

NO. 376-3

Water Division No. 26 Fall River Water District
(Blanks to be filled by the State Engineer.)

APPLICATION FOR PERMIT

To appropriate Water within the State of South Dakota

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

1. Name of applicant 7-11 RANCH INC. FRANK SCHRÖTH, OWNER
SOUTH SAKOTA INVESTMENT COMPANY (a South Dakota corporation)
Village Meadows, Box 97, BUFFALO GAP, SD 57722
 Postoffice address Hot Springs, County Fall River, State South Dakota

I. If a corporation

- (a) Name of same South Dakota Investment Company
 (b) Date and place of incorporation at Aurora, Ill., October 1, 1925
 (c) Amount of capital stock \$50,000
 (d) Amount paid in \$25,000
 (e) Names and address of directors: as of October 25, 1947: F. A. Butler,
J. Gravelle, R. W. Hubbard, Rudolph Schroth, Julius H. Butler, all of Hot Springs,
Ill., and as of 1-1-48: Gravelle, who permanent address is c/o J. J. Pours, St. Louis,
Ill., and present mail address is Hot Springs, S. D.

(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 work (Whether by contract, employment of others, or by direct labor) All methods indicated above
 (b) Cash on hand, \$ Financial statement of Sept. 30, 1947,
of company, \$120,868.43
 (c) Bonds to be issued, \$ (a) Present estimated total resources
(b) Other resources, \$

2. Name of diversion work Butter Creek Diversion No. 1
 3. Quantity of water claimed 2471 (3) cubic feet per second.
 4. Source of water supply Butter Creek
 5. Location of point of diversion Headgate 24 ft. 6 in. and 37 ft. 6 in. of Northwest corner
of Ass. 12, T. 22 N., R. 10 E., S. 1 E., of 2 E.
on right bank.
 (Right or left bank looking down stream.)
 6. Annual periods during which water is to be used entire year as needed
 7. To be used for: and

1. Irrigation or domestic use:

- (a) Number of acres to be irrigated 2471 acres.
 (b) Legal subdivisions to be irrigated as shown on map, accompanying this application

(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.)

the area of (a) Statement as to domestic use (giving location, etc.) this water will be used within
 development and operation of this irrigation, and other rights.

II. Mining, power, manufacturing, transportation, or other purposes:

- (a) Nature of use Stock raising, power, fish culture, and fire protection
product for use or sale.
 (b) Amount of power to be generated (10) horse power.
 (c) Location of plant within the irrigation district, on the NE 1/4 of
Sec. 35-6-7.
 (d) Method of developing power Hydro-electric
 (e) Point where water will be returned to stream Butter Creek in location 25 and 30

MAP N 348-2

8. Estimated cost of works:

(a) Head gates, \$300.00 (now in place) (b) Pumping plant, \$ (7)
 (c) Fluming, \$500.00 (d) Canal-earth, \$75,000, Rock, \$5,000,
 (e) Other structures ~~diversion-dam repairs~~ \$25,000; Total, \$110,300.

9. Description of diversion works:

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

II. Dimensions of works:

(a) Dam: Height 9 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 wood, stone, concrete, and earth.
 (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 4 ft., 6 inches feet; height 3.4 feet; feet;

Material concrete, now in place

(d) Canal: Total length four miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At Mile	 feet	 feet	 feet	 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
At Mile	 feet	 feet	 feet	 feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work five years.

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

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

The Easter Chronicle

STATE OF SOUTH DAKOTA

County of Hughes

ss.

I, P. O. Butler, president, being first duly sworn on my oath depose and say: That my relation to the above described, undertaking is that of president of South Dakota Investment Company, that I have read the above and foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters herein stated and shown are true.

Signed P. O. Butler, 1904.

(BEAT) Subscribed and sworn to before me this 23rd day of October, 19 04

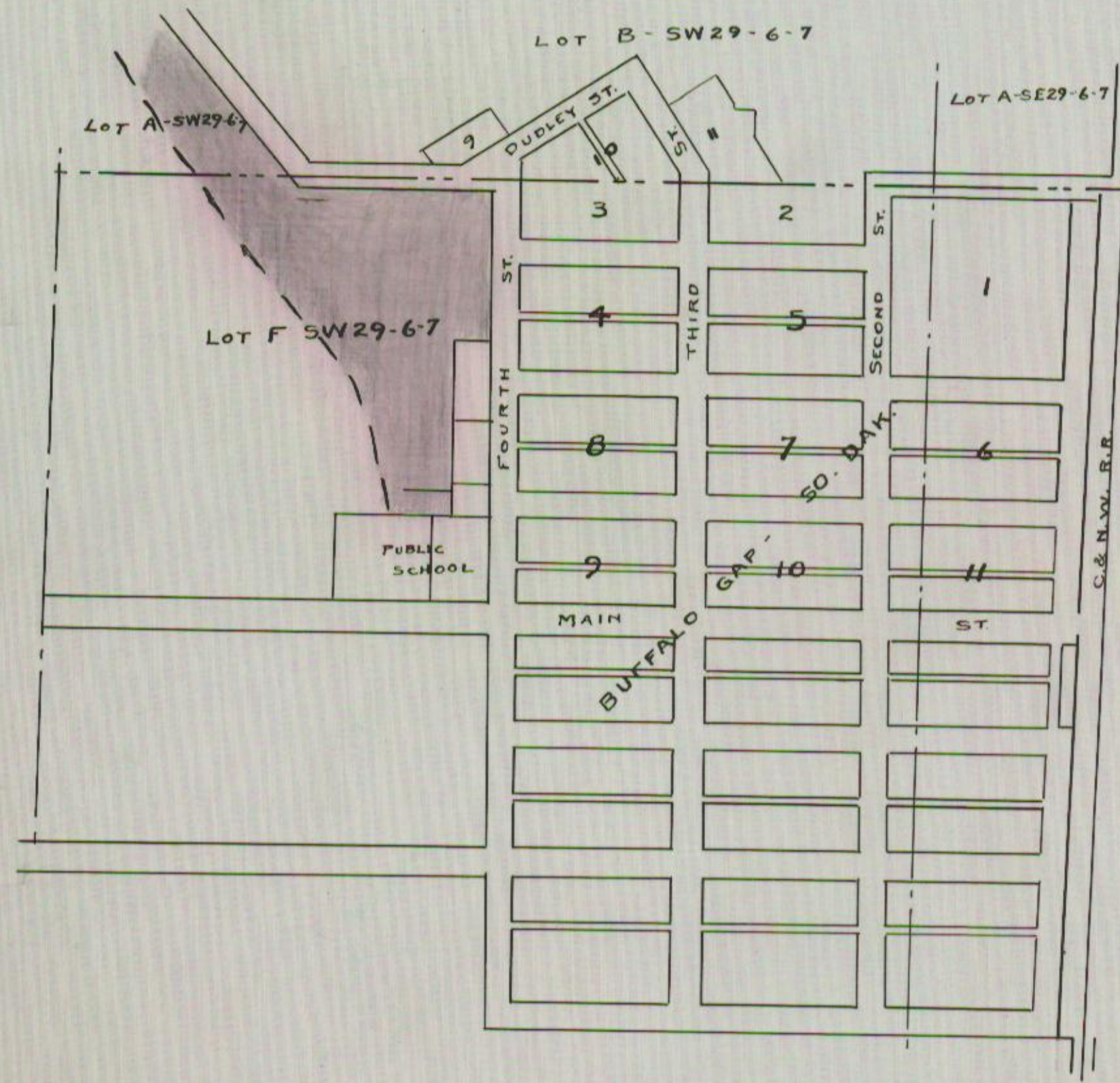
Notary Public (or other qualified officer.)

Bridge
 Highway floor elevation 101.7
 Water surface underneath 93.8
 Water surface above dam with
 no flash boards in place 100.9
 Floor of dam spillway 100.7
 Water surface at bridge 1/2 mile upstream 104.3
 Water surface with flash boards in place for
 irrigating 102.50 ft.

Diversion Box
 850 South and 300 ft. of northwest
 corner of section 19, Twp. 65 N. 7 E. of
 B. N. M.
 Floor Elevation 99.9
 Width
 Height 3.4 ft.

LEGEND.

- Main Canal.
- Highway.
- Land irrigable by gravity flow.
- Land irrigable by water pumped from
 the main canal.



400 FT. = 1 INCH.

BEAVER CREEK DIVERSION No. 1
 IN TOWNSHIP 65, RANGE 7E. OF BLACK HILLS MERIDIAN
 TO ACCOMPANY
 APPLICATION OF SOUTH DAKOTA INVESTMENT COMPANY,
 FOR WATER RIGHT IN
 BEAVER CREEK WATERSHED
 CUSTER CO. S.D.
 OCT. 25 - 1947.
 DAKOTA ENGINEERING CO.
 MITCHELL, S.D. ENGINEERS.

MAP#348-2 (WTR # 316-2)

(W.R. # 316-2)
Map # 348-2

This is all in
Beaver Creek Irrigation
Project No. 1



E. of Butler Properties

approximate Location of Beaver Creek

approximate Location of Mill Race

W.F. Nolan

C & NW

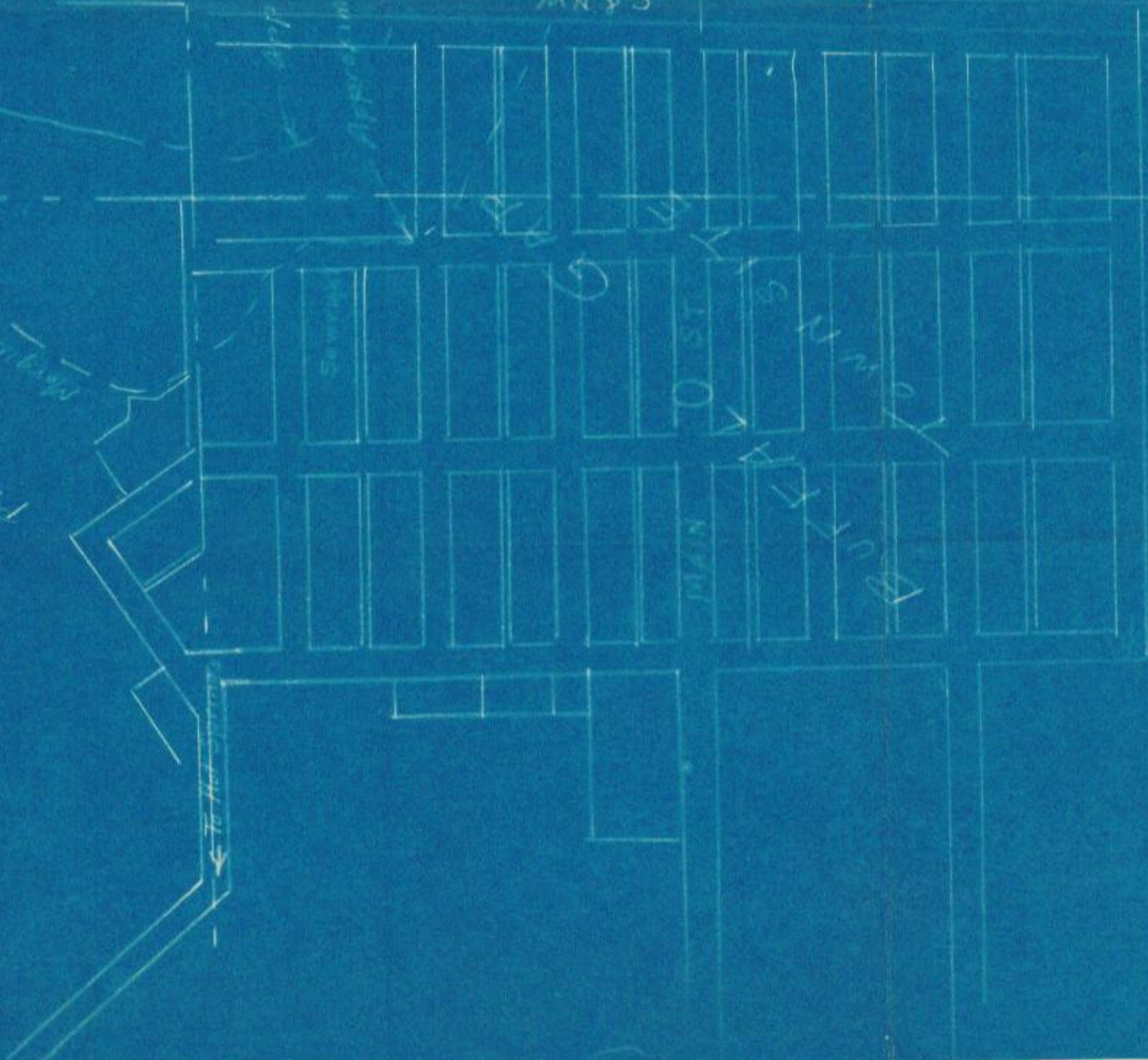
To Rapid City

Don't know recently
built by Nolan

Nolan Alfalfa
10-15 ft above Beaver Creek

Tubbs Miller Project

Beaver Creek



Remarks by State Engineer:

STATE OF SOUTH DAKOTA
County of Hughes } ss.

Pierre, South Dakota, November 30, 1947

This is to certify that the foregoing application was received at this office at 10:30 o'clock a.m. upon the 27th day of October, 1947 and that after examination it was found to comply with the water right laws of South Dakota was duly published and proof of publication filed in the office of the State Engineer. Three protests were received and discussed with the applicant and given careful consideration.

Dean W. Loucks, State Engineer.
Number of permit 316-2
Date of first receipt of application October 27, 1947
Date of return to applicant for correction None, 1947
Date of receipt of corrected application None, 1947
Date from which applicant may claim right October 27, 1947
Approved November 30, 1947, Recorded in Book 2, Page 576-577.

This is to certify that I have examined the foregoing application for a permit to appropriate water of the State of South Dakota in accordance with present State Water Laws, have read the three protests presented and have heard same discussed and I hereby approve under present State Water Laws the 4 cu. ft. per second of water from Beaver Creek appropriated in July 31, 1880 by water right No. 027-2, a copy of which is hereto attached and marked "Exhibit A". I also hereby approve an additional 4 cu. ft. per second from Goose Creek of the water appropriated Sept. 30, 1881, by water right No. 028-2, a copy of which is hereto attached and marked "Exhibit B". This water however, is available only after any and all prior rights have been satisfied including any rights that may be valid by virtue of the existence of water right No. 046-2, filed for record in the Gustav County Court House, a copy of which is attached hereto and marked "Exhibit C". The approval of this permit as set forth above in no way nullifies any valid priority dates or other provisions contained in the water rights referred to above or provisions of any other valid water rights existing at the time of the filing of the application for this permit. The above approvals are granted, subject further however to the following limitations and conditions:

1. The equivalent of at least one-fifth of the work above specified is to be completed on or before July 1, 1950.
2. The whole of said work is to be completed on or before January 1, 1953.
3. The limit of time for proof of beneficial use of water appropriated in accordance herewith is January 1, 1957.
4. The water appropriated shall be used for the purpose of irrigation, domestic supply, stock-watering, fire protection, fish culture, power, milling.

Witness my hand this 30th day of December, 1947

Dean W. Loucks, State Engineer.

No. 316-2

Division No. 2

Fall River Water

District

PERMIT

to appropriate water from

Beaver Creek

County, South Dakota

Name of applicant

South

Dakota Investment Company

Name of diversion works

Beaver

Drain Diversion No. 1

Date of first receipt at office of State

Engineer Oct. 27

1947

Returned to applicant for Correction

Not returned

19

Corrected application received

19

Date of water right

Oct. 27

1947

Recorded in Book

2

Page 576-577

One-fifth of work to be completed

July 1

1950

Whole work to be completed

January 1

1953

Final proof of use of water

January 1

1957

Approved December 30

1947

State Engineer.

Form 20.

No. 316-2

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights Commission
Poss Building
Pierre, South Dakota 57501

Date: September 23, 1977

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

Lands as described and shown on the attached map of said certificate
of Examination of Works

formerly owned by The South Dakota Investment Company

has been transferred to 7-11 Ranch Inc., Frank Schroth, owner, Box 97,
Buffalo Gap, SD 57722

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

Water Right Permit No. 316-2 as provided for in Section 61.0127 of the 1960
Supplement to the South Dakota Code of 1939.

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

A fee of two Dollars and fifty Cents (\$2.50) is hereto attached to cover
filing fees as required under Section 61.0159 of the 1960 Supplement to the South
Dakota Code of 1939..

STATE OF SOUTH DAKOTA)
) SS.
County of CUSTER)

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

Frank Schroth, 7-11 Ranch, Inc
(Signed)

Subscribed and sworn to before me this

8

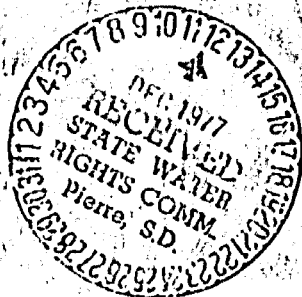
day of

DECEMBER

19 77

R. J. Nelson

(Notary Public)



COPY

Exhibit "A"

027-2

Know all men by these presents that I, G. C. Boland of the County of Gustar and Territory of Dakota claim by right of location, improvement and actual possession, Two hundred inches, "Miners Measurement" of the water of Beaver Creek for mining, milling, agricultural, and domestic purposes. Said water right is situate about 300 yards below the mouth of Buffalo Gap on Beaver Creek and was located on the 31st day of July A.D. 1880 by

G. C. Boland

Locator

The original of the foregoing instrument was filed for record on the 21st day of August 1880 at 10 o'clock A.M. and recorded on page 109 Book 4
Miscellaneous Locations.

H.P. Brown, Register of Leeds

C O P Y

Exhibit "B"

028-2

Water Right.

Know all men: That we, the undersigned citizens of the United States, and Territory of Dakota claim by right of location, improvement and possession, a certain water right situated on Beaver Creek, at Buffalo Gap, about one half mile below Glarks Ranch and one mile above Bolands Ranch. We claim 800 inches miners measurement of said water to be diverted from its course at a certain stake marked point of Diversion and where a notice is posted. Said water to be used for mining, milling, agricultural and domestic purposes and to be carried by ditch and flume or both to certain tracts of land about 2 miles below the residence of G. C. Roland, or to any intermediate point upon said route.

Located the 30th day of Sept. A.D. 1881.

G. C. Roland
L. B. Reno
Jabez Brandham

Locators.

Original of foregoing instrument filed for record at 8 o'clock P.M.

Oct. 1st 1881, Recorded page 148, Book 4.

E. H. Flynn,
Register of Deeds.

C O P Y

Exhibit "a"

0116-2

Water Right H. S. Tubbs et al.

Know all men by these presents that we the undersigned citizens of the United States claim by right of possession, appropriation and diversion and by virtue of the laws of the United States, One Thousand (1000) inches (miners measurement) of the waters of Beaver or Buffalo Gap Creek, for agricultural, domestic and mining, and milling purposes. Said Water to be carried by ditch or flume to certain agricultural ground lying about one half (1/2) mile from the point of diversion from its natural course. Said point of diversion being near a square bluff on East bank of creek where the creek turns to the West (reserving however the right to change the point of diversion should it be deemed necessary). Said Water Right being about one and one half (1 1/2) miles South East of Bolands Ranch at Buffalo Gap, and was located the 15th day of October A.D. 1880.

N. S. Tubbs
A. P. Smith

W. E. Bond
Geo. Jones

} Locators.

Jabez Brandham

The original of the foregoing instrument was filed for record this 15th day of October A.D. 1880 at 3 A.M. and recorded on page 123 of Book 4 of Miscellaneous Records.

H.P. Brown, Register of Deeds

G.H. Failey, Deputy.

Permit No. 316-2

Water Division No. 2

Fall River

Water District

Certificate of Construction of Works.

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That The South Dakota Investment Co. (A South Dakota Corporation)

of Hot Springs, County of Fall River, and State of South Dakota, the holder of Permit No. 316-2, issued upon Application

No. 316-2, bearing date of priority of Oct. 27, 1917 and as otherwise originally established under Water Right No. 027-2 and 028-2 as set forth in the permit.

second-feet of the waters of Beaver Creek, County of Fall River, State of South Dakota, at a point 150' South and 210'

West of the N.E. Corner of Sec. 19, T. 6 S., R. 7 E. of the N.W.M. and at the additional point as shown in the Engineer's Certificate of Examination of Works and shown on the map attached hereto, for irrigation, stock watering, power, fish culture, fire protection and including processing & development of agricultural products for use or purposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of sale,

completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use

second-feet of water; and that the lands proposed to be irrigated by the use of said water are described as follows:

as described in the Engineer's Certificate of Examination of Works and as shown on the map attached hereto.

Witness my hand this 22

day of

May

A. D. 1923

DEAN W. YACI

State Engineer of South Dakota.

cc: Ratler
Dean Eberle

Permit No. 216-2
Water Div. No. 2 Fall River Water Dist.

**Certificate of Completion
of Works.**

Dated May 29, 1953

Stream Beaver Creek

County Fall River

Amount 8 cu. ft.

Date of priority Oct. 27, 1947 & as
further described

Recorded in Book II

of Water Right Bk. page 576-577

STATE OF SOUTH DAKOTA

WATER LICENSE No. 316-2

WHEREAS, On the 2th day of October, A. D. 1947

The South Dakota Investment Co. (A South Dakota Corporation)

of Ville Theresa, County of Fall River, and State of South Dakota, duly made application (No. 316-2) to me for a permit to use 8

cubic feet per second of the waters of Beaver Creek, County of Fall River, State of South Dakota, for irrigating, stock watering, power, fish-culture and fire protection and including processing & development of agricultural products, and

WHEREAS, On the 30th day of December, A. D. 1947

Permit No. 316-2 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 1st day of January, A. D. 1953 & extended to May 30, 1953

and for the application to beneficial use of said water on or before the 1st day of January, A. D. 1957

and, WHEREAS, On the 24th day of April, A. D. 1953

the holder of said permit duly made proof of the completion of adequate works for the diversion of 6 cubic feet per second of said waters, as evidenced by my Certificate No. 316-2

dated May 29 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 8 cubic feet per second of water, with date of priority of Oct. 27, 1917, etc., and, and,

WHEREAS, On the 30th day of April, A. D. 1953 proof was duly made of the application to beneficial use of 8 cubic feet per second of said water;

NOW, THEREFORE, By the virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to The South Dakota Irrigand Co. (A South Dakota Corporation)

of Willie Thorpe, Hot Springs the holder and owner of said permit No. 316-2

a water right, dating from Oct. 27, 1917 and as otherwise vested in the permit then the early Water Right named in the permit to the use of 8 cubic feet per second of the waters of Roanoke Creek

in the County of Fall River and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be held in points as described in the

Certificate of Examination of Works

and conducted to and upon lands as described and shown on the attached map of said Certificate of Examination of Works.

for the purpose of irrigating stock watering, flax, fish culture and fire protection and including processing and development of agricultural products.

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and seal of my office at Pierre, South Dakota, this 27th day of May, A. D. Nineteen Hundred and Fifteen.

DEAN W. DUCKS

State Engineer.

State of South Dakota

Water License No. 1162

To South Dakota Irrigand Co.

(a S. Dak. Corporation)

Source of Supply Roanoke Creek

County Fall River

Area 8 Sec. Feet

Point of Diversion Sec. 35-65-75

as further described

Face of Use as described in

Certificate of Examination of

Works

Purpose irrigation, stock water-

ing, fish culture, fire protec-

tion & agriculture

Date of Priority Oct. 27, 1917

or of Invention as described

Records Dec. 30, 1918

In Book 17 of 17 Page 578

Applicant, the South Dakota Investment Company, a South Dakota Corporation, claims priority of right under section 61.0102 and amendments thereto, to the water flowing in Beaver Creek, Custer County, South Dakota, by virtue of a Water Right Location filed by G. C. Boland, August 21st, 1880 and recorded in Book 4 Miscellaneous Locations, page 109 of the records of the Register of Deeds of Custer County, South Dakota and the U. S. Government Land Office Plat of the Government Survey of Township Six (6) South, Range Seven (7) East of the Black Hills Meridian as now on file in the Office of the Commissioner of School and Public Lands at Pierre, South Dakota together with the Water Right filed by G. C. Boland, L. B. Reno and Jabez Brandham, dated September 30th, 1881 and filed for record in the Register of Deeds Office of Custer County, South Dakota and recorded in Book 4 of Location Certificates page 148 and which Water Rights are evidenced by record reference and in the State Engineer's Office at Pierre, South Dakota.

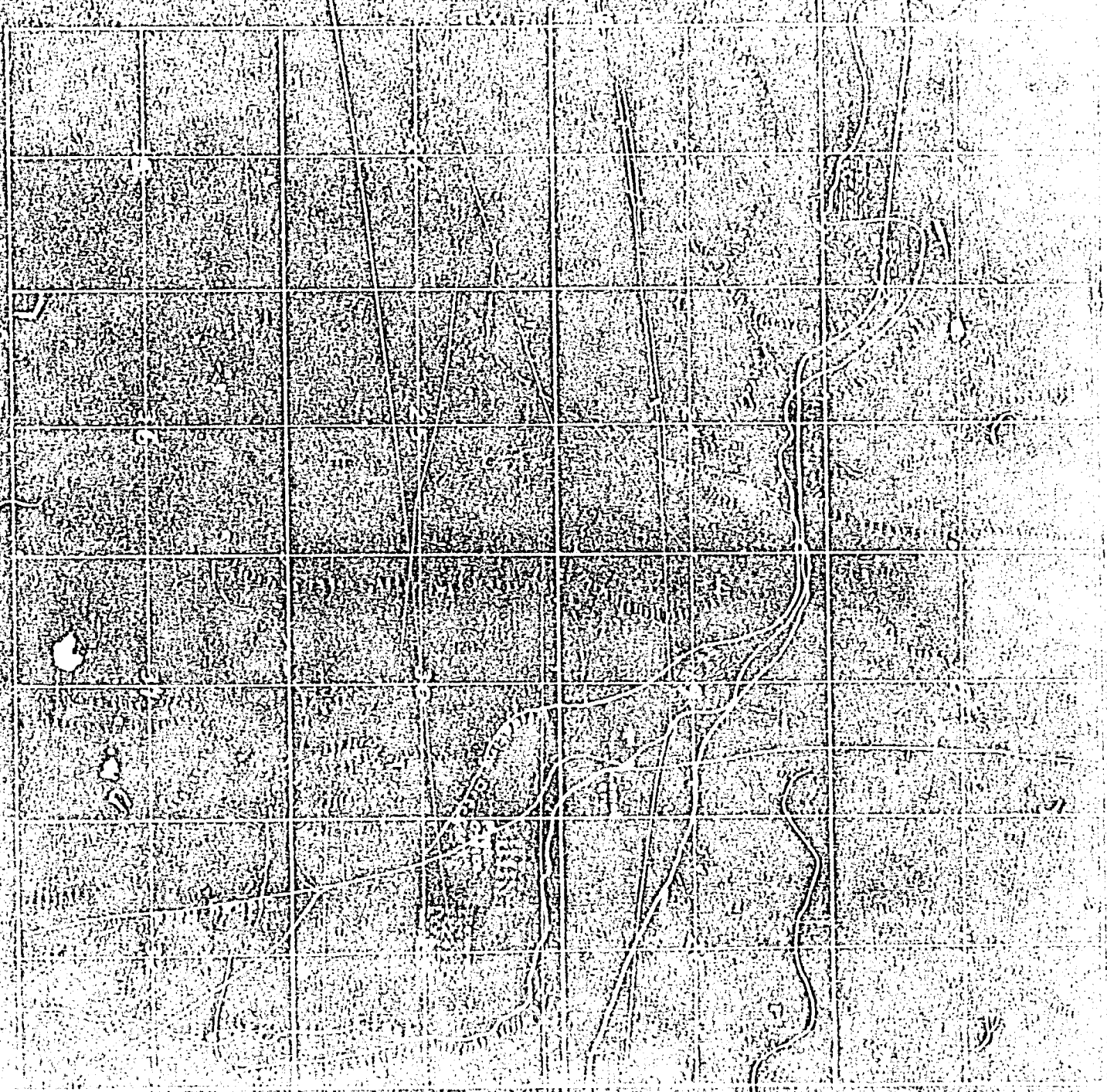
Applicant states that by assignment and conveyances of land it has acquired all rights in the locations above mentioned, and it is the owner of all land appurtenant to said Water Right Locations, and to the land to which water from said Water Right Location can be beneficially applied.

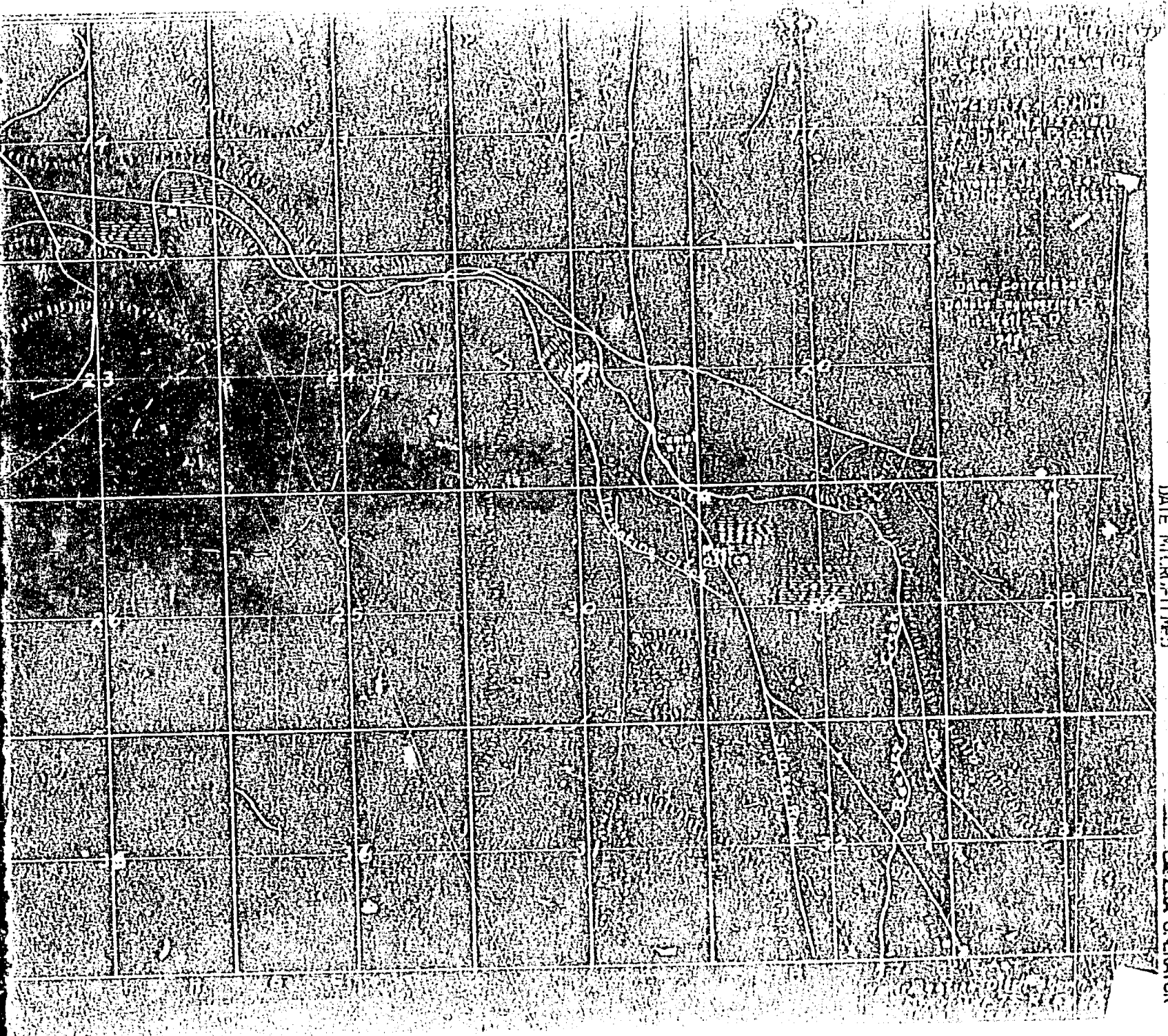
Applicant further states that said water right then made is now being confirmed to comply with subsequent legal requirements and practice.

An affiliated corporation is the owner of the land approximately one mile up stream upon which the springs are located which cause a permanent flow of water in said Beaver Creek to the headgate or point of diversion to Beaver Creek Irrigation Project #1.

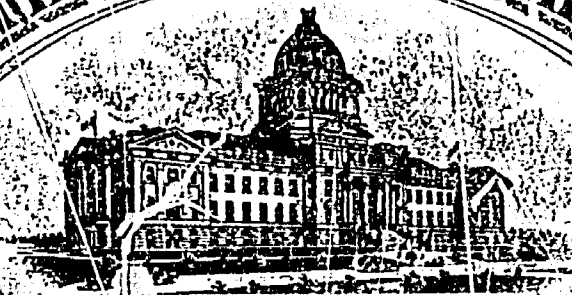
That the water appropriated by the Water Rights above referred to has been continuously beneficially applied for irrigation purposes, either by applicant or its predecessors in interest, since the said Water Rights are filed on August 21, 1880 and September 30, 1881. That the diversion dam and ditches and flumes have been used and improved since filing of said water rights and are being used at the present time by applicant. That applicant has an elaborate irrigation system constructed which is to be improved and enlarged until a total of 560 acres is under irrigation from said project.

Three-fourths (3/4) of the capital stock of applicant corporation and also of the above mentioned affiliated corporation, is held in trust by the Northwest Security National Bank of Sioux Falls, of Sioux Falls, South Dakota for the irrevocable use and benefit of the P. O. Butler RANCH DIVISION OF THE SOUTH DAKOTA STATE COLLEGE FOUNDATION, the same being a non-profit corporation organized and maintained by members of the staff and faculty of the South Dakota State College of Agriculture and Mechanic Arts of Brookings, South Dakota.





STATE OF SOUTH DAKOTA



DEPARTMENT OF STATE

United States of America, } Secretary's Office
State of South Dakota, }

This is to certify that the attached instrument of writing is a true, correct and examined copy of
Articles of Incorporation of SOUTH DAKOTA INVESTMENT
COMPANY and Amendment thereto.

and the whole thereof, and has been carefully compared with the original now on file in this office and found correct.

The within document, book, instrument, paper or law shall not be received in evidence in any court of this state unless this certificate is countersigned by the state treasurer with a statement of the fees received.

In Testimony Whereof, I have hereunto
set my hand and affixed the Great Seal of
the State of South Dakota, at the City
of Pierre, the Capital, on this 28th
day of October 19 47

FEES, \$ 5.00
COUNTERSIGNED BY

O. E. Buchler
State Treasurer.

Anna M. Stiff
Secretary of State.

ARTICLES OF INCORPORATION

OF SOUTH DAKOTA INVESTMENT COMPANY

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, Frank O. Butler, P. Rooney, and Rudolph Schroth, for ourselves, our associates and successors, have associated ourselves together for the purpose of forming a corporation under and by virtue of the statutes and laws of the State of South Dakota, and do hereby certify and declare that for such purpose we do hereby make, execute, and adopt the following articles of incorporation.

ARTICLE I

The name of this corporation shall be South Dakota Investment Company.

ARTICLE II

The term for which this corporation shall exist shall be fifty (50) years.

ARTICLE III

The principal place of business of this corporation shall be at the City of Hot Springs, County of Fall River, and State of South Dakota.

ARTICLE IV

The seal of this corporation shall be "South Dakota Investment Co., Hot Springs, S. D."

ARTICLE V

The purpose for which this organization is formed shall be as follows:

To subscribe for, purchase, invest, hold, own, assign, pledge, and otherwise dispose of capital stock, bonds, mortgages, debentures, notes, and other securities, obligations, contracts, and evidences of indebtedness of corporations, or any other organization either organized within or without the State of South Dakota. This corporation shall be and is fully authorized to purchase, acquire, hold, and dispose of stocks, bonds, or other evidence of indebtedness of any other corporation, domestic or foreign, or of any individual, and is further authorized:

(1) To buy, sell, or acquire, hold or manage, use, improve, maintain, develop, sell, rent, mortgage, transfer, or exchange real estate; to trade in and deal with real property, improved, or unimproved in any of the States of the United States or elsewhere.

(2) To trade and deal in any material of any nature necessary or convenient in connection with or in carrying on the business of said corporation or any part thereof.

(3) To collect rents, in general to manage real property, to make loans on real estate, to buy and sell bonds and mortgages upon real estate in any State of the United States or elsewhere.

(4) To purchase, acquire, or transfer and dispose of stocks, bonds, and mortgages, notes, or other evidences of indebtedness of any person or corporation.

(5) To purchase, acquire and hold any stocks, bonds, mortgages, notes, or other evidence of indebtedness or title to any real estate or personal property of any kind whatsoever, wherever located, and to issue, execute, and deliver in

exchange therefor, its stocks, bonds, or mortgages, notes, or other obligations, and to do all such things conducive to the objects herein set forth.

ARTICLE VI.

The number of directors of this corporation shall be not less than three, and the names and residences of such directors, who are to serve until the election of their successors are as follows:

NAME	RESIDENCE
Frank O. Butler	Hot Springs, South Dakota
W. P. Rooney	Hot Springs, South Dakota
Rudolph Schroth	Hot Springs, South Dakota

ARTICLE VII

The amount of capital stock of this corporation shall be \$50,000 divided into shares of par value of \$100.00 each. The entire amount of capital stock herein shall be fully paid into said corporation, and said stock subscription fully completed before said corporation shall begin business.

ARTICLE VIII

The annual meeting of the stockholders for the election of directors and for the transaction of other business shall be held at the office of the corporation in Hot Springs, South Dakota, on the first Tuesday after the first Monday in January of each year. The vote at the election for directors shall be by ballot and the election may be conducted in such manner and form as provided by the by-laws. The three directors receiving the highest number of votes shall hold their offices for one year and until their successors are elected.

ARTICLE IX

In all elections for directors, each stockholder shall be authorized to one vote for each share of stock owned by him for each director, and on all matters involving corporate acts transacted in stockholder's meeting; any stockholder may demand a vote according to the ownership of stock, in proportion to one vote for each share of stock owned by him, provided that said stock may be voted by anyone having written proxy from the owner of said stock.

ARTICLE X

Immediately upon the election of directors and the adjournment of the stockholder's meetings, or as soon thereafter as convenient, the directors so elected shall meet and organize by electing one of their number president, one of their number vice-president, and one of their number secretary and treasurer, each of whom shall perform such duties and powers as generally appertain to such offices, and as may be stated or required by them by action of the Board of Directors.

ARTICLE XI

At all meetings of the stockholders or of the Board of Directors, a majority of such stockholders or of such directors shall constitute a quorum.

ARTICLE XII

The greatest amount of indebtedness to which this corporation may at any time subject itself, shall not exceed the amount fixed by action of the Board of Directors from time to time, and depending upon circumstances, resources, and assets, and shall in no case exceed an amount equal to one-fourth of the value of the total assets owned by said corporation.

ARTICLE XIII

Private property of the stockholders of this corporation shall not be subject to the payment of corporate debts in any amount or to any extent, and the stock of this corporation shall be non-assessable.

ARTICLE XIV

These Articles may be changed, altered, or amended at any authorized meeting of the stockholders by a vote of the stockholders representing a majority of the stock.

ARTICLE V.

The names and places of residence of incorporation members, the subscribers hereto, and the number of shares subscribed to each of them, and which each agrees to take and pay for is as follows:

Name	Residence	No. of Shares
Frank O. Butler	Hot Springs, So. Dakota	48
W. P. Rooney	Hot Springs, So. Dakota	1
Rudolph Schroth	Hot Springs, So. Dakota	1

IN TESTIMONY WHEREOF, we have hereunto set our hands this 18th day of September, 1945.

Frank O. Butler
Rudolph Schroth
W. P. Rooney

STATE OF SOUTH DAKOTA)
COUNTY OF FALL RIVER) SS

Be it remembered that on the 18th day of September, 1945, before me the undersigned, a notary public, personally appeared the above named Frank O. Butler, and W. P. Rooney, and Rudolph Schroth well and personally known to me to be the same persons described in and who executed the foregoing instrument and severally and duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in said County and State the day and year last above written.

R. W. Southard
Notary Public

(NOTARIAL SEAL)

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

Frank O. Butler and W. P. Rooney BEING FULLY SWORN, each for himself deposes and says: That he is one of the persons described in and who signed the foregoing Articles of Incorporation as an incorporator therein; that he has read said Articles and knows the contents thereof; that the incorporators intend in good faith to form a corporation for the purpose of the promotion of a lawful business as set forth in said articles and not for the purpose of enabling any corporation or corporations to avoid the provisions of Chapter 13.18 South Dakota Code of 1939 of the State of South Dakota, relating to unlawful trusts and combinations, and laws amendatory thereto.

Frank O. Butler
W. P. Rooney

Subscribed and sworn to before me this 27th day of September, A. D. 1945.

C. A. Stewart,
Notary Public.

(NOTARIAL SEAL)

STATE OF SOUTH DAKOTA }
OFFICE OF SECRETARY OF STATE) SS.

I hereby certify that the within instrument was filed for record on the 1st day of October, A. D. 1945, at 10 o'clock A. M. and recorded in Vol. 136 on Page 428 Record Domestic Corporations of this office.

MRS. L. M. LARSEN
Secretary of State.

AMENDMENT TO ARTICLES OF INCORPORATION

OF

SOUTH DAKOTA INVESTMENT COMPANY

We, F. O. Butler and A. J. Gravelle, President and Secretary, respectively, of the South Dakota Investment Company, a corporation organized and existing under the laws of the State of South Dakota, hereby certify that said Corporation at the annual meeting of the stockholders of said Company, held at its offices in the city of Hot Springs, State of South Dakota, on the 8th day of January, 1946, amended Articles VII, VIII, X, and XII of the Articles of Incorporation, so as to read as follows:

ARTICLE VII.

The amount of capital stock of this corporation shall be \$50,000.00, divided into 500 shares of \$100.00 par value each.

ARTICLE VIII.

The annual meeting of the stockholders for the election of directors and for the transaction of other business shall be held at the office of the corporation in Hot Springs, South Dakota, on the first Tuesday after the first Monday in January of each year. The vote at the election for directors shall be by ballot, and the election may be conducted in such manner and form as provided by the by-laws. The five directors receiving the highest number of votes shall hold their offices for one year and until their successors are elected.

ARTICLE X.

Immediately upon the election of directors and the adjournment of the stockholders' meetings, or as soon thereafter as convenient, the directors so elected shall meet and organize by electing a president, vice-president, treasurer, and secretary, each of whom shall perform such duties and exercise such powers as generally appertain to such offices, and as may be stated or required of them, respectively, by such Board of Directors or by the by-laws of the corporation. One individual may be elected to hold two of the above-specified officeships.

ARTICLE XII.

The greatest amount of indebtedness to which this corporation may at any time subject itself, shall not exceed the fair value of its tangible assets.

We further certify that there were subscribed and outstanding at said date 500 shares of stock of said Company and no more, and that the vote by which said Amendment was adopted was 500 votes in favor thereof and no votes against, being more than two-thirds of the stock outstanding voting in favor of said amendment.

We further certify that said meeting was regularly called and that due and legal notice of the proposed amendment had been given and that the attached copy of notice is a true copy of the notice that was served upon all the stockholders of the South Dakota Investment Company and said notice was given in the manner provided by law.

IN WITNESS WHEREOF, We have hereunto signed this Certificate as President and Secretary, respectively of the said South Dakota Investment Company and caused the seal of said Company to be attached thereto.

F. O. Butler
President of South Dakota
Investment Company

A. J. Gravelle,
Secretary of South Dakota
Investment Company.

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

BE IT REMEMBERED, That on this 6th day of March, 1947, before me, R. W. Southard, a Notary Public in and for said County and State, personally came F. O. Butler, and A. J. Gravelle, known to me to be the persons described in and who signed the foregoing Certificate as to the correctness of the foregoing amendment to the Articles of Incorporation of the South Dakota Investment Company, personally known to me to be the President and Secretary, respectively of said South Dakota Investment Company, and severally acknowledged the execution and signing of same to be their free act and deed for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.

R. W. Southard,
Notary Public.

(NOTARIAL SEAL)

NOTE: Sixty (60) days notice required to increase capital stock.

(Attach copy of notice)

NOTICE OF ANNUAL MEETING OF THE
STOCKHOLDERS
OF THE
SOUTH DAKOTA INVESTMENT COMPANY.

To: F. O. Butler
Rudolph Schroth
Julius W. Butler
A. J. Gravelle

You will please take notice that the annual meeting of the stockholders of the South Dakota Investment Company will be held at the office of the Company, in Hot Springs, South Dakota, on Tuesday, January 8, 1946, at the hour of 10:00 o'clock a. m., at which said meeting a proposal will be made that Articles VII, VIII, X, and XII of the Articles of Incorporation be amended.

Dated November 1, 1945

Rudolph Schroth,
Vice-President.

Notice Waived:

F. O. Butler, owner 372 shares
Rudolph Schroth, owner 125 shares
Julius W. Butler, owner 1 share
R. W. Southard, owner 1 share
A. J. Gravelle, owner 1 share

STATE OF SOUTH DAKOTA, }
OFFICE OF SECRETARY OF STATE } SS.

I hereby certify that the within instrument was filed for record on the 20 day of March, A. D., 1947, at 10 o'clock A. M., and recorded in Vol. 127 on Page 557 Record of Amendments of this office.

ANNAMAE RILEY, Secretary of State
By: KATE P. YOUNG, Assistant Secretary of State

COPY

028-2

August 12, 1933

Guy W. Seywright
Box 35
Buffalo Gap, South Dakota

Dear Sir:

✓ A thorough search of our records reveals no information regarding a water right applied for, or held under, the name of either S. B. Reno or Jabez Bandhaus.

The Water Right Law or Code was enacted in 1905, prior to that time rights were obtained by merely posting a notice and filing a copy of same with the Register of Deeds in the County in which the appropriation was made. When the Water Code was enacted it specifically exempted these old water rights from the jurisdiction of the State Engineer, but since it was quite desirable that a record of these other rights should be had in this office, an effort was made to obtain copies of all of the location notices recorded in the various Counties in the western part of the State. This record however is probably not complete in this office.

Regarding the matter of right of way, the statute seems to clearly grant to anyone the right to enter upon private or public land for the purpose of constructing a dam, ditches, etc., for the storage, careage, and use of water. There is no definite statement as to the amount of land or the width of right of way granted along the ditch nor is there any reference to the matter of assessment or taxes upon land taken for such purposes.

Regarding your use of the part of the water stored by the dam mentioned, I may refer you to Sec. 8242 of the Revised Code which requires any appropriator having more water than he can apply to beneficial use, to sell this water to others who can make use of it. You state that a considerable amount of the water stored runs to waste. Section 8251 of the Revised Code specifically prohibits the waste of water where it can be applied to beneficial use.

I cannot settle all of the questions asked in your letter, but trust this will give you most of the information you desire. If we can be of further service to you, we will be very glad to do so.

Very truly yours,

CHAS. A. TRIMMER.
State Engineer.

CT:CR

Copy

Buffalo Gap, S. Dak.
Aug. 7, 1933

State Engineer
Pierre, S. Dak.

Dear Sir:

Would you kindly send me records for the following information.

I was in Custer a few days ago trying to look up records on water rights.

This water right was taken up the year 1880 or 1882. First water right on Beaver Creek, Custer Co. located about 3 miles N and W of Buffalo Gap, S. Dak. under the names of S. E. Renc and Jabez Bandhaus.

There is however a location notice, recorded in Custer, S. Dak. but does not give only a very small description. No Section, township or range or quarter and etc.

What I want to find out is this. This water rights privileges or right a way to trespass on land to get to this dam.

I have the land this dam is on also part of land the ditch runs through.

How many feet on each side of ditch does this water right own also how many feet from the dam does this water right own. And also this water right's privileges to trespass on this land to repair dam and ditch.

I have asked for the use of a very small amount of water (of which the company has plenty, more than they can ever use and a great amount runs to waste) of which they refuse to let me have.

Understand this dam and part of ditch about $\frac{1}{2}$ mile of ditch is located on land I have mentioned before? Also would company be compelled to pay taxes on account of land ditch and dam uses.

Let me know the fee for this information. I would like a complete record so I will know "exactly by law" where I stand I can take in this matter.

Very truly

Guy W. Sewright Box 35

EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

MITCHELL, S. D.

RECEIVED

October 25, 1947 OCT 30 1947

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

✓ Mr. D. W. Loucks, State Engineer

Pierre, South Dakota

Dear Sir:

Please find inclosed the applications for two water rights. I will send you from Mitchell a map for each and another typed sheet to be attached to each application. Said typed sheets explain the old water rights which are the basis for the applications and proceedings now initiated and more particularly set out this proceeding as a confirmation of the old water right under modern requirements with such advantages as are gained by reason of old priorities as well as the advantage gained by reason of these being the first applications fully complying with modern requirements. The public interest through the interest of the State of South Dakota in these water rights is also covered by this explanation.

Certified copy of the Articles of Incorporation of the South Dakota Investment Company for each application is to be furnished to you by the Secretary of State within the next few days. If same is not received promptly, please advise me.

Please send letters pertaining to publication of Notice of Hearing to Mr. Grover C. Gaylor, Attorney for Mr. Butler, on this proceeding at Hot Springs.

Our tentative plans talked of last night contemplated publication of Notice of Hearing on November 6, 13, 20, 27 and hearing on December 10 or December 11th. As soon as you make definite choice of dates, please notify my office and Mr. Butler so we can avoid conflicting appointments.

I did not have enough application blanks to prepare an original and carbon copy of each application. Please send 8 blanks to my Mitchell office so we can prepare copies for Mr. Butler's file and our file of the application filed with you.

Yours Respectfully,

DAKOTA ENGINEERING COMPANY

BY

Edward K. Mather

ERM:gyv
cc: F.O. Butler
Hot Springs, S.D.

Copy

027-2
028-2

August 27, 1916

Re: Water Rights,
027-2 and 028-2
G. C. Boland,
Custer County.

✓
Edward K. Mather, C.E.,
Managing Engineer,
Dakota Engineering Co.,
Mitchell, So. Dak.

Dear Mr. Mather:

I have your letter of August 23, wherein you inquire as to whether or not this office has any records indicating the Water Right in the above reference and in the absence of no record what the status of the Water Right is, and what, if anything, is necessary to complete the Water Right.

This office does not have records of Water Rights prior to the enactment of the Water Right Code in 1907, except as they have been obtained from the county records. We have certified copies of most, if not all, of the old Water Rights as they were filed in the Register of Deeds Offices in the Counties. We have on file certified copies of the Water Rights as contained in the enclosure attached to your letter of August 23. We do not have any subsequent abstract showing transfers of the document. Neither do we have any way of locating the points of diversion of these two Water Rights, other than is given in the notices which you enclosed and which are on file in this office. Therefore, we are unable to know what the exact points of diversion are and consequently have no way of knowing whether or not the two Water Rights in question are one and the same and apply to the same point of diversion. We also have on record certified copies of four other Water Rights on Beaver Creek and which are located only in a general way referring to the mouth of Buffalo Gap or a nearby ranch. These other four Rights are signed by parties mentioned in the enclosure of your letter of above date. It might be possible to re-trace in the field the approximate location of the points of diversion of these six Water Rights.

As near as I can tell the validity of these Water Rights at this time would depend largely upon "use". That is, whether or not the owners have complied with the requirement of the Water laws, requiring that Water must be used to retain the right to use. Also since these old Water Rights are very loosely drawn it seems quite possible that in event of a conflict, that many legal technicalities might be introduced. This, however, is a matter for legal decision rather than to be passed on by this office. My only suggestion as to what might be done to complete the Water Right, would be to apply for a new Water Right under the present Water Law and procedure retaining any Rights that exist by virtue of the original claim. The right to use under the new Right would of course date from the time the application was filed in this office.

Hoping that this may be the information that you require, we are

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

DWL/ep

Copy

027-2
028-2

DAKOTA ENGINEERING COMPANY
CONSULTING CIVIL ENGINEERS
MITCHELL, S. D.

August 23, 1946

✓
Mr. D. W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

The records of the Register of Deeds of Custer County indicate that a water right on Beaver Creek dated July 31, 1880 was initiated by notice to the public given by Mr. G. C. Bowland claiming 200 miner's inches to be taken from the creek about 300 yards below the mouth of Buffalo Gap. On September 30, 1881, G. C. Bowland, E. B. Reno and Jabez Brandham gave notice of intention to claim 800 miner's inches from said Creek at a point 1/2 mile below Clark's Ranch and one mile above Bowland's Ranch. Apparently both of these notices pertain to the same point of outlet as the ditch has been completed shortly subsequent to those notices with only one outlet and the subsequent abstract of interest transfers seems to indicate that both notices pertained to the same ditch.

Do you have any records in your office indicating such a water right and if there is no record in your office or if there is no record of anything more than the location notice, then what is the status of this water right and what if anything is necessary to complete the water right? I enclose copy from the abstract of this water right of the first two items. There are 33 subsequent items in the abstract showing interest transfers. We do not find anything in the records indicating location of the ditch or description of land to be irrigated beyond what can be assumed from items one and two of the abstract.

This is the same matter that I spoke to you about at a prior time but I would like to have you report on the above questions as if there had been no previous conversation.

Yours respectfully,

DAKOTA ENGINEERING COMPANY
BY Edward K. Mather

EKM:ks

cc: F. O. Butler
cc: C. G. Caylor

Copy

Abstract of Water Right on Beaver Creek, Custer County, South Dakota

ITEM No. 1

6275-2
From
G. C. BOLAND

To
THE PUBLIC

Inst. - WATER RIGHT LOCATION;
CERTIFICATE

Dated - July 31, 1880

Filed - August 21, 1880, 10 A.M.

Book - 4 Misc. Locations

Page - 109

✓
Gives notice that G. C. Boland of Custer County, Territory of Dakota, claims by right of location, improvement and actual possession 200 inches miners measurement of the water of Beaver Creek for mining, milling, agricultural and domestic purposes. Said Water of Right is situate about 300 yards below the mouth of Buffalo Gap on Beaver Creek and was located July 31, 1880.

ITEM No. 2

628-2
From
G. C. BOLAND, L. B. RENO AND
JABEZ BRANDHAM, Locators

To
THE PUBLIC

INST. - WATER RIGHT LOCATION NOTICE

Dated - September 30, 1881

Filed - October 1, 1881, 8:00 A.M.

Book - 4 of Location Certificates

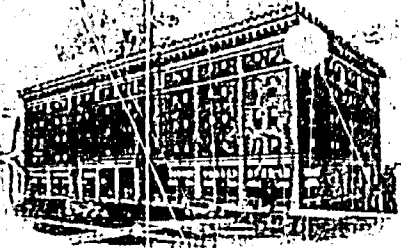
Page - 118

Gives notice that the undersigned citizens of the United States and Territory of Dakota claim by right of location, improvement and possession a certain Water Right situate on Beaver Creek, at Buffalo Gap, about 1/2 mile below Clark's ranch and 1 mile above Boland's Ranch. Claim 800 inches miners measurement of said water to be diverted from its source at a certain stake marked point to diversion and where a notice is posted. Said water to be used for mining, milling, agricultural and domestic purposes and to be carried by ditch and flume or both to certain tracts of land about 2 mile below the residence of G. C. Boland or to any intermediate points upon said route.



St. Charles

HOTEL



HOMER MYERS HOTEL CO. ... PIERRE, SOUTH DAKOTA, S. DAK.
 FIRE PROOF ... AIR CONDITIONED ROOMS
 OFFICE OF STATE ENGINEER
 PIERRE, S. DAK.

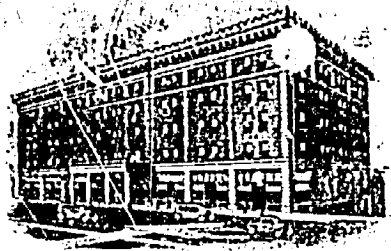
Mr. D. W. Loucks State Engineer
 Pierre So. Dakota

Dear Sir:

Please find enclosed the application for two water rights. I will send you from Mitchell a map for each and another typed sheet to be attached to each application. Said typed sheet explain the old water rights which are the basis for the applications and proceedings now initiated, and more particularly set out this proceeding as a confirmation of the old water right under modern requirements with such advantages as are gained by reason of old priorities as well as the advantage gained by reason of this being the first application fully complying with modern requirements. The public interest then the interest of the State of South Dakota in these water rights is also covered by this explanation.

Certified copy of the Articles of Incorporation of the South Dakota Investment Company for each application is to be furnished to you by the Secretary of State within the next few days. If same is not received promptly please advise me.

Please send letter put aiming to publication of Notice of Hearing to Mr. George C. Caylon atty for Mr. Butler on this proceeding at Hot Springs.



FIRE PROOF --- AIR CONDITIONED ROOMS

HOMER MYERS HOTEL CO. PIERRE, SOUTH DAKOTA

Our tentative plans talked of last night contemplated publication of Notice of Hearing on Nov 6, 13, 20 & 27 and hearing on Dec 18 or Dec 11. As soon as you make definite choice of date please notify my office and Mr Butler so we can avoid conflicting appointments.

I did not have enough application blanks to prepare an original and carbon copy of each application. Please send 8 blanks to my Mitchell office so we can prepare copies for Mr Butler's files and our files of the applications filed with you.

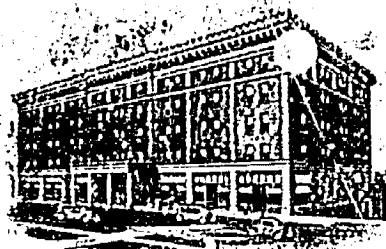
Yours Respectfully

Edward H. Mather

Hope I have the Beaver Creek Diversion 1A application in proper form but if you want changes made please advise and I'll revise the form subject to Mr Butler's approval.



St. Charles HOTEL



FIRE PROOF --- AIR CONDITIONED ROOMS

HOMER MYERS HOTEL CO. --- PIERRE, SOUTH DAKOTA

Our tentative plans talked of last night contemplated publication of Notice of Hearing on Nov 6, 13, 20 & 27 and hearing on Dec 10 or Dec 11. As soon as you make definite choice of date please notify my office and Mr. Butler so we can avoid conflicting appointments.

I did not have enough application blanks to prepare an original and carbon copy of each application. Please send 8 blanks to my Mitchell office so we can prepare copies for Mr. Butler's files and our files of the applications filed with you.

Yours Respectfully

Edward H. Mather

Hope I have the Beaver Creek Diversion 1A application in proper form but if you want changes made please advise and I'll revise the form subject to Mr. Butler's approval.

EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

MITCHELL, S. D.

RECEIVED

October 27, 1947 OCT 30 1947

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

✓
Mr. D. W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

We submit herewith an additional page of data supporting our priority claim as preceeding all other applications now of record in your office. The application of August 1880 is the first application of record. The plat of Government Land Office subdivision of land in that Township (Township 6 South, Range 7 East) on file in the Commissioner of School and Public Land Office indicates that land was surveyed July 21st to 27th, 1881 and that the irrigation ditch used for many years incidental to applications of 1880 and 81 was in use at that time. Other Government Land Office subdivision plats including Beaver Creek valley and particularly the plat of Township 7 South, Range 6 East lying South of Buffalo Gap and South of the Beaver Creek Diversion Project No. 1 made by the same surveyors under the same contractor at a subsequent date do not show any irrigation ditch for which a water right has been claimed. This is evidence that the water right dated September 30, 1881 is in fact a preceeding project to all other water rights in Beaver Creek valley.

Further more, the filing of this formal application together with maps and more exact data is the first complete water right proceeding in Beaver Creek water shed and therefore entitled to preference over all preceeding attempts to establish water rights in said water shed.

A copy of the Government General Land Office survey plan pertaining to this territory as now on file in the Commissioner of School and Public Land Office and the map of Beaver Creek Diversion District No. 1 are forwarded under separate cover.

We appreciate very much the time and courtesy shown us in the discussion of water right matters and the consideration and suggestions made in the matter of application preparation. Mr. Butler and Mr. Schroth are undertaking what I believe is easily the largest privately owned irrigation project undertaken in South Dakota. Details of land leveling, etc., which have been ordinarily over looked or postponed are being taken care of at this time. I believe this project will soon be recognized as an outstanding example of efficient application of surface water to beneficial use for irrigation and power development on a small scale.

With personal thanks to you, I am

Yours Respectfully,

DAKOTA ENGINEERING COMPANY

BY

Edward K. Mather

ENK:gv
Inclosure

(First Publication November 6 1917.)

APPROPRIATION OF WATER

Office of State Engineer,

Pierre, So. Dak., October 28 1917.

Notice is hereby given that The South Dakota Investment Company whose postoffice address is Hot Springs, So. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use

8 cubic feet of water per second of time from the Beaver Creek

through the Beaver Creek Diversion #1, the point of diversion of which is to be located on the right bank of said stream in the NE 1/4 of the SE 1/4 of Section 24

Twp. 6 S., Range 6 E. Said water to be used for the purpose of providing irrigation, stock water, power, fish culture, fire protection and processing and developing of agricultural products

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 11th day of December, 1917, at 10:00 A. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit 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 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 or all information presented.

Alvan H. Leucke
Dean V. Leucke,
State Engineer

October 30, 1947:

F. O. Butler,
Hot Springs, S. Dak.

Re: Water application No. 316-2,
Custer County.

Dear Mr. Butler:

Notices relative to your water right application prepared by Engineer Mather have been mailed to Attorney Grover O. Caylor in accordance with his instructions. The notice is to be advertised in the Custer Chronicle on November 6th, 13th, 20th, and 27th, and to be taken up for consideration by the State Engineer at his office at Pierre at 10:00 A. M. on December 11th, 1947.

Very truly yours,

Dean M. Loucks,
State Engineer.

DML/mh

cc to Edward R. Mather, Consulting Civil Engineer.

October 30, 1947.

Edward K. Mather,
Consulting Civil Engineer,
Dakota Engineering Company,
Mitchell, S. Dak.

Re: Water application No. 316-2,
Custer County.

Dear Mr. Mather:

Your letter dated October 27th, submitting additional supporting data pertinent to the above water right application, was duly received.

I am returning, herewith, the map showing data from township subdivision surveys by the United States Government Land Office for the reason that you may wish to correct the tracing and the print file in this office as to range numbers indicated thereon in red. Also in your letter of above date you refer to the plat of Township 7 South, Range 6 East as not showing any irrigation ditch for which a water right has been granted. On the map you refer to Township 7 South, Range 7 East in the same connection. I wonder if this reference should not be Township 7 South, Range 7 East in your letter.

Please return either the present print or a corrected copy at your earliest convenience.

Very truly yours,

Dean W. Loucks,
State Engineer.

DWL/mh
Enc.

FRANK O. BUTLER
HOT SPRINGS, S. D.

RECEIVED

NOV - 1 1947

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

October 31, 1947.

Mr. Dean W. Loucks,
State Engineer,
Pierre, S. Dak.

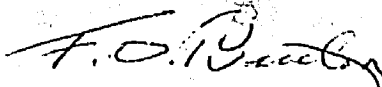
Dear Mr. Loucks:

Please refer to Application for Permit to Appropriate Water, Form 2, recently filed by Mr. Edward K. Mather, and entitled Beaver Creek Diversion No. 1.

Enclosed herewith please find cheque in the amount of \$5.00 in payment of filing fee.

Very truly yours,

G



F. O. Butler

cc Mr. Mather

Buffalo Gap, South Dakota
18 November 1947

Mr. Dean W. Loucks
State Engineer
Pierre, South Dakota

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Sir:

✓ I am enclosing a notice for the Appropriation of water from Beaver Creek. If this appropriation were to be granted it would be a catastrophe for the water right owners below this new point of diversion.

Have any water rights been filed since 1937?

Do you have a record of the normal flow of Beaver Creek? I have been told that it is less than 4 cubic feet per second. I do know that during the growing season we do not have enough water for irrigation and many times not enough water for our stock, as we depend on the irrigation water for part of our stock water.

I have talked to the various water right holders in regard to this matter and they are very much opposed to this appropriation. Would you advise us to come to Pierre when the appropriation is considered or would a petition signed by the various water right holders be sufficient? Any advice you can give us in this matter would be greatly appreciated.

Sincerely yours,

P. B. Conger
P. B. Conger

November 19, 1941.

✓
P. B. Conger,
Buffalo Gap,
South Dakota.

Re: Water Right No. 316-2,
Custer County.

Dear Mr. Conger:

I have your letter of November 18th enclosing Notice of Appropriation of Water on Beaver Creek and I note what you say relative to same.

Perhaps this notice is somewhat misleading. The request does not cover a new appropriation but is simply for the purpose of bringing up to date an old appropriation filed under the name of G. O. Boland with priority dates of 1880 and 1881. All the water rights on Beaver Creek have old dates of priority and it is not contemplated to appropriate any additional water than is now appropriated.

If you are not entirely satisfied with the above explanation, I would suggest that either yourself or a representative of the people in that section come to the State Engineer's Office on December 11th at 10:00 o'clock when Engineer Mather, who has been working on this project, will be here to explain more fully the nature of the right.

Sincerely yours,

Dean W. Loucks,
State Engineer.

DWL/mh

cc to E. F. Mather, Consulting Engineer,
Mitchell, S. Dak.

Affidavit of Publication

STATE OF SOUTH DAKOTA

COUNTY OF CUSTER

SS

Carl H. Sundstrom

of said County and State, being first duly sworn, on his oath says:

The Custer County Chronicle is a weekly newspaper of general circulation, published in Custer City in Custer County and State of South Dakota, and that I, the Undersigned am

Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; that the advertisement headed Appropriation of Water

a printed copy of which is hereunto attached and made a part thereof, was printed and published in said newspaper Four consecutive weeks.

That the first publication of said notice in said newspaper was on Thursday day of November A. D., 19 47 and the succeeding

on Thursday, the 13th	day of November
on Thursday, the 20th	day of November
on Thursday, the 27th	day of November
on Thursday, the	day of
on Thursday, the	day of
on Thursday, the	day of
on Thursday, the	day of
on Thursday, the	day of

on Thursday, the day of said notice and advertisement as aforesaid were Thirteen Dollars and 14 cents said fees for the printing and publishing of said notice and advertisement, and for the affidavit as aforesaid have been fully paid; that the full amount of the fee charged for the publishing of said attached and annexed notice and advertisement inures to the benefit of the publishers of the said Custer County Chronicle and that no agreement or understanding for the division thereof has been made with any person, and that no other part thereof has been agreed to be paid to any person whomsoever, and that the said newspaper is a legal newspaper as provided in Section 65.0503 of the South Dakota Code of 1939, as amended.

Subscribed and sworn to before me this 27th day of November, 19 47

Notary Public, Custer County, South Dakota.

No. 3162
(First Publication November 6, 1947)
(Fourth Publication November 27, 1947)

APPROPRIATION OF WATER
Office of State Engineer,
Pierre, So. Dak.,
October 28, 1947.

Notice is hereby given that The South Dakota Investment Company whose postoffice address is Hot Springs, So. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 8 cubic feet of water per second of time from Beaver Creek through the Beaver Creek Diversion No. 1, the point of diversion of which is to be located on the right bank of said stream in the NE 1/4 of the NE 1/4 of Section 24 Twp. 6 S. Range 6 E. Said water to be used for the purpose of providing irrigation, stock water, power, fish culture, fire protection and processing and developing of agricultural products for use or sale.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 11th day of December, 1947, at 10:00 A. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit 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 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 or all information presented.

DEAN W. LOUCKS,
State Engineer.

0263-N-27

Affidavit Ex-Rel Publication Fees

STATE OF SOUTH DAKOTA
Fall River ss.
COUNTY OF CUSTER

No. 3162
(First Publication
November 6, 1947)
APPROPRIATION OF WATER
Office of State Engineer,
Pierre, S. Dak.,
October 23, 1947.
Notice is hereby given that The
South Dakota Investment Company
whose postoffice address is
Hot Springs, So. Dak., has made
an application in accordance with
the provisions of the water laws
of South Dakota for a permit to
appropriate for beneficial use 8
cubic feet of water per second of
time from Beaver Creek through
the Beaver Creek Diversion No.
1, the point of diversion of which
is to be located on the right bank
of said stream in the NE 1/4 of
the NE 1/4 of Section 24 Twp. 6 S.
Range 1 E. Said water to be used
for the purpose of providing ir-
rigation, stock water, power, fish
culture, fire protection and pro-
cessing and developing of agri-
cultural products for use or sale.
This application will be taken
up by the State Engineer at his
office at Pierre for consideration
upon the 11th day of December,
1947, at 10:00 A. M. All persons
who believe that their prior
rights would be injuriously af-
fected, or that the allowance of
the permit would be detrimental
to the public welfare shall file
such protest with the State En-
gineer in writing prior to the
above date and may appear on
the day above mentioned in per-
son for the purpose of discussing
further the information present-
ed.
Appropriate action will be tak-
en by the State Engineer after
suitable time has elapsed for the
consideration of any or all in-
formation presented.
DEAN W. LOUCKS,
State Engineer.

0268-N-27

State of South Dakota
COUNTY OF CUSTER
In the Circuit Court
SEVENTH JUDICIAL DISTRICT

vs.

Affidavit of Publication
OF

AND

Affidavit Ex-Rel Publication Fees
The within Affidavit of Publication of
and Affidavit Ex-Rel Publication Fees
were filed in my office this
day of _____, 19____.

Clerk of the Circuit Court of the Sev-
enth Judicial Circuit of the State of
South Dakota, within and for Custer
County.

G. G. Caylor being first duly sworn
on his oath does say that he is one of the authorized attorneys of
the South Dakota Investment Company
and described in the annexed notice; that the affiant directed the
publication of the annexed notice; that no agreement or under-
standing for any division of the fees thereof has been made with any
person whomsoever, and that no part thereof has been refunded or
rebated by the party publishing said notice.
Subscribed and sworn to before me this 6th day
of December, 1947
J. D. Pischer
Clerk of Courts, Fall River County, South Dakota

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF)
THE SOUTH DAKOTA INVESTMENT COMPANY)
OF HOT SPRINGS, SOUTH DAKOTA)

PROTEST TO GRANTING OF APPLICATION

Comes now John Gregerson and in protest to the Application of the South Dakota Investment Company for Appropriation of Water respectfully shows the State Engineer:

I.

That John Gregerson is the owner of One Thousand (1000) acres of land, of which Forty (40) acres are and for many years last past have been continuously irrigated from water taken from Beaver Creek through diversion dam duly and legally established by virtue of certain water right locations previously filed and more particularly hereinafter referred to. The Forty (40) acres so irrigated being situated in Sections Fourteen (14) and Twenty-three (23), Township Seven (7) South, Range Seven (7) East, B.H.M. The source of diversion being below on Beaver Creek that location covered by the Application of the South Dakota Investment Company.

II.

That pursuant to water right location made by H. S. Tubbs, W. R. Bond, A. P. Smith, Geo. Jones and Jabez Brandham, filed on October 15, 1880 and recorded on October 15, 1880 in Book 4 of Location Certificates, Page 123, in the office of the Register of Deeds of Custer County, Dakota Territory, appropriating One Thousand (1000) Miners inches of water, and water right located by A. D. Bond on November 19, 1881, filed for record November 22, 1881, and recorded in Book 4 of Locations Page 153 in the office of the Register of Deeds of Custer County, Dakota Territory, and water right located by Joseph Brun Schmid on July 17, 1882, filed for record July 20, 1882 and recorded in Book 4 of Locations, Page 172 in the office of the Register of Deeds of Custer County, Dakota Territory, and water right located by Wm. A. Brooks on May 15, 1883, filed for record on May 16, 1883 and recorded in Book 4 of Locations, Page 188 in the office of the Register of Deeds of Custer County, Dakota Territory appropriating Five Hundred (500) Miners inches of water from Beaver Creek for agricultural and domestic uses, John Gregerson and certain other persons, their predecessors in title being successors in interest of all or a

portion of the water rights hereinbefore set out, and from the time of perfecting of said water rights, being within a few years of the location thereof, beneficially used for irrigation, stock raising and domestic purposes all water which was available and could be beneficially used on the land owned by the said John Gregerson without unjustly interfering with other persons having interests under the water rights hereinafter set out.

III.

That the applicant is applying for the diversion of water from Beaver Creek at a point on the Creek above the point of diversion of this protestant, and the application calls for an amount of water sufficient to take more than half of all the water ordinarily and normally flowing down Beaver Creek, and that if such Application is granted there will be little or no water available to the protestant at the point on Beaver Creek from which the protestant must secure water for the purpose of irrigation, agricultural, stock raising and domestic purposes.

IV.

That the flow of Beaver Creek is not and has not been sufficient to^{supply to} the protestant adequate water for irrigation, agricultural, stock raising and domestic purposes and that the granting of the Application will further cut down the amount of water available to this protestant; that protestant will have little or no water during that season of the year when water is most needed; and that persons further down Beaver Creek than the diversion dam of this protestant will have no water for irrigation or domestic purposes whatsoever.

V.

That eight cubic feet of water per second as applied for in the Application of the South Dakota Investment Company is more than half of the normal flow of Beaver Creek, and that the acreage below the point of diversion Number One (1) used in irrigation is more than double the acreage on which the Application is applied for.

VI.

That it will be adverse, detrimental and highly injurious to the protestant if the Application of the South Dakota Investment Company is granted and will be against public interest and public policy.

VII.

That this protestant is a riparian owner on Beaver Creek near the mouth of Beaver Creek and if Application is granted will have no water whatsoever for Beneficial use as a riparian owner; that during the irrigation period the flow of water down Beaver Creek comes to an absolute stop; and that the only water available for stock of this protestant is the water that accumulates in the holes along the bed of Beaver Creek.

WHEREFORE PROTESTANT FRAYS that the Application of the South Dakota Investment Company be in all things denied.

Dated this day of December, 1947.

John Gregerson

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF CUSTER)

John Gregerson being first duly sworn on oath deposes and says that he is the protestant herein; that he has read the foregoing Protest to Granting of Application, knows the contents thereof and that the same is true to his own knowledge except as to those matters stated on information and belief, and as to those matters he believes it to be true.

John Gregerson

Subscribed and sworn to before me this 2nd day of December, 1947.

Eck Carpenter
Notary Public
My Commission Expires April 11/48

(Seal)

M. F DUDLEY
ATTORNEY AT LAW
CUSTER, S. DAK.

December 4, 1947

RECEIVED

DEC - 5 1947

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dean W. Loucks,
State Engineer,
Pierre, South Dakota.

Dear Mr. Loucks:

Find herein enclosed three protests to the application of the South Dakota Investment Company for appropriation of water from Beaver Creek on the right bank of said stream in the Northeast Quarter of the Northeast Quarter of Section 24 Township 6 South Range 6 East. Kindly file these protests.

The protestants or part of them will appear at the date set for hearing and will either be represented by myself or some other attorney at that time.

Yours very truly,

M. F. Dudley

M. F. Dudley

MFD/bh
Encls.

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF)
THE SOUTH DAKOTA INVESTMENT COMPANY)
OF HOT SPRINGS, SOUTH DAKOTA)

PROTEST TO GRANTING OF APPLICATION

Comes now Albert T. Miller, William L. Miller and James Bowker and in protest to the Application of the South Dakota Investment Company for Appropriation of Water respectfully show the State Engineer:

I.

That Albert T. Miller and William L. Miller are the owners of Three Thousand Acres (3000) of land, of which One Hundred Sixty-five (165) acres are and for many years last past have been continuously irrigated from water taken from Beaver Creek through diversion dam duly and legally established by virtue of certain water right locations previously filed and more particularly hereinafter referred to. The One Hundred Sixty-five (165) acres so irrigated being situated in Section Thirty-three (33), Township Six (6) South, Range Seven (7) East, B.H.M., and Section Four (4), Township Seven (7), South, Range Seven (7) East, B.H.M., The source of diversion being below on Beaver Creek that location covered by the Application of the South Dakota Investment Company.

II.

That James Bowker is the owner of One Thousand Forty (1040) acres of land, of which Two Hundred Forty (240) acres are and for many years last past have been continuously irrigated from water taken from Beaver Creek through diversion dam duly and legally established by virtue of certain water right locations previously filed and more particularly hereinafter referred to. The Two Hundred Forty (240) acres so irrigated being situated in Sections Four (4) and Five (5), Township Seven (7), South, Range Seven (7) East, B.H.M. The source of diversion being below on Beaver Creek that location covered by the Application of the South Dakota Investment Company.

III.

That pursuant to water right location made by N. S. Tubbs, W. R. Bond, A.P. Smith, Geo. Jones and Jabez Brandham, filed on October 15, 1880 and recorded on October 15, 1880 in Book 4 of Location Certificates, Page 123 in the office of the Register of Deeds of Custer County, Dakota Territory, appropriating One Thousand (1000) Miners inches of water, and water right

located by A. D. Bond on November 19, 1881, filed for record November 22, 1881, and recorded in Book 4 of Locations, Page 153 in the office of the Register of Deeds of Custer County, Dakota Territory, and water right located by Joseph Brunschmid on July 17, 1882, filed for record July 20, 1882 and recorded in Book 4 of Locations, Page 172 in the office of the Register of Deeds of Custer County, Dakota Territory, and water right located by Wm. A. Brooks on May 15, 1883, filed for record on May 16, 1883 and recorded in Book 4 of Locations, Page 188 in the office of the Register of Deeds of Custer County, Dakota Territory appropriating Five Hundred (500) Miners inches of water from Beaver Creek for agricultural and domestic uses, Albert T. Miller, ^{William L. Miller} and James Bowker and certain other persons, their predecessors in title being successors in interest of all or a portion of the water rights hereinbefore set out, and from the time of perfecting of said water rights, being within a few years of the location thereof, beneficially used for irrigation, stock raising and domestic purposes all water which was available and could be beneficially used on the land owned by the said Albert T. Miller, ^{William L. Miller} and James Bowker without unjustly interfering with other persons having interests under the water rights hereinbefore set out.

IV.

That the applicant is applying for the diversion of water from Beaver Creek at a point on the Creek above the point of diversion of these protestants, and the application calls for an amount of water sufficient to take more than half of all the water ordinarily and normally flowing down Beaver Creek, and that if such Application is granted there will be little or no water available to the protestants at the point on Beaver Creek from which the protestants must secure water for the purpose of irrigation, agricultural, stock raising and domestic purposes.

V.

That the flow of Beaver Creek is not and has not been sufficient to supply to the protestants adequate water for irrigation, agricultural, stock raising and domestic purposes and that the granting of the Application will further cut down the amount of water available to these protestants; that protestants will have little or no water during that season of the year when water is most needed; and that persons further down Beaver Creek than the diversion dam of these protestants will have no water for irrigation or domestic purposes whatsoever.

VI.

That in 1947 one-third (1/3) of a crop was all that was realized from the lands of these protestants under irrigation by reason of shortage of water.

VII.

That eight cubic feet of water per second as applied for in the Application of the South Dakota Investment Company is more than half of the normal flow of Beaver Creek, and that the acreage below the point of diversion Number One (1) used in irrigation is more than double the acreage on which the Application is applied for.

VIII.

That it will be adverse, detrimental and highly injurious to the protestants if the Application of the South Dakota Investment Company is granted and will be against public interest and public policy.

WHEREFORE PROTESTANTS PRAY that the Application of the South Dakota Investment Company be in all things denied.

Dated this 1st day of December, 1947.

Albert T. Miller

William L. Miller

James Bowker

STATE OF SOUTH DAKOTA)

: SS

COUNTY OF CUSTER)

Albert T. Miller, William L. Miller and James Bowker being first duly and severally sworn on oath depose and say that they are the protestants herein; that they have read the foregoing Protest to Granting of Application, know the contents thereof and that the same is true to their own knowledge except as to those matters stated on information and belief, and as to those matters they believe it to be true.

Albert T. Miller

William L. Miller

James Bowker

Subscribed and sworn to before me this 1st day of December, 1947.

George J. Langford
Notary Public

(Seal)

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF)
THE SOUTH DAKOTA INVESTMENT COMPANY }
OF HOT SPRINGS, SOUTH DAKOTA }

PROTEST TO GRANTING OF APPLICATION

Comes now W. H. Schneider and in protest to the Application of the South Dakota Investment Company for Appropriation of Water respectfully shows the State Engineer:

I.

That W. H. Schneider is the owner of Four Hundred Twenty (420) acres of land, of which One Hundred Ten (110) acres are and for many years last past have been continuously irrigated from water taken from Beaver Creek through diversion dam duly and legally established by virtue of certain water right locations previously filed and more particularly hereinafter referred to. The One Hundred Ten (110) acres so irrigated being situated in Section Thirty-three (33), Township Six (6), Range Seven (7) East, B.H.M. The source of diversion being below on Beaver Creek that location covered by the Application of the South Dakota Investment Company.

II.

That pursuant to water right location made by N. S. Tubbs, W. R. Bond, A. P. Smith, Geo. Jones and Jabez Brandham, filed on October 15, 1880 and recorded on October 15, 1880 in Book 4 of Location Certificates, Page 123 in the office of the Register of Deeds of Custer County, Dakota Territory, appropriating One Thousand (1000) Miners inches of water, and water right located by A. D. Bond on November 19, 1881, filed for record November 22, 1881, and recorded in Book 4 of Locations, Page 153 in the office of the Register of Deeds of Custer County, Dakota Territory, and water right located by Joseph Brunschmid on July 17, 1882, filed for record July 20, 1882 and recorded in Book 4 of Locations Page 172 in the office of the Register of Deeds of Custer County, Dakota Territory appropriating Five Hundred (500) Miners inches of water from Beaver Creek for agricultural and domestic uses, W. H. Schneider and certain other persons, their predecessors in title being successors in interest of all or a portion of the water rights hereinbefore set out, and from the time of perfecting of said water rights, being within a few years of the location thereof, beneficially used for irrigation, stock raising and domestic purposes

all water which was available and could be beneficially used on the land owned by the said W. H. Schneider without unjustly interfering with other persons having interests under the water rights hereinbefore set out.

IV.

That the applicant is applying for the diversion of water from Beaver Creek at a point on the Creek above the point of diversion of this protestant, and the application calls for an amount of water sufficient to take more than half of all the water ordinarily and normally flowing down Beaver Creek, and that if such Application is granted there will be little or no water available to the protestants at the point on Beaver Creek from which the protestant must secure water for the purpose of irrigation, agricultural, stock raising and domestic purposes.

V.

That the flow of Beaver Creek is not and has not been sufficient to supply to the protestant adequate water for irrigation, agricultural, stock raising and domestic purposes and that the granting of the Application will further cut down the amount of water available to this protestant; that protestant will have little or no water during that season of the year when water is most needed; and that persons further down Beaver Creek than the diversion dam of this protestant will have no water for irrigation or domestic purposes whatsoever.

VI.

That in 1947 one-third ($1/3$) of a crop was all that was realized from the lands of this protestant under irrigation by reason of shortage of water.

VII.

That eight cubic feet of water per second as applied for in the Application of the South Dakota Investment Company is more than half of the normal flow of Beaver Creek, and that the acreage below the point of diversion Number One (1) used in irrigation is more than double the acreage on which the Application is applied for.

VIII.

That it will be adverse, detrimental and highly injurious to the protestant if the Application of the South Dakota Investment Company is granted and will be against public interest and public policy.

WHEREFORE PROTESTANT PRAYS that the Application of the South Dakota Investment Company be in all things denied.

Dated this day of December, 1947.

W. H. Schneider

STATE OF SOUTH DAKOTA)
COUNTY OF CUSTER) SS

W. H. Schneider being first duly sworn on oath deposes and says that he is the protestant herein; that he has read the foregoing Protest to Granting of Application, knows the contents thereof and that the same is true to his own knowledge except as to those matters stated on information and belief, and as to those matters he believes it to be true.

W. H. Schneider

Subscribed and sworn to before me this day of December, 1947.

Ed. Carpenter
Notary Public

My Commission expires Sept. 11 '49

(Seal)

DEAN W. LOUCKS, STATE ENGINEER
STATE OF SOUTH DAKOTA
OFFICE OF STATE ENGINEER
PIERRE

December 8, 1947.

BEAVER CREEK FILINGS
CUSTER AND FALL RIVER
COUNTIES

No.	Name	Cu. Ft.	Priority Date
027-2	Boland, G. C. 300 yards below ^{mouth of} Buffalo Gap.	4	7/31/1880
0446-2	Tubbs, N. S. Smith, A. P. Bond, W. R. Jones, George Brandham, Jabez 1 1/2 miles S. E. of Boland Ranch Land 1/2 mile from point of diversion.	20	10/15/1880
0241-2	Jones, George W. Brandham, Jabez 3/4 mile east of Boland Ranch. Carried south.	4	12/18/1880
028-2	Boland, G. C. Reno, L. B. Brandham, Jabez To be carried to land about 2 miles below residence of G. C. Boland.	16	9/30/1881
032-2	Bond, A. D. One mile below Boland house. To be carried 1/2 mile down E. side stream.	8	11/22/1881
047-2	Brunschmidt, Joseph Amphibious Cr. - 200 yards below N.W. corner of S.W. 1/4 of Sec. 33, Twp. 6 Range 7 E. To be carried down creek on east side not exceeding three miles.	0	7/17/1882
046-2	Brooks, Wm. A. 300 yards S. E. of the house of L. B. Reno near Buffalo Gap. To be carried to and on N 1/2 NW 1/4 and SE 1/4 NW 1/4 Sec. 33, Twp. 6 S. R. 7 E.	10	5/15/1883

0659-2 *Isaac Scholdfield*

11/5/1887

same 0411-2 } beginning by Farmers Home Colonies 1883
0412-2 }

Long Beach, Calif

Dec. 8, 1947.

RECEIVED

DEC 11 1947

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

✓
Mr. Dean W. Loucks
State Engineer
Pierre, S. Dak.

Dear Sir;

It has just come to my attention that the South Dakota Investment Co., which I have been told is Mr. Butler and Mr. Schroth of Hot Springs, have filed an application for increased water from Beaver Creek, which runs for 3/4 of a mile through our place. ^{N.E. 1/4, N.E. 1/4 - Sec. 24 - T. 6} As I understand the present water right already calls for more water than normally flows in the creek. If this application is granted, my supposition is that it will mean raising the dam and enlarging the ditch, which is on our land.

This would work a severe hardship on us as it would throw the water, especially in flood time, on our garden spot along the creek. It would also back up the water on our land. The place is mostly mountain pasture and the land along the creek is all that than be cultivated.

Mr. Schorath wrote me asking what we would sell the place for, and when I told him it was not for sale, he wrote me a letter advising me I should sell to him, so I am not too surprised at this move.

Because of the war, we moved to Calif. for the duration so we could be nearer our three sons who were in the navy. Mr. Sewright went to work for the Navy hospital on a temporary job. The boys are out of the service now, going to school and taking training. It has always been our plan to move back when they are through and live on the place. Without the land along the creek we could not make a living there.

It is very beautiful along the creek and we want it to stay as it is, natural and unspoiled, so we can live there and the boys and folks who live nearby can come back and enjoy it year after year as they have in the past, fishing picnicing etc.

Our boys were raised there, and their father before them was born and raised in the immediate vicinity, we were there long before the South Dakota Investment Co. The boys were all overseas, in battle zones, one six years, one four and one three years, and they dreamed of coming back to the place. We can keep it, pay the taxes etc., but we do not have money to hire lawyers to fight what appears to me is an attempt to force us to sell or have the place made worthless to us.

All we can do is to ask your understanding and fairness in the matter.

Yours truly

Muriel Swanson Dewright

40 Park Ave. Long Beach 3, Calif.

P.S. Am enclosing the letter I rec'd and a stamped envelope for its return.

Copy
Dear Mr. Nolan:

✓ There was much new thought and information uncovered in the discussions had at the State Engineer's hearing incidental to our Water Right investigations—which necessitates our writing you along somewhat different lines than heretofore had in mind.

No further work of development of the Mill Race can be done. Neither Rudolph Schroth, ourselves, nor anyone else can carry on as had been planned.

The Mill Race right of development for any purpose has been lost through total non-use of power as was originally granted. To now attempt to revamp Mill Races raises new questions and new complications that could carry us both into the courts.

A representative from the Attorney General's Office suggests to us that in order to avoid further complications of controversial character to all parties, we should address this notice to you.

Yours very truly

S. D. INVESTMENT COMPANY

EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

MITCHELL, S. D.

RECEIVED

December 12, 1947

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

✓
Mr. Dean W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

Hope by this time you are resting easy and you may appreciate the sentiments in the inclosed poem.

I think you understood that Mr. Nolan intended to start work immediately on reconstruction of the Mill Race on a slightly changed location and this Mill Race is used for irrigating a large area of his alfalfa on land for which he has no water right at all. Under Mr. Drury's suggestion it was inadvisable for the Butler interests to permit expenditure of funds for a ditch that initiates on their property and travels across their property to serve the Nolan alfalfa patch. As long as there is no water right authorizing use of water in the Mill Race for domestic or irrigation use, this and other features of the situation were discussed at length and after we had tried several forms of letter to Mr. Nolan that were more or less explanatory, we finally adopted the inclosed form together with a letter to the contractor and to the Soil Conservation Service which would briefly stop immediate construction and it will undoubtedly lead to conversation between these parties and Mr. Schroth who can undoubtedly explain matters to them better than in a letter.

It is my understanding that Mr. Nolan or any other users can take water from the stream on his own property for domestic and irrigation use on his own property, irrespective of all other water rights but he has no right to take water from an irrigation ditch built across a neighbor's land to serve his own land unless he has a water right and further more, he can not irrigate one piece of land owned by himself simply because he has an interest in a water right that has been definitely tied to irrigation of other ^{near} adjacent pieces of land which he has sold. If I am wrong in either of these assumptions, please advise me. Mr. Nolan's alfalfa patch is 10 or 15' above Beaver Creek which flows across the same piece of land. It is my understanding that without a water right Mr. Nolan could pump the water on his own land to an elevation that would irrigate the alfalfa patch but without a water right he can not take water by gravity from a ditch initiated upon and passing across someone else's land to irrigate this alfalfa patch.

Mr. Nolan may write you with reference to this matter, therefore, it was

thought best that I should contact you to explain the situation more in detail and if you have any suggestions or criticisms with reference to this proposed letter to Mr. Nolan, we would appreciate having same called to our attention immediately and before we send the letter to him. For this reason, we are holding the Nolan letter until the middle of next week before mailing. We do not want to start anything that is impractical or unfair to anybody or embarrassing to you. We suspect it will result in Mr. Nolan's cooperation with Sewright and Schroth in preparation and presentation of another water right application which will take its routine position as subsequent to all other previous water rights.

With best wishes,

Yours Respectfully,

DAKOTA ENGINEERING COMPANY

BY

Edmond H. Mathee

EKM:gvv

EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

MITCHELL, S. D.

January 9, 1948

✓
Mr. D. W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

Thanks for correspondence copies in re Mr. Bulter's water right.

Mr. Nolan's claim to interest in a Isaac Scholdfield water right of 1887 is a new name that I did not pick up from examination of the files in your office. Will you please check the files again if I am in error and I will ask the Hot Springs people to check the Register of Deeds records to see if there is something on file there that has never been brought to the attention of your office. They may be able to find this readily by examination of the grantee-grantor index of 1887 and search for the name of Scholdfield therein.

Yours Respectfully,

DAKOTA ENGINEERING COMPANY

BY

Edward K. Mather

EKM:gvv
cc: J.A. Gravelle

RECEIVED
JAN 10 1948
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

January 10, 1918.

Edward K. Mather, Consulting Engineer,
Dakota Engineering Company,
Mitchell, S. Dak.

Re: Water right,
Custer County,
Issachor Scholdfield.

Dear Mr. Mather:

I have your letter of January 9th and note your interest in the above water right filed by Issachor Scholdfield in 1887. For some reason this right was not filed in this office and I believe the reason is that originally it was filed under mining claims in the County and not discovered until later. I wrote the Register of Deeds of Custer County relative to the right and I have a reply from them this morning to the effect that they have in their office a water right filed by said Issachor Scholdfield on January 15th, 1887. It is recorded in Book 4 of Locations, Page 312.

For your further information, Mr. Nolan was in the office yesterday and we had quite a long talk relative to his right and he showed me a deed referring to the above right in question and apparently the water uses named in this right are milling, domestic and agriculture and, I believe, manufacturing. Now if the copy of the right from the County, which we have asked for, verifies the information so far presented, it appears that Mr. Nolan would have a right of rather late priority to irrigate and in talking to him he recognizes the late priority and that he would not have water until the prior rights are satisfied. From talking with him, he indicated that his irrigation was more of a flood irrigation character and he used, or would use, the water only off seasons when there was a surplus above the amount used by the prior appropriators. Also, he states that the water has been thus used for a good many years and he feels that perhaps he has established a right by use.

Under the above circumstances, it would perhaps seem that he would have a right to clean and repair his ditches for the continuation of such use. His attitude seemed very friendly and cooperative toward other water users and I believe if he is treated fairly that there will be no trouble in working out a distribution satisfactory to all.

As the matter begins to shape up there seems to be about four or five groups of users; first being those covered by the water right covered by 316-2; then the group comprising the Millers and Bowker,

then the Nolan and then Conger and then possibly Gregerson. Mr. Nolan's right, I believe, was for 1000 miners inches but of course he admitted that he had not used water to that extent. In fact there hasn't been that much water to use. I know you would be interested in the above additional information.

Very truly yours,

Dean W. Loucks,
State Engineer.

RECEIVED

MAR 26 1948

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

2
Buffalo Gap, S. Dak.
Nov. 23 - 1948

✓ Mr. Dean H. Loucke
Pierre South Dakota.
Dear Mr. Loucke,

In November of 1947 I had some correspondence with you in regard to the appropriation of water from Beaver Creek by J. O. Butler. At that time you stated there would be no need water rights secured on Beaver Creek.

A few days ago I was told that H. J. Koles had made application for the appropriation of water from the above stream. As I wrote you in a

previous letter this would
be desirable to me as
there are two acres above
mine serving four ranches
I never have enough water
for irrigation during the
growing season and
there are times when there
is not sufficient water
for my garden.

Thanked appreciate hearing
from you in regard to
this matter.

Very truly yours
P. B. Conger.

April 1, 1948

Mr. P. B. Conger
Buffalo Gap, S. D.

Re: Custer County Beaver
Creek Water Rights

Dear Mr. Conger:

This is a reply to your letter of March 23rd in which you suggest that there has been or may be an application for further rights on the Beaver Creek by Mr. W. F. Nolan. To date, we have received no such application and the information as appraised in our former correspondence still holds. We have, however, in this morning's mail received a protest signed by W. E. Snyder, Albert T. and Ma Miller and James Hooker addressed to Mr. Nolan. We also have a copy of Mr. Nolan's reply to the protest, a part of which reads as follows, "I am the owner of the Ischor Gold Field Water Rights, filed in 1887, recorded in our County Court, and a copy of such filing on file in the State Engineer's office at Pierre, South Dakota. This was taken out for industrial milling and agricultural purposes." However, I could much rather not use any water, if by doing so it would cause contention and ill feeling among my friends and neighbors. Life is too short to be spent in quarrelling and squabbling over a little alkali water - probably in court for years, cost each of us thousands of dollars, the verdict which might have been settled out of court at the start of the controversy by three of our neighbors." "So, hereafter, as in the past, I will use the water only at flood stage, fall, winter or spring, at such times it not being used by you, but is going to the Gulf of Mexico."

As far as any information available to this office is concerned, I believe Mr. Nolan is sincere in his operation, and I would suggest that water users on Beaver Creek get together and talk their problems over individually before assuming any unfounded conclusions.

Mr. Conger (2)

If this office can be of any further assistance, we would be glad to hear from you.

Sincerely yours,

Dean W. Lovels
State Engineer

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

RECEIVED S. D.
JUN 17 1948

June 14, 1948

Mr. Dean W. Loucks
State Engineer
Pierre, South Dakota

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Mr. Loucks:

I am inclosing 60¢. Was very glad to get the blue print as the information obtained at Custer together with this blue print enabled us to have better knowledge of the problem and I am sure it was of value to the inquirers. We sent them copy of the blue print together with other information and will contact them at time of my next trip to the hills.

Mr. Conger living in Beaver Creek Valley South of Buffalo Gap is planning on visiting you at Pierre in the near future. He does not want to undertake anything with reference to his water right until after he has talked with you. He has a water right obtained by his father about 1883 and we have copies of the complaint, answer and decree in a lawsuit tried in 1909 which recognizes this water right and its relationship to other water rights in the Valley. In fact we have obtained certified copies from the Clerk of Courts of all of the suits involving water rights in Beaver Creek Valley. There are some 5 or 6. These will be sent to you for your information and reference at an early date. All of them recognize the priority of the Boland water right now held by Mr. Butler. The order of priority of the junior water rights are not entirely clear and I believe that a fair interpretation of suits clearly establishes and recognizes one water right on the basis of useage that must be given an early priority.

The more I see of the condition and background pertaining to water right in the Valley, the more I am convinced that each one of the property owners should have his water right brought up to date and that it will not be a difficult matter to allocate the water so as to take care of all of them. I am convinced, however, that some who think they will have number 2 or number 3 priority following Mr. Butler will find that they have a small acreage or no acreage entitled to that priority and then they will have to drop way down the list if they do not take the steps necessary to comply with the present law.

Mr. Conger's basic water right is indefinite as the others in many respects and needs clarification as to acreage served, etc. He has other water rights and other ditches for which water rights should be secured that are very, very indefinite and should be clarified.

We have the field work completed for Mr. Nolan's water right and have request for revision of Mr. Sawright's water right. There are some very unusual complications in both of these water rights. We are trying to handle them fairly, carefully and properly. It is too long a story to send out in a letter. I had hoped to discuss this with you at the time of my last visit and may be able to get into Pierre for conference before going West early next month. If Mr. Conger also will authorize his work to be taken care of this summer, I believe our friends who appeared as objectors to the Butler water right and then employed Attorneys instead of engineers to look after their interests will be awoken to the advisability

of a change in policy then we can get an allocation and friendly cooperation in the irrigation of Beaver Creek Valley as desired by Mr. Butler.

Yours Respectfully,

DAKOTA ENGINEERING COMPANY

BY

Edward K. Mather

KM:gv

PS: For further thought, I believe I will send you the certified copies of those cases at this time without waiting to complete the explanation and additional data that we had intended to send in with this case.

Although we are sending the data at this time, my suggestion is that you do not file this data as a public file until the other data is sent you and that you do not publicize the existence of the data or the fact that copies have been made of the old files.

June 17, 1953

Mr. Rudolph Schroth
Vice Pres. & Mgr.
F. O. Butler Ranch
Hot Springs, South Dakota

Re: License No. 316-2
S. Dak. Investment Co.

Dear Mr. Schroth:

My attention was called to the fact that we had omitted the word "irrigation" in the last statement of purposes for which water will be used in writing your final Water License.

We have inserted the word "irrigation" in other copies and would appreciate it if you would do the same on the copy which you hold.

Yours very truly,

DEAN W. LOUCKS
State Engineer

DE:RW

✓
June 17, 1953

Edward K. Nather,
Dakota Engineering Co.
Mitchell, South Dakota

Re: Water License 316-2
S. Dak. Investment Co.

Dear Mr. Nather:

Thank you for your letter of June 9 calling our attention to the omission of the word "irrigation" in the last statement of purposes in the Water License.

We will insert this word in the copy which we are holding and will write Mr. Rudolph Schreft, to insert the word in the copy which he holds.

Yours very truly,

DEAN W. LOUCKS
State Engineer

DWL:RW

EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

MITCHELL, S. D.

June 9, 1953

RECEIVED

JUN 11 1953

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Mr. D. W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

Thanks for sending us the final water license 316-2. This form may be okay but in going over it I notice that on the face near the top of the first page water is to be used for irrigating, stock watering, power, etc. (but on the reverse side of the sheet it indicates water is to be used for stock water, power, etc. without any mention of the water used for irrigation. Of course, you and I know that practically all of the water will be used for irrigation but in case of future question I am wondering if the word "irrigation" should not have been used in that last statement of purposes for which the water will be used. I therefore call the matter to your attention.

Yours respectfully,

DAKOTA ENGINEERING COMPANY

By

Edward K. Mather

EKM/em

WATER LAW
ADMINISTRATION

OFFICE OF STATE ENGINEER
STATE OF SOUTH DAKOTA
DEAN W. LOUCKS, STATE ENGINEER
PIERRE

STATE BUILDINGS
DESIGN AND CONSTRUCTION

July 9, 1952

RECEIVED
MAY 7 1953

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Arthur Kroth
Buffalo Gap
South Dakota

Re: Water Permit No. 319-2
Custer County

Dear Mr. Kroth:

In accordance with your request of July 1, 1952,
we are enclosing herewith form which you may use to
report your irrigation water use.

Yours very truly,

Dean W. Loucks
DEAN W. LOUCKS
State Engineer

DWL:R/
Enc.

Buffalo Gap S. Dak.

*Mr. Dean W. Loucks
State Engineer Pierre S. Dak.*

July 23 1952
May 4, 1953

*Dear Sir: I am purchasing the irrigated
land from the W.A. Swright Estate at Buffalo
Gap S. Dak. and am enclosing a statement of
water used by Mr. Swright over the past years
which he has been using regularly by a time agreement
between himself and the F.O. Butler Reclamation
these forms I requested as you, assumed were not for
my water permit recorded as No. 319-2 but for a proper
report made by one of the heirs of the owner*

Sewright estate to bring the afore mentioned
land of irrigation right up to date before
being transferred to me, according to the abstract
E 34 of this right of water use at one
time was sold to a Mr Winters and some
was taken by mortgage and the mortgage
holder never used the water of his
allotment. Therefore Mr Sewright used
it for many years for 22 years that
I personally know of, as I formally owned
the land owned by F. O. Butler, formerly
the Sprague ranch and former ~~owners~~
of the major part of this water right
the balance was owned by Mr Sewright's
mother then brothers and now F. O. Butler
Jr. Hoping this information brings this
up to date

I have sold my ranch on Battle Creek
carrying the water right No 319-2 to a
Mr W. M. Miller and W. H. Miller of Snyder
Texas on contract so they will probably
make any following reports

Sincerely

Arthur Kroth
Buffalo Gap
So Dak.

July 30, 1952

P. B. Conger
Buffalo Gap, S. Dak.

Re: Water Permits 093-2
& No. 316-2

Dear Mr. Conger:

This is in reply to your letter of July 25, 1952 in which you request that we let you know how many acres of land can be irrigated on the Butler ranch in Custer County from Beaver Creek according to their water right.

In referring to Water Right No. 316-2 which is now in the name of the South Dakota Investment Company, the quantity of water granted is 1 cu. ft. per second from Beaver Creek appropriated in July 31, 1880 by Water Right No. 027-2 and an additional 1 cu. ft. per second from Beaver Creek of the water appropriated September 30, 1881 by Water Right No. 028-2. The number of acres to be irrigated as given on the application is 560 acres as shown on a map accompanying the application.

Without going into the matter which, as you know, is quite involved I would not know what your priority is. We have an old Water Right No. 093-2 dated November 28, 1882. We hope that this information will be helpful to you and if there is anything else that we can look up or help you with, I would be glad to hear further.

Yours very truly,

DEAN W. LOUCKS
State Engineer

DWL:RW

EDWARD K. MATHER, O. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS
MITCHELL, S.D.

January 2, 1953.

Mr. D. W. Loucks,
State Engineer,
Pierre, S. Dakota.

Dear Sir:

I have a letter from Mr. Schroth of Hot Springs enclosing forms Nos 17 and 23, in duplicate, asking that "I kindly sign and return same to him, so he can mail these back to you." He says "We do not intend to enlarge our project any more as we are satisfied that we irrigate all we care to and also enjoy some irrigated crops". I am of the definite opinion that they are not applying surface irrigation to all of the land named in the permit, but undoubtedly there is some land adjacent to the ditch or down hill below the land to which surface irrigation has been made that is sub-irrigated. It is my belief that in making a report to you, we have to specifically designate the number of acres to which ditches have been constructed for surface application of water, and but on looking over the form, it looks to me as if that could be signed up without reference to the land that is sub-irrigated, non-adjacent to any surface application of the water, or land that is still handled as dry farming land within the area of the permit.

Please advise.

Yours respectfully,

DAKOTA ENGINEERING COMPANY

By

Edward K. Mather

EKM/a

January 6, 1953

Edward K. Mather
Dakota Engineering Company
708 E. Third Avenue
Mitchell, South Dakota

Re: Water Right No. 316-2
S. Dak. Investment Co.

Dear Mr. Mather:

I have your letter of January 2 relative to the above referred to water permit in which you indicate that Mr. Schroth of Hot Springs has forwarded to you Form 23 which is the "Certificate of Examination of Works" for your completion. It is the assumption that you will examine the project and report definitely upon the information as indicated in the certificate form.

You refer to subirrigation. I do not recall that the original permit included any sub-irrigation. I would suggest that you report on the information as originally filed and on the extent to which same has been completed and on the areas ~~usually~~ ^{actually} irrigated.

Yours very truly,

DEAN W. LOUCKS
State Engineer

DWL:RW

Buffalo Gap, South Dakota
April 13, 1953

APR 14 1953

Mr. Dean Loucks
State Engineer, Capitol Bldg.
Pierre, South Dakota

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

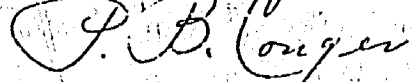
Dear Mr. Loucks:

It has just come to my attention that the Butler Ranch is constructing a new irrigation project on Beaver Creek. They are building ditches to irrigate an area of land on the north side of the creek. The new diversion they are building is located on the old Sprague land which is the SE $\frac{1}{4}$ Sec 19-T S 7N.

I would like to know if they have a new appropriation on the north side of Beaver Creek or is this included in the original water right?
At the present time there is not sufficient water in the creek to irrigate the land already covered by water rights.

Kindly let me hear from you.

Yours truly,



P. B. Conger

April 16, 1953

✓
P. B. Conger
Buffalo, Wyo.
South Dakota

Re: Beaver Creek
Water Right No. 316-2

Dear Mr. Conger:

I have your letter of April 13 in which you state that it has just come to your attention that the Butler Ranch is constructing a new irrigation project on Beaver Creek. You state that they are building ditches to irrigate an area of land on the north side of the Creek and that the new diversion that they are building is located on the old Sprague land which is the SE 1/4 Sec. 19-T8S-7W. You inquire as to whether or not they have a new appropriation on the north side of Beaver Creek or whether this was included in the original water right. You also state that at the present time, there is not sufficient water in the Creek to irrigate the land already covered by water rights.

This is to inform you that no recent application has been made by the Butler Ranch and no recent water permits have been issued. I do not know what the activities are to which you refer unless it is in connection with the existing rights.

Yours very truly,

DEAN W. LOUCYS
State Engineer

DWL:RW
(EIK:Mathor)

April 20, 1953

Mr. B. B. Conger,
Buffalo, Neb., Bow Dakota.

Dear Mr. Conger:

I have been informed by the State Engineer's Office recently and have learned of your complaint and inquiry concerning Butler ranch irrigation activities north of Beaver Creek.

of the water right granted to the South Dakota Investment Company, which is the intermediary incidental to the gift and transfer of a 100 of land by Mr. F. C. Butler of Hot Springs to the State College at Brookings. This gift includes the irrigated area which is part of the 560 acres to be irrigated under their permit of No. 916-2. Although a great deal of work has been done, there is still a considerable area within the 560 acres original permit on which construction has not been completed and apparently the construction to which you refer has to do with the said original application and the old ditched to Jackson, which is a great improvement more than 1000 acres of land. It is a great improvement and I think an inspection by yourself or anyone else will clearly indicate that more land is being better irrigated on the old Butler properties since they leveled fields and constructed new ditches in accordance with the water right application filed by the South Dakota Investment Company a few years ago. Their plan of procedure is aimed to lessen water wastage as result of increased efficiency in application of the water, so as to make more water available for downstream users. Their plans have been based upon general public welfare throughout the valley and if all water users would co-operate in avoiding water wastage and securing of most efficient use of the water, I believe there would be a satisfactory supply for all.

You are nodoubt fully aware that the old water right 028-2, owned by Helan et al, which is the basic right of the South Dakota Investment Company modernized right. According to Court decision, 028-2 becomes 316-2 and gives them priority in the use of 8 second feet of water for 560 acres of land. The Brunschmidt successors have a Court decision but non-completed water right for 4 second feet of water. As to all water users, except the South Dakota Investment Company, you would be in better position if you had followed our suggestion of completing your water right in accordance with Statutory requirements instead of depending upon complaints to the State Engineer and filing in the County Register of Needs Office without complying with the Statute which provides for the filing of maps and records in the State Engineer's Office, with certain public hearings and showings.

I know it is the desire of Mr. Butler and Mr. Schroth, The South Dakota Investment Company and the State College to promote efficient irrigation and use of Beaver Creek water as an aid and incentive to other water users. Mr. Schroth's frequent comment to me has indicated that was his instruction and aim. There is no sense in spending money on litigation. I have read the records of your case against Wm. H. Sawright, Charles L. Sprague and the Martin Valley Stock Company, started in 1906 with the third decision in 1909 and I have begun to feel some sympathy for

your unfriendly attitude toward upstream owners and water rights in general, but a thorough review of all water rights cases of record, and observance of conditions in Beaver Creek Valley and the efforts that have been made toward irrigation by various individuals, makes me feel that a better understanding and co-operation amongst owners is the cheapest and best way of getting satisfactory results. Water wastage which I have noticed along the road toward your place and elsewhere must be avoided. Mr. Nolan indicated in a letter in 1948 a very friendly co-operative attitude with reference to the handling of his Junior water right claim. A co-operative attitude on the part of all is cheaper in the end for everybody than a fight. I cannot blame you for being displeased with the Court's decision in your case against W. H. Wright but that is a sample of Court Action. It always costs both plaintiff and defendant money. The same money spent in securing most efficient application of water and lessening of water wastage is money better spent.

Extension of time for completion of work on the Butler on South Dakota Investment Co. properties will no doubt be necessary and is provided for in the statute, so I trust you will not be alarmed if you see more development going on either with reference to gravity irrigation or sprinkler irrigation which is permitted under their application for a part of the 560 acres. You can rest assured however that Messrs. Schroth and Butler have both indicated their intention to keep within the limits of the 560 acres of irrigated land, so I have no doubt but what when the project is completed, they will have a fine irrigation project of benefit to the entire community and which will take less rather than more than the allotted 8 second feet of water from the creek. We must keep in mind that their application holds primary priority. It has been upheld by the Court and they are entitled to take water to an amount of 8 second feet.

I expect to be in Hot Springs in the early future and if I can be of any assistance to you, will be glad to hear from you. Will probably stop at the Evans Hotel to a night, thereafter, probably reach near noon on the 10th and will be in the city by 11:00 AM. Yours very truly,

BKM/a

Enclosed for you are two copies of a letter from the South Dakota Investment Co. dated 10-1-48, and a copy of a letter from the same company dated 10-1-48, both of which are copies of letters from the South Dakota Investment Co. to the Bureau of Reclamation, dated 10-1-48, and a copy of a letter from the Bureau of Reclamation to the South Dakota Investment Co. dated 10-1-48. The letters from the South Dakota Investment Co. are copies of letters from the South Dakota Investment Co. to the Bureau of Reclamation, dated 10-1-48, and a copy of a letter from the Bureau of Reclamation to the South Dakota Investment Co. dated 10-1-48. The letters from the Bureau of Reclamation are copies of letters from the Bureau of Reclamation to the South Dakota Investment Co. dated 10-1-48, and a copy of a letter from the South Dakota Investment Co. to the Bureau of Reclamation, dated 10-1-48.

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EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY
CONSULTING CIVIL ENGINEERS
MITCHELL, S.D.

April 20, 1953

APR 22 1953

Mr. Dean Loucks,
State Engineer,
Pierre, So. Dak.

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Mr. Loucks:

Thanks very much for the blind copy, and I trust that we can see each other frequently enough so that a reference to my recent call at your office will be in order as basis for a letter such as I am writing to Mr. Conger, copy of which is enclosed, and I hope it will be of some value.

After reading two cases in which Conger was involved, once as defendant and he won in that case, and once as plaintiff where he lost, I begin to realize a little of his background and the reason for his being so inclined to find fault and make trouble. His normal position as a water right owner is in the 3rd group, or 3rd ditch leading out of Beaver Creek. If Bowker, et al are wasting as much water as I have seen in the past, I don't wonder at Conger's complaint about there not being much water left.

Yours very truly,

DAKOTA ENGINEERING COMPANY

EKM/a

By

Edward K. Mather

Buffalo Gap, S. Dak.

April 17, 1953

APR 19 1953

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Mr. Dean W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

I have your letter of April 16th in reply to my letter concerning the new irrigation project being constructed on the Butler Ranch.

You did not give me the information I would like to have.

You stated that there have been no new applications and no recent water permits issued to the Butler Ranch. Is the construction of the new diversion permissible without one of the former? If not, is the construction of this new project included in the Butler water right No. 316-2? It is my understanding that each individual water right may have only one specifically located point of diversion. The Butler water right No. 316-2 is a compilation of water rights 027-2 and 028-2. Neither of these old water rights included the project in question. What then, is the basis for the construction of this new project?

I plan to go to Pierre in the near future. May I see you at any time or will an appointment be necessary?

Yours truly,

P. B. Conger
P. B. Conger

April 28, 1953

R. B. Genger
Buffalo Gap
South Dakota

Re: Water Permit No. 316-2
S. Dak. Investment Co.
Fall River County

Dear Mr. Genger:

This is in reply to your letter of April 17 and further in regard to the South Dakota Investment Irrigation Project in Fall River County. To my knowledge the only work being done in the way of constructing an irrigation project is in connection with the completion of their water permit No. 316-2 which as you know is for 8 cu. ft. per Sec. of water and the irrigation of 560 acres of land. The status of this project is such that I expect to receive very shortly a Certificate of Examination of Works by a Registered Engineer arranged for by the South Dakota Investment Company. This Certificate and Report will indicate the project as finally completed. We have not yet received this report.

You state that you plan to come to Pierre in the near future and would like to have a conference with us. We would be glad to talk with you any time that we are in the Office. However, it might be well for you to let us know when you are coming so that if we are to be out of the Office we can so advise you.

Yours very truly,

DWL:RW
EM

DEAN W. LOUCKS
State Engineer

Buffalo Gap
South Dakota

May 4, 1953

Mr. Dean W. Loucks
State Engineer
Pierre, So. Dak.

Dear Sir:

I am purchasing the irrigated land from the W. A. Sewright Estate at Buffalo Gap, So. Dak., and am enclosing a statement of water used by Mr. Sewright over the past years which he has been using regularly by a fixed agreement between himself and the F. O. Butler Ranch Manager.

These forms I requested as you surmised were not for my water permit recorded as No. 319-2 but for a proper report made by one of the heirs of the Sewright estate to bring the afore mentioned land irrigation right up to date before being transferred to me. According to the abstract a 1/24 of this right of water use at one time was sold to a Mr. Winters and some was taken by mortgage and the mortgage holder never used the water of his allotment. Therefore, Mr. Sewright used it for many years, for 22 years that I personally know of. As I formally leased the land owned by F. O. Butler, formally the Sprague ranch and former owners of the major part of this water right, the balance was owned by Mr. Sewright's Mother, then brother and now F. O. Butler Inc. Hoping this information brings this up to date.

I have sold my ranch on Battle creek, carrying the water right No. 319-2 to a Mr. W. H. Miller and W. H. Miller of Snyder, Texas, on contract so they will probably make any following reports.

Sincerely

/s/ Arthur Kroth
Buffalo Gap
So. Dak.

COPY

STREAM SURVEY

ESTIMATE OF WATER DIVERSION

MAY 1953

OFFICE OF STATE ENGINEER

1. NAME OF STREAM

Beaver Creek

2. LOCATION OF POINT OF DIVERSION--SECTION

In the mouth of Buffalo Gap canyon where Beaver Creek passes through said Gap, where for many years a dam has been situated about one-half mile below what is known as Clark's Ranch and about one-half mile above what is known as Doland's Ranch about 3 miles above the Southwest Quarter of the Northeast Quarter of Section 32, in Township 6 South, Range 7 East of D.H.M., in Custer County, South Dakota.

(E) Storage Dam

(1) Approximate Capacity, Acre Feet

(C) Pumping Plant

(1) Size of Pump

(2) Rated Capacity, Gallons per Minute

5. AVERAGE RATE OF DIVERSION

(A) 1947

(1) Cubic Feet Per Second or Gallons per Minute

(2) Period of Use:

From to

(3) Estimated Total Time of Actual Diversion / day out of days

(B) 1946

(1) Cubic Feet Per Second or Gallons per minute

(2) Period of Use:

From to

(3) Estimated Total Time of Actual Diversion days.

(C) 1945

(1) Cubic Feet Per Second or Gallons per minute

(2) Period of Use:

From to

(3) Estimated Total Time of Actual Diversion days.

SIGNATURE OF PERSON FURNISHING INFORMATION

Owners Widow X Grace Lemright
(Owner) (Tenant) (Employer)

SIGNATURE OF INTERVIEWER

Arthur K. Roth

EDWARD K. MATHER, C. E.
MANAGING ENGINEER

708 E. THIRD AVE.

DAKOTA ENGINEERING COMPANY

CONSULTING CIVIL ENGINEERS

MITCHELL, S. D.

May 11, 1953

Mr. Dean W. Loucks
State Engineer
Pierre, South Dakota

In re: Water Right 316-2

Dear Mr. Loucks:

In checking the records incidental to preparation of my "Certification of Examination of Works" I find your certificate of December 30, 1947, in the first paragraph approve use of 4 second feet under 027-2 Exhibit A. # "I also hereby approve an additional 4 second feet under 028-2", etc. But in item 6 the permit is based upon 4 second feet and reference is made to possibility of a right existing under water right 0446-2 which is the Tubbs application of October 15, 1880.

The attorneys for Schneider, Bowker and Miller in making protest to the granting of Mr. Butler's application No. 316-2 based their protest upon said Tubbs water right No. 0446-2. This application was abandoned by Mr. Tubbs et al and as there is judicial record to justify this finding on your part I suggest for your consideration reference to the records accompanying this report as basis for a grant of 8 second feet in the water right without any specific reference to the Tubbs water right as in item 6 of your permit of December 30, 1947. If certified copies of any of the following records are wanted please advise and I believe Mr. Schroth will provide same as their desire is to complete the water right record within legal limits with the same thoroughness that the construction has been completed necessary to apply this water to beneficial use on their 560 acres of irrigated land.

For your convenience the transcript of legal proceedings enclosed are numbered pages from our final report to the South Dakota Investment Company and the pages are referred to for easy and quick reference.

In Custer County Circuit Court Case 469 initiated in 1893 by Tubbs et al vs Boland et al, plaintiff asked for damages because of claimed inability to get water enough for irrigation below the Boland ditch intake and asked for injunction restricting Boland's right to water, see page 118. The defendants denied all plaintiffs claims, asked for declaration of their right to water as claimed in their water right location notices of 1880 (your record 027-2) and 1881 (028-2), see page 120 and 121, then by stipulation opened the way for trial and legal motions, see page 123. Page 124 is a record of a December 13, 1893 "Judgment for defendants' costs" showing that the "action" was dismissed on motion of plaintiffs' counsel with his offer to pay defendants costs. This in effect admits an abandonment by Tubbs et al of

any rights under his water location notice of October 15, 1880 (your record 0446-2)

In Custer County Circuit Court Case 521 initiated in 1894 by Brunschmidt vs Boland et al, page 127, judgment was rendered in 1897 but twice amended but in each decision, pages 129, 137 and 139, the findings and judgments of the court recognized the Boland priority to water from Beaver Creek under his "location of 1880 (027-2) and 1881 (028-2), with Brunschmidt location of July 28, 1882 (your record number 027-2) having second priority." These decisions completely ignore the Tubbs et al water location (your record 0446-2), the Jones et al location of December 18, 1880 (your record 0241-2) which definitely indicates said locations and right to water with a priority ahead of Brunschmidts claim were abandoned.

The priority of Boland et al as against all others (page 175) recognized in your office 027-2 and 028-2 is further upheld in May 1, 1909 in the case of Conger vs Sewright et al.

The absolute priority of the Boland water right is again recognized in the Sewright vs Town of Buffalo Gap et al, Decree of June 2, 1913 (see page 154). I think, however, that decree is subject to attack on a nunc pro tunc proceeding only as to the Boland ditch priority and rights being extended to the S&NE 32, Twp 65, R7E, but need not detail that position at this time. This does not affect basic 316-2 territory shown on the map.

Further proof of reason for abandonment of the Tubbs claim to water from Beaver Creek is found in legal proceedings of record, see pages 120-II, 134, 140, 163. Carroll Smith (our report to SDI Co, page 188) born 1-24-1867, came to Buffalo Gap 3-17-86, worked in and operated the bank at Buffalo Gap, later similar operation in the bank at Hot Springs, told me he knew that Tubbs abandoned his water right claim and that there was practically nothing done with respect to a water right on east side of Beaver Creek until after the Brunschmidt location was made in 1882.

We believe the foregoing justifies the granting of an appropriative unconditional water right incidental to completion of 316-2 construction proceedings subject only to riparian or vested rights, if any there be, rather than that a mention of the Tubbs right 0446-2 be left in the record to encourage anyone looking for a chance to question 316-2 rights or priority.

With reference to extension of time I thought it would be wise to have an extension granted extending past the next session of the legislature in case we found any detail that should be modified to comply with a possible new law or revisions of the old law, but Mr. Butler and Mr. Schroth are insisting that final report be made and water right granted as quickly as possible. I do not know, but suspect that Mr. Butler's advancing age causes him to want to have the deal all completed incidental to the land he is transferring to the college so that he can feel satisfied that everything is in order and nothing is left unsettled in case he no longer is able to look after affairs pertaining to the property he is giving to the state. Consequently, I am trying to put things in shape that will be safe for both of us and such as will permit your action upon the water right at an early date.

I intend to make my certificate of examination of the works in form substantially as submitted herewith and would be glad to have your comments pertaining to same.

In view of the college's probable future use of this land and the unusual amount of construction money spent on a gift project I feel there are some features which should be protected in unusual manner and basis for a vested right established such as possibility of power at the drop in the present ditch, the use of foreign water if needed, and the supplying of small land owners in Buffalo Gap with water. None of us want to limit the probable use and value of this project as a demonstration project and demonstration of good will in keeping with the intent of the donor, F. O. Butler, and the manager, Rudolph Schroth.

Yours respectfully,

DAKOTA ENGINEERING COMPANY

BY

Edward R. Mathen

May 11, 1953

*Confidential
Information*

Mr. Rudolph Schroth
Hot Springs
South Dakota

Dear Mr. Schroth:

Your letter of April 30, 1953 received together with the aerial photograph which will be returned shortly, the transcript of court proceedings, and the two blue-prints which were to be attached to the reports we have made to you, comments on these hereinafter.

Enclosed is tentative copy of letter to Mr. Loucks which will be forwarded to him unless you promptly object. This is an attempt to get the unqualified water right for 8 second feet rather than to leave the record as giving you 4 second feet and questionable priority beyond that amount. I believe the point I am raising is definitely to your vital interest although Mr. Gravelle overlooked it. Your letter requesting me to make final examination of the work was received after January 1, 1953. It did not include a certificate of application of water to beneficial use, but I asked for and received a set from the state engineer, and enclose same herewith for your use. If any change is made before signing, advise so I can correct our records.

I don't care whether you ask for a 4 year extension or a 4 month extension of time beyond January 1, 1953, as permitted by Section 61.0132

"because of physical and engineering difficulties in completing all work prior to January 1, 1953. Active prosecution of the work during the allotted construction period is indicated by the fact that considerably over \$100,000.00 has been expended incidental to completion of work to date,"

but if you don't ask for extension at least until April 24, and date your application the day before Loucks' letter to Conger assuming letters passed in transit, it may cause trouble and loss. It should have been set before the diversion east of the creek was made, otherwise you are opening the way for anyone to ask that it be closed, or treated as a new water right providing you make a new application therefor. The state engineer has shown every possible effort to help, but he cannot go contrary to law.

Please refer to Appendix O, page 182 of our report, Section 61.0123d and remember completion date in your 316-2 application is January 1, 1953, Appendix H, page 43.

It is my understanding that plans for irrigating the 36 acres east of the creek were completed this spring and work was done shortly before my visit. You refuse to ask for an extension of time, therefore this work should not be included in your 316-2 project completion with priority and coverage you need. The new diversion point means a new and later priority for it than any other application or location in the valley unless we get it under the extension of time beyond January 1, 1953. The state engineer at first said it would require a new application, but after I called attention to the diversion point, the ditch and the irrigated land being all on your property and no one else affected, and that my completion report would show a substitution of land so the 560 acres would not be exceeded, he approved my suggestion. However, he cannot act on it unless there is an extension of time from January 1 to April 24, 1953 or some later date such as May 1 or May 15, and I will date the report I am making and your reports accordingly. There is no use in trying to make a showing of work being done before January 1 because Conger knows better and correspondence from him to the state engineer sets out the fact of construction being subsequent to January 1, 1953. An effort to fudge on this point will get us all into trouble.

Concerning intake for 316-2 diversion is my statement of raising creek level 9 inches at the Beaver Creek dam correct? If not, how much should be stated? Allegation in the court case indicated that it was raised 3 inches in connection with application 027-2 of 1880 so I don't want to go higher than necessary.

I avoided stating size of Calco intake gates because if running full we might raise question as to diversion being in excess of 8 second feet, or that diversion at the two diversion points totalling in excess of 8 second feet.

I enclose tentative wording of my report. If this is not changed you can add it to my report recently filed for future reference if and when same is required. The yellow sheets and copy Gravelle made of the court case proceedings will not be as easy to take care of as the report I have prepared which should all be kept in one book. We do not know from what angle or when reference will be made to data in this book, but it will be advisable that this compilation be kept available for your reference or that of your attorney in case conditions arise which make such reference advisable. After we made copies of the court proceedings which were apparently lost after Mr. Gravelle made copies on paper that does not fit in with the book I concluded it would be advisable to have same copied once more and pages numbered for reference. I frequently wanted to turn back to the data in those court cases and without an index would have been at a loss to know where to find it quickly. You will note I have referred frequently to same in the proposed letter to the state engineer and I am referring to the pages so he can find justification for my statements promptly. I think you would find it very handy to have these paged letters in your file. The blueprints may not seem necessary to you at this time but I think you will find in time that a map showing the location of the several diversion points and approximate location of the ditches will be of interest and value incidental to any discussion that may arise.

I thought we were going to settle a lot of the contradictions and uncertainties in the present law at the last session of the legislature, but instead I feel that the attorneys are going to make it more and more difficult to get a final,

clear cut, simple wording of the statute. The necessity for water rights is becoming more and more apparent but local conditions and personal interests are making it harder and harder to determine upon a wording that will be satisfactory to everyone. Therefore, I want to leave the immense amount of data we have compiled in usable shape, if it is ever needed. You were very wise and fortunate in undertaking the work necessary to make the old water rights comply with present law when you did.

Yours respectfully,

DAKOTA ENGINEERING COMPANY

By

7-11

Loucks
Page 2
5-26-53

RECEIVED
MAY 28 1953

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Mr. A. M. Eberle, Mr. Clifford Franske, and many others from South Dakota and many states here. Last year in July, I entertained 23 people, all engineers, from 16 different state colleges, and they had the highest praise for our sound and substantial project. We use a very conservative amount of water and with this system, all water waste is avoided and made available for these farmers downstream.

It is very regretful that, due to physical and engineering difficulties which were not anticipated, the project which was 98% completed at the time, could not be fully so, for that last little recutting of the ditch and laying the culvert, which we had to re-locate, amounted only to \$506, just a fraction of the whole project, but with the ingenuity of Mr. Elliott, engineer from the state college, who helped me straighten up my mathematics, we were able to beneficially irrigate that 36 acres, which before was done a little to our dissatisfaction.

It is our wish and expectation that we now capitalize on our investment and, if farm prices will not go any lower, I hope to do so. It would be very interesting to you sometime when you are in the neighborhood to let me know and I will be very happy to show you our accomplishments.

Respectfully yours,

SOUTH DAKOTA INVESTMENT CO.

By

Rudolph Schuroth
Rudolph Schuroth
Vice President and Manager

RS:mmh
Encl.

F. O. BUTLER, PRES.

RUDOLPH SCHROTH, VICE PRES. AND MGR.



F. O. BUTLER RANCH

HOT SPRINGS, SOUTH DAKOTA

REGISTERED, HEREFORDS • PUREBRED HOLSTEINS • CHESTER WHITE HOGS

May 26, 1953

RECEIVED

MAY 28 1953

Mr. Dean Loucks
State Engineer
Pierre, South Dakota

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Dear Sir:

Enclosed please find Certificate of Application of Water to Beneficial Use, which I understand is necessary for your files under the state regulations.

I also just received a letter from Mr. Edward K. Mather, managing engineer, Mitchell, South Dakota, and while this letter is quite right, I would like to make some comment on it. When I filed my request for final water license I anticipated that the whole project would be completed. However, we found that some engineering and staking mistakes were made and consequently, didn't get a very small part of the project finished. Furthermore, due to physical and engineering difficulties, also breakdown in machinery, we were compelled to cut a new ditch and run the water through a new culvert under the highway, and this is the point where Mr. Conger noticed the water first.

We are now all finished and do not anticipate to beneficially irrigate at any time more than 560 acres, or use more than eight second-foot of water beneficially at any time. Our project, which was started with the help of Mr. F. O. Butler, who is the donor of the ranch to the college and also the donor of the moneys that have been put into this project for development and irrigation purposes, is highly gratified with the job done.

Let me say that the credit goes to several outstanding engineers and there is a very unique system of flood irrigation. It always was Mr. Butler's intention to turn over a high-class institution to the State College, as benefits from this institution ~~as~~ turned over to the college for scholarships. The total expenditure, given to us by the auditor, comes to \$121,310.48. Since the project is finished and in operation, we had at different occasions very outstanding people, some of them engineers, others leaders of institutions. Among them are Mr. Ivan Wood of Denver, Mr. Fred Leinback, now of Minnesota, former president of the college, Mr. ~~Conger~~, Dean of Engineering at Brookings, Mr. John Headley, president of the State College,



F. O. BUTLER RANCH DIVISION, SOUTH DAKOTA STATE COLLEGE FOUNDATION
IN SUPPORT OF RESEARCH AND EDUCATIONAL PROJECTS FOR THE IMPROVEMENT OF AGRICULTURE IN SOUTH DAKOTA

2-9-53 316-2

In explanation of the map of Beaver Creek, Diversion No. 1, Water Right No. 316-2, attention is called to the area enclosed by the red line as indicating the area basically included within the 560 acres for which 8 second feet of water flow from Beaver Creek is granted for irrigation, domestic supply, stock raising, fire protection, fish culture, power and milling purposes. This water right is given priority based upon Water Rights 027-2, dated July 31, 1880 and 028-2, dated September 31, 1881.

The term "foreign water" shown on the plat indicates "a right is claimed to divert water from Beaver Creek at time of flood flow or of water in Beaver Creek in excess of the quantity being used legitimately in Beaver Creek Valley; said water to be diverted for storage in a stock watering dam in Elm Creek water shed in the east half of section 30; said stock dam is used for watering of stock on F. O. Butler land in the Elm Creek water shed".

The term "foreign water" is not in common use in South Dakota, but is used in other states to indicate water taken from one water shed into another water shed. This cannot be done unless there is an excess of water going to waste in the water shed from which it is taken and only under such conditions can it be taken out of the water shed which is a condition that may or may not develop in the future.

A further use of water within the limit of statutory limitation is based upon the 1917 revision of section 8227 of the preceding Irrigation Code of South Dakota which provides that a water right owner may sell or dispose of a portion of his water not needed for irrigation or immediate use. The Water Right 316-2 proceedings provide as follows:

"Without increase in the 8 second feet of water diverted from Beaver Creek, the right is claimed under section 61.0122 of the Code to provide water from 316-2 irrigation ditch for use of small non-riparian landowners in the Town of Buffalo Gap whenever the entire 8 second feet is not being used in irrigation of the designated 560 acres; and without assuming the obligation of furnishing water to said small users except when water is normally in the ditch for use in irrigation of an adjacent portion of the 560 acre proposed to be irrigated under this water right and temporarily not needed therefore, and providing said small landowner will comply with any reasonable regulation concerning transportation and beneficial use without wastage of water."

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and other purposes as stated in the application.

11

SOUTH DAKOTA INVESTMENT
COMPANY
Kenneth L. Smith

Holder of Permit No. 316-2

APPROVED:-

DEAN W. LOVOKS
State Engineer.

Water Division No. _____ Water District _____

CERTIFICATE OF APPLICATION OF WATER TO BENEFICIAL USE

DEPOSITION OF HOLDER

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Rudolph Schroth Vice President and Manager of So. Dakota Investment Co and properties now owned by the F.O. Butler State College Foundation a portion of which are irrigated by water right 316-2 which previously is known in the State Engineers Records as water rights 027-2 and 028-2.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. South Dakota Investment Company, Hot Springs, South Dakota,
Rudolph Schroth, Vice President and Manager.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. 316-2. Priority as of Aug 21, 1880 and Sept 30, 1881 as continued under the 316-2 proceeding initiated Oct. 27, 1947.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Beaver Creek Custer Co., S.D. for further data see Engineers Certificate of Examination of Works by Edward K. Mather, dated April 30, 1953.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. See foregoing Engineers Certificate of Examination of Works

Ques. 6. State for what purpose water is used and describe place of use (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. See foregoing Engineers Certificate of Examination of Works

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. See foregoing Engineer's Certificate of Examination of Works

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. Unknown. See foregoing Engineer's Certificate of Examination of Works

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. I am the party to whom the permit was issued.

*Check Division
this entry to see that
complete return is
sent & refer to State Engineer for
file*

RECEIVED
MAY 28 1953

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. During many years the water has been diverted and used for irrigation when and as needed in amount not exceeding 8 Second Feet

SOUTH DAKOTA INVESTMENT
COMPANY

(Sign.)

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Hot Springs, County of Fall River, State of South Dakota, on this 30th day of April, A.D., 1953.

My Commission Expires Oct. 2, 1955

W. H. Nelson
Notary Public

Permit No. _____
Proof of Application of Water to Beneficial Use.
DEPOSITION OF HOLDER.
Amount of water _____ second feet
Source _____
County _____
Purpose _____
Place of Use _____
Date of priority _____
Received and filed _____

CERTIFICATE OF EXAMINATION OF WORKS

TO THE STATE ENGINEER, PIERRE, SOUTH DAKOTA:

Dear Sir:

I hereby certify that in accordance with your letter of authorization I have on April 24, 1953, and on preceding and succeeding dates made a thorough examination of the diversion works constructed by South Dakota Investment Company and its cooperators, of Hot Springs, Fall River County, South Dakota, holder of permit No. 316-2 upon application No. 316-2, bearing date of priority of October 27, 1947, as based upon priority of water right 027-2, dated July 31, 1880, and 028-2, dated September 30, 1881, authorizing the diversion of 8 second feet of water of Beaver Creek for irrigation, domestic supply, stock raising, fire protection, fish culture, power and milling purposes. I have to report on the condition of the same as follows:

THE DIVERSION WORKS COMPRISE:

At the original location originally installed overflow flash boards on the Beaver Creek Dam raised the water level in the creek 9 inches, more or less, when needed, and divert part of the creek flow through the box or headgate into the Boland ditch as described in the several legal proceedings and judicial decrees upholding the priority of Boland et al to water from Beaver Creek. A Calco Steel Gate is now installed in this intake of less capacity than was approved by judicial decisions originally made and is now operated to take an amount of water not exceeding 8 second feet from the creek. This is now the basic intake on irrigation project 316-2.

A second diversion made without our knowledge in accord with engineering supervision from State College at Brookings, located as hereinafter stated, takes water on SDI Co (South Dakota Investment Company) land, conducts it over SDK Co land and applies it to the irrigation of 36 acres of SDI Co land on the east side of the creek, with overflow from a ditch bank into Beaver Creek. It consists of an earthen dam in one of the creek's channels. A small take-off ditch and an intake gate at which the flow may be estimated or cut off entirely when water is not needed in the diversion ditch.

The total intake of the 2 diversions will be limited to 8 second feet and total irrigated land is limited to 560 acres as a result of substituting gravity irrigated land in lieu of the sprinkler project land contemplated in the basic 316-2 application map. Another small tract of land near and east of the center of Section 29, containing 9 acres or less, was intended to be included in the Nolan project, but as he has failed to file his application in formal and proper manner we are including it by substitution in 316-2 project so as to protect all of the land being irrigated that is being given by Mr. Butler to Brookings State College. The water for these 9 acres is taken from the Mill Race ditch with location as shown on the map.

Certificate of Examination of Works -- 2

AND THE SYSTEM IS IN THE FOLLOWING CONDITION:

The record shows \$114,000.21 has been paid by Mr. Butler for removing trees, cutting 6 1/2 miles of main ditch, plus a large acreage of small ditches or cross laterals, leveling land within the boundary of the 560 acre tract, furnishing and installing 130 metal gates, 94 metal culverts totalling 1148 feet in length, besides 150 feet of 18 inch cement culvert, and five 9' x 3' x 3' galvanized steel diversion boxes through which water enters and is diverted through valved galvanized outlet pipes to different fields at the will of the irrigator. A beautiful job of leveling has been done, the ditching and leveling done under the supervision of the Soil Conservation Service. The project now seems to be in very good shape. Some trees and bursh remain to be cut to permit cropping of small areas now sub-irrigated. Some drainage will provide outlet into Beaver Creek for seepage water that is now excessive in one or more small patches after which this land will be efficiently tilled. I am reporting all such acreage within and as a part of the 560 acres because it will all be efficiently cropped and irrigated as fast as the work can be done. The property is now turned over as a gift to the F.P. Butler State College Foundation with Mr. Schroth as manager, who will complete and supervise the operation of the entire property for several years in all probability. It is a fine example of the possibilities and value of proper irrigation and all acreage will be tilled and irrigated as an example for public inspection at any time.

THE POINT OF DIVERSION IS LOCATED

The basic or original point of diversion is as named on the water right application map, which corresponds to prior basic water right descriptions, to-wit: 850 feet south and 910 feet west of the Northwest corner of Section 19, Township 6 South, Range 7 East of the BHM.

The supplementary outlet located by Brookings State College personnel is substantially as shown on the completion water right map accompanying this report and is located at the point where water is diverted from Beaver Creek to irrigate approximately 36 acres on the east side of Beaver Creek in the north half of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 29-6-7, said point of diversion being 370 feet west and 300 feet north of the southeast corner of Section 19.

The diversion point for irrigating land between the Mill Race and the creek east of Section 29 is taken from the Mill Race rather than from the creek. Water used at any time if taken from one or more diversion points and used for irrigating land under water right 316-2 will be limited to 8 second feet.

THE WORKS ARE CAPABLE OF DIVERTING AND CONVEYING TO THE PLACE OF USE 8 SECOND FEET OF WATER, WHICH IS TO BE USED FOR

Irrigation of 560 acres in Sections 19, 20, 29 and 30, Township 6 South of Range 7 East. 8 times 70 equals 560. Water will be taken at time or times "as needed".

Domestic use and fire protection within the area or added use at future building sites or structure set or used incidental to development and

Certificate of Examination of Works -- 3

operation as riparian owner of this irrigation project and water right.

Stock watering, fish culture, as needed.

Water for power, processing and development of agricultural projects for use or sale within the total of 8 second feet allowable diversion will be used at times when and if there is available water in addition to the portion of the 8 second feet that is used for irrigation. A 50 foot drop in the ditch is made by means of a metal tube near the center of the south line of the northeast quarter of the north quarter of Section 30 and same may be used for development of power incidental to the transfer of water in the ditches for irrigation of lands at lower level south and east of this drop.

"Foreign water". A right is claimed to divert water from Beaver Creek at times of flood flow, or of water in Beaver Creek in excess of the quantity being used legitimately in Beaver Creek Valley, said water to be diverted for storage in a stock watering dam on Elm Creek in the east half of section 30, said stock dam is used for watering of stock on F. O. Butler land in the Elm Creek watershed.

Without increase in the 8 second feet of water diverted from Beaver Creek the right is claimed under Section 61.0122 of the Code to provide water from 316-2 irrigation ditch for use of small non-riparian land owners in the town of Buffalo Gap whenever the entire 8 second feet is not being used in irrigation of the designated 560 acres, and without assuming the obligation of furnishing water to said small users except when water is normally in the ditch for use in irrigation of an adjacent portion of the 560 acres proposed to be irrigated under this water right and temporarily not need therefor, and providing said small land owners will comply with our reasonable regulations concerning transportation and beneficial use without wastage of water.

THE LEGAL SUB-DIVISIONS TO BE IRRIGATED ARE:

Areas south and west of creek to be irrigated includes:

NE of NW of Section 19.....	20 acres
SE of NW of Section 19.....	35 acres
SW of NE of Section 19.....	35 acres
NE of SW of Section 19.....	20 acres
NW of SE of Section 19.....	38 acres
NE of SE of Section 19.....	25 acres
SW of SE of Section 19.....	30 acres
SE of SW of Section 19.....	1 acre
SW of SE of Section 19.....	38 acres
SE of SE of Section 19.....	25 acres
NW of NE of Section 30.....	36 acres
NE of NE of Section 30.....	25 acres
NW of NW of Section 29.....	22 acres
NE of NW of Section 29.....	8 acres
SW of NE of Section 30.....	3 acres
SE of NE of Section 30.....	21 acres

Certificate of Examination of Works -- 4

SW of NW of Section 29.....	40 acres
SE of NW of Section 29.....	30 acres
NE of SE of Section 30.....	6 acres
NW of SW of Section 29.....	36 acres
NE of SW of Section 29.....	30 acres
SW of SW of Section 29.....	15 acres

Miscellaneous acreage due to irregularity of
land lines and creek or ditch locations..... 6 acres

Total.....515 acres

Substituted areas between Mill Race and
Creek near center Section 29..... 9 acres

On north and east sides of creek SW of SW
of Section 20..... 5 acres

NW of NW of Section 29.....16 acres

NE of NW of Section 29..... 7 acres

SW of NW of Section 29..... 8 acres

Total..... 45 acres

Grand total acreage to be irrigated.....560 acres

THE DOMESTIC USE INTENDED COMPRISES

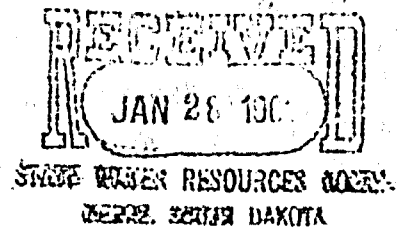
Usual needs of a riparian owner or his employees and supervisors living
on or adjacent to Beaver Creek or diversion ditches therefrom and more
fully answered in prior question as to what the water is to be used for.

THE UTILIZATION FOR POWER, MINING, OR OTHER BENEFICIAL USES COMPRISES:

More fully covered in answer to preceding question as to use that is
to be made of the water.

Edmund T. Marthens

Bottom & Beal
Attorneys at Law
714 Quincy Street
Rapid City, South Dakota



J. H. Bottom
George Beal

January 26, 1961

Mailing Address: Box 1785
Telephone TILLmore 2-2688

Mr. Joe Grimes
Water Resources Commission
State Capitol Building
Pierre, South Dakota

Re: South Dakota Investment Company - Water Permit No. 316-2.

Dear Joe:

In going through the correspondence which I made copies of at your office, I note that your department issued the above water permit for 4 cubic feet per second of water under Permit No. 027-2, dated July 31, 1880, and 4 cubic feet per second under Permit No. 028-2, dated September 30, 1881.

You will recall that under that decree entered in 1904, wherein Brunschmidt was the plaintiff and Boland and others were the defendants litigating priority of water rights under the September 30, 1881 Permit No. 028-2, the court gave the defendants, (applicant's predecessors in title) the amount of water which would run through a ditch 4 feet deep and 4 feet wide, for a distance of 300 yards. As I understand it, (which is a misstatement of the record because I don't understand it at all) in order to compute the cubic feet per second that would run through this ditch, you would have to know the head of the water where it goes into the ditch and the slope of the ditch for the 300 yards.

What I would like to know is how your office arrived at 4 cubic feet per second. Did your office or the applicant make an actual measurement of this water or was the 4 cubic feet per second just a rough guess. This point could be quite important in the action I am about to initiate on behalf of Gallentine and I would like to establish how the 4 cubic feet per second granted under this permit was arrived at.

I also note in the correspondence that Mr. Mather refers to a Mr. Gravelle. Would you know who this gentleman is as I would like to contact him. I thought that he might possibly have been an engineer at State College.

I am enclosing a self-addressed, stamped envelope for your convenience in answering these inquiries and I would appreciate an answer at your earliest convenience.

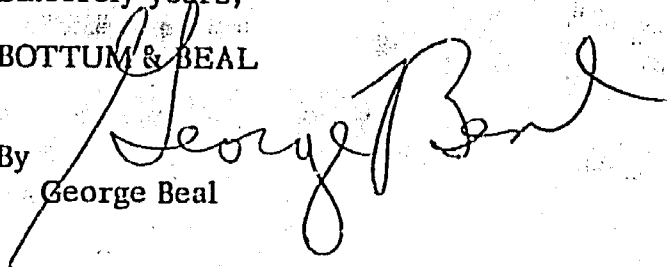
Again I would like to thank you for your splendid cooperation that you have shown Mr. Gallentine and myself and you may be assured that we will endeavor to work with your department to the utmost in resolving these water disputes.

Sincerely yours,

BOTTUM & BEAL

By

George Beal



CS

February 1, 1961

Mr. George Beal
Battum and Beal
Box 1785
Rapid City, South Dakota

Dear Mr. Beal:

In your letter of January 26, 1961, re South Dakota Investment Company-Water Permit No. 316-2, you request information as to how the 4 cubic feet per second was determined to be the proper quantity of water to which Applicant was entitled under a filing dated September 30, 1881 (028-2).

A check of the records indicates, apparently, that water right 316-2 was handled under existing state statutes as a record of water right filings made prior to enactment of the state water statutes. Water right 316-2 recognized the rights to divert 4 cubic feet per second under a filing (027-2 dated July 31, 1880 and to divert an additional 4 cubic feet per second under a filing (028-2) dated September 30, 1881. The state water statutes in effect on December 30, 1947, when the State Engineer approved Permit 316-2, specified 50 miners inches to be the equivalent of 1 cubic foot per second. Consequently, water right 316-2 recognizes 4 cubic feet per second as covered by the entire 027-2 filing for 200 miners inches with a priority of July 31, 1880 and an additional 4 cubic feet per second as covered by 200 miners inches of the 028-2 filing with a priority date of September 30, 1881. The entire water right 316-2, therefore, recognizes 8 cubic feet per second.

At the time of action by the State Engineer concerning Permit 316-2, existing state water statutes provided that diversions of water for irrigation purposes were not to exceed 1 cubic foot per second for each 70 acres irrigated. The 8 cubic feet per second as recognized in water right 316-2, apparently was determined by this ratio (560 acres divided by 70 acres per cubic foot equals 8 cubic feet per second).

George Baal

2

February 1, 1961

The 1904 Circuit Court decision, Brunschmidt vs. Boland, does not specify the data needed to determine the capacity of a ditch 4 feet deep and 4 feet wide through a distance of 300 yards. The water right record does not indicate that an actual measurement was made. However, a ditch 4 feet deep and 4 feet wide has ample capacity to carry 8 cubic feet per second except under very unusual conditions.

In your letter you inquire about a Mr. Gravelle. A. J. Gravelle, 223 W. Monrow St., Chicago, Illinois, is listed on water right application 316-2 as a member of the board of directors, South Dakota Investment Company.

I hope that this explanation is helpful.

Sincerely,

J. W. GRIMES
Executive Officer

JWG:12

James Bowker W. R.

April 6, 1961

Mr. Allen G. Wilson
Attorney-at-Law
Hot Springs, South Dakota

Dear Mr. Wilson:

Reference is made to your letter of March 21, 1960, in which you ask for application forms for your client, James Bowker to change the line of diversion from his irrigation out of Beaver Creek.

Since talking with you on the phone about this matter, we have considered it in more detail. There is a possibility that this change does not require formal application, advertising and a public hearing, as it maybe part of an internal change of the system.

At this time we have not assembled or analyzed sufficient information to decide which is the case. However, the State Water Resources Commission has passed a motion to make a study of the water right situation on Beaver Creek. Due to a back log of work it will be a number of months before this study can begin.

We believe now that Mr. Bowker should not make application for the change of the line of diversion until such a study is completed. In the meantime Mr. Bowker's letter received on October 29, 1960 will be retained as a part of his water right record and if the forthcoming study indicates that additional action on his part is necessary, we will so notify him and you.

Sincerely,

DONALD DRISCOLL
Field Engineer

DD/bw

State of South Dakota

RE-ISSUANCE OF Water License No. 316-2

(1) The South Dakota Investment Co.
of Buffalo Gap, SD was issued Water License No.
made Application No. 316-2, May 29, 1953
8.0 cubic feet per second of water from Beaver Creek
Ouster County, South Dakota for irrigation purposes.
Water License Permit No. 316-2, with a priority date of July 31, 1880 and September 30, 1881
was approved and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before and for the application to beneficial use of said
water on or before completed

On December 12, 1977, Water Right No. 316-2 was transferred to 7-11 Ranch Inc.
Water License No. 316-2 dated May 29, 1953 was issued for diversion of 8.0
cfs from Beaver Creek to irrigate 560 acres.
Based on the October 30, 1985 inspection of the water use system, this
license is being reissued to reflect what is actually being irrigated.

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of
the construction of the water supply system and is entitled to divert 5.40* cubic feet per second of water
for beneficial use. The location of the diversion point(s) is are #1 - 850'S & 910'W from the NW
corner of Section 19; #2 - 760'N & 740'W from the SE corner of Section 19;
#3 - 1860'S & 180'E from the N½ corner of Section 20, all in T6S, R7E

* 4.0 cfs from July 31, 1880

1.4 cfs from September 30, 1881

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, to irrigate the following lands all in T6S, R7E

Section 19 NE $\frac{1}{4}$ NW $\frac{1}{4}$ 7.6 acres	Section 30 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 3.1 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 33.6 "	Section 29 NW $\frac{1}{4}$ NW $\frac{1}{4}$ 13.8 "
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 17.4 "	NE $\frac{1}{4}$ NW $\frac{1}{4}$ 17.0 "
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 16.3 "	SW $\frac{1}{4}$ NW $\frac{1}{4}$ 37.4 "
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.3 "	SE $\frac{1}{4}$ NW $\frac{1}{4}$ 32.2 "
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 23.1 "	SW $\frac{1}{4}$ NE $\frac{1}{4}$ 7.7 "
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 5.5 "	NW $\frac{1}{4}$ SW $\frac{1}{4}$ 30.1 "
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 29.6 "	NE $\frac{1}{4}$ SW $\frac{1}{4}$ 24.8 "
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 13.4 "	SW $\frac{1}{4}$ SW $\frac{1}{4}$ 7.4 "
Section 30 NW $\frac{1}{4}$ NE $\frac{1}{4}$ 12.6 "	NW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.3 "
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 15.9 "	
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 22.2 "	TOTAL 378.3 acres

(4) Pursuant to §46-5-30.1 7-11 Ranch Inc.

of %Frank Schroth, Box 97, Buffalo Gap SD 57722

the holder(s) and/or owner(s) of Water Right Permit No. 316-2 is issued a license to appropriate water, the right to use 5.4 cubic feet per second of water from Beaver Creek with a priority date of 4.0 cfs from July 31, 1880 and 1.4 cfs from September 30, 1881 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation

This license is subject to any limitations or qualifications listed in Water Right Permit No. 316-2 and subject to South Dakota State Law.

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

DEC 20 1985

REPORT OF EXAMINATION OF WORKS

Permit No. 316-2

An investigation of the water use system for 7-11 Ranch Incorporated, Frank Schroth owner, Box 97, Buffalo Gap, South Dakota 57722 was conducted on October 30, 1985. This is permit No. 316-2 which authorizes the diversion of 8 cfs of the waters of Beaver Creek for irrigation purposes in Custer County. The permit bears priority dates of July 31, 1880 for 4 cfs and September 30, 1881 for 4 cfs. An investigation of the system was made in the early 1960's. Since that time the number of acres being irrigated has changed. The diversion points for the project remain as surveyed in the 1960's and are as follows:

- diversion point #1 - 850 feet south and 910 feet west from the NW Corner of section 19, T6S, R7E.
- diversion point #2 - 760 feet north and 740 feet west from the SE corner of section 19, T6S, R7E
- diversion point #3 - 1860 feet south and 180 feet east from the north 1/4 corner of section 29, T6S, R7E.

The system is a flood type irrigation project and applies water to the following acres:

NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, T6S, R7E	-----7.6 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, T6S, R7E	-----33.6 acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 19, T6S, R7E	-----17.4 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 19, T6S, R7E	-----16.3 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 19, T6S, R7E	-----1.3 acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 19, T6S, R7E	-----23.1 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 19, T6S, R7E	-----5.5 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 19, T6S, R7E	-----29.6 acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 19, T6S, R7E	-----13.4 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30, T6S, R7E	-----12.6 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30, T6S, R7E	-----15.9 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30, T6S, R7E	-----22.2 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30, T6S, R7E	-----3.1 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, T6S, R7E	-----13.8 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, T6S, R7E	-----17.0 acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, T6S, R7E	-----37.4 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, T6S, R7E	-----32.2 acres
SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, T6S, R7E	-----7.7 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, T6S, R7E	-----30.1 acres
NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, T6S, R7E	-----24.8 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 29, T6S, R7E	-----7.4 acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 29, T6S, R7E	-----6.3 acres

The project as operated now comprises a total of 378.3 acres of land and the license should be issued for 5.4 cfs. 4 cfs should bear the priority date of July 31, 1880 and 1.4 cfs should bear the priority date of September 30, 1881

November 13, 1985

Delvin D. Brosz
 Delvin D. Brosz, P.E.
 Hydrologist



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

DEC 20 1985

7-11 Ranch Incorporated
Frank Schroth, owner
Box 97
Buffalo Gap SD 57722

Dear Mr. Schroth:

Enclosed is your Water Right License No. 316-2. The water license has been reissued to the extent of what is actually being used. The relicense is based on a October 30, 1985 inspection of your water use system.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Hatch".

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

enclosure

AFFIDAVIT OF PUBLICATION

316-2

STATE OF SOUTH DAKOTA)
COUNTY OF CUSTER)

Randall O'Neill

of said county, being duly sworn, on oath says that
xxx he is publisher or xxxxxxxxxxxxxx of the CUSTER
COUNTY CHRONICLE, a weekly newspaper printed and
published in Custer City, said County of Custer and has
full and personal knowledge of all the facts herein stated;
that said newspaper is a legal newspaper and has a
bona-fide circulation of at least two hundred copies
weekly, and has been published within said County for
fifty-two successive weeks next prior to the publication
of the notice herein, mentioned, and was and is printed
wholly or in part in an office maintained at said place of
publication: that the Amendment to Notice of Intent
to Validate Vested Water Right Claims, a printed copy of

which, taken from the paper in which the same was
published, is attached to this sheet, and is made a part of
this Affidavit, was published in said newspaper at least
once each week for 2 successive week(s), on the
day of each week on which said newspaper was regularly
published, to wit:

<u>July</u>	<u>20</u>	<u>1988</u>	<u>July</u>	<u>27</u>	<u>1988</u>
_____	19	_____	_____	19	_____
_____	19	_____	_____	19	_____
_____	19	_____	_____	19	_____
_____	19	_____	_____	19	_____

that the full amount of the fees for the publication of the
annexed notice is \$ 56.76

[Signature]

Subscribed and sworn to me before this 27

d July 1988

[Signature]
Notary Public

My commission expires: June 30, 1994

AMENDMENT TO NOTICE OF INTENT TO VALIDATE VESTED WATER RIGHT CLAIMS

Notice is given that the following
vested water right claim in CUSTER
County was omitted from the notice of
intent to validate vested water right
claims which was published on June 22
and 29, 1988:

No. 316-2; 7-11 Ranch,
Inc., Box 97 Buffalo Gap,
SD 57722; the diversion
points are located in the NE
1/4 NE 1/4, Section 24, T6S
R6E; SE 1/4 SE 1/4, Section
19, T6S, R7E; SW 1/4 NE
1/4, Section 29, T6S, R7E;
the irrigated land is located
in the E 1/2 NW 1/4, SW 1/4
NE 1/4, E 1/2 SW 1/4, SE
1/4, Section 19, T6S, R7E;
N 1/2 NE 1/4, SE 1/4 NE
1/4, NE 1/4 SE 1/4, Section
30, T6S, R7E; NW 1/4, SW
1/4 NE 1/4, N 1/2 SW 1/4,
SW 1/4 SW 1/4, NW 1/4 SE
1/4, Section 29, T6S, R7E;
the irrigated acreage is 378.
3 acres; the water use is 4.0
cfs with a priority date of
July 31, 1881 and 1.4 cfs
with a priority date of Sep-
tember 30, 1880 and the
source is Beaver Creek.

Pursuant to the Notice published June
22 and 29, 1988, any person who wishes
to oppose validation of any vested right
claim shall, prior to October 1, 1988, file
a petition of intent to oppose the vali-
dation with the Chief Engineer and the
vested water right holder.

Water permits and water rights issued
by the Water Management Board since
1935 and those issued by the State Engi-
neer between 1907 and 1935 following
publication and notice do not need to be
included in the validation process. Vali-
dation is a legal procedure where those
recognized vested water right claims
established prior to 1907 or between
1907 and 1935 without publication and
notice, will be quantified, validated and
have official legal status.

Any person wishing further informa-
tion can contact the Chief Engineer, Wa-
ter Right Division, Joe Fox Building,
523 East Capitol, Pierre, SD 57501-
3181, (605) 773-3352.

274 7/20 & 7/27/88





316-2

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

January 14, 1993

7-11 Ranch Inc.
Box 97
Buffalo Gap SD 57722

Dear Sir:

The original Notice of Intent to Validate Vested Water Right Claims was published with an error. The priority dates were incorrect. Therefore, the notice needs to be readvertised to correct the errors regarding the priority dates. The Readvertisement of the Notice of Intent to Validate Vested Water Right Claims has been sent to the Publisher of the Custer County Chronicle printed at Custer SD. For your information, a copy of the notice is enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The cost of publication of this notice will be paid by the Division of Water Rights. Please contact us if you have any questions.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosure

316-2



January 14, 1993

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

Custer County Chronicle
Box 551
Custer SD 57730

ATTENTION: Legal Department

Enclosed is a Readvertisement of Notice of Intent to Validate Vested Water Right Claims. Please publish the first notice on January 20, 1993 with the second publication 7 days later.

Please BILL the Water Rights Division for the cost of publication.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. No action may be taken on the validations until proof of publication has been received.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Division
523 E Capitol
Pierre SD 57501-3181

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Readvertisement of Notice of Hearing to Validate Vested Water Right Claims which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Custer) ssI, Terri Tuggle

certify that the attached printed Notice was

taken from the CusterCounty Chronicleprinted and published in City of CusterCounty of Custer and State ofSouth Dakota. The notice was published in
the newspaper on the following two dates:1/20/931/27/93Cost of Printing: 49.59

(Signature)

(Title)

(Date Signed)

READVERTISEMENT OF
NOTICE OF INTENT TO
VALIDATE VESTED
WATER RIGHT CLAIM

Notice is given that the following vested water right claim in Custer County is eligible for validation by the Water Management Board pursuant to SDCL 46-2A-17 without a hearing unless a petition to oppose the validation is filed pursuant to SDCL 46-2A-22. Readvertisement of the original notice of intent to validate these claims, as published on July 20 and 27, 1988 in the Custer County Chronicle, is necessary to correct errors in the previously published notice.

Vested Water Right No. 316-2, 7-11 Ranch, Inc., Box 97, Buffalo Gap, SD 57722 appropriates 5.4 cubic feet of water (cfs) from Beaver Creek located in the NE 1/4 NE 1/4 Section 24-T6S-R6E; SE 1/4 SE 1/4 Section 19; SW 1/4 NE 1/4 Section 29; all in T6S-R7E to irrigate 378.3 acres. The irrigated land is located in the E 1/2 NW 1/4, SW 1/4 NE 1/4, E 1/2 SW 1/4, SE 1/4, Section 19; N 1/2 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4 Section 30; NW 1/4, SW 1/4 NE 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4, NW 1/4 SE 1/4 Section 29; all in T6S-R7E. The priority date for 4.0 cfs is July 31, 1880 and 1.4 cfs is September 30, 1881.

Any person who wishes to oppose validation of any of the readvertised vested right claims shall file a petition of intent to oppose the validation by February 22, 1993 with the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, SD 57501-3181 (605 773-3352) and with the vested water right holder at the listed address. The petition may be informal, but it must include a statement describing the petitioner's interest in the vested water right claim, the reasons for the petitioner's opposition to the claim, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained.

If a petition of intent to oppose the validation of a recognized vested water right claim is filed, the Water Management Board will conduct a hearing on the opposed claim at 10:00 am, March 3, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. The March 3, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 22, 1993.

If no person opposes validation of a recognized vested water right claim pursuant to SDCL 46-2A-16, the Water Management Board will issue an order pursuant to SDCL 46-2A-17, validating the vested water right claim.

These validations are made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-14, 46-2-3.1, 46-2-9, 46-2-11, 46-2-17, 46-2A-16 thru 46-2A-18, 46-2A-22, 46-5-1 thru 46-5-6.1, 46-5-12, 46-5-13 thru 46-5-15, 46-5-30.2 thru 46-5-37.1, 46-5-46, 46-5-49, 46-6-1 thru 46-6-3, 46-6-6, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-7-1 thru 46-7-5.3, 46-7-12, 46-7-14, 46-7-15 and Board Rules ARS 74:02:01:01 thru 74:02:01:05.03 and 74:02:01:20 thru 74:02:01:22.

Contact Eric Gronlund by February 22, 1993, at the above Water Rights Division address to: 1) request copies of information

relating to a vested right claim or a copy of the vested water right claim list for another county; 2) obtain a summary of South Dakota Water Law and Water Rights Information; 3) to assure access to the hearing by the handicapped; or 4) obtain an interpreter for the hearing impaired.

Robert E. Roberts, Secretary, Department of Environment and Natural Resources

8/283 1/20, 1/27

316-2

SOUTH DAKOTA

VESTED WATER RIGHT NO. 316-2 FOR IRRIGATION

Date of Receipt of Claim October 27, 1947.

Date of Validation March 3, 1993.

The Water Management Board validated Vested Water Right Claim No. 316-2 for irrigation purposes for 7-11 Ranch Inc., Box 97, Buffalo Gap SD 57722 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 316-2 appropriates 5.4 cubic feet of water per second (cfs) from Beaver Creek located in the NE 1/4 NE 1/4 Section 24-T6S-R6E; SE 1/4 SE 1/4 Section 19; SW 1/4 NE 1/4 Section 29; all in T6S-R7E to irrigate 378.3 acres. The irrigated land is located in the E 1/2 NW 1/4, SW 1/4 NE 1/4, E 1/2 SW 1/4, SE 1/4 Section 19; N 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 30; NW 1/4, SW 1/4 NE 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4, NW 1/4 SE 1/4 Section 29; all in T6S-R7E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: January 1 - December 31.
3. The priority dates of the Vested Water Right are:
 - 4.0 cfs - July 31, 1880
 - 1.4 cfs - September 30, 1881
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: _____

John H. Hatt
Chief Engineer

APR 1 1993

date

Division of Water Rights
Dept. of Environment and Natural Resources



316-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

APR 1 1993

7-11 Ranch Inc.
Box 97
Buffalo Gap SD 57722

Dear Sir:

The Water Management Board has validated the enclosed Vested Water Right No. 316-2. This validation gives legal status to the claim and is the final document for your vested right.

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

Very truly yours

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

enclosure



316-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

June 5, 1998

Lois Emery
HCR 52 Box 136A
Hot Springs, SD 57747

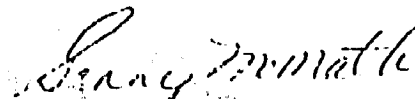
Dear Ms. Emery:

Enclosed, as we discussed, is a copy of Water Right No. 316-2 for 7-11 Ranch Company. The water license was reissued December 20, 1985 to reflect what was actually being irrigated.

The water license now authorizes diversion of 5.4 cubic feet of water per second (approximately 2,430 gallons per minute) to irrigate 378.3 acres. It carries priority dates of July 31, 1880 and September 30, 1881.

If you have any questions after reviewing the enclosed material, please give me a call.

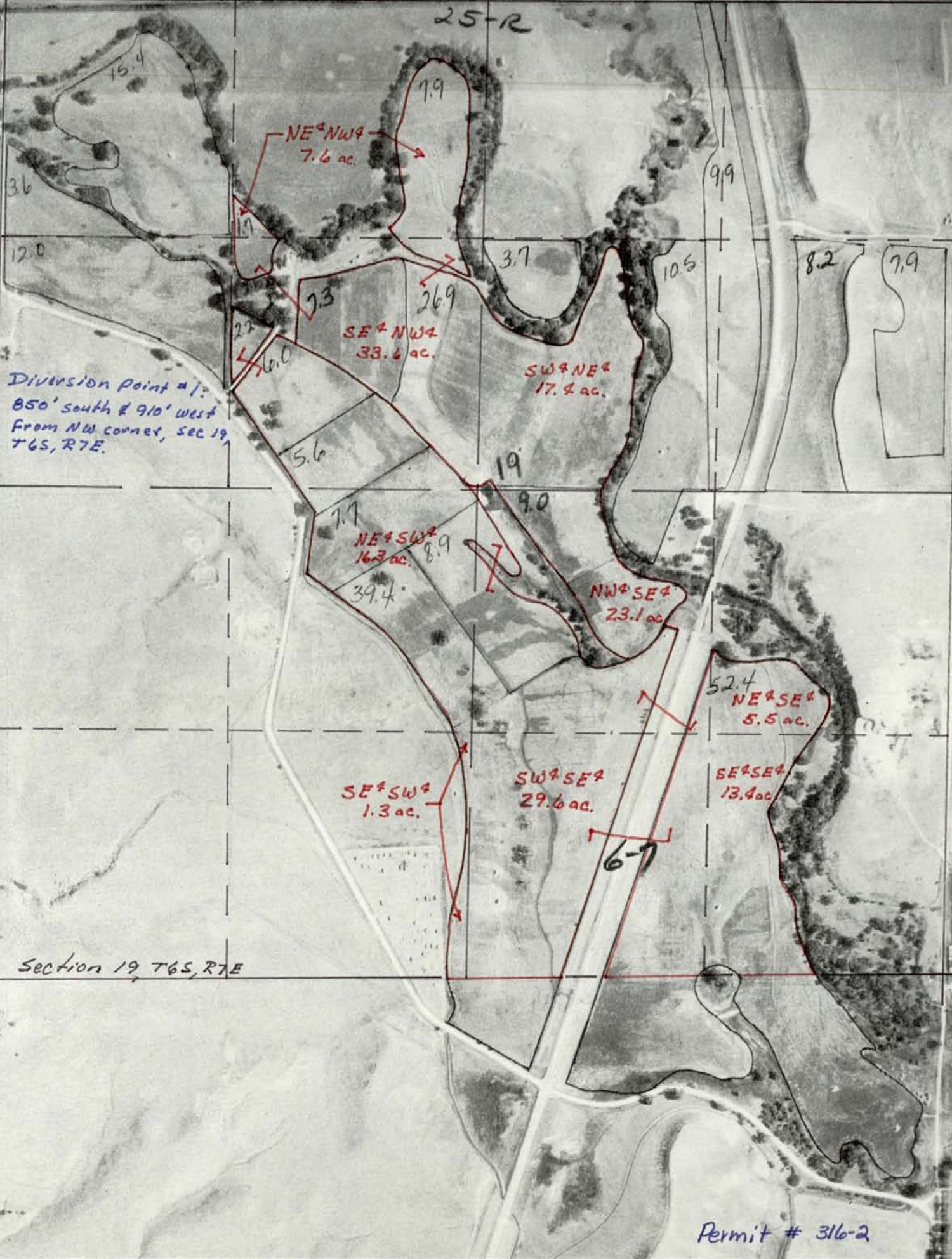
Sincerely,


Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

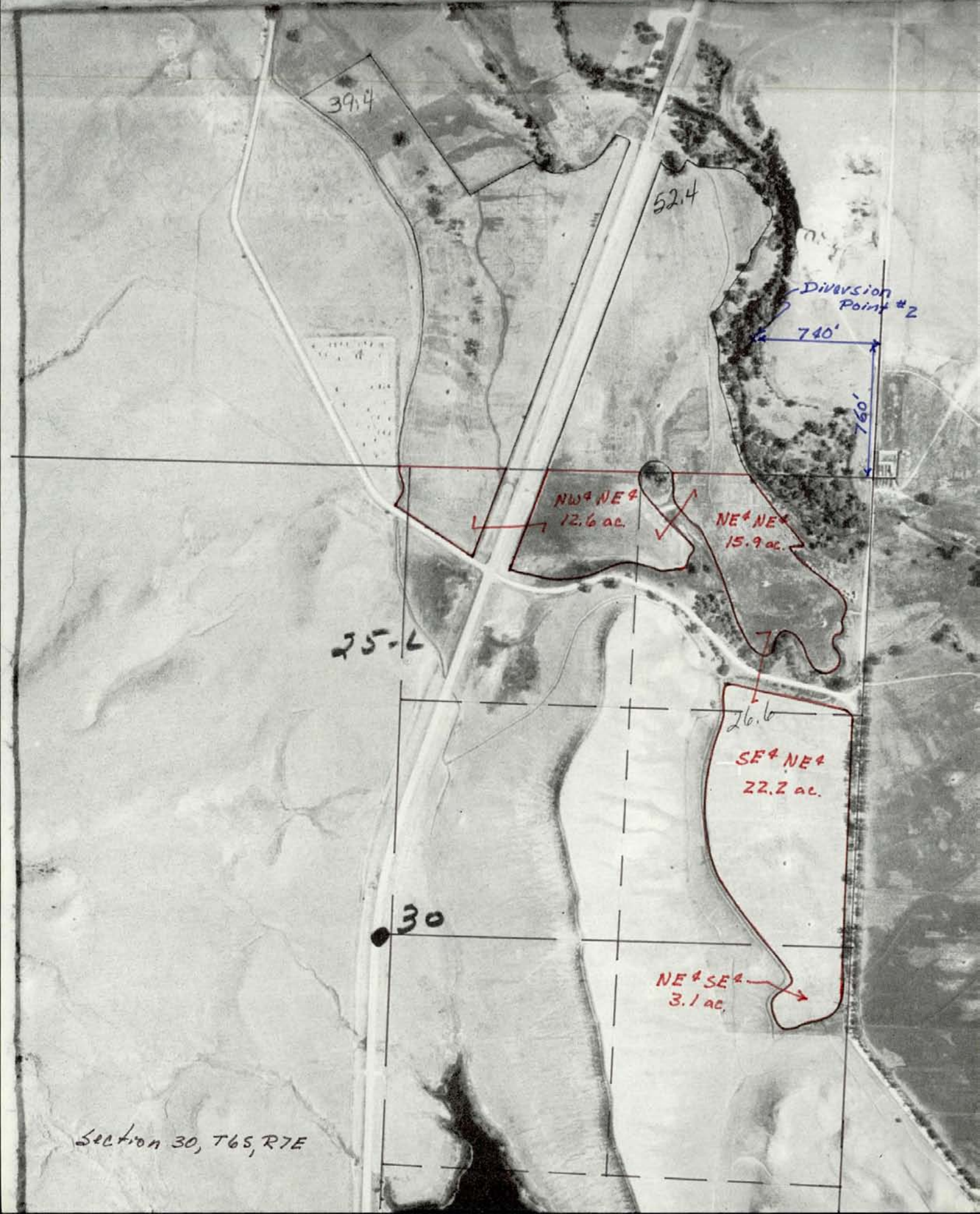
encl



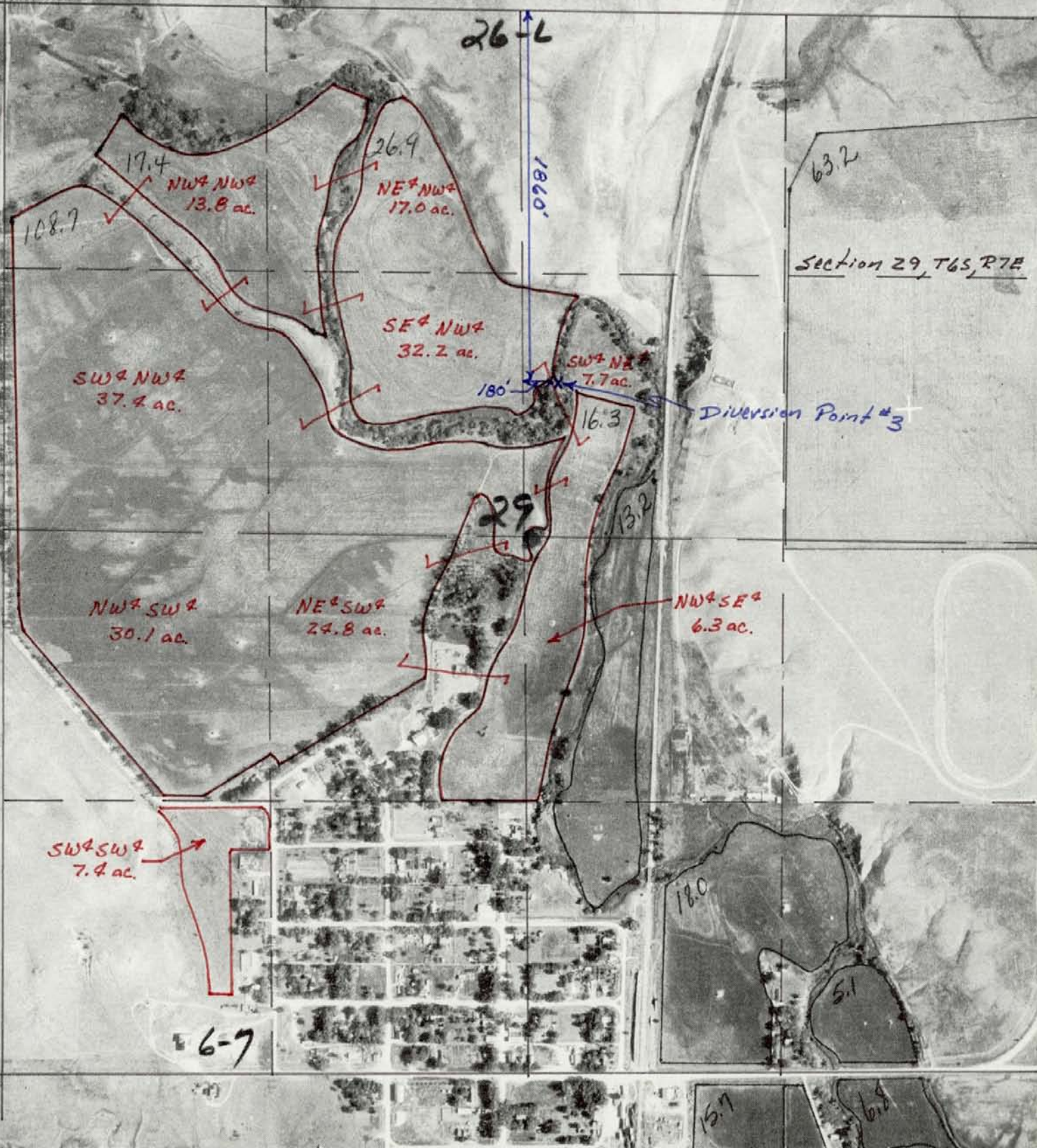
NOT TO SCALE

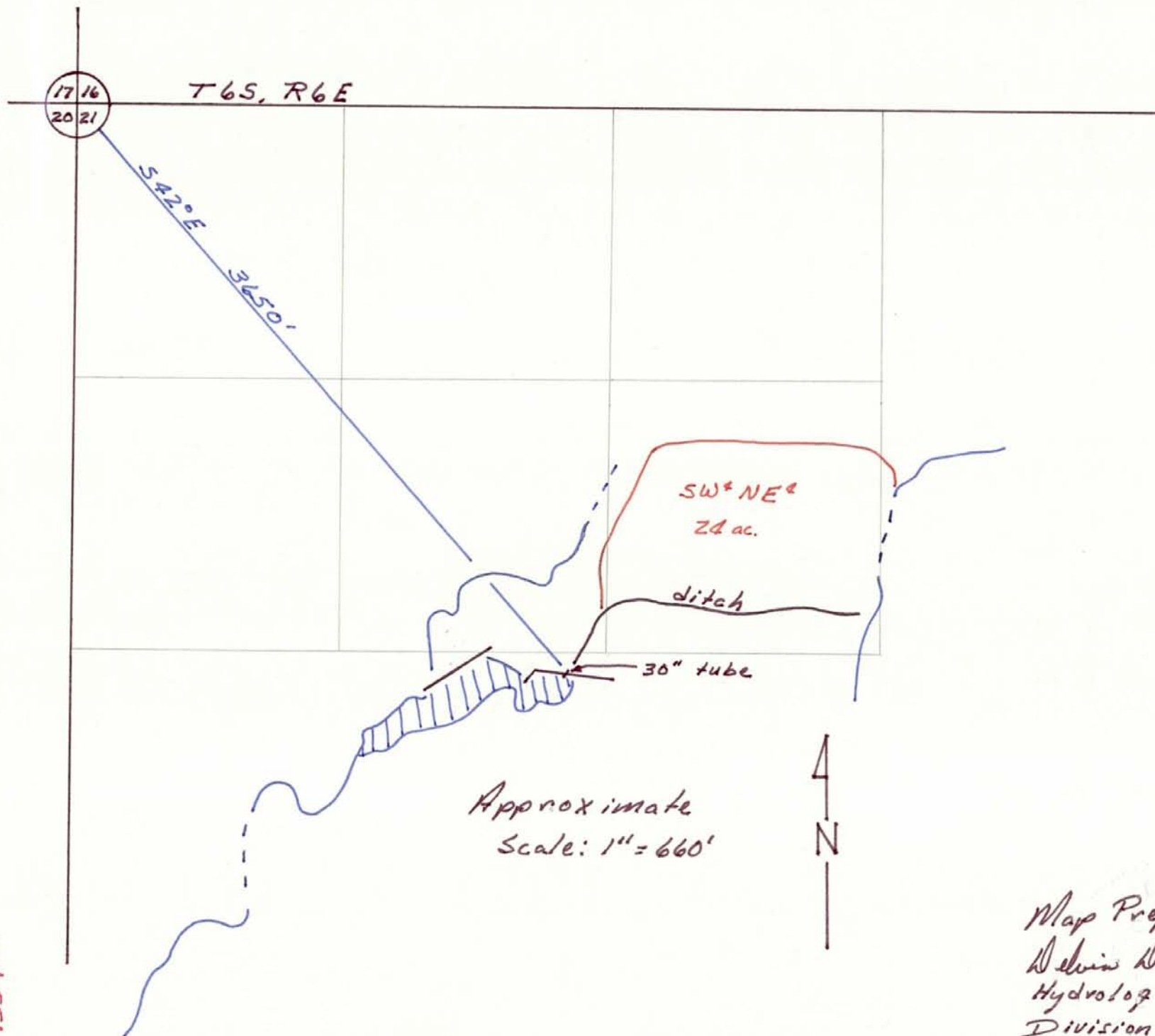


NOT TO SCALE



NOT TO SCALE





Map Prepared By:
 Delwin H. Bragg, P.E.
 Hydrologist
 Division of Water
 Rights



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

April 5, 2022

316-2
LN551-2

Randy Schroth
7-11 Ranch
PO Box 1
Buffalo Gap SD 57722-0001

Dear Mr. Schroth:

Thank you for calling concerning water rights and the irrigation questionnaire for Vested Water Right No. 316-2 and Location Notice No. 551-2 (copies enclosed).

As we discussed, I have changed the contact person from Frank to you for both of the above water rights. They will remain listed under 7-11 Ranch Inc.

An annual irrigation questionnaire is required for Vested Water Right No. 316-2. I have enclosed a copy of last year's questionnaire to give you an idea of what to keep track of during the irrigation season. An annual questionnaire is not required LN551-2.

If you have any questions concerning any of the enclosed information, please let me know. Once again, I am sorry to hear of your father's passing.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

enclosures