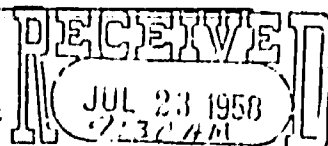


No. 491-2Water Division No. 2 Battle Creek District
(Blanks to be filled by the Engineer for the W. R. C.)STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT To Appropriative Water within the State of South Dakota

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

1. Name of applicant Sam Wedmore
Postoffice address Hermosa, County Pennington, State South Dakota

I. If a corporation -----

(a) Name of same -----

(b) Date and place of incorporation -----

(c) Amount of capital stock -----

(d) Amount paid in -----

(e) Names and addresses of directors -----

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

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

(a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)

Work completed.

(b) Cash on hand, \$----- (c) Treasury stock, \$-----

(d) Bonds to be issued, \$----- (e) Other resources, \$-----

2. Name of diversion work Charles Draw3. Amount of water claimed 2.8 cubic feet per second4. Source of water supply Charles Draw5. Location of point of diversion from S.E. corner of Section 26, T.2S. R. 9.E. B.H.M.
N. 30° 30' W. 1880 ft. to dam and point of diversion
on ----- bank ----- County.6. Annual period or periods during which water is to be used January 1 -- to January 1

7. To be used for:

1. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Gravity irrigation(a) Number of acres to be irrigated 800 acres.(b) Legal subdivisions to be irrigated See legal description attached below

(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.)

7.1(b) Legal subdivisions to be irrigated:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26; SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25. All in Twp. 2 S. Range 9 E. B.H.M.

(c) Location of plant -----

(d) Method of developing power -----

(e) Point where water will be returned to stream -----

 488-2
Map No.

8. Estimated cost of work:

(a) Head Gates, \$250.00 (b) Pumping plant, \$
 (c) Fluming, \$ (d) Canal-earth, \$2500.00 Rock, \$
 (e) Other structures earth dams \$2000.00 Total, \$

9. Description of diversion work:

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

Diversion dams, ditches and headgates

II. Dimensions of works:

(a) Dam: Height 10 feet; length at bottom 30 feet; length at top 200 feet; thickness at bottom 60 feet; thickness at top 10 feet; slope at front water face 3:1; slope at back face 2:1 material used in construction
 (b) Reservoir: Capacity when filled little or no storage acre feet. Surface area at highwater mark 2 acres.

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

(c)* Head gate: Width No gates feet; height feet; Material
 (d) Canal: Total length 12 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 Completed years. Completed
 11. Time required for complete application of water to the proposed beneficial use 1 years.
 12. Choice of newspaper for publication of notice of intention to appropriate Vested right no advertising required.

STATE OF SOUTH DAKOTA

County of Beadington } ss.

I, Sam Weidmore, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed Sam Weidmore

Subscribed and sworn to before me this 21st day of July 1958

Notary Public (or other qualified officer.)

State of South Dakota
County of Pennington ss.

I, Theodore Hesnard, owner of the
SE $\frac{1}{4}$ of Section 26, T.25, R.9E, do hereby
grant an easement for Right of Way for
dams and ditches as constructed and shown
on this plat.

S/ T Hesnard owner

Subscribed and sworn to before me this 19th
day of August 1935

S/ Turner Rudecil notary
Public.

WEDMORE IRRIGATION SYSTEM

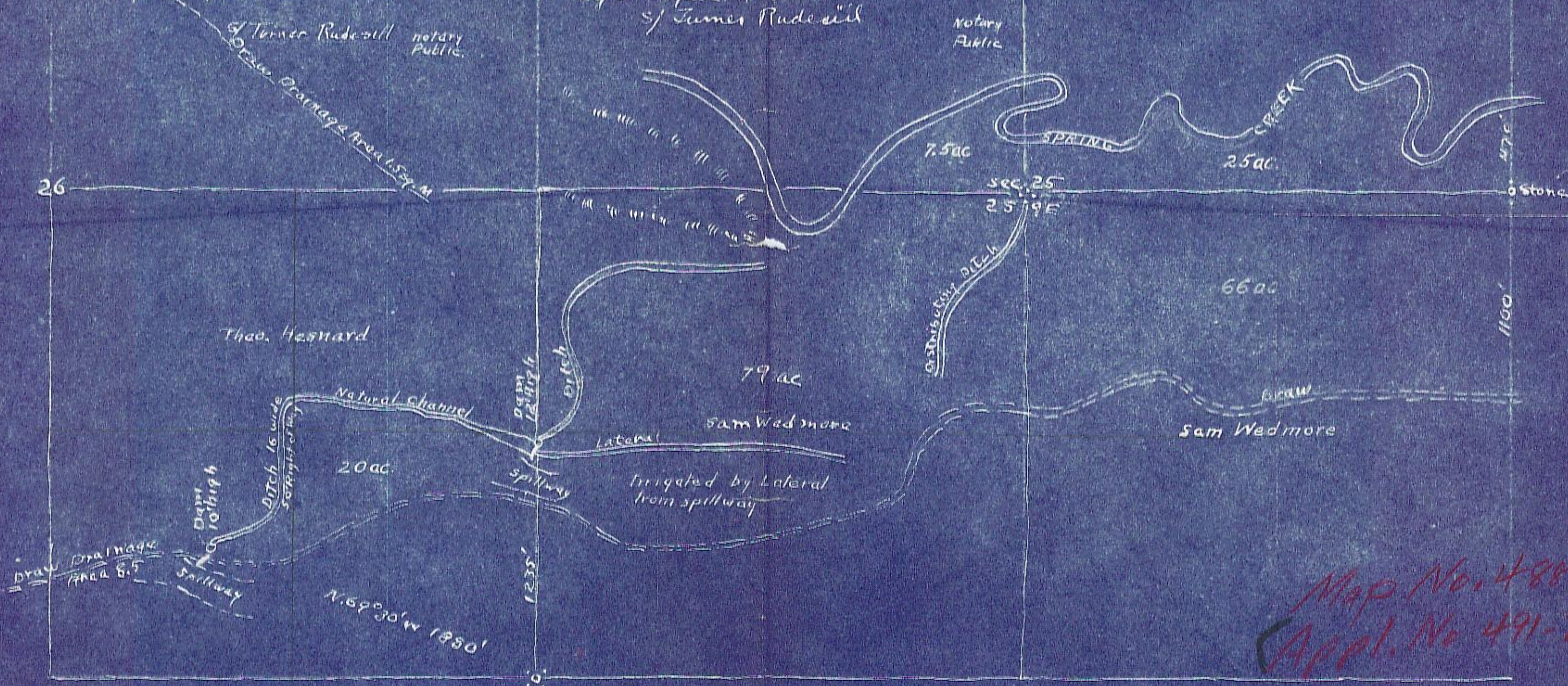
State of South Dakota
County of Pennington

I hereby certify that this plat
correctly represents the irrigation system
as constructed on secs 25 & 26 T.25 R.9E
of State Range

Subscribed & sworn to before me this
19 day of August 1935
S/ Turner Rudecil

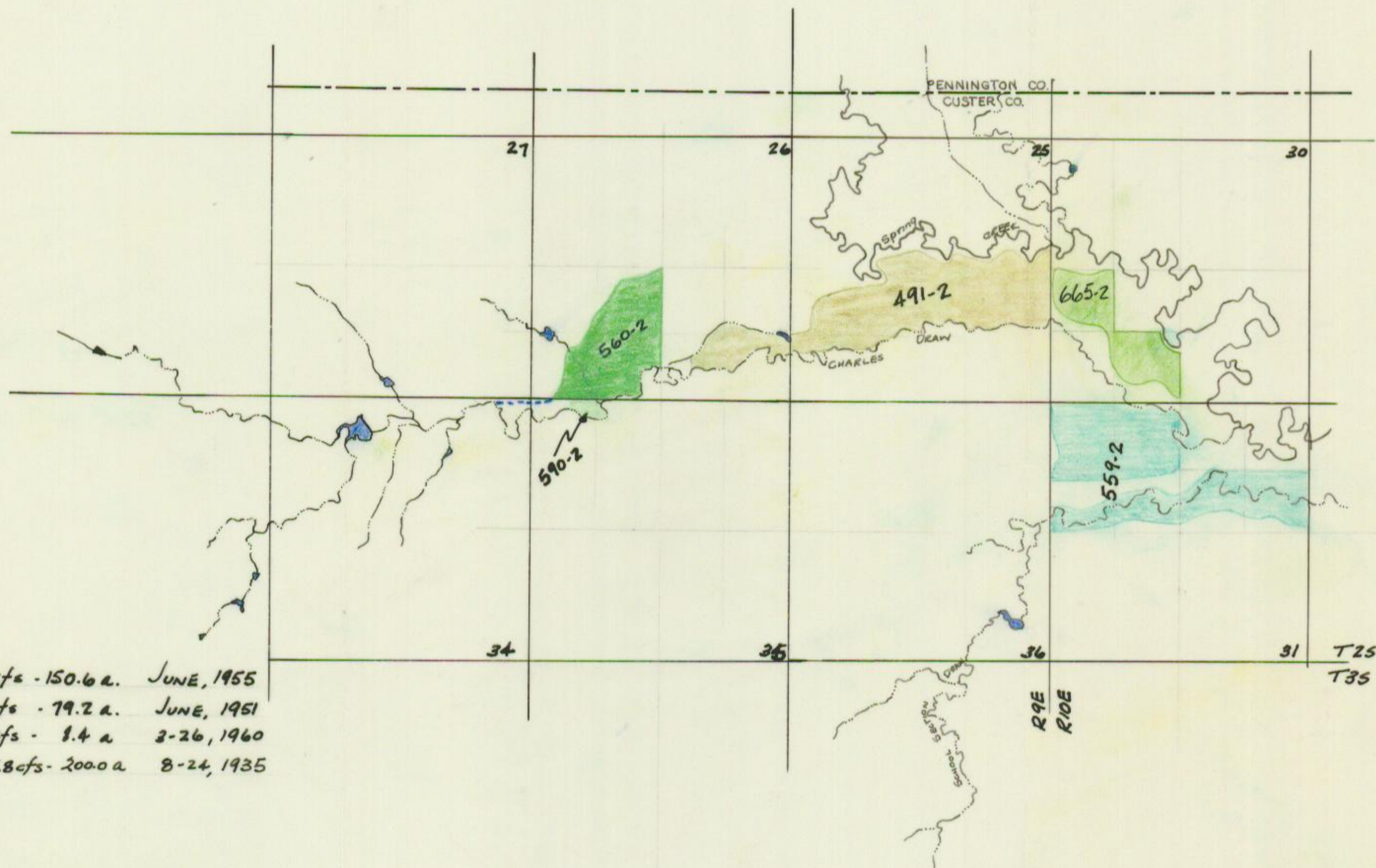
notary
Public

Sam Wedmore



Map No. 488-2
(Appl. No. 491-2)

Scale 500' = 1"



* 559-2 - EVANS - 2.1 cfs - 150.6 a. JUNE, 1955
 560-2 - EVANS - 1.1 cfs - 79.2 a. JUNE, 1951
 590-2 - EVANS - 0.12 cfs - 8.4 a. 8-26, 1960
 491-2 - WEDMORE - 2.8 cfs - 200.0 a. 8-24, 1935

* SOURCE OF WATER FOR 559-2 IS SCHOOL SECTION DRAW
 OTHERS ARE FROM CHARLES DRAW

Map # 549-2

(# 590-2)

Remarks by State Water Resources Commission:

Verted Right" Claimed

The diversion rate limitation of 1 cubic foot per second for each 70 acres irrigated shall not apply to this Dry Draw Irrigation diversion during periods of flood flows, when such flows are in excess of the amount of water required to satisfy domestic use requirements and other water rights.

STATE OF SOUTH DAKOTA

County of Blair

ss.

Pierre, South Dakota.

August 6, 1958

This is to certify that the foregoing application was received by the Commission at 9:30 o'clock

9 m. upon the 23 day of July, 1958

State Water Resources Commission

By:

J. C. Rimes

Chief Engineer, Executive Officer

Number of permit 491-2

Date of first receipt of application July 23, 1958

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right August 24, 1958

Approved August 5, 1958, Recorded in Book 2 Page 17

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we 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 _____

Completed, 19____

2nd. The whole of said work is to be completed on or before Completed, 19____

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

Completed, 19____

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

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

6th. The amount of the appropriation herein granted shall not exceed 2.8 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before Completed, 19____; said water to be used during the following described annual period:

Continuously

Witness my hand this 19 day of August, 1958

State Water Resources Commission

By:

J. C. Rimes

Chief Engineer, Executive Officer

Certificate of Construction Issued August 19, 1958

Water License Issued August 19, 1958

Permit No. 491-2Water Division No. 2 Battle
Creek Water District**Certificate of Completion of Works**

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That Sam Wedmoreof Hermosa, County of Custer, and State ofSouth Dakota, the holder of Permit No. 491-2 issued upon ApplicationNo. 491-2, bearing date of priority of August 24, 1935, authorizing the diversion of2.8cu. ft. per second of the waters of Charles Draw,County of Custer, State of South Dakota, at 1280 feet. N 69°30'W of the SE Cor., Sec. 25, T 2 S, R 9 E B1Mfor irrigationpurposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of completion of the works of diversion set out and described in said Permit, that said works are found in satisfactory condition for diverting and conveying to the place of intended use 2.8 cu. ft

per second of water; and that the lands proposed to be irrigated by the use of said water are described as follows,

to-wit: SW 1/4, SE 1/4, Sec. 25; SE 1/4 NW 1/4, NW 1/4 SW 1/4, NE 1/4 SW 1/4, SE 1/4 SW 1/4,SW 1/4 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4, and NE 1/4 SE 1/4, Sec. 25 all in T 2 S, R 9 E B1M200 acresWitness my hand this 19th day of August A. D. 1938

State Water Resources Commission

By:

J. W. GRIMES, Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

WATER LICENSE No. 491-2

WHEREAS, On the 23rd day of July A. D. 1958

Sam Wedmore

of Hermosa County of Custer and State of South Dakota duly made application (No. 491-2) to us for a Vested Right 2.8 cubic feet per second of the waters of Charles Draw County of Custer, State of South Dakota, for irrigation purposes; and

WHEREAS, On the 19th day of August A. D. 1958 Vested Right Permit No. 491-2 was issued to said applicant... for the diversion of said water, and recognizing completion of the works of diversion therein described on or before the 24th day of August A. D. 1955 and for the application to beneficial use of said water on or before the 24th day of August A. D. 1955 and,

WHEREAS, On the 23rd day of July A. D. 1958 the holder... of said Vested Right permit duly made proof of the completion of adequate works for the diversion of 2.8 cubic feet per second of said waters, as evidenced by our Certificate No. 491-2 dated August 19, 1958 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 2.8 cubic feet per second of water, with date of priority of August 24, 1935 and,

WHEREAS On the 23rd day of July A. D. 1958 proof was duly made of the application to beneficial use of 2.8 cubic feet per second of said water; on 200 acres located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 26; SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 25 all in T 2 S, R 9 E DIM

J. W. GRIMES Chief Engineer, Executive Officer

Water License No.	
To	
Source of Supply	
	County
Am't	c. f. s.
Point of Diversion	
Place of Use	
Purpose	
Date of Priority	
Recorded	
In Book	of Page

Location No. 491-2Water Division No. VBattle Creek Water DistrictRec'd
7/13/35-8
Jew**Proof of Application of Water to Beneficial Use****PETITION OF HOLDER**

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

Ans. Sam Wedmore, rancher, Harmon, South Dakota

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. - - - - -

Ques. 3. State date of posting and date of recording notice of appropriation.

Ans. August 24, 1935

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

Ans. A dry draw from the S.E. corner of Section 26, T. 23, R. 9E.
B.H.M. N. 69° 30' W. 1860 ft. to dam and point of diversion

Ques. 5. Describe your works of diversion giving length and height of each dam 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, and date of completion of same.

Ans. 1 dam 200.0 feet long and 10.0 feet high, 1 dam 100.0 feet long
and 120 feet high, 8000.0 feet main ditch. System was completed in
1935.

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.)

Irrigation 57 1/4Ans. SW 1/4 SE 1/4 and SE 1/4 SW 1/4 of Section 26: SE 1/4 NW 1/4, NW 1/4 SW 1/4, NE 1/4 SW 1/4, SW 1/4 SW 1/4,
SE 1/4 SW 1/4, SW 1/4 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4 and NE 1/4 SE 1/4 of Section 25. All in Twp.
2 S. Range 9 E. B.H.M.

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

Ans. No other use.

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

Ans. 2.3 sec/ft

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. Issued to present holder

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

Ans. All water has been used for irrigation as and when it was available.

1925 to 1930 (the 21st November 1930)
Noted by the Director of the Survey on 21st Nov 1930

(Sign) James T. Williams

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 21st day of July A D 1928

Witnesses. Colonel Marsh
Notary Public

I, the undersigned, do hereby certify that I am a duly qualified elector residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Terrence Rusk

Location No.-----	
PROOF OF APPLICATION OF WATER TO BENEFICIAL USE	
PETITION OF HOLDER	
Amount of Water----- c. f. s.	
Source-----	
County-----	
Purpose-----	
Place of Use-----	
Date of recording-----	
Received and filed-----	

November 29, 1960

Mr. Sam Wedmore
Harmona, South Dakota

Dear Mr. Wedmore:

At the Range Management meeting last week, I promised to look into the water right situation on Charles Draw and let you know.

Three water rights, 560-2, Irvin Evans, 590-2 Irvin Evans and your own 491-2, are matters of record of Charles Draw in the vicinity of your land. A fourth, 559-2 Irvin Evans, is below you on the draw. The location of these water rights are shown on the enclosed map.

These water rights are listed below in order of priority:

491-2, Sam Wedmore, 2.8 cubic feet per second to irrigate 200 acres in Sec's. 25, 26, T 9 S, R 2 E with priority date August 24, 1935. This is a "vested right" water right record.

560-2, Irvin H. Evans, 1.1 cubic feet per second to irrigate 79.2 acres in the SW $\frac{1}{4}$, Sec. 26, T 9 S, R 2 E with priority date June 1951. This is a "vested right" water right record.

559-2, Irvin H. Evans, 2.1 cubic feet per second to irrigate 150.6 acres in the N $\frac{1}{4}$, Sec. 31, T 9 S, R 3 E with priority date June 1955. This is a "vested right" water right record.

590-2, Irvin H. Evans, 0.12 cubic feet per second to irrigate 8.4 acres in the NW $\frac{1}{4}$, Sec. 35, T 9 S, R 2 E with priority date March 26, 1960.

Sam Wadmore

2

November 29, 1960

Apparently, the storage reservoir, to which you referred during our talk, is located in the NW 1/4, Sec. 33, T 9 S, R 2 E. No record of this reservoir was made under water right 560-2. Storage of 103.4 acre feet was included in water right 590-2. The reservoir is shown on official maps prepared by the United States Geological Survey in 1953 and no doubt was and is used to supply water for diversion to lands under water right 560-2.

Under provisions of the State water laws, Mr. Evans should allow water to pass his diversion point for water right 560-2 and 590-2 in the amount of 2.8 cubic feet per second during periods that you need water, or, if agreeable to both of you, a larger amount for correspondingly shorter periods of time whenever water is flowing in the draw immediately above his dam. He is not required to furnish water from his dam for this purpose when water is not flowing into his reservoir.

Because of these conditions and because both your water right, 491-2, and his water right, 560-2, were established under "vested right" provisions of the new State water laws (meaning that the water right records were established by you and Mr. Evans covering irrigation use of water prior to July 1, 1955 but not having acquired water rights under provisions of then existing state water laws), I believe that the best solution to your problem and his duties with respect to your water right would be to agree among the two of you to a sharing of the water supply. If you arrive at some agreement it would be well to let me know what it is so that I can make it a part of your and his water right record. If you cannot agree with Mr. Evans as to a satisfactory sharing of the water supply in Charles Draw let me know and I shall take the matter up officially.

Sincerely,

J. W. GRIMES
Executive Officer

JWG:ls

0281-2
0489-2
491-2

March 31, 1967

Mr. Sam Wedmore
Hermosa, S.D.

Dear Mr. Wedmore:

In looking at some of the files, we find there was a transfer of a water permit dated March 5, 1957 from J. C. McClelland, William F. McClelland, and T. M. Donaldson to Mrs. Lola O'Neill (through Harold Charles and others) and this covers the following described land:

SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30; W $\frac{1}{2}$ S $\frac{1}{2}$ Section 29, all in T2S, R10E.

Also, there is a water right transfer dated March 5, 1957 from the O. J. Adams (estate) to Loren O'Neill (through Elba Williams and others). This reference to water permit #0489-2 includes the following explanation:

"I bought and have been irrigating part of the W $\frac{1}{2}$ (about 160 Ac) Sec. 19 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ (about 60 Ac.) Sec. 30, all in T2S, R10E. I also have irrigated the above mentioned lands every year since 1941 when the land was purchased".

We do not have on record of transfer involving these two water rights - 0281-2 and 0489-2 - to your name. If this is the land you own, there should be on file in this office a transfer of that water right to you.

Water right #491-2 refers to the water right you have on Charles Draw.

It appears there are some steps that should be taken to up-date water rights 0281-2 and 0489-2. I would suggest that you come to the office at your convenience to discuss with members of the staff the status of these water rights as you take steps to have them transferred to your name, if these water rights involve the land which you own.

Mr. Richard Schmoyer is our water right specialist and I would recommend that you see him when you come in. The other members of our staff are Mr. Burton F. Jones who has served as water right specialist for many years; Mr. Donald Driscoll, our field engineer; and myself. We are frequently out of the office on field trips or attending meetings, but Mr. Schmoyer is likely to be at the office at all times.

However, presently he plans to be out of the office from April 11th through the 14th attending a conference.

Mr. Sam Wadmore

(continued)

March 31, 1967

I would also suggest that when you come into the office you bring with you any papers you have which relate in any manner to water rights you now have or claim.

Sincerely,

RAYMOND F. LUND
District Specialist

RFL/mf

191-2
Sam Wedmore

March 30, 1950

OFFICIAL OPINION

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

Dear Mr. Loucks:

Your letter of the 6th instant requests my opinion as follows:

"The land comprising the above project was purchased by two parties. The 1/4 section upon which the point of diversion is located was purchased by Wm. Melche of Iowa. The remainder of the land, including most of the irrigated land was purchased by Sam Wedmore. Mr. Wedmore wishes to irrigate his land. The less expensive way to do this would be to divert from a point downstream from the original point of diversion located just across the line on his own property.

"The question is - can this office change the point of diversion or authorize a second point of diversion on this same project and retain for Mr. Wedmore the original date of priority which the original right carries; namely, October 22, 1890."

The water right location notice attached to your letter is returned herewith. It defines "eight hundred (800) inches, miners measurement under a six inch pressure of the water of Spring Creek in said County, being the whole of the waters of said Creek at the points hereinafter designated, to-wit: Such waters will be diverted from the bed of the stream of said Spring Creek at a point near and just west of the Northeast corner of the Northwest quarter (NW¹/₄) of the Northwest quarter (NW¹/₄) of section number eight (8) in Township two (2) South

D. W. Loucks

-2-

March 30, 1950

of range number nine (9) East of the Black Hills Meridian in said County and State, and will be conducted from said point in a southeasterly and easterly direction in ditches, flumes and pipes or in either thereof to a point just southerly from the center line of section nine (9) in Township two (2) South of range nine East Black Hills Meridian. Such point being on or near the East line of said Section nine (9) and said waters will be conducted from said last point in a southerly direction on or near the East line of said Section nine (9) to the natural channel of said Spring Creek and said waters so diverted will be used for mining, milling, manufacturing, agricultural and domestic purposes and particularly will such waters be used for the purpose of irrigating said Sections five (5) eight (8) and nine (9)."

Certain information does not appear in your letter, and, therefore, certain assumptions must be indulged. These are that the water right, after being acquired, became appurtenant to Sections five (5), eight (8), and nine (9), and that Mr. Wedmore claims his share of the water right by virtue of his purchase of Sections five (5) and nine (9), to which lands a portion of the water right is now appurtenant. The general tenor of your letter read in conjunction with the quoted portions of the water right location notice, S.D.C. 61.0141 which provides,

"All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used . . .",

March 30, 1951

and the general law regarding passage of water rights appurtenant to land,

"The water right will pass as an appurtenance in parts on a sale of the land in parts. In subdividing a tract it will be presumed that a water right passes in proportion to the relative size of the subdivision." Wiel, Water Rights in the Western States, 3rd Edition, Section 553 Page 592,

makes it appear that these assumptions are probably what is in fact the actual situation.

D.D.C. 61.0142 provides:

"Any appropriator of water . . . may change the place of diversion . . . in the manner and under the conditions prescribed by this Chapter."

and, attesting that this is the general law, it is stated in 56 Am. Jur. 756,

"A prior appropriator of water from a stream may change the point of diversion and the place of use without affecting his right of priority so long as the rights of others are not thereby injuriously affected."

It must, I think, be conceded that a single appropriator may change his point of diversion without loss of priority. Our question becomes one of whether one of several users of water at a single point of diversion may establish a new point of diversion as to his share of the water without loss of priority.

At the outset it must be recognized that tenants in common in a single water right cannot partition the right.

Wiel, Water Rights in the Western States, 3rd Edition, Section 320, Page 343.

This, in effect, means that no second point of diversion could be had by among tenants in common. But when there is

D. W. Loucks

-4-

March 20, 1950

a common point of diversion and the respective shares of the appropriated water are applied to separate lands, there is not such a unity of possession as will constitute tenancy in common, and the respective owners in the water right may thereafter obtain and have separate and distinct points of diversion, provided that the change does not damage or infringe the rights of others.

City of Telluride vs. Davis (Colo.) 80 Pac. 1051.

I therefore conclude, assuming the assumptions I have indulged are in order, that Mr. Usdmore may establish a new point of diversion as to his share of the water without loss of priority subject to the approval of the State Engineer as provided by S.D.C. 61.0123.

Yours very truly,

Sigurd Anderson
Attorney General

WJF:jb

 **Department of
Water & Natural Resources**

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

491-2

September 19, 1988

Wesley Harrison
RR #3 Box 4
Hermosa, SD 57744

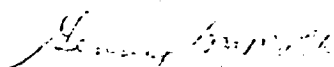
Dear Mr. Harrison:

I am contacting you in regard to Vested Water Right Claim No. 491-2, currently listed in the name of Sam Wedmore. A notation in our files indicates you now own the land specified in No. 491-2 (copy enclosed)

Enclosed is a partially completed "Notice of Transfer" for use in filing an ownership change on Vested Water Right Claim No. 491-2. Please check over the form and sign in the presence of a notary public. Upon completion of the form, return it to our office with a required filing fee of \$2.50. The vested water right claim will then be transferred to your name.

Also enclosed is a copy of the notice concerning validation of vested water right claims, originally sent to Mr. Wedmore. If you have any questions, please contact us.

Sincerely,

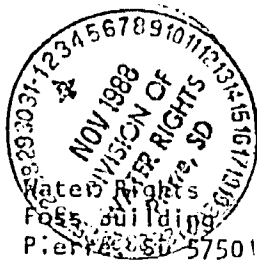


GENNY MCMATH
Natural Resources Analyst
605 773-3352

enclosure



NO. 491-2



NOTICE OF TRANSFER OF WATER PERMIT

TO:

Date: _____

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

200 acres - S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 26; SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 25,

all in T2S, R9E, BHM

formerly owned by Sam Wedmore

has been transferred to Wesley Harrison, HCR 83, Box 4, Hermosa, SD 57744

(please include complete mailing address)

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

Water Right Permit No. 491-2 as provided for in SDCL 46-5-32 and 46-5-33.

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

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

STATE OF SOUTH DAKOTA)
County of _____) ss.

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

Wesley Harrison
(Signed)

Subscribed and sworn to before me this 28th Day of October, 1988.

Donald R. Brudick
(Notary Public) Comm. Exp. 3-13-95

 **Department of
Water & Natural Resources**

Joe Foss Building Water Rights Division
Pierre, South Dakota 57501 Phone (605) 773-3352

November 7, 1988

Wesley Harrison
HCR 83, Box 4
Hermosa, South Dakota 57744

Dear Mr. Harrison:

Enclosed is receipt No. 411474 in the amount of \$ 2.50 which you
paid for transfer of Water Right No. 491-2.

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

Sincerely,

Maxine Stirling
Secretary

ms/
Enc.

RECEIPT

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

Pierre, November 1, 19 98

RECEIVED OF Wesley Harrison, HCR 33, Box 4, Hermosa, SD 57744
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____ Permit No. 421-2		
Fee for Filing Extension Request _____		2 50
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)		
Total	2	50

By John Hatch
Chief Engineer JOHN HATCH



Department of Water & Natural Resources

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

September 21, 1988

NOTICE

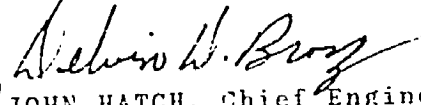
Welsey Harrison
Rt 3, Box 4
Hermosa SD 57744

Dear Mr. Harrison:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 491-2, 510-2 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

A staff member from the Division of Water Rights will be contacting you and scheduling an inspection of your water project. If we can answer any questions, please contact us.

Very truly yours,

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



Report for Validation of Water License No. 491-2

Upper Cheyenne - Water District
Wesley R. Harrison
HC 83 Hermosa, SD 57744
September 26, 1995

Water License No. 491-2 requires validation of the vested right claim for the appropriation of 2.80 cubic feet of water per second from surface runoff to irrigate 200 acres. The construction date for the system originally applied for was August 24 1935.

An inspection of Water License 491-2 revealed a diversion point located in the SW 1/4 SE 1/4 Sec. 26 T2S-R9E (1720 feet west and 650 feet north of the SE corner Sec. 26 T2S-R9E). The works are capable of diverting and conveying to the place of use 2.53 cu. ft. per second of water which is to be used for irrigation purposes. Water has been put to beneficial use to the maximum extent as shown in Table 1.

The system is in the following condition fair.

The inspection revealed a reduction in acreage from the time of application from 200 acres to 177.0 acres with 2.53 cfs as detailed in the Table 1. As indicated in Table 1 there are 4.5 acres in the N1/2 of the SE1/4 Section 26 T2S-R9E which need to be advertised and included in the project.

Table 1. Lands applied for under Water License No. 491-2 all in T2S-R9E.

1/4, 1/4	ACRES IN APPLICATION	PRESENT ACRES IRRIGATED
NW1/4 SE1/4 SEC. 26	on map-not in application	1.0
SW1/4 SE1/4 SEC. 26		6.5
NE1/4 SE1/4 SEC. 26	on map-not in application	3.5
SE1/4 SE1/4 SEC. 26		9.0
NW1/4 SW1/4 SEC. 25		22.5
SW1/4 SW1/4 SEC. 25		10.5
NE1/4 SW1/4 SEC. 25		33
SE1/4 SE1/4 SEC. 25		3.5
SE1/4 NW1/4 SEC. 25		7.5
SW1/4 NE1/4 SEC. 25		7.0
SE1/4 NE1/4 SEC. 25		11.0
NW1/4 SE1/4 SEC. 25		32
NE1/4 SE1/4 SEC. 25		30
TOTAL	<u>200</u>	<u>177 acres @ 2.53cfs</u>

The water is utilized for stock watering and irrigation via a water spreading system of 180.5 acres located in the SE 1/4 Section 26, S 1/2 Section 25, S 1/2 N1/2 Section 25 in T2S-R9E.

Conclusions

1. The project consists of a diversion dam diverting water to a gravity water spreading system. The system was inspected and found to exist with a reduction in the number of acres irrigated to 177.0 acres at 2.53 cfs.
2. Water has been used when available since the time that the system was constructed.
3. The priority date for this vested water right claim should be August 24, 1935 for 2.53 cfs.
4. No increase in the diversion rate or the number of acres irrigated authorized by the vested right application.



DelRon V. Peters
Natural Resources Engineer
DENR

File No. 491-2

Water Rights Program -- File Documentation

NAME: Wesley Harrison

ADDRESS: HC 83 Hermosa, SD 57744

DATE: May 22, 1996 **COUNTY:** Custer

RE: Readvertisement of acreage in N1/2 of SE1/4 Section 26 T2S-R9E.

COMMENTS:

Vested Water Right 491-2 has 4.5 acres in the N1/2 of SE1/4 Section 26 T2S-R9E which has not been advertised. The map shows these acres but they were not included in the application. Readvertise for 1 acre in the NW 1/4 SE 1/4 and 3.5 acres in the NE1/4 SE 1/4 all in Sec. 26 T2S-R9E.


DelRon Peters, Natural Resources Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 26, 1996

Wesley Harrison
HC 83
Hermosa SD 57744

Dear Mr. Harrison:

A Notice of Intent to validate Claim No. 491-2 was published on June 22 and 29, 1988 in the Custer County Chronicle. The Water Rights Program opposed validation of No. 481-2 for purposes of completing an on-site investigation of the claim. The investigation of Claim No. 491-2 was completed on September 26, 1995, by DelRon Peters, staff engineer. The investigation found no change in the number of acres being irrigated and amount of water claimed.

The 1988 Notice was published with an error. The notice did not include the land irrigated in the N 1/2 SE 1/4 Section 26. Therefore, the notice needs to be readvertised to include these lands. 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 Water Rights Program. Please contact us if you have any questions.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

Affidavit of Publication

STATE OF SOUTH DAKOTA

COUNTY OF CUSTER

)
)SS.
)

James Anderson

of said county, being duly sworn, on oath says that she is publisher or 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 Dept. of Environment

and Natural Resources

Readvertisement of Notice
of Intent

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 which said newspaper was regularly published, to wit:

9-5, 1996; 19 ;
9-12, 1996; 19 ;
 19 ; 19 ;
 19 ; 19 ;
 19 ; 19 ;

the full amount of the fees for the publication of the annexed notice is \$ 68.49

James Anderson
Subscribed and sworn to me before this 25th
of September 1996;

Don Zuehl
Notary Public

My commission expires: May 14, 2001

READVERTISEMENT OF NOTICE OF INTENT

TO VALIDATE VESTED WATER RIGHT CLAIMS

Notice is given that the following vested water right claims in Custer County are eligible for validation by the Water Management Board. Readvertisement of the notice of intent to validate these claims, as published on June 22 and 29, 1988 in the Custer County Chronicle is necessary to correct errors in the previously published notice.

Vested Water Right No. 491-2, Wesley Harrison, LLC 83, Hermosa SD 57744 appropriates 2.53 cubic feet of water per second (cfs) from a dry draw dam located in the SW1/4 SE1/4 Section 26-T2S-R9E to irrigate 177 acres. The lands irrigated are located in the SE1/4 Section 26; SW1/4, N1/2 SE1/4, SE1/4 NW1/4, S1/2 NE1/4 Section 25; all in T2S-R9E. The priority date is August 24, 1935.

Vested Water Right No. 1209-2, Edward and Betty Kanesky, PO Box 52, Caputa SD 57725 appropriates 1.07 cubic feet of water per second from Battle Creek located between points located in the NW1/4 NW1/4 and the SE1/4 NW1/4 Section 4-T4S-R10E. The 75 irrigated acres are located in the NW1/4 Section 4-T4S-R10E, and S1/2 SW1/4 Section 33-T3S-R10E. The priority date is September 29, 1900.

Vested Water Right No. 1221-2, Riuberger Brothers, LLC 55 Box 19, Buffalo Gap, SD 57722 appropriates 0.94 cfs from Battle Creek located between points located in the SW1/4 NE1/4 and the SE1/4 NE1/4 Section 4-T4S-R10E. The 66 irrigated acres are located in the S1/2 NE1/4, NE1/4 SE1/4, SE1/4 NW1/4, NW1/4 NE1/4 Section 4-T4S-R10E. The priority date is September 29, 1900.

Any person who wishes to oppose validation of the readvertised vested right claim shall file a petition of intent to oppose the validation by September 20, 1996 with the Chief Engineer, Water Rights Program, 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.



COUNTY OF CUSTER

of said county, being duly sworn, on oath says that she is publisher or _____ 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 Dept. of Environment

and Natural Resources
Readvertisement of Notice
of Intent

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 which said newspaper was regularly published, to wit:

9-5, 1996: _____, 19____;
9-12, 1996: _____, 19____;
_____, 19____: _____, 19____;
_____, 19____: _____, 19____;
_____, 19____: _____, 19____;

the full amount of the fees for the publication of the amended notice is \$68.69

Subscribed and sworn to me before this 25

of September, 1996;

Notary Public

My commission expires: May 14, 200

REA
N

REAR **THE ELEMENT OF**
consider this vested water right claim at 10:00 am, October 2, 1996, Floyd Matthew Training Center, Joe Fors Building, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) validate the claim as recommended, 2) validate the claim as licensed prior to the on-site investigation, 3) validate the claim based on evidence presented at the public hearing, 4) defer validation of the claim. The October 2, 1996 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 September 20, 1996. This validation will be held by September 20, 1996.

This validat
 R the provisions of S
 ii 46-1-14; 46-2-3.1,
 S 46-2A-16 thru 46-
 1 thru 46-5-6.1, 46-
 15, 46-5-30.2 thru
 49; 46-6-1 thru 4/
 6-10, 46-6-13, 46/
 46-7-5.3, 46-7/
 Board Rules
 74:02:01:05
 74:02:01:22
 Contain
 made pursuant to
 46-1-1 thru 46-1-9;
 46-7-11, 46-2-17;
 46-2A-22; 46-5-1
 46-5-13 thru 46-5-
 5-7-1, 46-5-46, 46-5-
 6-6-5, 46-6-6.1, 46-
 46-6-21, 46-6-7.1 thru
 14, 46-7-15 and
 4:02:01:01 thru
 4:02:01:20 thru

20, 1996, at the address to: I pertaining to of the veste another cot South Dakota Informal hearing I interest H. My Environ



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

DEC 26 1996

Wesley Harrison
HC 83
Hermosa SD 57744

Dear Mr. Harrison:

The Water Management Board has validated the enclosed Vested Water Right Nos. 491-2 and 510-2. These validations give legal status to the claims and are the final document for your vested right. Enclosed are the reissued water licenses which reflect the acreage and the diversion rates as validated by the Board.

Also, enclosed are Location Notice Water License Nos. 1214-2, 1419-2, 1420-2, 1421-2, 1422-2, 1424-2, 1425-2, and 1426-2, as well as the receipts for transfer of the location notices and water right.

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

Very truly yours,

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

enclosures

SOUTH DAKOTA

VESTED WATER RIGHT NO. 491-2 FOR IRRIGATION

Date of Receipt of Claim July 23, 1958.

Date of Validation October 2, 1996.

The Water Management Board validated Vested Water Right Claim No. 491-2 for irrigation purposes for Wesley R Harrison, HC 83, Hermosa SD 57744 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 491-2 appropriates 2.53 cubic feet of water per second from a dry draw dam located in the SW 1/4 SE 1/4 Section 26-T2S-R9E to irrigate 177 acres. The lands irrigated are located in the SE 1/4 Section 26; SW 1/4, N 1/2 SE 1/4, SE 1/4 NW 1/4, S 1/2 NE 1/4 Section 25; all in T2S-R9E
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. The water is to be used during the following annual period: January 1 - December 31.
3. The priority date of the Vested Water Right is August 24, 1935.
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 must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: _____

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

DEC 26 1996

date



STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 491-2 FOR IRRIGATION

(1) Sam Wedmore, Hermosa SD made Application No. 491-2, July 23, 1958 for validation of a vested right claim to appropriate 2.8 cubic feet of water per second from a dry draw dam (Charles Draw), Custer County, South Dakota, for irrigation purposes. Vested Water Right No. 491-2 with a priority date of August 24, 1935 was issued to the applicant with construction of the described water supply system and application of water to beneficial use completed.

On November 1, 1988, Vested Water Right No. 491-2 was transferred to Welsey Harrison.

On October 2, 1996, the Water Management Board validated Vested Right No. 491-2. Vested Right No. 491-2 is being reissued to reduce the amount of water claimed and the number of acres being irrigated, based on a September 8, 1995 inspection of the system.

(2) The vested right owner is entitled to divert 2.53 cubic feet of water per second for beneficial use. The location of the diversion point is: 1,720 feet west and 660 feet north of the southeast corner of Section 26-T2S-R9E (SW 1/4 SE 1/4).

The location of the irrigated acreage is: all in T2S-R9E

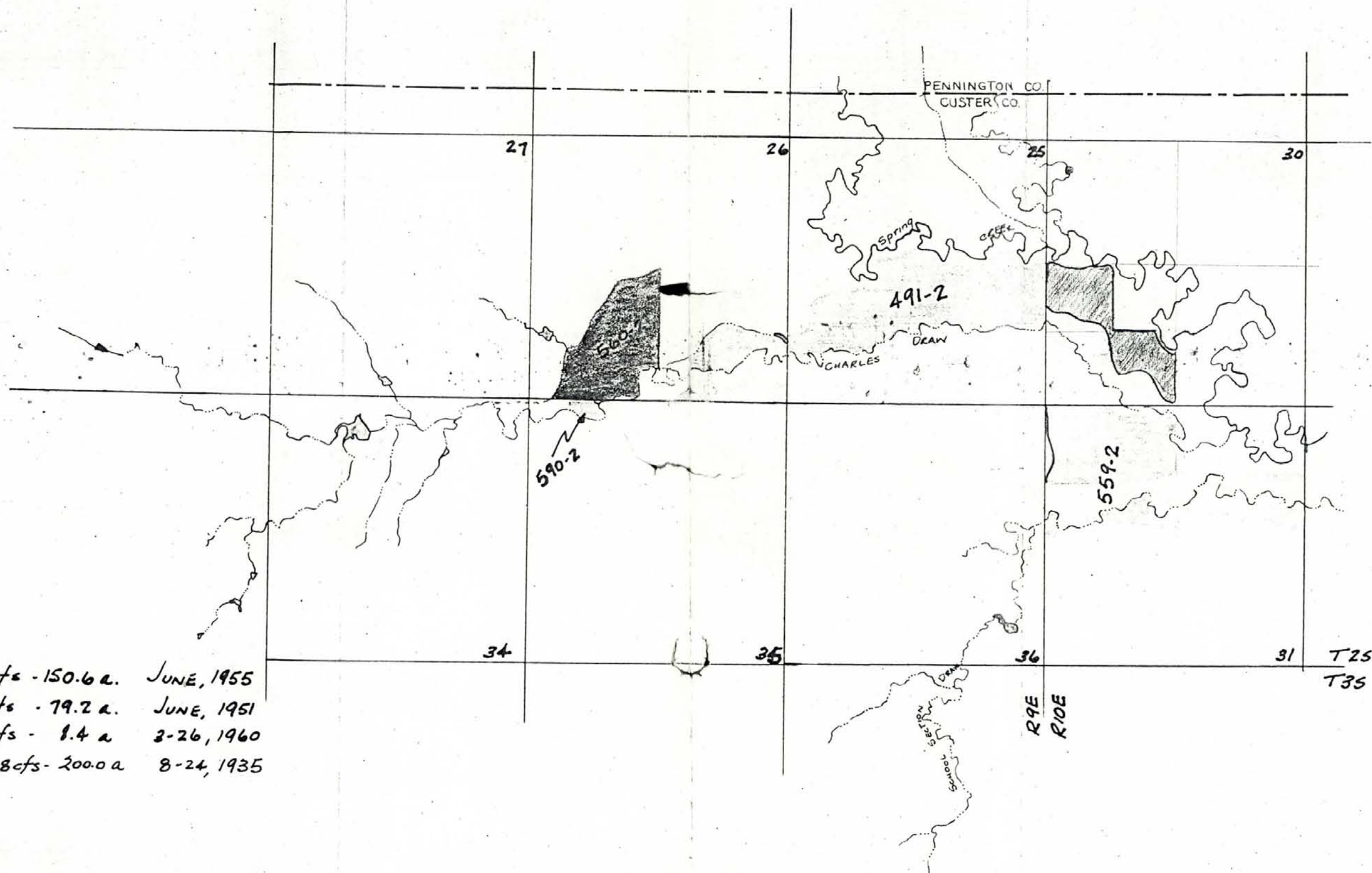
Sec 26	NW 1/4 SE 1/4	1.0 acre	Sec 25	NW 1/4 SE 1/4	32.0 acres
	SW 1/4 SE 1/4	6.5 acres		NE 1/4 SE 1/4	30.0 acres
	NE 1/4 SE 1/4	3.5 acres			
	SE 1/4 SE 1/4	9.0 acres	Sec 25	SE 1/4 NW 1/4	7.5 acres
Sec 25	NW 1/4 SW 1/4	22.5 acres	Sec 25	SW 1/4 NE 1/4	7.0 acres
	SW 1/4 SW 1/4	10.5 acres		SE 1/4 NE 1/4	11.0 acres
	NE 1/4 SW 1/4	33.0 acres			
	SE 1/4 SW 1/4	3.5 acres			
Total					177 acres

(3) Pursuant to Section 46-5-30.1 Welsey Harrison, HC 83, Hermosa SD 57744 the holder and/or owner of Vested Water Right No. 491-2 is issued a license to appropriate 2.53 cubic feet of water per second from a dry draw dam with a priority date of August 24, 1935 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 491-2 and subject to South Dakota State Law.


JOHN HATCH, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

DEC 26 1996

date



* 559-2 - EVANS - 2.1 cfs - 150.6 a. JUNE, 1955
 560-2 - EVANS - 1.1 cfs - 79.2 a. JUNE, 1951
 590-2 - EVANS - 0.12 cfs - 8.4 a. 3-26, 1960
 491-2 - WEDMORE - 2.8 cfs - 200.0 a. 8-24, 1935

* SOURCE OF WATER FOR 559-2 IS SCHOOL SECTION DRAW

OTHERS ARE FROM CHARLES DRAW

Map # 4882 (AP)

NOT TO SCALE



[illegible]

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79

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m29

59.1

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T556

TRANSFERRED TO
PENNINGTON CO.

T445



26

T557

#491 Walsby Harrison

#491 Walsby Harrison

TRANSFERRED TO
PENNINGTON CO.

90-L
m29

91-L
m30

T445

26

25

Div. Dam.

Dam

Spring Creek

ditch

ditch

NW $\frac{1}{4}$ SW $\frac{1}{4}$
22.5 Ac

7.5 Ac.
SE $\frac{1}{4}$ NW $\frac{1}{4}$

7.0 Ac. SWNE

11.0 Ac.
SE $\frac{1}{4}$ NE $\frac{1}{4}$

32 Ac.
NW $\frac{1}{4}$ SE $\frac{1}{4}$

30 Ac.
NE $\frac{1}{4}$ SE $\frac{1}{4}$

33 Ac.
NE $\frac{1}{4}$ SW $\frac{1}{4}$

Spreader
Dike

3.5 Ac. NW $\frac{1}{4}$ SE $\frac{1}{4}$
NE $\frac{1}{4}$ SW $\frac{1}{4}$
SE

10.5 Ac.
SW $\frac{1}{4}$ SW $\frac{1}{4}$

1.0 Ac.
NW $\frac{1}{4}$ SE $\frac{1}{4}$

3.5 Ac.

9.0 Ac. [T20H+west]
SE $\frac{1}{4}$ SE $\frac{1}{4}$

6.5 Ac.
SW $\frac{1}{4}$ SE $\frac{1}{4}$

6.0
4.9
13.0
28.0 Ac.
4.3

14.0
12.5
1.9

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T556

T556

Del Rm. Peter
Natural Resources Eng.
DENR
Sept 26, 1995

Total Acres = 180.5