

Considered: _____

VESTED RIGHT
WATER PERMIT NO. 1879-2

MAP No. 1879-2

Name of Applicant HOWARD AND DAVID HENDERSON

Post Office Address ST RT 1, Box 2, Provo, S.D. 57774

Amount of Water Claimed 25.30 Total Acres 1,772.00

Source of Water Supply Coal Creek

Water to be used for IRR County Fall River

About _____ miles _____ of _____.

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved 7-11-84 Subject to _____

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

PRIORITY _____ Date Received 6/13/84 Fee 10.50 Remarks _____

1/1/1946

Corrected Application Received _____ Period of Annual Use 1/1 to 12/31

WATER QUALITY APPROVAL RECEIVED _____ APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES _____ NO _____ REMARKS _____
not applicable

Diversion Point _____

NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23-T10S-R2E

Land to be Irrigated _____

see attachment

Well Log: Driller _____ Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

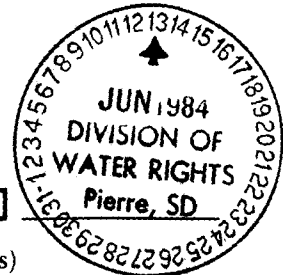
Type of Map drawn PREPARED BY Del Brosz Reviewed and the Number
assigned on 6/18/84 Division of Water Rights
By Betty Westlund

c Nelson
c-Hanten

No. <u>1879-2</u>	Hydrologic Unit <u>10120106</u>
Map No. <u>1879-2</u>	Basin <u>UC</u>
Newspaper <u>N/A</u>	

Application For Permit To Appropriate Water Within The State Of South Dakota

Type of Application: Check one or more of the following:

New ☐ Vested Right ☒ Future Use ☐☐ Application to amend Permit No. _____ with old priority date retained☐ Change diversion point(s) ☐ Add diversion point(s) ☐ Change acreage ☐ Other ☐☐ Application to: ☐ Change use ☐ Change diversion point(s) ☐ Add diversion point(s)☐ Add Acreage ☐ Increase diversion rate ☐ Other _____ See Permit No. _____☐ Application to: ☐ Use ☐ Transfer water reserved by Future Use Permit No. _____1. Name of Applicant Howard & David Henderson Phone No. 662-7874Post Office Address Star Route #1, Box 2, Provo, SD State 57774
(Street, RR or Box) Zip Code2. Amount of water claimed (c.f.s) 25.3 Total acres irrigated 17723. Source of Water supply Coal Creek4. Location of point of diversion S30W 1300' from NE Corner of Section 23, T10S, R2ECounty Fall River5. Counties where water will be used Fall River6. Annual period during which water is to be used All year

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 attached sheet)	

Land Description	No. Acres Irr.

Attach sheet if more space is needed

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

This is a waterspreading system. Water is diverted from the creek into a canal by a 6' high, 66' long overflow dike in the creek channel. Water is spread on the land by dikes and canals containing 6 inch concrete tile outlets spaced at 100 feet.

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

STATE OF SOUTH DAKOTA)
County of FALL RIVER)^{ss}I, Howard Henderson + David H. Henderson the applicants, certify that I have read the foregoing application, have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.Signed Howard Henderson + David H. HendersonSubscribed and sworn to before me this 11th day of June 1984

Lynnette Jo McGaw, Notary Public

My commission expires:

Lynnette Jo McGaw
 Notary Public for other qualified officers

WATER PERMIT

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

(Applicant)

(Post Office Address)

(State)

(Zip Code)

With the following qualifications.

See Form VR-1

Date of first receipt of application _____, 19____.

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

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

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

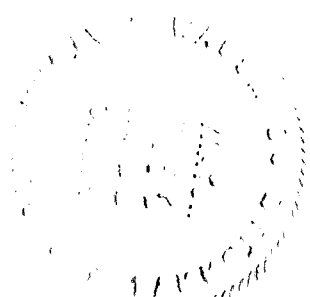
1. The date from which applicant may claim right is _____, 19____.
2. One-fifth of the work is to be completed on or before _____, 19____.
3. The whole of said work is to be completed on or before _____, 19____.
4. The time limit for proof of beneficial use of water is _____, 19____.
5. The water appropriated shall be used for the purpose of _____
6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be unlawfully impaired by this appropriation.
7. The amount of the appropriation herein granted shall not exceed _____ cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served. For irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one-seventieth ($1/70$) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before _____, 19____; said water to be used during the following described annual period: _____

WATER MANAGEMENT BOARD

By: _____
Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

_____, 19____



VESTED WATER RIGHT

The Water Management Board hereby recognizes Vested Water Right No. 1879-2

Howard & David Henderson
(applicant)

Star Rt. 1 Box 2 Provo
(post office address)

South Dakota 57774
(state) (zip code)

Date of receipt of Application June 13, 1984.

Recognized July 11, 1984.

The Water Management Board hereby recognizes the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Vested Water Right, subject, however, to the following limitations and conditions:

1. The date from which the applicant may claim right is January 1, 1946.
2. The whole of said work has been completed and water has been applied to beneficial use as described on Form 2B of this application.
3. The water appropriated is used for the purpose of Irrigation.
4. The prior rights of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be unlawfully impaired by this appropriation.
5. The amount of the appropriation hereby recognized shall not exceed _____

25.30 cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served. For irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water has been actually and beneficially applied for irrigation. The water is to be used during the following described annual period January 1 to December 31.

WATER MANAGEMENT BOARD

By: John H. H. H.

(Chief Engineer)

Division of Water Rights
Dept. of Water and Natural Resources

JULY 18, 1984.

State of South Dakota

VESTED Water License No. 1879-2

(1) Howard and David Henderson

of SR#1, Box 2, Provo, South Dakota 57774

made Application No. 1879-2, June 13, 1984 for recognition of a Vested Right for a water permit to appropriate

25.30 cubic feet per second of water from Coal Creek

Fall River County, South Dakota for Irrigation purposes.

Vested Right
/ Permit No. 1879-2, with a priority date of January 1, 1946

recognized July 11, 1984 and issued to applicant(s) for diversion of water recognizing construction of the described

water supply system to be completed on or before and for the application to beneficial use of said

water on or before

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of

the construction of the water supply system and is entitled to divert 25.30 cubic feet per second of water

for beneficial use. The location of the diversion point(s) is S 3°W 1300 feet from NE Corner of

Section 23, T10S, R2E

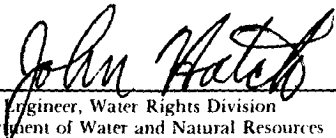
and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, to irrigate the land described in Attachment "A", a
total of 1,772 ACRES

(4) Pursuant to §46-5-30.1 Howard and David Henderson
of Star Route #1, Box 2, Provo, South Dakota
the holder(s) and/or owner(s) of ^{Vested Right}~~Water Permit~~ No. 1879-2 is issued a license to appropriate water, the right to use
25.3 cubic feet per second of water from Coal Creek with a priority date
of January 1, 1946 from the location specified in (2) of this license. The water to be
conducted to and upon lands specified in (3) of this license for the purpose of irrigation

Vested Right

This license is subject to any limitations or qualifications listed in ~~Water Permit~~ No. 1879-2 and subject
to South Dakota State Law.


Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

July 19, 1984

**This Water License No. 1879-2 is based upon a Vested Right claim filed with
the Water Management Board.**

IRRIGATED ACRES

Section 18, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	1 Acre
NW $\frac{1}{4}$ NW $\frac{1}{4}$	2 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	9 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	15 Acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	28 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	23 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	4 Acres

Section 17, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	1 Acre
SE $\frac{1}{4}$ SW $\frac{1}{4}$	1 Acre
SW $\frac{1}{4}$ SE $\frac{1}{4}$	25 Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	33 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	34 Acres

Section 16, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	39 Acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	6 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	9 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	38 Acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	7 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	38 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	8 Acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	21 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	31 Acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	21 Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	35 Acres

Section 21, T10, R3

NE $\frac{1}{4}$ NE $\frac{1}{4}$	2 Acres
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Section 15, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	32 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	26 Acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	21 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	13 Acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	39 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres

Section 22, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	1 Acre
NW $\frac{1}{4}$ NW $\frac{1}{4}$	29 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	29 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	1 Acre
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	1 Acre
NW $\frac{1}{4}$ SE $\frac{1}{4}$	28 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	27 Acres

Section 14, T10, R3

SW $\frac{1}{4}$ SW $\frac{1}{4}$	37 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	12 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	12 Acres

Section 23, T10, R3

SW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	37 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres

Section 26, T10, R3

NW $\frac{1}{4}$ NW $\frac{1}{4}$	36 Acres
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TOTAL ACRES 1,772

State of South Dakota

Reissuance of Vested Right Water License No. 1879-2

(1) Howard and David Henderson

of SR#1, Box 2, Provo, South Dakota 57774

made Application No. 1879-2, June 13, 1984 for recognition of a Vested Right ~~for a water permit~~ to appropriate

25.30 cubic feet per second of water from Coal Creek,

Fall River County, South Dakota for Irrigation purposes.

Vested Right

Permit No. 1879-2, with a priority date of January 1, 1946*

~~was approved~~ **recognized** July 11, 1984 and issued to applicant(s) for diversion of water ~~with~~ **recognizing** construction of the described

water supply system to ~~be completed on or before~~ and ~~for~~ the application to beneficial use of said

water ~~on or before~~

On September 14, 1984 additional documentation in the form of Location Notice No. 643-2 was found concerning Vested Right filing No. 1879-2.

*Location Notice No. 643-2 established a priority date of Oct. 4, 1945 for Vested Right filing No. 1879-2. Vested Right Water License No. 1879-2 is being reissued to reflect the change in priority dates. Location Notice No. 643-2 will be incorporated into this license.

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of

the construction of the water supply system and is entitled to divert 25.30 cubic feet per second of water

for beneficial use. The location of the diversion point(s) is S 3⁰W 1300 feet from NE Corner of Section

23, T10S, R2E.

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, to irrigate the land described in attachment "A"

a total of 1,772 Acres

(4) Pursuant to §46-5-30.1 Howard and David Henderson

of Star Route #1, Box 2, Provo, South Dakota

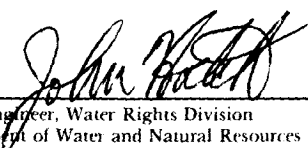
the holder(s) and/or owner(s) of /Vested Right 1879-2 is issued a license to appropriate water, the right to use

25.3 cubic feet per second of water from Coal Creek with a priority date

of October 4, 1945 from the location specified in (2) of this license. The water to be

conducted to and upon lands specified in (3) of this license for the purpose of Irrigation

This license is subject to any limitations or qualifications listed in /Vested Right 1879-2 and subject to South Dakota State Law.


Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

October 16, 1984

LOCATION NOTICE

State Publishing Co., Pierre, S. D.

KNOW ALL MEN BY THESE PRESENTS:

THAT L. R. Parkin and Clara Robinson whose post office is Pravo, South Dakota, South Dakota, a citizen of the United States, above the age of 21 years, being in possession of the following described land, to-wit: NW 1/4 NW 1/4 section 24 and SW 1/4 Sec. 13 township 10 range 2 E. B. H. M. in Free River County, South Dakota. Said lands comprising Desert Entry No. _____ Land District, availing themselves of the right granted them under the provisions of Section 31 of Chapter 180 of the Session Laws of South Dakota of 1907, has located and claims the right to construct a certain dam across a dry draw situated in the NW 1-4 of the NW 1-4 section 24 township 10 range 2 E. B. H. M. and has located and claims the right to construct ditches and flumes for the purpose of directing flood waters from said dam for irrigation of the land first above described, and claims the right of way across any land for the purpose of conveying said waters for said purpose.

Said locator claims for the above purpose 27 cubic feet of water per second during the following described annual periods all the year inclusive each year.

The location of the point of diversion of the reservoir is as follows:
SW corner of the NW 1/4 NW 1/4
 From the _____

The ditch _____ will run in a Northeasterly direction to and on said land for a distance of across said land feet.

Said location was made on the 4th day of October 1945

Witness my hand and seal this 24th day of November 1945

Clara Robinson (signed)
 Locator.

State of South Dakota, }
 County of Free River } ss.

On the 24th day of November 1945, before me the undersigned, a notary public in and for the County and State aforesaid, personally appeared Clara Robinson to me personally known to be the person who executed the foregoing instrument and acknowledged that he executed the same for the uses and purposes therein set forth.

Witness my hand and official seal, the day and date above written.

Paul H. Russell (signed)
 Notary Public.

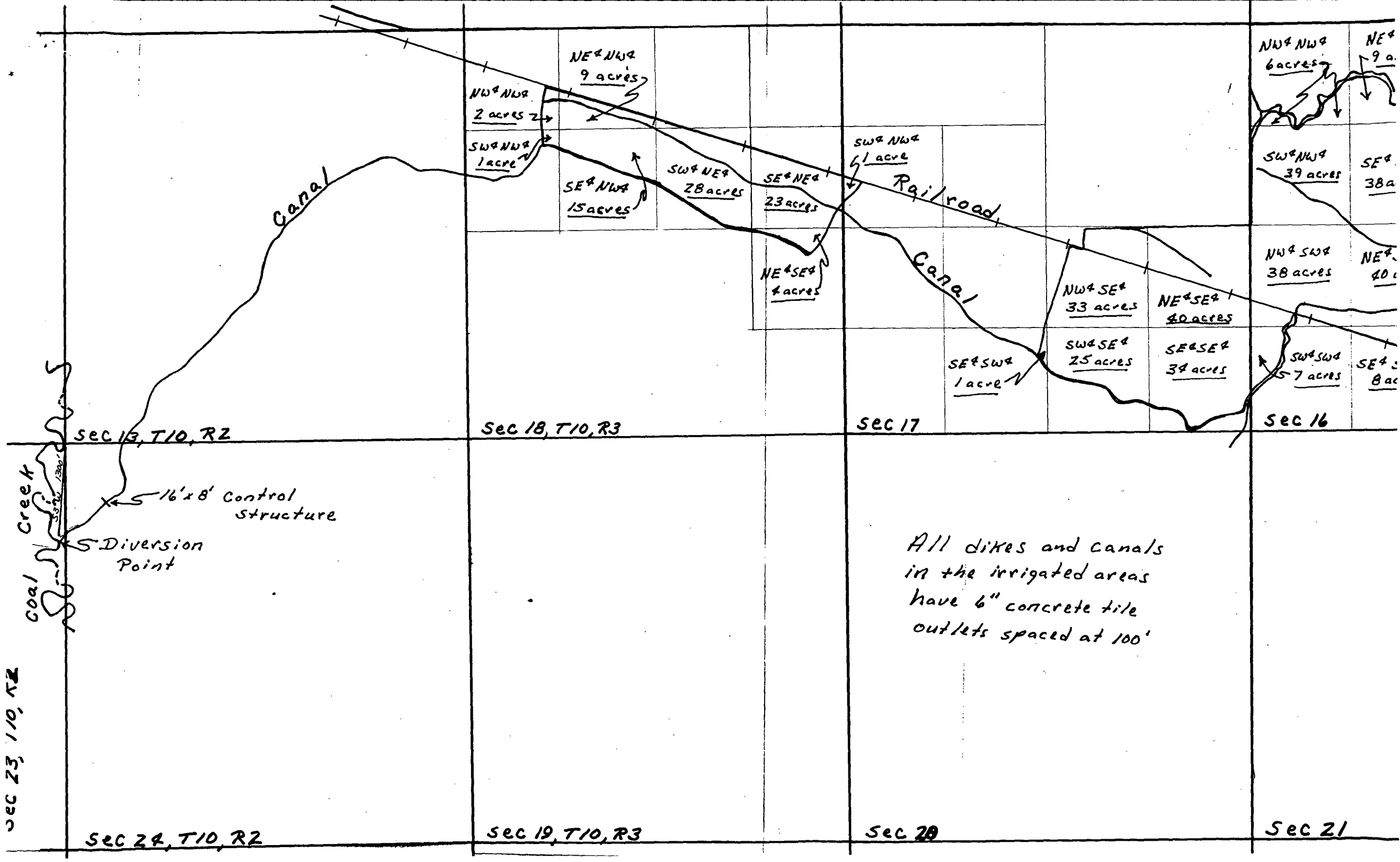
Pierre, South Dakota, October 16 1946

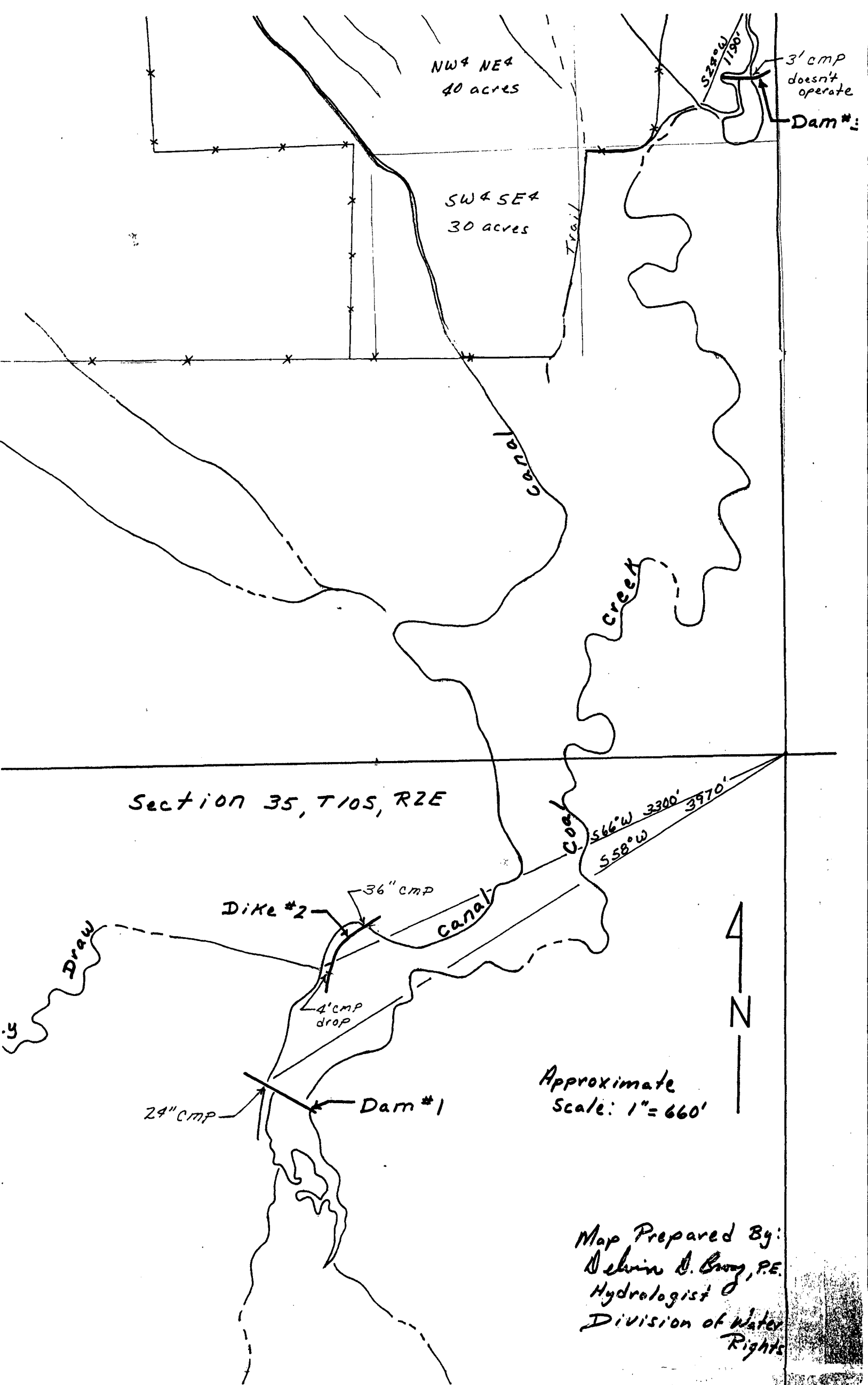
This is to certify that the foregoing location notice was received at this office at 8:00 o'clock A. M., upon the 16th day of October 1946, and after examination it was filed for record this 16th day of October, 1946

Dean H. Louche
E. P. State Engineer.

Transfer of Water Right under date of March 11, 1946 to
A. M. Henderson.

#643-2





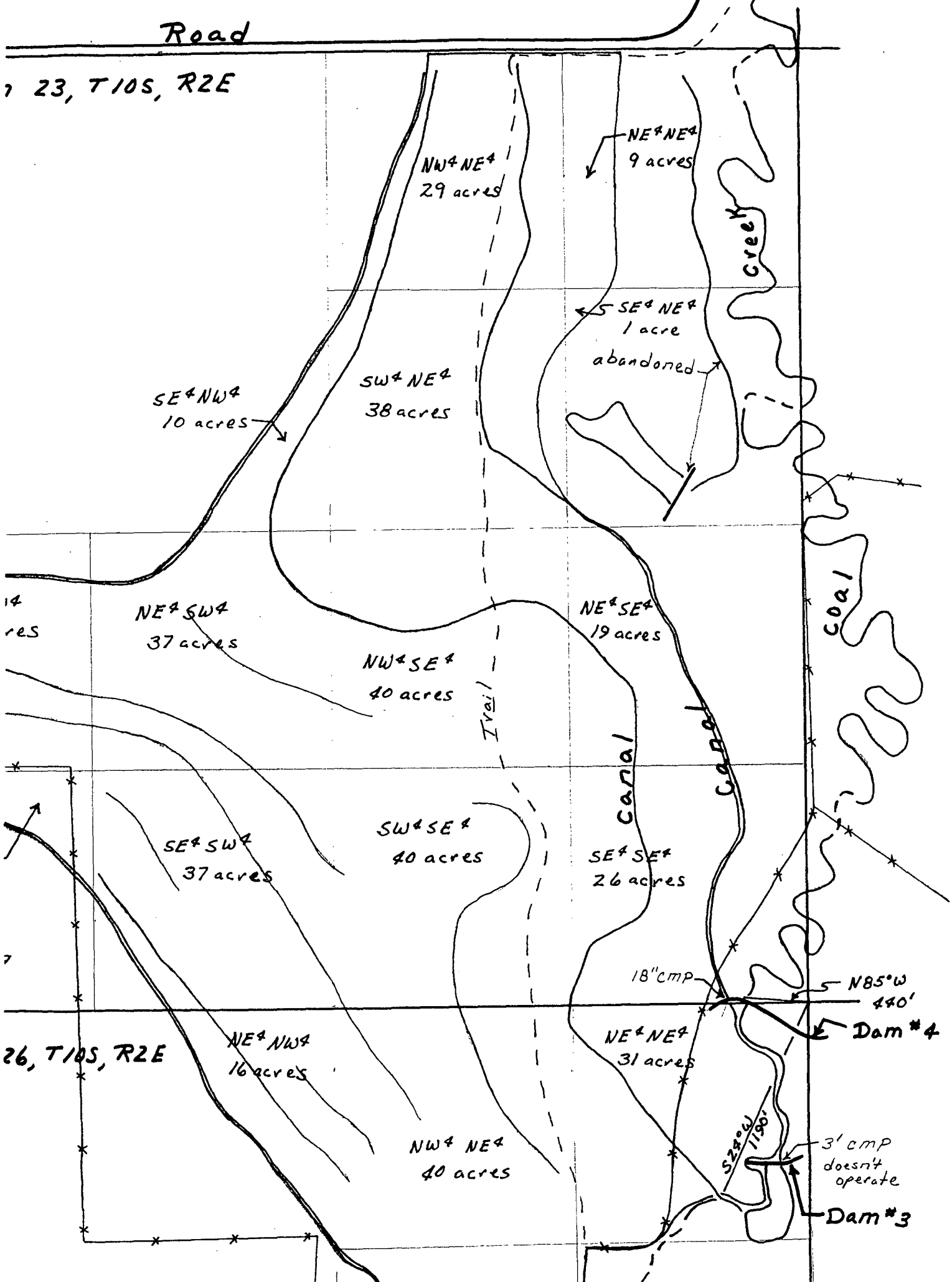
Road

23, T10S, R2E

14
res

7

26, T10S, R2E



RECEIPT

Division of Water Rights

No 4 9685

South Dakota Department of Water and Natural Resources

Pierre, June 13, 19 84

RECEIVED OF Howard Henderson, Star Route #1, Box 2, Provo, South Dakota 57774

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

Fee for Application for Permit No. 1879-2 to Appropriate Water, to construct works and to put water to beneficial use	8 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. 1879-2	2 50
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	10 50

By

John Hatch

Chief Engineer

JOHN HATCH/MS

WATER RIGHTS DIVISION
(605) 773-3352

June 5, 1984

Howard Henderson
Star Route #1, Box 2
Provo, South Dakota 57774

Dear Mr. Henderson:

I have completed all of the necessary forms for your water spreading systems. Enclosed are two copies of form 2, "Application for Irrigation" and one copy of form 2B, "Affidavit of Water Use".

Would you please examine the forms and correct anything that is in error. Please sign the forms in the presence of a notary where indicated. The forms should then be returned to our office with a check for \$10.50 to cover the cost of the filing fee and the license.

I have also enclosed a map of your project. If you have no changes to the map you may keep it for your files. If you have some changes please indicate them on the map and return it with the forms so that we can correct our office copy.

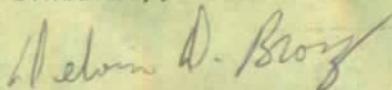
In searching our files I found the following location notices for livestock watering dams:

<u>Number</u>	<u>Location</u>	<u>Date</u>	<u>Filed by</u>
782-2	NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec.17, T10, R3	1949	A. Honadel
2651-2	NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec.17, T10, R3	1950	E. Ramsay
18914-2	NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec.14, T10, R3	1960	A. Henderson

If you have any other dams that are being used for livestock water you should file location notices. I have enclosed some forms for this purpose.

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

Sincerely,



Delvin D. Brosz, P.E.
Hydrologist

DDB:ms
Enc.

Conversation or File Documentation

NAME OF PERSON OR FILE: Howard & David Henderson
ADDRESS: Star Route #1, Box 2, Provo, S.D. 57778 COUNTY Fall River
DATE: Sept. 14, 1982 TELEPHONE 662-7872
RE: Location Notice 643-2

COMMENTS:

Vested Right 1879-2 was recognized by the Board of Water Management on July 11, 1982 with a priority date of Jan. 1, 1926.

I made a field inspection of the project on May 17, 1982. At that time I was unable to tie the project to any old location notice filing.

On Sept. 14, 1982, conducting micro-film research on another location notice, I found additional information relative to Water Right 1879-2. I found a transfer of water right for Location Notice 643-2 to A.M. Henderson. Location Notice 643-2 is the original filing for Water Right 1879-2.

The water license should be re-issued with a priority date of Oct. 2, 1925 and Location Notice 643-2 should be incorporated into Water Right 1879-2.

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 D. Bury, P.E.
Hydrologist

WATER RIGHTS DIVISION
(605) 773-3352

October 17, 1984

Howard and David Henderson
SR#1, Box 2
Provo, South Dakota 57774

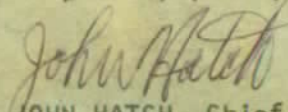
Dear Sirs:

Enclosed is your Vested Right Water License No. 1879-2. The license has been re-issued to reflect a priority date change.

Additional documentation in the form of Location Notice No. 643-2 was found concerning Vested Right Filing No. 1879-2. Location Notice No. 643-2 establishes a priority date of October 4, 1945 for Vested Right No. 1879-2. Location Notice No. 643-2 has been incorporated into the re-issuance of Vested Right Water License No. 1879-2.

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

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:ms
Enc.



Department of Water & Natural Resources

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

May 11, 1989

1879-2

NOTICE

TO: Howard/David Henderson
Star Route 1, Box 2
Provo, SD 57774

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

SUBJECT: Shut Off Order for Junior Water Rights Upstream of
Angostura Irrigation District

Effective May 19, 1989, you are ordered to cease diversions of water under Water Right No. 1879-2. The priority date for your water right is junior to the April 11, 1941 priority date for Angostura Irrigation District Water Right No. 579-2.

The Angostura Irrigation District's water supply is as follows:

May 2, 1989	24,673 acre feet available for irrigation at elevation 3173.4 ft. msl
-------------	--

The Irrigation District needs 45,000 acre feet per year for irrigation.

One fill of Angostura reservoir is authorized per year. The District has agreed to allow junior priority irrigation upstream, if the reservoir fills to elevation 3,183.7 ft. msl, 3.5 feet below full elevation (3187.2 ft msl). If the reservoir fills to 3,183.7 ft. msl, the shutoff order will be rescinded. Any releases by the District for irrigation will be included in the 3183.7 ft. msl. calculation.

If you have any questions, please contact Jim Winterton (605 773-3352).





South Dakota Department of Water & Natural Resources

De Foss Building
333 East Capitol
Pierre, South Dakota 57501-3181

October 30, 1989

1879-2

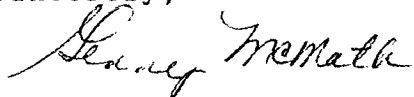
Marv Truhe, Attorney
PO Box 8106
Rapid City, SD 57701

Dear Mr. Truhe:

Enclosed, as you requested, is a copy of the complete file for Vested Water Right Claim No. 1879-2. The claim, currently listed under the names of Howard and David Henderson, carries a priority date of October 4, 1945.

If you have any questions concerning the enclosed information, please contact us.

Sincerely,



GENNY MCMATH
Natural Resources Analyst
(605) 773-3352

enclosures





Department of Water & Natural Resources

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

March 19, 1990

1879-2

NOTICE

TO: Howard/David Henderson
Star Route 1, Box 2
Provo, SD 57774

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

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

SUBJECT: Shut Off Order for Junior Water Rights Upstream of
Angostura Irrigation District

This is a follow-up notice to the May 10, 1990⁸⁹ notice that you received ordering you to cease diversion of water under Water Right No. 1879-2. You are reminded that the order is still in effect and will remain in effect until Angostura Reservoir has filled. The May 10, 1989 order stated that the order was effective until the reservoir had reached an elevation of 3183.7 feet above mean sea level (msl). This has been changed and the order will remain in effect until the reservoir has reached the full elevation of 3187.2 msl. On March 6, 1990 the reservoir elevation was 3171.1 msl.

All water rights above Angostura Reservoir will be monitored until the reservoir has filled. I am asking for your cooperation in complying with this order. The Water Management Board can suspend any water right that does not comply. The option also exists in that a water use control area can be established to enforce compliance.

If you have any questions, please contact Del Brosz (605 773-3352).

STATE OF SOUTH DAKOTA

COUNTY OF FALL RIVER

-JSS
)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

Civ. # 90-135

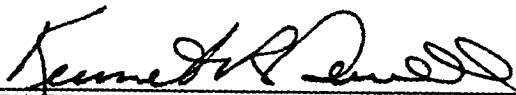
DORA R. HENDERSON,)
Plaintiff,)
vs.)
HOWARD HENDERSON and)
DAVID HENDERSON,)
Defendants.)

NOTICE OF ENTRY OF
JUDGMENT AND ORDER

TO: Howard Henderson and David Henderson, the Defendants and Kenneth E. Barker,
their attorney of record:

Notice is hereby given that the Court in the above entitled matter has entered a Judgment And Order in favor of the Plaintiff and against the Defendants, dated the 1st day of June, 1990, and filed for record on the 1st day of June, 1990, in the Office of the Clerk of Courts in and for Fall River County, South Dakota. A certified copy of said Judgment And Order is attached hereto and incorporated herein by reference.

Dated this 1st day of June, 1990.


KENNETH R. DEWELL
Attorney for Plaintiff
112 North Chicago
P.O. Box 292
Hot Springs, SD 57747
(605) 745-4866

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copies of the foregoing JUDGMENT AND ORDER and NOTICE OF ENTRY OF JUDGMENT AND ORDER, were served upon the Defendant's attorney of record, by United States mail directed to his address of record, to-wit: Kenneth E. Barker, Attorney at Law, P.O. Box 370, Belle Fourche, SD 57717-0370.

DATED this 1st day of June, 1990.


KENNETH R. DEWELL
Attorney for the Plaintiff

STATE OF SOUTH DAKOTA

COUNTY OF FALL RIVER

)SS

)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

Civ. # 90-135

DORA R. HENDERSON,)
Plaintiff,)

vs.)

JUDGMENT AND ORDER

HOWARD HENDERSON and)
DAVID HENDERSON,)
Defendants.)

The above entitled matter having come on before the Court upon the Plaintiff's Motion For Default Judgment and pursuant to the Stipulation of the parties dated the 16th day of May, 1990; the Plaintiff appearing by and through her attorney of record, Kenneth R. Dewell; and the Defendants appearing by and through their attorney of record, Kenneth E. Barker; and the Court having reviewed the legal briefs submitted by the parties and having heard the oral argument of counsel and having reviewed the files and records herein and having issued an Oral Decision in Open Court, and the Court being fully advised in the premises

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Dora R. Henderson, be and she is hereby entitled to the sole and exclusive ownership of Vested Water Right Permit No. 1879-2 dated the 18th day of July, 1984, and reissued on the 16th day of October, 1984, by the Water Rights Division of the Department of Water and Natural Resources of the State of South Dakota, free of any right, title, interest or claim or encumbrance or other interest of the Defendants, Howard Henderson and David Henderson; and

IT IS FURTHER ORDERED that the Defendants, Howard Henderson and David Henderson, shall both execute an assignment of the above identified Vested Water Rights Permit over to the Plaintiff and shall thereafter execute any and all documents as may be required by the Water Rights Division of the Department of

Water and Natural Resources in order to transfer and vest said Permit solely and exclusively to the name of the Plaintiff, Dora R. Henderson; and

IT IS FURTHER ORDERED that the Plaintiff's request for the assessment of attorney's fees be and the same is hereby denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, Dora R. Henderson, be and she is hereby awarded a Judgment against the Defendants, both jointly and severally, for statutory costs of \$84.96, and the Plaintiff's out-of-pocket expenses of \$566.96, for a total Judgment of \$651.92, from and after the date of this Judgment And Order.

Dated this 1st day of June, 1990.

BY THE COURT:

MARSHALL P. YOUNG

MARSHALL P. YOUNG - CIRCUIT COURT JUDGE

ATTEST:


LORRY LOU MILLETT - CLERK OF COURTS

Fall River County, SD.
FILED
IN THE CIRCUIT COURT

JUN 1 1990

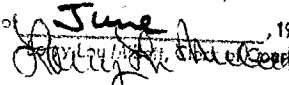
Lorry Lou Millett, Clerk

By _____, Deputy

State of South Dakota }
County of Fall River } Seventh Judicial
Circuit Court

I hereby Certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this 1st

day of June, 19 90.


By _____, Deputy

KENNETH R. DEWELL
MICHAEL A. PORTER

Dewell Law Office

P.O. BOX 292
112 NORTH CHICAGO
HOT SPRINGS, SOUTH DAKOTA 57747

July 24, 1990

TELEPHONE: (605) 745-4866
FAX: (605) 745-3119



Genny McMath
Natural Resource Analyst
Water Rights Division
Department of Water and Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

RE: Vested Water Right License No. 1879-2

Dear Ms. McMath:

Enclosed please find the original of an Assignment Of Interest, Notice Of Entry Of Judgment And Order and a certified copy of the Judgment And Order with regard to the above identified Vested Water Right License.

As those documents reflect, Water Right License No. 1879-2, dated the 18th day of July, 1984, and reissued on the 16th day of October, 1984, by the Water Rights Division should be held solely in the name of:

Dora R. Henderson
5141 Indian River Drive
Apartment 265
Las Vegas, NV 89103

The original of the Assignment Of Interest authorizes the Division to perform any acts and complete any such transactions as are necessary to comply with the purpose of that Assignment Of Interest and Judgment And Order. If any further documentation is necessary to complete this transfer please feel free to contact my office. Also, if there is any fee for this activity by the Water Rights Division, please notify my office and I will see that you are paid by return mail.

Once the Water Right License has been reissued I would ask that it be sent to my office so that a proper notation can be made in my file. I will then forward it on to my client at her Las Vegas, Nevada, address. In advance, both Dora Henderson and I would like to thank you for your prompt and courteous attention to this matter.

Respectfully submitted,

Kenneth R. Dewell
KRD/mt

Enc.

cc: Dora Henderson

ASSIGNMENT OF INTEREST

COME NOW HOWARD HENDERSON and DAVID HENDERSON, Star Route 1, Box 2, Provo, South Dakota 57774, and for good and valuable consideration hereby transfer and assign unto DORA R. HENDERSON, a single person, of 5141 Indian River Drive, Apartment #265, Las Vegas, Nevada 89103, all the right, title and interest, if any exists, in and to a Vested Water Right License No. 1879-2, as issued by the Water Right Division of the Department of Water and Natural Resources of the State of South Dakota and which License was originally issued on October 4, 1945 and which Water Right was revalidated July 11, 1984 and said Water Right identified as Vested Right Water License No. 1879-2.

By this Assignment, Howard Henderson and David Henderson expressly deny right, title or interest in Vested Water Right License No. 1879-2 but agree to execute any and all documents deemed necessary to clarify the ownership of said Water Right and certify that a copy of this Assignment will be filed with the Division of Water and Natural Resources, Water Rights Division in order to effectuate title to said Water Right in the name of, Dora R. Henderson.

By this Assignment, Howard Henderson and David Henderson further authorize and grant the Department of Water and Natural Resources, Water Rights Division the authority to perform any such acts and complete any such transactions as may be necessary to comply with the purpose and intent of this Assignment.



Dated this 22 day of May, 1990.

Howard Henderson
HOWARD HENDERSON

David H. Henderson
DAVID HENDERSON

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF FALL RIVER)

On the 22 day of May, 1990, before me, the undersigned officer, personally appeared Howard Henderson, known to me or satisfactorily proven to be the person whose name is subscribed to the within Assignment of Interest and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jean C. Schaeff
Notary Public

(SEAL)

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF FALL RIVER)

On the 23 day of May, 1990, before me, the undersigned officer, personally appeared David Henderson, known to me or satisfactorily proven to be the person whose name is subscribed to the within ASSignment of Interest and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jean C. Schaeff
Notary Public

(SEAL)



Department of Water & Natural Resources

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

August 8, 1990

1879-2

Kenneth R Dewell
Dewell Law Office
PO Box 292
Hot Springs, SD 57747

Dear Mr. Dewell:

In response to your letter of July 24, 1990, enclosed is a "Notice of Transfer" form for use in filing an ownership change on Vested Water Right Claim No. 1879-2. The claim is currently listed in the name of Howard & David Henderson.

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

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

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

Genny McMath
Natural Resources Analyst
(605) 773-3352

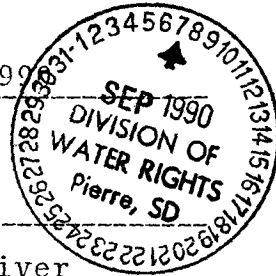
enclosure

NOTICE OF TRANSFER OF OWNERSHIP

No. 1879-2

TO: Chief Engineer
Water Rights Division, DWNR
523 East Capitol
Pierre, SD 57501-3181

Date: August 27, 1990



I/We request that Water Permit/Right No. 1879-2

formerly owned by: Howard & David Henderson

be transferred to: (name & address) Dora R. Henderson, 5141 Indian River
Drive, Apartment #265, Las Vegas, NV 89103 (telephone No.) 702-876-6611

Title to the following described land(s)/property has been transferred as described above:
real property transfer not involved. See attached conv of Judgment And Order
entered by Circuit Judge Marshall P. Young on June 1, 1990.

I/We understand that the validity of Water Permit/Right No. 1879-2 Fall River Co. has not been deter-
mined by this transfer action. If I/We have any questions on validity, I/We understand
that only the Water Management Board has the authority to determine if a water permit/
right is valid (see note).

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

A fee of Two Dollars and Fifty Cents (\$2.50) is attached to cover the filing fees as
required under SDCL 46-2-13.
Nevada

STATE OF ~~SOUTH DAKOTA~~)
)
County of Clark)

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

X Dora R. Henderson
(Signed)

Subscribed and sworn to before me this 31st day of August, 1990.



NOTARY PUBLIC
STATE OF NEVADA
County of Clark

My Commission Expires November 2, 1992
My Appointment Expires November 2, 1992

Loretta M. Sosnika
(Notary Public)

State of Nevada

NOTE: Water permits may be cancelled for nonconstruction within the five year
construction period. Once a water permit is developed and the water used, the
permit becomes a water right. A water right may be lost for three reasons:
1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

KENNETH R. DEWELL
MICHAEL A. PORTER

Dewell Law Office

P.O. BOX 292
112 NORTH CHICAGO
HOT SPRINGS, SOUTH DAKOTA 57747

TELEPHONE: (605) 745-4866
FAX: (605) 745-3119

September 6, 1990



Genny McMath
Natural Resource Analyst
Department of Water and Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

RE: Water Permit No. 1879-2

Dear Genny:

This is a follow-up of yours of August 8th with regard to the above captioned matter.

Enclosed please find the original of the Notice Of Transfer Of Ownership which has been executed by Dora R. Henderson. Attached to that Notice are additional copies of the Notice Of Entry Of Judgment And Order, Judgment And Order and Assignment Of Interest. These documents should be sufficient to complete the transfer of this Vested Water Right over to Dora R. Henderson. Should any further documentation be necessary please contact my office and I will see that it is provided by return mail.

Also enclosed please find a check drawn on my Office Trust Account in the amount of \$2.50 to cover the filing fees as required under SDCL 46-2-13.

Once the transfer has been completed I would ask that you forward it to my office so that the proper notation can be made in my file. I will then forward that document on to Dora Henderson at her Las Vegas, Nevada address.

In closing, both Dora Henderson and I would like to thank you for your prompt and courteous attention to this matter.

Respectfully submitted,

Kenneth R. Dewell

KRD/mt

Enc.

cc: Dora Henderson

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

412363

Pierre, September 10, 1990

RECEIVED OF Dewell Law Office, 112 North Chicago Box 292, Hot Springs SD 57747

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>Water Permit No. 1879-2</u>	2	50
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	2 50

By John Hotel (m)
Chief Engineer



Department of Water & Natural Resources

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

1879-2

September 28, 1990

Kenneth R. Dewell
Dewell Law Office
112 N. Chicago - Box 292
Hot Spring SD 57747

Dear Mr. Dewell:

Enclosed is Receipt No. 412363 in the amount of \$2.50 which you paid for transfer of Water Right No. 1879-2.

Our records now reflect "DORA R. HENDERSON" as the owner of this Water Right.

Sincerely,

A handwritten signature in cursive script that reads "Marie R. Arthur".

MARIE R. ARTHUR
Secretary
Water Rights Division
(605) 773-3352

enclosure

cc: Dora R. Henderson, 5141 Indian River Drive # 265, Las Vegas
NV 89103



Department of Water & Natural Resources

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

March 14, 1991

1879-2

NOTICE

TO: Howard/David Henderson
Star Route 1, Box 2
Provo, SD 57774

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

A handwritten signature in dark ink, appearing to read "Del Brosz".

SUBJECT: Reminder of Shut Off Order for Junior Water
Rights Upstream of Angostura Reservoir

This is a reminder that the March 19, 1990 notice you received ordering you to cease diversion under your water right is still in effect and will remain in effect until Angostura Reservoir has filled. The elevation of Angostura Reservoir when full is 3187.2 feet above mean sea level (msl). On February 27, 1991 the reservoir elevation was 3170.25 msl.

All water rights above Angostura Reservoir will be monitored until the reservoir has filled. I am again asking for your cooperation in complying with this order.

If you have any questions, please contact Mark Rath or Del Brosz (605) 773-3352.



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 20, 1991

1879-2

RESCISSION OF SHUTOFF ORDER

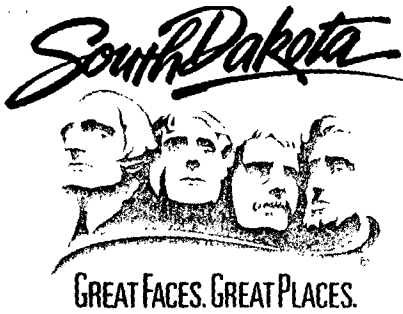
TO: Howard/David Henderson
Star Route 1, Box 2
Provo, SD 57774

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

SUBJECT: Rescission of Shut Off Order for Junior Water
Rights Upstream of Angostura Reservoir for 1991
Irrigation Season.

The recent rains in the Upper Cheyenne River Basin have provided large inflows for Angostura Reservoir. Now that Angostura Reservoir has filled, the shutoff order for all junior water rights upstream of the reservoir is rescinded for the 1991 irrigation season.

If you have any questions, please contact Mark Rath or Del Brosz (605) 773-3352.



June 28, 1991

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Susan Henderson
c/o Super 8 Motel
Mammoth Street
Hot Springs SD 57747

Dear Ms. Henderson:

I am writing in response to your request for the file on the Cold Creek Water Rights and to follow up on our telephone conversation June 27, 1991. I am enclosing a copy of the file for Water Right Claim No. 1879-2.

When this Water Right Claim was filed in 1984 by Howard and David Henderson, the enclosed Notarized Affidavit of Water Use stated that they had owned the property since 1972. The sworn affidavit is the only proof of ownership that we require. In this case, the water right was developed by A. M. Henderson, with another Henderson making the claim, there was no reason to believe Howard and David Henderson were not the owners. Also, during Del Brosz's inspection of the irrigation project, Howard Henderson acted like he was the owner.

South Dakota Codified Law (SDCL) 46-5-33 requires that irrigation water rights are appurtenant to the land. Therefore, the landowner is the owner of the water right, even if someone other than the owner made application for the water right. Also, SDCL 46-5-34.1 requires that any transfer of water rights to other lands must be approved by the State Water Management Board. The procedure to be followed requires publication of the notice and a public hearing before the Board. Any decision of the Board can be appealed to the Courts. I have enclosed a copy of the South Dakota Water Rights Laws for your information.

Regarding the Rescission of Shutoff Order dated May 20, 1991, the initial Shutoff Order was issued May 11, 1989 and addressed to Howard/David Henderson. The Angostura Irrigation District priority date of April 11, 1941 is senior to the October 4, 1945 priority date assigned to No. 1879-2. If you have any documents that would support a claim to an earlier priority date, we would like to review them.

Although the records for No. 1879-2 were changed during September 1990 to show that Dora R. Henderson is the owner of this water

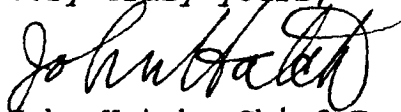
right claim, we made an error when the mailing list we used for the 1989 and 1990 shutoff orders was not updated before mailing the 1991 shutoff order and rescission of shutoff order. The Henderson's complied with the shutoff orders. I do not know if they tried to irrigate after receipt of the May 20 Rescission of Shutoff Order. You mentioned that there had been some changes with the irrigation ditches.

I have discussed the reported oil well drilling and seismic exploration with Robert Townsend, Administrator, Exploration and Mining. He suggested that you contact Fred Steece (394-2229) in the Department Regional Office, 36 East Chicago, Rapid City SD to find out if any oil well permits have been issued for your property. Mr. Steece is responsible for regulation of oil and gas activities in South Dakota.

Tom Durkin (773-4201), Office of Exploration and Mining, here in Pierre is responsible for Exploration activities. Mr. Townsend advised that there are two kinds of seismic exploration. The Vibroseis ("Thumper") method which does not require drilling has not been regulated for the last 3 or 4 years. The Legislature changed the law and excluded this type of exploration activity from state regulation. Although permits are required to conduct "shot hole" exploration, no "shot hole" permits have been issued since the Legislature changed the law to allow Vibroseis exploration without a permit. Therefore, if Howard/David Henderson allowed Vibroseis exploration on your Mother's property, the State would have no record of such exploration.

If you have further questions please let me know. Thank you for calling and bringing the water rights questions to my attention.

Very truly yours,

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

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

KENNETH R. DEWELL

MICHAEL A. PORTER

Dewell Law Office

P.O. BOX 292
112 NORTH CHICAGO
HOT SPRINGS, SOUTH DAKOTA 57747

TELEPHONE: (605) 745-4866
FAX: (605) 745-3119

July 1, 1991
~~June 27, 1991~~



Delvin D. Brosz
Water Rights Division
Department of Environment and
Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

RE: Water Right #1879-2

Dear Mr. Brosz:

This is a follow-up of your letter of May 20, 1991, to Howard/David Henderson with regard to a Rescission Of Shutoff Order.

Please be advised that my office represents Dora Henderson who is the lawful owner of Water Right #1879-2. A casual review of that file would show that Howard and David Henderson wrongfully secured ownership of that Right several years ago. Thereafter in 1990, the Circuit Court in and for Fall River County, South Dakota, Judge Marshall P. Young presiding, specifically found that the Water Right lawfully belonged to Dora Henderson. Thus, a transfer of that Permit occurred on September 28, 1990. All of this information should be reflected in the files of the Water Rights Division Office. Should you have any questions about the validity of these assertions please let me know and I will provide copies of my correspondence with the Division for your reference.

Because of your Notice dated May 20, 1991, I must again be concerned about any wrongful acts which Howard and/or David Henderson may be attempting. Consequently, I must insist that the Division provide me with copies of any and all correspondence which has occurred with respect to Water Right #1879-2 since the September 28, 1990, transfer. This will either provide me with an insight as to the potential deceitful conduct of Howard and/or David Henderson or reassure me that the Department has merely made an internal error as to whom the Rescission Of Shutoff Order should have been mailed.

Delvin D. Brosz

July 1 ~~June 27~~, 1991

Page Two (2)

Thus, your prompt attention to this matter would be greatly appreciated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth R. Dewell".

Kenneth R. Dewell

KRD/mt

South Dakota

W. R. 1879-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

GREAT FACES. GREAT PLACES.

July 3, 1991

Susan R. Henderson
General Delivery
Provo, South Dakota 57774

Dear Ms. Henderson:

I am responding to your June 27, 1991 letter which you wrote following our telephone conversation June 27. I tried to call you today at your ranch, but was unable to reach you. I believe that I had answered most of your questions in my June 28 letter to you (mailed to Super 8 in Hot Springs).

The Office of Mining and Exploration checked its listings of exploration permits for any permits issued for Township 10 South, Range 3 East and Township 11 South, Range 5 East in Fall River County. Six permits were issued several years ago and terminated as follows:

Permit Number	Company	Terminated
EX-50	Grant Geophysical	1-20-83
EX-60 & EX-61	Harvey Sales, Inc	11-18-82
EX-101	Seisdata Services, Inc	3-17-83
EXND-149	ARMA Geophysical Co.	3-21-91 (Issued 5-10-83)
EXNI-174	Western Geophysical	10-28-83

The list of permits only lists permits as issued by townships and not by section. Since these exploration permits are several years old, they have been microfilmed and the microfilm records were not reviewed for the specific sections where exploration was authorized. I have enclosed a copy of the 1991 termination inspection for ESND-149 which has additional information. If you want to review the microfilmed permit files to see if your land was under permit, it will be necessary for you to come to Pierre and review the microfilm records. You can contact Tom Durkin [(605) 773-4201] to arrange a time to do so.

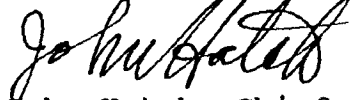
As I mentioned in my June 28 letter, no exploration permits have been issued since the Legislature repealed the requirement for permits using the Vibroseis exploration method. We would have no information on any more recent Vibroseis testing. The termination date is the date that the surety bond would have been authorized for release.

We have received a letter from Mr. Dewell requesting the file for Water Right Claim No. 1879-2. We are advising Mr. Dewell that we have already provided a complete copy of the file to you.

The Shutoff Order issued in 1989 is the first time that junior water right holders above Angostura have been ordered to shutoff, that I know of.

If I can answer additional questions, please let me know.

Very truly yours,

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

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

cc- Tom Durkin



DEPARTMENT OF WATER & NATURAL RESOURCES

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

GREAT FACES. GREAT PLACES.

OPERATOR: Arma Geophysical Company Inc.
PROJECT: EXNI-149
INSPECTION DATE: February 12, 1991
INSPECTOR: Tom Hack TH
OPERATOR PRESENT: None
CONDITIONS: 40-50 degrees, sunny, windy, muddy

On February 12, 1991, a final reclamation inspection of ARMA's spec line 380, EXNI-149, was carried out by Tom Hack (DWR), Mark Keenihan (DWR), and Ron Sieg (GF & P). In May of 1983, ARMA conducted seismic exploration consisting of surveying and then constructing the vibroseis line by specially equipped trucks which hammered the ground at 440 foot intervals. A total of 187 vibroseis imprints made up spec line 380 in Fall River County. Numerous sections in T11S-R1E, R2E, & R3E in Fall River County were included in the exploration.

The final inspection was carried out by choosing the starting point located at NW 1/4, SW 1/4, Section 5; T11S-R3E. Using a Brunton compass, the Provo Quadrangle topographic map, a Fall River County highway map, a US Forest Service map, and proper pacing techniques, the crew searched for the location of a reference imprint. No vibroseis imprints in this area were found.

Next, the crew chose to follow US Forest Service Roads from the US Forest Service map to find a landmark; such as a stock dam, cattle guard, or feeder lot; within the proximity of the line in order to search for the remains of other vibroseis imprints. Despite landmarks being on or near the line, no vibroseis imprints were found. Some bare patches were encountered which could have represented a vibroseis imprint. However, due to the patches' irregular shapes and absence of other such patches in the area, it was concluded by the crew that these patches must have been caused by livestock activity.

Approximately 11 miles of the 16 mile long spec line 30 in Fall River County was inspected. Five miles of the line was not inspected due to dangerous terrain and long distance from any access road.

CONCLUSION: The site is fully reclaimed to the Department's satisfaction. I hereby recommend the release of ARMA's surety bond # 867433 and liability.



Dora R. Henderson
Susan R. Henderson
General Delivery
Provo, South Dakota
57594

June 27, 1991

Mr. John Hatch
Chief Engineer, Water Rights Div
Dept of Environment + Natural Resources
Joe Foss Building
523 E. Capitol,
Pierre, SD 57501-3181

Dear Mr Hatch:

Pursuant to our conversation of ^{June 27,} ~~May 25,~~ 1991
I am forwarding a description of 8100 acres
owned by my mother, Dora R. Henderson near
Provo S. Dakota. Mother also owns the water
rights to the Cole Creek water drainage system
located in the two sections adjacent to and
west of Mother's deeded land #10-3, Sections 18 +
19. (See map).

These water rights were fraudulently
transferred to David + Howard Henderson
by your department in 1984. After Howard + David
attempted to sell the water rights to various
other water boards, Mother was forced to
spend several thousand dollars in legal fees
to get the courts to re-instate her water
rights.

Dora + Susan Henderson
To John Hatch 6-27-91

2

All this could have been avoided if your dept had merely required proof of land + water rights ownership before making the transfer.

As of June 1, 1991 Mother has terminated her lease with Howard + David + we now find that the Cole Creek irrigation canal was dammed up, possibly at your request. Mother has instructed her attorney Mr Ken Dewell to request all documents regarding her water rights + official correspondence regarding her land. Since this communication was directed to Howard + David mother was unaware that her canal was dammed in the crucial irrigation period in May + early June. We have had good rains this spring but because we did not irrigate the 1300 acre hay flat we will experience lower hay yields.

Mother's attorney has a large file of correspondence advising you of mother's address in Las Vegas NV and her long-standing ownership position. We are mystified as to why your department has continued to correspond with Howard + David.

8

Dora + Susan Henderson
To John Hatch 6-27-91

To our knowledge, we have never been required by the state to deflect the Cole Creek water to Angostura. The Cole Creek water rights were acquired by my father Andrew Henderson many years ago. Please advise us as to whether Angostura had senior water rights + provide written documentation.

Oil, Gas + Seismic activity:

In the last two weeks, it has come to our attention that several major seismographic projects, possibly including oil wells were carried out on the property without Mother's knowledge or consent.

You have advised me that Mr Bob Townsend of your department would be in charge of these activities. Also enclosed is a legal description of Mother's oil, gas + mineral rights. Please check immediately for all activity since 1972 and provide all documentation plus a copy of the law governing these activities.

You may reach us by phone at the ranch 605-662-6304 (days) or evenings at our hotel in Hot Springs 605-745-3888.

Thank you for your assistance.

Very truly yours,

Dora R. Henderson
Susan R. Henderson



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 20, 1991

1879-2

RESCISSION OF SHUTOFF ORDER

TO: Howard/David Henderson
Star Route 1, Box 2
Provo, SD 57774

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

SUBJECT: Rescission of Shut Off Order for Junior Water
Rights Upstream of Angostura Reservoir for 1991
Irrigation Season.

The recent rains in the Upper Cheyenne River Basin have provided large inflows for Angostura Reservoir. Now that Angostura Reservoir has filled, the shutoff order for all junior water rights upstream of the reservoir is rescinded for the 1991 irrigation season.

If you have any questions, please contact Mark Rath or Del Brosz (605) 773-3352.

Deeded land - Dora K. Anderson

Fall River County, South Dakota:

Township 10 South, Range 3 East, Black Hills Meridian,
Fall River County, South Dakota

- Section 6: $S\frac{1}{2}SW\frac{1}{4}$ (70.31 acres)
- Section 7: Lots 3 and 4; $E\frac{1}{2}SW\frac{1}{4}$; $E\frac{1}{2}SE\frac{1}{4}$ (220.12 acres)
- Section 14: $W\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}$ (240 acres)
- Section 15: All (640 acres)
- Section 16: All, less railroad and highway (616.76 acres)
- Section 17: $S\frac{1}{2}$, Less railroad (304.47) acres)
- Section 18: $E\frac{1}{2}$; $E\frac{1}{2}W\frac{1}{2}$; all the part of Lot 1 lying North of the railroad (470.85 acres)
- Section 19: $E\frac{1}{2}$; $E\frac{1}{2}W\frac{1}{2}$ (480 acres)
- Section 20: All (640 acres)
- Section 21: $E\frac{1}{2}$; $NW\frac{1}{4}$; $E\frac{1}{2}SW\frac{1}{4}$; $SW\frac{1}{4}SW\frac{1}{4}$; less railroad (596.20 acres)
- Section 22: All, less railroad (608.23 acres)
- Section 23: $W\frac{1}{2}$ (320 acres)
- Section 26: $W\frac{1}{2}NW\frac{1}{4}$; $NW\frac{1}{4}SW\frac{1}{4}$, less railroad (111.60 acres)
- Section 27: All, less railroad (638.35 acres)
- Section 28: All (640 acres)
- Section 29: All (640 acres)
- Section 30: $E\frac{1}{2}NW\frac{1}{4}$; $E\frac{1}{2}$; all the part of the $E\frac{1}{2}SW\frac{1}{4}$ lying East of the highway (443 acres)
- Section 31: All of the part of the $NE\frac{1}{4}$ lying North and East of the county highway; all the part of the $E\frac{1}{2}SE\frac{1}{4}$ lying East of the county highway; all the part of the $NE\frac{1}{4}NW\frac{1}{4}$ lying East of the county highway (125.60 acres)
- Section 32: $NW\frac{1}{4}$ (160 acres)

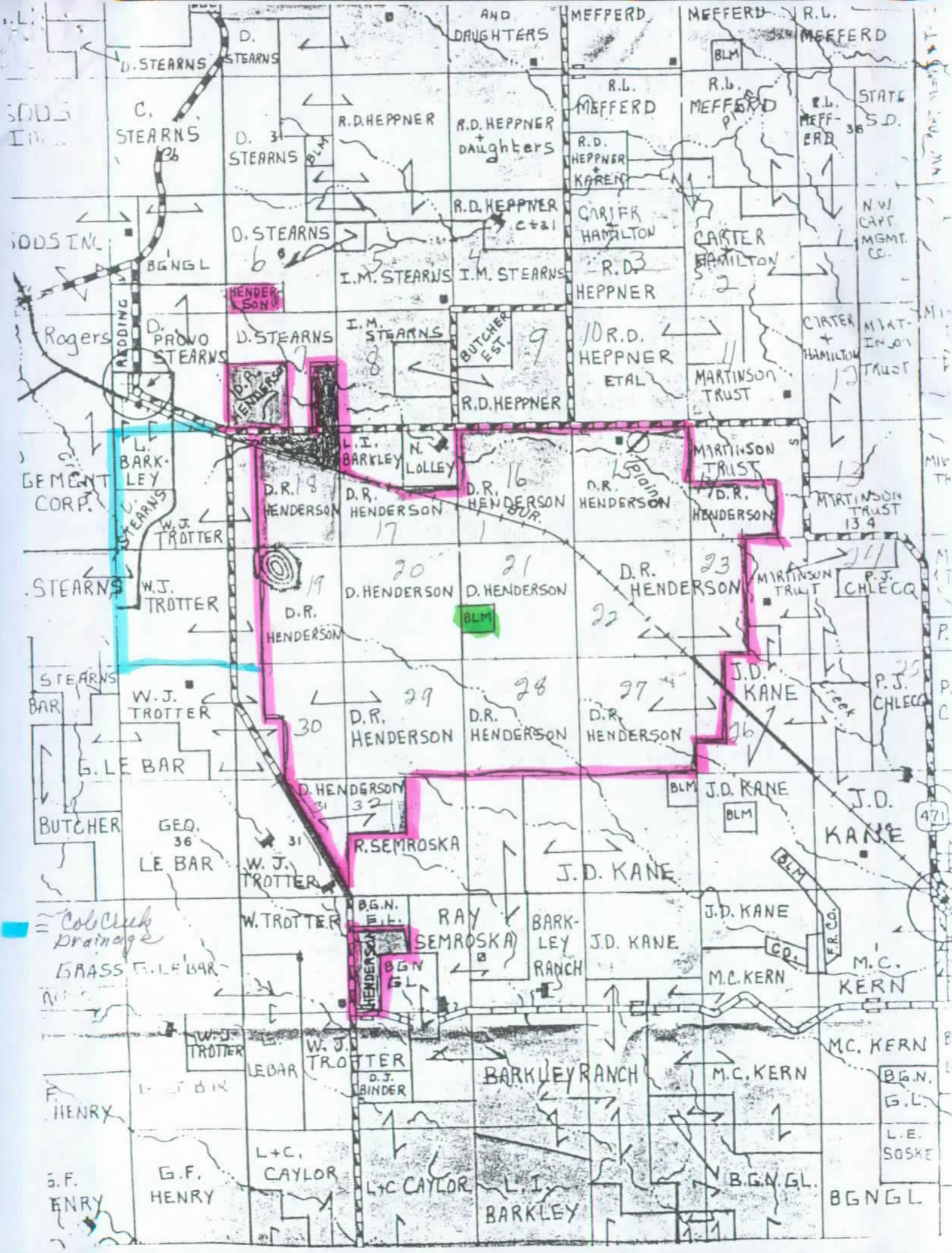
Township 11 South, Range 3 East, Black Hills Meridian,
Fall River County, South Dakota

- Section 5: $W\frac{1}{2}SW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$ (160 acres)

Township 11 South, Range 5 East, Black Hills Meridian,
Fall River County, South Dakota

- Section 13: All (640 acres)

all together consisting of 8,765.49 acres;



Oil Gas + Mineral Rights - DORA R. Henderson

situated in the County of Fall River, State of South Dakota, described as follows, to-wit:

Township 10 South, Range 3 East, B.H.M.Section 6: Lot 7, SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 7: Lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 14: SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$

Section 15: All

Section 17: E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ Section 20: NE $\frac{1}{4}$ Section 21: N $\frac{1}{2}$ W $\frac{1}{2}$ Section 22: N $\frac{1}{2}$ N $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23: NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27: W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28: S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 29: NW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 30: Lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 32: NW $\frac{1}{4}$ Township 11 South, Range 3 East, B.H.M.Section 9: E $\frac{1}{2}$ E $\frac{1}{2}$

two

HHS
DRX

and containing acres, more or less.

This lease shall remain in force for a term of 10 years from this date and as long thereafter as oil or gas of whatsoever



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 3, 1991

Kenneth R. Dewell
Dewell Law Office
P. O. Box 292
Hot Springs, SD 57747

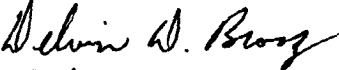
Dear Mr. Dewell:

This is in answer to your letter of July 1, 1991, requesting copies of correspondence which has occurred with respect to Water Right No. 1879-2.

Copies of the file for Water Right No. 1879-2 were forwarded to Susan Henderson on June 28, 1991. I have enclosed a copy of the letter to Ms. Henderson.

If I can be of further assistance, please contact me.

Sincerely,


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

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 25, 1992

1879-2

NOTICE

TO: DORA R HENDERSON
APT 265
5141 INDIAN RIVER
LAS VEGAS, NV 89103

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

A handwritten signature in cursive script, appearing to read 'John Hatch', is written over the typed name and title.

SUBJECT: Shut Off Order for Junior Water Right Holders Upstream
of the Angostura Irrigation District.

Please be advised that effective immediately no diversions of water will be allowed under your Water Right No. 1879-2 which is junior in priority to Water Right No. US579-2 held by the US Bureau of Reclamation for the Angostura Irrigation District.

On March 20, 1992 the water elevation in Angostura Reservoir was 4.4 feet and 19,164 acre feet below full. Reservoir storage levels will be closely monitored. If inflows increase such that the reservoir will fill, this shut off order will be rescinded at that time.

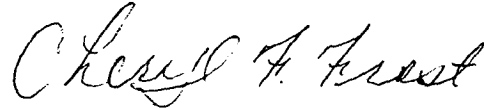
All water rights above Angostura Reservoir will be monitored until the reservoir has filled. I am asking for your cooperation in complying with this order.

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

PERMIT NO	FIRST NAME	LAST NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIPCODE	PERM2	PERM3
657-2		A & T CATTLE CO	TOM LANDERS	ST RT	HOT SPRINGS	SD	57747		
308-2	RICHARD	ANDERSON	& CHAR ANDERSON	HCR 59 BOX 18	EDGEMONT	SD	57735		
1614-2	IRENE R	ANDERSON		HCR 59 BOX 20	EDGEMONT	SD	57735		
324-2		B & H RANCH INC	B F CHILDERS	PO BOX 723	EDGEMONT	SD	57735		
534-2		RAIL BROS		BOX 617	EDGEMONT	SD	57735		
1995-2	LESTER I	BARKLEY		BOX 740	EDGEMONT	SD	57735		
1693-2	NICK/MICHAEL	BOGNER	&NICK BOGNER JR	HC 46 BOX 24	OELRICHS	SD	57763	1734-2	
755-2		BRAINERD INDIAN SCHOOL			HOT SPRINGS	SD	57747		
858-2	WAYNE F	CHILDERS		HCR 59 BOX 1A	EDGEMONT	SD	57735		
636-2	V L	CHILDERS		BOX 723	EDGEMONT	SD	57735		
654-2	OSCAR	COPE			OELRICHS	SD	57763		
1994-2	JOHN	DEGERING		SR 1 BOX 136	LUSK	WY	82225		
567-2	HAROLD E	DODSON		HCR 59 BOX 5A	EDGEMONT	SD	57735	1410-2	
2058-2	LEROY/BERTHA	DIERSON		HC 48 BOX 248	PROVO	SD	57774		
1985-2	DAVID M	DUNBAR		RR BOX 32	OELRICHS	SD	57763		
788-2		HALD BROTHERS, INC.	CARL P HALD, PRES	HCR 46 BOX 5	OELRICHS	SD	57763	1695-2	
421-2	HEFMAN	HECK		BOX 441	EDGEMONT	SD	57735		
540-2	DARRELL E	HELMAN		BOX 402	EDGEMONT	SD	57735		
1879-2	DORA R	HENDERSON	APT 265	5141 INDIAN RIVER	LAS VEGAS	NV	89103		
1980-2	DON W	HENRY		BOX 276	ARMORE	SD	57715		
379-2	HENRY C	HOLLENBECK		DEWEY ROUTE	EDGEMONT	SD	57735		
1593-2		HU RANCH INC	SD CORPORATION	HCR 59 BOX 102	EDGEMONT	SD	57735		
350-2	DARREL D	HUNTER		BOX D	ARMORE	SD	57715		
1641-2	JAMES/PATRICIA	JOHNSTON		HC 68 BOX 7	LAKESIDE	NE	69351		
18770-2	JIM	KANE		BOX 19A	PROVO	SD	57774		
763-2	CARL	KANNOLT	APT 207	BLANIE HOTEL	CHADRON	NE	69337		
1696-2	JOHN W	KOLLER		BOX 715	EDGEMONT	SD	57735		
866-2	A J	LANDERS	STAR CATTLE CO	BOX 159B HCR 52	HOT SPRINGS	SD	57747		
1840-2	B L/ALLEN	LAWRENCE		BOX 759	TIOGA	ND	58852		
676-2	MFLVIN	LULF			HOT SPRINGS	SD	57747		
17295-2	JOHN D(JACK)	MANKE	(ESTATE)	RR #1 BOX 179C	HOT SPRINGS	SD	57747		
11447-2	KENNETH	MARTINSON		BOX 361	EDGEMONT	SD	57735		
785-2	ARDITH W	MCLAIN		BOX 164	OELRICHS	SD	57763		
410-2	RALPH L	MEFFERD, JR		HCR 48 BOX 22	PROVO	SD	57774		
1973-2	A J	NELSON		BROADUS STAGE	MILES CITY	MT	59301		
2015-2		PETERSON & SON, INC		HCR 59 BOX 16	EDGEMONT	SD	57735		
1016-2	PAUL & JEAN	PETTY	& NOREEN PETTY	HCR 52 BOX 136	HOT SPRINGS	SD	577479603		
1716-2	MELVIN	PORTER		WYO RT BOX 17	EDGEMONT	SD	57735		
711-2	DONALD	PUTNAM		BOX 188	OELRICHS	SD	57763	2043-2	
1836-2	GLEN	REASER		HC 46 BOX 48	OELRICHS	SD	57763		
422-2	EDWARD/WANDA	REUTTER		HCR 59 BOX 90	EDGEMONT	SD	57735	1789-2	
293-2	CHANCE/NETERI	REYNOLDS		HCR 59 BOX 28	EDGEMONT	SD	57735	294-2	
669-2	OLIVER M	ROMEY		BOX 175	OELRICHS	SD	57763		
718-2	VERNON	SCHNOSE		ST RT BOX 155	HOT SPRINGS	SD	57747	1700-2	
1649-2		SEGER RANCH INC		BOX 95	OELRICHS	SD	57763	671-2	1837-2
927-2	BERNARD D	SIMONS		BOX 381	EDGEMONT	SD	57735		
1732-2	ROBERT/MARK	TUBBS		BOX 563	EDGEMONT	SD	57735		
1019-2		WAR BONNET RANCH LTD	BOX 132	105 E 5TH ST	MURDO	SD	57559		
392-2	VINCENT M	WASSERBURGER		BOX 83	ARMORE	SD	57715	853-2	2115-2

CERTIFICATION

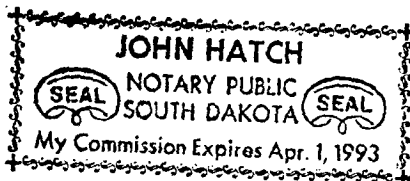
I hereby certify that on March 25, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 25, 1992, regarding Shut Off Order for Junior Water Right Holders Upstream of the Angostura Irrigation District addressed as stated on the attached list:



Cheryl F. Frost
Secretary

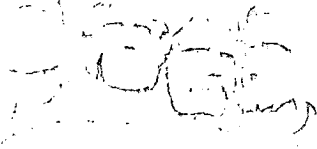
STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of March, 1992.



Notary Public

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

Dora R. Henderson
5141 Indian River Drive
#265
Las Vegas NV 89103

Dear Ms. Henderson:

The original Notice of Intent to Validate Vested Water Right Claims was published with an error. The priority date was incorrectly listed. 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

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

James R. Shanks
(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, S1/2 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 val-
idation 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 pur-
suant 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 46-5-8.1, 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



OCT 28 1992

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Dora Henderson
Apt. # 265
5141 Indian River Drive
Las Vegas NV 89103

Dear Ms. Henderson:

The Water Management Board has validated the enclosed Vested Water Right No. 1879-2. 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. 1879-2 FOR IRRIGATION

Date of Receipt of Claim June 13, 1984.

Date of Validation September 30, 1992.

The Water Management Board validated Vested Water Right Claim No. 1879-2 for irrigation purposes for Dora R. Henderson, Apt. 265, 5141 Indian River Drive, Las Vegas NV 89103 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1879-2 appropriates 25.3 cubic feet of water per second from Coal Creek located in the NE 1/4 NE 1/4 Section 23-T10S-R2E to irrigate 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 Section 26; all in T10S-R3E.
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: January 1 - December 31.
3. The priority date of the Vested Water Right is October 4, 1945.
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

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, regarding Shutoff Order for Junior Water Right Holders Upstream of the Angostura Irrigation District addressed as stated below, and on the attached:

Copy Sent To:

Bruce Laymon, U.S. Bureau of Reclamation, Belle Fourche Projects
Office, P.O. Box 226, Newell, SD 57760.

Joseph Kramer, Manager, Angostura Irrigation District, P.O. Box 346,
Oral, SD 57766.

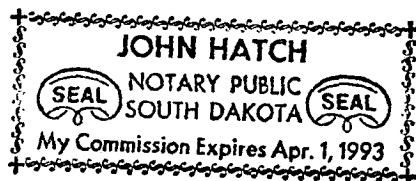
Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

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

John Hatch
Notary Public





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 12, 1993

1879-2

NOTICE

TO: DORA R HENDERSON
APT 265
5141 INDIAN RIVER
LAS VEGAS, NV 89103

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

SUBJECT: Shutoff Order for Junior Water Right Holders Upstream
of the Angostura Irrigation District.

Effective immediately no diversions of water under your Water Right No. 1879-2 are authorized. Your water right is junior in priority to the US Bureau of Reclamation Water Right No. 579-2 (April 11, 1941 priority date). The Bureau of Reclamation water right for the Angostura Irrigation District allows one annual fill of the reservoir.

The amount of water required for one annual fill of Angostura Reservoir as of January 1, 1993 was 45,402 acre feet. On March 9, 1993 the water elevation in Angostura Reservoir was 10.2 feet and 41,305 acre feet below full. Reservoir storage levels will be closely monitored. If inflows increase and the reservoir will fill, this shutoff order will be rescinded. Any 1993 irrigation releases from the reservoir will be included in the inflow calculations.

All water rights above Angostura Reservoir will be monitored until the reservoir has filled. I am asking for your cooperation in complying with this order.

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

cc: US Bureau of Reclamation
Angostura Irrigation District



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 14, 1993

1879-2

RESCISSION OF SHUTOFF ORDER

TO: DORA R HENDERSON
APT 265
5141 INDIAN RIVER
LAS VEGAS, NV 89103

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

SUBJECT: Rescission of the Shutoff Order for Junior Water Right
Holders Upstream of the Angostura Irrigation District
for the 1993 Irrigation Season.

Recent wet conditions in the Upper Cheyenne River Basin have provided large inflows and the Angostura Reservoir is expected to fill shortly. The shutoff order for all junior water rights upstream of the reservoir is rescinded for the 1993 irrigation season.

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

cc: US Bureau of Reclamation
Angostura Irrigation District



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 15, 1995

1879-2

NOTICE

TO: DORA R HENDERSON
5141 INDIAN RIVER
LAS VEGAS, NV 89103

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

SUBJECT: Shutoff Order for Junior Water Right Holders
Upstream of the Angostura Irrigation District.

Effective immediately no diversions of water under your Water Right No. 1879-2 are authorized. Your water right is junior in priority to the US Bureau of Reclamation Water Right No. US579-2 (April 11, 1941 priority date). Water Right No. US579-2 allows one annual fill of the reservoir.

On March 14, 1995, the water elevation in Angostura Reservoir was 7 feet and 30,000 acre feet below full. The Division of Water Rights, in cooperation with the Bureau of Reclamation, will closely monitor the reservoir storage level. If inflows increase and the reservoir will fill, this shutoff order will be rescinded. Any 1994 irrigation releases from the reservoir will be included in the inflow calculations.

The Division of Water Rights will monitor all water rights above Angostura Reservoir until the reservoir has filled. I am asking for your cooperation in complying with this order.

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

cc: US Bureau of Reclamation
Angostura Irrigation District



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 26, 1995

1879-2

RESCISSION OF SHUTOFF ORDER

TO: DORA R HENDERSON
APT 265 5141 INDIAN RIVER
LAS VEGAS, NV 89103

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

SUBJECT: Rescission of the Shutoff Order for Junior Water Right Holders Upstream of the Angostura Reservoir for 1995 Irrigation Season.

Recent wet conditions in the Upper Cheyenne River Basin have provided large inflows and the Angostura Reservoir is expected to fill shortly. The shutoff order for all junior water rights upstream of the reservoir is rescinded for the 1995 irrigation season.

If you have any questions, please contact Del Brosz or Rassool Ahadi, Division of Water Rights, 523 E. Capitol Ave., Pierre, SD 57501.

cc: US Bureau of Reclamation
Angostura Irrigation District



Dora R. Henderson
Susan R. Henderson
Box 731
Edgemont, SD 57735

December 30, 1996

Mr. John Hatch
Department of Environment and Natural
Resources, State of South Dakota
Water Rights Program
523 E. Capitol
Pierre, South Dakota 57501

Re: Henderson Ranch Coal Creek
Drainage Water Rights

Dear Mr. Hatch:

We are attaching a copy of a letter to the DeWayne Stearns family regarding unauthorized changes which they have made to our Coal Creek Drainage Ditch System.

These changes have rendered our ditch system nearly inoperable with respect to getting water from the Coal Creek Drainage System Headwaters. These changes have also ruined the hay field of Mrs. Georgene LeBar.

The lack of water running in the ditch in the recent two wet years have more than convinced that a serious violation of the water rights has occurred. *me*

We would like you to search your records regarding this system and assist us in enforcing our old and well established water right.

Please contact us as soon as possible at 605-662-5150 about this issue.

Sincerely yours,

Susan R. Henderson

Susan R. Henderson

Dora R. Henderson

Dora R. Henderson

Dora R. Henderson
Susan R. Henderson
Box 731
Edgemont, SD 57735

December 30, 1996

Mr. and Mrs. DeWayne Stearns
HC 48 Box 265
Provo, SD 57774-9605

Dear DeWayne and Flora: Re: Coal Creek Drainage Ditch

It has come to our attention that you have made or been instrumental in making changes to our Coal Creek Drainage Ditch System which have adversely affected the flow of water down the ditch, the volume of water coming on to our property and the lawful use of our water rights associated with the Coal Creek irrigation project which waters the Henderson Ranch.

These changes include but are not limited to the following:

1. Changes to the ditch work and dam abutments of the Coal Creek Dam.
2. The tearing out and replacing of the gate valve located below the dam which controls water flow into our ditch.
3. The creation of and adjustment to earthwork structures and ditches downstream (north and west) of the dam which slows down the water and diverts the water so as to prevent it from coming on down properly to the Henderson Ranch.

We note that you made these changes without the lawful owner of the ditch, Dora R. Henderson, nor did you consult or reach agreement with the surface owner Mrs. Georgene LeBar or the Butcher Family. These changes have resulted in the loss of Mrs. LeBar's hay field and has prevented the Coal Creek Water from properly coming to the Henderson Ranch.

Under the water right, LeBar, Henderson, Butcher and Stearns all share parts of this water; the proper allocation of this water depends on the proper allocation of the water at the headwaters of Coal Creek. Without this ditch system built by Andrew Henderson, you would not have your productive alfalfa fields.

It is our hope that all affected parties can work together to research and fix this problem. We look forward to hearing from you regarding this problem.

cc: Mrs. Georgene LeBar

Sincerely yours,

Dora R. Henderson
Dora R. Henderson
Susan R. Henderson
Susan R. Henderson



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 7, 1997

Susan R Henderson
Dora R Henderson
Box 731
Edgemont, SD 57735

Dear Ms. and Mrs. Henderson:

I am writing in response to your December 30, 1996, letter concerning the Coal Creek ditch system. We contacted Mrs. Stearns by telephone about your concerns. Mrs. Stearns advised that they had received the letter you had sent them. She said they had rebuilt a dam after it had washed out but were not aware that the reconstruction had caused any problems.

To help resolve this issue, I will have an engineer from my staff make an on site investigation of the problem this coming spring when the weather permits. If you have any questions, please contact Del Brosz or Mark Rath of the Water Rights Program at (605) 773-3352.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Program

c: Dewane and Flora Stearns

April 8, 1997

MEMO TO: File

FROM: Delvin D. Brosz, PE
Natural Resources Engineer



SUBJECT: Susan and Dora Henderson complaint - involving Water Right Nos.
LN10-2, 28-2, and 1879-2

At the request of Susan and Dora Henderson, Mark Rath and Del Brosz investigated Water Right Nos. LN10-2 (Dewane and Flora Stearns) and 28-2 (Mrs. Georgene LeBar). The investigation was conducted during the morning of April 2, 1997. The Henderson's and Dewane Stearns participated in the investigation.

The Henderson's complaint is that Water Right No. LN10-2 is taking water that rightfully belongs to Water Right No. 1879-2 (Dora Henderson - Susan's mother). The Henderson's charge that Dewane Stearns had made unauthorized changes to the Henderson's ditch system.

The Henderson's seem to believe that Coal Creek is their ditch and that the main delivery ditches for Water Right Nos. LN10-2 and 28-2 are part of Water Right No. 1879-2. The Henderson's also believe that Coal Creek dam, which is part of Water Right No. LN10-2, belongs to Water Right No. 1879-2.

Water Right Nos. LN10-2 and 28-2 have priority dates of 1907. Water Right No. 1879-2 has a priority date of 1946. The Henderson's believe that all the water rights should share the water under proper allocation and that priority dates don't seem to matter.

Coal Creek, above the diversion points for all three water rights, is a dry draw. The watershed does not yield enough water for all three water rights except under extreme wet conditions. Dewane Stearns stated that in the last ten years his diversion ditch had water in it twice.

An attempt was made to explain South Dakota Codified Law, as it applies to irrigation diversions, to Susan Henderson. She did not believe what was explained. For over 2.5 hours she continually screamed, threatened, and informed me that I did not know what I was doing. Never before have I taken such verbal abuse in the 33 years that I have worked for state government.

The investigation found that there had been no changes made to the Stearn's irrigation system and existed as authorized by Water Right No. LN10-2.

At the end of the investigation, we informed the parties that nothing would be done since nothing seemed improper. Susan Henderson was informed of her right to seek a declaratory ruling from the Water Management Board.

































**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 30, 2004

NOTICE OF SHUTOFF ORDER

TO: DORA R HENDERSON
APT 265
5141 INDIAN RIV
LAS VEGAS NV 89103

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

Shutoff Order for Water Right Nos. 1879-2

To protect the US Bureau of Reclamation's Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of junior water rights upstream of Angostura Dam will be allowed. On April 30, 2004, the water elevation in Angostura Reservoir was 3179.1 feet, a little over 8 feet below the full elevation of 3187.2 feet. Current storage is at 96,912 acre-feet, about 33,850 acre-feet below full and inflows are only about 38 acre-feet per day.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until December 31, 2004.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.



1879-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 15, 2005

NOTICE OF SHUTOFF ORDER

TO: DORA HENDERSON
SUSAN HENDERSON
BOX 731
EDGEMONT SD 57735

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

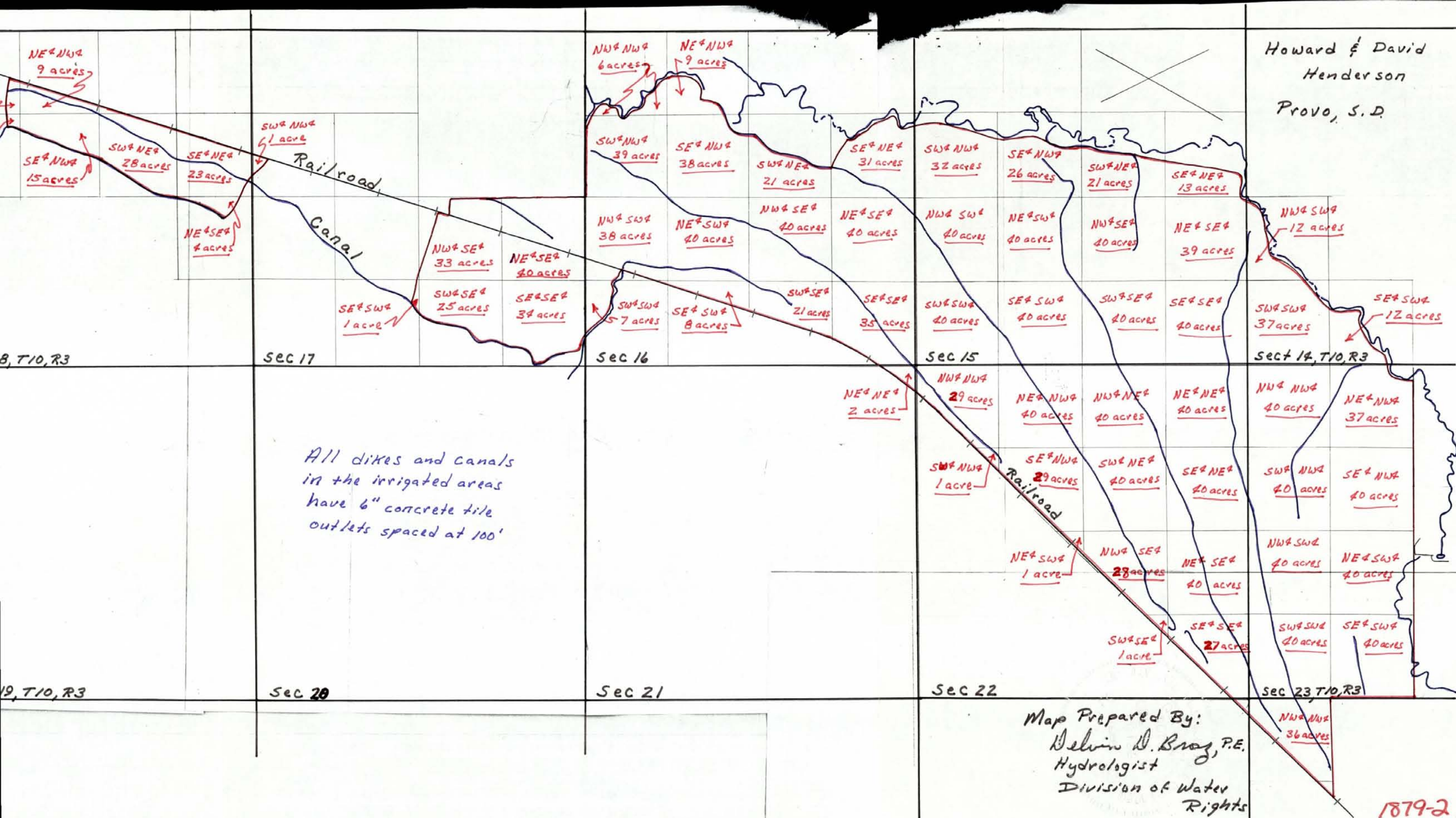
Shutoff Order for Water Right Nos. 1879-2

To protect the US Bureau of Reclamation's Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of junior water rights upstream of Angostura Dam will be allowed. On March 8, 2005, the water elevation in Angostura Reservoir was 3169.5 feet, almost 18-feet below the full elevation of 3187.2 feet. Storage is at 65,521 acre-feet, about 73,240 acre-feet below full and inflows are 14.9 acre-feet per day.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.

Howard & David
Henderson
Provo, S.D.





IN REPLY REFER TO:

DK-700
PRJ 13.00

1879-2
United States Department of the Interior

BUREAU OF RECLAMATION
Dakotas Area Office
Rapid City Field Office
515 9th St., Room 101
Rapid City, South Dakota 57701

FEB 24 2006



Mr. Garland Erbele
Chief Engineer
Water Rights Division
South Dakota Department of Environment and Natural Resources
523 E. Capitol
Pierre, South Dakota 57501-3181

RECEIVED
FEB 27 2006
WATER RIGHTS
PROGRAM

Subject: Request for Junior Water Rights Shut Off Order - Angostura Reservoir, South Dakota

Dear Mr. Erbele:

We request that the State of South Dakota's Department of Environment and Natural Resources Water Rights Division issue shut off orders to junior water right holders on the Cheyenne River above Angostura Reservoir.

Angostura Reservoir is presently at elevation 3169.90, which is a little over 17 feet down from full (top of conservation or full is at elevation 3187.2). On February 24, 2005, the storage in Angostura Reservoir is about 60,000 acre-feet, which is 63,000 acre-feet from full. If the spring weather continues to be dry, the water right at Angostura will not be satisfied.

/ If you have questions, please contact Curt Anderson or me at 605-394-9757.

Sincerely,

FOR Jeffrey L. Nettleton
Rapid City Field Office Manager

cc: Ms. Sue Lowry
Administrator
Interstate Streams Division
Wyoming State Engineer's Office
Herschler Building 4E
Cheyenne, WY 82002

Mr. Mick Jenniges
Manager
Angostura Irrigation District
P.O. Box 346
Oral, SD 57766



**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 10, 2006

NOTICE OF SHUTOFF ORDER

TO: DORA HENDERSON
SUSAN HENDERSON
BOX731
EDGEMONT SD 57735

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

Shutoff Order for Water Right Nos. 1879-2

To protect the US Bureau of Reclamation's Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of junior water rights upstream of Angostura Dam will be allowed. On March 7, 2006, the water elevation in Angostura Reservoir was 3170.3-feet, almost 17-feet below the full elevation of 3187.2-feet. Storage is at 64,524 acre-feet, about 74,237 acre-feet below full. Angostura Reservoir is not expected to fill with the current low inflows.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.



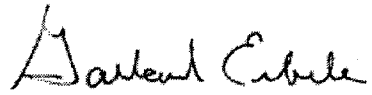
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 9, 2007

NOTICE OF SHUTOFF ORDER

TO: DORA R HENDERSON
BOX 731
EDGEMONT, SD 57735

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program 

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

Shutoff Order for Water Right Nos. 1879-2

To protect the US Bureau of Reclamation's Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of junior water rights upstream of Angostura Dam will be allowed. On March 9, 2007, the water elevation in Angostura Reservoir was 3166.9-feet, 20.3-feet below the full elevation of 3187.2-feet. Storage is at 51652 acre-feet, about 87109 acre-feet below full. Angostura Reservoir is not expected to fill with the current low inflows.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229 with the Water Rights Program. Thank you.



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 19, 2008

NOTICE OF SHUTOFF ORDER

TO: DORA HENDERSON
BOX 731
EDGEMONT SD 57735

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

Shutoff Order for Water Right Nos. 1879-2

The US Bureau of Reclamation holds Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941. To protect this right, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of water rights junior to the priority date of April 11, 1941 upstream of Angostura Dam will be allowed. On March 17, 2008, the water elevation in Angostura Reservoir was 3168.8-feet, 18.4-feet below the full elevation of 3187.2-feet. Storage is at 56785 acre-feet, about 66263 acre-feet below full. Angostura Reservoir is not expected to fill with the current low inflows.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229 with the Water Rights Program. Thank you.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 30, 2008

1879-2

Howard Henderson
614 S Custer
Miles City MT 59301

Dear Mr. Henderson:

Enclosed as you requested is a copy of Vested Water Right No. 1879-2, listed in the name of Dora Henderson. The copy includes the validation, reissued water license, a map and the last ownership change filed. I have also attached the last correspondence sent in March, 2008 concerning a "Shutoff Order for Junior Priority Date Water Rights Upstream of Angostura Dam".

If you have any questions concerning the enclosed materials, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Genny McMath". The signature is written in a cursive, flowing style.

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

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 7, 2008

1879-2

Howard Henderson
614 S Custer
Miles City MT 59301

Dear Mr. Henderson:

Enclosed as you requested is a copy of each of the three maps on file with Vested Water Right No. 1879-2, listed in the name of Dora Henderson.

I reviewed our database in response to your inquiry on a water right that pre-dates No. 1879-2 on Coal Creek. The two water rights on file for Coal Creek are No. 1879-2 (Henderson) and Water Right No. 28-2 listed in the name of George LeBar. Mr. LeBar's water right authorizes diversion of water from Coal Creek and dry draws with priority dates of July 26, 1907, February 1, 1910, October 14, 1910, March 29, 1911 and October 2, 1949. I have enclosed a copy of the water license and a map showing the location of the land authorized for irrigation.

If you have any questions concerning the enclosed materials, please contact us.

Sincerely,

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

enclosures



**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 19, 2009

NOTICE OF SHUTOFF ORDER

TO: SUSAN HENDERSON
DORA R HENDERSON
BOX 731
EDGEMONT SD 57735

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

Shutoff Order for Water Right Nos. 1879-2

The US Bureau of Reclamation holds Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941. To protect this right, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of water rights junior to the priority date of April 11, 1941 upstream of Angostura Dam will be allowed. On March 18, 2009, the water elevation in Angostura Reservoir was 3176.7-feet, 10.5-feet below the full elevation of 3187.2-feet. Storage is at 80792 acre-feet, about 42256 acre-feet below full. Angostura Reservoir is not expected to fill with the current low inflows.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229 with the Water Rights Program. Thank you.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

March 06, 2013

NOTICE OF SHUTOFF ORDER

TO: DORA R HENDERSON
% SUSAN HENDERSON
11507 HWY 471
EDGEMONT SD 57735

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of
Angostura Dam

**Shutoff Order for
Water Right Nos. 1879-2**

The US Bureau of Reclamation holds Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941. To protect this right, the Bureau of Reclamation has asked that we issue shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River and tributaries by holders of water rights junior to the priority date of April 11, 1941 upstream of Angostura Dam will be allowed. On March 05, 2013, the water elevation in Angostura Reservoir was 3176.8-feet, 10.4-feet below the full elevation of 3187.2-feet. Storage is at 81068 acre-feet, about 41980 acre-feet below full. Angostura Reservoir is not expected to fill with the current low inflows.

The Angostura Reservoir storage level will be closely monitored and if the Cheyenne River flows upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229 with the Water Rights Program. Thank you.

CERTIFICATION

I hereby certify that on March 6, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated March 6, 2013 regarding shut-off orders addressed as stated below:

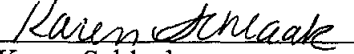
LAST_NAME	FIRST_NAME	ADDRESS2	CITY	STATE	ZIP
INDIAN CREEK CATTLE LLP		32296 190TH ST	SLEEPY EYE	MN	56085
INDIAN CREEK LAND & CATTLE LLC		PO BOX 538	EDGEMONT	SD	57735
WEINREIS BROTHERS		230908 HIGHLAND RD	SCOTTSBLUFF	NE	69361
SEGER RANCH INC		RR 1 BOX 100A1	HOT SPRINGS	SD	57747
REUTTER	EDWARD/WANDA	HCR 59 BOX 90	EDGEMONT	SD	57735
WASSERBURGER	MARTIN W & E DALLAS	30131 CASCADE RD	ARDMORE	SD	57735
HALD BROTHERS INC		30195 HIGHWAY 385	OELRICHS	SD	57763
GCC DACOTAH INC		PO DRAWER 360	RAPID CITY	SD	57709
FALKENBURG	JOE/NANCY	PO BOX 69	EDGEMONT	SD	57735
ANDERSEN	DONALD J/LYNDA J	10194 ARGENTINE RD	BURDOCK	SD	57735
ANDERSEN	KEITH	27360 S FLAT TOP RD	EDGEMONT	SD	57735
ANDERSON	DALE & JEANETTE	1401 TOMPKINS ST	RAPID CITY	SD	57701
B & H RANCH INC		900 W 7TH ST	CHADRON	NE	69337
BACHAND	DOUG & LORI	HC 48 BOX 248	PROVO	SD	57774
BALL BROS		BOX 527	EDGEMONT	SD	57735
BIRDSALL	JIM OR SHERYL	28086 ANGOSTURA RD	HOT SPRINGS	SD	57747
BOGNER	NICK/EUGENE	HC 46 BOX 24	OELRICHS	SD	57763
BOGNER	NICK/MICHAEL	29599 BLACK BANKS RD	OELRICHS	SD	57763
BRAINERD INDIAN SCHOOL		PO BOX 7038	RAPID CITY	SD	57709
CHILDERS	V L	900 W 7TH ST	CHADRON	NE	69337
COPE	OSCAR	PO BOX 147	OELRICHS	SD	57763
COPE RANCH		14160 SHIRK CREEK RD	OELRICHS	SD	57763
DUNBAR	DAVID M	HC 46 BOX 48A	OELRICHS	SD	57763
HENDERSON	DORA R	11507 HWY 471	EDGEMONT	SD	57735
HINESLEY	TED AND GAIL	103 W AVE A	BISMARCK	ND	58501
HOLLENBECK	HENRY C	665 OAK ST	EDGEMONT	SD	57735
HOLLENBECK	MARK J	27772 ELBOW CANYON RD	EDGEMONT	SD	57735
HOLLENBECK	PAT OR TAMMY	665 OAK ST	EDGEMONT	SD	57735
HU RANCH INC		28469 OLD HWY18	EDGEMONT	SD	57735
HUBER	GAYLE & LINDA	28797 LENNON SCHOOL RD	OELRICHS	SD	57763
HUNTER	ROSS J	30068 HAT CREEK RD	EDGEMONT	SD	57735
KOLLER	JOHN W	PO BOX 715	EDGEMONT	SD	57735
LANDERS	A J	BOX 159B HCR 52	HOT SPRINGS	SD	57747
LANDERS LIVESTOCK CO INC		29088 ASH CREEK RD	HOT SPRINGS	SD	57747
MANKE LAND & CATTLE CO LLC		PO BOX 599	EDGEMONT	SD	57735
MARTINSON	KENNETH	BOX 361	EDGEMONT	SD	57735
NELSON	A J	503 S CENTER AVE	MILES CITY	MT	59301
PETERSON & SON INC		27389 BURDOCK LOOP	BURDOCK	SD	57735
PORTER	EVERETT	10413 MOSS AGATE RD	EDGEMONT	SD	57735
PUTNAM	DONALD	BOX 188	OELRICHS	SD	57763
PUTNAM RANCH INC	DONALD	BOX 188	OELRICHS	SD	57763
QUINTO LTD		PO BOX 69	EDGEMONT	SD	57735
ROMEY	JOHN R OR TRACY	29773 HARD SCRABBLE RD	OELRICHS	SD	57763
SCHNOSE	ROBERT A & KIMBERLY L	29037 OLD HWY 79	OELRICHS	SD	57763

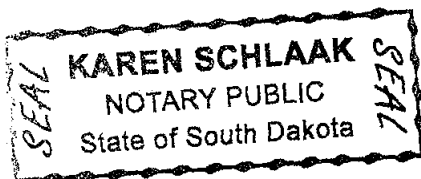
SCHNOSE	VERNON	12685 MAITLAND RD	HOT SPRINGS	SD	57747
SEABECK	DORIS SEABECK & THOMAS	2533 PARK AVE	LARAMIE	WY	82070
SIMONS	BERNARD D	BOX 381	EDGEMONT	SD	57735
TUBBS LAND & CATTLE LLC		10891 RIVER RD	EDGEMONT	SD	57735
WALKER	FRED S & CYNTHIA K	30301 CASCADE RD	ARDMORE	SD	57735
WYOMING DAKOTA RAILROAD PROPERTIES INC	WAYNE F	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402


 Gail Jacobson
 Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF HUGHES)

Sworn to, before me, this 6th day of March, 2013.


 Karen Schlaak
 Notary Public
 My Commission expires April 1, 2013



LAW OFFICES**Lynn, Jackson, Shultz & Lebrun, P.C.**

LAWYERS ALSO ADMITTED IN MINNESOTA, IOWA, NORTH DAKOTA AND WYOMING
www.lynnjackson.com

311 N. 27TH STREET
SUITE 4
SPEARFISH, SD 57783-3213
605-722-9000
FAX 605-722-9001

909 ST. JOSEPH STREET, SUITE 800
RAPID CITY, SD 57701-3301
605-342-2592
FAX 605-342-5185

110 N. MINNESOTA AVENUE
SUITE 400
SIOUX FALLS, SD 57104-6475
605-332-5999
FAX 605-332-4249

REPLY TO: Rapid City Office

From the offices of Jeffery D. Collins
e-mail address: jcollins@lynnjackson.com

October 19, 2020

RECEIVED

OCT 21 2020

WATER RIGHTS
PROGRAM

Eric Gronlund
Chief Engineer
SDDENR
Joe Foss Building
523 E. Capital Ave
Pierre, SD 57501

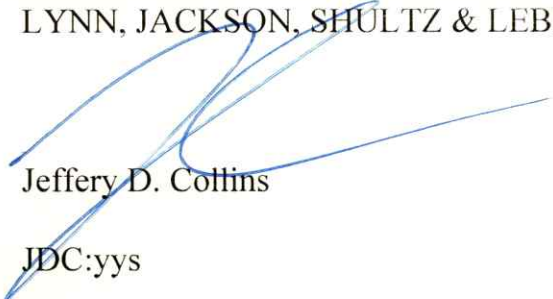
Re: Jerald E. and Melissa A. Stearns (The Estate of Dora R. Henderson v.)
Our File No. 150085-00004

Dear Mr. Gronlund:

We are requesting an investigation of Water License No. 1879-2 on behalf of our clients, Jerald and Melissa Stearns. A copy of the Petition for Investigation is enclosed. Thank you.

Sincerely,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.



Jeffery D. Collins

JDC:yy

cc: James G. Sword
Talbot J. Wiczorek
Jerald and Melissa Stearns via email

RECEIVED

OCT 21 2020

WATER RIGHTS
PROGRAM

SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

In the matter of Water License No. 1879-2)

PETITION FOR INVESTIGATION OF WATER RIGHT - ABANDONMENT AND
FORFEITURE FOR NONUSE – SDCL § 46-5-37.1

Petitioners, Jerald E. Stearns and Melissa A. Stearns, of Fall River County, South Dakota, being duly sworn, do hereby make the following statement of facts and petition to the Chief Engineer for the Water Rights Division as follows:

1. That the petitioners are the owner of the lands and the following described appropriations of water which are served by diversions from Hay Draw (a tributary of Coal Creek) and Coal Creek:
 - a. LN 10-2 in the amount of 6.4 c.f.s. diverting from Hay Draw and Coal Creek, with priority of October 28, 1907, for the irrigation of acreage within Section 23 and Section 26; all in Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota; and
 - b. Water Right 28-2 combining several location notices as follows:
 - i. Water Right 28-1 in the amount of 2.6 c.f.s., diverting from Coal Creek, with a priority of July 26, 1907, for the irrigation of acreage located in Section 13; all in Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota;
 - ii. Location Notice 209-2 in the amount of 2.2 c.f.s. diverting from Coal Creek, with priority of February 1, 1910, for the irrigation of acreage in Section 13; all in Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota;

*PETITION FOR ABANDONMENT AND FORFEITURE OF WATER RIGHT FOR NONUSE – SDCL §
46-5-37.1*

Water Permit No. 1879-2

- iii. Under Location Notice 338-2, an additional diversion point from Coal Creek, with priority of March 29, 1911, for the irrigation of acreage in Section 13; all in Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota; and
 - iv. Location Notice 709-2 in the amount of 1.8 c.f.s. diverting from Coal Creek, with priority of October 2, 1949, for the irrigation of acreage in Section 13; all in Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota.
- c. That pursuant to SDCL §§ 46-5-33 and 34, such water rights are appurtenant to the lands irrigated under such water rights, which lands are owned in fee by petitioners, making petitioners the owners of both the land and the water rights.
2. That Dora R. Henderson, formerly of County of Fall River, State of South Dakota, is the owner of the lands and the following described appropriation of water which is served by the following appropriation from Coal Creek:
- a. Water License No. 1879-2 in the amount of 25.3 c.f.s. diverting from Coal Creek with a priority of October 4, 1945 irrigating total acreage of up to 1,772 acres in Sections 14, 15, 16, 17, 18, 21, 22, and 23, all in Township 10 South, Range 3 East of the Black Hills Meridian, Fall River County, South Dakota which specific acreages are set forth in the Vested Water License filed with the Division of Water Rights, Department of Water and Natural Resources.
3. Total acreage for which a declaration of abandonment is sought by this petition is 1,772 acres (25.3 c.f.s.).

PETITION FOR ABANDONMENT AND FORFEITURE OF WATER RIGHT FOR NONUSE -- SDCL § 46-5-37.1

Water Permit No. 1879-2

4. That Dora R. Henderson passed away several years ago but none of the lands appurtenant to Water License No. 1879-2 have been transferred out of her estate and Susan Henderson is the court appointed personal representative of the Estate.
5. That petitioners bring this petition under the authority of SDCL §§ 46-5-26 and 46-5-37 and SDAR 74:02:01:36, and 74:02:01:37.
6. That the petitioners have standing to file this petition because petitioners hold senior and junior water rights from Coal Creek as set forth above.
7. That water under Water License No. 1879-2 has not been fully diverted and applied to beneficial use upon the lands described under the Water License for at least three (3) years past, when water was available for such purpose, due to lack to maintenance of the ditch and further because the ditch cannot be legally maintained because the Estate of Dora R. Henderson does not hold a valid easement for the ditch to cross the East Half of Section 13, Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota¹, as is required to transport the water from the point of diversion on Coal Creek which is located in Section 23, Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota to the irrigated lands located in Sections 14, 15, 16, 17, 18, 21, 22 and 23 of Township 10 South, Range 3 East of the Black Hills Meridian, Fall River County, South Dakota.
8. That the petitioners will be benefited by a finding of abandonment of this appropriation, or injured by the reactivation of this water right, as follows: petitioners hold a junior water right on Coal Creek and petitioners own additional lands on Coal Creek which could apply for new water permits for irrigation.

¹ A. M. Henderson held an easement in gross for an irrigation ditch across the east half of Section 13 which easement terminated upon his death because the easement was not perpetual or given to his heirs and assign. See attached Exhibit A for a copy of this easement.

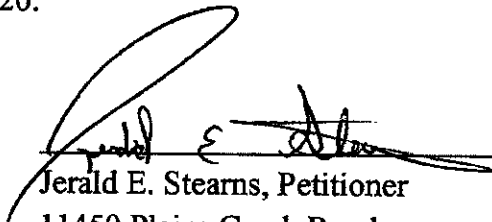
PETITION FOR ABANDONMENT AND FORFEITURE OF WATER RIGHT FOR NONUSE – SDCL § 46-5-37.1

Water Permit No. 1879-2

Therefore, petitioners pray for the following relief:

- a. For the Chief Engineer to investigate Water License No. 1879-2 pursuant to SDCL § 46-5-37.1 and determine that such water right has been abandoned and forfeited for nonuse;
- b. That following such investigation, that the Chief Engineer recommend to the South Dakota Water Management Board cancellation of Water License 1879-2 because of abandonment and determination that such waters have been forfeited to public use;
- c. That the South Dakota Water Management Board properly notice the interested parties of hearing upon this petition and the investigation and findings of the Chief Engineer and that such hearing be held before the Board according to law;
- d. That the South Dakota Water Management Board cancel Water Permit 1879-2 because of abandonment and declare that such waters are forfeited to public use;
- e. Such further relief as the South Dakota Water Management Board may find necessary and proper.

Dated: 10-19-2020, 2020.


Jerald E. Stearns, Petitioner
11450 Plains Creek Road
Edgemont, SD 57735

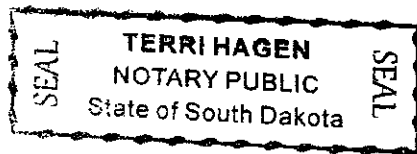
PETITION FOR ABANDONMENT AND FORFEITURE OF WATER RIGHT FOR NONUSE – SDCL § 46-5-37.1

Water Permit No. 1879-2

Melissa A. Stearns

Melissa A. Stearns, Petitioner
11450 Plains Creek Road
Edgemont, SD 57735

Subscribed and sworn to before me by Jerald E. Stearns this 19 day of August, 2020.



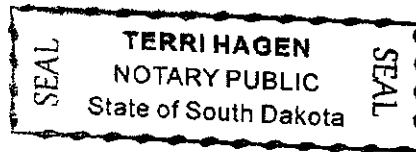
Terri Hagen

Notary Public, South Dakota

My commission expires:

My Commission Expires
April 20, 2022

Subscribed and sworn to before me by Melissa A. Stearns this 19 day of August, 2020.



Terri Hagen

Notary Public, South Dakota

My commission expires:

My Commission Expires
April 20, 2022

Jeffery D. Collins
Erika S. Olson
Lynn, Jackson, Shultz & Lebrun, P.C.
Attorneys for Petitioners
909 St. Joseph Street, Suite 800
Rapid City, SD 57701
(605) 342-2592
jcollins@lynnjackson.com
eolson@lynnjackson.com

*PETITION FOR ABANDONMENT AND FORFEITURE OF WATER RIGHT FOR NONUSE – SDCL §
46-5-37.1*

Water Permit No. 1879-2

FALL RIVER COUNTY, S. D.

III.

That the right of said Mary Morris to a conveyance of the lands above described is clear and specific and Greydon L. Nicholls, as Administrator of the estate of George R. Timberman, Decedent, should be and he hereby is directed, authorized and empowered to execute acknowledge and deliver to said Mary Morris, a good and sufficient deed in the form prescribed by statute for Administrators deeds conveying to her the lands hereinbefore described, in accordance with the terms of said contract.

Done at Hot Springs, South Dakota, December 10, 1945.

G. C. Caylor
JUDGE

WITNESSES:

Wm. T. Richer, Clerk

(Signed)

Filed Dec. 10, 1945 Clerk's Office Fall River Co. S.D.

Wm. T. Richer, Clerk of Courts

STATE OF SOUTH DAKOTA }
COUNTY OF FALL RIVER }

CERTIFICATE AS TO COPY

I, Wm. T. Richer, the duly elected, qualified and acting Clerk of Courts in and for the above named County and State, do hereby certify that the within and foregoing Order is a full, true and complete copy of the original thereof as appears to me from the records of this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the County Court of Fall River County, South Dakota, this 10 day of Dec. A. D. 1945.

Wm. T. Richer, Clerk of Courts

STATE OF SOUTH DAKOTA }
COUNTY OF FALL RIVER }

Filed for record 10 day of Dec. 1945 at 10:05 A.M. and recorded in Book 24 Misc. Pages 128-129.



Mary E. Brigham
Register of Deeds

AGREEMENT

THIS AGREEMENT made and entered into this 10th day of December, A. D., 1945, by and between J. G. Trotter of Irovo, South Dakota, party of the first part, and A. M. Henderson of Irovo, South Dakota, party of the second part.

WITNESSETH: That the said party of the First part for and in consideration of the covenants to be performed by the party of the second part at the time and in the manner hereinafter mentioned, agrees to sell and convey unto the party of the second part as soon as he receives title thereto from the Federal Land Bank, a strip of land 50 feet in width across the Northwest quarter of the Southeast Quarter and across the Southeast quarter of the Northeast Quarter of Section Thirteen (13), and across the Northwest corner of Lot Two and the Southeast corner of Lot One in Section Eighteen (18), all in Township Ten (10), South Range Two (2) S.B.H.M., Fall River County, South Dakota. Such property conveyed to be used by second party to construct a ditch for irrigation of certain lands belonging to second party and for certain lands belonging to first party in the manner hereinafter set forth. It being understood and agreed that should the said irrigation project be abandon and such ditch not used for the purposes for which same was constructed for a period of Five (5), successive years, then and in that event the title to said property shall revert to the party of the first part or to his heirs or assigns.

MISCELLANEOUS RECORD No. 24

In consideration of the foregoing the party of the second part agrees to erect a head gate at a point approximately 200 yards East of the One-half ($\frac{1}{2}$) section line running North and South through Section Thirteen (13), above described, in order to permit the party of the first part to secure and use water from said ditch to irrigate seventy (70) acres of land belonging to the first party, which land is below the ditch in question and that first party may have the choice of ten (10) consecutive days any time in the year he sees fit to use the water from said ditch for the 70 acres of land above mentioned.

That attached to and forming a part of this contract is a copy of a survey of the proposed ditch made by Julian Staven, dated November 17, 1945, which gives substantially the location thereof.

IN TESTIMONY WHEREOF both parties to this agreement have hereunto set their hands and seal the day and year first above written.

J. G. Trotter
Party of the First Part

A. L. Henderson
Party of the Second Part

STATE OF SOUTH DAKOTA)
COUNTY OF FALL RIVER) SS

On this 10th day of December, A. D., 1945, before me, the undersigned, personally appeared J. G. Trotter and A. L. Henderson known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(SEAL)

STATE OF SOUTH DAKOTA)
COUNTY OF FALL RIVER) SS



H. M. Lewis
Notary Public, South Dakota

Filed for record 11 day of Dec. 1945 at 8:30 A.M. and recorded in Book 24 Misc. pages 129-130.

Mary E. Bingham
Register of Deeds

MISCELLANEOUS RECORD No. 24

No. 3057

DEPARTMENT
OF MEDICAL EXAMINERS.

State of South Dakota

To All to Whom These Presents shall come, Greeting:

This is to Certify That BERNHOFF RISKE SKOGMO M.D., has complied with the law authorizing the licensing of Physicians to practice Medicine, Surgery and Obstetrics within this State, and we THE STATE BOARD OF PUBLIC HEALTH AND MEDICAL EXAMINERS, by Virtue of the Authority vested in us and by the Laws of said State, do hereby Licence and Commission the said Bernhoff Riske Skogmo by Reciprocity and do hereby authorize, empower and require the execution and fulfillment of the duties of said profession with all the Rights, Authorities, Privileges and Emoluments thereunto appertaining.

In Testimony whereof, we have hereunto set our hands and affixed the Seal of said Board at Pierre, South Dakota, this Sixteenth day of January in the year of our Lord One Thousand Nine Hundred and Forty six.

Gilbert Cottam M.D.
Director Medical Licensure



Lyle Hare, M. D.
President

Gilbert Cottam M.D.
Secretary and Executive Officer.

STATE OF SOUTH DAKOTA }
COUNTY OF FALL RIVER } SS

Filed for record the 2 day of Febr 1946 at 1:30 P.M. and recorded in Book 24 Misc.,
Page 172.

Wayne E. Smith
Register of Deeds

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That THE FEDERAL LAND BANK OF OMAHA, a corporation, for valuable consideration, does hereby grant unto A. M. Henderson and Joseph G. Trotter an easement for Irrigation Ditch right of way, as follows:

Said right of way traversing the East Half of Section 13, in Township 10 South, Range 2, and Lots 1 and 2 of Section 18, in Township 10 South, Range 3, all East of the Black Hills Meridian, in Fall River County, South Dakota, and being 25 feet on each side of a center line described as beginning approximately 570.4 feet South of center of said Section 13, thence Northeasterly approximately 3718.6 feet to a point 25 feet North of the Southeast corner of Lot 1 of Section 18;

Said right of way to revert to the present owner or its vendees if the irrigation project be abandoned or the ditch remain unused for five successive years.

IN WITNESS WHEREOF, the said THE FEDERAL LAND BANK OF OMAHA has caused these presents to be executed by the officers authorized by its Board of Directors to execute deeds and conveyances, and its corporate seal to be hereunto affixed this 15th day of January, 1946.

In the Presence of:
A. Johnson



THE FEDERAL LAND BANK OF OMAHA

By H. A. Viergutz
Vice President

Attest Wayne E. Smith
Secretary

FALL RIVER COUNTY, S. D.

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } SS

On this 15th day of January, 1946, before me, Evelyn Blomquist, a Notary Public in and for Douglas County, Nebraska, personally appeared H. A. Viergutz to me personally known to be the identical person who executed the foregoing instrument, who being by me duly sworn did say that he is Vice President of The Federal Land Bank of Omaha; that the seal affixed to said instrument is the corporate seal of The Federal Land Bank of Omaha; that said instrument was signed and sealed in behalf of the Federal Land Bank of Omaha by authority of its Board of Directors, and the said H. A. Viergutz acknowledged said instrument to be the free and voluntary act and deed of said corporation by it voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last above written.

Evelyn Blomquist
Notary Public in and for
Douglas County, Nebraska



My commission expires Oct. 5, 1950.

STATE OF SOUTH DAKOTA }
COUNTY OF FALL RIVER } SS

Filed for record the 2 day of Febr. 1946 at 3:00 P.M. and recorded in Book 24 Misc., Pages 172-173.

Wm. E. Brigham
Register of Deeds

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT WITHIN AND FOR FALL
RIVER COUNTY, STATE OF SOUTH DAKOTA

William J. Crowe, also known as W. J. Crowe,

Plaintiff,

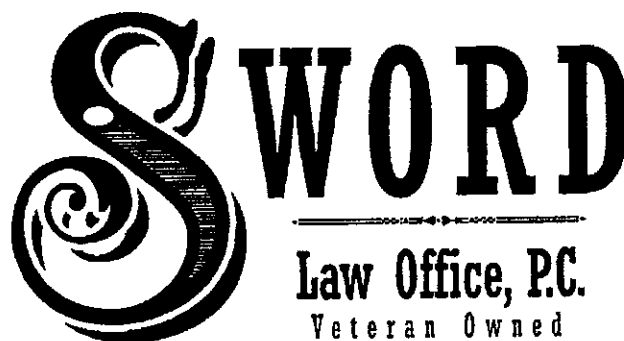
-VS-
Fall River County, a political subdivision of the State of South Dakota; Mrs. Margaret McGuire and Clarence J. Crowe, who together with the plaintiff, are the only heirs of Katherine Crowe, deceased; James Q. Keefe, sole devisee of William M. Shaffner, deceased; Mrs. E. J. Hanlon, sole devisee of E. J. Hanlon, deceased, as to the lands involved in this action; and all unknown heirs, devisees, legatees, administrators and executors, next of kin, successors, assigns and creditors of any persons who may be deceased at this time and all persons unknown who have or claim to have any right, title, interest or estate in or lien or encumbrance upon the premises described in the complaint or any part thereof.

Defendants.

DECREE
QUIETING TITLE

STATE OF SOUTH DAKOTA }
County of Fall River } ss

This cause coming on for hearing before the Court, without a jury at the adjourned term for October, 1945, at the Court House in the City of Hot Springs, Fall River County South Dakota, on the 30th day of January, 1946, C. C. Caylor, Attorney at Law, at Hot Springs, Fall River County, South Dakota, appearing as attorney for the Plaintiff and there being no appearance by or on behalf of the defendants or either of them and it satisfactorily appearing to the Court the the complaint in this action was duly filed in the office of the Clerk of Courts of said Fall River County, South Dakota on the



VIA US MAIL and EMAIL

November 13, 2020

Eric Gronlund
Water Rights Program
523 E. Capitol
Pierre, SD 57501
email: DENRINTERNET@state.sd.us

Ann Mines-Bailey
1302 E. HWY 14, #1
Pierre, SD 57501
email: ann.mines@state.sd.us

Re: Water License No. 1879-2
Henderson Response

Dear Eric and Ann:

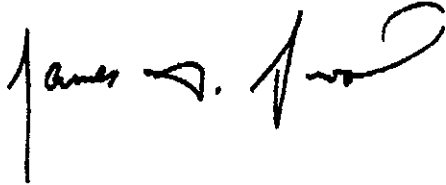
Enclosed please find the following:

1. Henderson Response to Stearns' Petition with accompanying photos

I appreciate our discussion the other day. As I stated, I would like to be informed as to when your staff makes a sight visit. This courtesy was extended to Stearns/Vermeer on the previous sight visit. I would ask that the same courtesy be extended to Henderson.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "James G. Sword". The signature is stylized with a large, looped "S" at the end.

JAMES G. SWORD

JGS/hb

cc: Mr. Jeffery Collins

SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

RECEIVED

NOV 16 2020

WATER RIGHTS
PROGRAM

In the matter of Water License No. 1879-2)

RESPONSE TO PETITION FOR INVESTIGATION OF WATER RIGHT

COMES NOW, the Dora Henderson Estate and for its response to the Petition for Investigation of Water Right states the following:

1. The Stearns' petition is defective. Jerald E. Stearns and Melissa A. Stearns claim that they made the petition after "being duly sworn." However, the Stearns' petition was not sworn under oath. The petition's notary clauses read as follows:

Subscribed and sworn to before me by Jerald E. Stearns this 19th
day of August, 2020.

/s
Teri Hagen

Subscribed and sworn to before me by Melissa A. Stearns this 19th
day of August, 2020.

/s
Teri Hagen

Jerald E. Stearns and Melissa A. Stearns did not sign in front of Teri Hagen on August 19, 2020. They signed the petition on **October 19, 2020**. The notary clause is defective. See Nist v. Herseth, 270 N.W.2d 565 (S.D. 1978) (holding that a proper notary clause is "not onerous" and is designed to insure the integrity of the document); SDCL 18-1-11 (Class 2 misdemeanor to notarize a document where the person signing did not appear in front of the notary).

The Stearns petition fails to evidence the very basic indicia of authenticity and integrity and should be rejected.

2. Susan Henderson is the personal representative for Dora Henderson's estate. Estate of Henderson v. Estate of Henderson, 2012 SD 80, ¶ 1. It is proper for the personal representative to manage the affairs of the estate. SDCL 29A-3-711. Petitioner has not cited this agency to any law to support their insinuation that Water License No. 1879-2 should be deemed abandoned because the water right has not been transferred out the Dora Henderson estate. See Petition ¶ 4.

3. Without any authority, the Stearns' claim that the Estate of Dora Henderson does not own an easement through Section 13, Township 10 South, Range 2 East of the Black Hills Meridian, Fall River County, South Dakota.

However, the Stearns' supplied to this agency a document clearly giving A. M. Henderson an easement in the irrigation ditch through Section 13 to the road. The document provided to this agency is still operative. This easement is valid until terminated pursuant to the clear language of the easement which is as follows:

Said right of way to revert to the present owner or its vendee if the irrigation project be abandoned or the ditch remain unused for five successive years.

By its own terms the easement is still valid and effective. The irrigation project has not been abandoned and the ditch is still being used.

It is not the function of this agency to make rulings on easement issues. Assuming arguendo, that the Stearns are correct then the Estate of Dora Henderson will have an easement by prior use (See Springer v. Cahoy, 2012 S.D. 32, ¶ 7) or a prescriptive easement (See Helleberg v. Estes, 2020 SD 27). Any argument that the Henderson ditch is not "open, continued and molested for more that 20 years" is beyond ridiculous.

4. The water right has not been abandoned. It has been stolen. The Stearns have diverted and dammed up the water that should properly be flowing to Henderson. On October 21, 2019, Henderson learned why there was no water coming from the water right. On that day, A site inspection of the dams on the Vermeer property was conducted. The Stearns' large dam was storing so much water that it finally broke. Attached to this Response and incorporated herein by this reference are the photos (Photos 1 – 8) from this sight inspection. The dam that was constructed by Stearns is so large that it is over ten feet above the waterline after the dam had been breached. See Photo 1. This massive dam has again been rebuilt and it took the side of a hill to fill in and reconstruct the breached dam.

5. The first act on the Stearns' petition should be an investigation of the large dam they have constructed and the amount of water that it is taking from the Henderson Estate.

6. The failure of the notary clause is not a formality. The Stearns know that the Henderson ditch has not been abandoned and they have failed to swear under oath to this fact. The reason the Stearns' have not properly sworn to their petition is because they know that Henderson has easement for the ditch. They have stolen water that Henderson is entitled to. The Stearns have stolen water through a large dam and a system of illegal diversion points. There has been no abandonment of the water right; however, there has been theft of that water.

7. Prior to acting on the Stearns petition and for the reasons set forth above, the Stearns should be required to formally swear under oath that allegations contained in the Petition are true.

8. The Stearns petition should be dismissed on the merits.

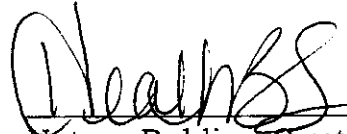
DATED this 13th day of November, 2020.



SUSAN HENDERSON

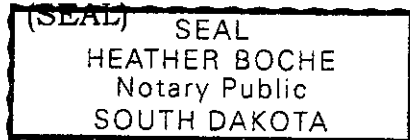
Personal Representative
Dora Henderson Estate

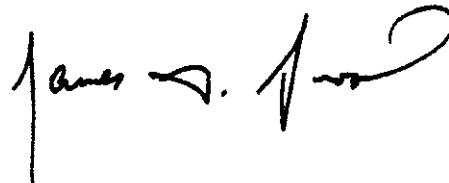
SUBSCRIBED and SWORN to this 13th day of November, 2020.



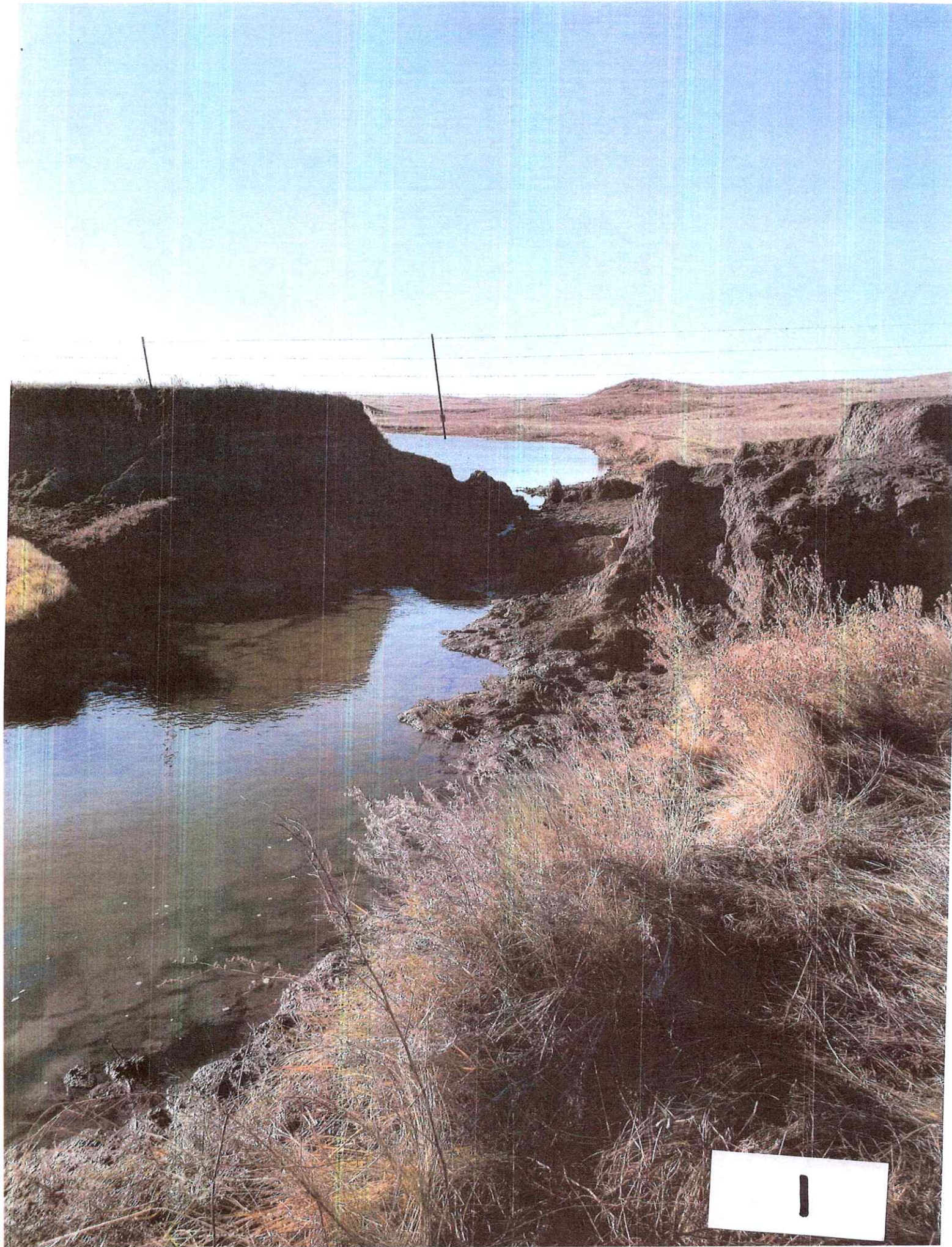
Notary Public – South Dakota

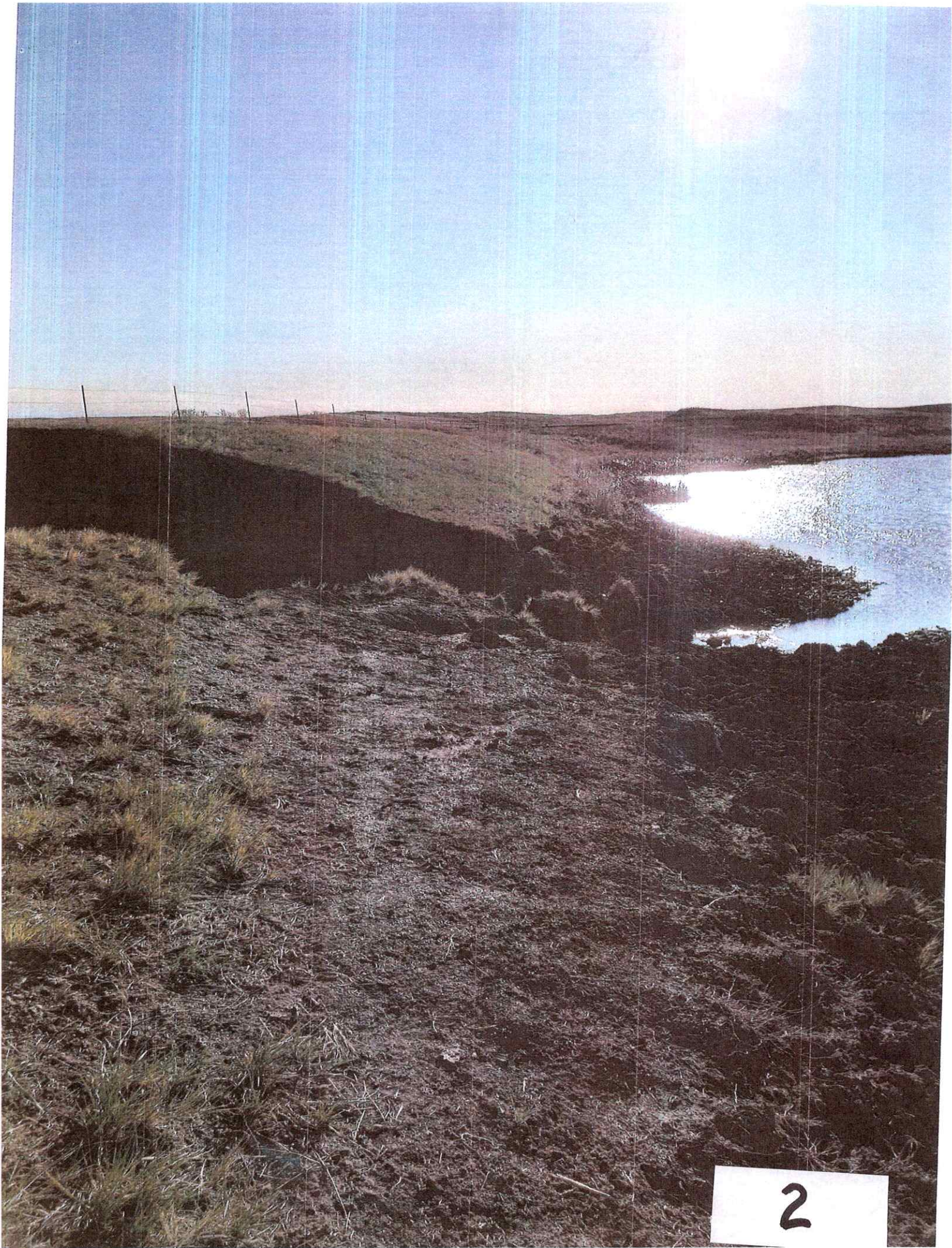
My commission expires: 2-21-2023

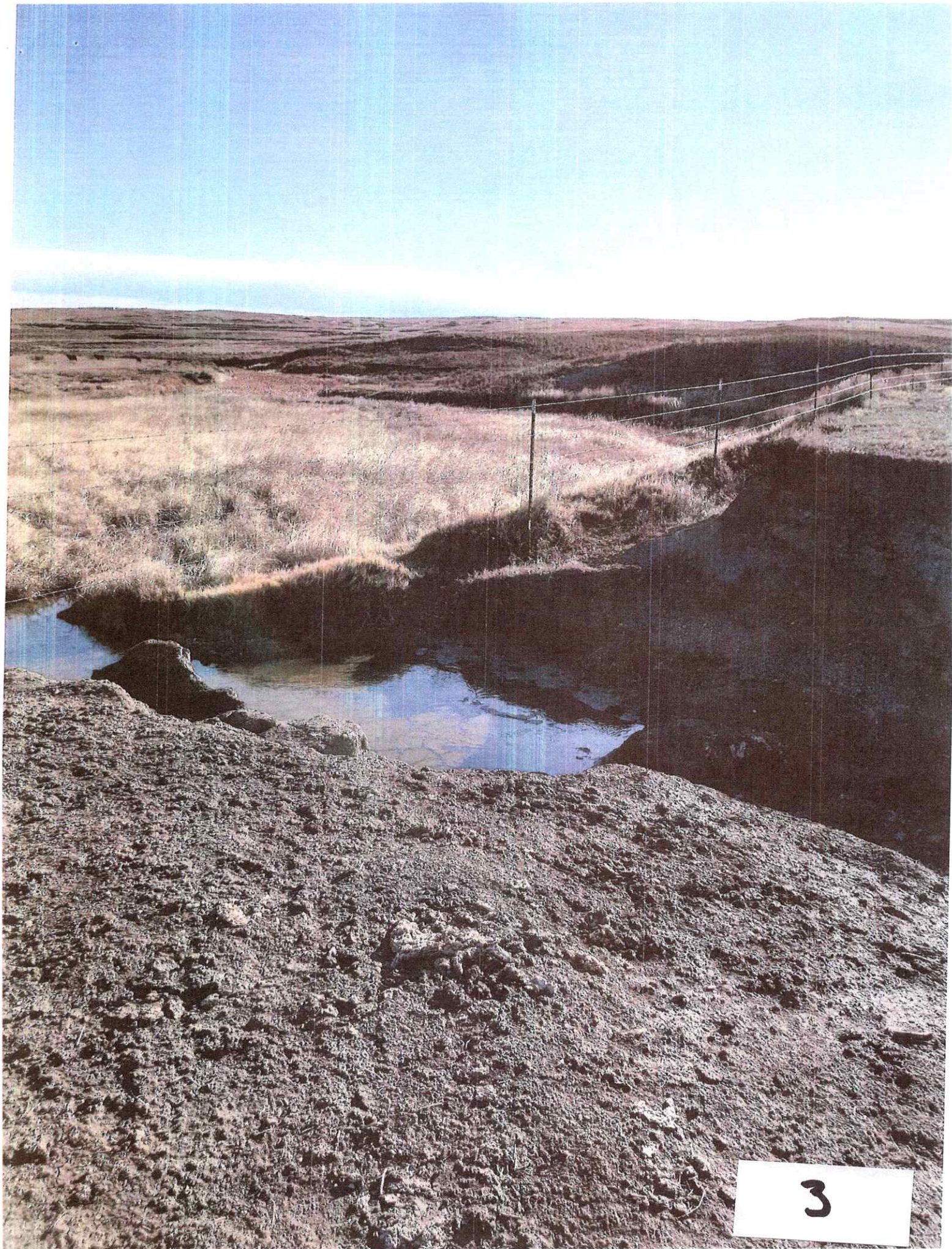




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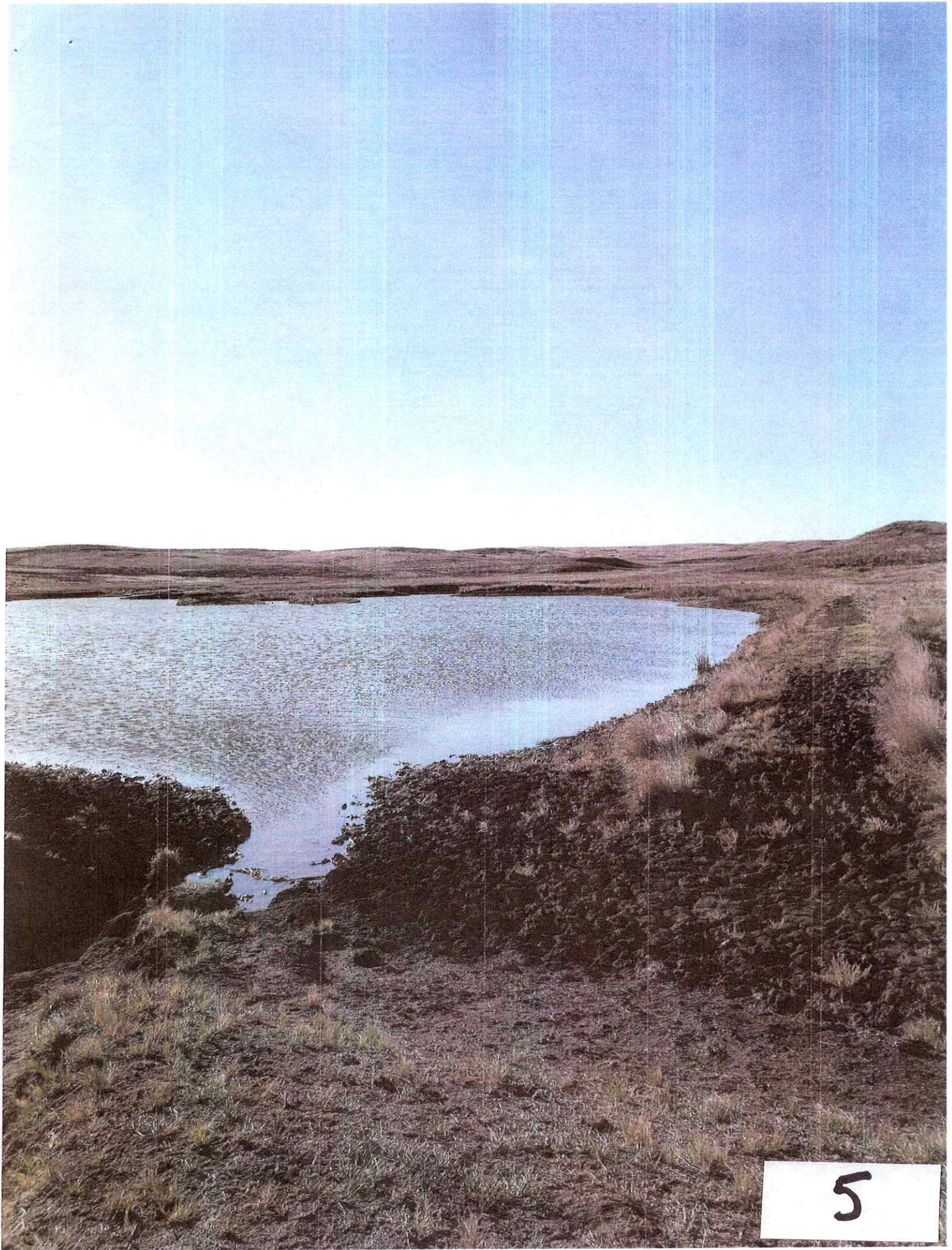






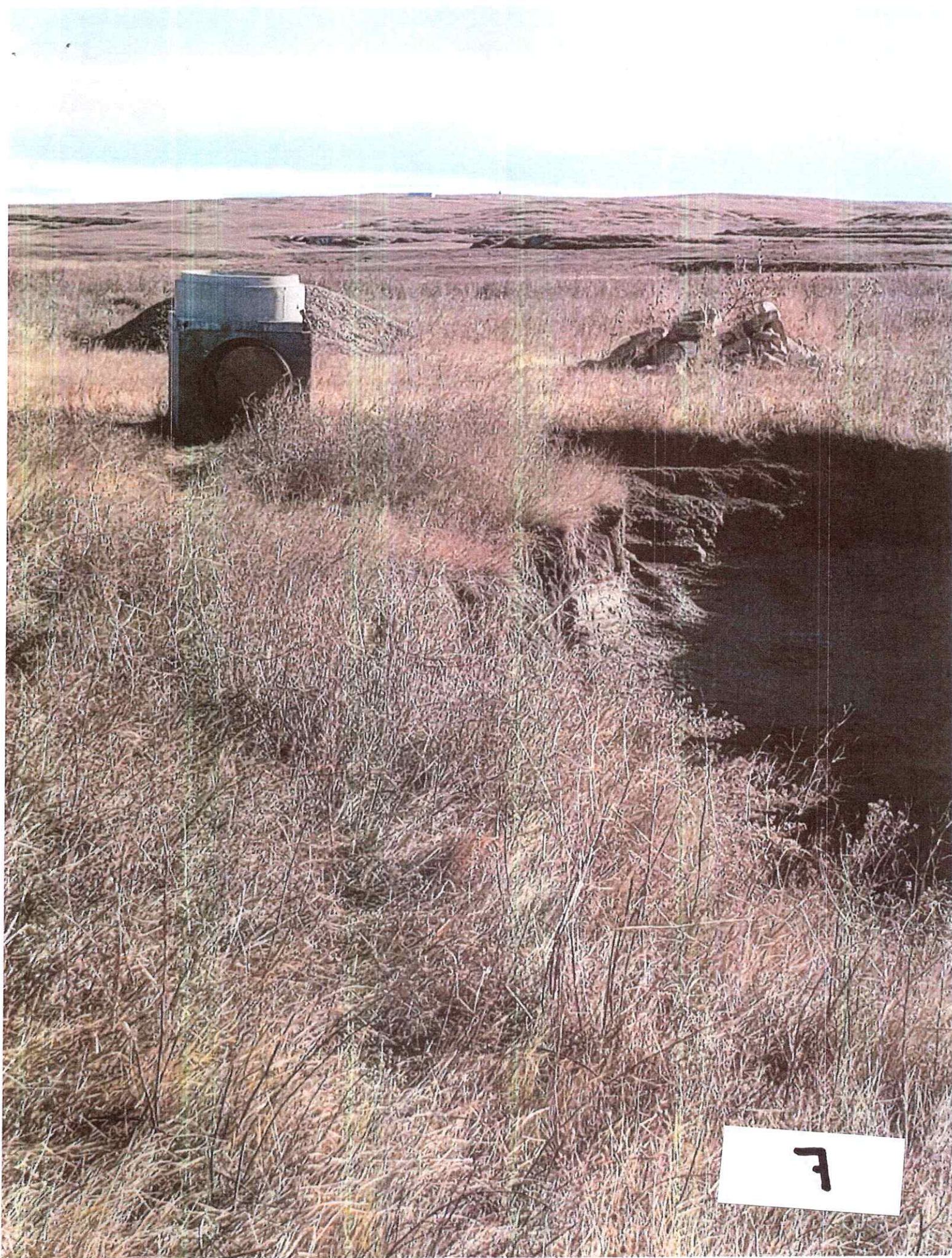
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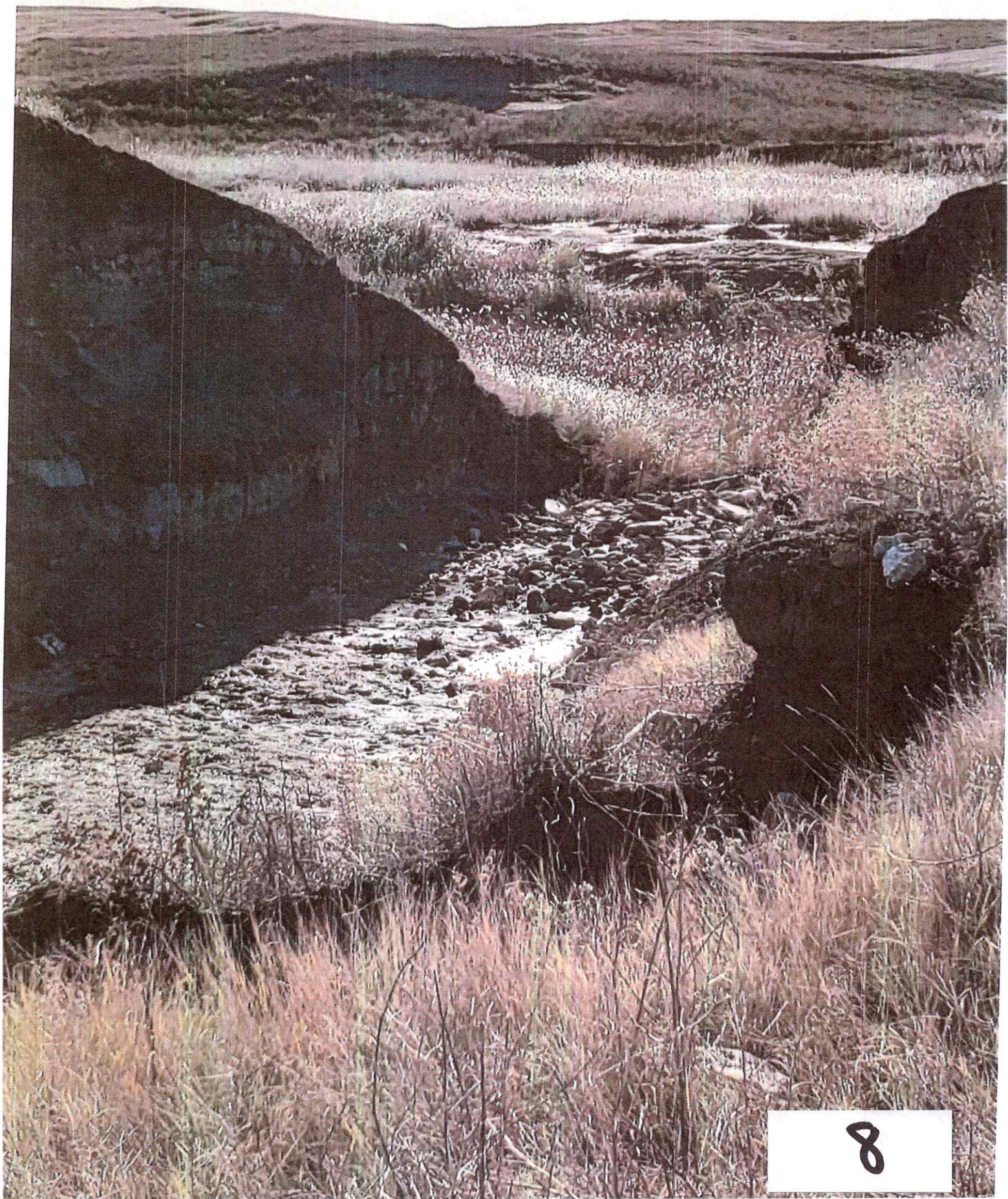




5







1879-2

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

December 7, 2020

James G. Sword
Sword Law Office, PC
P.O. Box 283
Hot Springs, SD 57747
jim@swordlawoffice.com

Re: Petition for Investigation of Water Permit No. 1879-2, Dora R. Henderson

Mr. Sword,

The Chief Engineer is in receipt of your response to the petition for investigation of Water Permit No. 1879-2, Dora R. Henderson which was submitted by Jerald E. and Melissa A. Stearns. I am writing to respond to several of the legal questions you set forth in the response. The petition for investigation was initiated pursuant to SDCL § 46-5-37.1 which provides as follows:

Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

There is nothing within this statute that requires that a petition to investigate be notarized. Furthermore, I am unaware of any other statute or rule which requires a petition requesting the Chief Engineer to investigate a water right to be notarized.

You further request that you be notified when a Water Rights' engineer conducts the on-site investigation. As was explained to you during the earlier phone conversation, prior to the on-site investigation made by the Water Rights

engineer regarding your petition for investigation of Water Right No. 28-2, contact was made with the Stearns and Mr. Vermeer because the engineer necessarily had to enter onto their properties. Though the Chief Engineer and his staff have legal authority to enter a property to inspect a water right, it is the practice of the Chief Engineer to notify the landowner first. Should the investigating engineer need to enter onto Ms. Henderson's property, you will be contacted. Additionally, as we conveyed during our earlier telephone conversation, you will be notified when the on-site investigation will occur on the Stearns' property. This notification, however, is not permission for you or your client to enter onto the petitioners' property.

Finally, I feel it is important to emphasize that the Chief Engineer will not be reviewing the legal issues raised by the Stearns regarding any easement; nor will the Chief Engineer be investigating the dam to which you refer in your response. Rather, the Chief Engineer is investigating the water right only to determine if it has been abandoned or forfeited as defined by SDCL §§ 46-5-36 and 4-5-37.

Respectfully,

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ann F. Mines Bailey
Assistant Attorney General
Counsel for Chief Engineer

AFM/lde

cc: Eric Gronlund, Chief Engineer
Jeffrey D. Collins
Erika S. Olson

Stearn's petition

- Basis is lack of maintenance of the ditch and fact ditch can not be legally maintained because easement is not valid. Don't they are questioning what is on Henderson's side of the fence.
- We don't determine if the easement is valid
- There could be legal excuse if Henderson couldn't get access to fix irrigation ditch due to a legal dispute (operation of law) regarding the easement.
- The 1945 easement between Trotter and Henderson seems to have errant legal descriptions.
- This is a request under 46-5-37.1. Only goes before the Board if a determination that the water is subject to abandonment/forfeiture.

Henderson response

- DENR can not grant Sword/Henderson access to another person's property during site visit.
- I don't feel the petition under SDCL 46-5-37.1 has to be "duly sworn" so don't feel the request is defective.
-



RECEIVED
NOV 16 2020
WATER RIGHTS
PROGRAM

VIA US MAIL and EMAIL

November 13, 2020

Eric Gronlund
Water Rights Program
523 E. Capitol
Pierre, SD 57501
email: DENRINTERNET@state.sd.us

Ann Mines-Bailey
1302 E. HWY 14, #1
Pierre, SD 57501
email: ann.mines@state.sd.us

Re: Water License No. 1879-2
Henderson Response

Dear Eric and Ann:

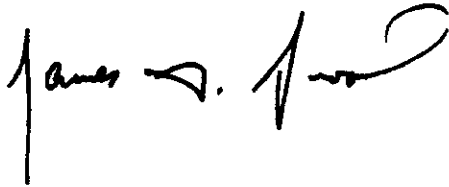
Enclosed please find the following:

1. Henderson Response to Stearns' Petition with accompanying photos

I appreciate our discussion the other day. As I stated, I would like to be informed as to when your staff makes a sight visit. This courtesy was extended to Stearns/Vermeer on the previous sight visit. I would ask that the same courtesy be extended to Henderson.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "James G. Sword". The signature is fluid and cursive, with a large, sweeping "S" at the end.

JAMES G. SWORD

JGS/hb

cc: Mr. Jeffery Collins



RECEIVED

JAN 07 2021

WATER RIGHTS
PROGRAM**VIA US MAIL and EMAIL**

January 5, 2021

Eric Gronlund
Water Rights Program
523 E. Capitol
Pierre, SD 57501
email: DENRINTERNET@state.sd.us

Ann Mines-Bailey
1302 E. HWY 14, #1
Pierre, SD 57501
email: ann.mines@state.sd.us

Re: Water License No. 1879-2
Henderson Response

Dear Eric and Ann:

Enclosed please find the following:

1. Henderson Supplemental Response to Stearns' Petition with accompanying Exhibit A (Bodie Report).

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'James G. Sword'.

JAMES G. SWORD
JGS/hb
cc: Mr. Jeffery Collins

RECEIVED

JAN 07 2021

WATER RIGHTS
PROGRAM

SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

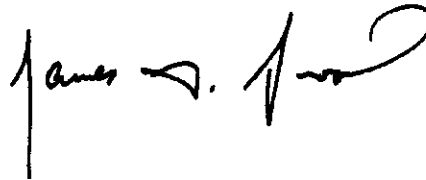
In the matter of Water License No. 1879-2)

**SUPPLEMENTAL RESPONSE TO PETITION
FOR INVESTIGATION OF WATER RIGHT**

COMES NOW, the Dora Henderson Estate and for its supplemental response to the Petition for Investigation of Water Right states the following:

1. The Memorandum of Peter D. Boddie, Senior Hydrologist, HRS Water Consultants, Inc., which is attached hereto as exhibit A and incorporated herein by this reference.
2. The Henderson ditch is capable of functioning and with some minimal maintenance work the purposeful interference with Henderson's water right by Stearns can be corrected. **See** Mark Rath report dated September 16, 2020 (WR No. 28-2) for similar standard.
3. The Stearns petition should be dismissed on the merits.

DATED this 5th day of January, 2021.



JAMES SWORD
702 Jennings Ave.
Hot Springs, SD 57747
605-745-5422
jim@swordlawoffice.com

RECEIVED

JAN 07 2021

WATER RIGHTS
PROGRAM

HRS WATER CONSULTANTS, INC.

8885 West 14th Avenue
Lakewood, CO 80215
(303) 462-1111
Cell: (303) 898-4991
email: pboddie@hrswater.com

Peter D. Boddie
Senior Hydrologist

Consultants in
Water Resources
& Hydrogeology

Memo

19-34

To: *James Sword, Esq.*
From: *Peter Boddie*
Date: *January 5, 2021*
Re: *Henderson Ditch Observations*

This memorandum provides a summary of observations I have made of certain unauthorized diversions which reduce or eliminate the beneficial use of water for the Henderson Ranch diverted through the Henderson Ditch. The Henderson Ditch diverts water from Coal Creek in Fall River County, South Dakota. Specifically, this memorandum documents three problems located on lands owned by the Sterns along the right of way for the Henderson Ditch, including:

- 1) An unauthorized diversion and ditch located at the decreed point of diversion for the Henderson Ditch on Coal Creek.
- 2) An unauthorized diversion pipe placed in the Henderson Ditch to capture flow and supply a ditch on the Sterns property.
- 3) A low point in the Henderson Ditch bank created by livestock and vehicle crossings which allows water to spill into the same ditch as in (2) and irrigate the Sterns property.

4)

None of these observed diversions of water appropriated for the Henderson Ditch were authorized by the Henderson Ranch or have valid water rights. Essentially, as will be evident from the evidence presented in this memorandum, these three unauthorized diversions constitute past and present theft of water legally entitled to be diverted via the Henderson Ditch and placed to beneficial use for irrigation on the Henderson Ranch.

Purpose of Investigation

HRS Water Consultants, Inc. was retained by Susan Henderson, representing the Henderson Ranch to investigate potential reasons for reduced water supply to the Henderson Ranch over the past several years. Our investigation included a review of water rights records maintained by the South Dakota Department of Environment, along with aerial photograph research of the ditch locations, conditions and history of diversion structures which divert from Coal Creek at or above the location of the Henderson Ditch point of diversion. A field trip to the Henderson Ditch was conducted on June 16, 2020.

Field Trip Circumstances

A field trip to inspect ditches and diversion points on Coal Creek, including the Henderson Ranch, on the Stearns and Double V properties was scheduled for June 16, 2020. The inspection was made by myself, Warren Rider, consultant for the Henderson Ranch, Jim Sword, attorney for Henderson, and Henderson Ranch manager.

When we arrived at the Double V Ranch, we were prevented access for our inspection as had previously been arranged. After a considerable delay, we were allowed access to the Double V property to inspect one point of diversion on Clear Creek. At the point where the road crossed briefly onto the Stearns property, we were met by Jerald Stearns, riding on an ATV, who denied us access across his property.

After another delay and phone call negotiations, presumably with attorneys for the property owners, we were allowed access across part of the Stearns property to inspect an upstream ditch and point of diversion. After returning from that field inspection, we were finally allowed access to inspect the Henderson Ditch on a portion of the Stearns property. Jim Sword, Warren Rider, and myself, walked a portion of the ditch, beginning at the county road, accompanied by Jerald Stearns, who followed alongside the ditch on his ATV.

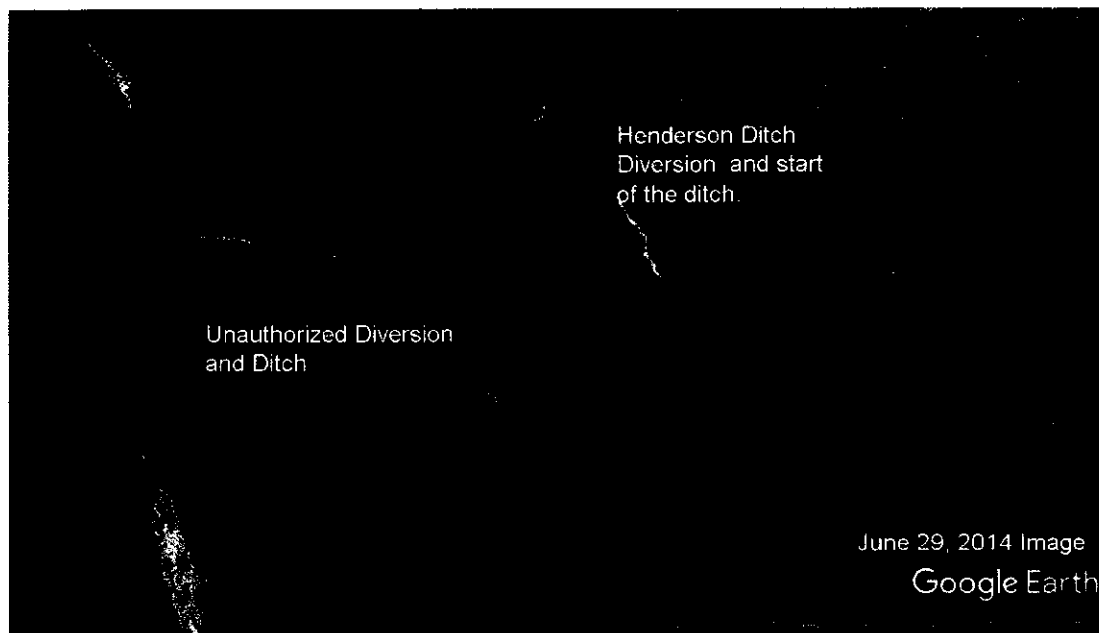
I was not a party to the telephone calls and discussions between attorneys and property owners regarding access for inspection. However, those discussions caused a considerable delay in our field work and prevented us from inspecting all of the diversions and ditches which we had intended to visit, including the point of diversion for the Henderson Ditch. The inspection of a portion of the Henderson Ditch occurred without vehicle access. Walking distance and time prevented us from inspection of the entire ditch reach across the Stearns property.

Diversion Point Observations

The point of diversion for the Henderson Ditch is located in the NE ¼, NE ¼ of Section 23, Township 10 South, Range 2 East, in Fall River County, South Dakota. The diversion consists of a low berm across the channel of Coal Creek which backs up a shallow pond and directs water into the Henderson Ditch at the northeast corner of the berm and pond. The diversion berm and start of the ditch are located on property owned by Jerald E. Stearns and Melissa A. Stearns.¹ From this point, the Henderson Ditch traverses northeast across land owned and operated by the Stearns for approximately 1.5 miles, to the point where it flows through culverts beneath County Road 7.

I did not visit the diversion point on June 16, 2020, due to the distance and walking time along the Henderson Ditch right-of-way, and lack of other access options. The observations discussed here are based upon evaluation of aerial photographs and satellite images from various sources.

Based upon a review of images, there is an additional ditch which conveys water from the Henderson Ditch diversion berm. This ditch begins at the west edge of the berm and carries water to the northwest for irrigation and storage on land owned by the Stearns. There is no water right or separated ditch structure or diversion registered with the _____. Therefore, this diversion point and ditch constitutes an unauthorized diversion making use of the water which would otherwise be available for diversion and use through the Henderson Ditch.

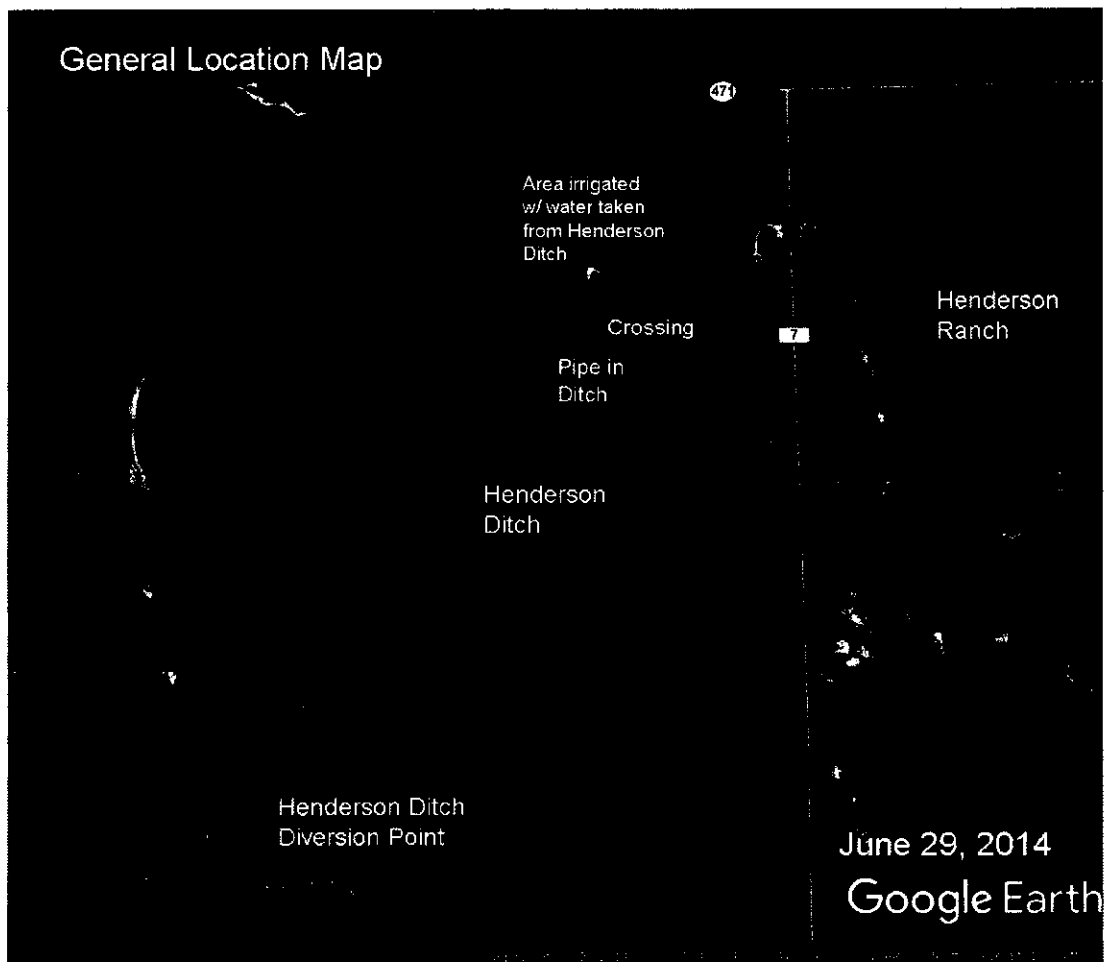


Google Earth Image showing unauthorized ditch on west side of Coal Creek making use of the berm for the Henderson Ditch diversion.

Unauthorized Pipe Used to Steal Water From Henderson Ditch

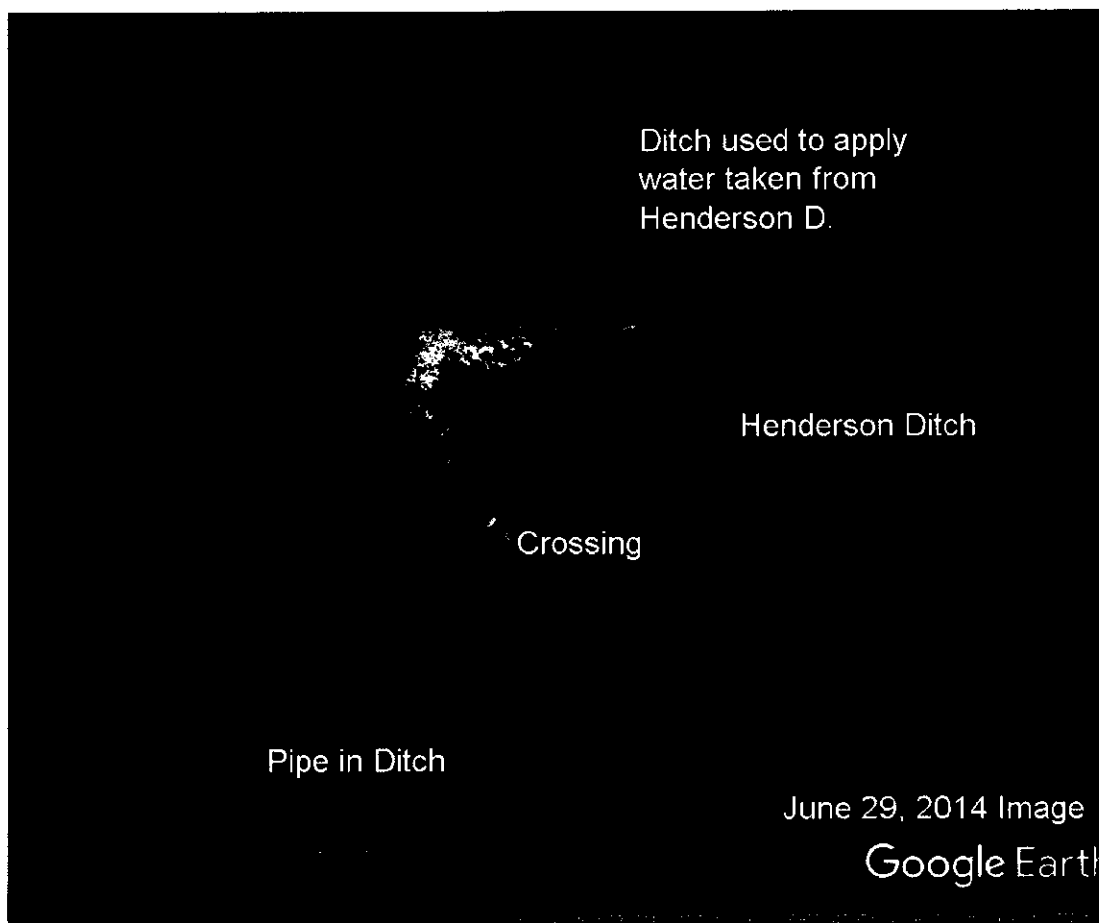
Based upon my review of aerial photographs and satellite images, I was able to identify a potential unauthorized diversion out of the Henderson Ditch and into a parallel ditch which conveys water for irrigation of land owned by the Stearns. This unauthorized diversion was confirmed on June 16, 2020 in our field inspection of a portion of the Henderson Ditch on the Stearns property.

Based upon our limited opportunity for inspection, the pipe is a concrete culvert approximately 1.5 feet in diameter. The pipe inlet was placed at in the downhill side of the Henderson Ditch and conveys water through the ditch berm to a short ditch, which then connects to a ditch which parallels the Henderson Ditch for about 1/3 mile, then makes a right angle bend north to irrigate a field on the Stearns property. Following are a general location map based upon a June 29, 2014 Google Earth image, and two additional more localized maps from the same image.

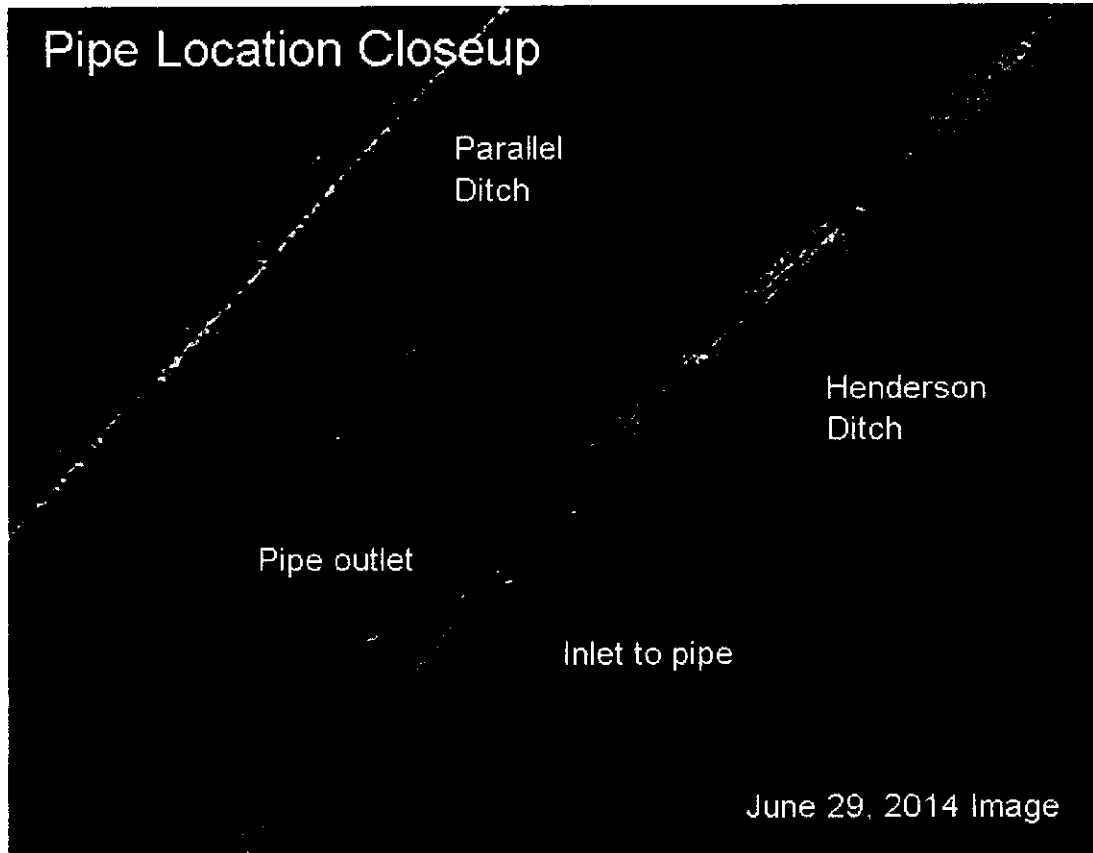


General location map of Henderson Ditch area and points of interest on lands owned by the Stearns.

The following two aerals are details of the June 29, 2014 imagery, focused on the pipe installed to take water from the Henderson Ditch.



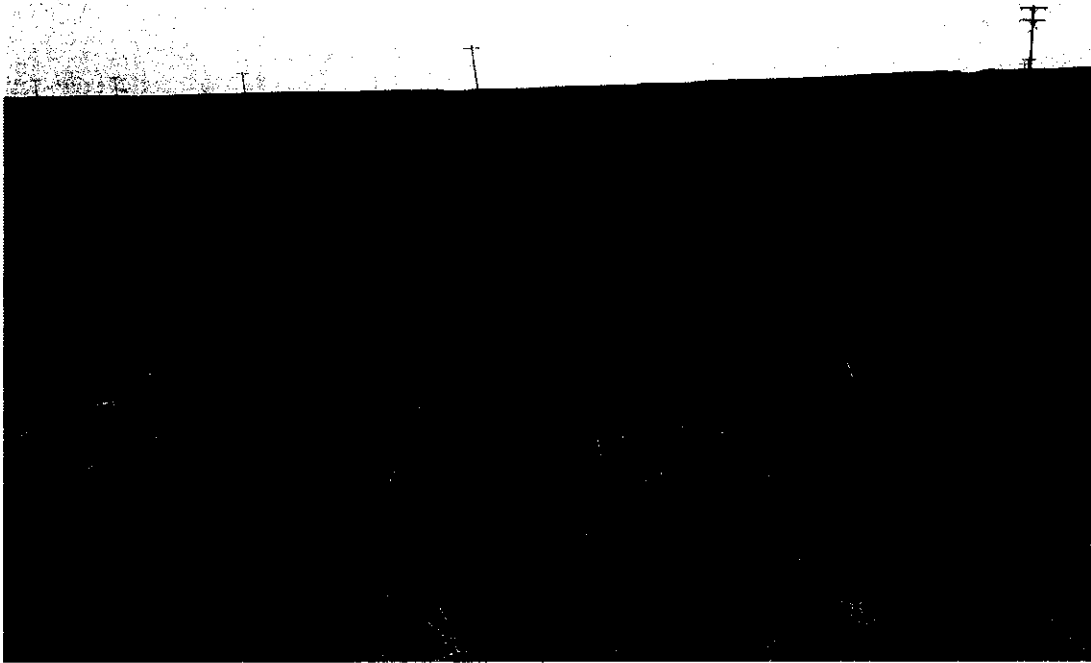
Aerial photo enlargement showing the location of the pipe in the Henderson Ditch, ditch parallel to the Henderson Ditch to the point of the right angle turn, and the cattle/vehicle crossing on the Henderson Ditch.



Aerial photo enlargement showing the pipe location in the Henderson Ditch.

The closeup aerial of the pipe location, clearly shows water ponded in the short ditch section between the pipe outlet and the start of the ditch parallel to the Henderson Ditch. This clearly shows evidence of diversion of water out of the Henderson Ditch for application to irrigation on the Stearns property in 2014.

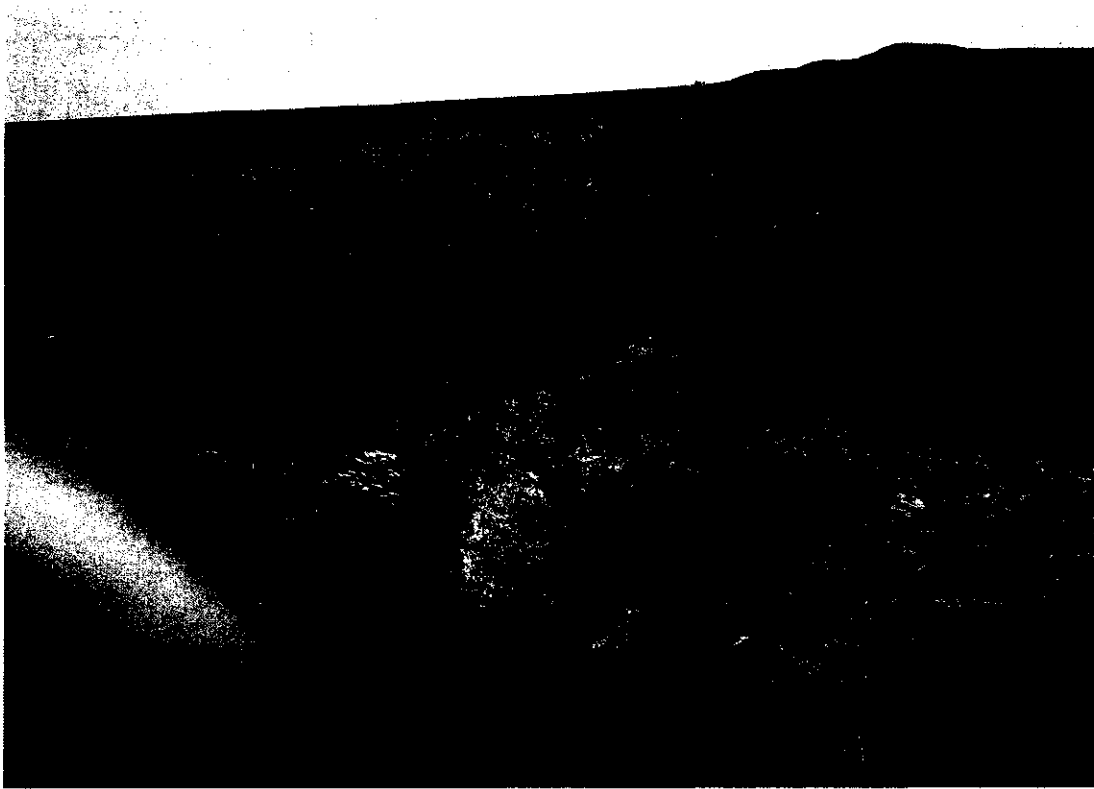
I have also included some photographs taken on June 16, 2014 during our field inspection which show the Henderson Ditch and evidence that flow is diverted out of the ditch via the pipe. Warren Rider, who climbed down to inspect the pipe inlet indicated that it was a concrete pipe, approximately 18 inches in diameter. I have used three of Warren's photos.



View upstream along the Henderson Ditch at the pipe location showing how active flow and ponding had occurred in the ditch earlier in 2020.



View looking downstream along the Henderson Ditch from just upstream of the pipe location showing how evidence of active flow stops at this point.



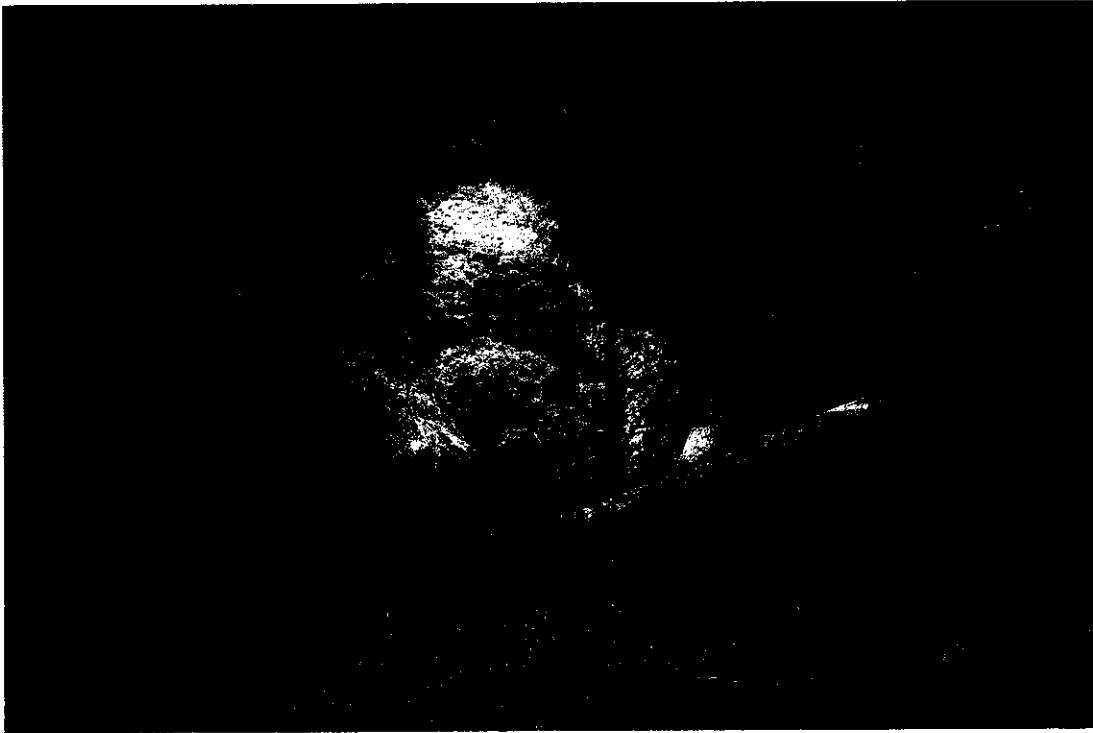
View standing on Henderson Ditch berm above the pipe entrance showing how flow stopped at this point and entered the pipe.



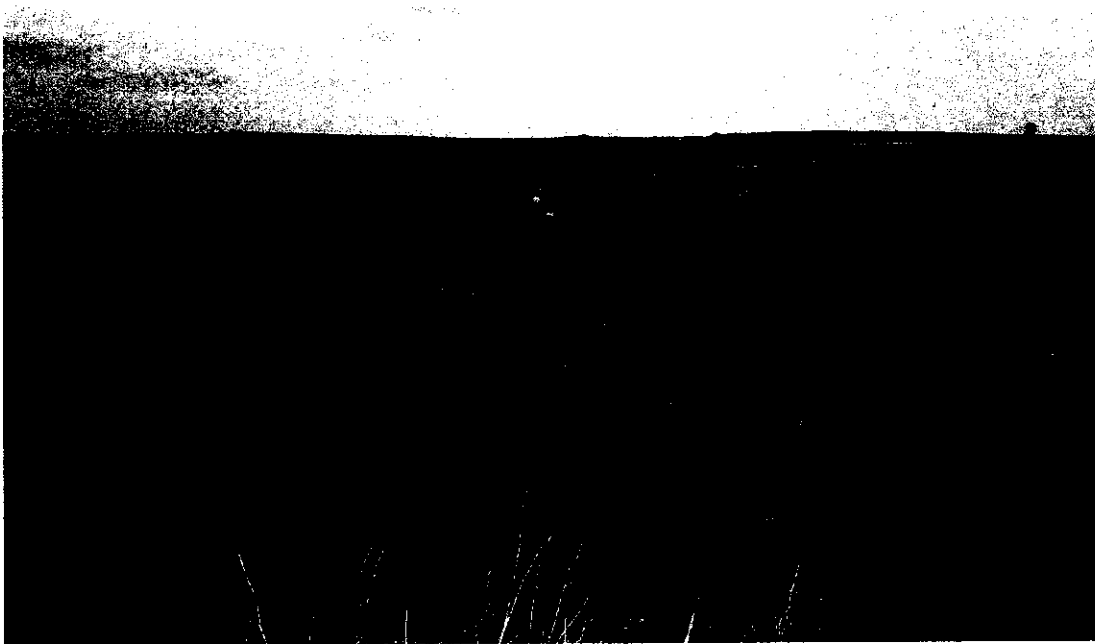
View standing in the Henderson Ditch at location of the pipe entrance showing how flow stopped at this point and entered the pipe. (Warren Rider photo)



View standing in Henderson Ditch of the pipe entrance showing how flow entered the pipe. (Warren Rider photo)



View standing on Henderson Ditch berm above the pipe looking at the pipe outlet and short ditch section showing how flow was diverted through the pipe and into the start of the parallel ditch.

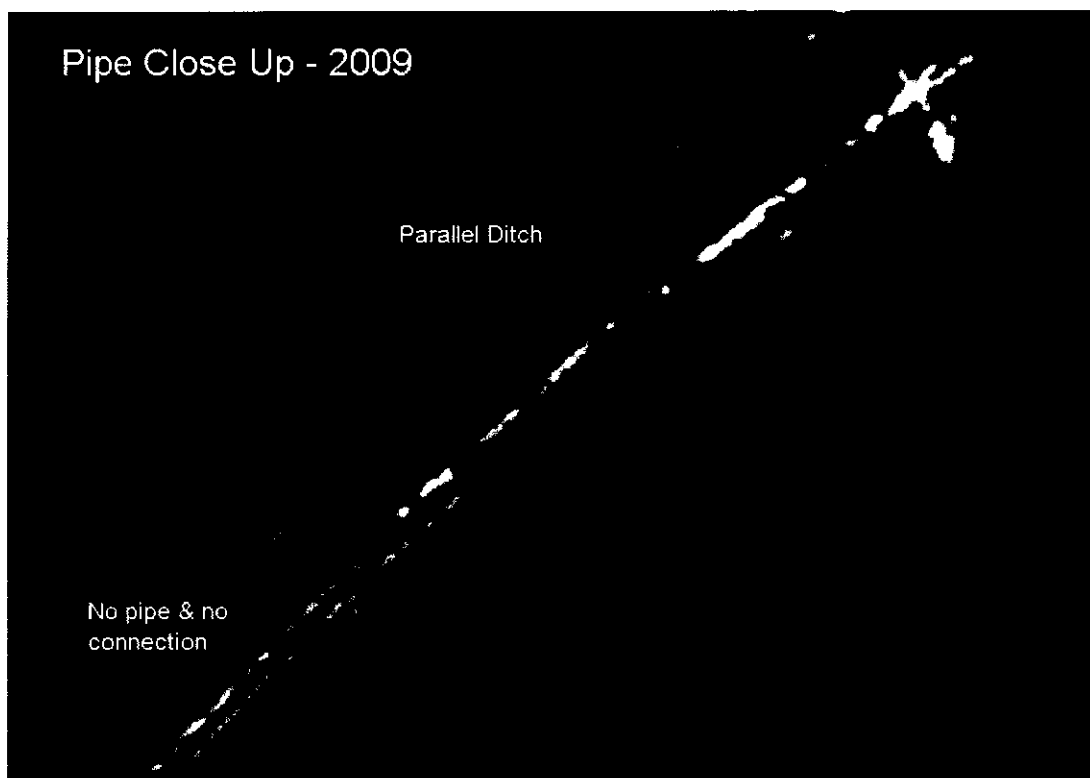


View standing on Henderson Ditch berm above the pipe looking at the parallel ditch. (Jerald Stearns is on the ATV) The field in the background is the area irrigated by water stolen from the Henderson Ditch.

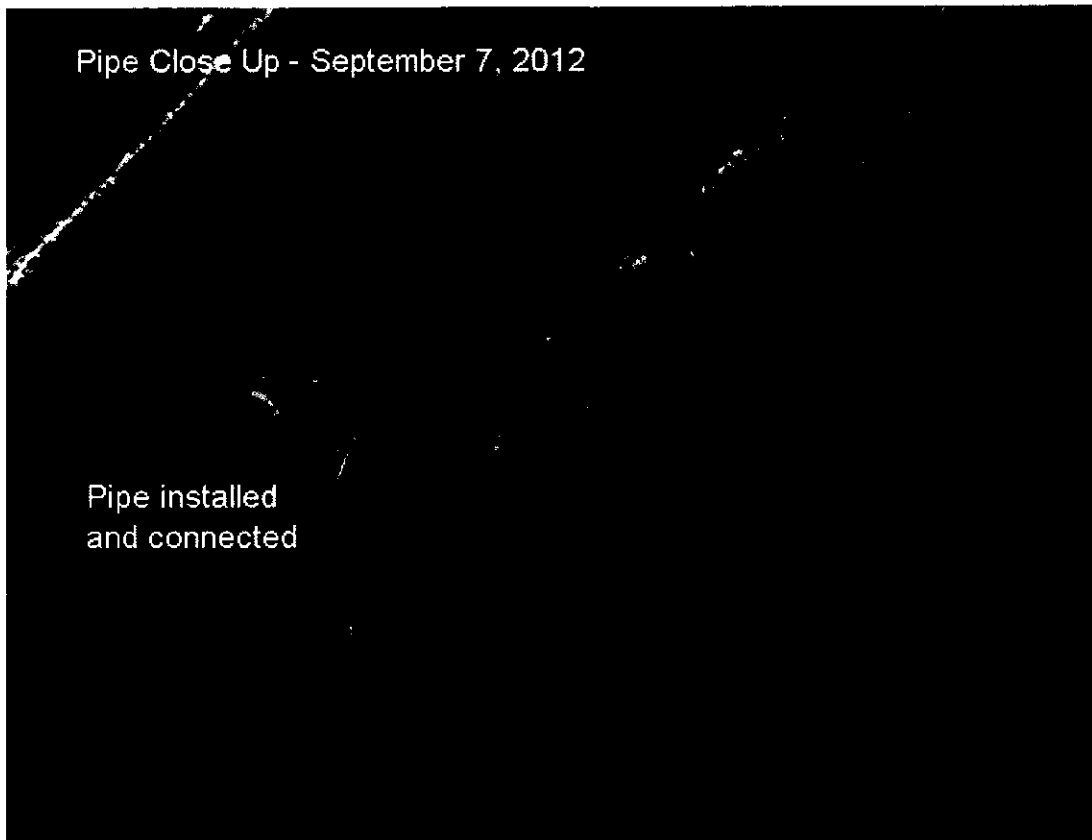
The foregoing set of photos, taken during our field inspection on June 16, 2020 demonstrate how an unauthorized pipe was installed in the Henderson Ditch and has been used to divert all of the flow under low flow conditions into a ditch below and parallel to the Henderson Ditch for irrigation of land on the Stearns property. While there, I inquired of Jerald Stearns what was going on with this pipe, and as I recall, his remark was something about "those Trotter boys must have put it there".

Now, it is my understanding that the Trotters last owned the property and farmed it decades ago. I have not researched the exact property history, but I am sure documents are available on the ownership. However, I do know that the Stearns currently own and operate this property, and it is my understanding that ranched it for many years, before they may have acquired this particular parcel.

If that is the case, then aerial photograph evidence would indicate that the Trotters (long deceased) did not install the pipe, but that Jerald Stearns probably did. Following are closeups from two Google Earth images which bracket the timing of the installation of the pipe for stealing water from the Henderson Ditch. The first is an image from 2009 showing no evidence of a pipe or connection to the start of the parallel ditch from the Henderson Ditch.

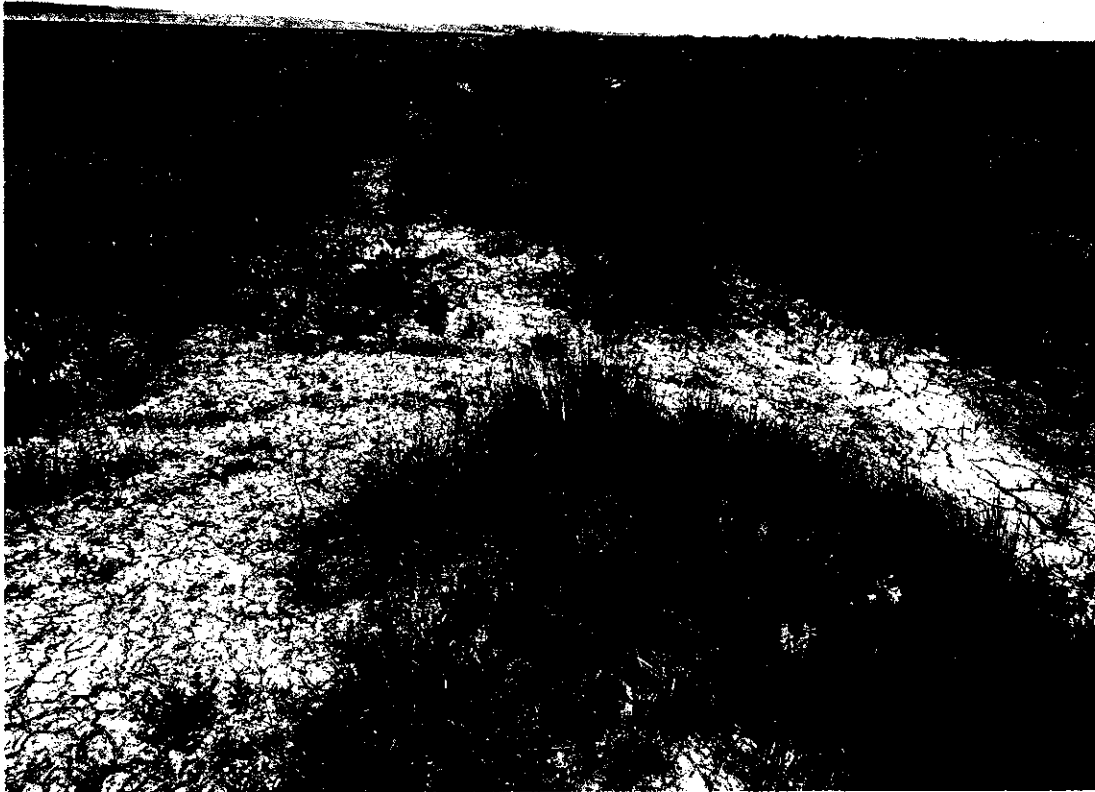


The second photo is from 2012, which clearly shows that the pipe has been installed along with a short connecting ditch to deliver water stolen from the Henderson Ditch into the parallel ditch. Note the board which appears in my field photo. Also, note that there does not appear to be evidence of recent pipe installation or connecting ditch excavation, which suggests that the pipe and connecting ditch were in place for some period before September, 2012, probably in 2010 or 2011.



Low Point in Ditch Berm at Livestock/Vehicle Crossing

Approximately 650 feet down the Henderson Ditch from the pipeline, there is cattle/vehicle crossing which creates a low point in the downstream ditch berm. Evidence on the ground and a review of aerial photos suggest that at high flows in the ditch, water may overtop the low point and flow down to the parallel ditch used by Stearns. During our field trip, Jerald Stearns mentioned that the ditch had overtopped at that point in the past. My recollection is that he mentioned 2015 or 2016, but I am not certain of the year. The location of the crossing is indicated on some of the aerial photographs included above. The following is a photo taken by Warren Rider of the cattle/vehicle crossing.



View looking downstream along the Henderson Ditch of the low point in the ditch berm at the cattle/vehicle crossing point. (Warren Rider photo)

In any case, fill should be added to raise the low point in the berm to prevent overtopping in the future, and the crossing should be monitored to prevent damage to the berm.

Conclusions

Based upon my examination of aerial photographs and the limited field investigation on June 16, 2020, it is my conclusion that water, which was otherwise legally available for diversion by the Henderson Ditch was diverted and used by Stearns. This unauthorized appropriation of Henderson Ditch water prevented the delivery and use of that water for irrigation on the Henderson Ranch.

The additional ditch diversion at the berm on Coal Creek for the Henderson Ditch, takes a portion of the water in Coal Creek which is legally available for diversion into the Henderson Ditch and available for application to irrigation on the Henderson Ranch. This additional diversion point, for which there is no water right, should be immediately filled in to prevent further theft of water.

The concrete pipe placed in the Henderson Ditch constitutes a theft of water for application on the Stearns property. Based upon evidence in aerial photographs, this theft

first began between 2009 and 2012, and continues to this day to the extent there is water flowing in the ditch at that point. My observation on the ground indicates that during lower ditch flows, all of the water in the ditch at the point is diverted by the pipe for application by the Stearns. Mr. Stearns remark that the Trotters put in the pipe does not appear to be truthful, given that Trotter died years ago and the Stearns have owned or had use of the land at the point of the pipe and the irrigated area where the stolen water was applied. The concrete pipe should be plugged so as to prevent further theft of water.

The cattle/vehicle crossing point along the Henderson Ditch needs to be repaired so as to prevent any future overtopping. This would involve a raising of the ditch berm to the same height as upstream and downstream and could be accomplished using material excavated from the ditch during cleaning.

I have not read all the claims and counter claims involved in this litigation, but it is my understanding that there is a claim by the Stearns that the Henderson Ditch right has been abandoned due to nonuse and neglect. In addition, it is my understanding that the Stearns' claim that the ditch easement across all or part of their land is invalid.

With regard to the specific easement question, I can't offer any legal opinion, but I would point out that in the western U.S. and certainly in Colorado (where I live), there is a fundamental right of access to operate, maintain and repair an irrigation ditch which diverts at or crosses another property. This concept is so fundamental to irrigation in the west, that I'm not sure that a formal easement is always required. On June 16, 2020 it took negotiations just for us to inspect a portion the ditch on the Stearns property.

With regard to the claim of nonuse, it is apparent that to the Henderson Ranch has been prevented from making use of all or a portion of the water legally available to them through the Henderson Ditch, because the Stearns' have stolen that water at the diversion point and through a pipe placed in the Henderson Ditch.

To me, it hardly seems appropriate for Stearns to make a claim of abandonment of the Henderson Ditch right while at the same time disputing the right of the Henderson Ranch to inspect, maintain and repair the ditch on the Stearns property, AND stealing all or a portion of the water available from the ditch.

In my opinion, the diversions into and through the Henderson Ditch for beneficial use on the Henderson Ranch can be restored and improved by:

- 5) Allowing access to the point of diversion (including the berm across Coal Creek) and along the Henderson Ditch through the Stearns property for operation, maintenance and repair.
- 6) Plugging the unauthorized diversion into the Stearns ditch on the west end of the Henderson Ditch berm across Coal Creek.
- 7) Plugging (or removing) the concrete pipe used to steal water from the Henderson Ditch and apply it to irrigation on the Stearns property.

8) Raising the ditch berm at the cattle/vehicle crossing so as to prevent overtopping and use of Henderson Ditch water for irrigation on the Stearns property.

9) Cleaning the ditch to improve flow and restore capacity.

All of these items can be accomplished fairly inexpensively using basic farm and ditch maintenance equipment.

¹ Based on property mapping available from AcreValue (web site: <https://www.acrevalue.com/Acres>) and information available from Fall River County web site.



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

January 13, 2021

Jeffery D Collins, Attorney
Lynn, Jackson, Schultz & Lebrun P.C.
909 St Joseph St Suite 800
Rapid City SD 57701-5185

Dear Mr. Collins,

I am writing concerning your petition to investigate Water Right No. 1879-2 pursuant to SDCL 46-5-37.1 and determine that such water right has been abandoned and forfeited for nonuse.

As requested by your petition, an investigation of Water Right No. 1879-2 has been completed. A report containing the results of the investigation is enclosed. The report concludes that the ditch is still capable of functioning. Therefore, I conclude that insufficient evidence exists for the state to prove the water right has been abandoned or forfeited. In fact, evidence exists showing the water right likely has not been abandoned or forfeited. Consequently, I choose to not recommend cancellation of the water right to the Water Management Board and will not be scheduling the matter for board consideration.

Please contact me if you have any questions, I can be reached at phone (605) 773-3352.

Sincerely,

A handwritten signature in blue ink that reads "Eric Gronlund".

Eric Gronlund, Chief Engineer
Water Rights Program

enclosure

cc: James G. Sword, Sword Law Offices, PC
Assistant Attorney General Ann Mines Bailey

**Water Rights Program - DENR
File Documentation**

File Nos. Water Right No. 1879-2

County: Fall River

No. 1879-2

Name of Person: Dora R. Henderson (Susan Henderson Personal Representative Dora Henderson Estate)

Contact Person: James Sword, Attorney (Sword Law Office)

Address: 702 Jennings Avenue, Hot Springs SD 57747

Date: January 12, 2021

RE: Investigation of the status of Water Right No. 1879-2

Comments:

On October 21, 2020, Eric Gronlund, the Chief Engineer for the SD DENR Water Rights Program, received a petition to investigate Vested Water Right No. 1879-2 from Jerald E Stearns and Melissa A Stearns through their attorney Jeffery D Collins. Pursuant to South Dakota Codified Law (SDCL) 46-5-37.1 any interested person may petition and, after reasonable notice to the holder of the right, the chief engineer may investigate whether or not a right maybe subject to cancellation due to abandonment or forfeiture.

The license for Vested Water Right No. 1879-2 (Attachment 1) was validated by the Water Management Board on September 30, 1992, based on a water permit inspection performed May 17, 1984, by Delvin D Brosz. Mr. Brosz also produced a map (Attachment 2) of the diversion dam and irrigation system based on his inspection.

The type of irrigation system utilized by Vested Water Right No. 1879-2 is a passive spreader irrigation system using a small diversion dam located on Coal Creek to divert water into a main irrigation ditch to carry the water to the irrigated land located approximately 1.5 miles to the northeast. Passive spreader irrigation systems function by automatically diverting water for irrigation whenever water is available. Vested Water Right No. 1879-2 utilizes multiple spreader dikes to disperse creek water and runoff from dry draws and overland drainage to irrigate the authorized acres (Figure 1).

On December 16, 2020, SD DENR-Water Rights staff engineers Mark Rath and Nakaila Steen, accompanied by Mr. Jerald Stearns, performed a site investigation of Vested Water Right No. 1879-2. The dam is used to divert water into the main irrigation ditch supplying Coal Creek water to the irrigation works authorized under Vested Water Right No. 1879-2. Mr. Stearns indicated that when the diversion dam fills, water is diverted into the irrigation ditch towards the Henderson property. Mr. Stearns was asked what he specifically was concerned about with his formal complaint. Mr. Stearns said his main concern was a breach and erosion of the primary spillway of the diversion dam allowing water diverted by the dam to run back to Coal Creek rather than flow down the irrigation ditch. Mr. Stearns indicated the breach is at the primary spillway on the northeast end of the Coal Creek diversion dam located in the NE ¼ of Sec 23 T10S-R2E on property owned by Mr. Stearns.

During the investigation we inspected the Coal Creek diversion dam, irrigation ditch and primary spillway. Figure 2 shows the diversion dam and the adjacent primary spillway located on the northeast side of the structure. Located next to the primary spillway is the main irrigation ditch which water is diverted into, then transported down the ditch to the acreage authorized to be irrigated under No 1879-2. The diversion system functions with the dam holding back water in Coal Creek allowing it to divert into the irrigation ditch. If there is more water diverted than the irrigation ditch can take, the water level impounded behind the dam rises and flows out of the primary spillway and runs back into Coal Creek approximately 500 feet to the north on the downstream side of the dam. At the time of the investigation water impounded behind the dam was frozen and was not high enough to flow down the irrigation ditch. Figure 3 is a photo taken from the dam embankment showing the entrance to the primary spillway and the adjacent irrigation ditch. Mr. Stearns pointed out where the erosion of the primary spillway was occurring, Figure 4.

Mr. Stearns stated the downcutting erosion of the primary spillway began when the snow, accumulated during the early October 2013 Winter Storm Atlas, melted. He explained, since that event, that each time there is a large enough runoff event on Coal Creek to divert water into the irrigation ditch, more water would spill out of the primary spillway and cause further downcutting erosion, Figure 5. He indicated there has been no maintenance performed by the holder of Vested Water Right No. 1879-2 to fix the downcutting erosion of the primary spillway since he purchased the property in 2014.

Mr. Stearns also complained that when water was flowing out the primary spillway it ran across his property, reentered Coal Creek approximately 500 feet north of the diversion dam and was causing a head-cutting erosion problem where water flowed back into Coal Creek, Figure 6. Mr. Stearns stated that additional downcutting erosion to the primary spillway will allow increasingly more water to flow back towards Coal Creek, which will exacerbate the head-cutting activity and result in more damage to his property.

The investigation found the Coal Creek diversion dam and the inlet to the irrigation ditch to be intact and capable of functioning. It was observed that the primary spillway had suffered significant downcutting erosion damage. Although the irrigation ditch was not flowing at the time of the investigation, it looked as if the ditch was still capable of taking diverted water. Mr. Stearns was asked, and he acknowledged that some water from Coal Creek would still divert into the irrigation ditch even while water would spill out through the eroded primary spillway.

During the investigation the irrigation ditch was observed in two locations between the diversion dam and the land authorized to be irrigated under No 1879-2. Figure 7 shows the ditch approximately 100 yards to the northeast of the diversion dam. Figure 8 shows the ditch at a location approximately 1.5 miles northeast of the diversion dam where the ditch crosses underneath Edgemont Road. In both locations the ditch looked capable of transporting water. The spreader dikes used to disperse irrigation water on land authorized by Vested Water Right No. 1879-2 were observed from multiple locations along SD Hwy 471 and appeared to be intact and capable of functioning.

Conclusions:

South Dakota Codified Law 46-5-37.1 allows an interested party to petition the chief engineer requesting an investigation of a water permit/right to determine whether a permit/right may be subject to cancellation due to abandonment or forfeiture.

During my December 16, 2020, site investigation of the diversion dam and irrigation ditch authorized by Vested Water Right No. 1879-2 for abandonment and/or forfeiture, I found the diversion dam and irrigation ditch to be intact and capable of transporting water. The primary spillway has suffered significant downcutting erosion and, unless repaired, would likely continue to erode until all the water diverted by the diversion dam returns to Coal Creek through the damaged spillway rather than being diverted into the irrigation ditch. Based on my investigation, since the diversion to irrigation ditch is still capable of functioning, I do not recommend scheduling Vested Water Right No. 1879-2 for a hearing before the South Dakota Water Management Board for cancellation due to abandonment and/or forfeiture pursuant to SDCL 46-5-37.1.



Mark D Rath

Natural Resources Engineer III

SD DENR-Water Rights Program

Attachment 1

State of South Dakota

Reissuance of Vested Right Water License No. 1679-2

Howard and David Henderson

IN SMI, Box 2, Provo, South Dakota 57774

made Application No. 1879-2 June 13, 1984 for recognition of a Next of Kin for a child of an appropriate

25.30 cubic feet per second of water from **Coal Creek**

Fall River - County: **South Dakota** **Ir** **rigation** **purposes**

Vested Right
 Patent No. 1879-2 with a priority date of January 1, 1946

recognized July 11, 1984 and issued its opinion on the diversion of water and recognition of the described

water supply system is ~~being completed as indicated~~ and ~~in~~ the application to beneficial use of said

~~WILL NOT BE~~ _____

On September 14, 1984 additional documentation in the form of Location Notice No. 643-2 was found concerning Vested Right Filing No. 1879-2.

Allocation Notice No. 643-2 established a priority date of Oct. 4, 1945 for Vested Right filing No. 1879-2. Vested Right Water License No. 1879-2 is being released to reflect the change in priority dates. Location Notice No. 643-2 will be incorporated into this license.

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of

the construction of the water supply system and is entitled to have _____ 25.30 _____ cubic feet per six hundred gallons

for beneficial use. The location of the diversion structure is \$ 394 1300 Feet from NE Corner of Section

23. T105, R2E.

and

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

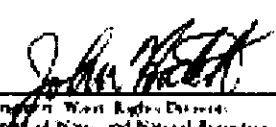
a total of 1,772 Acres

(4) Pursuant to §16-4-50 I Howard and David Henderson

of Star Route #1, Box 2, Provo, South Dakota

/Vested Right 1879-2
the holder(s) and/or owner(s) of ~~Water Permit~~ No. _____ is issued a license to appropriate water, the right to use
25.3 cubic feet per second of water from Coal Creek with a priority date
of October 4, 1945 from the location specified in (2) of this license. The water to be
conducted to and upon lands specified in (3) of this license for the purpose of Irrigation

This license is subject to any limitations or qualifications based on /Vested Right 1879-2 and subject
to South Dakota State Law.


Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

October 16, 1984

ATTACHMENT "A"

IRRIGATED ACRES

Section 18, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	1 Acre
NW $\frac{1}{4}$ NW $\frac{1}{4}$	2 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	9 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	15 Acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	28 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	23 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	4 Acres

Section 17, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	1 Acre
SE $\frac{1}{4}$ SW $\frac{1}{4}$	1 Acre
SW $\frac{1}{4}$ SE $\frac{1}{4}$	25 Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	37 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	34 Acres

Section 16, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	39 Acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	6 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	9 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	38 Acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	7 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	38 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	8 Acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	21 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	31 Acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	21 Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	35 Acres

Section 21, T10, R3

NE $\frac{1}{4}$ NE $\frac{1}{4}$	2 Acres
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Section 15, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	12 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	26 Acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$	21 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	13 Acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	39 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres

Section 22, T10, R3

SW $\frac{1}{4}$ NW $\frac{1}{4}$	1 Acre
NW $\frac{1}{4}$ NW $\frac{1}{4}$	29 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	29 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	1 Acre
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	40 Acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$	1 Acre
NW $\frac{1}{4}$ SE $\frac{1}{4}$	28 Acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$	27 Acres

Section 14, T10, R3

SW $\frac{1}{4}$ SW $\frac{1}{4}$	37 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	12 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	12 Acres

Section 23, T10, R3

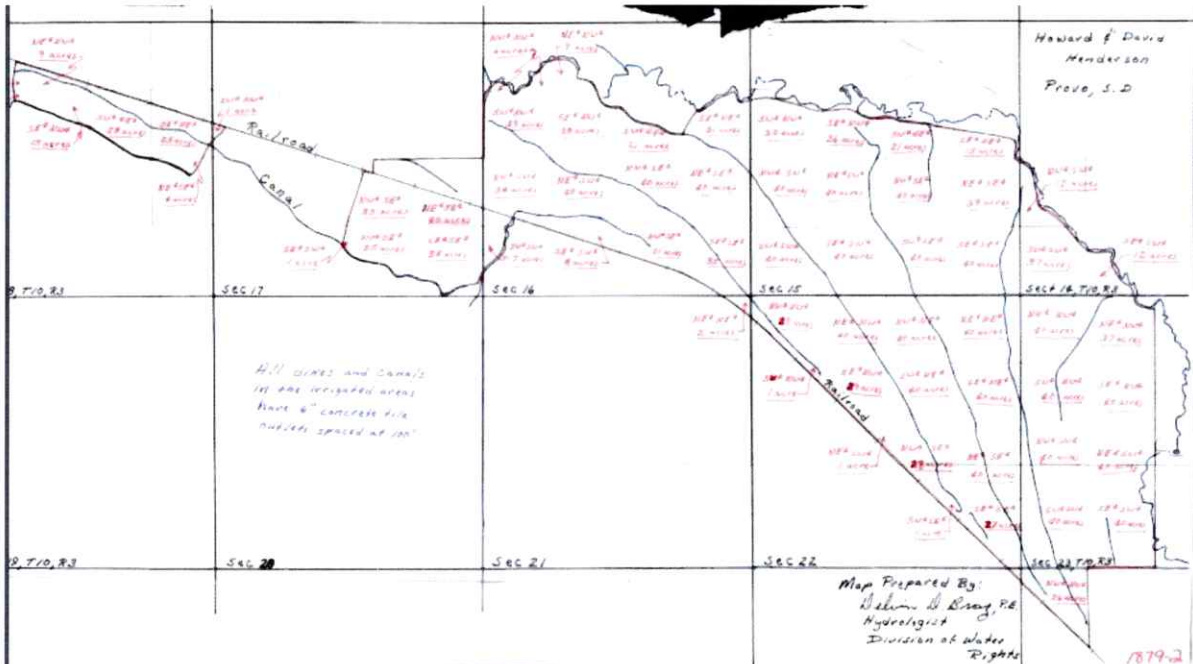
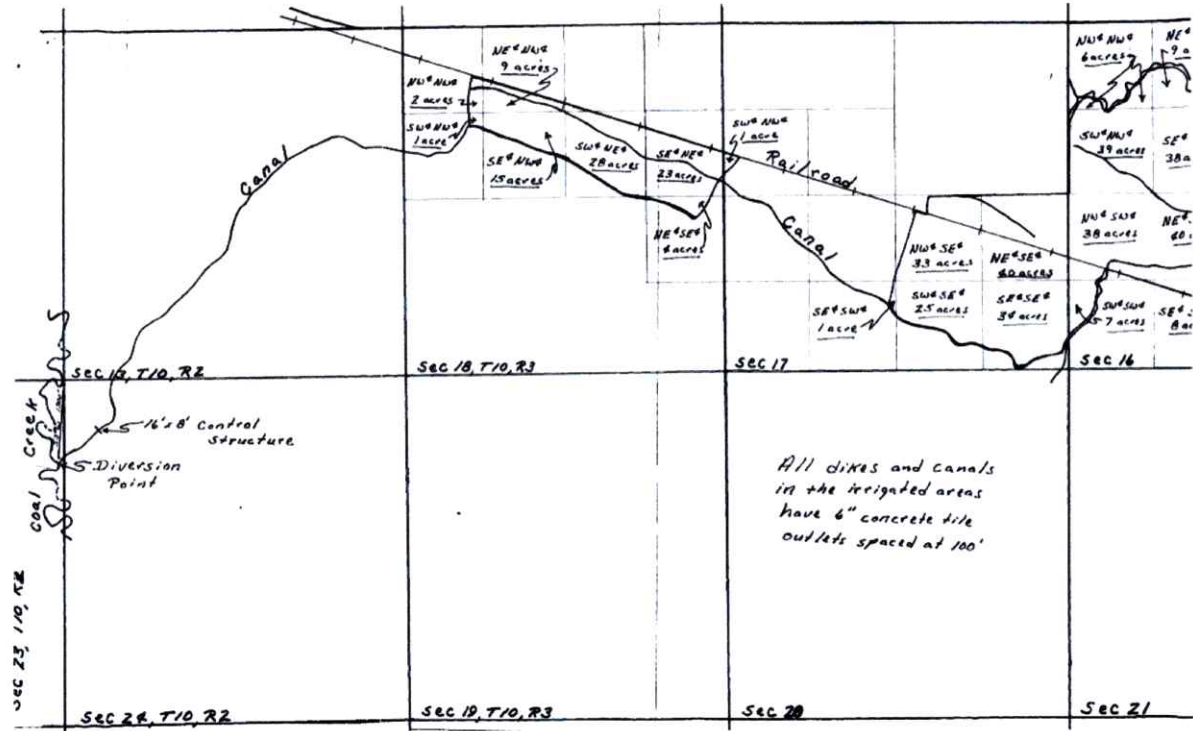
SW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40 Acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$	37 Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	40 Acres

Section 26, T10, R3

NW $\frac{1}{4}$ NW $\frac{1}{4}$	36 Acres
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TOTAL ACRES 1,772

Attachment 2



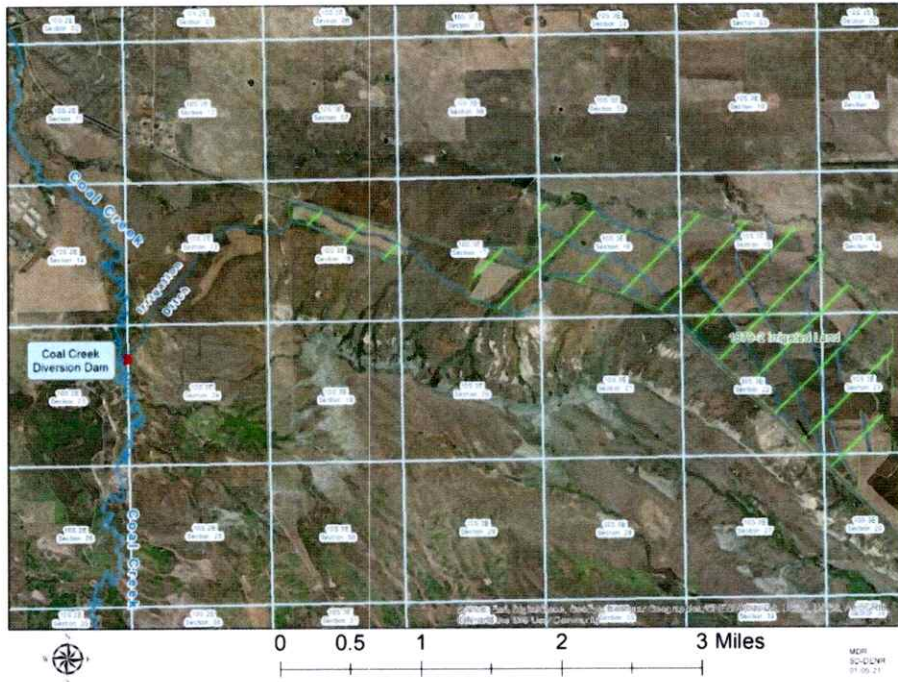


Figure 1 – Area Map for Vested Water Right No.1879-2.

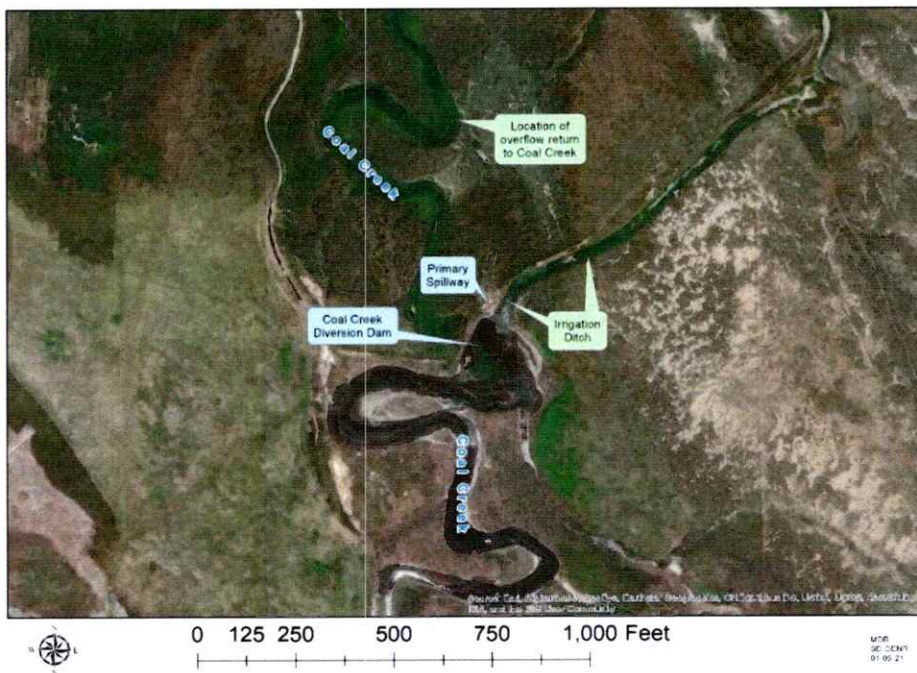


Figure 2 – Map showing the Coal Creek diversion dam, primary spillway, irrigation ditch and point of overflow return to Coal Creek.

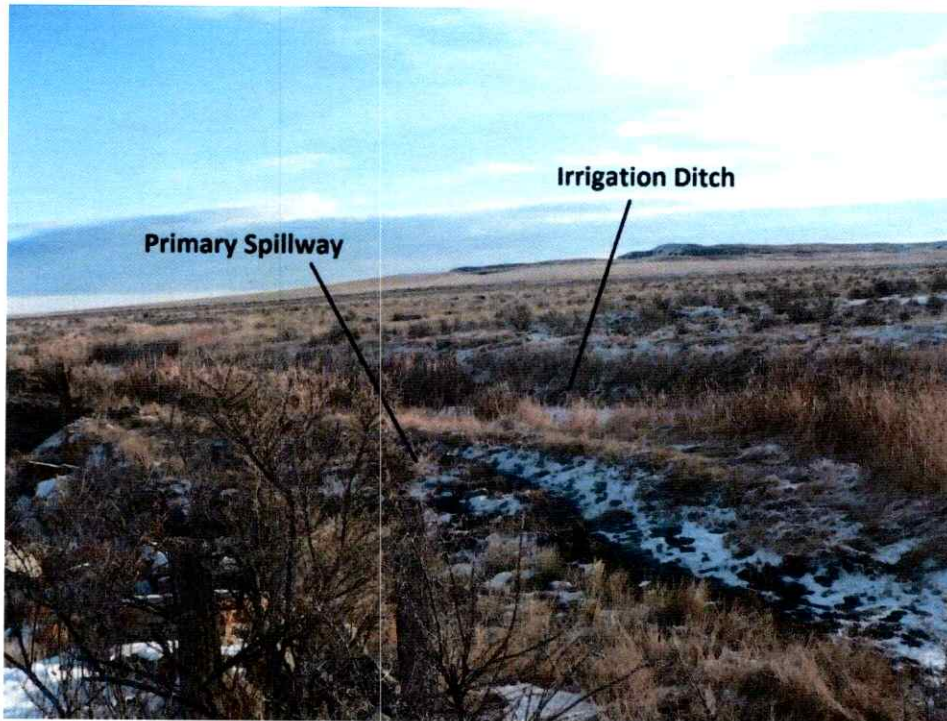


Figure 3 – Photo showing the primary spillway, irrigation ditch adjacent to Coal Creek diversion dam.



Figure 4 – Photo showing a side view of the downcutting erosion of the primary spillway with the irrigation ditch off to the right.

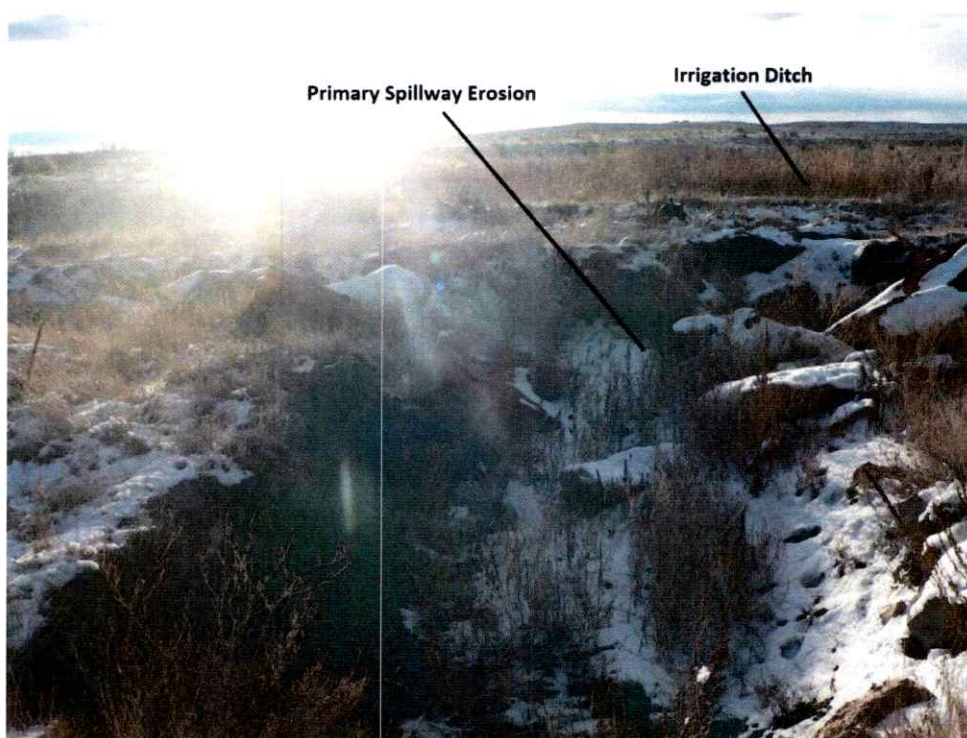


Figure 5 – Photo showing a straight on view of the downcutting erosion of the primary spillway with the irrigation ditch in the background.

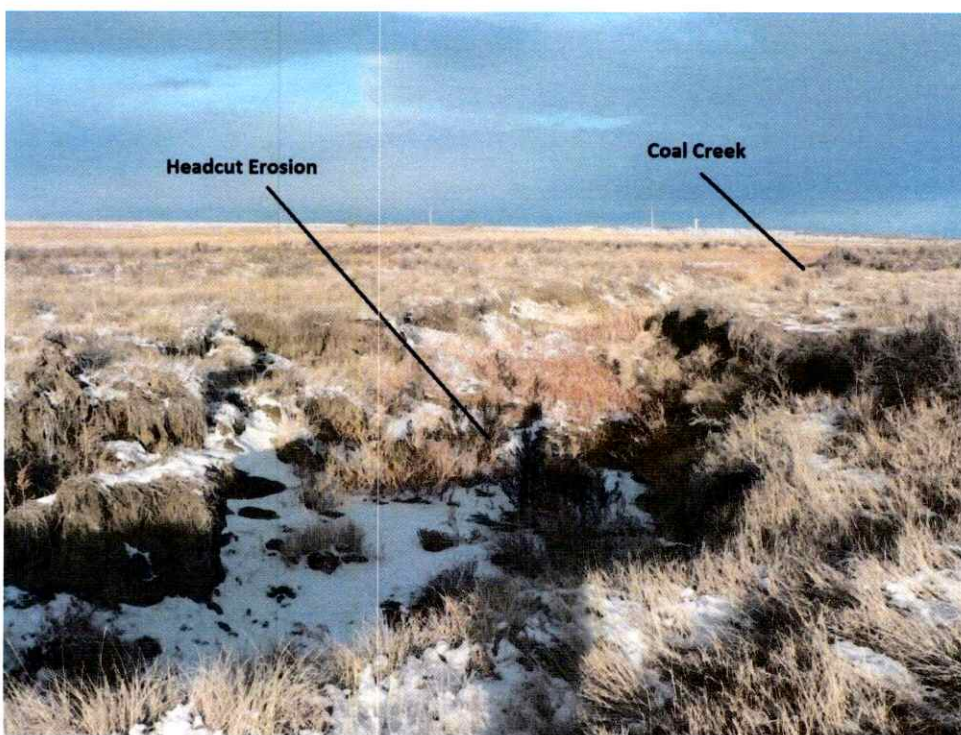


Figure 6 – Photo showing the head-cutting erosion where the flow from the primary spillway overflow returns to Coal Creek.



Figure 7 – Photo showing the irrigation ditch at a point approximately 100 yards northeast of the Coal Creek diversion dam.

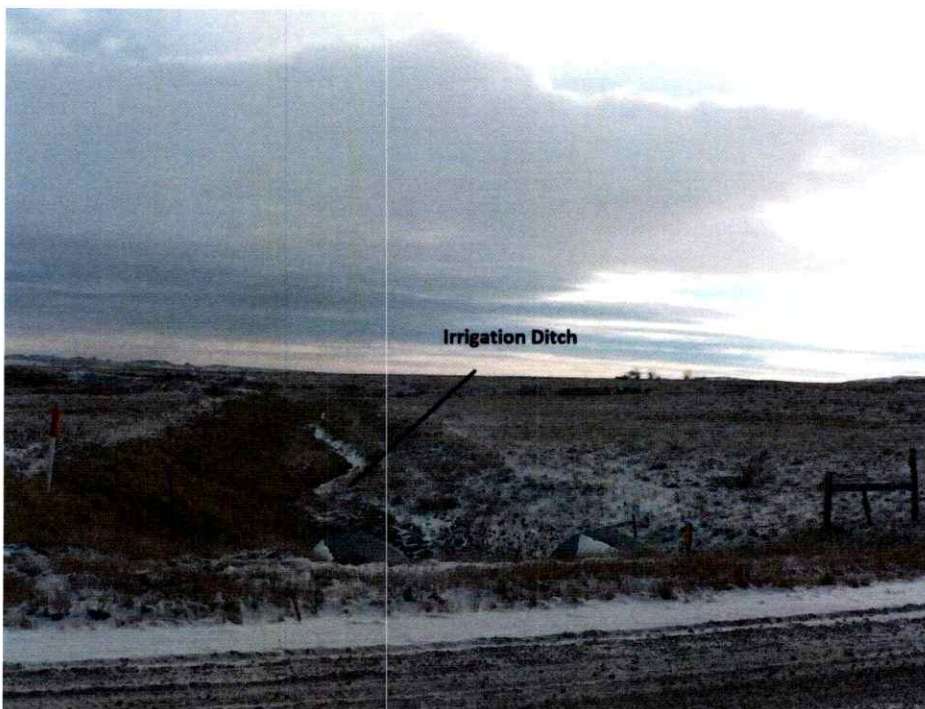


Figure 8 – Photo showing the irrigation ditch at a point approximately 1.5 miles northeast of Coal Creek diversion dam where the irrigation ditch crosses the Edgemont Road.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

RAPID CITY ONE-STOP
221 MALL DRIVE, SUITE 201
RAPID CITY, SD 57701
danr.sd.gov

June 05, 2026

TO: DORA R HENDERSON
5141 INDIAN RIV APT 265
LAS VEGAS, NV 89103

FROM: Adam Mathiowetz, PE, Acting Chief Engineer, Water Rights Program *Adam Mathiowetz*

SUBJECT: Shutoff Order for Junior Priority Date Water Rights Upstream of Angostura Dam

Shutoff Order for Water Permit No(s). 1879-2

The US Bureau of Reclamation holds Water Right No. US579-2 for Angostura Reservoir with a senior priority date of April 11, 1941. To protect this right, the Water Rights Program is issuing shutoff orders for junior water right holders. Effective immediately no diversions of water from the Cheyenne River or its tributaries, by holders of water rights junior to the priority date of April 11, 1941, upstream of Angostura Dam will be allowed. On June 03, 2026, the water elevation in Angostura Reservoir was 3173.87-feet, 13.3-feet below the fill elevation of 3187.2-feet (top of the conservation pool). Storage was at 71,519.0 acre-feet, which is approximately 51,529 acre-feet below full. At this time, Angostura Reservoir is not expected to fill with the current low inflows.

The Angostura Reservoir storage level will be closely monitored and if the flows in the Cheyenne River and its tributaries upstream of the dam increase such that the reservoir will fill, this shutoff order will be rescinded at that time. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Nakaila Steen at (605) 394-2229, or myself at (605) 773-3352 with the Water Rights Program. Thank you.

We would appreciate it if you would call Nakaila in our Rapid City office and provide an up-to-date phone number and email for faster communication on this matter. Thank you.