



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

OCT 05 2020

28A-2

Jerald E & Melissa A Stearns
11450 Plains Creek Rd
Edgemont SD 57735

Dear Mr. & Mrs. Stearns:

Enclosed is your Reissued Water License No. 28A-2. Included with the license is a map of the area and a receipt in the amount of \$50 which you paid for filing an ownership change.

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** 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** authorizing diversion of 4.80 cfs from Coal Creek and dry draws to irrigate 338 acres in Section 24, T10S, R2E.

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA

REISSUED WATER LICENSE NO. 28A-2 (DIVISION OF NO. 28-2 INTO 28A-2 AND 28B-2)

(1) 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. Water Right No. 28-2, with priority dates of July 26, 1907, February 1, 1910, October 14, 1910, March 29, 1911 and October 2, 1949 was issued to the water right holder for diversion of water with construction of the described water supply system and the application to beneficial use completed.

Water License No. 28-2 was reissued November 26, 1986 to include the applicable portions of Location Notice Nos. 209-2 (priority date of February 1, 1910), 330-2 (priority date of October 14, 1910), 338-2 (priority date of March 29, 1911) and 709-2 (priority date of 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 is being 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.

(2) It is certified that the water right holders have complied with the provisions of South Dakota State Law relating to completion of the water supply system and are entitled to divert 3.50 cubic feet of water per second for beneficial use. The diversion points are located as follows:

1. Coal Creek: 1,060 ft S of the NW corner of Section 25, T10S, R2E with a lat/long in the vicinity of Latitude 43.15643278 and Longitude -103.83792247 (**NW ¼ NW ¼ Section 25**);
2. Dry Draw: S45°W 3,400 ft from the NE corner of Section 24, T10S, R2E with a lat/long in the vicinity of Latitude 43.16709580 and Longitude of -103.82714979 (**SW ¼ NE ¼ Section 24**);
3. Dry Draw: N25°W 1,400 ft from the SE corner of Section 24, T10S, R2E with a lat/long in the vicinity of Latitude 43.16251674 and Longitude of -103.82072493 (**SE ¼ SE ¼ Section 24**);
4. Dry Draw: S61°W 460 ft from the NE corner of Section 24, T10S, R2E with a lat/long in the vicinity of Latitude 43.17304904 and Longitude -103.82013074 (**NE ¼ NE ¼ Section 24**);
5. Dry Draw: N39°W 2,300 ft from the SE corner Section 25, T10S, R2E with a lat/long in the vicinity of Latitude 43.16404303 and Longitude -103.82396592 (**NW ¼ SE ¼ Section 24**).

Continued

Water License No. 28A-2

Page 2

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

Legal Description	Acres	Priority dates
T10S, R2E Section 13 SE ¼ NE ¼	25	July 26, 1907
SW ¼ NE ¼	13	July 26, 1907
NE ¼ SW ¼	6	July 26, 1907
SW ¼ SW ¼	4	July 26, 1907
SE ¼ SW ¼	37	July 26, 1907 (35 acres) October 2, 1949 (2 acres)
NW ¼ SE ¼	40	July 26, 1907 (31 acres) October 2, 1949 (9 acres)
NE ¼ SE ¼	40	July 26, 1907 (6 acres) October 2, 1949 (34 acres)
SW ¼ SE ¼	40	July 26, 1907 (6 acres) February 1, 1910 (34 acres)
SE ¼ SE ¼	40	February 1, 1910
Total	245	

(4) Pursuant to South Dakota Water Law 46-5-30.1 Jerald E Stearns and Melissa A Stearns, 11450 Plains Creek Road, Edgemont SD 57735 the holders and/or owners of Water Right No. 28A-2 is issued a license to appropriate water, the right to use 3.50 cubic feet of water per second from Coal Creek and dry draws with priority dates of July 26, 1907 (1.81 cfs); February 1, 1910 (1.06 cfs); March 29, 1911 (diversion point #4) and October 2, 1949 (0.63 cfs) from the locations specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Incorporated Water Right No. 28-2.

Eric Gronlund

Eric Gronlund, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

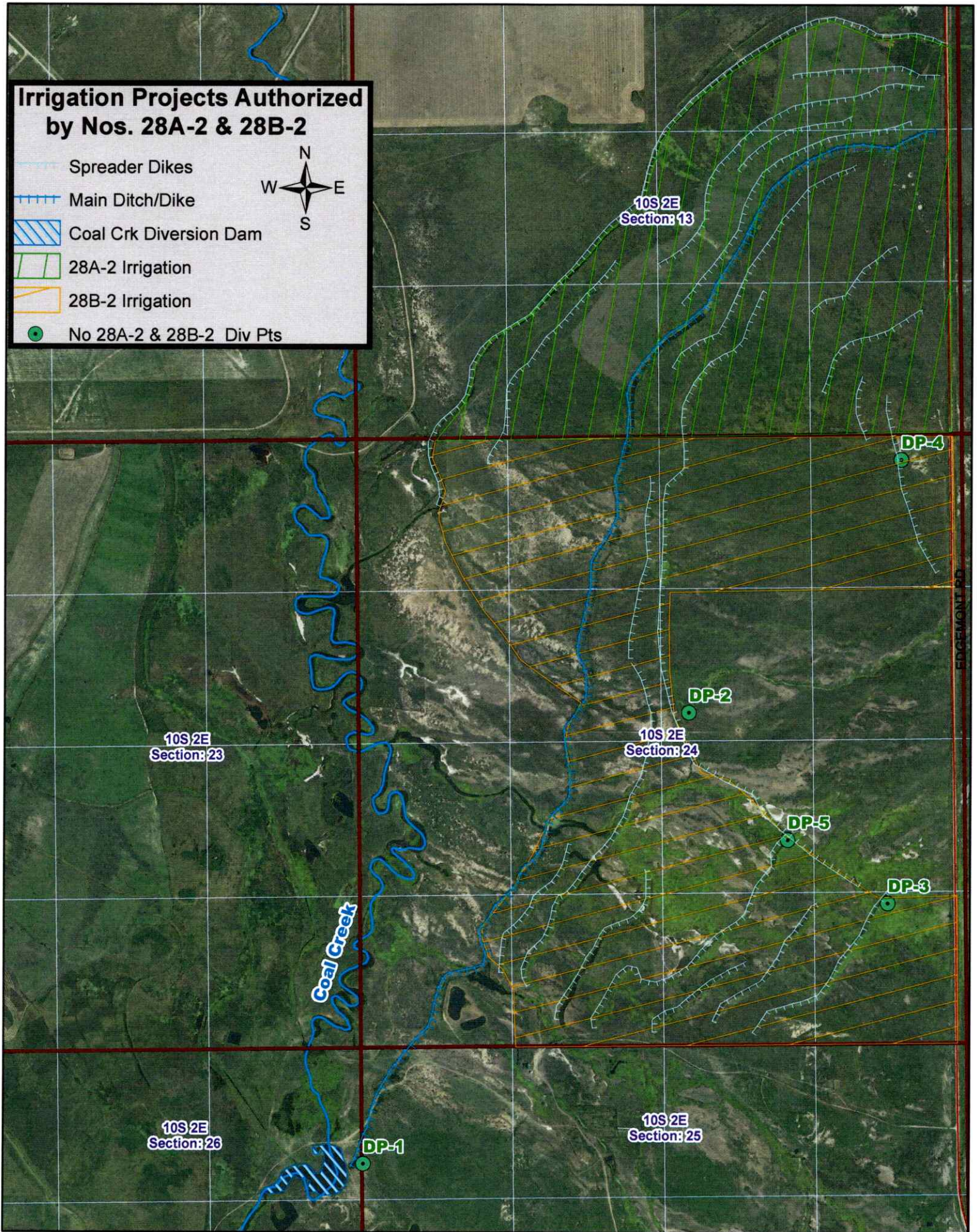
OCT 05 2020

date



Irrigation Projects Authorized by Nos. 28A-2 & 28B-2

- Spreader Dikes
- Main Ditch/Dike
- Coal Crk Diversion Dam
- 28A-2 Irrigation
- 28B-2 Irrigation
- No 28A-2 & 28B-2 Div Pts



0 0.25 0.5 1 Miles

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

PAID

JUN 22 2020

Ck# 4248

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

JUN 22 2020

WATER RIGHTS
PROGRAMWater Right/Permit No. 28-2Date: 6/19/20I/We request that Water Right/Permit No. 28-2 formerly owned by:George LeBar be transferred to:New Owner Name: Jerald E. Stearns and Melissa A. StearnsAddress: 11450 Plains Creek RoadCity, State, Zip Edgemont SD 57735 Telephone No. 605-662-6786

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

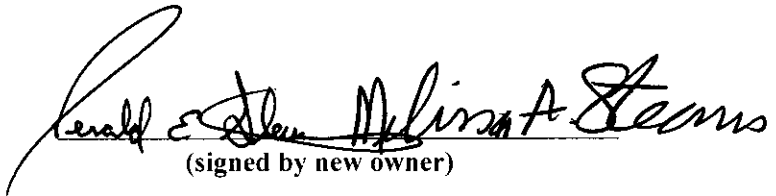
Township 10 South, Range 2 East, BHM, Fall River County, South Dakota:
Section 13: E1/2; Lot A of SW1/4 according to the plat thereof recorded in Book 7 of Plats, Page 44,
less railroad right of way; and SW1/4 less Lot A.

☒ I understand that the validity of Water Right/Permit No. 28-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

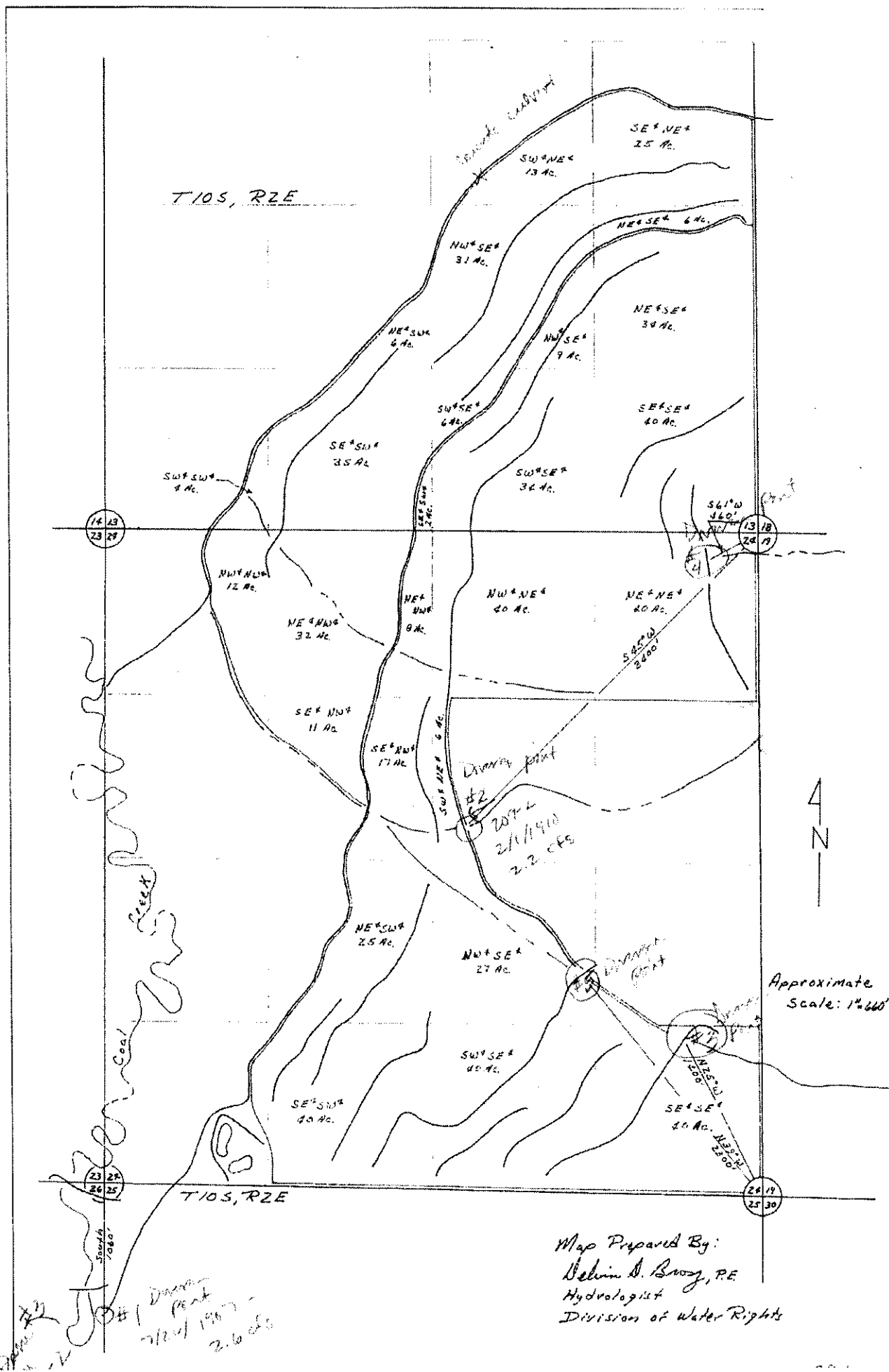
A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Melissa A. Stearns, Jerald E Stearns, the new owner, certify that the above information is true and correct.


(signed by new owner)

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

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



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date June 22, 2020

RECEIVED OF Jerry E Stearns 11450 Plains Creek Road Edgemont SD 57735

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$
Fee to retain Future Use Permit No. _____ after period of seven years.	\$
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	\$
Fee for Filing Transfer Form <u>28-2</u>	\$50.00
Fee for _____	\$
Fee for Issuing New Well Driller's License No. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law)	
TOTAL	\$50.00

By Eric Gronlund
Chief Engineer

vm

2019 REAL ESTATE TAX NOTICE DUE IN 2020

FALL RIVER COUNTY TREASURER
906 N RIVER ST
HOT SPRINGS SD 57747

LEGAL DESCRIPTION:(For Tax Purposes only)
E1/2 LYING S OF RR R/W, SW1/4
INCLUDING LOT A, SEC 13, TWP 10,
RG 2

Please notify us of address changes.
605-745-5145

SEE TRS TAX SEARCH ON COUNTY WEBSITE:
fallriver.sdcounties.org

TAXED IN THE NAME OF:

004387-009-034-009148-000000 SE240847 PAM

STEARNS, JERALD E & MELISSA A
11450 PLAINS CREEK RD
EDGEMONT SD 57735

AMBULANCE EDGEMONT AMBULANCE

RURAL FIRE EDGEMONT RURAL FIRE
CITY/TOWNSHIP: 10-2 PROVO T04

ADDITION: 13-010-02
SCHOOL DISTRICT: EDGEMONT 23-1 S01

ACRES 470.83

TAXBILL#: 2019 R 00363

PARCEL#: 04000-01002-131-10

ENTITY	\$ IN US CURRENCY \$/1000 LEVY	TAXABLE	TAX	*OPT-OUT		
COUNTY	4.185	72,940	305.25		1ST HALF DUE	379.43
RURAL FIRE	.096	72,940	7.01		2ND HALF DUE	379.43
AMBULANCE	.173	72,940	12.61	11.80		
SCHOOL AG	5.950	72,940	433.99	21.44		
					TOTAL DUE	758.86

* INDICATES A LOCAL DECISION TO OPT OUT OF THE TAX LIMITATION
TAXABLE @ 85.0% OF ASSESSED VALUE

*** IMPORTANT INFORMATION - PLEASE READ ***

If your taxes are included in your mortgage payment, retain this notice as reference.
Not all mortgage companies pay Special Assessments which are due April 30th.
If this tax notice includes any Special Assessments please contact your mortgage
holder to determine who is responsible.

SENIOR CITIZENS and DISABLED ASSESSMENT FREEZE * FALL RIVER COUNTY RESIDENTS ONLY *
Filing Deadline.....April 1st (You MUST re-apply each year)
Minimum Age.....65 or older, or disabled before January 1st
Income Guidelines Apply.....Contact your County Treasurer's Office

Delinquent Taxes Will Accumulate Interest At .833% per Month!

FALL RIVER COUNTY TREASURER
906 N RIVER ST
HOT SPRINGS SD 57747

PAYMENT 1

STEARNS, JERALD E & MELISSA A

BILL#: 2019 R 00363

PARCEL#: 04000-01002-131-10

1st HALF TAX AMOUNT DUE \$379.43

1st HALF DELINQUENT AFTER APRIL 30th, 2020

Detach and Return with First Payment
NO RECEIPT MAILED UNLESS SELF-ADDRESSED
STAMPED ENVELOPE IS ENCLOSED

FALL RIVER COUNTY TREASURER
906 N RIVER ST
HOT SPRINGS SD 57747

PAYMENT 2

STEARNS, JERALD E & MELISSA A

BILL#: 2019 R 00363

PARCEL#: 04000-01002-131-10

2nd HALF TAX AMOUNT DUE \$379.43

DELINQUENT AFTER OCTOBER 31st, 2020

Detach and Return with Second Payment
NO RECEIPT MAILED UNLESS SELF-ADDRESSED
STAMPED ENVELOPE IS ENCLOSED



☐ NOTE CHANGE OF ADDRESS INFORMATION ON REVERSE SIDE

CUT HERE



☐ NOTE CHANGE OF ADDRESS INFORMATION ON REVERSE SIDE

PDF+PIN: 029+04000-01002-131-10

Fall River County

Wed, 4/29/2020, 12:10 PM Page 1

Mail To: 11450 PLAINS CREEK RD
EDGEMONT, SD 57735-0000Deed: STEARNS, JERALD E & MELISSA A
Contract:
CID#: DBA:
MLS:Map Area: Ranch Land - West
Route: 000-000-000
Tax Dist: 20-10-2
Plat Page:
Subdiv: [EMPTY]Checks/Tags:
Lister/Date:
Review/Date: FD, 01/30/2019
Entry Status: Reviewed by Dep

A / Rural / Ag Land

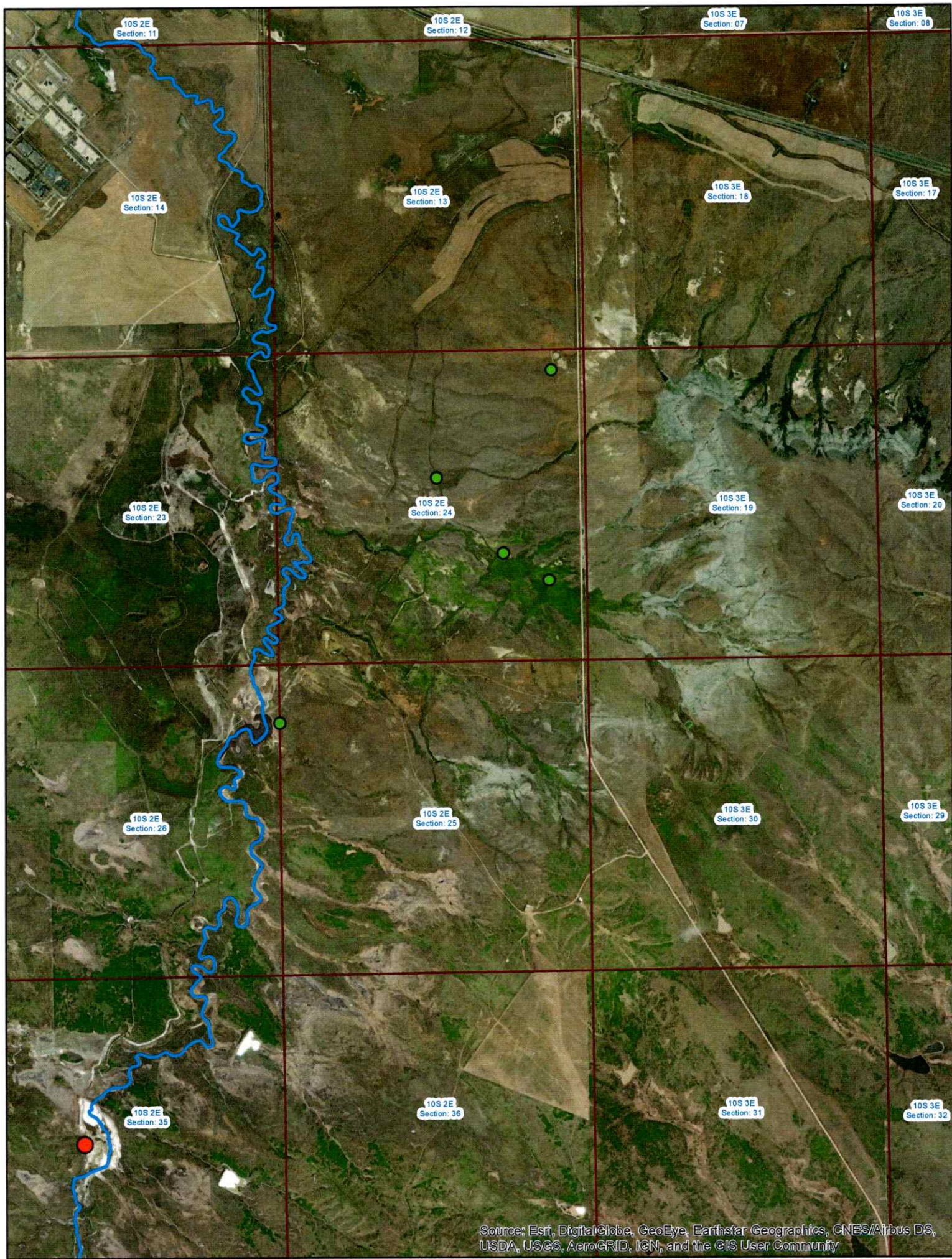
Legal: E1/2 LYING S OF RR R/W, SW1/4 INCLUDING LOT A, SEC 13, TWP 10, RG 2

Land																
Land Basis	Front	Rear	Side 1	Side 2	R. Lot	SF	Acres									
RANGE							470.830									
Grand Total						20,509,354.80	470.830									
Sales																
Date	\$ Amount	NUTC	Recording	Date	Number	Tag	\$ Amount	Reason	Type	Values						
									Ag							
									NA							
									OO							
									Exempt							
									Total							

Wed, 4/29/2020, 12:10 PM Page 1

Checks/Tags:
 Lister/Date:
 Review/Date: MB, 06/05/2013
 Entry Status:

[illegible]



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.

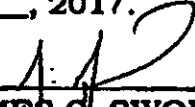
SUMMONS

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)
)
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.)

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 R Henderson
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 R Henderson
SUSAN HENDERSON

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

Valerie Sword
NOTARY PUBLIC - SOUTH DAKOTA

My Commission Expires: May 10, 2022
(SEAL) **VALERIE SWORD**

(SEAL) NOTARY PUBLIC (SEAL)
SOUTH DAKOTA

6

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 80 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 2/28/47.



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. 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 the 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.

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. Hark
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.

Mary E. Brighman
Register of Deeds

EXHIBIT

A

MISCELLANEOUS RECORD No. 24

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

Wm. E. Coughlin
Register of Deeds

AGREEMENT

THIS AGREEMENT made and entered into this 10th day of December, 1945, by and between J. C. 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 the 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 these 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 1/2/49.

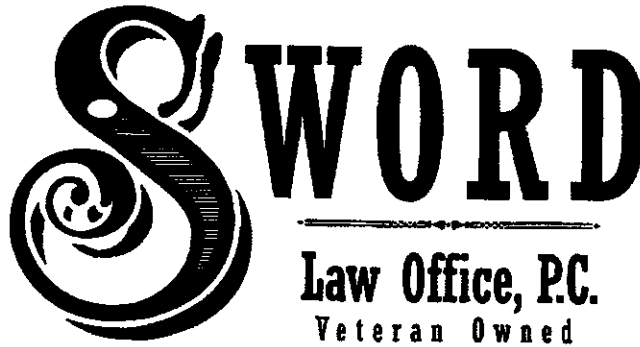
STATE OF SOUTH DAKOTA)
SS:
COUNTY OF FALL RIVER)

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

Wm. E. Bingham
Register of Deeds

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.

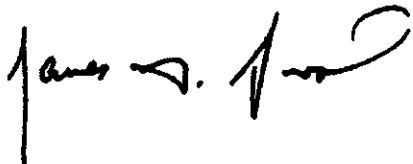
Enclosed please find the following:

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

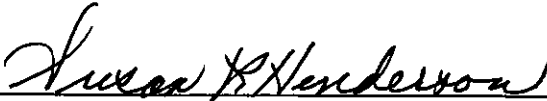
(605) 745-5422

STATE OF SOUTH DAKOTA)

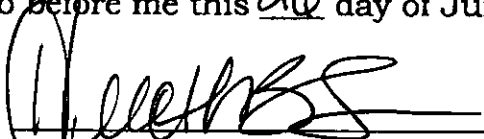
COUNTY OF FALL RIVER

)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)

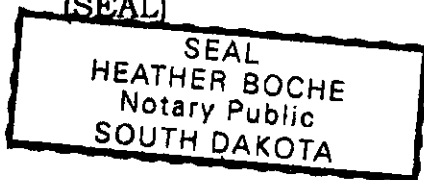




Photo added by Catherine LeBar Hamon



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

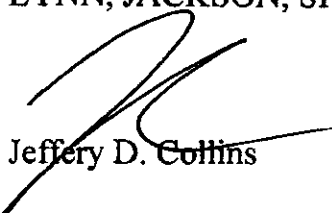
Dear Water Management Board:

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.


Jeffery D. Collins

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

www.lynnjackson.com

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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

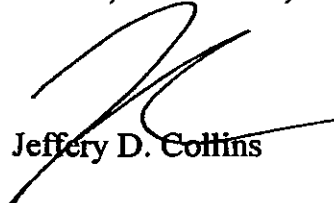
Dear Water Management Board:

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Thank you for your attention in this matter.

Sincerely,

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



Jeffery D. Collins

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)

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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. Wieczorek
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

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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

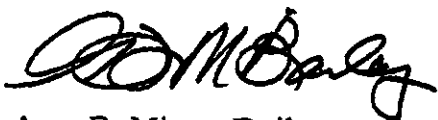
Second, to aid the parties through this process, please allow me to explain how the Chief Engineer responds to requests for investigations. Upon the receipt of a complaint, regardless of its form, the Chief Engineer, either himself or through an engineer in his employ, conducts an investigation. A report 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

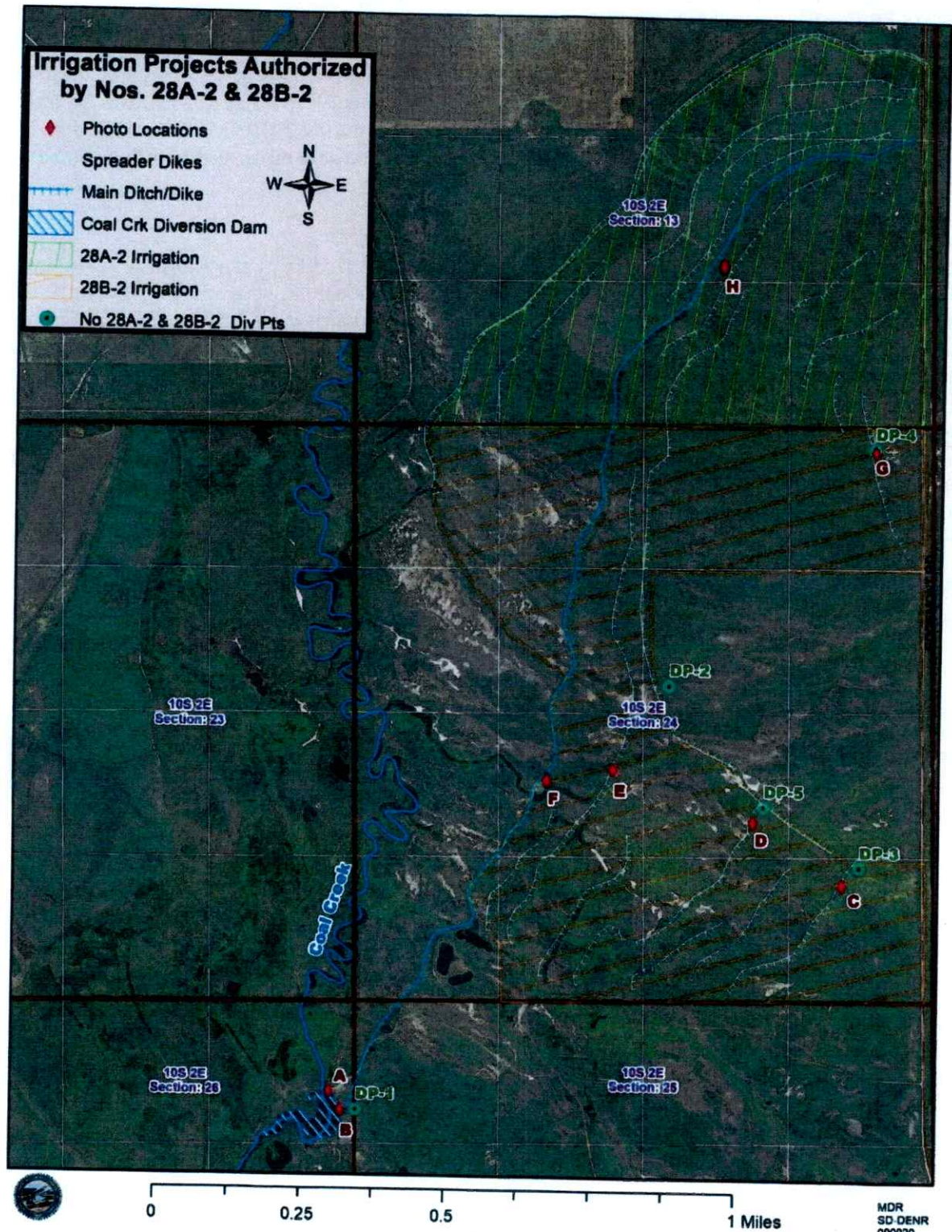


Figure 1 – Area map for Water Right No. 28-2 (Nos. 28A-2 and 28B-2) showing the authorized irrigation and the locations of photos taken during the August 18, 2020 water right status investigation.



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 $\frac{1}{4}$ 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.

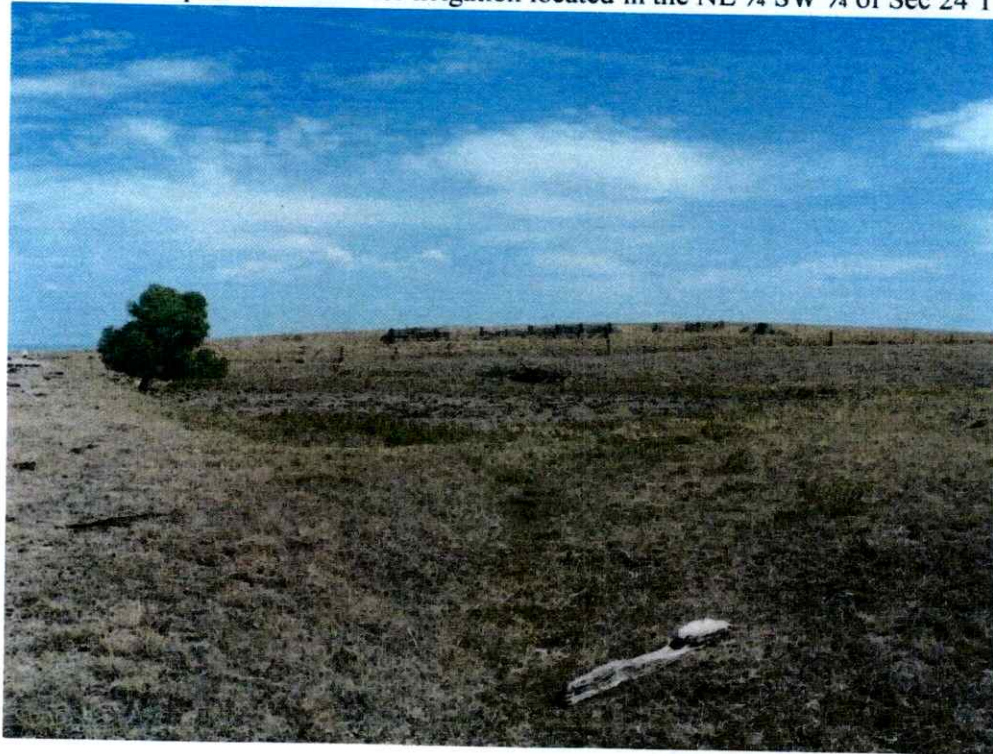


Figure 9 - Photo Location G facing north - A spreader dike to intercept runoff and disperse the water for irrigation located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 24 T10S-R2E.



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.

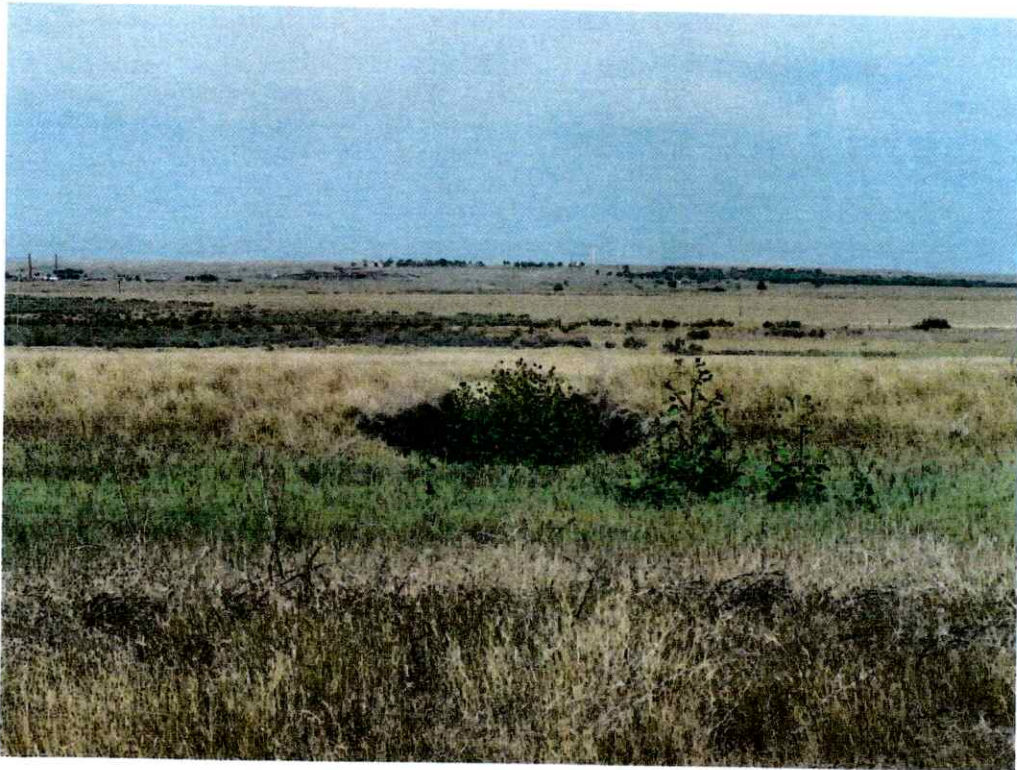


Figure 11 - Photo Location H - A dike breach to the main ditch/dike located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 13 T10S-R2E.

State of South Dakota

REISSUANCE OF Water License No. 28-2

(1) Joseph G. Trotter

of Prov., South Dakota was issued Water License No. 28-2

made 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 continued to applicant(s) for diversion of water with construction of the described

water supply system to be completed once before and the application to beneficial use of said

water once before completed.

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

Water License No. 28-2 as issued in 1974 contained errors in the diversion path 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, 1949 (LI 709-2).

(2)

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to the construction of

(the construction of the water supply system and beneficial diversion) 2.2 cubic feet per second of water

for beneficial use. The location of the diversion point(s) is 179-11-South 1060 feet from the NW

Corner of Section 25; 62-545°W 3400 feet from the NE Corner of Section 24; 63-825°W

1400 feet from the SE Corner of Section 24; 64-581°W 460 feet from the NE Corner of

Section 24; 65-839°W 2300 feet from the SE Corner of Section 24, all in T10S, R2E.

204

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

(6) Current to 900-301 90000 14827

at Box Q Douglas Wyoming 82610

the holder(s) and/or owner(s) of Water Right No. 28-2 is/are a license to appropriate water, the right to use

1.3 cfs water for use on land of water from Coal Creek and Dry Creek

July 26, 1907; February 1, 1910; October 14, 1910

of March 28, 1911; October 2, 1912 from the location specified in (7) of this license. The water is to

be used in and upon lands specified in (3) of this license for the purpose of irrigation

This license is subject to any limitations or specifications fixed in Water Permit No. 28-2 and subject

to South Dakota State Law.

John Hatch
State Engineer, Water Rights Division
Department of Water and Flood Control

JOHN HATCH

NOV 28 1985

Attachment A
Water License No. 28-2
George Lofar

1. Priority date: July 25, 1907
(Water Right No. 20-2)

Section 13, T100, 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	25 "
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, T100, R2E

SUBTOTAL 181 acres

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

Section 13, T100, R2E

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

Section 24, T100, R2E

NE 1/4 NE 1/4	40 "
NW 1/4 NE 1/4	40 "

SUBTOTAL 154 acres

3. Priority date: October 10, 1910
(Location Notice No. 320-2)

Section 24, T100, 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. 209-2

5. Priority date: October 2, 1949
(Location Notice No. 704-2)

Section 13, T100, R2E

NE 1/4 SE 1/4	34 acres
NW 1/4 SE 1/4	9 "
SE 1/4 SW 1/4	0 "

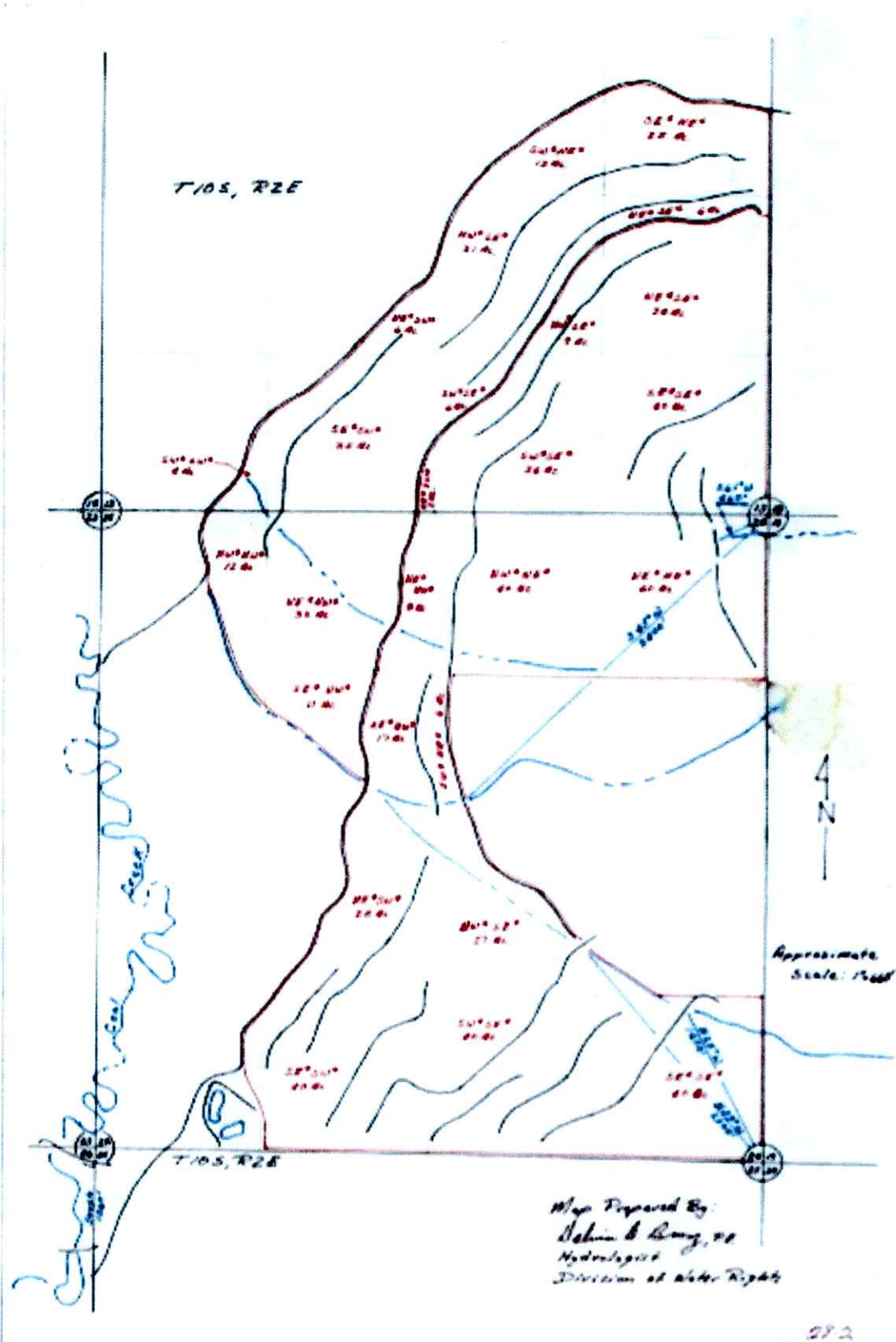
Section 24, T100, R2E

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	29 "
NW 1/4 SE 1/4	27 "

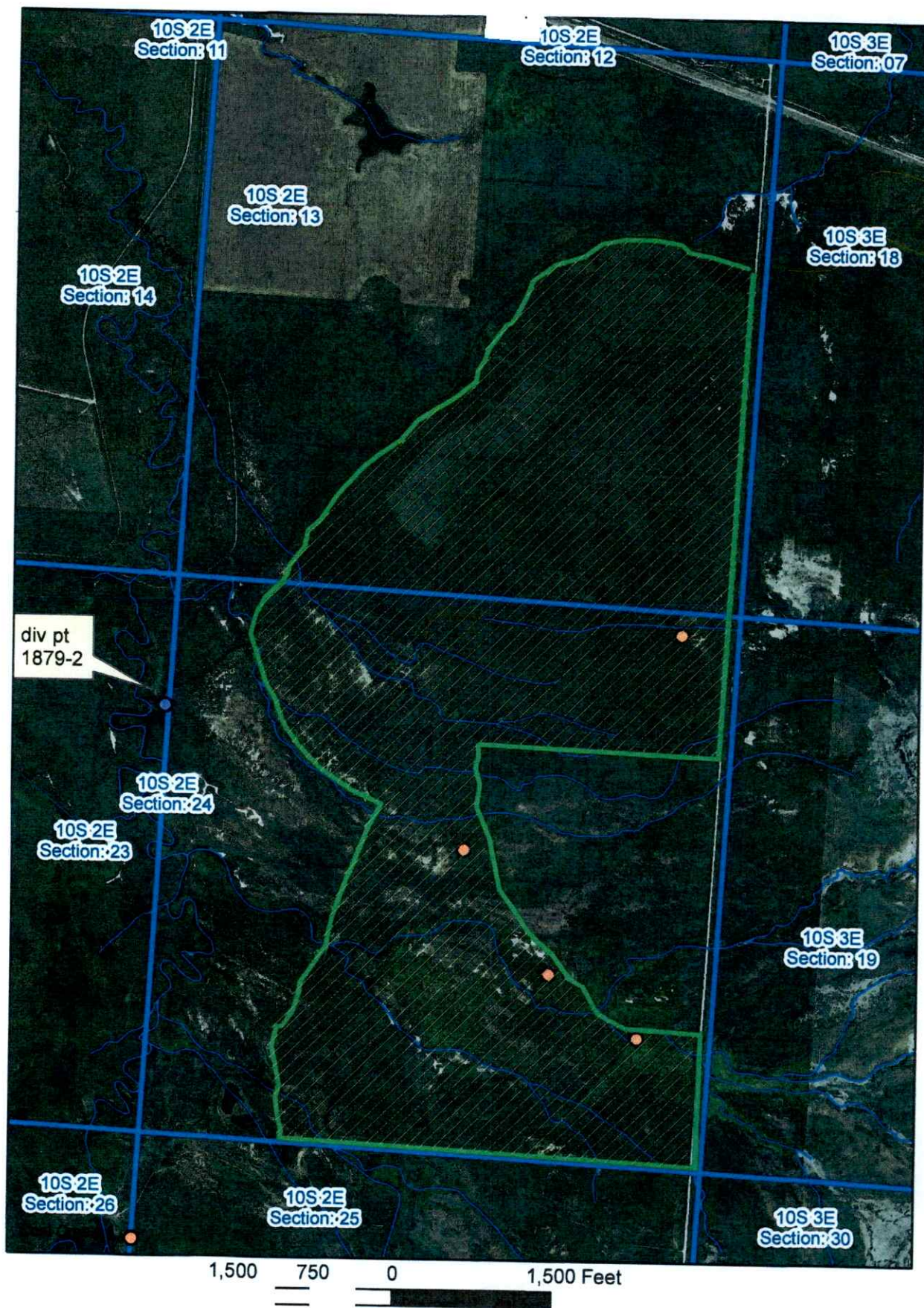
SUBTOTAL 128 acres

TOTAL 383 acres

Attachment 2



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



○ 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.