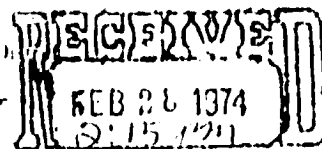


Water Right Number 2056-3

1. Considered MARCH 20 1974
2. Name of Applicant GILBERT SMITH
3. Post Office Address PIERRE
4. Amount of Water claimed 14.2
5. Source of Water supply MISSOURI RIVER
6. Water to be used for IRRIGATION
Acres to be irrigated 1040
7. Water to be diverted and used in SULLY County
about 3N 21 W miles of DNIDA
8. Proof of Publication
Received 3-14-74
Not Received _____
9. Application
Approved _____
Subject to _____
Not Approved _____
Action Deferred _____
10. Remarks:

No. 20572-3Map No. 1461-3 Water Division No. 3 MISSOURI RIVER
(Blanks to be Filled by the Engineer for the W. R. C.)

APPLICATION FOR PERMIT

STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

To Appropriate Water within the State of South Dakota

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

1. Name of Applicant Gilbert Smith
Postoffice address Part A, Pierre, State South Dakota 57501
If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) contract and direct labor
3. Name of diversion work Smith Irrigation Project
4. Amount of water claimed (cubic feet per second) 14.2
5. Source of water supply Missouri River
6. Location of point of diversion between points in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and in the NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Section 20, T115N, R80W
County Sully
7. Annual period or periods during which water is to be used April thru October
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation
9. For irrigation use, Total number of acres to be irrigated, 1040

List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
T115N, R80W Sec. 21	640		
Sec. 22 SW $\frac{1}{4}$	160		
Sec. 28 NW $\frac{1}{4}$	160		
Sec. 20 E $\frac{1}{2}$ NE $\frac{1}{4}$	80		

Attach sheet if more space is needed

10. Time required to complete construction of water supply system 5 years. Additional time required to complete application of water to the proposed beneficial use 4 years.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication Capitol Journal, Pierre, S. D.
12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source:

Pumping plant

B. Works proposed to transport water to place of use:

Mainline

C. Works proposed to apply water to beneficial use:

Sprinkler systems

Estimated Total Cost \$ _____

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map.
(See instructions concerning preparation.)

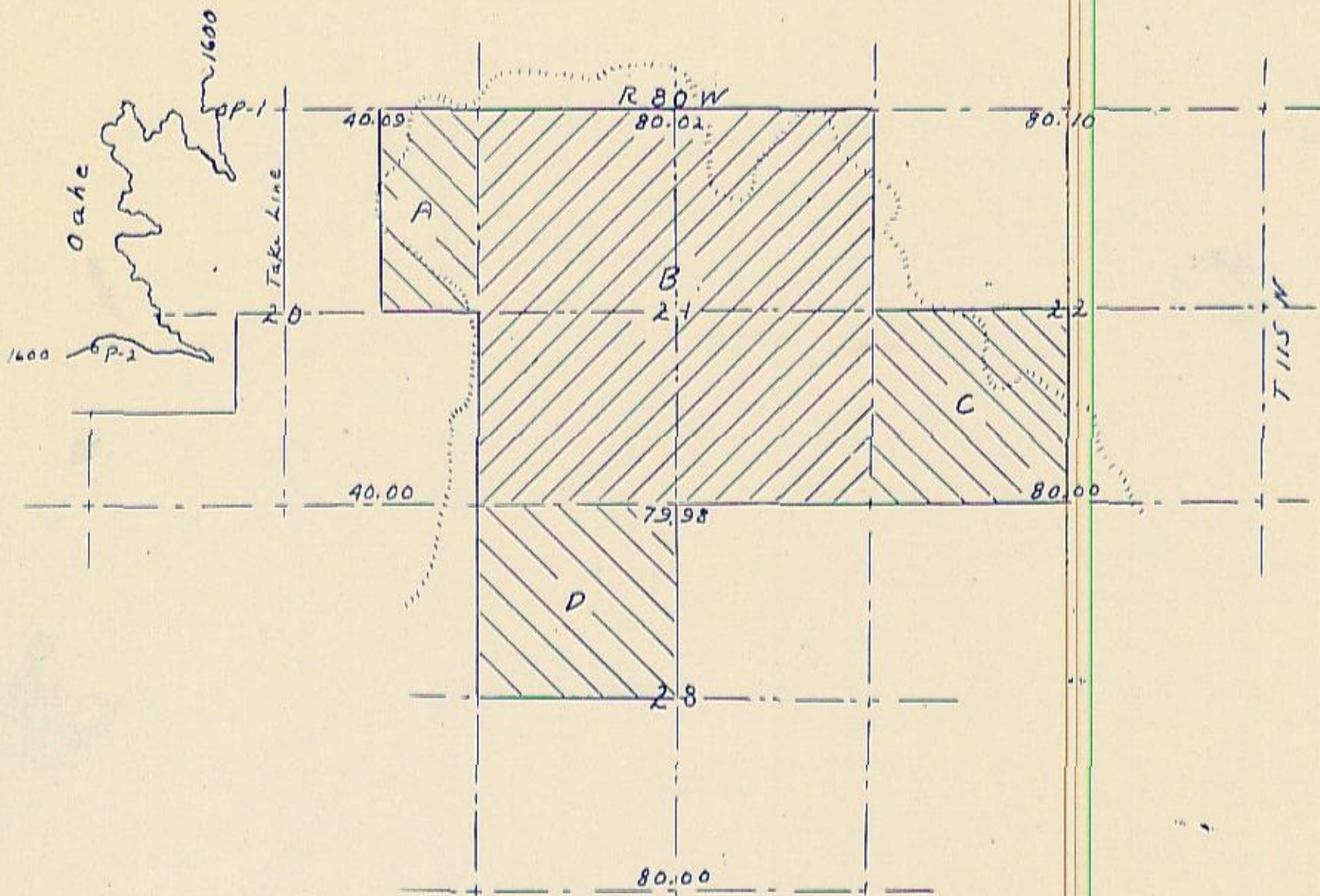
STATE OF SOUTH DAKOTA

County of HughesI, Gilbert Smith, the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.Signed Gilbert SmithSubscribed and sworn to before me this 28th day of February, 1974

Notary Public (or other qualified officer)

Frank Water Clerk II

GILBERT SMITH IRRIGATION PROJECT
SULLY COUNTY, SOUTH DAKOTA



Land to be Irrigated		
Area	Location	Acres
A	E 1/4 Section 20-T14N-R80W	80
B	All of Section 21	640
C	SW 1/4 Section 22	160
D	NW 1/4 Section 28	160
Total		1040

Pumping Sites Between P-1 and P-2

Scale ~ 1 inch = 2000 feet

SURVEYOR'S CERTIFICATE

I, R. V. Summerville, Registered Land Surveyor, State of South Dakota,
do hereby certify that, at the direction of Gilbert Smith
I have surveyed the tract of land as shown, and that the above drawn
plot is a reasonably accurate description of the land of the
proposed irrigation project. In witness whereof I have set
my hand and seal this 4th day of March, 1974, A.D.

R. V. Summerville
Registered Land Surveyor

WATER RIGHT APPLICATION APPROVAL

The Water ^{Rights} Commission hereby approves Water Right Application No. 2056-3
GILBERT SMITH PART A, PIERRE
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57501 With the following modifications:
 (State)

Date of first receipt of application FEBRUARY 28 19 74
 Date of return to applicant for correction, amendments or changes required _____ 19 ____
 Date of receipt of corrected application _____ 19 ____
 Approved MARCH 20 19 74 Recorded in Book 12 Page 333

WATER RIGHT PERMIT NO. 2056-3

The Water ^{Rights} Commission hereby grants and issues this Water Right Permit 2056-3 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is FEBRUARY 28 19 74
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before SEPTEMBER 20 19 76
3. The whole of said work is to be completed on or before MARCH 20 19 79
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is MARCH 20 19 83
5. The water appropriated shall be used for the purpose of IRRIGATION
6. 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.
7. The amount of the appropriation herein granted shall not exceed 14.2 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial uses served, and if for the irrigation purposes said appropriation must be limited to not more than 3 acre feet per acre per year and 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 MARCH 20 19 83; said water to be used during the following described annual period: APRIL THRU OCTOBER

Witness my hand this 25TH day of MARCH 19 74

WATER RIGHTS COMMISSION

By

Donald Dinsell
 Chief Engineer, Executive Officer

Certificate of Construction Issued _____ 19 ____

Water License Issued _____ 19 ____

2056-3

Publish first publication, on or before March 7, 19 74

**NOTICE
INTENT TO APPROPRIATE WATER**

Pierre, South Dakota 57501

March 4, 19 74

Notice is hereby given that Gilbert Smith
whose post office address is Pierre, South Dakota, has made an application in accordance
with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use
16.5 cubic feet of water per second of time from the Missouri River through the
Smith Irrigation Project, the point of diversion of which is to be located in the
between points in the NE 1/4 and in the NW 1/4

of Section 20, Twp. 115N, Range 80W. Said water to be used for the purpose
all or portions of
of providing irrigation on the following described land:

all of Section 21; SW 1/4, Section 22; NE 1/4, Section 20; and NW 1/4, Section 28,
all in T115N, R80W

This application No. 2056-3 will be considered by the Water ~~Resources~~ **Rights** Commission at their office at
Pierre upon the 70th day of March, 19 74, at 2:30 p.M. All interested
persons may appear and be heard.

cc: Gilbert Smith
Part A
Pierre, S. D. 57501

~~WATER RESOURCES COMMISSION~~
WATER RIGHTS COMMISSION

By:

Barton F. Joraa
Water Right Specialist

No. 2056-3

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Hughes) ss.

I, John H. Hipple hereby
certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the Daily Capital Journal

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 Pierre

County of Hughes and State of South Dakota;
that the said notice was published in said newspaper on the following
four dates:

March 6 and

March 13, 1974

John H. Hipple
(Signature)

Business Manager
(Title)

March 13, 1974
(Date Signed)

LEGAL NOTICE

No. 1453 - 2d dly - March 6 - 13

No. 2056-3

NOTICE INTENT TO
APPROPRIATE WATER

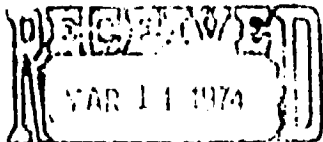
Notice is hereby given that
Gilbert Smith, whose post office
address is Pierre, South Dakota,
has made an application in ac-
cordance with the provisions of
the water laws of South Dakota
for a permit to appropriate for
beneficial use 14.3 cubic feet of
water per second of flow from
the Missouri River through the
Smith Irrigation Project, the
point of diversion of which is to
be located between points in the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ and in the NW $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 20, Twp. 115N, Range
30W. Said water to be used for
the purpose of providing irri-
gation on all or portions of the
following described land:

All of Section 21; SW $\frac{1}{4}$, Section
22; E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 20; and
NW $\frac{1}{4}$, Section 28, all in T115N,
R80W.

This application No. 2056-3 will
be considered by the Water Rights
Commission at their office at
Pierre upon the 20th day of
March, 1974, at 2:30 P.M. All
interested persons may appear
and be heard.

WATER RIGHTS COMMISSION

By: Burton F. Jones
Water Right Specialist



STATE WATER RIGHTS COM. S. DAKOTA

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 6912

PIERRE, May 3, 1979

RECEIVED OF Sandra Smith, RHY Part A., Pierre, SD 57501

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 <u>transfer of water right No. 2056-3</u>	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 John Hatch
Chief Engineer, Executive Officer
JOHN HATCH 9Y

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights Commission
Foss Building
Pierre, SD 57501

Date: 1/20/2000

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

1040 acres in Section 21, T115N, R80W, SW $\frac{1}{4}$ Section 22, NW $\frac{1}{4}$ of Section 28,

and the E½ NE¼ of Section 20, T115N, R80W

formerly owned by Gilbert Smith, Part A Pierre, SD

has been transferred to John G. Smith, Part A, Pierre, SD 57501 264-5361

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

Water Right Permit No. 2056-3 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 Commission 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)
) ss.
County of Woods)

I, Albert J. Smith 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.

Edward E. Smith
(Signed)

Subscribed and sworn to before me this 22 Day of Nov 1970.

MARGARET L. MAHER, Notary Public
My Commission Expires
November 30, 1986

Wm. and E. H. H. H.
(Notary Public)



NOTICE OF TRANSFER OF WATER RIGHTS



TO: Water Rights
Foss Building
Pierre, SD 57501

Date: March 9, 1981

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

Sec. 21, S. 44, Sec. 22, N. 44, E. 28, E. 2 NE 1/4, Sec. 20, all
in T115N-R80W, Liberty County, South Dakota
formerly owned by Gilbert T. Smith

has been transferred to John G. Smith, Part A, Pierre, SD 57501

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

Water Right Permit No. 2056-3 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 Hughes) ss.

I, John G. Smith, 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.

x John G. Smith
(Signed)

Subscribed and sworn to before me this 9 Day of March, 1981.

Kellie C. Moon
(Notary Public)

SOUTH Dakota Department of
Water & Natural Resources

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

2056-3

September 14, 1988

Ron Enz
Farm Credit Services
Box 3130
Rapid City, SD 57701

Dear Mr. Enz:

I am contacting you in regard to Water Permit No. 2056-3 currently listed in the name of John G Smith. Jim Viotor, Farm Credit Services in Pierre, contacted our office and indicated the land covered under this permit has been acquired by the Federal Land Bank-Farm Credit Services.

We also discussed the possibility that the permit may no longer be valid due to a period of more than three years of no irrigation. Under SDCL 46-5-37, when any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water. An exception to this statute would be for "legal excuse" as described in General Rules 74:02:01:37.01.

Mr. Viotor suggested I contact you regarding any irrigation done under this permit. I have enclosed a copy for your review. If the permit is still valid, it should be transferred to Farm Credit Services. Please review the enclosed permit and contact us as to the status of the permit.

Sincerely,

Genny McMATH
GENNY MCMATH
Natural Resources Analyst
(605) 773-3352

enclosure



2056-3

**South Dakota Department of
Water & Natural Resources**

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

February 8, 1989

JOHN G SMITH
ECR 37 BOX 104
PIERRE, SD 57501

NOTICE

RE: Violation of Requirement to Submit 1988 Irrigation Questionnaire

Our records indicate that the 1988 Irrigation Questionnaire has not been submitted for Permit No(s). 2056-3. The request for the Questionnaire was dated October 26, 1988. The Water Management Board had directed that owners of water permits who have not submitted the 1988 Irrigation Questionnaire be given notice of hearing to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 9:45 am, March 1, 1989 at the Howard Johnson's, Roosevelt Room, I-90 at LaCrosse, Rapid City SD.

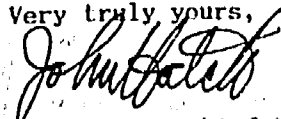
The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s). 2056-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

The hearing is an adversary proceeding. The permit owner 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 the State Supreme Court as provided by law.

If the questionnaire is received in this office before the March 1st hearing date, your name will be deleted from the agenda for the hearings.

Very truly yours,



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



South Dakota Department of
Water & Natural Resources

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

March 7, 1989

2056-3

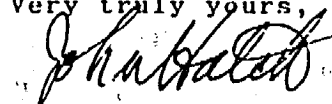
John G Smith
HCR 37 Box 104
Pierre, SD 57501

Dear Mr. Smith:

I am writing to acknowledge receipt of your 1988 irrigation questionnaire for Water Permit No. 2056-3. You may disregard the February 8, 1989, Notice of failure to submit the 1988 irrigation questionnaire. Your questionnaire was received prior to the March Water Management Board meeting and your name was deleted from the agenda pertaining to the hearing.

If you have any questions, please contact Genny McMath, at (605) 773-3352.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

4-6-89

Dear Mr. Hatch:

I am writing to request to ask for a ruling from the Water Management Board as to the validity of irrigation permit #2056.3.

The last time the acreage (NE of 21) was irrigated was in 1984. Bankruptcy proceedings began in 1983 and because of the proceedings, irrigation was discontinued after 1984. On December 30, 1988, the bankruptcy was finalized.

I would like the Board to find that due to the bankruptcy proceedings, that the three year period of nonuse pursuant to SDCL 46-5-37 has been suspended. Therefore, find that permit #2056.3 has not been forfeited due to nonuse.

John A. Smith



 **Department of
Water & Natural Resources**

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

April 6, 1989

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.

John G Smith
HCR 37, Box 104
Pierre SD 57501

Dear Mr. Smith:

A notice of your petition for a Declaratory Ruling has been sent to the Publisher of the Onida Watchman printed at Onida 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.

Be sure to contact the above newspaper to authorize publication of your Notice of Intent to Appropriate Water and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. We must receive Proof of Publication before the application can be considered by the Water Management Board.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures





Department of Water & Natural Resources

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

April 6, 1989

Onida Watchman
Box 205
Onida SD 57564

Dear Sir:

Enclosed is a Notice of Hearing to be published twice. Please publish the first notice on or before April 13, 1989 with the second publication 7 days later.

The PETITIONER MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the PETITIONER for the cost of publication. The PETITIONER is John G Smith, HCR 37, Box 104, Pierre SD.

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

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

CUT HERE

FIRST TRANSMITTAL NOTICE

TO: Ron Duvall
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name _____

Newspaper _____





PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Sully) ss.

I, Parker Knox hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Onida Waterman

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 Onida

County of Sully and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

April 13, 1989

April 20, 1989

Parker Knox
(Signature)

owner
(Title)

April 20, 1989
(Date Signed)

Cost of Printing: \$41.99

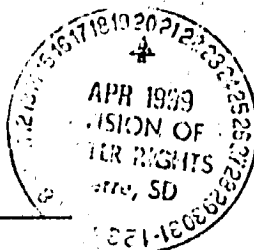
in portions of sections 20, 21, 22, 28-T115N-R80W from the Missouri River. Mr. Smith, owner of the NE 1/4 section 21, has petitioned the Board for a decision on the legal status of Permit No. 2056-3 due to the nonuse of water for irrigation since 1984. SDCL 46-5-37 requires that appropriated water be put to beneficial use at least once every three years or the unused portion of the water reverts to the public and becomes unappropriated water. Mr. Smith believes that Permit No. 2056-3 is still valid because legal excuse for nonuse of the water suspended the period of nonuse pursuant to Board General Rules, 74:02:01:37.01.

Pursuant to SCDL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Mr. Smith's petition to determine the validity of Permit No. 2056-3 because there has been legal excuse for non use of water. The Chief Engineer's recommendation is not final or binding on the Board. The Board may issue one of the following decisions regarding the petition for a declaratory ruling after all evidence is taken at the hearing: 1) that legal excuse existed for the nonuse of water and Permit No. 2056-3 is a valid permit, 2) that Permit No. 2056-3 has been forfeited due to nonuse and is subject to being noticed for cancellation or 3) take no action or do some combination of the

above. The petition for a declaratory ruling was filed on March 20, 1984 for irrigation of 1,040 acres. Smith and was approved on March 20, 1984. Permit No. 2056-3 was applied for by Gilbert land owned by Mr. Smith. Permit No. 2056-3 for the portions of the on the legal status of Water Permit ment Board for a declaratory ruling has petitioned the Water Manage- Notice is given that John G Smith NO. 2056-3

NOTICE OF HEARING ON
REQUEST FOR A
DECLARATORY RULING
REGARDING THE LEGAL
STATUS OF WATER PERMIT
NO. 2056-3

will be furnished. Everyone is asked to participate by helping to eliminate the debts from our town. We need to be ready for all the upcoming Centennial activities. Let's have a good turnout. Cookies and drinks in the park.



STATE OF SOUTH DAKOTA)

County Sully

I, Parker Knox hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Onida Watchman

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 Omaha

County of Sully and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

April 13, 1989

April 20, 1989

Parker Knox
(Signature)

owner
(Title)

April 20, 1989
(Date Signed)

Cost of Printing: \$41.99

**NOTICE OF HEARING ON
REQUEST FOR A
DECLARATORY RULING
REGARDING THE LEGAL
STATUS OF WATER PERMIT
NO. 20563**

Notice is given that John G Smith has petitioned the Water Management Board for a declaratory ruling on the legal status of Water Permit No. 2056.3 for the portions of the land owned by Mr. Smith. Permit No. 2056.3 was applied for by Gilbert Smith and was approved on March 20, 1974 for irrigation of 1,040 acres

in portions of sections 20, 21, 22, 23, T115N-R80W from the Missouri River. Mr. Smith, owner of the NE 1/4 section 21, has petitioned the Board for a decision on the legal status of Permit No. 20563 due to the nonuse of water for irrigation since 1964. SDCL 46-5-37 requires that appropriated water be put to beneficial use at least once every three years or the unused portion of the water reverts to the public and becomes unappropriated water. Mr. Smith believes that Permit No. 20563 is still valid because legal excuse for nonuse of the water suspended the period of nonuse pursuant to Board General Rules. 74:02:01:37.01.

Pursuant to SCDL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Mr. Smith's petition to determine the validity of Permit No. 2056-3 because there has been legal excuse for non use of water. The Chief Engineer's recommendation is not final or binding on the Board. The Board may issue one of the following decisions regarding the petition for a declaratory ruling after all evidence is taken at the hearing: 1) that legal excuse existed for the nonuse of water and Permit No. 2056-3 is a valid permit, 2) that Permit No. 2056-3 has been forfeited due to nonuse and is subject to being noticed for cancellation or 3) take no action or do some combination of the above. The petition for a declaratory ruling on the legal status of Permit No. 2056-3 will be considered by the Water Management Board at 10:00 am on May 10, 1969, in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-20, must file a written petition with both the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must describe the petitioner's interest in the petition for declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on the petition or a declaratory ruling or to assure access to the hearing by the handicapped.

The hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The petition for a declaratory ruling on the legal status of Permit No. 2056-3 is made pursuant to the Board General Rules, Sections 74:02:01:46 thru 74:02:01:49. The Board has legal authority and jurisdiction to consider the petition for a declaratory ruling pursuant to SDCL 46-1-14; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; and Board General Rules, Sections 74:02:01:33 thru 74:02:01:41. 13-14

**NOTICE OF HEARING ON
REQUEST FOR A
DECLARATORY RULING
REGARDING THE LEGAL
STATUS OF WATER PERMIT
NO. 2056-3**

Notice is given that John G Smith has petitioned the Water Management Board for a declaratory ruling on the legal status of Water Permit No. 2056-3 for the portions of the land owned by Mr. Smith. Permit No. 2056-3 was applied for by Gilbert Smith and was approved on March 20, 1974 for irrigation of 1,040 acres in portions of sections 20, 21, 22, 28-T115N-R80W from the Missouri River. Mr. Smith, owner of the NE 1/4 section 21, has petitioned the Board for a decision on the legal status of Permit No. 2056-3 due to the nonuse of water for irrigation since 1984. SDCL 46-5-37 requires that appropriated water be put to beneficial use at least once every three years or the unused portion of the water reverts to the public and becomes unappropriated water. Mr. Smith believes that Permit No. 2056-3 is still valid because legal excuse for nonuse of the water suspended the period of nonuse pursuant to Board General Rules, 74:02:01:37.01. Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Mr. Smith's petition to determine the validity of Permit No. 2056-3 because there has been legal excuse for non use of water. The Chief Engineer's recommendation is not final or binding on the Board. The Board may issue one of the following decisions regarding the petition for a declaratory ruling after all evidence is taken at the hearing: 1) that legal excuse existed for the nonuse of water and Permit No. 2056-3 is a valid permit, 2) that Permit No. 2056-3 has been forfeited due to nonuse and is subject to being noticed for cancellation or 3) take no action or do some combination of the above. The petition for a declaratory ruling on the legal status of Permit No. 2056-3 will be considered by the Water Management Board at 10:00 am on May 10, 1989, in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

Any interested person that intends to participate in the hearing before the Board by presenting

evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with both the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must describe the petitioner's interest in the petition for declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on the petition or a declaratory ruling or to assure access to the hearing by the handicapped.

The hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The petition for a declaratory ruling on the legal status of Permit No. 2056-3 is made pursuant to the Board General Rules, Section 74:02:01:46 thru 74:02:01:49. The Board has legal authority and jurisdiction to consider the petition for a declaratory ruling pursuant to SDCL 46-1-14; 46-2-3.1; 46-2-5; 46-2-9; 46-2-11; 46-2-17; 46-5-36; 46-5-37; 46-5-37.1; and Board General Rules, Sections 74:02:01:36 thru 74:02:01:41.

13-14



605 773-3352

enclosures

FIRST TRANSMITTAL NOT

No.

Date 4/13/89

We are in receipt of
Appropriate Water by
of 4/13/89

Name

Parker, Bruce

Newspaper

The Guide-Hatchman

TO: Ron Duvall
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

enclosing Notice of Hearing to
which was first published in our issue
OF THIS FIRST PUBLICATION.



April 17, 1989.

Dear Chief Engineer:

I'm Lester Smith, brother of John L. Smith and executor of the Gilbert Smith estate.

I'm writing this petition to participate in the hearing to determine the legal status of Water Permit No. 2056-3. I support the petition for a declaratory ruling. My position is in favor of my brother, John, being able to keep my father Gilbert Smith's Water Permit No. 2056-3. The place being in Chapter 11, is the reason for non use of the permit. I would hope the ruling will be in my brothers favor. Thank you.

Yours Truly
Lester L. Smith





Department of Water & Natural Resources

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

May 2, 1989

John G Smith
HCR 37, Box 104
Pierre SD 57501

Dear Mr. Smith:

Enclosed is the Report and the Recommendation of the Chief Engineer for Water Permit No. 2056-3 which will be considered at the May 10, 1989 Water Management Board Meeting.

Sincerely,

KAREN SCHLAACK
Senior Secretary
605 773-3352

enclosures

cc: Lester Smith
Agar SD 57520

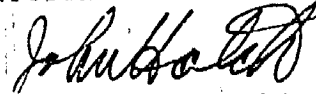


RECOMMENDATION OF CHIEF ENGINEER OF WATER PERMIT NO. 2056-3
PETITIONS AND FOR WATER PERMIT APPLICATION NO. 5297-3,
ORGANA CORPORATION

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit No. 2056-3 petitions and Water Permit Application No. 5297-3, Organa Corporation, PO Box 1114, Pierre SD.

The Chief Engineer is recommending that the Water Management Board issue a declaratory ruling that Water Permit No. 2056-3 is still valid because there has been legal excuse for non-use of water pursuant to Board Rule 74:02:01:37.01, and DENIAL of Application No. 5297-3 because Water Permit No. 2056-3 for irrigation of the same lands is still valid.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
April 4, 1989

Report on Application No. 5297-3, Organa Corporation
and Requests for Declaratory Ruling on Water Permit No. 2056-3
from Organa Corporation and John G. Smith
April 3, 1989

Application No. 5297-3 for Organa Corporation requests the appropriation of 7.77 cubic feet of water per second (cfs) from the Missouri River to irrigate 544 acres. The Missouri River diversion point is located in the NE1/4NW1/4 of section 20, T115N, R80W. The water is diverted to the acreage via a regulating pond (approximately 13 acre feet capacity) located in the SW1/4NW1/4 of section 21, T115N, R80W. The acreage to be irrigated is located on the W1/2 and SE1/4 of section 21; and NW1/4 of section 28, T115N, R80W.

In addition to the application, Organa Corporation and the original owner John G. Smith have submitted requests for a declaratory ruling on the validity of Water Permit No. 2056-3 which includes the same acreage as the application. The acreage was developed by John G. Smith, but irrigation has not taken place since 1984. According to the petition submitted by Thomas Tveit, Manager for Organa Corporation, the irrigation was started in 1975 and continued until 1983. Division of Water Rights records show irrigation through 1984. In Mr. Smith's request for a declaratory ruling, he states that the land was last irrigated in 1984.

Mr. Smith experienced financial difficulties and filed for protection under Chapter 11 of the Federal Bankruptcy code. In 1983, the bankruptcy proceedings began and on December 30, 1988, the bankruptcy proceedings were finalized. During the past year, the Federal Land Bank received all of the land covered by this permit, except the NE1/4 of section 21 in settlement of the debt.

In March of 1989, the Organa Corporation purchased the land covered by Water Permit No. 2056-3 except for the NE1/4 of section 21 which is still held by Mr. Smith. It is Organa Corporation's and Mr. Smith's intent to continue irrigation on the property.

The new landowner has requested that the Water Management Board rule that the Water Permit No. 2056-3 is still valid and that the land can continue to be irrigated. If the Board rules favorably on the requests, then Permit Application No. 5297-3 is not necessary.

DISCUSSION

The Missouri River is known to ample supplies of water; therefore, water availability is not a problem. Water Permit No.

2056-3 has not been used for four consecutive years which unless there has been legal excuse for non-use, that the permit has been forfeited. Board Rule states:

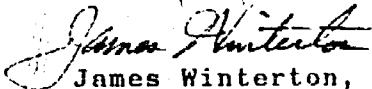
Legal excuse for the nonuse of water, suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

- (1) Unavailability of water to satisfy a permit or right;
- (2) Legal proceedings which prevent the use of water;
- (3) Water use under existing climatic conditions would result in a waste of water.

Mr. Smith encountered financial problems. He has been in bankruptcy proceedings which should be legal excuse for non-use of water. The period of non-use has been four years.

CONCLUSION AND RECOMMENDATION

It is recommended that the Water Management Board act favorably on the Organa Corporation and John G. Smith petitions, and that the Board deny Water Permit Application No. 5297-3 because Water Permit No. 2056-3 is still valid. There has been legal excuse for non-use of water pursuant to Board Rule 74:02:01:37.01.



James Winterton, P.E.
Natural Resources Engineer

CERTIFICATION

I hereby certify that on May 17, 1989 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Declaratory Ruling on Water Permit No. 2056-3 addressed as follows:

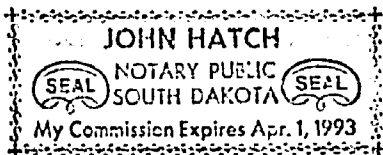
John G Smith, HCR 37, Box 104, Pierre SD 57501
Lester L. Smith, Agar SD 57520

Karen Schlaak

KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 19th day of May, 1989.



John Hatch
Notary Public

Instruction to Newspaper - Publish first Notice on or before April 13, 1989 with 2nd publication 7 days later. The applicant is responsible for payment.

**NOTICE OF HEARING ON REQUEST FOR A DECLARATORY RULING REGARDING
THE LEGAL STATUS OF WATER PERMIT NO. 2056-3**

Notice is given that John G Smith has petitioned the Water Management Board for a declaratory ruling on the legal status of Water Permit No. 2056-3 for the portions of the land owned by Mr. Smith. Permit No. 2056-3 was applied for by Gilbert Smith and was approved on March 20, 1974 for irrigation of 1,040 acres in portions of sections 20, 21, 22, 28-T115N-R80W from the Missouri River. Mr. Smith, owner of the NE1/4 section 21, has petitioned the Board for a decision on the legal status of Permit No. 2056-3 due to the nonuse of water for irrigation since 1984. SDCL 46-5-37 requires that appropriated water be put to beneficial use at least once every three years or the unused portion of the water reverts to the public and becomes unappropriated water. Mr. Smith believes that Permit No. 2056-3 is still valid because legal excuse for nonuse of the water suspended the period of nonuse pursuant to Board General Rules, 74:02:01:37.01.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Mr. Smith's petition to determine the validity of Permit No. 2056-3 because there has been legal excuse for non use of water. The Chief Engineer's recommendation is not final or binding on the Board. The Board may issue one of the following decisions regarding the petition for a declaratory ruling after all evidence is taken at the hearing: 1) that legal excuse existed for the nonuse of water and Permit No. 2056-3 is a valid permit, 2) that Permit No. 2056-3 has been forfeited due to nonuse and is subject to being noticed for cancellation or 3) take no action or do some combination of the above. The petition for a declaratory ruling on the legal status of Permit No. 2056-3 will be considered by the Water Management Board at 10:00 am on May 10, 1989, in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with both the applicant and Chief Engineer by April 28, 1989. The Chief Engineer's address is "Water Rights Division, 523 E Capitol, Pierre SD 57501 (605 773-3352)". The petition may be informal, but must describe the petitioner's interest in the petition for declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of petitioner or legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on the petition for a declaratory ruling or to assure access to the hearing by the handicapped.

The hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. The petition for a declaratory ruling on the legal status of Permit No. 2056-3 is made pursuant to the Board General Rules, Sections 74:02:01:46 thru 74:02:01:49. The Board has legal authority and jurisdiction to consider the petition for a declaratory ruling pursuant to SDCL 46-1-14; 46-2-2.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; and Board General Rules, Sections 74:02:01:36 thru 74:02:01:41.

April 27, 1989
(date)

page 1

Parties of Record before Water Management Board regarding petition for
declaratory ruling on the legal status of Permit No. 2056-3,
John G. Smith - petitioner

Proponents:

John G. Smith

HCR 37, Box 104

Pierre SD 57501

Lester L. Smith

Agar SD 57520

 **Department of
Water & Natural Resources**

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

May 17, 1989

NOTICE

TO: John G Smith Lester L Smith
HCR 37, Box 104 Agar SD 57520
Pierre SD 57501

FROM: John Hatch, Chief Engineer *John Hatch*
Water Rights Division
Pierre SD 57501

SUBJECT: Declaratory Ruling that Water Permit No. 2056-3 is
a Valid Water Permit

This notice is to inform you that on May 10, 1989, the Water Management Board ruled that Water Permit No. 2056-3 remains a valid permit due to legal excuse for the nonuse of water. Use of water authorized by Permit No. 2056-3 may be forfeited at a later date, if the water is not put to beneficial use pursuant to SDCL 46-5-37.

