

WATER PERMIT NO. 2479-2

Name of Applicant: Lone Tree Ditch

Address: 15605 Antelope Creek Rd, Rapid City SD 57703

Phone: 605 393-0223

Amount of Water Claimed: 15.0 cfs

Total Acres: 333

Source of Water Supply: Rapid Creek

Water to be used for: irrigation

County: Pennington

Type of Waste Disposal System:

Location:

PRIORITY

Date Received: 2-28-2002

Fee: \$15

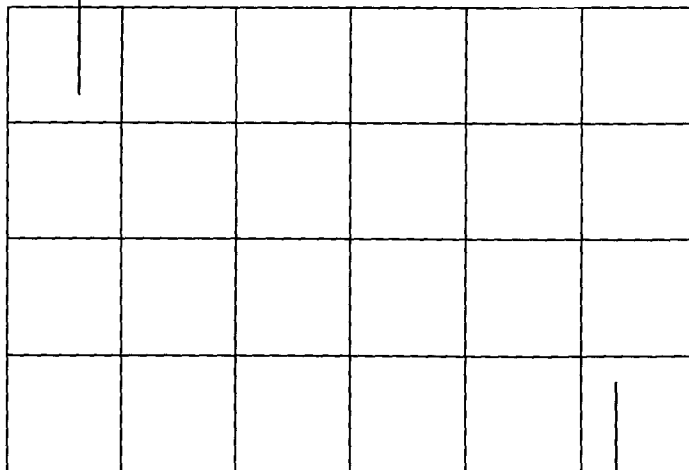
Corrected Application Received: 3-6-2002

Period of Annual Use: May 1 – October 31

Remarks: claimed priority date of September 29, 1881

Diversion Point: NE ¼ NE ¼ Sec 30-T1N-R9E

Land to be Irrigated: NE ¼, N ½ SE ¼ Sec 33,
NW ¼, N ½ SW ¼, NE ¼ Sec 34, S ½ SW ¼, S ½
SE ¼, Sec 27; all in T1N-R9E



Depth of Well: NA

Well Driller: : NA

Remarks:

Type of Map: plat

Prepared by: Mark Rath

Reviewed and the Number Assigned on: 3-6-2002

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA

VESTED WATER RIGHT NO. 2479-2 FOR IRRIGATION

Date of Receipt of Claim September 25, 2002.

Date of Validation October 2, 2002.

The Chief Engineer, on behalf of the Water Management Board validated Vested Water Right Claim No. 2479-2 for Lone Tree Ditch, 15606 Antelope Creek Rd, Rapid City SD 57703 irrigation purposes for with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2479-2 authorizes irrigation of an additional 333 acres located in the S ½ NE ¼, N ½ SE ¼ Section 33; NW ¼, N ½ SW ¼, N ½ NE ¼, SE ¼ NE ¼ Section 34 and S ½ SW ¼, S ½ SE ¼ Section 27; all in T1N-R9E. The land is owned by Mark and Pam Kieffer. Validation of this vested water right claim does not increase in the 15.0 cfs diversion rate from Rapid Creek for the Lone Tree Ditch but increases in the number of authorized acres for the ditch company.
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: May 1 – October 31.
3. The priority date of the Vested Water Right is September 29, 1881.
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 must not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Incorporated Vested Water Right No. 2479-2 is subject to domestic use rights. Diversion of natural flow water under this vested right is contingent upon supplies being available first to domestic uses.
2. That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

APR 17 2003

date



FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2479-2</u>	(office use only) Hydrologic Unit <u>10120110</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Rapid City Journal</u>	

RECEIVED
FEB 28 2002
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: New ☒ Vested Right ☐ Amendment/Correction to Permit No. 2038-2
(Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)
Reinstatement of omitted acreage and correction of records.

- Name of Applicant Lone Tree Ditch Phone 605 393-0223
(check one) ☒ Owner ☐ Tenant/lessee
- Mailing Address 15605 Antelope Creek Rd Rapid City State SD 57703
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 15 *CFS or 2 **GPM No add ***AF Total Acreage 333
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Rapid Creek
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) 1230 Feet S 64° W From
The NE corner of Section 30, T1N, R9E (NE 1/4 NE 1/4)
County Pennington
- County or counties where water will be used Pennington
- Annual period during which water is to be used May 1 through October 31
- List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
(ATTACHED SHEETS)			

8. Give a description of the project. (Attach sheet if more space is needed) (ATTACHMENTS INCLUDED)
This is an older, well established Irrigation system.
Some acreages were omitted during a map update in the mid 1980's
This is a request for a reinstatement of these acres.

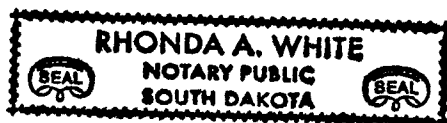
STATE OF SOUTH DAKOTA) SS
County of Pennington

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, H. Dale Gossard, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature H. Dale Gossard

Subscribed and sworn to before me this 26 day of Feb. 20



Rhonda A. White
Notary Public signature
My Commission Expires April 30, 2002



Affidavit of Water Use

Form 2B

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit is needed to document historical water use, 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) Lone Tree Ditch

Mailing Address 15605 Antelope Creek Rd. Rapid City SD 57703
(Street, RR or, Box) (City) (State) (Zip Code)

A. Notice of Appropriation original #4556 current #2038 update Oct. 19, 1981 original Date of Posting 29th September 1881
Date of Recording 23rd March 1882 Recording Date 23rd March 1882 11:00 AM

B. Date of start of construction of water supply system Estimated year 1881

C. Date that water was first applied to beneficial use Estimated, Spring or Summer 1882

D. Name of owner of original water supply system Lone Tree Ditch Company

E. Amount of water originally applied to beneficial use 2000 miners inches

F. Present use of water - amount of water now being used 15 Cubic Feet Per Second

Date that this water was first used 1988 Irrigation Season May through October

G. Chronological History of Water Use

Agriculture, Irrigation, hay, pasture, cropland

Attachments: Including some History, Maps, Usage and Records

along with information on Background and reason for filing request.

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)
SS

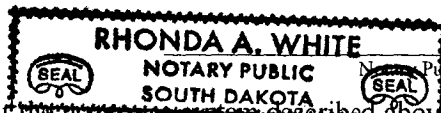
County of Pennington)

I, H. Dale Gossard, Resident of Lone Tree Ditch the applicant, certify that I have read the foregoing and that
(print or type) the matters therein are true.

Signed H. Dale Gossard

Subscribed and sworn to before me Rhonda A. White Feb. 26, 2002

My Commission Expires April 30, 2007



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 are true.

_____, 19____
(Print Name)

_____, 19____
(Print Name)

Land	Description	Acres
SW $\frac{1}{4}$	NE $\frac{1}{4}$ Sec 33 T1N R9E	2
SE $\frac{1}{4}$	NE $\frac{1}{4}$ Sec 33 T1N R9E	36
SW $\frac{1}{4}$	NE $\frac{1}{4}$ Sec 33 T1N R9E	12
NW $\frac{1}{4}$	SE $\frac{1}{4}$ Sec 33 T1N R9E	2
NE $\frac{1}{4}$	SE $\frac{1}{4}$ Sec 33 T1N R9E	13
NW $\frac{1}{4}$	NW $\frac{1}{4}$ Sec 34 T1N R9E	34
NE $\frac{1}{4}$	NW $\frac{1}{4}$ Sec 34 T1N R9E	24
SW $\frac{1}{4}$	NW $\frac{1}{4}$ Sec 34 T1N R9E	40
SE $\frac{1}{4}$	NW $\frac{1}{4}$ Sec 34 T1N R9E	26
NW $\frac{1}{4}$	SW $\frac{1}{4}$ Sec 34 T1N R9E	21
NE $\frac{1}{4}$	SW $\frac{1}{4}$ Sec 34 T1N R9E	3

Land South of Highway ⁴⁴ and old Railroad
Lone Tree Ditch

This sheet Total Acres 213

See Page #2

H. Dale Gossard
Lone Tree Ditch, President

Land Description	Acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SEC 27 T1N R9E	30
SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 27 T1N R9E	36 *
SW $\frac{1}{4}$ SE $\frac{1}{4}$ SEC 27 T1N R9E	20
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 27 T1N R9E	1
* INCLUDES A PORTION OF	
NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 34 T1N R9E	*
NORTH OF HIGHWAY 44	
	Subt, 87 Acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 34 T1N R9E	19
NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 34 T1N R9E	13
SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 34 T1N R9E	1
	Subt 33 Acres

Land North of Highway 44 and old Railroad, and
South of Lone Tree Ditch

This Sheet
Total Acres 120

Sheet #1 and Sheet #2 Combined Total $213 + 120 = 333$

333 acres total Requested to
be reinstated under the Lone Tree Ditch.

H. Dale Gosard
Lone Tree Ditch, President

Lone Tree Ditch
Cover letter

In the late 1990's it was called to the attention of the Lone Tree Ditch, we were missing much of the heart of the H O Ranch irrigated acreage. Upon examination of the land plots Legal description, much of this acreage did not appear on the map which was updated in 1987.

We did question some of the loss of approximately 100 acres on the Lone Tree Ditch when the up dated acreage in 1987 was released. Listed acreage in 1960 until the map up date in 1987 was 1121. The new 1987 map and land descriptions listed only 1022 acres. Assements continue to be paid on 1121 acres.

The difference in acreage was attributed to water use down playing on Rapid Creek due to over appropriation of water over the years, and updating the Irrigation District Maps. Much attention was given to water usage at this time. When the question of acreage irrigated 1985 into 1987, during the map acreage updating process, many irrigators reported only what they actually irrigated and not the amount they could and did irrigate in some years. It appears much of this missing acreage was not reported as irrigated and therefore omitted during the map update.

During the mid 1970's and 1980's much of the H O Ranch was sold. As some of this land changed owners and operators numerous times during the following few years, much of the irrigated land was dry land farmed, used for pasture, left idle, or put up for hay. Only part of the land was irrigated from time to time.

Since this irrigated land as well as much of the remainder of the Lone Tree Ditch is covered by Riparian Water Right carrying a priority date of September 29, 1881, not a lot of attention was given to how often the operators of the land irrigated.

Most important to the ditch company was that the irrigation fees were paid on the shares owned and acreages reported as irrigated. The acreage remained at 1121, and is at this date. The H O Ranch irrigation fees were regularly paid as it was broken up and changed ownership over the years.

In the late 1980's Mark Kieffer began purchasing portions of the H O Ranch and upgrading it back into a sound hay, feed and cattle operation. As this process unfolded this portion of the ranch once again became the center of prime irrigation production.

H. Dale Gossard

Lone Tree Ditch, President

February 8, 2002

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

NO 417110

Pierre, March 6, 20 02

RECEIVED OF Lone Tree Water Company, PO Box 48, Caputa SD 57725

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. 2479-2

15 00

Fee for Filing Transfer Form _____

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

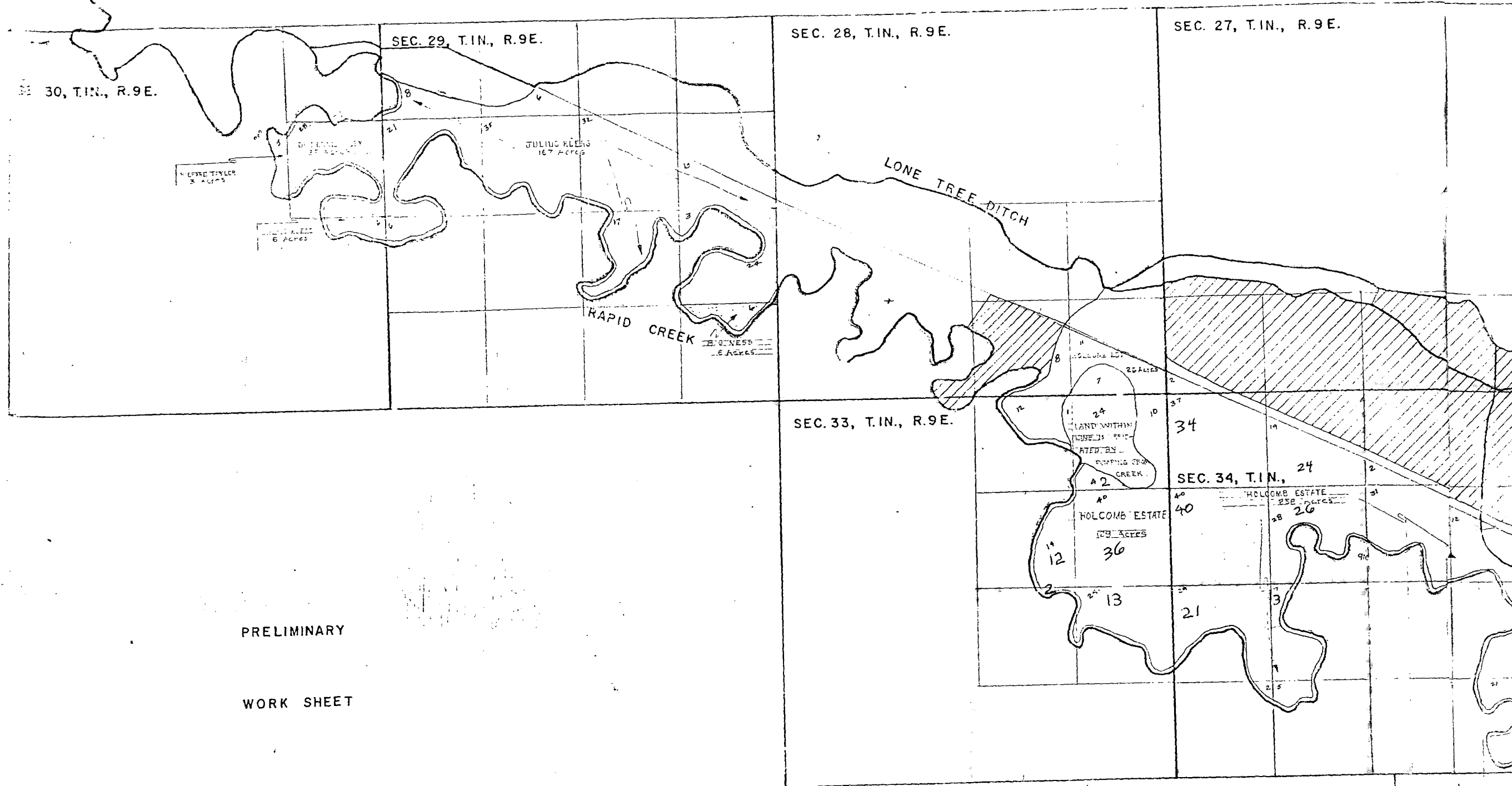
15 00

By

Darland Ebele

Chief Engineer

gm



PRELIMINARY

WORK SHEET

LONE TREE DITCH

LONE TREE DITCH
Acreages From Preliminary Work Sheet

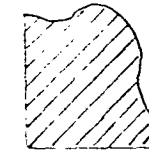
Richard Taylor	3 Acres	3 Acres
Dr. Dennis Casey	28	28
Julius Knarr	6	---

SEC. 27, T.1N., R.9E.

SEC. 28, T.1N., R.9E.

SEC. 27, T.1N., R.9E.

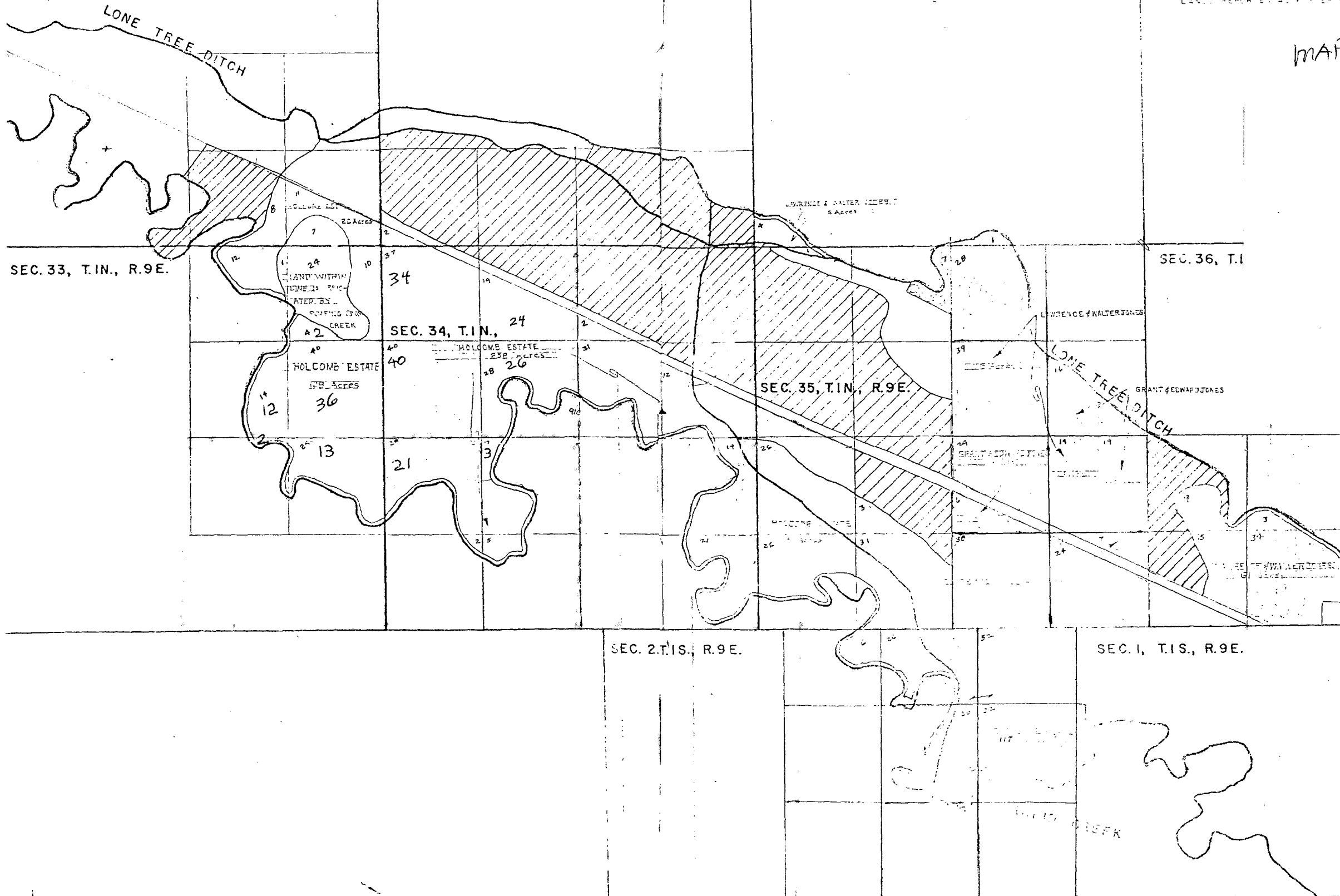
SEC. 26, T.1N., R.9E.



LAND REPORTED AS FORMERLY IRRIGATED

MAP WORK SHEET
REFERENCE

12-2001



Location Certificate Record,

217

Pennington County, - - Dakota.

4556.

Know all men by these presents, that we the undersigned Citizens of the United States and residents of Pennington County Territory of Dakota, do hereby claim by right of location and appropriation according to the laws of the United States and Territory of Dakota, Two thousand (2000) acres inclos-
ed the waters of Rapid Creek for mining manufacturing agricultural domestic and other purposes and we do take from Rapid Creek at a point on the ranch of Michael Thiel situated in the county of Pennington Territory of Dakota on the North East $\frac{1}{4}$ of the North East $\frac{1}{4}$ of Section 30 town 1. North Range 9. East - to be taken or carried thence by ditch and flume in a North Easterly direction along the Northerly bank of Rapid Creek across or through Section 29. 28- and 27. to the East side of Section 26, said water right was located on the 29th day of September A.D. 1881. and shall be known as the Lone Tree Ditch Company. Water Right.

Date of Certificate, March 23d 1882.

Geo. Brattinger
G. B. Jackson
J. A. Dunning
Chas. O. McElroy
Harry C. Blanchard
George Buckingham
O. Olson
John. E. Hunt
Wm. Hanson
John. K. Gorman
H. H. Piper.

Filed for record the 23d day of March A.D. 1882.
at 11 o'clock A.M. Recorded in Book E. Page 217
of Locations -

A. H. Sterling
Deputy Register of Dakota

Location Certificate Record,

Pennington County, - - Dakota.

Location Certificate

Water Right

Rapid Creek

H. Q. Blandhard

Locator

Filed

May 25th 1885. @ 12¹⁵ PM

J. J. Bantox
Register of Deeds

I know all men by their names that H. Q. Blandhard of the County of Pennington and Town of Dakota claim by right of location 2000 mineral acres off water from the waters of Rapid Creek, commencing at a point about one hundred yards South West from the stable of S. J. Elliot, and about 200 yards from the dwelling house of H. Q. Blandhard and at the corner of the bed of Rapid Creek near the Row Barn, he has conducted by ditch and flume to the ground off the said undesignated, and as much further as may be demanded, and as for domestic, and irrigating purposes.

Said H. Q. Blandhard appropriated & located said water on the 25th day of May AD 1885

Date of Certificate May 25th AD 1885

H. Q. Blandhard

LONE TREE DITCH

BACKGROUND INFORMATION

Prepared during November 2001

The copy of the 1911 Hydrographic Survey Map of Rapid Creek South Dakota (portions of Rapid Creek east of Rapid City to near Caputa). This map shows Lone Tree Ditch north of the creek but in general moving to the east southeast somewhat parallel direction. The Lone Tree Ditch crosses the Eugene Holcomb Land (which will be referred to as the H O Ranch in this text) in section 28, section 27 and into section 35, T 1 N, R 9 E. In general there is a downward slope in this land to the southeast providing drainage back into Rapid Creek. Much of this strip of land is in a favorable position to be irrigated by simple flood irrigation.

This map also shows lateral irrigation ditches from the Lone Tree Ditch running south to and crossing Rapid Creek by flume for the irrigating some of the northern portions of Section 34, T 1 N, R 9 E and extending southeast into the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 2, T 1 S, R 9 E.

The Lone Tree Ditch, (Lone Tree Ditch Co.) (Lone Tree Water Co.) referred to as such over the years, operates under a State of South Dakota Vested Water License No. 2038-2 for Irrigation, and carries a Priority date of September 29, 1881. This is a Riparian Right. The latest validation date of this Water Right was March 3, 1988.

How much of and how often Irrigable Land along the Lone Tree Ditch was irrigated over the past 100 years plus would be most difficult to determine. This includes the H O Ranch which is our main concern at this time. The H O Ranch was and currently is the major stock holder of the Lone Tree Ditch Co. They were also the major irrigators acreage wise untill into the 1970s when much of the land was sold in separate parcels.

The irrigated heart of the H O Ranch even after moving from one owner and operator to another for a number of years continued to hold the major number of shares in the Lone Tree Ditch and paid the irrigation fees on a large number acres. There were a few years during this time little or no irrigating was done. The land was dryland farmed, put for hay, used for pasture, and parts left idle.

LONE TREE DITCH

Background Information

Page 2

Lone Tree Ditch (Lone Tree Water Company) ((Corporation))
600 Shares capital stock, recorded December 5, 1903.

1908 Lone Tree Ditch reported 1280 irrigated acres

(1908 or early 1900s) recorded 344 shares Lone Tree
Fannie Holcomb - H O Ranch

1940 Lone Tree Ditch reported 1468 irrigated acres

1960 " " " reported 1121 irrigated acres

1961 " " " reported 1121 irrigated acres
G. Dunn listed 477 acres
for the H O Ranch on the
Pactola Water Contract

Undated map, Preliminary work sheet reported 1124
irrigated acres on Lone Tree Ditch, of which 465 acres
were listed under the H O Ranch. (Est. map date late 50s).

1960 through past year of 2001, the Lone Tree Ditch reported
and paid fees assessed on 1121 irrigated acres, as stated on
the 1960-1961 Pactola Water Contract.

The updated map showed land irrigated in 1987 by The Lone
Tree Ditch at 1022 acres. This map would reflect the
actual acreages being reported on the survey on which the
1987 irrigation map update is based.

This indicates 99 acres less than the previous acreages
reported and used. Upon reviewing the maps a large portion
of the H O Ranch irrigated acreage is missing. It appears
since there were a few years much of the H O Ranch was not
irrigated, it was not reported on this survey and therefore
omitted from the map. In reviewing the payment of irrigation
assessments, these were paid through these years as well as
the following years up to and including the year 2001.

ATTACHMENT: Background information listing Lone Tree Ditch,
origin and some history. Also included some history of The
Holcomb Ranch (H O Ranch) as related to the Lone Tree Ditch.
and irrigation. This includes the sell off and reconnecting
of parts of the H O Ranch under one owner operator.

H. Dale Gossard President
Lone Tree Ditch

**SOUTH DAKOTA
VESTED WATER RIGHT FOR IRRIGATION**

Date of Receipt of Claim October 19, 1987

Date of Validation March 3, 1988

The Water Management Board validated Vested Water Right Claim No. 2038-2 for irrigation purposes for Lone Tree Ditch, c/o Dale Gossard, President

(Applicant)

RR 2, Box 5040

(Street, RR or Box)

Rapid City,

(City)

South Dakota

(State)

57701

(Zip Code)

with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2038-2 appropriates 15.0 cubic feet of water per second from Rapid Creek to irrigate 1,022 acres via Lone Tree Ditch. The Rapid Creek diversion point is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30-T1N-R9E. The irrigated acreage is located in the S $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ Section 28; NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 29; SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33; NE $\frac{1}{4}$ Section 34; S $\frac{1}{2}$, NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 35; SW $\frac{1}{4}$ Section 36; all in T1N-R9E; Lots 2 thru 4, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1; Lots 1 and 2, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2; all in T1S-R9E
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 acre per year and may not exceed one-seventieth (1/70) cubic feet of water per second for each acre of irrigated land. The water is to be used during the following annual period: April 15-November 1
3. The priority date(s) of the Vested Water Right is(are) September 29, 1881
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. That Vested Water Right No. 2038-2 is subject to domestic use rights. Diversion of natural flow water under Water Right No. 2038-2 is contingent upon supplies being available first to domestic users.
2. That the existing flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

WATER MANAGEMENT BOARD

By: John Hatch

Chief Engineer

Division of Water Rights

Dept. of Water and Natural Resources

Lone Tree Ditch, priority date September 29, 1881
Lone Tree Ditch Company, Date of incorporation:
November 30, 1883, for 20 year term of existence,
expiration date 1903. 600 shares of
capital stock issued.

Lone Tree Water Company, formed Dec. 3, 1903.
600 shares Capital Stock

Contract: Lone Tree Water Company, with the
Rapid Valley Water Conservancy District
1960... 1121 acres

Holcomb Ranch 1960, 477 acres. All irrigable acres
listed. (Pactola Dam Contract pending).

1973 W. W. Walton (owner of HO or Holcomb Ranch)
Irrigation acreage 477

1974 W. W. Walton sold off part of the HO Ranch
Sale included 45 irrigated acres to
J. Norris and 91 irrigated acres to
W. Jones. (This leaves 341 irrigated
acres with the original HO Ranch.)

1976 W. W. Walton sold 74 acres irrigated land
covered by 31 shares of Lone Tree Water
Company stock to Barber in 1976.
(This left 267 irrigated acres with the
original HO Ranch.)

1979 Barber sold 74 acres irrigated land covered by
31 shares of Lone Tree Water Company
stock to Don Jundt. January 1979, stock
transfer date.

1979 Stock transfer of 180 shares Lone Tree Water
Company stock from Airport Farms to Etna
Life Insurance Company.

1987 Browder & Martin owned 51 irrigable acres
and Airport Farms owned 216 irrigable
acres. Ray Hillenbrand was also owner
of part of this balance of the HO Ranch
for a time.

1988 Mark Kieffer purchased the 51 irrigable acres
held by Browder & Martin. Airport Farms
controlled 216 acres of irrigable land.
Ray Hillenbrand kept 9 shares and 16 acres
of irrigable land, with the HO Ranch building
headquarters site which totaled approximately
40 acres. The irrigable portion lies between
the Lone Tree Ditch and highway 44 being to
the north of the old Rail Road right of way.

- 1989 Mark Kieffer; 51 irrigable acres.
Ag. Resources (former Airport Farms) 216
irrigable acres.
- 1990 Mark Kieffer; 51 irrigable acres. Ag. Affiliates
(former Airport Farms/Ag. Resources) 216 acres.
- 1991 Mark Kieffer; 51 irrigable acres. Ag. Affiliates
216 acres.
- 1991 or near that point in time Ray Hillenbrand sold the
HO Ranch headquarters site to Lammers. In the
mid 1990s the 16 acres of irrigable land south
of the Lone Tree Ditch and north of Highway
44 were included in a land sale to 2 separate
owners. The 9 shares of Lone Tree stock went
with the land deal. (This land was part of
the land Browder and Martin possessed for a
time.)
- 1992 Mark Kieffer controlled 267 irrigable acres of the
former HO Ranch.
- 1993 Mark Kieffer controlled 267 irrigable acres
of the former HO Ranch.
- 1994 Stock transfer to Mark Kieffer from Etna Life
Insurance Company and Ray Hillenbrand 214
shares of Lone Tree Ditch Company Stock.
This transfer of ownership 51 acres irrigable
land (Browder Martin /Ray Hillenbrand) plus 216
acres irrigable land held by Ag. Affiliates /
Etna Life Insurance Company.
- 1995 - 1999 Mark Kieffer continued to pay irrigation
assessments on 214 shares of Lone Tree Water
Company Stock covering 267 acres of irrigable
land.

The above information was taken from the record books
of the Lone Tree Water Company, March 6,7, year 2000,
by Walter Jones and H. Dale Gossard.

Mr. Kieffer began updating the irrigation portion as
well as cleaning up the remainder of the former
HO Ranch as he gained control of it. At present
he has a state of the art pivot irrigation system
on part of the irrigable land. An underground
pipe line is in place, which serves more of the
land. There are other updates some completed,
some in the works, while others are still in the
planning stage.

H. Dale Gossard
President Lone Tree Water Co.
March 9, 2000



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 24, 2001

Mark Kiefer
13605 Neckyoke Road
Rapid City, SD 57702

Dear Mr. Kiefer :

I am enclosing a copy of a map that I put together from information I received from you and from our files. On this map I show the lands that are currently covered by existing active water rights, and lands that are not. I am also enclosing application and affidavit forms for filing a vested water right claim. As we had discussed in the past, the Lone Tree Ditch Company would be the appropriate entity to file the claim for the additional land. Included with the claim the ditch company should also provide any information that would support that the land had been irrigated over the years.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program

Enclosure

Cy: Dale Gossard, Lone Tree Ditch Comapny

Solid green land is not covered under any active water right

Covered under 1831-2
Mark Kiefer

Covered under 2038-2
Lone Tree Ditch Company



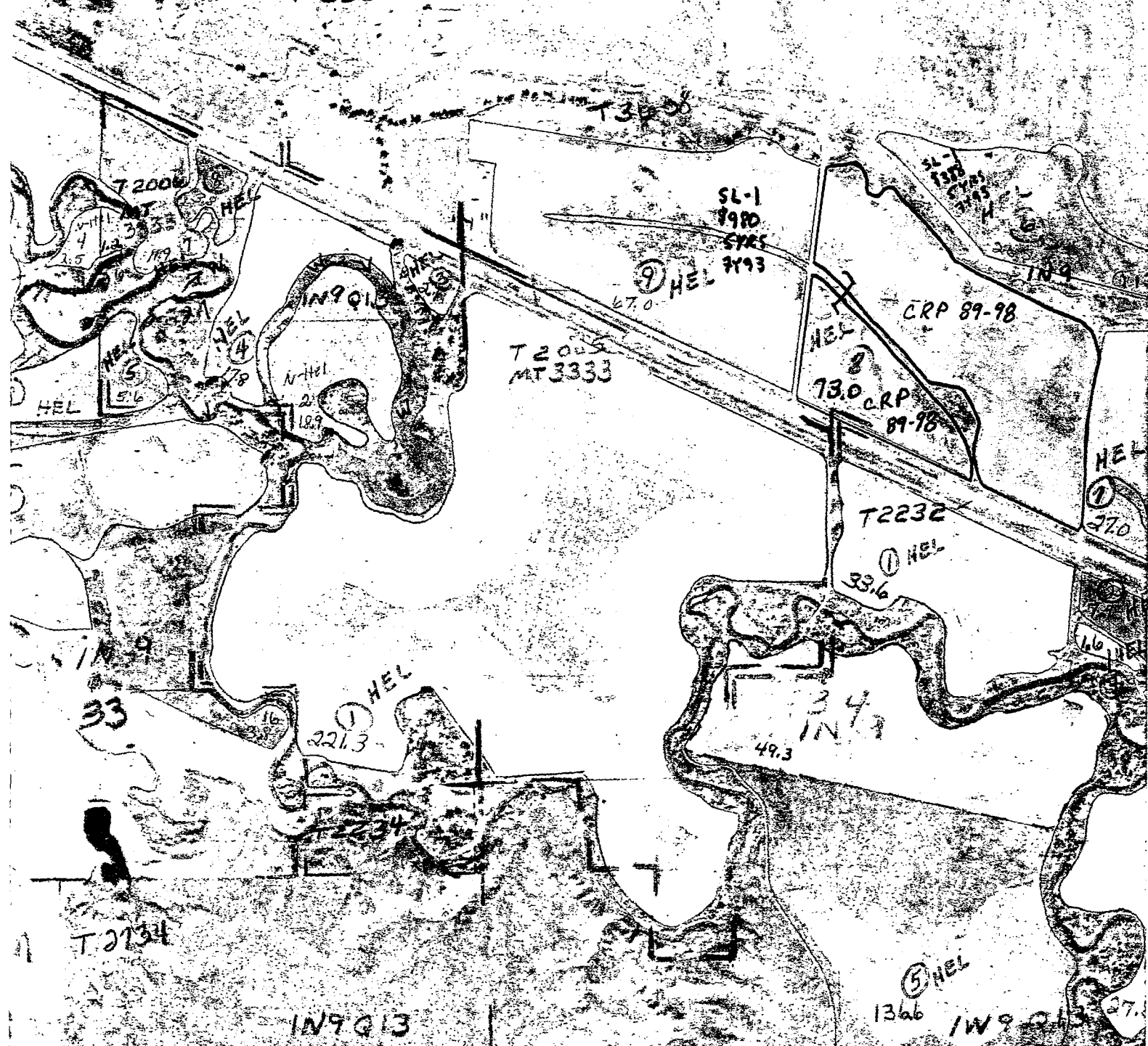
7-215

see
Q-12

28
IN-9

27
IN-9

T2235



Copy of Official USDA FEA/NRCS
aerial photo of cropland acres.
Hill M. Heyung
SET
8/28/00

see
Q-12

127
IN-9

28

IN-9

T2235

T3006

T2006
MT 3333

SL-1
T980
SPRS
T993

⑨ HEL
67.0 ac

CRP 89-98

IN-9 Q-13

T2005
MT 3333

293.1 ac

HEL
8
73.0 CRP
89-98

T2232

① HEL
33.6 ac

HEL
①
27.0 ac

IN-9

33

HEL
①
22.3

34
IN-9

55.6 ac

T2234

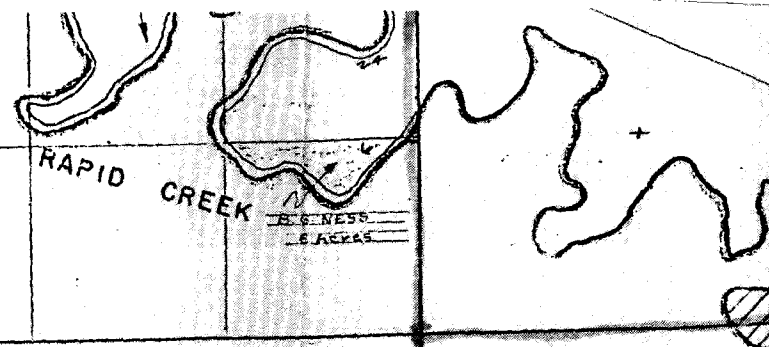
IN-9 Q-13

T2233

⑤ HEL
1366

IN-9 Q-13

NHEL
4
27.8 ac



SEC. 33, T. 1 N., R. 9 E.

PRELIMINARY

WORK SHEET

LONE TREE DITCH

SCALE 6" = 1 MILE

LONE TREE DITCH

Acreages From Preliminary Work Sheet

	3 Acres	3 Acres
Richard Taylor	28	28
Dr. Dennis Casey	6	173
Julius Koers	167	6
B. G. Ness	6	465
Holcomb Estate	26	
	129	
	258	
	52	
Lawrence & Walter Jones	4	
	75	
	19	
	61	159
Grant & Edwards Jones	29	
	6	
	16	70
	19	
Clarence E. Welch	96	103
	7	
Clarence Benson	117	117
		112

Note Acreage
Holcomb

OK

February 25, 2002

To: Mark Rath, Water Rights Program, DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

From: H. Dale Gossard, President, Lone Tree Water Co.

Subject: Mark Kieffer acreage, Lone Tree Water CO.

Enclosed are copies of the AFFIDAVITS of WATER USE
Form 2 and Form 2b, two copies each, completed, signed,
dated and Notarized.

Numerous attachments are also included giving background
information. Attachments include Copies of Documents of
origin and history of Lone Tree Ditch. Also considerable
information covering the Holcomb Ranch (H O Ranch).
Maps, Land Descriptions, some statements of irrigation fees
paid. Lone Tree Ditch Cover letter, carrying date of Feb.
8, 2002. Lone Tree Ditch Background Information prepared in
November 2001 with Attached brief of Lone Tree Ditch and
Holcomb Ranch (H O Ranch) prepared March 6,7, year 2000.

A brief letter of request will follow Form 2 and 2b but
precede the other attachments.

Hopefully this will include enough information to make
possible the completion of the acreage and record correction.

Sincerely,
H. Dale Gossard
H. Dale Gossard

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Lone Tree Ditch
Cover letter

In the late 1990's it was called to the attention of the Lone Tree Ditch, we were missing much of the heart of the H O Ranch irrigated acreage. Upon examination of the land plots Legal description, much of this acreage did not appear on the map which was updated in 1987.

We did question some of the loss of approximately 100 acres on the Lone Tree Ditch when the up dated acreage in 1987 was released. Listed acreage in 1960 until the map up date in 1987 was 1121. The new 1987 map and land descriptions listed only 1022 acres. Assements continue to be paid on 1121 acres.

The difference in acreage was attributed to water use down playing on Rapid Creek due to over appropriation of water over the years, and updating the Irrigation District Maps. Much attention was given to water usage at this time. When the question of acreage irrigated 1985 into 1987, during the map acreage updating process, many irrigators reported only what they actually irrigated and not the amount they could and did irrigate in some years. It appears much of this missing acreage was not reported as irrigated and therefore omitted during the map update.

During the mid 1970's and 1980's much of the H O Ranch was sold. As some of this land changed owners and operators numerous times during the following few years, much of the irrigated land was dry land farmed, used for pasture, left idle, or put up for hay. Only part of the land was irrigated from time to time.

Since this irrigated land as well as much of the remainder of the Lone Tree Ditch is covered by Riparian Water Right carrying a priority date of September 29, 1881, not a lot of attention was given to how often the operators of the land irrigated.

Most important to the ditch company was that the irrigation fees were paid on the shares owned and acreages reported as irrigated. The acreage remained at 1121, and is at this date. The H O Ranch irrigation fees were regularly paid as it was broken up and changed ownership over the years.

In the late 1980's Mark Kieffer began purchasing portions of the H O Ranch and upgrading it back into a sound hay, feed and cattle operation. As this process unfolded this portion of the ranch once again became the center of prime irrigation production.

H. Dale Ebsand
Lone Tree Ditch, President
February 8, 2002

Affidavit of Water Use

Form 2B

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit is needed to document historical water use, 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) Lone Tree Ditch

Mailing Address 15605 Antelope Creek Rd. Rapid City SD 57703
(Street, RR or Box) (City) (State) (Zip Code)

A. Notice of Appropriation #4556 ^{Original} ~~Current~~ ^{Latest Update} ~~Oct. 19, 1991~~ ^{Original} Date of Posting 29th September 1881

Date of Recording 23rd March 1882 Recording Date 23rd March 1882 11:00 AM

B. Date of start of construction of water supply system Estimated year 1881

C. Date that water was first applied to beneficial use Estimated, Spring or Summer 1882

D. Name of owner of original water supply system Lone Tree Ditch Company

E. Amount of water originally applied to beneficial use 2000 miners inches

F. Present use of water - amount of water now being used 15 Cubic Feet per Second

Date that this water was first used 1888 Irrigation Season May through October

G. Chronological History of Water Use

Agriculture, Irrigation, hay, pasture, cropland

Attachments: Including some History, Maps, Usage and Records

along with information on Background and reason for filing request.

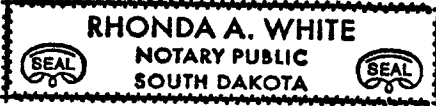
Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)
SS

County of Pennington)

I, H. Dale Gossard, President of Lone Tree Ditch the applicant, certify that I have read the foregoing and that
(print or type) the matters therein are true.

Signed H. Dale Gossard

Subscribed and sworn to before me Feb. 26 2002
 Rhonda A. White
Notary Public

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 are true.

_____, 19____
(Print Name)

_____, 19____
(Print Name)

T1N-R9E
Land Description Acres

SW $\frac{1}{4}$	SW $\frac{1}{4}$	SEC 27	T1N R9E	30
SE $\frac{1}{4}$	SW $\frac{1}{4}$	Sec 27	T1N R9E	36 *
SW $\frac{1}{4}$	SE $\frac{1}{4}$	Sec 27	T1N R9E	20
SE $\frac{1}{4}$	SE $\frac{1}{4}$	Sec 27	T1N R9E	1

* INCLUDES A PORTION OF
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SEC 34 T1N R9E *

NORTH OF HIGHWAY 44

Subt, 87 Acres

NW $\frac{1}{4}$	NE $\frac{1}{4}$	Sec 34	T1N R9E	19
NE $\frac{1}{4}$	NE $\frac{1}{4}$	Sec 34	T1N R9E	13
SE $\frac{1}{4}$	NE $\frac{1}{4}$	Sec 34	T1N R9E	1

Subt 33 Acres

Land North of Highway 44 and old Railroad, and
South of Lone Tree Ditch

This Sheet
Total Acres 120

Sheet #1 and Sheet #2 Combined Total $213 + 120 = 333$

333 acres total Requested to
be reinstated under the Lone Tree Ditch.

H. Dale Gossard
Lone Tree Ditch, President

TIN- R9E

Land Description

Acres

SW $\frac{1}{4}$	NE $\frac{1}{4}$	Sec 33	TIN R9E	2
SE $\frac{1}{4}$	NE $\frac{1}{4}$	Sec 33	TIN R9E	36
SW $\frac{1}{4}$	NE $\frac{1}{4}$	Sec 33	TIN R9E	12
NW $\frac{1}{4}$	SE $\frac{1}{4}$	Sec 33	TIN R9E	2
NE $\frac{1}{4}$	SE $\frac{1}{4}$	Sec 33	TIN R9E	13
NW $\frac{1}{4}$	NW $\frac{1}{4}$	Sec 34	TIN R9E	34
NE $\frac{1}{4}$	NW $\frac{1}{4}$	Sec 34	TIN R9E	24
SW $\frac{1}{4}$	NW $\frac{1}{4}$	Sec 34	TIN R9E	40
SE $\frac{1}{4}$	NW $\frac{1}{4}$	Sec 34	TIN R9E	26
NW $\frac{1}{4}$	SW $\frac{1}{4}$	Sec 34	TIN R9E	21
NE $\frac{1}{4}$	SW $\frac{1}{4}$	Sec 34	TIN R9E	3

Land South of Highway ¹⁴ and old Railroad
Lone Tree Ditch

This Sheet Total Acres 213

see Page #2

H. Dale Gossard
Lone Tree Ditch, President

FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)
	No. _____ Hydrologic Unit _____
	Basin _____
	Newspaper _____

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FEB 28 2002
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: _____ New ☒ Vested Right _____ Amendment/Correction to Permit No. 2038-2
(Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) _____
Reinstatement of omitted acreage and correction of records.

- Name of Applicant Lone Tree Ditch Phone 605 393-0223
(check one) ☒ Owner _____ Tenant/lessee _____
Mailing Address 15605 Antelope Creek Rd Rapid City State SD 57703
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 15 *CFS or _____ **GPM _____ ***AF _____ Total Acreage 333
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Rapid Creek
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) 1230 Feet S 64° W From
The NE corner of Section 30, T1N, R9E (NE 1/4 NE 1/4)
County Pennington
- County or counties where water will be used Pennington
- Annual period during which water is to be used May through October
- List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
(ATTACHED SHEETS)			

8. Give a description of the project. (Attach sheet if more space is needed) (ATTACHEMENTS INCLUDED)
This is an older well established Irrigation system.
Some acreages were omitted during a map update in the mid 1980's
This is a request for a reinstatement of these acres.

STATE OF SOUTH DAKOTA) SS
County of Pennington

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, H. Dale Gossard, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature H. Dale Gossard

Subscribed and sworn to before me this 26 day of Feb. 20 02



Rhonda A. White
Notary Public signature

My Commission Expires April 30, 2007

February 26, 2002

To: Mark Rath, Water Rights Program, DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

From: H. Dale Gossard, President, Lone Tree Water Co.

Subject: Mark Kieffer, (former H O Ranch); Lone Tree Ditch
(Lone Tree Water CO.) Formal Request for Acreage
Correction to REINSTATE missing acreage back into
the Lone Tree Ditch.

REFERENCE: Enclosed copies of the AFFIDAVITS of WATER
USE Form 2 and Form 2b, two copies each.
Form 2 item 7; Attachement Sheet #1 and Sheet
#2, Land Description Acres.

Sheet #1 lists Land Description Acres taken from the map
showing missing acres lying to the south of Highway #44
and the old railroad right-of-way, and north of Rapid.
Creek. (Between Highway 44 and Rapid Creek).
This is the prime acreage of irrigation where the Pivot
System is located and also the underground pipeline.
The map and land description lists 213 acres in this area,
which can be irrigated easily. This parcel of land is of
prime importance to this operation.

Attachment Sheet #2 lists land north of Highway 44 and south
of Lone Tree Ditch. This sheet lists an additional 120
acres. This land was at one time irrigated and we request
it also be reinstated.

This Vested Water Right Permit No. 2038-2 is a Riparian Water
Right with an original date of posting of September 29, 1881
and Date of Recording of March 23, 1882. Latest validation
date was March 3, 1988.

I am requesting we correct and update the Lone Tree Ditch
records with inclusion of this 333 acres being listed as
part of the current Lone Tree Ditch acreage.

Thank you.

Sincerely,
H. Dale Gossard
H. Dale Gossard

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FEB 28 2002
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2038-2 FOR IRRIGATION

(1) Lone Tree Ditch, Dale Gossard, President of RR #2 Box 5040, Rapid City, SD 57701 made Application No. 2038-2, October 19, 1987 for validation of a vested right claim to appropriate 23.0 cubic feet of water per second from Rapid Creek, Pennington County, South Dakota for irrigation purposes. Vested Water Right No. 2038-2 was validated March 3, 1988, with a priority date of September 29, 1881. 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 applicant is entitled to divert 15.0 cubic feet of water per second for beneficial use. The location of the diversion point is:

1230 feet S 64°W from the NE corner of Section 30,
T1N, R9E (NE 1/4 NE 1/4)

The location of the irrigated acreage is:

SEE ATTACHMENT 1

(3) Pursuant to Section 46-5-30.1 Lone Tree Ditch, Dale Gossard, President, of RR #2 Box 5040, Rapid City, SD 57701 the holder(s) and/or owner(s) of Vested Water Right No. 2038-2 is issued a license to appropriate 15.0 cubic feet of water per second from Rapid Creek with a priority date of September 29, 1881 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. 2038-2 and subject to South Dakota State Law.



JOHN HATCH, Chief Engineer

Water Rights Division

Department of Water and Natural
Resources

DEC 1 1988

Attachment I

Vested Right Water License No. 2038-2

The location of the irrigated acreage is:

ACRES	LEGAL DESCRIPTION OF LAND	ACRES	LEGAL DESCRIPTION OF LAND
28	SW1/4 SE1/4 SEC 28-T1N-R9E	11	NE1/4 SW1/4 SEC 35-T1N-R9E
28	SE1/4 SE1/4 SEC 28-T1N-R9E	33	SE1/4 SW1/4 SEC 35-T1N-R9E
17	NW1/4 SW1/4 SEC 28-T1N-R9E	27	SE1/4 SE1/4 SEC 35-T1N-R9E
5	SW1/4 SW1/4 SEC 28-T1N-R9E	31	SW1/4 SE1/4 SEC 35-T1N-R9E
16	NE1/4 SW1/4 SEC 28-T1N-R9E	40	NE1/4 SE1/4 SEC 35-T1N-R9E
15	SE1/4 SW1/4 SEC 28-T1N-R9E	36	SW1/4 NE1/4 SEC 35-T1N-R9E
		13	SE1/4 NE1/4 SEC 35-T1N-R9E
29	NW1/4 NW1/4 SEC 29-T1N-R9E	28	NW1/4 SE1/4 SEC 35-T1N-R9E
14	NE1/4 NW1/4 SEC 29-T1N-R9E	26	NW1/4 NE1/4 SEC 35-T1N-R9E
19	SW1/4 NW1/4 SEC 29-T1N-R9E	39	SE1/4 NW1/4 SEC 35-T1N-R9E
32	SE1/4 NW1/4 SEC 29-T1N-R9E	16	NE1/4 NW1/4 SEC 35-T1N-R9E
33	SW1/4 NE1/4 SEC 29-T1N-R9E	34	NW1/4 NW1/4 SEC 35-T1N-R9E
9	SE1/4 NE1/4 SEC 29-T1N-R9E	30	SW1/4 NW1/4 SEC 35-T1N-R9E
14	NW1/4 SE1/4 SEC 29-T1N-R9E		
1	NE1/4 SE1/4 SEC 29-T1N-R9E	7	NW1/4 SW1/4 SEC 36-T1N-R9E
5	NW1/4 SW1/4 SEC 29-T1N-R9E	16	SW1/4 SW1/4 SEC 36-T1N-R9E
		38	SE1/4 SW1/4 SEC 36-T1N-R9E
20	SE1/4 NE1/4 SEC 30-T1N-R9E	4	NE1/4 SW1/4 SEC 36-T1N-R9E
7	NW1/4 NE1/4 SEC 33-T1N-R9E	4	LOT 2 SEC 1-T1S-R9E
14	NE1/4 NE1/4 SEC 33-T1N-R9E	29	LOT 3 SEC 1-T1S-R9E
2	NE1/4 NW1/4 SEC 33-T1N-R9E	33	LOT 4 SEC 1-T1S-R9E
		33	NW1/4 SW1/4 SEC 1-T1S-R9E
26	SE1/4 NE1/4 SEC 34-T1N-R9E	9	NE1/4 SW1/4 SEC 1-T1S-R9E
21	NE1/4 NE1/4 SEC 34-T1N-R9E	12	NW1/4 SE1/4 SEC 1-T1S-R9E
2	NW1/4 NE1/4 SEC 34-T1N-R9E		
27	SW1/4 NE1/4 SEC 34-T1N-R9E	21	LOT 1 SEC 2-T1S-R9E
		5	LOT 2 SEC 2-T1S-R9E
25	NW1/4 SW1/4 SEC 35-T1N-R9E	16	NE1/4 SE1/4 SEC 2-T1S-R9E
22	SW1/4 SW1/4 SEC 35-T1N-R9E		
=====		=====	
TOTAL ACRES IRRIGATED		1022	

February 26, 2002

To: Mark Rath, Water Rights Program, DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

From: H. Dale Gossard, President, Lone Tree Water Co.

Subject: Mark Kieffer, (former H O Ranch); Lone Tree Ditch
(Lone Tree Water CO.) Formal Request for Acreage
Correction to REINSTATE missing acreage back into
the Lone Tree Ditch.

REFERENCE: Enclosed copies of the AFFIDAVITS of WATER
USE Form 2 and Form 2b, two copies each.
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it also be reinstated.

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and Date of Recording of March 23, 1882. Latest validation
date was March 3, 1988.

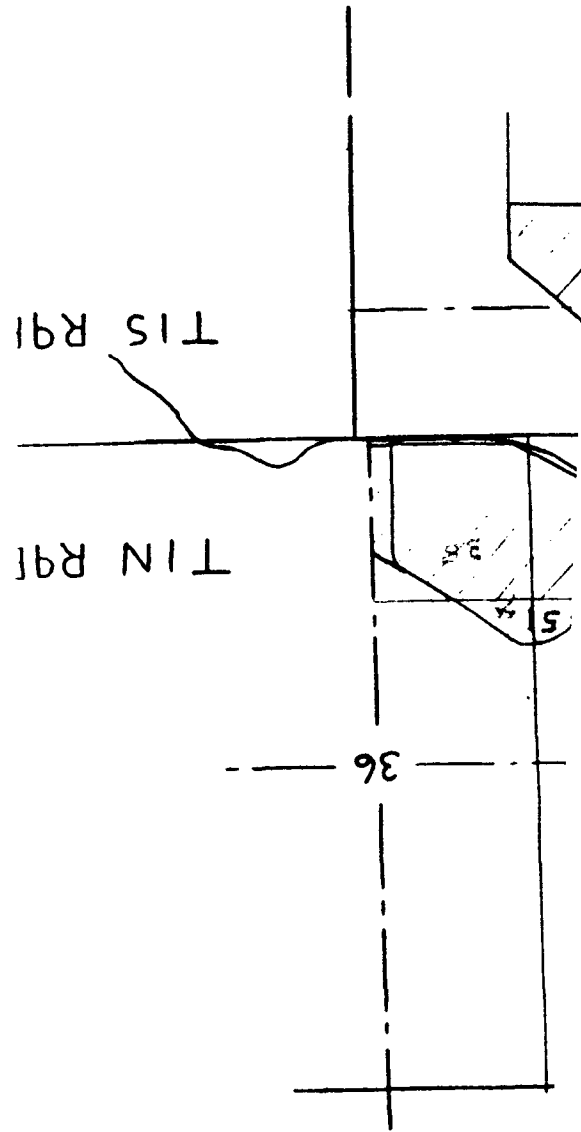
I am requesting we correct and update the Lone Tree Ditch
records with inclusion of this 333 acres being listed as
part of the current Lone Tree Ditch acreage.

Thank you.

Sincerely,
H. Dale Gossard
H. Dale Gossard

LAND IRRIGATED BY LONE
TREE DITCH WITH A
PRIORITY DATE OF
SEPTEMBER 29, 1881.
-Number indicates amount
of acres

SCALE: 1 in. $\approx$ 1320 ft.



DRAWN BY

Tim Toilefsrud 9/22/87
SD Natural Resources Engineer

Copy

Aug 9, 1938

FPS



[illegible]

STATE OF SOUTH DAKOTA

DEPARTMENT OF STATE

UNITED STATES OF AMERICA }

STATE OF SOUTH DAKOTA }

SECRETARY'S OFFICE

This is to certify that the attached instrument of writing is
a true, correct and examined copy of

ARTICLES OF INCORPORATION

OF

LOME TREE DITCH COMPANY

and the whole thereof, and has been carefully compared with the original
now on file in this office and found correct.

The within document, book, instrument, paper or law shall not be
received in evidence in any court of this state unless this certificate
is countersigned by the state treasurer with a statement of the fees
received.

In testimony whereof, I have hereunto
set my hand and affixed the Great Seal
of the State of South Dakota, at the
City of Pierre, the Capital, on this

(SEAL)

Twentieth day of July 19 42.

FEES, \$ 2.50

countersigned by

OLIVE A. RINGERUD

Secretary of State.

W. G. Douglas

State treasurer.

V.

LOVE TREE DITCH COMPANY--Incorporated.

Filing: Volume I Location Certificate Records, page 215.
March 23, 1882.

Location date: September 29, 1881.

Amount of water claimed: 2000 inches, Miner's measurement.

Point of diversion: NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of section ^{10, 3}31 township one north
of range nine east of the B.N.W.

Locators: George Cretsinger, J. C. Jackson, H. A. Dunning, Chas.
E. McElroy, Henry C. Blanchard, Geo. Buckingham, O. Olsen,
John B. Hunt, Wm. Ranson, John R. Brennan, and H. A. Piper.

A subsequent water right was filed by H. C. Blanchard on
May 25, 1885.

Officers: President-----Maurice Keliher, Rapid City
Vice president-----Wm. Lehman, Caputa
Secretary-Treasurer---Lawrence Jgnes, Rapid City

There are no non-stockholder water users. The stock is all held
by water users and the stockholders get water in proportion to the
stock they own. There are no priorities on the ditch.

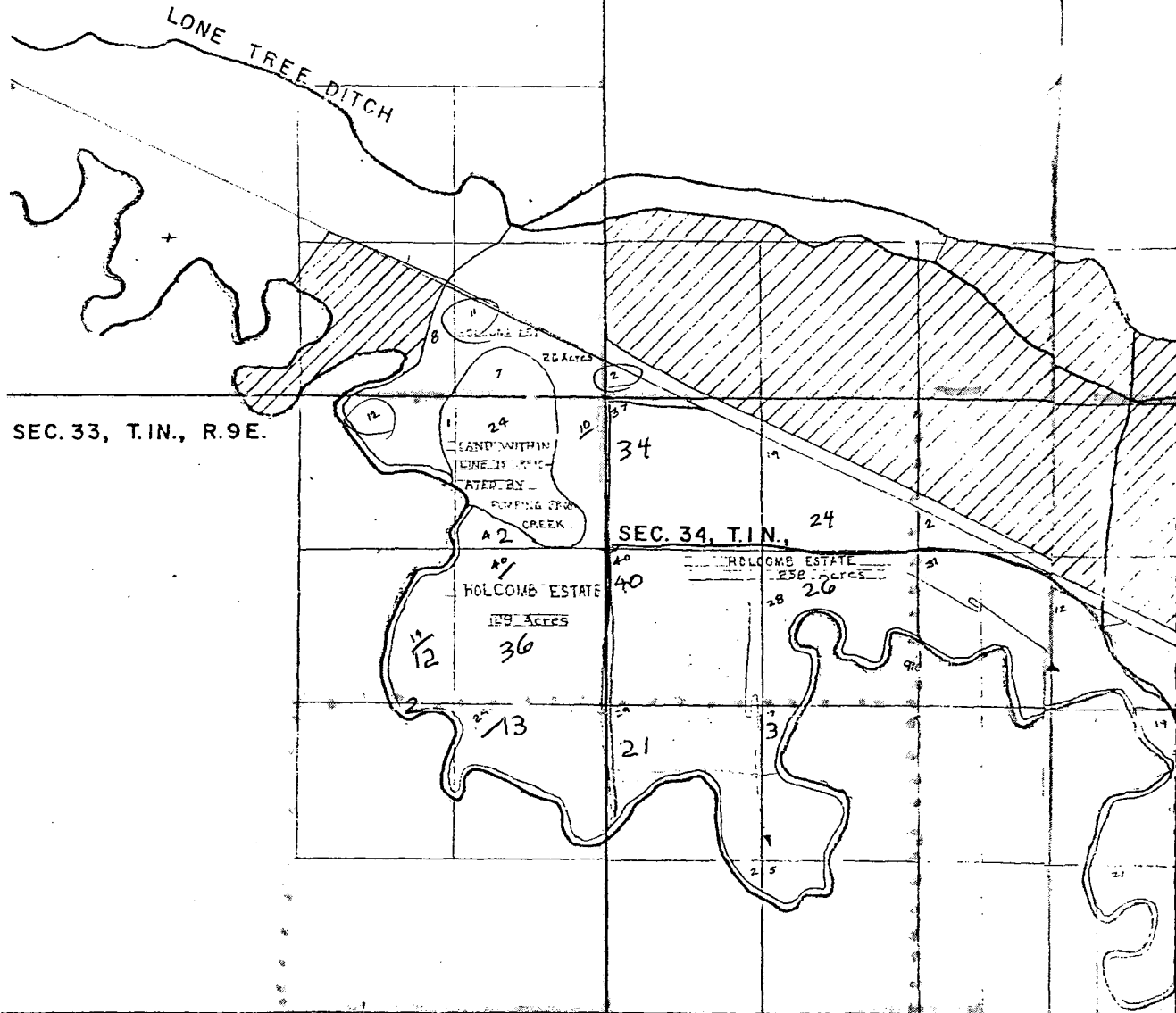
There are 600 shares of stock. There are about 2000 acres under the
ditch. The assessments vary from year to year and are levied on the
shares to take care of the O & K. This year the assessment was 25¢
per share. At a meeting of the company held on August 1, 1924,
steps were taken to renew the charter.

The length of the irrigation season and the time of irrigating is
entirely dependent on the water supply when it is available. When
water is available it is pro-rated among shareholders in ratio to the
shares owned.

List of shareholders, Exhibit VA, attached.
Location notices, Exhibits VB, VC, attached.
Certificate of Corporation, Exhibit VD, attached.
Bill of Sale, Exhibit VE, attached.
Articles of Agreement, VF, attached.
Articles of Incorporation, Exhibit VG.
By-Laws, Exhibit VH.
Original By-Laws, Exhibit VJ.

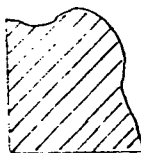
SEC. 28, T.1N., R.9E.

SEC. 27, T.1N., R.9E.



SEC. 2, T.1S., R.9E.

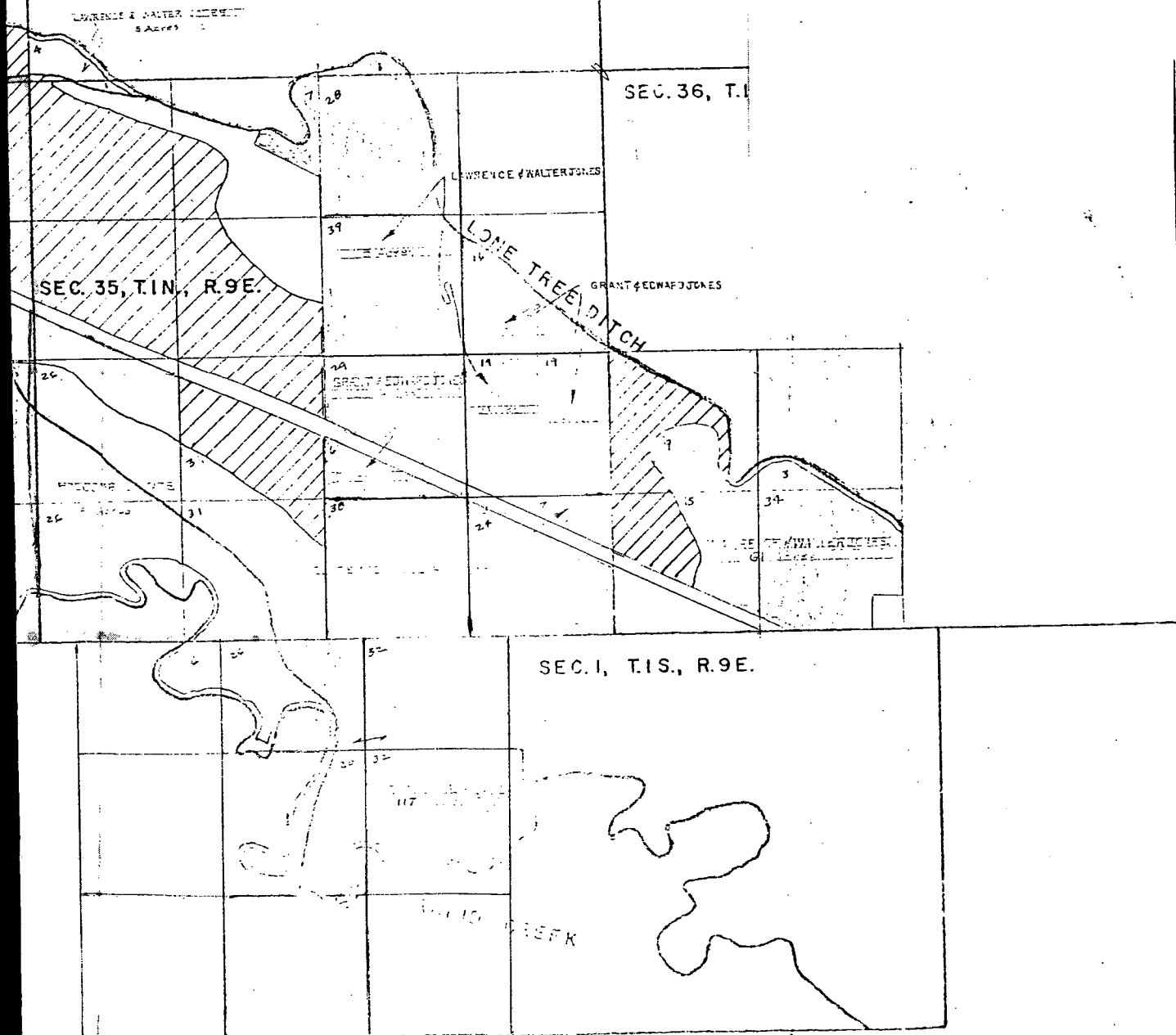
SEC. 26, T.1N., R.9E.



LAND REPORTED AS PREVIOUSLY IRRIGATED

MAP WORK SHEET
REFERENCE

12-2001



March 4, 2002

To: Mark Rath, Water Rights Program, DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

From: H. Dale Gossard, President, Lone Tree Water Co.

Subject: Lone Tree Water Co. Acreage Reinstatement
application filing fees.

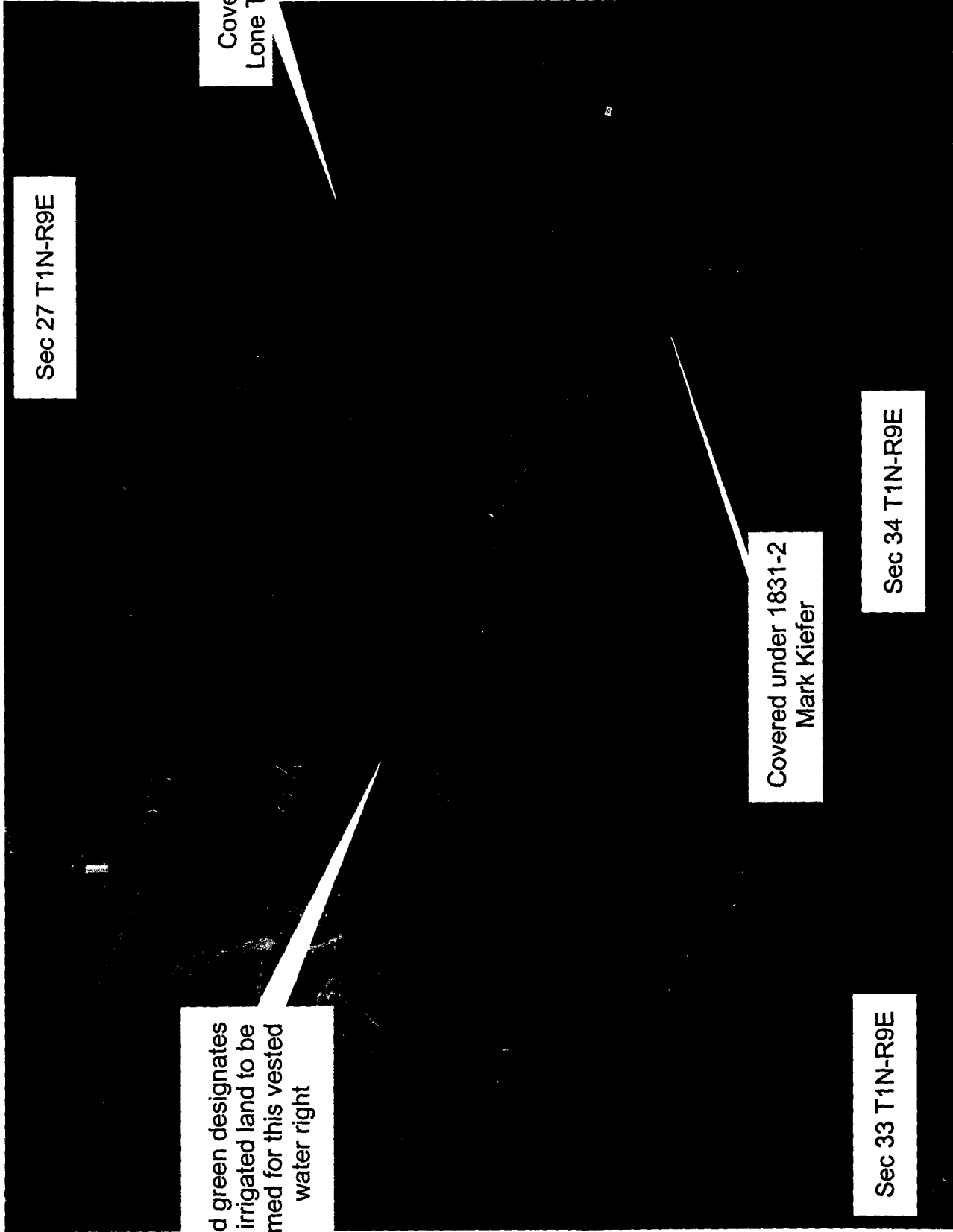
Reference: Phone conversation of Friday, March 1, 2001.

Please find a check from the Lone Tree Water Company
for the amount of \$15.00 to cover the filing fees.

Thank you,

Sincerely,
H. Dale Gossard
H. Dale Gossard

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MAR - 6 2002
WATER RIGHTS
PROGRAM



Sec 27 T1N-R9E

Solid green designates
the irrigated land to be
claimed for this vested
water right

Covered under 2038-2
Lone Tree Ditch Company

Covered under 1831-2
Mark Kiefer

Sec 34 T1N-R9E

Sec 33 T1N-R9E



May 27, 2002

To: Mark Rath, Water Rights Program DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

From: H. Dale Gossard President Lone Tree Water Co.

Reference: Your Letter of May 22, 2002, and our phone
conversation of, May 24, 2002

Items #'s 19, 20, 21, and 22 are all correct. The acreage
in item #19, does reduce the acreage from 265 to 202.
Though 216 was continued to be carried. and was the acreage
used for assessments

The 9 shares, and 16 acres which could be irrigated in item
21 was adjusted down to 12 acres for billing assessments.
Reasons being that the acreage of the land transfer in
relationship to the acreage likely to be irrigated was in
doubt. This 4 acres irrigated land was included back in
after the 47 acres in transfer item #22 and before transfer
item #29. Item #29 lists 51 acres as irrigated.

If we go back to basic irrigated land reported in the
land descriptions for transfer from AETNA and from Browder
& Martin (Nuttall) also item #'s 19, 20, 21, 22 this would
result in 69 acres with the 180 shares, plus 47 acres with
34 shares, and transferring aside 16 acres with 9 shares.

This would result in 214 shares as listed. Using just the
land description from the listed (in color) map plots and
acreages from land included in Vested Right application
only 116 acres are listed as irrigated.

Using the minimum acreage listed with stock transfers 202
plus 47 equalling 249 acres should be listed. For billing
purposes 267 acres have been listed for years.

There are approximately 200 acres south of HiWay 44 in
Section 33 & 34 T1N-R9E which were omitted. In addition
120 acres lies north of HiWay 44 in Section 27 & 34 which
have been irrigated.

This was basis of the 333 acre claim for this vested right,
adjustment, or correction. At a bare minimum acreage listings
should be brought back up to 1121 acres total as was listed
prior to the late 1980's omission of listed acreages.

The first priority of reinstatement of omitted acreages would
be to the south of HiWay 44.

*if enclosures
plus copy of your letter.*

Sincerely,
H. Dale Gossard

Attached brief of Lone Tree Ditch
and Holcomb Ranch (H O Ranch) (Page 1)

Lone Tree Ditch, priority date September 29, 1881
Lone Tree Ditch Company, Date of incorporation:
November 30, 1883, for 20 year term of existence,
expiration date 1903. 600 shares of
capital stock issued.
Lone Tree Water Company, formed Dec. 3, 1903.
600 shares Capital Stock

Contract: Lone Tree Water Company, with the
Rapid Valley Water Conservancy District
1960... 1121 acres

Holcomb Ranch 1960, 477 acres. All irrigable acres
listed. (Pactola Dam Contract pending).

1973 W. W. Walton (owner of HO or Holcomb Ranch)
Irrigation acreage 477

1974 W. W. Walton sold off part of the HO Ranch
Sale included 45 irrigated acres to
J. Norris and 91 irrigated acres to
W. Jones. (This leaves 341 irrigated
acres with the original HO Ranch.)

1976 W. W. Walton sold 74 acres irrigated land covered
by 31 shares of Lone Tree Water Co. stock
to Barber in 1976, leaving 267 irrigated
acres with the original HO Ranch.

1979 Barber sold this same 74 acres irrigated land
covered 31 shares of Lone Tree Water Co.
stock to Don Jundt. January 1979, stock
transfer date.

1979 Stock transfer of 180 shares Lone Tree Water
Company stock from Airport Farms to Etna
Life Insurance Company.

1987 Browder & Martin owned 51 irrigable acres and
Airport Farms owned 216 irrigable acres.
Ray Hillenbrand was also owner of part of
this balance of the HO Ranch for a time.

1988 Mark Kieffer purchased the 51 irrigable acres
held by Browder & Martin. Airport Farms
controlled 216 acres of irrigable land.
Ray Hillenbrand kept 9 shares and 16 acres
of irrigable land, with the HO Ranch building
headquarters site which totaled approximately
40 acres. The irrigable portion lies between
the Lone Tree Ditch and highway 44 being to
the north of the old Rail Road right of way.

Attachment I

Vested Right Water License No. 2038-2

The location of the irrigated acreage is:

ACRES	LEGAL DESCRIPTION OF LAND	ACRES	LEGAL DESCRIPTION OF LAND
28	SW1/4 SE1/4 SEC 28-T1N-R9E	11	NE1/4 SW1/4 SEC 35-T1N-R9E
28	SE1/4 SE1/4 SEC 28-T1N-R9E	33	SE1/4 SW1/4 SEC 35-T1N-R9E
17	NW1/4 SW1/4 SEC 28-T1N-R9E	27	SE1/4 SE1/4 SEC 35-T1N-R9E
5	SW1/4 SW1/4 SEC 28-T1N-R9E	31	SW1/4 SE1/4 SEC 35-T1N-R9E
16	NE1/4 SW1/4 SEC 28-T1N-R9E	40	NE1/4 SE1/4 SEC 35-T1N-R9E
15	SE1/4 SW1/4 SEC 28-T1N-R9E	36	SW1/4 NE1/4 SEC 35-T1N-R9E
		13	SE1/4 NE1/4 SEC 35-T1N-R9E
		28	NW1/4 SE1/4 SEC 35-T1N-R9E
29	NW1/4 NW1/4 SEC 29-T1N-R9E	26	NW1/4 NE1/4 SEC 35-T1N-R9E
14	NE1/4 NW1/4 SEC 29-T1N-R9E	39	SE1/4 NW1/4 SEC 35-T1N-R9E
19	SW1/4 NW1/4 SEC 29-T1N-R9E	16	NE1/4 NW1/4 SEC 35-T1N-R9E
32	SE1/4 NW1/4 SEC 29-T1N-R9E	34	NW1/4 NW1/4 SEC 35-T1N-R9E
33	SW1/4 NE1/4 SEC 29-T1N-R9E	30	SW1/4 NW1/4 SEC 35-T1N-R9E
9	SE1/4 NE1/4 SEC 29-T1N-R9E		
14	NW1/4 SE1/4 SEC 29-T1N-R9E	7	NW1/4 SW1/4 SEC 36-T1N-R9E
1	NE1/4 SE1/4 SEC 29-T1N-R9E	16	SW1/4 SW1/4 SEC 36-T1N-R9E
5	NW1/4 SW1/4 SEC 29-T1N-R9E	38	SE1/4 SW1/4 SEC 36-T1N-R9E
20	SE1/4 NE1/4 SEC 30-T1N-R9E	4	NE1/4 SW1/4 SEC 36-T1N-R9E
7	NW1/4 NE1/4 SEC 33-T1N-R9E	4	LOT 2 SEC 1-T1S-R9E
14	NE1/4 NE1/4 SEC 33-T1N-R9E	29	LOT 3 SEC 1-T1S-R9E
2	NE1/4 NW1/4 SEC 33-T1N-R9E	33	LOT 4 SEC 1-T1S-R9E
		33	NW1/4 SW1/4 SEC 1-T1S-R9E
26	SE1/4 NE1/4 SEC 34-T1N-R9E	9	NE1/4 SW1/4 SEC 1-T1S-R9E
21	NE1/4 NE1/4 SEC 34-T1N-R9E	12	NW1/4 SE1/4 SEC 1-T1S-R9E
2	NW1/4 NE1/4 SEC 34-T1N-R9E		
27	SW1/4 NE1/4 SEC 34-T1N-R9E	21	LOT 1 SEC 2-T1S-R9E
		5	LOT 2 SEC 2-T1S-R9E
25	NW1/4 SW1/4 SEC 35-T1N-R9E	16	NE1/4 SE1/4 SEC 2-T1S-R9E
22	SW1/4 SW1/4 SEC 35-T1N-R9E		
=====		=====	
TOTAL ACRES IRRIGATED		1022	

LONE TREE DITCH - LAND INCLUDED IN VESTED RIGHT APPPLICATION AND OWNERS

IRRIGATOR	ACRES	LEGAL DESCRIPTION OF IRRIGATED LAND	COMMENTS
AETNA	7	SW1/4 SE1/4 SEC 28-T1N-R9E	
	12	SE1/4 SE1/4 SEC 28-T1N-R9E	
	7	NW1/4 NE1/4 SEC 33-T1N-R9E	
	14	NE1/4 NE1/4 SEC 33-T1N-R9E	
	21	NE1/4 NE1/4 SEC 34-T1N-R9E	
	8	SE1/4 NE1/4 SEC 34-T1N-R9E	
PAULENE TLAMKA	29	NW1/4 NW1/4 SEC 29-T1N-R9E	
	14	NE1/4 NW1/4 SEC 29-T1N-R9E	
	5	NW1/4 SW1/4 SEC 29-T1N-R9E	
	19	SW1/4 NW1/4 SEC 29-T1N-R9E	
	32	SE1/4 NW1/4 SEC 29-T1N-R9E	
	33	SW1/4 NE1/4 SEC 29-T1N-R9E	
	9	SE1/4 NE1/4 SEC 29-T1N-R9E	
	14	NW1/4 SE1/4 SEC 29-T1N-R9E	
	1	NE1/4 SE1/4 SEC 29-T1N-R9E	
DAVE BROWDER & BUD MARTIN	2	NW1/4 NE1/4 SEC 34-T1N-R9E	
	27	SW1/4 NE1/4 SEC 34-T1N-R9E	
	18	SE1/4 NE1/4 SEC 34-T1N-R9E	
	16	SE1/4 SE1/4 SEC 28-T1N-R9E	
DON JUNDT	17	NW1/4 SW1/4 SEC 28-T1N-R9E	
	5	SW1/4 SW1/4 SEC 28-T1N-R9E	
	16	NE1/4 SW1/4 SEC 28-T1N-R9E	
	15	SE1/4 SW1/4 SEC 28-T1N-R9E	
	21	SW1/4 SE1/4 SEC 28-T1N-R9E	
	2	NE1/4 NW1/4 SEC 33-T1N-R9E	
DALE GOSSARD	5	NE1/4 SW1/4 SEC 35-T1N-R9E	
	33	SE1/4 SW1/4 SEC 35-T1N-R9E	
JAMES NORRIS	25	NW1/4 SW1/4 SEC 35-T1N-R9E	
	22	SW1/4 SW1/4 SEC 35-T1N-R9E	
DOROTHY HOHERZ LEASED BY MARTY RYPKEMA	27	SE1/4 SE1/4 SEC 35-T1N-R9E	
	31	SW1/4 SE1/4 SEC 35-T1N-R9E	
GRANT JONES	20	NE1/4 SE1/4 SEC 35-T1N-R9E	
	13	SE1/4 NE1/4 SEC 35-T1N-R9E	

PAGE 2

LEON FENHAUS 28 NW1/4 SE1/4 SEC 35-T1N-R9E

DENNIS CASEY 20 SE1/4 NE1/4 SEC 30-T1N-R9E

WALTER JONES 7 NW1/4 SW1/4 SEC 36-T1N-R9E
16 SW1/4 SW1/4 SEC 36-T1N-R9E
38 SE1/4 SW1/4 SEC 36-T1N-R9E
4 NE1/4 SW1/4 SEC 36-T1N-R9E
20 NE1/4 SE1/4 SEC 35-T1N-R9E
26 NW1/4 NE1/4 SEC 35-T1N-R9E
6 NE1/4 SW1/4 SEC 35-T1N-R9E
19 SE1/4 NW1/4 SEC 35-T1N-R9E
9 NE1/4 NW1/4 SEC 35-T1N-R9E
36 SW1/4 NE1/4 SEC 35-T1N-R9E
34 NW1/4 NW1/4 SEC 35-T1N-R9E
30 SW1/4 NW1/4 SEC 35-T1N-R9E
7 NE1/4 NW1/4 SEC 35-T1N-R9E
20 SE1/4 NW1/4 SEC 35-T1N-R9E

LORIN STALDER 21 LOT 1 SEC 2-T1S-R9E
5 LOT 2 SEC 2-T1S-R9E
16 NE1/4 SE1/4 SEC 2-T1S-R9E

* MULTIPLE OWNERS 4 LOT 2 SEC 1-T1S-R9E * THE FOLLOWING OWN
29 LOT 3 SEC 1-T1S-R9E PROPERTY IN SEC 1:
33 LOT 4 SEC 1-T1S-R9E A. BRAUNESREITHER 16 AC
33 NW1/4 SW1/4 SEC 1-T1S-R9E TAMMY BESLER 17 AC.
9 NE1/4 SW1/4 SEC 1-T1S-R9E TERRANCE THOMPSON 18 AC
12 ~~NW~~1/4 SE1/4 SEC 1-T1S-R9E WILLIAM STERN 20 AC.
NW ALLEN LEIGHTON 32 AC.
MIKE VICKERS 16 AC.

TOTAL ACREAGE 1022

ATTACHMENT Page 2, Lone tree Ditch and H O Ranch

- 1989 Mark Kieffer; 51 irrigable acres. Ag. Resources (former Airport Farms) 216 irrigable acres.
- 1990 Mark Kieffer; 51 irrigable acres. Ag. Affiliates (former Airport Farms/Ag. Resources) 216 acres.
- 1991 Mark Kieffer; 51 irrigable acres. Ag. Affiliates 216 acres.

1991 or near that point in time Ray Hillenbrand sold the HO Ranch headquarters site to Lammers. In the mid 1990s the 16 acres of irrigable land south of the Lone Tree Ditch and north of Highway 44 were included in a land sale to 2 separate owners. The 9 shares of Lone Tree stock went with the land deal. (This land was part of the land Browder and Martin possessed for a time.)

1992 and 1993 Mark Kieffer controlled 267 irrigable acres of the former H O Ranch.

1994 Stock transfer to Mark Kieffer from Etna Life Insurance Company and Ray Hillenbrand 214 shares of Lone Tree Ditch Company Stock. This transfer of ownership 51 acres irrigable land (Browder Martin /Ray Hillenbrand) plus 216 acres irrigable land held by Ag. Affiliates / Etna Life Insurance Company.

1995 - 1999 Mark Kieffer continued to pay irrigation assessments on 214 shares of Lone Tree Water Co. Stock covering 267 acres of irrigable land.

The above information was taken from the record books of the Lone Tree Water Company, March 6,7, year 2000, by Walter Jones and H. Dale Gossard.

Mr. Kieffer began updating the irrigation portion as well as cleaning up the remainder of the former HO Ranch as he gained control of it. At present he has a state of the art pivot irrigation system on part of the irrigable land. An underground pipe line is in place, which serves more of the land. There are other updates some completed, some in the works, while others are still in the planning stage.

H. Dale Gossard
Lone Tree Ditch, President

LONE TREE DITCH - LAND INCLUDED IN VESTED RIGHT APPLICATION AND OWNERS

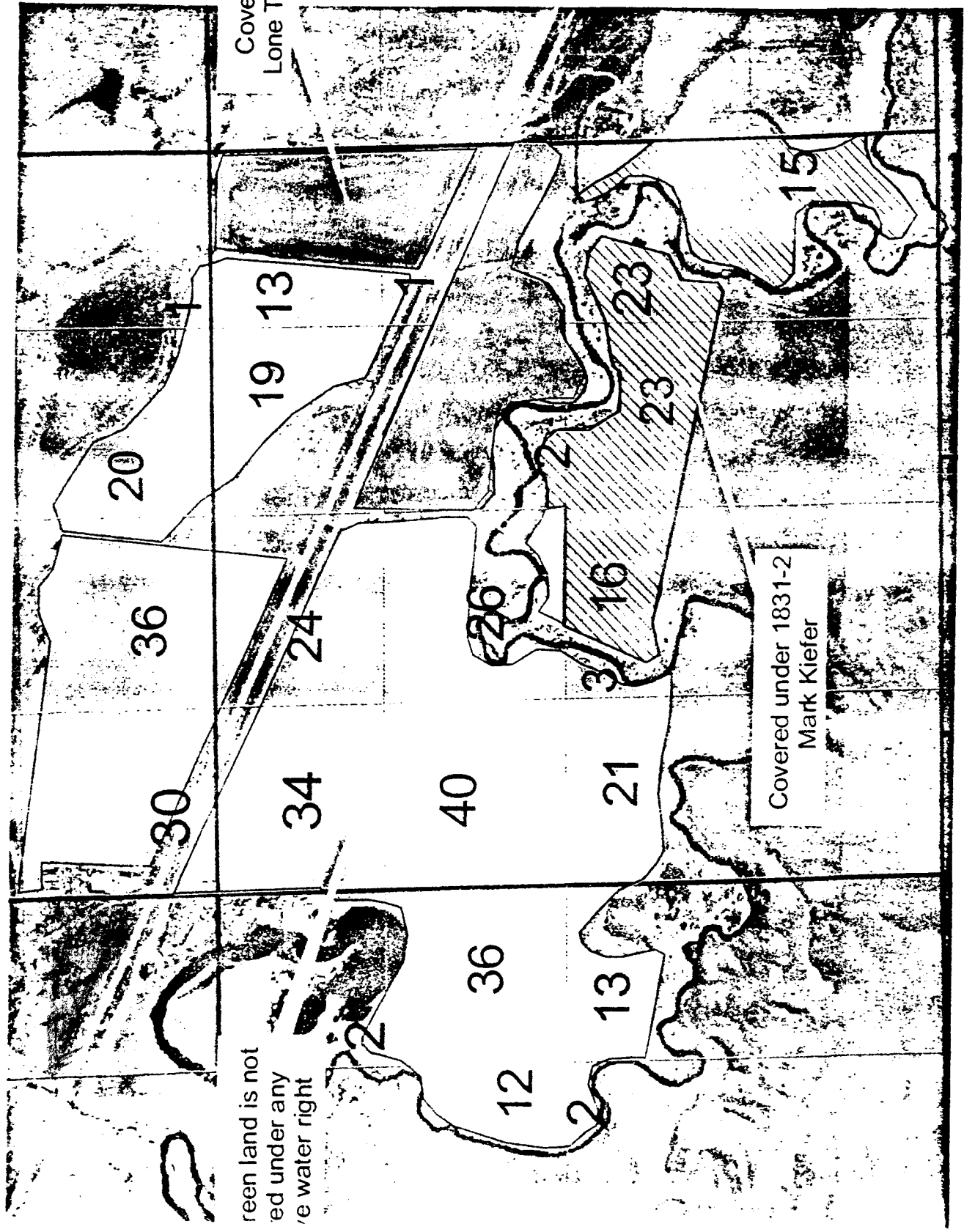
IRRIGATOR	ACRES	LEGAL DESCRIPTION OF IRRIGATED LAND	COMMENTS
AETNAI Listed as Transferred from AETNA From North Aetna of Highway	7	SW1/4, SE1/4 SEC 28-T1N-R9E	South of Highway (in Ox-Bow Area) Ac 69 acres
	12	SE1/4 SE1/4 SEC 28-T1N-R9E	
	7	NW1/4 NE1/4 SEC 33-T1N-R9E	
	14	NE1/4 NE1/4 SEC 33-T1N-R9E	
	21	NE1/4 NE1/4 SEC 34-T1N-R9E	
	8	SE1/4 NE1/4 SEC 34-T1N-R9E	
	69		
	29		
PAULENE TLAMKA	29	NW1/4 NW1/4 SEC 29-T1N-R9E	Kieffer 105.95 Actual
	14	NE1/4 NW1/4 SEC 29-T1N-R9E	
	5	NW1/4 SW1/4 SEC 29-T1N-R9E	
	19	SW1/4 NW1/4 SEC 29-T1N-R9E	
	32	SE1/4 NW1/4 SEC 29-T1N-R9E	
	33	SW1/4 NE1/4 SEC 29-T1N-R9E	
	9	SE1/4 NE1/4 SEC 29-T1N-R9E	
	14	NW1/4 SE1/4 SEC 29-T1N-R9E	
	1	NE1/4 SE1/4 SEC 29-T1N-R9E	156
DAVE BROWDER & BUD MARTIN	2	NW1/4 NE1/4 SEC 34-T1N-R9E	47 63 acres
	27	SW1/4 NE1/4 SEC 34-T1N-R9E	
	18	SE1/4 NE1/4 SEC 34-T1N-R9E	
	16	SE1/4 SE1/4 SEC 28-T1N-R9E	
	63		
DON JUNDT	17	NW1/4 SW1/4 SEC 28-T1N-R9E	63 acres
	5	SW1/4 SW1/4 SEC 28-T1N-R9E	
	16	NE1/4 SW1/4 SEC 28-T1N-R9E	
	15	SE1/4 SW1/4 SEC 28-T1N-R9E	
	21	SW1/4 SE1/4 SEC 28-T1N-R9E	
	2	NE1/4 NW1/4 SEC 33-T1N-R9E	
DALE GOSSARD	5	NE1/4 SW1/4 SEC 35-T1N-R9E	
	33	SE1/4 SW1/4 SEC 35-T1N-R9E	
JAMES NORRIS	25	NW1/4 SW1/4 SEC 35-T1N-R9E	
	22	SW1/4 SW1/4 SEC 35-T1N-R9E	
DOROTHY HOHERZ LEASED BY MARTY RYPKEMA	27	SE1/4 SE1/4 SEC 35-T1N-R9E	
	31	SW1/4 SE1/4 SEC 35-T1N-R9E	
GRANT JONES	20	NE1/4 SE1/4 SEC 35-T1N-R9E	
	13	SE1/4 NE1/4 SEC 35-T1N-R9E	

see
Q-12

28
N-9

127
IN-9





Covered under 2038-2
Lone Tree Ditch Company

Covered under 1831-2
Mark Kiefer



RECEIVED

APR - 8 2002

WATER RIGHTS
PROGRAM

REQUEST FOR TRANSFER OF STOCK
OF LONE TREE DITCH COMPANY
FORMERLY LONE TREE WATER COMPANY
CAPUTA, SOUTH DAKOTA

Transfer of 330 shares of stock of W. W. Walton received from Eugene H., Elizabeth F. and Virginia L. Dunn, under certificate originally dated May 24, 1957, to which is attached, are to be transferred as follows:

1. Nine (9) shares to Ray J. Hillenbrand and Larita D. Hillenbrand for the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, Township 1 North, Range 9 East of the Black Hills Meridian, Pennington County, South Dakota. This was sold under separate contract and for escrow and contract purposes, a separate certificate is required.
2. Thirty-Four (34) shares to Ray J. Hillenbrand and Larita D. Hillenbrand for the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, the SE $\frac{1}{4}$, all of the NE $\frac{1}{4}$ located South of the Highway Right-of-Way, the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, in Township 1 North, Range 9 East of the Black Hills Meridian, Pennington County, South Dakota.

In connection with this tract, Lots 3 and 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2; Lots 1 and 2, SE $\frac{1}{4}$ of Section 3, Township 1 South, Range 9 East of the Black Hills Meridian, were purchased, but I believe they are outside the irrigated areas.

3. One Hundred Eighty (180) shares to W. W. Walton. This certificate will be placed in escrow in the Donald W. Brown and Bette L. Brown contract, which is escrowed at the First National Bank, for delivery to them when they have completed their payments and all terms and conditions of their Contract for Deed with W. W. Walton. These shares are in connection with all of Section 27, except Highway and Railroad Right-of-Ways, the E $\frac{1}{2}$ NW $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ located North of Highway Right-of-Way, the NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, the N $\frac{1}{2}$ NW $\frac{1}{4}$ of NE $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, that portion of Section 34 located North of the Highway Right-of-Way, that portion of the NW $\frac{1}{4}$ of Section 34, located South of the Railroad Right-of-Way, the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, the N $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, all in Township 1 North, Range 9 East of the Black Hills Meridian.

10 (to Barber)

4. One Hundred Seven ~~(107)~~ shares to W. W. Walton, which is for the balance of the H-O property retained by Walton or sold under other contracts.

Attached is the original certificate, which has been assigned to W. W. Walton as above stated. Attached are assignments of W. W. Walton of 43 shares to Donald W. Brown and Bette L. Brown and of Brown's assignment of 43 shares to Nolan H. Nuttall and Lucile Nuttall, who in turned assigned 9 shares to Ray J. Hillenbrand and Larita D. Hillenbrand in connection with sale of the E $\frac{1}{2}$ SE $\frac{1}{4}$ located North of Highway Right-of-Way in Section 28, Township 1 North, Range 9 East; and 34 shares to Ray J. Hillenbrand and Larita D. Hillenbrand in connection with the sale fo the property in Sections 33 and 34, Township 1 North, Range 9 East of the Black Hills Meridian, which complete the transfer of the 43 shares.

If you will issue a separate certificate for the 180 shares to W. W. Walton, this can be placed in the Brown escrow file and would simplify later transactions, in connection with the 107 shares to W. W. Walton in connection with lands retained and other contract, there will be a later subdividing of this.

If you have any questions, please call Louis K. Freiberg, attorney for W. W. Walton, 909 St. Joe #420, Rapid City, South Dakota, Phone #343-5767.

4. The 107 shares referred to here could Refer to the Sale and Transfer of the

Place which was own W.W. Walton for a per Time, /scperate F H.O. Ranch.

Currently this is owned by merlin and Gloria Strawn and 1 (Family)

However there were

The 44 shares to B. J. and 22 shares to Dr No on the ATTACHED LET DATED 9/18/1979 L. Frei

There were 31 shares sold at the Time (Approximately) to Edgar Barber who made to Don Jundt (Current owner),

This makes 97 shares, (left is 10 or 9 shares in guest which is referred to IN Paragraph 1. page 2 this Letter and 2ND paragraph Page 2.



I'm Looking at this

Further, Stock Transfers show Kieffer with 34 shares + 180 shares. Hillenbrand 9 shares, which have since been sold but we have the Transfers Recorded.

The 16 to 20 acres with this 9 shares of stock and stock are listed with Kieffers in some places...

Will send more details on average later.

FK

~~Post Office Box 8150~~
Telephone (605) 343-5767

Law Offices of
Louis K. Freiberg

First Federal Plaza
9th and St. Joe Street
Rapid City, South Dakota 57701

September 18, 1979

Lone Tree Ditch Company
c/o Bud Jones
R. R. 2, Box 646
Rapid City, South Dakota 57701

RE: Our File #79-108(1)

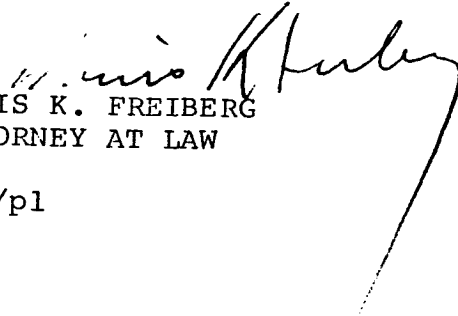
Dear Bud:

This is to confirm that we overlooked the fact that 44 shares had been assigned by Walton to you and 22 shares to Dr. Norris, a total of 66 shares. Please correct memorandum forwarded to you on September 12, 1979, to reflect that 41 shares should be issued to W. W. Walton, which is for the balance of H-O property retained by Walton or sold under other contract, he having issued 44 shares to Bud Jones and 22 shares to Dr. Norris.

The map on the Lone Tree Ditch is at my office and it is difficult to mail. If you could stop up the next time you are downtown, to pick it up, I would appreciate it.

Thank you.

Sincerely,


LOUIS K. FREIBERG
ATTORNEY AT LAW

LKF/pl

Canal Lone Tree
Maps 5N-113

Color
Brown

Map No.	Ownership No.	Acres	Owner
5N-113	1	25	Walt Hall
	2	65	Koers
1N-13	2A	30	Koers
	3	60	Koers
"	4	21	Koers
	5	100	Dunn
	6	251	Dunn
1N-40	7	39	Dunn
1N-38	8	87	Dunn
1N-40	9	4.5	L. Jones
1N-40	10	28	L. Jones
1N-40	11	53.5	L. Jones
1N-40	12	28	L. Jones
1N-40	13	33	L. Jones
1N-40	14	85	L. Jones
1N-38	15 15A	38 26 39	R. Melch
38	16	45	C. Melch
38	17	9	R. Melch
38	18	12	C. Melch
38	19	25	Lehman
38	20	12	Lehman
38	21	51	Lehman
38	21A	15	Lehman
5N 113	1A 5ac		Dick Taylor
		1121	

Lone Tree Ditch
 Acreages assessments
 were paid on. (or billed for)

1982		1105 acres
1984		1105 acres
1986		1105 acres
1987	(Lower Lone Tree Ranchbills... Subdivided.)	1162 acres
1988		1162 acres
1990		1162 (16 acres) NOT INCLUDED 10 Shares Paid on Not Included but paid on
1994		1167 acres

Water Rights Program - DENR

File Documentation

File No. 2479-2

County: Pennington

Name of Person: Dale Gossard, Lone Tree Ditch Company

Address: Rapid City

Date: 4/17/02 Telephone: 393-0223

RE: Mark and Pam Kieffer's ownership of shares in Lone Tree Ditch Company.

Comments:

I called Dale Gossard concerning the possibility of tracking shares in Lone Tree Ditch Company to Mark and Pam Kieffer. I told Dale that I had reviewed a document that he provided me titled "Request For Transfer of Stock of Lone Tree Ditch Company Formerly Lone Tree Water Company Caputa, South Dakota". I told him I particularly interested in paragraph No. 3 of that document which listed 180 shares to W.W. Walton because it involved the acres listed in the vested right claim. The following is the share transfer trail for those 180 shares:

Transfer of 180 shares from W.W. Walton to Donald W. Brown and Bette L. Brown – 7/31/1979

Transfer of 180 shares from D. Brown and B. Brown to Airport Farms – 12/5/1979

Transfer of 180 shares from Airport Farms to Aetna Insurance Company – 3/25/1983

Transfer of 180 shares from Aetna to Mark Kieffer – 8/31/1994

4/26/2002 – Dale Gossard stated the date of the document "Request For Transfer of Stock of Lone Tree Ditch Company Formerly Lone Tree Water Company Caputa, South Dakota" is believed to be September 12, 1979



Mark D Rath

Natural Resources Engineering Specialist

Mark Rath
Water Rights Division DENR

April 25, 2002

Mark: Enclosed more information
on the HO. Ranch irrigated acreages
as per our former phone conversation.
Some questions answered on
accompanying 3 pages.
The final listing of shares
transferred and in acreages and
locations will be mailed in
a couple of days.
I have to organize and
copy my findings for you.
most all verified O.K.
It took about
3 times as long
as I thought
it would.

RECEIVED
APR 26 2002
WATER RIGHTS
PROGRAM

Copy April 2002

AD Dale Gassard
Pres: Lone Tree
Water Co.
605-393-0223

BILL OF SALE

No.

From

To

STATE OF SOUTH DAKOTA

County of ss.

Filed this day of ss.

19

and entered in Personal Property

Index No. Page

Register of Deeds

Deputy.

Seal

March 23, 1992
NOTARY PUBLIC
STATE OF SOUTH DAKOTA

On this the day of 1988 before me
personally appeared Ray J. Hildebrand + Anita S. Hildebrand, known to me
(or satisfactorily proven) to be the persons whose names
and acknowledged that they executed the same for the purposes therein contained.
In witness whereof I have hereunto set my hand and official seal
subscribed to the within instrument

Notary Public
Mary Jones
Title of Officer

STATE OF SOUTH DAKOTA
County of ss.

Document:
Dated: March 24, 1988

Copy April 2002

BILL OF SALE—Short Form

43-35B

Know all Men by these Presents: That Ray J. Hillenbrand and Larita D. Hillenbrand, husband and sife, of 909 St. Joe Street #400, Rapid City South Dakota of the County of Pennington

and State of South Dakota, part ies of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration-----DOLLARS in hand paid, at or before the delivery of these presents, by Mark M. Kieffer and Pam I. Kieffer, husband and wife, or 8303 Keystone Route, Rapid City, So. Dak. of the County of Pennington and

Part ies of the second part the receipt whereof is hereby acknowledged, ha ve bargained, sold, granted and conveyed, and by these presents do bargain, sell and convey unto the said part of the second part their executors, administrators and assigns the following described personal property, namely all irrigation equipment located on the following described real estate: S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 33 SE $\frac{1}{4}$, all NE $\frac{1}{4}$, located south of the highway R.W., E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ W $\frac{1}{4}$, $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 34, T1N, R9E, Lots 3 & 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$ & W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 2, Lots 1 & 2 SE $\frac{1}{4}$ of Sec. 3, T1S, R9E, BHM, Penn. Cty., SD.

TO HAVE AND TO HOLD the same unto the said part ies their executors and administrators and assigns, forever. And the part ies of the first part do for themselves and their heirs, executors and administrators, covenant and agree to and with the said part of the second part, to warrant and defend the said property hereby sold unto the said part ies of the second part their executors, administrators and assigns, against all and every person and persons whatsoever.

IN WITNESS WHEREOF We have hereunto set our hands the 24th day of March, 1988

Signed, Sealed and Delivered in Presence of

Mary Bond
Susan L. Larson

Ray J. Hillenbrand (SEAL)
Larita D. Hillenbrand (SEAL)

mailing date on
this is believed
to be September 12, 1979

Copy
See page 2
and attached page.

REQUEST FOR TRANSFER OF STOCK
OF LONE TREE DITCH COMPANY
FORMERLY LONE TREE WATER COMPANY
CAPUTA, SOUTH DAKOTA

Transfer of 330 shares of stock of W. W. Walton received from Eugene H., Elizabeth F. and Virginia L. Dunn, under certificate originally dated May 24, 1957, to which is attached, are to be transferred as follows:

- Verify*
1. Nine (9) shares to Ray J. Hillenbrand and Larita D. Hillenbrand for the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, Township 1 North, Range 9 East of the Black Hills Meridian, Pennington County, South Dakota. This was sold under separate contract and for escrow and contract purposes, a separate certificate is required.

- Verify*
2. Thirty-Four (34) shares to Ray J. Hillenbrand and Larita D. Hillenbrand for the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, the SE $\frac{1}{4}$, all of the NE $\frac{1}{4}$ located South of the Highway Right-of-Way, the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, in Township 1 North, Range 9 East of the Black Hills Meridian, Pennington County, South Dakota.

In connection with this tract, Lots 3 and 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2; Lots 1 and 2, SE $\frac{1}{4}$ of Section 3, Township 1 South, Range 9 East of the Black Hills Meridian, were purchased, but I believe they are outside the irrigated areas.

- Verify*
3. One Hundred Eighty (180) shares to W. W. Walton. This certificate will be placed in escrow in the Donald W. Brown and Bette L. Brown contract, which is escrowed at the First National Bank, for delivery to them when they have completed their payments and all terms and conditions of their Contract for Deed with W. W. Walton. These shares are in connection with all of Section 27, except Highway and Railroad Right-of-Ways, the E $\frac{1}{2}$ NW $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ located North of Highway Right-of-Way, the NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, the N $\frac{1}{2}$ NW $\frac{1}{4}$ of NE $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, that portion of Section 34 located North of the Highway Right-of-Way, that portion of the NW $\frac{1}{4}$ of Section 34, located South of the Railroad Right-of-Way, the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, the N $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, all in Township 1 North, Range 9 East of the Black Hills Meridian.

10 (to Barbara)

44 shares B. Jones
22 shares J. Norris
31 shares E. Barber
10 shares unassigned
107 shares

4. One Hundred Seven ~~(107)~~ shares to W. W. Walton, which is for the balance of the H-0 property retained by Walton or sold under other contracts.

Attached is the original certificate, which has been assigned to W. W. Walton as above stated. Attached are assignments of W. W. Walton of 43 shares to Donald W. Brown and Bette L. Brown and of Brown's assignment of 43 shares to Nolan H. Nuttall and Lucile Nuttall, who in turned assigned 9 shares to Ray J. Hillenbrand and Larita D. Hillenbrand in connection with sale of the E $\frac{1}{2}$ SE $\frac{1}{4}$ located North of Highway Right-of-Way in Section 28, Township 1 North, Range 9 East; and 34 shares to Ray J. Hillenbrand and Larita D. Hillenbrand in connection with the sale fo the property in Sections 33 and 34, Township 1 North, Range 9 East of the Black Hills Meridian, which complete the transfer of the 43 shares.

If you will issue a separate certificate for the 180 shares to W. W. Walton, this can be placed in the Brown escrow file and would simplify later transactions, in connection with the 107 shares to W. W. Walton in connection with lands retained and other contract, there will be a later subdividing of this.

If you have any questions, please call Louis K. Freiberg, attorney for W. W. Walton, 909 St. Joe #420, Rapid City, South Dakota, Phone #343-5767.

Corrections Above.
The only part in question of this is the 10 shares to W. W. Walton which I have agreed, but have not found or verified a transfer of to date 4/25/2002
7/28/02

Frank

Verified

revised

~~Post Office Box 8150~~
Telephone (605) 343-5767

Law Offices of
Louis K. Freiberg

First Federal Plaza
9th and St. Joe Street
Rapid City, South Dakota 57701

September 18, 1979

Lone Tree Ditch Company
c/o Bud Jones
R. R. 2, Box 646
Rapid City, South Dakota 57701

RE: Our File #79-108(1)

Dear Bud:

This is to confirm that we overlooked the fact that 44 shares had been assigned by Walton to you and 22 shares to Dr. Norris, a total of 66 shares. Please correct memorandum forwarded to you on September 12, 1979, to reflect that 41 shares should be issued to W. W. Walton, which is for the balance of H-O property retained by Walton or sold under other contract, he having issued 44 shares to Bud Jones and 22 shares to Dr. Norris. *

The map on the Lone Tree Ditch is at my office and it is difficult to mail. If you could stop up the next time you are downtown, to pick it up, I would appreciate it.

Thank you.

Sincerely,

Louis K. Freiberg
LOUIS K. FREIBERG
ATTORNEY AT LAW

LKF/pl

Extra Copy

* From this request and the date on this letter, I estimate the mailing date of the memorandum to be September 12, 1979. The actual stock transfer dates on most of the requested stock Transfer Certificates is October 19, 1979. *MEB*

THE LONE TREE WATER (DITCH) COMPANY
STOCK OWNED BY THE HOLCOMB RANCH

Original stock certificate #4 owned by and issued to Eugene Holcomb for 344 shares of Lone Tree Water Company Stock, dated April 2 1904.

NOTE: (Holcomb Ranch was at that time, and through the years, and successive owners, continues to be the major stock holder in the Lone Tree Water Company.)

Share Transfer, from original stock certificate #4, listed above: 172 shares of Lone Tree Water Company Stock, (Orlan Holcomb estate) issued to Fannie J. Holcomb. New stock certificate #19, date September 13, 1937. (by Fannie J. Holcomb, executor)

NOTE: Holcomb, H O Ranch, name Orlan Holcomb, reversed initials.

Share Transfer, from original stock certificate #4, listed above: 172 shares of Lone Tree Water Company Stock, (Orlan Holcomb estate) issued to Laura Mae Dunn. New stock certificate #20, date September 13, 1937. (by Fannie J. Holcomb, executor)

Share transfer, from stock certificate #19, 167 shares of Lone Tree Water Company stock, issued to Fannie J. Holcomb. New stock certificate #22, date April 30, 1940. (Stock transferred FROM Fannie J. Holcomb.)

Share transfer, from stock certificate #19, 5 shares of Lone Tree Water Company stock, issued to Peter & Sofia Lutheran. New stock certificate #23, date April 30, 1940. (Stock transferred FROM Fannie J. Holcomb.) (Land deeded out of H O Ranch.)

Share transfer, from stock certificates: issue date
#20 172 shares, owner Lura Mae Dunn, September 13, 1937
#22 167 shares, owner Fannie J. Holcomb, April 30, 1940
New stock certificate #31, date July 27, 1955. New Owners:
Lura Mae Dunn 1/2 interest
Eugene H. Dunn 1/6 "
Elizabeth F. Dunn 1/6 "
Virginia L. Dunn 1/6 "

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MAY 07 2002

WATER RIGHTS
PROGRAM

H O Ranch Stock Transfers, page 2

Stock share transfer: From certificate #31

Listing 339 Shares of stock. Dated, July 27, 1955
Owners, Lura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn,
and Virginai L. Dunn

NEW Stock certificate #33, Listing 330 Share of Lone Tree
Water Company stock. Certificate date, May 24, 1957.

Owners: Eugene H. Dunn, Elizabeth F. Dunn and
Virginia L. Dunn.

Stock Share transfer: From Certificate #31, 9 shares,
Dated July 27, 1955. Owners, Laura Mae Dunn, Eugene H.
Dunn, Elizabeth F. Dunn and Virginia L. Dunn.

NEW Stock certificate #34, Listing 9 shares of Lone Tree
Water Company stock. Certificate date, May 24, 1957.

Owners: Eugene H. Dunn, Elizabeth F. Dunn and Virginia L.
Dunn.

Stock Share transfer: Certificate #34, 9 shares of stock.
Certificate dated May 24, 1957. Owners, Eugene H. Dunn,
Elizabeth F. Dunn and Virginia L. Dunn.

NEW stock certificate #39, 9 shares of Lone Tree Water
Company stock. Certificate dated, April 14, 1960.

New owners: R. E. and Cynthia Welch. (Land deeded out of
H O Ranch).

NOTE: (Contract, between H O Ranch, Eugene H. Dunn, Virginia
L. Dunn and Elizabeth F. Dunn Wells) and or of the Lone Tree
(Water) Ditch Company, the Rapid Valley Water Conservancy
District, and Pactola Reservoir. (Better known as the
Pactola Water Contract). Listed was 477 irrigated acres,
while owning 330 share of Lone Tree stock. Dated,
December 27, 1960 final seal. Preliminary or first
signataure January 5, 1960. Pactola Contract effective 1961.

The H O Ranch was sold to W. W. Walton by the Dunn family in
1966 or early 1967. Included in this sale was Lone Tree
Water company stock certificate #33 listing 330 shares, dated
May 24, 1957. 477 irrigated acres were listed with this sale.
(The exact sale date of the ranch does not appear in the Lone
Tree records,) however W. W. Walton paid the 1968 irrigation
fees.

Stock certificate #33 dated May 24, 1957, in the names of
Eugene H. Dunn, Elizabeth F. Dunn and Virginia L. Dunn. This
stock certificate was reported lost for a time, but later
retrieved. The certificate is in the Lone Tree Water Company
Stock Certificate Book. It is assigned to W. W. Walton and
signed by Carter S. Wells, Elizabeth (Dunn) Wells, Virginia
F. Dunn, Eugene H. Dunn and Kathleen A. Dunn, in the presence
of Georgia Atwell. This transfer to W. W. Walton is undated.
No new Stock certificate and number was issued to W. W. Walton.

H O Ranch, Lone Tree Water Company Stock Transfers
Page 3

Stock assignment transfers by W. W. Walton as he sold off the H O Ranch in several separate parcels a few years after purchasing the Ranch. Included with the purchase of the entire Ranch from the Dunn family was Lone Tree Water Company stock certificate #33 listing 330 shares of stock. 477 irrigated acres were listed. Some of the parcels of land sold contained no irrigated land or shares of Lone Tree Water Company Stock. Listed below are the sales of lands with stock and accompanying irrigated acres at the time of the sale.

1974, Land sale in the fall. February 23, 1975 W. W. Walton assigned 44 shares of Lone Tree Water Company Stock, with 91 irrigated acres to: Walter Jones. New stock certificate #48 issued, to Walter Jones. Stock certificate #48 issue date was April 25, 1975, listing 44 shares of Lone Tree Water Company Stock. (Land description: NW1/4 less lot A; also that portion of the NE1/4 of the SW1/4 lying north of Lot H-2, to the north of the highway 44 right of way; all in SEC35-T1N-R9E). This stock assignment, was confirmed by the Dunn and Dunn/Wells families on April 20, 26, 28, 1975. The old stock certificate was #33, listing 330 shares of Lone Tree Stock.

1974, Land sale in the fall. February 23, 1975 W. W. Walton assigned 22 shares of Lone Tree Water Company Stock, with 47 irrigated acres to: James V. Norris. New stock certificate #49 issue date was April 25, 1975. (Land description; 25 acres in NW1/4 SW1/4 and 22 acres in SW1/4 SW1/4 in SEC 35-T1N-R9E.) This stock assignment was confirmed by the Dunn, Dunn/Wells families former owners stock certificate #33, listing 330 shares of Lone Tree Water Company stock. Date of stock assessment confirmation, February. 20, 23, 26, 28, 1975.

1976 March 1, W.W. Walton assigned 31 shares of Lone Tree water Company stock with 74 acres irrigated to: Edgar F. Barber and Amy J. Barber. New stock certificate #50 issued, dated March 18, 1976. Stock transferred from older certificate #33, dated May 24, 1957, listed under the Dunn family name. (This land lies in the S/W1/4 SEC 28-T1N-R9E and 21 acres in the SW1/4 SE1/4 SEC 28-T1N-R9E, all south of Highway 44).

In 1979 Barber sold the above parcel of land to Donald D. Jundt and Virginia V. Jundt. Stock certificate #50 was turned in and replaced by new Stock Certificate #70, listing 31 shares of Lone Tree Water Company Stock, dated, January 1, 1989, under the names of Donald D. Jundt and Virginia V. Jundt.

H O Ranch, Lone Tree Water Company Stock Transfers
Page 4

STOCK ASSIGNMENTS: Transfer from W. W. Walton/(Dunn family Stock certificate #33 listing 330 shares of Lone Tree Water Company Stock, and 477 irrigated acres.)
ASSIGNMENT TO; Donald W. Brown and Bette L. Brown 43 shares of stock. This represents 63 acres of (listed) irrigated land.
(Rapid) retransfer of above 43 shares of stock;
ASSIGNMENT TO; Nolan H. Nuttall and Lucile Nuttall.
Transfer requested by Donald W. Brown and Bette L. Brown.
Dates of these Stock Assignment Transfers, July 30, 31, 1979. (Brief location of this land; E1/2SE1/4 of SEC 28-T1N-R9E, S1/2NE1/4SE1/4 of SEC 33-T1N-R9E. The SE1/4, all of NE1/4 located south of Highway 44 and the E1/2E1/2 SW1/4 the SW1/4SW1/4 the S1/2W1/2SE1/4SW1/4 and the S1/2NW1/4SW1/4 of SEC 34-T1N-R9E). Lands south of Baseline in SEC 2 and SEC 3 of T1S-R9E are not included as irrigated in this transaction.

REASSIGNMENT OF STOCK: The above stock assignment of 43 shares of Lone Tree Water Company stock to Nolan H. Nuttall and Lucile Nuttall, covering (63 acres) of irrigated land is being REASSIGNED to Ray J. Hillenbrand and Larita D. Hillenbrand The date of assignment being August 10, 1979, and requested by Nolan H. Nuttall and Lucile Nuttall. This stock assignment requested the land and stock to be transferred in two separate parcels, as per agreement with Ray J. Hillenbrand and his wife.

STOCK CERTIFICATE #51 for 9 shares Lone Tree Water Company stock, issued to Ray J. Hillenbrand and Larita D. Hillenbrand, dated, October 19, 1979. This stock certificate replaces a portion of former Stock Certificate #33 consisting of 330 shares of Lone Tree Water Company stock held by the Dunn Dunn/Wells family and transferred to W.W. Walton. (477 acres reported irrigated with certificate #33.) This certificate #51 covers approximately 16 acres of irrigatable land in the E1/2SE1/4, located north of highway 44 in SEC 28-T1N-R9E.

STOCK CERTIFICATE #52 for 34 shares of Lone Tree Water Company stock, issued to Ray J. Hillenbrand and Larita D. Hillenbrand, dated, October 19, 1979. This stock certificate replaces a portion of former Stock Certificate #33 as listed in the previous paragraph, except for acreage and land description.

Most of the irrigated acres reported in certificate #52 are located in the S1/2NE1/4 SEC 28-R9ET1N-R9E lying south of highway 44. Other irrigated acreages in SEC 33 and SEC 44 are not listed.

H O Ranch, Lone Tree Water Company Stock Transfers

Page 5

STOCK ASSIGNMENT: Transfer from W. W. Walton/(Dunn family Stock certificate #33 listing 330 shares of Lone Tree Water Company Stock, and 477 irrigated acres.) ASSIGNMENT TO; W. W. Walton 180 shares of Lone Tree Water Company Stock to be placed in escrow in the Donald W. Brown and Bette L Brown contract. Stock assignment date of request, July 31, 1979. General land description as follows; all of SEC 27, except Highway and Railroad Right-of Ways. In SEC 28, E1/2NW1/4, the NE1/4SW1/4 located North of Highway Right-of-Way and the NE1/4 and W1/2SE1/4 of SEC 28-T1N-R9E. N1/2NW1/4NE1/4, E1/2SW1/4NE1/4, E1/2NE1/4 and the N1/2NE1/4SE1/4 of SEC 33-T1N-R9E. The portion of SEC 34 located North of the Highway Right-of-Way and that portion of the NW1/4 of SEC 34 located south of the Railroad, Highway Right-of-way. The N1/2NW1/4SW1/4, N1/2W1/2SE1/4SW1/4 and W1/2NE1/4SW1/4 SEC 34-T1N-R9E. 216 or more acres of this land were covered under this stock assignment as irrigated. (Looking back over past H O Ranch land history probably 300 or more acres of this land were irrigated in times past.)

New STOCK CERTIFICATE #53 listing 180 shares of Lone Tree Water Company Stock, issued to W. W. Walton, dated October 19, 1979. This Stock Certificate #53 was issued as requested in the above Stock Assignment request.

STOCK ASSIGNMENT: Requested by Donald W. Brown and Bette L. Brown, dated December 5, 1979. Assignment of 180 shares of Lone Tree Water Company stock covered under Stock certificate #53, dated October 19, 1979 be assigned to; Airport Farm Limited Partnership, (Paul C. Bunn, Ronald M. Harmon, David O. Friggstad, John M. Davis and Peter E. Tracy.) new owners. Lands listed above on this page are associated with stock certificate #53 and were transferred into new ownership with this transaction.

NEW STOCK CERTIFICATE #57 listing 180 shares of Lone Tree Water Company Stock, issued to Airport Farm Limited Partnership, issue date March 25, 1983. This stock certificate #57 was issued in compliance with the above Stock Assignment request. This stock certificate replaces former Stock Certificate #53 listing 180 shares of Lone Tree Water Company stock in the name of W. W. Walton, dated October 19, 1979. (This Land and Stock Certificate was a part of of the original Holcomb, Holcomb/Dunn, Dunn/Wells/ Dunn/Wells/Walton shares and land covered by Stock Certificate #33 listing 330 shares of Lone Tree Water Company Stock.)

H O Ranch, Lone Tree Water Company Stock Transfers
Page 6

STOCK ASSIGNMENT, Resulting from the Property sale and transfer of ownership of Airport Farm Limited Partnership to Aetna Life Insurance Company. Request of 180 shares of Lone Tree Water Company stock owned by Airport Farm Limited Partnership be transferred to Aetna Life Insurance Company. Request signed by Terry Petrich, General and Managing Partner Ag Resources, Inc. Airport Farm Limited Partnership, dated October 1, 1990.

NEW STOCK CERTIFICATE #73 listing 180 shares of Lone Tree Water Company Stock, issued to Aetna Life Insurance Company, issue date October 18, 1990. This stock certificate replaces Stock Certificate #57 issued to Airport Farm Limited Partnership, dated March 25, 1983. (In general the land description on previous page 5 associated with stock transfer from stock certificate #33 to certificate #53 and on to certificate #57 would apply to this certificate).

STOCK ASSIGNMENT: Ray J. Hillenbrand and Larita D. Hillenbrand sell and transfer stock certificate #52 listing 34 shares of Lone Tree Water Company stock. Stock certificate dated October 19, 1979. (Irrigated acreage reported was 51 acres with this transaction, however considerable more acreage is irrigable. All irrigation equipment located on this real estate also was included with the land. Land location S1/2NE1/4SE1/4 SEC 33-T1N-R9E. SE1/4 all of the NE1/4 south of Highway 44 Right-of-way, the E1/2E1/2SW1/4, the SW1/4SW1/4, the S1/2W1/2SE1/4SW1/4 and the S1/2NW1/4SW1/4 SEC 34-T1N-R9E). Other land not irrigated in SEC 2 and SEC 3-T1S-R9-E was included in the land deal.

Land purchase from Aetna Life Insurance Company by Mark M. Kieffer and Pam I. Kieffer which included Stock certificate #73 listing 180 shares of Lone Tree Water Company stock. Certificate date October 18, 1990. (General land description of lands included in this transaction are listed under Stock Assignment, Page 5 of H O Ranch, Lone Tree Water Company Stock Transfers.) 216 or more irrigated acres are covered by Stock Certificate #73 listing 180 shares of Lone Tree Water Company stock in the name of Aetna Life Insurance Company.

NEW STOCK CERTIFICATE REQUEST; by Mark M. Kieffer and Pam I. Kieffer, a new STOCK CERTIFICATE, combining Stock Certificates #52 listing 34 shares and Stock Certificate #73 listing 180 shares of Lone Tree Water Company Stock be issued.

NEW STOCK CERTIFICATE #76 listing 214 shares and 267 or more acres irrigated. Certificate issued to Mark M. Kieffer and Pam I. Kieffer, dated August 31, 1994. This was the combined shares of former Stock Certificates #52 and #73 being replaced.
continued on page 7

H O Ranch, Lone Tree Water Company Stock Transfers
Page 7

Continued from page 6, combined New Stock Certificate #76 listing 214 shares of Lone Tree Water Company Stock, in the name of Mark M Kieffer and Pam I. Kieffer, dated August 31, 1994. This stock certificate replaced Stock Certificate #52 listing 34 shares of Lone Tree Water Company stock, issued in the name of Ray J. Hillenbrand and Larita D. Hillenbrand, dated October 19, 1979 which was assigned to Mark M. Kieffer and Pam I. Kieffer in the STOCK ASSIGNMENT: third paragraph page 6 of H O Ranch, Lone Tree Water Company. (Line stating the Stock Assignment, assigned to Mark M. Kieffer and Pam I. Kieffer was inadvertently omitted.) Stock certificate #76 listing 214 shares of Lone Tree Water Company stock also replaced Stock Certificate #73 listing 180 shares of Lone Tree Water Company Stock, issued to Aetna Life Insurance Company, dated October 18, 1990.

This concludes the tracking of stock in the Lone Tree Water Company held by the H O Ranch which is currently owned by Mark M. Kieffer and Pam I. Kieffer as of this date, May 3, 2002.

Reference back to Stock Certificate #51 for 9 shares and approximately 12 acres irrigated of 16 to 20 acres of deeded land. (Page 4, H O Ranch, Lone Tree Water Company Stock Transfers, paragraph 3.) Issue date, October 19, 1979 in the names of Ray J. Hillenbrand and Larita D. Hillenbrand. This parcel of land covered by Stock certificate #51 was transferred by Ray J. Hillenbrand and Larita D. Hillenbrand, dated October 19, 1979, into the "Dakota Parthnership d/b/a/ Tripple Seven Ranch". NEW STOCK CERTIFICATE #71, listing 9 Shares of Lone Tree Water Company stock, dated December 29, 1988, was issued.

Stock Certificate Transfer: Stock certificate #71, listing 9 shares of Lone Tree Water Company stock, dated December 29, 1988, under the name Dakota Partnership d/b/a/ Tripple Seven Ranch was requested to be transferred to Daniel and Laurel Lammers. NEW STOCK CERTIFICATE #72A, listing 9 shares of Lone Tree Water Company stock issued to Daniel and Laurel Lammers, dated March 15, 1993 was issued. New stock certificate #72A replaces older Stock Certificate #71. STOCK CERTIFICATE TRANSFER REQUEST: Daniel and Laurel Lammers request Stock Certificate #72A be split and transferred in two seperate certificates as listed below:
NEW STOCK CERTIFICATE #77, listing 5 shares of Lone Tree Water Company stock in the name of Kurt K. or Lori A. Weber, dated March 13, 1996. NEW STOCK CERTIFICATE #78, listing 4 shares of Lone Tree Water Company stock in the name of Vivian Green, dated March 13, 1996.

Compiled by,

H. Dale Hossard
Lone Tree Water Co. President
Completed, May 6, 2002

Certificate
Number

Early Stock Certificate Lone Tree Water Company

No of Shares

Date of Issue
Month Day Year

Issued in
Lieu of Fold
Cert No.

To Whom ISSUED Town Co. State

Dennington

Eugene Holcomb Rapid City SD

Pennington

Robert L. Platt Rapid City SD

Dennington

George Buckingham Rapid City SD

1

510 shares

12 5 1903

2

20 shares

12 5 1903

3

70 shares

12 5 1903

4

344 shares

4 2 1904

Eugene Holcomb

166 shares

4 2 1904

Robert L. Platt

5

10

4 2 1904

Wm. A. Chase

6

28

4 2 1904

William F. Jones

7

64

4 2 1904

Isaac E. Gudmer

8

118

6 1 1905

Maurice Keltner

J. Frank Keltner

Mon 11, 1923

W. H. Jones

9

7

9 26 1905

from #67

Wm. Jones

10

10

9 27 1905

2

Henry Mann

11

70

11 26 1923

3

George
Buckingham

10

5 10 1906

1

Wm. A. Chase

20

5 10 1906

2

Wm. A. Chase

10

5 10 1906

1

Wm. A. Chase

10

5 10 1906

1

Wm. A. Chase

RECEIVED

May 7, 2002

MAY 08 2002

To: Mark Rath, Water Rights Program DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

WATER RIGHTS
PROGRAM

From: H. Dale Gossard, President, Lone Tree Water Co.

Subject: Cover letter, and additional information,
Covering H O Ranch, Lone Tree Water Company
Stock Transfers.

H O Ranch, Lone Tree Water Company, stock transfers,
7 page listing, compiled and signed by Lone Tree Water
Company, President, dated May 6, 2002. (This document
was also mailed May 6, 2002.)

Added note of interest, Refer to NOTE: Page one of document
between paragraph 2 and paragraph 3. H O Ranch, name Orlan
Holcomb, reversed initials. Ranch name, also this was the
ranch horse brand. H O, (Reference, South Dakota Brand
Book 1943, page 57 item 21, "Orlan Holcomb, Estate c/o Mrs.
Orlan Holcomb, Rapid City, S. D." Brand location, left
shoulder, horses.)

Other information included: Copy of Surveyor certificate
of acreages in 11 tracts of H O Ranch sell off.
Copy of H O RANCH AUCTION hand out of auction held on
Monday, October 29, 1973 10:00A.M. (These are a couple
of "gems" I had and was able to find last evening.)

I am sure these will be of interest to you and fit in with
the information gathered in the document covered in this
letter. Also the brand information provided when I was
able to find the Brand Book passed on to me from my Folks.
(The Brand information mainly of interest to both you and
myself, since both of us put so much time into this.)

Information supplied by Craig Anderson, of Bureau of
Reclamation earlier this spring first page of large pages
copied "RAPID VALLEY PROJECT", 1989 irrigated acres.
This shows the non irrigated acreages listed for that
year, in sections 27, 33 and 34. This covers the areas
that are in question quite well. From observing much of
the information we have uncovered, it appears to me that
quite a lot of the land on the north side of highway 44
was not irrigated nearly as often as land to the south
of Highway 44 next to the creek.

I hope the provided information to date will pretty well
cover this subject.

Sincerely,
H. Dale Gossard

3077
646
3723 new

CERTIFICATE AS TO ACREAGES IN 11 TRACTS

IN H. O. RANCH, PENNINGTON COUNTY, SOUTH DAKOTA

I, RODNEY H. MEADOR, registered land surveyor #1019 in the State of South Dakota, do hereby certify that the acreages in Tracts 1 through 11 of the H. O. Ranch as set forth in attached H. O. Ranch Auction Exhibit are as follows, to-wit:

Tract 1 → 200 - 200 - 400 80.377
Tract 2 134.376
Tract 3 82.871
Tract 4 → 200 - 200 - 400 3,139.180
Tract 5 646.302
Tract 6 598.600
Tract 7 1,280.980
Tract 8 1,197.916
Tract 9 672.388
Tract 10 EV 936.234
Tract 11 928.821

Total Acres in 1-11 9,698.045

Tract to be retained
by W. W. Walton 77.083

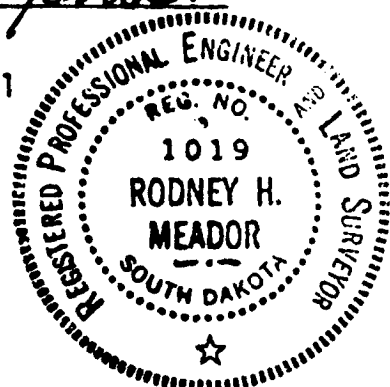
Total acres 9,775.128

Dated this 24 day of October, 1973.

FRANCIS-MEADOR-GELLHAUS, INC.

By

Rodney H. Meador
1843 W. Main
Rapid City, SD 57701



Leroy Bamheart

Norma

154.76

80

9617.66

137

Attachment I

Vested Right Water License No. 2038-2

The location of the irrigated acreage is:

04/11/02

Mark:
I will get an
updated connection
on the multiple owners
and later listing
of irrigated acres.

Dale
Long Tree Ditch.

ACRES	LEGAL DESCRIPTION OF LAND	ACRES	LEGAL DESCRIPTION OF LAND
AETNA 7	SW1/4 SE1/4 SEC 28-T1N-R9E	W. Jones 6	NE1/4 SW1/4 SEC 35-T1N-R9E
D. Jundt 21	SE1/4 SE1/4 SEC 28-T1N-R9E	D. Gouard 11	SE1/4 SW1/4 SEC 35-T1N-R9E
AETNA 7	NW1/4 SW1/4 SEC 28-T1N-R9E	D. Gouard 33	SE1/4 SE1/4 SEC 35-T1N-R9E
D. Jundt 5	SW1/4 SW1/4 SEC 28-T1N-R9E	W. Kaul 27	SW1/4 SE1/4 SEC 35-T1N-R9E
D. Jundt 16	NE1/4 SW1/4 SEC 28-T1N-R9E	W. Jones 31	NE1/4 SE1/4 SEC 35-T1N-R9E
D. Jundt 15	SE1/4 SW1/4 SEC 28-T1N-R9E	G. Jones 40	SW1/4 NE1/4 SEC 35-T1N-R9E
		W. Jones 36	SE1/4 NE1/4 SEC 35-T1N-R9E
		G. Jones 13	NW1/4 SE1/4 SEC 35-T1N-R9E
		L. Finkbein 28	NW1/4 NE1/4 SEC 35-T1N-R9E
M. Skromer 29	NW1/4 NW1/4 SEC 29-T1N-R9E	W. Jones 26	SE1/4 NW1/4 SEC 35-T1N-R9E
M. Skromer 14	NE1/4 NW1/4 SEC 29-T1N-R9E	W. Jones 39	NE1/4 NW1/4 SEC 35-T1N-R9E
M. Skromer 19	SW1/4 NW1/4 SEC 29-T1N-R9E	W. Jones 16	NW1/4 NW1/4 SEC 35-T1N-R9E
M. Skromer 32	SE1/4 NW1/4 SEC 29-T1N-R9E	W. Jones 34	SW1/4 NW1/4 SEC 35-T1N-R9E
M. Skromer 33	SW1/4 NE1/4 SEC 29-T1N-R9E	W. Jones 30	
M. Skromer 9	SE1/4 NE1/4 SEC 29-T1N-R9E		
M. Skromer 14	NW1/4 SE1/4 SEC 29-T1N-R9E		
M. Skromer 1	NE1/4 SE1/4 SEC 29-T1N-R9E		
M. Skromer 5	NW1/4 SW1/4 SEC 29-T1N-R9E		
D. Casey 20	SE1/4 NE1/4 SEC 30-T1N-R9E	W. Jones 7	NW1/4 SW1/4 SEC 36-T1N-R9E
AETNA 7	NW1/4 NE1/4 SEC 33-T1N-R9E	W. Jones 16	SW1/4 SW1/4 SEC 36-T1N-R9E
D. Jundt 14	NE1/4 NE1/4 SEC 33-T1N-R9E	W. Jones 38	SE1/4 SW1/4 SEC 36-T1N-R9E
D. Jundt 2	NE1/4 NW1/4 SEC 33-T1N-R9E	W. Jones 4	NE1/4 SW1/4 SEC 36-T1N-R9E
Brower + Martin 26	SE1/4 NE1/4 SEC 34-T1N-R9E		
Brower + Martin 21	NE1/4 NE1/4 SEC 34-T1N-R9E		
Brower + Martin 2	NW1/4 NE1/4 SEC 34-T1N-R9E		
Brower + Martin 27	SW1/4 NE1/4 SEC 34-T1N-R9E		
J. Norris 25	NW1/4 SW1/4 SEC 35-T1N-R9E		
J. Norris 22	SW1/4 SW1/4 SEC 35-T1N-R9E		
TOTAL ACRES IRRIGATED		1022	

Description
in Error

RECEIVED

APR 12 2002

WATER RIGHTS
PROGRAM



RANCH AUCTION!

NATIVE GRASS

Approximately 8500 acres native Western Wheat Grass, with lesser amounts of Buffalo Grass, Side Oats Grama, Blue Grama, and Green needle species. Balance between irrigated bottoms and hill pastures give this ranch a larger carrying capacity than most in this area.

FENCING AND PASTURES

A program of new fencing has been underway, using treated pine posts and four barbed wires. Much of the fence is new and most of the older fences are in good condition. Ranch is fenced and cross fenced into relatively small pastures, suitable for single bull breeding. Artificial insemination has been successfully practiced on the H-O.

TERMS AND CONDITIONS

Ten percent of purchase price will be required day of sale. Balance will be due January 3, 1974. Land sells with marketable title, or insured title. Reasonable time available to arrange conventional financing. Additional financing available to qualified buyers.

Possession of improvements and bottom meadows, May 1, 1974. Possession of balance of ranch by January 3, 1974. All of owners minerals sell with land.

TAXES

Taxes for 1973 paid by Sellers.

Ranch will be offered in Tracts, then collectively.

Present operator interested in leasing or management arrangement.

L-B LAND & CATTLE CO., of SOUTH DAKOTA, Owners
Gene Brinkman, Ph. 816-843-8155

C. V. Penfield
Box 233
Lemmon, S. D. 57638
Ph. 605-374-5144

Winchester-Shults Real Estate Auction Co.
Box 1309
Enid, Oklahoma 73701
Ph. 405-237-4341

C. V. PENFIELD: DELBERT WINCHESTER: GEORGE SHULTS, Auctioneers

H-O RANCH AUCTION

9765 ACRES

MONDAY, OCT. 29, 1973

10:00 A.M. M.S.T.

Sale at Mid States Fair Grounds Rapid City, S.D.

Ranch located on Highway 40 9 1/2 miles East of Rapid City

Picturesque H-O Ranch is well blocked together, and most accessible. This ranch represents the ideal investment opportunity to acquire a large block of land in a most rapidly developing area.



IMPROVEMENTS: The H-O has a practical set of ranch buildings, with excellent steel corrals, pens, and scales. A second set of working corrals are located in the northeast corner of Tract 6.

L-B LAND & CATTLE CO., of SOUTH DAKOTA, Owners
Gene Brinkman, Ph. 816-842-8155

C. V. Penfield
Box 233
Lemmon, S.D. 57638
Ph. 605-374-5144

Winchester-Shults Real Estate Auction Co.
Box 1309
Enid, Oklahoma 73701
Ph. 405-237-4341

C. V. PENFIELD: DELBERT WINCHESTER: GEORGE SHULTS, Auctioneers



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 22, 2002

H. Dale Gossard
Lone Tree Ditch
15605 Antelope Creek Rd.
Rapid City, SD 57703

Dear Mr. Gossard:

This letter is in regards to Vested Water Right Claim No. 2479-2 for additional acres under the Lone Tree Ditch. I reviewed the information you have been sending me and have put together the enclosed table that tracks the stock shares and acres of the irrigated property originally owned by Eugene Holcomb from 1903 up to 1999. I would like to thank you for the effort you have put in compiling this information.

I ran across a couple of discrepancies concerning the number of acres irrigated (see sections 19 & 24). If my calculations are correct the number of acres associated with the 180 shares went from 202 to 216. Also based upon the information you have provided, the number of irrigated acres claimed for this vested right, 333 acres, is between 66 to 80 acres more than what the stock shares information supports. I would like you to review the enclosed table to see if there is anything I am missing or if there is any other additional information you may have that would support validating more acres. At this time my review and report would not support recommending the validation of the full 333 acres as listed in the claim.

In order to get this claim to the Chief Engineer and advertised for the July Water Management Board hearing, I will need a response back from you by May 31, 2002. Otherwise the next scheduled hearing is set for September.

If you have any questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program

Copy

		reported 477 acres irrigated by the HO Ranch - Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn.	associated with <i>HO Ranch</i>
15	1967	Share transfer of 330 shares from Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn (<i>Certificate No. 33</i>) to W.W. Walton 330 shares for 477 acres. <i>Certificate No. 33</i>	NA
16	1968	US Bureau of Reclamation listed 1500 acres of irrigable acres under Lone Tree Ditch	1500 ac for the ditch
17	1975	Stock transfers from W.W. Walton (<i>Certificate No. 33</i>) to: 44 shares/91 irrigated acres to Walter Jones. <i>Certificate No. 48</i> 22 shares/47 irrigated acres to James V. Morris. <i>Certificate No. 49</i> W.W. Walton - HO Ranch retains 264 shares for 339 acres	339 ac associated with <i>Certificate No. 33</i>
18	1976	Stock transfer of 31 shares for 74 irrigated acres from W.W. Walton (<i>Certificate No. 33</i>) to Edgar F. Barber and Amy J. Barber. <i>Certificate No. 50</i> W.W. Walton - H O Ranch retains 233 shares for 265 acres.	265 ac associated with <i>Certificate No. 33</i>
19	1979	Stock re-assignment of 43 shares and 63 acres from W.W. Walton (<i>Certificate No. 33</i>) to Donald W. Brown and Bette L. Brown W.W. Walton - H O Ranch retains 180 shares for 202 acres.	202 ac associated with <i>Certificate No. 33</i>
20		Stock re-assignment of 43 shares and 63 acres from Donald W. Brown and Bette L. Brown (<i>Certificate No. 33</i>) to Nolan H. Nuttall and Lucille Nuttall.	
21	1979	Stock transfer of 9 shares and 16 acres from to Nolan H. Nuttall and Lucille Nuttall (<i>Certificate No. 33</i>) to Ray J. Hillenbrand and Larita D. Hillenbrand. <i>Certificate No. 51</i> Legal description of land listed with stock transfer - the E ½ SE ¼ of Sec 28 T1N-R9E	16 ac associated with <i>Certificate No. 51</i>
22	1979	Stock transfer of 34 shares and 47 acres from to Nolan H. Nuttall and Lucille Nuttall (<i>Certificate No. 33</i>) to Ray J. Hillenbrand and Larita D. Hillenbrand. <i>Certificate No. 52</i> Legal description of land listed with stock transfer - the S ½ NE ¼ SE ¼ of Sec 33; the SE ¼, all of the NE ¼ located south of highway right-of-way, the E ½ E ½ SW ¼, the SW ¼ SW ¼, the S ½ W ½ SE ¼ SW ¼, & the S ½ NW ¼ SW ¼ of Sec 34; all in T1N-R9E	47 ac associated with <i>Certificate No. 52</i>
23	1979	New Stock Certificate issued: 180 shares from W.W. Walton (<i>Certificate No. 33</i>) to W.W. Walton <i>Certificate No. 53</i>	
24	1979	Stock transfer of 180 shares and 216 acres more or less, from W.W. Walton (<i>Certificate No. 53</i>) to Donald W. Brown and Bette L. Brown to be placed in escrow. <i>Certificate No. 53</i> Legal description of land listed with stock transfer - all of Sec 27 except highway and railroad right of ways; the E ½ NW ¼, the NE ¼ SW ¼ located north of highway right of way, the NE ¼, & W ½ SE ¼ of Sec 28; the N ½ NW ¼ NE ¼, the E ½ SW ¼ NE ¼, the E ½ NE ¼, & the N ½ NE ¼ SE ¼ of Sec 33; All of Sec 34 located north of highway right-of-way; that portion of the NW ¼ of Sec 34 located south of railroad right-of-way; the N ½ NW ¼ SW ¼, the N ½ W ½ SE ¼ SW ¼, & the W ½ NE ¼ SW ¼ of Sec 34; all in T1N-R9E.	216 ac associated with <i>Certificate No. 53</i>
25	1979-1983	Stock transfer of 180 shares and 216 acres more or less from Donald W. Brown and Bette L. Brown (<i>Certificate No. 53</i>) to Airport Farms Limited Partnership <i>Certificate No. 57</i>	216 ac associated with <i>Certificate No. 57</i>

Table 1. Summary of irrigation, irrigated acres and irrigation stock shares in Lone Tree Ditch originally held by the HO Ranch associated with Vested Water Right Claim No 2479-2.

	Years	Description	Acres
1	1903	Lone Tree Water Company - 600 total shares of capital stock, Eugene Holcomb - HO Ranch held 510 of these shares. <i>Stock Certificate No. 1.</i>	NA
2	1904	166 shares transferred from Eugene Holcomb (<i>Certificate No. 1</i>) to Robert L. Platt. Eugene Holcomb retained a balance of 344 shares - issued <i>Certificate No. 4.</i>	1280 reported for the ditch
3	1911	Map titled "Hydrographic Survey of Rapid Creek South Dakota" South Dakota State Engineers Office. Indicates claimed acres as being irrigated.	NA
4	1937	Share transfer of 172 shares from Orlan Holcomb estate (<i>Certificate No. 4</i>) to Fannie J. Holcomb. <i>Certificate No. 19</i>	NA
5	1937	Share transfer of 172 shares from Fannie J. Holcomb (<i>Certificate No. 19</i>) to Laura Mae Dunn. <i>Certificate No. 20</i>	NA
6	1938	1938 NRCS airphotos showing the claimed land having irrigation borders. The borders indicate flood irrigation.	NA
7	1940	Share transfer of 167 shares from Orlan Holcomb estate (<i>Certificate No. 4</i>) to Fannie J. Holcomb. <i>Certificate No. 22</i>	NA
8	1940	Irrigation acres reported by the Lone Tree Ditch	1468 for the ditch
9	1955	Share transfer of 172 shares from Laura Mae Dunn (<i>Certificate No. 20</i>) and 167 shares from Fannie J. Holcomb (<i>Certificate No. 22</i>) to owners: Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, 339 shares total. <i>Certificate No. 31</i>	NA
10	1957	Share transfer of 330 shares from Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn (<i>Certificate No. 31</i>) to Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, <i>Certificate No. 33</i>	NA
11	1957	Share transfer of 9 shares from Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn (<i>Certificate No. 31</i>) to Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, <i>Certificate No. 34</i>	NA
12	1960	Share transfer of 9 shares from Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, (<i>Certificate No. 34</i>) to R.E. and Cythia Welch. <i>Certificate No. 39</i>	NA
13	1960	Irrigation acres reported by the Lone Tree Ditch of which 477 acres were irrigated by the HO Ranch.	477 ac associated with HO Ranch (1121 for the ditch)
14	1961	Pactola Contract - At that time the Lone Tree Ditch Company	477 ac

26	1988	Vested Water Right No. 2038-2, Lone Tree Ditch, was validated for 15.0 cfs and 1022 acres, not including any acres involved with this claim.	(1022 ac validated for the ditch)
27	1989	US Bureau of Reclamation's 1989 irrigated acres map shows 361 acres in vested right claim area as having the ability to be irrigated but were not irrigated that season from Lone Tree Ditch.	361ac potential (1213.4 for the ditch)
28	1990	Stock Transfer of 180 shares and 216 acres from from Airport Farms Limited Partnership (<i>Certificate No. 57</i>) to Aetna Insurance Company. <i>Certificate No. 73</i>	216 ac associated with <i>Certificate No. 73</i>
29	1990?	Stock Transfer of 34 shares (51 acres) Ray J. Hillenbrand and Larita D. Hillenbrand to Mark and Pam Kieffer. <i>Certificate No. 52</i> Legal description of land listed with stock transfer – the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 33; the SE $\frac{1}{4}$, all of the NE $\frac{1}{4}$ located south of highway right-of-way, the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, & the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec 34; all in T1N-R9E. This transaction also included all irrigation equipment located on the property.	51 ac associated with <i>Certificate No. 52</i>
30	1994	New stock certificate issued combining shares associated with <i>Certificate Nos. 52 & 73</i> to Mark and Pam Kieffer for a total ownership of 214 shares 267 acres which were originally associated with the HO Ranch. <i>Certificate No. 76</i>	267 ac associated with <i>Certificate No. 76</i>
31	1995-1999	Mark Kieffer paid Lone Tree Ditch irrigation assessments on 214 shares on 267 irrigated acres.	267 ac associated with <i>Certificate No. 76</i>

STATEMENT

From Long Tree Hatch Co

1212 2 200 44100

P. D. C. I. S. D. 1951

To Ag. Associates, Inc.

Address _____

City _____

Terms _____

[illegible]

STATEMENT

From Lone Tree Ditch Co.

RR d Box 4980

Rapid City S.D. 57701 1991

To Mark Kieffer

Address _____

City _____

Terms _____

[illegible]

1002

1033

ER'S ORDER NO. rk Kieffer DEPT. DATE 4-26-93

CUSTOMER'S ORDER NO. DEPT. DATE 5-21-94

NAME Mark Kieffer
ADDRESS

		CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
1	223 Shares					4.00	892 00
2	267 Acres					1.75	467 25
3							
4							
5	Total					1359	25
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							

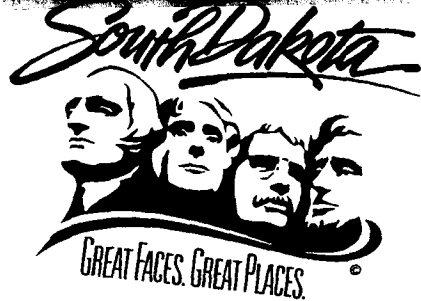
3Y

KEEP THIS SLIP FOR REFERENCE

		CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
1	223 Shares					4.00	892 00
2	267 Acres					1.75	467 25
3							
4							
5	Total					1359	25
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							

REC'D BY

KEEP THIS SLIP FOR REFERENCE



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 31, 2002

H. Dale Gossard
Lone Tree Ditch
15605 Antelope Creek Rd.
Rapid City, SD 57703

Dear Mr. Gossard:

This letter is in regards to Vested Water Right Claim No. 2479-2 for additional acres under the Lone Tree Ditch. I am enclosing a section of my draft report concerning this vested water right claim. I am also enclosing a draft map that I put together after my conversation with Mark Kieffer depicting the acreage he wishes to have covered by this claim.

Based upon my review of the information you provided, there appears to be sufficient evidence for me to recommend to the Chief Engineer to validate between 133 to 194 additional irrigated acres. Ultimately, the Chief Engineer makes the final recommendation to the Water Management Board. The information I have shows the Kieffers currently own 116 acres already covered by the Lone Tree Ditch vested water right No. 2038-2.

I realize this is less total acres than what the ditch company is requesting to be validated. I believe there are a few options that you may wish to consider to take care of this acreage problem: 1) Provide more information supporting the validation of additional acres. 2) Consider proceeding with the validation of these acres. Then apply to change the location of authorized acres under other existing water rights to this land. 3) Take this issue before the Water Management Board asking for the validation of your requested number of acres. If you choose this route, be prepared to provide testimony on why these acres were not include in the original vested water right claim that was validated in 1988 and why there should be more acres than the documentation appears to support.

I will proceed with finalizing my report and getting it to the Chief Engineer so it can be advertised for the July Water Management Board hearing. To meet this deadline, the Chief Engineer needs to have a recommendation off his desk by Friday June 7. To meet this date I will need a response back from you by June 4, 2002 on how you wish to proceed. Otherwise the next scheduled hearing is set for September.

If you have any questions, please contact me at phone (605) 773-3352.

Sincerely,



Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program
cc: Mark Kieffer
enclosures



IN REPLY REFER TO:
440

United States Department of the Interior

BUREAU OF RECLAMATION
Regional Office, Region 6
P. O. Box 2553
Billings, Montana 59103

JUN 3 1970

104 —
Rapid Valley Project

OFFICIAL FILE COPY

For Action By <u>430</u>		
Code	Initial	Date
To	Initial	Date
100	MSH	6/5
400	MSH	6/10
430	MSH	6/9
C&R Files		

To: Project Manager, Huron, South Dakota
Attention: 400

From: **ASSISTANT**
Regional Director, Billings, Montana

Subject: Rapid Valley Project History—1968

In accordance with Mr. DeKramer's memorandum of May 18, 1970, the Form 7-314 has been revised. The irrigation and municipal water deliveries are shown on separate forms. In the future, we would appreciate the distribution of water reported in this manner when submitting the crop census report.

We are sending 20 copies of the revised report. Please substitute these for the previous reports in the project history. We have inserted these revised forms in the four copies of the project history already submitted to this office.

J. A. Bradley

Enclosure

*Revised 430
6 June 70 MSH
Proj. History Copies
by Mr. [unclear]*

STATUS OF WATER USERS 19 68

PART A. IRRIGATION USERS		(B)	(C)	(D)	(E)	(F)	(G)	(H)
		DATA CARD COLUMNS	NUMBER OF FARMS (OPERATING UNITS)	IRRIGABLE ACRES FOR SERVICE	ACRE-FEET OF WATER DELIVERED	POPULATION	CONTO COUNT	ADD CODE CCB
1	FULL TIME FARMS							
2	Full Irrigation Service	6-24						
3	Supplemental Irrigation Service	25-43	30	8,400		150		2
4	Temporary Irrigation Service	44-62						
5	PART TIME FARMS							
6	Full Irrigation Service	6-24						
7	Supplemental Irrigation Service	25-43						
8	Temporary Irrigation Service	44-62						
9	URBAN, SUBURBAN AND INDUSTRIAL LANDS							
10	Full Irrigation Service	6-24						
11	Supplemental Irrigation Service	25-43						
12	Temporary Irrigation Service	44-62						
13	TOTALS - PART A	11-24						
14	PART B. MUNICIPAL, INDUSTRIAL AND OTHER USERS	30-43						
15	M & I PRIME CONTRACTORS	49-62	30	8,900		75		4
16	City of Rapid City, South Dakota					225		
17								
18								
19		6-21						
20		6-21						
21		6-21						
22		6-21						
23		6-21						
24	M & I SUBCONTRACTORS	6-21						
25		22-23						
26								
27		6-21						
28		6-21						
29		6-21						
30		6-21						
31		6-21						
32		6-21						
33	MISCELLANEOUS NONIRRIGATION USERS	6-21						
34		22-23						
35								
36		6-13						
37		6-13						
38		6-13						
39		6-13						
40		6-13						
41	TOTALS - PART B							
TOTAL POPULATION PART A + PART B								

NOTES 1. REPORT EACH STATE PORTION OF PROJECT SEPARATELY
2. DO NOT DUPLICATE POPULATION IN PARTS A OR B

STATUS OF IRRIGABLE LANDS AND CROP VALUE DATA 19 68
Missouri River Basin
PROJECT Cheyenne Division, Rapid Valley Unit STATE South Dakota REGION 6

TYPE OF IRRIGATION SERVICE AND DIVISION, DISTRICT, UNIT, ETC.	IRRIGABLE AREA FOR SERVICE			IRRIGABLE NOT FOR SERVICE (ACRES)	TOTAL IRRIGABLE AREA (ACRES)	TOTAL AREA IRRIGATED (ACRES)	GROSS CROP VALUE	
	CLASS 1-4 (ACRES)	CLASS 5 (ACRES)	TOTAL (ACRES)				TOTAL (DOLLARS)	PER ACRE IRRIGATED (DOLLARS)
FULL IRRIGATION SERVICE								
Subtotal								
SUPPLEMENTAL IRRIGATION SERVICE								
Rapid Valley Water Conservancy Dist.	8,900		8,900					
Iowa Ditch Company	(550)							
Hawthorne Ditch	(1,800)							
Rapid Valley Water Company	(800)							
Little Giant Ditch Company	(600)							
Lone Tree Ditch Company	(1,500)							
St. Germain Ditch Company	(1,400)							
Brennen Lockart Ditch	(240)							
South Side Ditch Company	(910)							
Cyclone Ditch Company	(1,100)							
Subtotal	8,900		8,900					
TEMPORARY IRRIGATION SERVICE								
Subtotal								
TOTAL								
Total Previous Year	8,900		8,900					
	8,900		8,900					
				8,900	7,000	297,040	42.43	

NOTE: List each reporting entity separately by type of service and state.

Color
Brown

Lone Tree

Map 5N-113

Map No	Ownership No	Acres	Owner
5N-113	1	25	Walt Hall
"	2	65	Kaers
"	2A	30	Kaers
1N-13	3	60	Kaers
"	4	21	Kaers
"	5	100	Levan
"	6	251	Levan
1N-40	7	39	Levan
1N-38	8	27	Levan
1N-40	9	4.5	L Jones
1N-40	10	25	L Jones
"	11	53.5	L Jones
"	12	28	L Jones
"	13	33	L Jones
"	14	85	L Jones
1N-38	15 15	39	Welch
"	16	4.5	"
"	17	9	"
"	18	12	"
"	19	25	Lehman
"	20	12	"
"	21	51	"
"	21A	13	"
5N-113	1A	5	Levan

1121
Acres

Covered by VR 2038-2, LONE TREE Ditch Co. 2 PRIORITY 9/29/1981

Covered by 1831-2, MARK KIEFER PRIORITY 2/8/1982

28
N-9



see 12
Q-12

28
9

127
IN-9

T2235



REPORT ON VESTED WATER RIGHT CLAIM NO. 2479-2

Lone Tree Ditch Company

June 4, 2002

Vested Water Right Claim No. 2479-2, Lone Tree Ditch Company, is making a vested water right claim for the irrigation of 333 additional acres to irrigation authorized by Vested Water Right No. 2038-2. The land irrigated under this claim is located in the S1/2 of Section 27; the E1/2 of Section 33; and the N1/2 and N1/2 SW1/4 of Section 34 all in T1N-R9E. There is no additional diversion rate claimed beyond the 15 cubic feet of water per second authorized by VR No. 2038-2. The source of the irrigation water is from Rapid Creek taken at the Lone Tree Ditch headgate locate in NE1/4 NE1/4 of Section 30 T1N-R9E.

Review of the Vested Water Right Claim

The Lone Tree Ditch holds Vested Water Right No. 2038-2 bearing a priority date of September 29, 1881 which was upheld in a 1900 court decree. This vested water right was validated by the Water Management Board in 1988 for a diversion rate of 15 cfs and the irrigation of 1022 acres.

The Lone Tree Ditch is now claiming, with the same priority date, an additional 333 acres of irrigated land. There is no claim to increase the diversion rate beyond the 15 cfs. The irrigated land that the claim is being made on, is owned by Mark and Pam Kieffer, who own stock in the Lone Tree Ditch Company. The additional claimed acreage is associated with the irrigation of an original stock holder, Eugene Holcomb, in the Lone Tree Ditch. The Holcomb land became known as the HO Ranch. The ditch company has provided the supporting evidence shown in Table 1.

Table 1. Summary of irrigation, irrigated acres and irrigation stock shares in Lone Tree Ditch associated with the holdings of the former HO Ranch as related to Vested Water Right Claim No 2479-2.

	Years	Description	Acres
1	1903	Lone Tree Water Company - 600 total shares of capital stock, Eugene Holcomb - HO Ranch held 510 of these shares. <i>Stock Certificate No. 1.</i>	NA
2	1904	166 shares transferred from Eugene Holcomb (<i>Certificate No. 1</i>) to Robert L. Platt. Eugene Holcomb retained a balance of 344 shares - issued <i>Certificate No. 4.</i>	1280 reported for the ditch
3	1911	Map titled "Hydrographic Survey of Rapid Creek South Dakota" South Dakota State Engineers Office. Indicates claimed acres as being irrigated.	NA
4	1937	Share transfer of 172 shares from Orlan Holcomb estate (<i>Certificate No. 4</i>) to Fannie J. Holcomb. <i>Certificate No. 19</i>	NA
5	1937	Share transfer of 172 shares from Fannie J. Holcomb (<i>Certificate No. 19</i>) to Laura Mae Dunn. <i>Certificate No. 20</i>	NA

6	1938	1938 NRCS airphotos showing the claimed land having irrigation borders. The borders indicate flood irrigation.	NA
7	1940	Share transfer of 167 shares from Orlan Holcomb estate (<i>Certificate No. 4</i>) to Fannie J. Holcomb. <i>Certificate No. 22</i>	NA
8	1940	Irrigation acres reported by the Lone Tree Ditch	1468 for the ditch
9	1955	Share transfer of 172 shares from Laura Mae Dunn (<i>Certificate No. 20</i>) and 167 shares from Fannie J. Holcomb (<i>Certificate No. 22</i>) to owners: Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, 339 shares total. <i>Certificate No. 31</i>	NA
10	1957	Share transfer of 330 shares from Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn (<i>Certificate No. 31</i>) to Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, <i>Certificate No. 33</i>	NA
11	1957	Share transfer of 9 shares from Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn (<i>Certificate No. 31</i>) to Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, <i>Certificate No. 34</i>	NA
12	1960	Share transfer of 9 shares from Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn, (<i>Certificate No. 34</i>) to R.E. and Cythia Welch. <i>Certificate No. 39</i>	NA
13	1960	Irrigation acres reported by the Lone Tree Ditch of which 477 acres were irrigated by the HO Ranch.	477 ac associated with HO Ranch (1121 for the ditch)
14	1961	Pactola Contract – At that time the Lone Tree Ditch reported 477 acres irrigated by the HO Ranch and owning 330 shares of stock - Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn.	477 ac associated with HO Ranch
15	1967	Share transfer of 330 shares from Laura Mae Dunn, Eugene H. Dunn, Elizabeth F. Dunn, & Virginia L. Dunn (<i>Certificate No. 33</i>) to W.W. Walton 330 shares for 477 acres. <i>Certificate No. 33</i>	NA
16	1968	US Bureau of Reclamation listed 1500 acres of irrigable acres under Lone Tree Ditch	1500 for the ditch
17	1973	W.W. Walton listed 477 acres irrigated under Lone Tree Ditch	477 ac
18	1975	Stock transfers from W.W. Walton (<i>Certificate No. 33</i>) to: 44 shares/91 irrigated acres to Walter Jones. <i>Certificate No. 48</i> 22 shares/47 irrigated acres to James V. Morris. <i>Certificate No. 49</i>	
19	1976	Stock transfer of 31 shares for 74 irrigated acres from W.W. Walton (<i>Certificate No. 33</i>) to Edgar F. Barber and Amy J. Barber. <i>Certificate No. 50</i>	
20	1979	Stock re-assignment of 43 shares and 63 acres from W.W. Walton (<i>Certificate No. 33</i>) to Donald W. Brown and Bette L. Brown W.W. Walton - H O Ranch retains 180 shares for 202 acres.	
21		Stock re-assignment of 43 shares and 63 acres from Donald W. Brown and Bette L. Brown (<i>Certificate No. 33</i>) to Nolan H. Nuttall and Lucille	

		Nuttall.	
22	1979	Stock transfer of 9 shares and 16 acres from to Nolan H. Nuttall and Lucille Nuttall (<i>Certificate No. 33</i>) to Ray J. Hillenbrand and Larita D. Hillenbrand. <i>Certificate No. 52</i>	
23	1979	Stock transfer of 34 shares and 47 acres from to Nolan H. Nuttall and Lucille Nuttall (<i>Certificate No. 33</i>) to Ray J. Hillenbrand and Larita D. Hillenbrand. <i>Certificate No.</i>	
24	1979	New Stock Certificate issued: 180 shares from W.W. Walton (<i>Certificate No. 33</i>) to W.W. Walton <i>Certificate No. 53</i>	
25	1979	Stock transfer of 180 shares and 216 acres more or less, from W.W. Walton (<i>Certificate No. 53</i>) to Donald W. Brown and Bette L. Brown to be placed in escrow. <i>Certificate No. 53</i>	
26	1979-1983	Stock transfer of 180 shares and 216 acres more or less from Donald W. Brown and Bette L. Brown (<i>Certificate No. 53</i>) to Airport Farms Limited Partnership <i>Certificate No. 57</i>	
27	1988	Vested Water Right No. 2038-2, Lone Tree Ditch, was validated for 15.0 cfs and 1022 acres.	(1022 ac validated for the ditch)
28	1989	US Bureau of Reclamation's 1989 irrigated acres map shows 361 acres in vested right claim area as having the ability to be irrigated but were not irrigated that season from Lone Tree Ditch.	361ac potential (1213.4 for the ditch)
29	1990	Stock Transfer of 180 shares and 216 or more acres from Airport Farms Limited Partnership (<i>Certificate No. 57</i>) to Aetna Insurance Company. <i>Certificate No. 73</i>	
30	1990	New Stock Certificate request by Mark and Pam Kieffer combining <i>Certificate No. 52</i> for 34 shares from Ray J. Hillenbrand and Larita D. Hillenbrand and <i>Certificate No. 73</i> for 180 shares from Aetna Life Insurance Company.	
31	1994	New stock certificate issued combining shares associated with <i>Certificate Nos. 52 & 73</i> to Mark and Pam Kieffer for a total ownership of 214 shares 267 or more acres which were originally associated with the HO Ranch. <i>Certificate No. 76</i>	
32	1995-1999	Mark and Pam Kieffer paid Lone Tree Ditch irrigation assessments on 214 shares.	

The information trail concerning the number of shares of Lone Tree Ditch Stock and the associated number of acres is somewhat sketchy over the time frame of 1903 to present. This supporting evidence does not sustain the validation of the full 333 acres claimed.

It appears that from the period of 1961 starting with the signing of the Pactola Contract through 1975 when W.W. Walton began selling off portions of the HO Ranch, the documentation states there were 330 shares of ditch company stock associated with 477 acres of irrigated land. This calculates to a value of 1 share per 1.45 irrigated acres. Based upon this the 214 shares would correspond to 310 irrigated acres under Lone Tree Ditch.

The share transfer trail from Table 1. shows that the transfers by W.W. Walton to various parties were not consistent. Some of the transfers allowed more shares for less acres than other transfers did. Using this information of the number of shares and acres that were transferred to various parties and eventually to the Kieffers during the period 1975 until 1999, are 214 shares for the irrigation of 249 acres.

The existing Lone Tree Ditch vested water right No. 2038-2 includes 116 acres owned by the Kieffers located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 and the NE $\frac{1}{4}$ of Section 34 T1N-R9E. This would leave the number of irrigated acres available for validation by this vested water right claim of between 133 ac (249-116) to 194 ac (310-116) based upon the available information.

The most reliable evidence provided by the ditch company appears to be that used for assessments. This information states the Kieffers currently hold Lone Tree Ditch Stock Certificate No. 73 for a total of 214 shares to irrigate 267 acres. With the existing 116 acres removed from the 267 total acres would leave 151 acres.

Review of Existing Water Rights

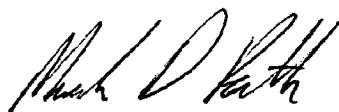
Appropriations of water from Rapid Creek exceed water availability except during extremely wet conditions. There are a total of 87 existing water rights/permits appropriating 265.22 cfs from Rapid Creek from its headwater to its confluence with the Cheyenne River. There are 20 existing water rights on Rapid Creek downstream from the Lone Tree Ditch diversion point appropriating 61.58 cfs. All of these water rights are junior to the Lone Tree Ditch 1881 priority date.

Since water availability is a problem, the Rapid Valley Water Conservancy District contracts with the US Bureau of Reclamation for stored water releases from Deerfield Reservoir. The Lone Tree Ditch is a member of the conservancy district. If this vested water right claim is validated, there would not be an increase in the authorized diversion rate for the Lone Tree Ditch, but there would be an increase in the number of authorized acres for the ditch company.

Conclusions

1. The Lone Tree ditch filed a vested water right claim for the irrigation of 333 additional acres to irrigation authorized by Vested Water Right No. 2038-2.
2. There is no additional diversion rate claimed beyond the 15 cubic feet of water per second authorized by VR No. 2038-2.
3. The priority date claimed for this vested water right is September 29, 1881 which was upheld in a 1900 court decree.
4. Vested Water Right No. 2038-2 was validated by the Water Management Board in 1988 for the irrigation of 1022 acres from Rapid Creek.
5. The supporting evidence does not sustain validation of the full 333 acres claimed.
6. The existing Lone Tree Ditch vested water right No. 2038-2 includes 116 acres owned by the Kieffers.

7. Documentation from 1961 to 1975 indicate 330 shares of ditch company stock associated with 477 acres of irrigated land. This calculates to a value of 1 share per 1.45 irrigated acres or 310 acres for the 214 shares. Removing the 116 acres from this amount would leave 194 acres.
8. The information of the number of shares and acres that were transferred to various parties and eventually to the Kieffers during the period 1975 until 1999, are 214 shares for the irrigation of 249 acres. Removing the 116 acres included in the existing vested water right from this amount would leave 133 acres.
9. The most reliable evidence provided by the ditch company appears to be the Lone Tree Ditch assessments. The Kieffers currently hold and have been paying assessments on Lone Tree Ditch Stock Certificate No. 73 for a total of 214 shares to irrigate 267 acres. Removing the 116 acres from this amount would leave 151 acres.
10. These 151 acres are located in the N $\frac{1}{2}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33; the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of Section 34; all in T1N-R9E.



Mark D. Rath
Natural Resources Engineering Specialist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
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RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER

RIGHT APPLICATION NO. 2479-2, Lone Tree Ditch

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch, c/o Dale Gossard, 15605 Antelope Creek Rd, Rapid City SD 57703.

The Chief Engineer is recommending VALIDATION of Vested Water Right Application No. 2479-2 for 151 acres located in the N $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 33 and the N $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ Section 34; all in T1N, R9E with no increase in the Rapid Creek diversion rate of 15 cfs because 1) evidence shows that water from Lone Tree Ditch has been diverted upon these 151 acres with a priority date of September 29, 1881, 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 with the following qualifications:

1. That Vested Water Right Nos. 2038-2 and 2479-2 are subject to domestic use rights.
Diversion of natural flow water under these vested water rights is contingent upon supplies being available first to domestic uses.
2. That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

See report on application for additional information.

Garland Erbele, Chief Engineer
June 5, 2002



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and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
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NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.

June 5, 2002

Lone Tree Ditch
% H. Dale Gossard
15605 Antelope Creek Rd.
Rapid City, SD 57703

Dear Mr. Gossard:

Water Permit Application No. 2479-2 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Rapid City Journal printed at Rapid City, SD (Ph # 605-394-8300). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,


Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Mark Kieffer, 13605 Neckyoke Rd. Rapid City, SD 57702

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



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June 5, 2002

Rapid City Journal
PO Box 450
Rapid City, SD 57709-0450

ATTENTION: Legal Public Notice

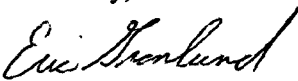
Enclosed is a Notice of Hearing on Application No. 2479-2 to Appropriate Water to be published twice. Please publish the first notice on June 12, 2002 with the second publication 7 days later.

The applicant must verify to you that the notice is to be published, before you make the first publication **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Lone Tree Ditch, %H. Dale Gossard, 15605 Antelope Creek Rd., Rapid City, SD 57703 (Ph # 605-393-0223).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 2479-2

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

Date _____

We are in receipt of your letter of June 5, 2002 enclosing Notice of Hearing to Appropriate Water by Application No. 2479-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS

County of Pennington)

I, Patricia K. Van Patten

certify that the attached printed Notice was
taken

from the Rapid City Journal

printed and published in Rapid City

County of Pennington and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

June 12, 2002

June 19, 2002

Cost of Printing One hundred sixty-seven

dollars and forty-four cents (\$167.44)

Patricia K. Van Patten
(Signature)

Legal Advertising Representative
(Title)

6/19/02
(Date Signed)

RECEIVED

JUN 20 2002

WATER RIGHTS
PROGRAM

June 12, 19 L1156150

NOTICE OF HEARING TO VALIDATE VESTED WATER RIGHT APPLICATION NO. 2479-2

Notice is given that Lone Tree Ditch, 15605 Antelope Creek Rd., Rapid City, SD 57703, has filed an application to validate a vested water right claim for irrigation of 333 additional acres to the acreage authorized by Vested Water Right No. 2038-2.

Vested Water Right No. 2038-2 entitles the Lone Tree Ditch to divert 15.0 cubic feet of water per second (cfs) from Rapid Creek at the headgate located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30, T1N, R9E. Water is conveyed through the ditch for the irrigation of 1022 acres located in portions of Sections 28, 29, 30, 33, 34, 35 and 36; all in T1N, R9E and Sections 1 and 2 of T1S, R9E. The vested water right has a priority date of September 29, 1881.

Application No. 2479-2 claims the irrigation of an additional 333 acres located in the S $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$ Section 33; NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34 and S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 27; all in T1N-R9E. The land is owned by Mark and Pam Kieffer. If this vested water right claim is validated, there will be no increase in the 15.0 cfs diversion rate from Rapid Creek for the Lone Tree Ditch but there will be an increase in the number of authorized acres for the ditch company. This claim for additional acres seeks a priority date of September 29, 1881.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2479-2 for 151 acres located in the N $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 33 and the N $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ Section 34; all in T1N, R9E with no increase in the Rapid Creek diversion rate of 15 cfs authorized by Vested Water Right No. 2038-2 because 1) evidence shows that water from Lone Tree Ditch has been diverted upon these 151 acres with a priority date of September 29, 1881, 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.

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 Program, 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 July 1, 2002. 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.

The Water Management Board will consider this application at 9:30 a.m. July 10, 2002, in the Matthew Training Center, Foss Building, 523 E. Capitol Ave., Pierre, S.D. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The July 10, 2002, 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 July 1, 2002.

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 Eric Gronlund by July 1, 2002, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

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-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01.01 thru 74:02:01.15.

Steven M. Pirner, Secretary
Department of Environment
and Natural Resources

RECEIVED

JUN 20 2002

WATER RIGHTS
PROGRAM

Any hearing may be an adversarial 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 Eric Gronlund by July 1, 2002, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

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-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 5, 2002

Jeff Nettleton
Rapid City Field Office Manager
Bureau of Reclamation
515 9th Street, Room 101
Rapid City SD 57701

Dear Mr. Nettleton:

I am writing regarding Vested Water Right Application No. 2479-2-2 filed by the Lone Tree Ditch Company. This application claims the irrigation of additional acres from the Lone Tree Ditch on Rapid Creek with no increase in the headgate diversion rate authorize by their present vested water right.

Enclosed is a copy of the recommendation, report and notice of hearing on this application. The notice is to be published in the Rapid City Journal on June 12 and 19, 2002. The Water Management Board hearing is scheduled for July 10, 2002.

This information is being sent to the Bureau to inform you of water right permitting issues on Rapid Creek. If you have any question on the application, please contact Mark Rath at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 5, 2002

Daniel Bjerke, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701-2724

Dear Mr. Bjerke:

I am writing regarding Vested Water Right Application No. 2479-2-2 filed by the Lone Tree Ditch Company. This application claims the irrigation of additional acres from the Lone Tree Ditch with no increase in the headgate diversion rate authorize by their present vested water right.

Enclosed is a copy of the recommendation, report and notice of hearing on this application. The notice is to be published in the Rapid City Journal on June 12 and 19, 2002. The Water Management Board hearing is scheduled for July 10, 2002.

This information is being sent to you to keep you informed of water right permitting issues in close proximity to Rapid City.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

Water Rights Program - DENR

File Documentation

File No. 2479-2

County: Pennington

Name of Person: Dale Gossard, Lone Tree Ditch

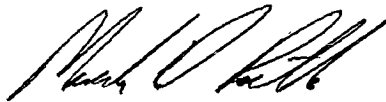
Address: Rapid City, SD

Date: 6/4/02 **Telephone:** 393-0223

RE: Vested Water Right Claim No. 2479-2

Comments:

I talked to Mr. Gossard about the amount of acres available for validation per my May 31, 2002 letter. He said the 267 total acres would be pretty consistent to what the Kieffers have been paying assessments on. I told him we would have to subtract 116 acres from this number since they were already validated under No. 2038-2. I told him that any moving around of acres from other existing water rights will take a new application.



Mark D Rath
Natural Resources Engineering Specialist

Water Rights Program - DENR

File Documentation

File No. 2479-2

County: *Pennington*

Name of Person: *Mark Kieffer, Lone Tree Ditch*

Address: *Rapid City, SD*

Date: 6/4/02 **Telephone:**

RE: *Vested Water Right Claim No. 2479-2*

Comments:

Mark Kieffer called I told him we would proceed with validation of the lesser acres. I said I would put the location of those acres where his existing center pivot is at. I said I would be finalizing my report and getting it to the Chief Engineer for his recommendation. I suggested that some acres from other existing water rights may be need to be relocated to cover the actual acres irrigated. I told him that any moving around of acres from other existing water rights will take a new application. He said they would take care of that later.



Mark D Rath
Natural Resources Engineering Specialist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 20, 2002

Max Main
618 State St
Belle Fourche, SD 57717

Dear Mr. Main:

This letter is in regards to your request for copies of the information provided by Lone Tree Ditch for Vested Water Right Claim No. 2479-2. I have enclosed the information you requested. I am also enclosing a draft map, you requested, showing the location of the 151 acres recommended for validation.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 24, 2002

NOTICE

TO: H. Dale Gossard
Lone Tree Ditch
15605 Antelope Creed Rd.
Rapid City SD 57703

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

SUBJECT: Rescheduling of Hearing Time on Vested Water Right Application No. 2479-2,
Lone Tree

Vested Water Right Application No. 2479-2 claims irrigation of 333 additional acres to the acreage authorized by Vested Water Right No. 2038-2. The notice of hearing published June 12 and 19, 2002 in the Rapid City Journal schedules a hearing before the Water Management Board at 9:30 AM on July 10, 2002.

Due to changes in the agenda, the hearing time has been changed. The Water Management Board will now consider Application No. 2479-2 on July 10, 2002, at 8:45 AM, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. Notice of the amended time will be provided to anyone that files a petition to intervene in the hearing

Applicable provisions of the Notice published in the Rapid City Journal will still apply at the July 10, 2002 hearing before the Water Management Board. This hearing may be an adversarial proceeding. Any party of record has the right to be present and 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.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
Max Main, 618 State Street, Belle Fourche SD 57717
Mark Kieffer, 13605 Neckyoke Rd., Rapid City SD 57702

CERTIFICATION

I hereby certify that on June 24, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 24, 2002, regarding rescheduling the hearing time for Vested Water Right Application No. 2479-2, Lone Tree Ditch, addressed as stated below:

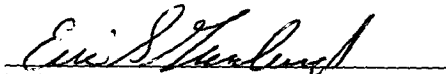
H. Dale Gossard
Lone Tree Ditch
15605 Antelope Creed Rd.
Rapid City SD 57703

Mark Kieffer
13605 Neckyoke Rd.
Rapid City SD 57702

Max Main
618 State St.
Belle Fourche SD 57717

A copy of the Notice was sent Inter-office to:

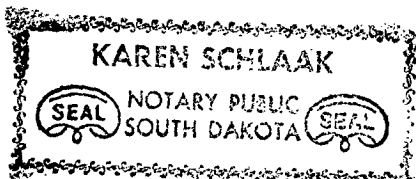
Diane Best, Assistant Attorney General, Capitol Building


Eric S. Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of June, 2002.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489

MAX S. MAIN*
DWIGHT A. GUBBRUD
CRAIG E. TRUMMEL*
*ALSO LICENSED IN WYOMING

TEL (605) 892-2011
FAX (605) 892-4084
Email: bellelaw@bellelaw.com

June 26, 2002

RETIRED
DONN BENNETT

Chief Engineer Garland Erbele
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

RE: In the Matter of Vested Water Right Application No. 2479-2, Lone Tree Ditch.

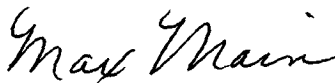
Dear Mr. Erbele:

Enclosed is an original JOINT PETITION TO SUPPORT APPLICATION AND CONTEST RECOMMENDATION for filing on behalf of Lone Tree Ditch and Mark Kieffer.

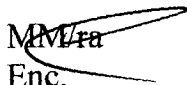
Service is hereby made upon all parties by first-class mail of the said document.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.



Max Main


MM/ra
Enc.

cc (w/Enc.): Client
Ass't Attorney General Diane Best

RECEIVED

JUN 27 2002

WATER RIGHTS
PROGRAM

**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD**

IN THE MATTER OF VESTED WATER)	JOINT PETITION TO SUPPORT
RIGHT APPLICATION NO. 2479-2, LONE)	APPLICATION AND CONTEST
TREE DITCH.)	RECOMMENDATION

Lone Tree Ditch and Mark Kieffer hereby jointly petition to support the application in the above-referenced matter and to contest the recommendation of the Chief Engineer. As required by SDCL 46-2A-4(4), petitioners state as follows:

1. Statement Describing the Petitioners' Interest in the Application:
Petitioner Lone Tree Ditch is the applicant. Petitioner Mark Kieffer owns 214 shares of stock in the Lone Tree Ditch Company and holds legal title to the 333 acres that are the subject of the application in this matter.

2. Reasons for Petitioners' Support for the Application and Contest of the Chief Engineer's Recommendation: When the Lone Tree Ditch vested water right was validated in 1988, 333 acres of the land petitioner Mark Kieffer now owns were inadvertently omitted from the legal description of lands irrigated with the Lone Tree Ditch vested water right. The application in this matter seeks to correct that oversight. No increase in the Lone Tree Ditch diversion rate of 15 cfs is requested. The Chief Engineer is only recommending that 151 acres of the requested 333 acres be added as irrigated lands.

3. Mailing Address of Petitioners' Legal Counsel: Max Main, Attorney at Law, 618 State Street, Belle Fourche, SD 57717-1489.

DATED this 26th day of June, 2002.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for petitioners

By Max Main
Max Main
618 State Street
Belle Fourche, SD 57717-1489
(605) 892-2011

CERTIFICATE OF SERVICE

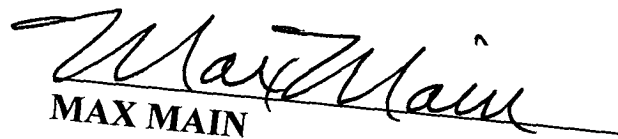
I, MAX MAIN, one of the attorneys for petitioners herein, do hereby certify that on the 26th day of June, I caused full, true and complete copies of the foregoing JOINT PETITION TO SUPPORT APPLICATION AND CONTEST RECOMMENDATION to be served upon the following named person at the following mailing address, as follows:

Diane Best
Assistant Attorney General
500 East Capitol
Pierre, SD 57501

and the original sent for filing with:

Chief Engineer Garland Erbele
Water Rights Program
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

by depositing the same in the United States Mail in Belle Fourche, South Dakota with first class postage thereon fully prepaid, in envelopes addressed as above.


MAX MAIN



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 18, 2002

NOTICE

TO: Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

FROM: Garland Erbele, Chief Engineer
Water Rights Program

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

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Vested Water Right Application No. 2479-2 filed by Lone Tree Ditch. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 PM, CDT on September 25, 2002 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Mr. Main by September 5, 2002. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by September 16, 2002.

Oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on September 25, 2002. The public hearing was completed July 10, 2002. No additional testimony will be received on September 25, 2002.

Enclosure

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

2002/ 2003 WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Rodney Freeman, Jr,
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Dwayne Rollag Chairman
320 Lincoln Lane S
Brookings SD 57006-2741

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on July 18, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 18, 2002, regarding preparation of findings of fact, conclusions of law and final decision on Vested Water Right Application No. 2479-2, Lone Tree Ditch, addressed as stated below.

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

A copy of the Notice was sent Inter-office to:

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



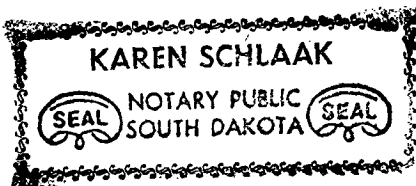
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of July, 2002.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

MARK BARNETT
ATTORNEY GENERAL

LAWRENCE LONG
CHIEF DEPUTY ATTORNEY GENERAL

September 5, 2002

TO: Members of the Water Management Board
and Interested Parties

FROM: John P. Guhin, Deputy Attorney General *John P. Guhin*

RE: In the Matter of the Validation of Vested Water
Rights Application No. 2479-2, Lone Tree Ditch

Pursuant to the direction of the Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law and a Final Decision. Please see the notice of the Chief Engineer dated July 18, 2002, for further information.

JPG/dh
Enclosure

RECEIVED

SEP 06 2002

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
VALIDATION OF VESTED WATER	)	FINDINGS OF FACT,
RIGHTS APPLICATION No. 2479-2,	)	CONCLUSIONS OF LAW
LONE TREE DITCH	)	AND FINAL DECISION

FINDINGS OF FACT

1. Pursuant to SDCL 46-5-49, enacted in 1986, any person claiming to be the owner of a vested right from a surface source could file a vested right claim. In 1987, Lone Tree Ditch Company filed a vested right claim for 23 cfs and identified 1,022 acres with a claimed priority date of September 29, 1881. In a letter dated January 5, 1988, the president of the Lone Tree Ditch Company formally reduced the 23 cfs claim to 15 cfs. The matter was duly advertised, indicating the claim for 15 cfs from Rapid Creek to irrigate 1,022 acres with a priority date of September 29, 1881. The legal description of the point of diversion and the legal description of the land irrigated was included in the advertisement.

2. Subsequently, on December 1, 1988, after the statutory process had been completed, Chief Engineer John Hatch issued "Vested Right Water License No. 2038-2 for irrigation." The right was issued to Lone Tree Ditch, and was for 15 cfs. The location of the diversion point was set out by legal description. The location of the irrigated acreage was also set out by legal description. The "total acres irrigated" were computed at "1022" acres. The priority date was recognized as September 29, 1881.

The License provided that "the water is to be used for the purpose of irrigation."

3. In approximately 1990, Lone Tree Ditch became aware that 333 acres, in addition to the 1,022 acres identified in 1988, had historically been irrigated through Lone Tree Ditch and by way of its claimed water right.

4. The case presents two fundamental issues. First, does this Board have authority to revisit the 1988 issuance of a Vested Right to revise the acreage associated with it? Second, if the Board has that authority, could it expand the acreage by 333 acres, as Lone Tree Ditch Company requests, by 151 acres, as the Water Rights Program recommends, or should it take some other action?

5. As noted above, the Water Rights Program recommends that the 1988 validation be revised to increase the amount of acreage which can be irrigated by 151 acres. The Water Rights Program relies upon the assessment statements issued by Lone Tree Ditch to Mr. Keefer. In particular, Certificate No. 73 has been issued to Keefer for a total of 216 shares with the authority to irrigate 267 acres. The Water Rights Program would deduct 116 acres of Mr. Keefer's lands which are presently within the area identified in the 1988 validation. This leaves 151 acres.

6. Lone Tree Ditch, as noted, requests that the 1988 validation be revisited and that the acreage listed thereon be increased by 333 acres. The basis of the Lone Tree claim is a 1911 map assembled by the predecessor to the Water Rights Program which indicates irrigated acreages in Sections 27, 33, and 34, in

T1N, R9E. Lone Tree Ditch demonstrated to the satisfaction of the Board, that Mr. Keefer presently irrigates 333 acres of the land in the identified sections, which had, in fact, also been irrigated in 1911. There was no proof of continuous nonuse up to the present.

7. No evidence indicates that the bylaws or plan of organization of Lone Tree Ditch Company provide other than that shares of stock in Lone Tree are personal property and may be sold and transferred independently of the land, and no evidence indicates that the bylaws or plan of organization of Lone Tree makes water appurtenant to the land on which it is used.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. Assuming, without deciding, that the Board may resort to the South Dakota Rules of Civil Procedure to determine the conditions under which a 1988 determination may be revisited, the Board makes the following Conclusions. First, SDCL 15-6-59, which sets out grounds for a new trial, does not allow relief in this case. SDCL 15-6-59(b) provides that a motion for new trial must be "served and filed not later than ten days after the notice of entry of the judgment." Taking the Chief Engineer's issuance of the Water License in December of 1988 as the last possible date, it is clear that more than ten days have elapsed. Second, relief is not available under SDCL 15-6-60(b) providing relief on several other grounds. SDCL 15-6-60(b) provides relief with regard to such matters as mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. SDCL

15-6-60(b)(1)-(3). Relief under these sections must be sought within one year, however, and this did not occur. No argument has been made that the judgment is void, or been satisfied, nor has a truly exceptional reason for vacating the 1988 License been offered. See SDCL 15-6-60(b)(4)-(6).

3. The basic legal conclusion of the Board, on which its ultimate decision is based, is one which is mandated by the cases: first, the water right holder in this case is Lone Tree Ditch and is not Mr. Keefer or any individual shareholder. Second, water rights held by ditch companies are not appurtenant to any particular land unless the bylaws or organization of the ditch company so provide. The Board has found above that the bylaws of Lone Tree Ditch do not contain such provision.

4. The Board is unable to discover, and no litigant has supplied, a legal basis upon which to identify acreages which should be added to the 1988 validation. The solutions suggested by the Water Rights Program and the Applicant are both carefully arrived at and practical solutions but neither appears to flow from a statutory, constitutional, or regulatory source.

5. The Water Rights Program quite correctly has argued that case law provides that ditch companies may be subject to certain public regulation. Thus, it is undeniable that the Lone Tree Ditch may not, for example, waste water. Moreover, the Lone Tree Ditch is subject to either forfeiture or abandonment should it fail to use its 15 cfs of water.

6. Public regulation in the form of requirements for validation is also applicable to Lone Tree Ditch. No state

statute, however, purports to reverse South Dakota Supreme Court precedent such that water rights held by a ditch company are not appurtenant to the land. Until the Legislature takes such an action, this Board is not free itself to make such a determination.

7. Based on the foregoing, the Board must conclude that Lone Tree Ditch is free to use the 333 acres it requests for the purpose of irrigation. This determination does not, however, purport to make the water right of the ditch company appurtenant to these particular lands.

FINAL DECISION

The application for validation of vested water right application No. 2479-2 is GRANTED for 333 acres, as set out in Vested Right Claim No. 2479-2, submitted by Lone Tree Ditch.

Dated this _____ day of _____, 2002.

BY THE BOARD:

Chairman

p1d905.jpg(dh)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Findings of Fact, Conclusions of Law and Final Decision In the Matter of the Validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 5th day of September, 2002:

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd St.
Rapid City, SD 57702

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

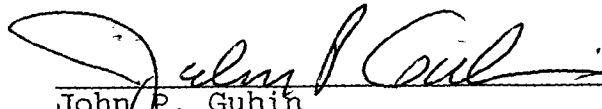
Max Main
Attorney at Law
618 State St.
Belle Fourche, SD 57717

and sent on the same date by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
and Natural Resources
Foss Building
Pierre, SD 57501

and by hand delivery on the same date to:

Diane Best
Assistant Attorney General
500 E. Capitol Ave.
Pierre, SD 57501-5070


John P. Guhin
Deputy Attorney General

pld905.jpg(dh)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	DENR RESPONSE TO PROPOSED
VALIDATION OF VESTED WATER	)	FINDINGS OF FACT,
RIGHTS APPLICATION No. 2479-2,	)	CONCLUSIONS OF LAW
LONE TREE DITCH	)	AND FINAL DECISION

COMES NOW the Department of Environment and Natural Resources, Water Rights Program, and makes its comments to the proposed Findings of Fact, Conclusions of Law and Final Decision drafted by Board counsel.

1. The DENR recognizes the holding in Jewett v. Redwater Irrigating Association, 220 N.W.2d 834 (1974) (holding that certain water associations with pre-1907 water rights may allocate water according to stock and that such water is not appurtenant to the land). However, the State asserts that to the extent that water associations have (a) participated in the validation of pre-1907 vested water rights and acquiesced in assigning the validated water rights to specific lands and/or (b) engaged in practices demonstrating that the association had, through its own operations, billing methods, or stock issuances, made water appurtenant to the land, then a different result should occur. In other words, the DENR asks that the irrigation associations own conduct or acquiescence in validation of vested water rights be considered in determining whether the water it administers is appurtenant to the land. The facts in the Jewett case involved a situation where the Redwater Irrigating Associations bylaws, stock issuances, and business practices were all consistent and provided that water was not appurtenant to the land. The DENR suggests that in situations where the bylaws are

not consistent with the business practices, stock issuances or other conduct, a different result should occur.

2. In this case, the DENR asserted that, with respect to Lone Tree Ditch Company, its participation in the 1988 vested water right validation resulted in an acquiescence in treating the water use as being appurtenant to the land and that Lone Tree's business practices tied the water to specific lands. Obviously the Board found differently at the close of hearing. DENR seeks to limit the applicability of this ruling to the factual situation at hand. Frankly, the DENR would favor a finding of fact indicating that adequate evidence was not presented to show the water was tied to the land in this case over a conclusion of law that may be broadly applied in the future to any organization with bylaws similar to those of the Lone Tree Ditch Company. More specifically, the DENR would add the following sentence at the end of Finding of Fact 7: Further inadequate evidence exists to demonstrate that Lone Tree's own operations, billing methods, stock issuances or other operations resulted in water being appurtenant to the land. Finally, inadequate evidence was presented to show that Lone Tree acquiesced in making water appurtenant to the land at the time of the 1988 validation. Although perhaps imminently clear, the DENR suggests that Conclusion of Law 6 be amended to reflect that this situation applies only to pre-1907 water rights held by water stock companies and that this determination is not applicable to other companies. Accordingly, the DENR asks that the second sentence be amended by inserting the words "pre-1907" between the

words "such that" and "water rights." Further, the DENR asks that the following clause be added to the end of the second sentence: "when organized and consistently operated as water stock companies within the meaning of Jewett v. Redwater Irrigating Association, 220 N.W.2d 834 (1974).

3. Finally, it appears that the intent of the Board is to clarify that the validation of vested water right No. 2038-2 for 15 cfs remains in effect for that quantity of water and that the 333 acres submitted by Lone Tree Ditch in this proceeding has been duly identified and associated with the irrigation under this water right. Further, the DENR understands that the Board is not intending to reopen its past validation. Accordingly, the DENR would suggest that the final decision read as follows:

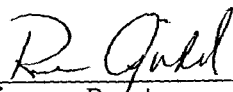
The validation of vested water right No. 2038-2 for 15 cfs is final and remains in effect and that vested water right application No. 2479-2 is GRANTED for 333 additional acres as set out in Vested Right Claim No. 2479-2, submitted by Lone Tree Ditch.

Thank you for considering the foregoing issues.

Dated this 16th day of September, 2002.

Respectfully submitted,

MARK BARNETT
ATTORNEY GENERAL


for Diane Best
Assistant Attorney General
Counsel for Division of
Water Rights
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of DENR Response to Proposed Findings of Fact, Conclusions of Law and Final Decision In the Matter of the Validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 16th day of September, 2002:

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd St.
Rapid City, SD 57702

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Max Main
Attorney at Law
618 State St.
Belle Fourche, SD 57717

and sent on the same date by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
and Natural Resources
Foss Building
Pierre, SD 57501

and by hand delivery on the same date to:

John P. Guhin
Deputy Attorney General
500 East Capitol Avenue
Pierre, SD 57501-5070


for Diane Best
Assistant Attorney General

officer's announcement and request for entry, he was in fact in joint possession of a quantity of marijuana in excess of one ounce, whether it was the marijuana on the back porch and in the attic, or of either of such quantities. We think that the evidence, both circumstantial and direct, so linked defendant Boltiador with possession of the greater quantity of marijuana that the inference of his guilt of the charge of possession of more than one ounce could fairly be drawn. *State v. Kietzke, supra.*

The convictions are affirmed.

All the Justices concur.



O. A. JEWETT et al., Plaintiffs
and Appellants,

y.

and

Supreme Court of South Dakota.

Action for adjudication of water rights brought by plaintiffs who demanded delivery of irrigation water from irrigation association. The State Water Resources Commission and State intervened and filed answer, claim and cross claim seeking adjudication of water rights in entire river irrigating system. The Circuit Court,

Affirmed

Where the plaintiffs' predes succeeded to water, the water u land did not gain nance, because it used with the lan-

Location of series of convey tor's conveyance tion by irriga rights in 1909 cii rights in associ Act requiring fi cense to appropri that no right to rigation shall be to which it is a 180, §§ 32-48.

Where byla
tion did not exp
represented by :
appurtenant to l.

Eighth Judicial Circuit, Butte County, J. H. Bottum, J., denied State's motion for allowance of counterclaim and cross claim and entered judgment for the association and plaintiffs and state commission and State appealed. The Supreme Court, Dunn, J., held that where plaintiffs' predecessor in title to land did not succeed to water right located by another, the water used for irrigation of the land did not gain the status of an appurtenance, because the water was not by right used with the land, and that where granting or nongranteeing of additional inches of water to plaintiffs did not affect other water users above or below on stream, State was not entitled to join the other claimants of water rights to obtain a complete adjudication of the entire river irrigation system.

Affirmed.

1. Waters and Water Courses §152(5)

Where there was no showing that plaintiffs' predecessor in title to land had succeeded to water right located by another, the water used for irrigation of the land did not gain the status of an appurtenance, because the water was not by right used with the land.

2. Waters and Water Courses §152(5)

Location of original water right and series of conveyances starting with locator's conveyance and ending with acquisition by irrigation association of water rights in 1909 effectively vested valid water rights in association, unaffected by 1907 Act requiring filing of assignments of license to appropriate waters and providing that no right to appropriate water for irrigation shall be assigned apart from land to which it is appurtenant. Laws 1907, c. 180, §§ 32, 48.

3. Waters and Water Courses §152(5)

Where bylaws of irrigation association did not expressly provide that water represented by shares of association was appurtenant to land on which it was used,

water did not become appurtenant to the land.

4. Waters and Water Courses §152(5)

Where granting or nongranteeing of additional inches of water to plaintiffs did not affect other water users above or below on stream and the matter was a private one between parties claiming water and an irrigation association, State was not entitled to join the other claimants of water rights to obtain a complete adjudication of the entire river irrigation system. Laws 1907, c. 180; SDCL 46-5-1 et seq., 46-10-1 et seq.

Wm. E. Anderson, Belle Fourche, for plaintiffs and appellants.

Joseph M. Butler of Bangs, McCullen, Butler, Foye & Simmons, Rapid City, for defendants and respondents.

William J. Srstka, Jr., Sp. Asst. Atty. Gen., Pierre, for defendants and appellants.

DUNN, Justice.

This lawsuit arose out of a demand made by the plaintiffs-appellants for delivery at a reasonable delivery rate of 165 miner's inches of irrigation water which plaintiffs claim was due under a claimed water right appurtenant to plaintiffs' land. The Redwater Irrigating Association, defendants-respondents, refused to deliver any such water at any delivery rate and denied existence of any water right as claimed by the plaintiffs. The plaintiffs commenced this action for adjudication of water rights and determination of conflicting water rights. The State Water Resources Commission and the State of South Dakota intervened and filed an answer, counterclaim and cross claim seeking an adjudication of the water rights in the entire Redwater River Irrigating System. The State's motion for allowance of counterclaim and cross claim was denied by the trial court. From this denial of the counterclaim and cross

claim and from a judgment for the Redwater Irrigating Association both the plaintiffs and the State Water Resources Commission of the State of South Dakota and the State of South Dakota appeal.

The facts involved are complicated but virtually undisputed, and may be summarized as pertinent to a decision in this case as follows: In March 1878, James M. Eaton, Sr. settled lands now owned by plaintiffs and received U. S. patents thereto in 1884 and 1891. The acreage in farmland consisted of 200 acres, 126 acres of which are, or have been, irrigated.

On May 5, 1878, James Newland located a water right on the east bank of the Redwater River in Butte County. Newland's water right appropriated 4,000 miner's inches of water to be used for irrigation and milling purposes.

The chain of title in issue here is to this water right staked out by James Newland on May 5, 1878. James Eaton, Sr. became involved when he joined with Newland and nine other farmers in digging the Newland Ditch which brought water from the Redwater River to the Eaton property as well as the other farms involved. In 1879 Newland and ten other farmers, including Eaton, incorporated the Redwater and Belle Fourche Milling & Irrigating Company. Newland then conveyed his water right to this newly formed corporation.

On November 2, 1889, John B. Wilson purchased all of the water rights of the Redwater and Belle Fourche Milling & Irrigating Company. On the same date he then transferred all of the water rights and locations owned by him to the Redwater Land and Canal Company. On November 10, 1902, the Redwater Land and Canal

Company further secured its claim to the Newland Ditch by obtaining a quitclaim deed from James Newland for his water location and also had him reaffirm the conveyance of his water right to the Redwater and Belle Fourche Milling & Irrigating Company back in 1879.

On October 18, 1889 and at about the same time that James Wilson purchased all of the water rights from Redwater and Belle Fourche Milling & Irrigating Company, he also entered into a contract with James M. Eaton, Sr., under the terms of which Eaton received the right to take 200 miner's inches of water from the Newland Ditch each year at the going price and not to exceed \$1.50 per miner's inch.¹ This contract was limited in the right to take water to Eaton and his heirs, and was expressly terminable in the event the Eaton land was sold out of the family.

The Redwater Land and Canal Company subsequently ran into financial difficulties and in October 1909 Redwater Irrigating Association, defendant herein, acquired all of the water rights once owned by Redwater Land and Canal Company from one Alfred Crebbin, acting as bondholder's trustee, in a mortgage foreclosure sale. This sale recognized the restrictive obligation to "furnish water to the lands of Eaton" according to the terms of the Wilson-Eaton contract.

In March of 1912 Redwater Irrigating Association and James M. Eaton, Sr. modified the Wilson-Eaton contract of 1889. The modification resulted in a trade being made of 35 miner's inches of water due Eaton's land for 35 shares of the Irrigating Association's original treasury stock. From that time until the present controversy approximately 165 miner's inches of wa-

ter due under the plaintiffs' land has been delivered each year through the delivery rate of 165 miner's inches of water.

the Newland water right by the corporation. In any event, James E. Eaton, Sr. and his heirs operated under this contract for 60 years without making any further claim to the Newland water right as being appurtenant to the Eaton land or otherwise. It was only after the sale of the land to Jewett that problems arose.

ter due under the plaintiffs' land has been delivered each year through the delivery rate of 165 miner's inches of water.

In 1913 Eaton conveyed the Newland lands and all interest therein to his son, James Eaton, Jr., and James Eaton, Jr. conveyed the same to the estate of Thomas Eaton, Jr. conveyed the same to Mildred Eaton. In 1913 Eaton executed a deed to the property to Jewett (plaintiff) and the property was conveyed to her husband. At that time Eaton executed a lease of the property to O. A. Jewett, who obtained an option to purchase the property at a price to be determined by the price. The plaintiffs are daughters of Mildred Eaton; the title to the land is in the name of the association to purchase the property constituted for Mildred Eaton's action.

In August 1968 the Redwater Irrigating Association brought suit against the Wilson-Eaton contract, claiming that the contract was terminated because the land was owned by James M. Eaton, Sr. The court found that the contract was not terminated by purchase and was still in effect, and that the lease was not a circumvention of the contract. There was a decision—rather, a decision by the court, Jewett, Joan Jewett brought this suit against the Redwater Irrigating Association claiming that the right existed as appurtenant to the Eaton land. From the circuit court, the

The appellants claim that the court erred.

2. This case deals with the water right that is involved in

1. There is no evidence in the record as to the circumstances surrounding this contract; but coming within a few days of Wilson's purchase of the Newland water right from the Redwater and Belle Fourche Milling & Irrigating Company, of which Eaton was president, it can be inferred that Wilson was removing any objection that Eaton may have had as a stockholder or officer to the sale of

ter due under the contract for irrigation of plaintiffs' land have been conveyed each year through the Redwater Ditch at the delivery rate of \$1.50 per inch per year.

In 1913 Eaton conveyed his remaining lands and all interests in the Wilson-Eaton contract to his two sons, Thomas Eaton and James Eaton, Jr.. Subsequently, James Eaton, Jr. acquired all of the interest of Thomas Eaton. In 1959 James Eaton, Jr. conveyed the property to his wife, Mildred Eaton. In February 1961, Mildred Eaton executed a warranty deed to O. A. Jewett (plaintiff herein) to a portion of the property previously deeded to her by her husband. At the same time Mrs. Eaton executed a lease of the balance of the property to O. A. Jewett, which lease contained an option to purchase with the rental payments to be applied to the purchase price. The plaintiffs, Butler and Nyland, are daughters of James Eaton, Jr. and Mildred Eaton; they presently hold legal title to the land subject to lease with option to purchase to Jewett, and were substituted for Mildred Eaton as plaintiffs in this action.

In August 1968 the Redwater Irrigating Association brought suit to have the Wilson-Eaton contract, as modified, declared terminated because the land was no longer owned by James M. Eaton, Sr.'s heirs. The court found that the lease with option to purchase and with the rental payments applying to the purchase price was a sale and that the lease was a mere attempt to circumvent the terms of the Wilson-Eaton contract. There was no appeal from this decision—rather, on August 11, 1970, O. A. Jewett, Joan Jewett and Mildred Eaton brought this suit against the Redwater Irrigating Association claiming that a water right existed appurtenant to the original Eaton land. From an adverse ruling by the circuit court, this appeal was taken.

The appellants' first contention is that the court erred in ruling the water rights

used for irrigation within the Redwater Irrigating Association are not appurtenant to the land. As support for this contention the appellants would contend the water rights used for irrigation purposes had been appurtenant to this land ever since the inception of water right because a statute controlling such matters was in effect in 1878 when Newland filed his water right. Section 166 of the Civil Code, Revised Code of Dakota Territory 1877 stated:

"A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat, from or across the land of another. * * *

The appellants would argue this statute was applicable to our situation. First of all they point out the "right used with the land" is the Newland water right. Secondly they contend it is without dispute the water was used "for its (the irrigated land's) benefit."

[1] This contention is partially correct. It is without dispute the water was used for the benefit of the land, but the above mentioned section of the 1877 Code requires the "thing * * * by right used with the land" and in regard to land originally owned by James M. Eaton, Sr. and now held by the Jewetts partly in fee and partly by leasehold interest no "right" ever existed. This theory is supported in language found in the case of Butte County v. Lovinger, 64 S.D. 200, 266 N.W. 127,² when the Court stated: "These rights, (referring to the original water rights) in our opinion, vested in the original locators at the time they were acquired and not in those who used the water." Eaton never located a water right. Newland located the water right and no evidence was produced which would show James Eaton, Sr. ever succeeded to this right. Consequently in regard to Eaton's land the water used for irrigation purposes never gained the

2. This case dealt with the status of stock held in the same Redwater Irrigating Association that is involved in this litigation.

status of an appurtenance, because the water was never "by right used with the land."

[2] The appellants further contend the formation of the Redwater Irrigating Association in 1909 and this association's subsequent purchase of the water rights held by Crebbin failed to recognize Chapter 180, Laws of 1907 in one respect and they would further contend Chapter 180, Laws of 1907 insures the appurtenance of these waters to the land in question. Section 32 of Chapter 180, Laws of 1907 provides:

"Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the state engineer, upon assignment. Provided, that no right to appropriate water for irrigation purposes shall be assigned, or the ownership thereof in any wise transferred, apart from the land to which it is appurtenant, except in the manner especially provided by law. Provided, further, that the transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes."

Section 48 of Chapter 180, Laws of 1907 provides:

"All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used.
* * *"

These contentions of the plaintiffs are fully considered and disposed of in the case of *Butte County v. Lovinger*, supra, which was passing on these same water rights and deciding whether they were appurtenant to the land:

"It seems to us, therefore, that, at the time these rights were acquired, they

3. A reading of the *St. Germain* case does not bear out the holding given it by the Court. However, the *Lovinger* decision is neverthe-

were acquired under the so-called 'possessory basis' of the right of appropriation, and became vested in those who actually located the right as distinguished from the users of the water.

"As stated above, the validity of these original water rights, to which the defendant Redwater Irrigation Association has succeeded, is not in dispute. These rights, in our opinion, vested in the original locators at the time they were acquired and not in those who used the water. The enactment of chapter 180, Laws of 1907, cannot affect these vested rights. *St. Germain Irrigating Ditch Co. v. Hawthorne Ditch Co.*, 32 S.D. 260, 143 N.W. 124.³ What effect the law of 1907 has upon the water right law of this state we need not now declare, except to hold in accord with the previous decision of this court that it cannot affect rights which had vested prior to its enactment. We are convinced, therefore, that, at the time the Redwater Irrigating Association acquired its right to this water, the right to the beneficial use of any of the water had not attached itself to, or become appurtenant to, this land subsequently owned by the defendants. Under our law, the defendant Redwater Irrigating Association succeeded to the rights of the original locators and owns those rights the same as any other property, subject, however, to possible public regulation which is not involved in this case."

Under this decision, Newland's locating of the original water right, and the series of conveyances starting with Newland's conveyance to the Redwater and Belle Fourche Milling Company in 1879 and terminating with the acquisition by the Redwater Irrigating Association of the water rights held by Crebbin in 1909, effectively vested valid water rights in the Redwater Irrigating Association, unaffected by the

less correct in stating that the Act of 1907 could not affect rights that had vested prior to its enactment.

1907 Act. These the original locators present day water 46-1-9 defines vest

" * * *

(4) Rights granted by court decision

(5) Uses of water applications passage of not subsequently forfeited."

SDCL 46-1-10 provides

"All vested rights acquired before in all respects vest

[3] Since the Redwater Irrigating Association in 1909 water has been reserved by the Association controlled 35 shares represented their right water. The association and has been allotted the 35 miner's inches on obligation. This arose out of the Act of 1889 which created its obligation. The Circuit Court of Butte County declared the contract void and consequently this agreement Association and must look to the state for more water. The *Butte County v. Lovinger*, supra, expressly provided that the water represented by the association said to be appurtenant to the land which it was used expressly provided water does not belong to the land.

Having decided the water is appurtenant to the land the Act of 1907 is in effect at

1907 Act. These vested water rights in the original locators are recognized in the present day water right statute. SDCL 46-1-9 defines vested rights:

" * * *

- (4) Rights granted before July 1, 1955 by court decree;
- (5) Uses of water under diversions and applications of water prior to the passage of the 1907 water law and not subsequently abandoned or forfeited."

SDCL 46-1-10 provides:

"All vested rights as defined in § 46-1-9 acquired before July 1, 1955 are hereby in all respects validated."

[3] Since the formation of the Irrigating Association in 1909 the right to use of water has been represented by the stock issued by the Association. The Eatons controlled 35 shares of this stock which represented their right to 35 miner's inches of water. The association is willing to allow and has been allowing the appellants-plaintiffs the 35 miner's inches of water. The Eatons had been receiving the other 165 miner's inches on the basis of a contractual obligation. This contractual obligation arose out of the Wilson-Eaton agreement of 1889 which the Association recognized as its obligation. The Eighth Judicial Circuit Court of Butte County in 1969 declared the contract as terminated. Consequently this agreement no longer binds the Association and the plaintiffs-appellants must look to their stock for the right to more water. This Court in Butte County v. Lovinger, supra, recognized that unless expressly provided in the by-laws, the water represented by such shares cannot be said to be appurtenant to the land on which it was used. Since this was not expressly provided for in the present case the water does not become appurtenant to the land.

Having decided the water is not appurtenant to the land in question either by statutes in effect at the time the Redwater Ir-

rigating Association was formed or because the water represented by the shares became appurtenant to the land, and because the Wilson-Eaton contract is no longer in effect, we would hold the plaintiffs-appellants not entitled to the additional 165 miner's inches of water withheld by the Redwater Irrigating Association.

Chapter 180, Laws of 1907 and the present law on irrigation as found in Chapter 46-5 SDCL would warrant a different outcome if they were applicable, but Butte County v. Lovinger, supra, is dispositive of this issue and these statutes recognize vested water rights of the type we find in the present case.

[4] The final point deals with the defendants-appellants' claim of error in the denial of its counterclaim and cross claim and the subsequent adjudication of the entire Redwater River Irrigation System. The cases recognize that ownership of water rights is subject to public regulation and that the Court does have jurisdiction to adjudicate all water rights within the stream system involved. This power found in the provisions of SDCL Chapter 46-10 should not be invoked in the present case because of the specific nature of this litigation. The origin of this litigation lies in the dispute as to the nature of the right to receive water on the land of the plaintiffs.

The granting or nongranteeing of the additional 165 inches of water to plaintiffs does not affect other water users above or below on the stream. This is a private fight between the plaintiffs and the Redwater Irrigating Association. It is simply a question of whether the plaintiffs or Redwater receive the 165 inches of water and does not affect other users. There is some evidence that Redwater is using more water than they have rights for, but that is not an issue in this lawsuit. The trial court did not err when it denied the State's request to join the other claimants of water rights and make a complete adjudication of the system.

Judgment affirmed.

All the Justices concur.

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September 16, 2002

MAX S. MAIN*
DWIGHT A. GUBBRUD
*ALSO LICENSED IN WYOMING

RECEIVED
SEP 17 2002
WATER RIGHTS
PROGRAM

RETIRED
DONN BENNETT

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Water Rights Program
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Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

**RE: IN THE MATTER OF VESTED WATER RIGHT APPLICATION NO.
2479-2, LONE TREE DITCH.**

Enclosed for each of you is a copy of the objections of Lone Tree Ditch Company and Mark Kieffer in the above-referenced matter. The original is being filed with the Chief Engineer.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.


Max Main

MM/mje
Enc.

cc: Clients (w/Enc.)

IN THE MATTER OF VESTED)
WATER RIGHT APPLICATION)
NO. 2479-2, LONE TREE DITCH.)
)

a. *Jewett v. Redwater Irrigating Association*, 220 NW2d 834 (SD 1974), which holds that pre-1907 water rights held by ditch companies are not appurtenant to any specific lands.

b. Exhibit B herein, the September 2, 1881 Location Certificate for the Lone Tree Ditch Company vested right, does not describe any specific lands to be irrigated, and does not limit use of the water right to any specific acres.

4. Proposed Conclusion No. 2 is incorrect. If Water License No. 2038-2 were a judgment, relief to correct it would be available under SDCL 15-6-60(b)(6), which provides for relief based on "[a]ny other reason justifying relief from the operation of the judgment." There is no statutory time limit for seeking relief under this subsection.

5. Regarding proposed Conclusion No. 4, there is no need to supply "a legal basis upon which to identify acreages which should be added to the 1988 validation." *Jewett v. Redwater Irrigating Association* controls, and holds that pre-1907 ditch company water rights are not appurtenant to any specific lands. *Id.* at 839. Therefore, any lands may be irrigated under the Lone Tree Ditch Company water right.

6. Proposed Conclusion No. 5 is unnecessary, irrelevant and immaterial. Waste, forfeiture and abandonment are not at issue in this matter.

7. The commentary in proposed Conclusion No. 6 is unnecessary. *Jewett v. Redwater Irrigating Association* controls.

DATED this 16th day of September, 2002.

BENNETT, MAIN & GUBBRUD, P.C.

Attorneys for Lone Tree Ditch Company and
Mark Kieffer

By 

Max Main

618 State Street

Belle Fourche, SD 57717-1489

605.892.2011

CERTIFICATE OF SERVICE

I, MAX MAIN, one of the attorneys for petitioners herein, do hereby certify that on the 16th day of September, 2002, I caused full, true and complete copies of the foregoing OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF

LAW, AND FINAL DECISION to be served upon the following named person at the following mailing address, as follows:

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucke
219 42nd St.
Rapid City, SD 57702

John P. Guhin
Deputy Attorney General
500 E. Capitol Ave.
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Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57706-2741

Diane Best
Assistant Attorney General
500 E. Capitol Ave.
Pierre, SD 57501-5070

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

and the original filed on the same day with:

Garland Erbele, Chief Engineer
Water Rights Program
Dept. of Environment & Natural Resources
Foss Building
Pierre, SD 57501

by depositing the same in the United States Mail in Belle Fourche, South Dakota with first class postage thereon fully prepaid, in envelopes addressed as above.


MAX MAIN

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHTS APPLICATION No. 2479-2,)
LONE TREE DITCH)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL DECISION

FINDINGS OF FACT

1. Pursuant to SDCL 46-5-49, enacted in 1986, any person claiming to be the owner of a vested right from a surface source could file a vested right claim. In 1987, Lone Tree Ditch Company filed a vested right claim for 23 cfs and identified 1,022 acres with a claimed priority date of September 29, 1881. In a letter dated January 5, 1988, the president of the Lone Tree Ditch Company formally reduced the 23 cfs claim to 15 cfs. The matter was duly advertised, indicating the claim for 15 cfs from Rapid Creek to irrigate 1,022 acres with a priority date of September 29, 1881. The legal description of the point of diversion and the legal description of the land irrigated was included in the advertisement.

2. Subsequently, on December 1, 1988, after the statutory process had been completed, Chief Engineer John Hatch issued "Vested Right Water License No. 2038-2 for irrigation." The right was issued to Lone Tree Ditch, and was for 15 cfs. The location of the diversion point was set out by legal description. The location of the irrigated acreage was also set out by legal description. The "total acres irrigated" were computed at "1022" acres. The priority date was recognized as September 29, 1881.

The License provided that "the water is to be used for the purpose of irrigation."

3. In approximately 1990, Lone Tree Ditch became aware that 333 acres, in addition to the 1,022 acres identified in 1988, had historically been irrigated through Lone Tree Ditch and by way of its claimed water right.

4. The case presents two fundamental issues. First, does this Board have authority to revisit the 1988 issuance of a Vested Right to revise the acreage associated with it? Second, if the Board has that authority, could it expand the acreage by 333 acres, as Lone Tree Ditch Company requests, by 151 acres, as the Water Rights Program recommends, or should it take some other action?

5. As noted above, the Water Rights Program recommends that the 1988 validation be revised to increase the amount of acreage which can be irrigated by 151 acres. The Water Rights Program relies upon the assessment statements issued by Lone Tree Ditch to Mr. Keefer. In particular, Certificate No. 73 has been issued to Keefer for a total of 216 shares with the authority to irrigate 267 acres. The Water Rights Program would deduct 116 acres of Mr. Keefer's lands which are presently within the area identified in the 1988 validation. This leaves 151 acres.

6. Lone Tree Ditch, as noted, requests that the 1988 validation be revisited and that the acreage listed thereon be increased by 333 acres. The basis of the Lone Tree claim is a 1911 map assembled by the predecessor to the Water Rights Program which indicates irrigated acreages in Sections 27, 33, and 34, in

T1N, R9E. Lone Tree Ditch demonstrated to the satisfaction of the Board, that Mr. Keefer presently irrigates 333 acres of the land in the identified sections, which had, in fact, also been irrigated in 1911. There was no proof of continuous nonuse up to the present.

7. No evidence indicates that the bylaws or plan of organization of Lone Tree Ditch Company provide other than that shares of stock in Lone Tree are personal property and may be sold and transferred independently of the land, and no evidence indicates that the bylaws or plan of organization of Lone Tree makes water appurtenant to the land on which it is used.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.

2. Assuming, without deciding, that the Board may resort to the South Dakota Rules of Civil Procedure to determine the conditions under which a 1988 determination may be revisited, the Board makes the following Conclusions. First, SDCL 15-6-59, which sets out grounds for a new trial, does not allow relief in this case. SDCL 15-6-59(b) provides that a motion for new trial must be "served and filed not later than ten days after the notice of entry of the judgment." Taking the Chief Engineer's issuance of the Water License in December of 1988 as the last possible date, it is clear that more than ten days have elapsed. Second, relief is not available under SDCL 15-6-60(b) providing relief on several other grounds. SDCL 15-6-60(b) provides relief with regard to such matters as mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. SDCL

15-6-60(b)(1)-(3). Relief under these sections must be sought within one year, however, and this did not occur. No argument has been made that the judgment is void, or been satisfied, nor has a truly exceptional reason for vacating the 1988 License been offered. See SDCL 15-6-60(b)(4)-(6).

3. The basic legal conclusion of the Board, on which its ultimate decision is based, is one which is mandated by the cases: first, the water right holder in this case is Lone Tree Ditch and is not Mr. Keefer or any individual shareholder. Second, water rights held by ditch companies are not appurtenant to any particular land unless the bylaws or organization of the ditch company so provide. The Board has found above that the bylaws of Lone Tree Ditch do not contain such provision.

4. The Board is unable to discover, and no litigant has supplied, a legal basis upon which to identify acreages which should be added to the 1988 validation. The solutions suggested by the Water Rights Program and the Applicant are both carefully arrived at and practical solutions but neither appears to flow from a statutory, constitutional, or regulatory source.

5. The Water Rights Program quite correctly has argued that case law provides that ditch companies may be subject to certain public regulation. Thus, it is undeniable that the Lone Tree Ditch may not, for example, waste water. Moreover, the Lone Tree Ditch is subject to either forfeiture or abandonment should it fail to use its 15 cfs of water.

6. Public regulation in the form of requirements for validation is also applicable to Lone Tree Ditch. No state

statute, however, purports to reverse South Dakota Supreme Court precedent such that water rights held by a ditch company are not appurtenant to the land. Until the Legislature takes such an action, this Board is not free itself to make such a determination.

7. Based on the foregoing, the Board must conclude that Lone Tree Ditch is free to use the 333 acres it requests for the purpose of irrigation. This determination does not, however, purport to make the water right of the ditch company appurtenant to these particular lands.

8. The Board, in rendering this decision, does not preclude the possibility that the water right of a ditch company could become appurtenant to particular lands if the ditch company acquiesced in a decision of this Board which so held or in an action of the Chief Engineer which so specified.

9. The Board is unable, however, to conclude that the grant of the December 1, 1988, Water License to Lone Tree Ditch or the acceptance of that Water License had that effect. In this regard, the Board notes that, although the irrigated acreage was set out by legal description, there was nothing in the Water License which notified Lone Tree Ditch that the listing of the legal descriptions had the effect of making the water right appurtenant to the described land.

10. To demonstrate acquiescence, the Water Rights Program had the burden of showing, by clear and convincing evidence, that Lone Tree Ditch acquiesced in converting its unique water right from one in which the water right was **not** appurtenant to the land

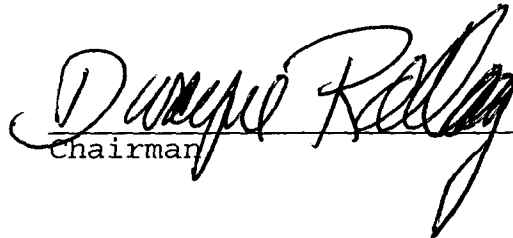
to one in which the water right was appurtenant to certain land. The mere listing of lands in a Water License did not create that acquiescence in the unique circumstances of this case.

FINAL DECISION

The application for validation of vested water right application No. 2479-2 is GRANTED for 333 acres, as set out in Vested Right Claim No. 2479-2, submitted by Lone Tree Ditch.

Dated this 2nd day of October, 2002.

BY THE BOARD:


Chairman

p1d905.jpg(dh)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 9, 2002

NOTICE

TO: Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

FROM: Garland Erbele, Chief Engineer
Water Rights Program

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

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, was adopted September 25, 2002, by the Water Management Board validating Vested Water Right Claim No. 2479-2 filed by Lone Tree Ditch. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

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

CERTIFICATION

I hereby certify that on October 9, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 9, 2002, regarding adoption of findings of fact, conclusions of law and final decision on Vested Water Right Application No. 2479-2, Lone Tree Ditch, addressed as stated below.

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

A copy of the Notice was sent Inter-office to:

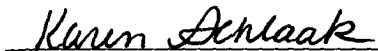
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General



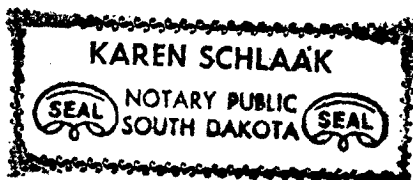
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of October, 2002.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



Water Rights Program - DENR

File Documentation for File Nos. 2038-2 & 2479-2

Name of Person: *Lone Tree Ditch Company % Dale Gossard*

Address: *15606 Antelope Creek Road, Rapid City SD 57703* **County:** *Pennington*

Date: *11/20/02* **Telephone:** *605-393-0223*

RE: *Validation of Vested Water Right No. 2479-2.*

Comments:

The Water Management Board validated No. 2038-2 in 1988 for 15 cfs to irrigate 1022 acres. In 2002 the Water Management Board considered validation of No. 2479-2 for an additional 333 acres having the same priority date with no increase in the diversion rate.

During the hearing for validation of Vested Water Right No. 2479-2, Lone Tree Ditch Company's attorney successfully argued that the vested water right is not appurtenant to specific irrigated acres (see Findings of Fact and Conclusions of Law for Validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch). The Board found that Lone Tree Ditch is a stockholder ditch company holding a pre-1907 water right. The Board determined this ditch company has continued to practice the allocation of irrigation water based upon the number of shares held by individual stockholders rather than the number of acres irrigated. This ruling is based upon a 1974 South Dakota Supreme Court decision in Jewett v. Redwater. The Water Management Board ruling does limit the validation of water rights for Lone Tree Ditch to a diversion point located in the NE¼ NE¼ of Sec 30 T1N-R9E with an authorized diversion rate of 15 cubic feet of water per second.

Applicable portions of Vested Water Right No. 2028-should now be incorporated into Vested Water Right No. 2479-2.



Mark D Rath

Natural Resources Engineering Specialist

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER : SS.
RIGHTS APPLICATION)
NO. 2479-2, LONE TREE DITCH)

STIPULATION TO AMEND
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL DECISION

COME NOW the Department of Environment and Natural Resources, Water Rights Program and the Lone Tree Ditch Company and stipulates that the Board's Findings of Fact and Conclusions of Law dated September 25, 2002, may be amended to insert additional language to include the Chief Engineer's two proposed qualifications as recommended at hearing. Amended Findings of Fact, Conclusions of Law, and Final Decision have been drafted to include these additional qualifications and are attached to this stipulation.

The parties further agree that the DENR may submit this stipulation to the Board for further consideration without the necessity of hearing.

Dated this 27th day of February, 2003.

Max Main
Max Main, Counsel for
Lone Tree Ditch Company

Dated this 3rd day of March, 2003.

Diane Best
Diane Best, Counsel for
Water Rights Program

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHTS APPLICATION No. 2479-2,)
LONE TREE DITCH)

AMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL DECISION

FINDINGS OF FACT

1. Pursuant to SDCL 46-5-49, enacted in 1986, any person claiming to be the owner of a vested right from a surface source could file a vested right claim. In 1987, Lone Tree Ditch Company filed a vested right claim for 23 cfs and identified 1,022 acres with a claimed priority date of September 29, 1881. In a letter dated January 5, 1988, the president of the Lone Tree Ditch Company formally reduced the 23 cfs claim to 15 cfs. The matter was duly advertised, indicating the claim for 15 cfs from Rapid Creek to irrigate 1,022 acres with a priority date of September 29, 1881. The legal description of the point of diversion and the legal description of the land irrigated was included in the advertisement.

2. Subsequently, on December 1, 1988, after the statutory process had been completed, Chief Engineer John Hatch issued "Vested Right Water License No. 2038-2 for irrigation." The right was issued to Lone Tree Ditch, and was for 15 cfs. The location of the diversion point was set out by legal description. The location of the irrigated acreage was also set out by legal description. The "total acres irrigated" were computed at "1022" acres. The priority date was recognized as September 29, 1881.

The License provided that "the water is to be used for the purpose of irrigation."

3. In approximately 1990, Lone Tree Ditch became aware that 333 acres, in addition to the 1,022 acres identified in 1988, had historically been irrigated through Lone Tree Ditch and by way of its claimed water right.

4. The case presents two fundamental issues. First, does this Board have authority to revisit the 1988 issuance of a Vested Right to revise the acreage associated with it? Second, if the Board has that authority, could it expand the acreage by 333 acres, as Lone Tree Ditch Company requests, by 151 acres, as the Water Rights Program recommends, or should it take some other action?

5. As noted above, the Water Rights Program recommends that the 1988 validation be revised to increase the amount of acreage which can be irrigated by 151 acres. The Water Rights Program relies upon the assessment statements issued by Lone Tree Ditch to Mr. Keefer. In particular, Certificate No. 73 has been issued to Keefer for a total of 216 shares with the authority to irrigate 267 acres. The Water Rights Program would deduct 116 acres of Mr. Keefer's lands which are presently within the area identified in the 1988 validation. This leaves 151 acres.

6. Lone Tree Ditch, as noted, requests that the 1988 validation be revisited and that the acreage listed thereon be increased by 333 acres. The basis of the Lone Tree claim is a 1911 map assembled by the predecessor to the Water Rights Program which indicates irrigated acreages in Sections 27, 33, and 34, in

T1N, R9E. Lone Tree Ditch demonstrated to the satisfaction of the Board, that Mr. Keefer presently irrigates 333 acres of the land in the identified sections, which had, in fact, also been irrigated in 1911. There was no proof of continuous nonuse up to the present.

7. No evidence indicates that the bylaws or plan of organization of Lone Tree Ditch Company provide other than that shares of stock in Lone Tree are personal property and may be sold and transferred independently of the land, and no evidence indicates that the bylaws or plan of organization of Lone Tree makes water appurtenant to the land on which it is used.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.

2. Assuming, without deciding, that the Board may resort to the South Dakota Rules of Civil Procedure to determine the conditions under which a 1988 determination may be revisited, the Board makes the following Conclusions. First, SDCL 15-6-59, which sets out grounds for a new trial, does not allow relief in this case. SDCL 15-6-59(b) provides that a motion for new trial must be "served and filed not later than ten days after the notice of entry of the judgment." Taking the Chief Engineer's issuance of the Water License in December of 1988 as the last possible date, it is clear that more than ten days have elapsed. Second, relief is not available under SDCL 15-6-60(b) providing relief on several other grounds. SDCL 15-6-60(b) provides relief with regard to such matters as mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. SDCL

15-6-60(b)(1)-(3). Relief under these sections must be sought within one year, however, and this did not occur. No argument has been made that the judgment is void, or been satisfied, nor has a truly exceptional reason for vacating the 1988 License been offered. See SDCL 15-6-60(b)(4)-(6).

3. The basic legal conclusion of the Board, on which its ultimate decision is based, is one which is mandated by the cases: first, the water right holder in this case is Lone Tree Ditch and is not Mr. Keefer or any individual shareholder. Second, water rights held by ditch companies are not appurtenant to any particular land unless the bylaws or organization of the ditch company so provide. The Board has found above that the bylaws of Lone Tree Ditch do not contain such provision.

4. The Board is unable to discover, and no litigant has supplied, a legal basis upon which to identify acreages which should be added to the 1988 validation. The solutions suggested by the Water Rights Program and the Applicant are both carefully arrived at and practical solutions but neither appears to flow from a statutory, constitutional, or regulatory source.

5. The Water Rights Program quite correctly has argued that case law provides that ditch companies may be subject to certain public regulation. Thus, it is undeniable that the Lone Tree Ditch may not, for example, waste water. Moreover, the Lone Tree Ditch is subject to either forfeiture or abandonment should it fail to use its 15 cfs of water.

6. Public regulation in the form of requirements for validation is also applicable to Lone Tree Ditch. No state

statute, however, purports to reverse South Dakota Supreme Court precedent such that water rights held by a ditch company are not appurtenant to the land. Until the Legislature takes such an action, this Board is not free itself to make such a determination.

7. Based on the foregoing, the Board must conclude that Lone Tree Ditch is free to use the 333 acres it requests for the purpose of irrigation. This determination does not, however, purport to make the water right of the ditch company appurtenant to these particular lands.

8. The Board, in rendering this decision, does not preclude the possibility that the water right of a ditch company could become appurtenant to particular lands if the ditch company acquiesced in a decision of this Board which so held or in an action of the Chief Engineer which so specified.

9. The Board is unable, however, to conclude that the grant of the December 1, 1988, Water License to Lone Tree Ditch or the acceptance of that Water License had that effect. In this regard, the Board notes that, although the irrigated acreage was set out by legal description, there was nothing in the Water License which notified Lone Tree Ditch that the listing of the legal descriptions had the effect of making the water right appurtenant to the described land.

10. To demonstrate acquiescence, the Water Rights Program had the burden of showing, by clear and convincing evidence, that Lone Tree Ditch acquiesced in converting its unique water right from one in which the water right was **not** appurtenant to the land

to one in which the water right was appurtenant to certain land. The mere listing of lands in a Water License did not create that acquiescence in the unique circumstances of this case.

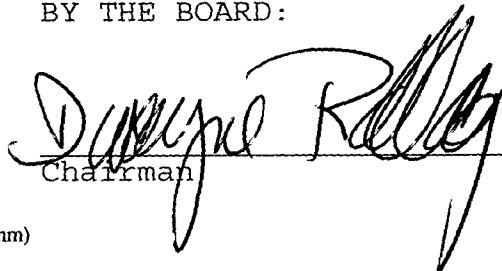
FINAL DECISION

The application for validation of vested water right application No. 2479-2 is GRANTED for 333 acres, as set out in Vested Right Claim No. 2479-2, submitted by Lone Tree Ditch, subject to the following qualifications:

1. That Vested Water Right Nos. 2038-2 and 2479-2 are subject to domestic use rights. Diversion of natural flow water under these vested water rights is contingent upon supplies being available first to domestic uses.
2. That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

Dated this 5 day of March, 2003.

BY THE BOARD:


Chairman

pld.db (Amended Findings, Conclusions & Final Decision)(jmm)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
VALIDATION OF VESTED WATER	)	CERTIFICATE OF SERVICE
RIGHTS APPLICATION No. 2479-2,	)	
LONE TREE DITCH	)	

The undersigned hereby certifies that true and correct copies of Amended Findings of Fact, Conclusions of Law and Final Decision, Motion to Amend Findings of Fact, Conclusions of Law and Final Decision and Stipulation to Amend Findings of Fact, Conclusions of Law and Final Decision In the Matter of the Validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 3rd day of March, 2003:

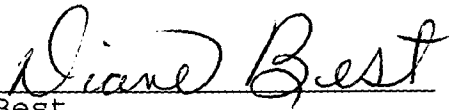
Max Main
Attorney at Law
618 State St.
Belle Fourche, SD 57717

and sent on the same date by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
and Natural Resources
Foss Building
Pierre, SD 57501

and by hand delivery on the same date to:

John P. Guhin
Deputy Attorney General
500 E. Capitol Ave.
Pierre, SD 57501-5070



Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

pld.db (Cert. of Service Lone Tree Ditch)(jmm)

STATE OF SOUTH DAKOTA

RECEIVED

BEFORE THE WATER MANAGEMENT BOARD

MAR - 4 2003

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER : SS.
RIGHTS APPLICATION)
NO. 2479-2, LONE TREE DITCH)

MOTION TO AMEND WATER RIGHTS
FINDINGS OF FACT, PROGRAM
CONCLUSIONS OF LAW
AND FINAL DECISION

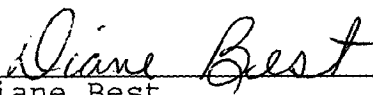
COMES NOW the Department of Environment and Natural Resources, Water Rights Program, and ask that the Board amend its Findings of Fact, Conclusions of Law and Final Decision issued on September 25, 2002. The reason for making this motion is to add the Chief Engineer's recommended permit qualifications:

1. That Vested Water Right Nos. 2038-2 and 2479-2 are subject to domestic use rights. Diversion of natural flow water under these vested water rights is contingent upon supplies being available first to domestic uses.
2. That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

The DENR submits that the foregoing qualifications should have been included in the Findings of Fact and Conclusions of Law and were inadvertently omitted. Upon discovering that these conditions were omitted, the DENR contacted counsel for the Lone Tree Ditch Company who stipulated that the Findings of Fact and Conclusions of Law could be amended in this matter without further hearing. The stipulation is attached.

Dated this 3rd day of March, 2003.

Respectfully submitted.



Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 11, 2003

NOTICE

TO: Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

FROM: Garland Erbele, Chief Engineer
Water Rights Program

Garland Erbele

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

This is to notify you that the amended Final Decision, including Findings of Fact and Conclusions of Law, was adopted March 5, 2003, by the Water Management Board validating Vested Water Right Claim No. 2479-2 filed by Lone Tree Ditch. A copy of the signed amended Findings of Fact, Conclusions of Law and Final Decision is enclosed.

The amended findings add the Chief Engineer's recommended qualifications which were inadvertently omitted from the originally adopted findings. Vested Water Right No. 2479-2 will now be issued.

Enclosure

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

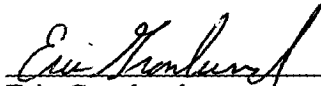
CERTIFICATION

I hereby certify that on March 11, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 11, 2003, regarding adoption of the amended findings of fact, conclusions of law and final decision on Vested Water Right Application No. 2479-2, Lone Tree Ditch, addressed as stated below.

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

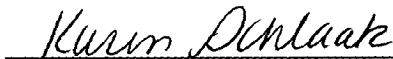
A copy of the Notice was sent Inter-office to:

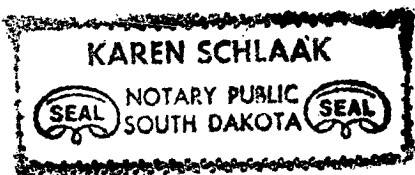
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

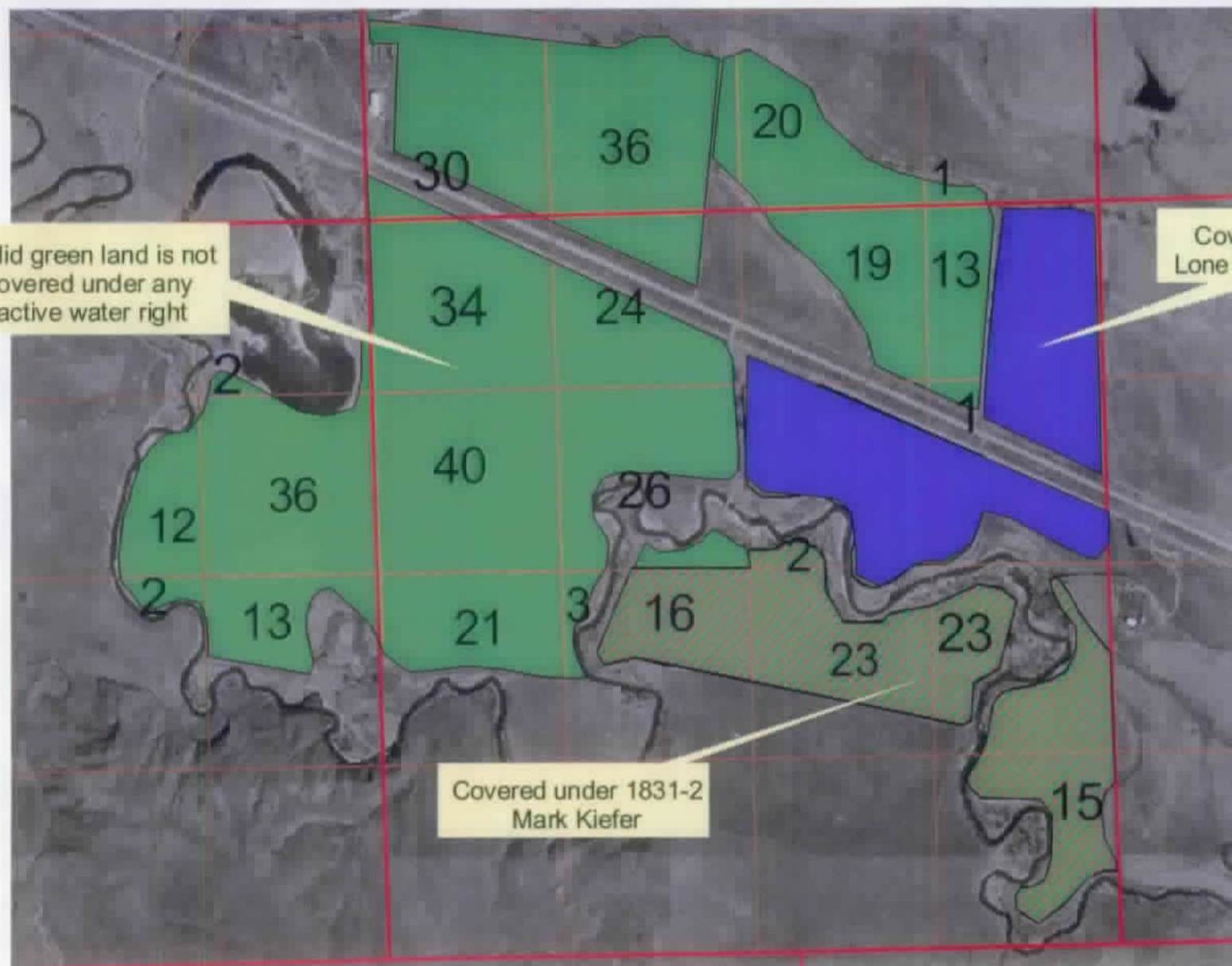

Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of March, 2003.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





Solid green land is not covered under any active water right

Covered under 2038-2 Lone Tree Ditch Company

Covered under 1831-2 Mark Kiefer



STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2479-2

(1) Lone Tree Ditch, 15606 Antelope Creek Rd, Rapid City SD 57703 made Application No. 2479-2, February 28, 2002 for validation of a vested right claim to appropriate no additional water from Rapid Creek, Pennington County, South Dakota, for irrigation purposes. Vested Water Right No. 2479-2 was validated October 2, 2002 with a priority date of September 29, 1881.

Vested Right Water License No. 2038-2 was validated March 3, 1988 for 15 cubic feet of water per second from Rapid Creek with a priority date of September 29, 1881. The applicable portions of No. 2038-2 are incorporated into No. 2479-2

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Incorporated Vested Water Right No. 2479-2 is issued a license, bearing a priority date of September 29, 1881 to appropriate 15 cubic feet of water per second from Rapid Creek via the Lone Tree Ditch. The diversion point is located in the NE ¼ NE ¼ Section 30-T1N-R9E.

During the hearing for validation of Vested Water Right No. 2479-2, Lone Tree Ditch Company's attorney successfully argued that the vested water right is not appurtenant to specific irrigated acres (see Findings of Fact and Conclusions of Law for Validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch).

The location of the irrigated acreage as listed when No. 2038-2 was validated March 3, 1988.

Acres			Acres		
Section 28-T1N-R9E	SW ¼ SE ¼	28	Section 35-T1N-R9E	NE ¼ SW ¼	11
	SE ¼ SE ¼	28		SE ¼ SW ¼	33
	NW ¼ SW ¼	17		SE ¼ SE ¼	27
	SW ¼ SW ¼	5		SW ¼ SE ¼	31
	NE ¼ SW ¼	16		NE ¼ SE ¼	40
	SE ¼ SW ¼	15		SW ¼ NE ¼	36
Section 29-T1N-R9E	NW ¼ NW ¼	29		SE ¼ NE ¼	13
		14		NW ¼ SE ¼	28
		19		NW ¼ NE ¼	26
		32		SE ¼ NW ¼	39
		33		NE ¼ NW ¼	16
		9		NW ¼ NW ¼	34
		14		SW ¼ NW ¼	30
		1	Section 36-T1N-R9E	NW ¼ SW ¼	7
Section 30-T1N-R9E	NE ¼ SE ¼	5		SW ¼ SW ¼	16
	NW ¼ SW ¼	5		SE ¼ SW ¼	38
				NE ¼ SW ¼	4
Section 33-T1N-R9E	SE ¼ NE ¼	20	Section 1-T1S-R9E	Lot 2	4
				Lot 3	29
				Lot 4	33
Section 34-T1N-R9E	NW ¼ NE ¼	7		NW ¼ SW ¼	33
	NE ¼ NE ¼	14		NE ¼ SW ¼	9
	NE ¼ NW ¼	2		NW ¼ SE ¼	12
			Section 2-T 1S-R9E	Lot 1	21
Section 35-T1N-R9E	SE ¼ NE ¼	26		Lot 2	5
	NE ¼ NE ¼	21		NE ¼ SE ¼	16
	NW ¼ NE ¼	2			
	SW ¼ NE ¼	27			
	NW ¼ SW ¼	25			
	SW ¼ SW ¼	22			
Total 1,022 acres					

Continued

The location of the irrigated acreage as listed when No. 2479-2 was validated October 2, 2002.

Acres			Acres			
Section 33-T1N-R9E	SW ¼ NE ¼	2	Section 34-T1N-R9E	NW ¼ NW ¼	34	
	SE ¼ NE ¼	36		NE ¼ NW ¼	24	
	SW ¼ NE ¼	12		SW ¼ NW ¼	40	
	NW ¼ SE ¼	2		SE ¼ NW ¼	26	
	NE ¼ SE ¼	13		NW ¼ SW ¼	21	
Section 27-T1N-R9E				NE ¼ SW ¼	3	
	SW ¼ SW ¼	30		NW ¼ NE ¼	19	
	SE ¼ SW ¼	36		NE ¼ NE ¼	13	
	SW ¼ SE ¼	20		SE ¼ NE ¼	1	
	SE ¼ SE ¼	1				
Total 333 acres						

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Incorporated Vested Water Right No. 2479-2 including the following now applicable qualifications:

- Incorporated Vested Water Right No. 2479-2 is subject to domestic use rights. Diversion of natural flow water under this vested right is contingent upon supplies being available first to domestic uses.
- That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

APR 17 2003

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

APR 17 2003

Lone Tree Ditch
H Dale Gossard
15605 Antelope Creek Rd
Rapid City SD 57703

Dear Mr. Gossard:

Enclosed are your Validated Vested Water Right and Water License No. 2479-2. As long as Lone Tree Ditch uses the water beneficially, as stated in the Water License, the State Water Laws provide a continuing right to use the water.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

Water Rights Program - DENR

File Documentation

File No. 2479-2, 2038-2, 1839A-2

County: Pennington

Name of Person: *Jerry Hammerquist, RVWCD*

Address: *Caputa SD*

Date: *July, 18 2003*

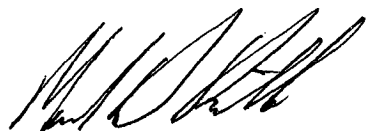
RE: *Mark Kieffer pumping water on a pivot away from Lone Tree Ditch Company*

Comments:

Mr. Hammerquist called and said that Mark Kieffer was pumping water through a centerpivot on land, NW¼ Sec27 T1N-R9E, not covered by the Lone Tree water right. He said that since Mr. Kieffer was not buying water but was pumping natural flow water, another Rapid Valley irrigator did not think he should have to buy water either.

I told Mr. Hammerquist because of the Water Management Board's ruling last year on No. 2479-2 which was based on an earlier Redwater Ditch Supreme Court ruling, Lone Tree's water right did not tie irrigation to specific acres but to diversion rate and shares in the ditch company. I suggested that Mr. Hammerquist look at the Findings-of-Fact in the No. 2479-2 issue and he said id he had a copy I sent him last year.

Mr. Hammerquist said he would inform the other irrigator he would have to purchase water and why.



Mark D Rath
Natural Resources Engineering Specialist

October 9, 2003

To: Garland Erbele, Chief Engineer, and Mark Rath
Water Rights Program DENR
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

From: H. Dale Gossard, President of Lone Tree Ditch

Reference: Your Letter dated March 5, 2003, Final Decision
vested water right No. 2479-2, Lone Tree Ditch,
covering 333 acres.

Listed Qualifications:

1. That Vested Water Right Nos. 2038-2 and 2479-2 are subject to domestic use rights. Diversion of natural flow water under these vested water rights is contingent upon supplies being available first to domestic uses.

(This is understood, and standard operation procedure for the Lone Tree Ditch.)

2. That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

(Lone Tree Ditch had selected a new site for the measuring device between the 2001 and 2002 irrigation seasons. The move to the new site was to occur between the 2002 and 2003 irrigation seasons. Completion of the new site installation of a 6 foot length weir was completed April 4, 2003. Some minor repair work on the irrigation box at the location of the measuring device was done on May 22, 2003. We are very pleased with the site location and its easy access.

For the record the location is 300 feet south of Highway 44 and South Airport Road junction. Lone Tree ditch crosses beneath the road at this point. The box and measuring device are 90 feet east of South Airport Road, or 1000 feet below Lone Tree Ditch Headgate. The footage numbers of these locations are approximate.)

After comparing acreages and legal descriptions in the final version of the above Vested Water Right claims and Final Decision all appears to be in order.

Thank you.

Sincerely,
H. Dale Gossard

cc/Max Main, Attorney; Mark Kieffer, Irrigator

2479-3

RECEIVED

MAR 29 2005

WATER RIGHTS
PROGRAM

Mark Kieffer, President
Lone Tree Ditch Company
13605 Neck Yoke Road
Rapid City, SD 57702

March 28, 2005

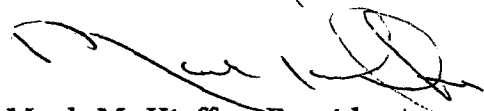
Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Dear Mr. Erbele:

This is a request from Lone Tree Ditch for an early turn on for water. Lone Tree Ditch Company holds the first senior right after release of affluent from Rapid City Sewage Treatment. There is sufficient water for irrigation at this time. Early irrigation might help extend the amount needed during the hot part of the irrigation season.

Thank you for your consideration of this request.

Sincerely,



Mark M. Kieffer, President
Lone Tree Ditch Company



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 1, 2005

2479-2

Mark Kieffer, President
Lone Tree Ditch Company
13605 Neck Yoke Road
Rapid City, SD 57702

Dear Mr. Kieffer:

This letter is in response to your March 28, 2005 request for a variance to divert Rapid Creek water into the Lone Tree Ditch earlier than the April 15 listed on the vested water right. After checking the current natural flows in Rapid Creek, I have determined a variance may be granted allowing the Lone Tree Ditch Company to start diverting from the creek into the irrigation ditch at this time.

This variance is for natural flows only and granting of this variance is not intended to require the US Bureau of Reclamation to increase releases from the reservoirs. If natural flows in Rapid Creek decrease due to climatic conditions and impact to domestic use, this variance may need to be rescinded at that time.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

cc: Curt Anderson, USBOR
Kevin Ham, Rapid Valley Water Master



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

March 28, 2012

No. 2479-2

S. Roy Dishman
825 Columbus Street
Rapid City, SD 57701

Dear Mr. Dishman:

This letter is in regards to your March 27, 2012 request for a variance allowing Lone Tree Ditch to divert from Rapid Creek for irrigation covered by Water Permit No. 2479-2 prior to May 1 as listed on the water right.

Effective immediately your request is granted allowing you to divert Rapid Creek water for irrigation as authorized by Permit No. 2479-2. This variance is only in effect for the current calendar year.

If you have any questions, please contact me at phone (605) 773-3352.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Rath".

Mark D. Rath
Natural Resources Engineer III
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

April 24, 2018

No. 2479-2

S. Roy Dishman
825 Columbus St.
Rapid City, SD 57701

Dear Mr. Dishman:

This letter is in regards to your April 5, 2018, request for a variance allowing Lone Tree Ditch to divert from Rapid Creek for irrigation covered by Water Permit No. 2479-2 prior to May 1.

Effective immediately your request is granted allowing you to divert Rapid Creek water for irrigation as authorized by Permit No. 2479-2. This variance is only in effect for the current calendar year.

If you have any questions, please contact me at phone (605) 773-3352.

Sincerely,

Jeanne Goodman
Chief Engineer
SD Dept of Environment and Natural Resources
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

FEB 13 2026

Reissued 2479-2

Lone Tree Ditch Company
c/o Megan Kieffer, Pres
15260 Caputa Loop
Rapid City SD 57703

Dear Ms. Kieffer:

Enclosed is Reissued Vested Water Right No. 2479-2, authorizing the appropriation of 15 cubic feet of water per second (cfs) from Rapid Creek via Lone Tree Ditch, for irrigation purposes. As outlined in the letter to you dated January 28, 2026, this license has been reissued to allow for diversion from a second diversion point, pursuant to SDCLs 46-5-13.1 and 46-2A-4.

The approval of the second diversion point does not authorize any increase to the maximum combined pump rate of 15 cfs, or the number of acres authorized for irrigation. Additionally, prior to any pumping from the location of the second diversion point, the Lone Tree Ditch Master and Rapid Creek Water Master will each need to be notified.

So long as you use the water beneficially, as stated in the reissued license, State Water Laws provide that you have a continued right to use the water. If you have any questions, please contact Amanda Dewell, Water Rights Permitting Administrator, at (605) 773-3352 or Amanda.Dewell@state.sd.us.

Sincerely,

Adam Mathiowetz, PE
Acting Chief Engineer
Water Rights Program

enclosure

STATE OF SOUTH DAKOTA
REISSUED VESTED RIGHT WATER LICENSE NO. 2479-2

(1) Lone Tree Ditch, 15260 Caputa Loop, Rapid City SD 57703 made Application No. 2479-2, February 28, 2002, for validation of a vested right claim to appropriate no additional water from Rapid Creek, Pennington County, South Dakota, for irrigation purposes. Vested Water Right No. 2479-2 was validated October 2, 2002, with a priority date of September 29, 1881, for irrigation of up to 333 acres.

Vested Right Water License No. 2038-2 was validated March 3, 1988, for 15 cubic feet of water per second from Rapid Creek with a priority date of September 29, 1881, for irrigation of up to 1,022 acres. The applicable portions of No. 2038-2 are incorporated into No. 2479-2.

The Lone Tree Ditch diversion point (Diversion Point No. 1) on Rapid Creek is located in the NE¼ NE¼ Section 30-T1N-R9E. On July 24, 2025, an application was filed to add another diversion point (Diversion Point No. 2) on Rapid Creek within the E½ SE¼ Section 2-T1S-R9E. According to the May 19, 2025, meeting minutes of the Lone Tree Ditch Company, a shareholder vote was authorized which subsequently approved the additional diversion point.

The Acting Chief Engineer makes a finding pursuant to SDCL 46-5-13.1 that no application or publication is needed to add Diversion Point No. 2 and development of the additional diversion point does not increase the potential for interference with existing diversions. In making the finding, "does not increase the potential for interference" is interpreted to mean potential for adverse interference. Vested Right License No. 2479-2 is being reissued to add Diversion No. 2 as described in section (2) of this license and is subject to the following:

- The diversion rate from Diversion Point No. 2 may not exceed 0.43 cfs for irrigation of up to 15 acres in the E½ SE¼ Section 2-T1S-R9E;
- Simultaneous diversions from Diversion Points No. 1 and No. 2 may not exceed 15 cfs and total acres irrigated may not exceed 1,355 acres; and
- Prior to operation of Diversion Point No. 2, the Lone Tree Ditch Master and Rapid Creek Water Master must be notified.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Vested Water Right No. 2479-2 is issued a license, bearing a priority date of September 29, 1881, to appropriate 15 cubic feet of water per second from Rapid Creek via the Lone Tree Ditch for irrigation of up to 1,355 acres. The diversion points are located as follows:

- Diversion Point No. 1: NE¼ NE¼ Section 30-T1N-R9E; and
- Diversion Point No. 2: E½ SE¼ Section 2-T1S-R9E

During the hearing for validation of Vested Water Right No. 2479-2, Lone Tree Ditch Company's attorney successfully argued that the vested water right is not appurtenant to specific irrigated acres (see Findings of Fact and Conclusions of Law for Validation of Vested Water Right Application No. 2479-2, Lone Tree Ditch).

The location of the irrigated acreage, as listed, when No. 2038-2 was validated March 3, 1988.

Acres			Acres		
Section 28-T1N-R9E	SW¼SE¼	28	Section 35-T1N-R9E	NE¼SW¼	11
	SE¼ SE¼	28		SE¼SW¼	33
	NW¼SW¼	17		SE ¼SE¼	27
	SW¼SW¼	5		SW¼SE¼	31
	NE¼SW¼	16		NE ¼SE¼	40
	SE ¼SW¼	15		SW¼NE¼	36
Section 29-T1N-R9E				SE ¼NE¼	13
				NW¼SE¼	28
				NW¼NE¼	26
				SE¼NW¼	39
				NE¼NW¼	16
				NW¼NW¼	34
				SW¼NW¼	30
			Section 36-T1N-R9E	NW¼SW¼	7
				SW¼SW¼	16
SE ¼SW¼	38				
NE¼SW¼	4				
Section 30-T1N-R9E	SE¼NE¼	20	Section 1-T1S-R9E	Lot2	4
Section 33-T1N-R9E	NW¼NE¼	7		Lot3	29
	NE ¼NE¼	14		Lot4	33
	NE¼NW¼	2		NW¼SW¼	33
Section 34-T1N-R9E	SE ¼NE¼	26	NE¼SW¼	9	
	NE¼NE¼	21	NW¼SE¼	12	
	NW¼NE¼	2	Section 2-T1S-R9E	Lot1	21
	SW¼NE ¼	27		Lot2	5
Section 35-T1N-R9E	NW¼SW¼	25		NE¼SE¼	16
	SW¼SW¼	22			
Total 1,022 acres					

The location of the irrigated acreage, as listed, when No. 2479-2 was validated October 2, 2002.

Acres			Acres		
Section 33-T1N-R9E	SW ¼ NE ¼	2	Section 34-T1N-R9E	NW ¼ NW ¼	34
	SE ¼ NE ¼	36		NE ¼ NW ¼	24
	SW ¼ NE ¼	12		SW ¼ NW ¼	40
	NW ¼ SE ¼	2		SE ¼ NW ¼	26
	NE ¼ SE ¼	13		NW ¼ SW ¼	21
Section 27-T1N-R9E	SW ¼ SW ¼	30		NE ¼ SW ¼	3
	SE ¼ SW ¼	36		NW ¼ NE ¼	19
	SW ¼ SE ¼	20		NE ¼ NE ¼	13
	SE ¼ SE ¼	1		SE ¼ NE ¼	1
	Total 333 acres				

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Vested Water Right No. 2479-2, including the following qualifications:

- Incorporated Vested Water Right No. 2479-2 is subject to domestic use rights. Diversion of natural flow water under this vested right is contingent upon supplies being available first to domestic uses.
- That a flow measuring device be maintained at or near the point of diversion for Lone Tree Ditch.

Adam Mathiowetz

Adam Mathiowetz, PE
Acting Chief Engineer
Water Rights Program, DANR

FEB 13 2026

date





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

March 18, 2026

Eric Henriksen
15571 Antelope Creek Road
Rapid City SD 57703

Dear Mr. Henriksen:

Pursuant to SDCL 46-5-13.1, an additional diversion point can be authorized without processing an application. Therefore, your Water Permit Application No. 2902-2 has been withdrawn. The application fee of \$300.00 will be refunded to you. You should receive the refund check within two weeks.

Should you have any questions, please contact our office.

Sincerely,

Adam Mathiowetz, PE
Acting Chief Engineer
Water Rights Program

March 17, 2026

REFUND REQUEST FORM

PAYEE:

Eric Henriksen
15571 Antelope Creek Road
Rapid City SD 57703

FROM: DANR-Water Rights Program
523 E. Capitol Ave
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Withdrawal of Water Permit Application #2902-2

AMOUNT: \$300.00

FUNDING SOURCE: WR Fees

GENERAL:

FEDERAL:

OTHER:

COMMENTS:

AUTHORIZATION: 

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.