

WATER PERMIT NO. 2765-2

Name of Applicant: **Brandon Zeisler**

Address: **30155 354th Ave, St. Charles SD 57571**

Phone: **605 830-1069**

Amount of Water Claimed: **1.33 cfs (216 acre-feet storage dam)**

Total Acres: **Gregory**

Source of Water Supply: **Squaw Creek**

Water to be used for: **irrigation**

County: **Gregory**

Type of Waste Disposal System:

Location: **15 miles southeast of Burke**

PRIORITY Date Received: **5-22-17**

Application/License Fee: **\$ 950**

Corrected Application Received: **6-7-17**

Period of Annual Use: **May 1 – October 31**

Remarks: **Existing irrigation project**

Diversion Point: **NW 1/4 SE 1/4 Sec 27-T95N-
R70W (Squaw Creek) N 1/2 SE 1/4 Sec 27-T95N-
R70W (storage dam)**

Land to be Irrigated: **SE 1/4 Sec 27-T95N-R70W**

Depth of Well: **NA**

Well Driller:

Remarks:

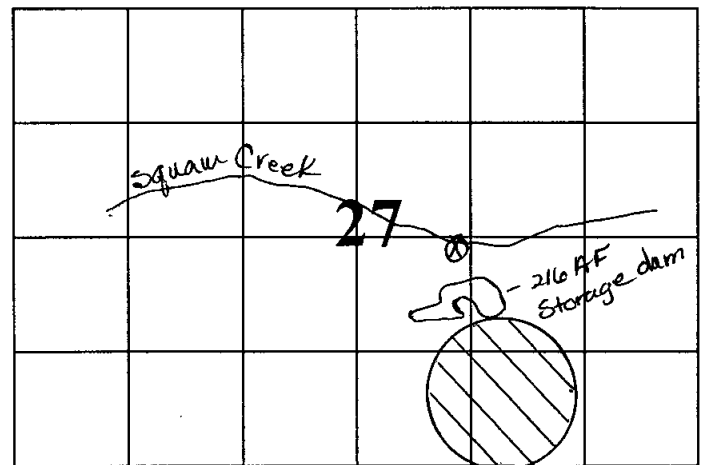
Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **6-7-17**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



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

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2765-2</u> (office use only) Hydrologic Unit <u>10150001</u>
	Basin <u>Niobrara Trib</u>
	Newspaper <u>Burke Gazette, Burke</u> <u>Daily Republic, Mitchell</u>

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MAY 22 2017
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Application For Permit To Appropriate Water For Irrigation

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

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

1. Name to Appear on Irrigation Permit Brandon Zeisler

Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.

Mailing Address 30155 354th Ave St Charles SD 57571
(Address) (City) (State) (Zip Code)

Phone 605 654-2363 Mobile 605 830-1069 Email _____ 70 acres

2. Amount of water claimed 1.56 (dam) *CFS or 800 ⁶⁰⁰ **GPM 180 ²¹⁶ ***AF Total Acreage 42 ~~acres~~ dam.
(*Cubic Feet per Second) (**Gallons per Minute) (***) Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Oscar Michaux Squaw Creek 2700' S, 1350' W of NE 1/4 27-95-70

4. Location of point of diversion 2700' S, 1350' W of NE 1/4 27-95-70

storage dam; N 1/2 SE 1/4 SW 27-95-70 (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)

diversion rate from creek to dam - 700 gpm (1.56 cfs) County Gregory

5. County or counties where water will be used Gregory

6. Annual period during which water is to be used May 1 to October 31

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
SE 1/4 SE 1/4 27-95-70	37		
SW 1/4 SE 1/4 27-95-70	14		
NE 1/4 SE 1/4 27-95-70	15		
NW 1/4 SE 1/4 27-95-70	4		

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

5 Tower center pivot - 70 acres
I pump water out of Squaw Creek to fill the holding pond, in the spring of the year for 7 to 10 days in total.
Pumping is completed by May 20th annually.

I, [Signature] owner, the applicant, certify under
Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

SOUTH DAKOTA
WATER PERMIT NO. 2765-2

Date of first receipt of application May 22, 2017.

Date of return to applicant for corrections, amendments or changes May 23, 2017.

Date of receipt of corrected application June 7, 2017.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2765-2 to Brandon Zeisler, 30155 354th Ave, St. Charles SD 57571 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. 2765-2 appropriates 1.56 cubic feet of water per second (cfs) from Oscar Micheaux Creek for irrigation. The permit holder is authorized to divert water from Oscar Micheaux Creek located in the NW 1/4 SE 1/4 Section 27-T95N-R70W into a 216 acre-feet storage dam each spring up until May 20th. The storage dam is located in the N 1/2 SE 1/4 Section 27-T95N-R70W. The dam also receives water from the contributing drainage basin. Water from the dam will be diverted as needed throughout the irrigation season at a rate of 1.33 cfs for irrigation of 70 acres located in the SE 1/4 Section 27-T95N-R70W which is approximately 15 miles southeast of Burke SD.
2. The amount of the appropriation may not exceed 2 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 – October 31.
3. The date from which applicant may claim right is May 22, 2017.
4. The date of approval of Permit No. 2765-2 is September 5, 2017.
5. One-fifth of the construction is to be completed on or before March 5, 2020.
6. All construction is to be completed on or before September 5, 2022.
7. Water is to be put to beneficial use on or before September 5, 2026.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. This permit does not authorize diversion of water from Oscar Micheaux Creek after May 20th of each calendar year, or at any time the creek's flow is obviously low, unless written orders have been issued by the Chief Engineer. Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be bypassed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
3. Permit No. 2765-2 authorizes total storage of up to 216 acre feet of water annually in the dam.

WATER MANAGEMENT BOARD

By: _____

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

OCT 02 2017
date



Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☐ Drilling new well(s) ☐ Using existing well(s)

a) If new wells, how many ____ Have test holes been drilled ☐ Yes ☐ No Drilled by ____
(if yes, please provide copies of logs)

b) If existing wells, how many ____ Provide copy of log(s), if available. Drilled by ____

For either Existing or Proposed Wells:

c) Well Depth (required) ____ Depth to Top of Water Bearing Material ____ Depth to Water from Surface ____

d) Distance to nearest domestic well on applicant's property ____ Property owned by others ____

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) ____

b) System Capacity (gallons) ____ Year Constructed ____

c) Connected to the City of ____ Sanitary System

3. Dugout Information

a) Surface Dimensions ____ Depth ____

b) Depth to water (ground surface to water level) ____

4. Water Storage Dams

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

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

b) Freeboard 5'

c) Crest Width 24'

Crest Length 250'

d) Height 45'

e) Primary Outlet Capacity

If pipe, diameter 2'

f) Secondary Spillway Capacity

Spillway Width

g) X & Y Slope (e.g. 3 to 1 is a typical slope)

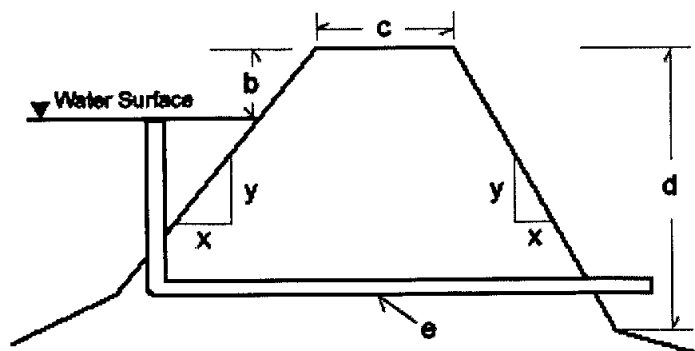
Upstream 3 to 1

Downstream 3 to 1

h) Surface Area of Impoundment 12 acres

i) Storage 216 Acre Feet

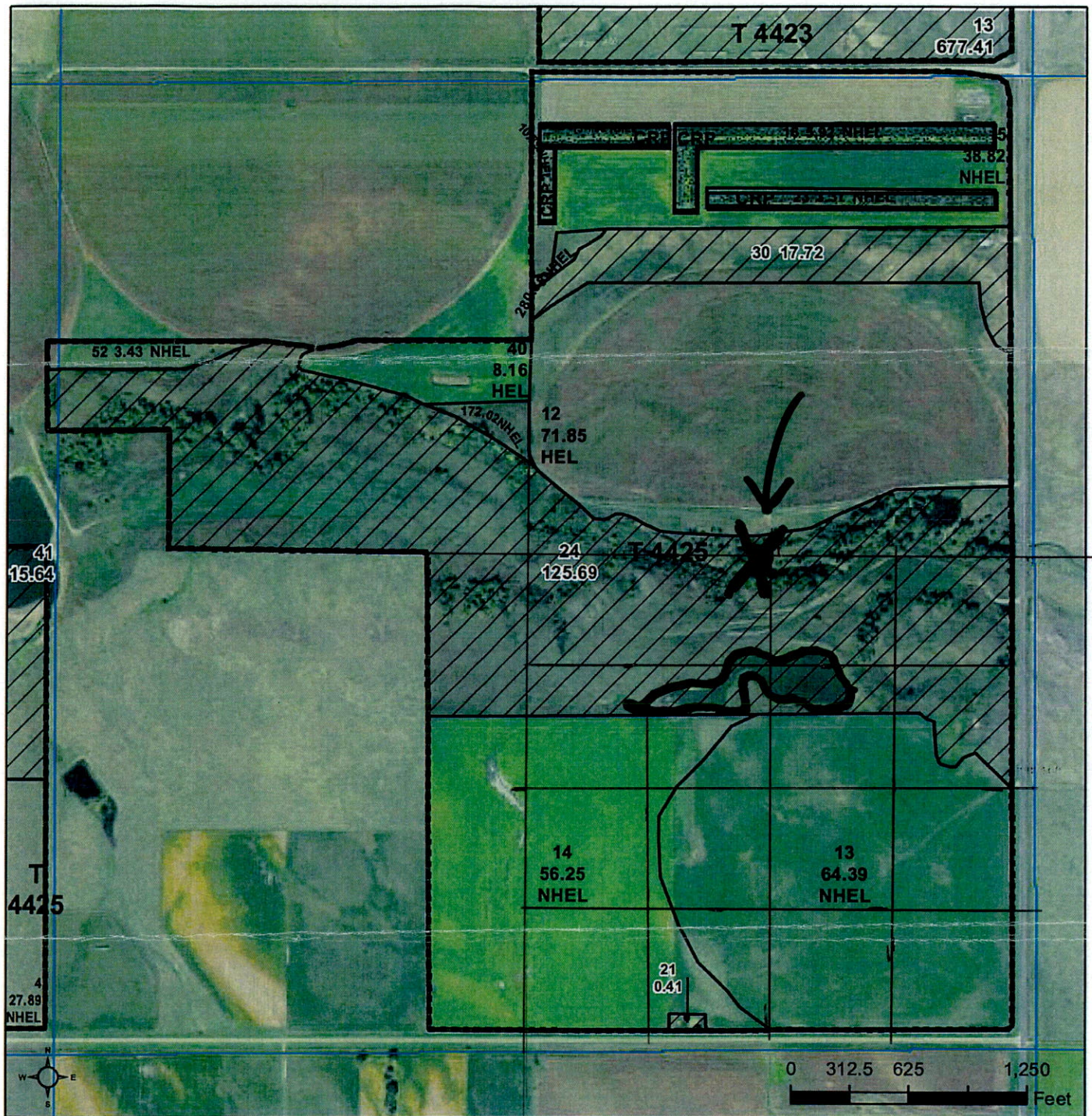
j) Drainage Area Above Dam 480 Acres





United States
Department of
Agriculture

Gregory County, South Dakota



Common Land Unit
Non-Cropland
Cropland
CRP
Tract Boundary
PLSS

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

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2017 Program Year

Map Created March 22, 2017

Farm 4094

27 -95N -70W

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

1-19C-5. Offensive place names revised by United States Board on Geographic Names. The following offensive place names in South Dakota by county were revised by the United States Board on Geographic Names as of January 1, 2014:

County	Current place name	Place name changed to
Codington	Squaw Lake	Serenity Lake
Custer	Little Squaw Creek	Badger Clark Creek
Fall River	Squaw Flat	Hat Creek Flat
Gregory	Squaw Creek	Oscar Micheaux Creek
	Squaw Creek Reservoir	Oscar Micheaux Reservoir
Haakon	Squaw Creek	Sarah Larabee Creek
Harding	Squaw Creek	Slim Buttes Creek
	East Squaw Creek	Meat Hook Creek
	Squaw Tree Spring	Prairie Woman Spring
	West Squaw Creek	Double X Creek
Jones	Squaw Creek	Pitan Creek
Lawrence	Squaw Creek	Cleopatra Creek
	East Branch of Squaw Creek	East Branch Cleopatra Creek
Marshall	Squaw Hill	Six Mile Hill
Meade	Squaw Butte	Vig Buttes
	Squaw Creek	Deer Creek
Moody	Squaw Creek	Isanti Creek
Pennington	Squaw Creek	Cedar Breaks Creek
Oglala Lakota	Little Squaw Humper Creek	Tahc'a Okute Wakpa C'ikala
	Little Squaw Humper Table	Tahc'a Okute Aglehan C'ikala
	Squaw Humper Creek	Tahc'a Okute Wakpa
	Squaw Humper Dam	Tahc'a Okute Mni Onaktake
	Squaw Humper Table	Tahc'a Okute Aglehan
Ziebach	Squaw Teat Butte	Peaked Butte
	Squaw Teat Creek	East Rattlesnake Creek

Source: SL 2009, ch 2, § 7; SL 2014, ch 9, § 6; SL 2015, ch 56 (HJR 1005), eff. May 1, 2015.

*Title 1
Chapter 1-19C-5*

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 5/23, 20 17

RECEIVED OF Brandon L Zeisler 30155 354th Ave Saint Charles SD 57571

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

Fee for Application for Permit No. <u>2765-2</u> to Appropriate Water, to construct and to put water to beneficial use	750	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>2765-2</u>	200	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	950	00

No. 08253

By

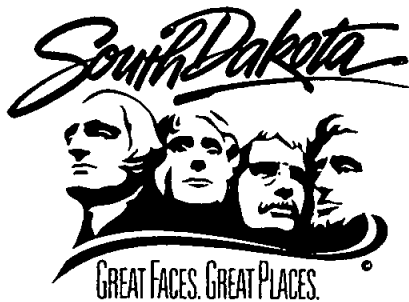
J. [Signature]
Chief Engineer

Gronlund, Eric

From: Gronlund, Eric
Sent: Wednesday, May 17, 2017 3:50 PM
To: Rath, Mark
Subject: Squaw Creek

Ray Rylance is working with the landowner and someone who purchased a portion of the land under No. 1223-2 from Squaw Creek in Gregory County. He's getting the transfer of ownership issues straightened out.

In researching it he found that there are some acres (possibly a whole pivot) that were never covered by permit. He is working to get an application filed. Supposedly they pump from Squaw Creek in the spring during high flows to an off stream storage dam and then rely on the dam to supply the pivot throughout the irrigation season.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 23, 2017

Brandon Zeisler
30155 354th Ave
St. Charles SD 57571

Dear Mr. Zeisler:

Thank you for submitting the *Application for a Permit to Appropriate Water* for irrigation in Gregory County. In order to complete the application, the following is required.

- Enclosed is the aerial photo map submitted with the application. On the map, please mark the location of the diversion point on Squaw Creek with an "X". I am assuming the 216 acre-foot storage dam is located just above the area to be irrigated located in the middle of the N 1/2 SE 1/4 Section 27. Is this correct?
- Your application requests a diversion rate of 800 gallons per minute (gpm). State Statutes limit diversions to 1 cubic foot of water per second (cfs) for each 70 acres irrigated. This would mean that you are allowed approximately 1 cfs or 450 gpm to irrigate the total 70 acres. We understand that in order to accommodate certain irrigation methods, a greater diversion rate is required. Please justify in writing your request for a diversion rate greater than the statutory limit (please explain diversion rate requirement for the project).

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

enclosure

Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota, 57501-3182

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June 4, 2017

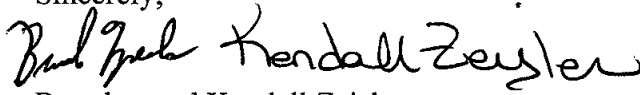
Dear Ms. Schlaak:

Please find enclosed the returned map with an "x" marking the location that water is diverted from Squaw Creek. The 216 acre-feet storage dam is outlined on the map I am enclosing back to you.

On the diversion rate, we incorrectly stated that 800 gallons per minute were needed for the diversion. In fact, we would like to get a 600 gallon per minute diversion rate for the project, as the pivot irrigation system we are planning to use is set up for 600 gallons per minute. If we can get this variance, we would appreciate the board's consideration. However, we understand if the board cannot make the variance, that we would be more than satisfied with a 450 gallon per minute diversion, and would re-nozzle the pivot system accordingly.

Please let us know if you have any other questions for us. We appreciate your time and efforts.

Sincerely,


Brandon and Kendall Zeisler

Gronlund, Eric

From: Raymond D. Rylance <rdr@wilesandrylance.com>
Sent: Tuesday, June 20, 2017 1:23 PM
To: Gronlund, Eric
Subject: RE: [EXT] Zeisler

He called me and I concur

Raymond D. Rylance
Wiles & Rylance
3 East Kemp, Suite 200
Watertown, SD 57201
Telephone: 605-886-5881
Fax: 605-886-3934
rdr@wilesandrylance.com

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From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Tuesday, June 20, 2017 11:06 AM
To: Raymond D. Rylance <rdr@wilesandrylance.com>
Subject: Zeisler

Ray

After I hung up the phone with you, Mr. Zeisler called. He said he had a friend involved in real estate come out and help him determine the approximate size of the dam and the pump rate for the diversion from Squaw Creek.

He indicated the surface area of the dam is 5.2 acres and the pump at Squaw Creek is rated at about 600 gpm. He asked that I amend his application to be for a 700 gpm diversion from Squaw Creek in order to be on the high side.

The application states the pump from Squaw Creek to the holding pond will occur in the spring for 7 to 10 days. Pumping 700 gpm continuously for 10 days equates to 30.9 acre feet of water. I realize there storage dam also receives water from the contributing drainage.

Do you concur or do you want to talk with Mr. Zeisler and get back to me?

On a separate note: it must be one deep draw that storage dam (holding pond) is located on. At 5.2 surface acres, the maximum depth would have to be well over 50 feet deep in order for the dam to be able to store up to 216 acre feet of water. The original application listed the height of the dam to be 45 feet with a 12 acre surface area. So the question becomes whether the 216 acre feet is an accurate reflection the dam's storage. That can likely be something we deal with at the time of licensing.

Eric

Gronlund, Eric

From: Gronlund, Eric
Sent: Friday, June 09, 2017 4:44 PM
To: 'Raymond D. Rylance'
Cc: Schlaak, Karen
Subject: RE: [EXT] Zeisler water permit application

Ray

Mr. Zeisler called to check on the status of his application. I brought up the issue of the pump rate from Squaw Creek to the storage dam. He stated it's a pretty big pump. He put it in the context of if the dam is down to 2/3 full it would take 10 days to fill it up.

Based on this I took the 216 acre foot storage dam by 33 percent which equates to 72.2 acre feet. To pump this volume in a 10 day period requires a pump rate of 1,629 gpm. This is making the assumption that Mr. Zeisler is correct. I also think Mr. Zeisler's application should be reasonable but error on the high side. Therefore he may want the application to reflect a pump rate of 1,800 gpm from Squaw Creek for a 10 day period during high spring runoff. Is this acceptable or do you want to get a more precise pump rate number to DENR?

I've included Karen Schlaak in this email since I am out of the office until Friday, June 16th.

From: Raymond D. Rylance [mailto:rdr@wilesandrylance.com]
Sent: Wednesday, June 07, 2017 4:20 PM
To: Gronlund, Eric
Subject: RE: [EXT] Zeisler water permit application

You are correct, the dam does receive a lot of water from the drainage area. I was advised that in the past once in a while the drainage will fill the dam. I will get you the pump rate to full the dam.

Raymond D. Rylance
Wiles & Rylance
3 East Kemp, Suite 200
Watertown, SD 57201
Telephone: 605-886-5881
Fax: 605-886-3934
rdr@wilesandrylance.com

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From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Wednesday, June 07, 2017 4:16 PM
To: Raymond D. Rylance <rdr@wilesandrylance.com>
Subject: Zeisler water permit application

Mr. Rylance another questions arises as I look at Mr. Zeisler's application. The amount of water claimed is 600 gallons per minute. Mr. Zeisler's June 7th letter on his application indicates this is the amount of water to operate the center pivot.

However, Mr. Zeisler application is twofold. First is to divert from Squaw Creek for 7 – 10 days in the spring during high flows to the storage dam. Secondly is to divert water from the storage dam to supply water to the center pivot as needed throughout the irrigation season. It seems clear the 600 gpm diversion rate is for the diversion from the storage dam to the pivot. What isn't clear is the diversion (pump) rate from Squaw Creek to the storage dam for that short period of time in the spring.

DENR recognizes the dam receives water from the contributing drainage area in addition to the Squaw Creek, so it unlikely is never empty. The question is what is the intended pump rate from Squaw Creek to the dam.

If it were 600 gpm, the pumping at this rate for 10 days is 26.5 acre feet and equates to 12 percent of the storage capability in the dam. This 26.5 acre feet of water is enough to apply 4.5 inches of water to the proposed 70 acres to be irrigated (not accounting for losses dues to evaporation, etc.).

It would take about 81 days of pumping at 600 gpm to fill the entire 216 acre foot storage dam if empty.

So the question what is the intended pump rate from Squaw Creek to supplement the storage dam each spring?

Please let me know if this is a question I should direct to Mr. Zeisler.

Thanks - Eric

From: Raymond D. Rylance [<mailto:rdr@wilesandrylance.com>]
Sent: Monday, June 05, 2017 3:09 PM
To: Gronlund, Eric
Subject: RE: [EXT] Zeisler water right transfer of ownership

we agree

Raymond D. Rylance
Wiles & Rylance
3 East Kemp, Suite 200
Watertown, SD 57201
Telephone: 605-886-5881
Fax: 605-886-3934
rdr@wilesandrylance.com

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From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Monday, June 05, 2017 3:01 PM
To: Raymond D. Rylance <rdr@wilesandrylance.com>
Subject: FW: Zeisler water right transfer of ownership

From: Gronlund, Eric
Sent: Thursday, May 25, 2017 1:26 PM
To: Ray Rylance
Cc: McMath, Genny
Subject: Zeisler water right transfer of ownership

Mr. Rylance:

DENR received the transfer of ownership by Brandon Zeisler to transfer a portion of Water Right No. 1223-2 back to his name. Mr. Zeisler retains ownership of the westerly most pivot which makes about a ½ rotation. The split of the water right will be based on acres with each landowner getting the proportionate share of diversion rate authority from Squaw Creek and the accompanying priority date.

Attached is a map showing the systems and Water Right No. 1223-2 for reference.

Breakdown of acres

- Marcel Thoene – 229 acres with diversion rate of 2.98 cfs with priority dates of 0.32 cfs/ Oct. 16, 1969 and 2.66 cfs / Nov. 18, 1974.
- Brandon Zeisler – 72 acres with a diversion rate of 0.94 cfs with priority date of Oct. 16, 1969.

The reason Mr. Zeisler gets the earlier priority date for the land he owns based on the fact it is associated with the earlier Water Right No. 1007-2 that was incorporated into No. 1223-2. This gives a shared priority date for the Zeisler portion of the water and a small portion of the Thoene water right. The larger portion of the Thoene water right will be junior. That bring up an interesting issue in that the Thoene's right will have the stored water in the large reservoir but may have to bypass inflows if the Zeisler water right is not satisfied.

Diversion point

Water Right No. 1223-2 has four diversion points associated with it.

Is it correct to assume the Thoene portion of the water right should be the diversion point from Squaw Creek Reservoir and a point on Squaw Creek just south of the center pivot?

That would then mean the Zeisler portion of the water right would be the two points in the NE ¼ Section 27, T95N, R70W just to the south of the pivot. A dugout is located at the point of one of the Zeisler diversions.

Seeking your input as counsel for Mr. Zeisler to make sure DENR is understanding the transfer and subsequent dividing of the water right.

Do you agree with our plan for dividing the water right?

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

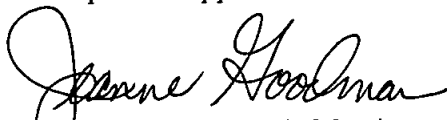
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2765-2, Brandon Zeisler**

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. 2765-2, Brandon Zeisler, 30155 354th Avenue, St Charles SD 57571

The Chief Engineer is recommending APPROVAL of Application No. 2765-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. This permit does not authorize diversion of water from Oscar Micheaux Creek after May 20th of each calendar year, or at any time the creek's flow is obviously low, unless written orders have been issued by the Chief Engineer. Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be bypassed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
3. Permit No. 2765-2 authorizes total storage of up to 216 acre feet of water annually in the dam.

See report on application for additional information.


Jeanne Goodman, Chief Engineer

NOTE: The dam on this permit application is not listed on the National Inventory of Dams. No alteration to the dam is authorized unless plans and specifications are submitted and approved by the Department of Environment and Natural Resources.

REPORT ON WATER PERMIT APPLICATION NO. 2765-2

Brandon Zeisler
30155 354th Avenue
St. Charles, SD 57571
August 8, 2017

Water Permit Application No. 2765-2, proposes to appropriate 1.56 cubic feet per second (cfs) of water from Squaw Creek (now known as Oscar Micheaux Creek) located in the NW ¼ SE ¼ Section 27-T95N-R70W into a 216 acre-feet storage dam located in the N ½ SE ¼ Section 27 T95N-R70W. Water from the dam will then be diverted at an application rate of 1.33 cfs for irrigation of 70 acres located in the SE ¼ Section 27-T95N-R70W.

The applicant requested an annual period of use to divert water from Oscar Micheaux Creek to the dam each spring for approximately seven to ten days until May 20, and divert water from the dam to the irrigation system from May 1 through October 31.

The applicant is also requesting a diversion rate greater than the statutory limit of 1.0 cfs per 70 acres.

Review of the Water Source and Existing Water Rights

The source of water for this application is Oscar Micheaux Creek. Oscar Micheaux Creek is a small prairie creek that originates in Nebraska, flows into South Dakota, and confluences with Ponca Creek approximately three stream-miles downstream from the applicant's proposed diversion point. Ponca Creek flows into Nebraska approximately one mile downstream from the confluence of these two creeks.

The creek has a drainage area of approximately 13.76 square miles upstream from the diversion point. This drainage area includes several unnamed creeks which confluence with Oscar Micheaux Creek upstream of the proposed diversion point.

The 216 acre-feet off stream storage dam from which the applicant will be directly diverting water to the irrigation system has a separate small drainage area of approximately 0.32 square miles.

Utilizing the USDA-NRCS method for estimating annual surface water yield for streams, Oscar Micheaux Creek at this site, and the drainage area to the storage dam, have an estimated combined 80% probability of yielding 152 acre-feet annually. The estimated annual yield with a 50% probability is 377 acre-feet, and the estimated annual yield with a 20% probability is 978 acre-feet.

There are two upstream water rights authorized to divert water from Oscar Micheaux Creek, Water Right Nos. 1223A-2 and 1223B-2. Water Right No. 1223-2 was originally held by the applicant, but was recently divided between the applicant and another landowner as the result of

an ownership change. The diversion points for both permits are located in Section 27-T95N-R70W.

Water Right No. 1223A-2 authorizes the diversion of 2.98 cfs from Oscar Micheaux Creek located in the SE ¼ NW ¼ Section 27, and storage in a 417 acre-feet dam (now known as Oscar Micheaux Reservoir) located on the creek in the SW ¼ NW ¼ Section 27; both in T95N-R70W. Oscar Micheaux Reservoir is listed on the National Inventory of Dams (NID) as ID No. SD02176 and considered a small size Category 3, low hazard dam. The storage dam is located upstream approximately ¾ of one-mile from the applicant's proposed diversion point from the creek. Water Right No. 1223A-2, authorizes the combined diversion of 2.98 cfs for irrigation of 229 acres located in Sections 22, 27, and 28; all in T95N-R70W.

Water Right No. 1223B-2, held by the applicant, authorizes the diversion of 0.94 cfs of water from Oscar Micheaux Creek located in the NW ¼ SE ¼ Section 27, and a dugout located along the creek located in the SE ¼ NE ¼ Section 27, both in T95N-R70W. Water Right No. 1223B-2 authorizes the diversion of water for irrigation of 72 acres located in Section 27-T95N-R70W.

There are no existing water rights/permits diverting water from Oscar Micheaux Creek or Ponca Creek located downstream of this project.

Discussion

The applicant has applied for 1.56 cfs (700 gpm) from Oscar Micheaux Creek to supply water to a 216 acre-feet off stream storage dam. Water stored in the dam will then be diverted at a rate of 1.33 cfs (600 gpm) to irrigate 70 acres of land. The applicant proposes to pump from the creek to the dam for seven to ten days in May during spring runoff. The applicant stated the overflow from the dam authorized by Water Right No. 1223A-2 located directly upstream from the applicant's proposed diversion point from the creek, generally occurs during the spring runoff. It appears to be the applicant's intent to capture flow during spring runoff events.

The applicant previously held Water Right No. 1223-2 which included diverting water from Oscar Micheaux Creek, Oscar Micheaux Reservoir, and a dugout for irrigation purposes. In review of the Irrigation Questionnaires from 1983 thru 2016, there have been eight years indicating no irrigation had occurred. No reasons were given for having not irrigated, except in 1993 when the permit holder indicated too much rain.

The applicant is requesting a diversion rate greater than the statutory limit. South Dakota Codified Law (SDCL) 46-5-6 states in part that... *"The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land"*.

This irrigation system and dam have been in place for a number of years without a water permit for irrigation of the land. The applicant has indicated the irrigation system currently operates at 1.33 cfs but could re-nozzle the pivot irrigation system to 1.0 cfs if required.

Sufficient water may not be available throughout the entire requested period of use, particularly during dry periods, and still protect downstream domestic use. The possibility exists that pumping of water from the creek at the requested rate could, in dry climatic conditions, dry up the creek. If approved, the water permit should contain a qualification that at all times sufficient flow must be bypassing the diversion point while pumping to protect domestic use downstream.

Conclusions

1. Water Permit Application No. 2765-2, proposes to appropriate 1.56 cubic feet per second (cfs) of water from Squaw Creek (now known as Oscar Micheaux Creek) located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27-T95N-R70W into a 216 acre-feet storage dam located in the N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 27 T95N-R70W. Water from the dam will then be diverted at an application rate of 1.33 cfs for irrigation of 70 acres located in the SE $\frac{1}{4}$ Section 27-T95N-R70W.
2. The applicant is requesting a diversion rate greater than the statutory limit of 1.0 cfs per 70 acres. The irrigation system currently operates at 1.33 cfs. The applicant has indicated the irrigation system could be re-nozzled to 1.0 cfs if required.
3. There are no existing water rights/permits diverting water from Oscar Micheaux Creek or Ponca Creek located downstream of this project.
4. The possibility exists that pumping of water from the creek at the requested rate could, in dry climatic conditions, dry up the creek. If approved, the water permit should contain a qualification that low flows as needed for domestic use; including livestock watering and prior water rights must be bypassed.



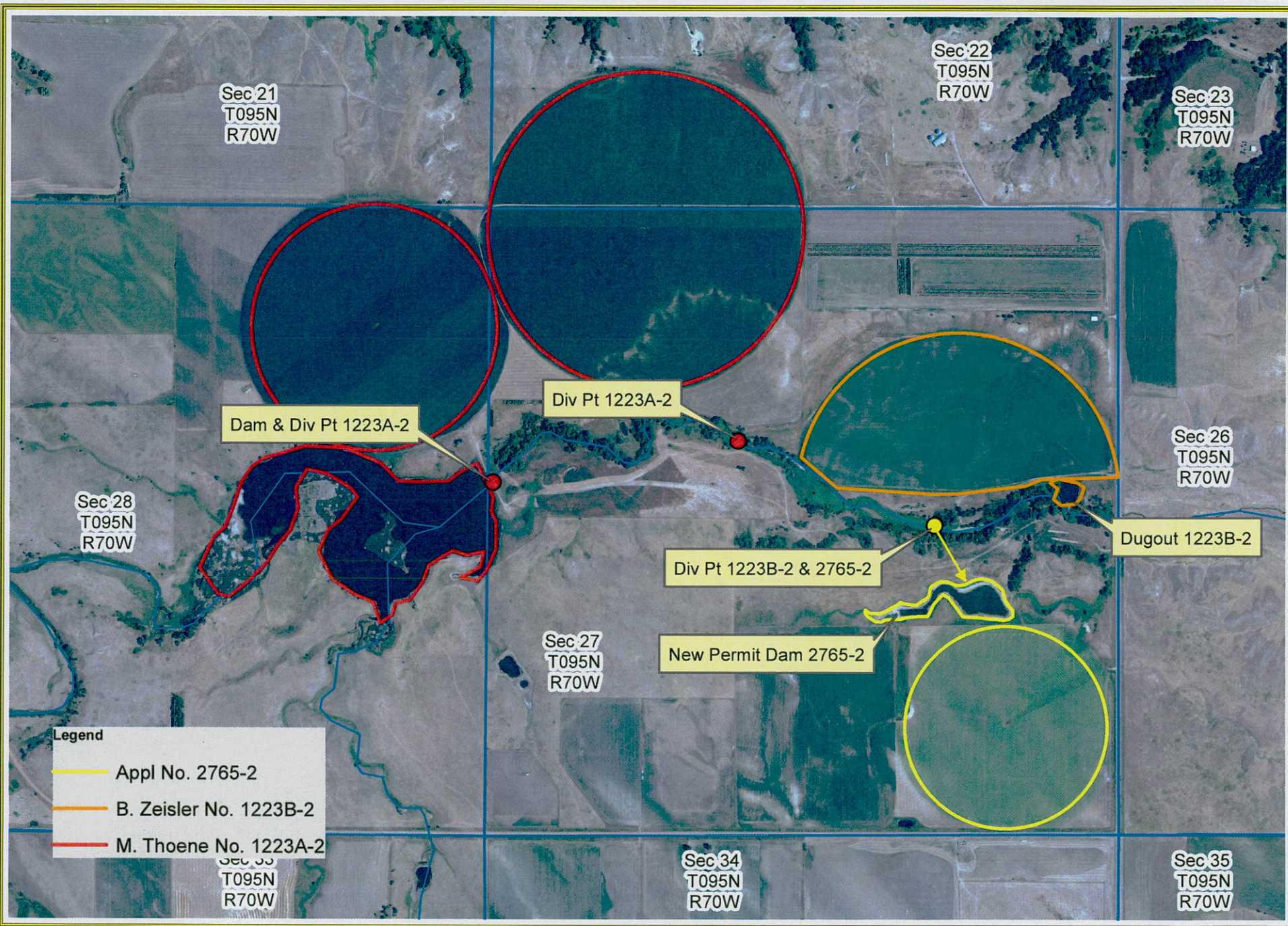
Mike DeFea
Natural Resources Engineer II
DENR, Water Rights Program

Reviewed by:



Mark Rath
Natural Resources Engineer III
DENR, Water Rights Program

Water Rights Nos. 1223A-2, 1223B-2 and Permit Appl. No. 2765-2



Affidavit Of Publication

STATE OF SOUTH DAKOTA
COUNTY OF GREGORY

ss.

C. J. FAHRENBACHER of said county being first duly sworn, on oath says that he is the publisher of THE BURKE GAZETTE, a weekly newspaper printed and published in Burke said County of Gregory and has full and personal knowledge of all facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said county for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

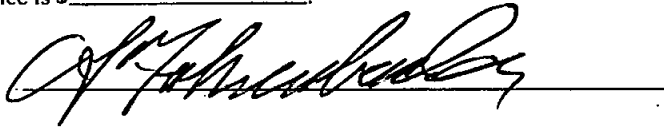
DENR-Notice of Application

a printed copy of which, taken from the paper in which the same was printed, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each

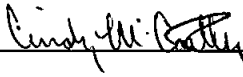
week for 1 successive weeks, on the day of each week on which said newspaper was regularly published, to-wit:

8/23/17

that the full amount of the fees for the publication of the annexed notice is \$ 35.97



Subscribed and sworn to before me this 23rd day
of August, 2017



Notary Public
County of Gregory, South Dakota

Commission Expires
October 30, 2021

RECEIVED

SEP 05 2017

WATER RIGHTS
PROGRAM

*1st 2 paragraphs on back
side of this page*

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2765-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting 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 5, 2017.

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.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

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

Published once at the total approximate cost of \$35.97.

**NOTICE OF APPLICATION
NO. 2765-2**

to Appropriate Water

Notice is given that Brandon Zeisler, 30155 354th Ave, St. Charles SD 57571 has filed an application for a water permit to appropriate 1.56 cubic feet of water per second (cfs) from Oscar Micheaux Creek for irrigation. The applicant is proposing to divert water from Oscar Micheaux Creek located in the NW 1/4 SE 1/4 Section 27-T95N-R70W into a 216 acre-feet storage dam each spring up until May 20th. The storage dam is located in the N 1/2 SE 1/4 Section 27-T95N-R70W. The dam also receives water from the contributing drainage basin. Water from the dam will be diverted as needed throughout the irrigation season at a rate of 1.33 cfs for irrigation of 70 acres located in the SE 1/4 Section 27-T95N-R70W which is approximately 15 miles southeast of Burke SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

The United States Board of Geographic Names revised the name of Squaw creek to Oscar Micheaux Creek on January 1, 2014.

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AUG 25 2017

WATER RIGHTS
PROGRAM

**NOTICE OF
APPLICATION
NO. 2765-2
to Appropriate Water**

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The United States Board of Geographic Names revised the name of Squaw Creek to Oscar Micheaux Creek on January 1, 2014.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2765-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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/s/ Steven M. Pirner,
Secretary,
Department of
Environment and
Natural Resources.
Published once at the total approximate cost of \$80.06

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 issues(s), to wit:

Wednesday, August 23, 2017

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$80.06

Signed:

Penny Hohbach

Subscribed and sworn to before me this 23rd day of August, 2017.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515

DEB TOWNSEND
Notary Public
SEAL
South Dakota

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, August 16, 2017 8:42 AM
To: 'phohbach@mitchellrepublic.com'
Subject: 2765-2, Brandon Zeisler
Attachments: 2765-2public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on August 23, 2017.

Brandon Zeisler, 30155 354th Ave, St. Charles SD 57571 (605 654-2363 or cell 605 830-1069) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, August 16, 2017 8:41 AM
To: cindy - Burke Gazette (burkegaz@gwtc.net)
Subject: 2765-2, Brandon Zeisler
Attachments: 2765-2public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on August 23, 2017.

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Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

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

August 16, 2017

Brandon Zeisler
30155 354th Ave
St. Charles SD 57571

Dear Mr. Zeisler:

Water Permit Application No. 2765-2 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 Burke Gazette printed at Burke SD (Ph # 605-775-2612) and the Daily Republic printed at Mitchell SD (Ph # 605-996-5514). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and 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(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. 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
Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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.

NOTICE OF APPLICATION NO. 2765-2 to Appropriate Water

Notice is given that Brandon Zeisler, 30155 354th Ave, St. Charles SD 57571 has filed an application for a water permit to appropriate 1.56 cubic feet of water per second (cfs) from Oscar Micheaux Creek for irrigation. The applicant is proposing to divert water from Oscar Micheaux Creek located in the NW 1/4 SE 1/4 Section 27-T95N-R70W into a 216 acre-feet storage dam each spring up until May 20th. The storage dam is located in the N 1/2 SE 1/4 Section 27-T95N-R70W. The dam also receives water from the contributing drainage basin. Water from the dam will be diverted as needed throughout the irrigation season at a rate of 1.33 cfs for irrigation of 70 acres located in the SE 1/4 Section 27-T95N-R70W which is approximately 15 miles southeast of Burke SD. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

The United States Board of Geographic Names revised the name of Squaw creek to Oscar Micheaux Creek on January 1, 2014.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2765-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting 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 5, 2017.

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Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of _____.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

OCT 02 2017

Brandon Zeisler
30155 354th Ave
St Charles SD 57571

Dear Mr. Zeisler:

Enclosed is Water Permit No. 2765-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

A 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 information 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,

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

enclosures

ED 2765-2

FEB 05 2018
WATER RIGHTS
PROGRAM

Form 10

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

Date 12/28/17

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

FROM: Brandon Zeisler
(name)
30155 354th Ave
(address)
St Charles SD 57571
(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. 2765-2 states that the water use system is to be constructed by September 5, 2022, and water is to be put to beneficial use by September 5, 2026.
(date) (date)

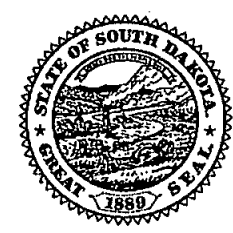
The water use system was completed on May, 1992.
(date)

Applying the water to beneficial use was completed on Crop year 1992.
(date)

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

[Signature]
(signature)

7-98



RECEIVED

MAY 18 2018

WATER RIGHTS
PROGRAM

SD EForm - 0495LD V2

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

Mail to: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 2765-2

Date: 5-14-18

I/We request that Water Right/Permit No. 2765-2 formerly owned by:
Brandon Zeisler be transferred to:

New Owner Name: Russell Garwood
Address: 47951 901 Rd
City, State, Zip Butte NE 68722 Telephone No. 402-775-2542

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

☒ I understand that the validity of Water Right/Permit No. 2765-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Russell Garwood, the new owner, certify that the above information is true and correct.

Russell Garwood
(signed by new owner)

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

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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date May 18

, 20 18

Russell or Louise Garwood 47951 901st Rd Butt, NE 68722

RECEIVED OF _____

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use		
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____ 2765-2	50	00
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	50	00

No. **08687**

By

Jeanne Goodman
Chief Engineer

gm

File No. 1223B-2

2765-2 ✓

1223A-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Mrs. Russell Garwood, 47951 901st Rd, Butte NE 68722

DATE: May 21, 2018

TELEPHONE: 402 775-2542

RE: land ownership under Water Right No. 1223B-2 and Water Permit No. 2765-2

COMMENTS:

Nos. 1223B-2 and 2765-2:

Russell Garwood submitted a "transfer of ownership" form for both of the above numbers. The transfer forms did not include a legal description of the land he purchased.

I called and spoke with Mrs. Garwood, she indicated they had purchased all of the land that Brandon Zeisler owned. Water Right No. 1223B-2 and Water Permit No. 2765-2 should be transferred in their entirety.

No. 1223A-2:

She further indicated they would be operating the irrigation system described in Water Right No. 1223A-2 held by Marcel Thoene, Alton IA. The annual irrigation questionnaire for No. 1223A-2 should be sent to Garwood's as that of operator or manager.



Genny McMath
Water Rights Program

2765-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 22, 2018

1223A-2
1223B-2
2765-2

Russell Garwood
47951 901st Rd
Butte NE 68722

Dear Mr. Garwood:

I am writing to acknowledge receipt of the transfer forms and filing fees you submitted for changing ownership on Water Right No. 1223B-2 and Water Permit No. 2765-2. The ownership changes have been completed. Nos. 1223B-2 and 2765-2 formerly held by Brandon Zeisler are now listed in your name.

In mid-October each year, we mail out irrigation questionnaires to irrigators to obtain information on how much water was withdrawn and applied from each water source. The forms are due back in our office by December 1st. I have included a copy of last year's forms to give you an idea of how to report the information and what type of information is needed.

It is my understanding that you will be operating the irrigation system described in Water Right No. 1223A-2, held by Marcel Thoene. The annual irrigation questionnaire for Water Right No. 1223A-2 will be directed to your attention until you or Marcel notifies us otherwise. This does not change ownership of the water right. I have included a copy of the water right and last year's irrigation questionnaire for your review.

The receipts for the filing fees you submitted for the ownership changes are enclosed. If you have any questions concerning any of the enclosed information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

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

enclosures: water rights; irrigation questionnaires; receipts