

No. 202-2.....
Division No. 2.....
Keyapaha..... Dist. let.

PERMIT

to appropriate water from.....

Keyapaha River.....
Tripp..... County, South Dakota.

Name of applicant.....

Charles Hickey.....

Name of diversion works.....

Hickey Diversion No. 2.....

Date of first receipt at office of State
Engineer January 15, 19. 40

Returned to applicant for Correction
January 16, 19. 40

Corrected application received.....
February 5, 19. 40

Date of water right.....
January 15, 19. 40

Recorded in Book 2..... Page.....
One-fifth of work to be completed

January 15, 19. 41

Whole work to be completed.....
..... 19.

Final proof of use of water.....
..... 19.

Approved March 27, 19. 40.

State Engineer.

NO. 282-2Water Division No. 2 Keyapaha Water District
(Blanks to be filled by the State Engineer.)

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 Charles RicheyPostoffice address Millboro, County Tripp, State South Dakota

2. 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) DIRECT LABOR(b) Cash on hand, \$ 400.00

(c) Treasury stock, \$

(d) Bonds to be issued, \$

(e) Other resources, \$

2. Name of diversion works Pumping station No. 2 (Richey Diversion No. 2)3. Quantity of water claimed 0.7 cubic feet per second. 0.74. Source of water supply Keyapaha River5. Location of point of diversion NE 1/4 of SW 1/4 Sec. 15-95-761630'E-1790'N SWCOR SEC 15-95-76 on Left bank.

(Right or left bank looking down stream.)

6. Annual periods during which water is to be used March to September

7. To be used for:

I. Irrigation or domestic use:

(a) Number of acres to be irrigated 15.41 acres.(b) Legal subdivisions to be irrigated NE 1/4 of SW 1/4 Sec 15 12.48A NW 1/4 of SE 1/4 Sec 15 2.93A

(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.) Irrigation of farm cropsSE 1/4 of Sec. 15-95-76

II. Mining, 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

State Engineer.

8. Estimated cost of works:

(a) Head gates, \$ 500.00 (b) Pumping plant, \$ 130.00
 (c) Fluming, \$ (d) Canal-earth, \$ 250.00 Rock, \$
 (e) Other structures, \$ Total, \$ 350.00

9. Description of diversion works:

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

PUMPING PLANT FLUME CAPACITY = 500 gals/min
1.1 c.f.s.

II. Dimensions of works:

(a) Dam: Height feet; length at bottom feet; length at top feet; thickness at bottom feet; thickness at top feet; slope of front (water) face; slope of back face; material used in construction

(b) Reservoir; Capacity when filled acre feet. Surface area at highwater mark acres.

DEPTH AT OUTLET—FEET	SURFACE AREA AT EACH DEPTH AT OUTLET—ACRES	FEET OF CAPACITY ACRE—FEET

(c) Head gate: Width 2 feet; height 1 feet;

Material WOODEN PLANKS

(d) Canal; Total length 2731 FEET
miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	DEPTH AT TAIL LINE	GRADE PER MILE
<u>THROUGH</u> At <u>0.15</u> Mile	<u>2</u> feet	<u>4</u> feet	<u>8</u> feet	<u>90 grade</u> <u>0.02</u> 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 2 years.

11. Time required for complete application of water to the proposed beneficial use 34 years.

12. Choice of newspaper for publication of notice of intention to appropriate

COLONIA TIMES - COLONIA SO. DAK.

STATE OF SOUTH DAKOTA,

County of Lincoln ss.

I Charles T. Pichay, 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 and (Owner, manager, engineer.)

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

Charles T. Pichay

Subscribed and sworn to before me this 13 day of Jan 1940

Geo. E. Muller
 Notary Public (or other qualified officer.)

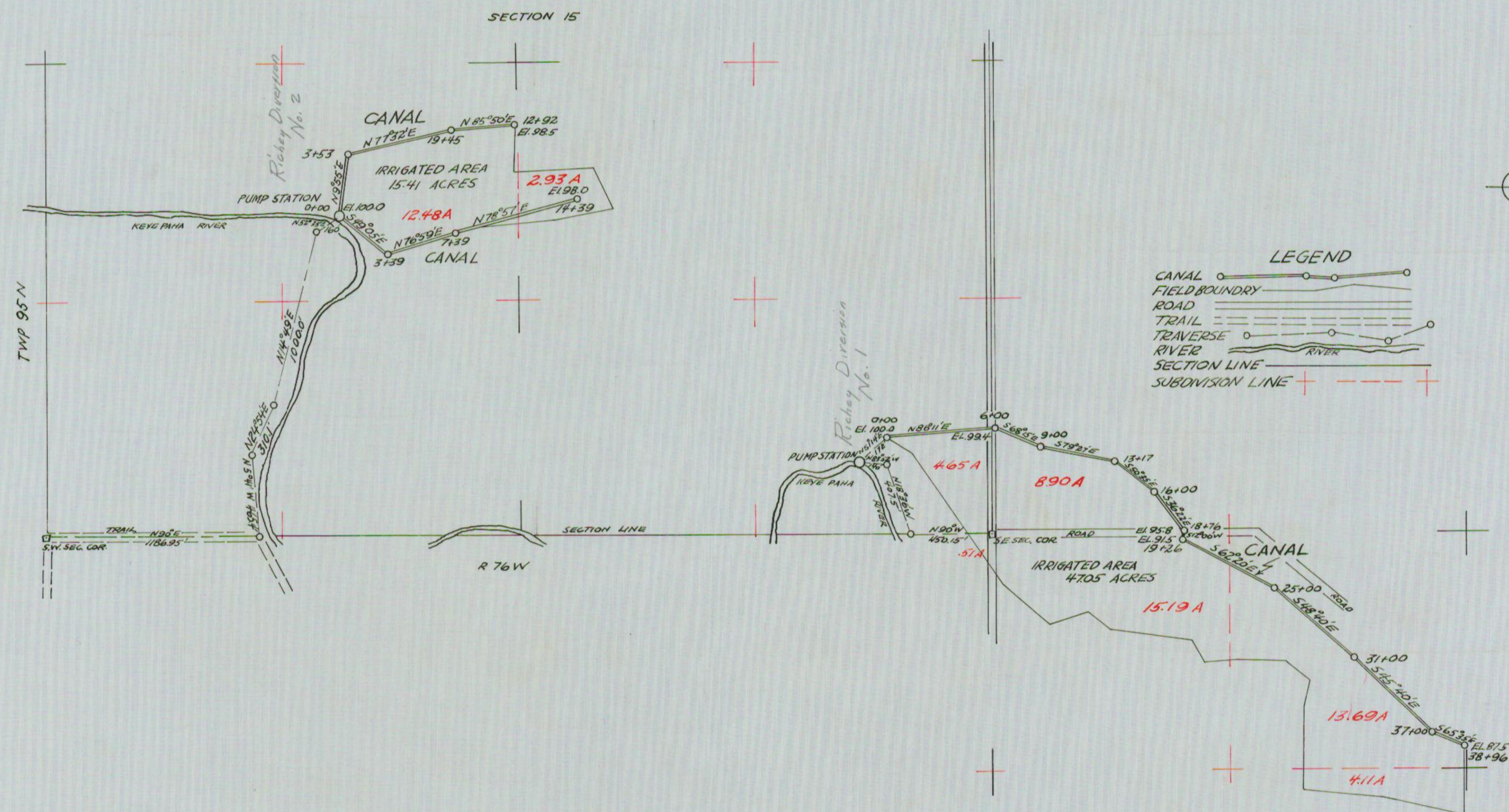
MAP OF KEYEPAHA RIVER IRRIGATION PROJECT

SECTION 15 - T95N-R76W

TOTAL ACRES UNDER IRRIGATION ~ 62.46

CHAS. RICHEY - OWNER

2 PUMPING STATIONS



SURVEYED 12-20-39
 PLOTTED 12-21-39
 TRACING 12-22-39
 DESCRIPTION 5 1/2 SEC. 15-95-76
 SW 1/4 SEC. 14-95-76
 NW 1/4 SEC. 23-95-76
 SCALE 1" = 400'

J. R. Richardson
 Registered Professional Engineer & Land
 Surveyor.

RECEIVED
 MAY 15 1940
 OFFICE OF STATE ENGINEER
 Pierre, S. DAK.

322-2
 (WR 281-2)
 282-2

Remarks by State Engineer:

Protest was made by stockmen below the site to the use of water from the river for irrigation during low stage when stock water supplies might be affected. For this reason the annual period of use has been limited as stated below. For the purpose of this permit the limitation shall be as follows: During periods when the flow in the river at the Government Station at Wawela is 10 cu. ft. per sec. or less or when the gauge reading is 1.0 or less, this permit shall not authorize the drawing of water from the stream for irrigation.

STATE OF SOUTH DAKOTA,

County of Hughes } ss.

Pierre, South Dakota, March 27, 1940

This is to certify that the foregoing application was received at this office at 1:45 o'clock P.m. upon the 15th day of January, 1940 and that after examination it was found to be in accordance with the irrigation laws of South Dakota and the permit is hereby granted subject to the provisions hereinafter stated.

DEAN W. LOUCKS

State Engineer.

Number of permit 202-2

Date of first receipt of application January 15, 1940

Date of return to applicant for correction January 16, 1940

Date of receipt of corrected application February 5, 1940

Date from which applicant may claim right January 15, 1940

Approved March 27, 1940, Recorded in Book 2, Page 468-469

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 March 27, 1941

2nd. The whole of said work is to be completed on or before March 27, 1942

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is March 27, 1944

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 0.2 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 for irrigation on or

before March 27, 1944; said water to be used during the following described annual periods:

March to December except during periods of low river stage when use of water for irrigation would effect necessary stock water supplies

Witness my hand this 27th day of March, 1940.

DEAN W. LOUCKS

State Engineer.

(First Publication 1940)

APPROPRIATION OF WATER

Office of the State Engineer
Pierre, S. Dak. Feb. 5 1940

Notice is hereby given that Charles R. Richey whose postoffice address is Millboro, Tripp County, S. Dak., has made applications in accordance with the provisions of the irrigation laws of South Dakota for permits to appropriate for beneficial use 0.6 and 0.2 cubic feet of water per second of time from Koya Paha River through Richey Diversion No's. 1 & 2 respectively, the point of diversions to be located on the Left bank of said stream in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 15 township 95N range 76W, and 740' W. and 410' N from the SE corner of the said Section 15, and in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 15 township 95N range 76W, and 1630' east and 1790' north from the SW corner of said Section 15, respectively. Said water to be used for the purpose of providing irrigation in Sections 14, 15 and 23 in township 95 north range 76 west.

These applications will be taken up by the State Engineer at his office at Pierre for consideration upon the 9th day of March 1940, at 11:00 A.M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permits would be detrimental to the public welfare (shall) file such protest with the State Engineer in writing prior to the above date and may appear on the day, and at the place, above mentioned, in person, for the purpose of discussing further the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any and all information presented.

Dean W. Lauck

November 15, 1939

Re: Koya Paha Water Right

O. A. Richey
Millboro, South Dakota

Dear Sir:

This will acknowledge receipt of your letter of November 14th and we are enclosing, herewith, application blanks and mimeographed instructions relative to the procurement of a water right. There has been no particular change in the procedure and the information given in 1934 through correspondence still holds good.

I note that you say that water will be taken from two different points and I would advise that it is necessary to fill out two separate applications, one for each point of diversion or pumping station. Necessary forms are enclosed.

The applications should be filled out and returned to this office together with the required fee of \$5.00 and the necessary maps prepared by a registered engineer. After the applications and maps have been received by this office they will be reviewed and you will be informed as to further procedure.

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

DWL:dn
Enc.

Form No. 25

APPLICATION FOR EXTENSION OF TIME FOR COMPLETING WORKS.

To the State Engineer,

Pierre, South Dakota.

Dear Sir:-

I hereby request that an extension of time ~~XXX~~ to Oct. 1, 1917

be granted me for the completion of works to be done under permit No. 281-2
282-2.

Said works are located in Tripp County and are described as follows:-

Location of headworks: In the SE
NE $\frac{1}{4}$ of the SE
SW $\frac{1}{2}$ of Section 15 Township 96 N. Range 76 W.
E., B. H. M.

The water is to be used for the purpose of Irrigation

The extension of time for the completion of these works is requested for the following reasons:

Difficulty in getting material and equipment

Charles R. Richey
Holder of Permit No. 281-2
282-2

APPROVED:-

Heard Luck
State Engineer.

Copy sent to Charles R. Richey,
Milboro, So. Dak.

Form No. 25

APPLICATION FOR EXTENSION OF TIME FOR COMPLETING WORKS

To the State Engineer,
Pierre, South Dakota.

Dear Sir:-

I hereby request that an extension of time of one year
be granted me for the completion of works to be done
under permit No. 262-2.

Said works are located in NW¹ of SW¹ of Sec. 15, T. 95 N. R. 76 County and
are described as follows:-

Location of headworks: In the 1/4 of the 1/4
of Section Township Range
E., B.H.H.

The water is to be used for the purpose of irrigation

The extension of time for the completion of these works is requested
for the following reasons: labor and cost conditions.

Charles P. Reiche
Holder of Permit No. 262-2

APPROVED:-

APPROVED
OCT 1 1947
Richard L. Smith
State Engineer.
STATE ENGINEER

September 26, 1947.

Charles E. Richey,
Milboro, S. Dak.

Dear Mr. Richey:

In reply to your letter of September 20th, we are enclosing herewith application for extension of your water permit No. 202-2. If you will sign both copies and return, we will complete and send one to you for your files. We are also enclosing in duplicate a Notice of Completion of Works. You will also please sign this and return both copies.

Before we can authorize an Engineer to make inspection of the works it will be necessary for us to have the name and address of said Engineer. I would, therefore, suggest that you get in touch with the Soil Conservation Service and find out who can make the inspection and let me know and then I will mail him an authorization.

Very truly yours,

Dean W. Loucks,
State Engineer.

W/Lch
Enc.

**South Dakota Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Division of Water Rights
(605) 773-3352

August 11, 1980

Because of the existing deficient supply of water in the Keyapaha River (2.3 cfs at Wewela gage August 6, 1980) to provide water for domestic use including livestock watering, it is ordered that all withdrawals of water from the Keyapaha River for irrigation purposes cease effective 12:00 noon August 14, 1980 until January 1, 1981 or until further notice.

This order is issued in accordance with the South Dakota Water Laws which require the Water Management Board to control and regulate all waters of the State to assure water for domestic supplies and prior water rights.

Please govern your use of irrigation water under your Water Right in accordance with this order. You will be notified if the water supplies of the Keyapaha River become sufficient to permit irrigation water withdrawals again during 1980. If there are any questions on this order, please let me know.

Very truly yours,



JOHN PATCH, Chief Engineer
Water Rights Division

JH/gy

Equal Opportunity Employer

South Dakota
Department of
Water & Natural Resources

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

March 23, 1987

CHARLES D RICHIEY
SR 10 BOX 110
WEWELA, SD 57578

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

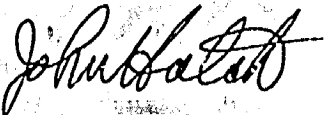
Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 710-2, 282-2, 281-2. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 2:00 pm, May 6, 1987 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

1. Amend Permit No(s). 710-2, 282-2, 281-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

The hearing(s) is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.


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

NOTE: If the questionnaire(s) is received in this office before the hearing date, your name will be deleted from the agenda for the hearing.

South Dakota
Department of
Water & Natural Resources

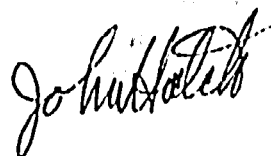
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

May 13, 1987

NOTICE OF AMENDMENT TO WATER PERMIT(s)

TO: CHARLES W. RICHEY
SR 10 BOX 110
WEWELA, SD 57578

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



SUBJECT: Amendment to Water Permit No(s). 282-2, 710-2, 281-2

Pursuant to the provisions of the notice dated March 23, 1987, and following the Hearing May 6, 1987, the Water Management Board has amended Water Permit No(s). 282-2, 710-2, 281-2 to add the following qualification:

"This permit is subject to the Irrigation Water Use Questionnaire being submitted each year."

The addition of this qualification to your Permit means that failure to submit the required irrigation questionnaire in the future could result in **SUSPENSION** of the water permit and no use of water for up to one year for the first violation. Please include the enclosed attachment with your permit.

Attachment to Water Permit No. 282-2

Pursuant to the provisions of the notice dated March 23, 1987 and following the Hearing May 6, 1987, the Water Management Board has amended Water Permit No. 282-2 to add the following qualification:

"This Permit is subject to the Irrigation Water Use Questionnaire being submitted each year."

NOTICE OF TRANSFER OF OWNERSHIP

No. 282-2

TO: Chief Engineer
Water Rights Division, DWR
523 East Capitol
Pierre, SD 57501-3181

Date: 8-28-90



I/We request that Water Permit/Right No. 282-2-----

formerly owned by: Charles R. Richey-----

be transferred to: (name & address) Charles D. Richey-----

HC 88, Box 47 Wewela, SD 57572----- (telephone No.) 842-1539-----

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

SW1/4 Sec. 14; S1/2 Sec. 15; NW1/4 & NE1/4 Sec. 23 all in T95N-R76W-----

I/We understand that the validity of Water Permit/Right No. 282-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

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

STATE OF SOUTH DAKOTA)

County of T.B.J.P.P.)

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

Charles D. Richey
(Signed)

Subscribed and sworn to before me this 28 day of August, 1990.

[Signature]
(Notary Public)

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

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

RECEIPT

Division of Water Rights
South Dakota Department of Water and Natural Resources

Pierre, September 6, 1990

RECEIVED OF Charles O. Richey, SR 10 Box 110, Menela, SD 57578

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 _____ Water Right No. 282-2

Fee for Filing Extension Request _____

Fee for Certified Copy of _____

Fee for Print Copy of Map _____

Fee for Certifying _____

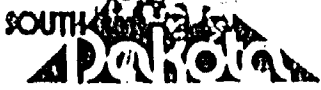
Fee for _____
(Any Other Work Provided by Law)

Total

2 50

By

Chief Engineer



Department of Water & Natural Resources

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

282-2

September 28, 1990

Charles D. Richey
SR 10 Box 110
Wewela SD 57578

Dear Mr. Richey:

Enclosed is Receipt No. 412361 in the amount of \$2.50 which you paid for transfer of Water Right No. 282-2.

Our records now reflect you as the owner of this Water Right.

Sincerely,

MARIE R. ARTHUR
Secretary
Water Rights Division
(605) 773-3352

enclosure

282-2

CERTIFICATION

I hereby certify that on January 14, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Amendment of Water Right Nos. 281-2, 282-2 and 710-2 addressed as stated below.

Charles Richey, HC 88 Box 47, Wewela SD 57578

Marie R. Arthur
Marie R. Arthur
Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 15th day of January, 1991.



John Hatch
Notary Public

South Dakota

GREAT FACES. GREAT PLACES.

282-2
DEPARTMENT OF WATER & NATURAL RESOURCES
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

January 11, 1991

NOTICE

TO: Charles Richey
HC 88, Box 47
Wewela, SD 57578

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

John Hatch

SUBJECT: Amendment of Water Right Nos. 281-2, (282-2) and 710-2
Qualification Regarding Cut Off Periods

Notice is given that the Water Management Board will consider deleting and adding the following qualifications to Water Right Nos. 281-2, 282-2 and 710-2.

Qualification to be deleted from Water Right Nos. 281-2 and 282-2:

During periods when the flow in the river at the Government Station at Wewela is 10 cubic feet of water per second or less or when the gauge reading is 1.0 or less, this permit shall not authorize the drawing of water from the stream for irrigation.

Qualification to be added:

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 10 cfs or less, unless written authorization is received from the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

The hearing to consider amendment of Water Right Nos. 281-2, 282-2, and 710-2 to delete and add the above qualifications will be held February 27, 1991 at 11:30 am, Meeting Room, Governors Inn, 700 West Sioux Avenue, Pierre, SD 57501. The agenda time is an estimate and may be delayed due to prior agenda items. The hearing will be held pursuant to the provisions of SDCL 46-1-14 and 46-2-17.

The hearing is based on the review of Keya Paha River Water Permits/Rights and historic flow records of the Keya Paha River. The attached report summarizes the current water permits/rights on the Keya Paha River and contributing tributaries. Also enclosed is a notice of hearing that will be published in the Winner Advocate for two consecutive weeks. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-9 and 46-2-11.

After all evidence is taken at the hearing, the Board may issue a decision to delete and add the above qualifications, postpone any action or take no action. This hearing is an adversary proceeding. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Attachment

282-2

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION
TO AMEND WATER PERMITS AND WATER
RIGHTS WHOSE WATER SOURCE IS THE
KEYA PAHA RIVER, IN PARTICULAR,
WATER PERMITS AND RIGHTS NOS. 281-2
282-2 AND 710-2, CHARLES RICHEY;
NO. 369-2, VICTOR WEICKUM; NO. 414-2
H.W. CARLSON; NO. 465-2 LUCILE RICHEY;
NOS. 835-3 AND 959-2 ALVA WILEY;
NO. 1530-2, VERN KESZLER; NO. 879-2,
RICHARD KIRSCH; NO. 931-2, LLOYD
BLOMSTROM NO. 1107-2, STANLEY HANSON;
NO. 1108-2, GARNET SARGENT;
NO. 1128-2, CHARLES HELLMANN; AND
NO. 2122-2 RODNEY HOFELDT

) FINDINGS OF FACT
) CONCLUSION OF LAW
) AND FINAL DECISION



FINDINGS OF FACT

I

This is an application by the Chief Engineer to establish a more manageable "cutoff" system on the Keya Paha River.

II

The existing water permits and water rights on the Keya Paha River have various cutoff dates. The first three permits issued on the Keya Paha River have a 10 cfs bypass at the Wewela Gauging Station. Eight permits, issued in the 1950s and 1960s, do not have a specific low flow bypass or cutoff date, but do have a requirement to bypass water for downstream domestic use and prior water rights. Three permits, issued in the 1970's, have a June 15 cutoff date. The most recent permit granted in the Keya Paha system provides a May 20 cutoff date.

III

Keya Paha system includes not only diversions from the Keya Paha River itself, but from its tributaries.

IV

The Keya Paha River is a spring fed river.

V

The Wewela Gaging Station is located at a point downstream of most of the water permits at issue. Statistics developed at the Wewela Gaging Station demonstrate that for the past thirty-nine years there were at least 10 cfs water at Wewela 90% of the time during the driest months of July, August and September. The same gaging station statistics indicate that there was a 70% chance that there would be at least 20 cfs of water at Wewela during the driest months of August and September.

VI

That Wewela Gaging Station thus reflects the situation which has existed given actual diversions. The Wewela station statistics do not reflect, however, the withdrawals of the latest appropriator whose Water Permit Application No. 2122-2 was approved May 23, 1990. That permit was for 4.57 cfs of water from a dug out located on a spring fed draw and supplemental water from Lost Creek, a tributary of the Keya Paha River. That permit has a May 20 cutoff for the portion of the diversion from Lost Creek.

VII

At least one domestic user downstream of the Wewela Gaging Station has testified that even when there are 18 cfs of water in the stream, there is insufficient water for his livestock. His cattle are located several miles below Wewela.

VIII

The Board finds that a 10 cfs bypass at Wewela is insufficient to provide reasonable protection to downstream domestic use, including livestock watering and prior water rights. The Board finds, furthermore, that reasonable protection is provided, on the basis of data now available, by a 15 cfs bypass requirement.

IX

The Board of Water Management has jurisdiction to impose amendments on existing permits to protect downstream domestic use, including livestock watering and to protect prior water rights. Such amendments are justified by the Water Management Board's statutory authority and duty to protect such prior rights.

X

The rights of the prior appropriators are not unlawfully impaired by the exercise of this authority by the Board, especially when the amendment provides for exceptions upon written authorization from the Chief Engineer. Moreover, when it is reasonable to allow exceptions despite the 15 cfs bypass requirement, senior appropriators will be

allowed by the Chief Engineer to irrigate beyond the cutoff date before junior appropriators.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. The Board has general authority to amend existing water permits pursuant to SDCL 46-2A-12.
3. The amendment set out in the Final Decision does not unlawfully impair existing rights. This is so because the existing rights are all subject to downstream domestic use including livestock watering and, of course, prior water rights. Moreover, even when the flow is 15 cfs or less, any appropriator may receive written permission from the Chief Engineer to appropriate water and such permission shall be granted, insofar as reasonably possible under the circumstances, first to senior appropriators and then to later appropriators.
4. The cutoff requirement set out in the Final Decision provides reasonable direction to the Chief Engineer in his management of the Keya Paha system. The proposed amendment to the permits is for beneficial purposes and is in the public interest.
5. The Board has jurisdiction to provide for a 15 cfs bypass requirement despite the fact that the advertisement provided for a 10 cfs requirement. The Chief Engineer's recommendation, as advertised and served upon the present water right holders, authorized the Board to approve the recommendation with "additional qualifications. . . ."

This language vests the Board with the power to make reasonable modifications in the recommendation.

6. The Department of Game, Fish and Parks requested a 16 cfs bypass for fish and wildlife purposes. The Board, having determined to adopt a 15 cfs requirement, concludes that it is unnecessary to consider whether it is appropriate or lawful to impose new bypass requirements on existing permits for fish and wildlife purposes and therefore declines to act upon the GF&P suggestion.

FINAL DECISION

Each of the rights and permits identified in the caption of this proceeding is herewith amended to remove any previous cutoff dates and bypass requirements and the following qualification is hereby added to each of the above-identified water rights and water permits.

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be bypassed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 15 cfs or less, unless written authorization is received from the chief engineer. Diversions under this permit shall be in accordance with any written orders issued by the chief engineer.

BY THE BOARD

Chairman
Water Management Board

m-pld51.jpg

282-2

CERTIFICATION

I hereby certify that on June 17, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of action taken by the Water Management Board to amend Water Right Nos. 281-2, 282-2 and 710-2 addressed as stated below:

Charles Richey, HC 88, Box 47, Wewela, SD 57578.

Cheryl F. Frost
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of June, 1991.

John Hatch
Notary Public



South Dakota

GREAT FACES. GREAT PLACES.

June 13, 1991

282-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

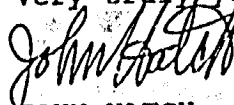
NOTICE

Charles Richey
HC 88, Box 47
Wewela SD 57578

Dear Mr. Richey

This letter is in response to action taken by the Water Management Board to amend Water Right Nos. 281-2, 282-2 and 710-2. The Board amended Water Right Nos. 281-2, 282-2 and 710-2 by deleting and adding the qualifications on the enclosed "Attachment" which should be placed with each water right. The action was taken pursuant to the notice to you dated January 11, 1991.

Very truly yours,



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

enclosures

ATTACHMENT TO WATER RIGHT NO. 282-2

CHARLES RICHEY

The Water Management Board amended Water Right No. 282-2 at the February 27, 1991 Board meeting to delete and add the following qualifications:

Qualification deleted:

During periods when the flow in the river at the Government Station at Wewela is 10 cubic feet of water per second or less or when the gauge reading is 1.0 or less, this permit shall not authorize the drawing of water from the stream for irrigation.

Qualification added:

Low flows as needed for downstream domestic use, including livestock watering, and prior water rights must be by-passed. This permit does not authorize the diversion of water from the Keya Paha River or contributing tributaries when the flow in the Keya Paha River at the USGS gaging station located at Wewela is 15 cfs or less, unless written authorization is received from the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

282-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
623 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

August 29, 1991

NOTICE

PERMIT NO(S). 710-2, 282-2 and 281-2

TO: Charles Richey
HC 88, Box 47
Wewela, SD* 57578

FROM: *for* JOHN HATCH, Chief Engineer
Water Rights Division
(605) 773-3352

SUBJECT: Shutoff Order for Water Diversions from the
Keyapaha River.

The flows in the Keyapaha River are below 15 cubic feet
per second (cfs) at the Wewela gaging station. Therefore,
to protect domestic use (livestock watering), effective
immediately, no pumping of water is authorized from the
Keyapaha River or contributing tributaries until January
1, 1992 or until further notice.

The following is the latest flow (cfs information on the
river:

GAGE	3/27/91	3/28/91	3/29/91
Wewela	15.9	13.5	12.6

If you have any questions, please contact Tim Schaal or
Del Brosz, Division of Water Rights, Joe Foss Building,
Pierre, SD 57501, phone (605) 773-3352.

282-2

CERTIFICATION

I hereby certify that on August 29, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Shutoff Order for Water Diversions from the Keyapiha River addressed as stated below:

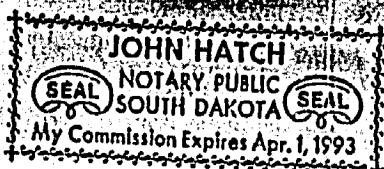
Garnet Sargent, RR, Clearfield, SD 57581
Rodney Hofeldt, RR 5, Box 89, Millboro, SD 57554
Stanley Hanson, RR 5, Box 63, Millboro, SD 57554
Lloyd Blomstrom, P.O. Box 623, Winner, SD 57580.
Vern Keszler, HC 88, Box 12, Clearfield, SD 57581.
~~Dale Heese, SR Box 36, Millboro, SD 57554.~~
Charles Hellman, RR 5, Box 84, Millboro, SD 57554.
Alva Wily, SR 10, Box 34, Millboro, SD 57554.
Richard Kirsch, HC 80, Box 49, Springview, NE 68778.
Charles Richey, HC 88, Box 47, Wewela, SD 57578.
Lucile Richey, RR 10, Box 46, Wewela, SD 57578.
Victor Weickum, Wewela, SD 57578.
H. W. Carlson, RR 1, Box 32, Colome, SD 57528.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 30th day of August, 1991.



John Hatch
Notary Public



282-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

NOV 12 1997

710-2

Charles D Richey
HIC 88 Box 48
Wewela, SD 57578-7003

Dear Mr. Richey:

Enclosed is your Reissued Water License No. 710-2. The applicable portions of Water Right Nos. 281-2 and 282-2 were incorporated into this water license. The priority dates that were established under each of the water rights were carried over to the new license.

On June 28, 1990, an investigation was conducted of the water use system described in Water Right Nos. 281-2, 282-2 and 710-2. The investigation found a total of 140.5 acres being irrigated from the Keya Paha River at a diversion rate of 1.96 cfs. A priority date of January 15, 1940 (as established under Nos. 281-2 and 282-2) is retained for 0.80 cfs with the remaining diversion rate of 1.16 cfs retaining a priority date of May 12, 1961 (established under No. 710-2).

As long as you beneficially use the water as described in Water License No. 710-2, SD Water Laws provide that you have a continuing right to the use of the water. If you have any questions concerning the reissued license, please contact us.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

gm

enclosures