

No. 35-2

Office of State Engineer
DOCUMENT FILE

Applicant: Hawthorne
Lith. Co.

Enlargement: Hawthorne
Lith. Co. Est. Lith

Date of First Receipt: Oct. 1, 1907

Location: Sec. 13, T. 14, R. 15
Rapid Creek

Approved: Feb. 21, 1908

Recorded: Bk 1, Pg. 68

Date of Completion: Dec. 17, 1908

When Taken: Dec. 17, 1908

Note: Reports and
Court Proceedings
also in this file.
See 0527-2 also.

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES.

I hereby certify that the within and foregoing instrument is a true, correct and complete transcript of the instrument which it purports to be, as the same was filed for record in the office of the State Engineer.

Witness my hand and official seal, done at my office in Pierre, State of South Dakota this 16 day of April 1908.

Samuel H. Lea
State Engineer.

By Mrs. S. H. Lea

COPY.

No. 38

Division No. 2 RAPID CREEK District

PERMIT

to appropriate water from

Rapid Creek

Pennington County, South Dakota

Name of applicant The Hawthorne

Ditch Company

Name of diversion works Hawthorne

Ditch Company Dam & Ditch

Date of first receipt at office of State

Engineer October 1st, 1907

Returned to applicant for correction

1907

Corrected application received

1907

Date of water right

October 1st 1907

Recorded in Book 1 Page 68

One-fifth of work to be completed

February 21st, 1909

Whole work to be completed

February 21st, 1910

Final proof of use of water

February 21st, 1910

Approved February 21st, 1908

Samuel H. Lea

State Engineer.

By

Deputy.

No. 35

Water Division No. 2 Rapid Creek Water, District.
(Blanks to be filled by the State Engineer.)

COPY.

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

(NOTE—Draw lines through items not applicable. Where not otherwise stated all items refer to the proposed enlargement or extension.)

1. Name of applicant The Hawthorne Ditch Company.
Postoffice address Rapid City, County Pennington, State South Dakota

I. If a corporation:

(a) Name of same The Hawthorne Ditch Company
(b) Date and place of incorporation South Dakota, Dec. 27, 1906.
(c) Amount of capital stock Five Thousand Dollars.
(d) Amount paid in Five Thousand Dollars
(e) Names and addresses of directors:

Wilson Marsh, Rapid City, So. Dak.H.N. Johnson, Rapid City, So. Dak.John E. Hunt, Rapid City, So. Dak.

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

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

(a) Method of accomplishing the work: (Whether by contract, employment of others, or by personal labor) Employment of others.

(b) Cash on hand, \$ 450.00 (c) Treasury stock, \$ none

(d) Bonds to be issued, \$ none (e) Other resources, \$ none

2. Name of existing diversion work Hawthorne Ditch Co.'s Dam & Ditch Date of Location July 12, 1896
and July 8, 1890
Name of enlargement or extension Hawthorne Ditch Company Extension Ditch

3. Quantity of water claimed by enlargement or extension 5-1/4 cubic feet per second.

4. Source of water supply Rapid Creek in Pennington County, So. Dak.

5. Location of point of commencement of extension 610 feet north of quarter section corner on east side of section 13, Township 1 north of Range 8 E. B.H.M. in Pennington County, So. Dak.

6. Annual periods during which water is to be used From April 1st to Nov. 1st.

7. To be used for:

I. Irrigation ~~or~~ domestic use:

(a) Number of acres to be irrigated 367.6 acres.

(b) Legal subdivisions to be irrigated N1/2 NW1/4, N1/2 NE1/4 and NW1/4 NE1/4 Sec. 19 SW1/4 and W1/2 NW1/4 and SE1/4 of NW1/4 and W1/2 of SE1/4 and SE1/4 of SE1/4

(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.)

Sec. 18, all in T. 1 N. R. 9 E. B.H.M.

(c) Statement as to domestic use (giving location, etc.) Drinking water for cattle, horses and other domestic animals along the line of ditch.

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

(a) Nature of work:

(b) Amount of power to be generated horse power

(c) Location of plant:

(d) Method of developing power:

(e) Point where water will be returned to stream from the end of the ditch water will run into Williams draw about 1-1/2 miles from Rapid Creek.

8. Estimated cost of work: \$500.00

(a) Head gate, \$

(b) Pumping plant, \$

(c) Fluming, \$

Ditch
(d) Canal earth, \$ 500.00

rock, \$

(e) Other structures, \$

Total, \$ 500.00

9. Description of diversion works in extension

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

Ordinary ditch earth banks

II. Dimensions of works:

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

(b) Reservoir: Capacity when filled _____ acre feet; surface area at high water _____ acres

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET-ACRES	CAPACITY- ACRE-Feet

to Head gate: Width _____ feet; height _____ feet

Material: Earth

(d) Canal: Total length _____ miles & 2060 feet.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At 7 3/10 mile	1 1/2 feet	Four feet	Five feet	Four 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: two years.

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

12. Choice of newspaper for publication of notice of intention to appropriate: Rapid City

Daily Journal, at Rapid City, So. Dak.

STATE OF SOUTH DAKOTA

County of Pennington

The Hawthorne Ditch Company
by Wilson Marsh, President,
by H.N. Johnson, Secretary.

I, Wilson Marsh and H.N. Johnson, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of

President and Secretary

(Owner, manager or engineer)

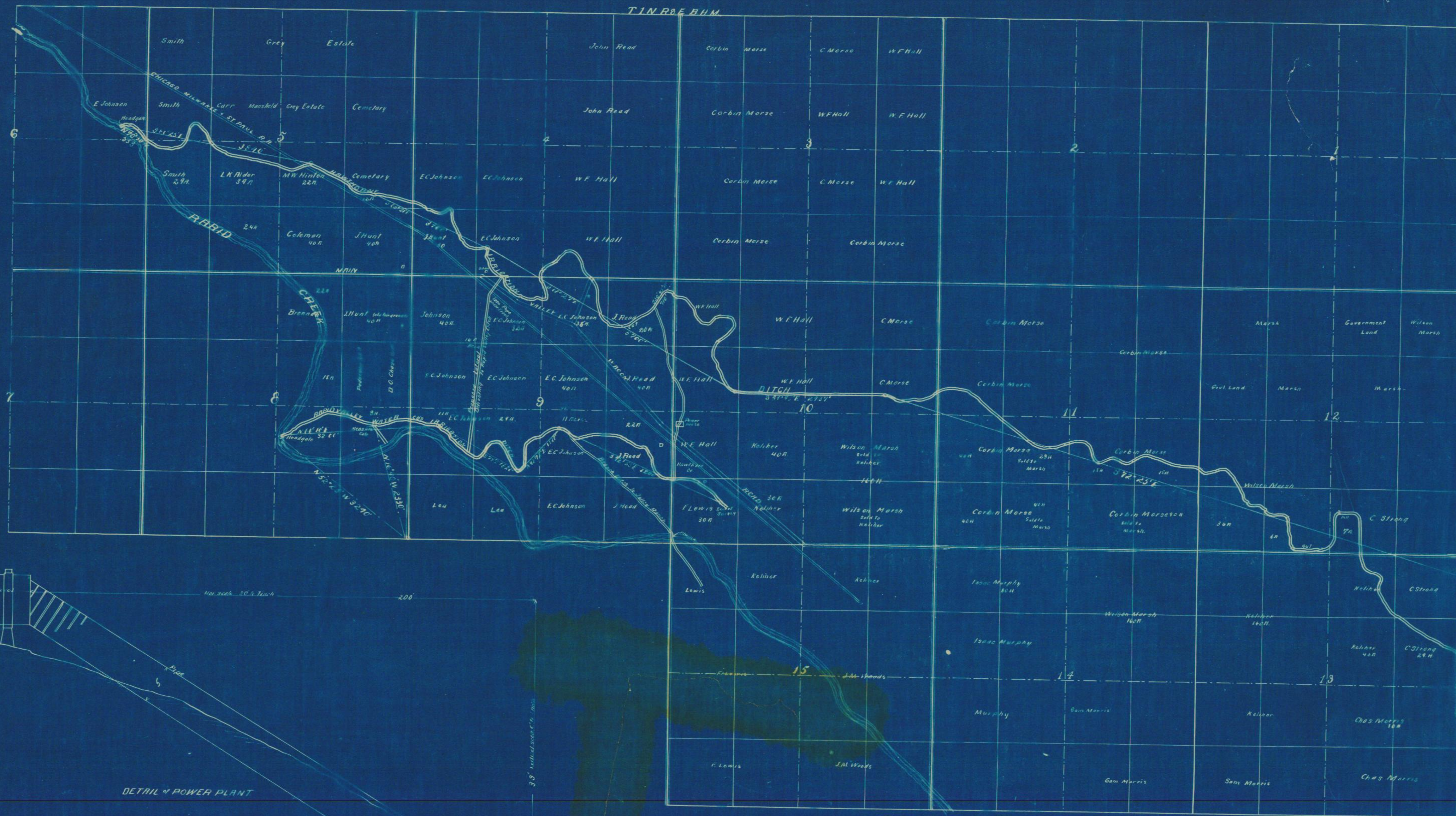
foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Wilson Marsh
Signed H.N. Johnson

Subscribed and sworn to before me this 26th day of September 1907

Clarence L. Lein

Notary Public for other qualified officers
County Judge.



HAWTHORNE DITCH.

AFFIDAVIT.

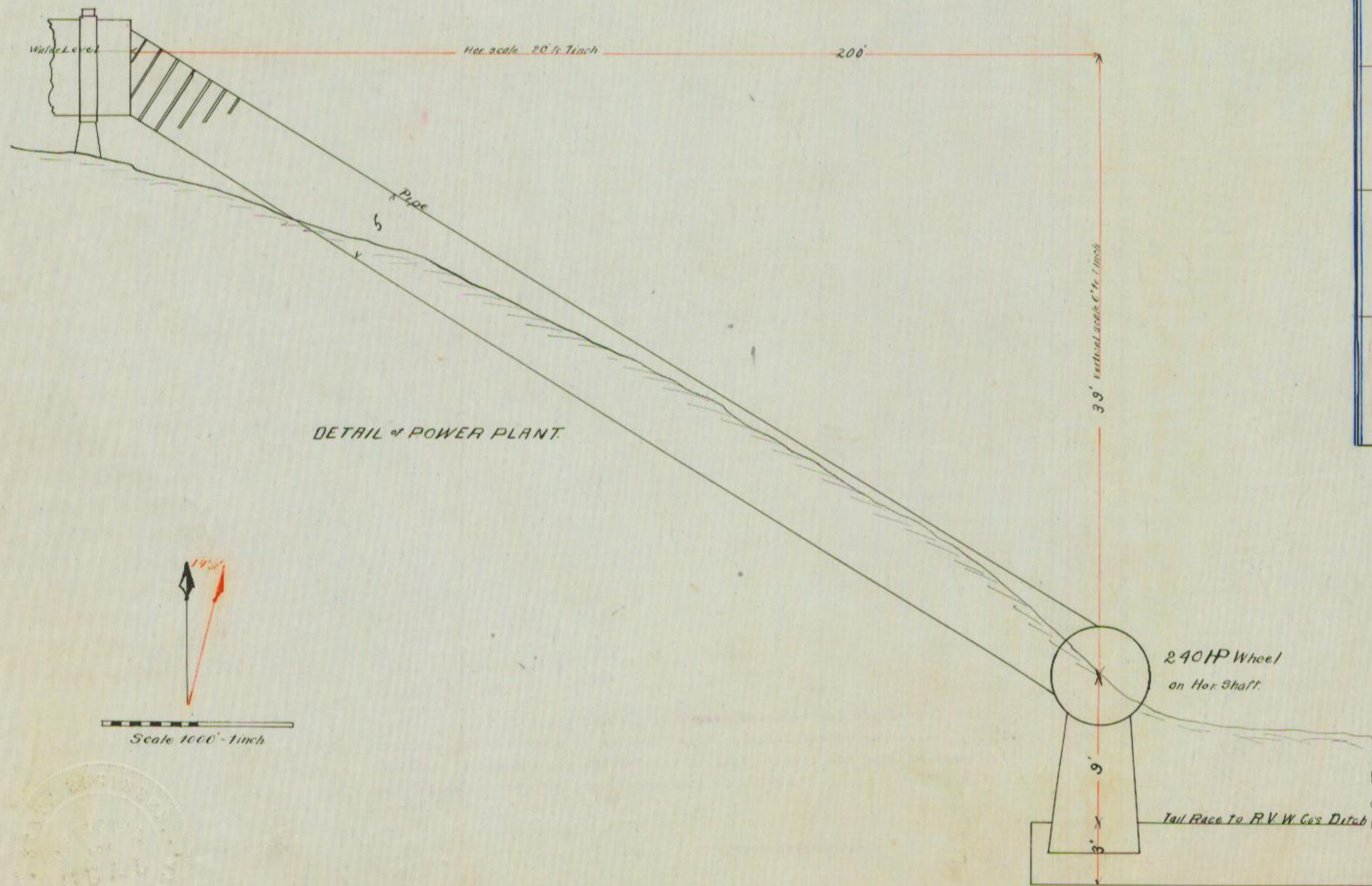
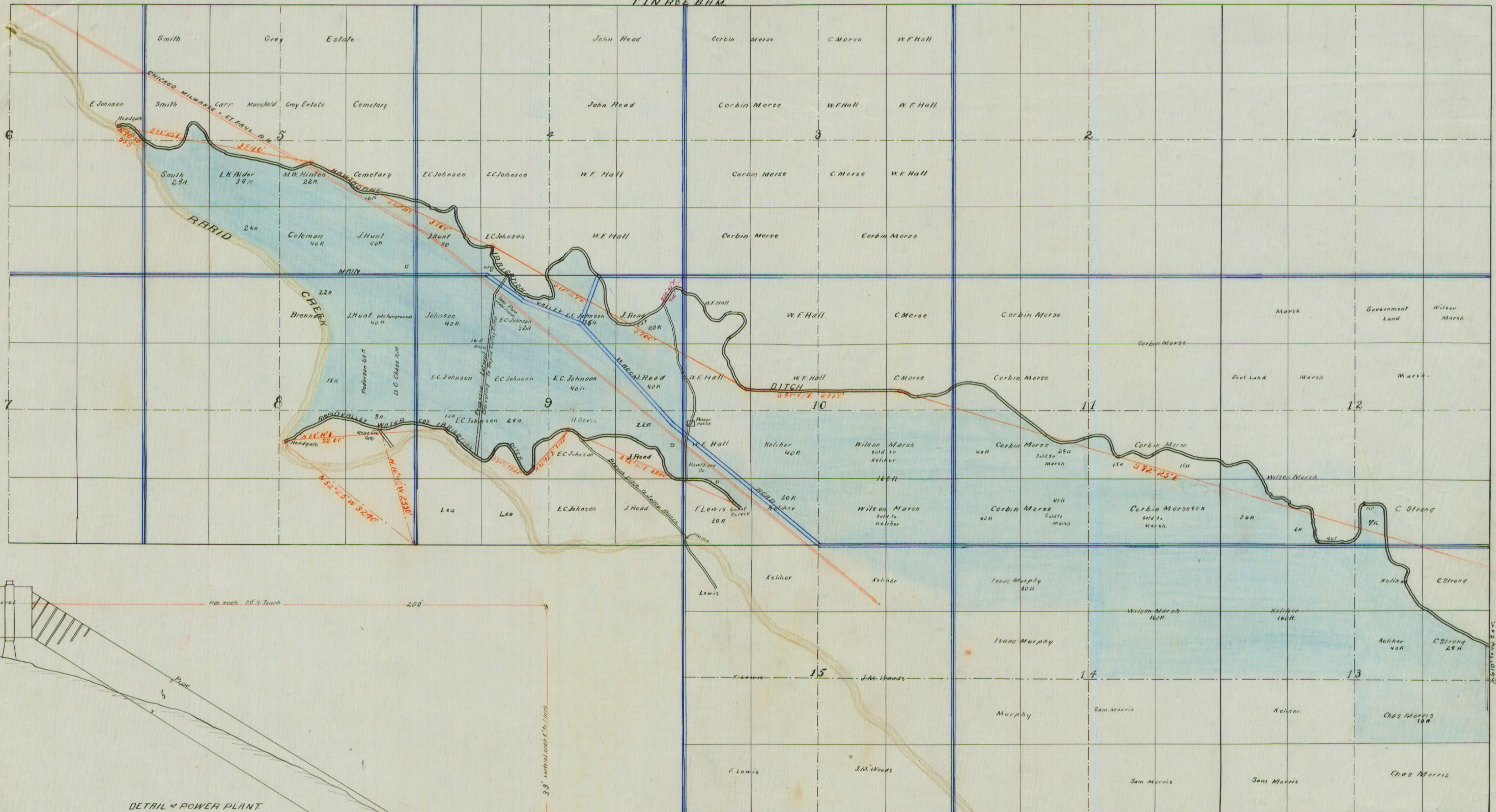
State of South Dakota } ss.
County of Pennington }
I, Steen Bangs, being duly sworn, say that I am the engineer of the HAWTHORNE DITCH, that the survey and map thereof were made by me or under my direction, and that I have read the accompanying statement and know of my own knowledge that the statements therein made are true.

Subscribed and sworn to before me this 18 day of December, 1906.

Steen Bangs
Engineer

J.N. Mathison, Notary Public.

TIN R&E B.H.M.



HAWTHORNE DITCH.

AFFIDAVIT.

State of South Dakota } ss.
 County of Pennington }
 I, Stein Bangs, being duly sworn, say that I am the engineer of the HAWTHORNE DITCH, that the survey and map thereof were made by me or under my direction, and that I have read the accompanying statement and know of my own knowledge that the statements therein made are true.
 Stein Bangs
 Engineer
 Subscribed and sworn to before me this 18th day of December 1906
 J.N. Mathias, Notary Public.

Map No 12-2 (Wje #35-2)

Remarks by State Engineer

This application is for the right to enlarge an existing water right by extending an irrigation ditch from its present terminus further down the valley.

STATE OF SOUTH DAKOTA

County of.....Hughes.....

Pierre, South Dakota, February 21, 1908

This is to certify that the foregoing application was received at this office at 9 o'clock a. m. upon the 1st day of October 1907 and that after examination it was found to comply with the provisions of the Water Laws of South Dakota. Notice of intention was duly published and a hearing was held in this office upon November 30, 1907.

Samuel H. Lea State Engineer.

By..... Deputy.

Number of permit.....35

Date of first receipt of application.....October 1st, 1907

Date of return to applicant for correction.....1907

Date of receipt of corrected application.....1907

Date from which application may claim right.....October 1st 1907

Approved.....February 21st, 1908, Recorded in Book-1, Page 68

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

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before February 21st, 1909.

2d. The whole of said work is to be completed on or before February 21st 1910.

3d. The limit of time for proof of beneficial use of water appropriated in accordance herewith is February 21st, 1910.

4th. The water appropriated shall be used for the purpose of irrigation and domestic use.

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

6th. The amount of the appropriation herein granted shall not exceed 5-1/4 cubic feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1-70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied on or before February 21st, 1910; and water to be used during the following described annual periods.

From April 1st to November 1st.

Witness my hand this 21st day of February 1908

Samuel H. Lea State Engineer.

By..... Deputy.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 35

WHEREAS, On the first day of October A. D. 1909

THE HAWTHORNE PETROL COMPANY

of Rapid City County of Pennington and State of
South Dakota duly made application (No. 35) to me for a permit to use 51

cubic feet per second of the waters of Rapid Creek

County of Pennington State of South Dakota, for irrigation and domestic
purposes; and

WHEREAS, On the twenty-first day of February A. D. 1909

Permit No. 35 was issued to said applicant for the diversion of said water, and providing for the com-
pletion of the works of diversion therein described on or before the twenty-first day of

February

A. D. 1910

and for the application to beneficial use of said
water on or before the twenty-first day of February A. D. 1910

and,

WHEREAS, On (ie. seventeenth) day of December A. D. 1909

the holder of said permit duly made proof of the completion of adequate works for the diversion of

51 cubic feet per second of said water's, as evidenced by my Certificate No. 35

dated December 15, 1909, confirming the completion of work of sufficient capacity for

diverting and conveying to the place of intended use 51 cubic feet per second of water,

with date of priority of October 1, 1907, and,

WHEREAS, On the seventeenth day of December A. D. 1909

proof was duly made of the application to beneficial use of 51 cubic feet per second of

said water:

For irrigating the N $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18; SW $\frac{1}{4}$,
W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 18, Township 1 N., Range
9 E. B.H.M., and for domestic uses for watering horses, cattle and
other domestic animals.

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to.....THE HAWTHORNE DITCH COMPANY..... of.....Rapid City..... the holder... and owner... of said permit No. 35 a water right, dating from...October 1, 1907,..... to the use of...5 1/2 cubic feet per second of the waters of ...Rapid Creek..... in the County of...Ponnington..... and State of South Dakota, or so much thereof as may be necessary for the purposes hereinafter mentioned, to be diverted at ...610 feet north of quarter section corner on east side of Section 13, Township 1 N., Range 8 E. NW 1/4 and conducted to and upon ...N 1/2 NW 1/4, E 1/2 NW 1/4 and NW 1/4 NW 1/4, Section 19, SW 1/4 NW 1/4, SE 1/4 NW 1/4, W 1/2 SW 1/4 and SW 1/4 SW 1/4, Section 18, Township 1 N., Range 8 E. NW 1/4 for the purpose of...irrigation and domestic use.....

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 the seal of my office at Pierre, S. Dakota,
this ~~seventeenth~~ day of...December..... A. D. Nineteen
Hundred and...Nine.....

State Engineer.

STATE OF SOUTH DAKOTA

Water License No. 35

To

THE HAWTHORNE DITCH COMPANY

Source of Supply...Rapid Creek

County...Ponnington

Am't...5 1/2 Sec. Feet

Point of Diversion 610 ft. N. of 1/4 sec. cor. on East side of Sec. 13, T. 1 N., R. 8 E., NW 1/4

Place of Use...N 1/2 NW 1/4, E 1/2 NW 1/4, NW 1/4 NW 1/4, Sec. 19, SW 1/4 NW 1/4, SE 1/4 NW 1/4, W 1/2 SW 1/4 and SW 1/4 SW 1/4, Sec. 18, T. 1 N., R. 8 E., NW 1/4

Purpose...irrigation and domestic use

Date of Priority...October 1, 1907

Recorded...February 21, 1908

In Book...1 of Record Page 63

Permit No. 3.5

Water Division No. 8 Rapid Creek Water District

Certificate of Examination of Works

Report of Examining Engineer

RECEIVED

DEC 17 1909

OFFICE OF STATE ENGINEER,
PIERRE, S. DAK.

To the State Engineer, Pierre, South Dakota:

Dear Sir: I hereby certify that in accordance with your letter of authorization dated 1909... I have this day made a thorough examination of the diversion works constructed by Hamilton
Stetson of Pierre
Pierre County, South Dakota, holder of permit No. 3.5, issued upon application No. 3.5, bearing date of priority of Oct. 1st, 1907, authorizing the diversion of 5 1/4 second feet of the waters of Rapid Creek for irrigation purposes. I have to report on the condition of the same as follows:

The diversion works comprise: 2.39 miles of extension to the
Hamilton ditch, 5 feet wide on the water line
and 1.5 feet deep

and the system is in the following condition: that the ditch is completed
as above specified

The point of diversion is located 6.10 North of 1/4 sec. cor. on East
side of sec. 13 T. 1 N., R. 8 E. B. H. M.

The works are capable of diverting and conveying to the place of use 5 1/4 second-feet of water, which is to be used for irrigation and domestic purposes

The legal sub-divisions to be irrigated are: N 1/2 N.W. 1/4, E 1/2 N.E. 1/4, and N.W. 1/4 N.E. 1/4 Sec.
19, S.W. 1/4, W 1/2 N.W. 1/4, S.E. 1/4 N.W. 1/4, W 1/2 S.E. 1/4, and S.E. 1/4 S.E. 1/4
Sec. 18 T. 1 N., R. 8 E. B. H. M.

comprising a total of 3.62 6 acres of land.

The domestic use intended comprises drinking water for human
cattle and other domestic animals

The utilization for power, mining, or other beneficial uses comprises:

Witness my hand, this 15th day of December, A. D. 1909

James Hartgering
Examining Engineer.

Permit No. 35

Water Division N

Water District

Certificate of Application of Water to Beneficial Use.

Deposition of Holder

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

Ans. ~~The Hawthorne Ditch Co.~~ Wilson Marsh
Rapid City, Farmer

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. The Hawthorne Ditch Co. Rapid City, S. Dak.
I am President of the Company

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

Ans. No. 35 - date Oct 1 - 1907

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

Ans. Rapid Creek by way of Hawthorne Ditch
610 ft. N. of 1/4 Sec. Cor. on E. bdy. Sec. 13 T. 1 N., R. 8 E. B. 4 m.

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. The Hawthorne Ditch is capable of conveying
5 1/4 sec. feet, water is conducted through the Hawthorne Ditch

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. For irrigation & domestic use, N. 1/2 N.W. 1/4, E. 1/2 N.E. 1/4 and
N.W. 1/4 N.E. 1/4, Sec. 19, S.W. 1/4, W. 1/2 N.W. 1/4, S.E. 1/4 N.W. 1/4, W. 1/2
S.E. 1/4 and S.E. 1/4 S.E. 1/4 Sec. 18 T. 1 N., R. 9 E. B. 4 m.

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

Ans. Domestic use for watering Horses, Cattle and
other domestic animals

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

Ans. 5 1/4 sec. feet

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.

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

Ans. There has been 275 acres irrigated the first term seasons on the above described tract.

(Sign.) The Haythorn Detachment
By New March

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 Rapid City, County of Pennington, State of South Dakota, on this 15th day of December, A. D., 1909.

Frank R. Bangs
Notary Public

Permit No. 35

Proof of Application of Water to Beneficial Use.

DEPOSITION OF HOLDER.

Amount of water 5 1/2 second feet

Source Rapid Creek

County Pennington

Purpose Irrigation and domestic use.

Place of Use N 1/2 NW 1, E 1/2 NE 1, NW 1/4 NE 1,

Sec. 18, SW 1, W 1 NW 1, SE 1 NW 1, W 1 SE 1,

SE 1 SE 1, Sec. 18, all in T. 1 N.,

Range 8 E., B.H.M.

Date of priority October 1, 1907

FILED
DEC 17 1909

SAMUEL H. LEA, State Engineer.

Received and filed December 17, 1909.

RECEIVED
DEC 17 1909

OFFICE OF STATE ENGINEER.
PIERRE, S. DAK.

Permit No. 35....

Water Division No. 3.....

Rapid Creek... Water District

Notice of Completion of Works

(This blank must be filled out by the holder of permit and forwarded to the State Engineer at least 60 days before the time set for completion of works.)

(P. C.)

Rapid City, S. Dak

(Date)

Dec 15, 1909

TO THE STATE ENGINEER OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given of the completion of the works for the diversion of $5\frac{1}{4}$

9070nd feet of the waters of the state from Rapid Creek
through the Hawthorne Ditch Extension
for Irrigation and domestic purposes

In accordance with the terms and conditions of a certain permit heretofore issued by the State Engineer of the State of South Dakota.

1. The name of the person or corporation holding said permit is Hawthorne Ditch Co.

2. The postoffice address of such person or the place of business of such corporation is Rapid City
County of Pennington State of South Dakota.

3. The number of such permit is 35 and the date set for the completion of such work is February 21st, 1900.

4. Said water to be used for Irrigation and domestic purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is $5\frac{1}{4}$ cubic feet per second.

6. The amount of land for which said water is available is ~~440~~ 367.6 acres,
particularly described as follows: W $\frac{1}{2}$ N. W. $\frac{1}{4}$, 34.3 a., S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$, 12 a. sec. 18
S. W. $\frac{1}{4}$ sec. 18 - 134.4 a., S. $\frac{1}{2}$ S. E. $\frac{1}{4}$, 38.5 a., sec. 18, N. $\frac{1}{2}$ N. W. $\frac{1}{4}$
60 a., N. $\frac{1}{2}$ N. E. $\frac{1}{4}$, 79.75 a., S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, 20 a. sec. 19

(In case of all canals or other works designed to divert or carry more than 50 cubic feet of water per second, the following certificate must be signed by a well known and competent engineer.)

I hereby certify that the facts set forth in the above notice are true.

(Signature)

James Hartgering
The Hawthorne Ditch Co.
By Wilson Marshall, Pres.

Hawthorne Ditch Co.

#538

FILED FOR RECORD THIS 9th DAY OF
JANUARY 1907
J. H. MATTHEW
RECORDED

RECORDED
INDEXED
COMPARED

Office of the State Engineer, Pierre,
S. D., October 1, 1907.
Notice is hereby given that the Hawthorne Ditch Company, whose office is located at Rapid City, Pennington County, S. D., has made an application in accordance with the provisions of the Irrigation Laws of South Dakota for a permit to appropriate for beneficial use five and one-fourth cubic feet of water per second of time from Rapid Creek through the Hawthorne Ditch Co.'s Extension, the point of diversion of which is to be located in the southwest quarter of the northwest quarter of section 18, township 1 north, range 9 east, T. 1 N., R. 9 E., said water to be used for the purpose of irrigation and domestic use upon the north half of the northwest quarter, east half of north-east quarter, and northwest quarter of northeast quarter of section 18, south-west quarter and west half of north-west quarter and southeast quarter, northwest quarter and west half of southeast quarter and southeast quarter of southeast quarter, section 18, all in township 1 north, range 9 east, T. 1 N., R. 9 E.
This application will be taken up by the State Engineer at his office at Pierre for consideration and appropriation upon the 30th day of November, 1907, at 9 a. m., at which time all persons who believe that the prior rights would be injuriously affected or that the flowage of the permit would be detrimental to the public welfare, and also parties making the application, and who be benefited or injured by the permit, either by the flowage or in person for the present, any relative to the permit, are hereby notified to be present.

CHAS. H. LEA, State Engineer.
Publication October 1, 1907.

State of South Dakota

Department of State

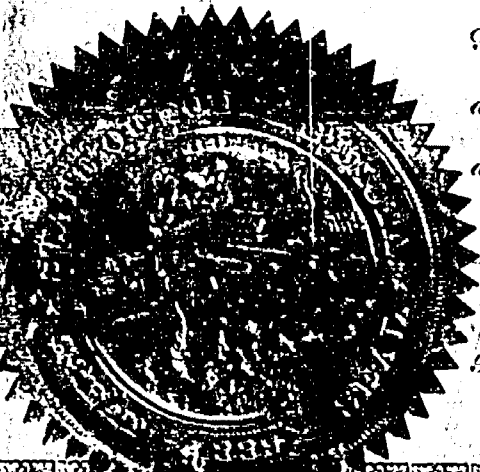


United States of America, } Secretary's Office.
State of South Dakota. }

*I, L. D. Wipf, Secretary of State of South Dakota, and
keeper of the Great Seal thereof, do hereby certify that the
attached instrument of writing is a true and correct copy of*
ARTICLES OF INCORPORATION OF THE HAWTHORNE
DITCH COMPANY.

*and of the whole thereof, and has been compared with the original now on file in
this office.*

*In Testimony Whereof, I have hereunto set my hand and affixed the
Great Seal of the State of South Dakota, done
at the City of Pierre this 27th.*
day of December, 1908.



L. D. Wipf
Secretary of State

By

[Signature]
Assistant Secretary of State

ARTICLES OF INCORPORATION
of the
HAWTHORNE DITCH COMPANY

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned have this day voluntarily associated ourselves together, for the purpose of forming a corporation under the laws of the State of South Dakota.

First.

That the name of said corporation is "The Hawthorne Ditch Company"

Second.

That the purposes for which it is formed are, to supply water for irrigating, manufacturing, milling, mining, domestic and other useful purposes, from a certain water ditch and water right, located on Rapid Creek, in Pennington County, South Dakota, the point of diversion being on the north side of said Creek, about Five Hundred (500) feet west of the Section line, between Sections Five (5) and Six (6), in Township One (1) North of Range Eight (8) East of B.H.M. in said County and state.

Third.

That the place where its principal business shall be transacted is Rapid City, Pennington County, State of South Dakota.

Fourth.

That the term for which it is to exist is ninety nine (99) years from and after the date of its incorporation.

Fifth.

That the number of its directors shall be three; and the names and residences of those who are to serve until the election of such officers are as follows:

Names.	Residences.
George Hunt	Rapid City, Pennington Co. South Dakota.
John P. Elroy	Rapid City, Pennington Co. South Dakota.
James H. Woxls	Rapid City, Pennington County, South Dakota.

Sixth.

That the amount of the capital stock of this corporation shall be Five Thousand (\$5000.00) Dollars, divided into fifty (50) shares, of the par value of One Hundred (\$100.00) Dollars each.

Seventh.

That the stream from which the water is to be taken for the purposes aforesaid, is Rapid Creek; the point of diversion off said stream, at or near which the water is to be taken out is at a point on said Creek in the South-East quarter of the North-East quarter of Section Six (6), Township One (1) North, of Range Eight (8) East, B. H. M., in said county and state, thence continuing from said point of diversion by means of ditches, dykes and flumes in a southeasterly course, through and across Sections Five (5), Four (4), Nine (9) and Ten (10), in Township One (1) North of Range Eight (8) East, B. H. M., and thence from point to point, through and along the north side of Rapid Valley and its tributary valleys, to terminate at or near a point about three miles west of the South Fork of the Shavonne River in said county and state, at which point it returns to and discharges the water into the main channel of said Rapid Creek.

IN WITNESS WHEREOF, we have hereunto set our hand and seals this 14th day of July, A. D. 1890.

George Hunt

John P. McElroy

James M. Woods

John C. Read

Mat D. Woods

State of South Dakota)
County of Pennington) ss

On this 14th day of July, A. D. 1890, before me, Charles J. Buell, a notary public, within and for the County and State aforesaid, appeared George Hunt, John P. McElroy, James M. Woods, John C. Read and Mat D. Woods, each well known to me to be the persons whose names are subscribed to the within articles of incorporation, and they each duly acknowledged to me the execution thereof.

IN WITNESS WHEREOF, I have herunto set my hand and affixed my
notarial seal, this 14th, day of June, A. D. 1890.

Charles J. Buell,

(S E A L)

Notary Public.

State of South Dakota, }
County of Pennington } ss

John P. McElroy and James M. Woods being duly 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 incor-
porator therein; that he has read said articles and knows the contents
thereof, that the incorporators intended in good faith to form a cor-
poration for the purpose of the promotion of a lawful business, as
set forth in said articles, and not for the purpose of enabling several
corporations to avoid the provisions of chapter 154, session laws of
1890, being an act entitled "An Act to declare certain combinations,
agreements or trusts unlawful, and to restrain and punish the same."

John P. McElroy

James M. Woods

Subscribed and sworn to before me this 23 day of July 1890.

Charles J. Buell,

(S E A L)

Notary Public.

Filed for record July 30th, 1890 and recorded in Vol. 2, Page 22 Dom-
estic Incorporation Record.

H. Knudson,

Asst. Sec. of State.

STATE OF SOUTH DAKOTA

SENATE CHAMBERS

PIERRE

Hawthorn & Sibley Co.

No. 35.

Ad. Oct. 1, 1907.

Notice Mailed Oct. 1, 1907

Hearing Nov. 30, 1907.

Big Horn Creek Water Right

Hearing was held on above date.
A number of protests were filed
by various irrigating companies.
Decision was postponed pending
a visit of inspection by
the State Engineer.

Before the State Engineer
of Irrigation.

In The Matter of the
Hawthorn Ditch Company.

AFFIDAVIT.

Filed Dec. 4, 1907.

Samuel R. Lea,
State Engineer.

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA.

- 0 -

In the Matter of the Application of the
Hawthorne Ditch Company, for a permit
to appropriate water within the State
of South Dakota.

BRIEF ON PROTEST
OF THE RAPID VALLEY WATER COMPANY

- 0 -

Statement of the case.

The Hawthorne Ditch Company having filed application for a permit to appropriate five and one-quarter cubic feet of water per second of time from Rapid Creek through the Hawthorne Ditch Company's extension, *the* point of diversion of which is located in the Southwest Quarter of the Northwest Quarter of Section 18, Township 1, north of Range 9, E.B.H.M., and on notice the matter came on for hearing before the Honorable State Engineer on the 30th day of November, 1907, at which time the Rapid Valley Water Company filed a protest against the allowance of said permit;

It appears from the showing filed by the Rapid Valley Water Company that said Rapid Valley Water Company and its grantors and predecessors at interest on or about the 6th of April, 1878, duly located a water right on the north side of Rapid Creek about two and one-half miles east of Rapid City, and thereafter duly appropriated upwards of 2,000 miner's inches of the waters of said Rapid Creek, and thereafter, on or about the month of June 1879 and prior to the occupation and settlement of any lands described in the application for permit, the said water right and appropriation by the protestant was enlarged to 3,000 miner's inches, and that since said time the waters have been appropriated and used for beneficial purposes and that the rights of the protestant are prior and superior to any rights of the Hawthorne Ditch Company;

It also appears that the Hawthorne Ditch Company does not own the land at the point of diversion of the water from Rapid Creek, but that said point of diversion is on the land of a third party and that the

said Kawthorne Ditch Company and its predecessors in interest are and were trespassers.

Argument.

Aside from the fact that the undisputed proof shows that the rights of the protestant are prior and superior to the rights of the applicant, it should be observed that the applicant is asking for a permit under an application for an extension of an old right or alleged right, which had never been passed upon or submitted to the State Engineer; In fact, the said applicant has withdrawn its application for the original water right and has declined to submit the same to the State Engineer, and we submit that it is not possible to grant an extension of a right without first having passed upon the right, of which the applicant purports to be an extension. It seems a little strange to us that this application should be made for an extension, whereas the applicant has specifically declined to submit his application for the original water right;

If, however, it be contended that the application for this extension can be entertained, notwithstanding the fact that the original water right has not been passed upon, then we submit that this application necessarily involves the validity of the original water right and ditch;

As to this, the undisputed proof shows that the applicant does not own the land at the point of diversion, that it is a trespasser and has therefore acquired no right to divert the waters or maintain its ditches, at least at the point of diversion;

In the case of *Sturr vs. Beck*, reported in the 133 U.S. 541, the Supreme Court holds that where one settler goes upon the lands of a prior settler and there locates a water right and constructs a ditch and turns the water therein but has not acquired any grant of any right from the owner of said lands, that he is a trespasser and acquires no right by the mere appropriation of the water.

The doctrine of this case clearly precludes the applicant from asserting any rights by reason of the location of its water right and ditch

upon the lands of another;

It should also be suggested that this rather cunningly devised application for an extension calls for five and one-quarter feet of water per second, presumably in addition to the original appropriation made by the applicant and its predecessors.

It appears from the evidence that all the waters of Rapid Creek have heretofore been appropriated and there is therefore no water subject to appropriation under the applicant's application and it should therefore not be granted.

Respectfully submitted,


Attorneys for the Protestant.

State of South Dakota (
 Pannington County (SS.
)

Chauncoy L. Wood being sworn says,

That I have read and understand the application of the Hawthorn Ditch Company, for a permit to appropriate five and one fourth ~~xxxx~~ cubic feet per second of time of the waters of Rapid Creek, through the so-called "Hawthorn Ditch Co's extension", as said application is published in the Rapid City Daily Journal. The point of diversion, designated in said application, is described as being in Range Nine East, B.H.M. while the point of diversion of the Hawthorn Ditch is in Range ^{East} Eight of the B.H.M. showing that the only diversion involved in said application is an extension of the Hawthorn Ditch, which can not be lawfully done to the detriment of older appropriators, of the waters of said Creek either above or below the point of actual diversion of the said Hawthorn Ditch. That this affiant is the Attorney for the Cyclone Ditch Co. the owner of the Cyclone ditch and water right.

That said Cyclone water right was located on the 31st day of October 1887, by Joseph Jolly and John W. Nowlin, and by them conveyed to the Cyclone Ditch Co. a Corporation, and that Company still remains the owner of the said ditch and water right, and has constructed and is now actually ~~xxxxx~~ using the same for the irrigation of agricultural lands along the line of said ditch, which said ditch is about five miles in length. That the location of the said Hawthorn Water Right is junior in point of time, to the said Cyclone Water Right by a number of years, and there is not sufficient water in said Rapid Creek to allow the said increase in the quantity of water to be diverted from said Creek by the said Hawthorn Co. under its said application, without doing irreparable injury to the said Cyclone Co. so this affiant says that the allowance of said permit would be detrimental to the said Cyclone Co.

and the said Hawthorn Co. is not entitled to such permit as
against the superior rights of the said Gyalona Co.
attach

That I ~~xxxxxx~~ a copy of the location certificate of
the water right owned as aforesaid by the Gyalona Co.
to this affidavit and make the same a part hereof. That the
said location certificate was filed for record on the 4th.
day of November 1887, and is recorded in Book "A" on page 96
of location certificate records of said Pennington County.

Wherefore affiant asks that whatever allowance that may
be granted to the said Hawthorn Co., under said application,
be made expressly junior and inferior, and subject to, all of
the rights of the said Gyalona Co.

That this affiant can not appear in person before the
Hon. State Engineer, on the 30th. of this month in opposition
to said application, for the reason that Court is now in ses-
sion in said Pennington County, and this affiant is very busy
in said Court, but that if this showing is held to be insuf-
ficient for any reason, then and in that case, I request that
final action on said application be adjourned to some future
day to the end that all persons may be given an opportunity
to be fully heard as to the merits of the same.

Chauncey L. Wood

Subscribed and sworn to before me this 27th. day of
November 1907.

Harrison E. Edwards
Notary Public

LOCATION NOTICE OF WATER RIGHT.

NOTICE IS HEREBY GIVEN, to all whom it may concern, That Joseph Jolly and John W. Nowlin, citizens of the United States and over the age of Twenty one, (21) years, have this ~~xxx~~ 31st, day of October, 1887, located a water right on Rapid Creek in Pennington County Dakota Territory, and thereby claim 3000, inches, miners measurement, of the water of said Rapid Creek.

That said waters are appropriated for agricultural irrigating, Milling, Manufacturing, domestic, mining and other useful purposes, said waters are diverted from the main channel of said Rapid Creek at a point near where the center, north and south 1-2 section line of section sixteen intersects the center of section nine (9) in township One North of Range eight (8) East. B.H.M. Thence from said point of diversion by means of ditches, dykes and flumes, to convey the waters in a south east direction along the south bank of said valley, through and across section sixteen (16); twenty two (22); twenty seven (27); twenty six (26); and thence from point to point through and along said valley of Rapid Creek and its tributary valleys at such elevation as may be subsequently found necessary.

Date of Location October, 31st, 1887.

Names of Locators.	(	Joseph Jolly
	(	John W. Nowlin.

Original.

-:-

BEFORE THE STATE ENGINEER OF
THE STATE OF SOUTH DAKOTA.

-:-

In the Matter of the Application
of the Hawthorne Ditch Company,
whose post office address is
Rapid City, Pennington County,
South Dakota, for a permit to
appropriate water within the
State of South Dakota.

-:-

PROTEST OF THE RAPID VALLEY
WATER COMPANY.

-:-

Buell & Gardner,
Attorneys for Protestant.

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA.

-:-

In the Matter of the Application
of the Hawthorne Ditch Company,
whose post office address is
Rapid City, Pennington County,
South Dakota, for a permit to ap-
propriate water within the State
of South Dakota.

}
} PROTEST OF THE RAPID VALLEY
} WATER COMPANY.
}

-:-

Come now the Rapid Valley Water Company, a corporation
duly organized and existing under the laws of the State of South
Dakota, and protests against the allowance of the application of the
Hawthorne Ditch Company for a permit to appropriate water within the
State of South Dakota, and on grounds of said protest alleges:

I

It appears from the said application and map, made a part
thereof, that it is proposed to conduct the water through the ditch
of the Hawthorne Ditch Company, from the point of diversion of the
latter Company on Rapid Creek, near the easterly city limits of the
City of Rapid City in Pennington County, through the ditch of the
said Hawthorne Ditch Company, to a point in the Southwest Quarter
of the Northwest Quarter of Section Eighteen (18), Township One (1),
North of Range Nine (9), East of the Black Hills Meridian, in said
Pennington County, and to receive the same at said point, and the
said Hawthorne Ditch Company proposed to conduct such water through
what is known as the Hawthorne Ditch Company's extension, as more
fully appears by the protest of this protestant against the allowance
of the application of said Hawthorne Ditch Company, for a permit to
appropriate water within the State of South Dakota, a copy of which
said protest is hereby annexed and marked Ex. 2, and by this reference
the said protest is made a part hereof.

(2)

II

On information and belief, the said Hawthorne Ditch Company has no valid and subsisting water right, and never acquired any right to appropriate the water of Rapid Creek, or to divert the same at the point of the proposed diversion thereof on said Rapid Creek, for the reason that said Hawthorne Ditch Company never in any manner acquired the right to divert the water of said Rapid Creek at its alleged point of diversion, from the owner of the land upon which said point of diversion is located, and that the said Hawthorne Ditch Company have no right whatever to divert the water of said Rapid Creek, and the said ditch water right and alleged right of way of the said Hawthorne Ditch Company, under the plan proposed, constitute a part of the proposed system of the said Hawthorne Ditch Company.

WHEREFORE, the said protestant asks that the said application may in all things be denied and rejected, and that protestant be granted such other and further relief as may be just and proper.

RAPID VALLEY WATER COMPANY, a corporation, Protestant.

By, *Quell Macer*
Attorneys for Protestant.

State of South Dakota, }
County of Pennington. } ss.

Samuel J. Morris, being first duly sworn, on his oath deposes and says: That he is the President of the said Rapid Valley Water Company, a corporation; that he has heard read the above and foregoing protest, and understands the contents thereof, and that the same is true to his best knowledge, information and belief.

Samuel J. Morris

(3)

subscribed and sworn to before me this 27th day of November
or, A. D., 1907.

(Seal)

Mary C. Reilly
Notary Public.

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA.

-:-

In the Matter of the Application)
of the Hawthorne Ditch Company,)
whose post office address is)
Rapid City, Pennington County,)
South Dakota for a permit to ap-)
propriate water within the State)
of South Dakota.)

PROTEST OF THE RAPID VALLEY
WATER COMPANY.

-:-

Comes now the Rapid Valley Water Company, a corporation,
and protests against the allowance of the application of the Haw-
thorne Ditch Company, for a permit to appropriate waters within the
State of South Dakota, and as grounds of said protest alleges:

I

That this protestant now is, and at all the times herein
mentioned, was a corporation duly organized and existing under the
laws of the State of South Dakota.

II

That on or about the year 1878, and prior to the occupation
and settlement of the premises described in the said application of
the said Hawthorne Ditch Company, this protestant, and its predecess-
ors in interest, and the other stockholders and users of waters of
and from said Rapid Valley Water Company, took up for settlement and
cultivation about 6,000 acres of the unappropriated public land of
the United States, subject to homestead and preemption along and near
Rapid Creek in said Pennington County, and under the ditch of the
Rapid Valley Water Company, of which lands about 4,000 acres are
cultivated and grazing lands, and most of which has been, during all
of said time, and is now, being actually cultivated to crops, or
used for pasturage and hay land, and irrigated from said ditch, and
that they, and their predecessors in interest have ever since said
first named date occupied and cultivated said lands, and are now the

(2)

owners of the same in fee. That all of said land is situate in Sections Nine, Ten, Thirteen, Fourteen, Fifteen, Twenty-three and Twenty-four in Township One North, of Range Eight East, of the Black Hills Meridian, in said Pennington County, and Sections Nineteen, Twenty, Twenty-one, Twenty-two, Twenty-five, Twenty-six, Twenty-seven and Twenty-eight in Township One North of Range Nine, East of the Black Hills Meridian, in said Pennington County, and Sections Thirty-Three and Thirty-four in Township One North of Range Ten East, of the Black Hills Meridian, in said Pennington County, and that the said lands are highly improved and valuable as a consequence of the appropriation and use of said water for the purpose of irrigating the same.

III

That on the 6th day of April, 1878, the said protestant and its predecessors in interest duly located a water right on the North side of Rapid Creek, about two and a half miles East of Rapid City, near the center of Section Eight, Township One North of Range Eight East of the Black Hills Meridian, in said Pennington County, at the point where the water was diverted from said stream into their ditch to be by them carried by ditch and flume over and across their said lands, running down said Rapid Valley in a general easterly direction, crossing said Rapid Creek about one and one-half miles from the place of beginning; thence easterly on the South side of said Creek, one mile further, with the right of extension, etc. That on the 6th day of April, 1878, they duly posted a notice of their said water right location at the said point of diversion, which notice was in due form, and thereafter, and on the 9th day of April, 1878, they caused a copy of said notice to be duly recorded in the office of the Register of Deeds in and for said Pennington County, and immediately commenced, diligently prosecuted as required by law, and within six months thereafter, completed the construction of the dam at said

(3)

point of diversion, and their ditch of sufficient size and capacity to carry 2,000 miner's inches of water, measured under a six inch pressure, and within twenty days after the posting of said notice, actually diverted from said creek into said ditch, 2,000 miner's inches of water, measured under a six inch pressure, which said amount of water this protestant, its stockholders and predecessors in interest, have ever since actually appropriated and used, and which was, and is necessary to use for the irrigation of said lands.

IV

That between the 6th day of April, 1878 and the month of June, 1879, this protestant, ~~and its predecessors in interest~~ acquired by deed duly made and delivered, the ownership and right of possession of said water right, dam, ditch and appurtenances, together with the right of way to divert and carry said water across, and erect and maintain said dam and ditch across said lands, for the purpose of furnishing said water to its stockholders and others for irrigating their lands, and for other purposes.

V

That thereafter, and on or about the month of June, 1879, and long prior to the occupation and settlement of any of the lands described in said application, this protestant or its predecessors in interest, greatly enlarged its said dam and ditch, and then and thereby duly appropriated, diverted into, and used on the lands of this protestant, its stockholders and predecessors in interest, in the necessary irrigation of said land, 3,000 miner's inches of water measured under a six inch pressure, and at the same time extended the line of said ditch easterly, beyond the point mentioned aforesaid, about six miles over the lands of this protestant, its stockholders and their predecessors in interest, and at the same time, the predecessors in interest of the protestant posted at the head of their

(4)

said ditch on said Rapid Creek, and at the commencement of said extension on the line of said main ditch, on a posted location notice, claiming the right to extend and maintain said ditch through Sections Nine, Ten, Thirteen, Fourteen, Fifteen and Twenty-four in Township One North of Range Eight East of the Black Hills Meridian, and Sections Nineteen, Twenty, Twenty-one, Twenty-two, Twenty-five, Twenty-six, Twenty-seven and Twenty-eight in Township One North of Range Nine, East of the Black Hills Meridian, and Sections Thirty, Thirty-one and Thirty-two to a point between the center and east side of said Section Thirty-two, Township One North of Range Ten East of the Black Hills Meridian; thence due South to said Rapid Creek, all in said Pennington County, claiming and appropriating 3,000 miner's inches of water, measured under a six inch pressure for agricultural, irrigation, domestic and other useful purposes, and that ever since the said 9th day of June, 1879, the protestant, its stockholders and predecessors in interest, have owned, diverted, appropriated and used, through said ditch, in the actual and necessary irrigation of the said cultivated and farm lands, 3,000 miner's inches of the waters of said Creek, measured under a six inch pressure, whereby, and by reason of said appropriation, this protestant, and its stockholders have the right to continue the use and appropriation of 3,000 miner's inches of the waters of said Rapid Creek, measured under a six inch pressure, for irrigation, agricultural, domestic and other useful purposes, and which said right is prior and superior to any rights of the said Hawthorne Ditch Company, in and to the waters of said Rapid Creek.

VI

That the proposed point of diversion of the waters of said Rapid Creek of the said Hawthorne Ditch Company, is situate at a point on said Rapid Creek about a mile and one-half above the said

(5)

point of diversion of this protestant, so that the waters of said Rapid Creek in their natural flow, are required to pass the proposed point of diversion of said Hawthorne Ditch Company before it reaches the point of diversion of this protestant.

VII

It appears from the said application and map made a part thereof, that it is proposed to conduct the water through the ditch of the Hawthorne Ditch Company, from the point of diversion of the latter Company on Rapid Creek, near the easterly city limits of the City of Rapid City in Pennington County, and at a point about a mile and one-half above the point of diversion of this protestant on said Rapid Creek, through the ditch of the said Hawthorne Ditch Company, to a point in the Southwest Quarter of the Northwest Quarter of Section Eighteen (18), Township One (1), North of Range Nine (9), East of the Black Hills Meridian, in said Pennington County, and to receive the same at said point; thence to conduct said waters through what is known as the Hawthorne Ditch Company's extension, for the purpose of irrigation and domestic use upon the lands described in said application, reference to which is hereby made for a complete description, and the said proposed ditch.

VIII

That said Hawthorne Ditch Company has no right or authority to divert, use or appropriate the waters of said Rapid Creek, and the said Hawthorne Ditch Company has no valid and subsisting water right, and never acquired any right to appropriate the waters of said Rapid Creek, or to divert the same at the point of diversion on said Rapid Creek, for the reason that said Hawthorne Ditch Company never, in any manner acquired the right to appropriate or divert the water of said Rapid Creek at its said point of diversion, from the owner of the land upon which said point of diversion is located, and said Hawthorne Ditch Company never had the right to make a valid ap-

(6)

appropriation of said waters at said point, or to divert the same at said point, without in some manner acquiring the right so to do, and the said alleged water right and alleged right of way of the said Hawthorne Ditch Company, under the plan proposed, constitute a part of the proposed system of the said Hawthorne Ditch Company.

IX

That if the said Hawthorne Ditch Company were permitted and allowed to take and divert the waters of said Rapid Creek, the water so taken and diverted would be returned to said Creek, if returned at all, far below the point of diversion of this protestant, and thereby protestant would be deprived of said water, to the great and irreparable damage and injury of this protestant and its stockholders and the users of the waters from its said ditch. That the diversion of the said stream into the said proposed ditch, would greatly impair the value of protestant's said water right, and greatly lessen the value of said lands irrigated by and from protestant's said ditch and water system.

WHEREFORE, the said protestant asks that the said application may in all things be denied and rejected, and that protestant be granted such other and further relief as may be just and proper.

RAPID VALLEY WATER COMPANY,
Protestant.

By, *Robert H. McArthur*
Attorneys for Protestant.

State of South Dakota, }
County of Pennington. } ss.

Samuel J. Harris, being first duly sworn, on his oath deposes and says: That he is the President of the said Rapid Valley Water Company, a corporation; that he has heard

DATE MICROFILMED

CAMERA OPERATOR

(7)

read the above and foregoing protest, and understands the contents thereof, and that the same is true to his best knowledge, information and belief.

Samuel M. Morris

Subscribed and sworn to before me this 27th day of November, A. D., 1907.

(Seal)

Mary C. Rell
Notary Public.

STATE OF SOUTH DAKOTA, SS.
COUNTY OF PENNINGTON.

STIPULATION.

WHEREAS, the Hawthorne Ditch Company, a corporation, organized under the laws of the state of South Dakota, did on the 1st day of October, 1907, present to and file with the Hon. Samuel H. Lea, State Engineer, at his office in Pierre, South Dakota, an application in due form, being known as application number thirty-five of Water Division number two Rapid Creek Water District, praying for a permit to appropriate 5 1/4 cubic feet per second of water, same to be used in the Hawthorne Ditch Company's extension in Rapid Valley, Pennington County, South Dakota; and

WHEREAS, the ~~Oliver~~ ^{Irrigating} St. Germaine ~~Ditch~~ Company, a Corporation organized and existing under and by virtue of the laws of the State of South Dakota, has heretofore constructed and now maintains a ditch for the diversion of certain waters from the said Rapid Creek, the rights of which company thereto have become vested,

IT IS THEREFORE HEREBY STIPULATED AND AGREED by and between the said Hawthorne Ditch Company, and the said ~~Oliver~~ ^{Irrigating} St. Germaine ~~Ditch~~ Company, First, that the said ~~Oliver~~ ^{Irrigating} St. Germaine ~~Ditch~~ Company shall and it does hereby withdraw all protest and opposition to the granting of said application number thirty-five hereinbefore referred to, upon the conditions hereinafter mentioned. Second, that as against the rights of the said ~~Oliver~~ ^{Irrigating} St. Germaine ~~Ditch~~ Company, said application number thirty-five may be granted, provided that the permit therein prayed for shall be made in expressed terms subject to the existing rights of said ~~Oliver~~ ^{Irrigating} St. Germaine ~~Ditch~~ Company.

Dated at Rapid City, South Dakota, this 14th day of December, 1907.

By

The Hawthorne Ditch Co. (SEAL)

By

Oliver St. Germaine (SEAL)
President.
St. Germaine Irrigating Company. (SEAL)
W. H. Anderson, Treas. (SEAL)

DATE MICROFILMED

CAMERA COPY

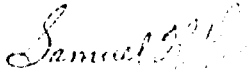
A hearing was held in this office on November the 20th, 1907, in the matter of the application of the Hawthorne Ditch Company for a permit to extend their present irrigation ditch.

A.K. Gardner, an attorney, was present at the hearing in behalf of the Rapid Valley Water Company and presented an affidavit of the president of this Company to the effect that said Company had a prior right to the use of the water of Rapid Creek, and that the applicant had no valid right to same. Mr. Gardner protested in behalf of the Rapid Valley Water Co. against the granting the application of the Hawthorne Ditch Co., and stated that the granting of such application would recognize an existing right of the Hawthorne Ditch Co. to use water in their present ditch, which right he seriously questioned. He further stated that the headgate of the Hawthorne Ditch Co. is on land that does not belong to any member of the Hawthorne Ditch Co., and that under a decision of the United States Supreme Court no valid water right could obtain under this condition.

A protest was received from Chauncey L. Wood, an attorney of Rapid City, in behalf of the Cyclone Ditch Co., accompanied by an affidavit signed by Mr. Wood. This protest was against granting any additional water, besides that now being appropriated by the Hawthorne Ditch Co., to this Company under their application.

The hearing was adjourned to a later date in order to allow the State Engineer to consult with the Attorney General and to make an examination of the records of Pennington County regarding the status of the existing rights of the Hawthorne Ditch Co. for water from Rapid Creek, through their irrigation ditch.

Approved November 30th, 1907.


State Engineer.

State of South Dakota)
County of Hughes.) ss.

Ivan W. Goodner, of lawful age, being first duly sworn, says that he is a member of the firm of Goodner & Goodner, attorneys at law practicing their profession at Pierre, South Dakota; that said firm has been retained with Mr. Charles W. Brown, of Rapid City, South Dakota, as attorneys for and on behalf of the Lone Tree Water Company and the South Side Ditch & Water Company, both of which are South Dakota ditch corporations, and also by their associates, for the purpose of protecting the prior vested rights of said corporations and associates in the matter of the application of the Hawthorne Ditch Company of Rapid City, Pennington County, South Dakota, to appropriate certain waters from Rapid Creek through the Hawthorne Ditch Company's extension, which application is now pending before Hon. Samuel H. Lea, State Engineer;

Upon information and belief, affiant states that in a suit brought by the Lone Tree Ditch Company against the Rapid City Electric & Gas Light Company, decided by the Supreme Court of South Dakota and reported in the 16th South Dakota Reports, at page 451, it was held that the plaintiff had a vested right to 1500 miner's inches of the waters of Rapid Creek, under a 6-inch pressure, under and by virtue of a location made by George C. Cretsinger et al, duly recorded in the office of the Register of Deeds of Pennington County on May 23, 1882, in Book E of Locations, at page 217, and affiant's client, the Lone Tree Water Company is now the successor in interest of the Lone Tree Ditch Company and its predecessors in interest;

That under a location made by William H. Hopkins, et al, recorded in the office of the Register of Deeds of Pennington County, on June 17, 1880, in Book E of Locations, at page 20, the Rapid Ditch Company et al, in an action brought by them against the Hawthorne Ditch Company et al, was on or about July 29th, 1899, adjudged to have a priority over those defendants, and a vested right, to the extent of 900 inches, miner's measurement, under a 6-inch pressure, and the South Side Ditch & Water Company is the successor

in interest of the Lower Rapid Ditch Company and its predecessors in interest; that the rights claimed and adjudged in favor of clients above mentioned were to the use of the waters of Rapid Creek for agricultural, domestic and other useful purposes; that all the rights of the Lone Tree Ditch Company have been duly succeeded to by the Lone Tree Water Company by proper deeds of conveyance and that the South Side Ditch Company is by proper deeds of conveyance the successor in interest of the Lower Rapid Ditch Company and associates;

WHEREFORE, affiant on behalf of his said clients asks that no permit be given which will in any wise have the effect to interfere ^{or prejudice} with the prior vested rights of said clients.

Sam R. Gardner

Subscribed and sworn to before me this 16th day of January, 1908.

M. J. Gardner

Notary Public, Hughes County,
South Dakota.

State of South Dakota

County of Pennington, ss

Wilson Marsh, a resident of Rapid Valley Pennington County South Dakota of lawful age, upon his oath deposes and says; that he is the President of the Hawthorn Ditch Company and that in compliance with permit No 35 they have expended on the Hawthorn Ditch extension, the following sums.

For Excavating, Seven hundred and forty eight (\$748.) Dollars,

For Attorney Fee, Ten Dollars (\$10)

For Surveying Fifty two and 50/100 Dollars (\$52.50)

For Cost of Permit, Twenty six Dollars (\$26.)

This being being more than one fifth of the whole amount of work to be done upon the extension,

In witness whereof, I have herunto set my hand and seal the sixth day of February A. D. 1909.

Wilson Marsh seal
Pres. Hawthorn Ditch Co

subscribed and sworn to before me this 6th day of February A. D. 1909

Geo. C. Hancock

Notary Public

RECEIVED

FEB 7 1909

OFFICE OF STATE ENGINEER,
PIERRE, S. DAK.

DEC " 1907

Law Office
of
Frank D. Range
Attorney and Counselor at Law

OFFICE OVER
PENNINGTON
COUNTY BANK

Rapid City, S. D., 12/4/07.

Hon. Samuel H. Lea,
State Engineer,
Pierre, S. Dak.

Dear sir:--

Am herewith enclosing to you check for \$2.00 to cover costs of certified copy of application of Hawthorne Ditch Company to appropriate water from Rapid creek, recently sent to me by you. Please accept my thanks for your promptness and courtesy in this matter.

Am somewhat at a loss to understand the exact purpose of the applicant in this matter, and just what effect the granting of the application would have on prior rights. Do you understand that the granting of this application would empower the Hawthorne Ditch Company to withdraw from Rapid creek into their present ditch a greater amount of water than they are at present entitled to withdraw or divert, or would it simply empower them to extend their ditch and to use $5 \frac{1}{4}$ cubic feet of water per second in the extension, of the water which they were previously authorized to divert, taking it from the end of their present ditch where it would ordinarily be discharged into the creek and continuing it in the extension?

In other words, would the granting of this application effect only those who withdraw water from the creek below the present point of discharge of the Hawthorne ditch into the creek, or would it effect all rights below the present point of diversion? Again, if, as is claimed by many of the water users down the valley, all of the waters of the creek are already appro-

TELEPHONES
OFFICE, NO. 143
RESIDENCE, NO. 144

Law Office
of
Frank D. Bangs
Attorney and Counselor at Law

DEC 6 1907

OFFICE OVER
PENNINGTON
COUNTY BANK

Rapid City, S. D.

appropriated and applied to benefit of use during the irrigation season, and if the measure of the Hawthorne Ditches present right in the water applied by it to beneficial use, then any extension of their rights would necessarily be an infringement upon the rights of others. Therefore it occurs to me that the question involved would be simply one of fact as to whether the entire volume of the creek is at present already appropriated and applied to beneficial use. If the hearing has not already been definitely closed, and if further proof along this line would be received by your office, please so advise me, and in case it appears necessary for the protection of my client's interests to protest against this application, I will take steps accordingly.

Thanking you in advance for a prompt reply, I remain,

Yours very truly,

Frank D. Bangs
Per A. A.

DEC 6 1907

Rapid City S D Dec 3 - 07
Mr. Samuel H. Dean

Dear Sir,

I learned today that there
were two percolate filings
against the application
of The Hawthorn Ditch Co
in regard to which I wish
to say that We recognize
that our extension asked
for is made subject
to all prior rights of the
Cyclone Ditch Co and
the Rapid Valley Ditch
Co. and the order granting
the same be so worded

DEC 6 1907

as to make the proposed
extension of The Hawthorn
Ditch Co subject to all
prior water rights of these
companies. but however
the order granting the
extension is not to refer to
or limit any Ditch or
Water Rights of the Hawthorn
Ditch Co. except the

Proposed Extension

Hoping you will be able to
pass all this application down

I remain Yours Truly

Wilsch Marsh

For The Hawthorn Ditch Co

Rapid City S D Dec 16 1897
Mr Samuel H. Lee. No 82
Dear Sir

I note what you say in re-
-gards to Frank O Bangs in
your letter of Dec 11.

I saw him Dec 9th and
he then had no case against
us. As he told me he had
written to you in behalf
of George Sanders asking
you if ever asked for permit
would interfere with prior
rights, and he told me
you wrote that it would
not.

But since that date they have
made up their minds that
they wanted their rights men-
-tioned in our Permit No 30.

Saturday we reached an agree-
-ement. And the understand-
-ing between Mr Bangs and
myself (some of our business
present) was that the present
existing rights of The Oliver
St. Germain Litch Co was
what water they were putting
to a beneficial use at present
and not what water they
may claim by their location
to Rip out in excess of what

is being used beneficially,
 still, she insisted in not
 going into that part of the
 question. But that is my
 understanding of the law
 and if you construe the law
 to be different from that
 and considered they have a
 right to all waters asked
 for and claimed by their
 notice of appropriation
 regardless of what amount
 of water they have put to
 use. I would rather have
 you reject our Application
 and we will appeal to the

Circuit Court.

I am willing and intend
 to concede to every Ditch
 across Rapid Creek the right
 to all the water they have
 put to use, to be prior to
 our Ditch Extension except
 But I am not willing to
 concede to them the right
 to all water they claim by
 their location certificates.
 Because I do not think
 there is one Ditch Co on
 Rapid Creek across Rapid
 City who have not used
 the water claimed by their

Location Certificate, would
 if that should be the intent
 of the law we would not
 have to ask for any more
 water, for we are not using
 the amount of water

for irrigation purposes even
 for in our Location Certificate
 as our Location Certificate can
 for ^{other} purposes also, and does not
 state how much for any one
 purpose.

I want you to reach a con-
 -clusion which in your own
 judgment is just to all parties
 and if they or we are not

satisfied, all parties interested
 still have further recourse
 to have their rights adjudicated
 by higher courts.

Thanking you for the indulgence
 allowed me, I am

Yours Truly

Wilson Frank Orr
 The Hawthorn Ditch Co.

Dec. 6, 1907.

Mr. Wilson Marsh,

Rapid City, So. Dak.

Dear Sir:-

Replying to your letter of December the 3rd, I will state that a vigorous protest has been made against the application of the Hawthorne Ditch Company for the proposed extension. The attorney for the Rapid Valley Water Company was present at the hearing and filed an affidavit and also a statement regarding the rights of the company. Other companies have also protested against this application and the hearing has been adjourned to a later date in order to acquire additional information regarding the same. The application is for five and one quarter ($5 \frac{1}{4}$) cubic feet of water per second in the extension, which has been construed to mean that much water in addition to what is already appropriated. Please inform me if such is the case. The matter will be taken up at an early date and a decision rendered concerning same.

Yours very truly,

State Engineer.

Jan. 16, 1908.

Mr. Ellison Marsh
Rapid City, So. Dak

Dear Sir:

Replying to your letter of December 19, 1907, which I find upon my desk upon my return to this office, I note that you say concerning the rights of the St. Germaine Irrigation Co. I have received from this company a stipulation agreed by and between the Hawthorne Ditch Company and the St. Germaine Irrigation Company, which clears up the situation with regard to the protest of the St. Germaine Co. There is also upon file in this office an affidavit in behalf of the Lone Tree later Co. and the South Side Ditch Co. relating to the granting of the permit to the Hawthorne Ditch Co for the proposed extension. This affidavit requests that no permit be given which will in any wise have the effect to interfere with the prior vested rights of the two companies named. This is in conformity with the terms under which all permits for water rights are granted and consequently will not interfere with the granting of the permit to the Hawthorne Ditch Co. as requested.

I believe that it will now be possible to grant the permit requested by your company without opposition by any of the other irrigating companies interested. I expect to visit Rapid City soon and will take the matter up with you at that time.

Yours very truly,

State Engineer.

February 1, 1909.

Mr. Wilson Marsh,
Rapid City, South Dakota.

Dear Sir:-

I hand you herewith suitable blanks for notifying this office of the completion of work on your ditch, which is now under construction. I note that your time for submitting proof expires February 31, 1909. Please notify me promptly if you expect to have the ditch finished by this time and when you expect to have an application made of the water to beneficial use. This application can be ^{stated} ~~furnished~~ on the enclosed blanks.

Yours very truly,

State Engineer.

Encl.

DATE MICROFILMED

FEB 21 1908

Rapid City S.D. 2/20 1908
Mr. S.H. Low, Reno, Ind.

Dear Sir:

Upon advice of Attorney the
Hawthorn Ditch Co desire
to make application for permit
to extend the Hawthorn ditch
for power purposes the same
as was made and contempl-
ated in our application which
we with-drew about one year
ago insofar as concerns the
power proposition. only we

shall confine our application
to a conformity with our or-
iginal location certificate

We are not going to waive any
rights we now have but do it
to strengthen our right by
complying with the present law
and establishing a record in
your office and thereby prob-
ably avoid future complication
and litigation.

I am under the impression that
the map made by Mr. Stein
Bangs will serve serve serve
the purpose for this application.
We will use the our old ditch
to a point about forty or fifty
rods S.W. of the N.E. corner of
section nine. 1 N Range 8 E B.H.M.
as near as I can judge. but
it shows on the map.

and from there the extension will run nearly south to Rapid Creek.

I wish you would favor me by examining said map to see if it will serve the purpose. As we desire to use it if possible to save expense and hurry our application along, any suggestions you may be able to make will be highly appreciated by us.

Also please send me the proper blanks as I do not know of any one here having any. Also please send me the present Irrigation and Water Power laws if you have it in pamphlet form

Any fees or costs caused by your complying with these requests will be gladly paid upon presentation of bill. The law firm of Schrader and Lewis will represent us in this matter after I receive blank forms. for I do not feel able to cope with Lawyers if there is any protest made in this matter. But Our Co does not want anything that is unjust.

I Am Yours truly

Wilson Marsh. Pres
The Hawthorn Ditch Co
Rapid City
S. D.

Feb. 22, 1903.

Mr. Wilson Varah,
Rapid City, So. Dak.

Dear Sir:-

Referring to your letter of the 20th inst., I note that the Hawthorne Ditch Co., desires to make application to extend the Hawthorne Ditch for power purposes in the manner that was indicated in the application which was withdrawn about a year ago.

I am pleased to note that the company will do this for it will place an important irrigation project within the protection and supervision of the present State Water Law.

I will examine the map that is now on file in this office and ascertain if it will serve the purpose, and will also make such research into the records of this office as will enable me to decide the proper status of the application. When this is completed I will forward to you the proper blanks for filling out and also instructions regarding the completion of the application. The cost of this service will be nominal and will be corrected after the completion of the inquiry and you will be notified of the amount.

Yours very truly,

State Engineer.

DATE MICROFILMED

CHIEF CLERK

State of South Dakota
IN THE CIRCUIT COURT

County

Plaintiff

vs.

Defendant

RECEIVED JANUARY 16, 1908.

FILED FOR RECORD, January 18, 1908.

State Engineer

Deputy.

Affidavit of
Jesse M. Goodner
in re application
Newphone Ditch Company.

Due service of the within

by copy admitted at

South Dakota, this day of

190

Attorney for

IVAN W. GOODNER

Pierre, S. D.

Attorney for

WR 135.

Fed. Land Bank of Omaha
Omaha, Nebraska

Sept. 17, 1930

Gentlemen;

ATTENTION: R. L. Stable, Attorney

Your follow-up inquiry of the 8th inst. was promptly received. Our reply has been delayed somewhat, pending attention to urgent matters in the office and to a rather careful examination of certain details in connection with your inquiry.

The office records show, on page 63 of volume number one, Record of Filings for Water Rights, that license number 35 was issued in 1909 to the Hawthorne Ditch Co. The record shows that this application, which preceded the issuance of the license, asked for an extension of very old water rights dating back to 1886, presumably under the name of the Hawthorne Ditch Co. The record is not clear as to whether the 1886 rights were really in the name of the Hawthorne Ditch Co.

The Hawthorne improvement or extension, for which license number 35 was issued, begins, according to the record, 610 feet north of the quarter section corner on east side of section 13, township 1 north, range 8 east, B.H.M. in Pennington County. At the time of the application, which was September 26, 1907, Wilson Marsh was president and H. N. Johnson was secretary, both officers giving Rapid City as their business address.

The lands to be irrigated under license number 35 were located, according to the application, in sections 18 and 19, township 1 north, range 9 east, B.H.M. It should be noted that lands in this area are adjacent to but do not coincide with section 13, township 1 north, range 8 east, in which section 13 you claim that Herman Bausch owns land.

Further inquiry reveals that on page 77 of the same record of water rights, permit number 45 was issued June 10, 1908. The record indicates that no license was issued. This permit was granted primarily for a power project which the applicants intended to build between one irrigation ditch and another. According to the application the point of diversion of the water was 710 feet south, 300 1/2 feet west of the N.E. corner of section 9 in township 1 north, Range 8 east in Pennington County, on the main line of the main Hawthorne ditch, about 3 miles from the head of the ditch. It appears to the writer in a very general sort of way that:

- (1.) Herman Bausch has in the past dealt with, or purchased water from the Hawthorne Ditch Co.
- (2.) In all probability he was not a member or a stock owner of the Hawthorne Ditch Co.
- (3.) The fact that he owned land in section 13 and bought water from the Hawthorne Ditch Co. would hardly be a proper basis upon which to claim water rights; tho the writer admits that this feature is, beyond any doubt, a legal question entirely beyond the province of our office to judge.
- (4.) In all probability his use of the water would depend, or has depended, entirely upon his business good will and his friendly relations with the Hawthorne Ditch Co.

You ask about priority. We are able to say merely this: water rights based upon "location notices" posted and filed in 1886 and 1890 antedate the present comprehensive water right law passed in 1907 and therefore may be of doubtful value in certain cases at issue, but probably not in all cases. We suggest that you consult the S.D. "Compiled Laws of 1929" p. 2604, par. 8220 and notes appended thereto. If you have difficulty in locating the officers of the Hawthorne Ditch Co. kindly drop us a line to that effect and we will be glad to assist in any way possible.

dfr/mb

Very truly yours,

D.F. Radaliff, Heating Engineer

320 South Street
Rapid City, South Dakota

January 12, 1970

Department of Agriculture
Irrigation Water Conservation
Pierre, S. Dak.

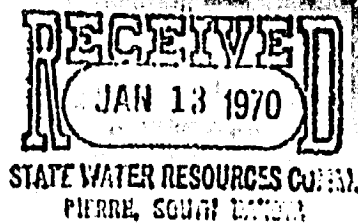
Dear Sirs,

I would like information concerning the irrigation water rights of the Hawthorne Ditch. I own 2.3 acres along this ditch. Would my water charge per acre be the same as a neighbor owning 40 or more acres? How much water am I allowed and when can I irrigate and for how long at one time? Also, if water is not used each year do I still pay a yearly charge? If my rates are not paid yearly do I lose my rights and then can they be obtained again? I have tried to obtain this information locally but to no avail, opinions seem to differ. So any information would be appreciated.

Yours truly,

Julius S. Matt

Julius S. Matt
320 South Street
Rapid City, S. Dak. 57701



January 16, 1970

Mr. Julius S. Matt
320 South Street
Rapid City, South Dakota 57701

Dear Mr. Matt:

Your letter of January 12, 1970 states you own 2.3 acres of land along Hawthorne Ditch and asks a number of questions pertaining to water charges and water service of the Hawthorne Ditch.

Hawthorne Ditch is, I believe, owned by several people. The degree of ownership of each of these people is based on the number of shares of stock of the Hawthorne Ditch Company that each owns. Irrigation ditches, such as the Hawthorne Ditch, are authorized to make charges for delivering water to people who irrigate from the ditch. The policies of such ditch companies, pertaining to water charges and delivery amounts and times are determined by the stockholders at Stockholder or Board of Director meetings. The stockholders normally designate a ditch manager to see that water is delivered in accordance with the policies determined by the stock owners.

The Hawthorne Ditch ownership thus determines the charges you are to pay to have water delivered to your 2.3 acres. This charge does not have to be the same price per acre for each irrigator. In most such ditches, I believe the small irrigation tracts pay a higher price per acre, one reason being that the smaller tracts normally require a higher degree of service per acre, than do the larger tracts.

There are a number of irrigation ditches which deliver water from Rapid Creek. Seven of these ditches, because of earlier water use are legally entitled to withdraw water from Rapid Creek before water is available to Hawthorne Ditch. While the authorized water right diversion rate of the Hawthorne Ditch is over 20 cubic feet per second, during much of the irrigation season, water in this amount and water in the amount desired by all of the irrigators along Hawthorne Ditch is not available. The Hawthorne Ditch ownership after considering how much water is available, how the water can be best used and after considering the different requests for water use from the ditch, determines how much water you are allowed, when you can irrigate and for how long at one time.

Mr. Julius S. Matt

Page 2.

January 16, 1970
Water Right 35-2

As a matter of information, ditch companies which have been in existence as long as the Hawthorne Ditch Company develop policies which cover most situations and it is not necessary to call many special meetings of the stockholders.

The ditch company has the right to charge you a yearly fee, even if you do not use water during the year, and I believe this is the usual custom. The ditch company also may refuse to deliver water because of non payment of past water service charges. After past due water service charges are paid, including legal interest charges, the ditch company normally would again deliver water when it is available as determined by its water service policies. If the land is not irrigated for a long period of time, South Dakota Water Laws do specify that the right to use water from the ditch on such land may be forfeited for nonuse.

While stockholders of ditch company, who also irrigate with water from the ditch do have some advantages, the ditch company has the responsibility to deliver water to those entitled to use it and assess water service charges in a fair and equitable manner. Subdivision of lands into small tracts quite often have a bearing in water delivery privileges from a ditch company.

The Water Resources Commission regulates the use of water as between the different water carrying ditches. Regulation of the use of water from one ditch is considered as being the responsibility of the ditch company. However water use inequities, of water use from one ditch, if reported to the Water Resources Commission will be investigated.

Sincerely,

J.W. GRIMES
Executive Officer
Water Resources Commission

JWG/DD/bw

South Dakota
Department of
Water & Natural Resources

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

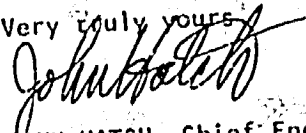
DEC 1 1988

Hawthorne Ditch
c/o Charles Johnson, President
1500 E 27th St
Rapid City SD 57701

Dear Mr. Johnson:

Enclosed are your Validated Vested Water Right and Water License No. 2039-2.
As long as you use the water beneficially, as stated in the Water License,
the 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

JH: ks

enclosures

The applicable portions of Water Right Nos. (35-2) 1152-2, 1153-2, 1190-2 and
Location Certificate Nos. 11702 and 6527 have been incorporated into No. 2039-2.

Equal Opportunity Employer