFF ORDER

TO: Merlin Stromer
RR 2 Box 4550
Rapid City, SD 57701

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

SUBJECT: Diversion of water from Rapid Valley Water Company ditch.

On August 17, 1994, the Division of Water Rights was contacted by the Rapid Valley Water Conservancy District. They informed us that you have not contacted them concerning ordering purchased water and that you continue to irrigate using natural flow water in violation of the August 8, 1994 shutoff order. **Therefore, I am ordering you to cease all diversions from the Rapid Valley Water Company Ditch. I am also ordering the Rapid Valley Water Master, Duane Scott, to take any appropriate action to verify that this order is being adhered to.** Written notice will be given of any permanent or temporary rescission of the shutoff order. I will be meeting with the Rapid Valley Water Conservancy District Board concerning this matter the evening of August 18, 1994 at the Caputa Community Hall.

Please contact Mark Rath or Del Brosz, phone 605-773-3352, if you have any questions concerning this shutoff order.

cy: Jerry Hammerquist, RVWCD
Duane Scott, Water Master
Steve Murphy, RVWC
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on August 17, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 17, 1994, regarding Diversion of Water from Rapid Valley Water Company Ditch, addressed as stated below:

Merlin Stromer, RR 2, Box 4550, Rapid City, SD 57701.

Jerry Hammerquist, RVWCD, Box 26, Caputa, SD 57725.

Duane Scott, Water Master, 3155 Anderson Road, Rapid City, SD 57701.

Steve Murphy, RVWC, Rt 5, Box 125, Rapid City, SD 57701.

The above described Notice was faxed to DelRon Peters at the Rapid City Regional Office, telephone #394-5317, to be hand delivered to Duane Scott (see attached "Facsimile Transmittal Cover Sheet").

Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.

Copy Hand Delivered to:

John Hatch, Chief Engineer, Water Rights Division.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of August, 1994.

John Hatch

Notary Public

JOHN HATCH
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA

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

GREAT FACES. GREAT PLACES.

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

August 31, 1995

Ray Morf
Valley Green Sod Farm
1996 Sedivy Lane
Rapid City, SD 57701

Dear Mr. Morf:

This letter is in regard to our discussion on August 29, 1995 concerning a diversion point change request for the Murphy ditch. I have enclosed a copy of the letter that was sent to Jerry Hammerquist with the Rapid Valley Water Conservancy District. South Dakota Codified Law (SDCL) 46-5-13.1 which was passed by the 1994 South Dakota Legislature provides a mechanism to change an existing diversion point without going through the formal application procedure. The diversion point change can be either moving the original diversion point location or adding new diversion points to an existing one. To make a change such as this, the water right holder would need to contact the Chief Engineer with the requested change. The Chief Engineer would then need to make a determination that the change does not increase the potential for interference with other existing diversions.

The Rapid Valley Water Company is the water right holder for the Murphy ditch. You will need to work with the Rapid Valley Water Company to formally request a diversion point change in writing. The written request will also need to include a signed map showing the location of the new diversion point. Your local NRCS (formally SCS) office should be able to help you in preparing the map.

If you have any questions, please give me a call at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineer

enclosure

GREAT FACES. GREAT PLACES.

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

August 31, 1995

Steve Murphy
Rapid Valley Water Company
5666 Hwy 44
Rapid City, SD 57701

Dear Mr. Murphy:

This letter is in regard to our discussion on August 29, 1995 concerning Valley Green Sod Farms diversion point change request. I have enclosed a copy of the letter that was sent to Jerry Hammerquist with the Rapid Valley Water Conservancy District. South Dakota Codified Law (SDCL) 46-5-13.1 which was passed by the 1994 South Dakota Legislature provides a mechanism to change an existing diversion point without going through the formal application procedure. The diversion point change can be either moving the original diversion point location or adding new diversion points to an existing one. To make a change such as this, the water right holder would need to contact the Chief Engineer with the requested change. The Chief Engineer would then need to make a determination that the change does not increase the potential for interference with other existing diversions.

Your concern was that the sod farm wants to divert from the dam located approximately 300 yards past the terminal point of the Rapid Valley Water Company ditch and that the dam was not part of your ditch system. Moving the diversion point can be possible because based upon my site investigation and review of topographic maps I concluded that moving the diversion directly from the ditch to the dam downstream should not interfere with other diversions. The proper procedure that the Rapid Valley Water Company will need to follow to make this diversion change is to provide a written request to the Chief Engineer.

If you have any questions concerning this, feel free to contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineer

enclosure

United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Region
Newell Field Office
P.O. Box 226
Newell, South Dakota 57760-0226

OCT 1996
WATER RIGHTS
PROGRAM
Pierre, SD

IN REPLY REFER TO:

DK-460
LND-10.00-

OCT 24 1996

Mr. Jerry Hammerquist, President
Rapid Valley Water Conservancy District
P.O. Box 26
Caputa, SD 57725

Subject: Reclassification of Lands in Rapid Valley Water Conservancy District, Rapid Valley Unit

Dear Mr. Hammerquist:

Enclosed is the final report on the land reclassification for the properties owned by Jim Bloom and Merle Stromer in Sections 20 and 29 of T1N, R9E. These lands are now classified as irrigable and are eligible to receive project water provided they are inside the District boundary and hold valid Water Permits with the State of South Dakota.

In addition, the landowners must pay the reclassification costs in accordance with my letter dated February 6, 1996, and complete the required Reclamation Reform Act reports prior to being served with project water from Deerfield or Pactola Reservoirs.

The new arable acreage summary for the District is shown on page 2 of the report.

If you have any questions, please contact Curt Anderson or me at (605) 456-2695.

Sincerely,

J. Craig Kjar
Facilities Management

Enclosure

cc: Mr. Jerry Marsh, Secretary
Rapid Valley Water Conservancy District
HCR 36 Box 35
Caputa, SD 57725
(w/ enclosure)

Mr. John Hatch, Chief Engineer
Water Rights Division
South Dakota Department of Environment and Natural Resources
523 E. Capitol
Pierre, South Dakota 57501-3181
(w/ enclosure)

Land Reclassification Report

Rapid Valley Water Conservancy District

Rapid Valley Unit, August 1995

INTRODUCTION

Two adjacent parcels of land totaling about 170 acres were reclassified during June 1995. Both parcels have been irrigated with a non-project water right water for many years. These lands are located in Sections 20 and 29, Township 1N Range 9E, near Rapid City, South Dakota.

The parcels were originally classed as 6 (non-arable) in the certified land classification surveys for the Rapid Valley Unit in 1952.

The reclassified parcels are located on low alluvial terraces about a mile north of Rapid Creek. Most of the land is in irrigated pasture and appears to be best suited for that purpose.

PROCEDURES

A Soil Scientist and a Drainage Engineer from Reclamation's Technical Service Center in Denver, Colorado inspected the parcels. Four soil borings were examined and logged. Two of these borings were sampled. Soil salt content and soil reaction were determined on the samples. The lands were classed based on the August 15, 1949, Land Classification Specifications presented in the 1952 Lands Appendix to the Rapid Valley Report. Several soil logs from the 1949-1952 Land Classification were also evaluated along with recent Soil Conservation Service mapping.

No current site-specific economic analysis was conducted to determine arability, i.e. the capability of the lands to cover water charges. However, since the lands are parts of existing operations, with other lands and enterprises, it is likely that gross returns exceed the incremental costs associated with their inclusion.

RESULTS

Nearly all lands were placed in arable land class 3. The lands were downgraded to class 3 because of topographic deficiencies including excess slope and uneven topography, in combination with heavy soil texture (excess clay content). Shallow groundwater associated with slightly elevated soil salinity was present in one area. Generally the lands appeared to be free of harmful quantities of excess salt and sodium.

The following items are attached to this report:

1. Land classification drawings of classified area, including the 1995 soil boring logs complete with laboratory data.

2. Copy of the 1949 Land Classification Standards.

ACREAGE SUMMARY

A total of 163.6 acres of Class 6 land was reclassified to class 3. A summary of the Rapid Valley Conservancy district's new official arable acreage is listed below:

Arable Acreage Summary

Class 1	560
Class 2	1,451
Class 3	2,403
Class 4	2,278
Total Arable	6,692

TRACE ELEMENT ASSESSMENT

No trace element toxicity problems are anticipated from continued irrigation of these parcels due to their small size in relation to the entire irrigated area in Rapid Valley.

LAND CHARACTERISTICS	Symbols Basic & Subclass	Symbols Inform. & Defic.	CLASS 1 - Arable	CLASS 2 - Arable	CLASS 3 - Arable
SOILS	s		Sandy loams to clay loams.	Loamy sands to very permeable clays.	Loamy sands to permeable clays.
Textures					
Very light		v		Loamy sands or gravel sufficient to moderately reduce productivity and moisture-holding capacity.	Loamy sands or gravel sufficient to markedly reduce productivity and moisture-holding capacity.
Moderately light		l	Sandy loams and loams.	Sandy loams and loams.	Sandy loams and loams.
Moderately heavy		m	Silt loams and clay loams.	Silt loams and clay loams.	Silt loams and clay loams.
Heavy		h		Very permeable clay.	Permeable clay.
Depth					
To incoherent sands, clean gravel or cobbles.		k	36" or more of good free working soil of fine sandy loam or heavier, or 42" of sandy loam. If gravel contains soil, depth may be minimum of 30" depending upon the water-holding capacity.	24" plus of good free working soil of fine sandy loam or heavier, or 30" of loamy sand. If gravel contains soil, depth may be minimum of 20" depending upon the water-holding capacity.	18" plus of good free working soil of sandy loam or heavier, or 24" of loamy sand. If gravel contains soil, depth may be minimum of 12" depending upon water-holding capacity.
To solid sandstone, shale bedrock, raw wash from shale impervious clay substrata, or any other impervious substrata.		b	60" plus or 54" with minimum of 6" of gravel overlying impervious material or sandy loam throughout.	48" plus or 42" with minimum of 6" of gravel overlying impervious material or loamy sand throughout.	42" plus or 36" with minimum of 6" of gravel overlying impervious material or loamy sand throughout.
To highly consentrated (gray to white) penetrable lime zone.		s	18" plus with 60" penetrable.	14" plus with 48" penetrable.	8" plus with 36" penetrable.
Alkalinity and Salinity		a	Total salts* not to exceed .2% or 4 millimhos/cm. May be higher under good leaching and drainage conditions. pH 8.6* or less on paste. May go to 8.8 below 42". pH 9.0 or less on 1-5 dilution, associated with good permeability. *See Supplement	Total salts* not to exceed .4% or 8 millimhos/cm. May be higher under good leaching and drainage conditions. pH 8.8 or less on paste. pH 9.3* or less on 1-5 dilution. pH spread between paste and 1-5 less than 1.1 if pH on 1-5 dilution is 9.0 or more. *See Supplement	Total salts* not to exceed .6% or 15 millimhos/cm. May be higher under good leaching and drainage conditions. pH 8.6 or less on paste. pH 9.6* or less on 1-5 dilution. May be higher below 42". pH spread between paste and 1-5 less than 1.1, if pH on the 1-5 dilution is 9.0 or more. *See Supplement
TOPOGRAPHY	t				
Slope		g	0.15% to 2% incl.	0.0% to 0.1% and 2% to 5%.	5% to 8%.
*Irrigation pattern		j	400 feet minimum run. 8 acres minimum size.	300 feet minimum run. 5 acres minimum size.	150 feet minimum run. 2 acres minimum size.
Surface (leveling)		u	Light 0 to 175 cubic yards excavation per acre. 0.0 to 0.22' average cut and fill.	Medium 175 to 350 cubic yards excavation per acre. 0.22 to 0.44' average cut and fill.	Heavy 350 to 650 cubic yards excavation per acre. 0.44 to 0.81' average cut and fill.
*Cover (vegetation)		c			
Low brush (6 ft. and less)			0% to 100% cover.	Not applicable.	Not applicable.
High brush (over 6 ft.)			0% to 50% cover.	50% to 100% cover.	Not applicable.
Trees (6 to 15" diameter)			0 to 8 trees per acre.	8 to 18 trees per acre.	18 to 35 trees per acre.
Stones and cobbles		r	0 to 10 cubic yards per acre.	10 to 22 cubic yards per acre	22 to 45 cubic yards per acre.
DRAINAGE		d	No drainage anticipated.	Slight drainage problem anticipated but may be improved at relatively low cost.	Drainage problem anticipated but may be improved by expensive but feasible measures.
MISCELLANEOUS					
High areas above level of irrigation		h	Occurs only in classes 5 and 6. Irrigability in question when used with class 5 and definitely non-irrigable when used with class 6.		
Isolated areas		i	Occurs only in classes 5 and 6. To be shown same as slight areas as sh (2s) or si (3s) smk scsu		

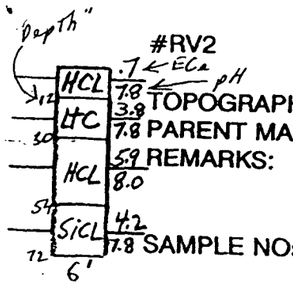
CLASS 4 - Limited arable. Includes lands which fail to meet the minimum requirements of Class 3 but which special economic and engineering studies have shown capable of feasible restricted use under irrigation, such as pasture, suburban use, etc. (See handbook 2.2.5, 2.4.2B-5, 2.5.5a, and symbols listed above for appropriate classification symbols).

CLASS 5 - Non-arable. Includes lands which require additional economic and engineering studies to determine their irrigability and lands classified as temporarily non-productive pending construction of corrective works and reclamation through application of these works. Upon completion of studies, these lands are placed in proper class. (See handbook 2.2.6, 2.4.2B-6 and 2.5.5A and symbols listed above for appropriate classification symbols).

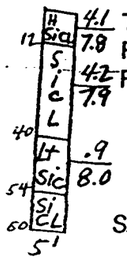
CLASS 6 - Non-arable. Includes lands which do not meet the minimum requirements of the next higher class mapped in a particular survey and small areas of arable land lying within larger bodies of non-arable land. (See handbook paragraphs 2.4.2B (2-6), 2.5.5A and symbols listed above for appropriate classification symbols).

*Note: Irrigation pattern - Minimums are for fields that are approximately rectangular. As shapes become more irregular minimum allowable sizes shall be increased proportionately. A field is defined as a body of land lying in approximately the same plane, and feasible of being irrigated with single layout of parallel border dikes or parallel corrugations.

*Note: Cover - Cover is defined as shaded area. The class shall be lowered proportionately as different types of cover occur in combination. As the size of trees increases over 15" diameter, the allowable number per acre shall be decreased.



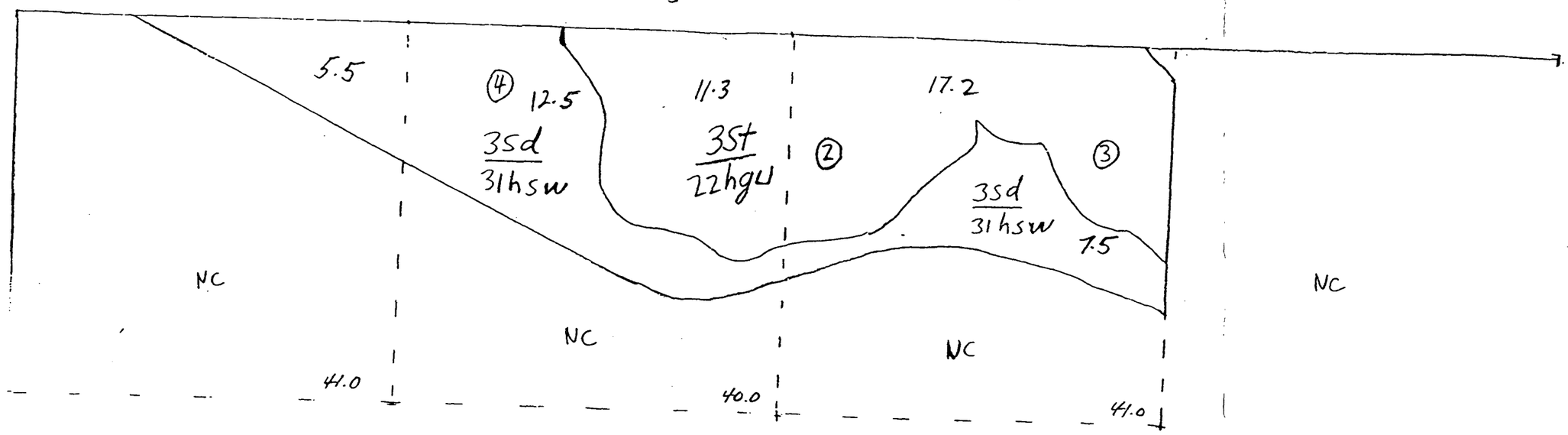
#RV2 LOCATION: Sec 29 T.1N R.9E
400'S 3200'E of N/4 corner.
TOPOGRAPHY: V.gentle undulating on 2% slope.
PARENT MATERIAL: Alluvium.
REMARKS: Irrigated pasture 0-30" friable. Thin gravel layer at 3' or so. 30-54" common salts & carbonates. 54-72 v.moist.
SAMPLE NOs: RV-1-4.



#RV4 LOCATION: Sec 29 T.1N R.9E
1600'E 200'S of NW corner.
TOPOGRAPHY: Nearly level.
PARENT MATERIAL: Alluvium.
REMARKS: Good irrigated pasture. 0-12" common carbonates & salts. 12-40" few to common salts. 40-54 increasing wetness. 54-60" saturated. Water table encountered 54".
SAMPLE NOs: 54-60" not sampled.
RV5-7.

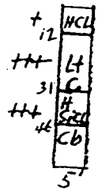
TEXTURE SYMBOLS

S	SAND
LS	LOAMY SAND
SL	SANDY LOAM
L	LOAM
Si	SILT
SiL	SILT LOAM
CL	CLAY LOAM
SCL	SANDY CLAY LOAM
SiCL	SILTY CLAY LOAM
SC	SANDY CLAY
SiC	SILTY CLAY
C	CLAY
Ss	SANDSTONE
Sh	SHALE
	GRAVEL, COBBLE
	ROCK



IRRIGATION SUITABILITY

CLASS 1 - EXCELLENT
CLASS 2 - GOOD
CLASS 3 - FAIR
CLASS 6 - UNSUITABLE

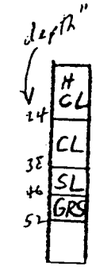


#RV3 LOCATION: Sec 29 T.1N R.9E
1000'E 400'S of N/4 corner.
TOPOGRAPHY: 2-3% slope with gentle undulations.
PARENT MATERIAL: Alluvium.
REMARKS: Irrigated pasture 0-12" friable. 12-46" many carbonates, roots to 46"+. Stopped by cobble at 46".
SAMPLE NOs: NS.

class 6 to class 3 54 acres

NC = No change from 1952 classification

1995 Reclassification
North Half
Section 29 T1N R9E



#RV5 LOCATION: Sec 20 T.1N R.9E
700'E 400'N of SW corner.

TOPOGRAPHY: Nearly level toe of gentle slope.

PARENT MATERIAL: Alluvium.

REMARKS: Irrigated pasture, senior water right, irrigated 100-years. 24-38" common carbonates. 46-52" highly permeable. Land is OK for pasture hay.

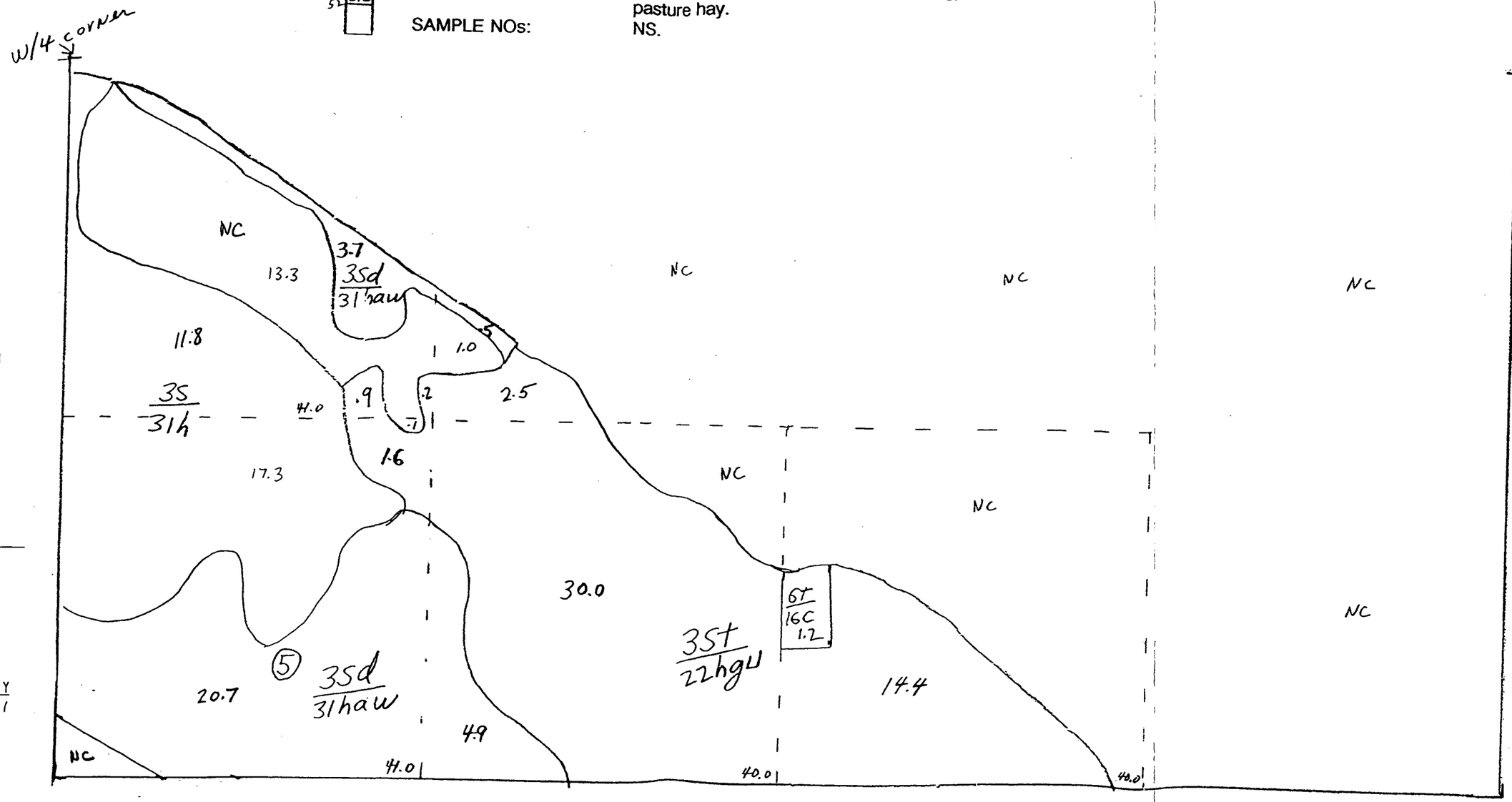
SAMPLE NOs: NS.

TEXTURE SYMBOLS

S	SAND
LS	LOAMY SAND
SL	SANDY LOAM
L	LOAM
Si	SILT
SiL	SILT LOAM
CL	CLAY LOAM
SCL	SANDY CLAY LOAM
SiCL	SILTY CLAY LOAM
SC	SANDY CLAY
SiC	SILTY CLAY
C	CLAY
Ss	SANDSTONE
Sh	SHALE
	GRAVEL, COBBLE
	ROCK

IRRIGATION SUITABILITY

CLASS 1 - EXCELLENT
CLASS 2 - GOOD
CLASS 3 - FAIR
CLASS 6 - UNSUITABLE



NC = No change from 1952 classification

class 6 - class 3 109.6 acres

South half
Section 20 T 1N R 9E
1995 Reclassification
Rapid Valley Unit

GREAT FACES. GREAT PLACES.

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

April 21, 1997

David Lamb
4555 E 53 St
Rapid City SD 57701

Dear Mr. Lamb:

As you requested from Mark Rath, enclosed are copies which show the amount of water remaining in the water rights for Murphy, South Side and Hawthorne Ditches.

If you have questions, please contact this office.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosures

Water Rights Division - DENR

File Documentation

Name of Person: City of Rapid City and Rapid Valley Water Co. File No. 2199-2 & 1727-2
Address: County: Pennington County
Date: 8/28/1997 Telephone:
RE: **Pelle property Validation**

Comments: ***The 4 acres associated with the Pelle property were actually validated by the Water Management Board in December of 1990. When Vested Water Right License No. 1727-2 was issued the acres were inadvertently left off even though they had been validated. When the City of Rapid City applied for Water Permit No. 2199-2 to transfer the natural flow irrigation water from te Pelles property, this was the determination that was made. The priority date for these acres was April 6, 1878.***

Mark D Rath
Natural Resources Engineer

Revised Report on the Inspection of
Vested Water Right Claim 1727-2
Rapid Valley Water Company, Inc.
February 8, 1991

Vested Water Right Claim No. 1727-2, Rapid Valley Water Company Inc. (a.k.a. Murphy Ditch) was validated by the Water Management Board on December 5, 1990 pursuant to South Dakota Codified Law (SDCL) 46-2A-16. The advertisement for NOTICE OF INTENT TO VALIDATE VESTED WATER RIGHT CLAIMS for Permit 1727-2 was published in the Rapid City Journal on June 23 and 30, 1988. The notice listed the claim as appropriating 20 cubic feet of water per second (cfs) from Rapid Creek and the point of diversion from the creek in the SW1/4 of Section 8-T1N-R8E. The notice listed two priority dates associated with the claim, January 1, 1878 for 17 cfs and January 1, 1893 for 3 cfs. The notice listed 1425 acres of irrigated land in portions of Sections 9, 10, 13, 14, 15, 20 and 24 T1N-R8E and Sections 19, 20, 29 and 30 T1N-R9E. There was no petition of intent to oppose the validation of recognized Vested Water Right Claim No. 1727-2 filed within ninety days of the date of the last publication of the notice, pursuant to SDCL 46-2A-16. SDCL 46-2A-17 states that if no petition opposing validation of the recognized water right claim is filed pursuant to SDCL 46-2A-16, the board shall issue an order validating the vested water right claim.

On September 25, 26 and 27, 1990 an inspection of the vested water right claim was performed. At that time discrepancies in the legal descriptions of the irrigated land were found. The inspection found that lands located in Section 20-T1N-R8E are not being irrigated from the ditch. Also portions of lands located in Sections 13 and 14 T1N-R8E and Sections 19 and 30 T1N-R9E are no longer being irrigated.

The following table lists the legal description, acreage irrigated and associated priority dates, of the lands which are presently irrigated by the vested water right claim.

1878 PRIORITY DATE

Land Parcel Number	Legal Description		Acreage
1	NE1/4 SW1/4	S9-T1N-R8E	20
	SE1/4 SW1/4	S9-T1N-R8E	25
2	NW1/4 SE1/4	S9-T1N-R8E	29
	SW1/4 SE1/4	S9-T1N-R8E	35
3	SW1/4 SW1/4	S10-T1N-R8E	25
	NW1/4 NW1/4	S15-T1N-R8E	31
	SW1/4 NW1/4	S15-T1N-R8E	38

	NW1/4 SW1/4	S15-T1N-R8E	30
	SE1/4 NW1/4	S15-T1N-R8E	32
	NE1/4 SW1/4	S15-T1N-R8E	31
	SW1/4 NE1/4	S15-T1N-R8E	38
	NW1/4 SE1/4	S15-T1N-R8E	29
	SE1/4 NE1/4	S15-T1N-R8E	25
	NE1/4 SE1/4	S15-T1N-R8E	38
	SW1/4 SW1/4	S15-T1N-R8E	1
	SE1/4 SW1/4	S15-T1N-R8E	11
	SW1/4 SE1/4	S15-T1N-R8E	24
	SE1/4 SE1/4	S15-T1N-R8E	15
5	SW1/4 NW1/4	S14-T1N-R8E	5
6	SW1/4 NW1/4	S14-T1N-R8E	32
7	SE1/4 NW1/4	S14-T1N-R8E	6
	NE1/4 SW1/4	S14-T1N-R8E	4
8	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
9	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
10	NW1/4 SE1/4	S14-T1N-R8E	28
	SW1/4 SE1/4	S14-T1N-R8E	31
	SE1/4 SE1/4	S14-T1N-R8E	32
	NE1/4 SE1/4	S14-T1N-R8E	3
	SW1/4 SW1/4	S13-T1N-R8E	27
11	SE1/4 SW1/4	S13-T1N-R8E	2
12	SW1/4 SE1/4	S13-T1N-R8E	5
13	104 OF THE TOTAL 142 ACRES		
	NE1/4 NW1/4	S24-T1N-R8E - 36	
	SE1/4 NW1/4	S24-T1N-R8E - 40	
	NW1/4 NE1/4	S24-T1N-R8E - 32	
	SW1/4 NE1/4	S24-T1N-R8E - 34	104
14	NW1/4 NE1/4	S24-T1N-R8E	1
15	28 ACRES OF THE TOTAL 56 ACRES		
	NE1/4 NE1/4	S24-T1N-R8E - 31	
	SE1/4 NE1/4	S24-T1N-R8E - 25	
			28
16	NW1/4 NW1/4	S19-T1N-R9E	10
	SW1/4 NW1/4	S19-T1N-R9E	39
17	NE1/4 NW1/4	S19-T1N-R9E	2

	SE1/4 NW1/4	S19-T1N-R9E	32
	NE1/4 SW1/4	S19-T1N-R9E	10
	SW1/4 NE1/4	S19-T1N-R9E	25
	NW1/4 SE1/4	S19-T1N-R9E	24
	SW1/4 SE1/4	S19-T1N-R9E	2
	SE1/4 NE1/4	S19-T1N-R9E	11
	NE1/4 SE1/4	S19-T1N-R9E	39
18	NE1/4 SW1/4	S19-T1N-R9E	12
	SE1/4 SW1/4	S19-T1N-R9E	39
	NE1/4 NW1/4	S30-T1N-R9E	12
19	SW1/4 SE1/4	S19-T1N-R9E	31
	NW1/4 NE1/4	S30-T1N-R9E	20
		Total	1103

1893 PRIORITY DATE

20	SE1/4 SE1/4	S19-T1N-R9E	14
	NE1/4 NE1/4	S30-T1N-R9E	12
21	NW1/4 SW1/4	S20-T1N-R9E	25
	SW1/4 SW1/4	S20-T1N-R9E	34
	NE1/4 SW1/4	S20-T1N-R9E	7
	SE1/4 SW1/4	S20-T1N-R9E	39
	NW1/4 NW1/4	S29-T1N-R9E	2
	NE1/4 NW1/4	S29-T1N-R9E	18
22	SW1/4 SE1/4	S20-T1N-R9E	18
	NW1/4 NE1/4	S29-T1N-R9E	20
		Total	189

A review was made of the Vested Water Right Claim No. 1727-2 file and the Pennington County NOTICE OF INTENT TO VALIDATE VESTED WATER RIGHT CLAIMS file. It was found that there is a discrepancy in the priority dates listed on the Affidavit of Construction of Water Use System and Application of Water to Beneficial Use filed by Rapid Valley Water Company, Inc., Water License No. 1727-2, and the Notice. The water license and the notice list the priority dates as being January 1, 1878 and January 1, 1893, while the affidavit claimed priority dates of April 6, 1878 and April 26, 1893. Because this was not found within the ninety day period specified by SDCL 46-2A-16, the Chief Engineer could not file a petition of intent to oppose the validation of a recognized water right claim. After the Water Management Board validates the vested water right claim, the water license will be reissued by the Chief Engineer with the correct priority dates and the correct lands.

Conclusions

1. An inspection of Vested Water Right Claim No. 1727-2 found

that lands were listed that are not being irrigated.

2. The inspection determined that there are 1103 acres irrigated under the 1878 priority date at a diversion rate of 17 cfs and 189 acres irrigated under the 1893 priority date at a diversion rate of 3 cfs.

3. A review of the Division of Water Rights files found a discrepancy in the priority dates.

4. The water license should be reissued by the Chief Engineer with the correct priority dates and for the correct lands.

Mark D. Rath
Natural Resources Engineer II

Approved by,

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

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1727-2 FOR IRRIGATION

(1) Rapid Valley Water Company, Inc., of RR #2 Box 223, Rapid City, SD 57701 made Application No. 1727-2, January 7, 1980 for validation of a vested right claim to appropriate 20.0 cubic feet of water per second (cfs) from Rapid Creek, Pennington County, South Dakota for irrigation purposes.

Vested Water Right No. 1727-2 was validated December 5, 1990 with priority dates of **January 1, 1878 (for 17.0 cfs) and January 1, 1893 (for 3.0 cfs). Construction of the described water supply system and the application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

> **Vested Water Right No. 1727-2 was validated with priority dates of January 1, 1878 and January 1, 1893, however the affidavit of water use submitted with the vested right claim shows the actual priority dates to be April 6, 1878 and April 26, 1893. This vested right water license will reflect the priority dates specified on the affidavit.

(2) The applicant is entitled to divert 20.0 cubic feet of water per second for beneficial use. The location of the diversion point is in the SW 1/4 Section 8, T1N, R8E.

The location of the irrigated acreage is:

1878 PRIORITY DATE

Land Parcel Number	Legal Description		Acreage
1	NE1/4 SW1/4	S9-T1N-R8E	20
	SE1/4 SW1/4	S9-T1N-R8E	25
2	NW1/4 SE1/4	S9-T1N-R8E	29
	SW1/4 SE1/4	S9-T1N-R8E	35

3	SW1/4 SW1/4	S10-T1N-R8E	25
	NW1/4 NW1/4	S15-T1N-R8E	31
	SW1/4 NW1/4	S15-T1N-R8E	38
	NW1/4 SW1/4	S15-T1N-R8E	30
	SE1/4 NW1/4	S15-T1N-R8E	32
	NE1/4 SW1/4	S15-T1N-R8E	31
	SW1/4 NE1/4	S15-T1N-R8E	38
	NW1/4 SE1/4	S15-T1N-R8E	29
	SE1/4 NE1/4	S15-T1N-R8E	25
	NE1/4 SE1/4	S15-T1N-R8E	38
	SW1/4 SW1/4	S15-T1N-R8E	1
	SE1/4 SW1/4	S15-T1N-R8E	11
	SW1/4 SE1/4	S15-T1N-R8E	24
	SE1/4 SE1/4	S15-T1N-R8E	15
5	SW1/4 NW1/4	S14-T1N-R8E	5
6	SW1/4 NW1/4	S14-T1N-R8E	32
7	SE1/4 NW1/4	S14-T1N-R8E	6
	NE1/4 SW1/4	S14-T1N-R8E	4
8	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
9	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
10	NW1/4 SE1/4	S14-T1N-R8E	28
	SW1/4 SE1/4	S14-T1N-R8E	31
	SE1/4 SE1/4	S14-T1N-R8E	32
	NE1/4 SE1/4	S14-T1N-R8E	3
	SW1/4 SW1/4	S13-T1N-R8E	27
11	SE1/4 SW1/4	S13-T1N-R8E	2
12	SW1/4 SE1/4	S13-T1N-R8E	5
13	104 OF THE TOTAL 142 ACRES		
	NE1/4 NW1/4	S24-T1N-R8E - 36	
	SE1/4 NW1/4	S24-T1N-R8E - 40	
	NW1/4 NE1/4	S24-T1N-R8E - 32	
	SW1/4 NE1/4	S24-T1N-R8E - 34	104
14	NW1/4 NE1/4	S24-T1N-R8E	1

15	28 ACRES OF THE TOTAL 56 ACRES		
	NE1/4 NE1/4	S24-T1N-R8E - 31	
	SE1/4 NE1/4	S24-T1N-R8E - 25	
			28
16	NW1/4 NW1/4	S19-T1N-R9E	10
	SW1/4 NW1/4	S19-T1N-R9E	39
17	NE1/4 NW1/4	S19-T1N-R9E	2
	SE1/4 NW1/4	S19-T1N-R9E	32
	NE1/4 SW1/4	S19-T1N-R9E	10
	SW1/4 NE1/4	S19-T1N-R9E	25
	NW1/4 SE1/4	S19-T1N-R9E	24
	SW1/4 SE1/4	S19-T1N-R9E	2
	SE1/4 NE1/4	S19-T1N-R9E	11
	NE1/4 SE1/4	S19-T1N-R9E	39
18	NE1/4 SW1/4	S19-T1N-R9E	12
	SE1/4 SW1/4	S19-T1N-R9E	39
	NE1/4 NW1/4	S30-T1N-R9E	12
19	SW1/4 SE1/4	S19-T1N-R9E	31
	NW1/4 NE1/4	S30-T1N-R9E	20
		Total	1103

1893 PRIORITY DATE

20	SE1/4 SE1/4	S19-T1N-R9E	14
	NE1/4 NE1/4	S30-T1N-R9E	12
21	NW1/4 SW1/4	S20-T1N-R9E	25
	SW1/4 SW1/4	S20-T1N-R9E	34
	NE1/4 SW1/4	S20-T1N-R9E	7
	SE1/4 SW1/4	S20-T1N-R9E	39
	NW1/4 NW1/4	S29-T1N-R9E	2
	NE1/4 NW1/4	S29-T1N-R9E	18
22	SW1/4 SE1/4	S20-T1N-R9E	18
	NW1/4 NE1/4	S29-T1N-R9E	20
		Total	189

(3) Pursuant to Section 46-5-30.1, Rapid Valley Water Company, Inc of RR #2 Box 223, Rapid City, SD 57701 the holder and/or owner of Vested Water Right No. 1727-2 is issued a license to appropriate 20.0 cubic feet of water per second from Rapid Creek with priority dates of April 6, 1878 (for 17.0 cfs) and April 26, 1893 (for 3.0 cfs) from locations specified in (2) of this license. The water is to be used for irrigation purposes. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 1727-2 and subject to South Dakota Water Law.

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

FEB 2 0 1991
DATE

GREAT FACES. GREAT PLACES.

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

November 6, 1991

David Lamb, President
Rapid Valley Water Company, Inc.
Rt 2 Box 160
Rapid City, SD 57701

Dear Mr. Lamb:

This letter is in regard to the diversion rate for Rapid Valley Water Company's Vested Water Right No. 1727-2. The vested water right claim was filed and validated for 20 cfs, with 17 cfs having the priority date of April 6, 1878, and 3 cfs having a priority date of April 26, 1893. We are concerned with the diversion rate associated with the separate parcels of irrigated land. The information that we have concerning the separate rates is as follows:

Appropriation Owner's Name	1878 Priority (miner's inch)	1893 Priority (miner's inch)
Joseph M. Lytle	41	
C.E. Morris	105	
David S. Lamb	230	
Marty Rypkema	36	
Jerry L. Olson	9	
Rapid Valley Fire Dept.	8	
Arlene J. Murphy	38	
James K. Long	10	
Cora Buckholtz	9	
Kenneth Buckholtz	6	
Higgins Ranch	120	
Wayne R. Anderson	12	
Dale A. Wileman	7	
Rick L. Whiting	1	
Wes Wileman	33	
Bruce Weber	46	
H. Lee Ahrlin	47	
Dorothy J Tyler *	36	
Merrill P. Carley	50	
Roseanne Heavlin		25
Merlin Stromer		114
James A. Bloom		41

* transferred under Water Permit No. 2142-2

The total number of miner's inches listed is 1024, with 844 miner's inches being under the 1878 priority, and 180 miner's inches under the 1893 priority.

We want to know if this list is correct, and if it is, how these rates relate to the 20 cfs that was approved under Vested Water Right No. 1727-2. Please respond as soon as possible.

Sincerely,

Mark D. Rath
Natural Resources Engineer II
Divsion of Water Rights
(605) 773-3352

cc: Michael M. Hickey
Leslie J. England

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

August 11, 2000

Steve Murphy
5666 E Hwy 44
Rapid City, SD 57703

Dear Mr. Murphy:

I am responding to your telephone call concerning an additional diversion point for the Rapid Valley Water Company water right No. 1727-2. State water law SDCL 46-5-13.1 allows the Chief Engineer to grant an additional diversion point administratively if he determines that the potential for interference with other existing diversions is not increased, it is from the same source of water as the original, and no new land is being irrigated. If the Chief Engineer determines the conditions cannot be met, then a water permit would need to be applied for.

I am suggesting that ditch company submit an application for the additional diversion point. I am enclosing water permit application forms. Please fill these out completely, describing the proposed diversion point, the amount of water to be diverted at this point, and the specific acres that will be irrigated from this diversion point. Submit the signed and notarized application along with a signed map. At this time do not submit an application fee. We will use the information you provide in determining if the proposed diversion point can be added administratively, or whether a water permit is required to amend the existing water right. If the Chief Engineer determines a new permit is needed we will then contact you for the application fee.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineer
Water Rights Program
enclosures:

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

November 29, 2000

David S. Lamb
4555 East 53rd Street
Rapid City, SD 57703-8408

Dear David:

This letter is in regards to your Email request for information on irrigation from Murphy Ditch. Attached are a map showing the parcels of land irrigated from Murphy Ditch, a copy of Vested Right Water License No. 1727-2, a copy of the inspection report, and a summary of changes. The numbered land parcels on the map correspond to the Land Parcel Number listed in License No. 1727-2.

There are several withdrawals for irrigated lands from Murphy Ditch not included in License No. 1727-2; Rypkema (#1784-2) for 0.20 cfs, Lamb (#1461-2) for 1.25 cfs, Olsen (#1788-2) for 0.5 cfs, and Sedivy (#1684-2) for 0.21 cfs. Licenses 653-2 and 2383-2 authorize the delivery of 200 miner inches (4 cfs) of water through Murphy Ditch to Little Giant Ditch.

If you wish to obtain a listing of current landowners irrigating from Murphy Ditch, you will need to contact the Pennington County Director of Equalization. That office can supply you with the landowners using the legal descriptions for the land parcels listed in the copy of License No. 1727-2 or from the map. Some lands are covered by more than one license and it is sometimes difficult to separate the actual acreage irrigated under a specific license.

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

Sincerely,

Donald E. Stroup

Donald E. Stroup
DENR Natural Resources Engineer

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

September 12, 2000

Ray Elliott
2655 South Valley Drive
Rapid City, SD 57703

Dear Ray:

This letter is in regards to your Email request for information on irrigation from Murphy Ditch. Attached are a map showing the parcels of land irrigated from Murphy Ditch and a copy of Vested Right Water License No. 1727-2. The numbered land parcels on the map correspond to the Land Parcel Number listed in License No. 1727-2.

There are several withdrawals for irrigated lands from Murphy Ditch not included in License No. 1727-2; Rypkema (#1784-2) for 0.20 cfs, Lamb (#1461-2) for 1.25 cfs, Olsen (#1788-2) for 0.5 cfs, and Sedivy (#1684-2) for 0.21 cfs. Licenses 653-2 and 2383-2 authorize the delivery of 200 miner inches (4 cfs) of water through Murphy Ditch to Little Giant Ditch.

If you wish to obtain a listing of current landowners irrigating from Murphy Ditch, you will need to contact the Pennington County Director of Equalization. That office can supply you with the landowners using the legal descriptions for the land parcels listed in the copy of License No. 1727-2 or from the map. Some lands are covered by more than one license and it is sometimes difficult to separate the actual acreage irrigated under a specific license.

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

Sincerely,

Donald E. Stroup
DENR Natural Resources Engineer

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

September 15, 2000

Ray Elliott
2655 South Valley Drive
Rapid City, SD 57703

Dear Mr. Elliott:

This letter is in regards to your phone request for additional information on Murphy Ditch. Specifically you inquired about whether the land you own in Section 8 T1N-R8E is included in the Murphy Ditch water right. Enclosed are copies of the original application and several other documents showing land parcels irrigated from Murphy Ditch.

A Hydrographic Survey of Rapid Creek conducted in 1908 by F.C. Huffman, Assistant State Engineer, shows irrigated land in Section 8 T1N-R8E under the name of Pederson. This is the only document showing irrigation of land in Section 8 T1N-R8E found during review of water right records.

Even though lands may have been irrigated in the past, the right to irrigation may have been lost under South Dakota Codified Law (SDCL) due to abandonment or forfeiture. SDCL 46-5-37 states that "When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated water".

If you are in possession of land that has been historically irrigated, you will need to submit a vested water right claim for that irrigation. As part of the vested right claim you will be responsible for documenting continuous beneficial use of the irrigated land and that the right to this use has not been forfeited under SDCL 46-5-37. The burden to provide such proof lies with the individual submitting a vested right claim. The Rapid Valley Water Co. may be able to assist you in documenting past irrigation.

A partially completed Form 2 and instruction sheet are also enclosed. The application needs to be signed before a notary public and submitted along with a filing fee of $15. Once a completed application is received it will be reviewed and public noticed for a hearing before the Water Management Board.

I hope the enclosed documents help in your inquiry. If you should have any questions, please contact Ron Duvall or myself at 605-773-3352.

Sincerely,
Donald E. Stroup
DENR Natural Resources Engineer

COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP

ATTORNEYS AT LAW

DENNIS H. HILL
KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
THOMAS H. BARNES
DONALD A. PORTER
GREGORY G. STROMMEN
PATRICIA A. MEYERS
WILLIAM A. MAY

200 SECURITY BUILDING■704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

605-343-2410
TELECOPIER NO. 605-343-4262
E-MAIL: lawfirm@costelloporter.com

JOSEPH R. LUX
HEATHER M. LAMMERS
MELVIN D. WEDMORE
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JESS M. PEKARSKI

RETIRED
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Ed Carpenter
Direct Line: (605) 718-8116
Email: ecarpenter@costelloporter.com

Judy Bieri, Paralegal
Direct Line: (605) 718-8134
Email: jb@costelloporter.com

June 10, 2003

Water Rights Program
ATTN: Mark Rath
523 E. Capitol
Pierre, SD 57501

Re: Rapid Valley Water Company, Inc. and Merlin Stromer and Don Jundt
Our File No. 22453

Dear Mark:

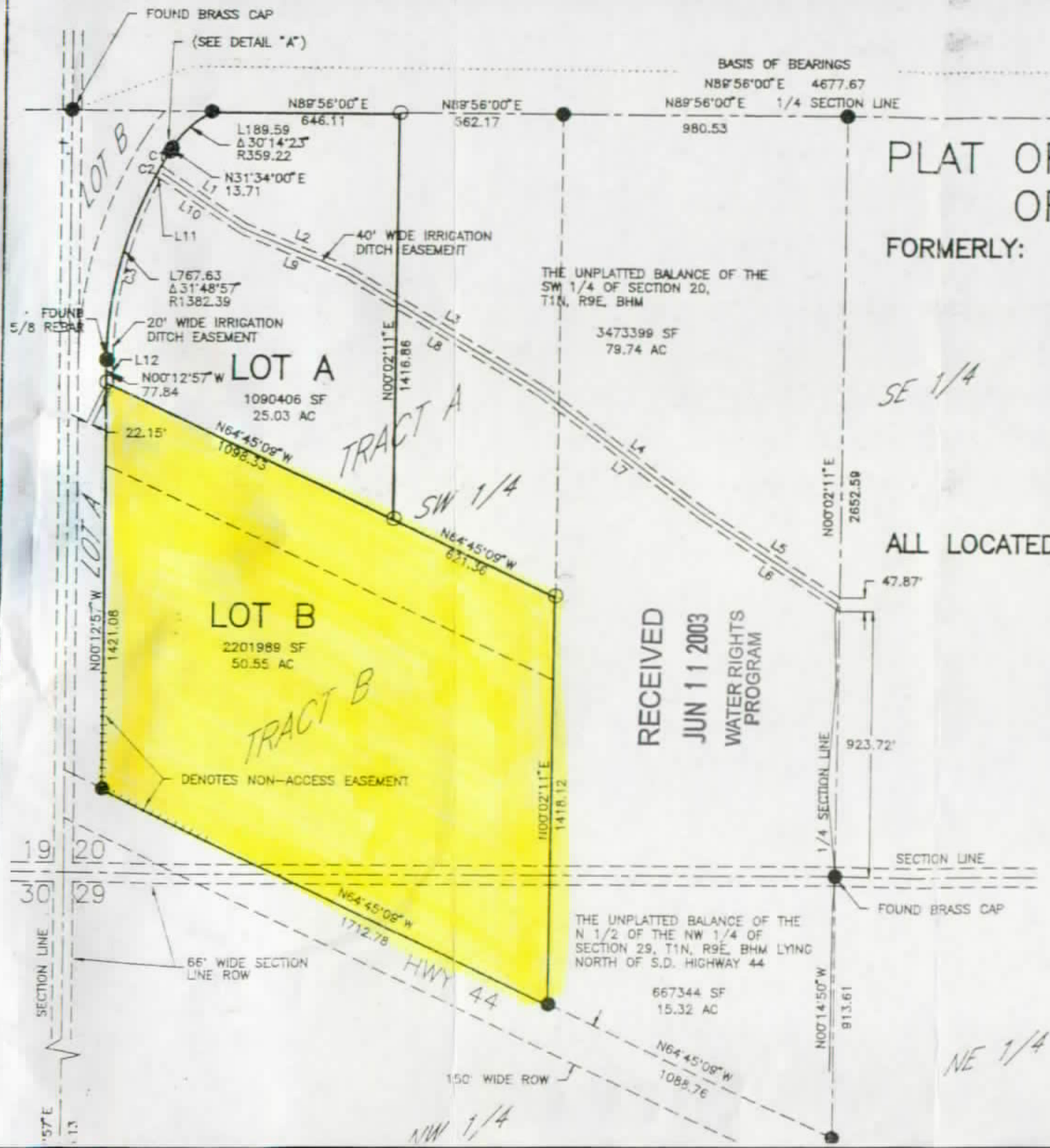
Per our telephone conference of this date, I am enclosing a partial copy of a plat containing the legal description of Merlin Stromer's property. The property in question is identified as Lot B and is highlighted for your convenience. Lot B consists of 50.55 acres, the entirety of which is irrigated. It is my understanding that you will review your records and let me know the amount of water right applicable to said 50.55 acres. If you have any questions, please be sure to call and I will do my best to answer them. Thank you.

Sincerely,

Edward C. Carpenter

ECC:jb
Enclosure

RECEIVED
JUN 11 2003
WATER RIGHTS
PROGRAM



RECEIVED
JUN 11 2003
WATER RIGHTS PROGRAM

NOTICE
MAY BE
MILT STR
BOX 101
FAIRBURN

PLAT OF LOT A AND LOT B OF BAR P–S SUBDIVISION

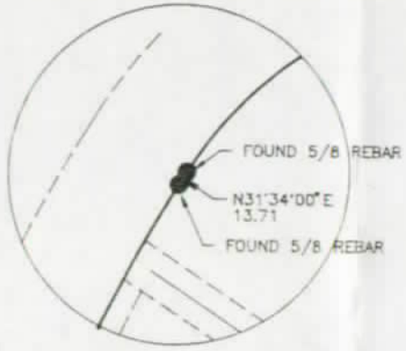
FORMERLY: TRACT A AND TRACT B OF BAR P–S SUBDIVISION AND THE UNPLATTED PORTION OF THE SW 1/4 OF SECTION 20 (LESS RIGHT OF WAY OF RECORD AND LESS THAT PORTION THEREOF KNOWN AS LOTS A AND B, OTHERWISE KNOWN AS THE MUNICIPAL AIRPORT ACCESS ROAD) AND THAT PORTION OF THE N 1/2 OF THE NW 1/4 OF SECTION 29 LYING NORTH OF SOUTH DAKOTA HIGHWAY NO. 44 ALL IN T1N, R9E, BHM

ALL LOCATED IN: SW 1/4 SECTION 20 AND THE N 1/2 OF THE NW 1/4 OF SECTION 29 ALL IN T1N, R9E, BHM

RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

SCALE 1"

JUNE 15



DETAIL "A"

LEGEND:

- ● – Found survey monument as
- O – Set 5/8 rebar with survey "Davis 3095"
- o – Set 5/8 rebar with no cap
- (R) – Recorded in previous surv
- (M) – Measured this survey

BASIS OF BEARINGS: As shown he

CERTIFICATE OF SURVEYOR
State of South Dakota
County of Pennington

I, Ronald D. Davis, Registered Land Surveyor

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 20, 2003

Edward C. Carpenter
Attorney at Law
PO Box 290
Rapid City, SD 57709

Dear Mr. Carpenter:

This letter is in regards to your request for water right information concerning the Rapid Valley Ditch Company. I am enclosing a map showing the 50.55 acres (red) that are being proposed to have the irrigation transferred from and the total 189 acres (blue cross hatch) of Rapid Valley Water Company irrigated with 1893 priority date water.

As shown on the map, it appears the full 50.55 acres fall within the acres validated by the Water Management Board in 1990. I am also enclosing a copy of the vested water right that lists this property. The 1893 portion of the water right was validated for 3.0 cubic feet per second of water (cfs). The amount of water available to this property, based upon pro-rata share of the 3.0 cfs, would be 0.80 cfs. Although I would advise you to check to see if the common practice for splitting water on this portion of the ditch was based upon the number of shares in the ditch company, which may change the amount available.

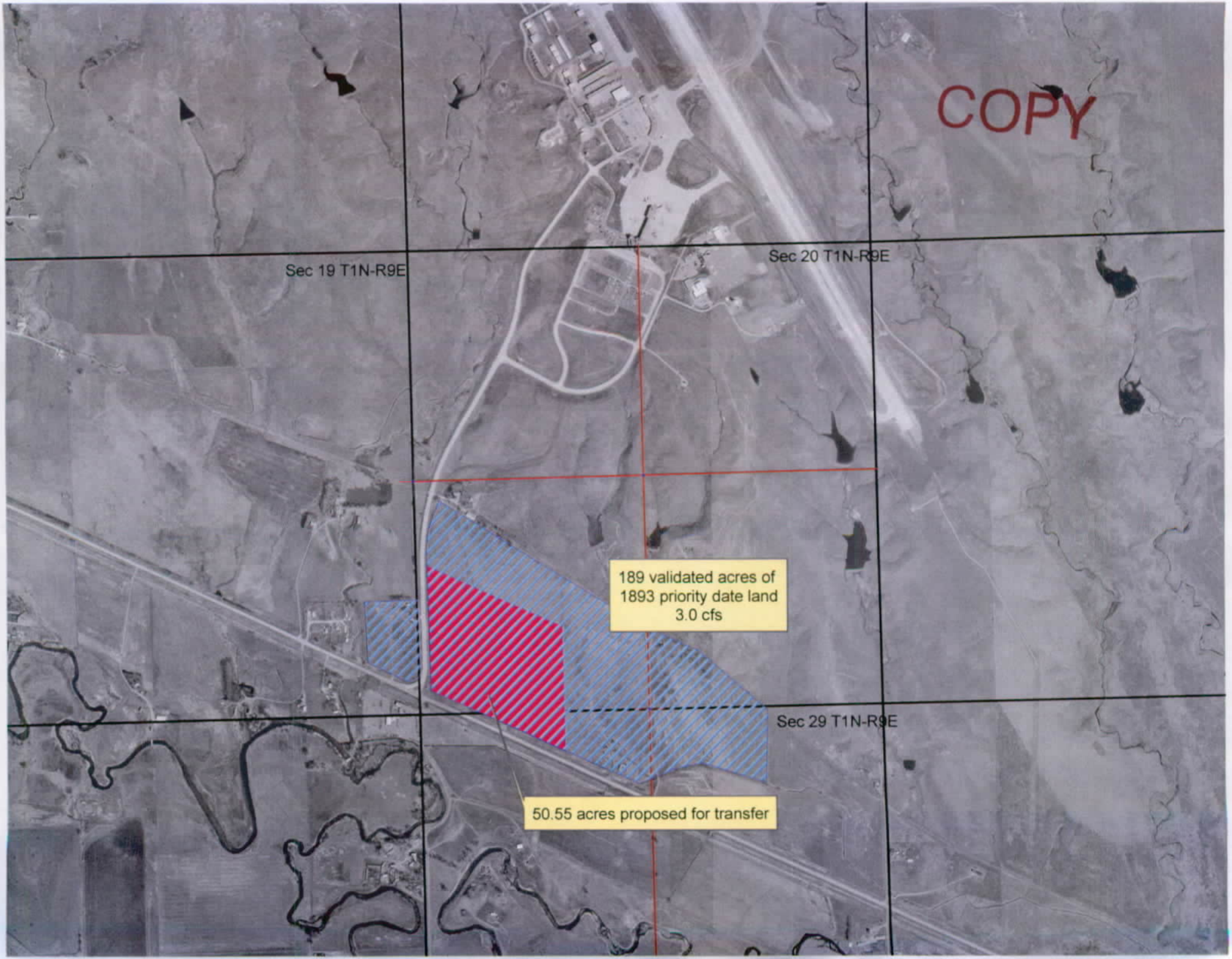
One other thing to be aware of is when the city of Rapid City transferred water rights off of the Rapid Valley water company ditch they were required to leave the carriage loss with the ditch company water right. Our records indicate this amount was 11%. You should contact the ditch company to determine whether they want the ditch loss to remain or are willing to waive that requirement.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program

enclosures


COPY
Sec 19 T1N-R9E
Sec 20 T1N-R9E
189 validated acres of
1893 priority date land
3.0 cfs
Sec 29 T1N-R9E
50.55 acres proposed for transfer

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 23, 2003

David Lamb
4555 Reservoir Road
Rapid City, SD 57703

Dear Mr. Lamb:

This letter is in regards to your telephone request for information concerning a possible transfer of irrigated land from the Rapid Valley Water Company to the South Side Ditch. During our conversation you expressed some concerns about the issues that need to be addressed prior to a transfer occurring.

From the information I have been given concerning this proposed transfer it would involve transferring irrigation from 50.55 acres of Rapid Valley Water Company land irrigated with 1893 priority date water. In 1990, the Water Management Board validated a total of 189 acres associated with this priority date. It appears the full 50.55 acres fall within the acres validated by the Water Management Board. The amount of water available to this property, based upon pro-rata share of the 3.0 cfs, would be 0.80 cfs. Although you indicated the amount of irrigated water, on this portion of the irrigation ditch, may be allocated based upon the number of shares in the ditch company. This may change the amount of water available to be transferred.

One other thing to be aware of is when the city of Rapid City transferred water rights off of the Rapid Valley water company ditch they were required to leave the carriage loss with the ditch company water right. Our records indicate this amount was 11%. The Rapid Valley Water Company should consider whether the carriage loss needs to remain or if this requirement can be waived.

I have told the potential applicants I want a letter from the ditch company, included with the application, addressing the ditch company's position on these issues.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

April 1, 2005

1727-2

Steve Murphy
RR 5 Box 125
Rapid City, SD 57701

Dear Mr. Murphy:

This letter is in response to your April11, 2005 request for a variance to divert Rapid Creek water into the Murphy Ditch earlier than the April 15 listed on the vested water right. After checking the current natural flows in Rapid Creek, I have determined a variance may be granted allowing the Rapid Valley Ditch Company to start diverting from the creek into the irrigation ditch at this time.

This variance is for natural flows only and granting of this variance is not intended to require the US Bureau of Reclamation to increase releases from the reservoirs. If natural flows in Rapid Creek decrease due to climatic conditions and impact to domestic use, this variance may need to be rescinded at that time.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

For Garland Erbele, Chief Engineer
Water Rights Program

cc: Curt Anderson, USBOR
Kevin Ham, Rapid Valley Water Master

1727-2

THE RAPID VALLEY WATER CO.REQUEST A VARIANCE FROM RAPID CREEK TO MURPHY DITCH HEAD GATE FROM 4/8/05 TO 4/15/05

REPERSENTIVE OF RAPID VALLEY WATER CO.
STEVEN MURPHY

Steven Murphy

1727-2

ESTABLISHED
PENNINGTON TITLE
1954
The Service You Are Entitled To

November 02, 2006

RECEIVED
NOV - 6 2006
WATER RIGHTS
PROGRAM

PMB 2020
SD DENR
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

RE: Water Rights Program
Pennington County
Our file # P-118202

Gentlemen:

Enclosed please find a certified copy of the Bill of Sale, Assignment, and Transfer to Rapid Valley Sanitary District, with a date and time receipt from the Pennington County Register of Deeds. We have also enclosed a check in the amount of $2.50 for the filing fee.

Thank you for the opportunity to be of service. Should you need anything further for your file, please contact our office.

Sincerely,

PENNINGTON TITLE COMPANY

Gretchen Jackson

Gretchen Jackson
Executive Assistant
to the Vice President & Escrow Officer

Enclosures

725 Kansas City Street • Rapid City, SD • 57701
Phone (605) 343-5670 • Fax (605) 343-3862

Certified to be a true &
correct copy of the original
which has been transmitted
for recordation
PENNINGTON TITLE COMPANY

NOV 2 AM 8:45

Document prepared by:
Chuck L. Riter, Esq.
Bangs, McCullen, Butler, Foye & Simmons, L.L.P.
333 West Boulevard Suite 400; P.O. Box 2670
Rapid City, SD 57709
(605) 343-1040

BILL OF SALE, ASSIGNMENT, AND TRANSFER

David S. Lamb, for One Dollar ($1.00) and other good and valuable consideration, sells, transfers, assigns, sets over, and conveys to Rapid Valley Sanitary District, a governmental subdivision of the state of South Dakota, and public body, corporate and politic, in accordance with SDCL §34A-5-514, 4611 Teak Drive, attention Mr. Jim Jester, Rapid City, South Dakota, 57703, all of his right, title, and interest in and to David E. Lamb's 33.4% interest in Water Rights 1727-2 (1878 Priority), currently also referenced as Water Right No. 02586-2, issued by the state of South Dakota appurtenant to the real property described on Exhibit A attached hereto and incorporated herein by this reference (the "Water Rights").

The Seller warrants and represents that the Water Rights described herein are:

(1) In good standing with the state of South Dakota and have not been forfeited or abandoned and are not subject to any judgment, suit, lien, receivership or any other encumbrance whatsoever;

(2) Free and clear of all liens, security interests, mortgages, pledges, encumbrances, ditch fees, taxes and assessments, and charges or claims of any nature whatsoever;

(3) According to the official records of the state of South Dakota, he owns all rights, title, and interest in and to the Water Rights;

(4) He is the sole owner of ninety (90) shares of common stock in Rapid Valley Water Company, Inc., which represents the entirety of his interest; and stock in the corporation.

(5) He has no knowledge of any outstanding judgments against him that would in any manner affect the consummation of this transaction or constitute any cloud upon the title to the Water Rights; and

(6) He has no knowledge of any pending litigation, proceedings, or investigations, or any threats of litigation, proceedings or investigations, or any threats of litigation, proceedings or investigations, which might result in any cloud upon the title to the Water Rights.

This Bill of Sale, Assignment, and Transfer may be recorded with the Pennington County Register of Deeds, Rapid City, South Dakota, but only as a miscellaneous document. This document does not sell, convey, alter or affect any of the Seller's right, title, and interest in and to the real property described or Exhibit A attached hereto and incorporated herein by this reference.

Dated this 1ST day of November, 2006.

David S. Lamb

Subscribed and sworn to before me this 1ST day of November, 2006.

(SEAL)

Notary Public, South Dakota
My Commission Expires: 1-4-2010

Exhibit A

REAL PROPERTY

David S. Lamb:

SW1/4 SW1/4	S10-TIN-R8E	25
NW1/4 NW1/4	S15-TIN-R8E	31
SW1/4 NW1/4	S15-TIN-R8E	38
NW1/4 SW1/4	S15-TIN-R8E	30
SE1/4 NW1/4	S15-TIN-R8E	32
NE1/4 SW1/4	S15-TIN-R8E	31
SW1/4 NE1/4	S15-TIN-R8E	38
NW1/4 SE1/4	S15-TIN-R8E	29
SE1/4 NE1/4	S15-TIN-R8E	25
NE1/4 SE1/4	S15-TIN-R8E	38
SW1/4 SW1/4	S15-TIN-R8E	1
SE1/4 SW1/4	S15-TIN-R8E	11
SW1/4 SE1/4	S15-TIN-R8E	24
SE1/4 SE1/4	S15-TIN-R8E	15

David S. Lamb Total 368 acres

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 8, 2006

1727-2
2586-2

Gretchen Jackson
Pennington Title Company
725 Kansas City St
Rapid City SD 57701

Dear Ms. Jackson:

We have received the Bill of Sale, Assignment and Transfer document you forwarded to us prepared by Bangs, McCullen, Butler, Foye & Simmons LLP.

Vested Water Right No. 1727-2 and Water Permit No. 2586-2 were applied for and issued under the name of Rapid Valley Sanitary District. David Lamb's stock interest in the District may have been conveyed to Rapid Valley Sanitary District; however since Nos. 1727-2 and 2586-2 are already listed in the district's name, the ownership change will not be necessary.

We will place a copy of the document you forwarded in each of the files but a filing fee will not be required. Enclosed is the title company's check in the amount of $2.50.

If you have any questions, please contact Mark Rath with our program at 605 773-3352.

Sincerely,

Genny McMath

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

c: Chuck Riter, w/Bangs McCullen, Butler, Foye & Simmons LLP

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

March 21, 2007

1727-2

Steve Murphy
Rapid Valley Water Company
5666 E Hwy 44
Rapid City, SD 57703

Dear Mr. Murphy:

I am writing this letter is in reference to your March 20, 2007 telephone request allowing diversion into Murphy Ditch prior to the irrigation season. Flow today in Rapid Creek at the USGS gaging station at Rapid City is 23 cfs.

The Water Rights Program will grant your request to immediately begin diverting into Murphy ditch under the Rapid Valley Water Company's Water Right No. 1727-2.

If you have any questions, please contact me at the Water Rights Program at phone (605) 773-3352.

Sincerely,

Mark D Rath,
Natural Resources Engineering Specialist

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

March 28, 2010

No. 1727-2

Steve Murphy
Rapid Valley Water Company
5666 E Hwy 44
Rapid City SD 57703

Dear Mr. Murphy:

This letter is in regards to your March 28, 2010 request for a variance allowing you to divert from Rapid Creek at the Rapid Valley Water Company headgate covered by Water Permit No. 1727-2 prior to April 15 as listed in the permit.

Effective immediately your request is granted allowing you to divert Rapid Creek water for irrigation as requested. This variance is only in effect for the current calendar year.

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

Sincerely,

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

Nos. 1727-2 and 2487-2

March 16, 2012

David Snyder
2100 Sedivy Lane
Rapid City SD 57703

Steve Murphy
Rapid Valley Water Company
5666 E Hwy 44
Rapid City SD 57703

Dear Mr. Snyder and Mr. Murphy:

This letter is in regards to Mr. Snyder's telephone request on March 16, 2012 for a variance allowing diversion from Rapid Creek to irrigate land covered by Vested Right No. 1727-2 and Water Right No. 2487-2 prior to April 15th as listed on the water rights.

Effectively immediately this request is granted allowing you to divert Rapid Creek water for irrigation as requested. This variance is only in effect for the current calendar year.

If you have any questions, please contact Mark Rath or me at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

April 9, 2012

No. 1727-2

Steve Murphy
5666 E Hwy 44
Rapid City SD 57703

Dear Mr. Murphy:

This letter is in regards to your April 6, 2012 request for a variance allowing Rapid Valley Water Company to divert from Rapid Creek for irrigation covered by Water Permit No. 1727-2 prior to April 15 as listed on the water right.

Effective immediately your request is granted allowing you to divert Rapid Creek water for irrigation as authorized by Permit No. 1727-2. This variance is only in effect for the current calendar year.

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

Sincerely,

Mark D. Rath
Natural Resources Engineer III
Water Rights Program

1727-2

RECEIVED
MAY 17 2012
WATER RIGHTS
PROGRAM

RAPID VALLEY WATER CO.
(MURPHY DITCH)
5/15/2012

NOTICE:

The members of the Rapid Valley Water Co. have elected a new Board of Directors and Water Master at the recent Annual Meeting. The new Directors are:

- Dr. Lee Ahrlen
- James Williams
- Steven Buckholz (V. President)
- Milt Stromer (Sec/Treas)
- Jeep (Jim) Williams (President)

The new Water Master is Jeep Williams. Please keep in communication with Jeep for any issues involving Flow of Water, Maintenance, or Construction with the Murphy Ditch.

Jeep Williams (President/Water Master)
8005 Morris Lane
Rapid City, SD 57703
605-431-1180 cell
605-393-2297 home

Rapid Valley Water Co. has a new mailing address.

Rapid Valley Water Co.
c/o Milt Stromer (Secretary/Treasurer)
14930 Aviation Road
Rapid City, SD 57703
605-430-1271 cell

Please revise your records to include the above information. We are looking forward to working with you through the 2012 irrigating season and into the future.

Milt Stromer

1727-2

RECEIVED

SEP 29 2022

OFFICE OF WATER

COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP

ATTORNEYS AT LAW

KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
DONALD A. PORTER
JOSEPH R. LUX
HEATHER LAMMERS BOGARD†
JESS M. PEKARSKI

†Also available at Spearfish office
115 N. 7th Street, Suite 3
Spearfish, SD 57783
+ Also admitted in North Dakota
* Also admitted in Wyoming
^Also admitted in Nebraska

200 SECURITY BUILDING
704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

Telephone: (605) 343-2410
Fax: (605) 343-4262

PHILLIP R. STILES
JONATHAN P. McCOY*
MICHAEL F. STEVE^
KRISTEN E. BASHAM
REECE R. WEBER
GARRETT J. KEEGAN

± Registered Patent Attorney

J.M. COSTELLO
1923-2007

WILLIAM G. PORTER
1926-2004

September 27, 2022

Department of Agriculture & Natural Resources
State of South Dakota
Attn: Mark Rath
523 E Capitol Ave
Pierre, SD 57501-2291

Re: Rapid Valley Water Company, Inc
Our File No. 202130

Dear Department of Agriculture & Natural Resources:

Enclosed please find a letter sent to Pink Cabin, LLC and Murphy Ranch, LLC regarding Rapid Valley Water Company, Inc. and the easements needed to access the ditch necessary for irrigation water and the drainage of the lots. Please contact us after review to discuss the water rights in this case.

Thank you for your time and attention to this matter and please contact our office with any questions or concerns.

Respectfully,

DICTATED

Jess M. Pekarski

JMP/hew
Enclosures
cc: client

COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP

ATTORNEYS AT LAW

KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
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JOSEPH R. LUX
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†Also available at Spearfish office
115 N. 7th Street, Suite 3
Spearfish, SD 57783
+ Also admitted in North Dakota
* Also admitted in Wyoming
^Also admitted in Nebraska

200 SECURITY BUILDING
704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

Telephone: (605) 343-2410
Fax: (605) 343-4262

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MICHAEL F. STEVE^+
REECE R. WEBER
GARRETT J. KEEGAN

J.M. COSTELLO
1923-2007

WILLIAM G. PORTER
1926-2004

September 26, 2022

Pink Cabin, LLC
PO Box 7591
Rapid City, SD 57709

Murphy Ranch, LLC
PO Box 7591
Rapid City, SD 57709

Re: Rapid Valley Water Company, Inc.
Our File No. 202130

Attention Landowners:

I represent Rapid Valley Water Company, Inc. As you are well aware, its ditch passes through the properties you are developing. In this regard, we want to make clear (1) that the ditch varies in size and requirements as it passes through each respective property. It appears from some plats that you are identifying the size of the ditch; however, it has always been used historically as required to move water through the property with accompanying right for ingress and egress as required to move trees, clean the ditch, and repair the ditch. My client has searched and is unaware of any document setting the size of the easement through this property other than two plats which do not reference a legal document signed by Rapid Valley Water Company, Inc.

In this regard, the parties need to discuss some issues as your development appears may encroach on the existing rights and easement. It appears houses will be built all the way along the easement not allowing the access that Rapid Valley Water Company, Inc. has historically used to do all things necessary to upkeep and use its ditch including, but not limited to, removing sediment, trees, and general upkeep of the ditch. My client wants a mutually beneficial solution, but needs its historical access to that ditch for maintenance, upkeep and safety.

The drainage of the lots needs to be discussed and clarified. Please be aware that this is a

ditch for irrigation water and not a sanitary or stormwater sewer system or other drainage ditch. In this regard, any damage caused by sediment, trash or other items will be pursued against the property owners. It is important that we work together to ensure both the ditch is available for irrigation and the owners of your development understand that this ditch has been there prior to statehood and will continue for irrigation purposes and not as a drainage ditch.

I look forward to meeting with you and working out these issues so the parties can move forward together protecting both the irrigation use and the future development. We will need a response on or before October 10, 2022 or my client will be proceed with all legal rights and remedies.

Sincerely,

DICTATED

Jess M. Pekarski

JMP/rjw
cc/client

1727-2

Dewell, Amanda

From: Steen, Nakaila
Sent: Monday, August 12, 2024 11:55 AM
To: Gronlund, Eric; Dewell, Amanda
Subject: RE: VWR 1727-2

After adding more decimals to my table , I get same #s as eric in below email for 2671-2 and 2672-2

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Monday, August 12, 2024 10:47 AM
To: Steen, Nakaila <Nakaila.Steen@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Subject: RE: VWR 1727-2

Once Nakaila confirms my minor correction, this can be scanned and replace the tracking sheet at the beginning of the administrative record for 1727-2.

From: Gronlund, Eric
Sent: Monday, August 12, 2024 11:46 AM
To: Steen, Nakaila <Nakaila.Steen@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Subject: RE: VWR 1727-2

Thank you

Change has been made

My only question is the acres remaining on your table for 2671-2 and 2672-2 seems to have a slight error as I arrive at
234.4 for 2671-2
198.4 for 2672-2

From: Steen, Nakaila <Nakaila.Steen@state.sd.us>
Sent: Monday, August 12, 2024 10:41 AM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Subject: RE: VWR 1727-2

Please see small difference I noticed when doing this breakdown in March regarding 2399-2

The Total remaining between two priority dates I calculated is highlighted at bottom

From: Gronlund, Eric <Eric.Gronlund@state.sd.us> See full chart on page 4

Transfers	Historic Property Owner	Priority Date	Diversion Rate (cfs)	Transferred Acres	Priority Date 4/6/1878 4/26/1893
2142-2 (Rapid City)	Tyler	05/01/1991	0.62	49	from the 4/6/1878 pd
2199-2 (Rapid City)	Pelle	05/07/1992	0.05	4	from the 4/6/1878 pd
2201-2 (Rapid City)	Long	05/07/1992	0.13	10	from the 4/6/1878 pd
2316-2 (Rapid City)	Morris	05/01/1996	0.81	64	from the 4/6/1878 pd
2399-2 (Rapid City)	Wileman	05/07/1998	0.33	26	from the 4/6/1878 pd
2469-2 (Rapid City)	Arlene Murphy	12/08/2001	0.34	27	from the 4/6/1878 pd
2512-2 (Rapid City)	Carley	12/03/2003	1.84	145	from the 4/6/1878 pd
2586-2 (RVSD)	Lamb	08/23/2006	5.05	368	from the 4/6/1878 pd
2641-2 (RVSD)	Higgins	03/10/2010	1.66	121	from the 4/6/1878 pd
2670-2 (RVSD)	Olson	11/30/2011	0.12	9	from the 4/6/1878 pd
2671-2 (RVSD)	Gravatt	11/30/2011	0.6	45.6	from the 4/6/1878 pd
2672-2 (RVSD)	Rypkema	11/30/2011	0.47	36	from the 4/6/1878 pd
2807-2 (RVSD)	Lytle	02/26/2020	0.53	45	from the 4/6/1878 pd
2877-2 (RVSD)	Vessely	04/08/2024	0.06	5	from the 4/6/1878 pd
2526-2 (Jundt)	Stromer	03/02/2005	0.71	50	*from the 4/26/1893*
					TOTAL:

Sent: Friday, August 9, 2024 3:28 PM
To: Steen, Nakaila <Nakaila.Steen@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Subject: FW: VWR 1727-2

This is not a rush item but still wanting both of you to review in order to confirm the tracking of transfers from irrigation to municipal use for VWR 1727-2.

From: Gronlund, Eric
Sent: Thursday, July 25, 2024 3:15 PM
To: Steen, Nakaila <Nakaila.Steen@state.sd.us>; Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>; Dewell, Amanda <Amanda.Dewell@state.sd.us>
Cc: Rath, Mark <Mark.Rath@state.sd.us>
Subject: VWR 1727-2

Nakaila is at WSWC meeting in ND the rest of this week – so this will wait to see if there is agreement next week to give her an opportunity to weigh in.

VWR 1727-2 was validated in 1990 for 20 cfs for a total of 1292 acres (17 cfs/1103 acres is afforded a 4/6/1878 priority & 3 cfs/189 afforded a 4/26/1893 priority.

Transfers from irrigation to municipal use began in 1991. At the beginning of the WR file we have maintained a tracking of the transfers that have occurred showing the amount details of the amount each transfer permit reduced No. 1727-2 and the amount remaining both cfs and acres. I recently signed the Rapid Valley Sanitary District water permit and something didn't look right.
- database states 7.5 cfs remaining and 381.1 acres
- the tracking table after Rachel updated indicates 2.23 cfs and 134 acres remaining.
- the database has 7.5 cfs and 381.1 acres
This caused me to take a harder look.
Attached is the original tracking table in the file and my edited version.

Now for my explanation.
First I will point out the old table started with 1,143 acres with the 4/6/1878 priority date. However the validation of 1727-2 from 1991 is for 1,103 acres (45 less acres) with the 1878 priority. The remaining acres have been adjusted accordingly to reflect this.

Then the table differentiated between the 1878 priority and the 1893 priority. However, Rachel just deducted the 0.06 cfs / 5 acres from 2877-2 from the bottom entry on the list which was the one 1893 priority date transfer. On the revised tracking table I attempted to make clear separation on the tracking of the two priority dates

I come up with the total quantity left in 1727-2 as being 6.66 cfs and 286.1 acres (4.37 cfs/147.1 acres with 4/6/1878 priority and 2.29 cfs/139 acres with 4/26/1893 priority).

I did figure out how Genny came up with the 7.5 cfs and 381.1 acres to put in the database.

After you have a chance to review (including Nakaila) I think that the database can be updated accordingly.

Finally, there were other transfers/shifting of acres into the system of 1727-2. I did not include them in the meat of the tracking table but have is as a note at the end. The reason is these were transfer of acres and not transfer from irrigation to municipal use.

However, in the case of 2241-2 – transfer of 36 acres/ 0.51 cfs there was to be a deduction of WR 1784-2 by those amounts but I can't find that the database reflects that. **If in concurrence, the database for No. 1784-2 should likewise be reduced by this amount and an explanation put in the comment section of the Prmt-2 tab explaining this reduction due to 2241-2.** Again I want to give Nakaila an opportunity to provide input prior to making the change. (This is likely all about nothing because Mark indicated that most if not all of the areas in 2239-2 thru 2242-2 area developed and likely no longer irrigated).

I want this to be understandable to everyone so that it the future you all can track what is left in 1727-2.

Eric

					Priority Date	Diversion Rate (cfs)	Acres	
					4/6/1878	17	1,103	
					4/26/1893	3	189	
Transfers	**Historic Property Owner**	**Priority Date**	**Diversion Rate (cfs)**	**Transferred Acres**		**Diversion Rate (cfs)**	**Acres**	
2142-2 (Rapid City)	Tyler	05/01/1991	0.62	49	from the 4/6/1878 pd	16.38	1,054	
2199-2 (Rapid City)	Pelle	05/07/1992	0.05	4	from the 4/6/1878 pd	16.33	1,050	
2201-2 (Rapid City)	Long	05/07/1992	0.13	10	from the 4/6/1878 pd	16.2	1,040	
2316-2 (Rapid City)	Morris	05/01/1996	0.81	64	from the 4/6/1878 pd	15.39	976	
2399-2 (Rapid City)	Wileman	05/07/1998	0.33	26	from the 4/6/1878 pd	15.06	950	in file , listed as 0.35 cfs , should be 0.33 --- also 27.3 acres instead of 26
2469-2 (Rapid City)	Arlene Murphy	12/08/2001	0.34	27	from the 4/6/1878 pd	14.72	923	
2512-2 (Rapid City)	Carley	12/03/2003	1.84	145	from the 4/6/1878 pd	12.88	778	
2586-2 (RVSD)	Lamb	08/23/2006	5.05	368	from the 4/6/1878 pd	7.83	410	
2641-2 (RVSD)	Higgins	03/10/2010	1.66	121	from the 4/6/1878 pd	6.17	289	
2670-2 (RVSD)	Olson	11/30/2011	0.12	9	from the 4/6/1878 pd	6.05	280	
2671-2 (RVSD)	Gravatt	11/30/2011	0.6	45.6	from the 4/6/1878 pd	5.45	234	
2672-2 (RVSD)	Rypkema	11/30/2011	0.47	36	from the 4/6/1878 pd	4.98	198	
2807-2 (RVSD)	Lytle	02/26/2020	0.53	45	from the 4/6/1878 pd	4.45	153.4	
2877-2 (RVSD)	Vessely	04/08/2024	0.06	5	from the 4/6/1878 pd	**4.39**	**148.4**	REMIANING FOR MURPH DITCH (1878 PD)
2526-2 (Jundt)	Stromer	03/02/2005	0.71	**50**	***from the 4/26/1893***	**2.29**	**139**	
					TOTAL:	6.68	287.4	