

Considered: _____

WATER PERMIT NO. 1814A-2 48

HAP No. same

Name of Applicant Robert & Mark Tubbs

Post Office Address Box 563 Edgemont, SD 57735

Amount of Water Claimed no add'l Total Acres no add'l

Source of Water Supply dry draw

Water to be used for irrigation County Fall River

About 3 miles NW of Edgemont

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY _____ Date Received June 12, 1989 Fee \$15⁰⁰ Remarks Adding a

previously omitted div. pt. to Vested Right Claim No. 1814-2

Corrected Application Received _____ Period of Annual Use Mar 1 - Nov 30

WATER QUALITY APPROVAL RECEIVED not required APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES NO REMARKS _____

Diversion Point 2125 feet south and 1875 feet

west of the NE corner

Section 28 - T8S-R2E

Land to be Irrigated _____

See U.R. Claim No. 1814-2

Well Log: Driller NA Licensed YES NO

Depth of Well _____ REMARKS _____

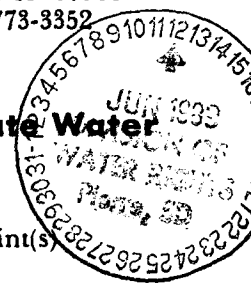
Type of Hap topo PREPARED BY J. Winterton Reviewed and the Number

assigned on July 6, 1989 By Susan Bower

Mail to: Water Rights Div.
523 E. Capitol
Pierre, SD 57501
(605) 773-3352

(See instructions)

No. <u>1814A-2</u>	Hydrologic Unit <u>10120106</u>
Basin <u>Upper Cheyenne</u>	
Newspaper <u>Edgemont Herald-Tribune</u> Box <u>660</u> <u>57735</u>	



Application For Soil/Water Compatibility Permit and Permit To Appropriate Water

Type of Application: ☐ New ☒ Vested Right ☐ Amend Permit No. _____
☐ Change Acreage ☐ Change diversion point(s) ☒ Add diversion point(s)
☐ Add Acreage ☐ Increase diversion rate ☐ Other _____

1. Name of Applicant Robert & Mark Tubbs Phone No. _____

Post Office Address Box 563 Edgemont State SD 57735
(Street, RR or Box) (City) Zip Code

2. Amount of water claimed (c.f.s.) 4.0 no add'l Total acres irrigated Portions of 972

3. Source of Water supply dry draw

4. Location of point of diversion 2125 feet south and 1875 feet west of the NE corner of
Section 28, T8S, R2E

_____ County Fall River

5. Counties where water will be used Fall River

6. Annual period during which water is to be used March 1 - November 30

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

Land Description	No. Acres Irr.
See Vested Water Right No.	
1814-2	

Land Description	No. Acres Irr.

Attach sheet if more space is needed

8. Type of Irrigation: Gravity: X Towline: _____ Center Pivot: _____ Gun: _____ Other: _____
(Specify)

9. Crops to be Irrigated: grass

10. Give a description of proposed project. (Attach sheet if more space is needed)

This is a water spreading system. This application is for the addition of a diversion point that should have been included in Vested Right Claim No. 1814-2.

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach maps, soils information and any other technical information.

STATE OF SOUTH DAKOTA)
County of Fall River) ss

I, ROBERT TUBBS Mark Tubbs, the applicant, certify that I have read this application and examined the attached maps, that the water sample, if needed, has been taken by the required procedures and has not been adulterated or tampered with and is truly representative of the water to be used, and that the matters stated in this application are true and correct. Mark Tubbs

Signed Robert Tubbs

Subscribed and sworn to before me this 6th day of June 19 89

COMMISSION EXPIRES 4-16-94

Notary Public

Affidavit of Water Use

No. _____

(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) Robert & Mark Tubbs

Post Office Address Box 563 Edgemont SD 57735
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting Fall River misc.
 Date of recording December 12, 1907 Recording date Reg. of Deeds 4 128
Where Book Page

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

C. Date that water was first applied to beneficial use _____

D. Name of owner of original water supply system J.C. Birdsell and Goe. T. PaineE. Amount of water originally applied to beneficial use 4.0 cfsF. Present Use of Water - Amount of water now being used 13.9 cfsDate that this water was first used February 29, 1908

G. Chronological History of Water Use

See Affidavit of Water Use for Vested Right Claim No. 1814-2.

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 TUBBS Mark Tubbs the applicant, certify that I have read the foregoing
(print or type)
 and that the matters therein stated are true.

Signed Robert Tubbs
Mark Tubbs
 Subscribed and sworn to before me June 19 89
Commission Expires 4-16-94
 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.

Robert Tubbs 19 89
(Print name)
Mark Tubbs 19 89
(Print name)

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, June 12, 1989

RECEIVED OF Tuobs Land & Cattle, Box 563, Edgemont, SD 57735-0563

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

Fee for Application for Permit No. <u>1814H-2</u> to Appropriate Water, to construct works and to put water to beneficial use	15	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	1500

By

Chief Engineer

Conversation or File Documentation

NAME OF PERSON OR FILE: Mark TubbsADDRESS: _____ COUNTY Fall RiverDATE: 7/26/88 TELEPHONE _____RE: Omission of Diversion Pt which should be added to 1814-2

COMMENTS:

Mark Tubbs called in reference to vested right No. 1814-2.
This water right is from dry draws and Dry Creek.
Dry Creek should be listed as a source which corresponds to
the listed diversion points. Also the diversion point from
Lake Nettleton was omitted and should be added to the vested
right to clarify the right to divert through their existing
ditch system from the draws, Dry Creek, and Lake Nettleton.
A diversion pt. no 6 should be added and stated to read
as follows: Point #6 - 2125 ft S & 1875 ft. W of the
NE Corner of Sec 28, T8S, R2E. (SW 1/4 NE 1/4).

I wrote to Mark Tubbs on this date to petition the Board to
add this point of diversion to the water right ^{and the name (Dry Creek)}. They have
as long as they can remember diverted from this point for
this vested right. This may need readvertizing for the
added point of diversion.

I am personally aware of the diversion and was ^{with} ~~then~~ LeRoy
Mermaugh when the inspection was made. I concur that the
point of diversion should be included in the water right.

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: James E. Hamilton

Aug 9, 1988

South Dakota Department of
Water and Natural Resources,
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181
Attn: Water Management Board



Dear Board Members;

I was told by Jim Winterton that I needed to petition the board for inclusion of a point of diversion, on vested right no. 1814-2. The point was missed on the original paper work.

The point of diversion is located 2,225 ft. south and 1875 ft west of the NE corner of section 28, T8S, R2E.

DDP

This point of diversion ~~is~~ takes
water from Lake Nettleton, which
is water, that comes out of Dry Creek.

The dam and lake on Dry Creek
were built in 1892 as part of the Edgemat
canal. The point of diversion and ditch
irrigating our property have been in
continuous use since that time.

This point of diversion needs to
be included in Vested right no 1814-2.

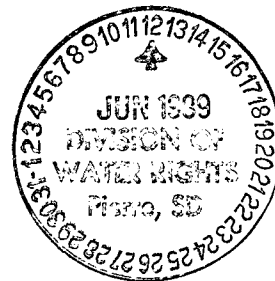
Thank You

Mark K. Tubbs

Bob Tubbs

SOUTH DAKOTA Department of
Water & Natural Resources

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



June 2, 1989

Robert & Mark Tubbs
Box 563
Edgemont, SD 57735-0563

Dear Mr. Tubbs:

Enclosed are the forms for adding the diversion point from Lake Nettleton to your Vested Right Claim No. 1814-2.

The forms must be signed in the presence of a Notary. The forms and a filing fee of \$15.00 should be returned to our office as soon as possible.

If I can answer any questions, please contact me.

Sincerely,

DELVIN D. BROSZ, P.E.
Hydrologist
Water Rights Division
(605) 773-3352

*Instructions comply with as
specified in above letter.*



Conversation or File Documentation

NAME OF PERSON OR FILE: Robert and Mark TubbsADDRESS: P.O. 563, Edgemont, SD 57735 COUNTY Fall RiverDATE: June 8, 1989 TELEPHONE _____RE: Validation of Vested Right Claim No. 1814-2

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 Mernaugh, Division of Water Rights Engineer in 1982. The Tubbs stated that the project had not changed except that the diversion point at Lake Nettleton had been omitted from the claim. We field inspected this diversion point and found that it was in operating condition. I prepared the necessary application forms to add this diversion point to the claim. The forms were mailed ^{on June 3, 1989} to the Tubbs for review, signatures and ^{to} return with fee.

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: Nehin W. Brong, P.E.
Hydrologist

Report on Application No. 1814A-2
Robert & Mark Tubbs
August 8, 1989

Application No. 1814A-2 submitted by Robert and Mark Tubbs requests that an additional point of diversion that was previously omitted be added to Vested Right Claim No. 1814-2. This diversion point is from a former reservoir area known as Lake Nettleton. The lake was originally formed by a Dam on Dry Creek and is now silted in and stores no water. The dam and reservoir were built in 1892 and the water right claim was filed in 1908. The water has been in continuous use when available since that time. The diversion structure is still used when Dry Creek flows are present. The diversion point has been used since the original system was constructed. The location of the point of diversion is 2125 feet south and 1875 feet west of the northeast corner of section 28, T8S-R2E.

Vested Water Right Claim No. 1814-2 contains the following information:

It claims 4.0 cfs from December 12, 1907 and 9.9 cfs from February 29, 1908 from dry draws and Dry Creek to irrigate 972 acres. This is a water spreading system.

An inspection of the diversion point by the Del Brosz and Jim Winterton on May 31, 1989 showed the diversion point to exist and still capable of diverting the flows of Dry Creek. This point of diversion should have been included on the original Vested Right Claim No. 1814-2.

It is recommended that the additional point of diversion be approved and incorporated into Vested Right Claim No. 1814-2 with the February 29, 1908 priority date.


James Winterton, P.E.
Natural Resources Engineer

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1814A-2, Robert & Mark Tubbs

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 Application No. 1814A-2, Robert & Mark Tubbs, Box 563, Edgemont SD.

The Chief Engineer is recommending VALIDATION of Application No. 1814A-2 to include a sixth diversion point because 1) water has been appropriated as described for irrigation use with a priority date of February 29, 1908, 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 the attached report for additional information.

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

JOHN HATCH, Chief Engineer
August 8, 1989



Department of Water & Natural Resources

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

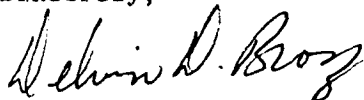
August 15, 1989

Robert & Mark Tubbs
Box 563
Edgemont SD 57735

Dear Mr. Tubbs:

This is to inform you that the Division of Water Rights will pay the publication costs for Vested Water Right Application No. 1814A-2. The Edgemont Herald-Tribune has been informed of this.

Sincerely,



DELVIN D. BROSZ, P.E.
Hydrologist
605 773-3352

cc: Edgemont Herald-Tribune





Department of Water & Natural Resources

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

August 22, 1989

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

Robert & Mark Tubbs
Box 563
Edgemont SD 57735

Dear Sirs:

Your Application No. 1814A-2 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publisher of the Edgemont Herald-Tribune printed at Edgemont SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice and notify this office, if you have any corrections or questions.

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

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures





Department of Water & Natural Resources

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

August 22, 1989

Edgemont Herald-Tribune
Box 660
Edgemont SD 57735

Dear Sir:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1814A-2 to be published twice. Please publish the notice on or before August 30, 1989 with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Robert & Mark Tubbs, Box 563, Edgemont SD 57735.

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,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

CUT HERE

FIRST TRANSMITTAL NOTICE

TO: ATTN: Ron Duvall
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Validate A Vested Right Application which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name _____

Newspaper _____



Instruction to Newspaper - Publish first Notice on or before August 30, 1989 with 2nd publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 1814A-2 to Appropriate Water

Notice is given that Robert & Mark Tubbs, Box 563, Edgemont SD 57735 have filed an application to add a diversion point that was previously omitted on their Vested Right Claim No. 1814-2. Vested Water Right Claim No. 1814-2 lists five diversion points as follows: 1) 550 feet north and 700 feet west of the SE corner Section 34; 2) 2100 feet north and 700 feet east of the SW corner Section 28; 3) 1700 feet east and 100 feet south of the W 1/4 corner Section 29; 4) 1300 feet north of the SW corner Section 27; and 5) 1320 feet south of the NW corner Section 27; all in T8S-R2E. The 4.0 cubic feet of water per second (cfs) claimed since December 12, 1907 and the 9.9 cfs claimed since February 29, 1908 are taken from dry-draws and Dry Creek to irrigate 972 acres. The sixth diversion point, not previously included, is from a reservoir, also known as Lake Nettleton, that is formed by a dam on Dry Creek. It is located 2125 feet south and 1875 feet west of the NE corner Section 28-T8S-R2E. This dam and reservoir were built in 1892 and the water right claim was filed in 1908. The water has been in continuous use since that time.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1814A-2 because 1) water has been appropriated as described for irrigation with a priority date of February 29, 1908, 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 application will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD on September 27, 1989 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 of the application 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 applicant and Chief Engineer by September 15, 1989. 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 application, the petitioner's reasons for opposing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant 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 applicant or a petitioner. The request for a delay must be received by September 15, 1989.

This application 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 46-5-11, 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 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
 County Fall River) ss.

I, Barb Bryan

certify that the attached printed Notice was taken
 from the Edgemont Herald-Tribune

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

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

Wed Aug. 30 1989

Wed Aug Sept. 6, 1989

Barb Bryan
 (Signature)

Publisher
 (Title)

Sept 7-1989
 (Date Signed)

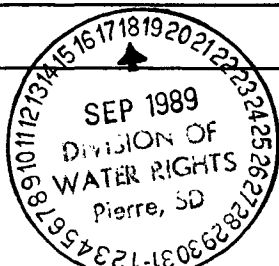
Cost of Printing: \$43.06

NOTICE OF HEARING

To Validate Vested Water Right
 Application No. 1814A-2
 to Appropriate Water

Notice is given that Robert & Mark Tubbs, Box 563, Edgemont SD 57735 have filed an application to add a diversion point that was previously omitted on their Vested Right Claim No. 1814-2. Vested Water Right Claim No. 1814-2 lists five diversion points as follows: 1) 550 feet north and 700 feet west of the SE corner Section 34; 2) 2100 feet north and 700 feet east of the SW corner Section 28; 3) 1700 feet east and 100 feet south of the W $\frac{1}{4}$ corner Section 29; 4) 1300 feet north of the SW corner Section 27; and 5) 1320 feet south of the NW corner Section 27; all in T8S-R2E. The 4.0 cubic feet of water per second (cfs) claimed since December 12, 1907, and the 2.9 cfs claimed since February 29, 1908 are taken from dry-draws and Dry Creek to irrigate 972 acres. The sixth diversion point, not previously included, is from a reservoir, also known as Lake Nettleton, that is formed by a dam on Dry Creek. It is located 2125 feet south and 1875 feet west of the NE corner Section 28-T8S-R2E. This dam and reservoir were built in 1892 and the water right claim was filed in 1908. The water has been in continuous use since that time.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 1814A-2 because 1) water has been appropriated as described for irrigation with a priority date of February 29, 1908, 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 application will be considered by the Water Management Board in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD on September 27, 1989 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 on all any validation of the application based on the facts presented at the public hearing.



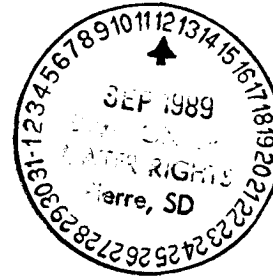
Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by September 15, 1989. The Chief Engineer's address is "Water Rights Division, 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 application, the petitioner's reasons for opposing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant 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 applicant or a petitioner. The request for a delay must be received by September 15, 1989.

This application 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 46-5-11, 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 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.
[Aug. 30 - Sept. 6] [35-36]

September 8, 1989

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



PETITION

The undersigned, being first duly sworn on oath, each deposes and says:

EDWIN P. BENTON and WESLEY E. BENTON, the post office address of Edwin P. Benton being Box 94, Custer, SD 57730; the post office address of Wesley E. Benton being Box 40, Edgemont, SD 57735.

The Petitioners are interested in the hearing involving the validation of a vested water right application #1814A-2 to appropriate water.

A copy of the public notice appearing in the Edgemont Herald Tribune for Wednesday, August 30, 1989, at page 9, is attached hereto for further particulars as to the description of the land and other items set forth in said Notice of Hearing, which said copy of Notice of Hearing is incorporated in this Petition and made a part thereof as fully as if set out in full.

The Petitioners plan to appear at before the Water Management Board in Room 216, Joe Foss Building, Pierre, South Dakota, on September 27, 1989, at 10:00 a.m.

The Petitioners interest is that they owned land close to the diversion of where this application land is described.

In the event this hearing is postponed, the Petitioners request notice of the date and place of the delay.

Respectfully submitted,

Edwin P. Denton

EDWIN P. BENTON


WESLEY E. BENTON

STATE OF SOUTH DAKOTA)
COUNTY OF FALL RIVER) SS

On this 11th day of Sept, 1989, before me,
 , the undersigned officer, personally
appeared EDWIN P. BENTON and WESLEY E. BENTON, known to me to be the persons
whose names are subscribed to the foregoing instrument, and acknowledged to me
that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF I have hereunto set my hand and official

seal.


Notary Public - South Dakota

My commission expires:

(SÉAL)

Feb. 9, 1992

Sept 12, 1989
(date)

page 1

Parties of Record before Water Management Board regarding Vested
Water Right Application No. 1814A-2, Robert & Mark
Tubbs

Proponents :

Robert & Mark Tubbs
Box 563
Edgemont SD 57735

Interested :

Edwin P Benton
Box 94
Custer SD 57730

Wesley E Benton
Box 40
Edgemont SD 57735



Department of Water & Natural Resources

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

September 13, 1989

Robert & Mark Tubbs
Box 563
Edgemont SD 57735

Dear Mr. Tubbs:

A petition to participate in the hearing on Vested Right Application No. 1814A-2 was received by the Division of Water Rights on September 12, 1989. Enclosed is a copy of the petition submitted by Edwin and Wesley Benton.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

SEP 20 1993

Robert and Mark Tubbs
Box 563
Edgemont SD 57735

Dear Sirs:

The Water Management Board has validated the enclosed Vested Water Right Nos. 1814-2 and 1814A-2. Also, enclosed is Vested Right Water License No. 1814A-2. The applicable portions of Vested Water Right No. 1814-2 have been incorporated into Vested Water Right License No. 1814A-2.

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. 1814A-2 FOR IRRIGATION

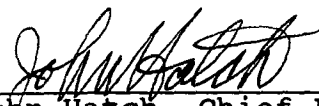
Date of Receipt of Claim June 12, 1989.

Date of Validation September 27, 1989.

The Water Management Board validated Vested Water Right Claim No. 1814A-2 for irrigation purposes for Robert and Mark Tubbs, Box 563, Edgemont SD 57735 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1814A-2 adds a diversion point to those diversion points authorized by Vested Water Right No. 1814-2 for irrigation of portions of 972 acres. This diversion point (Lake Nettleton) is a dam located on Dry Creek in the SW 1/4 NE 1/4, SE 1/4 NW 1/4 Section 28-T8S-R2E. No increase in acreage or diversion rate is authorized by this vested right.
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 February 29, 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: 
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and
Natural Resources

SEP 20 1993

date

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1814A-2 FOR IRRIGATION

(1) Robert and Mark Tubbs of Box 563, Edgemont, SD 57735, made Application No. 1814A-2, June 12, 1989 for validation of a vested right claim to appropriate no additional cubic feet of water per second (cfs) from Lake Nettleton (a dam on Dry Creek), Fall River, County, South Dakota, for irrigation purposes. Vested Water Right No. 1814A-2 was validated September 27, 1989 with a priority date of February 29, 1908. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

Vested Water Right No. 1814A-2 added a diversion point to those diversion points authorized by Vested Water Right No. 1814-2. The additional diversion point will irrigate portions of the 972 acres described in No. 1814-2. No. 1814A-2 did not allow for an increase in acreage or diversion rate. The applicable portions of Vested Water Right No. 1814-2 have been incorporated into this Vested Water Right License No. 1814A-2. Priority dates are as follows: February 29, 1908 - 9.90 cfs and the Lake Nettleton diversion point; December 12, 1907 - 4.00 cfs.

(2) The vested right owner is entitled to divert 13.90 cubic feet of water per second for beneficial use. The location of the diversion points are: (1) 550'N & 700'W of the SE corner Section 34 (SE 1/4 SE 1/4); (2) 2100'N & 700'E of the SW corner Section 28 (NW 1/4 SW 1/4); (3) 1700'E & 100'S of the W 1/4 corner Section 29 (NE 1/4 SW 1/4); (4) 1300'N of the SW corner Section 27 (SW 1/4 SW 1/4); (5) 1320'S of the NW corner Section 27 (NW 1/4 NW 1/4); (6) 2125'S and 1875'W of the NE corner of Section 28 (SW 1/4 NE 1/4); all in T8S, R2E.

The location of the irrigated acreage is: all in T8S, R2E

Section 20

E1/2 SE 1/4 SE 1/4 10 acres

Section 21

SW 1/4 160 acres

Section 22

NW 1/4 SW 1/4 4 acres

SW 1/4 SW 1/4 31 acres

Section 27

NW 1/4 NW 1/4 32 acres

NE 1/4 NW 1/4 15 acres

SW 1/4 NW 1/4 31 acres

SE 1/4 NW 1/4 33 acres

SW 1/4 NE 1/4 28 acres

NW 1/4 SW 1/4 40 acres

NE 1/4 SW 1/4 40 acres

SW 1/4 SW 1/4 38 acres

SE 1/4 SW 1/4 40 acres

Section 28

N 1/2 NW 1/4 80 acres

SW 1/4 NW 1/4 15 acres

SE 1/4 NW 1/4 15 acres

NW 1/4 SW 1/4 6 acres

NE 1/4 SW 1/4 33 acres

NW 1/4 SE 1/4 40 acres

NE 1/4 SE 1/4 17 acres

Section 28 cont.

SW 1/4 SE 1/4 20 acres

SE 1/4 SE 1/4 40 acres

Section 29

SE 1/4 NW 1/4 10 acres

SW 1/4 NE 1/4 15 acres

SE 1/4 NE 1/4 16 acres

NE 1/4 SW 1/4 2 acres

Section 33

NE 1/4 NE 1/4 23 acres

Section 34

NW 1/4 NW 1/4 40 acres

SW 1/4 NW 1/4 12 acres

SE 1/4 NW 1/4 22 acres

SW 1/4 NE 1/4 36 acres

NW 1/4 SE 1/4 19 acres

SE 1/4 SE 1/4 9 acres

Total

972 acres

VESTED RIGHT WATER LICENSE NO. 1814A-2
ROBERT & MARK TUBBS
PAGE 2

(3) Pursuant to Section 46-5-30.1 Robert and Mark Tubbs of Box 563, Edgemont, SD 57735 the holders and/or owners of Incorporated Vested Water Right No. 1814A-2 is issued a license to appropriate 13.90 cubic feet of water per second from dry draws and Lake Nettleton (dam on dry creek) with priority dates of February 29, 1908 for 9.90 cfs and December 12, 1907 for 4.00 cfs from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Incorporated Vested Water Right No. 1814A-2 and subject to South Dakota State Law.


SEP 20 1993

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