

No. 28 River
 Division No. 2 S. Cheyenne District

PERMIT

to appropriate water from
 Dry Draw
 Fall River, County, South Dakota

Name of applicant
 Laura J. Mudge
 Name of diversion works Laura J.
 Mudge Reservoir & Ditches

Date of first receipt at office of State
 Engineer July 26 1907

Amount of appropriation for diversion
 \$100

Corrected appropriation
 \$100

Date of water right July 26
 1907

Recorded in Vol. 1 Page 47

One-fifth of work to be completed
 April 7 1910

Whole work to be completed
 October 7 1912

Final proof of use of water
 October 7 1912

Approved September 26 1907

Samuel H. Lea
 State Engineer.

By Deputy.

STATE OF SOUTH DAKOTA
 COUNTY OF HUGHES
 I hereby certify that the within and
 foregoing instrument is a true, correct and
 complete transcript of the instrument which
 it purports to be, as the same was filed
 record in the office of the State Engineer.
 Witness my hand and official seal, done
 at my office in Pierre, State of South Dakota
 this 4 day of April 1908
 Samuel H. Lea
 State Engineer

No. 28

Water Division No. 2 So. Cheyenne Water District.

(Blanks to be filled by the State Engineer.)

COPY

APPLICATION FOR A PERMIT To appropriate Water Within the State of South Dakota

(NOTE--Draw a line through items not applicable.)

1. Name of applicant ~~Laura J. Mudge~~ JOSEPH G. TROTTER
 Postoffice address Edgewood, County Fall River, State South Dakota
~~I--If a corporation--~~
~~(a) Name of same~~
~~(b) Date and place of incorporation~~
~~(c) Amount of capital stock~~
~~(d) Amount paid in~~
~~(e) Names and addresses of directors~~

(NOTE--A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

- (a) Method of accomplishing the work. (Whether by contract, employment of others, or by direct labor) By Direct Labor
~~(b) Cash on hand, \$~~ ~~(c) Treasury stock, \$~~
~~(d) Bonds to be issued, \$~~ ~~(e) Other resources, \$~~
 2. Name of diversion works Laura J. Mudge Reservoir and Ditches
 3. Quantity of water claimed Six cubic feet per second.
 4. Source of water supply Flood Water from Dry Draws
 5. Location of point of diversion No. 1 153 Rds E. and 31 Rds S. from the 1-4 Sec. cor. Between Sec. 22 and 24 in town 10 S. R 2 E. B. H. M. and No. 2 is 75 Rds S. and 10 links E of NW Sec. cor of Sec. 19 in town 10 S. R 3 E Right bank
 6. Annual periods during which water is to be used during Flood Water and when Reservoirs are full
 7. To be used for: Irrigation

I. Irrigation or domestic use:

- (a) Number of acres to be irrigated 320 acres.
 (b) Legal subdivisions to be irrigated SW 1-4 of Sec. 12 and NW 1-4 Sec. 24
Town 10 S. R 2 E. B. H. M.

(NOTE--A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

~~(c) Statement as to domestic use (giving location, etc.)~~

III. Milling, power, manufacturing, transportation, or other purposes--

- ~~(a) Nature of use~~
~~(b) Amount of power to be generated~~ horse power
~~(c) Location of plant~~
~~(d) Method of developing power~~
~~(e) Point where water will be returned to stream~~

8. Estimated cost of works:

(a) Head gates, \$ (b) Pumping plant \$
 (c) Plumbing, \$ (d) Canal—earth, \$ rock, \$
 (e) Other structures \$ Total, \$

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.) and head gate on

II. Dimensions of works:

(a) Dam: Height No. 1 2-1-2 to 2 feet; length at bottom feet; length at top feet; thickness at bottom No. 1 1-2 feet; thickness at top 12 feet; slope of front (water) face 3 feet; slope of back face 2 feet; material used in construction Dirt and boulders

(b) Reservoir: Capacity when filled No. 1 3 No. 2 3-1-4 acre feet. Surface area at high water mark No. 1 3-4 No. 2 1-2 acres.

DEPTH AT OUTLET—FEET	SURFACE AREA AT EACH..... FEET OF DEPTH AT OUTLET—ACRES	CAPACITY— ACRE-Feet
No. 1 2-1-2		3
No. 2 20		5-1-4

(c) Head gate: Width 2 feet feet; height 2 feet
 Material 2 inch plank

(d) Canal: Total length 1 miles, and 275 feet

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At mile	0-5 feet	6 feet	7 feet	No. 1 3 No. 2 19 feet
At mile	 feet	 feet	 feet	 feet
At mile	 feet	 feet	 feet	 feet
At mile	 feet	 feet	 feet	 feet
At mile	 feet	 feet	 feet	 feet

[Give dimensions where reductions in size are made.]

10. Time required for completion of work 5 years.

11. Time required for complete application of water to the proposed beneficial use Five years.

13. Choice of newspaper for publication of notice of intention to appropriate Edgemont Express

STATE OF SOUTH DAKOTA

County of Fall River } ss

I, Laura J. Hudgro

....., being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of

Owner

(Owner, manager or engineer)

that I have read the above and foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed Laura J. Hudgro

Subscribed and sworn to before me this 23rd day of July 1907

Howard H. Thompson

Notary Public (or other qualified officer).

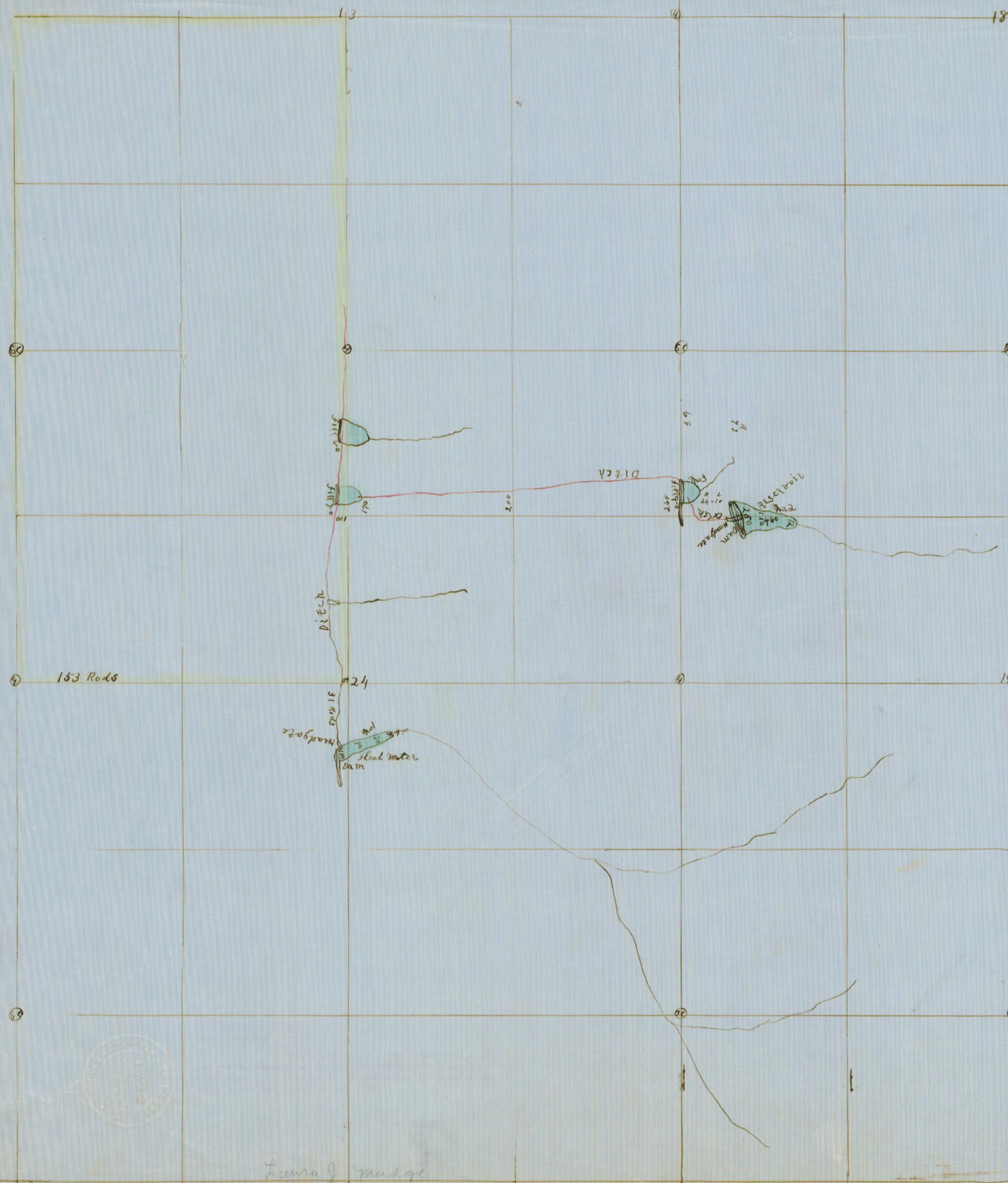
My Commission expires Jan. 15- 1911

The Laura J. Mudge Reservoir & Ditches
 Surveyed By the True Meridian
 By Robt Wallace D.S. Surveyor
 S. Dak
 Surveyed June 1907

J. Robt Wallace upon oath
 do say that this map & survey
 were made by me & the same
 are correct
 Robt Wallace
 D.S. Surveyor
 S. Dak

State of S. Dak {ss.
 County of Fall River

Subscribed and sworn to before me this
 11th day of July 1907.
 Dora Anderson
 My commission expires Nov. 14, 1908. Notary Public.



(W.R. # 28-2)
 Map # 28-2

Remarks by State Engineer:

This application is for the right to appropriate and store the flood water from several draws for irrigation purposes.

STATE OF SOUTH DAKOTA
County of Hughes

Pierre, South Dakota, October 7 1907

This is to certify that the foregoing application was received at this office at 9 o'clock P. M. upon the 26 day of July 1907 and that after examination it was found to comply with the provisions of the irrigation laws of South Dakota. Notice of Intention was duly published and a hearing was held in this office upon September 25, 1907.

Samuel H. Lea
State Engineer.

By Deputy.

Number of permit 28

Date of first receipt of application July 26 1907

Date of receipt of application for correction 1907

Date of receipt of corrected application 1907

Date from which application may claim right July 26 1907

Approved September 26 1907, Recorded in Book 1 Page 47

This is to certify that I have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and I hereby grant the same as stated herein, subject, however, to the following limitations and conditions.

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before April 7 1910.

2d. The whole of said work is to be completed on or before October 7 1912.

3d. The limit of time for proof of beneficial use of water appropriated in accordance herewith is October 7 1912.

4th. The water appropriated shall be used for the purpose of Irrigation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 4.6 cubic feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied on or before October 7 1912; said water to be used during the following described annual periods.

During flood water and when reservoirs are full.

Witness my hand this 7 day of October 1907.

Samuel H. Lea
State Engineer.

By Deputy.

WATER LICENSE NO. 28-2

(1) WHEREAS, On the 26th day of July A. D. 19 07

Laura J. Mudge

made Water Right Application No. 28-2 for a permit to use 4.6 cubic feet per second of the waters of dry draws

County of Fall River, State of South Dakota, for irrigation

purposes; and

(2) WHEREAS, On the 7th day of October A. D. 19 07

Permit No. 28-2, with a date of priority of July 26, 1907

was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water

supply system therein described on or before the 7th day of October A. D. 19 12 and for the

application to beneficial use of said water on or before the 7th day of October A. D. 19 12

and, Whereas, on the 16th day of August, 1974, the Permit was transferred to

Joseph G. Trotter, Provo, South Dakota

and;

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 4.6 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent,

for irrigating the following land in T10S, R2E

		Acrea
Section 13	NW $\frac{1}{4}$ NE $\frac{1}{4}$	30
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	15
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	10
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	35
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	20
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	15
Section 24	SW $\frac{1}{4}$	160
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	35
Total		320 Acres

(5) NOW, WHEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Joseph G. Trotter

_____ of Pravo, South Dakota
the holder _____ and owner _____ of said permit No. 28-2 a water right, dating from July 26, 1907
_____ to use of 4.6 cubic feet per second of the waters
of Dry draws

in the County of Fall River and State of South Dakota, or so much thereof as may be necessary for the
purposes hereinbelow mentioned, to be diverted at a point 1340 feet South of the NW Corner, Section 25, T108, R2E

and conduct to and upon portions of Sections 13 and 24, T108, R2E, more fully described
on the face of this license

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 28-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 16th day of August A. D.
Nineteen Hundred and Seventy - four

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer DONALD DRISCOLL

Form 15.

Permit No. 28-2

Water Diversion No. 2 SOUTH CHEYENNE RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Joseph C. Trotter
the holder of
Permit No. 28-2, issued upon Application No. 28-2, bearing date of priority of July 26, 1907
authorizing the diversion of 4.6 cu. ft. per second of the waters of
dry draw County of Fall River, State of South Dakota at
a point 1340 feet South of the NW Corner, Section 25, T10N. R2E
for irrigation
purposes, has s complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use up to 25 cu. ft. per second of water.

Date August 16, 1974

By: WATER RIGHTS COMMISSION

DONALD DRISCOLL, Chief Engineer

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA } ss
County of Fall River

H. Goodard being duly sworn, deposes and says the annexed printed copy of Notice Intention to appropriate Water was taken from the Edgemont Express a newspaper which during the whole time of publication of said notice hereinafter stated, has been and is printed and published in the City of Edgemont County of Fall River and State of South Dakota.

That the said notice was published in said newspaper on the following dates:

August 9, August 16 August 23
and August 30—07

in each and every issue of the full number thereof, the first publication being made on the 9th day of August 1907 and the last publication on the 30th day of August 1907, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was the printer and publisher of the said newspaper.

Subscribed and sworn to before me this 31st day of August A. D. 1907

Wm. H. Johnson
Notary Public, Fall River County, S. D.

Appropriation of Water.

Form 9—Notice of Intention to appropriate Water. No. 20.
(First Publication Aug. 9th, 1907.)
Office of the State Engineer,
Pierre, S. D., July 27, 1907.

Notice is hereby given that Mrs. Laura J. Mudge, whose postoffice address is Edgemont, Fall River County, S. D., has made an application in accordance with the provisions of the Irrigation laws of South Dakota for a permit to appropriate for beneficial use 0.00 cubic feet of water per second of time from Sever, at draws through the Laura J. Mudge Reservoirs and ditches the points of diversion of which are to be located upon the right bank of said streams in the S. W. 1/4 of the N. W. 1/4 of Section 10, Township 10 S., Range 3 E., B. H. M. and in the N. E. 1/4 of the S. W. 1/4 of Section 21, Township 10 S., Range 2 E., B. H. M. said water to be used for the purpose of irrigation upon the S. W. 1/4 of Sec. 10, and the N. W. 1/4 of Section 21, T. 10 S., Range 2 E., B. H. M.

This application will be taken up by the state engineer at his office at Pierre for consideration and appropriate action upon the 25th day of Sept., 1907, at 0.3. m., at which time all persons who believe that the prior rights would be injuriously affected by the allowance of the permit should be detrimental to the public welfare, and also parties making the application, and to be benefited, are notified to be present either by sworn affidavit or in person for the purpose of presenting any relative testimony.

SAMUEL H. LEA,
State Engineer.

The Field notes of the Laura J
Mudge, Reservoirs Dams & Ditches.
Dam No. 1 is Located 153 rods east +
31 rods south from the sec. cor. between
Sec. 23 + 24 in town 108, R 2. E B. N. M.
When Dam runs S 2° E. 300 ft. + is
from 2½ ft to 8½ ft high + is to be a flood
water dam to turn water into ditch,
+ headgate is located 17 ft east of north
end of dam + ditch starts at headgate
+ runs, 9 Headgate 2 ft square + made of 2 inch plank

h 200

h 3° E. 300

h 4° E. 300

h 200

h 3° W 400

h 2° W. 50

h 400

h 16° E 50

h 17° E 100

h 20° E 100

h 15° E. 100

h 13° E 100

h 11° E. 100.

h 2° E 300

h 800

Then dam No 2 is located 48 rods south + 24 rods 10 links east, of the N.W. Sec. cor. of sec. 19. Town 10 S R 3. East 13.74. In. To the north end of dam. Then dam runs S 19° E 250 ft. + is a fill of from 2 feet 20 ft fill. + from center of dam reservoir runs East 8° S. 460 ft. in length + the Headgate is located in the center of the dam + at the bottom of dam, + ditch starts at Headgate + runs

N W 3° S. 200.

W 100

N N 37° W 100 + empties into reservoir No 3 which is located 68 rods south from the same Sec. Corner as no. 2. is located from + is 140 ft long. + a fill of 9 ft. Then ditch starts at north end of dam + runs N 35° W 100 ft. then N 2° S 2545 ft + running into ditch No 1.

This Field Notes + Maps were
made by Robt Wallace
D.S. Surveyor
S. Dak

Permit No. 28-2Water Division 2 FALL RIVER Water DistrictREPORT OF EXAMINATION OF WORKS
AND/OR APPLICATION OF WATER TO BENEFICIAL USE

TO: Water Resources Commission, State Office Building No. 2, Pierre, South Dakota 57501

I have this day made a thorough examination of the water use system constructed by LAURA J. MUDGE of EDGEMONT, SOUTH DAKOTA holder of Permit No. 28-2, bearing date of priority of JULY 26, 19 07 authorizing the diversion of 4.6 cu. ft. per second of the waters of DRY DRAWS for IRRIGATION purposes, in FALL RIVER County.

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

The Water Use System consists of,

A. Works used to divert the water:

SMALL COMPACTED EARTH DAM, 25 FT. IN LENGTH;
4 FT. HIGH; 8 FT IN WIDTH.

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

11,900 FT. OF CHANNEL, 25 FT. WIDE; 4 FT. DEEP

C. Works used to apply water to beneficial use. FLOOD IRRIGATION.

WOOD SIPHON TUBES LOCATED EVERY 33 FT.
FIVE SPREADER DIKES IN SEC. 24, T10S., R2E. B.H.M.

The system is in the following condition: FAIR

The point of diversion is located 1300 FEET SOUTH OF THE
NORTHWEST CORNER OF SECTION 24, T10S., R2E. B.H.M.

The works are capable of diverting and conveying to the place of use 25cu. ft. per second of water which is to be used for IRRIGATION

Water has been put to beneficial use to the maximum extent as follows:

SEE ATTACHMENT "A"

comprising a total of 320 acres of land.

SEND TO: JOSEPH G. TROTTER
PROVO, S.D.

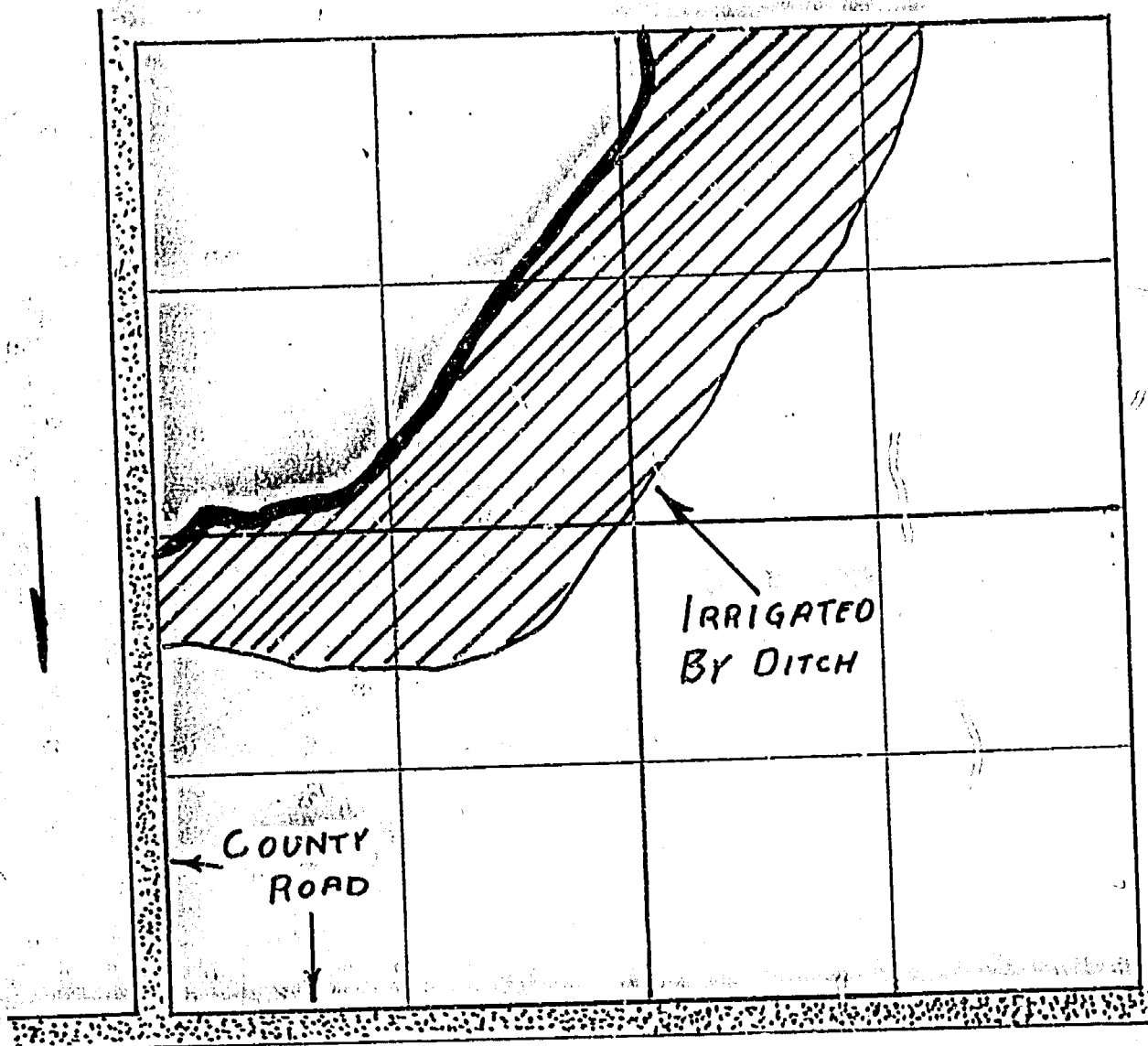
Date

Thomas A. Gardner
(Signature)

THOMAS A GARDNER
WATER RESOURCES ENGINEER

ATTACHMENT "A"

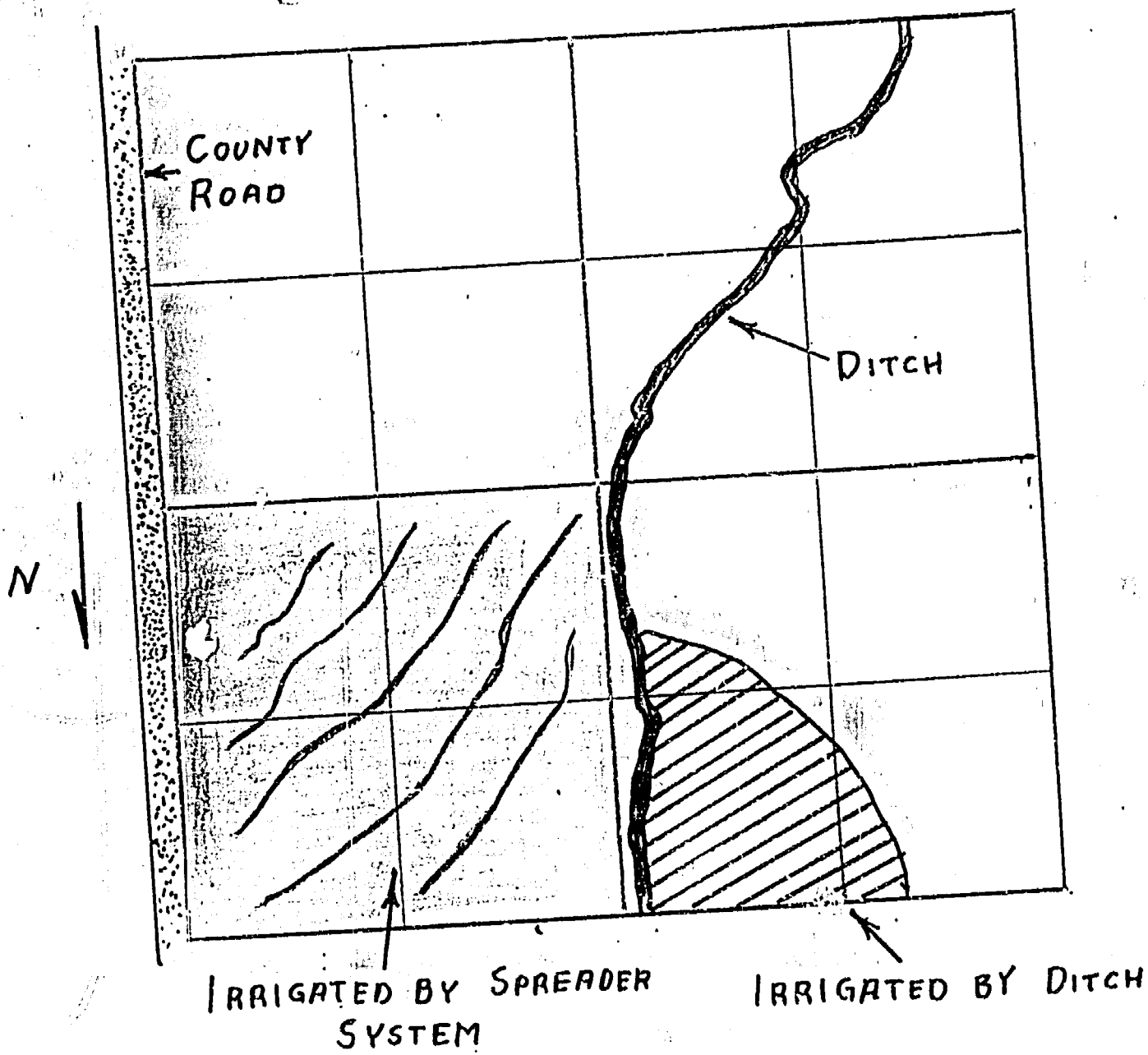
<u>LOCATION</u>	<u>ACRES</u>
SW 1/4 SEC. 24 T10S., R2E., B.H.M.	160
SW 1/4 SE 1/4 " " " "	35
NW 1/4 NE 1/4 SEC. 13 T10S., R2E., B.H.M.	30
SW 1/4 NE 1/4 " " " "	15
NE 1/4 NW 1/4 " " " "	10
SE 1/4 NW 1/4 " " " "	35
NE 1/4 SW 1/4 " " " "	20
NW 1/4 SW 1/4 " " " "	15
TOTAL	320



SECTION: 13

TOWNSHIP: 10S

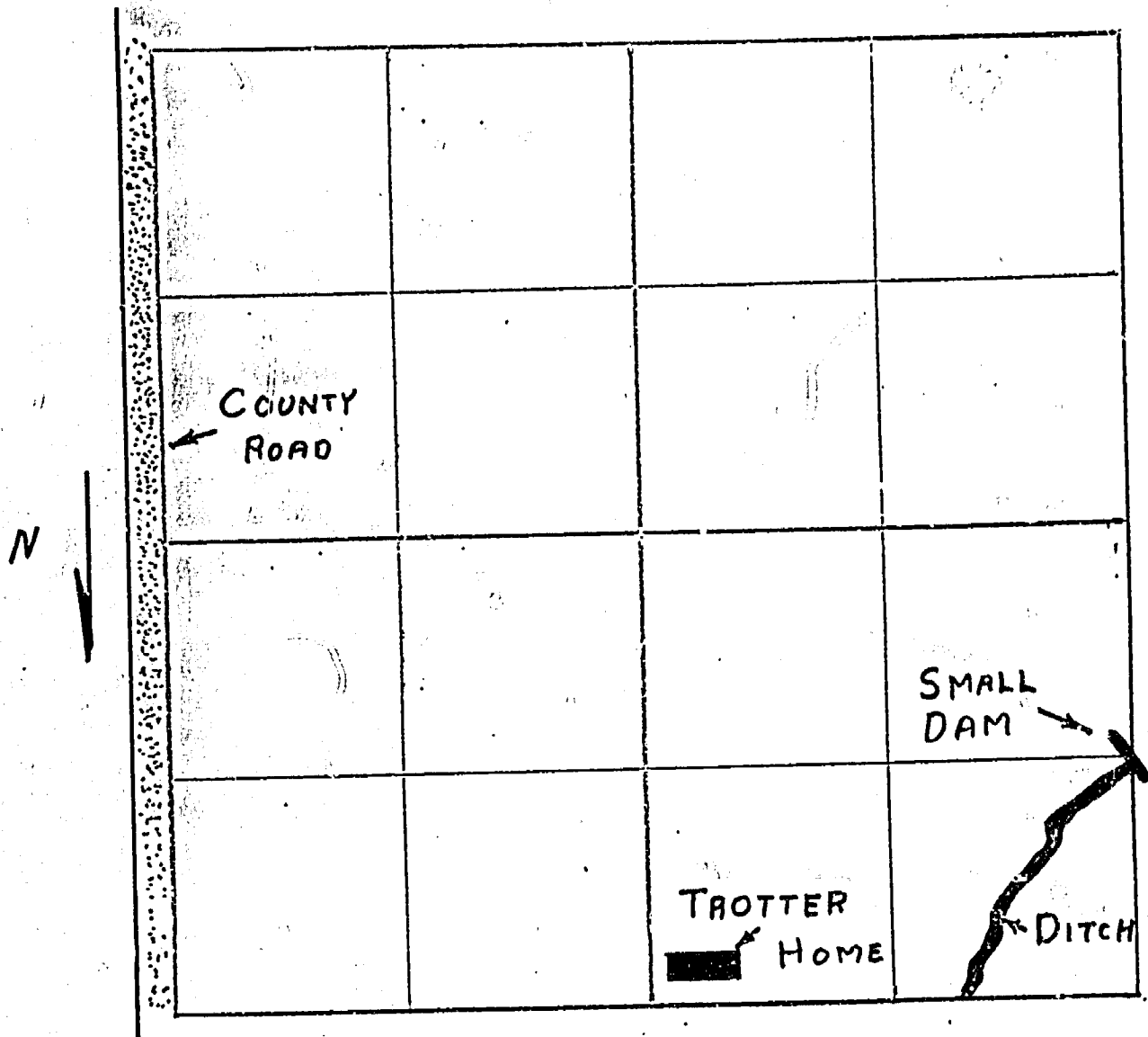
RANGE: ~~12~~ 2E



SECTION: 24

TOWNSHIP: 10S

RANGE: ~~4E~~ 2E



SECTION: 25

TOWNSHIP: 10S.

RANGE: 2 E.

NOTICE OF TRANSFER OF WATER PERMIT

TO: **WATER RIGHTS COMMISSION**State Office Building No. 2
Pierre, South Dakota 57501

Date _____

This is to notify you that title to the lands described as follows:

SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; Section 24, T10S, R2E, B.H.M. NW $\frac{1}{4}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$;
NE $\frac{1}{4}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 13, T10S, R2E, B.H.M.formerly owned by Laura J. Mudgehas been transferred to Joseph G. Trotter

together with any rights to the beneficial use of water thereon as evidenced by Water Right Permit No. 28-2 as provided for in Section 61.0127 of the 1960 Supplement to the South Dakota Code of 1939.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Office of Water Resources Commission as evidence of the change of ownership.

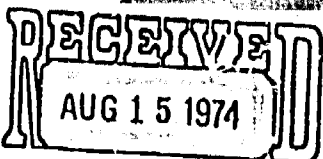
WATER RIGHTS COMMISSION

A fee of one dollar is hereto attached to cover filing fees as required under Section 61.0159 of the 1960 Supplement to the South Dakota Code of 1939.

STATE OF SOUTH DAKOTA)

County of Stoll) ss.I, Joseph G. Trotter being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

(Signed)

Subscribed and sworn to before me this 14th day of August, 1974Geraldine B. Beard
(Notary Public)STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

Permit No. 28-2

Water District

Report Of Examination Of Works And/Or Application Of Water To Beneficial Use

TO: Chief Engineer, Division of Water Rights, DWR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by George Le Bar of Box Q, Douglas, WY 82633 holder of Permit No. WY 28-2, LN 209-2, LN 338-2, LN 709-2, bearing the priority of (see inspection report) 19___ authorizing the diversion of 22.1 cu. ft. per second of the waters of Coal Creek and dry draws for irrigation purposes, in Fall River County.

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

- A. Works used to divert the water: A small dam 225' long and 12' high with a 10' top on Coal Creek pushes the water into a diversion ditch. The dam does not store water. The remaining diversion points are dikes and ditches across dry draws.
- B. Works used to transport water to place of use: diversion ditches and dikes
- C. Works used to apply water to beneficial use: This is a waterspreading system. the spreader ditches release water out the ends, with out top and in some cases have small outlets.

The system is in the following condition FairThe point of diversion is located (See Investigation Report)

The works are capable of diverting and conveying to the place of use

cu. ft. per second of water which is to be used for irrigation - water spreading

Water has been put to beneficial use to the maximum extent as follows:

(See Investigation Report)comprising a total of 583 acres of land and the license should be issued for 8.3 cfsApplicable permit qualifications have been complied with ☒ Yes ☐ No

Exceptions to compliance are:

The Location Notices should be incorporated with Water Right 28-2

Date May 7 1985

Alvin D. Boud, P.E.
(signature) Hydrologist

Report for WR# 28-2 and LN 209-2, 330-2, 338-2 and 709-2

Water License 28-2 should be reissued with the correct diversion point and the correct legal description of the lands irrigated. Location Notices 209-2, 330-2, 338-2 and 709-2 should be incorporated with Water Right 28-2 since all of the filings related to one large system.

The location of the diversion points are as follows:

- 1-South 1060 feet from the NW Corner of Section 25, T10S, R2E
- 2-S45°W 3400 feet from the NE Corner of Section 24, T10S, R2E
- 3-N25°W 1400 feet from the SE Corner of Section 24, T10S, R2E
- 4-S61°W 460 feet from the NE Corner of Section 24, T10S, R2E
- 5-N39°S 2300 feet from the SE Corner of Section 24, T10S, R2E

The acres, diversion rates and priority dates are as follows:

1. Priority date - July 26, 1907 Diversion Rate - 2.6 cfs (Water Right 28-2)	SE 1/4 NE 1/4 of Section 13, T10S, R2E	25 Acres
	SW 1/4 NE 1/4 of Section 13, T10S, R2E	13 Acres
	NE 1/4 SW 1/4 of Section 13, T10S, R2E	6 Acres
	NW 1/4 SE 1/4 of Section 13, T10S, R2E	31 Acres
	NE 1/4 SE 1/4 of Section 13, T10S, R2E	6 Acres
	SW 1/4 SW 1/4 of Section 13, T10S, R2E	4 Acres
	SE 1/4 SW 1/4 of Section 13, T10S, R2E	35 Acres
	SW 1/4 SE 1/4 of Section 13, T10S, R2E	6 Acres
	NW 1/4 NW 1/4 of Section 24, T10S, R2E	12 Acres
	NE 1/4 NW 1/4 of Section 24, T10S, R2E	32 Acres
SE 1/4 NW 1/4 of Section 24, T10S, R2E		11 Acres
TOTAL		181 ACRES
2. Priority date - February 1, 1910 Diversion Rate - 2.2 cfs (Location Notice 209-2)	SW 1/4 SE 1/4 of Section 13, T10S, R2E	34 Acres
	SE 1/4 SE 1/4 of Section 13, T10S, R2E	40 Acres
	NE 1/4 NE 1/4 of Section 24, T10S, R2E	40 Acres
	NW 1/4 NE 1/4 of Section 24, T10S, R2E	40 Acres
TOTAL		154 ACRES
3. Priority date - October 14, 1910 Diversion Rate - 1.7 cfs (Location Notice 330-2)	SE 1/4 SE 1/4 of Section 24, T10S, R2E	40 Acres
	SW 1/4 SE 1/4 of Section 24, T10S, R2E	40 Acres
	SE 1/4 SW 1/4 of Section 24, T10S, R2E	40 Acres
TOTAL		120 ACRES
4. Priority date - March 29, 1911 additional diversion point (Location Notice 338-2)		Same lands as Location Notice 209-2
5. Priority date - October 2, 1949 Diversion Rate - 1.8 cfs (Location Notice 709-2)	NE 1/4 SE 1/4 of Section 13, T10S, R2E	34 Acres
	NW 1/4 SE 1/4 of Section 13, T10S, R2E	9 Acres
	SE 1/4 SW 1/4 of Section 13, T10S, R2E	2 Acres
	NE 1/4 NW 1/4 of Section 24, T10S, R2E	8 Acres
	SE 1/4 NW 1/4 of Section 24, T10S, R2E	17 Acres
	SW 1/4 NE 1/4 of Section 24, T10S, R2E	6 Acres
	NE 1/4 SW 1/4 of Section 24, T10S, R2E	25 Acres
	NW 1/4 SE 1/4 of Section 24, T10S, R2E	27 Acres
TOTAL		128 ACRES
TOTAL ACRES		583
Diversion Rate:		8.3 cfs

Prepared BY:
Delvin D. Brosz, P.E.
Hydrologist

INVESTIGATION REPORT

for

Water Right No. 28-2 and Location Notices 209-2, 330-2, 338-2 and 709-2

Water Right 28-2: The application for this permit was filed with the State Engineer on July 26, 1907. The permit was approved for a diversion point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T10S, R2E and a diversion point on the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T10S, R3E. The permit was also approved for irrigating 320 acres of land in the SW $\frac{1}{4}$ of Section 13 and the NW $\frac{1}{4}$ of Section 24, T10S, R2E. In 1974, Thomas Gardner, Engineer with the Division of Water Rights, completed an inspection of the project. After his inspection a Water License was issued for Water Permit 28-2. The license lists the diversion point as a point 1340 feet south of the NW Corner of Section 25, T10S, R2E and the 320 acres of irrigated land as being in the NE $\frac{1}{4}$, NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 13 and in the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 24, T10S, R2E. The sketch map of the project and the legal descriptions of the irrigated land as described in the license do not agree. Both seem to contain errors. The diversion point as described in the Water License was not included in the original application for 28-2. SDCL 46-5-4.1 which was passed by the 1983 South Dakota Legislature validates this diversion point. A correct map and legal descriptions of the irrigated lands has been completed.

Location Notice 209-2:

This notice was filed with the State Engineer on February 23, 1910. The location was made on February 1, 1910.

The diversion point is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T10S, R3E. The lands to be irrigated are located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 13 and in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24, T10S, R2E.

Location Notice 330-2:

This notice was filed with the State Engineer on March 18, 1911. The location was made on October 14, 1910. The diversion point is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T10S, R2E. The lands to be irrigated are located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, T10S, R2E.

Location Notice 338-2:

This notice was filed with the State Engineer on April 3, 1911. The location was made on March 29, 1911. The diversion point is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T10S, R3E. The lands to be irrigated are located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 13, T10S, R2E.

Location Notice 709-2:

This notice was filed with the State Engineer on October 3, 1949. The location was made on October 2, 1949. The diversion point is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T10S, R2E. The lands to be irrigated are not described.

State of South Dakota

REISSUANCE OF Water License No. 28-2

(1) Joseph G. Trotter
of Provo, South Dakota was issued Water License No. 28-2
made Application No. August 16, 1974 for a water right permit to appropriate
4.6 cubic feet per second of water from dry draws
Fall River County, South Dakota for irrigation purposes.
Water License Permit No. 28-2, with a priority date of July 26, 1907
was approved and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before and for the application to beneficial use of said
water on or before completed

Water License No. 28-2 was transferred to George LeBar, Douglas, Wyoming on August 5, 1985.

Water License No. 28-2 as issued in 1974 contained errors in the diversion point and the legal description of the lands irrigated. The reissuance of this license will correct those errors.

The applicable portions of Location Notice Nos. 209-2, 330-2, 338-2 and 709-2 are being incorporated into this reissuance of Water License No. 28-2.

Location Notice No. 338-2 with a priority date of March 29, 1911 was filed as an additional diversion point on Location Notice 209-2 (priority date of February 1, 1910). Diversion point No. 4 (listed below) pertains to Location Notice No. 338-2. Diversion point No. 2 (listed below) pertains to Location Notice 209-2. Combinations of diversions from these two points can not exceed 2.2 cfs.

Priority dates are as follows: 2.6 cfs from July 26, 1907 (Water Right No. 28-2); 2.2 cfs from February 1, 1910 (this priority is retained only when diverting from diversion point No. 2 for LN 209-2); 1.7 cfs from October 14, 1910 (LN 330-2); 2.2 cfs from March 29, 1911 (this priority is retained only when diverting from diversion point No. 4 for LN 338-2, the 2.2 cfs diversion rate in combination with LN 209-2 and not in addition to); 1.8 cfs from October 2, 1949 (LN 709-2).

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 8.3 cubic feet per second of water

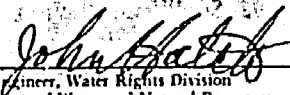
for beneficial use. The location of the diversion point(s) is are #1-South 1060 feet from the NW Corner of Section 25; #2-S45°W 3400 feet from the NE Corner of Section 24; #3-N25°W 1400 feet from the SE Corner of Section 24; #4-S61°W 460 feet from the NE Corner of Section 24; #5-N39°S 2300 feet from the SE Corner of Section 24, all in T10S, R2E.

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, See Attachment 4

(4) Pursuant to §46-5-30.1 George LeBar
of Box Q, Douglas, Wyoming 82633
the holder(s) and/or owner(s) of Water ^{Right} Permit No. 28-2 is issued a license to appropriate water, the right to use
8.3 cubic feet per second of water from Coal Creek and dry draws with a priority date
July 26, 1907; February 1, 1910; October 14, 1910
of March 29, 1911; October 2, 1949 from the location specified in (2) of this license. The water to be
conducted to and upon lands specified in (3) of this license for the purpose of Irrigation

This license is subject to any limitations or qualifications listed in Water ^{Right} Permit No. 28-2 and subject
to South Dakota State Law.


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

JOHN HATCH

NOV 26 1986

Attachment A
Water License No. 28-2
George LeBar

1. Priority date: July 26, 1907
(Water Right No 28-2)

Section 13, T10S, R2E

SE 1/4 NE 1/4	25	acres
SW 1/4 NE 1/4	13	"
NE 1/4 SW 1/4	6	"
NW 1/4 SE 1/4	31	"
NE 1/4 SE 1/4	6	"
SW 1/4 SW 1/4	4	"
SE 1/4 SW 1/4	35	"
SW 1/4 SE 1/4	6	"
NW 1/4 NW 1/4	12	"
NE 1/4 NW 1/4	32	"
SE 1/4 NW 1/4	11	"

Section 24, T10S, R2E

SUBTOTAL 181 acres

2. Priority date: February 1, 1910
(Location Notice No. 209-2)

Section 13, T10S, R2E

Section 24, T10S, R2E

SW 1/4 SE 1/4	34	acres
SE 1/4 SE 1/4	40	"
NE 1/4 NE 1/4	40	"
NW 1/4 NE 1/4	40	"
SUBTOTAL	154	acres

3. Priority date: October 14, 1910
(Location Notice No. 330-2)

Section 24, T10S, R2E

SE 1/4 SE 1/4	40	acres
SW 1/4 SE 1/4	40	"
SE 1/4 NE 1/4	40	"
SUBTOTAL	120	acres

4. Priority date: March 29, 1911
(Location Notice No. 338-2)

This location notice was filed as an additional diversion point and covers the same lands as in Location Notice No. 209-2

5. Priority date: October 2, 1949
(Location Notice No. 709-2)

Section 13, T10S, R2E

Section 24, T10S, R2E

NE 1/4 SE 1/4	34	acres
NW 1/4 SE 1/4	9	"
SE 1/4 SW 1/4	2	"
NE 1/4 NW 1/4	8	"
SE 1/4 NW 1/4	17	"
SW 1/4 NE 1/4	6	"
NE 1/4 SW 1/4	25	"
NW 1/4 SE 1/4	27	"
SUBTOTAL	128	acres

TOTAL 583 acres

28-2

WATER RIGHTS DIVISION
(605) 773-3352

July 18, 1985

John Skavdahl
P.O. Box 156
Harrison, Nebraska 69346

Dear Mr. Skavdahl:

Enclosed are documents for the water rights of George LeBar. It took considerable effort to get these documents completed.

Water license 28-2 contained a considerable number of errors. We are going to issue a corrected license for this Water Right. At the same time a number of Location Notices; 209-2, 330-2, 338-2 and 709-2 are being incorporated with Water Right 28-2. We can do this since all of these pertain to one large system.

Enclosed is a Notice of Transfer of Water Permit form for the above mentioned Water Right and Location Notices. Please have Mr. LeBar date and sign this form in the presence of a Notary. The form should then be returned to our office with a filing fee of \$2.50. I have enclosed a map and an investigation report of the project. Mr. LeBar can keep these for his files.

The project along Duck Creek needs to be filed as a vested right. The Location Notices that are on file for this area don't seem to cover the project adequately. The two upper most diversion dams seem to be listed in Location Notices 451-2 and 507-2. The remaining dams and dikes are not included in any filings in our office. The vested right will be based on Location Notices 451-2 and 507-2. This makes the assumption that the entire project was constructed at that time. Mr. LeBar will have to determine if this is correct. Location Notices 507-2 and 530-2 do not conform with the existing system. Field inspection of the project and review of ASCS photos indicate that these two notices were never constructed. I am therefore recommending cancellation of Location Notices 506-2 and 530-2. Cancellation of these notices will have no effect on the existing system which will be covered by the Vested Right.

Enclosed are two copies of form 2, Application for irrigation and one copy of form 2B, Affidavit of Water Use. I did not complete Section G of form 2B. Please have Mr. LeBar review the forms, correct anything that is in error, complete Section G of form 2B and then sign the forms in the presence of a Notary. All of the forms should be returned to our office with a filing fee of \$10.50. The map of the project is for Mr. LeBar's file.

John Skavdah
page 2
July 18, 1985

Location Notice 345-2 was inspected with Mr. LeBar. The dam does not exist. This notice will be cancelled.

Location Notices 326-2 and 535-2 were inspected with Mr. LeBar. There wasn't much at either location. I discussed these with the Forest Service and they requested that these two notices be cancelled.

I have enclosed a copy of Water License 1019-2 as you requested.

If I can answer any questions, please contact me.

Sincerely,

Delvin D. Brosz, P.E.
Hydrologist

DD3:ms
Enc.

NO. 28-2

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: _____

This is to notify you that the title to the lands described as follows:

S $\frac{1}{2}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ of Section 13, T10S, R2E and Section 24, T10S, R2E

formerly owned by J. G. Trotter, W. G. Trotter and John Modde

has been transferred to George LeBar, Box Q, Douglas, WY 82633

(please include complete mailing address)

together with any rights to the beneficial use of water thereon as evidenced by

28-2, LN209-3, LN 330-2, LN 338-2

Water Right Permit No. LN709-2 as provided for in SDCL 46-5-32 and 46-5-33.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Div. of Water Rights, Water Management Board as evidence of the change of ownership.

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

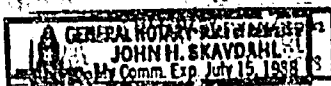
STATE OF NEBRASKA)
~~SOUTH DAKOTA~~) ss.
County of SIOUX)

I, George LeBar being first duly sworn on my oath depose and say:
That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

George LeBar
(Signed)

Subscribed and sworn to before me this 29th Day of July, 1985.

John H. Skavdahl
(Notary Public)



WNR-820-9/83
Notice of Transfer of Water Permit



RECEIPT

Division of Water Rights

No 4-10140

South Dakota Department of Water and Natural Resources

Pierre, August 5, 1995

RECEIVED OF John Skavdahl, Box 156, Harrison, NE 69346, (for George LeBar, Box 0, Douglas, Wyoming 82633)
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct works 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 #28-2, LI 209-3, LI 330-2 & LI 709-2, LI 330-2	2	50
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	

By John Hatch
Chief Engineer JOHN HATCH/ms

SOUTH DAKOTA
Department of
Water & Natural Resources

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

WATER RIGHTS DIVISION
(605) 773-3352

NOV 26 1986

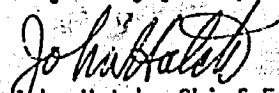
George LeBar
Box Q
Douglas, Wyoming 82633

Dear Mr. LeBar:

Enclosed is your Water Right License No. 28-2. The water license has been reissued to correct errors in the original license and to incorporate Location Notice Nos. 209-2, 330-2, 338-2 and 709-2.

If you have any questions concerning the enclosed Water License, please contact us.

Very truly yours,



John Hatch, Chief Engineer
Water Rights Division

JH:ms
Enc.

Applicable portions of Location Notice Nos. 209-2, 330-2, 338-2 and 709-2 are being incorporated into this reissuance of Water License No. 28-2.

Equal Opportunity Employer



Department of Water & Natural Resources

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

March 23, 1990

28-2
1974-2

NOTICE

TO: George LeBar
BOX Q
DOUGLAS, WY 82633

FROM: *for Del Brosz*
JOHN HATCH, CHIEF ENGINEER
Water Rights Division
(605)773-3352

SUBJECT: Low Water Levels in Angostura Reservoir

The water level in Angostura Reservoir on March 6, 1990 was at 3171.1 feet above mean sea level (msl). This is approximately 16 feet below the full elevation of 3187.2 msl. The present estimates are that the Angostura Irrigation District will be able to deliver less than 50% of full service water to project lands during the 1990 irrigation season. We are contacting you to advise you of the actions we have taken due to the low water situation in Angostura Reservoir. Junior Water Right owners above Angostura have been ordered not to use water until Angostura fills.

Since your Water Right Nos. 28-2 and 1974-2 have priority dates that are senior to the April 11, 1941 priority for Angostura Irrigation Water Right No. 1579-2, your permits are not directly affected by the Junior Priority Order. However, I am requesting that all Senior Water Right holders comply with any qualifications and limitations as stated on their water right. With the existing low runoff conditions, we expect to monitor all water rights above Angostura Reservoir.

I want to thank all Water Right Holders above Angostura for the cooperation that we have received up to this time. If you have any questions, please contact Del Brosz (605 773-3352).

T10S, R2E

SW¹SW⁴
4 Ac.

14 13
23 24

NW¹NW⁴
12 Ac.

NE¹NW⁴
32 Ac.

SE¹NW⁴
11 Ac.

SE¹NW⁴
17 Ac.

NE¹SW⁴
25 Ac.

NW¹SE⁴
27 Ac.

SW¹SE⁴
40 Ac.

SE¹SW⁴
40 Ac.

NE¹SW⁴
6 Ac.

SE¹SW⁴
35 Ac.

NW¹SE⁴
31 Ac.

SW¹SE⁴
6 Ac.

SW¹SE⁴
34 Ac.

SW¹NE⁴
13 Ac.

SE¹NE⁴
25 Ac.

NE¹SE⁴
6 Ac.

NE¹SE⁴
34 Ac.

SE¹SE⁴
40 Ac.

NW¹NE⁴
40 Ac.

NE¹NE⁴
40 Ac.

SW¹NE⁴
6 Ac.

S 61° W
460'

13 18
24 19

S 45° W
3400'

4
N
—

Approximate
Scale: 1"=660'

N 25° W
1200'

SE¹SE⁴
40 Ac.

N 39° W
2300'

24 19
25 30

T10S, R2E

Map Prepared By:
Delvin A. Bragg, P.E.
Hydrologist
Division of Water Rights

STATE OF SOUTH DAKOTA)
COUNTY OF FALL RIVER)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

THE ESTATE OF DORA R.,
HENDERSON,

Plaintiff,

v.

23 CIV 17-__

DOUBLE V. LAND & CATTLE LLC.,)
VERMEER MIDWEST FARMS, LLLP,)
DARRELL VERMEER,)
NATHAN VERMEER,)
JERIS VERMEER and)
DARREN E. VERMEER,)

Defendants.)

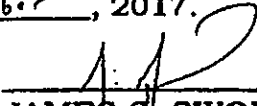
SUMMONS

THE STATE OF SOUTH DAKOTA SENDS GREETINGS TO THE ABOVE
NAMED DEFENDANTS

You are hereby summoned and required to serve upon James G. Sword,
plaintiff's attorney whose address is P.O. Box 283, 702 Jennings Ave., Hot
Springs, SD 57747, an answer to the Complaint of the Plaintiff, a copy of
which is herewith served upon you, within thirty (30) days from the date of the
service of this Summons upon you, exclusive of the date of such service.

IF YOU FAIL TO DO SO, judgment by default will be taken against you
for the relief demanded in the complaint as requested in Plaintiff's Complaint
thirty (30) days after the completed service of Plaintiff's Summons and
Complaint.

DATED this 3rd day of November, 2017.



JAMES G. SWORD
Attorney for Plaintiff
702 Jennings Ave.
P.O. Box 283
Hot Springs, SD 57747
(605) 745-5422

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
COUNTY OF FALL RIVER) SEVENTH JUDICIAL CIRCUIT

THE ESTATE OF DORA R.,
HENDERSON,

Plaintiff,

v.

23 CIV 17-____

DOUBLE V. LAND & CATTLE LLC.,)
VERMEER MIDWEST FARMS, LLLP,)
DARRELL VERMEER,)
NATHAN VERMEER,)
JERIS VERMEER and)
DARREN E. VERMEER,)

Defendants.)

COMPLAINT

COMES NOW, the Plaintiff, the Estate of Dora R. Henderson, and makes the following allegations for its Complaint against the Defendants:

1. Susan Henderson is the personal representative and sole heir to the Estate of Dora R. Henderson.
2. Double V. Land & Cattle, LLC. is a domestic limited liability company organized in the State of South Dakota.
3. Vermeer Midwest Farms, LLLP. is a foreign limited liability limited partnership registered with the State of South Dakota.
4. All property and/or property right and/or water right subject to the action herein is located in Fall River County, South Dakota.

5. The Estate of Dora R. Henderson is the rightful owner of the following property right:

[A] perpetual easement and right to construct, use and maintain irrigation ditches on, over and across the property owned by the Grantors, and more particularly described as follows:

Beginning at a point on Coal Creek at approximately the southwest corner of the Northwest Quarter of the Northwest Quarter of Section Twenty-four, T. 10, R. 2 in Fall River County, South Dakota, and running in a northeasterly direction according to the survey thereof, across the Northwest Quarter of the Northwest Quarter of Section Twenty-four and Southwest Quarter of Section Thirteen, T. 10, R. 2 in Fall River County, South Dakota, to a point approximately 10 rods south of the Northeast corner of the Southwest Quarter of Section Thirteen, T.10 R. 2, said right-of-way not to exceed fifty (50) feet in width.

(hereinafter "the property right").

6. Attached as Exhibit A and incorporated herein by this reference is a copy of the Easements granting the above described property right.

7. The Estate of Dora R. Henderson has a long-established water right to the Coal Creek drainage runoff water and water flowing through the Defendant's property (hereinafter "the water right"). Said water right is evidenced by South Dakota Permit 643-2 established in October, 1945, and South Dakota vested water right water permit number 1879-2. Attached as Exhibit B and incorporated herein by this reference is the Transfer of Water Right dated March 11, 1946.

8. The water right of the Estate of Dora R. Henderson is exclusive.

9. Defendants do not have a water permit to appropriate water for irrigation or any other purposes for any of the ditches, dams, dikes, and/or levees

constructed that are the subject of the property right and/or the water right identified above.

10. Defendants do not have any interest in the water right of the Estate of Dora R. Henderson.

11. Defendants, have interfered with, damaged and caused dirt work modifications to be made to the ditch system thereby damaging the property right and water right interest of the Estate of Dora R. Henderson.

12. The headwaters of the Coal Creek drainage which is part of the water right inures from the hills to the South of the Defendants' property on government land permitted to the Defendants. Defendants have willfully and/or negligently affected the flow of the water to the ditch system and the Coal Creek Drainage to the detriment of the Estate of Dora R. Henderson's water right. This damage includes any and all changes to the dirt work that may have affected the flow of water and/or flood control dams in the head waters area.

13. Defendants have caused changes to be made and/or improperly maintained the flood control dams and over flow water channels to the detriment and damage of the property owned by the Estate of Dora R. Henderson.

14. Defendants have willfully, unreasonably, inefficiently and wastefully deprived the Estate of Dora R. Henderson of its water right.

15. Defendants by their unauthorized and wrongful actions have changed and damaged the ditch system which is essential to the property right and the water right.

16. The irrigation ditches that are owned by the Estate of Dora R. Henderson are open and obvious on the property of the Defendant Double V Land & Cattle, LLC and other Defendants.

17. The Defendants' damage to the irrigation ditches that are essential to the property right and water right has wrongfully deprived the Estate of Dora Henderson of its water and has caused its land to be less productive.

18. The Defendants' damage to the irrigation ditches that are essential to the property right and water right has caused the Estate of Dora R. Henderson damages in lost income from its agricultural production.

19. The damage caused by the Defendants has substantially devalued the ranch value of the property of the Estate of Dora R. Henderson.

20. The Estate of Dora R. Henderson is entitled to compensation retroactively for past misappropriation and conversion of water by the Defendants.

21. The Defendants' have wrongfully converted the water right of the Estate of Dora R. Henderson to Defendants' own use and for the Defendants' own benefit without notice to, compensation to, and/or agreement by Plaintiff.

22. The Defendants have wrongfully blocked the Estate of Dora R. Henderson and its agents/employees from inspecting, constructing and maintaining the ditches which are the subject of the property right.

23. The Defendants have wrongfully locked gates and fenced access so as to deny the Estate of Dora R. Henderson and its agents/employees from inspecting, constructing and maintaining the ditches which are essential to the property right and water right.

24. The property right of the Estate of Dora R. Henderson is obvious upon inspection of the Defendants' property and Defendants' had full knowledge of the property right of the Estate of Dora R. Henderson upon purchasing their/its property.

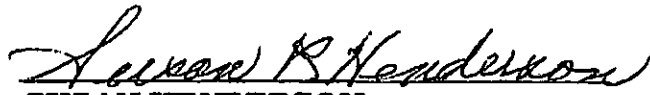
WHEREFORE, Plaintiff respectfully prays for the following relief:

1. The Defendants' be ordered to allow the Plaintiff, its agents and employees immediate access to Defendants' property to inspect the ditches and maintain and repair the ditches that are essential to the property right and water right, at any time without notice.
2. To enjoin the Defendants' from taking any actions that would interfere with the Plaintiff's use and enjoyment of its water right.
3. The Plaintiff be awarded actual and compensatory damages; and
4. Such damages related to the conversion and misappropriation of the water right of the Estate of Dora R. Henderson which shall include, but are not limited to, loss of agricultural income and value, costs associated with restoring the ditch system to its original design and form from the time the Defendants purchased their/its property in 2013 and for interest to be calculated at 12% annually for all damages.

5. The Plaintiff be awarded all incidental and consequential damages; and
6. For recovery of pre-judgment interest and post-judgment interest; and
7. For such costs and disbursements associated with bringing this action; and
8. The Plaintiff be awarded attorney fees, costs and disbursements.
9. The Plaintiff be awarded such other and further relief as the Court deems just and equitable.

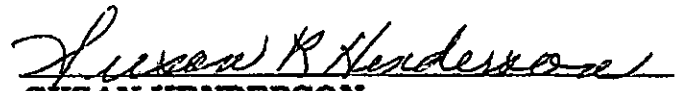
PLAINTIFF DEMANDS TRIAL BY JURY

DATED this 3rd day of November, 2017.


SUSAN HENDERSON
Personal Representative for Plaintiff

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF FALL RIVER)

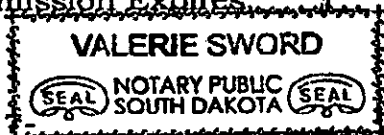
SUSAN HENDERSON, being first duly sworn, states that she is the Plaintiff in the foregoing action, that she has read the foregoing document, and knows the contents thereof to be true to the best of her knowledge, information and belief.


SUSAN HENDERSON

SUBSCRIBED AND SWORN to before me this 3rd day of November, 2017.


NOTARY PUBLIC - SOUTH DAKOTA

My Commission Expires: May 10, 2022
(SEAL)



23 CIV 1

Estate of Henderson v. Double V. and Vermeers
Complaint

FALL RIVER COUNTY, S. D.

EASEMENT

THIS AGREEMENT, Made and entered into in duplicate this 31st day of January, 1946, by and between L. R. Parkin and Clara Robison, hereinafter known as the Grantors, and A. M. Henderson, hereinafter known as the Grantee.

WITNESSETH:

1. That for and in consideration of the sum of Two Hundred Dollars (\$200.00) in hand paid by the Grantee to the Grantors herein, and receipt of which is hereby acknowledged, the said Grantors have granted, and by these presents do hereby grant unto the said Grantee, his heirs, and assigns, forever, a perpetual easement and right to construct, use and maintain an irrigation ditch on, over and across the property owned by the Grantors, and more particularly described as follows:

Beginning at a point on Coal Creek approximately 400 feet west of the southwest corner of the Northwest Quarter of the Northwest Quarter of Section Twenty-four, T. 10, R. 2 in Fall River County, South Dakota, and running in a northeasterly direction according to the survey thereof across portions of Section Twenty-four and Thirteen, T. 10, R. 2, in Fall River County, South Dakota, to a point approximately 10 rods south of the northeast corner of the Southwest Quarter of Section Thirteen, T. 10, R. 2, said right-of-way not to exceed 50 feet in width.

2. That for and in consideration of the sum of Eighteen Hundred Dollars (\$1800.00) the Grantors herein have granted, and by these presents do hereby grant unto the said Grantee the right to take, appropriate and use any and all waters from Coal Creek whenever available, and divert the same into the above mentioned irrigation ditch, subject, however, to all present valid and pre-existing water rights.

3. The Grantors herein reserve the right to build, install, maintain and use a headgate and pipe in said irrigation ditch to be used to fill a stock water dam on Section Twenty-four whenever water is available.

4. That this easement is being given by the Grantors to the Grantee to correct a description given in a similar easement dated October 4, 1945, and recorded in Book 24 of Misc., on page 86 at 4:30 o'clock P.M. in the office of the Register of Deeds in Hot Springs, Fall River County, South Dakota, on the 17th day of October, 1945.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

L. R. Parkin
Clara Robison
A. M. Henderson

STATE OF CALIFORNIA)
SS:
COUNTY OF SAN BERNARDINO)

On this the 11 day of March, 1946, before me, the undersigned Notary Public within and for said County and State, personally appeared L. R. Parkin, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as his own free act and deed.

Walt W. Harek
Notary Public
My commission expires 2/25/47.



STATE OF SOUTH DAKOTA)
SS:
COUNTY OF FALL RIVER)

On the 5th day of April, 1946, before me, the undersigned Notary Public within and for said County and State, personally appeared Clara Robison, and A. M. Henderson, known to me to be the persons who are described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same as their own free

MISCELLANEOUS RECORD No. 24

EASEMENT

THIS AGREEMENT, Made and entered into in duplicate this 4th day of October, 1945, by and between L. R. Parkin, Clara Robison, hereinafter known as the Grantors, and A. M. Henderson, hereinafter known as the Grantee;

WITNESSETH:

1. That for and in consideration of the sum of Two Hundred Dollars (\$200.00) in hand paid by the Grantee to the Grantors herein, and receipt of which is hereby acknowledged, the said Grantors have granted, and by these presents do hereby grant unto the said Grantee, his heirs and assigns, forever, a perpetual easement and right to construct, use and maintain an irrigation ditch on, over and across the property owned by the Grantors, and more particularly described as follows:

Beginning at a point on Coal Creek at approximately the southwest corner of the Northwest quarter of the Northwest quarter of Section Twenty-four, T. 10, R. 8 in Fall River County, South Dakota, and running in a northeasterly direction according to the survey thereof, across the Northwest quarter of the Northwest quarter of Section Twenty-four and the Southwest quarter of Section Thirteen, T. 10, R. 8 in Fall River County, South Dakota, to a point approximately 10 rods south of the Northeast corner of the Southwest quarter of Section Thirteen, T. 10 R. 8, said right-of-way not to exceed fifty (50) feet in width.

2. That for and in consideration of the sum of Eighteen Hundred Dollars (\$1800.00) the Grantors herein have granted and by these presents do hereby grant unto the said Grantee the right to take, appropriate and use any and all waters from Coal Creek whenever available, and divert the same into the above mentioned irrigation ditch, subject, however, to all present valid and pre-existing water rights.

3. The Grantors herein reserve the right to build, install, maintain and use a headgate and pipe in said irrigation ditch to be used to fill a stock water dam on Section Twenty-four whenever water is available.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

L. R. Parkin
Clara Robison
A. M. Henderson

STATE OF CALIFORNIA) }
COUNTY OF SAN BERNARDINO) SS

On this the 8 day of Oct., 1945, before me the undersigned Notary Public within and for said County and State, personally appeared L. R. Parkin, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as his own free act and deed.



Walter W. Harek
Notary Public
My commission expires 2/28/47

STATE OF SOUTH DAKOTA) }
COUNTY OF FALL RIVER) SS

On this the 17th day of October, 1945, before me, the undersigned Notary Public within and for said County and State personally appeared Clara Robison, and A. M. Henderson, known to me to be the persons who are described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same as their own free act and deed.



Paul H. Russell, Notary Public
My commission expires 1-8-49

STATE OF SOUTH DAKOTA) }
COUNTY OF FALL RIVER) SS

Filed for Record 17 day of Oct. 1945 at 4:30 P.M. and recorded in Book 24 Misc. Page 86.

May E. Brigham
Register of Deeds

EXHIBIT

A

MISCELLANEOUS RECORD No. 24

act and deed.

Paul H. Russell
Notary Public
My commission expires 1-8-49.

STATE OF SOUTH DAKOTA }
COUNTY OF FALL RIVER }

FILED FOR RECORD 30 day of Sept., 1946 at 3:30 P.M. and recorded in Book 24 Misc.,
Pages 523-524.

Wm. E. Brigham
Register of Deeds

AGREEMENT

THIS AGREEMENT made and entered into this 10th day of December, 1945, by and between J. O. Trotter of Provo, South Dakota, party of the first part, and A. M. Henderson of Provo, South Dakota, party of the second part.

WITNESSETH: That WHEREAS the party of the first part has entered into an agreement with the Federal Land Bank to purchase the following described land in Fall River County, South Dakota, to-wit:

The Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Eighteen (18); the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Nineteen (19); and the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Thirty (30), all in Township Ten (10) South of Range Three (3), E.B.M., and that portion of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Eighteen (18) lying North of the C. B. & Q. Railroad Company right-of-way, and that part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Thirty-one (31) lying East of the present Highway running through said property, all in said Township and Range, aforesaid.

And the party of the second part having leased all of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty (30), the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$), the West Half of Southeast Quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$) and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Thirty-one (31), Township Ten (10), South of Range Three (3), E.B.M., Fall River County, South Dakota.

AND WHEREAS the highway above mentioned divides to some extent the property of the parties to this agreement, NOW THEREFORE, it is understood and agreed by and between the parties as follows:

That for and in consideration of the mutual interest of both parties hereto, it is understood and agreed that the Party of the First Part is hereby granted the right of exclusive use for grazing purposes of all that portion of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty (30), lying West of the Highway and all of the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) and the West Half of the Southeast Quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$), and that portion of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) lying South and West of the said Highway, all in Section Thirty-one (31), and in exchange therefor he hereby grants unto the Party of the second part the right to use for grazing purposes all of that part of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Eighteen (18), lying North of C. B. & Q. Railroad Company right-of-way, the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) and the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Eighteen (18), also that part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Thirty-one (31) lying East of the Highway and the East Half of the Southwest Quarter of Section Nineteen (19) and the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Thirty (30) all in Township Ten (10), South of Range Three

MISCELLANEOUS RECORD No. 24

TRANSFER OF WATER RIGHT

KNOW ALL MEN BY THESE PRESENTS: That L. R. Parkin and Clara Robison of Provo, Fall River County, South Dakota, party of the first part, in consideration of One Dollar and Other Good and Valuable Consideration, in hand paid by A. M. Henderson, party of the second part, has sold, assigned, transferred, and set over, and by those presents does sell, assign, transfer and set over, unto the said party of the second part, its successors and assigns, that certain water right or permit granted to him by the State Engineer of the State of South Dakota, and being permit No. 643-S in Water Division No.-----in Fall River County, South Dakota, and on the stream of Coal Creek in said county and state, the record of which is filed in the office of the State Engineer at Pierre, South Dakota, with all and singular the premises herein mentioned and described, and the said party has good right and lawful authority to sell, assign, and transfer the same in the manner herein set forth; except that this transfer of water right shall give to the party of the second part no guarantee of any specific amount of water, and said right is confined to any and all amounts of water that shall arrive at the point of diversion in the natural course of the stream's flow, and shall not affect or alter in any way the water rights located above this right on said Coal Creek.

In Witness Whereof, they have hereunto set their hands and seals the 11 day of March, 1946.

L. R. Parkin
Clara Robison

STATE OF CALIFORNIA)
SS:
COUNTY OF SAN BERNARDINO)

On this 11 day of March, 1946, before me, the undersigned Notary Public within and for said County and State, personally appeared L. R. Parkin, well known to me to be the person who is described in and who executed the above and foregoing Assignment, and duly acknowledged that he executed the same freely.

Walt W. Harek
Notary Public
My commission expires 2/26/47.

STATE OF SOUTH DAKOTA)
SS:
COUNTY OF FALL RIVER)

On this 1st day of April, 1946, before me the undersigned Notary Public within and for said County and State, personally appeared Clara Robison, known to me to be the person who is described in and who executed the above and foregoing assignment, and duly acknowledged that she executed the same freely.

Paul H. Russell
Notary Public
My commission expires 1/8/49.

STATE OF SOUTH DAKOTA)
SS:
COUNTY OF FALL RIVER)

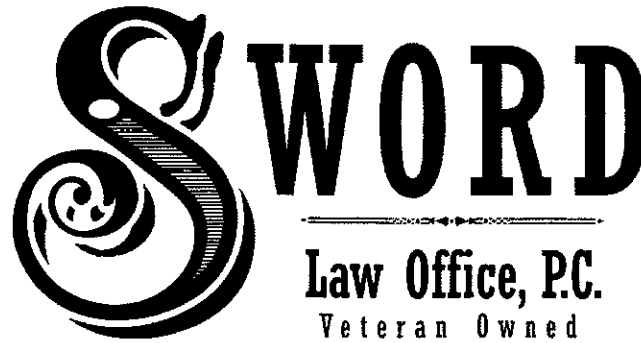
FILED FOR RECORD 30 day of Sept. 1946 at 3:30 P.M. and recorded in Book 24 Misc.,
Page 522.

Wm. E. Brigham
Register of Deeds

RECORDED

EXHIBIT

3



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JUN 29 2020

WATER R.
PROGRAM

VIA 1st CLASS US MAIL and EMAIL

June 26, 2020

Mr. Eric Gronlund
Chief Engineer, Water Rights
Joe Foss Building
523 E. Capitol
Pierre, SD 57501
email: DENRINTERNET@state.sd.us

Re: Water Permit 28-2, George LeBar

Mr. Gronlund:

By way of introduction, I am an attorney in Hot Springs and represent the Estate of Dora Henderson. We have traded a couple of voice messages over the past week. I appreciate you calling me back.

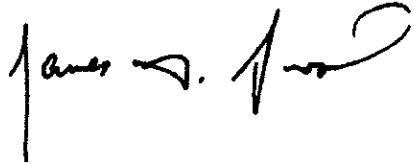
Enclosed please find the following:

1. Petition Pursuant to SDCL § 46-5-37.1 (relating to Water Permit 28-2)

In short, Mr. LeBar, the owner of water permit 28-2, has been dead for over 30 years. For approximately 10 years the water right hasn't even been used for its intended purpose. We are requesting that water permit 28-2 be cancelled for abandonment and/or forfeiture.

I appreciate your work on this issue. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "James G. Sword". The signature is fluid and cursive, with a large, stylized "S" at the end.

JAMES G. SWORD
JGS/hb

cc: Ms. Susan Henderson

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER RIGHTS

IN THE MATTER OF WATER PERMIT No. 28-2)
and concerning Mr. GEORGE LEBAR,)
owner of said permit)

PETITION PURSUANT TO SDCL § 46-5-37.1

COMES NOW, SUSAN HENDERSON, and after being duly sworn upon her oath, respectfully petitions the Chief Engineer for the Water Rights Division and the Water Management Board as follows:

1. I am the personal representative for the Estate of Dora R. Henderson (hereinafter "the estate").
2. The estate has a vested water right which is evidenced by South Dakota water permit 1879-2. The source of this water right is Coal Creek located in Fall River County, South Dakota. The priority date of this water right is 1945.
3. The estate owns property in Fall River County, South Dakota that is near the property in which South Dakota water permit 28-2 is located. The estate uses water from Coal Creek to irrigate its hay ground located at the Henderson Ranch in Fall River County.
4. The source of the water right evidenced by South Dakota water permit 28-2 is Coal Creek and dry draws, tributaries to Coal Creek and water right 1879-2 located in Fall River County, South Dakota.
5. Based upon a common water source and the location of water permit 28-2, Susan Henderson as the personal representative for the estate is an interested person in this matter. See SDCL 46-5-37.1.

George LeBar

6. The owner of the South Dakota water permit 28-2 is George LeBar.
7. George LeBar died on March 13, 1989, at the LeBar ranch in Fall River County, South Dakota.
8. Attached hereto as Exhibit 1 is a copy of the obituary for Mr. George LeBar.
9. George LeBar is the person entitled to use the appropriated water identified in South Dakota water permit 28-2.

Abandonment and/or Forfeiture of Water Right for Nonuse

10. SDCL § 46-5-36 (abandonment) provides as follows:

If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

11. The land appurtenant to South Dakota water permit 28-2 has not been used for the purpose of irrigation of in approximately 20 years.

12. SDCL § 46-5-37 (forfeiture) provides as follows:

If any person [George LeBar] entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose which it was appropriated, **for a period of three years**, the unused water shall revert to the public and shall be regarded as unappropriated public water.

11. George LeBar has been dead for over 30 years and has failed to use beneficially the water right evidenced by South Dakota water permit 28-2.

12. The water evidenced by South Dakota water permit 28-2 has not been used as intended, regardless of the owner of the real property or the water permit, for approximately 10 years.

13. ARSD 74:02:01:36 provides as follows:

The [Water Management] board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

14. ARSD 74:02:01:37 provides:

A water permit [28-2], right, or vested right is invalid if it meets one or more of the following conditions:

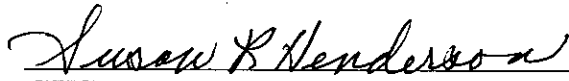
(2) Use of water has been abandoned as specified in SDCL § 46-5-36;

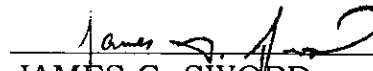
(3) Use of water has been forfeited for nonuse as specified in SDCL § 46-5-37.

WHEREFORE, SUSAN HENDERSON, as personal representative for the estate, respectfully petitions for the following relief:

1. For the chief engineer to investigate, pursuant to SDCL § 46-5-37.1, whether or not South Dakota water permit 28-2 has been abandoned and/or forfeited.
2. That after the investigation, the chief engineer recommend cancellation of South Dakota water permit 28-2 for the reason of abandonment and/or forfeiture.
3. For the South Dakota Water Management Board to properly notice the interested parties of the hearing upon this petition and/or the investigation of the chief engineer and to conduct the appropriate hearings on the abandonment and/or forfeiture of South Dakota water permit 28-2 according to law.
4. For the South Dakota Water Management Board to cancel South Dakota water permit 28-2 for abandonment and/or forfeiture. See ARSD 74:02:01:40.
5. For the South Dakota Water Management Board, pursuant to SDCL 46-5-34.1, to deny any request to transfer South Dakota water permit 28-2 and the water right contained therein until such time as a hearing can be held on the petition and investigation by the chief engineer is concluded.
6. For further relief as may be just and equitable.

DATED this 20th day of January, 2020.

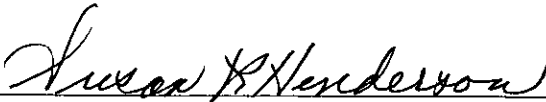

SUSAN HENDERSON
Personal Representative for Dora R.
Henderson Estate


JAMES G. SWORD
Attorney for Estate
702 Jennings Ave.
P.O. Box 283
Hot Springs, SD 57747
(605) 745-5422

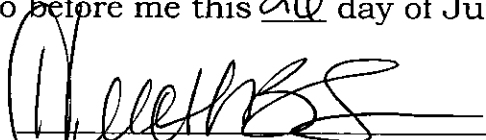
STATE OF SOUTH DAKOTA)

COUNTY OF FALL RIVER)SS
)

SUSAN HENDERSON, being first duly sworn, states that she is the Petitioner in the foregoing action, that she has read the foregoing document, and knows the contents thereof to be true to the best of his knowledge, information and belief.


SUSAN HENDERSON

SUBSCRIBED AND SWORN to before me this 26th day of June, 2020.


Notary Public - South Dakota

My Commission Expires: 02-21-2023
(SEAL)

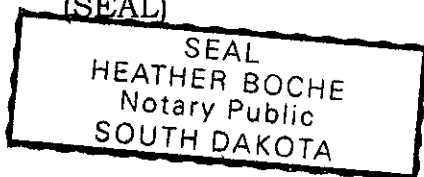




Photo added by Catherine LeBar Hamon



Added by Catherine LeBar Hamon

George Newton LeBar

BIRTH	3 Jan 1919 Douglas, Converse County, Wyoming, USA
DEATH	13 Mar 1989 (aged 70) Fall River County, South Dakota, USA
BURIAL	Douglas Park Cemetery Douglas, Converse County, Wyoming, USA
MEMORIAL ID	59137420 ·

Obituary
The Douglas Budget

George N. LeBar

DOUGLAS - Funeral services for George N. LeBar, 70, will be held Friday at 2 p.m. at Congregational United Church of Christ in Douglas with Dr. Thomas E. Hartshorn officiating. Burial will be in the Douglas Park Cemetery.

Mr. LeBar died on March 13, 1989, at the LeBar ranch near Ardmore, S.D., of an apparent heart attack. He was born on Jan. 3, 1919, the son of Wyoming pioneers Paul C. and Georgia C. (Doyle) LeBar at Douglas where he was reared and educated, graduating from Converse County High School.

He owned and operated ranches in Converse County, Wyo.; Sioux County, Neb.; and Fall River County, S.D. Mr. LeBar had many out-of-state business associates. He enjoyed fishing and working.

In 1974 he married Georgene Hager at Little Moon Lake, near Henry, Neb.

He is survived by his wife of Douglas, one sister, Mrs. Ralph (Winona) Brown of Casper; and two grandsons, Pierre C. and George M. LeBar, both of Perth West Australia.

He was preceded in death by his parents; a son, Barney "Paul" LeBar; and a daughter, Susan "Suzie" LeBar.

Memorials to the American Heart Association or to a charity of

1

the donor's choice would be equally appreciated by the family.

Family and friends may call at the Converse Funeral Chapel
Thursday from 10 a.m. to 8:30 p.m., and Friday from 9 a.m. to
11:30 a.m.

Family Members

Parents



Paul C LeBar
1894-1976



Georgia Catharine
Doyle LeBar
1897-1972

Spouses



Alyce Gertrude
Shepperson LeBar
1917-1970 (m.
(marriage) 1940)



Georgene Hager
LeBar
1940-2009 (m.
(marriage) 1974)

Siblings



Winona Ruth LeBar
Brown
1921-1998

Children



Paul Lester LeBar
1942-1982



Susan Gene LeBar
1948-1968

Created by: Catherine LeBar Hamon

Added: 24 Sep 2010

Find a Grave Memorial **59137420**

Find a Grave, database and images (<https://www.findagrave.com>
: accessed 26 June 2020), memorial page for George Newton
LeBar (3 Jan 1919-13 Mar 1989), Find a Grave Memorial no.
59137420, citing Douglas Park Cemetery, Douglas, Converse
County, Wyoming, USA ; Maintained by Catherine LeBar Hamon
(contributor 47314226) .

Copyright © 2020 Find a Grave

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AUG 19 2020

WATER RIGHTS
PROGRAM

LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

LAWYERS ALSO ADMITTED IN MINNESOTA, IOWA, NORTH DAKOTA AND WYOMING
www.lynnjackson.com

311 N. 27TH STREET
SUITE 4
SPEARFISH, SD 57783-3213
605-722-9000
FAX 605-722-9001

909 ST. JOSEPH STREET, SUITE 800
RAPID CITY, SD 57701-3301
605-342-2592
FAX 605-342-5185

110 N. MINNESOTA AVENUE
SUITE 400
SIOUX FALLS, SD 57104-6475
605-332-5999
FAX 605-332-4249



REPLY TO: Rapid City Office

From the offices of Jeffery D. Collins

e-mail address: jcollins@lynnjackson.com

Sender's Direct Line -- 605-791-6491

August 17, 2020

South Dakota DENR
Water Management Board
Joe Foss Building
523 E. Capital Ave
Pierre, SD 57501

Re: Jerald E. and Melissa A. Stearns (The Estate of Dora R. Henderson v.)
Our File No. 150085-00004

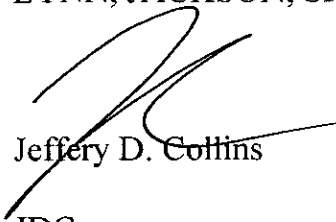
Dear Water Management Board:

Enclosed herewith please find enclosed Stearns' Response to Petition Pursuant to SDCL § 46-5-37.1 (Relating to Water Permit 28-2).

Thank you for your attention in this matter.

Sincerely,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.



JDC:sar

cc: James Sword
Talbot Wieczorek
Jerald and Melissa Stearns

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER RIGHTS

IN THE MATTER OF WATER PERMIT No. 28-2)
and concerning Mr. GEORGE LEBAR,)
owner of said permit)

RESPONSE TO PETITION PURSUANT TO SDCL § 46-5-37.1
(RELATING TO WATER PERMIT 28-2)

COMES NOW, JERALD E. STEARNS AND MELISSA A. STEARNS, and in response to the petition filed by the Estate of Dora R. Henderson in the above referenced matter file this response:

1. That Jerald E. Stearns and Melissa A. Stearns are the current owners of the real property that was deeded to them by David Kreycik, as Sucessor Trustee of the Trust No. 2 A Qualified Terminable Interest Property Marital Trust Pursuant to Paragraph 4 of the Last Will and Testament of Decedent, George N. Lebar, which is real property located in Fall River County, South Dakota to which Water Permit 28-2 is appurtenant. See SDCL §§ 46-5-33 and 34..

2. That the Petition Pursuant to SDCL § 46-5-37.1 filed by the Estate of Dora Henderson with South Dakota Department of Environment & Natural Resources Water Rights fails to comply with SDLRC 74:02:01:48 which states as follows:

Petitioner to notify all affected persons. The petitioner shall serve a copy of the petition upon all known persons whose pecuniary interests would be directly and immediately affected by a declaratory ruling on the petition. Proof of such service shall be filed with the board with the petition. All such parties shall be notified by the chief engineer at least 15 days before the petition is scheduled to be heard. In addition, the petitioner shall publish a notice of hearing describing the contents of the petition pursuant to SDCL 46-2A-4(1) to 46-2A-4(10), as applicable, and SDCL 1-26-17.

3. Jerald and Melissa Stearns, subsequent owners of the Lebar property, to which Water Permit 28-2 is appurtenant, were not provided notice by the Estate of Dora Henderson of the petition as required by the South Dakota Administrative Rules.

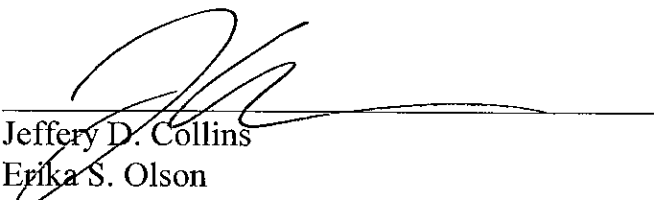
4. As such, Stearns have requested that the attorney for the Estate of Dora R. Henderson file an Amended Petition to provide notice to any and all parties who have pecuniary interests which would be affected if Water Permit 28-2 or any portion thereof is declared abandoned, specifically to all of the owners of the real property which is irrigated under

Water Permit 28-2 and therefore it appurtenant.

5. To date, the Estate of Dora R. Henderson has failed to file an Amended Petition which would comply with the South Dakota Administrative rule requirements.
6. The Stearns request that the South Dakota Department of Environment & Natural Resources and the Chief Engineer for the Water Rights Division and the Water Management Board notify and require the Estate of Dora R. Henderson to file and provide notification of an Amended Petition to comply with the South Dakota Administrative Rules or in the alternative, that the Chief Engineer for the Water Rights Division and Water Management Board dismiss the filed Petition so that it can be properly filed and noticed to all affected parties.

Dated August 17, 2020.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: 

Jeffery D. Collins

Erika S. Olson

Attorneys for Jerald and Melissa Stearns

909 St. Joseph Street, Suite 800

Rapid City, SD 57701-3301

605-342-2592

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WATER RIGHTS
PROGRAM

LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

LAWYERS ALSO ADMITTED IN MINNESOTA, IOWA, NORTH DAKOTA AND WYOMING
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FAX 605-342-5185

110 N. MINNESOTA AVENUE
SUITE 400
SIOUX FALLS, SD 57104-6475
605-332-5999
FAX 605-332-4249

REPLY TO: Rapid City Office

From the offices of Jeffery D. Collins

e-mail address: jcollins@lynnjackson.com

Sender's Direct Line -- 605-791-6491

August 17, 2020

South Dakota DENR
Water Management Board
Joe Foss Building
523 E. Capital Ave
Pierre, SD 57501

Re: Jerald E. and Melissa A. Stearns (The Estate of Dora R. Henderson v.)
Our File No. 150085-00004

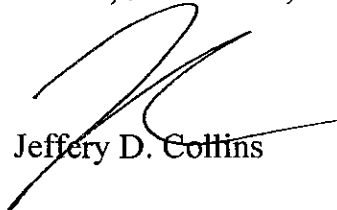
Dear Water Management Board:

Enclosed herewith please find enclosed Stearns' Response to Petition Pursuant to SDCL § 46-5-37.1 (Relating to Water Permit 28-2).

Thank you for your attention in this matter.

Sincerely,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.


Jeffery D. Collins

JDC:sar

cc: James Sword
Talbot Wiczorek
Jerald and Melissa Stearns

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER RIGHTS

IN THE MATTER OF WATER PERMIT No. 28-2)
and concerning Mr. GEORGE LEBAR,)
owner of said permit)

RESPONSE TO PETITION PURSUANT TO SDCL § 46-5-37.1
(RELATING TO WATER PERMIT 28-2)

COMES NOW, JERALD E. STEARNS AND MELISSA A. STEARNS, and in response to the petition filed by the Estate of Dora R. Henderson in the above referenced matter file this response:

1. That Jerald E. Stearns and Melissa A. Stearns are the current owners of the real property that was deeded to them by David Kreycik, as Sucessor Trustee of the Trust No. 2 A Qualified Terminable Interest Property Marital Trust Pursuant to Paragraph 4 of the Last Will and Testament of Decedent, George N. Lebar, which is real property located in Fall River County, South Dakota to which Water Permit 28-2 is appurtenant. See SDCL §§ 46-5-33 and 34.

2. That the Petition Pursuant to SDCL § 46-5-37.1 filed by the Estate of Dora Henderson with South Dakota Department of Environment & Natural Resources Water Rights fails to comply with SDLRC 74:02:01:48 which states as follows:

Petitioner to notify all affected persons. The petitioner shall serve a copy of the petition upon all known persons whose pecuniary interests would be directly and immediately affected by a declaratory ruling on the petition. Proof of such service shall be filed with the board with the petition. All such parties shall be notified by the chief engineer at least 15 days before the petition is scheduled to be heard. In addition, the petitioner shall publish a notice of hearing describing the contents of the petition pursuant to SDCL 46-2A-4(1) to 46-2A-4(10), as applicable, and SDCL 1-26-17.

3. Jerald and Melissa Stearns, subsequent owners of the Lebar property, to which Water Permit 28-2 is appurtenant, were not provided notice by the Estate of Dora Henderson of the petition as required by the South Dakota Administrative Rules.

4. As such, Stearns have requested that the attorney for the Estate of Dora R. Henderson file an Amended Petition to provide notice to any and all parties who have pecuniary interests which would be affected if Water Permit 28-2 or any portion thereof is declared abandoned, specifically to all of the owners of the real property which is irrigated under

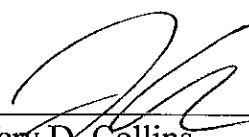
Water Permit 28-2 and therefore it appurtenant.

5. To date, the Estate of Dora R. Henderson has failed to file an Amended Petition which would comply with the South Dakota Administrative rule requirements.

6. The Stearns request that the South Dakota Department of Environment & Natural Resources and the Chief Engineer for the Water Rights Division and the Water Management Board notify and require the Estate of Dora R. Henderson to file and provide notification of an Amended Petition to comply with the South Dakota Administrative Rules or in the alternative, that the Chief Engineer for the Water Rights Division and Water Management Board dismiss the filed Petition so that it can be properly filed and noticed to all affected parties.

Dated August 17, 2020.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: 

Jeffery D. Collins

Erika S. Olson

Attorneys for Jerald and Melissa Stearns

909 St. Joseph Street, Suite 800

Rapid City, SD 57701-3301

605-342-2592

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER RIGHTS

IN THE MATTER OF WATER PERMIT No. 28-2)
and concerning Mr. GEORGE LEBAR,)
owner of said permit)

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, I sent to:

James G. Sword
Sword Law Office, P.C.
702 Jennings Ave.
P.O. Box 283
Hot Springs, SD 57747
jim@swordlawoffice.com

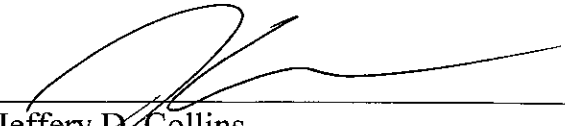
Talbot J. Wiczorek
Gunderson, Palmer, Nelson & Ashmore LLP
506 Sixth Street
PO Box 8045
Rapid City, SD 57709-8045
tjw@gpna.com

by electronic mail and first class mail, postage prepaid, a true and correct copy of
Response To Petition Pursuant To SDCL 46-5-37.1 (Relating To Water Permit 28-2)
relative to the above-entitled matter.

Dated August 17, 2020.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: _____


Jeffery D. Collins
Erika S. Olson
Attorneys for Jerald and Melissa Stearns
909 St. Joseph Street, Suite 800
Rapid City, SD 57701-3301
605-342-2592



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED

AUG 26 2020

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

August 25, 2020

James G. Sword
Sword Law Office, P.C.
P.O. Box 283
702 Jennings Avenue
Hot Springs, SD 57747

Jeffery D. Collins
Lynn, Jackson, Shultz & Lebrun
909 Saint Joseph Street, Suite 800
Rapid City, SD 57701-3301

Re: *In the Matter of Water Permit No. 28-2*

Dear Mr. Sword and Mr. Collins:

I am contacting you with regard to your submissions under the caption "In The Matter of Water Permit No. 28-2 and concerning Mr. George LeBar owner of said permit". The initial correspondence received was on June 26, 2020, from Mr. Sword. It consists of a request for an investigation pursuant to SDCL § 46-5-37.1 to determine whether Water Permit No. 28-2 has been abandoned or forfeited. On August 17, 2020, the Chief Engineer received a response to Mr. Sword's request from Mr. Collins on behalf of his clients dated August 17, 2020, which requests the Chief Engineer to require Mr. Sword to file an amended petition and complete service upon all parties which may have a pecuniary interest in accordance with ARSD 74:02:01:48 .

First, a request for investigation is handled by the Chief Engineer. It does not go through the Water Management Board before the investigation is conducted. To be clear, there is nothing currently pending before the Water Management Board in this matter. Correspondence with the Chief Engineer need not be presented in the form of a formal pleading.

James G. Sword
Jeffery D. Collins
August 25, 2020
Page 2

Second, to aid the parties through this process, please allow me to explain how the Chief Engineer responds to requests for investigations. Upon the receipt of a complaint, regardless of its form, the Chief Engineer, either himself or through an engineer in his employ, conducts an investigation. A report on the investigation is authored. Based upon that investigation, the Chief Engineer determines whether a cancellation proceeding should be commenced due to abandonment or forfeiture. The report becomes part of the file and is available to the parties once finalized. Should the Chief Engineer find it appropriate to proceed with cancellation, notice is then provided to the parties pursuant to the statute and the matter is placed on the agenda for the Board's next regularly scheduled meeting.

With regard to the June 26, 2020 letter, the Chief Engineer does not construe this request for an investigation as a petition for declaratory ruling. Complaints or requests for investigation are not normally construed as petitions for declaratory rulings. Rather, a petition for a declaratory ruling generally provides a specific request for a declaration of rights and includes reference to SDCL § 1-26-15 and ARSD 74:02:01:46. Here, the request seeks only an investigation. The Chief Engineer's position is that ARSD 74:02:01:48 is applicable only to petitions for declaratory rulings. Complaints and/or requests for investigations are not required to be served upon other interested parties.

Finally, as I am sure you are aware, the engineer assigned to conduct this investigation recently conducted an on-site visit. He will be authoring a report which will be reviewed by the Chief Engineer. Once that report is finalized and the Chief Engineer has had the opportunity to review the report and make a determination, the report will be made available to you as well as notice of the Chief Engineer's decision.

Please feel free to contact me should you have any additional questions or concerns.

Sincerely,



Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

cc: Eric Gronlund, Chief Engineer ✓



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 17, 2020

James G Sword, Attorney
Sword Law Office P.C.
PO Box 283
Hot Springs SD 57747

Dear Mr. Sword,

I am writing concerning your petition to investigate Water Right No. 28-2 to determine whether the permit holder has abandoned or forfeited the water right.

As requested by your petition, an investigation of Water Right No. 28-2 has been completed. A report containing the results of the investigation is enclosed. I agree with the report conclusion that insufficient evidence exists for the state to prove the water right has been abandoned or forfeited. In fact, evidence exists showing it likely has not been abandoned or forfeited. Consequently, I choose to not recommend cancellation of the water right to the Water Management Board and will not be scheduling the matter for board consideration pursuant to South Dakota Codified Law 46-5-37.1.

Please contact me if you have any questions, I can be reached at phone (605) 773-3352.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program

enclosure

cc: Jeffery D Collins, Lynn, Jackson Shultz & LeBrun, 909 Saint Joseph Street, Suite
800, Rapid City SD 57701
Jerald E. and Melissa A. Stearns
Double V Land & Cattle LLC % Darrell Vermeer
Assistant Attorney General Ann Mines Bailey

**Water Rights Program - DENR
File Documentation**

File Nos. Water Right No. 28-2 (28A-2 & 28B-2) (currently in the name of George LeBar)

County: Fall River

No. 28A-2

Name of Person: Jerald E Stearns and Melissa A Stearns

Address: 11450 Plains Creek Road, Edgemont SD 57735

No. 28B-2

Name of Person: Double V Land & Cattle LLC % Darrell Vermeer

Address: 1506 Crown Ridge Dr, Sioux Center IA, 51250

Date: 9-16-20

RE: Investigation of the status of WR No. 28-2

Comments:

The license for Water Right No. 28-2 (Attachment 1) was reissued on November 26, 1986, based upon a May 7, 1985, water permit inspection performed by Delvin D Brosz, Staff Hydrologist. Delvin D. Brosz also produced a map (Attachment 2) of the irrigation and diversions based upon his inspection.

On June 22, 2020, the Water Rights Program received Notice of Transfer of Ownership forms for No. 28-2 from Jerald E Stearns and Melissa A Stearns and Double V Land & Cattle LLC % Darrell Vermeer. Water Right No. 28-2 will be split into two separate water rights and identified as Nos. 28A-2 for the Stearns and 28B-2 for Double V Land & Cattle LLC.

On June 29, 2020, Chief Engineer Eric Gronlund received a petition from attorney James G Sword representing the Estate of Dora Henderson requesting Water Right No. 28-2, held in the name of George LeBar, be cancelled due to abandonment and/or forfeiture. SDCL 46-5-37.1 provides that upon petition by any interested person and after reasonable notice to the holder of the right, the chief engineer may investigate whether or not a right has been abandoned or forfeited.

On August 18, 2020, SD DENR-Water Rights staff engineers Mark Rath and Nakaila Steen, accompanied by Mr. Jerald Stearns and Mr. Darrell Vermeer, performed a site investigation of the diversions and irrigation works covered by Water Right No. 28-2 (Nos. 28A-2 and 28B-2). The area encompassed by the irrigation system and diversions in sections 13, 24, 25 and 26 of T10S-R2E was canvassed to look at the Coal Creek diversion dam, main irrigation ditch/dike and spreader dikes.

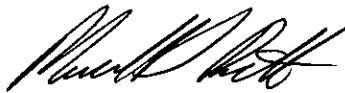
The type of irrigation system utilized by Water Right No. 28-2 is a passive spreader irrigation system using a small diversion dam located on Coal Creek to divert water into a main ditch/dike to carry and disperse the water the length of the irrigation project. Also, multiple spreader dikes intercept runoff from dry draws and overland drainage and disperse water throughout the project (Figure 1).

The diversion dam located in the NE ¼ NE ¼ of Section 26 T10S-R2E was found to be intact (Figure 2). Water diverted into the main ditch carries water down the ditch to the irrigation project where the main ditch becomes a dike. The dam has a culvert through the embankment (Figure 3) allowing excess water not diverted to either the main ditch/dike, or to a separate irrigation ditch authorized by Water Right No.

LN10-2, to remain in Coal Creek and continue to flow downstream. There are a series of spreader dikes located in Sections 13 and 24; T10S-R2E (Figures 5 to 10) that intercept runoff from numerous draws and side hills, spreading the water out over pastureland in those same sections. The investigation found these dikes to be intact and capable of functioning. However, there was a breach of the main dike located in the NE ¼ SE ¼ of Section 13 T10S-R2E (Figure 11) approximately 1.75 miles downstream from the Coal Creek diversion. Mr. Stearns indicated this breach had occurred during 2019. Mr. Stearns said he had a contractor who was currently doing some dirt work for him who would repair this breach when he completed his other work.

Conclusions:

During my August 18, 2020, investigation of the irrigation authorized by Water Right No. 28-2, I found the irrigation system and diversions to be intact and functional, matching what was licensed in 1986 based upon the 1985 inspection by Delvin D. Brosz. Based upon my investigation, I find no justification to schedule Water Right No. 28-2 for a hearing before the South Dakota Water Management Board for cancellation due to abandonment and/or forfeiture.



Mark D Rath
Natural Resources Engineer III
SD DENR-Water Rights Program

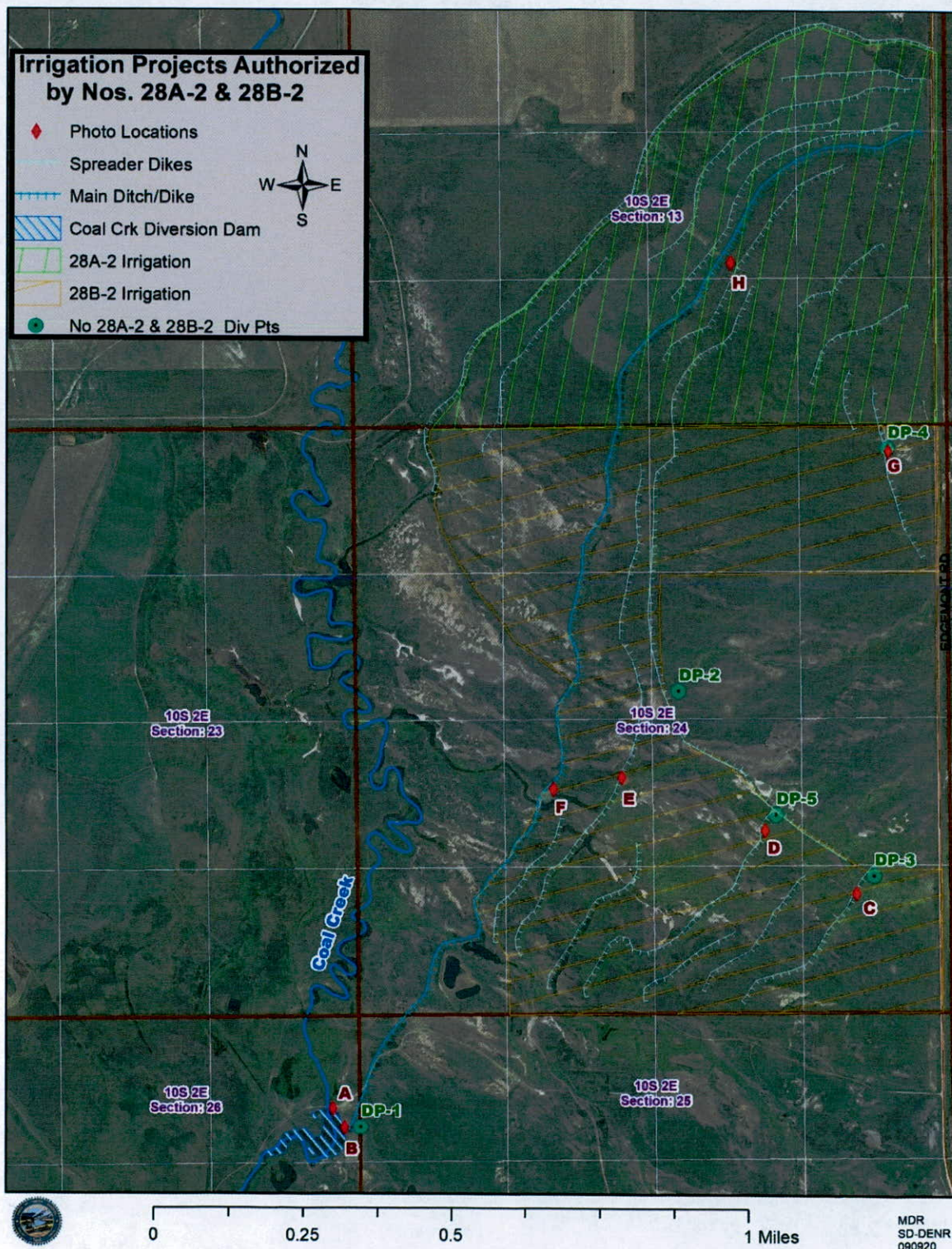


Figure 1 – Area map for Water Right No. 28-2 (Nos. 28A-2 and 28B-2) showing the authorized irrigation and the locations of photos taken during the August 18, 2020 water right status investigation.



Figure 2 - Photo Location A- Diversion dam on Coal Creek located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 26 T10S-R2E.



Figure 3 - Photo Location A- Creek flow bypass pipe through the diversion dam on Coal Creek located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 26 T10S-R2E.



Figure 4 - Photo Location B- Diversion dam on Coal Creek on the right and top of the main ditch/dike on the left for Water Right No. 28-2 (Nos 28A-2 and 28B-2) Creek located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 26 T10S-R2E.



Figure 5 - Photo Location C – A spreader dike to intercept runoff and disperse the water for irrigation located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 24 T10S-R2E.



Figure 6 - Photo Location D - A spreader dike to intercept runoff and disperse the water for irrigation located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 24 T10S-R2E.



Figure 7 - Photo Location E - A spreader dike to intercept runoff and disperse the water for irrigation located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec 24 T10S-R2E.



Figure 8 - Photo Location F – The main ditch/spreader dike to transport water from Coal Creek and intercept runoff and disperse the water for irrigation located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec 24 T10S-R2E.



Figure 9 - Photo Location G facing north - A spreader dike to intercept runoff and disperse the water for irrigation located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 24 T10S-R2E.



Figure 10 - Photo Location G facing south - A spreader dike to intercept runoff and disperse the water for irrigation located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 24 T10S-R2E.



Figure 11 - Photo Location H - A dike breach to the main ditch/dike located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 13 T10S-R2E.

State of South Dakota

REISSUANCE OF Water License No. 28-2

(1) Joseph G. Trotter
 of Provo, South Dakota was issued Water License No. 28-2
 under Application No. August 16, 1974 for a water right to appropriate
4.6 cubic feet per second of water from dry draws
Fall River County, South Dakota for irrigation purposes.
 Water License No. 28-2 with a priority date of July 26, 1907
 was approved and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before and for the application to beneficial use of said
water on or before completed

Water License No. 28-2 was transferred to George LeBar, Douglas, Wyoming on August 8, 1965. Water License No. 28-2 as issued in 1974 contained errors in the diversion point and the legal description of the lands irrigated. The reissuance of this license will correct those errors. The applicable portions of Location Notice Nos. 209-2, 330-2, 338-2 and 709-2 are being incorporated into this reissuance of Water License No. 28-2. Location Notice No. 338-2 with a priority date of March 29, 1911 was filed as an additional diversion point on Location Notice 209-2 (priority date of February 1, 1910). Diversion point No. 4 (listed below) pertains to Location Notice No. 338-2. Diversion point No. 2 (listed below) pertains to Location Notice 209-2. Combinations of diversions from these two points can not exceed 2.2 cfs. Priority dates are as follows: 2.2 cfs from July 26, 1907 (Water Right No. 28-2); 2.2 cfs from February 1, 1910 (this priority is retained only when diverting from diversion point No. 2 for LI 209-2); 1.7 cfs from October 14, 1910 (LI 330-2); 2.2 cfs from March 29, 1911 (this priority is retained only when diverting from diversion point No. 4 for LI 338-2, the 2.2 cfs diversion rate in combination with LI 209-2 and not in addition to); 1.8 cfs from October 2, 1919 (LI 709-2).

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 8.3 cubic feet per second of water for beneficial use. The location of the diversion point(s) is 81° 41' South 1060 feet from the NW Corner of Section 25; 62° 54' 5" N 3100 feet from the NE Corner of Section 24; 63° 42' 5" N 1400 feet from the SE Corner of Section 24; 64° 56' 1" N 460 feet from the NE Corner of Section 24; 65° 13' 3" N 2300 feet from the SE Corner of Section 24, all in T10S, R2E.

41) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use in the following extent. See Attachment 4

(1) Partent to 900-3-30.1 George Lohar
 of Box Q, Douglas, Wyoming 82633
 the holder(s) and/or owner(s) of Water Right No. 20-2 is/are a license to appropriate water, the right to use
0.3 cubic feet per second of water from Coal Creek and dry draws
July 26, 1907; February 1, 1910; October 14, 1910
 of March 29, 1911; October 2, 1949 from the location specified in (2) of this license. The water is to
 be used to and upon lands specified in (3) of this license for the purpose of irrigation

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Right

This document is subject to any limitations or qualifications found in Form 4-750, No. 28-2, and subject to South Dakota State Laws.

Journal of Health, Social Behavior, and Society
Department of Health and Human Services

JOHN HATCH

NOV 26 1985

Attachment A
Water License No. 28-2
George Lober

1. Priority date: July 26, 1907
(Water Right No 28-2)

Section 13, T10S, R2E

SE 1/4 NE 1/4	25 acres
SW 1/4 NE 1/4	13 "
NE 1/4 SW 1/4	6 "
NW 1/4 SE 1/4	31 "
NE 1/4 SE 1/4	6 "
SW 1/4 SW 1/4	4 "
SE 1/4 SW 1/4	35 "
SW 1/4 SE 1/4	8 "
NW 1/4 NW 1/4	12 "
NE 1/4 NW 1/4	22 "
SW 1/4 NW 1/4	11 "

Section 24, T10S, R2E

SUBTOTAL 181 acres

2. Priority date: February 1, 1910
(Location Notice No. 289-2)

Section 13, T10S, R2E

SW 1/4 SE 1/4	34 acres
SE 1/4 SE 1/4	40 "
NE 1/4 NE 1/4	40 "
NW 1/4 NE 1/4	40 "

Section 24, T10S, R2E

SUBTOTAL 154 acres

3. Priority date: October 14, 1910
(Location Notice No. 320-2)

Section 24, T10S, R2E

SE 1/4 SE 1/4	40 acres
SW 1/4 SE 1/4	40 "
SE 1/4 SE 1/4	40 "

SUBTOTAL 120 acres

4. Priority date: March 29, 1911
(Location Notice No. 330-2)

This location notice was filed as an additional diversion point and covers the same lands as in Location Notice No. 289-2

5. Priority date: October 2, 1949
(Location Notice No. 709-2)

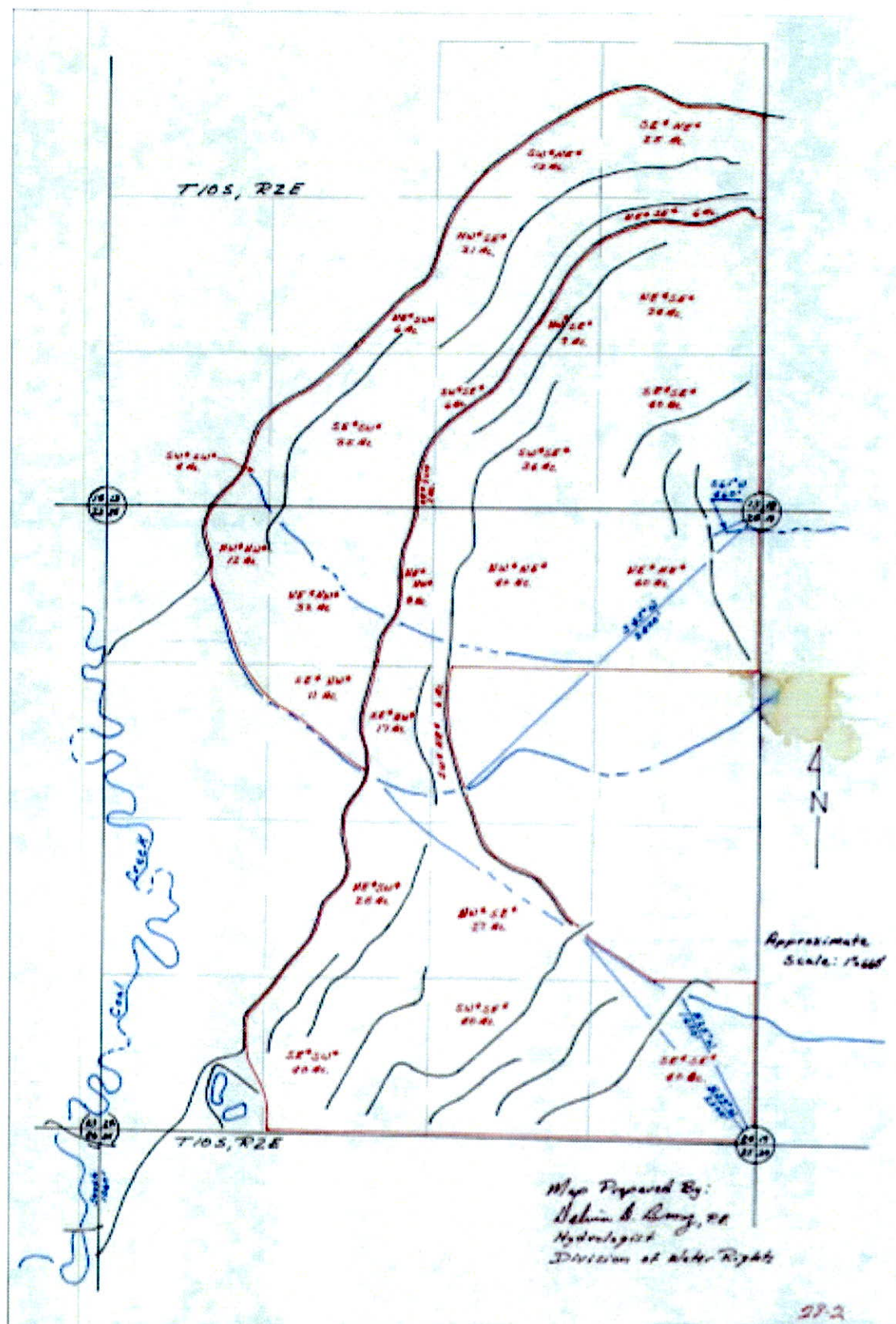
Section 13, T10S, R2E

NE 1/4 SE 1/4	34 acres
NW 1/4 SE 1/4	9 "
SE 1/4 SW 1/4	0 "
NE 1/4 NW 1/4	0 "
SE 1/4 NW 1/4	17 "
SW 1/4 NE 1/4	6 "
NE 1/4 SW 1/4	25 "
NW 1/4 SE 1/4	27 "

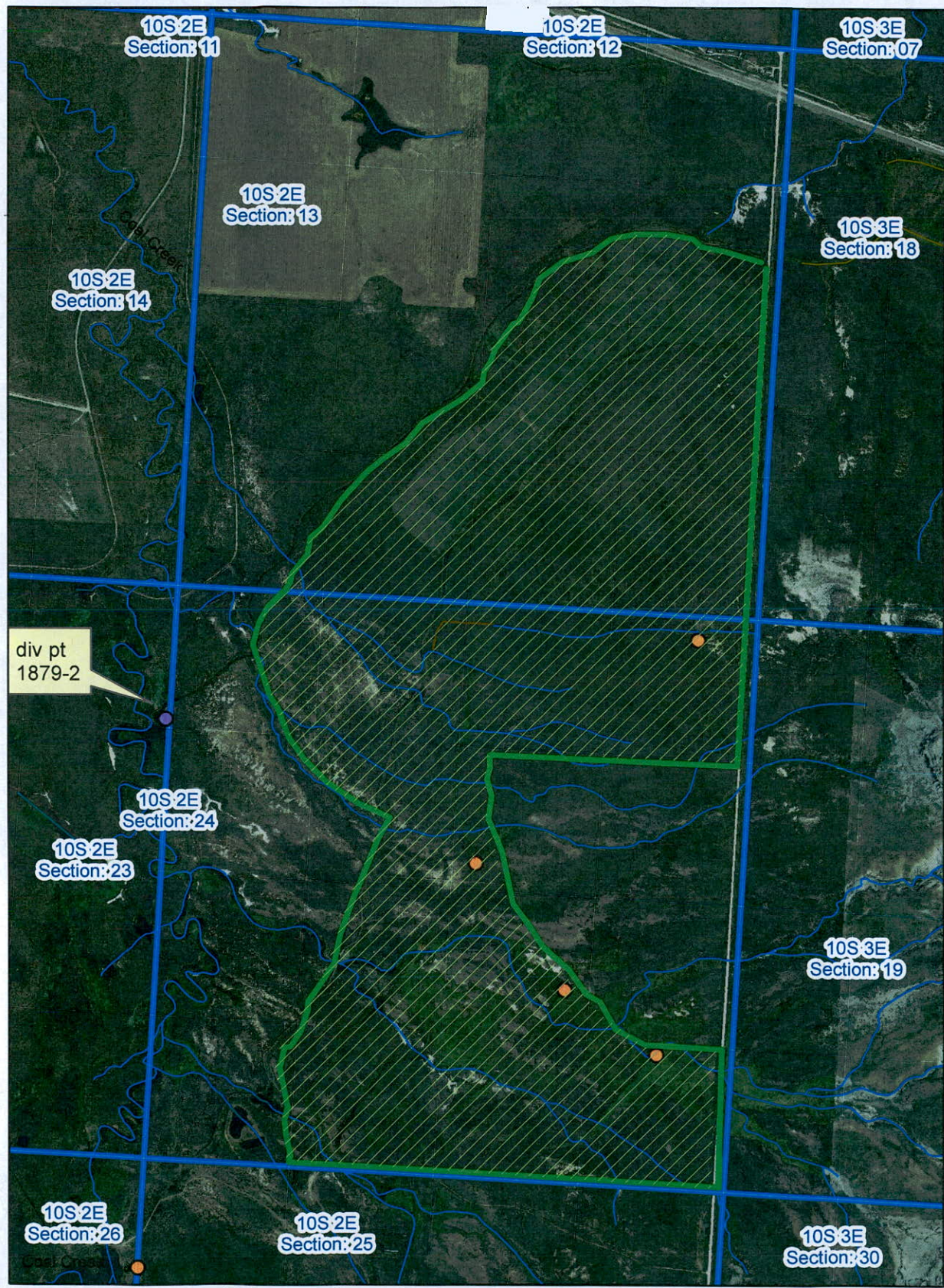
SUBTOTAL 128 acres

TOTAL 583 acres

Attachment 2



General Depiction of Diversion Points and Irrigated Acres Authorized by Reissued Water License no. 28-2



1,500 750 0 1,500 Feet



○ Diversion points under Water License 28-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

George LeBar held Water Right No. 28-2 authorizing diversion of 8.30 cubic feet of water per second (cfs) from Coal Creek and dry draws, Fall River County, South Dakota for irrigation of 583 acres located in portions of Sections 13 & 24, T10S, R2E and carried priority dates of July 26, 1907, February 1, 1910, October 14, 1910, March 29, 1911 and October 2, 1949.

On June 22, 2020, ownership changes were filed for the land described in the water right. Based on the ownership changes, Water Right No. 28-2 was divided and reissued to reflect separate ownership as follows:

- **No. 28A-2, Jerald E Stearns and Melissa A Stearns, 11450 Plains Creek Road, Edgemont SD 57735** authorizing diversion of 3.50 cfs from Coal Creek and dry draws to irrigate 245 acres in Section 13, T10S, R2E;
- **No. 28B-2, Double V Land & Cattle LLC, % Darrell Vermeer, 1506 Crown Ridge Dr, Sioux Center IA, 51250** authorizing diversion of 4.80 cfs from Coal Creek and dry draws to irrigate 338 acres in Section 24, T10S, R2E.