

VESTED RIGHT
Water Right No. 1813-2

1. Considered: June 9, 1982
2. Name of Applicant ROBERT AND MARK TUBBS
3. Post Office Address Box 563, Edgemont, S.D.
4. Amount of Water Claimed 4.4 maximum acre feet
5. Source of Water Supply Moss Agate Creek and Dry Draw
6. Water to be used for IRR acres to be irrigated 308
7. County Fall River about miles of
8. PROOF OF PUBLICATION: Received Not Received
APPLICATION: Approved 6/9/82 Subject to
Not Approved Action Deferred

PRIORITY ~~XXXXXXXXXXXX~~
Dated Received 1/12/82 Application complete-yes no FEE 13.00
Remarks Went to law & Niagara have checked abstract

Corrected Application received Period of Annual Use March to November

WATER QUALITY Received yes no APPROVED/CONDITIONAL (Circle one)
WI-1 Description same as application-yes no Remarks
NOT applicable

Disapproved Returned

Diversion Point
Between points in NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 1-
8S-R1E and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6-T8S-R2E

Land to be irrigated
NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1-
T8S,R1E and NW $\frac{1}{4}$ AND SW $\frac{1}{4}$, Section 6-T8S-R2E

WELL LOG Driller Licensed - yes no
Depth
Remarks 32' deep dam

MAP Map No. 1567-2 Map located in Water Right X Map file _____
 Type of Map Drawn Prepared by Thurnau

+++++

REVIEWED This Application was received within 30 days of the date received, accepted as complete, Number assigned and written up for advertisement before the Board on:

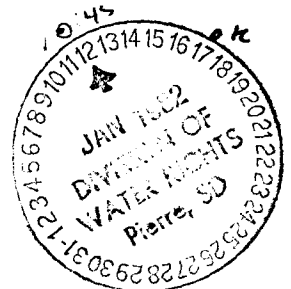
4/21/82

Betty Wiseman
 (Signed)

+++++

PROTESTS Letters/Petitions in File - yes _____ no _____ Remarks _____

REMARKS Date
 F.F. & C. Final Decision, including F.F. & C. of Law were adopted _____
 OF LAW, Date
 FINAL Final Decision mailed to parties and/or parties notified that Final Decision was
 DECISIONS adopted _____
 ETC. Remarks _____



No. 1813-2
Map No. 1567-2 Water Division No. 3 UPPER South Cheyenne River District
Above for Office Use 10120106

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 _____ Additional Acreage _____

1. Name of Applicant Robert and Mark Tubbs Phone No. _____
Post Office Address _____ Edgemont State South Dakota 57735
(Street, RR, or Box) (Town) (Zip Code)
If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) completed
3. Name of diversion work 1 FOOT 3 INCH DIAMETER DITCH
4. Amount of water claimed (cubic feet per second) 4.4
5. Source of water supply Moss Agate Creek and Dry Draw
6. Location of point of diversion On Tubbs Ditch between a point 550'S and 450'E of the NW⁴
corner of Section 1, T8S, R1E and a point 850'N and 1550'E of the SW⁴ corner of
Section 6, T8S, R2E County Fall River
7. Annual period or periods during which water is to be used March to November
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 308

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.
<u>see attached sheet</u>			

Attach sheet if more space is needed

10. Time required to complete construction of water supply system completed years. Additional time required to complete application of water to the proposed beneficial use _____ 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.
- B. Works proposed to transport water to place of use.
- C. Works proposed to apply water to beneficial use.

Estimated Total Cost \$ _____

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

STATE OF SOUTH DAKOTA)

County of Fall River) ss.

I, Robert D Tubbs and Mark K Tubbs 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 Robert D. Tubbs
Mark K. Tubbs

Subscribed and sworn to before me this 14th day of January, 1982
David P. Busseil
Notary Public (or other qualified officer)



WATER RIGHT APPLICATION APPROVAL

The Board of Water Management hereby approves Water Right Application No. 1813-2

ROBERT E. MARK TUBBS
(Applicant)

Box 563, EDGEMONT,
(Post Office Address)

SOUTH DAKOTA 57135
(State)

With the following qualifications.

"VESTED RIGHT" CLAIMED

Date of first receipt of application January 12, 19 82

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

Date of receipt of corrected application _____, 19____

Approved June 9, 19 82, Recorded in Book _____ Page _____

WATER RIGHT PERMIT NO. 1813-2

The Board of Water Management hereby grants and issues this Water Right Permit No. 1813-2 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 1908, ~~19~~
2. The equivalent of at least one-fifth of the work above specified is ~~to be~~ completed ~~on or before~~ _____, ~~19~~
3. The whole of said work is ~~to be~~ completed ~~on or before~~ _____, ~~19~~
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is completed, ~~19~~
5. The water appropriated shall be used for the purpose of IRRIGATION

6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

7. The amount of the appropriation herein granted shall not exceed 4.40 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, ~~19~~; said water to be used during the following described annual period: March to November

Witness my hand this 28th day of June, 19 82

THE BOARD OF WATER MANAGEMENT

By:

John Hatch
Chief Engineer, Water Rights

JOHN HATCH

Certificate of Construction Issued June 28, 19 82

Water License Issued June 28, 19 82

Robert and Mark Tubbs

Land Description

	Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$ - 1, T8S, R1E	2
NW $\frac{1}{4}$ NE $\frac{1}{4}$ - 1	32
NE $\frac{1}{4}$ NE $\frac{1}{4}$ - 1	40
SW $\frac{1}{4}$ NE $\frac{1}{4}$ - 1	2
SE $\frac{1}{4}$ NE $\frac{1}{4}$ - 1	33
NE $\frac{1}{4}$ SE $\frac{1}{4}$ - 1	5
NW $\frac{1}{4}$ NW $\frac{1}{4}$ - 6, T8S, R2E	36
NE $\frac{1}{4}$ NW $\frac{1}{4}$ - 6	3
SW $\frac{1}{4}$ NW $\frac{1}{4}$ - 6	40
SE $\frac{1}{4}$ NW $\frac{1}{4}$ - 6	34
NW $\frac{1}{4}$ SW $\frac{1}{4}$ - 6	37
NE $\frac{1}{4}$ SW $\frac{1}{4}$ - 6	25
SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 6	14
SE $\frac{1}{4}$ SW $\frac{1}{4}$ - 6	5
TOTAL	308 acres

D Well Information

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

E. Dugout Information or Estimates

- (1) Surface dimensions, _____, Depth _____

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

- (1) Water Bearing Materials. (Attach a copy of test well log)

Depth to top of water bearing material _____

Depth to bottom of water bearing material _____

Depth to water (ground surface to water level) _____

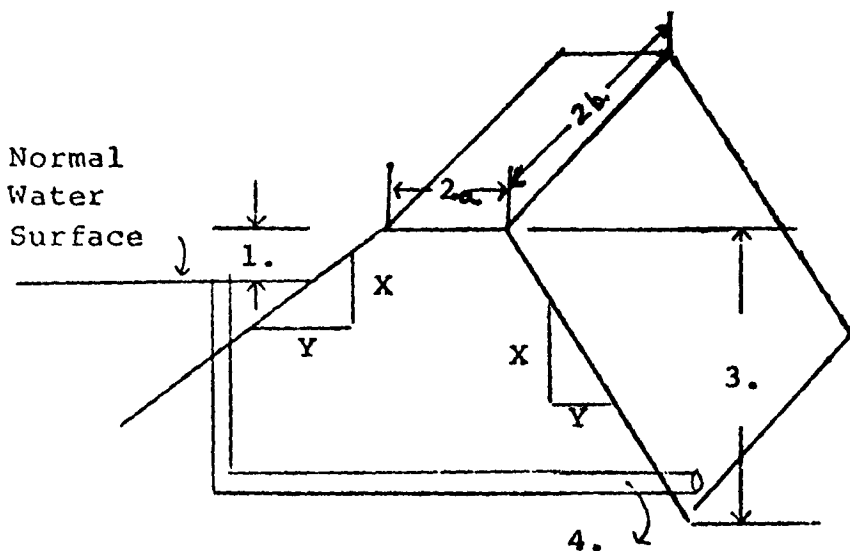
- (2) Distance to nearest existing household or livestock watering well.

On same owner's property _____ rds.

On property owned by others _____ rds.

G Water Storage Dams

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



1. Freeboard 10'
- 2a Crest width 16' b. length _____
3. Height of Dam 32'
4. Outlet dimensions:
Pipe diameter 16"
Spillway width 120"
- X & Y slope:
Upstream 1 to 4
Downstream 1 to 2
- Surface area of impoundment
50 acres
- Drainage area above dam
65,000 acres

Robert D. Tubbs
Mark K. Tubbs
Signature of Applicant

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1813-2

(1) WHEREAS, On the 12th day of January A. D. 1982
Robert and Mark Tubbs

made Water Right Application No. 1813-2 Vested Right for a permit to use 4.40 cubic feet per second of the waters
of Mass Agate Creek and Dry Draw
County of Fall River, State of South Dakota, for irrigation
purposes; and

(2) WHEREAS, On the 9th day of June A. D. 1982
Vested Right Permit No. 1813-2, with a date of priority of 1928
was issued to said applicant for the diversion of said water, and recognizing
supply system therein described or before the day of A. D. 1982 and for the
application to beneficial use of said water or before the day of A. D. 1982

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 4.40 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,
to irrigate the following lands

Section 1, T8S, R1E			
E			
NW1/4 NW1/4	2 acres	SW1/4 NE1/4	2 acres
NW1/4 NE1/4	32 "	SW1/4 NE1/4	33 acres
NE1/4 NE1/4	40 "	NE1/4 SE1/4	5 "
Section 6, T8S, R2E			
NW1/4 NW1/4	36 acres	NW1/4 SW1/4	37 acres
NE1/4 NW1/4	3 "	NE1/4 SW1/4	25 "
SW1/4 NW1/4	40 "	SW1/4 SW1/4	14 "
SE1/4 NW1/4	34 "	SE1/4 SW1/4	5 "
TOTAL 308 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 Robert and Mark Tubbs
_____ of Edgemont SD
the holder S and owner S Vested Right of said permit No. 1813-2 a water right, dating from 1900
_____ to use of 4.40 cubic feet per second of the waters
of Moss Agate Creek and Dry Draw
in the County of Fall River and State of South Dakota, or so much thereof as may be necessary for the
purposes hereinbelow mentioned, to be diverted at on Tubbs Ditch between a point 550' south &
450' east of the NW corner of Section 1, T8S, R1E & a point 850' north
and 1550' east of the SW corner of Section 6, T8S, R2E
_____ and conducted to and upon portions of lands in Section 1, T8S, R1E and Section
6, T8S, R2E more fully described on the face of this license

for the purpose of irrigation

This Water License No. 1813-2 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. 1813-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 28th day of June A. D.
Nineteen Hundred and Eighty-two

WATER MANAGEMENT BOARD

By:

John Hatch
Chief Engineer, Executive Officer

JOHN HATCH

Permit No. 1813-2

Water Diversion No. 2 Upper Cheyenne Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Robert & Mark Tubbs

Vested
Right

_____ the holder _____ of
Permit No. 1813-2, issued upon Application No. 1813-2, bearing date of priority of 1908

_____ authorizing the diversion of 4.40 cu. ft. per second of the waters of _____
Moss Agate Creek & ^{dry} draw County of Fall River, State of South Dakota at _____
on Tubbs Ditch between a point 550' south & 450' east of the NW
corner of Sec 1, T8S, R1E & a point 350' north & 1550' east of the
SW corner of Sec 6, T8S, R2E for irrigation

purposes, ~~has~~ ve 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 ~~found~~ ^{recognized} as
~~satisfactory~~ condition for diverting and conveying to the place of intended use 4.40 cu. ft. per second of water.

Date June 28, 1982



JOHN HATCH, Chief Engineer
Water Rights Division

No. 1813-2

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) Robert and Mark TubbsPost Office Address Edgemont,, State South Dakota 57735

If a Corporation show date and place of incorporation _____

13. Notice of Appropriation (If available)

Date of Posting November 22, 1907 Date of Recording May 5, 1908Recording Data Recorded in Book 4, Miscellaneous Record, Page 301, Register of Deeds
Fall River County, South Dakota

14. Date of start of construction of water supply system _____

15. Date that water was first applied to beneficial use 190816. Name of owner of original water supply system N.S. & D.D. Tubbs17. Amount of water originally applied to beneficial use 10,000 miners inches xxx

18. Present Use of Water

Amount of water now being used 4.4 c. f. s.Date that this amount of water was first used 1908

19. Chronological History of Water Use

We have used and irrigated this land ever since my family came here in 1900. No one else has ever used or irrigated this ground. There have been many that tried to take it away from us through litigation, but they didn't.

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)

County of Fall River) ss.

I, Robert D Tubbs and Mark K Tubbs, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed Robert D. TubbsSigned Mark K. TubbsSubscribed and sworn to before me this 11th day of January, 1982

Daniel P. Russe
(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.

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 8810

PIERRE, April 19, 1982

Robert D. & Mark Tubbs, Box 563, Edgemont, SD 57735

RECEIVED OF

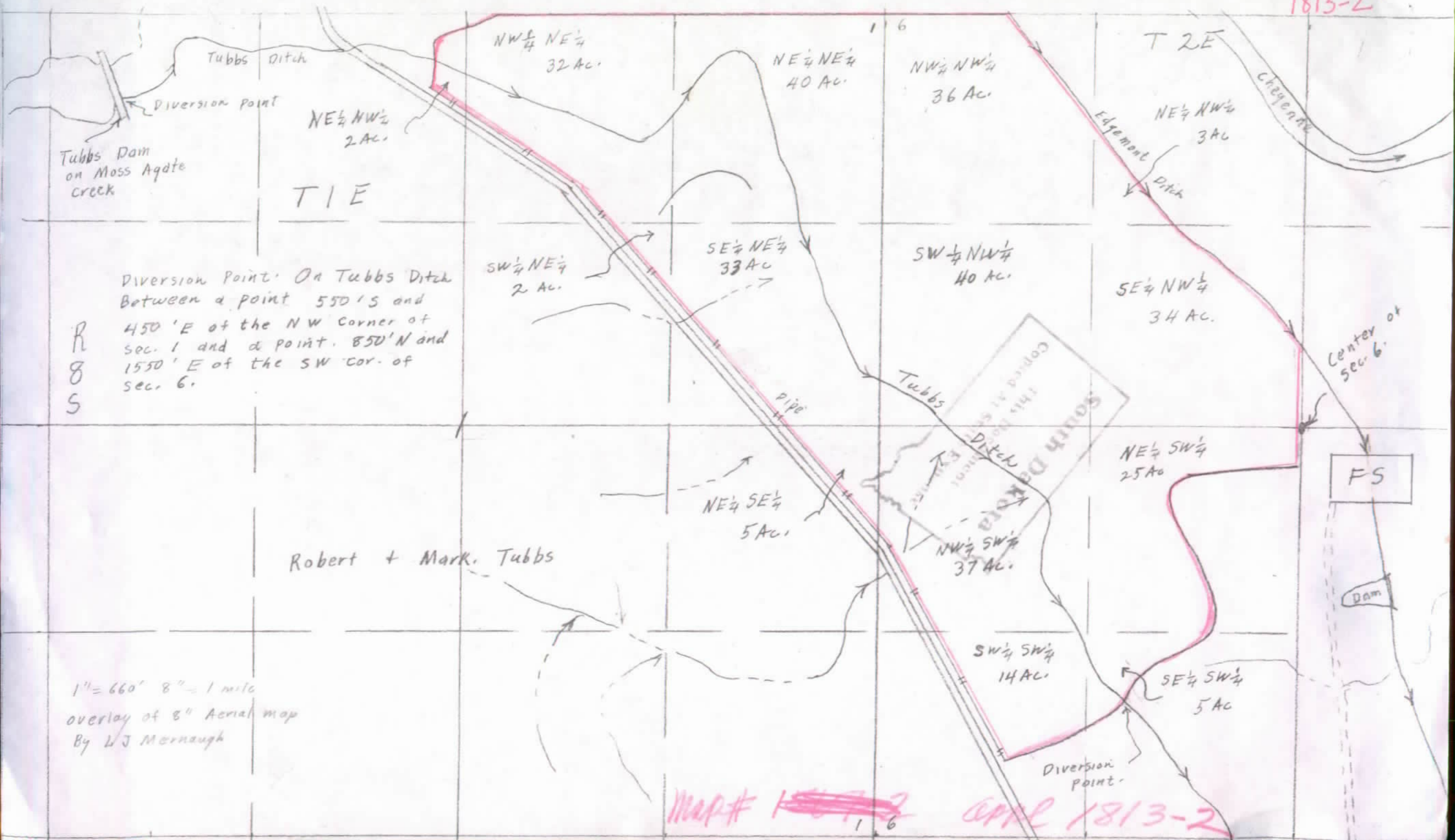
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit to Appropriate Water No. 1813-2 (examination, processing, recording and filing) -----	8	00
Fee for inspecting Construction, and issuing Cert. of Construction No. 1813-2 -----	2	50
Fee for inspecting Beneficial Use, and issuing Water License No. 1813-2 -----	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	13	00

WATER RIGHTS COMMISSION

By *John Hatch*
Chief Engineer, Executive Officer

1813-2nd



The following Water Rights apply to this Vested Right Application

Name of Owner of Original Water Supply System: N.S. & D.D. Tubbs
(Permit No. 0550-2)

Date of Filing for Water Right: May 5, 1908

Date of Recording: May 5, 1908

Recording Data: Recorded in Book 4, Miscellaneous Record on Page 301,
Register of Deeds, Fall River County South Dakota.

Amount of water originally applied to beneficial use: 10,000 miners inches
was claimed on the original location notice.



Department of Water & Natural Resources

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

September 21, 1988

NOTICE

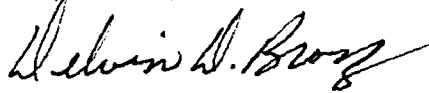
Robert & Mark Tubbs
Box 563
Edgemont SD 57763

Dear Sirs:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 1813-2, 1814-2 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

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

Very truly yours,

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





Department of Water & Natural Resources

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

December 1, 1988

Vested Water Right
Claim No. 1813-2
1814-2

Robert & Mark Tubbs
Box 563
Edgemont SD 57763

Dear Sirs:

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

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

If we can answer any questions, please contact us.

Very truly yours,

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

cc: Bruce Laymon, Bureau of Reclamation



SOUTH Dakota Department of
Water & Natural Resources

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

March 23, 1990

1813-2
1814-2
1912-2

NOTICE

TO: Robert/Mark Tubbs
BOX 563
EDGEMONT, SD 57735

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

SUBJECT: Low Water Levels in Angostura Reservoir

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

Since your Water Right Nos. 1813-2, 1814-2 and 1912-2 have priority dates that are senior to the April 11, 1941 priority for Angostura Irrigation Water Right No. 579-2, your permits are not directly affected by the Junior Priority Order. However, I am requesting that all Senior Water Right holders comply with any qualifications and limitations as stated on their water right. With the existing low runoff conditions, we expect to monitor all water rights above Angostura Reservoir.

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

Conversation or File Documentation

NAME OF PERSON OR FILE: Robert and Mark TubbsADDRESS: P.O. Box 563, Edgemont, SD 57735 COUNTY Fall RiverDATE: June 8, 1989 TELEPHONE _____RE: Validation of Vested Right Claim No. 1813-2

COMMENTS:

I discussed this claim with Robert and Mark Tubbs on May 31, 1989. We reviewed the map that was submitted with the claim in 1982. The map was prepared by Leroy Mernagh, Division of Water Rights Engineer in 1982. The Tubbs stated that the project had not changed. We were unable to field inspect the system due to rainy conditions.

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: Delvin W. Brog, P.E.Hydrologist

South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 20, 1991

1813-2

Mark Tubbs
Box 563
Edgemont, SD 57735

Dear Mr. Tubbs:

I am writing in answer to your telephone inquiry of this morning. Mr. Melvin Porter has Vested Water Right Claim No. 1716-2 to divert 0.14 cubic feet of water per second (cfs) from Moss Agate Creek to irrigate 10 acres. The priority date for this claim is 1943.

Your Vested Water Right Claim No. 1813-2 is for 4.40 cfs from Moss Agate Creek to irrigate 308 acres with a priority date of 1908.

If you have any other questions, please contact me.

Sincerely,

Delvin D. Brosz, PE
Natural Resources Engineer
Division of Water Rights
(605) 773-3352

cc: Melvin Porter



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 20, 1992

Robert and Mark Tubbs
Box 563
Edgemont SD 57735

Dear Sirs:

The original Notice of Intent to Validate Vested Water Right Claims was published with an error. The lands irrigated in the NE 1/4 NW 1/4 Section 1-T8S-R1E was incorrectly listed as the NW 1/4 NW 1/4 Section 1-T8S-R1E. Therefore, the notice needs to be readvertised to correct the error. The Readvertisement of the Notice of Intent to Validate Vested Water Right Claims has been sent to the Publisher of the Hot Springs Star printed at Hot Springs SD. For your information, a copy of the notice is enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

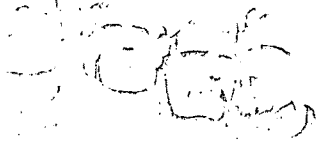
The cost of publication of this notice will be paid by the Division of Water Rights. Please contact us if you have any questions.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 20, 1992

L.O. and Joel Rickenbach
Box 97
Oelrichs SD 57763

Dear Joel:

The original Notice of Intent to Validate Vested Water Right Claims was published with an error. The lands irrigated in the NE 1/4 SW 1/4 Section 10-T10S-R8E were not included in the notice. Therefore, the notice needs to be readvertised to correct the error. The Readvertisement of the Notice of Intent to Validate Vested Water Right Claims has been sent to the Publisher of the Hot Springs Star printed at Hot Springs SD. For your information, a copy of the notice is 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

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

1813-2

Form 8 - Proof of Publication

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Fall River) ss.

I, James R. Shanks

certify that the attached printed Notice was taken
from the Hot Springs Star

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

City of Hot S
County of Fall River and Sta
that the said notice was published in sai
following two dates:

September 1, 19

September 8, 19

(Signature)

Publisher
(Title)

September 8,
(Date Signed)

Cost of Printing: \$74.47



270
READVERTISEMENT OF NOTICE
OF INTENT TO VALIDATE VESTED
WATER RIGHT CLAIMS

Notice is given that the following vested
water right claims in Fall River County are
eligible for validation by the Water Man-
agement Board pursuant to SDCL 46-2A-
17 without a hearing unless a petition to
oppose the validation is filed pursuant to
SDCL 46-2A-22. Readvertisement of the
original notice of intent to validate these
claims, as published on June 7 and 14,
1988 in the Hot Springs Star, is necessary
to correct errors in the previously pub-
lished notice.

Vested Water Right No. 481-2, L.O.
and Joel Rickenbach, Box 97, Oelrichs
SD 57763 appropriates 4.06 cubic feet of
water per second (cfs) from dry draws
located in the SE 1/4 SE 1/4 Section 35; S
1/2 SW 1/4 Section 36; all in T9S-R8E:
NW 1/4 NW 1/4, NW 1/4 NE 1/4, S 1/2 NE
1/4 Section 1; SW 1/4 NW 1/4, N 1/2 SE 1/
4, SE 1/4 SE 1/4 Section 10; all in T10S-
R8E. The location of the 285 acres irri-
gated is the N 1/2 SE 1/4, SE 1/4 SE 1/4
Section 35; S 1/2 SW 1/4 Section 36; all in
T9S-R8E: Lots 1, 2, 3 & 4, S 1/2 NW 1/4, S
1/2 NE 1/4, N 1/2 SE 1/4 Section 1; SW 1/
4 NE 1/4, NW 1/4 SW 1/4, SE 1/4, S 1/2
NW 1/4, NE 1/4 SW 1/4 Section 10; all in
T10S-R8E. The priority dates are as fol-
lows: 0.01 cfs - 1/1/1937, 0.73 - 1/1/1942,
0.12 - 1/1/1943, 0.79 - 1/1/1946, 0.24 cfs-
1/1/1948, 0.23 cfs- 1/1/1949, 0.45 cfs-
1/1/1952, 0.43 cfs 1/1/1953, 1.06 cfs- 1/1/
1954.

Vested Water Right No. 1872-2, Melvin
Schumacher, Box 25, Oelrichs SD 57763,
appropriates 0.94 cfs from Duck Creek
into a 30 acre-foot storage dam located in
the NE 1/4 NW 1/4 Section 2 to irrigate
65.8 acres located in the NE 1/4 NW 1/4,
SE 1/4 NW 1/4, S 1/2 NE 1/4, NE 1/4 SE
1/4 Section 2 and the SW 1/4 NW 1/4, NW
1/4 SW 1/4 Section 1; all in T12S-R6E.
The priority date is 1/2/1906.

Vested Water Right No. 1873-2, Wil-
liam R. Fitzner, Rt 1, Box 78, Oral SD
57766, appropriates 0.8 cfs from Hay
Canyon located in the NE 1/4 NW 1/4, SW
1/4 NW 1/4; SW 1/4 NE 1/4 Section 1 to
irrigate 56 acres located in the NW 1/4, W
1/2 NE 1/4 Section 1; all in T8S-R8E. The
priority date is 1/1/1909.

Vested Water Right No. 1879-2, Dora
R. Henderson, Apt#265, 5141 Indian River

Drive, Las Vegas NV 89103, appropriates
25.3 cfs from Coal Creek located in the NE
1/4 NE 1/4 Section 23-T10S-R2E to irri-
gate 1,772 acres. The irrigated lands are
located in the SW 1/4 Section 14; S 1/2
NW 1/4, SW 1/4, S 1/2 NE 1/4, SE 1/4
Section 15; NW 1/4, SW 1/4, S 1/2 NE 1/
4, SE 1/4 Section 16; SW 1/4 NW 1/4, SE
1/4 SW 1/4, SE 1/4 Section 17; NW 1/4, S
1/2 NE 1/4, NE 1/4 SE 1/4 Section 18; NE
1/4 NE 1/4 Section 21; NW 1/4, NE 1/4 SW
1/4, NE 1/4, SE 1/4 Section 22; SW 1/4,
NW 1/4 Section 23; NW 1/4 NW 1/4 Sec-
tion 26; all in T10S-R3E. The priority date
is 10/4/1945.

Vested Water Right No. 1716-2, Melvin
Porter, Wyo. Rt., Box 17, Edgemont SD
57735 appropriates 0.14 cfs from Moss
Agate Creek (storage dam) located in the
SW 1/4 SE 1/4 Section 11 to irrigate 10
acres located in the W 1/2 SE 1/4 Section
11; all in T8S-R1E. The priority date is 1/
1/1943.

Vested Water Right No. 1813-2, Robert
& Mark Tubbs, Box 563, Edgemont SD
57735, appropriates 4.4 cfs from Moss
Agate Creek and dry draw between in the
NW 1/4 NW 1/4 Section 1-T8S-R1E to SE
1/4 SW 1/4 Section 6-T8S-R2E to irrigate
308 acres located in the NE 1/4 NW 1/4,
NE 1/4, NE 1/4 SE 1/4 Section 1-T8S-R1E
and the NW 1/4, SW 1/4 Section 6-T8S-
R2E. The priority date is 1/1/1908.

Any person who wishes to oppose vali-
dation of any of the readvertised vested
right claims shall file a petition of intent to
oppose the validation by September 18,
1992 with the Chief Engineer, Water Rights
Division, Department of Environment and
Natural Resources, Joe Foss Building,
523 East Capitol, Pierre, SD 57501-3181
(605 773-3352) and with the vested water
right holder at the listed address. The
petition may be informal, but it must in-
clude a statement describing the
petitioner's interest in the vested water
right claim, the reasons for the petitioner's
opposition to the claim, and the signature
and mailing address of the petitioner or his
legal counsel if legal counsel is obtained.

If a petition of intent to oppose the
validation of a recognized vested water
right claim is filed, the Water Management
Board will conduct a hearing on the op-
posed claim at 10:00 am, September 30,
1992, Floyd Matthew Training Center, Joe
Foss Building, 523 E Capitol, Pierre SD.
The September 30, 1992, hearing date
will be automatically delayed for at least
20 days upon written request to the Chief
Engineer from the applicant or any inter-
ested person opposing the application.
The request for an automatic delay must
be filed by September 18, 1992.

If no person opposes validation of a
recognized vested water right claim pur-
suant to SDCL 46-2A-16, the Water Man-
agement Board will issue an order pursu-
ant to SDCL 46-2A-17, validating the
vested water right claim.

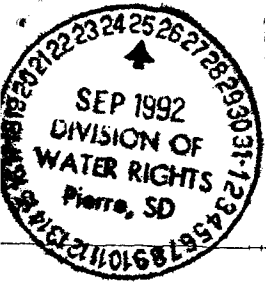
These validations are made pursuant to
the provisions of SDCL 46-1-1 thru 46-1-
9, 46-1-14; 46-2-3.1, 46-2-9, 46-2-11, 46-
2-17; 46-2A-16 thru 46-2A-18, 46-2A-
22; 46-5-1 thru 46-5-6.1, 46-5-8.2, 46-5-13
thru 46-5-15, 46-5-30.2 thru 46-5-37.1,
46-5-46, 46-5-49; 46-6-1 thru 46-6-3, 46-
6-6, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14,
46-6-21, 46-7-1 thru 46-7-5.3, 46-7-12,
46-7-14, 46-7-15 and Board Rules ARSD
74:02:01:01 thru 74:02:01:05.03 and
74:02:01:20 thru 74:02:01:22.

Contact Eric Gronlund by September
18, 1992, at the above Water Rights Divi-
sion address to: 1) request copies of infor-
mation pertaining to a vested right claim or
a copy of the vested water right claim list
for another county; 2) obtain a summary of
South Dakota Water and Water Rights
Information; 3) to assure access to the
hearing by the handicapped; or 4) obtain
an interpreter for the hearing impaired.

Robert E. Roberts, Secretary, Depart-
ment of Environment and Natural Re-
sources

Attn: John Hatch
Del Broz

Sept - 15 - 1992



It does no good to protest any
thing in S. D.

To protest the 10 acres of
Melvin Posters irrigation project is
insignificant. But what is important
is the other 40 to 50 acres that
he irrigates without a permit.

The 10 acrea permit is 40 to 50
years Junior to our water rights.
It is about the same as our
irrigation project taking water away
from Angustora water project. A
person only pumps when the river is
in flood stage.

The problem is that Melvin stops
the water & irrigates before we even
get any water & he holds it up in
his dam & lets it evaporate into
the air & doesn't use it for anything.

Melvin's dam is now fenced
off & is used as a duck pond
which is contrary to supposed
water law, which we have to follow.

This is all on our 100 yr old
investment & water right.

my father & I tried for years
& years to find out from S.O.
what we could do with our water
rights and they would never tell
us. The only thing that has been
told us is not to pump!!

you people have an idea (use it
or lose it)

Tubbs's filled that old ^{Edgemont} Canal
& run water down it for years.
They raised hip high hay & sold
box car loads of alfalfa seed to
Henry Field's seed Co. in Iowa.
Also filled the lake in Edgemont
with water.

Then the state of S.O. ruled that
Birdsall didn't abandon his water
right. Took the water away from
Tubbs's & gave it to Birdsall who was
the Supt. of the C.B. & Q. railroad
at that time. He never ran a drop
of water down that ditch

Now who the hell used that
water right & who the hell didn't???

I suppose your Attorney General
can waste a life time studying
that question behind a desk, just to
have a job.

That doesn't produce one damn
Ton of hay or grain that we need &
use to try to pay the taxes and
make a living.

I will add that my family has
been here 125 years paying taxes.

That's great. Take the water &
money & give it to some body else!!

- That's Socialism -

The water should go with the land.

When it rains there is water for
everyone, when it doesn't rain there
isn't any water for anyone!!!!

Bob Tubbs
Mark Tubbs

I want this filed in our records!!
& your records.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 1, 1992

Melvin Porter
Wyo. Rt., Box 17
Edgemont, SD 57735

Dear Mr. Porter:

I received a letter from Robert and Mark Tubbs on September 25, 1992 advising that you were irrigating more than the 10 acres authorized by Vested Right No. 1716-2. They also stated that your dam was no longer used to store water for livestock use.

The priority date for your Vested Water Right No. 1716-2 is junior to that of Vested Water Right No. 1813-2, Robert and Mark Tubbs. You are not authorized to irrigate or store water for irrigation until their water right has been satisfied. You can irrigate with stored water, if the water was stored after the Tubbs' right was satisfied.

If the dam is no longer used to store water for livestock use, all inflows must be bypassed until the Tubbs' water right has been satisfied.

If the irrigation canal extends beyond a point needed to irrigate the 10 acres, the irrigation canal needs to be plugged at that point. Allowing water to flow in the canal beyond this point is not authorized by your vested right.

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

Very truly yours,

John Hatch, Chief Engineer
Division of Water Rights

c: Robert and Mark Tubbs



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 1, 1992

Robert and Mark Tubbs
Box 563
Edgemont, SD 57735

Dear Mr. Tubbs:

I am writing in answer to your letter that was received on September 25, 1992 regarding Vested Water Right No. 1716-2, Melvin Porter. Vested Water Right No. 1716-2 is for the irrigation of 10 acres and for storage of water in a dam for irrigation and livestock use. The priority date is January 1, 1943.

Mr. Porter has told Division of Water Rights staff that he only irrigates the 10 acres authorized by the water right. If he irrigates additional acres and you have documentation, such as photographs, please provide that documentation.

If Mr. Porter no longer uses the dam for storage of livestock water, he is required to bypass all inflows until your Water Right No. 1813-2 is satisfied. Since Mr. Porter's water right is junior to your water right, he is not authorized to irrigate until your water right has been satisfied.

I am enclosing a copy of the letter that was sent to Mr. Porter. Thank you for writing on this matter.

Very truly yours,

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

enclosure

c: Melvin Porter



OCT 28 1992

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Robert & Mark Tubbs
Box 563
Edgemont SD 57735

Dear Sirs:

The Water Management Board has validated the enclosed Vested Water Right No. 1813-2. This validation gives legal status to the claim and is the final document for your vested right.

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

Very truly yours,

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

enclosure

SOUTH DAKOTA

VESTED WATER RIGHT NO. 1813-2 FOR IRRIGATION

Date of Receipt of Claim January 12, 1982.

Date of Validation September 30, 1992.

The Water Management Board validated Vested Water Right Claim No. 1813-2 for irrigation purposes for Robert & Mark Tubbs, Box 563, Edgemont SD 57735 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1813-2 appropriates 4.4 cubic feet of water per second from Moss Agate Creek and dry draw between in the NW 1/4 NW 1/4 Section 1-T8S-R1E to SE 1/4 SW 1/4 Section 6-T8S-R2E to irrigate 308 acres located in the NE 1/4 NW 1/4, NE 1/4, NE 1/4 SE 1/4 Section 1-T8S-R1E and the NW 1/4, SW 1/4 Section 6-T8S-R2E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: March 1 - November 30.
3. The priority date of the Vested Water Right is January 1, 1908.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: 
Chief Engineer

OCT 28 1992

date

Division of Water Rights
Dept. of Environment and Natural Resources



IN REPLY
REFER TO:

WTR 4.10
BF-430

United States Department of the Interior

BUREAU OF RECLAMATION

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



AUG 18 1993



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

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

Dear Mr. Hatch,

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

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

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

Sincerely,

Bruce M. Laymon
Project Manager

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

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



8 7'93

Picture of Porter
10 acres below dam

26.1 8



picture of headgate
at Porter dam note
water left in dam above
Head gate.



Porter Dam at head
gate, note drop in dam
level



8 7'93

Porter Dam looking
out from Spillway



8 193

Porter irrigation Ditch
below dam note the
laid over grass in bottom
of ditch



8 7'93

Pictures of ditch below
his dam



picture of Porter

Head gate, Note the recent
drop in water level. water
left above head gate

8 7'93



Irrigation Ditch Porter
going ~~not~~ north from
Porter dam into Sec. 2, T8S
R1E. No water rights



8 T93

Picture of porter
irrigation ditch, land, and
Hay Stack this is part of
the 10 acres.



8 1993

Porter Hay Meadow

in Sec 2 T8S R1E with
no water right



8° 1' 53"

Picture of Porter meadow
Sec 2 T8S R1E looking N.
from County road. No
water rights



pictures of porter ditch
below his dam



8 7'33

Tubbs Laan, spillway
in middle right hand side
of picture.



SWT-03 100-100-100

8 7'93

Irrigation on Jeff Schultz



Dikes and diversion on
Jeff Schütz property



8 7'93

Dike and Diversion on
Jeff Schultz property



6 1993

~~How~~ Irrigation on Jeff
Schultz



Porter dam.



Tubbs Hay Meadow Moss Agate

Note dull look of meadow and few
of 20 Bale stacks These are all
dated pictures look in lower right hand
corner.

Also Jeff Schultz up the creek from Porter's has dikes on Moss Gate. He irrigated 50-60 acres on his land in Sec. 9-10, T8S R1E. He has no water right. Jeff Schultz has agreed with us that his dikes should be cut to allow us the first water, so we can use our water rights on small runs.

Mr. Porter was written a letter October 1, 1992, by your office explaining his Junior water rights.

Everett Porter has told people he has irrigated and was getting a third cutting of Alfalfa. He irrigated 10 acres out of the dam plus

additional acres from stops in the creek, (a spreader system).

Our dam got about $\frac{1}{4}$ full. I was able to irrigated only about thirty acres around the last of July. We had no water to irrigated our first cutting.

On Jeff Schultz property the creek ran about 5 times from April 1 - July 15, they were small runs. The first three runs never got past his property.

Our water rights should be protected by the State of South Dakota, just as irrigators on the Angustora project are protected. The Porters have thumbked their

nose at us and the State of South Dakota.

They should be threaten with a fine of taking of their water right, if they donot go by the law.

We have had water rights taken from us and our family in the past. It is sad that after more than a hundred years here, plus 3 to 5 million dollars invested in this end of the state, that you people keep taking and taking. Making it impossible to make a living and pay the taxes, which we try to do.

This is no hobby farm or ranch we dig our living out of the

dirty old dirt.

Now we want what water rights we have left, made so we can use them. If not the State of South Dakota has taken another water rights.

These actions should and must stop!!!

Bob Tubbs

Maps and pictures enclosed Mark Tubbs



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 14, 1993

Robert and Mark Tubbs
P.O. Box 563
Edgemont, SD 57735

Gentlemen:

I am writing in answer to your letter of September 13, 1993, and your complaints of irrigation upstream from your irrigation storage dam. Rassool Ahadi, Division of Water Rights, investigated your complaint concerning Melvin Porter. The investigation did show that Mr. Porter irrigated the 10 acres. Inspection of the irrigation ditch and the vegetation in the ditch indicated that no other land was irrigated.

Enclosed are copies of the letters that have been mailed to Melvin Porter and Jeff Schultz. If you have any questions, please contact Rassool Ahadi, Division of Water Rights, 523 East Capitol, Pierre, SD 57501. Telephone, (605) 773-3352.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

enclosures

c: Diane Best, Assistant Attorney General

File No. 1813-2

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Mark and Robert Tubbs

ADDRESS: Edgemont

COUNTY: Fall River

DATE: Feb. 28, 1994

TELEPHONE: 662-7302

RE: Complaint

COMMENTS: Mark Tubbs called today to inform me that Melvin Porter does not by-pass any water for their use. He said that Mr. Porter runs water on his 10 acres and whatever is left would flow toward them. He said they were getting the "Tail end of it". He wanted to make sure that I put this complaint in our files.

** March 1, 1994. Today, I contacted Mr. Melvin Porter (662-7367). He said he was not running water over his land. He said water was running through his spillway and down the creek channel.



M. RASSOOL AHADI

Natural Resources Engineer III
DENR, Water Rights Division

Sept 10, 1993

John Hatch

Chief Engineer Waterrights Division

Dept Environment & Natural Resources

Joe Foss Building 523 East Capitol

Pierre, South Dakota 57501-3181



Dear Mr. Hatch,

We were not able to use but a small portion of vested water right No. 1813-2 on Moss Agate creek this summer.

Two landowners up the creek irrigated before we got any water. One Melvin Porter and his son Everett Porter irrigated their 10 acres out of their dam, plus irrigated another approximately 40 acres from dikes in the creek, down from the dam. Their water right #1716-2 is junior to ours.

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Melvin Porter

ADDRESS: Edgemont

COUNTY: Fall River

DATE: March 10, 1994

TELEPHONE: 662-7054

RE: Flooding

COMMENTS: Mr. Everette Porter called yesterday to inform me that Tubbs' dam was flooding his property. I suggested that Mr. Porter talk with Tubbs first, if they did not respond favorably, then I will talk with Tubbs.

Mr. Everette Porter called today to inform me that Tubbs did not say what they will do other than they will look into it. I told Everette that he should take pictures of the flooding and if Tubbs did not do anything to remedy the situation, he should file a complaint. He said he will do that.

Contacted Tubbs and talked to Robert Tubbs. He did not deny flooding Porter's land but he said it was a sudden snow melt. I told him that he can not flood anybody's property without an easement. Also talked to Mark Tubbs and told him the same thing. I also told him if they (Tubbs and Porters) would reach some agreement (easement) so that the Porters let the Tubbs flood their land and in exchange, the Tubbs would let, for example, Porters to irrigate for two weeks or so in July or August!!

I contacted Everette Porter again and told him that he should contact Tubbs and try to work it out with them. He said he will try 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.



M. RASSOOL AHADI

Natural Resources Engineer III
DENR, Water Rights Division

June 26, 1996

Mark & Bob Tubbs
Box 5123
Edgemont, So Dak.

Dear Eric Gronlund;

Due to the fact that Tubbs's water right claim of 1908 has the prior date, Mr. Porter should not have the option to store water in his dam.

We have agreed that Mr. Porter can irrigated his 10 acres as the water come by. This is to compensate for our dam backing water on approx. 1 acre of his land when our dam is completely full.

Mr. Porter should not control the water and store it in his dam. His dam

(2)

should only be a diversion to irrigate his 10 acres and all other water should ~~go~~ go by for our needs.

His dam is larger than state law allows for domestic use, and is in violation of our 1908 water right, by keeping the water away from us.

His dam backs water on U.S. Forest Service land, which is only used a short period of the year. The land the dam is on is watered by a pipeline.

Possibly Porter's are in violation of backing water onto Govt. land.

(3)

Last year Mr. Porter irrigated his ten acres. He stored the water till he could get his hay up, which took a month.

His dam evaporated and soaked away about 15 acre feet of our water. We were able to only irrigate 30 acres ^{out of} 300. This has went on forever, and it should

be your responsibility to bring this problem to a conclusion.

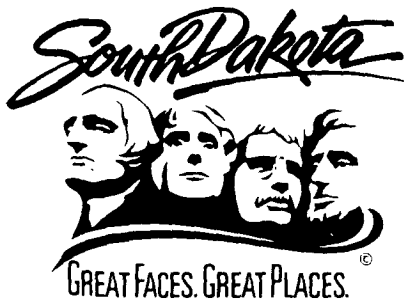
In closing Mr. Porter should irrigated his ten acres when the water is flowing and let all other water by.

P.S. we have not received any water to irrigate with as of this date. 1996

Sincerely,

Mark Tubbs

Robert D. Tubbs



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 2, 1996

Nos. 1716-2 and 1813-2

Everett Porter
Wyoming Rt, Box 17
Edgemont SD 57735

Robert and Mark Tubbs
PO Box 563
Edgemont SD 57735

Gentlemen:

I am writing in regard to the pending validation of Vested Water Right Claim No. 1716-2, Everett Porter at the July 10, 1996, Water Management Board meeting. To answer the concerns in the petition filed by Robert and Mark Tubbs (No. 1813-2), I am suggesting that the following qualification be added to No. 1716-2:

No impoundment of water for irrigation use as authorized by Vested Water Right No. 1716-2 may occur until the downstream storage dam authorized by Vested Water Right No. 1813-2 has received its annual fill. In addition, other inflows received during the irrigation season must be by-passed, as needed, to satisfy downstream prior water rights and domestic uses. Subject to any agreement between the holders of Vested Right No. 1716-2 and Vested Right No. 1813-2, water may be diverted under No. 1716-2 prior to filling of the downstream dam or under other water use conditions agreed to by the vested right holders.

If you have any comments or suggestions on this proposed qualification, please contact Eric Gronlund or Ron Duvall at (605) 773-3352 prior to the July 10, 1996 hearing. We welcome any comments or suggestions you may want to offer concerning this matter.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Program

Water Rights Program -- File Documentation

NAME: Everett Porter

ADDRESS: Wyoming Rt, Box 17, Edgemont SD 57735

DATE: July 8, 1996 **COUNTY:** Fall River

RE: Pending Hearing on Validation of Vested Water Right Claim No. 1716-2

COMMENTS:

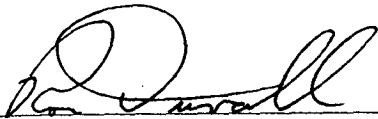
July 5, 1996

Everett Porter called concerning the June 26, 1996, petition filed by Robert and Mark Tubbs. Mr. Porter indicated that he was planning on discussing a possible solution with Mark Tubbs. According to Mr. Porter, water is available for his cattle from another water supply but he also liked to have water in the dam as a backup water source. Mr. Porter planned on discussing the possibility of releasing as much water as possible in each June after the cattle are removed. Most of the water can be released according to Mr. Porter, except for maybe six inches covering an acre or two. I informed Mr. Porter that state law does not require him to release water stored for domestic use. Mr. Porter replied that no cattle are present the remainder of the year and the dam dries up by the end of the summer anyway. According to Mr. Porter, the water is only waist deep even when the dam is full -- considerable silting in of the dam has occurred.

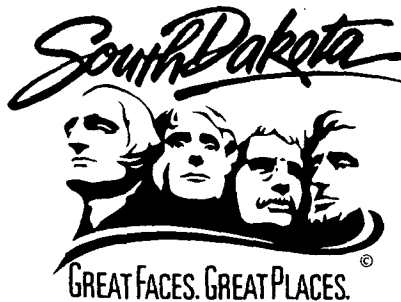
I informed Mr. Porter of the proposed qualification mentioned in the letter mailed on July 2, 1996. Mr. Porter had not yet received the letter, but after reading the qualification over the phone, Mr. Porter understood that the qualification corresponded with state law.

July 8, 1996

Mark Tubbs called concerning the July 2, 1996 letter and expressed support for including the qualification on the vested right claim.



Ron Duvall, Natural Resources Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 10, 1997

Nos. 1716-2 and 1813-2

Robert and Mark Tubbs
PO Box 563
Edgemont SD 57735

Everett and Deb Porter
HC 68 Box 17
Edgemont SD 57735

Dear Messrs. Tubbs and Mr. and Mrs. Porter:

I am writing in response to phone conversations on January 6, 1997 between Mark Tubbs, Deb Porter, and Ron Duvall, staff engineer, concerning water diverted by the Porter dam located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ section 11-TT8S-R1E.

Mr. Tubbs stated that runoff into the Porter dam should be released to help fill the downstream Tubbs dam which has an earlier priority date for irrigation. Mr. Duvall contacted Deb Porter and was informed that the headgate on the Porter dam had been opened during the afternoon on January 4, 1997 to release water. According to Mrs. Porter, there was no intention to irrigate and the Porters are concerned that the build up of ice downstream may kill their alfalfa. Mrs. Porter further mentioned that water was released to improve relations with Mr. Tubbs and also because the Porters believe there will be sufficient runoff in the spring to impound water for stock watering. Currently, there are no cattle in the pasture where the Porter dam is located.

A qualification attached to Vested Water Right No. 1716-2, Everett Porter specifies that the Porter property may not be irrigated until the Tubbs vested water right has been satisfied as well as any other downstream senior water rights or domestic uses. The qualification also includes a provision that the Porter's and Tubbs' may reach a private agreement to allow diversion of water under other conditions agreed to by both parties. Mr. Tubbs indicated during his conversation with Mr. Duvall that there was a verbal agreement between the parties that Porter's can irrigate the 10 acres covered by No. 1716-2 provided the headgate on the Porter dam remains open.

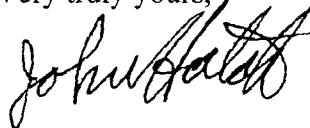
I suggest you reach an agreement and then put the agreement in writing. A written agreement will help ensure that important details are not overlooked and that everyone is aware of their responsibilities. Any agreement reached will only pertain to your water use and not to other water users. For example, a shutoff order may still be issued to Mr. Porter to protect the Angostura Project water right even though your agreement may specify that the 10 acres can be irrigated if the headgate is left open.

January 10, 1997
Robert and Mark Tubbs
Everett and Deb Porter
Page 2 of 2

In lieu of an agreement, we will continue to take the position that water may be impounded in the Porter dam only for livestock water until downstream senior water rights and domestic uses are satisfied. In addition, no property may be flooded by a dam other than property owned by the dam owner or for which a flood easement has been obtained.

Please contact Ron Duvall at (605) 773-3352 if you have questions or need further direction concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Hatch", written in a cursive style.

John Hatch, Chief Engineer
Water Rights Program