

Considered: _____

WATER PERMIT NO. 2122-2

MAP No. same 557-3400

Name of Applicant Rodney Hofeldt

Post Office Address RR 5, Box 89, Millboro SD 57580

Amount of Water Claimed 4.57 cfs (8ac-ft storage) Total Acres 320

Source of Water Supply spring feed dry draw & Lost Creek

Water to be used for irrigation County Tripp

About 9 1/2 miles W of Wewela

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY _____ Date Received Feb 23, 1990 Fee 325⁰⁰ Remarks _____

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

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

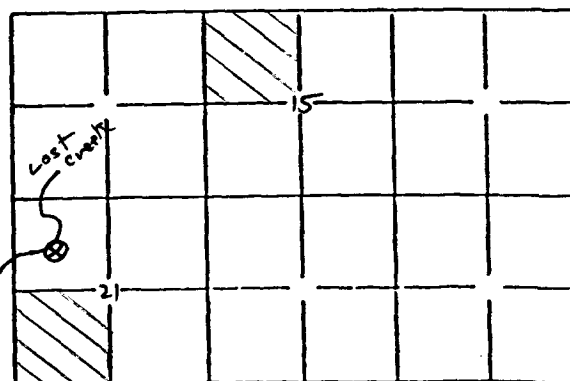
WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point dugout / Lost Creek: W 1/2 NW 1/4

section 21 - T95N - R77W

Land to be Irrigated SW 1/4 section 21; NW 1/4

section 15; all in T95N - R77W



Well Log: Driller NA Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

Type of Map aerial photo PREPARED BY Harry Hilgemann Reviewed and the Number

assigned on April 2, 1990 By Ron Durrall

(See instructions)

No. 2122-2 Hydrologic Unit 10150006
Basin Nebraska Trib.
Newspaper Winner Advocate, Box 71, 57580
Wesd

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

- Type of Application: ☒ New ☐ Vested Right ☐ Amend Permit No. _____
- ☐ Change Acreage ☐ Change diversion point(s) ☐ Add diversion point(s)
- ☐ Add Acreage ☐ Increase diversion rate ☐ Other _____
1. Name of Applicant Rodney Hofeldt Phone No. 605 557 3400
2. Office Address RR5 Box89 Millboro State SD 57580
(Street, RR or Box) (City) Zip Code
3. Amount of water claimed (c.f.s) 4.57 Total acres irrigated 360 320
4. Source of Water supply Spring fed dry draw and Lost Creek
5. Location of point of diversion W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 21-T 95N-R77W
- County Tripp
6. Counties where water will be used Tripp
7. Annual period during which water is to be used Apr 1 -- Oct 31
8. 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.
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 21-95-77	40
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 21-95-77	40
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 21-95-77	40
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 21-95-77	40

Land Description	No. Acres Irr.
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 15-95-77	40
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 15-95-77	40
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 15-95-77	40
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 15-95-77	40

Attach sheet if more space is needed

9. Type of Irrigation: Gravity: _____ Towline: _____ Center Pivot: xx Gun: _____ Other: _____
(Specify) _____
10. Crops to be Irrigated: Alfalfa--Corn--Sudan
11. Give a description of proposed project. (Attach sheet if more space is needed)

Applicant proposes to construct a dugout in a spring-fed draw which will be self-filling.

It is further proposed that, if necessary, applicant be allowed to supplement the water level in the dugout using a 12'' gravity-fed line from Lost Creek.

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

STATE OF SOUTH DAKOTA)
County of Tripp)^{ss}

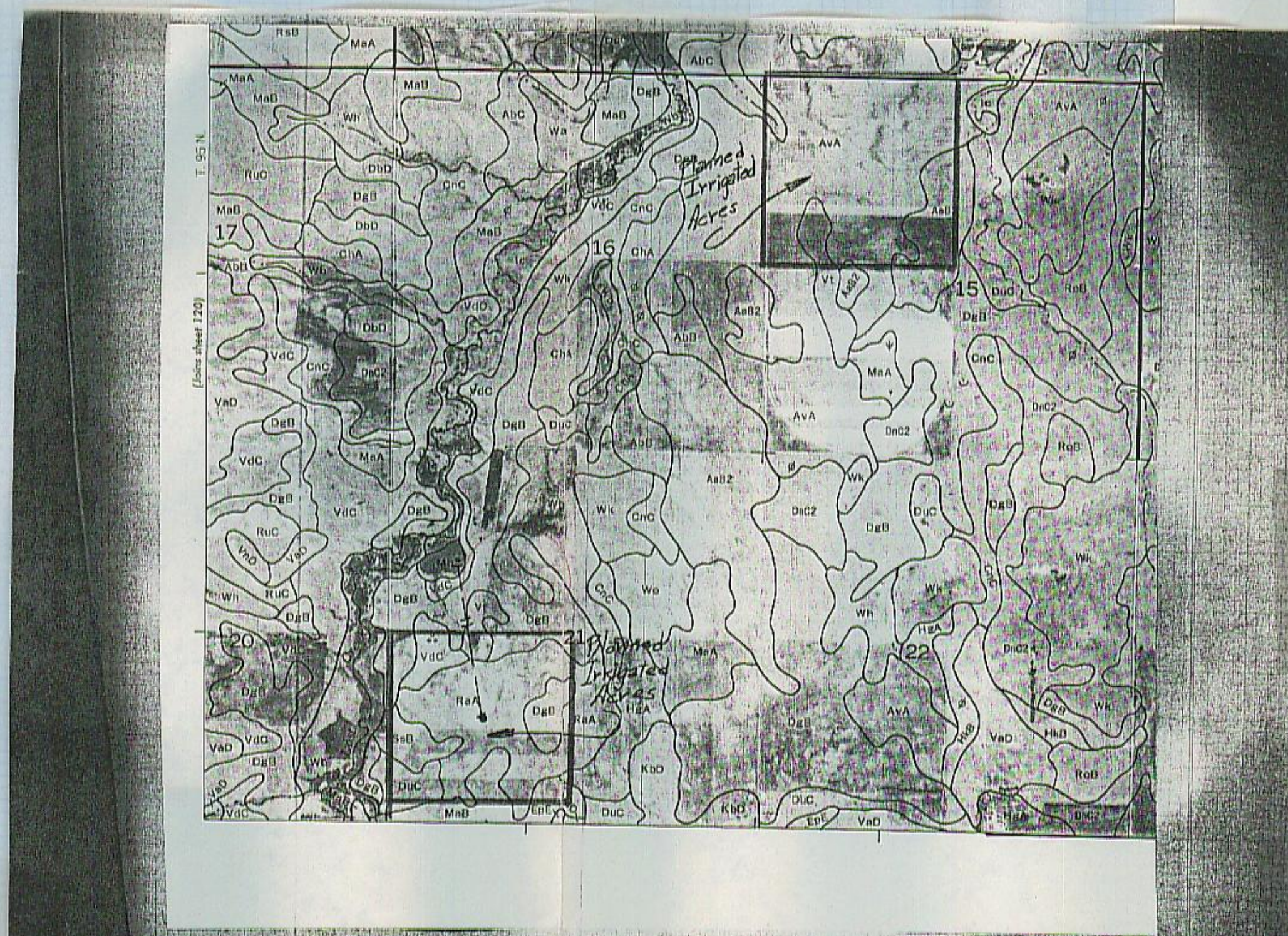
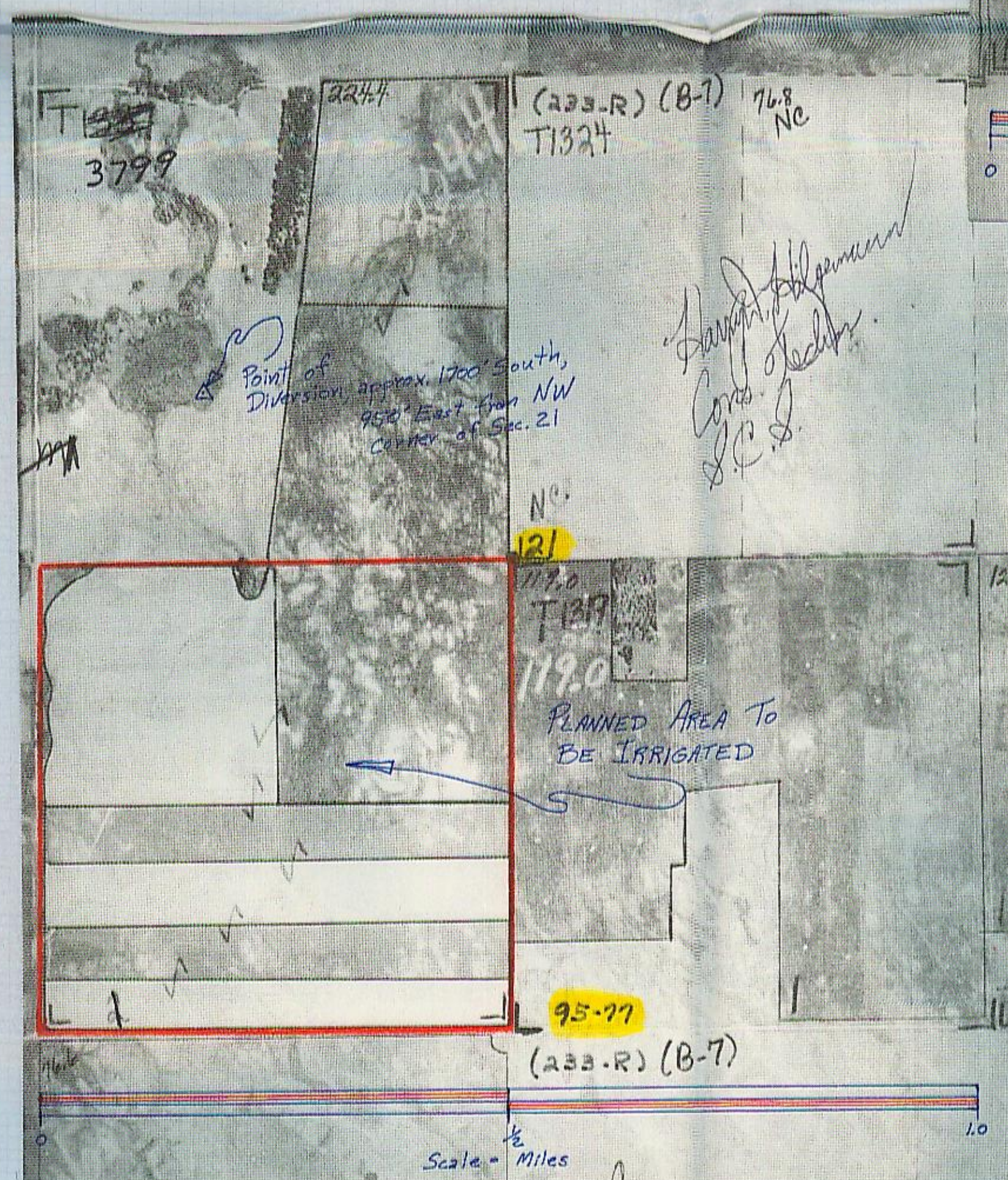
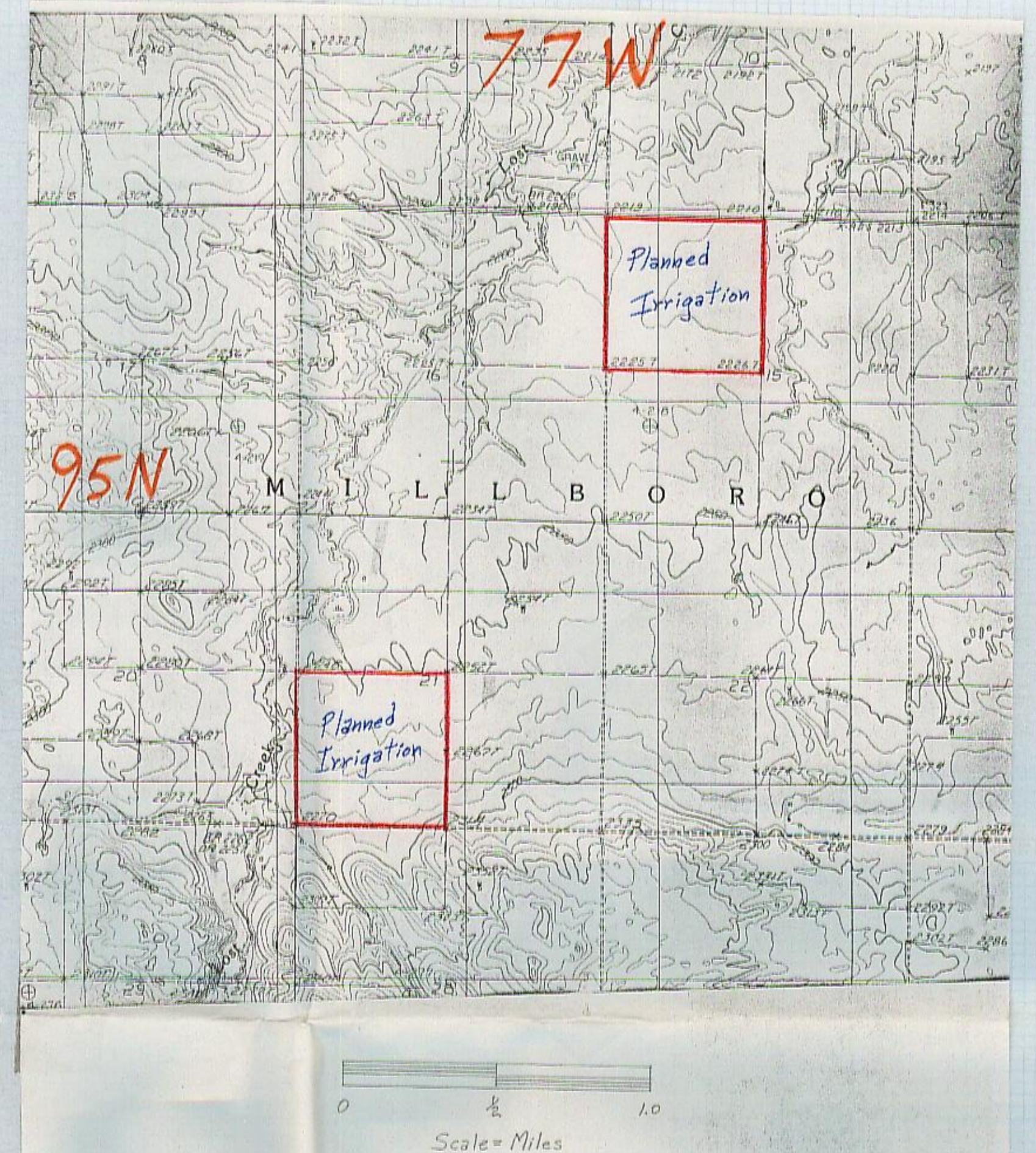
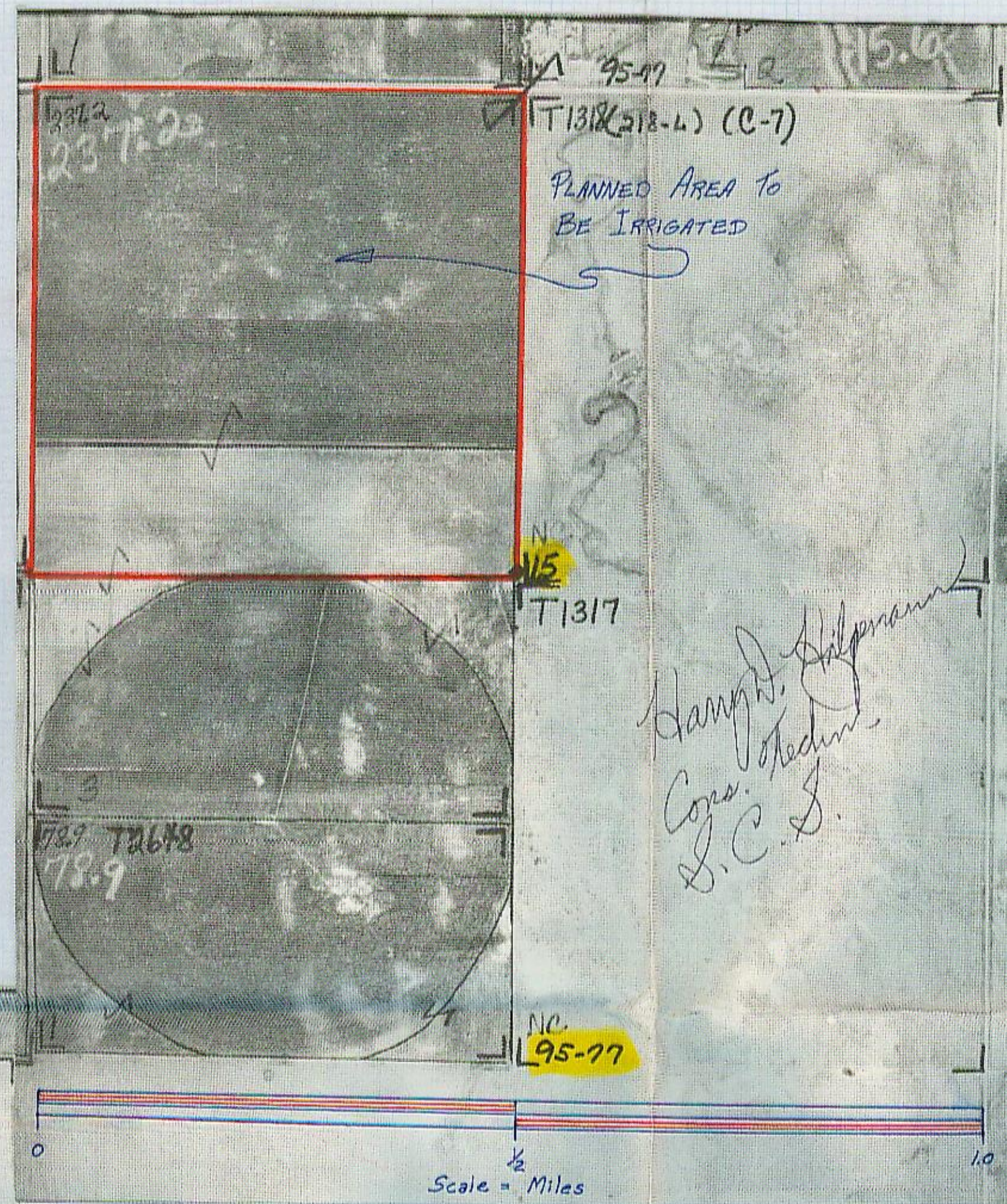
I, Rodney Hofeldt, the applicant, certify that I have read this application and examined the attached maps, that the water sample, if needed, has been taken by the required procedures and has not been adulterated or tampered with and is truly representative of the water to be used, and that the matters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

Signed

Rodney Hofeldt

Subscribed and sworn to before me this 22 day of February 1990

Notary Public



Appl. No. 2122-2

RODNEY HOFELDT
C-K CONS. DIST.
SPRINKLER IRRIGATION PLAN MAP

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Designed.....	Date.....	Approved by.....
Drawn.....		Title.....
Traced.....		Sheet.....
Checked.....		Drawing No.
		No. 1 of 1

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicants property _____ On property owned by others _____

2. Dugout Information Estimates

- a) Surface Dimensions 100' x 400' Depth 12'
- b) Depth to water (ground surface to water level) Ø 12''

3. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below. The locations of each dam should be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam please give their name and address

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____
If Pipe, diameter _____

f) Secondary Spillway Capacity _____
Spillway width _____

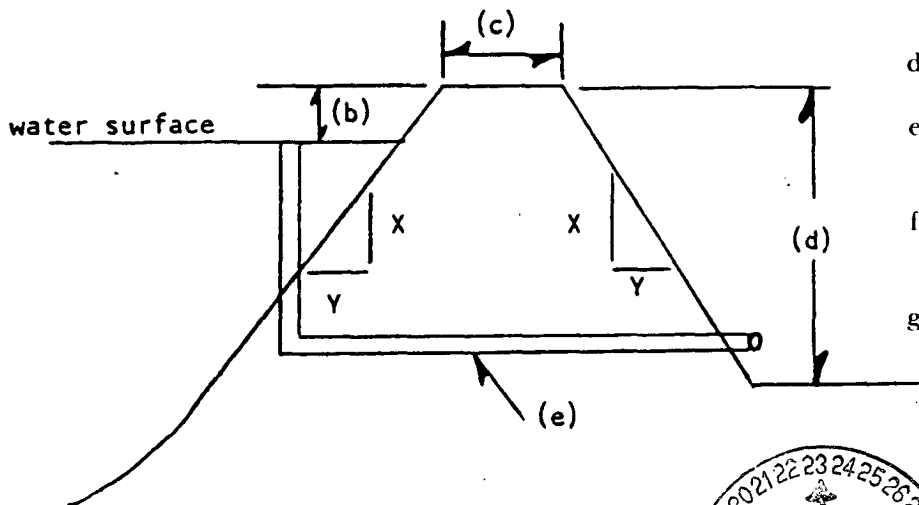
g) X & Y Slope
Upstream _____

Downstream _____

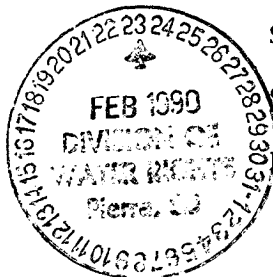
Surface Area of Impoundment _____

Storage _____ acre feet

Drainage area above dam _____



Signature of Applicant _____



SOUTH DAKOTA
WATER PERMIT No. 2122-2 FOR IRRIGATION

Date of first receipt of application February 23, 1990.

Date Soil/Water Compatibility Permit received April 13, 1990.

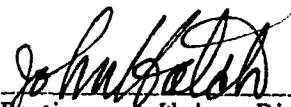
The Water Management Board approved Water Permit Application No. 2122-2 on May 23, 1990 for Rodney Hofeldt, RR 5, Box 89, Millboro, SD 57580 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2122-2 appropriates 4.57 cubic feet of water per second from a dugout (approximately 8 acre-feet storage capacity) located on a spring fed draw and supplemented with water from Lost Creek to irrigate 320 acres. The diversion point is to be located in the W1/2 NW1/4 Section 21 and the irrigated acreage is to be located in the SW1/4 Section 21; NW1/4 Section 15; all in T95N-R77W.
2. The amount of the appropriation may not exceed 2 acre feet per acre per year for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 - October 31.
3. The date from which applicant may claim right is February 23, 1990.
4. One-fifth of the construction is to be completed on or before November 23, 1992.
5. All construction is to be completed on or before May 23, 1995.
6. Water is to be put to beneficial use on or before May 23, 1999.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

- 1) Permit No. 2122-2 does not authorize diversion of water from Lost Creek after May 20th of each calendar year, nor at any time when the creek flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- 2) Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
- 3) This permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

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

MAY 30 1990

(date)

Department of Agriculture
WI#1
5/87

SOIL/WATER COMPATIBILITY PERMIT
Division of Conservation

Office Use Only

4482

WR#

OWNERS NAME: HOFELDT, RODNEY

OWNERS ADDRESS: RR5, Box 89

Millboro, SD 57580

COUNTY LAND LOCATED IN: Tripp

PHONE: 557-3400

(Lost Creek & Dugout)

LEGAL DESCRIPTION:

☐ Well

☒ Surface

1. LOCATION Spring fed dry draw & Lost Creek/ W $\frac{1}{2}$ NW $\frac{1}{4}$ 21-T95N-R77W

Depth _____

Legal Description	Acres	Legal Description	Acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 21-T95N-R77W	40		
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 21-T95N-R77W	40		
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 21-T95N-R77W	40		
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 21-T95N-R77W	40		

2. TYPE OF IRRIGATION: GRAVITY: _____ TOWLINE: _____ CENTER PIVOT: ~~xxx~~ OTHER: _____
GUN: _____ (Specify) _____

3. CROPS TO BE IRRIGATED: Alfalfa, Corn, Sudan

WATER QUALITY:

4. WATER SAMPLE NUMBER: 90-0071 & 90-0072 7. ADJUSTED (SAR): 0.80 & 0.65

5. SALINITY (EC X 10⁶): 350 & 450 8. PERCENT SODIUM: 13.33 & 9.04

6. SODIUM (SAR): 0.42 & 0.31

Requirements:

The area mapped as Shena (SsB) is shallow to silt stone. This area shall remain in permanent vegetation.



Peter Quirk
Director, Division of Conservation

~~xxx~~ APPROVED

DISAPPROVED

WAIVER

~~xxx~~ REQUIREMENTS

April 5, 1990
Date

Soil/water permits will be recorded by the Department of Agriculture, with the County Register of Deeds.

Department of Agriculture
WI#1
5/87

SOIL/WATER COMPATIBILITY PERMIT
Division of Conservation

Office Use Only

4481

WR#

OWNERS NAME: HOFELDT, RODNEY

OWNERS ADDRESS: RR5, Box 89

Millboro, SD 57580

COUNTY LAND LOCATED IN: Tripp PHONE: 557-3400

(Lost Creek & Dugout)

LEGAL DESCRIPTION: Spring fed dry draw and Lost Creek

☐ Well

☒ Surface

1. LOCATION

Depth W $\frac{1}{2}$ NW $\frac{1}{4}$ 21-T95N-R77W

Legal Description	Acres	Legal Description	Acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 15-T95N-R77W	40		
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 15-T95N-R77W	40		
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 15-T95N-R77W	40		
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 15-T95N-R77W	40		

2. TYPE OF IRRIGATION: GRAVITY: _____ TOWLINE: _____ CENTER PIVOT: XXX GUN: _____ OTHER: _____ (Specify) _____

3. CROPS TO BE IRRIGATED: Alfalfa, Corn, Sudan

WATER QUALITY:

4. WATER SAMPLE NUMBER: 90-0071 & 90-0072 7. ADJUSTED (SAR): 0.80 & 0.65
5. SALINITY (EC X 10⁶): 350 & 450 8. PERCENT SODIUM 13.33 & 9.04
6. SODIUM (SAR): 0.42 & 0.31

Requirements:



[Signature]
Director, Division of Conservation

April 5, 1990

Date

XXX APPROVED _____ REQUIREMENTS
____ DISAPPROVED
____ WAIVER

Soil/water permits will be recorded by the Department of Agriculture, with the County Register of Deeds.

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

412187

Pierre, April 2, 19 90

RECEIVED OF T Lazy H Ranch (Rodney Hofeldt), RR #5 Box 89 Milbora, SD 57580

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

Fee for Application for Permit No. <u>2122-2</u> to Appropriate Water, to construct works and to put water to beneficial use _____	325	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	325 00

By John Welch
Chief Engineer

TABLE 1

Weather Partly cloudyStream Lost Creek/Tripp County

DISCHARGE MEASUREMENT NOTES

Date May 7th, 19 90Party Bill Giroux and Charles MackTime 4:25 pmSite T-95-N, R-77-W, Sec. 20, NE ¼Total Width 10 ft.

Approximate gpm _____

Distance from Initial Point	(a) Width (Ft.)	(b) Depth of Obs. (Ft.)	(c) Vel. Feet per (Sec.)	(axbxc) Dis- charge (cfs)
1'	1'	0.4	0.44	0.176
2'	1'	0.425	1.48	0.629
3'	1'	0.525	1.83	0.960
4'	1'	0.75	1.95	1.462
5'	1'	0.5	1.77	0.885
6'	1'	0.55	1.84	1.012
7'	1'	0.5	1.72	0.86
8'	1'	0.5	1.45	0.725
9'	1'	0.5	1.47	0.735
			TOTAL =	7.268 cfs

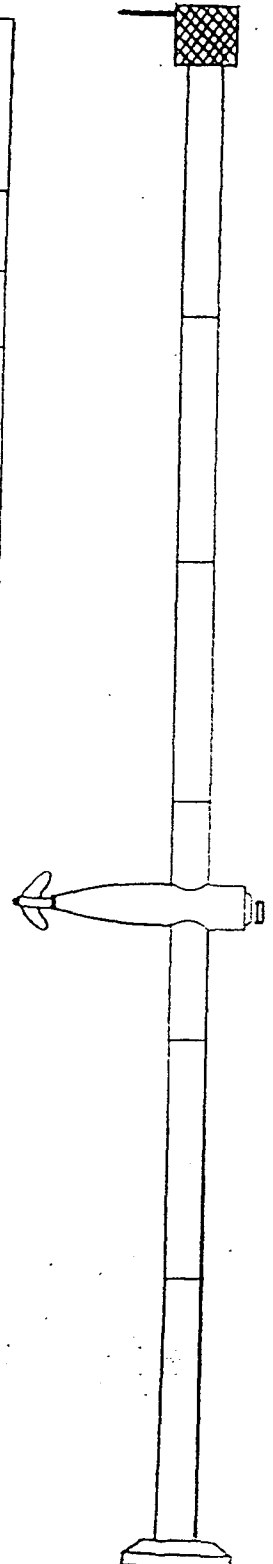


TABLE 2

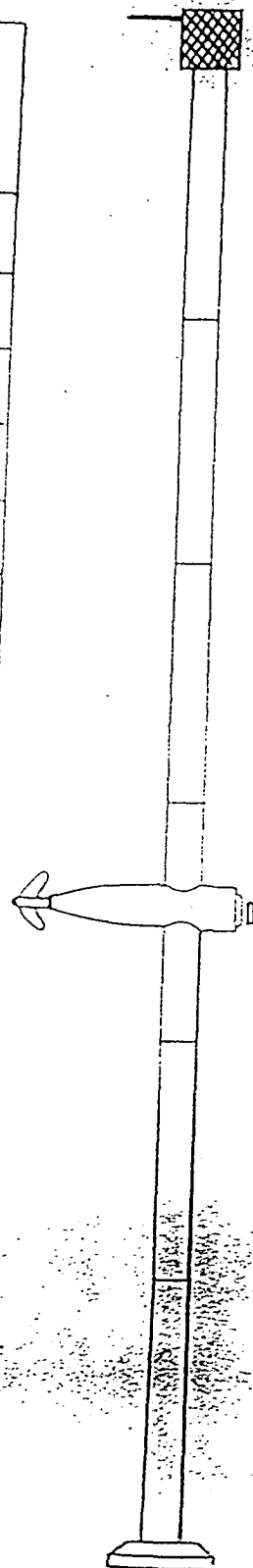
Weather Partly cloudyStream Lost Creek/Tripp County

DISCHARGE MEASUREMENT NOTES

Date May 7th, 1990Party Bill Giroux and Charles MackTime 5:00 pmSite T-95-N, R-77-W, Sec.10 NW $\frac{1}{4}$ Total Width 6.5 ft

Approximate gpm _____

Distance from Initial Point	(a) Width (Ft.)	(b) Depth of Obs. (Ft.)	(c) Vel. Feet per (Sec.)	(axbxc) Dis- charge (cfs)
0.5	0.5	0.5	0.66	0.165
1.0	0.5	0.3	0.42	0.063
1.5	0.5	0.4	0.95	0.19
2.0	0.5	0.5	1.41	0.352
2.5	0.5	0.5	1.78	0.445
3.0	0.5	0.6	1.96	0.588
3.5	0.5	0.65	2.34	0.760
4.0	0.5	0.75	2.43	0.911
4.5	0.5	1.0	2.25	1.125
5.0	0.5	1.05	2.26	1.186
5.5	0.5	1.2	2.31	1.386
6.0	0.5	1.1	2.28	1.254
			TOTAL =	8.425 cfs

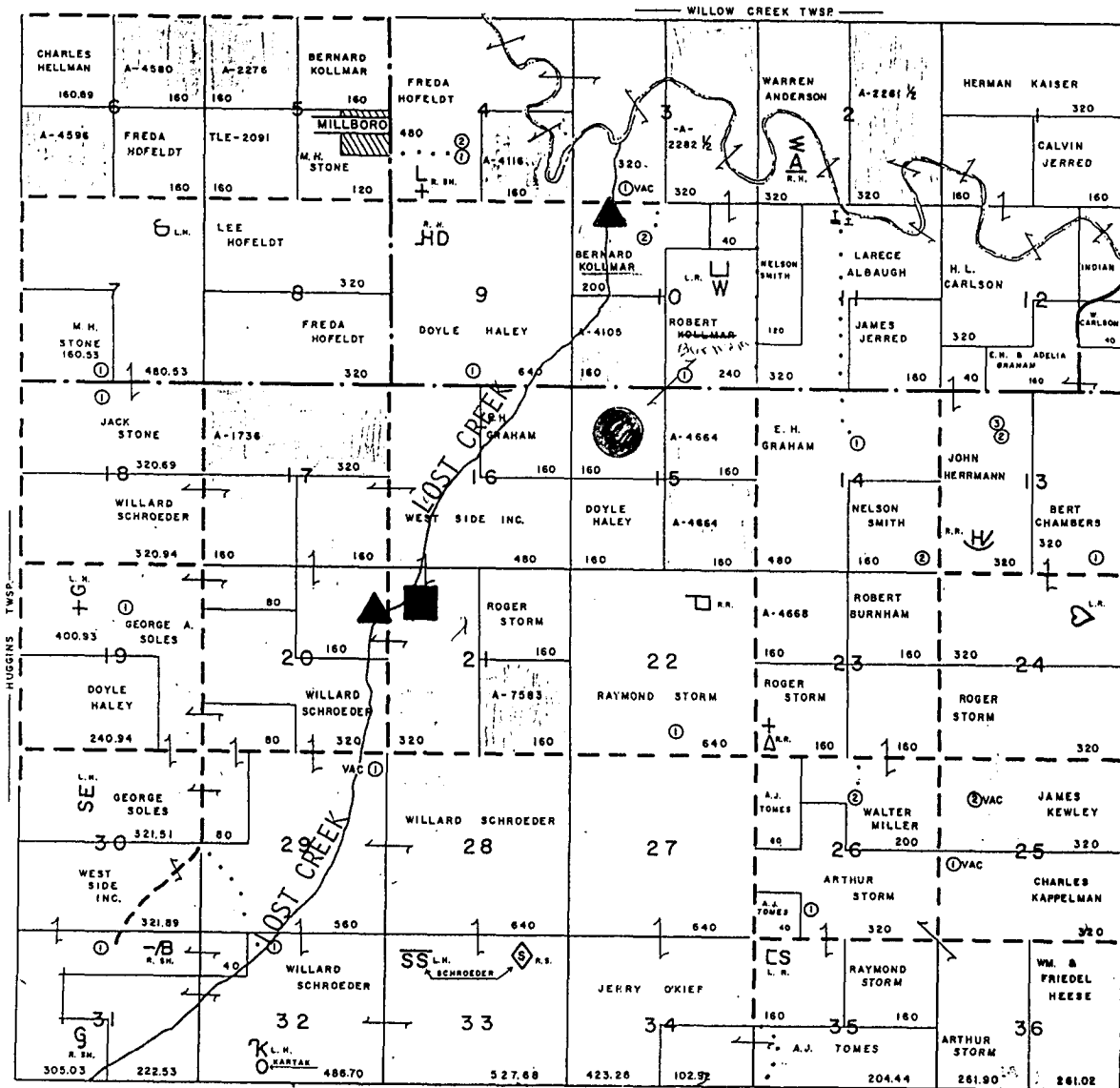


MILLBORO

TWSP - 95 - NORTH

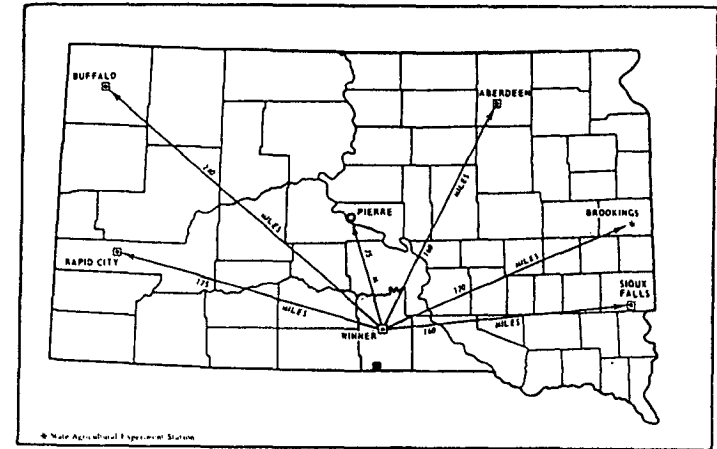
RANGE - 77 - WEST

CODE - ML



STATE OF NEBRASKA

MAP - 29



—Location of Tripp County in South Dakota.

LEGEND

- ▲ STREAM GAUGING SITE
- PROPOSED DUGOUT SITE
- R.S.T. ALLOTTED LAND
- CENTER PIVOT IRRIGATION SYSTEM



FIG. 1

Conversation or File Documentation

NAME OF PERSON OR FILE: Rodney Hofeldt
ADDRESS: RR 5, Box 89, Millboro SD COUNTY Tripp
DATE: April 2, 1990 TELEPHONE _____
RE: diversion point & total acreage.
COMMENTS:

Contacted Mr. Hofeldt to determine if the diversion point located in the $W\frac{1}{2}NW\frac{1}{4}$ sec. 21 was to supply both pivots. Mr. Hofeldt indicated the same diversion point is to be used. The exact pipeline route has not been determined and therefore was not marked on the map. Mr. Hofeldt also indicated that the total acreage was 320 acres.

Estimated dugout capacity: $\frac{V_1 + V_2}{2} (H) = \text{capacity}$
 $(400 \times 100) + (352 \times 52) / 2 [12]$
 $\approx 8 \text{ acre-feet}$

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: Rodney Hofeldt

Report on Water Right Application No. 2122-2
Rodney Hofeldt
April 5, 1990

Application No. 2122-2, Rodney Hofeldt, proposes to appropriate 4.57 cubic feet of water per second (cfs) from a dugout located on a spring fed draw with supplemental water from Lost Creek for irrigating 320 acres. The diversion point is to be located in the W1/2 NW1/4 of Section 21 and the irrigated acreage is to be located in the SW1/4 of Section 21 and the NW1/4 of Section 15; all in T95N-R77W, Tripp County.

Water Source

The diversion of water is to be from a dugout with a storage capacity of 8 acre-feet. The dugout is to be constructed in a spring fed draw. The primary source of water for the dugout will be from springs and local surface runoff. It is proposed that supplemental water for filling the dugout be gravity fed from Lost Creek through a 12 inch pipe. Lost Creek which is a tributary to the Keya Paha River has about 5000 acres of watershed in South Dakota and an nondeterminable acreage in Nebraska.

Review of Existing Water Rights

There is one existing water right for ground water located approximately 1 mile from the proposed application. Interference is not likely.

There are thirteen existing water rights, whose diversion source is the Keya Paha River, located downstream from this application to the point where the river crosses the Nebraska border. The combined diversion rate for these water rights is 12.44 cfs. The median of the yearly mean discharges of the Keya Paha River as measured at the Wewela gaging station, located approximately 10 miles downstream from the mouth of Lost Creek, is 60 cfs. There is potential for interference with these water rights from this application during low flow years.

Conclusions

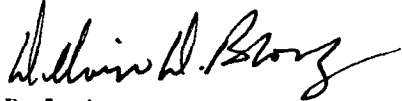
1. Water is available for irrigation.
2. There is potential for interference with existing water rights from this application during low flow years.
3. The permit should be approved for 4.57 cfs, for irrigating 320 acres, with the following qualifications:

- A. Low flows should be bypassed for downstream domestic use, including livestock watering, and prior water rights.
- B. This permit authorizes the diversion of water from Lost Creek Until May 20th of each calendar year. After May 20th there shall be no diversion from Lost Creek under this permit unless such written authorization is issued by the Chief Engineer. Diversions under this Permit shall be in accordance with any written orders issued by the Chief Engineer.
- C. The irrigation questionnaire be submitted each year.



Mark D. Rath
Natural Resources Engineer

approved by



Delvin D. Brosz
Natural Resources Engineer IV

References

1. U.S. Geological Survey. 1988. Water Resources Data South Dakota Water Year 1988. U.S. Geological Survey Water-Data Report SD-88-1.
2. Mernaugh, Le Roy. 1977. Report on Water Right Application No. 1527-2. South Dakota Department of Water and Natural Resources, Water Rights Division.

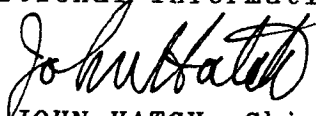
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2122-2, Rodney Hofeldt

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 Water Permit Application No. 2122-2, Rodney Hofeldt, RR 5, Box 89, Millboro SD.

The Chief Engineer is recommending APPROVAL of Application No. 2122-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Permit No. 2122-2 does not authorize diversion of water from Lost Creek after May 20th of each calendar year, nor at any time when the creek flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
April 12, 1990

NOTE: This recommendation was prepared prior to receiving an approved Soil/Water Compatibility Application (SWCA) from the Department of Agriculture in order to avoid delaying Application No. 2122-2 until the July, 1990 Water Management Board meeting. Pursuant to General Rule 74:02:01:09, an approved SWCA must be received prior to a hearing being held on a water permit application. If your approved SWCA is not received prior to the May 23, 1990 hearing, then Application No. 2122-2 will need to be rescheduled for a later hearing date. Approval of the SWCA by the Department of Agriculture is also subject to review by the Conservation Commission. This note is to advise you that authorizing publication of the enclosed notice of hearing may **NOT** result in a hearing at the May 23, 1990 Water Management Board meeting due to the above described circumstances. In addition, once the application is advertised for hearing, the cost of publication will be an expense incurred if the SWCA is denied by the Department of Agriculture.



Department of Water & Natural Resources

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

April 13, 1990

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

Rodney Hofeldt
RR #5 Box 89
Millboro, SD 57580

Dear Mr. Hofeldt:

Water Permit Application No. 2122-2 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Winner Advocate printed at Winner SD. For your information, a copy of the notice is enclosed. Copies of the report and the Chief Engineer's recommendation are also enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: Please refer to note on the Chief Engineer's Recommendation prior to authorizing publication of this notice of hearing.



Department of Water & Natural Resources

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

April 13, 1990

Winner Advocate
Box 71
Winner, SD 57580

ATTN: Legal Publications:

Enclosed is a Notice of Hearing on Application No. 2122-2 to be published twice. Please publish the first notice on or before April 19, 1990 with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Rodney Hofeldt, RR #5 Box 89, Millboro, SD 57580.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

Eric Gronlund

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE

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

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

Instruction to Newspaper - Publish first Notice on or before April 19, 1990 with 2nd publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2122-2 to Appropriate Water

NOTICE

Notice is given that Rodney Hofeldt, RR #5 Box 89, Millboro, SD 57580 has filed an application for a water permit to appropriate 4.57 cubic feet of water per second from a dugout (approximately 8 acre-feet storage capacity) located on a spring fed draw and supplemented with water from Lost Creek to irrigate 320 acres. The diversion point is to be located in the W1/2 NW1/4 Section 21 and the irrigated acreage is to be located in the SW1/4 Section 21; NW1/4 Section 15; all in T95N-R77W.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Application No. 2122-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water and 4) it is in the public interest. This application will be considered by the Water Management Board in the Pelican Room, Ramkota Inn, Hwy 212, Watertown, SD on May 23, 1990 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer or 4) deny this application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by May 11, 1990. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by May 11, 1990.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15; 46-5-1 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; 46-6-3, 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.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Tripp) ss.

I, Karen W. Krumm

certify that the attached printed Notice was taken
from the Winner Advocate.

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 Winner

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

April 18, 1990

April 25, 1990

Karen W Krumm
(Signature)

Business Manager
(Title)

4/25/90
(Date Signed)

Cost of Printing: \$ 38.10

45 lines @ 2 col. rate

45 lines @ 2 col. rate X 80%



Notice of hearing on application no. 2122-2 to appropriate water

Notice is given that Rodney Hofeldt, RR #5 Box 89, Millboro, SD 57580 has filed an application for a water permit to appropriate 4.57 cubic feet of water per second from a dugout (approximately 8 acre-feet storage capacity) located on a spring fed draw and supplemented with water from Lost Creek to irrigate 320 acres. The diversion point is to be located in the W1/2 NW1/4 Section 21 and the irrigated acreage is to be located in the SW1/4 Section 21; NW1/4 Section 15; all in T95N-R77W.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Application No. 2122-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water and 4) it is in the public interest. This application will be considered by the Water Management Board in the Pelican Room, Ramkota Inn, Hwy 212, Watertown, SD on May 23, 1990 at 10:00 a.m. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer or 4) deny this application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by May 11, 1990. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605 773-3352)." The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application and the signature and mailing address of the petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by May 11, 1990.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15; 46-5-1 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; 46-6-3, 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.

(16-17 633)

Conversation or File Documentation

NAME OF PERSON OR FILE: Marie Condon
ADDRESS: Millboro, SD COUNTY Tripp
DATE: 4/22/90 TELEPHONE 557-3436
RE: Water Permit Application No. 2122-2

COMMENTS:

Mrs. Condon called today and asked about Water Permit No. 2122-2 filed by Rodney Hofelt. It sounded like she was planning to ask for a automatic delay. She is concerned about their wells & domestic use out of Lost Creek. She asked us to come down and measure the wells & flow in Lost Creek. Told her she should talk to Del Brosz. She said she would try to call again on Monday.

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: Toni Sheal

(date)

page

Parties of Record before Water Management Board

Rodney Hofeldt - Permit No. 2122-2

Proponent

Opponent

Rodney Hofeldt

R.R. 5, Box 89

Millboro, SD 57580

Marie (Kollman) Condon

R.R. 5, Box 94

Millboro, SD 57554

Ralph Moran, President

Rosebud Sioux Tribe

P.O. Box 430

Rosebud SD 57570

Francis A. Halligan

Bureau of Indian Affairs

Box 550

Rosebud SD 57570

RALPH MORAN
President

VERNON "IKE" SCHMIDT
Vice-President

Rosebud Sioux Tribe

ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57570

Incorporated Under Act of June 18, 1934, 48 Stat - 984

PHONE 605-747-2381 — P.O. BOX 430

SHARON L. BURNETTE
Secretary

CHARLES WHITE PIPE, JR.
Treasurer

May 09, 1990

Chief, Water Rights Division
South Dakota Dept. of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Ref: Division of Water from Lost Creek

Dear Sir:

We have been informed that Mr. Rodney Todd Hofeldt may have submitted an application to your office, to allow him to divert 4.57 CFS of water from the Lost Creek in Tripp County. There are some Tribal allotted lands, down stream from the proposed dugout site (Fig 1). Lost Creek is also a major contributor to the flow of Keya Paha River. The Discharge of Lost Creek were measured at two points (Fig 1). The discharge at the site just below the dugout site was measured to be 7.268 CFS (Table 1) , and the discharge of the creek just before it flows into Keya Paha river was measured to be 8.425 CFS (Table 2). The Lost Creek appears to be a gaining stream at that site, gaining water probably from the Ogallala Aquifer.

We have also been informed that Mr. Hofeldt plans to divert water from the 8 acre - feet dug out by means of a pipeline to Section 15 (Fig 1). It is our understanding that the interaction between surface water and groundwater in the area is very sensitive.

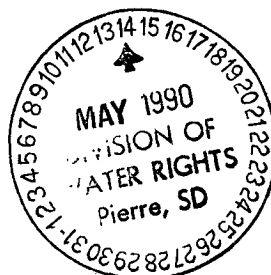
In view of the fact that there are several parcels of Indian lands in and around the proposed dug out site (Fig 1) which may be affected by the diversions of water from the Lost Creek, we request that the application of Mr. Rodney Todd Hofeldt be disapproved.

If you have any questions or comments on this, please direct them to Syed Y. Huq or Charles L. Mack of the Water Resources Program at 747-2559.

Sincerely,

Ralph Moran, President
Rosebud Sioux Tribe

attachment



Millboro, SD 57554
May 9, 1990

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

Dear Sir:

Enclosed is a letter regarding application no. 2122-2 by Rodney Hofeldt of Millboro, SD, to appropriate water from Lost Creek for irrigation.

Would you please see that my letter is read at the hearing on this application by the Water Management Board in Watertown, on May 23, 1990?

As of now, I do not intend to be there in person to participate in the hearing, but would like my letter to be read and have my concerns addressed.

I am not sending a copy of this attached letter to the applicant today, as I do not have a copy machine handy, but I will get a copy made from my copy, and can send it to him in a few days. I will call and check with your office to see if that is acceptable.

I also want to thank your staff in the office in Pierre for being so helpful in trying to answer my questions when I have phoned up there. I appreciate that.

Thank you.

Sincerely,


Marie (Kollmar) Condon

R.R. 5, Box 94
Millboro, SD 57554



Millboro, South Dakota 57554
May 9, 1990

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



Dear Sir:

I am writing regarding application no. 2122-2 to appropriate water for irrigation out of Lost Creek, and also out of a dugout supplemented with water from Lost Creek--by Rodney Hofeldt, of Millboro, SD.

I live about 2 miles downstream from this proposed site. I have several concerns that I would like the Water Management Board to consider in their discussion on this application.

My first concern is not only how this proposed use will affect the amount of water in Lost Creek that will be available for use for those of us downstream on the creek and the Keya Paha river; but also how it may affect our water table in this area - in general. Let me explain why I am concerned over this. The wells that we have here on our place for domestic use are very shallow, and if a large amount of water is taken out of the creek, or a dugout, or another well, it may very much affect our wells here. In talking to another hydrologist--Charles Mack--he did say there could definitely be a correlation between a lack of water on our place and irrigation nearby. I am referring to a specific situation that occurred last summer. We lease a 40-acre parcel of Indian Land just east of our land--which is all located in the N $\frac{1}{2}$ of Sec. 10-95N-77W. There is a small creek that runs through this Indian Land (NENE of Sec. 10) and that is the only water that is available to water livestock on this 40 acres. When we had cattle in this 40 acres, we had a problem with the little creek going dry. We were using this pasture from July 23 through Aug. 11, and that is when the problem occurred. Burnham's irrigate from a well just south of us on the NW $\frac{1}{4}$ of Sec. 15, and we can hear their pump running when they are using it. When the creek went dry, there would be a night or two that we did NOT hear their pump running, and then there would be water in the little creek again, after they didn't irrigate for a day or two. This happened about 3 times in that 3-week period. That appears to us to be very good evidence that there is a correlation to Burnham's irrigation and the little creek going dry on the Indian Land. This is the situation that I explained to Charles Mack, and he actually looked at the land and the locations that I just described, and he also felt that there could be a correlation. We do realize that it was a very dry year in 1989, but one of the owners of the Indian Land (Arthur Raymond) said that he knew the little creek had NEVER gone dry before, even in the 30's. (When I say "little creek"--I am referring to the one on the Indian Land--not Lost Creek--but the "little creek" is only about a half mile from Lost Creek.) Also, referring to Lost Creek, it went dry for awhile in the summer of 1976, and all the "old-timers" said that was the ONLY time it had EVER gone dry--not even during the 30's--and they all felt that the reason it did go dry then was that water was being taken out of the water table by the irrigation near to the creek.

Jim Goodman quoted me quite a few statistics from their observation wells in this vicinity which he felt were indicators of the irrigation done by

Burnham's and Heese's, but I want you to realize that ALL of these observation wells are located SOUTH of the irrigation systems and their supply wells, and I am located NORTH of these observation wells; so they do not indicate what is happening to the water table in THIS direction and toward the Keya Paha River from the irrigation systems.

You may wonder why I have spent so much time telling you about the problem we had on the Indian Land, but I think this is an indication of what is happening here as a result of irrigation. This incident may not directly relate to Mr. Hofeldt's proposal, but I think you can now see why we have concerns as to what can happen to the water table in general as a result of nearby irrigation systems.

I am aware that there is a stipulation that Mr. Hofeldt can not take water directly out of Lost Creek after May 20. I hope this will not be changed--as it may provide some protection for those of us downstream who also need water after May 20.

Please understand that I have nothing personal against any of the people mentioned in this letter, but I feel WATER is a most important issue; and we all have a right to water for our domestic use. My concern is for our wells, and for water in Lost Creek for livestock use. We are concerned not only for ourselves and our use, but also for the rights and needs of the those who will come after us. The people change--but the land will still be here, and so will the need for water--for all who follow us in the future.

I would appreciate the Board giving my concerns their most serious consideration in regard to this application no. 2122-2.

Thank you.

Sincerely,

Marie Condon
Marie (Rollmar) Condon

R.R. 5, Box 94
Millboro, SD 57554



RALPH MORAN
President

VERNON "IKE" SCHMIDT
Vice-President

Rosebud Sioux Tribe

ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57570

Incorporated Under Act of June 18, 1934, 48 Stat - 984

PHONE 605-747-2381 — P.O. BOX 430

SHARON L. BURNETTE
Secretary

CHARLES WHITE PIPE, JR.
Treasurer

May 09, 1990

Chief, Water Rights Division
South Dakota Dept. of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501



Ref: Division of Water from Lost Creek

Dear Sir:

We have been informed that Mr. Rodney Todd Hofeldt may have submitted an application to your office, to allow him to divert 4.57 CFS of water from the Lost Creek in Tripp County. There are some Tribal allotted lands, down stream from the proposed dugout site (Fig 1). Lost Creek is also a major contributor to the flow of Keya Paha River. The Discharge of Lost Creek were measured at two points (Fig 1). The discharge at the site just below the dugout site was measured to be 7.268 CFS (Table 1), and the discharge of the creek just before it flows into Keya Paha river was measured to be 8.425 CFS (Table 2). The Lost Creek appears to be a gaining stream at that site, gaining water probably from the Ogallala Aquifer.

We have also been informed that Mr. Hofeldt plans to divert water from the 8 acre - feet dug out by means of a pipeline to Section 15 (Fig 1). It is our understanding that the interaction between surface water and groundwater in the area is very sensitive.

In view of the fact that there are several parcels of Indian lands in and around the proposed dug out site (Fig 1) which may be affected by the diversions of water from the Lost Creek, we request that the application of Mr. Rodney Todd Hofeldt be disapproved.

If you have any questions or comments on this, please direct them to Syed Y. Huq or Charles L. Mack of the Water Resources Program at 747-2559.

Sincerely,

Ralph Moran, President
Rosebud Sioux Tribe

attachment



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ROSEBUD AGENCY
ROSEBUD, SOUTH DAKOTA 57570



IN REPLY REFER TO:

Natural Resources



Chief, Water Rights Division
South Dakota Dept. of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear Sir:

We have been advised that Mr. Rodney Todd Hofeldt has submitted an application to divert 4.57 cubic feet per second of water from Lost Creek in Tripp County. The diversion point is identified as the W $\frac{1}{2}$ NW $\frac{1}{4}$, Section 21, T. 95 N., R. 77 W., 5th Principal Meridian, Tripp County, South Dakota. The Rosebud Sioux Tribal Water Resources Department has advised our office by a copy of the Tribe's letter of opposition to the application. A copy of the letter and supporting documentation is attached for your reference.

The Bureau of Indian Affairs has administrative jurisdiction over the trust lands that would be directly affected by approval of Mr. Hofeldt's application. We support the Rosebud Sioux Tribe's request to deny the application as it would adversely affect the trust lands in the surrounding area.

Any questions regarding this matter should be referred to Mr. Cleve Burnette, Realty Specialist, Acquisition and Disposal Section. He may be reached by telephone at 605-856-4649.

Sincerely,

Francis A. Halligan

Acting Superintendent



Department of Water & Natural Resources

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

May 11, 1990

Mr. Rodney Hofeldt
RR 5, Box 89
Millboro, SD 57580

Dear Mr. Hofeldt:

This letter is in reference to your water permit application (No. 2122-2) to appropriate 4.57 cfs (8 acre feet) to irrigate 320 acres. This office has, at this time, received three letters of opposition to your application. Since our phone conversation on Friday, May 11, 1990, I received two additional letters of opposition. Enclosed are copies of these letters.

The letters of opposition did not request a delay of the May 23, 1990 scheduled date for consideration of this application by the Water Management Board. I will contact you if any additional petitions are received regarding your permit application.

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

Sincerely,

A handwritten signature in cursive script that reads "Eric Gronlund".

Eric Gronlund
Water Rights Division
(605) 773-3352

enc.



Department of Water & Natural Resources

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

May 30, 1990

NOTICE

TO: Rodney Hofeldt
RR 5 Box 89
Millboro, SD 57580
and Parties of Record (see attached sheet)

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

SUBJECT: Approval of Water Permit No. 2122-2

On May 23, 1990, the Water Management Board approved Water Permit No. 2122-2 with qualifications as recommended. Water Permit No. 2122-2 authorizes diversion of 4.57 cubic feet of water per second from a spring fed dry draw and Lost Creek to irrigate 320 acres.

Decisions of the Board may be appealed to the Circuit and State Supreme Court as provided by law.

enclosure

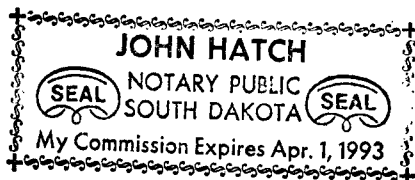
CERTIFICATION

I hereby certify that on May 30, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Approval of Water Permit No. 2122-2 addressed as stated on the Parties of Record sheet.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of May, 1990.



John Bates
Notary Public



Department of Water & Natural Resources

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

MAY 30 1990

Rodney Hofeldt
RR 5, Box 89
Millboro SD 57580

Dear Mr. Hofeldt:

Enclosed is Water Permit No. 2122-2 as approved by the Water Management Board authorizing you to construct your water diversion system and put the water to beneficial use, not exceeding the limits as specified in the Water Permit.

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water License may be issued, thus completing your acquisition of a Water Right.

Very truly yours,

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

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

enclosures

PLEASE NOTE: Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period - i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.



Department of Water & Natural Resources

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

July 10, 1990

Rodney Hofeldt
RR 5, Box 89
Millboro SD 57580

Dear Mr. Hofeldt:

As per your telephone call to Del Brosz on July 6, 1990 requesting permission to divert water under Water Permit No. 2122-2. Water Permit No. 2122-2 does not authorize diversion of water from Lost Creek after May 20th of each calendar year. Mr. Brosz gave you verbal permission to divert water because flows in Lost Creek are sufficient to provide water for downstream domestic use (livestock water) and water for your permit.

This letter is confirmation that you may divert water from Lost Creek. A minimum of 2.0 cubic feet of water per second (cfs) must be bypassed to meet downstream domestic use. If the flow of Lost Creek drops to 2.0 cfs, diversion of water must cease.

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

Very truly yours,

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

John Hatch, Chief Engineer
Division of Water Rights



NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE

Date 10-15-90

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

FROM: Rodney Hofeldt RR5 Box 89 Millboro
name address city

I have completed the construction of the water diversion system and I have put the water to beneficial use to the maximum extent it is going to be used. I have not exceeded the amounts specified in Water Permit No. 2122-2.

Water Permit No. 2122-2 states that the diversion system is to be constructed by May 23 1995, and that the water it put to beneficial use by May 23 1999.

The diversion system was completed on 7-2-90.
Applying the water to beneficial use was completed on 7-10-90.

You may schedule an inspection so that the Water License may be issued.

Rodney T Hofeldt
signature



DEPARTMENT OF WATER & NATURAL RESOURCES

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

January 11, 1991

NOTICE

TO: Rodney Hofeldt
RR 5, Box 89
Millboro, SD 57580

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

SUBJECT: Amendment of Water Permit No. 2122-2 Qualification Regarding
Cut Off Periods

Notice is given that the Water Management Board will consider deleting and adding the following qualifications to Water Permit No. 2122-2.

Qualification to be deleted:

Permit No. 2122-2 Does not authorize diversion of water from Lost Creek after May 20th of each calendar year, nor at any time when the creek flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

Qualification to be added:

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 10 cfs or less, unless written authorization is received from the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

The hearing to consider amendment of Water Permit No. 2122-2 to delete and add the above qualifications will be held February 27, 1991 at 11:30 am, Meeting Room, Governors Inn, 700 West Sioux Avenue, Pierre, SD 57501. The agenda time is an estimate and may be delayed due to prior agenda items. The hearing will be held pursuant to the provisions of SDCL 46-1-14 and 46-2-17.

The hearing is based on the review of Keya Paha River Water Permits/Rights and historic flow records of the Keya Paha River. The attached report summarizes the current water permits/rights on the Keya Paha River and contributing tributaries. Also enclosed is a notice of hearing that will be published in the Winner Advocate for two consecutive weeks. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-9 and 46-2-11.

After all evidence is taken at the hearing, the Board may issue a decision to delete and add the above qualifications, postpone any action or take no action. This hearing is an adversary proceeding. Any party 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 the State Supreme Court as provided by law.

Attachment

CERTIFICATION

I hereby certify that on January 14, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Amendment of Water Permit No. 2122-2 addressed as stated below.

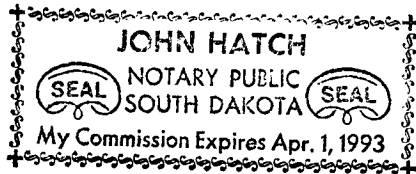
Rodney Hofeldt, RR #5 Box 89, Millboro SD 57580

Marie R. Arthur
Marie R. Arthur
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of January, 1991.

John H. Hall
Notary Public



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION	)	FINDINGS OF FACT
TO AMEND WATER PERMITS AND WATER	)	CONCLUSION OF LAW
RIGHTS WHOSE WATER SOURCE IS THE	)	AND FINAL DECISION
KEYA PAHA RIVER, IN PARTICULAR,	)	
WATER PERMITS AND RIGHTS NOS. 281-2	)	
282-2 AND 710-2, CHARLES RICHEY;	)	
NO. 369-2, VICTOR WEICKUM; NO. 414-2	)	
H.W. CARLSON; NO. 465-2 LUCILE RICHEY;	)	
NOS. 835-3 AND 959-2 ALVA WILEY;	)	
NO. 1530-2, VERN KESZLER; NO. 879-2,	)	
RICHARD KIRSCH; NO. 931-2,, LLOYD	)	
BLOMSTROM NO. 1107-2, STANLEY HANSON;	)	
NO. 1108-2, GARNET SARGENT;	)	
NO. 1128-2, CHARLES HELLMANN; AND	)	
NO. 2122-2 RODNEY HOFELDT	)	



FINDINGS OF FACT

I

This is an application by the Chief Engineer to establish a more manageable "cutoff" system on the Keya Paha River.

II

The existing water permits and water rights on the Keya Paha River have various cutoff dates. The first three permits issued on the Keya Paha River have a 10 cfs bypass at the Wewela Gauging Station. Eight permits, issued in the 1950s and 1960s, do not have a specific low flow bypass or cutoff date, but do have a requirement to bypass water for downstream domestic use and prior water rights. Three permits, issued in the 1970's, have a June 15 cutoff date. The most recent permit granted in the Keya Paha system provides a May 20 cutoff date.

III

Keya Paha system includes not only diversions from the Keya Paha River itself, but from its tributaries.

IV

The Keya Paha River is a spring fed river.

V

The Wewela Gaging Station is located at a point downstream of most of the water permits at issue. Statistics developed at the Wewela Gaging Station demonstrate that for the past thirty-nine years there were at least 10 cfs water at Wewela 90% of the time during the driest months of July, August and September. The same gaging station statistics indicate that there was a 70% chance that there would be at least 20 cfs of water at Wewela during the driest months of August and September.

VI

That Wewela Gaging Station thus reflects the situation which has existed given actual diversions. The Wewela station statistics do not reflect, however, the withdrawals of the latest appropriator whose Water Permit Application No. 2122-2 was approved May 23, 1990. That permit was for 4.57 cfs of water from a dug out located on a spring fed draw and supplemental water from Lost Creek, a tributary of the Keya Paha River. That permit has a May 20 cutoff for the portion of the diversion from Lost Creek.

VII

At least one domestic user downstream of the Wewela Gaging Station has testified that even when there are 18 cfs of water in the stream, there is insufficient water for his livestock. His cattle are located several miles below Wewela.

VIII

The Board finds that a 10 cfs bypass at Wewela is insufficient to provide reasonable protection to downstream domestic use, including livestock watering and prior water rights. The Board finds, furthermore, that reasonable protection is provided, on the basis of data now available, by a 15 cfs bypass requirement.

IX

The Board of Water Management has jurisdiction to impose amendments on existing permits to protect downstream domestic use, including livestock watering and to protect prior water rights. Such amendments are justified by the Water Management Board's statutory authority and duty to protect such prior rights.

X

The rights of the prior appropriators are not unlawfully impaired by the exercise of this authority by the Board, especially when the amendment provides for exceptions upon written authorization from the Chief Engineer. Moreover, when it is reasonable to allow exceptions despite the 15 cfs bypass requirement, senior appropriators will be

allowed by the Chief Engineer to irrigate beyond the cutoff date before junior appropriators.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. The Board has general authority to amend existing water permits pursuant to SDCL 46-2A-12.
3. The amendment set out in the Final Decision does not unlawfully impair existing rights. This is so because the existing rights are all subject to downstream domestic use including livestock watering and, of course, prior water rights. Moreover, even when the flow is 15 cfs or less, any appropriator may receive written permission from the Chief Engineer to appropriate water and such permission shall be granted, insofar as reasonably possible under the circumstances, first to senior appropriators and then to later appropriators.
4. The cutoff requirement set out in the Final Decision provides reasonable direction to the Chief Engineer in his management of the Keya Paha system. The proposed amendment to the permits is for beneficial purposes and is in the public interest.
5. The Board has jurisdiction to provide for a 15 cfs bypass requirement despite the fact that the advertisement provided for a 10 cfs requirement. The Chief Engineer's recommendation, as advertised and served upon the present water right holders, authorized the Board to approve the recommendation with "additional qualifications. . . ."

This language vests the Board with the power to make reasonable modifications in the recommendation.

6. The Department of Game, Fish and Parks requested a 16 cfs bypass for fish and wildlife purposes. The Board, having determined to adopt a 15 cfs requirement, concludes that it is unnecessary to consider whether it is appropriate or lawful to impose new bypass requirements on existing permits for fish and wildlife purposes and therefore declines to act upon the GF&P suggestion.

FINAL DECISION

Each of the rights and permits identified in the caption of this proceeding is herewith amended to remove any previous cutoff dates and bypass requirements and the following qualification is hereby added to each of the above-identified water rights and water permits.

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be bypassed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 15 cfs or less, unless written authorization is received from the chief engineer. Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.

BY THE BOARD

Chairman
Water Management Board

m-pld51.jpg



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 13, 1991

NOTICE

Rodney Hofeldt
RR 5, Box 89
Millboro SD 57580

Dear Mr. Hofeldt:

This letter is in response to action taken by the Water Management Board to amend Water Permit No. 2122-2. The Board amended Water Permit No. 2122-2 by deleting and adding the qualifications on the enclosed "Attachment" which should be placed with the water permit. The action was taken pursuant to the notice to you dated January 11, 1991.

Very truly yours,

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

enclosure

ATTACHMENT TO WATER PERMIT NO. 2122-2

RODNEY HOFELDT

The Water Management Board amended Water Permit No. 2122-2 at the February 27, 1991 Board meeting to delete and add the following qualifications:

Qualification deleted:

Permit No. 2122-2 does not authorize diversion of water from Lost Creek after May 20th of each calendar year, nor at any time when the creek flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

Qualification added:

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 15 cfs or less, unless written authorization is received from the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

CERTIFICATION

I hereby certify that on June 17, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of action taken by the Water Management Board to amend Water Permit No. 2122-2 addressed as stated below:

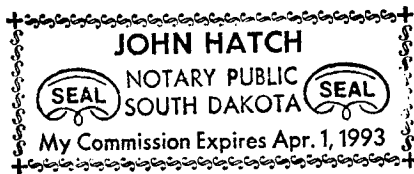
Rodney Hofeldt, RR 5, Box 89, Millboro, SD 57580.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of June, 1991.



Johubatah
Notary Public



2/22-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 29, 1991

NOTICE

PERMIT NO(S). 2122-2

TO: Rodney Hofeldt
RR 5, Box 89
Millboro, SD* 57554

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

Delwin D. Brosz

SUBJECT: Shutoff Order for Water Diversions from the
Keyapaha River.

The flows in the Keyapaha River are below 15 cubic feet per second (cfs) at the Wewela gaging station. Therefore, to protect domestic use (livestock watering), effective immediately, no pumping of water is authorized from the Keyapaha River or contributing tributaries until January 1, 1992 or until further notice.

The following is the latest flow (cfs information on the river:

GAGE	8/27/91	8/28/91	8/29/91
Wewela	15.9	13.5	12.6

If you have any questions, please contact Tim Schaal or Del Brosz, Division of Water Rights, Joe Foss Building, Pierre, SD 57501, phone (605) 773-3352.

CERTIFICATION

I hereby certify that on August 29, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Shutoff Order for Water Diversions from the Keyapaha River addressed as stated below:

Garnet Sargent, RR, Clearfield, SD 57581

Rodney Hofeldt, RR 5, Box 89, Millboro, SD 57554

Stanley Hanson, RR 5, Box 63, Millboro, SD 57554

Lloyd Blomstrom, P.O. Box 623, Winner, SD 57580.

Vern Keszler, HC 88, Box 12, Clearfield, SD 57581.

Dale Heese, SR Box 36, Millboro, SD 57554.

Charles Hellman, RR 5, Box 84, Millboro, SD 57554.

Alva Wily, SR 10, Box 34, Millboro, SD 57554.

Richard Kirsch, HC 80, Box 49, Springview, NE 68778.

Charles Richey, HC 88, Box 47, Wewela, SD 57578.

Lucile Richey, RR 10, Box 46, Wewela, SD 57578.

Victor Weickum, Wewela, SD 57578.

H. W. Carlson, RR 1, Box 32, Colome, SD 57528.

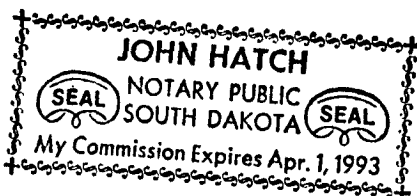
Cheryl F. Frost

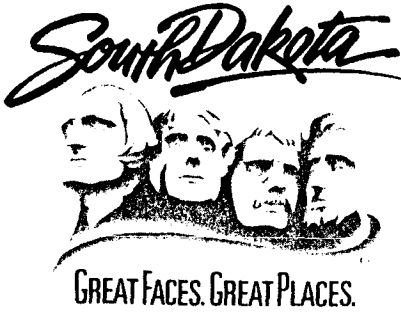
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of August, 1991.

John Hatch
Notary Public





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 11, 1991

NOTICE

PERMIT NO. 2122-2

TO: Rodney Hofeldt
RR 5, Box 89
Millboro, SD 57554

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

SUBJECT: Authorization for additional diversion from the Keyapaha River and contributing tributaries.

Since our August 29, 1991 Shutoff Order, the flows of the Keyapaha River at the Wewela gaging station have increased to above 15 cfs. This NOTICE will serve as written authorization for you to continue diverting from the Keyapaha River or contributing tributaries.

It is our understanding that you would like to continue diverting from Lost Creek for a period of 4 or 5 days. You will need to monitor the flows in Lost Creek to insure flows for downstream domestic use.

If you have any questions, please contact Tim Schaal or Del Brosz, Division of Water Rights, Joe Foss Building, Pierre, SD 57501, phone (605) 773-3352.

CERTIFICATION

I hereby certify that on September 11, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Authorization for additional diversion from the Keyapaha River and contributing tributaries addressed as stated below:

Rodney Hofeldt, RR 5, Box 89, Millboro, SD 57554.

Chas F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of September, 1991.



John Hatch
Notary Public

FROM : Rodney Hofeldt
HC 88 BOX 89
Millboro, S.D. 57580



SUBJECT : One year suspension of Water Permit No. 2122-2 & 2122A-2

TO: Whom it may Concern ,

In late October or early November when I received the 1995 Questionnaire I was already started with my corn harvest , so I made the mistake of putting it up until I had more time. This was MY first mistake,(NO EXCUSE). I then forgot about it until I received your notice the 1ST part of February.

At that time I filled out the Questionnaire and prepared it to be mailed the next day along with some other unrelated documents. I thought the matter had been taken care of that day, until I received Your notice of Suspension of My water permit that arrived on the 8th of March, at first I had no idea what could of happened. After looking though all papers and my file cabinet I found the sealed envelope containing the Questionnaire that I thought was mailed the 1st of February. It had been picked up and put back into My filing cabinet by mistake. (AGAIN THIS IS NO EXCUSE IT WAS MY MISTAKE.)

This was on a Friday and it was impossible to respond over the weekend, so I will prepare this letter now and will hand deliver it and the Questionnaire to your office on Monday the 11th of March.

All though it is about a 130 mile drive and I am calving now I feel I must get this resolved at the earliest date possible. Because without this permit my operation can simply not survive, even for one year.

Also I have been working on a loan and other matters trying to get a center pivot up and running by this spring for the permit 2122A-2. There is simply no way the bank will work with me without this matter resolved.

I apologize for the inconvenience and my mistakes once again, and ask you what I can do to rectify the situation, I have put my self in.

Sincerely Yours,


Rodney T. Hofeldt



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

APR 23 1998

2122A-2

Rodney Hofeldt
RR 5, Box 89
Millboro, SD 57580

Dear Mr. Hofeldt:

Enclosed is Water License No. 2122A-2 and Receipt No. 415648 for \$50.00 which was assessed for an investigation and issuance of the license. Water License No. 2122A-2 is the final document which completes the process of obtaining a water right.

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.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

ks
enclosures

NOTE: The applicable portions of Water Permit No. 2122-2 are incorporated into No. 2122A-2.