

Considered: _____

WATER PERMIT NO. VR 2168-2

Phone: 343-8281

Name of Applicant: Frank & Evelyn Whitney

Post Office Address: PO Box 2853, Rapid City SD 57709-2853

Amount of Water Claimed: 0.14 Total Acres: 11

Source of Water Supply: Jim Creek and springs

Water to be used for: irrigation County: Pennington-Lawrence

About 10 miles NW of Rapid City

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY Date Received: 3-19-91 Fee: \$15.00 Remarks See Vested

Claim No. 863-1

Corrected Application Received _____ Period of Annual Use March 15 - Oct 15

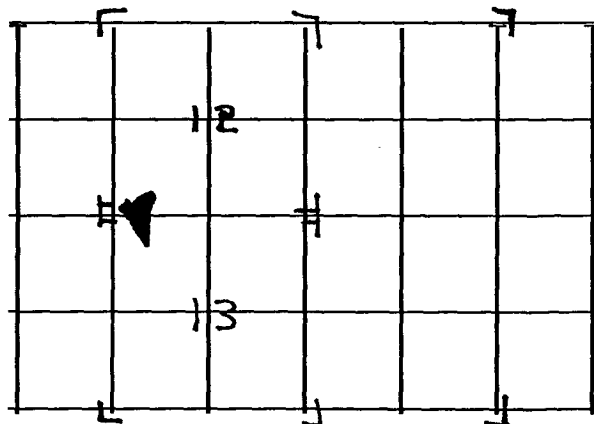
WATER QUALITY APPROVAL RECEIVED _____ APPROVED/CONDITIONAL (Circle one)

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

Diversion Point: NW 1/4 NW 1/4 13-T2N-R4E

Land to be Irrigated: NW 1/4 NW 1/4 13-T2N-R4E

SW 1/4 SW 1/4 12-T2N-R4E



Well Log: Driller: _____ Licensed YES _____ NO _____

Depth of Well: _____ REMARKS _____

Map of Map: topo PREPARED BY: Tim Tollefsrud Reviewed and the Number

igned on 3-19-91 By Karen Schlaak

(See instructions)

No. 2168-2 Hydrologic Unit 10/20110
Basin Upper Cheyenne
Newspaper Lead Daily Call, Box 876

Rapid City Journal, Box 450

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 Frank and Evelyn Whitney Phone No. 343-8281
2719 Tomahawk Drive Rapid City State SD Zip Code 57709-2853
Post Office Address P.O. Box 2853 (Street, RR or Box) (City)
2. Amount of water claimed (c.f.s.) 0.14 Total acres irrigated 11
3. Source of Water supply Jim Creek and Springs
4. Location of point of diversion 250 feet south and 300 feet east from the NW corner of section 13, T2N, R4E (NW 1/4 NW 1/4)
County Pennington
5. Counties where water will be used Pennington and Lawrence
6. Annual period during which water is to be used March 15 - October 15
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.
<u>NW 1/4 NW 1/4, SEC 13, T2N, R4E</u>	<u>7</u>
<u>SW 1/4 SW 1/4, SEC 12, T2N, R4E</u>	<u>4</u>

Land Description	No. Acres Irr.

Attach sheet if more space is needed

8. Type of Irrigation: Gravity: _____ Towline: _____ Center Pivot: _____ Gun: _____ Other: water - spreading (Specify)
9. Crops to be Irrigated: Grass and hayland
10. Give a description of proposed project. (Attach sheet if more space is needed)

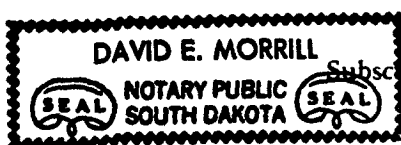
Water is stored in an earth rolled dam with a low level drawdown. The dam has a storage capacity of 2 acre-feet. Water is released from the dam through two culverts, one foot in diameter, into an 800 feet long ditch. The water is spread over the land by spreader dikes.

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 Pennington)
Frank Whitney and
Evelyn M. Whitney, 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 Frank Whitney
Evelyn M. Whitney

15th day of March 1991



Subscribed and sworn to before me this

David E. Morrill

My Commission Expires April 29, 1998

My Commission Expires April 29, 1998

SOUTH DAKOTA

VESTED WATER RIGHT NO. 2168-2 FOR IRRIGATION

Date of Receipt of Claim March 19, 1991.

Date of Validation July 22, 1992.

The Water Management Board validated Vested Water Right Claim No. 2168-2 for irrigation purposes for Evelyn Whitney, 2719 Tomahawk Drive, Rapid City SD 57709-5256 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2168-2 authorizes 0.14 cubic feet of water per second from a storage dam (2 acre-feet capacity) supplied by Jim Creek and springs to irrigate 11 acres. The point of diversion from the dam is located in the NW 1/4 NW 1/4 Section 13-T2N-R4E. The irrigated acreage is located in the NW 1/4 NW 1/4 Section 13; SW 1/4 SW 1/4 Section 12; all in T2N-R4E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: March 15 - October 15.
3. The priority date of the Vested Water Right is January 1, 1900.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Application No. 2168-2 for 0.14 cfs is validated and the applicable portions of Vested Right No. 863-1 incorporated into No. 2168-2 and the abandoned portions of No. 863-1 are cancelled.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER MANAGEMENT BOARD

By: _____

John Hatch
John Hatch, Chief Engineer
Water Rights Division
Dept. of Environment and Natural Resources

NOV 17 1992

date

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2168-2 FOR IRRIGATION

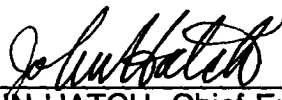
(1) Evelyn Whitney of 2719 Tomahawk Drive, Rapid City, SD 57702-5256, made Application No. 2168-2, March 19, 1991 for validation of a vested right claim to appropriate 0.14 cubic feet of water per second from a storage dam supplied by Jim Creek and springs, Pennington, County, South Dakota, for irrigation purposes (the location of the irrigated acreage is in Lawrence and Pennington Counties). Vested Water Right No. 2168-2 was validated July 22, 1992 with a priority date of January 1, 1900. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

(2) The vested right owner is entitled to divert 0.14 cubic feet of water per second for beneficial use. The location of the diversion point is: 250'S and 300'E of the NW corner of Section 13, T2N, R4E (NW 1/4 NW 1/4)

The location of the irrigated acreage is:

T2N, R4E Section 13 NW 1/4 NW 1/4	7 acres	(Pennington County)
Section 12 SW 1/4 SW 1/4	4 "	(Lawrence County)
TOTAL		11 acres

(3) Pursuant to Section 46-5-30.1 Evelyn Whitney of 2719 Tomahawk Drive, Rapid City, SD 57702-5256 the holder(s) and/or owner(s) of Vested Water Right No. 2168-2 is issued a license to appropriate 0.14 cubic feet of water per second from a storage dam supplied by Jim Creek and springs with a priority date of January 1, 1900 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 2168-2 and subject to South Dakota State Law.

 **NOV 17 1992**

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

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 _____

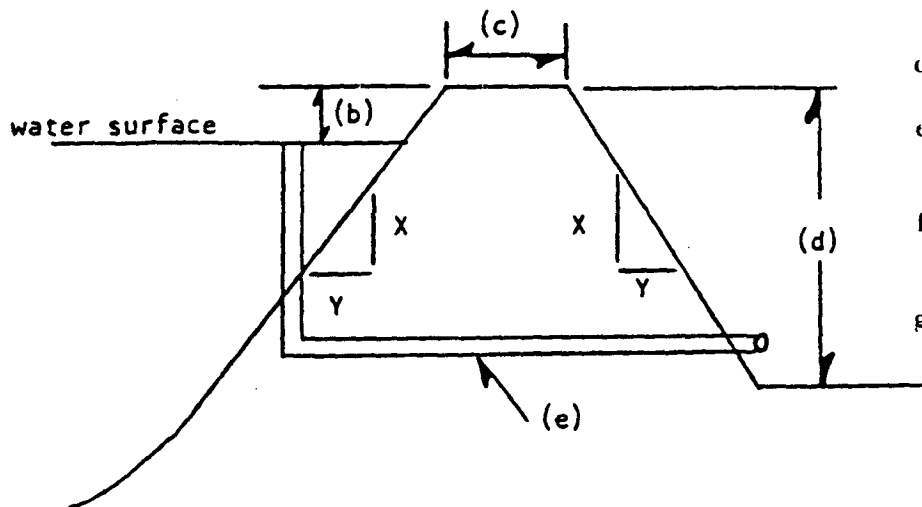
2. Dugout Information Estimates

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

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 3'
- c) Crest Width 10'
- Crest Length 300'
- d) Height 8'
- e) Primary Outlet Capacity 10 cfs
If Pipe, diameter 24 inches
- f) Secondary Spillway Capacity _____
Spillway width two - 1 foot pipes
- g) X & Y Slope
Upstream 3:1
Downstream 2:1
- Surface Area of Impoundment 1 acre
- Storage 2 acre feet
- Drainage area above dam 700 acres

Signature of Applicant _____

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 Frank
Whitney of PO Box 2853, Rapid City, SD 57709 holder of
 Permit No. 863-1, bearing the priority of _____ 1900 authorizing
 the diversion of 0.14 cu. ft. per second of the waters of Jim Creek and Springs
 for irrigation purposes, in Lawrence and Pennington County.

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

A. Works used to divert the water:

Earth rolled dam - low level drawdown
8' high 2' cnp with screwgate
2 acre feed storage

B. Works used to transport water to place of use:

2 - one foot culverts through dam
800' long ditch - water level in dam rises, water flows through culverts
into ditch

C. Works used to apply water to beneficial use:

Spreader dikes

The system is in the following condition good

The point of diversion is located 250' south and 300' East of NW
corner of Section 13 - T2N-R4E, Pennington County

The works are capable of diverting and conveying to the place of use 10 cfscu. ft. per second of water which is to be used for irrigation purposesWater has been put to beneficial use to the maximum extent as follows: All in T2N-R4E

7 acres NW 1/4 NW 1/4 Section 13 - Pennington County

4 acres SW 1/4 SW 1/4 Section 12 Lawrence County

comprising a total of 11 acres of land and the license should be issued for 0.14 cfsApplicable permit qualifications have been complied with ☒ Yes ☐ NoExceptions to compliance are: _____ Date 11/2/1988

LICENSE FOR PERMIT NUMBER 863-1

1. Legal location of wells: _____

dams & structures: 250' S and 300' E of NW corner Section 13-2N-4E

2. Well Information: Well Drilling Firm _____

No. of wells _____ Depth _____

Casing a) diameter _____ Screen a) type _____
b) length _____ b) length _____
c) type _____ Static Water Level _____

Pump a) make _____ Motor a) make _____
b) model _____ b) model no. _____
c) size _____ c) horsepower rating _____
d) capacity _____ GPM d) motor efficiency rating _____
e) turbine pump
no. of stages _____

3. Distribution lines:
a) size of lines _____
b) type _____
c) length _____

4. Dam information:
a) height to crest 8'
b) height to spillway 5'
c) crest width 10'
d) crest length 300'
e) spillway length -
f) spillway width -
g) approx. storage 2 ac. ft.
h) Distribution lines or canals:
1) size 4' width - 2' depth
2) type Earth
3) length 800'

i) Outlet tubes:
1) diameter (1') 2' 2'
2) type CMP CMP
3) valued (Y/N) N Y
4) valve type screwgate
5) location on structure
Right Embankment / middle Embankment

5. System Type: a) sideroll: _____ b) towline: _____
1) length _____ feet 1) length _____ feet
2) diameter of pipe _____ 2) make, model & number of sprinklers _____
3) make, model & number of sprinklers _____ 3) spacing of sprinklers _____
4) spacing of sprinklers _____ 4) nozzle size _____
5) nozzle size _____

5. System Type: c) center pivot

- 1) make _____
- 2) number of towers _____
- 3) distance between towers _____
- 4) overall length _____
- 5) End gun (Y/N) _____
- 6) high or low pressure _____
- 7) make & size of nozzles _____
- 8) PSI reading while system is running _____
- 9) GPM _____

g) Gun

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____
- 6) hose size _____
- 7) hose length _____

d) Gate Pipe

- 1) length _____
- 2) diameter _____
- 3) spacing of gates _____

e) Siphons

- 1) number _____
- 2) size _____

f) Portable boom

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____

h) Hydromatic

- 1) make _____
- 2) model _____
- 3) serial number _____
- 4) length _____
- 5) nozzle size _____
- 6) spacing _____
- 7) PSI _____
- 8) capacity (GPM) _____

YES NO Check Items

- | | |
|---|--|
| <p><u>NA</u> _____</p> <p><u>NA</u> _____</p> <p><u>✓</u> _____</p> | <p>1. Soil and water permit lands agree with lands being irrigated and lands listed on permit.</p> <p>2. Special Qualifications to permit being abided by.</p> <p>3. All Structures, wells and lands on map.</p> |
|---|--|

REMARKS:

Affidavit of Water Use

No. _____

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use already constructed is needed, primarily with vested right claims.

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

Name of Applicant (Same as Form 2) Frank and Evelyn Whitney

Post Office Address P.O. Box 2853 Rapid City, SD 57709-2853
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

Date of recording _____ Recording date _____
Where Book Page

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

C. Date that water was first applied to beneficial use 1900

D. Name of owner of original water supply system _____

E. Amount of water originally applied to beneficial use 0.14 cfs

F. Present Use of Water - Amount of water now being used 0.14 cfs

Date that this water was first used 1900

G. Chronological History of Water Use

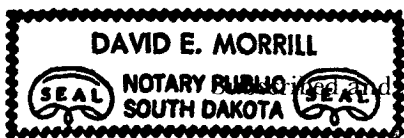
The original dam was replaced by the present dam in May, 1969. An ASCS photo, dated October 8, 1958, shows the original dam. Original dam still exists and functions behind the replacement.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)

County of Pennington) SS

I, Frank Whitney and Evelyn M. Whitney the applicant, certify that I have read the foregoing
(print or type)
and that the matters therein stated are true. M. E. Whitney



Signed John H. Whitney
for me Evelyn M. Whitney
March 15 1991

David L. Maxwell
Notary Public or other qualified officer.
My Commission Expires _____

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein stated are true.

Frank Whitney 3-15 19 91
(Print name)
Evelyn M. Whitney 3-15 19 91
(Print name)
Evelyn M. Whitney



12-10-1946

N

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, March 19, 1961

RECEIVED OF Evelyn M. Whitney, PO Box 2853, Rapid City, SD 57709

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

Fee for Application for Permit No. <u>2168-2</u> to Appropriate Water, to construct works and to put water to beneficial use _____	15	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	15 00

By

Chief Engineer

John Hatch / Jmks



TROUT HAVEN FISHING RESORT

Nemo Route, Deadwood, S. D. 57732 Box 1806
Phone Rapid City, S.D. 605 - 342-6009

Fishing Paradise

LOCATED IN THE CENTER OF THE BLACK HILLS
Sept. 22, 1988



Water Resources Commission
Pierre, South Dakota

Dear Sirs,

My name is Tom C. Simpson. I am the owner and operator of Trout Haven located in Lawrence and Pennington Counties on Jim Creek, 19 miles west of Rapid City on Hwy 385.

I have been open and operating since 1957. My water right numbers are 688-1 and 688-1A

I have 2 complaints about application #863-1 by Frank and Evelyn Whitney for 0.14 CFS dated 1-1-1900 for Jim Creek and Spring. The main complaint is that for at least 20 years before Mr. Whitney owned the land, there was an old washed out dam there with no irrigation ditch. Trout Haven had water rights for approximately 10 years before he even owned the land where the dam was. In approximately 1970 he hired a man (I believe to be Ralph Morris) to rebuild the dam and put in the irrigation ditch. So the date, 1900, is not true.

The second complaint is that some dry years he runs some of the Creek from his dam onto his field which reduces the flow of the creek and eventually reduces the flow to Jim Creek at Trout Haven. In a normal wet year I have no problem with it. But I must oppose Validation of his claim for my own protection.

Water is essential for a trout hatchery and fishing resort.

Sincerely,

Tom C. Simpson
Tom C. Simpson

C.C. Frank & Evelyn Whitney

*Everything Furnished - No License Needed - Fishing Pier
Pier Cafe - Camping - Cottages - Souvenirs - Country Store*

 **Department of
Water & Natural Resources**

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

September 27, 1988

863-1

Frank & Evelyn Whitney
PO Box 2853
Rapid City SD 57709

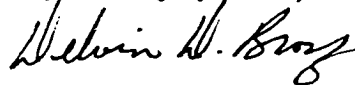
Dear Mr. and Mrs. Whitney:

I am writing in follow-up to the letter received from Tom C. Simpson opposing your vested Water Right Claim No. 863-1.

You and Mr. Simpson will be notified as to the date, place and time of the hearing on vested Water Right Claim No. 863-1. At that time, you and Mr. Simpson will have the opportunity to present evidence as to why the claim should be validated or should be cancelled. If you agree that the claim has been forfeited and can be cancelled, please let us know. A validation hearing will not be necessary if your claim can be noticed for cancellation.

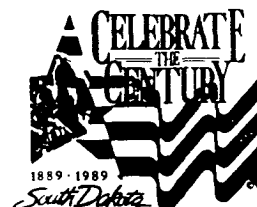
If you have any questions or need additional information, please contact us.

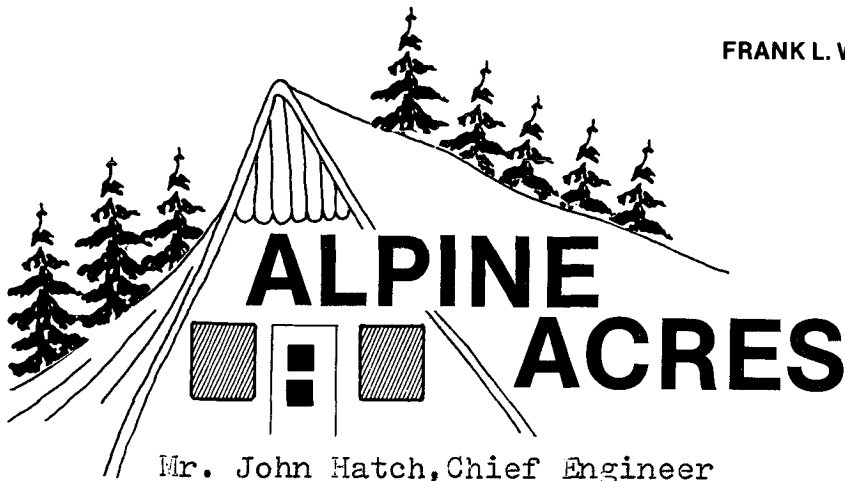
Very truly yours,



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

cc: Tom C. Simpson





FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

September 29, 1988

Mr. John Hatch, Chief Engineer
Water Rights Division
605 773-3352

Dear Sir:

Your letter of September 22nd was appreciated but did raise several questions. Do your records confirm the fact these meadows have been under irrigation since before 1900 ? Aerial photos of 1954 help establish same.

Advance notice of your inspector's visit would be helpful. I would like to share with him our complete records and the very visible dikes, dams, and spreader ditches from pioneer times.

Jim Creek is a small stream but in normal years Brook trout do reproduce here. The primary source is the springs on our land. This summer the flow has come exclusively from them.

Our hay crop for 1988 was the smallest ever! Only the irrigation this spring made it worth cutting. Our nearest fire protection is the Silver City Volunteer Fire Dept., of which we are members. A few days ago both the Chief and his associate were here to check our dam and expressed their appreciation for it.

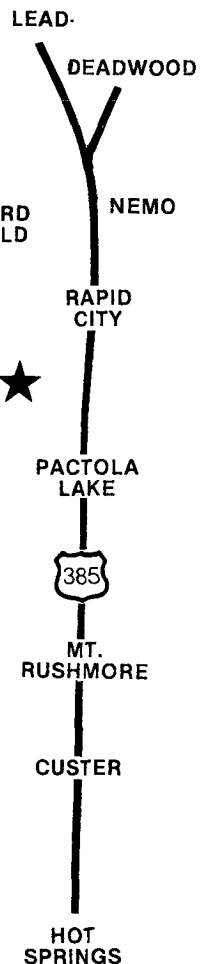
Trust we will hear shortly the date your staff member will be here.

Sincerely,

Frank L. Whitney



**ALPINE
ACRES** ★



"In The Heart of the Hills"



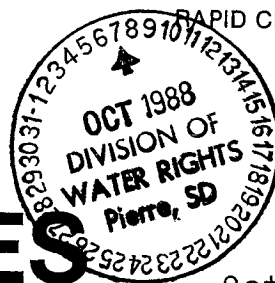
FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853

RAPID CITY, S. DAK. 57709

Telephone 343-8281



October 6, 1988

Mr. Delvin Brosz
Water Rights Division

Dear Sir;

Thanks for your explanation and guidance on the phone Tuesday. As agreed, I am enclosing copies of my records labelled pages 3 and 4. Please note page 4 is a continuation of page 3 with the printed heading "Remarks by the Applicant". Also the underlined reference to the aerial photo from the office of ASCS here in Pennington County.

After our conference with you we took several photos of the old, established channel around the end of the old dam which provided water for flooding of the meadow. Please note in Tom Simpson's letter of Sept. 22, 1988 (a copy of which he sent us) he refers to "no irrigation ditch".

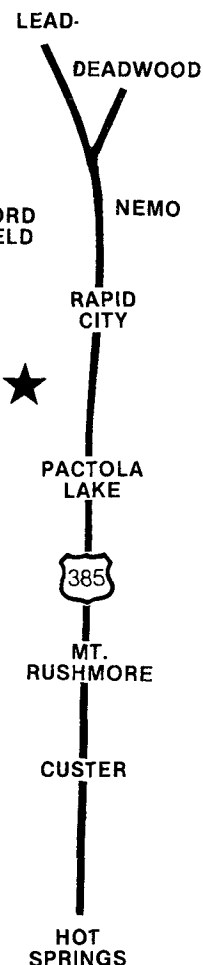
There are several discrepancies in that letter and if he stops to visit, we hope to call his attention to them.

We have had a friendly relationship with Tom and Alta for years and hope to work this out in that same spirit.

Sincerely,

Frank L. Whitney

**ALPINE
ACRES** ★



"In The Heart of the Hills"



FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

October 25, 1988



Mr. Delvin Brosz
Water Rights Division

Dear sir;

Please refer to my letter of Oct. 6th and to Tom Simpson's letter of Sept. 22nd. Tom and I have had a short conference but may need a joint session with one of your staff, here on the grounds. Simpson indicates his operation started in 1957.

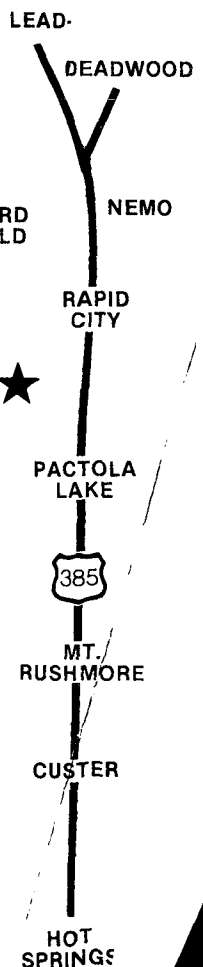
Checking our records I do not understand WHY there can even be a challenge to our VESTED RIGHTS. Please note that both former Executive officers, Joe Grimes and Burton Jones , have their signatures on file granting our rights prior to 1900, and paragraph 6 of said document states " which water was actually and beneficially applied for irrigation on or BEFORE June 30,1955 " Both the present physical structure and film on record in 1954 support our claim.

Simpson is mistaken when he writes that I hired Ralph Morris to rebuild the dam. The Soil Conservation Service hired Ralph Morris and paid two thirds of the cost. It was not to rebuild the dam which is there and has been prior to 1900, but to repair. The original construction had a flood channel around the end of the said dam-- the SCS recommended , and contracted with Morris to replace, the flood channel with a series of spreader ditches. The original channel is clearly visible today.

Sincerely
Frank L. Whitney

A handwritten signature in cursive script that reads 'Frank L. Whitney'.

**ALPINE
ACRES** ★



"In The Heart of the Hills"

*Called him 10-26-88
Told him we would inspect his project.*



FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

Nov. 15, 1988



Mr. Delvin Brosz
Water Rights Division

Dear sir:

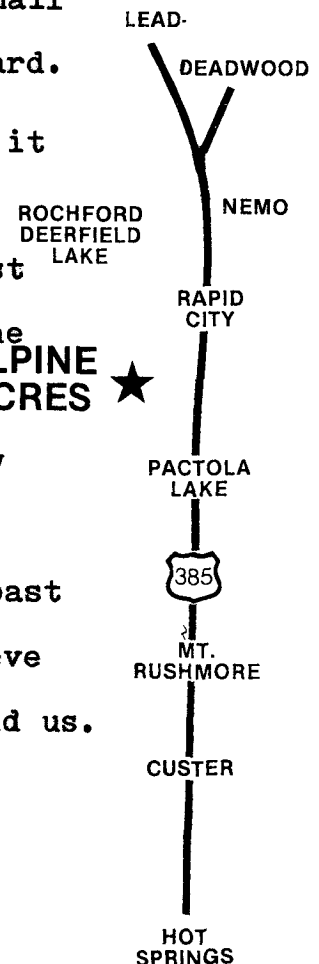
It was a pleasure to meet and check out our rights with your staff member Tim Tollefsrud. He took time to look over our past irrigation experiences and also evidences of long standing past work of this nature.

We are heading South for a couple of months shortly before Thanksgiving. In case you have reason to contact us any mail will be forwarded by our daughter, Mrs. John(Connie) Howard. Our uncertainty has been due to "experience" which makes it clear there is no dependable Jim creek flow above our ranch. Ground water in the nature of Springs supplies most of the normal flow. In the Spring and occasionally in the late summer there is surface run off which supplies the water we use to irrigate the approximate 12 acres we know has been used continuously since well before 1900. I am sure from evidences we shared with Tim there has in the past been at least 40 or 50 acres flood irrigated. I do not believe there needs to be conflict of interest between Simpson and us.

Sincerely,

Frank L. Whitney

"In The Heart of the Hills"



 **Department of
Water & Natural Resources**

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

July 5, 1989

NOTICE

TO: Frank and Evelyn Whitney
PO Box 2853
Rapid City SD 57709

Tom C. Simpson
Nemo Route, Box 1806
Deadwood SD 57732

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



SUBJECT: Validation of Vested Right Claim No. 863-1, Frank and Evelyn Whitney

The Water Management Board will consider Validation of Vested Right Claim No. 863-1 at 10:00 am, July 26, 1989 at the Hilton Inn, Deerfield Room, 445 Mt. Rushmore Road, Rapid City SD. The agenda time is an estimate. The actual time of hearing may be letter than 10:00 am due to prior agenda items.

This hearing is being held because Tom C. Simpson opposes validation of Vested Right Claim No. 863-1. The hearing is an adversary proceeding. Any person having filed a petition and the Vested Right Claim holder 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 the State Supreme Court as provided by law.

The applicable provisions of the Notice of Intent to Validate Vested Water Right Claims published in the Lead Daily Call, Lead SD on June 15 and 22, 1988 will still apply at this hearing.

cc: John Haak, Assistant Attorney General



CERTIFICATION

I hereby certify that on July 5, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Validation of Vested Right Claim No. 863-1 addressed as follows:

Frank and Evelyn Whitney
PO Box 2853
Rapid City SD 57709

Tom C. Simpson
Nemo Route, Box 1806
Deadwood SD 57732

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of July, 1989.



John Hatch
Notary Public

Conversation or File Documentation

NAME OF PERSON OR FILE: Frank & Evelyn WhitneyADDRESS: P.O. Box 2853, Rapid City, SD 57709 COUNTY LawrenceDATE: July 5, 1989 TELEPHONE _____RE: Validation of Vested Right Claim No. 863-1

COMMENTS:

I tried to contact Mr & Mrs Whitney between June 26-28, 1989 to arrange ^{for} an inspection of the claim. I was unable to make contact.

I visited with Tom Simpson about the claim during the afternoon of June 28th. Mr. Simpson stated that the dam for the system had been washed out for many years until Mr. Whitney had it reconstructed in approximately 1970. The original dam was repaired and another dam was constructed immediately downstream from the original dam. Mr. Simpson believes that his Water Right Nos. 688-1 & 688-1A are adversely affected by claim No. 863-1.

Mr. Simpson, Mrs Simpson and I inspected the dams for the claim. Mr & Mrs Whitney were not home. I could not determine from the inspection if irrigation took place from the original dam.

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:

Delwin J. Booz, P.E.
Hydrologist



FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

July 13, 1989



Mr. Delvin Brosz
Water Resources Dept.
Pierre, So.Dak.57501

Dear sir;

It was good to meet with you recently in Pierre.

In line with our phone conversation this morning I am requesting a change in our Board hearing since our attorney will be in Colorado with a previous commitment.

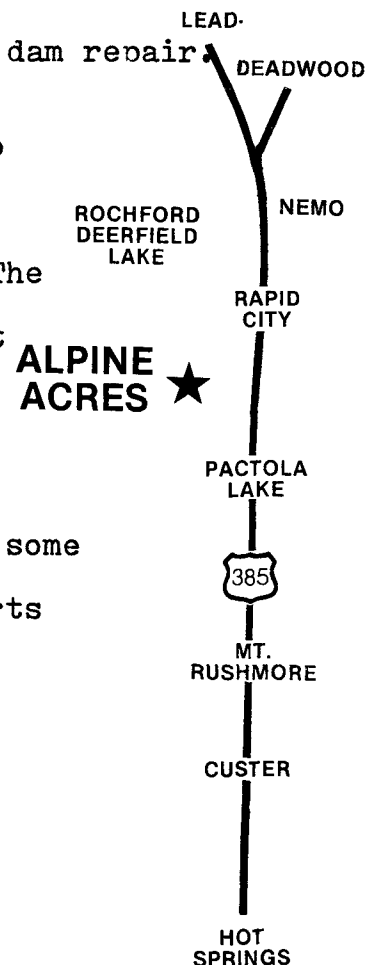
Tomorrow I will get my water records out of the lock box in the bank. Will also check with the Rapid City Journal to see if they have available records of the ^ASCS add for our dam repair.

Without my records today, I remember well at least two mistakes in Tom Simpson's letter opposing our vested rights . First I did not hire the late Ralph Morris. The ^ASCS did. Second the old dam was still functioning, but did need some repairs.

Sorry we were not home when you were here. Tim did an excellent job of checking our entire set-up including some pictures. I had hoped he would have left written reports to indicate his findings and recommendations.

Sincerely,
Frank L. Whitney
Frank L. Whitney

"In The Heart of the Hills"





Department of Water & Natural Resources

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

July 19, 1989

NOTICE

TO: Frank and Evelyn Whitney
PO Box 2853
Rapid City SD 57709

Tom C Simpson
Nemo Route, Box 1806
Deadwood SD 57732

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

James E. Hunter

SUBJECT: Validation of Vested Right Claim No. 863-1, Frank and Evelyn Whitney

At the request of Frank L. Whitney the hearing for validation of Vested Right Claim No. 863-1 has been continued. The hearing by the Water Management Board to consider validation of Vested Right Claim No. 863-1 has been rescheduled for 1:00 pm, September 27, 1989, Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The applicable provisions of the July 5, 1989 notice will still apply at this hearing.

cc: John Haak, Assistant Attorney General



CERTIFICATION

I hereby certify that on July 19, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Validation of Vested Right Claim No. 863-1 addressed as follows:

Frank and Evelyn Whitney
PO Box 2853
Rapid City SD 57709

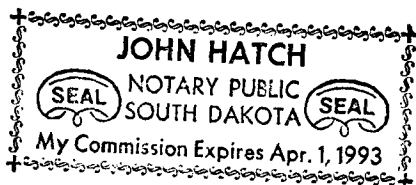
Tom C Simpson
Nemo Route, Box 1806
Deadwood SD 57732

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 20th day of July, 1989.

John Hatch
Notary Public





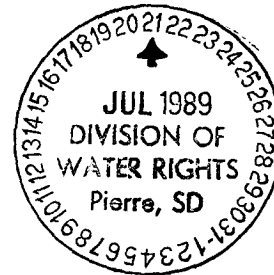
FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

July 20, 1989



Mr. Delvin Brosz
Water Resources Dept.
Pierre, So.Dak. 57501

Dear sir;

Since writing you a week ago we have been checking records and trying to understand why there is any question about our vested water rights.

The physical evidence to support Tom Simpson's claim is not here. He is right that there was no irrigation ditch prior to 1900 but ignores the "floodway" around the south end of the dam. That is still clearly visible and was recorded on film by Tim Tollefsrud of your office on November 2, 1988. We also have copies of same. The ASCS did substitute ditches for the floodway for greater efficiency and less chance to erode or gully.

The old dam dating back before 1900 is still here. After he completed the new dam Ralph Morris did add a culvert through the old dam to prevent further erosion around the old floodway. At present water passes through both the culvert and around the old floodway at south end of dam.

Tom's second complaint is without any physical support. Our present set-up is like the original in that only during flood times is irrigation possible!

The source of water in Jim Creek in normal or dry seasons is the springs on our ranch. The main source of Jim Creek is the Minnesota Ridge Country to the northwest of our place. Those springs feed into Jim Creek below our dams.

Please note Tom's sentence "In a normal wet year I have no problem with it."

We understood Tim to agree there is no physical evidence to support Tom's claim. He suggested a control gate in the original dam similar to that in the ASCS dam would be an improvement. We are agreeable to that.

Sincerely,

Frank L. Whitney
Frank L. Whitney

ALPINE
ACRES ★



"In The Heart of the Hills"



Department of Water & Natural Resources

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

September 6, 1989

NOTICE

TO: Frank and Evelyn Whitney
PO Box 2853
Rapid City SD 57709

Tom C Simpson
Nemo Route, Box 1806
Deadwood SD 57732

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

SUBJECT: Validation Hearing for Vested Right Claim No. 863-1,
Frank and Evelyn Whitney

The validation hearing for Vested Right Claim No. 863-1 scheduled for 1:00 pm, September 27, 1989 in Room 216, Joe Foss Building, 523 E Capitol, Pierre has been continued to a future Water Management Board meeting in March or May, 1990.

The actual date, time and place of the hearing will be provided in a follow-up notice.

cc: Harold Deering



CERTIFICATION

I hereby certify that on September 6, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Validation Hearing for Vested Right Claim No. 863-1 addressed as stated on the notice.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of September, 1989.

John H. Bates
Notary Public









FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

June 25, 1990



Mr. Delvin Brosz
Water Resources Dept.
Pierre, S.D. 57501

It was good to see you on Tuesday - the lush growth did make it difficult to see the old floodway . I will enclose two pictures - - one shows the channel in which we were parked, the second taken from the west in back of the old dam shows the floodway in the upper right.

You saw the old dam dating before 1900 - A little higher than the one major dam completed in 1968 or 1969 . Clearly the original dam was never washed out ; as claimed by The Late Tom Simpson !!

Simson's water right applies to the water which flows around the south end of the dam; that is still true.

Our system does not make it possible to turn water out on our land in dry years.

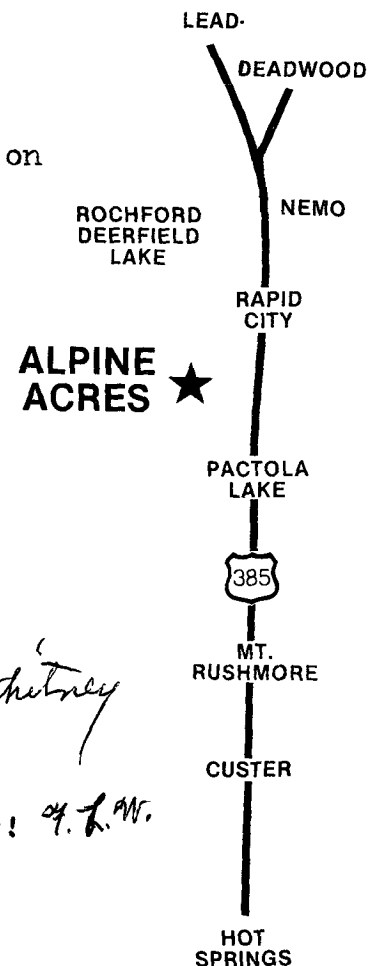
The two dams give all of us - including Simpson's - reservoirs to recharge the underground water which we both depend upon. The costs to us and to the soil conversation service runs into thousands of dollars.

I will enclose a copy of our permit signed by J. W. Grimes. A further record under the signature of Burton Jones shows our vested right prior to 1900 and gives us an irrigation season from March 15 to October 15 .

Sincerely, *Frank L. Whitney*
Frank L. Whitney

P.S. Hope you will give us a phone call if you have any questions not made clear by your records and our letter! *FLW*

"In The Heart of the Hills"



No. 863-1

NO. _____

SOUTH DAKOTA
Water Resources Commission

STATE OFFICE BUILDING
PIERRE, SOUTH DAKOTA
57501

October 1, 1969



Rev. Frank L. Whitney
R.R. #1, Box 114B
Rapid City, S.D. 57701

Dear Rev. Whitney:

Vested Right Permit

Enclosed herewith are, / Water License No. 863-1, Certificate
of Construction, and Receipt No. 4 1137 in the amount of \$10.00
for the fee which you have paid.

Water License No. 863-1 is the final water right document completing your process of obtaining a ^{Vested Right} water right.

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.

Respectfully,

WATER RESOURCES COMMISSION

By:

J.W. GRIMES
Chief Engineer, Executive Officer

JWG/BFJ/bw
Encl: As stated



FRANK L. WHITNEY

EVELYN M. WHITNEY

P.O. BOX 2853
RAPID CITY, S. DAK. 57709

Telephone 343-8281

Nov.1, 1990



Mr. Delvin Btosz
Water Resources Dept.
Pierre, So. Dak. 57501

Dear sir;

We appreciate your phone call and the date of Dec.5-6 is fine with us as we will not head South until after the first of the year. If things are not cleared before that time we see no reason this cannot be carried over until Spring.!

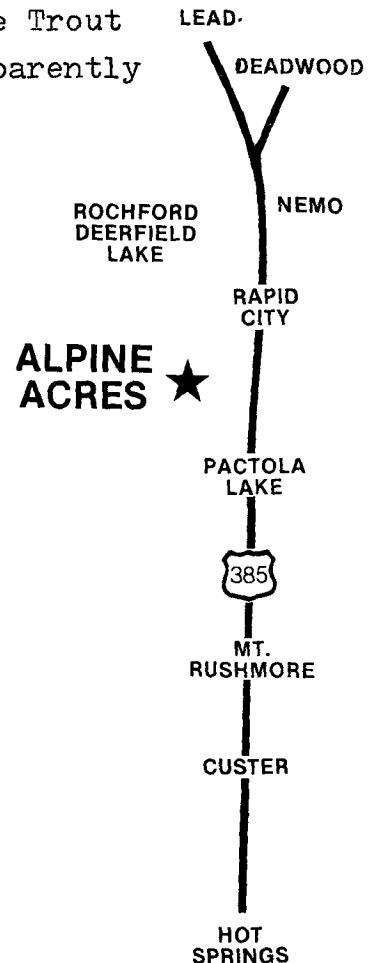
Following your phone call I did try to reach Alta Simpson with no success. The last time I visited with her she was very concerned and upset about the administration of the Trout Haven estate. There is considerable property and apparently more wealth involved than I realized.

Will keep in touch as I learn more.

Sincerely,

A handwritten signature in cursive script that reads "Frank".

Frank L. Whitney



"In The Heart of the Hills"



Department of Water & Natural Resources

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

November 7, 1990

N O T I C E

TO: Frank and Evelyn Whitney
PO Box 2853
Rapid City SD 57709-2853

Alta Simpson
Nemo Route Box 1806
Deadwood SD 57732-9718

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

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

SUBJECT: Validation of Vested Right Claim No. 863-1, Frank and Evelyn Whitney

The Water Management Board will consider Validation of Vested Right Claim No. 863-1 at 9:15 am, December 5, 1990 at the Hilton Inn, Deerfield Room, 445 Mt. Rushmore Road, Rapid City SD. The agenda time is an estimate. The actual time of hearing may be later than 9:15 am due to prior agenda items.

This hearing is being held because Tom C. Simpson opposed validation of Vested Right Claim No. 863-1. The hearing is an adversary proceeding. Any person having filed a petition and the Vested Right Claim holder 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 the State Supreme Court as provided by law.

The applicable provisions of the Notice of Intent to Validate Vested Water Right Claims published in the Lead Daily Call, Lead SD on June 15 and 22, 1988 will still apply at this hearing.

CERTIFICATION

I hereby certify that on November 7, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Validation of Vested Right Claim No. 863-1, addressed as stated below.

Frank and Evelyn Whitney, Box 2853, Rapid City SD 57709-2853
Alta Simpson, Nemo Route Box 1806, Deadwood SD 57732-9718

Marie R. Arthur
Marie R. Arthur
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of November, 1990.



John H. H. H.
Notary Public



Department of Water & Natural Resources

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

November 19, 1990

N O T I C E

TO: Frank and Evelyn Whitney
P O Box 2853
Rapid City, SD 57709-2853

Alta Simpson
Nemo Route, Box 1806
Deadwood, SD 57732-9718

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

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

SUBJECT: Validation Hearing for Vested Right Claim No. 863-1,
Frank and Evelyn Whitney

The validation hearing for Vested Right Claim No. 863-1 scheduled for 9:15 am, December 5, 1990 at the Hilton Inn, Deerfield Room, 445 Mt. Rushmore Road, Rapid City, SD has been continued to a future Water Management Board meeting. The reason for the continuation is because of an error in the June 15 and 22, 1988 publication notice. A corrected notice will need to be published with a new date, time and place of hearing. You will be provided a copy of the corrected publication notice after it has been drafted.

cc: John Haak, Assistant Attorney General

CERTIFICATION

I hereby certify that on November 19, 1990, I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Validation Hearing for Vested Right Claim No. 863-1 addressed as stated on the Notice.

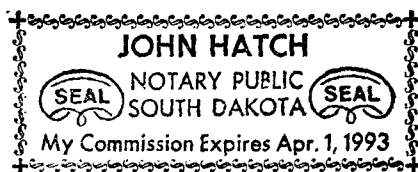
Gaci Konop

JACI KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 21st day of November, 1990.

John Hatch
Notary Public





DEPARTMENT OF WATER & NATURAL RESOURCES

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

March 6, 1991

Frank and Evelyn Whitney
P O Box 2853
Rapid City, SD 57709-2853

Dear Mr and Mrs Whitney:

Enclosed are the forms that I discussed with you on the telephone. Please sign the forms in the presence of a notary and then return them with a \$15.00 fee. The Division of Water Rights will pay the costs of readvertising your claim.

If you have any additional documentation to add to the affidavit of water use, please enclose it with the forms.

As I explained on the telephone, this seems to be the best procedure to follow to correct the error that was discovered in your 1969 filing.

If I can answer any questions, please contact me at telephone no. 773-3352.

Sincerely,

Delvin D. Brosz, PE
Natural Resources Engineer
for John Hatch, Chief Engineer
Division of Water Rights

enclosures

Report on Vested Right Application No. 2168-2
Frank and Evelyn Whitney
April 3, 1991

Application No. 2168-2 requests validation of a vested right claim for the appropriation of 0.14 cubic feet of water per second (cfs) from Jim Creek and springs to irrigate 11 acres. The point of diversion is located in the NW 1/4 NW 1/4, Section 13-T2N-R4E, Pennington County. The irrigated land is located in the NW 1/4 NW 1/4, Section 13, Pennington County and in the SW 1/4 SW 1/4, Section 12, Lawrence County, all in T2N-R4E.

DISCUSSION

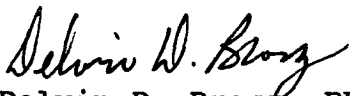
Vested Water Right Claim No. 863-1 was filed on March 21, 1969 and recognized on March 26, 1969 with a claimed priority date of 1900. The claim was noticed for validation, pursuant to SDCL 46-2A-16, in the Lead Daily Call on June 15 and 22, 1988. A downstream water right holder, Mr. Tom Simpson, opposed the validation. Mr. Simpson is now deceased. It was discovered later on that the claim was noticed in Lawrence County and it should have been noticed in Pennington County. Application 2168-2 has been filed to correct this error.

The water spreading system was inspected on November 3, 1988 by Tim Tollefsrud. Mr. Tollefsrud found the system to exist as described. Mr. Whitney claims a dam has existed in this location since 1900. The original dam had a flood channel on the right abutment which Mr. Whitney claims was used to flood irrigate the downstream meadow. The older dam breached during a spring runoff and instead of repairing the older dam, the Soil Conservation Service advised to build a new dam approximately 200 feet downstream. The original dam was also repaired during construction of the new dam. It does not contribute to the present water spreading system.

CONCLUSIONS

1. The project is a water spreading system. It was inspected and found to exist as described.
2. Water has been put to beneficial use since the time that the system was constructed.
3. A priority date of January 1, 1900 should be assigned since the exact date during 1900 for start of construction is unknown.
4. If Vested Water Right Application No. 2168-2 is validated, the applicable portions of Vested Right Claim No. 863-1

should be incorporated into No. 2168-2 and the abandoned portions of Vested Right Claim No. 863-1 cancelled.

A handwritten signature in cursive script, reading "Delvin D. Brosz".

Delvin D. Brosz, PE
Natural Resources Engineer IV

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 2168-2, Frank and Evelyn Whitney

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. 2168-2, Frank and Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709.

The Chief Engineer is recommending VALIDATION of Application No. 2168-2 for 0.14 cfs and that the applicable portions of Vested Right Claim No. 863-1 be incorporated into No. 2168-2 and the abandoned portions of 863-1 be cancelled because 1) water has been appropriated as described for irrigation use with a priority date of January 1, 1900, 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 with the following qualification.

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

See report on application for additional information.

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

JOHN HATCH, Chief Engineer
April 9, 1991



DEPARTMENT OF WATER & NATURAL RESOURCES

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

April 16, 1991

Frank and Evelyn Whitney
PO Box 2853
Rapid City, SD 57709-2853

Dear Mr. & Mrs. Whitney:

The original notice of hearing to validate Vested Water Right Application No. 2168-2 was published in the wrong county. Therefore, the notice of hearing needs to be readvertised to correct the error. A notice of hearing has been sent to the Publisher of the Lead Daily Call printed at Lead, SD and Rapid City Journal, Rapid City, SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the readvertisement are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The cost of publication of these notices will be paid by the Division of Water Rights. Please contact us if you have any questions.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



DEPARTMENT OF WATER & NATURAL RESOURCES

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

April 16, 1991

Lead Daily Call
Box 876
Lead, SD 57754

Enclosed is a Readvertisement of Notice of Hearing To Validate Vested Water Right Application No. 2168-2 to be published twice. Please publish the first notice on April 24, 1991, with the second publication 7 days later.

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

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
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 Readvertisement of Notice of Hearing to Appropriate Water by Permit No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



DEPARTMENT OF WATER & NATURAL RESOURCES

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

April 16, 1991

Rapid City Journal
Box 450
Rapid City, SD 57709

Enclosed is a Readvertisement of Notice of Hearing To Validate Vested Water Right Application No. 2168-2 to be published twice. Please publish the first notice on April 24, 1991, with the second publication 7 days later.

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

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
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 Readvertisement of Notice of Hearing to Appropriate Water by Permit 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 April 24, 1991, with the second publication 7 days later.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 2168-2 to Appropriate Water

Notice is given that Frank and Evelyn Whitney, PO Box 2853, Rapid City, SD 57709-2853 have filed an application to validate a vested right claim to appropriate 0.14 cubic feet of water per second from a storage dam (2 acre-feet capacity) supplied by Jim Creek and springs to irrigate 11 acres with a priority date of 1900. The point of diversion from the dam is located in the NW 1/4 NW 1/4 Section 13-T2N-R4E. The irrigated acreage is located in the NW 1/4 NW 1/4 Section 13; SW 1/4 SW 1/4 Section 12; all in T2N-R4E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2168-2 for 0.14 cfs and that the applicable portions of Vested Right No. 863-1 be incorporated into No. 2168-2 and the abandoned portions of No. 863-1 be cancelled because 1) water has been appropriated as described for irrigation with a priority date of January 1, 1900, 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. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by May 13, 1991. 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 the petitioner's legal counsel, if legal counsel is obtained.

For purposes of publishing 1) the notice of hearing on Application No. 2168-2 and 2) the chief engineer's recommendation, a special Board meeting is scheduled for May 22, 1991, at 9:00 a.m. in Room 413, Joe Foss Building, 523 E Capitol, Pierre, SD. If this application is opposed or the recommendation is contested, the May 22, 1991 hearing date may be rescheduled for another Board meeting. If the hearing is rescheduled, notice of the time and place will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The May 22, 1991 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by May 13, 1991.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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. Contact the Water Rights Division to request copies of information pertaining to this application or to assure access to the hearing by the handicapped.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 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, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22..

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF LAWRENCE)

SS.



Billy T. Masterson, Jr. of said County and State being duly sworn on his oath says: That The LEAD DAILY CALL/DEADWOOD PIONEER-TIMES is a legal daily newspaper of general circulation, printed and published in the City of Lead, in said County and State by Seaton Publishing Company, and has been such a newspaper during the times hereinafter mentioned; and that I, Billy T. Masterson, Jr., the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

L 353 Notice of Hearing To Validate Vested
Water Right Application No 2168-2 In
Appropriate Water

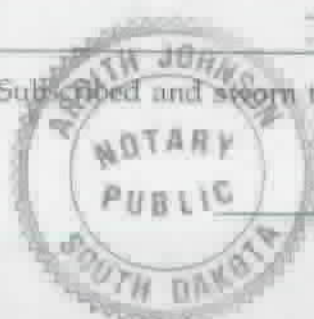
a printed copy of which is hereto attached, was printed and published in said newspaper for two successive and consecutive issues the respective publications thereof being made on April 24 1991 and on May 1 1991

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and the last publication thereof on _____ 19

and that the full amount of fees charged for publishing same, to-wit: the sum of \$59.99, insures solely to the benefit of the publisher and that no arrangement or understanding for a division thereof has been made with any person other than the publisher, and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 1st day of May, 1991



Arvid Johnson
Notary Public, Lawrence County, South Dakota
My commission expires: 10-21-96

NOTICE OF HEARING To Validate Vested Water Right Application No. 2168-2 In Appropriate Water

Notice is given that Frank and Evelyn Whitty, P.O. Box 285, Rapid City, SD 57709-2853 have filed an application to validate a vested right claim to appropriate 0.14 cubic feet of water per second from a storage dam (2 acre-foot capacity) supplied by Iron Creek and springs to irrigate 11 acres with a priority date of 1960. The point of diversion from the dam is located in the NW 1/4 NW 1/4 Section 13 - T2N-R4E. The irrigated acreage is located in the NW 1/4 NW 1/4 Section 13, SW 1/4 & SW 1/4 Section 12, all in T2N-R4E.

Pursuant to SDCL 45-28-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2168-2 for 0.14 cfs and that the applicable portions of Vested Right No. 863-1 be incorporated into No. 2168-2 and the abandoned portions of No. 863-1 be cancelled because 1) water has been appropriated as described for irrigation with a priority date of January 1, 1900, 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. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT A HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The

applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605-775-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by May 15, 1991. 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 the petitioner's legal counsel, if legal counsel is obtained.

For purposes of publishing 1) the notice of hearing in Application No. 2168-2 and 2) the chief engineer's recommendation, a special board meeting is scheduled for May 22, 1991.



at 9:00 a.m. in Room 413, Joe Foss Building, 523 E. Capitol, Pierre, SD. If this application is opposed or the recommendation is contested, the May 22, 1991, hearing date may be rescheduled for another Board meeting. If the hearing is rescheduled, notice of the time and place will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The May 22, 1991, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by May 13, 1991.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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. Contact the Water Rights Division to request copies of information pertaining to this application or to assure access to the hearing by the handicapped.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 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, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:20.

130

L-353

May 1

59.

1. Jerry J. Shoener

being first duly sworn,

upon his oath says: That he is now and was at all times hereinafter mentioned, an employee of the RAPID CITY JOURNAL COMPANY, a corporation, of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said RAPID CITY JOURNAL, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said newspaper once each week

for two successive weeks, the first publication thereof being on the twenty-fourth day of April, 1991, that the fees charged for the publication thereof are one hundred five Dollars and no cents.

James J. Schaner

scribed and sworn to before me this 1st day of

May 19 91

Rory Winkler
Notary Public.

Commission expires April 30, 1999.

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

818 St. Joe Street

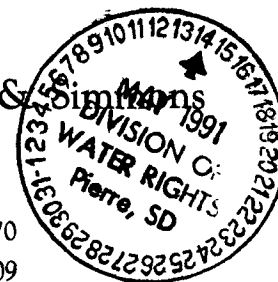
Mailing Address P. O. Box 2670

Rapid City, South Dakota 57709

605-343-1040

Telecopier 605-343-1503

May 13, 1991



George A. Bangs
W. A. McCullen (1943-1987)
Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Ronald E. Clabaugh
Charles L. Riter
Allen G. Nelson
James P. Hurley

Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Rebecca A. McMahon
Patrick K. Duffy
Rodney W. Schlauger
Matthew V. Ressegieu

Recycled Paper



John Hatch, Chief Engineer
SD Dept of Water & Nat'l Resources
Water Rights Division
523 E. Capitol
Joe Foss Building
Pierre, SD 57501-3181

SENT VIA FAX

Re: In the Matter of Vested Water
Right Application No. 21-68-2
to Appropriate Water

Dear Mr. Hatch:

Please find enclosed the original of Alta Simpson's Objection to Vested Water Right Application No. 2168-2 and Vested Water Right No. 863-1 relative to the above matter. I have by a copy of this letter sent a copy of our Objection to Frank and Evelyn Whitney. This is intended as service by mail upon them.

If you have any questions or comments, please do not hesitate to contact me. Thank you.

Sincerely,

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

Michael M. Hickey
Michael M. Hickey

MMH/dcc

Enclosure

cc: Frank and Evelyn Whitney
Alta Simpson

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

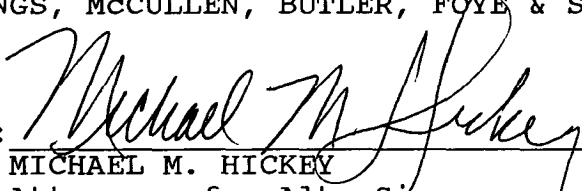


IN THE MATTER OF VALIDATION)
HEARING TO VALIDATE VESTED) **OBJECTION TO VESTED WATER RIGHT**
WATER RIGHT APPLICATION NO.) **APPLICATION NO. 2168-2 AND**
2168-2 TO APPROPRIATE WATER.) **VESTED WATER RIGHT NO. 863-1**

Comes now Alta Simpson of Nemo Route, Box 1806, Deadwood, South Dakota, and by and through her undersigned counsel hereby files an objection and protest to the validation of Vested Water Right Application No. 2168-2 and applicable portions of Vested Water Right No. 863-1 on the grounds and for the reasons (1) that said water right unlawfully impairs existing water rights; (2) that said water right was earlier abandoned and not used in accordance with South Dakota law and accordingly and it not entitled to a priority date of January 1, 1990; and (3) that validation of the vested claim would unlawfully impair domestic rights.

Dated this 13th day of May, 1991.

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

BY: 

MICHAEL M. HICKEY
Attorneys for Alta Simpson
818 St. Joseph Street; P.O. Box 2670
Rapid City, SD 57709
(605) 343-1040

CERTIFICATE OF SERVICE

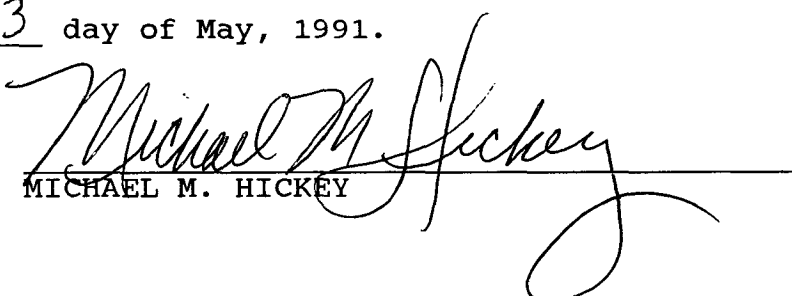
The undersigned hereby certifies that he served copies of this legal document upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

Mr. John Hatch, Chief Engineer
SD Dept of Water & Nat'l Resources
Water Rights Division
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Frank and Evelyn Whitney
P.O. Box 2853
Rapid City, SD 57709-2853

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 13 day of May, 1991.


MICHAEL M. HICKEY

South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 16, 1991

NOTICE

TO: Frank and Evelyn Whitney
PO Box 2853
Rapid City, SD 57702-2853
and Parties of Record (see attached list)

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

SUBJECT: Vested Water Right Application No. 2168-2

A petition on Vested Water Right Application No. 2168-2 has been filed by Michael Hickey, attorney representing Alta Simpson. The hearing before the Water Management Board will no longer be held on May 22, 1991.

The Water Management Board will now consider Application No. 2168-2 on July 24, 1991 at 9:00 am in the Kneip Room, Governor's Inn, 700 West Sioux Ave., Pierre, SD 57501. The agenda time is an estimate. The actual time of hearing may be later than 9:00 am due to prior agenda items. Applicable provisions of the Notice of Hearing published April 24, 1991 and May 1, 1991 in the Lead Daily Call and Rapid City Journal will still apply at this hearing.

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 State Supreme Court as provided by law.

cc: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 16, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Vested Water Right Application No. 2168-2 addressed:

Frank and Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57702-2853.

Parties of Interest as follows:

Michael Hickey, Bangs, McCullen, Butler, Foye & Simmons, P.O. Box 2670, Rapid City, SD 57709.

Alta Simpson, Nemo Rt., Box 1806, Deadwood, SD 57732-9718.

Copy interofficed to:

Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 20th day of May, 1991.

John Hatch
Notary Public

LAW OFFICES
MORRILL BROWN & THOMAS

625 NINTH STREET - 8TH FLOOR

P. O. Box 8108

RAPID CITY, SOUTH DAKOTA 57709-8108

DAVID E. MORRILL
PORTIA K. BROWN
TIMOTHY L. THOMAS
JOHN K. NOONEY



TELEPHONE
(605) 348-7516

FAX
(605) 348-5852

July 9, 1991

John Hatch, Chief Engineer
South Dakota Department of
Water and Natural Resources
Water Rights Division
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181

Re: In the Matter of the Validation Hearing to
Validate Vested Water Right Application No. 2168-2
to Appropriate Water
Frank and Evelyn Whitney

Dear Mr. Hatch:

I represent Frank and Evelyn Whitney of this city.

Frank Whitney is in very ill health at this time and will not be able to appear at the Water Management Board meeting which is scheduled this month.

Reverend Whitney is very concerned about objections filed by Alta Simpson to the validation of his water right and desires to be personally present at that hearing and to make sure that all of the facts are known in this case.

In rescheduling this matter before the Board, it also would certainly be helpful if the dispute could be scheduled before a Board meeting at Rapid City, South Dakota. Both as a matter of health and cost, it would be very helpful to the Whitneys to be able to cause the proper appearance to be made before a meeting at Rapid City rather than at Pierre. We would appreciate any considerations along that manner.

In any event, on behalf of Frank and Evelyn Whitney, I do hereby respectfully request that the hearing on the above-entitled matter be continued to a later date and preferably to a meeting to be held at Rapid City, South Dakota.

John Hatch
Page 2
July 9, 1991



No adverse results would come from such a continuance. Although Whitneys claim that the small amount of spread irrigation conducted by them never did affect an adequate water supply for the trout tourist attraction, certainly in light of this year's rain, no one can be seriously concerned about an adequate water supply at this time. A continuance should not be harmful to anyone; and in fact, if the hearing is set in Rapid City, it would also be more convenient for Alta Simpson and/or her attorney to appear.

Sincerely,

David E. Morrill

DEM:br
cc Rev. and Mrs. Frank Whitney
Michael M. Hickey, Esq.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 12, 1991

NOTICE

TO: Frank & Evelyn Whitney
PO Box 2853
Rapid City, SD 57709-2853
and Parties of Record (see attached list)

FROM: *for* John Hatch, Chief Engineer *Helvin D. Bragg*
Water Rights Division
605 773-3352

SUBJECT: Continuance of Hearing on Vested Water Right Application NO.
2168-2

Pursuant to the July 9, 1991, written request for continuance from David E. Morrill, attorney representing Frank & Evelyn Whitney, the Water Management Board will NOT consider Vested Water Right Application No. 2168-2 at the July 24, 1991 Board meeting.

The Water Management Board will now consider Application No. 2168-2 at their October 2 & 3, 1991 meeting. Notice of the rescheduled date, time, and location of the hearing on this application will be given to all parties in August.

cc: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on July 12, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Continuance of Hearing on Vested Water Right Application No. 2168-2 addressed as stated below:

Frank and Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709-2853.

David Morrill, Morrill, Brown & Thomas, 625 Ninth St., 8th Floor, P.O. Box 8108, Rapid City, SD 57709-8108.

Michael Hickey, Bangs, McCullen, Butler, Foye & Simmons, P.O. Box
2670, Rapid City, SD 57709.

Alta Simpson, Nemo Rt., Box 1806, Deadwood, SD 57732-9718.

Sent Inter-office To:

Diane Best, Assistant Attorney General, Capitol Building.

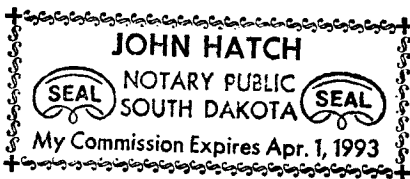
Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16 day of July, 1991.

John Hatch
Notary Public



(date)

page

Parties of Record before Water Management Board

Vested Right Application No. 2168-2, Frank & Evelyn
Whitney

Frank & Evelyn Whitney

P.O. Box 2853

Rapid City, SD 57709-2853

Attorney:

David Morrill Thomas

Morrill, Brown & Thomas

625 Ninth St. - 8th Floor

P.O. Box 8108

Rapid City, SD 57709-8108

Opposition

Attorney:

Michael Hickey

Bangs, McCullen, Butler, Foye & Simmons

P.O. Box 2670

Rapid City, SD 57709

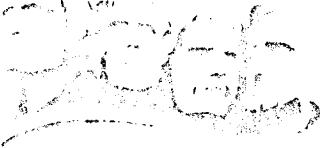
Representing:

Alta Simpson

Nemo Route, Box 1806

Deadwood, SD 57732-9718

South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 27, 1991

NOTICE

TO: Evelyn Whitney
P.O. Box 2853
Rapid City, SD 57709-2853

Alta Simpson
Nemo Route Box 1806
Deadwood, SD 57732-9718

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

SUBJECT: Continuance of Hearing on Vested Water Right Application No.
2168-2, Evelyn Whitney

The Water Management Board will not consider Application No. 2168-2 at their October 1 & 2, 1991 meeting. The October 1 & 2, 1991 Board meeting is to be held in Sioux Falls and due to the travel distance for all parties, this application will remain in continued status until the December 4 & 5, 1991 Board meeting in Pierre SD.

Notice of the rescheduled date, time and location of the hearing on this application will be given to all parties a month prior to the December Board meeting.

cc: Diane Best, Assistant Attorney General
Michael M. Hickey, Attorney
David E. Morrill, Attorney

CERTIFICATION

I hereby certify that on August 27, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Continuance of Hearing on Vested Water Right Application No. 2168-2 addressed as stated below:

Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709-2853.

Alta Simpson, Nemo Route, Box 1806, Deadwood, SD 57732-9718.

Michael M. Hickey, Attorney, Bangs, McCullen, Butler, Foye & Simmons,
P.O. Box 2670, Rapid City, SD 57709.

David E. Morrill, Attorney, Morrill, Brown & Thomas, P.O. Box 8108,
Rapid City, SD 57709-8108.

Sent Inter-office To:

Diane Best, Assistant Attorney General, Capitol Building.

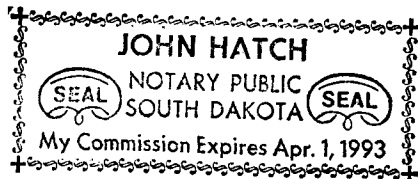
Cheryl F. Frost

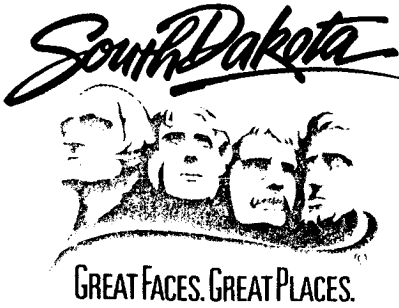
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th 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

October 22, 1991

NOTICE

TO: Evelyn Whitney
P.O. Box 2853
Rapid City, SD 57709-2853

Alta Simpson
Nemo Route Box 1806
Deadwood, SD 57732-9718

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

SUBJECT: Rescheduling of Hearing on Vested Water Right Application
No. 2168-2, Evelyn Whitney

The Water Management Board will consider Water Permit Application No. 2168-2 on December 4, 1991 at 2:00 pm in the Kneip Room, Governor's Inn, 700 West Sioux Ave., Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. This application was continued from the October 1, 1991 Board meeting.

Applicable provisions of the notice of hearing published April 24, 1991 and May 1, 1991 in the Lead Daily Call and Rapid City Journal will still apply at this hearing.

If you have any questions regarding the location of the Board meeting or the water permit application, please contact Eric Gronlund at 773-3352.

cc: Diane Best, Assistant Attorney General
Michael M. Hickey, Attorney
David E. Morrill, Attorney

CERTIFICATION

I hereby certify that on October 22, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Rescheduling of Hearing on Vested Water Right Application No. 2168-2, Evelyn Whitney addressed as stated below:

Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709-2853.

Alta Simpson, Nemo Route, Box 1806, Deadwood, SD 57732-9718.

Michael M. Hickey, Attorney, Bangs, McCullen, Butler, Foye & Simmons,
P.O. Box 2670, Rapid City, SD 57709.

David E. Morrill, Attorney, Morrill, Brown & Thomas, P.O. Box 8108,
Rapid City, SD 57709-8108.

Sent Inter-office To:

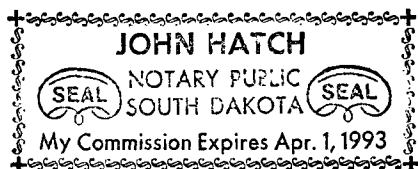
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 23rd day of October, 1991.



John Hatch
Notary Public

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

George A. Bangs
W. A. McCullen (1943-1987)
Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Ronald E. Clabaugh
Charles L. Riter
Allen G. Nelson
James P. Hurley

818 St. Joe Street
Mailing Address P. O. Box 2670
Rapid City, South Dakota 57709
605-343-1040
Telecopier 605-343-1503

Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Rebecca A. McMahon
Patrick K. Duffy
Rodney W. Schlauger
Matthew V. Ressegieu

October 29, 1991

Recycled Paper 

Mr. John Hatch, Chief Engineer
SD Dept of Water and Nat'l Resources
Water Rights Division
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501-3181



Re: Vested Water Right Application
No. 2168-2, Evelyn Whitney

Dear Mr. Hatch:

After receiving the latest Notice setting the hearing in the above matter for December 4, 1991, at 2:00 p.m., I wrote to David Morrill, attorney for Evelyn Whitney and requested that the matter be continued as my client, Alta Simpson, will be out of the state during that time. Mr. Morrill indicated that Mrs. Whitney had no objection to a continuance. Since Ms. Simpson will be gone until approximately April 1992, I would request that the above matter be rescheduled sometime after April 1, 1992.

If you have any questions or comments, please do not hesitate to contact me. Thank you for your consideration of this request.

Sincerely,

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS



Michael M. Hickey

MMH/dcc

cc: David E. Morrill
client



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 8, 1991

NOTICE

TO: Evelyn Whitney
P.O. Box 2853
Rapid City, SD 57709-2853

Alta Simpson
Nemo Route, Box 1806
Deadwood, SD 57732-9718

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

SUBJECT: Continuance of Hearing on Vested Water Right Application No.
2168-2, Evelyn Whitney

The Water Management Board will not consider Application NO. 2168-2 at their meeting on December 4, 1991. This continuance is granted based on the request by Michael Hickey, attorney representing Alta Simpson, and agreed upon by David Morrill, attorney representing Evelyn Whitney.

The hearing will be scheduled for the Board's spring meeting which is tentatively scheduled for May 6 and 7, 1991. Notice of the rescheduled date, time and location of the hearing on this application will be given to all parties a month prior to the spring Board meeting.

cc: Diane Best, Assistant Attorney General
Michael M. Hickey, Attorney
David E. Morrill, Attorney

CERTIFICATION

I hereby certify that on November 8, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Continuance of Hearing on Vested Water Right Application No. 2168-2, Evelyn Whitney addressed as stated below:

Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709-2853.

Alta Simpson, Nemo Route, Box 1806, Deadwood, SD 57732-9718.

Michael M. Hickey, Attorney, bangs, McCullen, Butler, Foye & Simmons,
P.O. Box 2670, Rapid City, SD 57709.

David E. Morrill, Attorney, Morrill, Brown & Thomas, 625 Ninth St.,
8th Floor, P.O. Box 1808, Rapid City, SD 57709-8108.

Sent Inter-office To:

Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of November, 1991.

John P. Hatch
Notary Public





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 1, 1992

NOTICE

TO: Evelyn Whitney
P.O. Box 2853
Rapid City, SD 57709-2853

Alta Simpson
Nemo Route Box 1806
Deadwood, SD 57732-9718

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

SUBJECT: Rescheduling of Hearing on Vested Water Right Application
No. 2168-2, Evelyn Whitney

The Water Management Board will consider Vested Water Right Application No. 2168-2, on May 6, 1992 at 1:30 pm in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Ave., Pierre, SD 57501. The agenda time is an estimate and may be delayed due to prior agenda items. This application was continued from the October 1, 1991 and December 4, 1991 Board meeting.

Applicable provisions of the notice of hearing published April 24, 1991 and May 1, 1991 in the Lead Daily Call and Rapid City Journal will still apply at this hearing.

If you have any questions regarding the location of the Board meeting or the water permit application, please contact Eric Gronlund at 773-3352.

cc: Diane Best, Assistant Attorney General
Michael Hickey, Attorney
David E. Morrill, Attorney

CERTIFICATION

I hereby certify that on April 1, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 1, 1992, regarding Rescheduling of Hearing on Vested Water Right Application No. 2168-2, Evelyn Whitney addressed as stated below:

Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709-2853.

Alta Simpson, Nemo Route, Box 1806, Deadwood, SD 57732-9718.

Michael Hickey, Attorney, Bangs, McCullen, Butler, Foye & Simmons,
P.O. Box 2670, Rapid City, SD 57709.

David E. Morrill, Attorney, Morrill, Brown & Thomas, 625 Ninth St.,
8th Floor, P.O. Box 1808, Rapid City, SD 57709-8108.

Sent Inter-Office To:

Diane Best, Assistant Attorney General, Capitol Building.

Cheryl A. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of April, 1992.

John Hatch
Notary Public



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 8, 1992

NOTICE

TO: Evelyn Whitney
PO Box 2853
Rapid City, SD 57709-2853
and Parties of Record (see attached list)

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

SUBJ: Preparation of Findings of Fact, Conclusions of Law and
Final Decision

The Water Management Board has directed John Guhin, The Board's attorney to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision on Validation of Vested Water Right Application No. 2168-2. The Board will consider the proposed Findings, Conclusions and Final Decision at 8:45 am, July 22, 1992, American Legion, Main Street, Martin, SD.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record and their attorneys (copy enclosed) by July 2, 1992. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by July 13, 1992.

The public hearing was completed May 6, 1992. No additional testimony will be received on July 22, 1992.

cc: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 8, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 8, 1992, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision on Vested Water Right Application No. 2168-2, and a copy of the Parties of Record addressed as stated below:

Evelyn Whitney, P.O. Box 2853, Rapid City, SD 57709-2853.

Tim Thomas, Morrill, Brown & Thomas, 625 Ninth St., 8th Floor,
P.O. Box 8108, Rapid City, SD 57709-8108.

Michael Hickey, Bangs, McCullen, Butler, Foye & Simmons, P.O. Box
2670, Rapid City, SD 57709.

Alta Simpson Klooz, Nemo Route, Box 1806, Deadwood, SD 57732-9718.

Hand Delivered To:

John Guhin, Deputy Attorney General, Capitol Building.

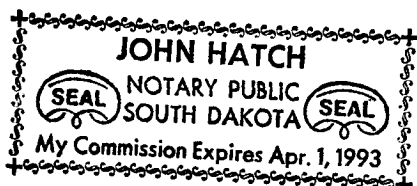
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of May, 1992.



John H. Bates
Notary Public



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 1, 1992

NOTICE

TO: Evelyn Whitney
PO Box 2853
Rapid City, SD 57709-2853
and Parties of Record (see attached list)

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

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and
Final Decision

This is to notify you that a Final Decision, including Findings of Fact and Conclusions of Law, was adopted by the Water Management Board for Validation of Vested Water Right Application No. 2168-2 at the July 22, 1992, meeting.

A copy of the signed final Decision, Findings and Conclusions is enclosed for the applicant. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that decisions of the Board may be appealed to the Courts.

cc: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 1, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated September 1, 1992, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision for Validation of Vested Water Right Application No. 2168-2 addressed to:

Evelyn Whitney
PO Box 2853
Rapid City, SD 57709-2853

and Parties of Record (as shown on the attached list)

A copy of the Notice was sent through inter-office mail to:

John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

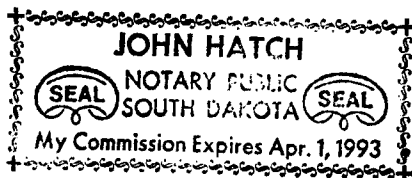
Jaci R Konop

JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of September, 1992.

John Hatch
Notary Public



South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 4, 1992

Michael Hickey
BANGS, McCULLEN, BUTLER, FOYE & SIMMONS
PO Box 2670
Rapid City, SD 57709-2670

RE: Vested Water Right Application No. 2168-2, Evelyn Whitney

Dear Mr. Hickey:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law and Final Decision in regard to the above-referenced matter.

Sincerely,

Jaci R Konop

Jaci R Konop
Senior Secretary
Division of Water Rights

/jrk

Enclosure

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE VALIDATION	) FINDINGS OF FACT
OF VESTED WATER RIGHT APPLICATION	) CONCLUSION OF LAW
NO. 2168-2.	) AND FINAL DECISION

FINDINGS OF FACT

I

This is an application to validate a vested right claim for the appropriation of .14 cfs of water from "Jim Creek and springs" to irrigate 11 acres. The point of diversion is located in Pennington County; the irrigated land is located in Pennington and Lawrence County.

II

Vested water right claim number 863-1 was filed by Frank and Evelyn Whitney on March 21, 1969, and was recognized on March 26, 1969, with a claimed priority date of 1900. No hearing was held at that time.

III

Pursuant to statute, the previous claim was later noticed for validation pursuant to SDCL 46-2A-16 in the Lead Daily Call in Lawrence County. The publication was erroneous and should have occurred in Pennington County.

IV

The present Application No. 2168-2 has been filed to correct the error in publication.

V

The applicant has demonstrated, to the satisfaction of the Board, that the water right sought to be

validated has been continuously used since 1900. The following facts support this finding. First, Mr. Whitney, who is now deceased, in a document filed with the Department under oath, stated that the testimony of older residents indicated that the "dam and water spreading arrangement dates back to at least 1900." Second, Mr. Whitney, in his statement, referred to a ASCS map dated October 8, 1954, which apparently indicated the existence of a dam at the site claimed. Third, the area in question was granted a homestead patent in 1910; it may reasonably be implied that the party gaining a patent had entered the area at a date earlier than 1910.

VI

The Board credits the deposition of Shirley Astleford to the effect that a dam was in existence when Ms. Astleford's family came into possession of the property in 1964. The dam was at this point in place and held water to the extent that it was available for fishing. This indicates that it was a viable operating dam.

VII

The Board also credits the testimony of Mrs. Whitney who testified that when she and her husband took over the property in 1968, the dam was not washed out although it did need repair. The Board also finds it significant that although the dam was subject to repairs in

1969, no protest to use of water was made until the late 1980s.

VIII

The original water license issued in 1969 recognized that approximately twelve acres were irrigated under the claim. Ms. Astleford in her deposition indicated that from the period of approximately 1964 to 1968 the size of the area irrigated may have been increased. She first testified that she could not tell "whether he [her father] increased it very much." She then stated that she could not say that the area had been doubled but that "it probably was about a third." The Board reconciles these matters by reducing the amount claimed under water license 863-1 from twelve to eleven acres.

IX

The Board finds that the use in question has been developed without unlawful impairment of existing rights. No effect has been alleged on any water right except that of the Simpsons. The Simpsons right, however, has a priority date later than that of the water right in question. Moreover, the Board finds the admission of Mr. Simpson that the creek "runs only in wet years" and "goes underground before" it reaches his property to be dispositive of the issue of whether the impoundment of the applicant harms the Simpsons. The Board finds that the difficulties of the

Simpsons are caused by the hydrology of the area and not by the applicant's activities.

IX

The use of water for irrigation of hay is a beneficial use, and is in the public interest.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. The amount of water provided for in the Final Decision has been continuously appropriated for irrigation use since the claimed priority date.
3. The use has been developed without unlawful impairment of existing rights.
4. The use of irrigation has been and is a beneficial use.
5. The assignment of a January 1, 1900, priority date is reasonable given the sworn statement of the now deceased applicant that the dam had been in existence before 1900.
6. The use is in the public interest as qualified in the Final Decision.

FINAL DECISION

1. Application No. 2168-2 for 0.14 cfs is validated and the applicable portions of vested right claim No. 863-1 incorporated into No. 2168-2 and the abandoned portions of No. 863-1 are cancelled.

2. This validation is subject to the following qualification: Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

Dated this 26th day of August, 1992.

BY THE BOARD:

Francis E. Brink
Chairman

m-pld50.jpg



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOV 17 1992

2168-2

Evelyn Whitney
2719 Tomahawk Drive
Rapid City, SD 57702-5256

Dear Ms. Whitney:

Enclosed are your Validated Vested Water Right and Water License No. 2168-2. 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

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 2168-2

Date: Aug 25, 1997

I/We request that Vested Water Right No. 2168-2

formerly owned by: Evelyn Whitney, 2719 Tomahawk Drive, Rapid City, SD 57702-5256

be transferred to: (name & address) James F. & Christine A. Lawler
13084 385th Ave, Aberdeen, S.D 57401 Telephone No. 605 226 1126

Title to the following described land(s)/property has been transferred as described above:

11 acres - NW¼ NW¼ Section 13, T2N, R4E (Pennington County) and SW¼ SW¼ Section 12, T2N, R4E (Lawrence County)

I/We understand that the validity of Vested Water Right No. 2168-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

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

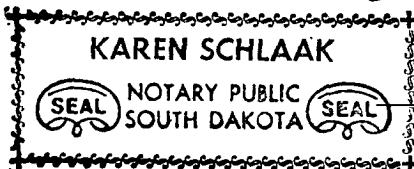
STATE OF SOUTH DAKOTA)

County of Hughes)

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

[Signature]
(Signed)

Subscribed and sworn to before me this 25th day of August, 19 97.



Karen Schlaack
(Notary Public)
KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

Division of Water Rights

South Dakota Department of Environment and Natural Resources

415451

Pierre, _____ August 25, 19 97

RECEIVED OF James F. & Christine A. Lawler, 13084 385th Ave., Aberdeen, SD 57401

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>Vested water Right No. 2168-2</u>	2	50
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	2 50

By John Hatch
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 11, 1997

No. 2168-2

James F. and Christine A. Lawler
13084 385th Ave.
Aberdeen, SD 57401

Dear Mr. and Ms. Lawler:

Enclosed is a receipt in the amount of \$2.50 which you paid for the transfer of Water Right No. 2168-2.

Our records now show you as the owner of Water Right No. 2168-2.

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Program
(605) 773-3352

enclosure