

Considered: _____

Vested Right
WATER PERMIT NO. 1971-2

MAP No. same

Name of Applicant Paul & Carol Fugier

Post Office Address RR1, Box 104, Buffalo Gap, SD 57722

Amount of Water Claimed .95 cfs Total Acres 66.6

Source of Water Supply Beaver Creek

Water to be used for irrigation County Custer & Fall River

About 1 miles SE of Buffalo Gap

PROOF OF PUBLICATION: Received 8/18/86 Not Received _____

APPLICATION: Approved Sept 3, 1986 Subject to _____

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

PRIORITY _____ Date Received Oct 30, 1985 Fee \$10.50 Remarks _____

11/2/1881 see Water Right Filing 032-2 11-20th each month

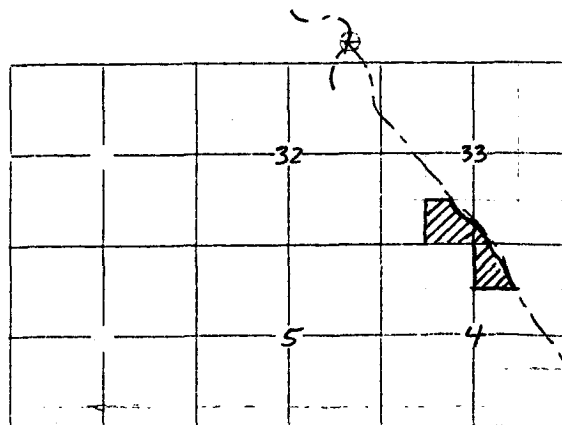
Corrected Application Received _____ Period of Annual Use Apr 1 - Dec 31

WATER QUALITY APPROVAL RECEIVED Not needed APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point Beaver Creek: SE 1/4 SE 1/4 of
sec 29-T6S-R7E

Land to be Irrigated SE 1/4 SW 1/4, SW 1/4 SE 1/4, sec 33-
T6S-R7E; NW 1/4 NE 1/4, sec 4-T7S-R7E



Well Log: Driller NA Licensed YES _____ NO _____

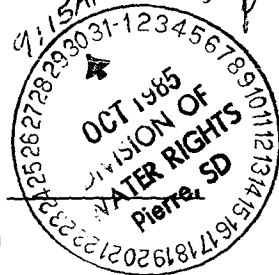
Depth of Well _____ REMARKS _____

Type of Map plat PREPARED BY Del Brosz Reviewed and the Number
assigned on June 19, 1986 By Ron Duvall

No. 1971-2 Hydrologic Unit 10120109
Map No. same Basin Upper Cheyenne R.
Newspaper Custer County Chronicle, Box 551, (Wed)Hot Springs Star, Box 1000 (Tues)**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 ☐ Water Right Filing 032-2
- ☐ 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 Paul & Carol Fugier Phone No. 833-2781
- Post Office Address Rural Route 1, Box 104, Buffalo Gap, South Dakota State 57722
(Street, RR or Box) DD8 Zip Code
2. Amount of water claimed (c.f.s) 1.2 0.95 Total acres irrigated 83.9 66.6 DD8
3. Source of Water supply Beaver Creek
4. Location of point of diversion N 54° W 1200 ft from the SE Corner of Section 29, T6S, R7E
- _____ County Custer
5. Counties where water will be used Custer & Fall River
6. Annual period during which water is to be used April 1 to December 31 (11th & 20th of each month)
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.	Land Description	No. Acres Irr.
<u>NE 1/4 SW 1/4 Sec. 33, T6S, R7E</u>	<u>17.3</u>	<u>NW 1/4 NE 1/4 Sec. 4, T7S, R7E</u>	<u>22.0</u>
<u>SE 1/4 SW 1/4 Sec. 33, T6S, R7E</u>	<u>38.0</u>		
<u>SW 1/4 SE 1/4 Sec. 33, T6S, R7E</u>	<u>6.6</u>	TOTAL	<u>83.9 66.6</u> <u>DD8</u>

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 gravity irrigation system. The water flows by canal from Beaver Creek to the fields. The water is allowed to flow from the canal and flood the fields.

In accordance with an agreement, dated September 29, 1920, this water right and the water right held by W. L. Miller use water from this diversion point from the 11th thru the 20th of each month.

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 Custer) ss

I, Paul and Carol Fugier the applicant, 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 X Paul Fugier
Carol Fugier

Subscribed and sworn to before me this 29 day of Oct 1985

DEG
Notary Public (or other qualified officer)

WATER PERMIT

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

(Applicant)

(Post Office Address)

(State)

(Zip Code)

With the following qualifications.

See VR-1

The applicable portions of Water Right Filing No. 032-2 have been incorporated into this Vested Water Right No. 1971-2 with the abandoned portions of the filing cancelled.

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 validates Vested Water Right ^{claim} No. 1971-2

Paul and Carol Fugier
(applicant)

RR 1, Box 104, Buffalo Gap
(post office address)

South Dakota 57722
(state) (zip code)

Date of receipt of Application October 30, 19 85.

Validated September 3, 19 86.

The Water Management Board hereby validates 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 November 22, 19 81.
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 validated shall not exceed _____

0.95 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 April 1 - December 31.

WATER MANAGEMENT BOARD

By: John H. Hatch

(Chief Engineer)

Division of Water Rights
Dept. of Water and Natural Resources

NOV 25 1986

, 19 ____.

(Type or Print in Ink)

Affidavit Of Construction Of Water Use System And Application Of Water To Beneficial Use

Paul Eugier 19____
(Print name)
~~Carol~~ Carol Eugier 19 85
(Print name)

Permit No. 1971-2Upper Cheyenne Water District
10120109**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWNR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by Paul & Carol
Fugier of Buffalo Gap, S.D. holder of
Permit No. 1971-2, bearing the priority of Nov. 22, 1881 authorizing
the diversion of 8 cu. ft. per second of the waters of Beaver Creek
for irrigation purposes, in Custer & Fall River County.

I have to report on the conditions of the same as follows:

- A. Works used to divert the water: Log & rock dike in the channel of Beaver Creek. Dike is approximately 100' long and 5' high with a 4' wide opening that is controlled with wood planks for flow bypass. The dike diverts the water to a 24" gated CMP at the canal inlet
- B. Works used to transport water to place of use:
unlined canal from the creek to the fields

- C. Works used to apply water to beneficial use: Flood irrigation. Pipe outlets in the main canal allow the water to flow onto the field and flood the field.

The system is in the following condition FairThe point of diversion is located N 54° W 1200 ft from the SE corner of
Section 29, T6S, R7EThe works are capable of diverting and conveying to the place of use 5cu. ft. per second of water which is to be used for irrigation

Water has been put to beneficial use to the maximum extent as follows: SE⁴SW⁴ - 38.0 acres &
SW⁴SE⁴ - 6.6 acres all in Section 33, T6S, R7E.
NW⁴NE⁴ - 22.0 acres in Section 4, T7S, R7E.

comprising a total of 66.6 acres of land and the license should be issued for 0.95 cfsApplicable permit qualifications have been complied with ☒ Yes ☐ NoExceptions to compliance are: _____ Date June 18, 1988

Alvin H. Brown, P.E.
(signature)

State of South Dakota

VESTED RIGHT Water License No. 1971-2

(1) Paul and Carol Fugier
of RR 1, Box 104, Buffalo Gap SD 57722
made Application No. 1971-2, ^{October 30, 1985 for validation of} ~~a vested right claim~~ for a water permit to appropriate
0.95 cubic feet per second of water from Beaver Creek
Custer & Fall River County, South Dakota for irrigation purposes.
Vested Water
Right Permit No. 1971-2, with a priority date of November 22, 1981
validated September 3, 1986
was approved and issued to applicant(s) for diversion of water with 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 completed.

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 0.95 cubic feet per second of water
for beneficial use. The location of the diversion point(s) is N 54°W 1200 feet from the SE corner
of Section 29, T6S, R7E (SE¼ SE¼)

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 following land

Section 33, T6S, R7E

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 38.0 acres

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.6 "

Section 4, T7S, R7E

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 22.0 acres

TOTAL 66.6 acres

(4) Pursuant to §46-5-30.1 Paul & Carol Fugier

of RR 1, Box 104, Buffalo Gap SD 57722

Vested Water Right
the holder(s) and/or owner(s) of Water Permit No. 1971-2 is issued a license to appropriate water, the right to use
0.95 cubic feet per second of water from Beaver Creek with a priority date
of November 22, 1881 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 Water Right 1971-2 and subject
to South Dakota State Law.



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

NOV 25 1986

BUFFALO GAP

Paul & Carol Fugier
Buffalo Gap, S. D.

32 T6S R7E

33 T6S R7E

CUSTER COUNTY
FALL RIVER COUNTY

5 T7S R7E

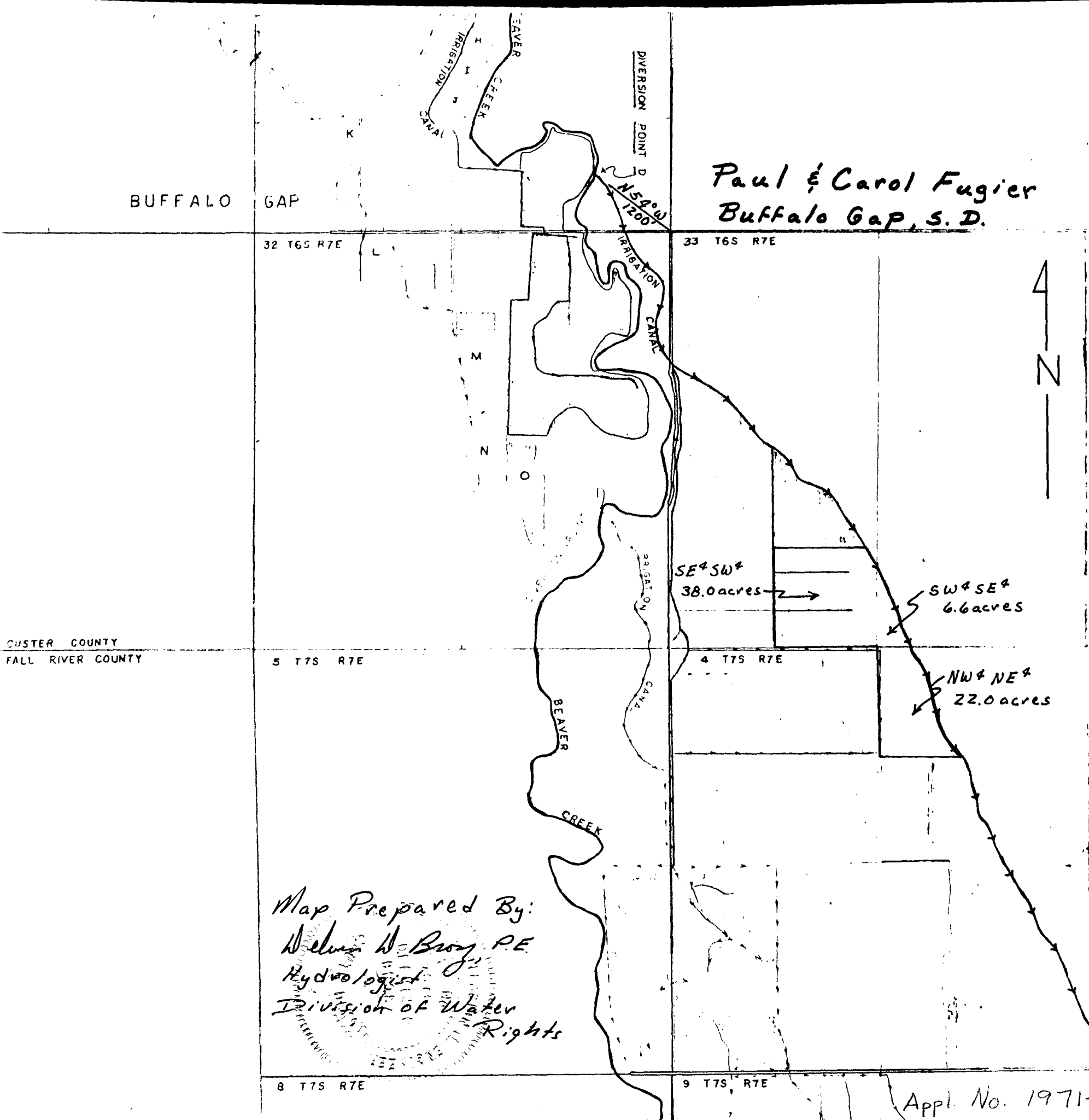
4 T7S R7E

8 T7S R7E

9 T7S R7E

Map Prepared By:
Melvin H. Brog, P.E.
Hydrologist
Division of Water Rights

Appl. No. 1971-2



RECEIPT

Division of Water Rights

No 410222

South Dakota Department of Water and Natural Resources

October 25, 1985

Pierre, _____, 19____

RECEIVED OF D. Paul or Carol Fugier, RR#1, Box 104, Buffalo Gap, SD 57722

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 _____	3 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. _____	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

Chief Engineer

JOHN HATCH / ES

MARTIN P. FARRELL
LAWYER
441 NORTH RIVER STREET
HOT SPRINGS, SOUTH DAKOTA
57747

Beaver Creek 7.2
~~Cheyenne River Falls~~

TELEPHONE
(605) 745-5161

January 5, 1977

Water Rights Commissioner
State of South Dakota
Pierre, SD 57501



RE: Albert T. Miller Water Rights

Gentlemen:

Albert T. Miller formerly owned land on which he (and others) had a water right originating from the Joseph Brunschmid water right which was dated about July 17, 1882, which original water right was for 400 cubic inches of water which was diverted from Beaver Creek about 200 yards below the northwest corner of the Southwest Quarter of Section 33, Township 6 South, Range 7 East of the Black Hills Meridian, Custer County, South Dakota.

Some legal instruments refer to this as the Brooks-Brunschmid water right.

This water right may also relate back to an original location by William A. Brooks which water right was dated May 15, 1883, wherein he claimed 500 inches of water of Beaver Creek to be diverted at a point about 300 yards southeast of the dwelling house of L. B. Reno near Buffalo Gap which was to be carried on the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 6 South, Range 7 East of the Black Hills Meridian, Custer County, South Dakota.

Recently Mr. Miller made gifts of certain of his real estate to his daughter, Carol J. Fugier, whose post office address is Buffalo Gap, SD 57722.

Mr. Miller now wishes to transfer and assign to his daughter, Carol J. Fugier, any and all interest in the water right he may have.

*Full amount
of water right
received Jan. 17, 1882*

*Name Change
JDF*

Water Rights Commissioner
State of South Dakota

January 5, 1977

Please send me the necessary instruments on which Mr. Miller may transfer his water rights to his daughter.

Mr. Miller does not claim that he owns the entire water right. There are several other persons who also share in the water from this ditch.

Sincerely,

Martin P. Farrell

MARTIN P. FARRELL

MPF/ra

WATER RIGHTS DIVISION
(605) 773-3352

July 25, 1984

Paul & Carol Fugier
Rural Route, Box 104
Buffalo Gap, South Dakota 57722

Dear Mr. & Mrs. Fugier:

I have completed all of the necessary forms for your vested right to use water for irrigation from Beaver Creek.

Would you please examine the forms and correct anything that is in error. Then, 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. This will cover the cost of the filing fee and the water license.

Upon recognition of the vested right by the Water Management Board, Water Right Filing 032-2 will be incorporated into your Water Right.

I have enclosed a map of your project. If there are no changes you may keep it for your files. If you have changes please indicate them on the map and return it with the forms. We will then correct our office copy. You may keep the copy of Water Right Filing 032-2.

Any other Water Right Filings that would duplicate your vested right will be cancelled. You will be receiving notices for the ones that will be cancelled.

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

Sincerely,

Delvin D. Boosz, P.E.
Hydrologist

DDB:ms
Enc.

WATER RIGHTS DIVISION
(605) 773-3352

January 15, 1985

Paul & Carol Fugler
Rural Route, Box 104
Buffalo Gap, South Dakota 57722

Dear Mr. & Mrs. Fugler:

In July 1984, I forwarded the necessary forms to modernize your Water Right for using water from Beaver Creek. As you know, I was doing this with a number of Water Right holders along the creek. In reviewing a water right with Mr. Floyd Simunek, I discovered that I had made an error in the legal description of lands that you irrigate. For some reason I thought the 17.3 acres that are irrigated in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 33, T6N, R7E were owned by you. The land is owned by MR. Simunek.

I am enclosing a set of corrected forms. Please discard the incorrect set and correct your map by eliminating the 17.3 acres.

Many of the Water Rights along Beaver Creek have been updated. I am hoping to complete the rest, such as yours, as soon as possible. If I can answer any questions, please contact me.

Sincerely,

Delvin D. Brosz, P.E.
Hydrologist

DDB:ms
Enc.

INVESTIGATION REPORT

BEAVER CREEK NEAR BUFFALO GAP, SOUTH DAKOTA

January 22, 1985

1. July 31, 1880 - Water Right Filing 027-2

G. C. Boland notifies the public that he claims 200 inches, miners measurement of the water of Beaver Creek, said water right being located about 300 yards below the mouth of Buffalo Gap.

September 30, 1881 - Water Right Filing 028-2

G. C. Boland, L. B. Reno, Jabez Brandham claim a water right about 1/2 mile below Clark's Ranch and about 1 mile above Boland's Ranch. Claim 800 inches, miners measurement, to be carried by ditch and flume to certain tracts of land about 2 miles below residence of G. C. Boland and to any intermediate point upon said route.

The above two water right filings are the basis for Water Right 316-2. Water Right 316-2 allows a diversion of 8 cfs to irrigate 560 acres. The priority dates apply as follows: July 31, 1880 - 4 cfs and September 30, 1881 - 4 cfs. I have discussed Water Right 316-2 with the present landowner, Frank Schroth, 7-11 Ranch, Incorporated. Mr. Schroth stated that he probably is irrigating less than 560 acres. I informed him that I would make a re-inspection of his Water Right to determine the actual acreage being irrigated. I plan to do this during the summer of 1985.

2. November 19, 1881 - Water Right Filing 032-2

A. D. Bond claims 400 miners inches of water on Beaver Creek about 1 mile below Boland's house, to be diverted from its course on the east side of the creek, to be carried 1½ miles down east side and used for agricultural and domestic purposes.

3. November 28, 1882 - Water Right Filing 093-2

Charles L. Conger claims 400 cubic inches of water to be diverted from the channel of (Amphibious Creek) about 200 yards below the NW Corner of SW¼ of Section 33, T6S, R7E and to be conducted on the east side of creek, not exceeding 3 miles.

This Water Right Filing is the basis for Vested Right 1759-2. Vested Right 1759-2 allows a diversion of 3.9 cfs to irrigate 195.8 acres and is authorized use of an undivided 1/2 interest in the ditch and water with Vested Right 1854-2. The 1/2 interest is from a Referee's Report, December 12, 1892, in the case of E. D. Bond and J. Bond vs C. L. Conger, J. M. Smith and F. Allen.

4. July 7, 1883 - Water Right Filing 0412-2

James M. Smith claims 500 inches of Beaver Creek, to be diverted about 300 yards south and west from the dwelling house now occupied by Brunschmid and Brooks and 2½ miles from Buffalo Gap.

This Water Right Filing is the basis for Vested Right 1854-2. Vested Right 1854-2 allows a diversion of 2.25 cfs to irrigate 112.40 acres and is authorized use of an undivided 1/2 interest in the ditch and water with Vested Right 1759-2. The 1/2 interest is from a Referee's Report, December 12, 1892, in the case of E. D. Bond and J. Bond vs C. L. Conger, J. M. Smith and F. Allen.

5. November 12, 1886 - Water Right Filing 0657-2

Issacher Schofield claims 10,000 inches of water from Beaver Creek to be taken out at a point on the SE Corner of NW $\frac{1}{4}$ of Section 29.

This Water Right Filing is the basis for Vested Right 1894-2. Vested Right 1894-2 allows a diversion of 1.3 cfs to irrigate 89.4 acres. On March 29, 1948, Mr. W. F. Nolan who was the owner of Water Right Filing 0657-2 at that time, stated that he would continue to use the water only at flood stages and at such times as it is not being otherwise used. Vested Right 1894-2 is therefore limited to excess waters.

6. June 29, 1887 - Water Right Filings 032-2

A. D. Bond, gives warranty deed to W. A. Brooks, for \$1.00 for a 1/2 interest in a certain water right described as follows: Said Water Right is on Beaver Creek about 400 yards easterly from the Railroad Depot at Buffalo Gap.

W. A. Brooks gives a warranty deed to A. D. Bond for \$1.00 for a 1/2 interest in a certain water right described as follows: said Water Right is on Beaver Creek about 400 yards easterly from the Railroad Depot at Buffalo Gap.

Wm. A. Brooks gives warranty deed to Joseph Brunschmid for a 1/4 interest in a certain water right; said water right is on Beaver Creek about 400 yards easterly from the Railroad Depot at Buffalo Gap.

This exchange of water rights relates to Item 2 - Water Right Filing No. 032-2 located by A. D. Bond. The exchange of Water Rights by the above three persons are the basis for the following Vested Rights:

Vested Right 1892-2,	Lyda Bowker (A.D. Bond)
Vested Right 1910-2,	Floyd Simunek (J. Brunschmid)
---	Vivian Rhoades (J. Brunschmid)
---	Paul & Carol Fugier (W. A. Brooks)
---	William L. Miller (W. A. Brooks)

Lyda Bowker and Floyd Simunek have submitted Vested Right Applications and these were recognized by the Water Management Board. Vested Right Application forms have been forwarded to Vivian Rhoades, Paul and Carol Fugier and William L. Miller. At this time, these forms have not been returned to the Division of Water Rights.

September, 1920 - Agreement that owners, heirs and assigns of the Brooks, Bond and Brunschmid water right will divide the water, diverted at their common diversion point, on a 1/3 basis from April 1 to December 31, as follows:

Pengro (this now is Floyd Simunek) and Busteed (this now is Vivian Rhoades) are entitled to take all of the water for the first 10 days of a 30 day month and the first eleven days of 31 day month, (I was informed that presently Simunek gets the water for the first 10 days and Rhoades receives the water during the 31st day of a month);

Mildred F. Miller (this now is Paul & Carol Fugier and William L. Miller) is entitled to take all of the water for the next ten days of the month;

Charles Smith (this now is Lyda Bowker) is entitled to take all of the water for the last ten days of the month.

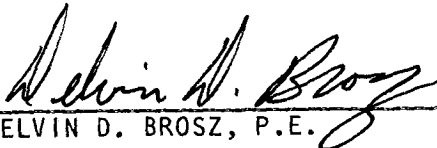
It is understood between the parties that this agreement in no way combines or modifies their respective ownership in and to the individual water rights. Each is to pay a 1/3 cost in repair and maintenance of the dam and main ditch. This agreement to stand unless the parties herinafter, by agreement, make different arrangements.

7. Other Water Rights on Beaver Creek

Water Right 1755 - allows irrigation of 78 acres with water from Vested Right 1854-2 (no additional appropriation of water) with a priority date of February 6, 1981.

Vested Right 1794-2 - any excess water not utilized by the two undivided one-half interests in Vested Right 1759-2 and 1854-2 can be utilized on these acreages up to a maximum of 1 cfs from each 70 acres. The application was for 537.3 acres. The priority date is 1920.

These are all of the Water Rights that are presently active between the diversion point for Water Right 316-2 and where Beaver Creek empties into the Cheyenne River. All other Water Right Filings that have been abandoned have been cancelled or are in the process of being cancelled.



DELVIN D. BROSZ, P.E.
Hydrologist

WATER RIGHTS DIVISION
(605) 773-3352

September 13, 1985

Paul & Carol Fugier
RR, Box 104
Buffalo Gap, South Dakota 57722

Dear Mr. & Mrs. Fugier:

In July, 1984 and January 15, 1985 you were contacted concerning making a vested right application for your use of water from Beaver Creek. To date, we have not heard from you on this matter.

Although you are not required to file a vested right claim with our office, it would be in your best interest to establish a priority date for your use of the water in Beaver Creek. Filing of a vested right would also establish a record of your irrigation system with our office.

May we hear from you soon regarding this matter.

Sincerely,

Genny McMath
Natural Resources Analyst

GM:ms



I'm sorry this hasn't
been taken care of sooner.
Guess I put it away + promptly
forgot it! Thanks for the reminder.

Carol



November 4, 1985

Paul & Carol Fugier
Rural Route #1, Box 104
Buffalo Gap, South Dakota 57722

Dear Mr. and Mrs. Fugier:

As I had stated in a letter to you on January 14, 1985, there was an error in your original Vested Right Application. I had included with the letter a set of corrected forms. Evidently you misplaced the corrected forms and you signed and returned the original forms that are in error.

I am making the following corrections on your application forms:

1. Delete the 17.3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 33, T6S, R7E. This land is owned by Floyd Simunek.
2. Change the total acres irrigated from 83.9 to 66.6.
3. Change the amount of water claimed from 1.2 cfs to 0.95 cfs.

If I can answer any questions, please contact me.

Sincerely,

Delvin D. Brosz, P.E.
Hydrologist

DDB:ms

REPORT ON VESTED RIGHT APPLICATION NO. 1971-2
PAUL & CAROL FUGIER
July 22, 1986

Application No. 1971-2 requests validation of a vested water right claim to appropriate 0.95 cfs from Beaver Creek. The water has been used since construction of the system after November 22, 1881 to irrigate 66.6 acres. The point of diversion is located in the SE 1/4 SE 1/4 of Section 29, T6S, R7E. The irrigated acreage is located in Section 33, T6S, R7E and in Section 4, T7S, R7E.

Conclusions

1. The project is a gravity irrigation system. It was inspected by Delvin D. Brosz and found to exist as described.
2. The system was constructed and the water put to beneficial use after November 22, 1881.
3. It is recommended that the vested right claim be validated.



DELVIN D BROSZ, P.E.
Hydrologist

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 1971-2

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Validation of Vested Water Right Application No. 1971-2, Paul & Carol Fugier, RR 1, Box 104, Buffalo Gap SD.

The Chief Engineer is recommending VALIDATION of Application No. 1971-2 because 1) water has been appropriated as described for irrigation with a November 22, 1981 priority date, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

See the attached report for additional information.


JOHN HATCH, Chief Engineer
July 25, 1986



Department of Water & Natural Resources

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

July 25, 1986

CUSTER COUNTY CHRONICLE
Box 551
Custer SD 57730

Dear Sir:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 1969-2, 1970-2, 1971-2 and 1981-2. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before July 30, 1986.

Please bill the Water Rights Division for the cost of the publication.

Please receipt for the notice IMMEDIATELY after first publication attaching a copy of the first publication so that it may be compared with the records. For your convenience, you may use the printed form below for this purpose.

After final publication please complete and mail to this office, the enclosed Form to furnish Proof of Publication. The application can not be considered by the Water Management until proof of publication has been received.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

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Date _____

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

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

Name

Newspaper

SOUTH DAKOTA
Department of
Water & Natural Resources

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

July 25, 1986

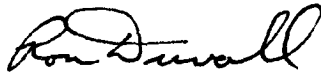
Paul & Carol Fugier
RR 1, Box 104
Buffalo Gap SD 57722

Dear Mr. & Mrs. Fugier:

Your Application No. 1971-2 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publisher of the CUSTER COUNTY CHRONICLE printed at Custer SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice and notify this office, if you have any corrections or questions.

The cost of publication of this notice will be paid for by the Water Rights Division.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

Instruction to Newspaper - Publish first publication of the following Notice on or before July 30, 1986 with 2nd publication 1 week later.

NOTICE OF HEARINGS To Validate
Vested Right Application Nos. 1969-2, 1970-2, 1971-2 and 1981-2
to Appropriate Water

Notice is hereby given that Historic Wagon Train Campground, Rt 3, Box 85A, Custer, South Dakota has filed Application No. 1969-2 to validate a vested right claim to appropriate 0.08 cubic feet of water per second from one well located in the SE 1/4 SE 1/4 Section 20, T3S, R5E. The water use has a priority date of January 1, 1952 and is used for commercial purposes by the campground.

Notice is hereby given that Wayne G. Van Norman, RR 1, Box 56B, Custer, South Dakota has filed Application No. 1970-2 to validate a vested right claim to appropriate 0.04 cubic feet of water per second from one well 70 feet deep located in the N 1/2 NE 1/4 Section 5, T4S, R4E. The water use has a priority date of February 12, 1953 and is used for commercial purposes.

Notice is hereby given that Paul & Carol Fugier, RR 1, Box 104, Buffalo Gap, South Dakota have filed Application No. 1971-2 to validate a vested right claim to appropriate 0.95 cubic feet of water per second from Beaver Creek to irrigate 66.6 acres with a priority date of November 22, 1881. The point of diversion is located in SE 1/4 SE 1/4 of Section 29, T6S, R7E. The irrigated acreage is located in the SE 1/4 SW 1/4, SW 1/4 SE 1/4 Section 33, T6S, R7E and the NW 1/4 NE 1/4 Section 4, T7S, R7E.

Notice is hereby given that Charles Bliss, HCR 83, Box 119, Custer, South Dakota has filed Application No. 1981-2 to validate a vested right claim to appropriate 0.022 cubic feet of water per second from one well 93 feet deep located in the SW 1/4 SW 1/4 Section 20, T3S, R5E. The water use has a priority date of January 1, 1945 and is used for commercial purposes.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application Nos. 1969-2, 1970-2, 1971-2 and 1981-2 because 1) water has been appropriated as described with the above priority dates, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water and 4) it is in the public interest.

Validation of these applications will be considered by the Water Management Board in Room 216, Joe Foss Building, Pierre SD on September 3, 1986 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of an application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the

7. 4

hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by August 22, 1986. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

These applications are made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

These hearings are adversary proceedings. The applicant or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on an application or to assure access to the hearing by the handicapped can contact the Water Rights Division, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by August 22, 1986.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Custer) ss.

I, Randall O'Neill hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Custer County Chronicle

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

City of Custer

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

July 30, 1986

August 6, 1986

Randall O'Neill
(Signature)

Publisher
(Title)

8/6/86
(Date Signed)

Cost of Printing: _____

July 30, 1986 - \$34.93

August 6, 1986 - \$27.94

Total - \$62.87

Notice of Hearings

To Validate Vested Right
Application Nos. 1969-2,
1970-2, 1971-2 and 1981-2
to Appropriate Water

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second from one well located in the SE 1/4
SE 1/4 Section 20, T3S, R5E. The water use
has a priority date of January 1, 1952 and is
used for commercial purposes by the
campground.

Notice is hereby given that Wayne G.
Van Norman, RR 1, Box 56B, Custer, South
Dakota has filed Application No. 1970-2 to
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0.04 cubic feet of water per second from one
well 70 feet deep located in the N 1/2 NE
1/4 Section 5, T4S, R4E. The water use has
a priority date of February 12, 1953 and is
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Notice is hereby given that Paul & Carol
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second from Beaver Creek to irrigate 66.6
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1881. The point of diversion is located in
SE 1/4 SE 1/4 Section 29, T6S, R7E. The
irrigated acreage is located in the SE 1/4 SW
1/4, SW 1/4 SE 1/4 Section 33, T6S, R7E
and the NW 1/4 NE 1/4 Section 4, T7S,
R7E.

Notice is hereby given that Charles Bliss,
HCR 83, Box 119, Custer, South Dakota has
filed Application No. 1981-2 to validate a
vested right claim to appropriate 0.022
cubic feet of water per second from one well

93 feet deep located in the SW 1/4 SW 1/4
Section 20, T3S, R5E. The water use has a
priority date of January 1, 1945 and is used
for commercial purposes.

Pursuant to SDCL 46-2A-2 the Chief
Engineer of the Water Rights Division
recommends VALIDATION of Vested Water
Right Application Nos. 1969-2, 1970-2,
1971-2 and 1981-2 because 1) water has
been appropriated as described with the
above priority dates, 2) the use has been
developed without unlawful impairment of
existing rights, 3) it is a beneficial use of
water and 4) it is in the public interest.

Validation of these applications will be
considered by the Water Management Board
in Room 216, Joe Foss Building, Pierre SD
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approve validation, 2) approve the
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deny validation of the application after it
reaches a conclusion based upon facts
presented at the public hearing. Any
interested person who may be affected by a
Board decision and who intends to
participate in the hearing before the Board
and present evidence or cross-examine
witnesses according to SDCL 1-16, must file
a written petition with BOTH the applicant
and the Chief Engineer by August 22, 1986.
The petition may be informal, but it must
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the petitioner's opposition to or support of
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mailing address of the petitioner or his legal
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the provisions of SDCL 46-1-1 thru 46-1-9,
46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9,
46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru
46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15,
46-2A-18; 46-5-1 thru 46-5-11, 46-5-13
thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2,
46-5-30.4, 46-5-31, 46-5-49; 46-6-3,
46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13,
46-6-14 and Board Rules ARSD 74:02:01:01
thru 74:02:01:15 and 74:02:01:19, thru
74:02:01:22.

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The applicant or any person, after filing a
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who has filed a petition to oppose or
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Engineer by August 22, 1986.

#291 07-30-86
08-06-86





Department of Water & Natural Resources

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

NOV 25 1986

Paul & Carol Fugier
RR 1, Box 104
Buffalo Gap SD 57722

Dear Mr. & Mrs. Fugier:

Enclosed are your Validated Vested Water Right and Water License No. 1971-2. As long as you use the water beneficially, as stated in the Water License, the 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

JH:ks

enclosures

NOTE: The applicable portions of Water Right Filing No. 032-2 have been incorporated into this Vested Water Right No. 1971-2 with the abandoned portions of the filing cancelled.

Equal Opportunity Employer