

WATER PERMIT NO. 2526-2

Name of Applicant: **Donald & Virgena Jundt**

Address: **RR 2, Rapid City SD 57701**

Phone: **605 393-2433**

Amount of Water Claimed: **0.80 cfs**

Total Acres: **50.55**

Source of Water Supply: **Rapid Creek**

Water to be used for: **irrigation**

County: **Pennington**

Type of Waste Disposal System:

Location: **southeast of Rapid City**

PRIORITY

Date Received: **4-27-04**

Application/License Fee: **\$100**

Corrected Application Received:

Period of Annual Use: **May 1 – September 30**

Remarks: **transferring a portion of irrigated acres and diversion authority to other land**

Diversion Point: **SE ¼ NW ¼ Sec 15-T1N-R8E**

Land to be Irrigated: **NW ¼ Sec 33-T1N-R9E**

Depth of Well: **NA**

Well Driller: : **NA**

Remarks:

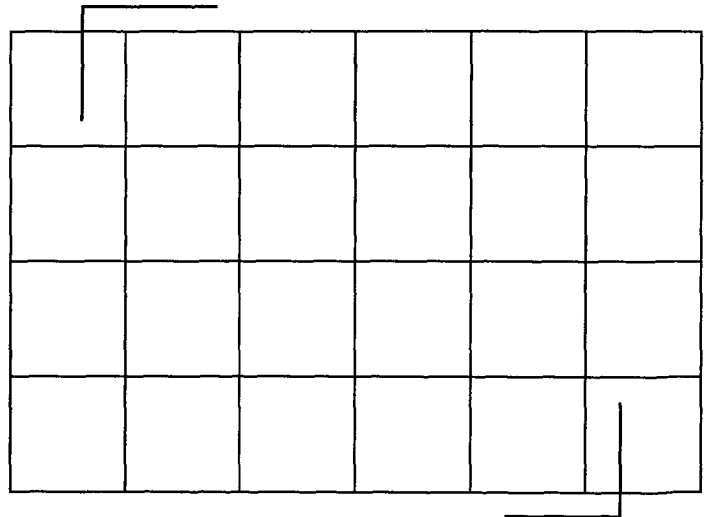
Type of Map: **aerial**

Prepared by: **Joel Jundt, PE**

Reviewed and the Number Assigned on: **4-27-04**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only) No. <u>2526-2</u> Hydrologic Unit <u>10/20110</u> Basin <u>Upper Cheyenne</u> Newspaper <u>Rapid City Journal, Rapid City</u>
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RECEIVED
APR 28 2004
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

- Type of Application: New Vested Right X Amendment/Correction to Permit No. 1727-2
 (Use predates Mar 2, 1955)
- Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) Transfer .80 CFS vested water right appurtenant to property owned by Merlin Stromer from Rapid Valley Water Company (1727-2) Inc. to Southside Ditch Company to become appurtenant to property owned by Donald and Virgena Jundt, (2020-2)
1. Name of Applicant Donald and Virgena Jundt Phone (605) 393-2433
 (check one) XX Owner Tenant/lessee
- Mailing Address RR-2, Rapid City 23356 Bradsky Rd State SD 57701
 (Street, RR, or Box and City) (Zip Code)
2. Amount of water claimed .80 *CFS or **GPM ***AF Total Acreage 50.55
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Rapid Creek
4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
South side Ditch Diversion pt - SE 1/4 NW 1/4 Sec 15-T1N-R8E
County Pennington
5. County or counties where water will be used Pennington
6. Annual period during which water is to be used May 1 to September 30
7. 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
N1/2NW1/4NW1/4 Sec. 33 T1N R9E	20		
NW1/4NE1/4NW1/4 Sec. 33 T1N R9E	10		
S1/2NE1/4NW1/4 Sec. 33 T1N R9E	20		

8. Give a description of the project. (Attach sheet if more space is needed)

SEE ATTACHED SHEET

STATE OF SOUTH DAKOTA)
 County of Pennington SS

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)

We, Donald and Virgena Jundt, 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: Donald Jundt

Applicant's signature Virgena Jundt

Subscribed and sworn to before me this 27th day of April, 2004

Jacqui R. Deven

Notary Public signature

My Commission Expires 23rd day of March, 2010

8. Description of Project.

Applicant Merlin Stromer is changing use of the property to which the water right is presently appurtenant as property is of necessity being developed due to expansion of City of Rapid City to the East. If the water right cannot be transferred, it will be lost. Donald Jundt's property is serviced by South Side Ditch Company and water can be delivered through existing ditches to the Jundt property. The intent is to leave 11% with Rapid Valley Water Company, Inc. representing carriage loss. Granting this application would benefit South Side Ditch Company and prevent the loss of the water right.

The water right being transferred is presently serving Lot B of Bar P-S Subdivision located in SW1/4 Sec. 20 and N1/2NW1/4 of Sec. 29, T1N, R9E, BHM, Rapid City, Pennington County, S.D. See attached Exhibit A consisting of letter of Mark D. Rath with a map showing 50.55 acres from which water right would be transferred and vested Right Water License No. 1727-2 for Irrigation.

The land to which the use of the water right would be transferred is described in paragraph 7. Attached Exhibit B depicts that property.

The diversion point for the Stromer property is in Section, T1N R8E as on file with Rapid Valley Water Company, Inc. The diversion for the Jundt property will be from the South Side Ditch Company diversion point located in Section 15 T1N-R8E. Both diversion points are from Rapid Creek.

SOUTH DAKOTA
WATER PERMIT NO. 2526-2 FOR IRRIGATION

Date of first receipt of application April 27, 2004.

The Water Management Board approved Water Permit No. 2526-2 on March 2, 2005 for Donald and Virgena Jundt, 23356 Bradsky Rd, Rapid City SD 57703 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2526-2 authorizes amending Vested Water Right No. 1727-2 held by the Rapid Valley Water Company by transferring a portion of the irrigated acres and accompanying diversion authority to other land. Vested Water Right No. 1727-2 is commonly known as the Murphy Ditch water right and appropriates a total of 15.86 cubic feet of water per second (cfs) for the irrigation of 1010.7 acres. Specifically related to this permit, Right No. 1727-2 authorizes the diversion of 3.0 cfs from Rapid Creek bearing an April 26, 1893 priority date for irrigation of 189 acres. The diversion point from Rapid Creek is in the SW ¼ Section 8, T1N, R8E. This permit severs irrigation from 50 acres known as the Stromer Property located in portions of the SW ¼ Section 20 and N ½ NW ¼ of Section 29; all in T1N, R9E. This permit authorizes severing these 50 acres and a diversion authority of 0.71 cubic feet of water per second (cfs) and simultaneously transfer and become appurtenant to land in the N ½ NW ¼ Section 33, T1N, R9E (Jundt property). The diversion point will be changed from the Murphy Ditch diversion in the SW ¼ Section 8, T1N, R8E to the South Side Ditch Company headgate on Rapid Creek located in the SE ¼ NW ¼ Section 15, T1N, R8E and authorized by Vested Water Right No. 2040-2. The water source for irrigation is Rapid Creek and no increase in the diversion rate or number of acres irrigated is authorized by this permit.
2. The amount of the appropriation may not exceed 3 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – September 30.
3. The date from which applicant may claim right is April 26, 1893 (established by Vested Water Right No. 1727-2).
4. One-fifth of the construction is to be completed on or before September 2, 2007.
5. All construction is to be completed on or before March 2, 2010.
6. Water is to be put to beneficial use on or before March 2, 2014.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Permit No. 2526-2 is limited to a diversion rate of 0.71 cfs and a total irrigated acreage of 50 acres.
2. Diversions under this permit may not interfere with existing water rights in effect prior to approval of this permit, nor may it affect any domestic or other prior water rights.

(continued)

3. Vested Water Right No. 1727-2, Rapid Valley Water Company (Murphy Ditch) is reduced by 0.71 cfs and the amount of acreage which might be irrigated under this right is reduced by 50 acres. The reduction in diversion rate is due to carriage losses which are to be retained in Murphy Ditch.
4. Prior to utilization of water under this permit, the Chief Engineer shall inspect any measuring device presently in place at the point at which South Side Ditch will divert this water from Rapid Creek. Water may be diverted under this permit only at such time the Chief Engineer certifies that the measuring device in place at the point is of equivalent quality to that in place at the main diversion utilized by the St. Germaine Ditch.

WATER MANAGEMENT BOARD

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

JUL 11 2005

date



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date April 26, 20 04

RECEIVED OF Merlin Stroman, 23324 S Airport Rd., Rapid City SD 57703

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

Fee for Application for Permit No. <u>2526-2</u> to Appropriate Water, to construct and to put water to beneficial use	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2526-2</u>	50	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	100.00

No.

1298

By

Darlene Elise

Chief Engineer

gm

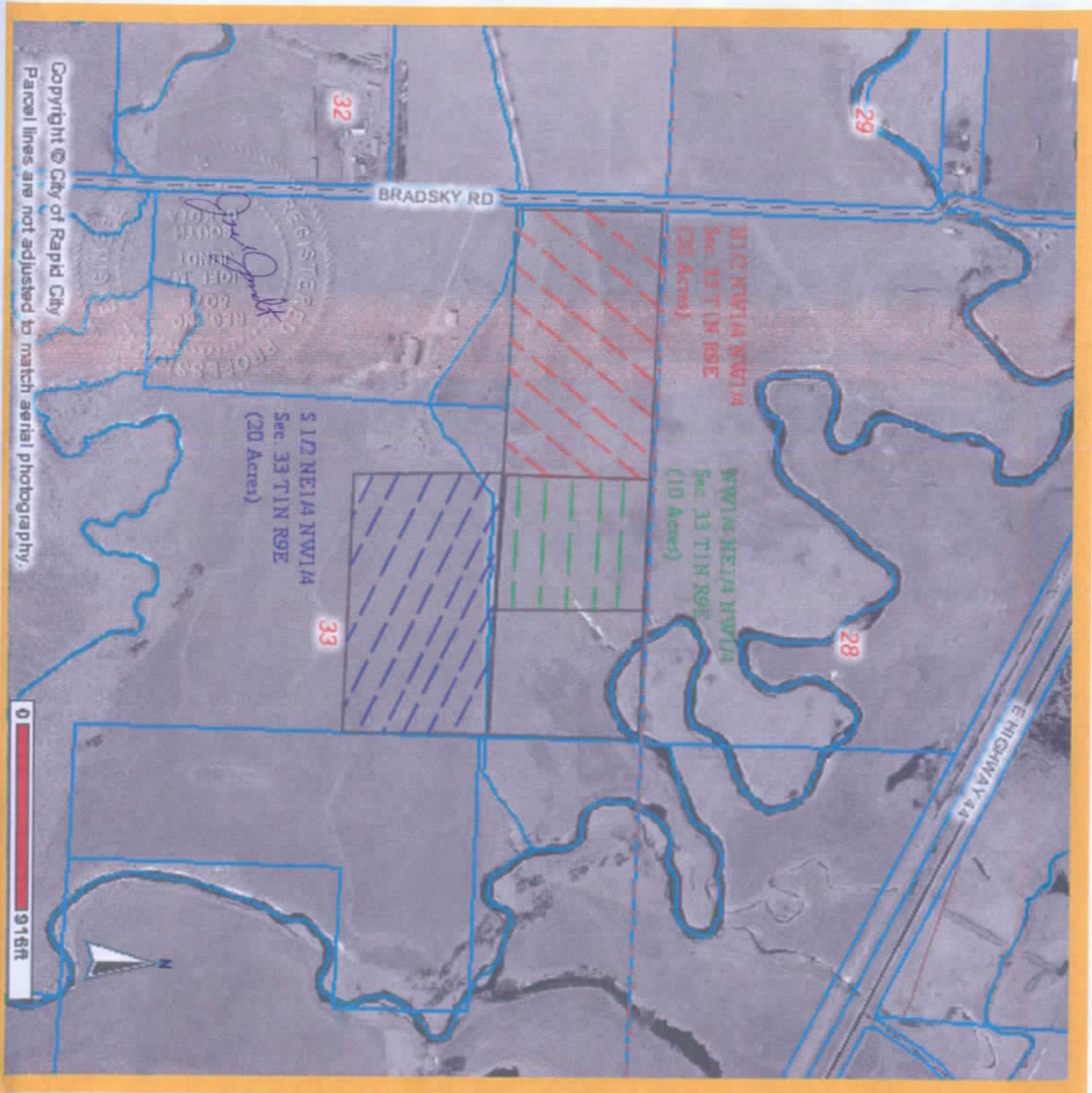


EXHIBIT B

**COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP**

ATTORNEYS AT LAW

200 SECURITY BUILDING ■ 704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

605-343-2410

TELECOPIER NO. 605-343-4262

E-MAIL: lawfirm@costelloporter.com

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HEATHER M. LAMMERS
MELVIN D. WEDMORE
JEREMIAH J. LUEBBE
JESS M. PEKARSKI
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Jacci Nevin, Paralegal

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KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
THOMAS H. BARNES
DONALD A. PORTER
GREGORY G. STROMMEN
PATRICIA A. MEYERS

Ed Carpenter

Direct Line: (605) 718-8116

Email: ecarpenter@costelloporter.com

April 27, 2004

VIA FACSIMILE - (605) 773-6035 and U.S. Mail

Mark Rath
Natural Resources Engineering Specialist
DENR
523 E. Capitol
Pierre, SD 57501

RECEIVED

APR 28 2004

WATER RIGHTS
PROGRAM

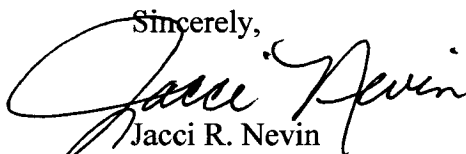
Re: Application For Permit to Appropriate
Water for Irrigation

Dear Mr. Rath:

Attached please find the Application for Permit to Appropriate Water for Irrigation of Don and Virgena Jundt as referenced in my April 26, 2004, e-mail to you.

Thank you in advance for your assistance in this matter. If there is any additional information required, please do not hesitate to contact me.

Sincerely,



Jacci R. Nevin

Paralegal to Edward C. Carpenter

Attachment



June 20, 2003

Edward C. Carpenter
Attorney at Law
PO Box 290
Rapid City, SD 57709

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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



Dear Mr. Carpenter:

This letter is in regards to your request for water right information concerning the Rapid Valley Ditch Company. I am enclosing a map showing the 50.55 acres (red) that are being proposed to have the irrigation transferred from and the total 189 acres (blue cross hatch) of Rapid Valley Water Company irrigated with 1893 priority date water.

As shown on the map, it appears the full 50.55 acres fall within the acres validated by the Water Management Board in 1990. I am also enclosing a copy of the vested water right that lists this property. The 1893 portion of the water right was validated for 3.0 cubic feet per second of water (cfs). The amount of water available to this property, based upon pro-rata share of the 3.0 cfs, would be 0.80 cfs. Although I would advise you to check to see if the common practice for splitting water on this portion of the ditch was based upon the number of shares in the ditch company, which may change the amount available.

One other thing to be aware of is when the city of Rapid City transferred water rights off of the Rapid Valley water company ditch they were required to leave the carriage loss with the ditch company water right. Our records indicate this amount was 11%. You should contact the ditch company to determine whether they want the ditch loss to remain or are willing to waive that requirement.

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

enclosures

EXHIBIT

A

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1727-2 FOR IRRIGATION

(1) Rapid Valley Water Company, Inc., of RR #2 Box 223, Rapid City, SD 57701 made Application No. 1727-2, January 7, 1980 for validation of a vested right claim to appropriate 20.0 cubic feet of water per second (cfs) from Rapid Creek, Pennington County, South Dakota for irrigation purposes.

Vested Water Right No. 1727-2 was validated December 5, 1990 with priority dates of **January 1, 1878 (for 17.0 cfs) and January 1, 1893 (for 3.0 cfs). Construction of the described water supply system and the application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

****Vested Water Right No. 1727-2 was validated with priority dates of January 1, 1878 and January 1, 1893, however the affidavit of water use submitted with the vested right claim shows the actual priority dates to be April 6, 1878 and April 26, 1893. This vested right water license will reflect the priority dates specified on the affidavit.**

(2) The applicant is entitled to divert 20.0 cubic feet of water per second for beneficial use. The location of the diversion point is in the SW 1/4 Section 8, T1N, R8E.

The location of the irrigated acreage is:

1878 PRIORITY DATE

Land Parcel Number	Legal Description	Acreage
1	NE1/4 SW1/4	20
	SE1/4 SW1/4	25
2	NW1/4 SE1/4	29
	SW1/4 SE1/4	35

3	SW1/4 SW1/4	S10-T1N-R8E	25
	NW1/4 NW1/4	S15-T1N-R8E	31
	SW1/4 NW1/4	S15-T1N-R8E	38
	NW1/4 SW1/4	S15-T1N-R8E	30
	SE1/4 NW1/4	S15-T1N-R8E	32
	NE1/4 SW1/4	S15-T1N-R8E	31
	SW1/4 NE1/4	S15-T1N-R8E	38
	NW1/4 SE1/4	S15-T1N-R8E	29
	SE1/4 NE1/4	S15-T1N-R8E	25
	NE1/4 SE1/4	S15-T1N-R8E	38
	SW1/4 SW1/4	S15-T1N-R8E	1
	SE1/4 SW1/4	S15-T1N-R8E	11
	SW1/4 SE1/4	S15-T1N-R8E	24
	SE1/4 SE1/4	S15-T1N-R8E	15
5	SW1/4 NW1/4	S14-T1N-R8E	5
6	SW1/4 NW1/4	S14-T1N-R8E	32
7	SE1/4 NW1/4	S14-T1N-R8E	6
	NE1/4 SW1/4	S14-T1N-R8E	4
8	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
9	SE1/4 NW1/4	S14-T1N-R8E	3
	NE1/4 SW1/4	S14-T1N-R8E	2
10	NW1/4 SE1/4	S14-T1N-R8E	28
	SW1/4 SE1/4	S14-T1N-R8E	31
	SE1/4 SE1/4	S14-T1N-R8E	32
	NE1/4 SE1/4	S14-T1N-R8E	3
	SW1/4 SW1/4	S13-T1N-R8E	27
11	SE1/4 SW1/4	S13-T1N-R8E	2
12	SW1/4 SE1/4	S13-T1N-R8E	5
13	104 OF THE TOTAL 142 ACRES		
	NE1/4 NW1/4	S24-T1N-R8E -	36
	SE1/4 NW1/4	S24-T1N-R8E -	40
	NW1/4 NE1/4	S24-T1N-R8E -	32
	SW1/4 NE1/4	S24-T1N-R8E -	34
			104
14	NW1/4 NE1/4	S24-T1N-R8E	1

15	28 ACRES OF THE TOTAL 56 ACRES		
	NE1/4 NE1/4	S24-T1N-R8E - 31	
	SE1/4 NE1/4	S24-T1N-R8E - 25	
			28
16	NW1/4 NW1/4	S19-T1N-R9E	10
	SW1/4 NW1/4	S19-T1N-R9E	39
17	NE1/4 NW1/4	S19-T1N-R9E	2
	SE1/4 NW1/4	S19-T1N-R9E	32
	NE1/4 SW1/4	S19-T1N-R9E	10
	SW1/4 NE1/4	S19-T1N-R9E	25
	NW1/4 SE1/4	S19-T1N-R9E	24
	SW1/4 SE1/4	S19-T1N-R9E	2
	SE1/4 NE1/4	S19-T1N-R9E	11
	NE1/4 SE1/4	S19-T1N-R9E	39
18	NE1/4 SW1/4	S19-T1N-R9E	12
	SE1/4 SW1/4	S19-T1N-R9E	39
	NE1/4 NW1/4	S30-T1N-R9E	12
19	SW1/4 SE1/4	S19-T1N-R9E	31
	NW1/4 NE1/4	S30-T1N-R9E	20

	Total		1103
1893 PRIORITY DATE			
20	SE1/4 SE1/4	S19-T1N-R9E	14
	NE1/4 NE1/4	S30-T1N-R9E	12
21	NW1/4 SW1/4	S20-T1N-R9E	25
	SW1/4 SW1/4	S20-T1N-R9E	34
	NE1/4 SW1/4	S20-T1N-R9E	7
	SE1/4 SW1/4	S20-T1N-R9E	39
	NW1/4 NW1/4	S29-T1N-R9E	2
	NE1/4 NW1/4	S29-T1N-R9E	18
22	SW1/4 SE1/4	S20-T1N-R9E	18
	NW1/4 NE1/4	S29-T1N-R9E	20

	Total		189

Page 4

Vested Water Right License No. 1727-2

(3) Pursuant to Section 46-5-30.1, Rapid Valley Water Company, Inc of RR #2 Box 223, Rapid City, SD 57701 the holder and/or owner of Vested Water Right No. 1727-2 is issued a license to appropriate 20.0 cubic feet of water per second from Rapid Creek with priority dates of April 6, 1878 (for 17.0 cfs) and April 26, 1893 (for 3.0 cfs) from locations specified in (2) of this license. The water is to be used for irrigation purposes. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 1727-2 and subject to South Dakota Water Law.



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

FEB 20 1991

DATE

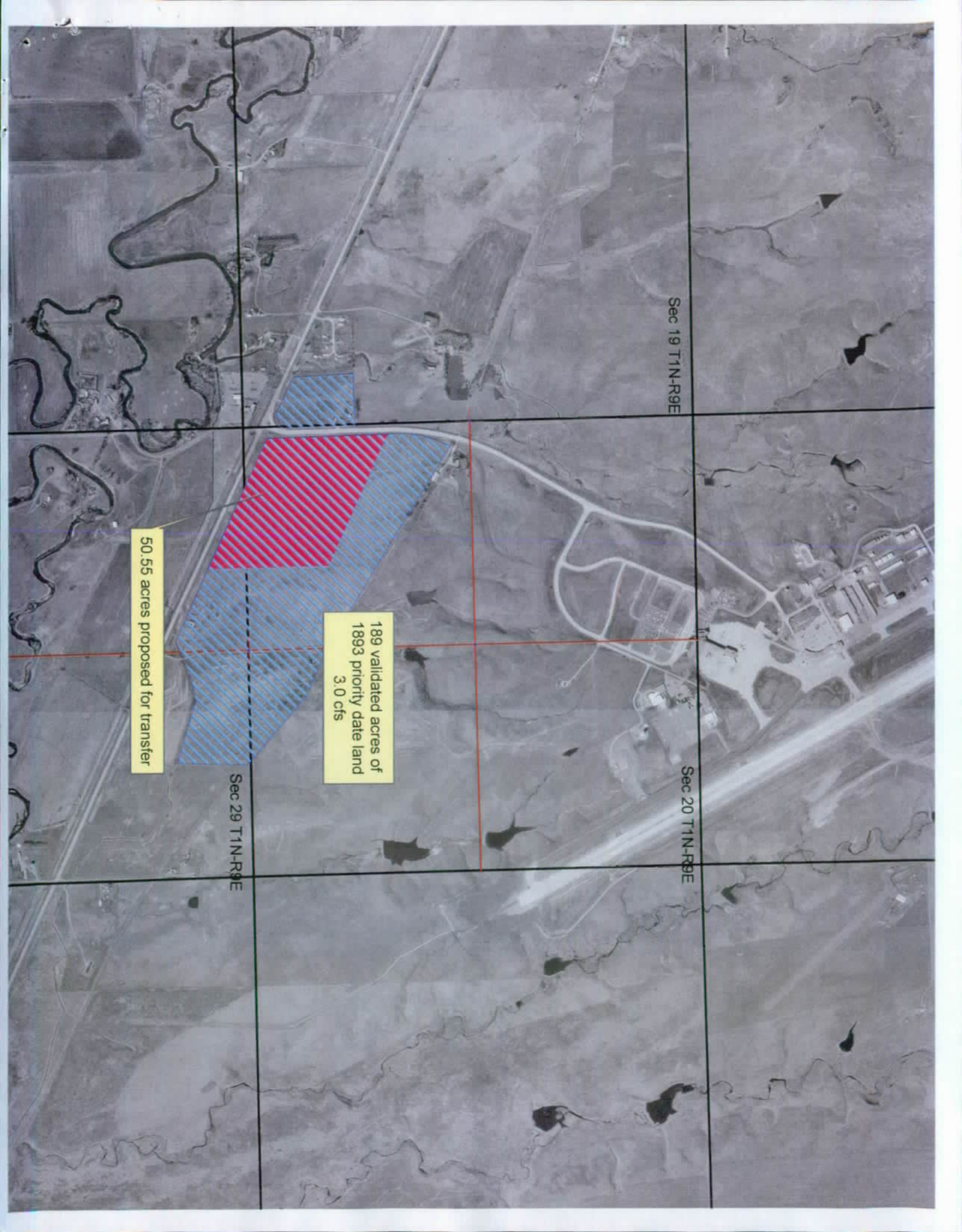
Sec 19 T1N-R9E

Sec 20 T1N-R9E

Sec 29 T1N-R9E

189 validated acres of
1893 priority date land
3.0 cfs

50.55 acres proposed for transfer



**COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP**

ATTORNEYS AT LAW

200 SECURITY BUILDING #704 ST. JOSEPH STREET
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RAPID CITY, SD 57709

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TELECOPIER NO. 605-343-4262
E-MAIL: lawfirm@costelloporter.com

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JEREMIAH J. LUEBBE
JESS M. PEKARSKI
JOHN W. STEKLY

RETIRED
J.M. COSTELLO
WILLIAM G. PORTER

Jacci Nevin, Paralegal
Direct Line: (605) 718-8140
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Ed Carpenter
Direct Line: (605) 718-8116
Email: ecarpenter@costelloporter.com

April 19, 2004

RECEIVED
APR 20 2004
WATER RIGHTS
PROGRAM

Mark Rath
Natural Resources Engineering Specialist
DENR
523 E. Capitol
Pierre, SD 57501

Re: Application For Permit to Appropriate
Water for Irrigation
Our File No. 22453

Dear Mr. Rath:

Enclosed is the signed Application for Permit to Appropriate Water For Irrigation and applicable attachments, and filing fee of \$100.00.

Also, please forward the cost for the publication notice to my attention at the above-referenced address.

Thank you for your assistance in this matter.

Sincerely,

Jacci R. Nevin
Paralegal to Edward C. Carpenter

Enclosures

cc/enclosure: Merlin Stromer
Don Jundt

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 _____
--	--

RECEIVED

APR 20 2004

WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

 Type of Application: _____ New _____ Vested Right X Amendment/Correction to Permit No. 1727-2

(Use predates Mar 2, 1955)

 Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) Transfer .80 CFS vested water right appurtenant to property owned by Merlin Stromer from Rapid Valley Water Company Inc. to Southside Ditch Company to become appurtenant to property owned by Donald and Virgel Jundt.

 1. Name of Applicant Merlin Stromer Phone 393-2655
 (check one) X Owner _____ Tenant/lessee _____

 Mailing Address 23324 Airport Rd., Rapid City, State SD 57703
 (Street, RR, or Box and City) (Zip Code)

 2. Amount of water claimed .80 *CFS or **GPM ***AF Total Acreage 50.55
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable

 3. Source of water supply Rapid Creek

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) _____

 _____ County Pennington

 5. County or counties where water will be used Pennington

 6. Annual period during which water is to be used May to September

 7. 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
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S1/2NE1/4NW1/4 Sec. 33 T1N R9E	20		

8. Give a description of the project. (Attach sheet if more space is needed)

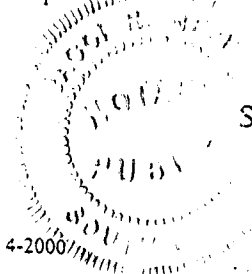
SEE ATTACHED SHEET.

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, Merlin Stromer, 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 Merlin StromerSubscribed and sworn to before me this 19th day of April 2004
Jaaci R. Devlin
 Notary Public signature

My Commission expires 3/23/10


7. Description of Project.

Applicant Merlin Stromer is changing use of the property to which the water right is presently appurtenant as property is of necessity being developed due to expansion of City of Rapid City to the East. If the water right cannot be transferred, it will be lost. Donald Jundt's property is serviced by South Side Ditch Company and water can be delivered through existing ditches to the Jundt property. The intent is to leave 11% with Rapid Valley Water Company, Inc. representing carriage loss. Granting this application would benefit South Side Ditch Company and prevent the loss of the water right.

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Rath, Mark

From: Jacci R. Nevin [jrn@costelloporter.com]
Sent: Monday, April 26, 2004 12:58 PM
To: Mark.Rath@state.sd.us
Subject: RE: Stromer/Jundt

I have contacted Jundt's to come in to sign the application. As soon as it is signed, I will fax the new application without all the attachments and application fee, since you already have those. If that is acceptable, that is. If not, please let me know. I will also forward the application by hard copy.

In reference to South Side Ditch Company, I know that Mr. Carpenter has been in contact with them.

Thank you.

-----Original Message-----

From: Mark.Rath@state.sd.us [mailto:Mark.Rath@state.sd.us]
Sent: Monday, April 26, 2004 7:20 AM
To: Jacci R. Nevin; Mark.Rath@state.sd.us
Subject: RE: Stromer/Jundt

This application won't be scheduled for a hearing before the Water Management Board before July at the earliest. Just to meet legal notification requirements we have to have a recommendation out of here at least one month prior to the hearing. Plus we need time to review the application and get a recommendation put together. There was no way we would have made the May 12 hearing date.

As far as the application goes, our administrative section was reviewing the application for completeness on Friday and they ran across a problem. The applicant should be Don Jundt and not Merlin Stromer. That needs to be taken care of.

Another question I have concerning this application is: Do you have an agreement from South Side Ditch company stating their willingness to carry this new water?

-----Original Message-----

From: Jacci R. Nevin [mailto:jrn@costelloporter.com]
Sent: Monday, April 26, 2004 9:13 AM
To: mark.rath@state.sd.us
Subject: Stromer/Jundt

Good morning. Mr. Carpenter asked that I check to see if the notice of Mr. Stromer's application is being published since there is a Rapid Valley meeting May 1. Would you please let me know who I need to contact regarding that issue? Thank you again.

This electronic message transmission contains information from the law firm of Costello, Porter, Hill, Heisterkamp, Bushnell & Carpenter, LLP which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this electronic message transmission in error, please notify us immediately by reply email and delete the original message. Thank you.

FAX

To Jacci Nevin

From Mark Rath

When this issue originally came up I stated to Ed Carpenter that I had some concerns about some of the language in SDCL 46-5-34.1. The issue was Don Jundt transferred a water right off of his land to Rapid City in January 1994 using the following statute:

46-5-34.1. Transfer of irrigation rights apart from land -- Restricted purposes -- Protection of other users. The provisions of § § 46-5-33 and 46-5-34 notwithstanding, irrigation rights may be transferred apart from the land to which they are appurtenant if they are transferred for domestic use or use within a water distribution system. Such irrigation rights may be transferred or leased in whole or in part and may be acquired only through the exercise of powers possessed independently of this section. No transfer, however, may be approved by the Water Management Board unless the transfer can be made without detriment to existing rights having a priority date before July 1, 1978, or to individual domestic users. No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source.

The last sentence was adopted in this form in the spring of 1994 and became effective on July 1, 1994. We were proceeding with the application with the assumption that since the transfer to Rapid City occurred prior to the current wording going into effect, that this property could potentially get a new water right because it was grandfather in and was not bound by the wording change.

Looking at the Pocket Supplement for the 1987 Revision, I noticed there was some language in the statute that was in effect in January 1994 that may prohibit moving the Stromer water right back onto this property.

I have attached a copy from the Pocket Supplement.

46-5-15. Water diverted for municipal use — Issuance of permit — Contest and appeal. Natural flow water of any stream appropriated or diverted for municipal use is subject to downstream senior priority water rights. Any contest between water right owners shall be brought to the water management board first for resolution. The board's ruling may be appealed to circuit court under the provisions of chapter 1-26.

No water permit to appropriate natural flow of a stream by a municipality may be issued unless the board determines, based upon the evidence presented at a hearing that questions on impairment of downstream senior priority water rights have been resolved.

Source: SDC 1939, § 45.1903; SL 1993, ch 334, § 3.

Amendments.

The 1993 amendment rewrote this section. For prior version, see parent volume.

46-5-30.5. Unpermitted acreage developed for irrigation — Requirement. Acreage developed for irrigation outside of the acreage described on the permit may be licensed pursuant to § 46-5-30.1, if no increase occurs in either permitted acreage or water appropriated. The unpermitted acreage shall be contiguous to the permitted acreage, owned by the same property owner, and developed as part of the original irrigation project within the time period designated for completion of works. The unpermitted acreage added to a license under this section retains the priority date assigned to the original permit. Licensing of the unpermitted acreage may occur without application or publication pursuant to § 46-2A-4, if the chief engineer makes a finding that existing water rights will not be impaired and the overall project, as developed, is consistent with the original application. This section does not apply to the transfer of licensed acreage from one parcel of land to another as provided for by § 46-5-34.

Source: SL 1996, ch 263, § 5.

46-5-31.1. Abandoned permitted irrigation use — Stock watering permitted. If permitted irrigation use from a storage dam is abandoned or forfeited but the storage dam is used for stock watering, stock watering may be added to the license or permit upon the request of the permit or license holder. A license or permit modified under this section retains the priority date of the original license or permit. This addition of stock watering to the license or permit may occur without application or publication pursuant to § 46-2A-4, if no diversion is made from the stock dam and the chief engineer makes a finding that existing water rights will not be impaired.

Source: SL 1996, ch 263, § 6.

46-5-34. Irrigation rights appurtenant to land — Amendment of permit required for severance and transfer.

Appurtenancy.

"Appurtenancy" under this section does not require that the new land must be contiguous to the property in the original permit. *DeKay v. United States Fish & Wildlife Serv.* (1994) 524 NW 2d 855.

Law Reviews.

South Dakota Groundwater Protection Law, 40 SD LRev 1 (1995).

46-5-34.1. Transfer of irrigation rights apart from land — Restricted purposes — Protection of other users. The provisions of §§ 46-

5-33 and 46-5-34 notwithstanding, irrigation rights may be transferred apart from the land to which they are appurtenant if they are transferred for domestic use or use within a water distribution system. Such irrigation rights may be transferred or leased in whole or in part and may be acquired only through the exercise of powers possessed independently of this section. No transfer, however, may be approved by the Water Management Board unless the transfer can be made without detriment to existing rights having a priority date before July 1, 1978, or to individual domestic users. No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source.

Source: SL 1978, ch 320; 1983, ch 314, § 65; 1989, ch 383; 1992, ch 314; 1994, ch 345.

Amendments.

The 1989 amendment substituted the present first sentence for that which appears in the parent volume; in the second sentence, deleted "but only for the supply of water through a water distribution system"; and made minor changes in punctuation.

The 1992 amendment added the last sentence.

The 1994 amendment substituted the last sentence for the former last sentence which read "No person who has transferred an irrigation right pursuant to this section may acquire another irrigation right for the same land."

Law Reviews.

South Dakota Groundwater Protection Law, 40 SD LRev 1 (1995).

46-5-35. Transfer of irrigation rights or amendment of permits — Soil-water compatibility permit required. Repealed by SL 1996, ch 263, § 3.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Source: SL 1989, ch 384.

46-5-38. Future use of water — Entities entitled to reservation.

Proper Reservation of Future Use.

Permit which would allow the U.S. Fish and Wildlife Service the right to continued natural flow of six springs of water if the water table dropped due to the conditions or use by others did not improperly reserve a future use by

protecting against future diminution; the springs' natural flow was intended for current use to maintain marshes and other waterfowl habitat. *DeKay v. United States Fish & Wildlife Serv.* (1994) 524 NW 2d 855.

46-5-40.1. Temporary permits for use of public water for construction, testing or drilling purposes — Term of permit — Qualifications and limitations.

Cross-References.

Limitation on stringency of certain rules, § 1-40-4.1.

46-5-47. Flood

Opinions of Attorney General

Landowners may use flood waters from back property from a county measures comply with (a)

46-5-48. Flood

Opinions of Attorney General

Landowners may use flood waters from back property from a county measures comply with (a)

46-5-50. Drip irrigation. "drip irrigation," means directly to the root emitters, porous tu pressure and are pla

Source: SL 1990, ch 3

46-5-51. Permit appropriate water, pursuant irrigation, as defined conditions:

- (1) The irrigation
- (2) Use of water

Source: SL 1990, ch 3 § 4.

Commission Note.

The code commission has to a soil-water compatibility the repeal of § 46-5-6.2.

46-5-52. Noncomm the term, "noncomm conservation purpose purposes.

Source: SL 1990, ch 3

Section

46-6-6.
46-6-6.1.
46-6-9.
46-6-20.
46-6-26.

46-6-27.

Collection, Rules and Well driller Rules and Permits ma natural Plugging, se

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
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LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

June 16, 2004

Ed Carpenter
Attorney at Law
P.O. Box 290
Rapid City, SD 57709

Jerry Hammerquist
P.O. Box 26
Caputa, SD 57725

RE: Jundt water transfer application

Dear Mr. Carpenter:

As you know, SDCL 46-5-31.1 is implicated in the pending water transfer application from Murphy Ditch Company to Don and Virgena Jundt. I previously indicated that this statute should not bar filing an application for the transfer. The application was then made and the Chief Engineer asked me to more fully elaborate on this issue. This letter is to explain my analysis of SDCL 46-5-34.1 to you as well.

The last sentence of the statute, in its present form, prohibits a new water right from being acquired for lands that have previously been subject to a transfer. The lands in this case were subject to a water transfer in January 1994. South Side Ditch Company transferred a portion of its water right to Rapid City. The question here is whether the current version of the statute should be applied insofar as it became law on July 1, 1994, several months after the initial transfer.

Because the current version of SDCL 46-5-34.1 was not yet in effect when the initial transfer occurred, it seems to me that neither the water right holder nor the land owner would have had an expectation that the initial transfer would have permanently removed this land from obtaining another irrigation right. Although the statute does not contain a "grandfather" clause, statutes should be read as having prospective application only. State ex rel Van Emmerick v. Janklow, 304 N.W.2d 700 (S.D. 1981), In Re: Scott's Estate, 133 N.W.2d (1965). Consequently, I read the current statute as applying only if the initial transfers occur after July 1, 1994. I fully realize that there are other

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WATER RIGHTS
PROGRAM

Ed Carpenter
June 16, 2004
Page 2

legal interpretations, but I believe this is the one most consistent with previous South Dakota Supreme Court analysis. The Chief Engineer has indicated that his recommendation will include this analysis.

The Board has not yet considered any other application regarding this scenario, and the Jundt case is one of first impression. Once the Board makes its decision, I expect the State will be in a position to defend which ever position it takes.

Assuming the Board adopts the above analysis, the operative language would be the language in SDCL 46-5-34.1 as it existed when the initial transfer occurred. At that time, the last sentence of SDCL 46-5-34.1 provided that "no person who has transferred an irrigation right pursuant to this section may acquire another irrigation right for the same land." This language, in effect from July 1, 1992, through June 30, 1994, prohibited the acquisition of another water right for the land only if the applicant for the new water right was the same person who transferred the water right from the land. Under this language, the pending transfer would be permissible. The initial transfer was made from South Side Ditch Company to the City of Rapid City. The parties in the current transfer proceeding are the Murphy Ditch Company and Don and Virgena Jundt. An argument could be made that even this version of the statute should be applied against the Jundts insofar as they owned the land throughout this time. I note, however, that South Side Ditch Company was considered the water right holder that transferred this water right and not the Jundts.

This analysis was discussed informally with both of you sometime ago. I don't believe that I had ever articulated the analysis in written format, and I am doing so now.

Notice of the transfer application has not yet been published.

It is my understanding that the Chief Engineer's recommendation will be forth coming and the matter would be ready for advertisement for the October 6-7 Water Board meeting.

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

Sincerely,

Diane Best

Diane Best
Assistant Attorney General

DB:dp

cc: Garland Erbele

REPORT ON WATER PERMIT APPLICATION NO. 2526-2
Donald and Vergena Jundt
August 18, 2004

Application No. 2526-2, Donald and Vergena Jundt, proposes to amend a portion of Vested Water Right No. 1727-2, held by the Rapid Valley Water Company (Murphy Ditch) by transferring a portion of the irrigated acres and diversion authority to other land. Vested Water Right No. 1727-2 appropriates a total of 15.86 cfs for the irrigation of 1010.7 acres. Specifically related to this application, this water right authorizes the diversion of 3.0 cfs bearing an April 26, 1893 priority date, from Rapid Creek in the SW $\frac{1}{4}$ Section 8 T1N-R8E, for irrigating 189 acres. The applicants propose to sever irrigation from 50 acres located in portions of the SW $\frac{1}{4}$ of Section 20 and N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 29 all in T1N-R9E (Stromer Property) and diversion authority of 0.71 cubic feet of water per second (cfs) and simultaneously transfer and become appurtenant to land in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33 T1N-R9E. The diversion point will be moved from the Murphy Ditch diversion point to the South Side Ditch Company diversion point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15 T1N-R8E.

Review of the Proposed Project

The applicant proposes to transfer irrigation from land served by the Murphy Ditch to land served by the South Side Ditch. The April 26, 1893 portion of the Murphy Ditch water right was validated for 3 cfs to irrigate 189 acres. The pro-rata portion of the diversion rate associated with the 50 acres to be transferred is 0.80 cfs.

South Dakota water law allows irrigation to be severed from the original land and simultaneously transferred and become appurtenant to other land. South Dakota Codified Law SDCL 46-5-34 states:

Irrigation rights appurtenant to land -- Amendment of permit required for severance and transfer. All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used. However, if for any reason it should become impracticable to use all or any part of the water beneficially or economically for irrigation of any land to which the right of its use is appurtenant, all or any part of the right may be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established, subject to existing rights, upon approval of an application for an amended permit. No increase in total acres irrigated may be allowed under this section.

Merlin Stromer, the owner of the property irrigation is currently appurtenant to on Murphy Ditch is changing use of that property and has stated the water rights will be lost unless they can be transferred.

The applicant proposes to transfer only the pro-rata share of the April 26, 1893 Murphy Ditch priority water minus 11% ditch loss for the 50 acres. In previous transfers of water from

irrigation to municipal use by the City of Rapid City, the 11% ditch loss was the amount of carriage loss that was determined to be lost transporting water in Murphy Ditch. Leaving the carriage loss protects the existing water rights on Murphy ditch from being adversely impacted by the transfer. The transferable amount of the diversion rate is 0.71 cfs ($0.80 \text{ cfs} * 89\%$). The remaining 0.09 cfs of the pro-rata share will continue to be held under the Murphy Ditch water right.

The land the water is to be transferred to, had a portion of an irrigation water right held by South Side Ditch transferred off of it to municipal use by the City of Rapid City in January 1994 under Water Right No. 2296-2. SDCL 46-5-34.1 which is the statute allowing such a transfer to occur contains a stipulation “No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source.” This additional language to SDCL 46-5-34.1 was adopted by the legislature, signed into law, and became effective in July 1994. This occurred six months after the Jundt transfer to Rapid City occurred. The last sentence in SDCL 46-5-34.1 that was in effect when the transferred occurred stated “No person who has transferred an irrigation right pursuant to this section may acquire another irrigation right for the same land.” South Side Ditch Company was the water right holder of record when a portion of the water right was transferred to Rapid City. The parties in the current transfer proceeding are Don and Virginia Jundt. Although the Jundts were owners of the land when the previous transfer occurred, they were not the water right holder of record.

Based upon the opinion of Assistant Attorney General Best, the current version of SDCL 46-5-34.1 was not yet in effect when the initial transfer occurred, so an argument can be made neither the water right holder nor the land owner would have had an expectation that the initial transfer would have permanently removed this land from obtaining another irrigation right. Consequently, the current language in the stipulation of SDCL 46-5-34.1 only pertain to transfers occurring after July 1, 1994. The initial transfer was made from South Side Ditch Company to the City of Rapid City.

Review of Existing Water Rights

This proposal will sever irrigation from land irrigated from Murphy Ditch and simultaneously transfer it to other land to be irrigated from South Side Ditch. The diversion point will also change from the Murphy Ditch headgate downstream to the South Side Ditch headgate. If this application is approved, the applicants need to reach an agreement and coordinate with the South Side Ditch on when and how the water associated with this project will be diverted and transported.

There are 89 existing water rights/permits appropriating 270.13 cfs from Rapid Creek on the reach located between Pactola Reservoir and the confluence with the Cheyenne River. The priority date associated with this water right is April 26, 1893. There are 43 water rights appropriating 140.47 cfs in this reach of Rapid Creek that are senior in priority to the April 26, 1893 date. Eight of these senior priority water rights appropriating 70.09 cfs are located downstream from the proposed diversion point.

Rapid Creek is considered an over-appropriated creek, meaning there is more natural flow water appropriated than what is reasonably available except during extremely wet conditions. The US Bureau of Reclamation (Reclamation) addressed this issue several decades ago by constructing Deerfield and Pactola Reservoirs upstream in the Rapid Creek watershed. These large reservoirs capture water and release it for use through contractual agreements with the City of Rapid City, the Rapid Valley Water Conservancy District (RVWCD), CJ Sanders, and Rapid Valley Sanitary District.

The RVWCD, an alliance of irrigation ditch companies and individual irrigators, provide the district members whose land falls within the irrigation district boundaries the ability to purchase water for irrigation through the RVWCD's Deerfield Reservoir contract with Reclamation. The location of the land that the irrigation is to be transferred to is located within the district boundaries.

Approving the transfer of the proposed portion of water right No. 1727-2 to new land located within the RVWCD boundaries does not guarantee water availability for the irrigation. Natural flow water from Rapid Creek will only be available when the senior downstream water rights have sufficient natural flow water available to meet their needs. In order to guarantee water for irrigation, the applicants will need to reach a separate agreement with the RVWCD allowing them to purchase stored water through the RVWCD's Deerfield contract with Reclamation.

Conclusions

1. This application proposes to sever irrigation from 50 acres and diversion authority of 0.71 cfs and simultaneously transfer and become appurtenant to new land.
2. The applicant proposes to transfer only the pro-rata share of the April 26, 1893 Murphy Ditch priority water minus 11% ditch loss for the 50 acres.
3. This proposal will sever irrigation from land irrigated from Murphy Ditch and simultaneously transfer it other land to be irrigated from South Side Ditch. The diversion point will also change from the Murphy Ditch headgate downstream to the South Side Ditch headgate.
4. SDCL 46-5-34 allows irrigation water rights to be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established.
5. If this application is approved, the applicants need to reach an agreement and coordinate with the South Side Ditch on when and how the water associated with this project will be diverted and transported.
6. The last sentence in SDCL 46-5-34.1 that was in effect when the a previous water right was transferred to the City of Rapid City in January of 1994 stated " No person who has transferred an irrigation right pursuant to this section may acquire another irrigation right for the same land." South Side Ditch Company was the water right holder of record when a portion of the water right was transferred to Rapid City. The parties in the current transfer proceeding are Don and Virginia Jundt. Although the Jundts were owners of the land when the previous transfer occurred, they were not the water right holder of record.

7. The new land is located within the RVWCD boundaries but the transfer does not guarantee water availability for the irrigation. Natural flow water from Rapid Creek will only be available when the senior downstream water rights have sufficient natural flow water available to meet their needs. In order to guarantee water for irrigation, the applicants will need to reach a separate agreement with the RVWCD allowing them to purchase stored water through the RVWCD's Deerfield contract with Reclamation.



Mark Rath
Natural Resources Engineering Specialist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2526-2, Donald and Virgena Jundt**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2526-2, Donald and Virgena Jundt, RR 2, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2526-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Diversions under Permit No. 2526-2 may not interfere with existing water rights or domestic rights.
2. Permit No. 2526-2 authorizes diversion of only natural flow water and does not guarantee a right to stored irrigation water from the Deerfield Reservoir. Availability of stored irrigation water would need to be secured through a separate agreement with the Rapid Valley Water Conservancy District through their Deerfield Contract with the U.S. Bureau of Reclamation.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
August 18, 2004

NOTE: This land is located within Rapid Valley Water Conservancy District boundaries but the transfer does not guarantee water availability for irrigation. Natural flow water from Rapid Creek will only be available when the senior downstream water rights have sufficient natural flow to meet their needs. In order to guarantee water for irrigation, you will need to reach a separate agreement with the District for the purchase of stored water through the District's Deerfield contract with the Bureau of Reclamation.



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August 23, 2004

Ted Vore, Acting Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701-2724

Dear Mr. Wagner:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

The notice is to be published in the Rapid City Journal on September 1 and 8, 2004. A hearing before the Water Management Board is scheduled for October 6th in Pierre. Anyone desiring to participate in the hearing must file a petition to intervene by September 27, 2004 as set forth in the notice of hearing.

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

Sincerely,

Eric Gronlund /KS
Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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www.state.sd.us/denr

August 23, 2004

Curt Anderson
Bureau of Reclamation
515 9th Street, Suite 101
Rapid City, SD 57701-2695

Dear Mr. Anderson:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

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

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

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August 23, 2004

Jerry Hammerquist
Rapid Valley Conservancy District
P.O. Box 26
Caputa, SD 57725

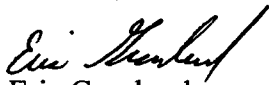
Dear Mr. Hammerquist:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

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

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 23, 2004

Keith Ham
15567 Hammerquist Road
Caputa SD 57725

Dear Mr. Ham:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

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Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

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

August 23, 2004

David Lamb, President
Rapid Valley Water Company
RR 5 Box 140
Rapid City SD 57701

Dear Mr. Lamb:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

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

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

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and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
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August 23, 2004

Merlin Stromer
23324 S Airport Rd
Rapid City SD 57703

Dear Mr. Stromer:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

The notice is to be published in the Rapid City Journal on September 1 and 8, 2004. A hearing before the Water Management Board is scheduled for October 6th in Pierre. Anyone desiring to participate in the hearing must file a petition to intervene by September 27, 2004 as set forth in the notice of hearing.

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

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 23, 2004

John Wagner, Water Superintendent
City of Rapid City
300 6th Street
Rapid City SD 57701-2724

Dear Mr. Wagner:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

The notice is to be published in the Rapid City Journal on September 1 and 8, 2004. A hearing before the Water Management Board is scheduled for October 6th in Pierre. Anyone desiring to participate in the hearing must file a petition to intervene by September 27, 2004 as set forth in the notice of hearing.

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

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 23, 2004

Leslie Petersen
SD Department of Game, Fish and Parks
523 E Capitol Ave
Pierre SD 57501

Dear Leslie:

Donald and Virgena Jundt have filed Water Right Permit Application No. 2526-2. This application seeks to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to the Jundt's property which will then be served via South Side Ditch. See enclosed notice of hearing, staff report and Chief Engineer's recommendation for specifics on this application.

The notice is to be published in the Rapid City Journal on September 1 and 8, 2004. A hearing before the Water Management Board is scheduled for October 6th in Pierre. Anyone desiring to participate in the hearing must file a petition to intervene by September 27, 2004 as set forth in the notice of hearing.

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

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

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:

September 1, 2004

September 8, 2004

Cost of Printing Two hundred eight

dollars and forty-four cents (\$208.44)

Patricia K. Van Patten
(Signature)

Legal Advertising Rep.
(Title)

9/8/04
(Date Signed)

Sept. 1, 8 L1745665
NOTICE OF HEARING
ON APPLICATION NO. 2526-2
Notice is given that Donald and Virgena Jundt, 23356 Bradsky Rd., Rapid City, SD 57703, has filed an application for a water permit to amend a portion of Vested Water Right No. 1727-2 held by the Rapid Valley Water Company. Application No. 2526-2 proposes to amend Vested Water Right No. 1727-2 by transferring a portion of the irrigated acres and accompanying diversion authority to other land. Vested Water Right No. 1727-2 is commonly known as the Murphy Ditch water right and appropriates a total of 15.86 cubic feet of water per second (cfs) for the irrigation of 1010.7

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 September 27, 2004, 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. Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case need not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by September 27, 2004.

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

acres. Specifically related to this application, Right No. 1727-2 authorizes the diversion of 3.0 cfs from Rapid Creek bearing an April 26, 1893, priority date for irrigation of 189 acres. The diversion point from Rapid Creek is in the SW $\frac{1}{4}$ Section 8, T1N, R8E. The applicants seek to sever irrigation from 50 acres known as the Stromer Property located in portions of the SW $\frac{1}{4}$ Section 20 and N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 29; all in T1N, R9E. This application proposes to sever these 50 acres and a diversion authority of 0.71 cubic feet of water per second (cfs) and simultaneously transfer and become appurtenant to land in the N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 33, T1N, R9E (Jundt property). The diversion point will be changed from the Murphy Ditch diversion in the SW $\frac{1}{4}$ Section 8, T1N, R8E to the South Side Ditch Company headgate on Rapid Creek located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T1N, R8E and authorized by Vested Water Right No. 2040-2. The water source for irrigation is Rapid Creek and no increase in the diversion rate or number of acres irrigated is authorized by this application.

State Law (SDCL 46-5-34) allows an irrigation water right to be severed from a parcel of land and simultaneously transferred to another parcel if it is impractical to use all or any part of the water beneficially or economically for irrigation on the current land. The Jundts have indicated this transfer is requested due to expansion of the city of Rapid City. Merlin Stromer, the owner of the currently irrigated 50 acres is changing the use of the property and the water rights may be lost unless they can be transferred. Mr. Stromer is in agreement with the proposed transfer.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2526-2 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) 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 recommendations. 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 September 27, 2004. 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 10:00 a.m., October 6, 2004, in the Matthew Training Center, Foss Building, 523 E. Capitol, 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 October 6, 2004, 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 September 27, 2004.

RECEIVED
SEP 10 2004
WATER RIGHTS
PROGRAM

Instruction to Newspaper - Publish first Notice on September 1, 2004 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2526-2

Notice is given that Donald and Virgena Jundt, RR 2, Rapid City SD 57701 filed an application for a water permit to amend a portion of Vested Water Right No. 1727-2 held by the Rapid Valley Water Company. Application No. 2526-2 proposes to amend Vested Water Right No. 1727-2 by transferring a portion of the irrigated acres and accompanying diversion authority to other land. Vested Water Right No. 1727-2 is commonly known as the Murphy Ditch water right and appropriates a total of 15.86 cubic feet of water per second (cfs) for the irrigation of 1010.7 acres. Specifically related to this application, Right No. 1727-2 authorizes the diversion of 3.0 cfs from Rapid Creek bearing an April 26, 1893 priority date for irrigation of 189 acres. The diversion point from Rapid Creek is in the SW ¼ Section 8, T1N, R8E. The applicants seek to sever irrigation from 50 acres known as the Stromer Property located in portions of the SW ¼ Section 20 and N ½ NW ¼ of Section 29; all in T1N, R9E. This application proposes to sever these 50 acres and a diversion authority of 0.71 cubic feet of water per second (cfs) and simultaneously transfer and become appurtenant to land in the N ½ NW ¼ Section 33, T1N, R9E (Jundt property). The diversion point will be changed from the Murphy Ditch diversion in the SW ¼ Section 8, T1N, R8E to the South Side Ditch Company headgate on Rapid Creek located in the SE ¼ NW ¼ Section 15, T1N, R8E and authorized by Vested Water Right No. 2040-2. The water source for irrigation is Rapid Creek and no increase in the diversion rate or number of acres irrigated is authorized by this application.

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2526-2 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) 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 September 27, 2004. 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 10:00 A.M., October 6, 2004 in the Matthew Training Center, Foss Building, 523 E Capitol, Pierre SD. 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 September 27, 2004 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 September 27, 2004.

(continued)

October 6,

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 September 27, 2004, 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.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case need not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by September 27, 2004.

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

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

August 23, 2004

Donald & Virgena Jundt
RR 2
Rapid City SD 57701

Dear Mr. & Mrs. Jundt:

Water Permit Application No. 2526-2 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice 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 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. 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

cc: Jacci Nevin, Costello, Porter, Hill, Heisterkamp, Bushnell & Carpenter, PO Box 290, Rapid City SD 57709

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.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 23, 2004

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

ATTENTION: Legal Public Notice

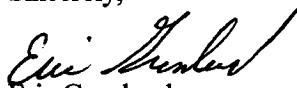
Enclosed is a Notice on Application No. 2526-2 to Appropriate Water to be published twice. Please publish the first notice on September 1, 2004 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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 Donald & Virgena Jundt, RR 2, Rapid City SD (Ph # 605-393-2433).

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. 2526-2

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

Date _____

We are in receipt of your letter of August 23, 2004 enclosing Notice to Appropriate Water by Application No. 2526-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

Bangs McCullen Law Firm

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

RECEIVED
SEP 16 2004
WATER RIGHTS
PROGRAM

Rapid City

Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Rachel V. Jepsen
Eric J. Pickar
Sara L. Larson

Sioux Falls

Michael A. Hauck
John P. Mullen
Brian K. Kirby
Victoria M. Duehr
Leigh N. Talley

Attorneys also admitted in
Nebraska, North Dakota
and Minnesota

Reply to Rapid City Office

Writer's e-mail address: gerlandson@bangsmccullen.com

September 15, 2004

Mr. Ron Duvall
Natural resources Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

**Re: Rapid Valley Water Conservancy District
Water Permit App. #2526-2
Donald and Vergena Jundt**

Dear Mr. Duvall:

Thank you for taking the time to speak with me the afternoon of September 15th and for agreeing to provide me with the following information:

- a. Current map of the District's boundaries;
- b. Maps of the following ditches: Murphy, South Side and Lone Tree;
- c. Copy of Jan. 1994 transfer from Jundt to Rapid City as referenced in the August 18, 2004 Report on Water Permit Application No. 2526-2;
- d. List of water rights and priorities on Rapid Creek; and
- e. Complete administrative file on above-referenced application.

Your prompt attention is greatly appreciated. The District will need to review this information prior to September 27th, which is the deadline to intervene. Please contact me if you have questions or concerns.

Sincerely,

BANGS, McCULLEN, BUTLER
FOYE & SIMMONS, L.L.P.



Gregory J. Erlandson

gje:lj

cc: Jerry Hammerquist
Keith Ham

Trust Building
818 St. Joseph Street
P.O. Box 2670
Rapid City, SD 57709-2670
605-343-1040
Fax: 605-343-1503

Security Bank Building
100 N. Phillips Ave.
Suite 610
P.O. Box 949
Sioux Falls, SD 57101-0949
605-339-6800
Fax: 605-339-6801

www.bangsmccullen.com



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 16, 2004

Gregory J Erlandson
Bangs, McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Dear Mr. Erlandson:

I am writing in regard to our phone conversation and your letter dated September 15, 2004. In response to your request for information the following is enclosed:

1. A map dated 12/87 showing the general coverage of the ditch companies located in Rapid valley;
2. A copy of Water Right No. 2296-2 – 1994 transfer from Jundt to the City of Rapid City;
3. A listing of water permits/rights located on Rapid Creek; and
4. A copy of Application No. 2526-2, Donald & Virgena Jundt

I was not able to locate a map showing the boundaries of the Rapid Valley Conservancy District. Your best option is probably contacting the District for a boundary map.

Please let me know if you have any questions regarding the enclosures.

Sincerely,

Ron Duvall
Natural Resources Engineer
Water Rights Program

enclosures

Bangs McCullen Law Firm

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

Rapid City

Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Rachel V. Jepsen
Eric J. Pickar
Sara L. Larson

Sioux Falls

Michael A. Hauck
John P. Mullen
Brian K. Kirby
Victoria M. Duehr
Leigh N. Talley

Attorneys also admitted in
Nebraska, North Dakota
and Minnesota

Trust Building
818 St. Joseph Street
P.O. Box 2670
Rapid City, SD 57709-2670
605-343-1040
Fax: 605-343-1503

Security Bank Building
100 N. Phillips Ave.
Suite 610
P.O. Box 949
Sioux Falls, SD 57101-0949
605-339-6800
Fax: 605-339-6801

www.bangsmccullen.com

Reply to Rapid City Office

Writer's e-mail address: gerlandson@bangsmccullen.com

September 24, 2004

RECEIVED

SEP 27 2004

WATER RIGHTS
PROGRAM

~~Mr. Garland Erbele~~
Chief Engineer, Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Mr. David and Virgena Jundt
RR 2
Rapid City, SD 57701

**RE: *Joint Petition of Lone Tree Ditch Co. and
St. Germain Ditch in Opposition to Application
No. 2526 to Amend Water Right No. 1727-2, held
by the Rapid Valley Water Company (Murphy Ditch)***

Dear Gentlemen and Lady:

This letter serves as formal notice that the Lone Tree Ditch Company and St. Germain Ditch Company (collectively referred to as "Ditch Companies" or individually as "Lone Tree" or "St. Germain") oppose the above-referenced water rights application which is scheduled to be considered by the Water Management Board at 10:00 a.m. on October 6, 2004, at the Mathews Training Center, Foss Building, 523 East Capitol in Pierre, South Dakota. Ditch Companies, pursuant to A.R.S.D. 74:02:01:12.02, through their undersigned attorney, respectfully request they receive further notices and all other materials pertaining to any hearing upon which this permit or petition in objection thereto relates.

1. Interests in the Application

Lone Tree is a ditch company with vested water rights on Rapid Creek in the proximity of the Jundt property. St. Germain is a ditch company with vested water rights on Rapid Creek East of the Jundt property. Both companies have members or shareholders who have free flow rights to water and, additionally, purchase Rapid Creek irrigation water in Pennington County.

Applicants seek to transfer a portion of irrigated acres and accompanying diversion authority currently authorized by Vested Water Right No. 1727-2 (Murphy Ditch) to their property which will be served via the South Side Ditch.

2. Reasons for Opposing the Application

a. **General Policy Considerations**

Ditch Companies submit that granting the permit will not benefit the public and is certainly not the best utilization of Rapid Creek water. Water resources should be developed for the “greatest public benefit.” S.D.C.L. 46-1-2. Water conservation should be “exercised with a view to the reasonable and beneficial use ... in the interest of the people and for the public welfare.” S.D.C.L. 46-1-4. A water right does not “constitute absolute ownership” but shall “remain subject to the principle of beneficial use.” S.D.C.L. 46-5-5. “Beneficial use” is defined as any “use of water ... that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interest of the public of this state in the best utilization of water supplies[.]” S.D.C.L. 46-1-6(3).

b. **Recommendation of Chief Engineer For Water Permit Application**

The Chief Engineer recommends approval of the application because:

1. the proposed diversion can be developed without unlawful impairment of existing rights;
2. the proposed diversion can be developed without unlawful impairment of existing rights:
 - a. Diversions under permit No. 2526-2 may not interfere with existing water rights or domestic rights.
 - b. Permit No. 2526-2 authorizes diversion of only natural flow water and does not guarantee a right to stored irrigation water from Deerfield Reservoir. ...
 - c. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

The recommendation does not indicate whether or not Murphy Ditch will reduce their natural flow allocation by the 0.71 cfs requested to be diverted. Ditch Companies would concede that their opposition would evaporate if Murphy Ditch does, in fact, agree to reduce their allocation by the requested amount.

c. **Applicant’s Proposed Use may Impair Existing Rights of Ditch Companies**

Again, neither the Chief Engineer’s Recommendation nor the Report assert that the Rapid Valley Water Company acquiesce in the Jundt’s proposed amendment to it Vested Water Right No. 1727-2. Similarly, the record does not assert that South Side Ditch Company has agreed to carry the water to the Jundt property. Without such information it appears as if a decision on the Jundt application could be mooted. Additionally, since this application seeks to potentially divest the Rapid Valley Water Company’s water rights or, at least, primarily concerns

its water rights, it appears that the Jundts may not have standing or are not the proper parties to file this application.

Considering the anticipated amount of ditch loss (11%), it is believed that the amount of requested diversion to the 50 acres will be approximately 0.61 cubic feet of water per second (cfs). In the experience of the Ditch Companies, this amount may not be supplied without another source of water to carry it. Certainly, transportation of only 0.61 cfs would not be feasible considering the distance involved and natural conditions of the ditches. Thus, in order to transport the water, it will be necessary for applicants to utilize water of either of the Ditch Companies who have priority. The requested transfer, if approved, may have unpredictable and unfortunate consequences upon Ditch Companies' members or shareholders. If the permit is issued, then the water will be, indirectly, taken from the Ditch Companies' allocation and impair their existing rights.

Furthermore, Ditch Companies assert the Jundt application is erroneously completed as *they* were required to provide a description of the project. Rather than provide such a description, the Jundts attached a statement, apparently on behalf of "Applicant Merlin Stromer" and provide his justification for the transfer. Also, Jundts have not alleged that either the Murphy Ditch or South Side Ditch Company are agreeable to the proposed project. Unfortunately, since no representation was made, it appears as if this matter may ultimately be moot thereby causing Ditch Companies to needlessly expend their resources in addressing the Application.

Ditch Companies respectfully request the Board require the Jundts to provide a monitoring plan for Water Board consideration and Ditch Companies comment. Without such monitoring plan, Ditch Companies have no idea as how or who could or would monitor the proposed project.

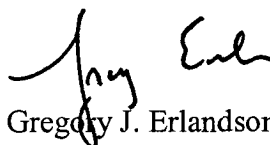
CONCLUSION

Ditch Companies respectfully request the Board deny Jundt's request. As indicated above, Jundt's requested transfer will negatively impact the Ditch Companies and their customers unless the Rapid Valley Water Company agrees to reduce its natural flow by 0.71 and Jundts provide an adequate monitoring plan.

The Ditch Companies would request to be heard and will be available to answer questions and concerns at the October 6, 2004 hearing on this application. Thank you in advance for your consideration and time.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Gregory J. Erlandson

gje:lj
cc: Client

COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP

ATTORNEYS AT LAW

200 SECURITY BUILDING ■ 704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

605-343-2410
TELECOPIER NO. 605-343-4262
E-MAIL: lawfirm@costelloporter.com

HEATHER LAMMERS BOGARD
MELVIN D. WEDMORE
JEREMIAH J. LUEBBE
JESS M. PEKARSKI
PHILLIP R. STILES

RETIRED
J.M. COSTELLO

WILLIAM G. PORTER
1926-2004

DENNIS H. HILL
KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
THOMAS H. BARNES
DONALD A. PORTER
GREGORY G. STROMMEN
PATRICIA A. MEYERS
JOSEPH R. LUX

September 27, 2004

VIA FACSIMILE AND U.S. MAIL

Mr. Garland Erbele
Chief Engineer, Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501
605-773-4068

RECEIVED
SEP 28 2004
WATER RIGHTS
PROGRAM

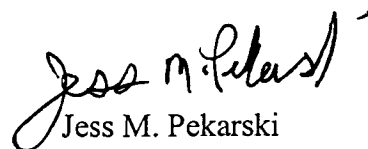
Re: Our File No. 22453
Application for Permit to Appropriate Water for Irrigation

Dear Mr. Erbele:

I am writing in regards to water permit application #2526-2 submitted by Mr. & Mrs. Jundt which application is to be considered before the water management board at 10:00 a.m., October 6, 2004. In this regard I am writing to request this matter be automatically delayed, pursuant to the terms of the Notice of Hearing.

Thank you for your consideration in this matter and please forward confirmation of the new hearing date to my attention.

Sincerely,


Jess M. Pekarski

JMP/les

cc: Eric Gronlund
Merlin Stromer
Don Jundt



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 28, 2004

NOTICE

TO: Jess M. Pekarski
Attorney at Law
PO Box 290
Rapid City SD 57709

Donald and Virgena Jundt
RR 2
Rapid City SD 57701

Gregory Erlandson
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

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

Eric Gronlund

SUBJECT: Automatic Delay of Hearing on Water Right Permit Application No. 2526-2,
Donald and Virgena Jundt

In response to the notice of hearing published in the Rapid City Journal, a petition has been filed by Gregory Erlandson, attorney representing Lone Tree Ditch Company and St. Germain Ditch Company, opposing Water Right Permit Application No. 2526-2 filed by Donald and Virgena Jundt. Jess Pekarski, attorney for the law firm representing Mr. and Mrs. Jundt, filed a request for an automatic delay of the October 6th hearing before the Water Management Board. Therefore, the hearing on Application No. 2526-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 6, 2004.

The hearing to consider Application No. 2526-2 will now be held at 1:30 PM, Thursday, December 2, 2004, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. Future notice will be provided to all parties of record if there is a change in the meeting time or date.

Please contact Diane Best, Assistant Attorney General at (605) 773-3215 or Eric Gronlund, Water Rights Program at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
Jacci Nevin, Costello, Porter, Hill Law Firm, PO Box 290, Rapid City SD 57709

CERTIFICATION

I hereby certify that on September 28, 2004, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 28, 2004, regarding Automatic Delay of Hearing on Water Right Permit Application No. 2526-2, Donald and Virgena Jundt addressed as stated below:

Jess M. Pekarski
Attorney at Law
PO Box 290
Rapid City SD 57709

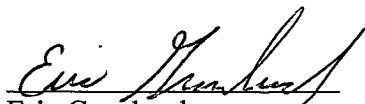
Donald and Virgena Jundt
RR 2
Rapid City SD 57701

Gregory Erlandson
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Jacci Nevin
Costello, Porter, Hill Law Firm
PO Box 290
Rapid City SD 57709

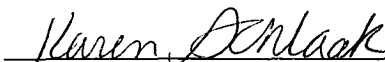
A copy of the Notice was sent Inter-office to:

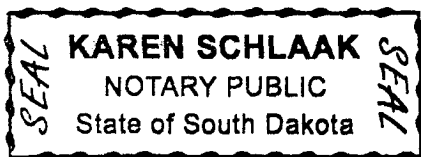
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of September, 2004.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



**COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP**

ATTORNEYS AT LAW

DENNIS H. HILL
KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
THOMAS H. DARNES
DONALD A. PORTER
GREGORY O. STROMMEN
PATRICIA A. MEYERS

200 SECURITY BUILDING 704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

605-343-2410
TELECOPIER NO. 605-343-4262
E-MAIL: lawfirm@costelloporter.com

JOSEPH R. LUX
HEATHER M. LAMBERS
MELVIN D. WEDMORE
JESS M. PEKARSKI
PHILLIP R. STILES

RETIRED
J.M. COSTELLO
WILLIAM G. PORTER

Judy Bieri, Paralegal
Direct Line: (605) 718-8134
Email: jb@costelloporter.com

Ed Carpenter
Direct Line: (605) 718-8116
Email: ecarpenter@costelloporter.com

VIA FAX 605-773-4106 and U.S. MAIL
November 30, 2004

Diane Best
Office of the Attorney General
500 East Capitol
Pierre, SD 57501-3182

Re: Jundt Hearing
Our File No. 22453

Dear Diane:

Attached please find Jundt's Response to Joint Petition of Lone Tree Ditch Company and St. Germain Ditch in Opposition. This is to request that the attached be included as a part of the pleadings to be distributed to the Board at the time of Mr. Rath's testimony. Thank you.

Sincerely,



Edward C. Carpenter

ECC:jb
Enclosure
cc w/enc.: Greg Erlandson
Merlin Stromer
Don and Virgena Jundt

WATER MANAGEMENT BOARD

) JUNDT'S RESPONSE TO JOINT PETITION
) OF LONE TREE DITCH COMPANY AND
) ST. GERMAIN DITCH IN OPPOSITION
)

In the Matter of Application No. 2526-2,
 Donald and Virgena Jundt

For response to Joint Petition of Lone Tree Ditch Company and St. Germain Ditch in Opposition to Application No. 2526-2, Donald and Virgena Jundt state as follows:

I. PETITIONERS ADMIT THAT THE PETITION IS WITHOUT BASIS SO LONG AS MURPHY DITCH ONLY DIVERTS THE AMOUNT OF WATER ALLOWED UNDER ITS PERMIT.

Petitioners state that "Ditch Companies would concede that their opposition would evaporate if Murphy Ditch does, in fact, agree to reduce their allocation by the requested amount." If the Water Board follows the recommendation of Chief Engineer, Vested Water Right No. 1727-2 held by Rapid Valley Water Company (Murphy Ditch), would be amended by transferring a portion of the irrigated acres and accompanying division authority to the Jundt's land. The amount transferred would be 0.71 CFS. There is absolutely no basis for assuming that Murphy Ditch will divert waters in excess of their permitted amount. Thus, Petitioners opposition is clearly without merit and the Board need not consider it further.

II. PETITIONERS HAVE NO STANDING TO URGE THAT APPLICANT'S PROPOSED USE MAY IMPAIR EXISTING RIGHTS OF RAPID VALLEY WATER COMPANY AND SOUTH SIDE DITCH COMPANY.

Both Rapid Valley Water Company and South Side Ditch Company were specifically served by Applicant with a copy of an Application for Permit to Appropriate Water for Irrigation. Neither South Side Ditch Company or Rapid Valley Water Company have filed an opposition to the Application.

III. THE RECOMMENDATION OF THE CHIEF ENGINEER SHOULD BE FOLLOWED BY THE BOARD.

The findings of the Chief Engineer negates Petitioner's additional arguments. Chief Engineer recommended approval because "1) The proposed diversion can be developed without unlawful impairment of existing rights, 2) The proposed use is of beneficial use and 3) It is in the public interest..." Petitioner's speculation that granting the permit may interfere with and impair their rights is made without any engineering or factual support. Further, as pointed out hereinabove, by Petitioner's own admission, so long as Murphy Ditch diverts only its permitted amount of water, Petitioner's concerns are mooted. Finally, as to the suggestion that there be some type of monitoring program, again, there is no factual or engineering basis set forth. Further, there is no reason that Applicant should be treated differently than any other permit holder in the event the application is granted as recommended by the Chief Engineer.

Respectfully submitted,

Donald and Virgena Jundt

By:



Edward C. Carpenter
Counsel for Donald and Virgena Jundt
P.O. Box 290
Rapid City, SD 57709



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 7, 2004

NOTICE

TO: Edward Carpenter
Attorney at Law
PO Box 290
Rapid City SD 57709

Greg Erlandson
Attorney at Law
PO Box 2670
Rapid City SD 57709-2670

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

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 Final Decision for Water Permit Application No. 2526-2 filed by Donald and Virgena Jundt. The Board will consider adoption of Findings, Conclusions and Final Decision at 1:00 PM, on March 2, 2005, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

The Board requested that copies of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by February 10, 2005. 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 February 21, 2005.

At the Board's discretion, 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 March 2, 2005. The public hearing was completed on December 2, 2004. No additional testimony will be received on March 2, 2005.

Enclosure

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

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
320 Lincoln Lane S
Brookings SD 57006-2741

James Hutmacher
802 East 7th Street
Oacoma SD 57365

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 December 7, 2004 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 7, 2004 regarding Preparation of Findings of Fact, Conclusion and Law and Final Decision addressed as stated below:

Edward Carpenter
Attorney at Law
PO Box 290
Rapid City SD 57709

Greg Erlandson
Attorney at Law
PO Box 2670
Rapid City SD 57709-2670

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

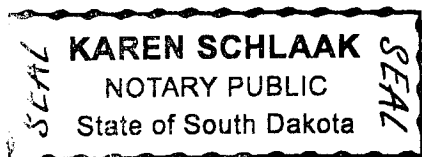
Diane Best, Assistant Attorney General, Capitol Building
John Guhin, Deputy Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of December, 2004.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





RECEIVED

FEB 11 2005

WATER RIGHTS
PROGRAM

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

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 10, 2005

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

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Yankton, SD 57078-3702

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

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

Re: Proposed Findings of Fact, Conclusions of Law, and Final
Decision In the Matter of the Application for Water Permit
No. 2526-2, Donald and Vergena Jundt

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 notes of the Chief Engineer dated December 7, 2004 for further information.

Sincerely,

A handwritten signature in dark ink, appearing to read "John P. Guhin", written in a cursive style.

John P. Guhin
Assistant Attorney General

JPG:js

BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

RECEIVED

FEB 11 2005

IN THE MATTER OF THE)
APPLICATION FOR WATER PERMIT)
NO. 2526-2, DONALD AND)
AND VERGENA JUNDT)

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

1. This is an application to amend a portion of Vested Water Right No. 1727-2, held by Rapid Valley Water Company (also known as Murphy Ditch) by transferring a portion of the irrigated acres and diversion authority to other land.

2. Vested Water Right No. 1727-2 includes a right to divert 3.0 cfs with an April 26, 1893 priority date from Rapid Creek for the purpose of irrigating 189 acres.

3. The Applicants propose to sever irrigation from Vested Water Right No. 1727-2 from 50 acres on lands known as the Stromer property on the north side of Rapid Creek and transfer the land to be irrigated to the south side of the creek.

4. The diversion point is proposed to be moved from the Rapid Valley Water Company (or Murphy Ditch) diversion point on the north side of Rapid Creek to the South Side Ditch diversion point on the south side of Rapid Creek. As noted, the present Vested Water Right allows irrigation of 189 acres. The pro rata portion of the diversion rate associated with the 50 acres proposed to be transferred is 0.80 cfs.

5. This Board has, in the past, found that waters transferred from Rapid Valley Water Company (or Murphy Ditch) lands must leave eleven percent of the water to be transferred in the Murphy Ditch. The eleven percent loss represents the amount of carriage loss due to the transportation of water in the Murphy

Ditch. The transferable amount of the diversion rate is therefore 0.80 cfs less eleven percent for a total of 0.71 cfs. The remaining .09 cfs continues to be held under the Murphy Ditch Water Right under the proposal.

6. The Applicant proposes to divert his water to the South Side Ditch Company ditch but lacks a separate agreement at this time with South Side Ditch.

7. The Board finds that the failure of the Applicant to present the Board with a agreement with South Side Ditch to carry his waters in the event the permit is granted is not fatal to his request. First, there is nothing in the statutes or regulations pertaining to the Board which requires all impediments to utilization of a water right be removed before a water permit is granted. Second, the Board finds that a general rule requiring all such impediments to be removed before the Board considers or grants a permit would be impractical given the multiple layers of regulation to which an applicant might be subject. Third, in the particular case of water rights and ditch companies in the area of the application, the property relationships tend to be quite complex. The Board does not apprehend any strong public interest consideration requiring every difficulty to be resolved before an application is presented to it.

8. Testimony also revealed that the land in question is within the Rapid Valley Conservancy District boundaries and the Applicant will need a separate agreement with the district to purchase stored Deerfield water. Only natural flows are transferred by this permit.

9. The failure to of the Applicant to obtain such an agreement prior to the consideration of this permit is not fatal to the application for the same reasons as set forth immediately above.

10. The Applicant for transfer of the water right testified that he seeks to transfer the water right from the north side to the south side of the river because the north side property is being converted to commercial use. The change in such use will make it impracticable to continue the use of water for irrigation on this same property.

11. The Jundts, who propose to utilize the water on the south side of the river, intend to use it to grow alfalfa as part of a cattle operation.

12. A representative of St. Germaine Ditch Company testified that it was his belief that, if the water right were allowed to be transferred as proposed the nearest potential diversion point on the south side of the river would be a significant distance from the property that the Jundts which to irrigate. The representative stated his opinion that if the water is transferred to the South Ditch diversion point, and if it flows to the Jundt property, the quantity of water which actually reaches the Jundt property might well be negligible or nonexistent. The representative based his opinion on his observation, not of the South Side Ditch but other ditches, including the St. Germaine ditches. He also based his opinion on his view that there is no other water flowing through the ditch at this point.

13. Further testimony revealed that there is a water permit on the pertaining to lands in question and water could flow through the ditch. There was no testimony as to the last time the water permit was actually utilized, however.

14. The Board finds that the testimony regarding the potential loss of water in the South Side Ditch from the potential diversion point to the Jundt property raises a concern, but again the concern is not fatal to the application. The observation in question was not based upon ditch losses in the South Side Ditch, but upon other areas. It appears, moreover, that there is a water permit in the area, contrary to the apparent understanding of the St. Germaine representative. In any event, the Applicant will not have authority to "waste" water contrary to law.

15. The opponents to the application stressed the importance of reducing the amount of water available to Murphy Ditch or the Rapid Valley Water Company if this permit is granted. All agreed that the amount to be reduced from the Murphy Ditch appropriation is .71 cfs. There is no evidence that Murphy Ditch would continue to appropriate or attempt to appropriate the .71 cfs which would be subtracted from its permit if this permit is granted.

16. The opponents to the permit testified that the water should not be transferred to the South Side Ditch Company system because it lacks adequate measuring devices. The evidence on this point is not clear but the Board takes note of the need for proper measuring devices and has included an appropriate

qualification in its final decision to address this potential problem.

17. In January of 1994, South Ditch Company transferred a portion of the irrigation water right for the lands in question to the city of Rapid City. If the present application is approved, lands which were removed from irrigation through that January 1994 transaction will again be irrigated.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter.
2. The Applicants request for a change in place of use can be made without detriment or impairment to existing rights when accomplished as set forth in the final decision.
3. The proposed change in the point of diversion and use is in the public interest. The Board specifically finds that irrigation is a public interest and that lands would be lost to irrigation but for the transfer.
4. The priority date of April 26, 1893, which is the priority date for the Vested Water Right No. 1727-2 held by Rapid Valley Water Company also known as Murphy Ditch, should be retained for the transferred water right.
5. The diversion rate which is transferred under this permit is .71 cfs.
6. Approval of this Application necessitates that the authorized diversion rate and acreage for Rapid Valley Water Company (Murphy Ditch) Water Right No. 1727-2 be decreased by .71 cfs by 50 acres.

7. Legitimate concerns have been raised with regard to the adequacy of a measuring device for South side ditch company. As a condition of the permit, an adequate flow measuring device will be required to be in place prior to utilization of the permit.

8. South Dakota law, as enacted in 1992, stated that no "person" who had transferred an irrigation right pursuant to the statute could acquire another irrigation right for the same land. South Side Ditch Company was the water right holder of record when a portion of a water right for this land was transferred to Rapid City in January of 1994. In January of 1994, when the transfer was made, the section acted to prohibit and still acts to prohibit South Side Ditch from placing the land in question back into irrigation. The law in effect in January of 1994, however, did not prevent any other person from placing that same land into irrigation. In July of 1994, a new statute went into effect which prevents "land" which had an irrigation right transferred from it pursuant to the section from being utilized for irrigation. The Board concludes that the intent of the legislature in adopting this section was prospective only. Therefore, the 1994 amendment does not affect this case.

FINAL DECISION

Application No. 2526-2 is granted subject to the following qualifications:

1. Permit No. 2526-2 is limited to a diversion rate of .71 cfs and a total irrigated acreage of 50 acres.

2. Diversions under this permit may not interfere with existing water rights and effect prior to approval of this permit, nor may it affect any domestic or other prior rights.

3. Vested Water Right No. 1727-2, Rapid Valley Water Company (Murphy Ditch) is reduced by 0.80 cfs and the amount of acreage which might irrigated under that right is reduced by 50 acres.

4. Prior to utilization of water under this permit, the Chief Engineer shall inspect any measuring device presently in place at the point at which South Side Ditch will divert this water from Rapid Creek. Water may be diverted under this permit only at such time the Chief Engineer certifies that the measuring device in place at that point is of equivalent quality to that in place at the main diversion utilized by the St. Germaine Ditch Company.

Dated this ____ day of _____, 2005.

BY THE BOARD:

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 Application for Water Permit No. 2526-2, Donald and Vergena Jundt 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 10th day of February, 2005:

Francis E. Brink
1214 S. 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
291 42nd Street
Rapid City, SD 57702-0240

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

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

James Hutmacher
802 E. 7th Street
Oacoma, SD 57365

Edward Carpenter
Attorney at Law
P.O. Box 290
Rapid City, SD 57709-0290

Greg Erlandson
Attorney at Law
P.O. Box 2670
Rapid City, SD 57709-2670

BY INTEROFFICE MAIL:

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

BY HAND DELIVERY:

Diane Best, Asst. Atty. Gen.
Office of the Attorney General
Natural Resources Section
500 East Capitol Avenue
Pierre, SD 57501-5070


John P. Guhin
Assistant Attorney General

j-wtrmgmtbd.jph Lyle and Viola Williams

BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

IN THE MATTER OF THE	)	DENR RESPONSE TO PROPOSED
APPLICATION FOR WATER PERMIT	)	FINDINGS OF FACT, CONCLUSIONS
NO. 2526-2, DONALD AND	)	OF LAW AND FINAL DECISION
VIRGENA JUNDT.	)	

COMES NOW, the South Dakota Department of Environment and Natural Resources, Water Rights Program, and makes its response to Board counsel's Proposed Findings of Fact, Conclusions of Law and Final Decision:

1. The DENR supports the Proposed Findings of Fact, Conclusions of Law and Final Decision and urges the Board to enter them as drafted with a few minor exceptions as noted below.
2. As to Finding of Fact No. 9, the third word "to" does not appear to belong in this sentence and is apparently a typographical error.
3. In Finding of Fact No. 13, the DENR asks that the first sentence be deleted. The proposed version, as drafted, might be read to suggest that there are redundant permits on the lands in question, (which is not the case here) or it might be read to explain that other water use from South Side Ditch occurs nearby. The DENR proposes the following language instead: "Further testimony revealed that there is land being irrigated from South Side Ditch near the lands intended for irrigation by this application and water does flow through South Side Ditch in this area." This proposed change is based on testimony that providing water at this

location from the South Side Ditch is not a significant distance from the property that the Jundts wish to irrigate.

4. The word "South Side" is referred to as the "South Ditch" in Findings 12 and 17. According to DENR records regarding this permit, the customary name for this ditch is always two words: South Side.

5. The DENR proposes an additional Conclusion of Law in this matter which should read as follows:

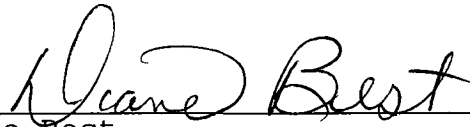
The Board concludes that it has jurisdiction to consider this permit notwithstanding allegations that an independent agreement has not yet been reached with South Side Ditch to convey water to this property. This Board's jurisdiction applies to the granting or denying of the transfer of use of water. The matter of permission to use South Side's conveyance system, like other impediments to utilization of water rights (such as zoning or other contractual matters) need not be considered before this Board exercises jurisdiction. This conclusion not only applies to the carriage agreement with South Side Ditch, but also applies to the similar argument in this case that a separate agreement would first need to be made with the Rapid Valley Conservancy District to purchase stored Deerfield water before the Board makes its decision in this case.

6. The Final Decision, third paragraph, refers to Vested Right No. 1727-2, and indicates that a reduction in diversion rate is warranted due to this transfer. The DENR submits that, based on the testimony at hearing, the proper number should

be 0.71 cfs. This is the number testified to by the DENR Water Rights witness. Also, the DENR asks that the Final Decision, paragraph 3, state that "The reduction in diversion rate is due to carriage losses which are to be retained in Murphy Ditch." The factual basis for this Final Decision is set forth in Board Proposed Finding No. 5. Dated this 14th day of February, 2005.

Respectfully submitted,

LAWRENCE E. LONG
ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
500 East Capitol
Pierre, SD 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 Application for Water Permit No. 2526-2, Donald and Vergena Jundt, 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 14th day of February, 2005:

Francis E. Brink
1214 S. Wells St.
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
291 42nd Street
Rapid City, SD 57702-0240

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

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

James Hutmacher
802 E. 7th Street
Oacoma, SD 57365

Edward Carpenter
Attorney at Law
P.O. Box 290
Rapid City, SD 57709-0290

Greg Erlandson
Attorney at Law
P.O. Box 2670
Rapid City, SD 57709-2670

BY INTEROFFICE MAIL:

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

BY HAND DELIVERY:

John Guhin
Assistant Attorney General
500 East Capitol Ave.
Pierre, SD 57501-5070


Diane Best
Assistant Attorney General



**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 17, 2005

NOTICE

TO: Edward Carpenter
Attorney at Law
PO Box 290
Rapid City SD 57709

Greg Erlandson
Attorney at Law
PO Box 2670
Rapid City SD 57709-2670

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

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, were adopted March 2, 2005, by the Water Management Board in the matter of Application for Water Permit No. 2526-2, Donald and Virgena Jundt. 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, Assistant Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 17, 2005, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 17, 2005, adoption of findings of fact, conclusions of law and final decision in the matter of Application for Water Permit No. 2526-2, Donald and Virgena Jundt, addressed as stated below.

Edward Carpenter
Attorney at Law
PO Box 290
Rapid City SD 57709

Greg Erlandson
Attorney at Law
PO Box 2670
Rapid City SD 57709-2670

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

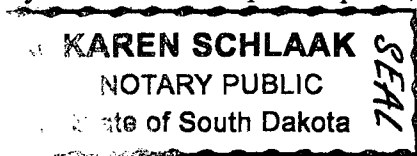
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General


Eric Gronlund
Natural Resource Engineer
Water Rights Program

[illegible]

Sworn to, before me, this 18th day of March, 2005.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2007



BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)
APPLICATION FOR WATER PERMIT)
NO. 2526-2, DONALD AND)
AND VERGENA JUNDT)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
FINAL DECISION

1. This is an application to amend a portion of Vested Water Right No. 1727-2, held by Rapid Valley Water Company (also known as Murphy Ditch) by transferring a portion of the irrigated acres and diversion authority to other land.
2. Vested Water Right No. 1727-2 includes a right to divert 3.0 cfs with an April 26, 1893 priority date from Rapid Creek for the purpose of irrigating 189 acres.
3. The Applicants propose to sever irrigation from Vested Water Right No. 1727-2 from 50 acres on lands known as the Stromer property on the north side of Rapid Creek and transfer the land to be irrigated to the south side of the creek.
4. The diversion point is proposed to be moved from the Rapid Valley Water Company (or Murphy Ditch) diversion point on the north side of Rapid Creek to the South Side Ditch diversion point on the south side of Rapid Creek. As noted, the present Vested Water Right allows irrigation of 189 acres. The pro rata portion of the diversion rate associated with the 50 acres proposed to be transferred is 0.80 cfs.
5. This Board has, in the past, found that waters transferred from Rapid Valley Water Company (or Murphy Ditch) lands must leave eleven percent of the water to be transferred in the Murphy Ditch. The eleven percent loss represents the amount of carriage loss due to the transportation of water in the Murphy

Ditch. The transferable amount of the diversion rate is therefore 0.80 cfs less eleven percent for a total of 0.71 cfs. The remaining .09 cfs continues to be held under the Murphy Ditch Water Right under the proposal.

6. The Applicant proposes to divert his water to the South Side Ditch Company ditch but lacks a separate agreement at this time with South Side Ditch.

7. The Board finds that the failure of the Applicant to present the Board with a agreement with South Side Ditch to carry his waters in the event the permit is granted is not fatal to his request. First, there is nothing in the statutes or regulations pertaining to the Board which requires all impediments to utilization of a water right be removed before a water permit is granted. Second, the Board finds that a general rule requiring all such impediments to be removed before the Board considers or grants a permit would be impractical given the multiple layers of regulation to which an applicant might be subject. Third, in the particular case of water rights and ditch companies in the area of the application, the property relationships tend to be quite complex. The Board does not apprehend any strong public interest consideration requiring every difficulty to be resolved before an application is presented to it.

8. Testimony also revealed that the land in question is within the Rapid Valley Conservancy District boundaries and the Applicant will need a separate agreement with the district to purchase stored Deerfield water. Only natural flows are transferred by this permit.

9. The failure of the Applicant to obtain such an agreement prior to the consideration of this permit is not fatal to the application for the same reasons as set forth immediately above.

10. The Applicant for transfer of the water right testified that he seeks to transfer the water right from the north side to the south side of the river because the north side property is being converted to commercial use. The change in such use will make it impracticable to continue the use of water for irrigation on this same property.

11. The Jundts, who propose to utilize the water on the south side of the river, intend to use it to grow alfalfa as part of a cattle operation.

12. A representative of St. Germaine Ditch Company testified that it was his belief that, if the water right were allowed to be transferred as proposed the nearest potential diversion point on the south side of the river would be a significant distance from the property that the Jundts wish to irrigate. The representative stated his opinion that if the water is transferred to the South Side diversion point, and if it flows to the Jundt property, the quantity of water which actually reaches the Jundt property might well be negligible or nonexistent. The representative based his opinion on his observation, not of the South Side but other ditches, including the St. Germaine ditches. He also based his opinion on his view that there is no other water flowing through the ditch at this point.

13. Further testimony revealed that there is land being irrigated from South Side Ditch near the lands intended for irrigation by this application and water does flow through South Side Ditch in this area. There was no testimony as to the last time the water permit was actually utilized, however.

14. The Board finds that the testimony regarding the potential loss of water in the South Side Ditch from the potential diversion point to the Jundt property raises a concern, but again the concern is not fatal to the application. The observation in question was not based upon ditch losses in the South Side Ditch, but upon other areas. It appears, moreover, that there is a water permit in the area, contrary to the apparent understanding of the St. Germaine representative. In any event, the Applicant will not have authority to "waste" water contrary to law.

15. The opponents to the application stressed the importance of reducing the amount of water available to Murphy Ditch or the Rapid Valley Water Company if this permit is granted. All agreed that the amount to be reduced from the Murphy Ditch appropriation is .71 cfs. There is no evidence that Murphy Ditch would continue to appropriate or attempt to appropriate the .71 cfs which would be subtracted from its permit if this permit is granted.

16. The opponents to the permit testified that the water should not be transferred to the South Side Ditch Company system because it lacks adequate measuring devices. The evidence on this point is not clear but the Board takes note of the need for

proper measuring devices and has included an appropriate qualification in its final decision to address this potential problem.

17. In January of 1994, South Side transferred a portion of the irrigation water right for the lands in question to the city of Rapid City. If the present application is approved, lands which were removed from irrigation through that January 1994 transaction will again be irrigated.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter.
2. The Board concludes that it has jurisdiction to consider this permit notwithstanding allegations that an independent agreement has not yet been reached with South Side Ditch to convey water to this property. This Board's jurisdiction applies to the granting or denying of the transfer of use of water. The matter of permission to use South Side's conveyance system, like other impediments to utilization of water rights (such as zoning or other contractual matters) need not be considered before this Board exercises jurisdiction. This conclusion not only applies to the carriage agreement with South Side Ditch, but also applies to the similar argument in this case that a separate agreement would first need to be made with the Rapid Valley Conservancy District to purchase stored Deerfield water before the Board makes its decision in this case.

3. The Applicants request for a change in place of use can be made without detriment or impairment to existing rights when accomplished as set forth in the final decision.

4. The proposed change in the point of diversion and use is in the public interest. The Board specifically finds that irrigation is a public interest and that lands would be lost to irrigation but for the transfer.

5. The priority date of April 26, 1893, which is the priority date for the Vested Water Right No. 1727-2 held by Rapid Valley Water Company also known as Murphy Ditch, should be retained for the transferred water right.

6. The diversion rate which is transferred under this permit is .71 cfs.

7. Approval of this Application necessitates that the authorized diversion rate and acreage for Rapid Valley Water Company (Murphy Ditch) Water Right No. 1727-2 be decreased by .71 cfs by 50 acres.

8. Legitimate concerns have been raised with regard to the adequacy of a measuring device for South side ditch company. As a condition of the permit, an adequate flow measuring device will be required to be in place prior to utilization of the permit.

9. South Dakota law, as enacted in 1992, stated that no "person" who had transferred an irrigation right pursuant to the statute could acquire another irrigation right for the same land. South Side Ditch Company was the water right holder of record when a portion of a water right for this land was transferred to Rapid City in January of 1994. In January of 1994, when the transfer was made, the section acted to prohibit and still acts to prohibit South Side Ditch from placing the land in question back into irrigation. The law in effect in January of 1994,

however, did not prevent any other person from placing that same land into irrigation. In July of 1994, a new statute went into effect which prevents "land" which had an irrigation right transferred from it pursuant to the section from being utilized for irrigation. The Board concludes that the intent of the legislature in adopting this section was prospective only. Therefore, the 1994 amendment does not affect this case.

FINAL DECISION

Application No. 2526-2 is granted subject to the following qualifications:

1. Permit No. 2526-2 is limited to a diversion rate of .71 cfs and a total irrigated acreage of 50 acres.
2. Diversions under this permit may not interfere with existing water rights and effect prior to approval of this permit, nor may it affect any domestic or other prior rights.
3. Vested Water Right No. 1727-2, Rapid Valley Water Company (Murphy Ditch) is reduced by 0.71 cfs and the amount of acreage which might irrigated under that right is reduced by 50 acres. The reduction in diversion rate is due to carriage losses which are to be retained in Murphy Ditch.
4. Prior to utilization of water under this permit, the Chief Engineer shall inspect any measuring device presently in place at the point at which South Side Ditch will divert this water from Rapid Creek. Water may be diverted under this permit only at such time the Chief Engineer certifies that the measuring device in place at that point is of equivalent quality to that in

place at the main diversion utilized by the St. Germaine Ditch Company.

Dated this 15 day of March, 2005.

BY THE BOARD:

A handwritten signature in black ink, appearing to read "Leo H. Hauer", is written over a horizontal line.

j-wtrmgmtbd.jpg Water Permit 2526-2 (Jundt)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUL 11 2005

Donald & Virgena Jundt
23356 Bradsky Rd
Rapid City SD 57703

Dear Mr. & Mrs. Jundt:

Enclosed is Water Permit No. 2526-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

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

enclosures

2526-2

RECEIVED

OCT - 9 2008

WATER RIGHTS
PROGRAM

COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP

ATTORNEYS AT LAW

200 SECURITY BUILDING#704 ST. JOSEPH STREET
MAILING ADDRESS P. O. BOX 290
RAPID CITY, SD 57709

605-343-2410

TELECOPIER NO. 605-343-4262

E-MAIL: lawfirm@costelloporter.com

DENNIS H. HILL
KENNETH L. HEISTERKAMP
GENE R. BUSHNELL
EDWARD C. CARPENTER
THOMAS H. BARNES
DONALD A. PORTER
PATRICIA A. MEYERS
JOSEPH R. LUX
HEATHER LAMMERS BOGARD*

MELVIN D. WEDMORE
JESS M. PEKARSKI
PHILLIP R. STILES
BECKY A. VOGT
MICHAEL S. HOFMANN

J.M. COSTELLO
1923-2007

WILLIAM G. PORTER
1926-2004

*Also available at Spearfish office
104 W. Hudson

September 17, 2008

Ranae Truman
Clerk of Courts
P.O. Box 230
Rapid City, SD 57709

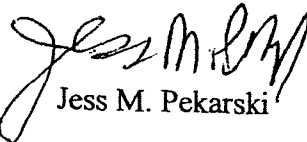
Re: Jundt vs. American West Communities
CIV. No. 05-688
Our File No. 22453

Dear Ranae:

Enclosed for filing in your office in the above-captioned matter please find the original of the Notice of Entry of Final Judgment with attached copy of a certified copy of the Final Judgment.

Thank you for your assistance in this matter.

Sincerely,


Jess M. Pekarski

JMP/rjw
cc/clients

Enclosure

RECEIVED

OCT - 9 2008

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

WATER RIGHTS
PROGRAM

Civil No. 05-688

DONALD JUNDT and VIRGENA JUNDT)

Plaintiffs,)

vs.)

AMERICAN WEST COMMUNITIES)

Defendant.)

**NOTICE OF ENTRY OF ORDER
ON FINAL JUDGMENT**

TO: THE ABOVE-NAMED DEFENDANT:

You are hereby notified that the Final Judgment in the above-captioned estate was executed by the Honorable A.P. Fuller, Circuit Court Judge, on the 17th day of September 2008, and filed of record with the Pennington County Clerk of Courts at the Pennington County Courthouse in Rapid City, South Dakota, on the 17th day of September 2008. A copy of a certified copy of the Final Judgment is attached hereto and incorporated herein by this reference.

Dated this 18th day of September 2008.

**COSTELLO, PORTER, HILL, HEISTERKAMP,
BUSHNELL & CARPENTER, LLP:**

By: Jess M. Pekarski

Jess M. Pekarski, Attorneys for Plaintiffs
704 St. Joseph Street, P.O. Box 290
Rapid City, SD 57709
Telephone (605) 343-2410

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he mailed a true and correct copy of this document with attached copy of a certified copy of the Final Judgment to:

**AMERICAN WEST COMMUNITIES, INC.
C/O RONALD A. BAKER
3213 WEST MAIN #323
RAPID CITY, SD 57702**

by first class U.S. mail, postage prepaid, on the 18th day of September 2008.

Jess M. Pekarski
Jess M. Pekarski

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

Civil No. 05-688

DONALD JUNDT and VIRGENA JUNDT)

Plaintiffs,)

vs.)

AMERICAN WEST COMMUNITIES.)

Defendant.)

FINAL JUDGMENT

The Court hereby finds that appropriate notice has been given regarding the Stipulation and Final Judgment to the above-named Defendant, and based on the entire Court's file, all testimony heard before the Court this Court's Findings of Fact and Conclusions of Law as stated on the record by the Court and argument of counsel that it has jurisdiction to proceed in this matter, it is hereby

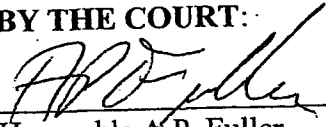
ORDERED, ADJUDGED, AND DECREED that Donald Jundt and Virgena Jundt have the right to condemnation pursuant to SDCL § 46-8-1;

Further, upon reading and filing of the above Stipulation, it is hereby

ORDERED, ADJUDGED, AND DECREED that all remaining matters in the above-captioned action be, and the same hereby are, dismissed with prejudice and without further costs to either party.

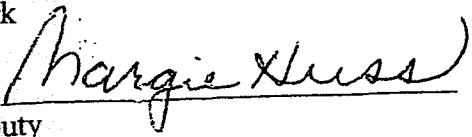
Dated at Rapid City, South Dakota, this 17 day of September 2008.

BY THE COURT:


Honorable A.P. Fuller
Circuit Court Judge

ATTEST:

Clerk

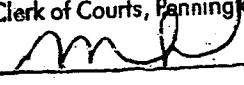
By: 

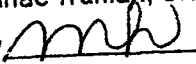
Deputy
(SEAL)

State of South Dakota) Seventh Judicial
County of Pennington) Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

SEP 17 2008

RANAE L. TRUMAN
Clerk of Courts, Pennington County

By: 

Deputy Ranae Truman, Clerk of Courts
By:  Deputy

4:20pm
Pennington County, SD
FILED
IN CIRCUIT COURT

SEP 17 2008

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

Received 10-9-08

Date Sept. 17, 2008

TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

FROM: Donald Jundt and Virginia Jundt
(name)

P.O. Box 514
(address)

Rapid City S.D. 57709 605-484-9443
(city, state, zip) (phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 2526-2
1727-2 states that the water use system is to be constructed by

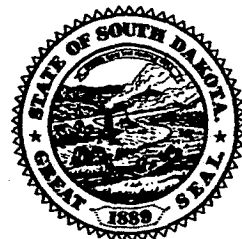
Sept. 17, 2008, and water is to be put to beneficial use by Sept. 17, 2008.
(date) (date)

The water use system was completed on Sept. 17, 2008.
(date)

Applying the water to beneficial use was completed on Sept. 17, 2008.
(date)

You may schedule an investigation so that the water license may be issued.

Donald and Virginia Jundt
(signature)





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 14, 2008

2526-2

Donald & Virgena Jundt
PO Box 514
Rapid City SD 57709

Dear Mr. & Mrs. Jundt:

I am writing to acknowledge receipt of the "Notice of Completion of Works" form indicating you are completed with your irrigation system.

The system is now ready for inspection. Inspections are done on a county-by-county basis as staff time permits. You have done everything you need to do and the intervening time between the completion of your project and the staff inspection has no bearing on your water permit.

Someone from our office will contact you prior to the inspection to set up a time that is convenient for you. If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

Permit Nos. 2526-2
Upper Cheyenne River - Water District

Report of Examination of Works and/or Application of Water to Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have on this day, 3/23/2012 thorough examination of the water use system constructed by Don & Virginia Jundt, PO Box 514, Rapid City, SD 57709 holder of Permit Nos. 2526-2, bearing the priority date of April 26, 1893. Permit Nos. 2526-2 is authorized to appropriate a total of 0.71 cfs from Rapid Creek/South Side Ditch for irrigation purposes, in Pennington County.

Inspection contact and relationship to
permit holder, if applicable:

Don Jundt (Owner)

A. Works used to divert the water:

Gravity is used to divert water by means of headgate located on Rapid Creek (South Side Ditch) and a ditch lateral diversion located on South Side Ditch.

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

The flood irrigation system consists of irrigation ditch laterals that utilize gravity to divert water from South Side Ditch.

The system is in the following condition good. The point of diversion is located specifically at Lat/Lon – N44.043197/W-103.137980 which is approximately 1865 feet north and 1800 feet west of the SE corner of Section 15, T1N-R8E for the South Side Ditch headgate and Lat/Lon – N44.007377/W-103.050414 which is approximately 680 feet south and 25 feet east of the NW corner of Section 33, T1N-R9E for the Jundt lateral diversion point. The works are capable of diverting 3.0 cfs which is to be used for irrigation purposes. Water has been put to beneficial use to the maximum extent as follows:

Section 33, T1N-R9E
NW¼ NW¼ - 20.0 acres
NE¼ NW¼ - 30.0 acres

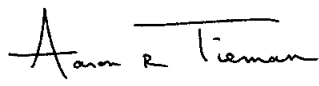
comprising a total of 50.0 acres of land and the license should be issued for 0.71 cfs.

All structures, wells and lands on map Y

Exceptions to compliance are: none.

Comments:

A measuring device has been installed on the lateral as to measure 0.71 cfs for irrigation of 50 acres.



Aaron Tieman
Natural Resources Engineer II
DENR, Water Rights Program

Date report completed: June 23, 2015

FIELD INVESTIGATION REPORT FOR PERMIT NOS. 2526-2

DATE OF INVESTIGATION:	3/23/2012
NAME & ADDRESS OF PERMIT HOLDER	Don & Virginia Jundt PO Box 514 Rapid City, SD 57709
INVESTIGATION CONTACT/ RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE	Don Jundt (owner)
DIVERSION POINT LEGAL LOCATIONS	SE¼ NW¼ Section 15, T1N-R8E and NW¼ NW¼ Section 33, T1N-R9E
WATER SUPPLY SOURCE	Surface water, Rapid Creek/South Side Ditch

Other permit(s) associated with the project:

SYSTEM INFORMATION:

Gravity is used to divert water by means of an irrigation ditch headgates located on Rapid Creek:

South Side Ditch diversion point located in the SE¼ NW¼ Section 15, T1N-R8E

Gravity is used to divert water by means of a ditch lateral located on South Side Irrigation Ditch:

Don & Virginia Jundt lateral diversion point located in the NW¼ NW¼ Section 33, T1N-R9E

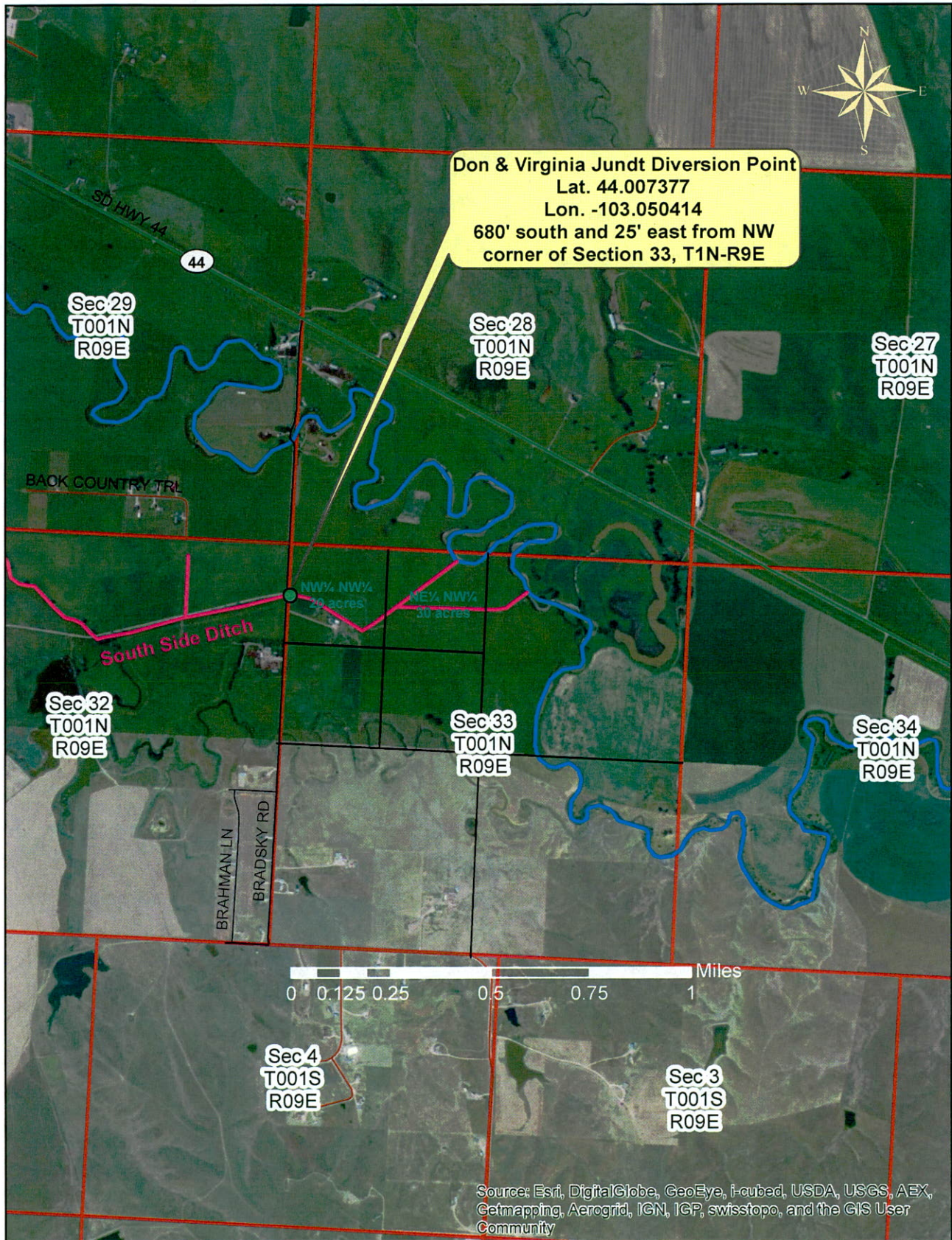
The gravity irrigation system consists of ditch laterals and underground PVC pipe that deliver water to the authorized acreage.

PERMIT QUALIFICATIONS:

- 1) Special qualifications to permit being abided by Yes
- 2) All structures, wells and lands on map Yes

COMMENTS:

Water Right 2526-2
Don & Virginia Jundt
March 23, 2012



Aaron R. Tieman

Aaron Tieman
Natural Resources Engineer II
DENR Water Rights Program





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

JUL 20 2015

2526-2

Donald & Virgena Jundt
23370 Bradsky Road
Rapid City, SD 57703-8445

Dear Mr. & Mrs. Jundt:

Enclosed is Water License No. 2526-2. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

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

Sincerely,

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

enclosures

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 2526-2**

(1) Donald & Virgena Jundt, 23370 Bradsky Road, Rapid City SD 57703-8445 made Application No. 2526-2, April 27, 2004 for a water permit to divert 0.71 cubic feet of water per second (cfs) from Rapid Creek via South Side Ditch, Pennington County, South Dakota for irrigation purposes. Permit No. 2526-2, with a priority date of April 26, 1893 (established under Vested Water Right No. 1727-2) was approved March 2, 2005 and issued to the applicants for diversion of water with construction of the described water supply system to be completed on or before March 2, 2010 and for the application to beneficial use of said water on or before March 2, 2014.

Water Permit No. 2526-2 authorized amending Vested Water Right No. 1727-2 held by Rapid Valley Water Company by transferring a portion of irrigated acreage and accompanying diversion authority to other land. An April 26, 1893 priority date was retained.

(2) It is certified that the permit holders have complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and are entitled to divert 0.71 cubic feet of water per second for beneficial use.

Gravity is used to divert water by means of irrigation ditch headgates located on Rapid Creek:

- **South Side Ditch diversion point is located approximately 1865 feet north and 1800 feet west of the SE corner of Section 15, T1N-R8E (SE $\frac{1}{4}$ NW $\frac{1}{4}$)**

Gravity is used to transport water by means of a lateral ditch located on South Side Irrigation Ditch:

- **Don & Virginia Jundt diversion point for the lateral ditch from the main ditch is located approximately 680 feet south and 25 feet east of the NW corner of Section 33, T1N-R9E (NW $\frac{1}{4}$ NW $\frac{1}{4}$)**

(3) The permit holders have complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

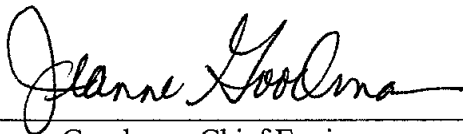
Section 33, T1N-R9E	NW $\frac{1}{4}$ NW $\frac{1}{4}$	20.0 acres
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	30.0 acres
	Total	50.0 acres

(4) Pursuant to South Dakota Water Law 46-5-30.1 Donald & Virgena Jundt, 23370 Bradsky Road, Rapid City SD 57703-8445 the holders and/or owners of Water Right No. 2526-2 are issued a license to appropriate water, the right to use 0.71 cubic feet of water per second from Rapid Creek via South Side Ditch with a priority date of April 26, 1893 from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 2526-2 and subject to the following qualifications:

- Permit No. 2526-2 is limited to a diversion rate of 0.71 cfs and a total irrigated acreage of 50 acres.
- Diversions under this permit may not interfere with existing water rights in effect prior to approval of this permit, nor may it affect any domestic or other prior water rights.

- Vested Water Right No. 1727-2, Rapid Valley Water Company (Murphy Ditch) is reduced by 0.71 cfs and the amount of acreage which might be irrigated under this right is reduced by 50 acres. The reduction in diversion rate is due to carriage losses which are to be retained in Murphy Ditch.
- Prior to utilization of water under this permit, the Chief Engineer shall inspect any measuring device presently in place at the point at which South Side Ditch will divert this water from Rapid Creek. Water may be diverted under this permit only at such time as the Chief Engineer certifies that the measuring device in place at the point is of equivalent quality to that in place at the main diversion utilized by the St Germaine Ditch. *An investigation found a measuring device has been installed on the lateral ditch to measure 0.71 cfs for irrigation of 50 acres.*



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

JUN 30 2015

date

