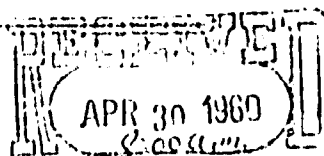


595-2

1. Considered June 7, 1965
2. Name of Applicant Samuel H. Kirk
3. Post Office Address Pringle
4. Amount of water claimed 0.30
5. Source of water supply Dry draw
6. Water to be used for irrigation
Acres to be irrigated 20.80
7. Water to be diverted and used in Cassata County about
1 1/2 miles 1 W of Pringle.
8. Proof of Publication Received ✓
Not Received
9. Application Approved
Subject to
Not approved
Action deferred
10. Remarks:

No. 5952Water Division No. 2 Fall River District
(Blank to be filled by the Engineer for the W. R. C.)STATE WATER RESOURCES COM.
PIERRE SOUTH DAKOTA

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of applicant Samuel A. Kirk, Inc. A. Kirk President
Postoffice address Pringle, County Custer, State S. Dak.

~~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)

Contract

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

(d) Bonds to be issued, \$

(e) Other resources, \$ Govt. Cost Share

2. Name of diversion work Samuel A. Kirk Water Spreading Project
number 2

3. Amount of water claimed 0.30 cubic feet per second or 62.4 Acre-ft.

4. Source of water supply Surface runoff - dry draw

5. Location of point of diversion 63.6 Rods N 32° 30' W of the
SE Corner Sec 2-T55-R4E, BHM right bank Custer County.

6. Annual period or periods during which water is to be used Whenever available
during annual period.

7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Irrig. Grav.

(a) Number of acres to be irrigated 20.8 acres.

(b) Legal subdivisions to be irrigated See attachment #1

(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.)

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

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

(a) Nature of use None
Name any of the above uses claimed

(b) Amount of power to be generated None horse power.

Amount claimed for engine cooling

(c) Location of plant

(d) Method of developing power

(e) Point where water will be returned to stream

Map No 553-2

8. Estimated cost of work:

(a) Head Gates, \$.....

(c) Plumbing, \$.....

(e) Other structures Tunnels & Plug \$200.00

(b) Pumping plant, \$.....

Rock, \$.....

Total, \$.....

9. Description of diversion works:

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

Small plug in slope & area, diverting water into
canal which conveys water to area

II. Dimensions of works.

(a) Dam: Height.....feet; length at bottom.....feet; length at top.....feet; thickness at bottom.....feet; thickness at top.....feet; slope at front water face.....; slope at back face.....; material used in construction.....

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

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

(c) Head gate: Width.....feet; height.....feet; Material.....

(d) Canal: Total length 1.1 miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER-LINE	GRAD. PER MILE
At <u>0.0</u> Mile	<u>1.5</u> feet	<u>0.0</u> feet	<u>10.0</u> feet	<u>5.28</u> feet
At <u>1.1</u> Mile	<u>1.5</u> feet	<u>0.0</u> feet	<u>10.0</u> feet	<u>5.28</u> 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 5 years.

11. Time required for complete application of water to the proposed beneficial use 7 years.

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

STATE OF SOUTH DAKOTA

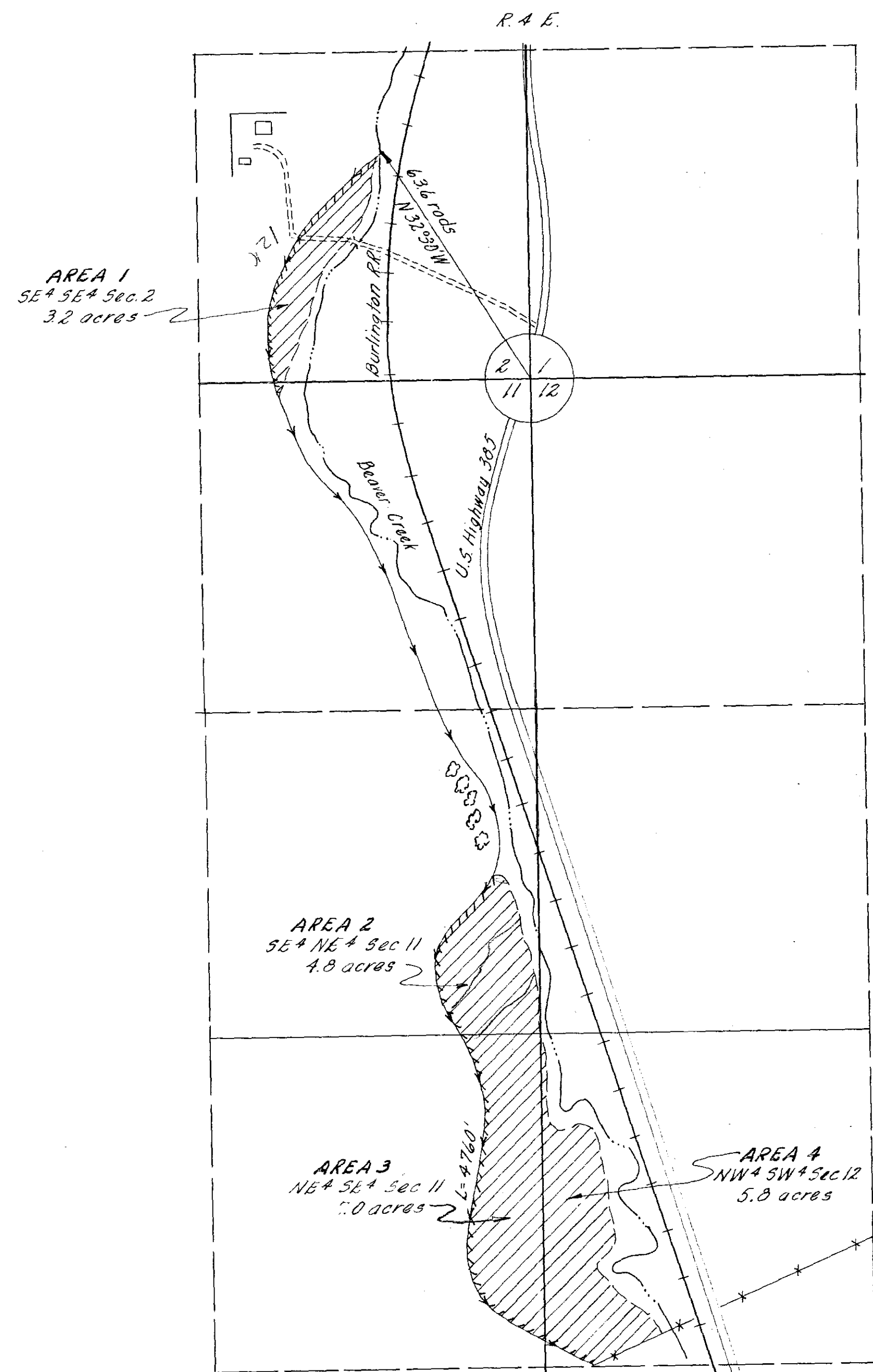
County of Butte } ss.

I, Samuel A. Kirk, 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 Samuel A. Kirk

Subscribed and sworn to before me this 29 day of April 1960

Lib. H. H. H.
Notary Public (or other qualified officer.)



LOCATION OF LANDS TO BE IRRIGATED

LOCATION	SECTION	TOWNSHIP	RANGE	ACRES
SE 1/4 Sec 2	2	5S	4E	3.2
SE 1/4 NE 1/4	11	5S	4E	4.8
NE 1/4 Sec 11	11	5S	4E	7.0
NW 1/4 SW 1/4	12	5S	4E	5.8
TOTAL				20.8

All lands described owned by Samuel A. Kirk.

LEGEND

- Irrigable land
- Spreader ditch
- Canal
- Farmstead access road
- Dry draw

SURVEYOR'S CERTIFICATE

I, Walter H. Christman, DO HEREBY CERTIFY THAT THIS MAP IDENTIFIES A REASONABLY ACCURATE RECORD OF THE LAND OF THE Samuel A. Kirk Water Spreader Project AND HAS BEEN PREPARED BY THE SOIL CONSERVATION SERVICE FOR THE Custer County SOIL CONSERVATION DISTRICT.

SIGNATURE: Walter H. Christman

TITLE: Area Engineer
U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 19th DAY OF April, 1960, A.D.

File Van Thie
NOTARY PUBLIC

MY COMMISSION EXPIRES Aug. 5, 1965.

Scale: 1" = 400'

**SAMUEL A. KIRK
WATERSPREADING PROJECT
NUMBER 2**

Custer County, South Dakota

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Designed.....	Date.....	Approved by.....
Drawn.....		Title.....
Traced.....		Title.....
Checked.....	2-60	Sheet No. 1 of 1

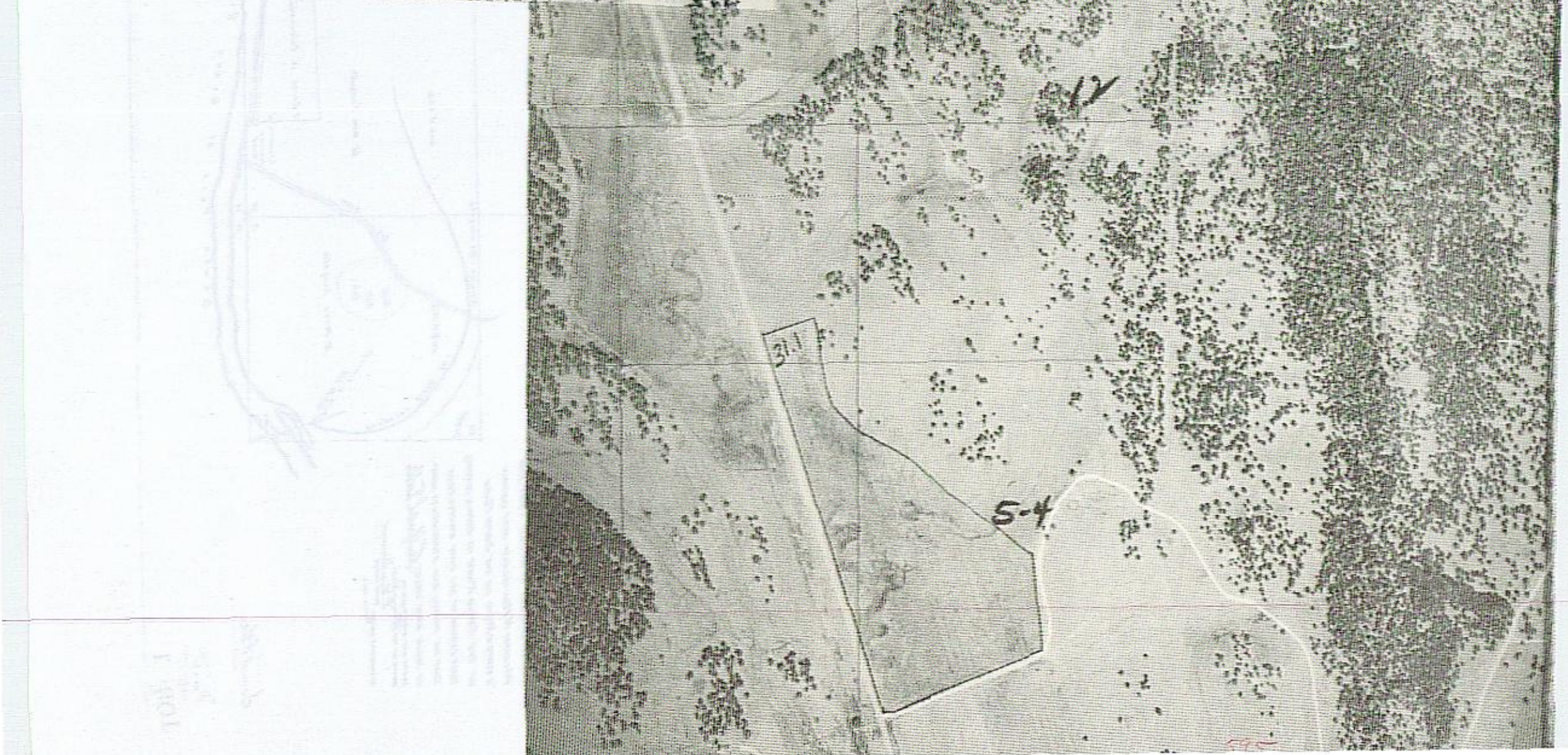
MAP NO 553-2 (APP NO 595-2)

#589 K+L

NOT TO SCALE



SCALE



Remarks by State Water Resources Commission:

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 Hughes } ss.

Pierre, South Dakota, June 10, 1960

This is to certify that the foregoing application was received by the Commission at 8:00 o'clock
a m. upon the 30th day of April, 1960.

State Water Resources Commission

By: William J. Miller

for Chief Engineer, Executive Officer

Number of permit 595-2

Date of first receipt of application April 30, 1960

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 April 30, 1960

Approved June 8, 1960, Recorded in Book 6 Page 63

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 _____

December 8, 1960

2nd. The whole of said work is to be completed on or before June 8, 1965

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

June 8, 1969

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 .30 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 June 8, 1969; said water to be used during the following described annual period:

whenever available during irrigation season

Witness my hand this 10th day of June, 1960.

State Water Resources Commission

By: William J. Miller

Chief Engineer, Executive Officer

Certificate of Construction issued MAY 19, 1970

Water License issued MAY 19, 1970

7(1)b - Lands to be Irrigated:

SE ⁴ SE ⁴ Sec. 2	-	3.2 Acres
SE ⁴ NE ⁴ Sec 11	-	4.8 "
NE ⁴ SE ⁴ Sec 11	-	7.0 "
NW ⁴ SW ⁴ Sec 12	-	5.8 "

Total Acres 20.8

All above lands located
in T55-R4E, BHM

Sheet #1

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 595-2

(1) WHEREAS, On the 30th day of April A. D. 19 70
Samuel A. Kirk

made Water Right Application No. 595-2 for a permit to use .30 cubic feet per second of the waters of a dry draw

County of Custer, State of South Dakota, for irrigation

purposes; and
 (2) WHEREAS, On the 10th day of June A. D. 19 60
 Permit No. 595-2 with a date of priority of April 30, 1960

was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water supply system therein described on or before the 8th day of June A. D. 19 65 and for the application to beneficial use of said water on or before the 8th day of June A. D. 19 69

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert .30 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent,

for irrigating the following land in T5S, R4E

<u>Acres</u>		
Section 2	SE $\frac{1}{4}$ SE $\frac{1}{4}$	3.2
Section 11	SE $\frac{1}{4}$ NE $\frac{1}{4}$	4.8
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	7.0
Section 12	NW $\frac{1}{4}$ SW $\frac{1}{4}$	5.8
Total		20.8 Acres

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Samuel A. Kirk

_____ of Pringle, S.D.

the holder _____ and owner _____ of said permit No. 595-2 a water right, dating from April 30, 1960

_____ to use of .30 cubic feet per second of the waters of a dry draw

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 a point 63.6 rods North 32°30' West from the SE corner, Section 2, T5S, R4E

and conduct to and upon portions of Sections 2, 11 and 12, T5S, R4E, described on the face of this license

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 595-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 19th day of May 1970 A. D.
Nineteen Hundred and Seventy

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer: J.W. GRIMES

Form 15.

Permit No. 595-2

Water Diversion No. 2 FALL RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Samuel A. Kirk

_____ the holder _____ of
Permit No. 595-2, issued upon Application No. 595-2, bearing date of priority of April 30, 1960
_____ authorizing the diversion of .30 cu. ft. per second of the waters of _____
a dry draw County of Custer, State of South Dakota at _____
a point 63.6 rods North 32° 30' West from the SE Corner, Section 2, T56, R4E

_____, for irrigation

_____ purposes, has _____ 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 5.0 cu. ft. per second of water.

Date May 19, 1970

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

PROOF OF PUBLICATION

RECEIVED
JUN 6 1960

STATE OF NORTH DAKOTA

County of Quarter

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Carl H. Dandstrom, being duly sworn, deposes and says the annexed printed copy of Notice of Intention to Appropriate Water was taken from the

QUARTER COUNTY CHRONICLE, a newspaper which during the whole time of publication of said notice herein after stated, has been and is printed and published in the

City of Quarter, County of Quarter, and State of South Dakota; that the said notice was published in said newspaper on the following dates:

MAY 19, 19, 26, and June 2, 1960

in each and every issue of the said number thereof the first publication being made on the 19th day of May

1960 and the last publication on the 2nd day of June

1960. The said newspaper was regularly published and that during the whole time of said publication he

was Assistant Editor and Publisher of the said newspaper.

No. 594-1
(First Publication May 12, 1960)
APPROPRIATION OF WATER
Office of State Water Resources Commission,
Pierre, S. D., May 2, 1960.
Notice is hereby given that Samuel Kirk, whose postoffice address is Pringle S. D., has made an application in accordance with the provisions of the water law of South Dakota for a permit to appropriate for beneficial use 34 cubic feet of water per second of time from a dry draw through the Kirk Waterspreading Project No. 1, the point of diversion of which is to be located on the left bank of said stream in the NW 1/4 of the NW 1/4 of Section 2, Twp. 55 Range 4E. Said water to be used for the purpose of providing irrigation on portions of following described land:

W 1/4 NW 1/4 SW 1/4 Section 2,
T 55 R 4E

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 10th day of June 1960 at 2 P. M. All persons may appear and be heard.

Appropriate action will be taken by the Water Resources Commission after suitable time has elapsed for the consideration of any or all information presented.
State Water Resources Commission,
Burton F. Jones
Water Right Specialist

(S.D. 5-2)

(First Publication ~~on or before~~ May 12, 1960)

APPROPRIATION OF WATER

Office of State Water Resources Commission,

Pierre, S. Dak., May 2, 1960

Notice is hereby given that Samuel A. Kirk whose postoffice address is Pringle S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use _____ cubic feet of water per second of time from ~~the~~ a dry draw through the Kirk Waterspreading Project #2, the point of diversion of which is to be located on the right bank of said stream in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 2 Twp. 58 Range 43 Said water to be used for the purpose of providing irrigation on ~~the~~ portions of following described land:

SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ & NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11 all in T. 58, R. 4E

~~and/or~~ ~~XXXXXX~~

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 7th day of June, 1960, at 2 P. M. All interested persons may appear and be heard.

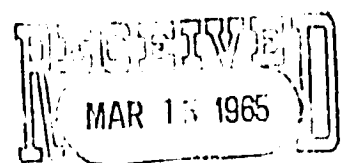
Appropriate action will be taken by the Water Resources Commission after suitable time has elapsed for the consideration of any or all information presented.

State Water Resources Commission

cc: Carl H. Sundstrom - Publisher
Custer County Chronicle
Custer, South Dakota

By:

~~Chief Engineer, Executive Officer~~
~~XXXXXXXXXXXXXXXXXXXX~~
Burton F. Jones
Water Right Specialist



Permit No. 595-2

STATE WATER RESOURCES COMMISSION

Water Division No. 2 Fall River Water District

Notice of Application of Water to Beneficial Use

(This blank must be filled out by holder of permit and forwarded to the State Water Resources Commission at least sixty days before the time set for application of water.)

(P. O.) Pringle

(Date) March 13, 1965

TO THE STATE WATER RESOURCES COMMISSION OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given that on the 8th day of June 1965, at Pringle County of Custer State of South Dakota, before _____ proof will be submitted of the application to beneficial use of 0.30 cubic feet per second of the waters of dry draw _____ in accordance with the terms and conditions of Permit No. 595-2 heretofore issued by the Water Resources Commission of South Dakota.

1. The name and postoffice address of the person or corporation holding said permit are _____

Samuel A. Kirk

2. The use to which said water has been applied is irrigation

3. The amount applied to beneficial use is 62.4 Ac. ft.

4. The place where said water is used is (if for irrigation, give full and accurate description of the lands irrigated) SE⁴SF⁴ Sec. 3---3.2 acres, SE⁴NE⁴ Sec. 11---4.8 acres, NE⁴SE⁴ Sec. 11---7.0 acres and NW⁴SE⁴ Sec. 12---5.3 acres. All of above lands located in T 5 S - R 4 E, BLM.

5. The name of the canal or ditch or other works by which said water is conducted to such place of use is

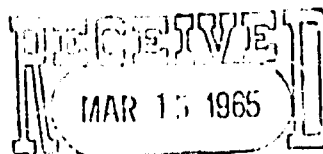
Samuel A. Kirk Water Spreading Project No. 2

6. The right to take the water from such works is based upon permit No. 595-2

7. The source of supply from which such water is diverted is dry draw

8. The date of priority which said user is prepared to establish is April 30, 1960

(Sign)

Permit No. 595-2

STATE WATER RESOURCES COMMISSION

Water Division No. 2Fall River Water District

NOTICE OF COMPLETION OF WORKS

This blank must be filled out by the holder of permit and forwarded to the Executive Officer at least 60 days before the time set for completion of works

(P. O.) Pringle(Date) March 13, 1965

TO THE STATE WATER RESOURCES COMMISSION
OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given of the completion of the works for the diversion of 30

cu. ft. per second of the waters of the state from dry draw
through the Samuel A. Kirk Water Spreading Project Number 2
~~XXXXXXS~~
for irrigation purposes

Permit No. 595-2 in accordance with the terms and conditions of a certain permit heretofore issued by the Water Resources Commission of the State of South Dakota

1. The name of the person or corporation holding said permit is Samuel A. Kirk

2. The postoffice address of such person or the place of business of such corporation is Pringle
County of Clatsop State of South Dakota

3. The number of such permit is 595-2 and the date set for the completion of such work is June 8, 1965

4. Said water to be used for irrigation purposes

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 0.30 cubic feet per second.

6. The amount of land for which said water is available is 20.8 acres,
particularly described as follows: SE⁴SE⁴ Sec. 2--3.2 acres, SE⁴NE⁴ Sec. 11--4.8 acres,
NE⁴SE⁴ Sec. 11--7.0 acres and NW⁴SW⁴ Sec. 12--5.8 acres. All of
above lands located in T6S-R4E, BMM.

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

Samuel A. Kirk

(Signature of Owners)

Permit No. 595-2Water Division 2 FALL RIVER Water District

REPORT OF EXAMINATION OF WORKS AND/OR APPLICATION OF WATER TO BENEFICIAL USE

TO: Water Resources Commission, State Office Building No. 2, Pierre, South Dakota 57501

I have this day made a thorough examination of the water use system constructed by Samuel A. Kirk
Pringle of Pringle holder
 of Permit No. 595-2, bearing date of priority of April 30, 19 60
 authorizing the diversion of 0.30 cu. ft. per second of the waters of Surface runoff
 for spreader irrigation purposes, in ~~FALL RIVER~~ CUSTER County.

I have to report on the condition of the same as follows:

The Water Use System consists of,

A. Works used to divert the water:

small diversion plugs

B. Works used to transport water to place of use.

carrying ditches

C. Works used to apply water to beneficial use.

Gravity flow across small areas

The system is in the following condition: good
 The point of diversion is located 63.6 rods N., 32° 30' W., from SE Corner of Section 2,
T5S, R4E

The works are capable of diverting and conveying to the place of use several
cu. ft. per second of water which is to be used for spreader irrigation

Water has been put to beneficial use to the maximum extent as follows: all in T5S, R4E

SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2	3.2 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 11	4.8 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 11	7.0 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 12	5.8 acres

comprising a total of 20.8 acres of land.Date May 4, 1970

Donald D. Driscoll
 (Signature)

DONALD DRISCOLL, Deputy Chief Engineer
 Water Resources Commission

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 8166

PIERRE, April 20, 19 81

RECEIVED OF Kirk & Sons Inc., Samuel A. Kirk, Pres., Pringle, SD 57773

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

Fee for Application for Permit to Appropriate Water No. _____ (examination, processing, recording and filing) _____		
Fee for Inspecting Construction, and Issuing Cert. of Construction No. _____		
Fee for Inspecting Beneficial Use, and Issuing Water License No. _____		
Fee for Issuing Location Certificate-Dry Draw, No. _____		
Fee for filing _____ transfer of MP# 595-2	2	50
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for _____		
(any other work as provided by law)		
TOTAL	2	50

WATER RIGHTS COMMISSION

By *(Signature)*

Chief Engineer, Executive Officer

JOHN HATCH / Lt

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: April 18, 1981

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

20.8 acres - SE $\frac{1}{4}$ SE $\frac{1}{4}$ 3.2 acres, Sec. 2; SE $\frac{1}{4}$ NE $\frac{1}{4}$ 4.8 acres, NE $\frac{1}{4}$ SE $\frac{1}{4}$ 7.0 acres

Sec. 11; NW $\frac{1}{4}$ SW $\frac{1}{4}$ 5.8 acres Sec. 12; all in T5S, R4E

formerly owned by Samuel A Kirk

has been transferred to Kirk & Sons Inc., Samuel A Kirk, Pres., Pringle, SD 57773

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

Water Right Permit No. 595-2 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 Office 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 Custer) ss.

I, Samuel A. Kirk 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.

Samuel A. Kirk
(Signed)

Subscribed and sworn to before me this 18 Day of April, 1981.

Stephen R. Zornet
(Notary Public)



Water Rights Division (605) 773-3352

May 6, 1981

Kirk & Sons, Inc.
Samuel A Kirk, President
Pringle, SD 57773

Dear Mr. Kirk:

Enclosed please find receipt nos. 4 8164, 4 8165, and 4 8166, in the amounts of \$2.50 each which you paid for the transfer of Water Right Nos. 589-2, 594-2 and 595-2.

The Water Rights are now in the name of Kirk & Sons, Inc. If you have any questions, please contact this office.

Sincerely,

GENNY YOUNG
Staff Assistant

GY

encl

595-2

FILE DOCUMENTATION

NAME: Jeff McClaren

PHONE: 673-4889
673-2679

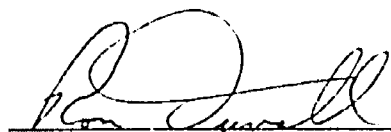
SUBJECT: Diversion of Water from Beaver Creek for Road Construction

On July 21, 1992, Jeff McClaren called to followup on a phone conversation from last week. Mr. McClaren stated that Zandstra Construction had placed a dam in Beaver Creek for purposes of diverting water for road construction. I told Mr. McClaren that I would check to see if a temporary permit had been issued. I located a temporary permit issued July 14, 1992, for the site in question. I relayed this information to 673-2552 (number given by Mr. McClaren.)

Mr. McClaren noted during the July 21 conversation that no water being bypassed at the diversion point. The company was diverting water out of a sump hole (not a dam as originally claimed.) I told Mr. McClaren that water must be bypassed for downstream domestic uses. Mr. McClaren also noted that the amount of water being diverted was in excess of the daily 15,000 gallons identified on the temporary permit. According to Mr. McClaren, 3 trucks holding 8,000 gallons each were filled 5 times each during one day (120,000 gallons.)

I contacted Zandstra Construction on July 21 to discuss the situation. I spoke to Steve concerning water use from the creek. Steve confirmed that more than 15,000 gallons of water had been diverted but not as much as claimed by Mr. McClaren. This was also confirmed by Denny Rabe with Zandstra Construction who called on July 22, 1992. Mr. Rabe also indicated that an additional site at a beaver dam is to be used pending granting of a temporary permit. I informed Steve and Mr. Rabe that no more than 15,000 gallons may be diverted at the existing permitted site and that water must be bypassed for downstream domestic uses. Both representatives of Zandstra Construction indicated that at no time has the flow been stopped. I attempted to contact Mr. McClaren twice on the afternoon of July 21, and on the morning of July 22, left a message for Mr. McClaren to call me.

I also spoke with Don Kraus, site contact person with DOT 673-4948, concerning flow in the creek on July 21 and 22. Mr. Kraus could not say whether or not flow was being bypassed. A DOT representative will investigate after construction resumes at the site. Mr. Kraus also indicated a problem with a water right headgate on Beaver Creek. The channel was being lowered according to design and this may affect the ability of the irrigator to divert water. DOT was investigating, as an option, relocating the diversion structure upstream and extending the diversion ditch. No one was aware of the water right at the time of the design.



Ron Duvall Natural Resources Engineer

7/23/92

(date)

595-2

FILE DOCUMENTATION

NAME: Samuel A Kirk, President, Kirk and Sons Inc.
Pringle SD 57773

PHONE: 673-2653

SUBJ: Inspection of Vested Water Right No. 589-2 and Water Right Nos. 594-2 and 595-2

On July 24, 1992, an inspection was completed of Vested Right No. 589-2 and Nos. 594-2, and 595-2 with Sam Kirk and Jack Kirk (Sam's son.) Inspection of Vested Right No. 589-2 was needed based on the Water Rights Division contesting validation of the vested right as part of the 1986 validation legislation. The inspection found that a small dam had been constructed with a gated tube through the dam. According to Mr. Kirk (Jack), the tube has not been operated for several years and the property is no longer irrigated. The small dam seldom holds water and serves as a water source for livestock when water is available. I informed Mr. Kirk (Sam and Jack), that the vested right would be scheduled for cancellation due to abandonment.

Water Right Nos. 594-2 and 595-2 were also inspected while on site. The area described on No. 594-2 continues to be irrigated. The system does not include the small dam on the north end of the project. The dam was not constructed. Essentially, the project is a type of terrace system used to "irrigate" the acreage. Water is collected by the terrace and gradually soaks into the ground irrigating the area. Water Right No. 595-2 authorizes diversion of water from Beaver Creek for irrigation of 20.8 acres. According to Don Kraus, DOT representative, modifications to the stream channel during road construction may have adversely affected the ability to divert water through the ditch. During the inspection, water was being diverted through a section of the ditch. According to Greg Fuller, also with DOT, the water was being diverted through the ditch to allow construction of a drain system and construction of a cattle underpass. The stream channel appeared to be graded to a final elevation. As noted, water was being diverted through the ditch at this elevation. A backhoe had been used to open the first few yards of the ditch. Water diverted through the ditch was being diverted back to the stream a few hundred feet downstream through a manmade breach in the ditch. The water went into a sump hole created for diversions of water for road construction. Water was flowing out of the sump hole. According to Mr. Kirk (Jack), the acreage located at the beginning of the ditch is sub-irrigated and acreage at the end of the ditch is irrigated only during high flows. High flows are necessary to get the water to the end of the ditch. Maintenance work on the ditch would assist greatly with operation of the irrigation system.

Complaints have been received concerning water availability downstream for domestic uses. One complaint made by Jeff McClaren concerns diversions from the sump hole and one by Thomas Kirk (letter dated July 22, 1992) concerns operation of the irrigation system. Water was flowing past the sump hole. In order to divert water down the ditch, an earthen plug is placed across the stream. I informed Sam and Jack Kirk that some flow must be bypassed to satisfy downstream domestic water uses.

(continued)

A subsequent conversation with Joan Bortnem, Division of Environmental Regulation, indicates that water quality standards do not allow discharge of pollutants (including dirt/fill) to a stream, unless authorized by a Corps of Engineers 404 permit. In addition, the stream classification of Beaver Creek does not allow more than 90 parts per million of total suspended solids. Placing dirt in the creek may result in violation of this standard during construction and due to erosion of the fill. Aside from water quality concerns, provision for bypassing some flow for downstream domestic uses is very difficult using an earthen fill. If a portion of the creek is bypassed, the fill would probably erode quickly reducing the ability to irrigate and also causing water quality concerns. Therefore, an alternate diversion method is needed because: 1) placement of dirt fill in the creek is considered a pollutant, and 2) adequate flows need to be bypassed for downstream domestic uses. One alternative may be installation of a permanent diversion structure with a low level outlet to bypass some flow for downstream domestic use. This type of structure may require approval of a 404 permit.



Ron Duvall, Natural Resources Engineer

7/28/92
(date)

NOTE:

The clippings of the publication notices for Water Right Nos. 595-2 and 594-2 have been reversed in the files. The published notice for No. 595-2 contains a publication error. The acreage located in section 12 was mistakenly placed in section 11. The water license issued for No. 595-2 on May 19, 1970, has the correct location of the acreage and is legalized pursuant to SDCL 46-5-4.1 even though the publication was in error.

595-2

FILE DOCUMENTATION

NAME: Don Kraus, Dept of Transportation, Custer SD

PHONE: 673- 4948

SUBJ: Construction of Diversion Structure

On September 10, 1992, I contacted Don Kraus, project engineer with the Department of Transportation, regarding the Beaver Creek diversion point for Water Right No. 595-2. Tom Kirk had contacted me earlier and indicated that DOT was planning to assist with installation of a permanent diversion structure. Mr. Kraus confirmed that DOT was in the process of designing a diversion structure for Kirk and Sons, Inc., holders of No. 595-2. The work is being performed by DOT in response to a lowering of the stream channel due to road construction work.

I informed Mr. Kraus that the design needs to incorporate the ability to bypass low flows for downstream domestic water uses. Mr. Kraus indicated that the proposed design would be submitted to the Water Rights Division for review prior to construction.



Ron Duvall, Natural Resources Engineer

9/15/92
(date)