



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

1894A-2

FEB 17 2015

Stephen J & Linda L Tymkowych
1209 Pine Knoll Pl
Rapid City SD 57701

Dear Mr. & Mrs. Tymkowych:

Enclosed is your Vested Right Water License No. 1894A-2. Due to an ownership change filed by Robert Baker for portions of the land described in Vested Right No. 1894-2, the license has been divided and reissued to reflect separate ownership as follows:

- **Vested Water Right No. 1894A-2: Stephen J and Linda L Tymkowych**
authorizing diversion of 1.02 cfs from the flood waters of Beaver Creek located in the NE ¼ NE ¼ Section 32 to irrigate 70.2 acres in the NE ¼ Section 32, T6S, R7E;
- **Vested Water Right No. 1894B-2: Robert K or Rita B Baker**
authorizing diversion of 0.28 cfs from the flood waters of Beaver Creek located in the SW ¼ SE ¼ Section 29 to irrigate 19.2 acres in the S ½ SE ¼ Section 29, T6S, R7E.

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

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA
VESTED RIGHT WATER LICENSE NO. 1894A-2
DIVISION OF NO. 1894-2 INTO 1894A-2 AND 1894B-2

(1) Stephen J and Linda L Tymkowych, 1209 Pine Knoll Place, Rapid City SD 57701 were issued Vested Right Water License No. 1894-2, October 30, 2009 for a right to divert 1.30 cubic feet of water per second (cfs) from the flood waters of Beaver Creek, Custer County, South Dakota for irrigation purposes. The water license was reissued at that time to remove a gravity diversion point located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, T6S, R7E that had been cancelled by the Water Management Board due to abandonment and/or forfeiture.

The October 30, 2009 reissued water license authorizes diversion of 1.30 cfs from the flood waters of Beaver Creek with the two remaining diversion points located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32, T6S, R7E to irrigate 89.4 acres in portions of the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 29 and NE $\frac{1}{4}$ Section 32, T6S, R7E.

On November 19, 2014, an ownership change was filed for a portion of land authorized under Vested Water Right No. 1894-2. The vested water right is being reissued to reflect separate ownership as follows:

- **Vested Water Right No. 1894A-2: Stephen J and Linda L Tymkowych**
authorizing diversion of 1.02 cfs from the flood waters of Beaver Creek located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32 to irrigate 70.2 acres in the NE $\frac{1}{4}$ Section 32, T6S, R7E;
- **Vested Water Right No. 1894B-2: Robert K or Rita B Baker**
authorizing diversion of 0.28 cfs from the flood waters of Beaver Creek located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 to irrigate 19.2 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 29, T6S, R7E.

(2) It is certified that the vested right holders have complied with the provisions of South Dakota State Law relating to completion of works and the application of water to beneficial use and are entitled to divert 1.02 cubic feet of water per second for beneficial use. The location of the diversion point is as follows:

- 1000' west and 525' south of the NE corner of Section 32, T6S-R7E (NE $\frac{1}{4}$ NE $\frac{1}{4}$).

The irrigated acreage is located:

Section 32, T6S, R7E	
SW $\frac{1}{4}$ NE $\frac{1}{4}$	18.5 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$	16.6 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$	17.4 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$	17.7 acres
Total	70.2 acres

(3) Pursuant to South Dakota Water Law 46-5-30.1 Stephen J and Linda L Tymkowych, 1209 Pine Knoll Place, Rapid City SD 57701 the holders and/or owners of Vested Water Right No. 1894A-2 is issued a license to appropriate water, the right to use 1.02 cubic feet of water per second from the flood waters of Beaver Creek with a priority date of November 12, 1886 from the location specified in (2) of this license for irrigation purposes.

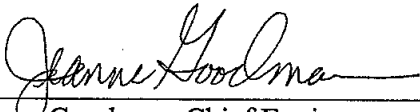
continued

Vested Right Water License No. 1894A-2

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This license is subject to South Dakota Water Law, any limitations or conditions listed in Vested Water Right No. 1894-2 and subject to the following qualifications:

- Irrigation is allowed to take place only at times when there is excess water in Beaver Creek – flood flows.
- The applicable portions of Water Right Filing No. 0657-2 were incorporated into Vested Water Right No. 1894-2 and the abandoned portions of Filing No. 0657-2 have been cancelled (*taken from original vested right validation*)



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

FEB 17 2015

date





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September 24, 2018

Carol Foos
P.O. Box 317
Hermosa, SD 57744

Tom Coolahan
15810 SD Hwy 40
Hermosa, SD 57744

Shawn and Carol Fugier
27094 Beaver Valley Road
Buffalo Gap, SD 57722

Dear Mrs. Foos, Mr. Coolahan, and Shawn and Carol Fugier:

On March 26, 2018, the Water Rights Program received a request to investigate the status of the Vested Water Right 1894A-2 held by Stephen J. and Linda L. Tymkowych. As a result of the request, a review of Vested Water Right 1894A-2 was conducted to determine whether there is sufficient evidence to recommend cancellation for abandonment or forfeiture of the water right and bring before the Water Management Board.

Vested Water Right 1894A-2, with a priority date of November 12, 1886, authorizes the diversion of 1.02 cubic feet of water per second (cfs) from Beaver Creek to irrigate 70.2 acres in the NE¼ Section 32, T6S-R7E in Custer County, South Dakota. The diversion point is located in the NE¼ NE¼ Section 32. Because of the relative junior status of this water right, the diversion of water for irrigation is allowed only at times of excess water in Beaver Creek (i.e. flood waters).

The petition asserts the land listed under this water right has not been irrigated since 1998. In addition, the petition states that the supply ditch was filled in and abandoned in 2009 and there are no pumps or dams present where water has been diverted from Beaver Creek.

A similar request to investigate whether Vested Water Right No. 1894-2 was subject to cancellation was received in 2009. An investigation found the gravity diversion point was abandoned, and the Water Management Board cancelled that diversion point from the vested water right in 2009. The vested water right was subsequently reissued in 2009 for two sites that would use a pump. The Water Rights Program's review of your request is limited to the use of water since 2009 when the matter was previously brought before the Water Management Board.

In 2014, there was a land ownership change resulting in the vested water right being split with a portion of the land and diversion rate authority being held in the name of a new owner and the remaining portion retained by the Tymkowych's.

Water right regulations provide that a water right may be subject to cancellation due to forfeiture for nonuse when water is not placed to beneficial use for a period of three years unless legal

excuse for nonuse exists. Legal excuse for nonuse of water suspends the period of nonuse. Legal excuses for nonuse of water include but are not limited to the following:

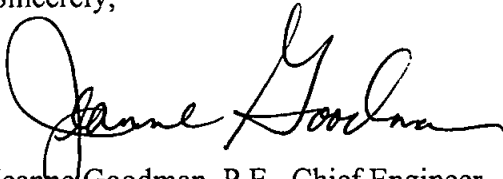
- (1) Unavailability of water to satisfy a permit, right, or vested right;
- (2) Legal proceedings which prevent the use of water; and
- (3) Water use under existing climatic conditions would result in a waste of water.

The Water Rights Program reviewed the irrigation questionnaires submitted for Vested Water Right No. 1894A-2 from 2009 through 2017. In each year, the right holder reported either there was no floodwater available or that there was sufficient water from precipitation as the basis for not irrigating. Both of the reasons fit within the administrative rules of legal excuse for nonuse of water.

In determining whether a water right is subject to cancellation the burden of proof lies with the State of South Dakota to prove the right has been abandoned or forfeited at hearing before the Water Management Board. Based on the evidence of legal excuse cited in the irrigation questionnaires submitted since 2009, it is my position that the state is unable to meet its necessary burden of proof. Therefore, after considering the findings of the current investigation, I decline to proceed with scheduling a hearing before the Water Management Board to consider cancellation of Vested Water Right No. 1894A-2.

If you have any questions, please contact Eric Gronlund or Aaron Tieman with the Water Rights Program at (605) 773-3352.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Goodman". The signature is fluid and cursive, with a large initial "J" and "G".

Jeanne Goodman, P.E., Chief Engineer
Water Rights Program, SD DENR