

No. 55-2

OFFICE OF STATE ENGINEER
DOCUMENT FILE

Division No. 2 Fall River Dist.
Name of Applicant,
John L. Mayson & Grace M.
Mayson as joint owners.
Name of Division Work
Mayson Irrigation System;
Date of First Receipt Aug 19th 1908
Location of point of diversion
S. 2 E. 9: 8 feet from 14 corner between
Sec 28 & 29 T. 6. S. 8. E. B. H. M.

Beneficial Use Irrigation
Approved October 21st 1908
Recorded in Book 1 page 98

Remarks, This application
is for the right to appropriate
water from same Johnson Creek
in Carter County for irrigation
and domestic purposes. The permit
to appropriate 3.04 second feet of water
is issued under the usual restriction
that the priority of all valid water
rights on this stream be respected.

Water License No. 55-2 Nov. 27.
1914.

C O P Y

No. 55

Division No. 2 Fall River District

PERMIT

to appropriate water from Lamo

Johnny Crook

Custer County, South Dakota

Name of applicant John L. Maxson

and Grace M. Maxson, Joint Owners.

Name of diversion works Maxson

Irrigation System.

Date of first receipt at office of State

Engineer August 19, 1908.

Returned to applicant for correction

-190-

Corrected application received

-190-

Date of water right

August 19, 1908.

Recorded in Book -1- Page -98-

One-fifth of work to be completed

August 19, 1909.

Whole work to be completed

August 19, 1910.

Final proof of use of water

August 19, 1912.

Approved October 31, 1908.

Samuel H. Lea

State Engineer.

By B. B. Lee

Deputy.

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 11 day of November 1908

Samuel H. Lea

State Engineer.

By B. B. Lee

Deputy.

by said persons in the proposition 130/313 to Grace M. Maxson and 93/313 to John L. Maxson.

No. 55.

Water Division No. 2 Fall River Water District.
[Thanks to be filled by the State Engineer.]

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

[NOTE—Draw a line through items not applicable.]

I. Name of applicant John L. Maxson and Grace M. Maxson, as joint owners,
Postoffice address Buffalo Gap, County Custer, State South Dakota

1. If ~~a~~ corporation:

(a) Number of same

(b) Date and place of incorporation

(c) Amount of capital stock

(d) Amount paid in

(e) Names and addresses of directors:

[NOTE—A certified copy of articles of incorporation must accompany the application.]

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

(a) Method of accomplishing the work. (Whether by contract, employment of others, or by direct labor) Supply ditch by contract, balance direct labor(b) Cash on hand, \$ 1350.

(c) Treasury stock, \$

(d) Bonds or mortgages, \$

(e) Other resources, \$

2. Name of diversion works Maxson Irrigation System3. Quantity of water claimed, 3.04* cubic feet per second.4. Source of water supply Lane Johnnie Creek5. Location of point of diversion S. 6°30' E., 948 feet from 1/4 corner between Section 28 and 29 T. 6 S., R. 8 E., E. 1/4 on left bank
(Right or left bank looking down stream.)6. Annual periods during which water is to be used Continuously

7. To be used for:

I. Irrigation or domestic use:

(a) Number of acres to be irrigated 213 acres.(b) Legal subdivisions to be irrigated List appended hereto.

[NOTE—A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be attached here, or may be appended as a part of this application. Same must also be shown on accompanying map.]

(c) Statement as to domestic use (giving location, etc.) Water stock, horses, etc.

The lands to be irrigated are as follows:

120 acres lying upon W $\frac{1}{2}$ and S E $\frac{1}{4}$ of N W $\frac{1}{4}$; N $\frac{1}{4}$ S E $\frac{1}{4}$; and N W $\frac{1}{4}$ S E $\frac{1}{4}$; in Section 34, T. 6 S., R. 8 E., same being Desert Entry No. 1289, by Grace M. Maxson; and 93 acres lying upon S E $\frac{1}{4}$ Section 33, N E $\frac{1}{4}$ N W $\frac{1}{4}$; and N E $\frac{1}{4}$ S E $\frac{1}{4}$; Section 33; all in T. 6 S., R. 8 E., E. 1/2 E., same being land deeded to John L. Maxson; and said water right is to be owned by said persons in the proportion 120/213 to Grace M. Maxson and 93/213 to John L. Maxson.

29 of 31

5. Estimated cost of works:

(a) Head gates, \$ 25 (b) Pumping plant \$ 5000
 (c) Fluming, \$ 750 (d) Canal-earth, \$ 275 rock, \$ 5000
 (e) Other structures diverting-storage dams 300. Total, \$ 1350.

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.) diverting dam, supply ditch, storage reservoir, main ditch, laterals, small dikes.

II. Dimensions of works.

(a) Dam: Height 18 feet; length at bottom 150 feet; length at top 135 feet; thickness at bottom 96 feet; thickness at top 6 feet; slope of front (water) face 3 to 1; slope of back face 2 to 1; material used in construction earth, rock riprap.

(b) Reservoir: Capacity when filled 10 acre feet. Surface area at highwater mark 3.79 acres.

DEPTH AT OUTLET- FEET	SURFACE AREA AT EACH..... FEET OF DEPTH AT OUTLET- ACRES	CAPACITY- ACRE- FEET

(c) Head gate: Width two feet; height one feet
 Material timber

(d) Canal: Total length 3.1 miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At mile	1 feet	3 feet	4 feet	10.50 feet
At mile	feet	feet	feet	feet
Same size throughout.				
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 22 years.

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

"The Buffalo Gap Republican", Buffalo Gap, S. L.

STATE OF SOUTH DAKOTA

County of Pennington ss

I, Ivan E. Goodner, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Engineer, that I have read the above and

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

Signed Ivan E. Goodner

Subscribed and sworn to before me this 7th day of August 1907

George Williams,

Notary Public (or other qualified officer).

Remarks by State Engineer:

This application is for the right to appropriate water from Lamo Johnny Creek in Custer County, for Irrigation and domestic purposes. The Permit to appropriate 3.04 second-foot of water is issued under the usual restrictions that the priority of all valid water rights on this stream be respected.

STATE OF SOUTH DAKOTA

County of Hughes ss

Pierre, South Dakota, October 20, 1908.

This is to certify that the foregoing application was received at this office at 11 o'clock a m. upon the 19th day of August 1908 and that after examination it was found to comply with the provisions of the State Water Code. Notice of intention to appropriate was advertised and a hearing was held in this office Oct. 21, 1908. A protest was filed by Mike Pash who claimed prior rights, but an affidavit filed by Ivan E. Goodner states that no valid rights will be injuriously effected by this proposed appropriation.

Samuel H. Lea
State Engineer.

By B. B. Lea Deputy.

Number of permit 55

Date of first receipt of application August 19, 1908.

Date of return to applicant for correction - - - - - 190-

Date of receipt of corrected application - - - - - 190-

Date from which application may claim right August 19, 1908.

Approved October 21, 1908, Recorded in Book -1- Page -98-

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 August 19, 1909.

2d. The whole of said work is to be completed on or before August 19, 1909.

3d. The limit of time for proof of beneficial use of water appropriated in accordance herewith is August 19, 19012.

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 3.04 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 August 19, 19012; said water to be used during the following described annual periods.

When required for actual use.

Witness my hand this 20th day of October, 1908.

Samuel H. Lea
State Engineer.

By B. B. Lea Deputy.

Copy

STATE OF SOUTH DAKOTA

WATER LICENSE NO. ⁵⁵⁻⁴~~55-3~~

WHEREAS, On the 7th day of August A. D. 19 08

John L. Maxson and Grace M. Maxson

of Buffalo Gap County of Custer and State of South Dakota

duly made application (No. 55) to me for a permit to use -3.04-

cubic feet per second of the waters of Lake Johnny Creek

County of Custer State of South Dakota, for irrigation

purposes; and

WHEREAS, On the 29th day of October A. D. 19 08

Permit No. 55 was issued to said applicant, for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the August 19th day of

August A. D. 19 10 and for the application to beneficial use of said water on or before the 19th day of August A. D. 19 12

and.

WHEREAS, On the 27th day of March A. D. 19 14

the holder of said permit duly made proof of the completion of adequate works for the diversion of -3.04- cubic feet per second of said waters, as evidenced by my Certificate No. 55

dated March 24, 1914, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use -3.04- cubic feet per second of water, with date of priority of August 19, 1908 and.

WHEREAS, On the 27th day of March A. D. 19 14

proof was duly made of the application to beneficial use of -3.0- cubic feet per second of said water.

120 Acres in

For irrigation of the ^{79 Acres in} SE¹/₄, NW¹/₄, NE¹/₄ SW¹/₄ & NW¹/₄ Sec. 34, and SW¹/₄ Sec. 22, and NE¹/₄ NW¹/₄ & NW¹/₄ NE¹/₄ Sec. 33, all in Twp. 6-S., R. 8 E. 9M

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of South Dakota, I heroby grant and confirm to John L. Maxson and Grace M. Maxson of Buffalo Gap, S. D. the holder and owner of said permit No. 55 a water right, dating from August 7, 1908, to the use of -3.04- cubic feet per second of the waters of Lame Johnny Creek, in the County of Custer and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at S. 0°30' E., 248 feet from the corner between Sections 28 and 29, T. 6S., R. 8 E. E. 1/4 and conducted to and upon 1/2, SE 1/4 NW 1/4, NE 1/4 SW 1/4 & NW 1/4 SE 1/4 Sec. 34, and SW 1/4 Sec. 28, NE 1/4 NW 1/4, NW 1/4 NE 1/4 Sec. 33, all in Twp. 6S, R. 8 E. E. 1/4 for the purpose of irrigation

subject, nowever, 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, South Dakota, this 27th day of March A. D. Nineteen Hundred and fourteen

(S E A L)

Homer M. Derr,

State Engineer.

STATE OF SOUTH DAKOTA

Water License No. 55

To John L. Maxson and

Grace M. Maxson

Source of Supply Lame Johnny Creek

County Custer

Am't -3.04- Sec. Feet

Point of Diversion S. 0°30' E. 248 feet from the corner between Sec. 28 & 29, T. 6S, R. 8 E.

Place of Use 1/2, SE 1/4 NW 1/4, NE 1/4 SW 1/4 & NW 1/4 SE 1/4 Sec. 34 & SW 1/4 Sec. 28, NE 1/4 NW 1/4, NW 1/4 NE 1/4 Sec. 33, T. 6S, R. 8 E.

Purpose Irrigation

Date of Priority August 19, 1908

Recorded

in Book 1 of Record Page 28

Permit No.

Water Division No.

Water District

Certificate of Examination of Works

Report of Examining Engineer

To the State Engineer, Pierre, South Dakota:

Dear Sir: I hereby certify that in accordance with your letter of authorization dated April
19 09, I have this day made a thorough examination of the diversion works constructed by John L.
Shae M. Mason of Buffalo Sup.
Leuster County, South Dakota, holder of permit No. 54, issued
upon application No. 54, bearing date of priority of Aug 21, 1908, authorizing the
diversion of 204 second feet of the waters of Lane Gulch for irrigation
purposes. I have to report on the condition of the same as follows:

The diversion works comprise: Dam of stone & concrete 4 1/2 feet high
top length 105 feet. 26 feet of culvert of dam in concrete
spillway. Head gate set in four foot cut at end
of dam. Head gate concrete of box (wood) 12'3' x 80'.

and the system is in the following condition:

good
The point of diversion is located 50° 30' E 948' from 1/4 corner
between 28 & 29 Sup. 658 E B.H. 17.

The works are capable of diverting and conveying to the place of use 3 second-feet of water,
which is to be used for irrigation purposes.

The legal sub-divisions to be irrigated are: 1/4 SE 1/4 NW 1/4
N 1/2 SW 1/4 - NW 1/4 SE 1/4 Sec 34 - SW 1/4 Sec 28
NE 1/4 NW 1/4 - NW 1/4 NE 1/4 Sec 33 all in Sup. 65 R. 8 E

comprising a total of 72.0 acres of land.

The domestic use intended comprises

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

Witness my hand, this 26 day of August, A. D. 1914

Charles H. Brown
Examining Engineer.

AFFIDAVIT OF PUBLICATION.

STATE OF SOUTH DAKOTA.

COUNTY OF Lincoln

(First Publication August 22, 1908.)

APPROPRIATION OF WATER.

Office of State Engineer, Pierre, S. D., August 22, 1908.
 Notice is hereby given that John I. Maxson and Grace M. Maxson, whose postoffice address is Buffalo Gap, Center County, S. D., have made application in accordance with the provisions of the irrigation laws of South Dakota for a permit to appropriate for beneficial use 8 1/2 cubic feet of water per second of time from Levee Johnny Creek through the Maxson irrigation system, the point of diversion of which is to be located upon the left bank of said stream in the NW 1/4 of the NW 1/4 of section 22, township 6 south, range 3 east, said water to be used for the purpose of irrigation upon the 29 acres lying upon NW 1/4 and NE 1/4 of NW 1/4, NW 1/4 SW 1/4, and NW 1/4 SE 1/4 in section 22, township 6 south, range 3 east, same being desert entry No. 1230, by Grace M. Maxson, and 23 acres lying upon SW 1/4 section 22, NE 1/4 NW 1/4, and NW 1/4 of NE 1/4, section 22, all in township 6 south, range 3 east, H. H. M., same being land deeded to John I. Maxson; and said water right is to be owned by said persons in the proportion 13/213 to Grace M. Maxson and 92/213 to John I. Maxson.
 This application will be taken up by the state engineer at his office at Pierre for consideration and appropriate action upon the 30th day of October, 1908, at 9 a.m., at which time all persons who believe that the prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare, and also parties making the application, and to be transmitted, are notified to be present either by sworn affidavit or in person for the purpose of presenting any relative testimony.

—HAMUEL H. LEE,

State Engineer.

Ivan E. Goodner, Applicant's Engineer,
 Rapid City, S. D., Aug. 22, 1908.

of said County and State, being duly sworn, on 22nd day of August 1908 says that the The Republican is a legal weekly newspaper of general circulation, printed and published in Buffalo Gap in said County and State, by Henry Hetch and has been such legal weekly newspaper during the times hereinafter mentioned, and that I, E. L. Ferny, the undersigned, am Publisher of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the advertisement headed

Appropriation of Water - John I. Maxson and Grace M. Maxson

a printed copy of which is hereto attached, was printed and published in the said newspaper for 4 successive weeks, to-wit: The first publication being made on the 22 day of August, 1908, the 2nd on the 5 day of Sept, 1908, the 3rd on the 12 day of Sept, 1908, the 4th on the 19 day of Sept, 1908, the 5th on the 19 day of Sept, 1908.

and the last publication on the 19 day of Sept, 1908. That the full amount of the fees charged for publishing the same to-wit: The sum of \$8.85

inures solely to the benefit of the publisher of the The Republican. That no agreement or understanding for any division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Subscribed and sworn to before me this 19 day of Sept, 1908 at Buffalo Gap, S. D.

E. L. Ferny
 Notary Public

AFFIDAVIT OF ATTORNEY OR AGENT Ex. Rel.

STATE OF SOUTH DAKOTA.

COUNTY OF _____

ss

being first duly sworn, on _____ oath says that _____ is of _____ that _____ directed the publication of the annexed notice of _____ in the _____

That no agreement or understanding for any division of the fees thereof has been made with any person whomsoever, and that no part thereof has been refunded or rebated by the party publishing said notice.

Subscribed and sworn to before me this _____ day of _____

Publication Fees \$

Notary's Fees \$

Total \$

(First Publication August 21 1908)

APPROPRIATION OF WATER

Office of the State Engineer,

Pierre, S. D., August 21 1908.

Notice is hereby given that John L. Maxson and Grace H. Maxson whose postoffice address is Buffalo Gap ~~County~~ ^{Custer} 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 $5\frac{1}{4}$ cubic feet of water per second of time from ~~Lame~~ ^{Johnny} ~~Creek~~ through the ~~Maxson Irrig. System~~, the point of diversion of which is to be located upon the left bank of said stream in the N.W. $\frac{1}{4}$ of the ~~37~~ ³ of section ~~28~~ ³ township ~~3~~ ³ range ~~8~~ ⁸ said water to be used for the purpose of ~~irrigation~~

upon the 120 acres lying upon W $\frac{1}{2}$ and SE $\frac{1}{4}$ of NW $\frac{1}{4}$; N $\frac{1}{2}$ SW $\frac{1}{4}$; and NE $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 34, T. 6 S., R. 8 E., being Desert Entry No. 1289, by Grace H. Maxson; and 93 acres lying upon SW $\frac{1}{4}$ Section 28; NE $\frac{1}{4}$ NW $\frac{1}{4}$; and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ in Section 33; all in T. 6 S., R. 8 E., B.H.M., same being land deeded to John L. Maxson; and said water right is to be owned by said persons in the proportion 120/21 to Grace H. Maxson and 93/21 to John L. Maxson.

This application will be taken up by the state engineer at his office at Pierre for consideration and appropriate action upon the 20th day of October 1908, at 9 a. m., at which time all persons who believe that the prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare, and also parties making the application, and to be benefited, are notified to be present either by sworn affidavit or in person for the purpose of presenting any relative testimony.

State Engineer

Buffalo Gap N. D. Sept^r 1908
Thos. Samuel Lea

State Engineer

Dear Sir and Friend Pierre D B

I see by The Buffalo Gap
Republican paper a notice that
John Maxon is about to build
Irrigation works above me on
Lame John creek.

I hope you will see to it that
the Maxons do not take the water
from me. I have been using the
water of this creek for benificial
use every year since 1894 put
a notice at the diverting dam
had a "Water Right" recorded at
Custer the county seat same year
use the water for grass corn barley &c
in their rotation. It would be a great
hardship and loss to us to lose the
water with six of a family and some
in debt we dell hay raised under
our ditch taken from this creek.

This part or season is so dry some years we could get rain enough on our home-stead to support the family we had to purchase the W.C. of 1836 the former owner took and accorded a Water Right in 1878 and used the water each year and we use the water every year our ditch on the S.W. corner and one on the N.W. corner these two corners are the highest ground all of W.C. is under these two ditches.

Before 1876 I had a substantial rock dam but a great deluge of water from six to ten feet high swept this valley from bluff to bluff some and all so since we run the grade of the ditch into the bed of the creek and a few rocks directs the water into the ditches If you require further proof as to my rights I can send you town plat showing ditches and cobbles from County recorder

Your obedient servant

Mike Rush

3 on the mouth of Range Big T East of B.H. M.

DEWEY

2021 & 1922

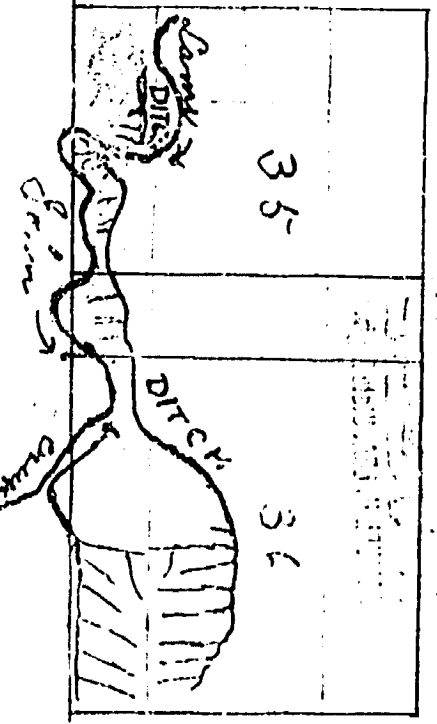
REMOVED FROM RECORD

30 29 28 27 26 25

31 32 33 34

Booster County

Indian Gap October 5th 1908
D.D.



on land of Lee State Governor Lewis D.D. of migration
near friend: -
the order to give you an idea of the location of my ditch. It is very near to the
the 6' wide ditch. This ditch is located at the upper ditch measured from the N.W. corner
of the 36' x 36' lots which is 4 rods from the N.E. corner of the 1/4 of section 30 north west 25 rods from the
N.E. corner of the 36' x 36' lots which is 4 rods from the N.E. corner of the 1/4 of section 30 north west 25 rods from the
N.E. corner of the 36' x 36' lots which is 4 rods from the N.E. corner of the 1/4 of section 30 north west 25 rods from the

TO WHOM IT MAY CONCERN, I, Mike Rush, a resident of the United States, of lawful age, first being duly sworn, do depose and say, that, on the 6th, day of January 1894, I claimed by right of actual possession all the water of Lone Johny creek for 50 purposes of irrigation, agriculture and domestic uses, a notice of which appropriation was filed with the Register of Deeds in Custer County, South Dakota and recorded on page 378 of book 8 of Placer records on the 8th, day of January 1894, at 3:30 o'clock A.M. John K. Eggenberger

Also, on the 17th, day of April 1898, I appropriated 1500 inches of the waters of said Lone Johny Creek for agriculture and domestic purposes. Which notice of location was filed with the Register of Deeds in Custer County, South Dakota and recorded in Book 9 of Placer records at page 489, on the 19th, day of April 1898 at 10 o'clock A.M. Which water was appropriated for use on the SE 1/4 of section 36, in township 6 South of Range 8 east, Black Hills Meridian. Since which time I have purchased said described land together with the water right above mentioned;

I also depose and say that, I am the sole, absolute owner of the two above mentioned water rights; that I have the water obtained by virtue of the above locations, each and every year, for beneficial purposes.

In testimony whereof, I have hereunto set my hand and seal this 5th, day of October, 1908.

Mike Rush

State of South Dakota
County of Pennington SS

On this 5th, day of October 1908, before me, Elmer E. Weeks, a Notary Public, within and for said County and State, personally appeared Mike Rush, well known to me to be the person who subscribed the above, after having been duly sworn by me.

Elmer E. Weeks
Notary Public, South Dakota.

Affidavit of
Ivan E. Goodner, of Rapid
City, S.D., in support of
Application No. 54.

FILED
OCT 22 1908
FILED
SAMUEL H. LEA, State Engineer.

RECEIVED

OCT 22 1908

OFFICE OF STATE ENGINEER,
PIERRE, S. DAK.

WATER RIGHT APPLICATION No. 54,

John L. Maxson and Grace M. Maxson, Buffalo Gap, S.D.

STATE OF SOUTH DAKOTA,)
(ss.
COUNTY OF PENNINGTON.)

Ivan E. Goodner, a Deputy State Surveyor, residing at Rapid City, S. D., being duly sworn, says that he is the engineer having in charge the survey for water right application filed by John L. Maxson and Grace M. Maxson, both of Buffalo Gap, S. D.; that as such engineer he has informed himself as fully as possible of all facts and data pertaining to Lane Johnny Creek, from which creek said applicants desire to appropriate water; that said creek during the latter part of the summer months flows a very small stream and at places is apparently dry, owing to sinking of the water for greater or less distances; that during the winter and spring months, when irrigation of the land of the applicants is carried on, the creek flows a large volume of water, impossible to accurately gauge, but occupying a channel thirty to fifty feet wide, and at times ten or more feet in depth, flowing with a velocity estimated at ten miles an hour; that at all times except during the dry latter part of summer said creek flows sufficient water to supply all irrigation needs of the applicants and to properly irrigate at rate of one cubic foot per second per seventy acres, all of the 320 acres claimed to be irrigated by one Mike Rush, who has water rights upon said creek below these applicants; that the irrigation system of these applicants is designed to collect flood waters from said creek and store such waters in a reservoir upon the SW 1/4 of NE 1/4, Section 33, Tp. 6 S., R. 8 E., B.H.M., to be drawn therefrom as required during the said dry months; that a large part of the supply of water for said reservoir will be obtained from flood waters coming down the large ravine in which said reservoir is situated; that except during said dry months it is affiant's belief, based upon careful observation of the premises, that the Maxson water right will not in any way interfere with the water claimed by said Mike Rush.

Affiant would further represent that the claims of the said Mike Rush for 1500 miner's inches of water and for "all the waters of Lane

Johnny Creek", are beyond reason and opposed to good public policy and the best interests of the public; that said Mike Rush claims to irrigate ~~xxx~~ but 320 acres, and as a matter of fact irrigates very much less than this, owing to presence of hills and breaks upon his land; that irrigation upon the full 320 acres would entitle him to less than five (5) cubic feet of water per second, being less than 250 miner's inches, both upon the statute of 1905 and upon the usual customs of irrigation in this region; that if this claim of "all the water of Lane Johnny Creek" made by said Mike Rush is allowed to prevail as against this application for Maxson water right for a reasonable proportion of the flow of said creek, the way is opened for innumerable lawsuits and endless disputes, as a large number of the early water rights upon the streams of the Black Hills region similarly claim the entire flow, without regard to either prior or subsequent locators.

Affiant would further represent that as a riparian owner upon said creek the applicant John L. Maxson is entitled to the usual use and benefits thereof, and that such right cannot be impaired by granting or recognizing the right of any person whatsoever to appropriate the entire flow of said creek.

Affiant further states upon information and belief that as recently as ~~as~~ the 20th day of October, 1908, being the day before the making of this affidavit, said Mike Rush stated to said John L. Maxson that he did not wish to protest against the granting of the Maxson right, that the creek was flowing ten times as much water as he (Rush) required, and that he merely wanted to have on record with the state engineer the fact that he was claiming some right upon said said creek, in order to protect that right against extinction.

Affiant therefore represents that no harm will be done to any persons rightfully interested by granting this application, and would respectfully petition the State Engineer to issue the usual permit to proceed with the construction under said application of John L. Maxson and Grace M. Maxson.

(signed) Swan E. Gordon

Acknowledged and sworn to before me this 21st day of October, 1908, at my office in Rapid City, Pennington County, South Dakota.

George Williams
Notary Public

Permit No. 55
 Water Division No. 2 Fall River Water District

Certificate of Application of Water to Beneficial Use.

Deposition of Holder

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

Ans. John L. Mason, Farmer, Buffalo Gap, S.D.
 and Erastus Mason, Buffalo Gap, S.D.

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

Ans. Permit No. 55 August 21, 1908

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

Ans. Lance Run Creek S. 0° 30' E 9.48 feet
 from T. 4 has between 28 + 29 Sec. 6 S 8 E B. H. 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. Dam of stone & concrete 4 1/2' high 105' top length
 name of canal is Mason branch capable of conveying
 3 second feet of water

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. Irrigation of 120 acres upon NW 1/4 + SE 1/4 NW 4 -
 NW 1/4 SW 4 - NW 1/4 SE 4 Sec 34 and 93 acres Sprague
 (NW 1/4 Sec 28), NE 1/4 NW 4 - NW 1/4 NE 4 Sec 33 all
 in Twp 6 S R 8 E

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

Ans. _____

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

Ans. 3.0 second 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. _____

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

Ans. Division was completed and ditches made in the years 1907 & 1910 ever since that time the system has been working at full capacity for irrigation purposes when ever needed & when the water is supplied it covering all lands embraced under this system.

(Sign.) *Arthur L. Gasson & Grace M. Gasson*

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe ^{them} to be the person he represents ^{himself} to be, and that said testimony was subscribed and sworn to before me, at my office in *Chamberlain*, County of *Butte*.

State of South Dakota, on this *15th* day of *March*, 19*14* D., 19*14*

W. H. Wallace, Jr.
Notary Public

Permit No. *53*

Proof of Application of Water to
Beneficial Use.

DEPOSITION OF HOLDER.

Amount of water *3.04* second feet

Source *Lane Johnny Creek*

County *Butte*

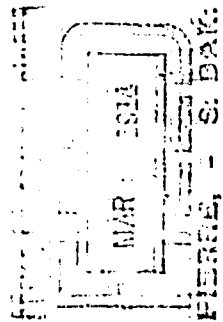
Purpose *Irrigation*

Place of Use *N¹/₂, S¹/₂ NW¹/₄ N¹/₂ S¹/₂ SW¹/₄ NW¹/₄*

Sec 3 & 4 T¹/₂ S¹/₂ Sec 23 N¹/₂ S¹/₂ NW¹/₄

T¹/₂ S¹/₂ NW¹/₄ Sec 23 T¹/₂ S¹/₂ R 8 E

Date of priority *August 19, 1908*



Received and filed *March 27 - 1914*

RECEIVED
MAR 27 1914
OFFICE OF STATE ENGINEER
SIOUX FALLS, S. DAK.

TERCHERON HORSES
POLLED DURHAMS

ALFALFA SEED A SPECIALITY

DUROC JERSEYS
BROWN LEGHORNS

Quality is Our Trademark

Brookside Stock Farm

J. L. Maxson, Proprietor

Buffalo Gap, S. D. Jan 19th, 1931.

RECEIVED
JAN 20 1931

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Mr. Chas A. Trimmer,
Pierre, S. D.

Dear Mr. Trimmer :- We built the best and most permanent irrigation system in this valley, consisting of concrete diversion dam, concrete syphon, and metal flume, large earth storage dam and about three miles of good ditches, an expenditure of about \$5,000 was all destroyed by Your office allowing subsequent water rights above us on the same stream.

The Haaser, first one above us takes several cubic feet, the Englebrecht above that has a diversion ditch 12 or 13 feet wide at bottom and takes all water from the creek, only at extreme flood. For these reasons the water coming to us was so little and so far between that it was negligible and did not pay to keep up our system, therefore we have not used the water the 3 years mentioned in this report.

We promised ourselves not to go into litigation, for the reason that we had seen so much of that, and all that the aggrieved parties ever got out of it was just litigation, there is something wrong with our water right laws when it allows one party to invest a lot of money in a system and then give them no protection.

Sincerely,

John L. Maxson
Grace M. Maxson

February 16, 1931

John L. Maxson
Brookside Stock Farm
Buffalo Gap, N. D.

Dear Sir;

Replying to your letter of the 19th, in reply to our water right questionnaire concerning your water right number 55-2, we regret very much that such a condition as you describe in connection with your water right exists.

This condition is particularly true with regard to the streams in the Black Hills area for the reason that this office does not know the normal flow of any of the streams in the state, and further, has no way of knowing as we have no stream flow records by which to gauge the normal flow of any of the streams. No provision is made, nor has been made in the past, and no money appropriated for the purpose of stream gaging, so that we have no possible way of knowing when a stream is over-appropriated, as is true in your case.

Therefore, the only thing we can do when an applicant applies for appropriation of water, is to assume that he knows that there is water available, and grant him the right to the use of the water, provided there is no protest. In many cases the lack of protest on the part of prior appropriators at the time of the publication of intention to appropriate water by an applicant causes over-appropriation, as is evidently true in your case.

Until such a time as provision is made and money appropriated for the purpose of accurate stream flow gaging so that this office may be enabled to have stream flow records or file the above condition will no doubt continue to exist unless recourse is sought in court action in individual cases.

Assuring you we regret not being able to be of service to you in your present water right difficulty, I am

Very truly yours,

Charles A. Trimmer
STATE ENGINEER

HE

Water Rights Division - DWR
Conversation or File Documentation

File No. 55-2

NAME OF PERSON OR FILE: Tom Norman

ADDRESS: Route 6, Box 110, Rapid City, SD 57701 COUNTY Custer

DATE: Aug 28, 1987 TELEPHONE -

RE: Cancellation of Water Right 55-2

COMMENTS:

I discussed this water Right with Mr. Norman by telephone on August 21, 1987. Mr. Norman is the landowner of the land that was irrigated. He stated that the system had been abandoned. He agreed that Water Right No. 55-2 could be cancelled. Mr. Norman wants to be informed if the adjoining landowner Robert Dugan applies for an irrigation water permit. The diversion point for WR 55-2 is located on land owned by Mr. Dugan.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

4/82

NAME: Delvin H. Broy, P.E.
Hydrologist



Department of Water & Natural Resources

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

November 3, 1987

NOTICE OF CANCELLATION

TO: Tom Norman, RR #6 Box 110, Rapid City, SD 57701

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

SUBJECT: Cancellation of Water Right No. 55-2

The Water Management Board will consider cancellation of Water Right No. 55-2 at 9:00 am, December 2, 1987 in the Roosevelt & Jefferson Rooms, Howard Johnson's, 2211 LaCrosse, Rapid City, SD.

The hearing(s) will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

The Chief Engineer of the Water Rights Division is recommending cancellation of Water Right No. 55-2 due to abandonment.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right No. 55-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by Water Right No. 55-2. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by November 20, 1987. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained. The Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1, 46-2, 46-2A and 46-5.

These hearings are adversary proceedings. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Further information on the proposed cancellation or to assure access to the hearing by the handicapped can be obtained by contacting the Water Rights Division, DWR, Joe Foss Building, Pierre, SD (605-773-3352) for assistance prior to the hearing. The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting March 2-3, 1988. Any request for extension must be filed with the Chief Engineer by November 20, 1987.

Please note: Cancellation of this permit does not prohibit you from making a new application for this project in the future.

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 55-2, JOHN & GRACE MAXSON

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Right No. 55-2, now owned by Tom Norman.

The Chief Engineer is recommending cancellation of the above Water Right because in an August 21, 1987, telephone conversation with Delvin Brosz, of this office, Mr. Norman stated the irrigation system had been abandoned. The water right has been abandoned.



JOHN HATCH, Chief Engineer
November 3, 1987

South Dakota
Department of
Water & Natural Resources

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

December 15, 1987

NOTICE

Tom Norman
RR 6, Box 110
Rapid City, South Dakota 57701

Dear Mr. Norman:

This will notify you that the Water Management Board cancelled your Water Right No. 55-2.

This action was taken under the conditions outlined in our notice to you dated November 3, 1987.

Very truly yours,

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

Water Right No. 55-2 was determined by Judge Jeff Davis of the Seventh Judicial Circuit Court to be valid and not abandoned or forfeited.

This case was before the Seventh Judicial Circuit Court (Civ. No. 97-127) in a matter brought by the Department of Environment and Natural Resources regarding the cancellation of Water Right No. 55-2 and a declaratory ruling request on Robert Dugan's construction activities on Lame Johnny Creek.

The file on this matter is found in the Custer County file of the Water Rights Program files. A copy of Judge Davis' findings and order and judgment reversing the Board's decision (unsigned) in this matter are attached.

MAR 19 1999

BANGS McCULLEN LAW FIRM

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

818 St. Joe Street
Mailing Address P.O. Box 2670
Rapid City, South Dakota 57709-2670
605-343-1040
Telecopier 605-343-1503

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Bowen
John H. Raforth
Terry G. Westergeard
Steven R. Nolan

George A. Bangs (1943-1995)
W.A. McCullen (1943-1987)

* Also admitted in Minnesota,
Nebraska and North Dakota

March 18, 1999

Honorable Jeff W. Davis
Circuit Court Judge
P.O. Box 230
Rapid City, SD 57709

Re: Lame Johnny Water Rights
(Custer County Case)

Dear Judge Davis:

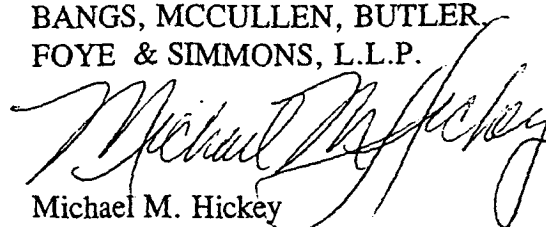
In accordance with our discussion please find enclosed my Findings of Fact, Conclusions of Law and Order and Judgment Reversing Board's Decision in the above matter. As you may recall you earlier by mistake signed a Judgment Affirming Agency Decision concerning the cancellation of Water Right No 55-2. In these documents I have clarified that the earlier Judgment was entered in error and should be removed from the record.

I would appreciate your review of this matter as soon as possible, so that this mistake can be corrected immediately. Upon your review of this letter, if you have any questions please give me a call, and I will get Diane Best on the phone so that we get this procedural difficulty resolved.

Thank you for your cooperation, and if you have any questions or comments, please advise.

Sincerely,

BANGS, MCCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Michael M. Hickey

MMH:bah
cc: All parties

STATE OF SOUTH DAKOTA :
SS

IN CIRCUIT COURT

COUNTY OF CUSTER:

SEVENTH JUDICIAL CIRCUIT

IN THE MATTER OF THE PETITION)
FOR CANCELLATION OF WATER)
RIGHT NO. 55-2, LAME JOHNNY)
CREEK,)
)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This administrative appeal came on for hearing before the Court, the Honorable Jeff W. Davis, presiding on January 21, 1999. The Appellant, Robert Dugan appeared through his attorney, Michael M. Hickey. The Department of Environment and Natural Resources, Water Management Board, appeared through their attorney, Diane Best. The Court having review the administrative record herein and having considered all of the files and records herein including the arguments of counsel, and having orally announced its decision reversing the decision of the Water Management Board, now hereby makes and enters the following:

FINDINGS OF FACT

1

The Court's oral decision as announced in open Court on January 21, 1999, is incorporated herein by this reference.

2

The Board's Findings of Fact 14, 15, 16, 17, 18 and 19 are clearly erroneous and not supported by substantial evidence and the Court is firmly convinced that a mistake was made.

3

That evidence does not establish that there has been a failure to use available water for three continuous years.

That the evidence establishes that Lame Johnny Creek did not have sufficient flow to support a full set of diversion works.

5

Any decision made by the Board which finds that there has been an abandonment is clearly erroneous and not supported by substantial evidence in the record.

Based upon the foregoing findings of fact, the Court hereby makes and enters the following:

CONCLUSIONS OF LAW

1

The Board's Conclusions 6, 7 and 8 are hereby reversed in that they are in violation of statutory provisions and in excess of the statutory authority of the Board.

2

That Water Right 55-2 in the amount of 3.04 cubic feet of water per second with a priority date of August 19, 1908, is hereby determined to be valid and has not been forfeited or abandoned.

3

That the case is reversed and the Board is hereby ordered and directed to validate the above described vested water right in the name of Robert Dugan and to issue a license accordingly.

That the previous Order entered by the Court on March 4, 1999, which affirmed the decision of the Board was done so erroneously and by mistake. Said Order is withdrawn and is null and void and of no force and effect.

Let an Order be entered accordingly.

Dated this ____ day of March, 1999.

BY THE COURT:

JEFF W. DAVIS
CIRCUIT COURT JUDGE

ATTEST:-----

Clerk of Courts

BY:_____
(Deputy)

(SEAL)

STATE OF SOUTH DAKOTA :
SS

IN CIRCUIT COURT

COUNTY OF CUSTER:

SEVENTH JUDICIAL CIRCUIT

IN THE MATTER OF THE PETITION)
FOR CANCELLATION OF WATER)
RIGHT NO. 55-2, LAME JOHNNY)
CREEK,)
)

ORDER AND JUDGMENT
REVERSING BOARD'S DECISION

The above entitled matter came on for hearing before the Court, the Honorable Jeff W. Davis, presiding on January 21, 1999. The Appellant, Robert Dugan appeared through his attorney, Michael M. Hickey. The Department of Environment and Natural Resources, Water Management Board, appeared through their attorney, Diane Best. Interested party Tom Fitzner appeared in person.

The Court having reviewed the administrative record herein, and having considered all of the files and records herein including the arguments of counsel, and having orally announced its decision which decision is incorporated herein by this reference, and having entered Findings of Fact and Conclusions of Law, and being fully advised it is hereby

ORDERED, ADJUDGED AND DECREED that the decision of the South Dakota Water Management Board is reversed, and it is further

ORDERED, ADJUDGED AND DECREED that the earlier Judgment entered by the Court on March 4, 1999, is withdrawn and is null and void, and it is further

ORDERED, ADJUDGED AND DECREED that Water Right 55-2 is valid and vested and has not been forfeited or abandoned and it is further

ORDERED, ADJUDGED AND DECREED that the Water Management Board shall issue Water Right 55-2 in the name of Robert Dugan.

Dated this ____ day of March, 1999.

BY THE COURT:

JEFF W. DAVIS
CIRCUIT COURT JUDGE

ATTEST:

Clerk of Courts

BY: _____
(Deputy)

(SEAL)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing documents upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid for certified mail, in envelopes addressed to said addressees, to wit:

Ms. Diane Best
Assistant Attorney General
500 East Capitol
Pierre, SD 57501-5070

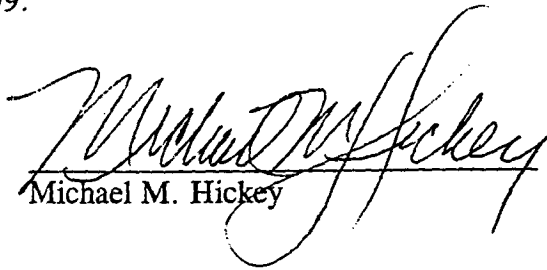
Roland & Marie Kimmey
HC 56 Box 17
Buffalo Gap, SD 57722

Timothy Fitzner
P.O. Box 77
Hot Springs, SD 57747

Russ & Ellen Ballard
HCR 83, Box 23E
Custer, SD 57730

which are the last addresses of the addressees known to the subscriber.

Dated this 18th day of March, 1999.


Michael M. Hickey



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 8, 2002

55-2

Russ Ballard
HCR 56 Box 5
Buffalo Gap, SD 57722

Dear Mr. Ballard:

Enclosed as you requested, are two location notices and a partially completed "Notice of Transfer of Ownership" form for use in filing an ownership change with Water Right No. 55-2.

The transfer form will need to be completed and then signed in the presence of a notary public. Upon completion, please return the form to our office with a required filing fee of \$2.50. The check or money order for the fee can be made payable to the Water Rights Program.

The fee for filing location notices is \$10.00 (each). If you need more than two forms please give me a call and I can mail you some more.

If you have any questions or need assistance in completing the enclosed forms, please contact me.

Sincerely,

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

enclosures