

2211-3

1. Considered 3-19, 1975
2. Name of Applicant MARTIN JORGENSEN, JR.
3. Post Office Address IDEAL
4. Amount of water claimed 3.30
5. Source of water supply GROUND WATER
6. Water to be used for IRRIGATION
Acres to be irrigated 234.
7. Water to be diverted and used in BROOKINGS county
about 7.5 miles of BROOKINGS.
8. Proof of Publication Received 3-18-75
Not received _____
9. Application Approved _____
Subject to _____
Not Approved _____
Action deferred _____

10. Remarks:

Map No. 1610-3 Water Division No. 3 BIG SIOUX RIVER
(Blanks to be filled by the Engineer for the W. B. C.)

Water within the State of South Dakota

1. Name of Applicant Martin Sorensen Jr.
Postoffice address Ideal, State South Dakota 57541

2. Method of accomplishing work. (contract, employment of others, or by direct labor) Direct Labor

3. Name of diversion work Dor Jensen Irrigation Project #1

1. Amount of water claimed (cubic feet per second) 3.5

5. Source of water supply Large gravel pit

6. Location of point of diversion 706' N 92° W at South East corner of Section 35 - 109-50; NE⁴ of NE⁴ of 35

County Brookline S

7. Annual period or periods during which water is to be used May through 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. 234

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.
SW ⁴ of NE ⁴ Sec 26 - 109 - 50	40	NW ⁴ of SE ⁴ Sec 26 - 109 - 50	40
SE ⁴ of NE ⁴ Sec 26	39	NE ⁴ of SE ⁴ Sec 26	39
NE ⁴ of SW ⁴ Sec 26 - 109 - 50	6	SW ⁴ of SE ⁴ Sec 26	31
SE ⁴ of SW ⁴ Sec 26	1	SE ⁴ of SE ⁴ Sec 26	30

10. Time required to complete construction of water supply system Five years. Additional time required to complete application of water to the proposed beneficial use three years.

11. Choice of newspaper for Notice of Intent to Appropriate Water publication: Brookings Register

12. Principal Features of the Proposed Water Supply System.

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

Centrifugal Pump (located in gravel pit)

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

closed Conduit

C. Works proposed to apply water to beneficial use.

Center Pivot Irrigation System

Estimated Total Cost \$ 42,000.00

Attachments: Attach Form 2-V 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 Brooklyn

1. Donald A. Johnson 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 _____

Subscribed and sworn to before me this 1st day of Feb 1922

Annals of the

WATER RIGHT APPLICATION APPROVAL

The Water Resources Commission hereby approves Water Right Application No. 2211-3MARTIN JORGENSEN, JR.
(Applicant)IDEAL

(Post Office Address)

SOUTH DAKOTA 57541
(State)

With the following modifications:

The irrigation well approved under this Permit is located near domestic wells which may obtain water from the same aquifer. The irrigation well owner, under this Permit, shall control his irrigation withdrawals so there is not a reduction of needed water supplies in existing domestic wells.

Date of first receipt of application FEBRUARY 18, 19 75Date of return to applicant for correction, amendments or changes required , 19 Date of receipt of corrected application FEBRUARY 28, 19 75Approved MARCH 20, 19 75, Recorded in Book 13 Page 230WATER RIGHT PERMIT NO. 2211-3

The Water Resources Commission hereby grants and issues this Water Right Permit No. 2211-3 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 18, 19 75
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before SEPTEMBER 20, 19 77
3. The whole of said work is to be completed on or before MARCH 20, 19 80
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 3.3 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: MAY THRU OCTOBER

Witness my hand this 24TH day of MARCH, 19 75

WATER RESOURCES COMMISSION

By:

Donnell Driscoll
Chief Engineer, Executive Officer
Certificate of Construction Issued January 23, 19 79Water License Issued January 23, 19 79

12. Principal Features of the Proposed Water Supply System (continued.)

D. Well Information or Estimates

- (1) Drill Hole, Diameter _____ Depth _____
- (2) Casing, Type _____ Diameter _____ Thickness _____
(wood, concrete, steel, etc)
- (3) Perforated Screen.
Type _____, Diameter _____, Length _____
- (4) Gravel Pack, Thickness _____, Length of gravel pack _____

E. Dugout Information or Estimates.

- (1) Surface dimensions 6' x 10' 6" x 25', Depth 20'

F. Fill out for Either a Well or a Dugout.

- (1) Water Bearing Materials. (Please attach a copy to test well log if available.)

Character of Water bearing materials 2' sect of overburden over sand and gravel gravel & sand used by contractor - Kollberg gravel pit

Depth to top of water bearing material 8'

Depth to bottom of water bearing material 20'

Thickness of water bearing material 12'

Depth to water (ground surface to water level) 8'

- (2) Distance to nearest existing household or livestock watering wells.

On same owner's property none on property. On property owned by others 20 rds.

G. Water Storage Dams.

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, maximum water depth, surface area and storage capacity of each storage dam. The location of each water storage dam should be shown on the water right map.

Jorgensen Bros.
Signature of Applicant
by Donald Jorgensen

WATER LICENSE NO. 2211-3

(1) WHEREAS, On the 18th day of February A. D. 19 75
Martin Jorgensen, Jr.

made Water Right Application No. 2211-3 for a permit to use 3.3 cubic feet per second of the waters of a gravel pit

County of Brookings, State of South Dakota, for Irrigation

purposes; and
 (2) WHEREAS, On the 20th day of March A. D. 19 75
 Permit No. 2211-3, with a date of priority of February 13, 1975

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 30th day of March A. D. 19 80 and for the application to beneficial use of said water on or before the 20th day of March A. D. 19 83

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 2.23 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,

to irrigate parts of the following lands in Section 26-T109N-R50W

Description	Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	3
SW $\frac{1}{4}$ NE $\frac{1}{4}$	36
SE $\frac{1}{4}$ NE $\frac{1}{4}$	28
NE $\frac{1}{4}$ SW $\frac{1}{4}$	7
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40
NE $\frac{1}{4}$ SE $\frac{1}{4}$	37
SW $\frac{1}{4}$ SE $\frac{1}{4}$	8
SE $\frac{1}{4}$ SE $\frac{1}{4}$	5
TOTAL	164

(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 Martin Jorgensen, Jr.

_____ of Ideal SD

the holder _____ and owner _____ of said permit No. 2211-3 a water right, dating from February 18, 1975

_____ to use of 2.23 cubic feet per second of the waters

of a gravel pit

in the County of Brookings and State of South Dakota, or so much thereof as may be necessary for the

purposes hereinbelow mentioned, to be diverted at a point 400 feet south and 700 feet west of the NE

corner, Section 35-T109N-R50W

and conduct to and upon portions of land in Section 26-T109N-R50W, more fully described
on the face of this License

for the purpose of Irrigation

Subject to any limitations listed in Water Right Permit No. 2211-3 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 23rd day of January A. D.

Nineteen Hundred and Seventy-nine

WATER RIGHTS COMMISSION

By: John Hatch
Chief Engineer, Executive Officer, JOHN HATCH

Permit No. 2211-3Water Diversion No. 3 Big Sioux River Water District

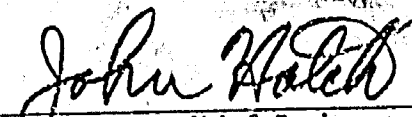
CERTIFICATE OF CONSTRUCTION

This is to Certify, That Martin Jorgensen Jr.

the holder _____ of
 Permit No. 2211-3, issued upon Application No. 2211-3, bearing date of priority of February 18,
1975 authorizing the diversion of 3.3 cu. ft. per second of the waters of _____
a gravel pit County of Brookings, State of South Dakota at _____
a point 400 feet South and 700 feet West of the NE corner, Section 35-T109H-R50H

for Irrigation

purposes, has 5 complied with the provisions of the laws of the State of South Dakota relating to proof of
 completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
 condition for diverting and conveying to the place of intended use 2.23 cu. ft. per second of water.

Date January 23, 1979


JOHN HATCH, Chief Engineer
 Water Rights Commission

STATE WATER QUALITY LAB
BROOKINGS, S.D.



February 24, 1975

Mr. Martin Jorgensen, Jr.
Ideal, S.D. 57541

Dear Mr. Jorgensen:

The water sample brought here February 12 from the sand pit in southern Brookings County has been analyzed. The WI-1 form has been completed and will be forwarded to the State Conservation Commission along with a copy of the water analysis and a copy of this letter.

This water is only medium in total salinity and very low in sodium proportion of salts, so the quality is good for irrigation purposes. There should be no difficulty irrigating the crops you designate on the land which you have in Brookings County with this water. I wish you success in your venture.

Sincerely yours,

L. O. Fine

L. O. Fine
Water Quality Lab

LOF:MRB

Enclosures

cc: "State Conservation Commission
Mr. Alvar Aho, Brookings County Agent
Darrel Pahl

STATE CONSERVATION COMMISSION
SUPPORTING INFORMATION

FOR APPROPRIATION OF GROUND WATER IN ACCORDANCE
WITH SDCL 46-6-3 AS AMENDED
(This Form Required for Proposed Well Irrigation Only)

FOR COMMISSION USE ONLY

Irrigation System: _____

Water Quality: _____

Soils Capability: _____

Approved Allen D. Felt
1775777

Disapproved: _____

NAME: Martin Jorgensen Jr.

ADDRESS: Eden, South Dakota - 57541

COUNTY: Land in Brookings County

LEGAL DESCRIPTION

1. WELL LOCATION: NE⁴ of NE⁴ sec 35 - 109-50 - Kelley gravel pit

2. AREA TO BE IRRIGATED: S¹/₂ of NE⁴ and SE¹/₄ of sec 26 - 109-50

TYPE OF IRRIGATION

3. GRAVITY _____ SPRINKLER (Indicate Type): Center Pivot

4. CROPS TO BE IRRIGATED: Corn & Alfalfa

LAND CAPABILITY FOR IRRIGATION

5. PERCENTAGE OF SLOPE: Nearly Level

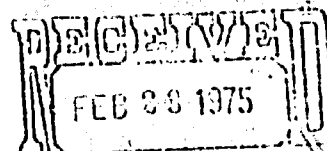
6. PHYSICAL SOILS CLASSIFICATION FOR IRRIGATION: Fordville with a
little Lamourre along west side - see Engle Bulletin 468

WATER QUALITY (To Be Completed by Commission)

7. SAMPLE NO: 75-080

8. SALINITY: EC = 702 micromhos/cm (medium)

9. SODIUM: Sodium Adsorption Ratio = 0.32 (low)



STATE WATER RIGHTS COM.
PERRIS, SOUTH DAKOTA

I do hereby certify that a chemical analysis of the ground water to be
acquired for irrigation from South Dakota State University and:
the land capability for irrigation information has been acquired from

Experiment Station Bulletin 468

and:

that the legal description for the location of the well and land to be
irrigated is true and correct.

Jorgensen Bros.
Donald Jorgensen

Subscribed and sworn before me this

14 day of February 1975.

Robert E. Wilson

Notary Public

(Title)

REPORT OF ANALYSIS
 Water Quality Laboratory
 Water Resources Research Institute
 South Dakota State University
 Brookings, South Dakota 57006

Submitted by: Lowell Anderson
 Address: Rt. 4
Brookings, SD 57006

Date Rec'd February 12, 1975
 Sample No. 75-080
 Identification Sand Tit
NE 1/4, Sec. 35, T. 109N, R. 50W

WATER ANALYSIS

Calcium (Ca)	100	ppm*	5.00	me/l**
Magnesium (Mg)	39	ppm	3.20	me/l
Sodium (Na)	15	ppm	0.65	me/l
Potassium (K)	10	ppm	0.25	me/l
Sulfate (SO ₄)	154	ppm	3.19	me/l
Nitrate (as N)		ppm		me/l
Chloride (Cl)	19	ppm	0.54	me/l
Bicarbonate (HCO ₃)	239	ppm	3.92	me/l
Carbonate (CO ₃)		ppm		me/l
Iron (Fe)		ppm		me/l
Fluoride (F)		ppm		g.p.g.***
Hardness (EDTA as CaCO ₃)		ppm		
Alkalinity (Methyl Orange)	196	ppm (as CaCO ₃)		
Alkalinity (Phenolphthalein)	0	ppm (as CaCO ₃)		
Electrical Conductivity	702	micromhos per cm at 25° C.		
Sodium Adsorption Ratio	0.32			
Sodium	7.14	% of cations		
Residual sodium carbonate	0.00	me/l		
pH	7.01			
Others:				

*ppm=parts per million
 **me/l=milliequivalents per liter

***g.p.g.=grains per gallon

COMMENTS: Total cations 9.10 me/l
 Total anions 7.65 me/l

By: Shirley Mitten

Service Performed	Amount Due
Irrigation analysis	\$6.00 PAID

Make checks payable to: Water Quality Laboratory

Cut along dotted line and return the lower portion with payment

Amount Enclosed \$

Sample No. 75-080

Signed

Form G - Notice of Intent to Appropriate Water

No. 2211-3

Publish first publication, on or before March 7, 1975

NOTICE
INTENT TO APPROPRIATE WATER

Pierre, South Dakota 57501

March 3, 1975

Notice is hereby given that Martin Jorgensen, Jr.

whose post office address is Ideal, 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

3.3 cubic feet of water per second of time from the ground water through the Jorgensen Irrigation Project #1, the point of diversion of which is to be located in the

NE 1/4, NW 1/4
of Section 35, Twp. 109N, Range 59W. Said water to be used for the purpose
of providing irrigation ^{Portions of} on the following described land:

S 1/4 NE 1/4, SE 1/4, E 1/4 SW 1/4, Section 25, T109N, R50W

This application No 2211-3 will be considered by the Water Rights Commission at its office at Pierre upon the 19th day of March, 1975, at 2:30 P. M. All interested persons may appear and be heard.

WATER RIGHTS COMMISSION

By:

BURTON F. JONES
Water Rights Specialist

BFG/JW

cc: Martin Jorgensen, Jr., Ideal, S.D. 57541

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Brookings) ss.

I, James M. McLellan Jr. hereby

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

Water was taken from the Brookings Daily Register

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 Brookings

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

March 7, 1975

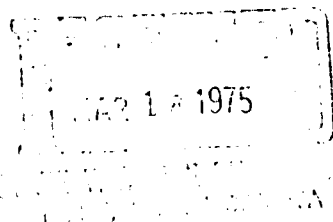
March 14, 1975

James M. McLellan Jr.
(Signature)
Sen. Rep.
(Title)
March 17, 1975
(Date Signed)

Legal No. 251 — March 7, 14
NOTICE
INTENT TO APPROPRIATE
WATER

March 3, 1975
Notice is hereby given that Martin Jorgensen, Jr. whose post office address is Idal, 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 3.2 cubic feet of water per second of time from ground water through the Jorgensen Irrigation Project No. 1, the point of diversion of which is to be located in the NE $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 35, Twp. 109 N, Range 50W. Said water to be used for the purpose of providing irrigation on portions of the following described land: S $\frac{1}{2}$, NE $\frac{1}{4}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 26, T109N, R50W
This application No. 2311-3 will be considered by the Water Rights Commission at its office at Pierre upon the 19th day of March, 1975, at 2:30 P.M. All interested persons may appear and be heard.

WATER RIGHTS COMMISSION
By: Burton F. Jones
Water Rights Specialist



12113 - Waterbury, Conn.

Pump. Bedley 1200 RPM

10" dia. P/C Undermount

C.P. Longspan 12' travel

Valley. C.P. Waterbury

100 H.P. Motor, 3550 RPM

Motor South. Century

P.S. # 6 - 323 064 - 01

Gump. Bedley 3600 RPM

Mshl BJE DBA

ser# 7515144

ASCS = 164 Ac. For.

Former says. 178 Ac. For.

Use 164 Ac.

Permit No. 2211-3Water Division 3 Big Sioux 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 Martin Jorgensen Jr. of Ideal, South Dakota. 57541 holder of Permit No. 2211-3, bearing date of priority of February 18, 1975 authorizing the diversion of 3.3 cu. ft. per second of the waters of Gravel Pit. for Irrigation purposes, in Brookings 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:

Motor - Gould Century Part # 6-323069-01, 100HP 3550 RPM.
Pump - Berkeley, Model B5E DBM, Ser # 7575144, 3600 RPM
pumping, 1000 gpm.

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

3100 ft. 10" PVC. Underground Pipe

C. Works used to apply water to beneficial use.

Valley Water drive Center Pivot.

The system is in the following condition: Good.The point of diversion is located 400 ft South and 700 ft west of the NE corner of Section 35, T109N R50WThe works are capable of diverting and conveying to the place of use 2.23cu. ft. per second of water which is to be used for IrrigationWater has been put to beneficial use to the maximum extent as follows: All in Sec. 26, T109N R50W

SE $\frac{1}{4}$ NW $\frac{1}{4}$ - 3 Ac. SW $\frac{1}{4}$ NE $\frac{1}{4}$ - 36 Ac. SE $\frac{1}{4}$ NE $\frac{1}{4}$ - 28 Ac. NE $\frac{1}{4}$ SW $\frac{1}{4}$ - 7 Ac.
NW $\frac{1}{4}$ SE $\frac{1}{4}$ - 40 Ac. NE $\frac{1}{4}$ SE $\frac{1}{4}$ - 37 Ac. SW $\frac{1}{4}$ SE $\frac{1}{4}$ - 8 Ac. SE $\frac{1}{4}$ SE $\frac{1}{4}$ - 5 Ac.

comprising a total of 164 acres of land.

Date January 8, 1979
L. Roy J. McNaught
(Signature)

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 6700 "

PIERRE, January 12, 1979

RECEIVED OF Martin Jorgenson, Jr., Ideal, SD
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. <u>2211-3</u>	50	00
Fee for Inspecting Beneficial Use, and Issuing Water License No. <u>2211-3</u>		
Fee for Issuing Location Certificate-Dry Draw, No. _____		
Fee for filling _____		
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for _____ (any other work as provided by law)		
TOTAL	50	10

WATER RIGHTS COMMISSION

By John Hatch
Chief Engineer, Executive Officer
JOHN HATCH gy

**Department of
Water & Natural Resources**

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

February 17, 1989

Martin Jorgensen, Jr.
HCR 57, Box 91
Ideal, SD 57541

Dear Mr. Jorgensen, Jr.:

On October 6, 1988, the Water Management Board adopted rules to implement a 1988 law for application of chemicals through irrigation systems. The rules establish equipment standards, performance standards and installation requirements for irrigation systems that apply chemicals (fertilizers, insecticides, or herbicides) with irrigation water.

You have indicated on your 1988 Water Management Board Irrigation Questionnaire that you do apply chemicals with irrigation water. A copy of the new rules for chemigation are enclosed for your information.

The new standards include:

- * a check valve between the irrigation pump and the point of chemical injection;
- * a vacuum relief valve on top of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a low-pressure drain on the bottom of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a chemical injection line check valve between the chemical injection pump and the point at which the chemical is injected into the irrigation line; a second check valve is required if the chemical injection pump is not a positive displacement pump;
- * an interlock system which ensures that the chemical injection pump will stop whenever the irrigation pump stops;
- * an inspection port between the irrigation pump and the check valve on the irrigation line;

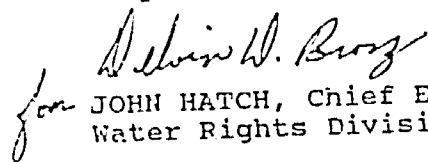


Each of these equipment requirements are discussed more thoroughly in Sections 74:02:09:05 through 74:02:09:10 of the enclosed rules. Appendix A contains diagrams of the arrangements of these anti-pollution devices.

The equipment must be installed according to the manufacturer's specifications, calibrated, and maintained in good working condition. All chemical product labels must be followed and warning signs must be posted. These rules also require reporting of all spills, accidents, and system malfunctions. A 24-hour telephone number is provided.

The chemigation rules contain notification and record keeping requirements. Prior to using chemigation, notification must be given to the Chief Engineer on the enclosed Form 1C. Information that must be provided in this notification includes the water permit or right number, the name, address, and telephone number of the water permit or right holder and of the system operator, and the legal description of the lands on which the system is located. A record of the name, quantity, dates and hours of each chemical applied must be provided to the Chief Engineer on Form 2C. A copy of this form is also enclosed for your information. It will be mailed with the annual irrigation questionnaire and must be returned with the questionnaire by the date specified. If you have any questions regarding these rules or need additional copies of the forms, please contact Susan Bowar, Water Rights Engineer (605-773-3352).

Very truly yours,


for JOHN HATCH, Chief Engineer
Water Rights Division

2211-3



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3191

April 5, 1995

2211-3

Gary Hoffman
Western Trust Company
PO Box 1052
Watertown, SD 57201

Dear Mr. Hoffman:

Enclosed, as we discussed, is a copy of Water Right No. 2211-3. The water right is currently listed in the name of Martin Jorgensen, Jr. authorizes irrigation of 164 acres with water diverted from a gravel pit.

I am also enclosing a copy of the map which was submitted with the permit application. The map reflects acreage originally applied for. An inspection of the water use system found a total of 164 acres being irrigated with a center pivot system. The penciled in area on the map is a rough estimate of where the pivot lies.

You indicated you are purchasing this property. I am including a partially completed "Notice of Transfer of Ownership" form. Once you own the land, the water right should be transferred to your name. Please complete the form and sign it in the presence of a notary public. Upon completion, return the form to our office with a required filing fee of \$2.50.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Genny McMath'.

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

enclosures

2211-3

NOTICE OF TRANSFER OF OWNERSHIP



To: Chief Engineer
Water Rights Division, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 2211-3

Date: _____

I/We request that Water Right No. 2211-3

formerly owned by: Martin Jorgensen, Jr

be transferred to: (name & address) Western Trust Company - Gary G. Hoffman, Trustee

P.O. Box 1052 - Watertown, SD 57201 (Telephone No) (605) 874-2903

Title to the following described land(s)/property has been transferred as described above:

164 acres in the SE 1/4 NW 1/4, S 1/2 NE 1/4, NE 1/4 SW 1/4, and the SE 1/4 Section 26, T109N, R50W

I/We understand that the validity of Water Right 2211-3 not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file at the Division of Water Rights, as evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)
County of Codington)

I/We Gary G. Hoffman 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 that I know of my own personal knowledge that the information herein stated is true.

Western Trust Company
Gary G. Hoffman Trustee
(Signed)

Subscribed and sworn to before me this 19th day of April, 19 95.

Patricia L. Yetter
(Notary Public) Patricia L. Yetter
State of South Dakota

Comm. Expires:
Nov. 25, 1996

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

Division of Water Rights

414471

South Dakota Department of Environment and Natural Resources

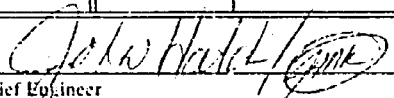
Pierre, April 20, 1995

RECEIVED OF Gary G. Hoffman (Western Trust Co), PO Box 1052, Watertown, SD 57201

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use _____		
Fee for Application for Pennit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____ Water Right No. 2211-3	2	50
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	2 50

By 
Chief Engineer

2211-3



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 12, 1995

No. 2211-3

Western Trust Company
Gary G. Hoffman, Trustee
P.O. Box 1052
Watertown, SD 57201

Dear Mr. Hoffman:

Enclosed is a receipt in the amount of \$2.50 which you paid for the transfer of Water Right No. 2211-3.

Our records now show Western Trust Company, Gary G. Hoffman, Trustee as the owner of Water Right No. 2211-3.

Sincerely,

A handwritten signature in cursive script that reads 'Cheryl F. Frost'.

Cheryl F. Frost
Secretary
Water Rights Division
(605) 773-3352

enclosure

Attention:
Ron Duvall

- 1082 -

3

STATE OF SOUTH DAKOTA, COUNTY OF BROOKINGS

4th day of July 1982
638-639

87-225 109 Beader

WARRANTY DEED

MARY I. JORGENSEN and MARTIN F. JORGENSEN, her husband, State of SOUTH DAKOTA, for and in consideration of Ten Thousand dollars (\$10,000.00) GRANT, CONVEY AND WARRANT TO MARK FRONING and Grantee, of R.R 4 Box 255 Brookings, SD 57006, the following described real estate in the County of Brookings, in the State of South Dakota, to wit:

The Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), including Outlot "A" thereof, but excluding Outlot "B" thereof, in Section Thirty-Five (35), Township One Hundred Nine (109) North, Range Fifty (50) West of the 5th P.M., Brookings County, South Dakota, subject to an Option Agreement dated July 31, 1982 and recorded in Book 101 of Miscellaneous on pages 599-600 with the Register of Deeds of Brookings County, and the Addendum to Option Agreement dated February 22, 1983 and recorded in Book 102 of Miscellaneous on pages 305-306 with the Register of Deeds of Brookings County.

AND: Grantors do reserve unto themselves, their heirs, successors and assigns, and the owners of the South Half of the Northeast Quarter (SE $\frac{1}{2}$ NE $\frac{1}{4}$); the Southeast Quarter (SE $\frac{1}{4}$); the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) and the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty-Six (26) Township One Hundred Nine (109) North, Range Fifty (50) West of the 5th P.M., (hereinafter described as the dominant tenement) the right to pump and take water from the property conveyed to the Grantee herein for purposes of irrigation on the property referred to herein as the dominant tenement, as allowed by the water right permit held the Grantors and their heirs, successors and assigns, including the right to enter upon and onto the property conveyed to the Grantee (hereinafter referred to as the servient tenement) for such purpose, including the installation, repair and maintenance of pumps, water lines and other devices and equipment normally associated with irrigation;

Grantors agree that the easement created and reserved hereby shall limited to the area of the servient tenement known as the "north pond" situated thereon, and that the Grantors will do no harm or injury to the servient tenement in the exercise of this easement.

TRANSFER FEE
PAID \$10.00

- 2 of 2 -

Attention: Ron Duvall

Dated this 21 day of July, 1987.Mary I. JorgensenMartin F. Jorgensen

STATE OF SOUTH DAKOTA)

SS

COUNTY OF TRIPP)

On this the 21 day of July, 1987, before me Kim R. Harremore undersigned officer, personally appeared Mary I. Jorgensen and Martin F. Jorgensen, known to me or satisfactorily proven to be the persons whose names were subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In Witness whereof I hereunto set my hand and official seal.

Kim R. Harremore

Notary Public

My commission expires 10-8-90

Water Rights Program -- File Documentation**NAME:** Gary Hoffman**ADDRESS:** PO Box 1052, Watertown SD 57201**DATE:** July 23, 1997**COUNTY:** Brookings**TELEPHONE:** 874-2903**FAX:** 874-8176**RE:** Water Use Dispute**COMMENTS:**

Gary Hoffman called regarding the status of Water Right No. 2211-3 and to note that an error had been made on the 1996 irrigation questionnaire. Mr. Hoffman indicated that the acreage on the water right had not been irrigated in 1996 due to some confusion as to what water right went with what land. I advised Mr. Hoffman that we would correct the error on the questionnaire.

Mr. Hoffman also inquired about the legal status of No. 2211-3 because of concern over a water use dispute. The dispute involves Mr. Hoffman's diversion of water from a gravel pit (permitted diversion point) located on property owned by Mark Froning. An easement is in place to allow access but some terms of the easement are the focus of the dispute. According to Mr. Hoffman, Mr. Froning is concerned that diversion of water from the gravel pit will cause injury to his bait fish business. A letter has been received by Mr. Hoffman from Mr. Froning's legal counsel indicating that Mr. Hoffman should not use the diversion. Mr. Hoffman is concerned about losing his bean crop due to the lack of rain. I informed Mr. Hoffman that I would review the irrigation questionnaires concerning historical water use under No. 2211-3. In addition, I told Mr. Hoffman that only the Water Management Board can make a legal determination on the validity of the water right. The following table contains the results of the review:

Irrigation Year	Irrigation (Yes/No) and comments, if any, on the irrigation questionnaire	Irrigation Year	Irrigation (Yes/No) and comments, if any, on the irrigation questionnaire
96	No, too wet according to Mr. Hoffman	86	No, flooded out for one half summer
95	No, too wet according to Mr. Hoffman	85	Yes
94	No	84	No, flooded out three times
93	No, too wet	83	No
92	No, high rainfall	82	Yes
91	No, too wet	81	No report
90	Yes	80	Yes
89	Yes	79	Yes
88	Yes	78	Yes
87	Yes	77	Yes

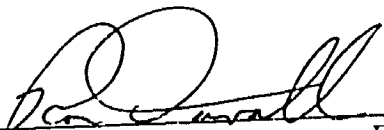
This table was faxed to Mr. Hoffman on July 23, 1997.

(continued)

Mr. Hoffman also questioned whether the bait business of Mr. Froning needed a water right permit. I informed Mr. Hoffman that if water is stored in place with no diversion then a water right permit was probably not needed. In response to this Mr. Hoffman stated that water is diverted from a well and a pond to a building at the site. Mr. Hoffman was advised that water is diverted at a rate of 250 gpm from the pond and the well (500 gpm total) and for purposes of blending the water to moderate the water temperature for the fish. The legal description of the bait business is the NE $\frac{1}{4}$ NE $\frac{1}{4}$ section 35-T109N-R50W according to Mr. Hoffman. After reviewing our files, I could not locate a water right permit for the bait business. The name and address given by Mr. Hoffman for the business is:

Mark Froning	693-4422 (work)
Dakota Wholesale Bait	692-6469 (home)
Route 4, Box 255	
Brookings SD 57006	

I advised Mr. Hoffman that there is nothing preventing him from using his water right from our perspective. However, the issue of access and what the easement allows will need to be addressed by the parties directly involved. A copy of the easement was faxed to the Water Rights Program by Mr. Hoffman.



Ron Duvall, Natural Resources Engineer
Water Rights Program

2211-3



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

May 4, 2004

2211-3
2211A-3

Jim Peterson
Burlage – Peterson Realty
317 4th St
Brookings SD 57006

Dear Mr. Peterson:

It is our understanding that the land described in Water Right No. 2211-3 and Water Permit No. 2211A-3 has been sold. Enclosed is a copy of Nos. 2211-3 and 2211A-3.

Also enclosed are partially completed Notice of Transfer of Ownership forms for filing an ownership change. Please review the forms and complete as needed. Upon completion, the forms should be signed by the new owner and returned to our office with a required filing fee of \$2.50 each (total of \$5.00). The check or money order for the fee can be made payable to the Water Rights Program.

If I can answer any questions for you, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED

MAY 17 2004

WATER RIGHTS
PROGRAM

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 2211-3

Date: May 6, 2004

I/We request that Water Right No. 2211-3

formerly owned by: Western Trust Company - Gary G Hoffman, Trustee, PO Box 1052, Watertown, SD 57201

be transferred to: (name & address) Reuben Nicolai,
4800 So. 33rd St. 4329 Mormon Coulee Rd #7
LaCrosse, WI 54601 Telephone No. 608-787-5685

Title to the following described land(s)/property has been transferred as described above:

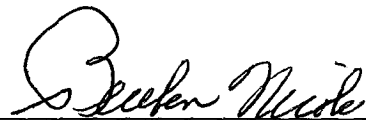
164 acres in the SE 1/4 NW 1/4, S 1/2 NE 1/4, NE 1/4 SW 1/4 and SE 1/4 Section 26, T109N, R50W

I/We understand that the validity of Water Right No. 2211-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Reuben Nicolai, the new owner, certify that the above information is true and correct.



(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date May 17, 20 04

RECEIVED OF Reuben Nicolai, 4800 S 33rd St., LaCrosse WI 54601

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>2211-3</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____	2	50
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

001322

By

Barland Erbe
Chief Engineer *gn*



2211-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

May 18, 2004

2211-3
2211A-3

Reuben Nicolai
4800 S 33rd St
LaCrosse WI 54601

Dear Mr. Nicolai:

I am writing to acknowledge receipt of the transfer of ownership forms and filing fees for Water Right No. 2211-3 and Water Permit No. 2211A-3. The transfers have been completed. The water right and permit formerly listed in the name of Western Trust Company are now listed in your name.

Enclosed are copies of Nos. 2211-3 and 2211A-3. I am also including the 2002 and 2003 irrigation questionnaires for No. 2211-3. We do not have questionnaires yet for 2211A-3. Water Permit No. 2211A-3 was issued late in the season last year and a questionnaire was not required for 2003.

The 2004 irrigation questionnaires will be mailed from our office in October. The enclosed questionnaires will give you an idea of what type of irrigation information is needed and what to keep track of during the growing season.

Enclosed are Receipt Nos. 001321 and 001322 in the amount of \$2.50 each, which you paid for filing the ownership changes. You may keep the receipts along with the other material I have enclosed for your records. If I can answer any questions for you, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

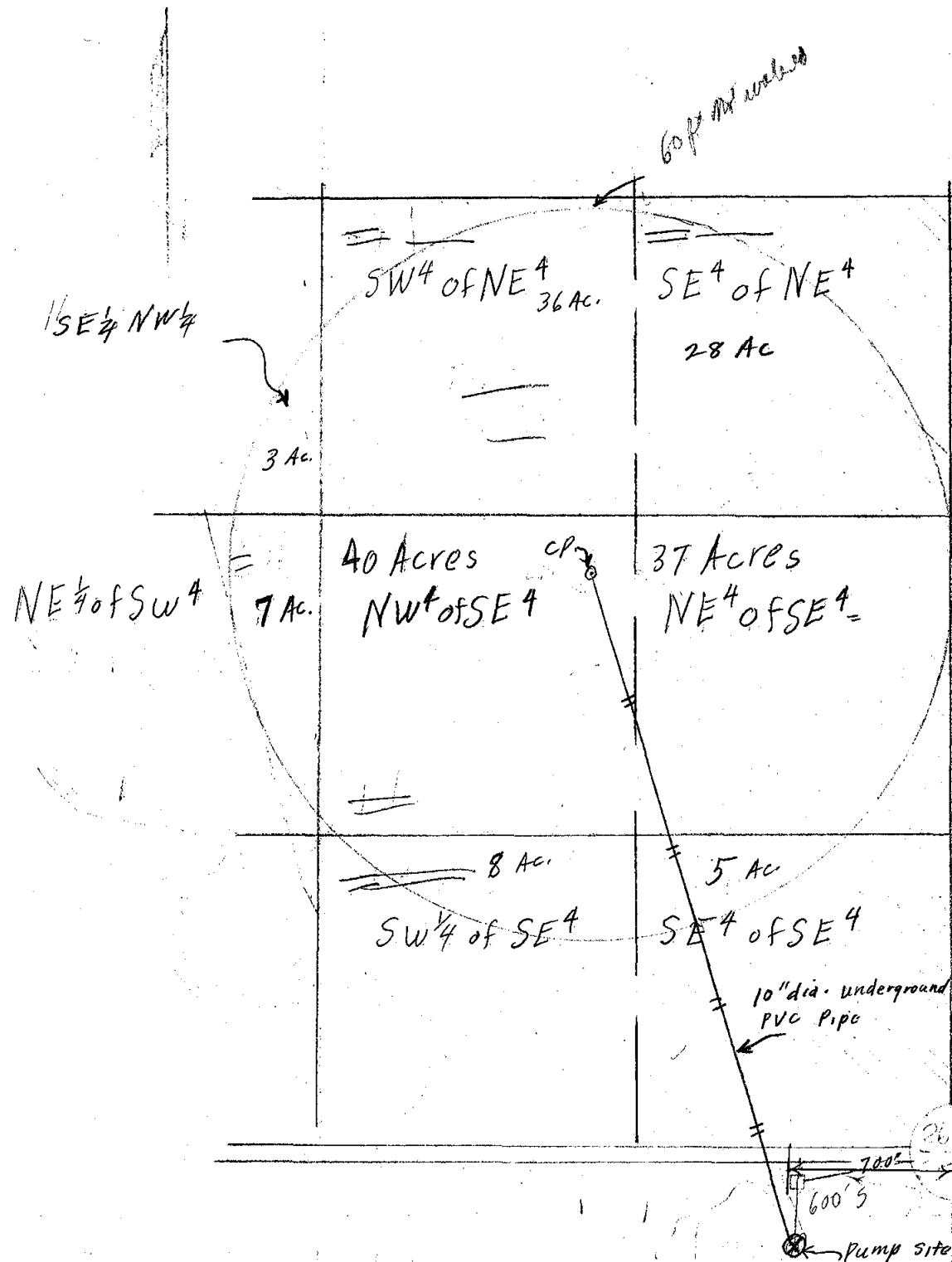
JORGENSEN IRRIGATION

PROJECT #ONE

Martin Jorgensen Jr. owner

Ideal, South Dakota 57541

Land Located in Brinkley County



ASCS 164 Acres
1600 ft. radius
160 Ac. Pivot



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

October 29, 2013

Reuben Nicolai
4800 S 33rd St
LaCrosse WI 54601

Dear Mr. Nicolai:

Enclosed are the 2013 irrigation questionnaires you submitted for Water Permit or Right Nos. 2211-3, 2211A-3, 3386-3 and 4648-3.

In order for the questionnaires to be considered complete you will need to fill out the back side of all the forms. Please include the crop, number of acres irrigated, the pump rate, days per month and hours per day the systems were in operation.

The forms will need to be completed and returned to us before **December 2, 2013**. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Genny McMath". The signature is written in a cursive, flowing style.

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

SCHAFFER LAW OFFICE, PROF. LLC
LAWYERS
412 WEST 9TH STREET – SUITE 1
SIOUX FALLS, SOUTH DAKOTA 57104-3602

RECEIVED

JUN 18 2015

WATER RIGHTS
PROGRAM

Michael J. Schaffer
Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: paul@schafferlawoffice.com

June 16, 2015

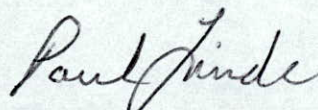
Chief Engineer
Department of Environment and Natural
Resources Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57051

RE: Water Right Number 2211-3

Dear Chief Engineer:

Please find enclosed the original Petition for Cancellation of Water Right Number 2211-3.

Sincerely,



PAUL H. LINDE
For the Firm

PHL:aml
Enclosure

cc: Jay Leibel
cc: Mark and Diana Froning (w/o enclosures)

PETITION FOR CANCELLATION OF WATER RIGHT NUMBER 2211-3

TO: CHIEF ENGINEER
DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES WATER RIGHTS PROGRAM
FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501

RECEIVED

JUN 18 2015

**WATER RIGHTS
PROGRAM**

Mark Froning and Diana Froning make this Petition for Cancellation as interested parties pursuant to SDCL 46-5-37.1. Petitioners request that the Chief Engineer cancel Water Right Number 2211-3 held by Reuben Nicolai based on the fact that the holder of the water right has failed to use such appropriated water beneficially for a period in excess of three (3) years and such right has been forfeited pursuant to SDCL 46-5-37 and SDCL 46-5-37.1.

BACKGROUND

Water Right Number 2211-3 was first issued in February of 1975 to Martin Jorgenson Jr. for the appropriation of 3.3 cubic feet per second of water from a gravel pit pond at a point 400 feet South and 700 feet West of the Northeast corner Section 35-T109N-R50W in Brookings County, South Dakota. This gravel pit pond is located on property owned by the Petitioners, Mark and Diana Froning. The Petitioners raise game fish in this pond.

Water Right Number 2211-3 allowed the appropriation of water from the gravel pit pond for irrigation of 164 acres of land in Section 26-T109N-R50W in Brookings County as fully set forth in the original water license. (Exhibit 1) Mr. Jorgenson later transferred the water right to Western Trust Company in the spring

of 1995. (Exhibit 2) Western Trust Company then transferred it to Reuben Nicolai of La Crosse, Wisconsin on or about May 18, 2004. (Exhibit 3)

BASIS FOR PETITION

The Petitioners, Mark and Diana Froning, operate Dakota Wholesale Bait and raise game fish in the pond on their land that is subject to Water Permit Number 2211-3. In the years before the extended non-use of this Water Permit, water was appropriated from this pond in such a manner that it resulted in substantially lowering the water level in the pond. Photos of the substantial use of water in 2004 are provided as Exhibit 4. Water was appropriated at such a rate that it would reduce the level of the pond necessitating the recharging of the pond by cooler water and ultimately stunning and/or killing the game fish the Petitioners were attempting to raise and sell for their business. Photos of the previous pump taken in 2005 are attached hereto as Exhibit 5.

The Petitioners inform the Board that the last use of this gravel pit pond for irrigation purposes by the holder of the Water Permit Number 2211-3 or his tenant has been over seven years ago. Petitioners further inform the Board that there was electrical service for a large electric water pump through a three-phase line and, upon information and belief, this three-phase line was taken out in October 2007 and there is now only a single-phase electric line. Furthermore, there is no longer a pump for the removal of water from the pond. Recent photos of the empty pad where the pump used to sit are attached hereto as Exhibit 6. The pond has

essentially been abandoned by the holder of Water Right Number 2211-3 and has not been used for irrigation since 2007, when the pump was removed.

Upon information and belief, Petitioners do believe that Mr. Nicolai's tenant is obtaining irrigation water for Section 26-T109N-R50W under Water Permit Number 2211A-3. This is a dugout in the Southwest Quarter of the Southeast Quarter Section 26 Township 109N Range 50W supplied by runoff and the Big Sioux Brookings Aquifer. This was established in June of 2003 as an additional source of irrigation water for the land in Section 26-T109N-R50W. (Exhibit 7)

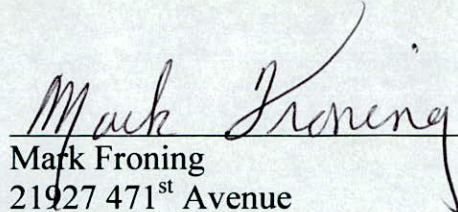
Petitioners further inform the Board that they have contacted Mr. Nicolai and his tenant previously. They offered to assist in dredging the dugout to allow for more water storage in dry times in exchange for the agreement that water would no longer be appropriated from their gravel pond. No agreement was reached.

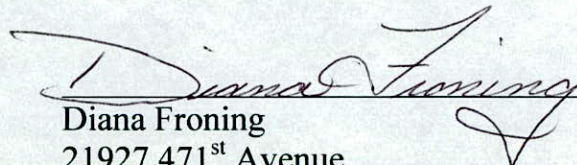
REQUESTED ACTION

The holder of Water Right Number 2211-3 has not used the Water Right for well over three years and such right has been forfeited for non-use under SDCL 46-5-37 and SDCL 46-5-37.1. Quite frankly, there is no pump to remove the water from the pond and Petitioners do not believe there are adequate electric facilities remaining to serve a pump to remove the water for irrigation. Petitioners request that the Chief Engineer recommend cancellation of this Water Right under

SDCL 46-5-37.1 and that the Water Management Board cancel Water Right
Number 2211-3.

Respectfully submitted this 15th day of June, 2015.


Mark Froning
21927 471st Avenue
Brookings, SD 57006


Diana Froning
21927 471st Avenue
Brookings, SD 57006

Document Prepared by:
Paul H. Linde
Schaffer Law Office, Prof. LLC
412 W. 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile (605) 274-6764

WATER LICENSE NO. 2211-3

(1) WHEREAS, On the 18th day of February A. D. 19 75
Martin Jorgensen, Jr.

made Water Right Application No. 2211-3 for a permit to use 3.3 cubic feet per second of the waters of a gravel pit

County of Brookings, State of South Dakota, for Irrigation

purposes; and
 (2) WHEREAS, On the 20th day of March A. D. 19 75

Permit No. 2211-3, with a date of priority of February 13, 1975

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 30th day of March A. D. 19 80 and for the application to beneficial use of said water on or before the 20th day of March A. D. 19 83

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 2.23 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,

to irrigate parts of the following lands in Section 26-T109N-R50W

Description	Acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$	3
SW $\frac{1}{4}$ NE $\frac{1}{4}$	36
SE $\frac{1}{4}$ NE $\frac{1}{4}$	28
NE $\frac{1}{4}$ SW $\frac{1}{4}$	7
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40
NE $\frac{1}{4}$ SE $\frac{1}{4}$	37
SW $\frac{1}{4}$ SE $\frac{1}{4}$	8
SE $\frac{1}{4}$ SE $\frac{1}{4}$	5
TOTAL	164

EXHIBIT

tabbles

(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 Martin Jorgensen, Jr.

_____ of Ideal SD
the holder _____ and owner _____ of said permit No. 2211-3 a water right, dating from February 18, 1975
_____ to use of 2.23 cubic feet per second of the waters
of a gravel pit
in the County of Brookings and State of South Dakota, or so much thereof as may be necessary for the
purposes hereinbelow mentioned, to be diverted at a point 400 feet south and 700 feet west of the NE
corner, Section 35-T109N-R50W

and conduct to and upon portions of land in Section 26-T109N-R50W, more fully described
on the face of this License

for the purpose of Irrigation

Subject to any limitations listed in Water Right Permit No. 2211-3 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 23rd day of January A. D.

Nineteen Hundred and Seventy-nine

WATER RIGHTS COMMISSION

By:

John Hatch

Chief Engineer, Executive Officer, JOHN HATCH

2211-3

NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Division, DENR
523 E. Capitol
Pierre, SD 57501-3181



No. 2211-3

Date: _____

I/We request that Water Right No. 2211-3

formerly owned by: Martin Jorgensen, Jr

be transferred to: (name & address) Western Trust Company - Gary G. Hoffman, Trustee

P.O. Box 1052 - Watertown, SD 57201 (Telephone No) (605) 874-2903

Title to the following described land(s)/property has been transferred as described above:

164 acres in the SE 1/4 NW 1/4, S 1/2 NE 1/4, NE 1/4 SW 1/4, and the SE 1/4 Section 26, T109N, R50W

I/We understand that the validity of Water Right 2211-3 not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file at the Division of Water Rights, as evidence of the change of ownership.

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

STATE OF SOUTH DAKOTA)

County of Codington)

I/We Gary G. Hoffman 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 that I know of my own personal knowledge that the information herein stated is true.

Western Trust Company
Gary G. Hoffman Trustee
(Signed)

Subscribed and sworn to before me this 19th day of April, 19 95.

Comm. Expires:
Nov. 25, 1996

Patricia L. Yetter
(Notary Public) Patricia L. Yetter
State of South Dakota

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.



NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED

MAY 17 2004

WATER RIGHTS
PROGRAM

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 2211-3

Date: May 6, 2004

I/We request that Water Right No. 2211-3

formerly owned by: Western Trust Company - Gary G Hoffman, Trustee, PO Box 1052,
Watertown, SD 57201

be transferred to: (name & address) Reuben Nicolai,

4800 So 33rd St.

4329 Mormon Coulee Rd #7

LaCrosse, WI 54601 Telephone No. 608-787-5685

Title to the following described land(s)/property has been transferred as described above:

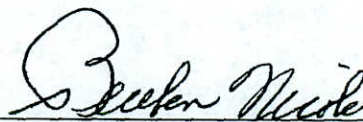
164 acres in the SE 1/4 NW 1/4, S 1/2 NE 1/4, NE 1/4 SW 1/4 and SE 1/4 Section 26, T109N, R50W

I/We understand that the validity of Water Right No. 2211-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Reuben Nicolai, the new owner, certify that the above information is true and correct.



(Signed by new owner)

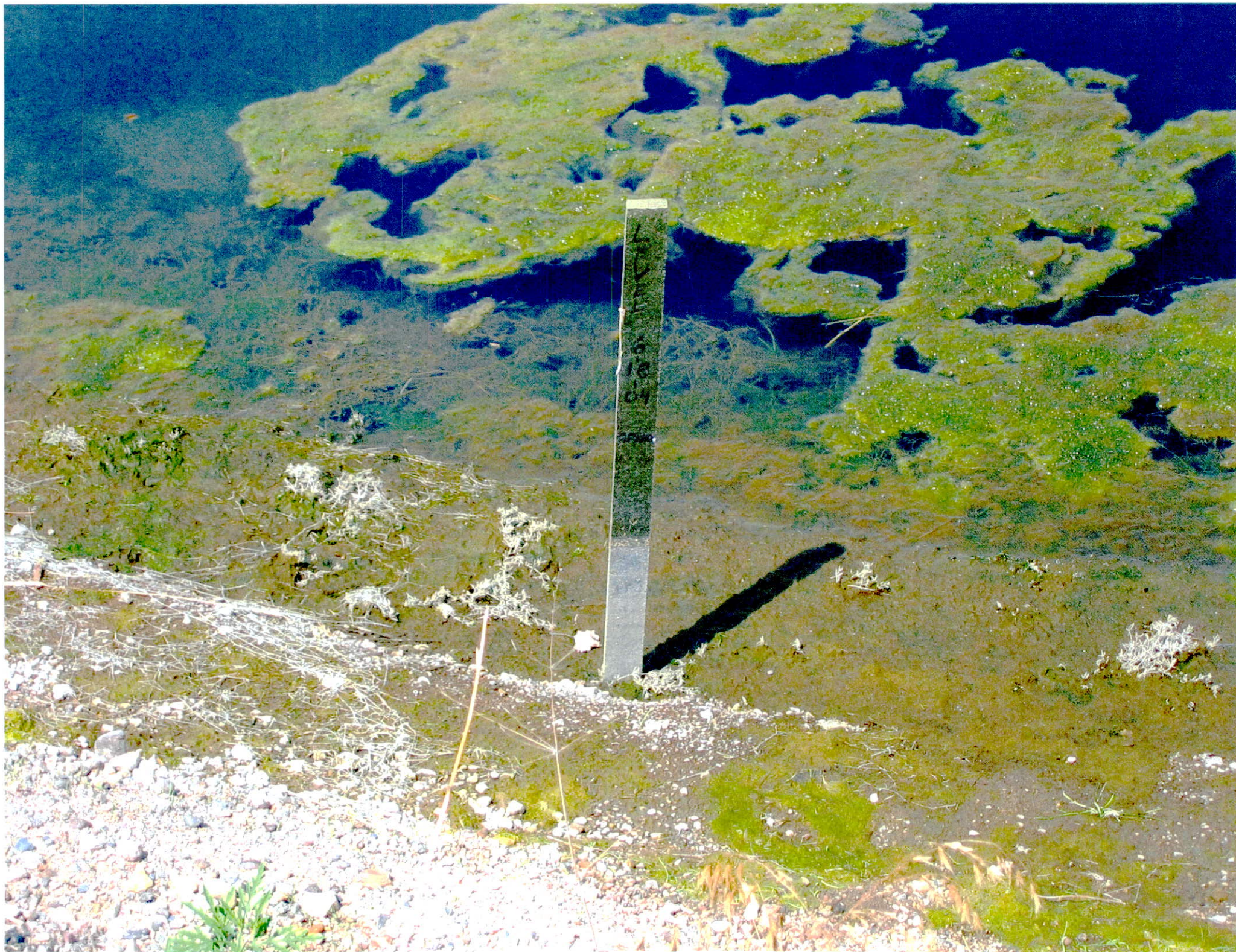
NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

EXHIBIT

3















**SOUTH DAKOTA
WATER PERMIT NO. 2211A-3**

Date of first receipt of application June 19, 2003.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2211A-3 to Western Trust Company, Gary Hoffman, Trustee, PO Box 1052, Watertown SD 57201 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2211A-3 authorizes an additional point of diversion. Water Right No. 2211-3 authorizes 2.23 cubic feet of water per second from a gravel pit to irrigate 164 acres located in the SE ¼, S ½ NE ¼, SE ¼ NW ¼, NE ¼ SW ¼ Section 26-T109N-R50W. This permit authorizes construction of a dugout located in the SW ¼ SE ¼ Section 26-T109N-R50W to supplement irrigation from the gravel pit. The dugout (approximate storage capacity of 4.0 acre feet) will be constructed to a depth to intercept ground water from the Big Sioux:Brookings Aquifer. The dugout will also receive incidental surface run-off. No increase in the amount of water appropriated or acres irrigated are authorized by this permit.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 - October 31.
3. The date from which applicant may claim right is June 19, 2003.
4. The date of approval of Permit No. 2211A-3 is September 8 2003.
5. One-fifth of the construction is to be completed on or before March 8, 2006.
6. All construction is to be completed on or before September 8, 2008.
7. Water is to be put to beneficial use on or before September 8, 2012.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The dugout approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The owner of this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. Water Permit No. 2211A-3 authorizes a dugout with an approximate storage capacity of 4.0 acre feet of water.
3. The diversion rate from Water Right No. 2211-3 and Permit No. 2211A-3, combined, may not exceed 2.23 cfs for the irrigation of the 164 acres authorized under Water Right No. 2211-3.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Garland Erbele
Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

SEP 26 2003

date



EXHIBIT

tabbies

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2211A-3</u> (office use only) Hydrologic Unit <u>10170202</u>	RECEIVED JUN 19 2003 WATER RIGHTS PROGRAM
	Basin <u>Sioux River</u>	
	Newspaper <u>Brookings Register</u> <u>Brookings</u>	

Application For Permit To Appropriate Water For Irrigation

Type of Application: New Vested Right ☒ Amendment/Correction to Permit No. 2211-3
 (Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) Diversion Pond
120 feet long by 120 feet wide and 30 feet deep.

1. Name of Applicant Gary Hoffman, Trustee - Western Trust Co. Phone (605) 874-2903
 (check one) X Owner Tenant/lessee
 Mailing Address P.O. Box 1052 - Watertown State S.D. 57201
 (Street, RR, or Box and City) no add'l (Zip Code)

2. Amount of water claimed Don't know *CFS or 800 **GPM Don't know ***AF Total Acreage 164 (no add'l)
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable

3. Source of water supply Gravel Pit dugout

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) Diversion Pond in the SE1/4
SW1/4 SE1/4 and E1/2 SW1/4 of Section 26-105-50 (Separate legal description
sheet by Professional Engineer - Wayne Haug - is attached) County Brookings

5. County or counties where water will be used Brookings County

6. Annual period during which water is to be used May thru August October 31

7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
 (Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
Sec 26-T109N-R50W, BD	3.00	Sec 26-T109N-R50W, DB	40.00
Sec 26-T109N-R50W, AC	36.00	Sec 26-T109N-R50W, DA	37.00
Sec 26-T109N-R50W, AD	28.00	Sec 26-T109N-R50W, DC	8.00
Sec 26-T109N-R50W, CA	7.00	Sec 26-T109N-R50W, DD	5.00

8. Give a description of the project. (Attach sheet if more space is needed)

STATE OF SOUTH DAKOTA) SS

County of Codington)

I, GARY G. HOFFMAN, Trustee, Western Trust Co., the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Gary G. Hoffman Trustee
Western Trust Co

Subscribed and sworn to before me this 18th day of June 20 03

Deb Seiler

Notary Public signature

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]

Sent: Wednesday, June 24, 2015 4:13 PM

To: Claudia DeRungs

Subject: Petition for Cancellation of Water Right No. 2211-3 held by Reuben Nicolai

A petition for cancellation of Water Right No. 2211-3 held by Reuben Nicolai for irrigation south of Brookings was filed by Paul Linde, counsel for Mark and Diana Froning. A cover letter indicates a copy of the petition was provided to Mr. Jay Leibel. The Department of Environment and Natural Resource (DENR) contacted Mr. Linde and it was represented to us that Mr. Leibel is counsel for Mr. Nicolai.

The petition regards the component of the water right involving a diversion point from an old gravel pit located on the Froning property. The water right indicates another dugout on Mr. Nicolai's property is also used for irrigation of the acreage. DENR understands the petition does not seek cancellation of the use of water for irrigation from the dugout on the Nicolai property.

Questions are:

1. Did Mr. Leibel receive the petition for cancellation of Water Right No. 2211-3?
2. Does Mr. Leibel represent Mr. Nicolai in this water right matter?
3. If so, will a response to the petition be filed?

Thank you for your attention to this matter.

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

Gronlund, Eric

From: Gronlund, Eric
Sent: Thursday, June 25, 2015 12:57 PM
To: 'Claudia DeRungs'
Subject: RE: Petition for Cancellation of Water Right No. 2211-3 held by Reuben Nicolai

The Department of Environment and Natural Resources (DENR) will be conducting an investigation based on the petition. The Chief Engineer of DENR after the investigation will decide whether the facts warrant bringing a cancellation proceeding before the Water Management Board as it is the state that bears the burden of proof in a cancellation proceeding. It is logical that part of that investigation would include the water right holder's position regarding the assertion of abandonment and/or forfeiture regarding the diversion point on the Froning property.

Although there is no specific timeframe, DENR anticipates that the investigation being completed by September 1st in order for a decision to be made whether to pursue cancellation and schedule the matter for the October 7-8, 2015, Water Management Board meeting. Based on this, if you determine a response is warranted, DENR would appreciate receiving it on or before August 3rd.

Thank you,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

From: Claudia DeRungs [<mailto:claudia@madisonsdlaw.com>]
Sent: Thursday, June 25, 2015 11:41 AM
To: Gronlund, Eric
Subject: RE: Petition for Cancellation of Water Right No. 2211-3 held by Reuben Nicolai

I have discussed this matter before with Mr. Nicolai. I have sent him a copy of the petition and anticipate he will want to respond. Is there a deadline by which the response must be filed and if so, what is the date?

Jay M. Leibel

Claudia DeRungs, Office Manager
Issenhuth & Leibel, LLP
PO Box 28
205 North Egan Avenue
Madison, South Dakota 57042
claudia@madisonsdlaw.com
Phone: (605) 256-9161
Fax: (605) 256-9213

CONFIDENTIALITY NOTE: This message contains confidential information. If you are not the intended recipient, you may not copy, use or distribute this information. If you have received this e-mail in error, please notify us immediately by calling (605) 256-9161 and delete this copy from your system. Thank you for your cooperation.

Gronlund, Eric

From: paul linde <paull@schafferlawoffice.com>
Sent: Thursday, June 18, 2015 9:48 AM
To: Gronlund, Eric
Cc: Jay Leibel
Subject: Re: Petition for cancellation of Water Right No. 2211-3

Yes. He is counsel for Mr. Nicolai.

Paul Linde
Schaffer Law Office, Prof. LLC
412 W. 9th Street, Suite 1
Sioux Falls, SD 57104
P: (605) 274-6760
F: (605) 274-6764

On Jun 18, 2015, at 9:36 AM, Gronlund, Eric wrote:

Mr. Lind:

DENR acknowledges receipt of the petition for cancellation of Water Right No. 2211-3.

Was Mr. Nicolai provided notification of the filing. Attorney Jay Leibel received a cc: of your filing but am unaware of his involvement. Is he counsel for Mr. Nicolai?

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

RECEIVED

JUL 13 2015

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC

LAWYERS

412 WEST 9TH STREET – SUITE 1

SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer
Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: paull@schafferlawoffice.com

July 10, 2015

Chief Engineer
Department of Environment and Natural
Resources Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57051

RE: Water Right Number 2211-3

Dear Chief Engineer:

This is a follow-up to my letter to you of June 16, 2015. I would appreciate it if you could let me know when we will be hearing from you on our Petition for Cancellation of Water Right Number 2211-3. Thank you.

Sincerely,



PAUL H. LINDE
For the Firm

PHL:aml

cc: Jay Leibel
cc: Mark and Diana Froning (w/o enclosures)

Gronlund, Eric

From: Gronlund, Eric
Sent: Wednesday, July 15, 2015 8:53 AM
To: paul@schafferlawoffice.com
Subject: Petition for Cancellation of Water Right No. 2211-3.

Mr. Paul Linde:

DENR received your follow-up letter requesting we let you know when there will be a hearing on the Petition for Cancellation of Water Right No. 2211-3 held by Mr. Nicolai.

First as a point of clarification, DENR views the petition as requesting cancellation of the portion of the water right involving the diversion point located on your client's property. It is not a request for cancellation of the entire water right. Page 3 of the petition states Mr. Nicolai's tenant is obtaining irrigation water under Water Permit No. 2211A-3. Water Permit No. 2211A-3 is an amendment to the water right to allow the additional diversion point (dugout) located on Mr. Nicolai's property. The foundation water right and priority date from the water right still lies with Water Right No. 2211-3. Please let us know if this misrepresents your client's position.

Secondly, SDCL 46-5-37.1 states in part that upon petition and after reasonable notice to the holder of the right or permit, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation for reason of abandonment or forfeiture. The recommendation, notice and hearing shall be conducted pursuant to the procedure contained in chapter 46 -2A. In a cancellation proceeding, the state bears the burden at hearing to show the water right is subject to cancellation. If the chief engineer determines there is not a basis for cancellation, DENR is not obligated to bring the matter for hearing before the Water Management Board.

As set forth in SDCL 46-5-37.1, DENR has contacted counsel for Mr. Nicolai. We provided him until August 1st to respond to the petition. The next meeting of the Water Management Board is October 14 – 15, 2015. That provides time for DENR to investigate after knowing the position of both parties and if a determination is made to proceed with cancellation there will be ample time to notice the matter for hearing before the Board.

As part of our investigation, DENR will likely conduct an on-site investigation. When that occurs do you want contact to arrange the on-site visit to be directed to you or should we contact Mark and Diana Froning directly.

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

Duvall, Ron

From: Gronlund, Eric
Sent: Wednesday, July 15, 2015 10:30 AM
To: Duvall, Ron
Subject: FW: Petition for Cancellation of Water Right No. 2211-3.

From: paul linde [<mailto:paul@schafferlawoffice.com>]
Sent: Wednesday, July 15, 2015 10:28 AM
To: Gronlund, Eric
Cc: Jay Leibel
Subject: Re: Petition for Cancellation of Water Right No. 2211-3.

Mr. Gronlund:

Thank you for your email. In response to your inquiry, my clients have no interest in requesting a cancellation of 2211A-3, which is a separate diversion point that is not on my clients' property. My clients simply request cancellation of the water right to their pond on their property that is provided by water right 2211-3. They want Mr. Nicolai and his tenant to seek water from the dugout on land owned by Mr. Nicolai.

As to the potential onsite visit, you may contact my clients directly. The contact information is provided below.

Contact Information for Fronings

Mark and Diana Froning

21927 471st Avenue

Brookings, SD 57006

Phone Numbers:

Mark: 695-4422

Diana: 695-3880

Home: 693-3715

Fax: 693-1301

Email: dakotawhsebait@live.com

Thanks,

ISSENHUTH & LEIBEL, LLP

ATTORNEYS AT LAW

205 N. EGAN AVENUE
PO Box 28
MADISON, SD 57042
PHONE: 605-256-9161
FAX: 605-256-9213



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AUG - 3 2015

WATER RIGHTS
PROGRAM

THOMAS M. ISSENHUTH

JAY M. LEIBEL

ATTORNEYS AT LAW

July 30, 2015

Chief Engineer
Department of Environment and Natural
Resources Water Rights Program
Foss Building
523 East Capitol
Pierre, South Dakota 57051

Re: Water Right Number 2211-3
Reuben Nicolai

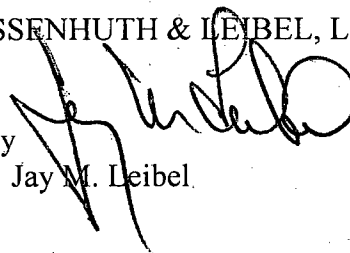
Dear Chief Engineer:

Please find enclosed a response to the Petition for Cancellation of Water Right Number 2211-3 of my client, Reuben Nicolai filed by Paul H. Linde on behalf of his clients, Mark and Diana Froning.

Thank you.

Respectfully submitted,

ISSENHUTH & LEIBEL, LLP.

By 
Jay M. Leibel

JML/cd

Enclosures

cc: Reuben Nicolai
David Ahlers
Paul H. Linde

RESPONSE TO PETITION FOR CANCELLATION OF WATER RIGHT #2211-3

TO: CHIEF ENGINEER
DEPARTMENT OF ENVIRONMENT & NATURAL
RESOURCES WATER RIGHTS PROGRAM
FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57051

RECEIVED
AUG - 3 2015
**WATER RIGHTS
PROGRAM**

Mr. Nicolai respectfully requests there be no alteration or change in the water rights issued by 2211-3 as such water is used from time to time in the irrigation of crop land. The amount of water used varies from year to year. In some years, based upon the nature of the crop and rainfall it is not necessary to appropriate any water for irrigation. As a matter of fact the request of the petitioner Nicolai altered the rotation of crops to address the petitioner's desire to use water which would be available to Nicolai under the permit.

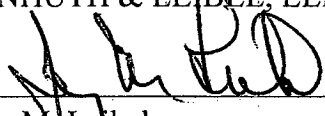
The entire basis for the petitioner's claim is Ahlers has failed to use such appropriated water beneficially for the last three years. We respectfully disagree with that representation. We would acknowledge not all the water that is appropriated has been used, some water has been used as it has not been necessary due to rainfall and rotation of crops.

In the last three (3) years significant improvement was made in the irrigation system by Mr. Nicolai. Attached hereto is a copy of a purchase order dated September 3, 2012 together with an invoice dated February 27, 2015, and an invoice dated October 15, 2013 for the purchase of a new pump, irrigation pipe, and attachments which were purchased specifically for the purposes of pumping water under the permit. Water is pumped from one pond into another pond which is used for irrigation. The reason for this is the irrigation system needs more gallons of water per minute than could be obtained through a well. Therefore, water is placed in a surface pond and the pump is used to transfer water from the pond into the irrigation system. The pump is removable and can be moved from time to time for maintenance and for use.

Pursuant to the rules and regulations an inspection has already been done by Mr. Ron Devall of DENR. David Ahlers, the tenant, was present during the inspection. It's my understanding he has provided additional information with Mr. Devall. It seems duplicitous to repeat that information in this presentation if it may be provided to the Board in Mr. Devall's report. We respectfully request we be given an opportunity to respond, in writing, prior to the October hearing on the matters addressed in that report or to add information which may be relevant but not submitted in that report.

Respectfully submitted this 30th day of July, 2015.

ISSENHUTH & LEBEL, LLP.

By 

Jay M. Leibel

Attorney for Reuben Nicolai

PO Box 28

Madison, SD 57042

(605) 256-9161

From: Claflin Excavating
47629 229th St
Flandreau, SD 57028

10/15/2013

To: Reuben Nicolai
4800 S. 33rd St
LaCrosse, WI 54601

Install 10" Irrigation pipe	960'	X 2.25 per foot	\$2,160.00
on 26-109-50		Excise Tax 2.041%	<u>44.09</u>
		Total	\$2,204.09

Please Remit Payment to Claflin Excavating

Thank You



55371 866 Rd
McLean, NE 68747

Invoice

Date	Invoice #
2/27/2015	135

Bill To
David Ahlers 48542 231st St Flandreau, SD 57028

Due Date
3/13/2015

Quantity	Description	Rate	Amount
8	1. Professional Precision Data Specialist Support 2. Telemetry w/included fees 3. Drill and Drop Triscan Probe 36" 4. Non-slurry installation for improved accuracy and quality 5. Removal at end of Season 6. In season hardware support 7. Off season storage, refurbishment, cleaning, maintenance and updates 8. Access to Cropmetrics VO website for soil moisture monitoring, recommendations, pivot status, etc...	1,400.00	11,200.00

Thank you for your business.

Total

\$11,200.00

solutions@precisionpointne.com

pd # 7924
3-23-15

From: Claflin Excavating
47629 229th St
Flandreau, SD 57028

10/15/2013

To: Reuben Nicolai
4800 S. 33rd St
LaCrosse, WI 54601

Install 10" Irrigation pipe	960'	X 2.25 per foot	\$2,160.00
on 26-109-50		Excise Tax 2.041%	<u>44.09</u>
		Total	\$2,204.09

Please Remit Payment to Claflin Excavating

Thank You



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

August 6, 2015

Paul H. Linde
Schaffer Law Office, Prof. LLC
412 West 9th Street – Suite 1
Sioux Falls SD 57104-3602

Dear Mr. Linde:

I am writing in regard to the June 16, 2015, "Petition for Cancellation of Water Right Number 2211-3" which you sent to me on behalf of Mark and Diana Froning.

On July 15, 2015, Ron Duvall with the Water Rights Program, conducted a field investigation and visited with the Froning family. Mr. Duvall also contacted Reuben Nicolai and his renter, David Ahlers, by phone. Mr. Nicolai indicated there was no intention to either forfeit or abandon use of water from the Froning pond and this position was confirmed in a letter dated July 30, 2015, from Jay Leibel who represents Mr. Nicolai.

Mr. Duvall prepared a document dated August 5, 2015, based on his investigation which is enclosed for your review. I agree with the recommended action in the document prepared by Mr. Duvall. Therefore, I will not be pursuing cancellation of Water Right No. 2211-3 by scheduling the matter for consideration by the Water Management Board. Based on provisions of Administrative Rules of South Dakota (ARSD) 74:02:01:37.01 and 74:02:01:37.02, suspending the period of nonuse and allowing for standby works, I see no basis for asking the Water Management Board to cancel the water right.

However, the Froning family may choose to petition the Water Management Board for a declaratory ruling concerning the water right pursuant to ARSD 74:02:01:46 through 74:02:01:49. If this declaratory ruling procedure is pursued, I believe the petitioners bear the burden of proof in demonstrating the water right should be cancelled.

Please feel free to contact me or Ron Duvall at (605) 773-3352 if you have any questions and, on behalf of the water rights staff, I would like to thank everyone for their cooperation in this investigation.

Sincerely,

Jeanne Goodman
Chief Engineer, Water Rights Program

Enclosure

c: Mark and Diana Froning
Reuben Nicolai
Jay Leibel

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Mark and Diana Froning (Petitioners)

ADDRESS: 21927 471st Avenue, Brookings SD 57006

DATE: July 15, 2015 - Field Inspection

RE: Petition, dated June 16, 2015, for Cancellation of Water Right No. 2211-3

BACKGROUND

On June 18, 2015, the Chief Engineer of the SD DENR Water Rights Program received a petition from Paul Linde, representing Mark and Diana Froning, requesting action to cancel Water Right No. 2211-3. As indicated in the petition, the basis for requesting the Chief Engineer to pursue cancellation is due to forfeiture of the water right pursuant to SDCL 46-5-37 and 46-5-37.1.

Water Right No. 2211-3 authorizes irrigation of 164 acres in section 26-T109N-R50W with a diversion rate of 2.23 cubic feet of water per second (1,000 gallons per minute) from a "gravel pit" located in the NE1/4 NE1/4 section 35-T109N-R50W. A copy of the file is available online at: http://denr.sd.gov/wrimage/wrinfo/wr_div3/2211-3.pdf

Water Permit No. 2211A-3 was issued September 26, 2003, and authorized an additional diversion point for the acreage covered by No. 2211-3. The additional diversion point was to be a dugout located in the SW1/4 SE1/4 section 26-T109N-R50W with no increase in the diversion rate or acreage irrigated under No. 2211-3. A copy of the file is available online at: http://denr.sd.gov/wrimage/wrinfo/wr_div3/2211A-3.pdf

FIELD INVESTIGATION

On Wednesday, July 15, 2015, I contacted Mark Froning, Reuben Nicolai (owner of the property covered by Nos. 2211-3 and 2211A-3) and the renter, David Ahlers.

During a site visit, Mr. Froning showed me a concrete pad where a motor and pump had previously been located (Picture 1). As shown in the picture, Mr. Froning indicated that there is still power (single phase service) to the site but he indicated there is no longer three phase service needed to run an electric motor. Near the concrete pad I also observed the inlet (Picture 2 & 3) to the pipeline used to run water to the irrigation system. During a phone conversation with David Ahlers, Mr. Nicolai's renter, I asked Mr. Ahlers when the last time irrigation occurred from the site on Mr. Froning's property. Mr. Ahlers indicated that the last time water was diverted from the gravel pit (Froning pond) was during the 2013 irrigation season using a PTO drive Berkeley pump with a tractor to run the pump. Mr. Froning confirmed that a tractor and PTO drive were on the site during that timeframe but could not use the concrete pad due to the configuration of the pumping equipment. Mr. Froning pointed out an area below and west of the pad where the tractor and pump were placed to connect to the pipeline inlet. According to Mr. Froning, there was a severe shoreline erosion problem caused by the pumping which lasted for only a short period of time.

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3

During the site visit Mr. Froning also explained issues arising from pumping of water:

- Weed problems due to the inability to treat the pond,
- Damage to the fishery resulting from a change in water temperature caused by pumping-induced recharge to the pond, and;
- Noise from the tractor running a PTO drive pump would be disruptive to nearby neighbors.

Mr. Froning also made note of his offer to use his heavy equipment to remove silt from the dugout in section 26 in exchange for Mr. Nicolai relinquishing his easement to divert water from the Froning pond.

I spoke to Reuben Nicolai via phone and he put me in contact with his property renter, David Ahlers. Mr. Nicolai indicated that he did not want to lose the ability to pump from the pond nor harm the fishery. A written response to the petition for cancellation dated July 30, 2015, from Jay Leibel, legal counsel for Mr. Nicolai, also indicated a desire to retain the permit allowing use of the Froning pond.

I called Mr. Ahlers for information concerning the irrigation system in section 26 and use of water from the Froning pond. Mr. Ahlers indicated, to minimize the need for water from the Froning pond, they planted soybeans to lessen the amount of water needed for irrigation. Corn had been grown on the property in the past which has a higher demand for water. Mr. Ahlers also indicated that the center pivot had been converted from a high pressure to a low pressure system and now operates at 800 gallons per minute (gpm). Water Right No. 2211-3 currently authorizes diversion of 1,000 gpm based on the former, higher pump rate when the pivot operated at high pressure.

I questioned Mr. Ahlers concerning past usage of water from the Froning pond. Mr. Ahlers indicated that a tractor and a power-take-off (PTO) pump were used to pump water from the pond in 2013 (this was confirmed by Mr. Froning). According to Mr. Ahlers, a diesel motor and pump were available for use prior to the PTO drive pump being acquired in 2012. I asked Mr. Ahlers where the pump was and he indicated it was currently being serviced at Farmers Implement and Irrigation in Brookings. I contacted Farmers Implement and Irrigation and existence of a 4 inch Berkeley PTO pump was confirmed along with a picture of the pump provided by Dave Gullickson (Picture 4). A receipt for purchase of the pump was also provided by Mr. Leibel.

Mr. Ahlers indicated a change was made in the route of the pipeline running from the Froning pond following construction of the dugout in section 26. I reviewed imagery available through Google Earth and noted the dugout in section 26 appears to have been constructed sometime in the late 2005 to early 2006. A new 10 inch PVC line connects to the existing 10 inch PVC line north of the section line between sections 35 and 26. The new 10 inch pipeline then runs to the dugout in section 26 (see Map in Appendix). In addition, a Marathon electric motor and Berkeley pump were installed at the dugout to divert water from the dugout to the center pivot. To operate the electric motor, the 3 phase power supply formerly located at the Froning pond was relocated to near the dugout site. The electric motor/pump and

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3

standpipe outlet of the new 10 inch PVC pipeline from the Froning pond are shown in Picture 5. Mr. Ahlers indicated additional pipeline (Picture 6) is stockpiled near the dugout to attach to the standpipe to prevent erosion at the outlet when water is being pumped from the Froning pond.

REVIEW OF ANNUAL IRRIGATION WATER USE REPORTS

A review of the annual irrigation water use reports for Water Right No. 2211-3, submitted since approval of Water Permit No. 2211A-3 in late 2003, found water has been used every year with the exception of 2010. Annual reports filed during the time period from 2004 through 2014 for No. 2211A-3 also indicate water use every year with the exception of 2010. Since the dugout in section 26 does not appear on an aerial photo map until 2006, the 2004 report for No. 2211A-3 clearly was not for water diverted from the dugout which did not yet exist. The following annual reports for No. 2211A-3 from 2005 to present all refer to seeing reports filed under No. 2211-3 for the reported water usage. For the years 2011 and 2012 the reports for No. 2211A-3 had "dugout" circled and "gravel pit" written in beside dugout. The 2013 report had "dugout" circled with no reference to "gravel pit" made on the form.

ANALYSIS

The petition filed by Mark and Diana Froning seeks to have the Chief Engineer pursue cancellation of Water Right No. 2211-3 for water use from the Froning pond due to forfeiture of the water right. In regard to forfeiture, the pertinent period begins with construction of the dugout in section 26 which was either late 2005 or early 2006 which is when the second water source became available. However, according to the Froning petition, the 3 phase power is believed to have been removed in October 2007. Therefore, the period during which forfeiture may have occurred is 5 years between 2008 and 2012. Both Mr. Froning and Mr. Ahlers agree some pumping of water from the Froning pond occurred in 2013.

Regarding forfeiture of the water right, there are two Administrative Rules of South Dakota (ARSD) which need to be considered regardless of the length of the period of nonuse:

74:02:01:37.01. Legal excuse for nonuse of water. Legal excuse for 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, right, or vested right;
- (2) Legal proceedings which prevent the use of water;
- (3) Water use under existing climatic conditions would result in a waste of water.

Subsection (3) of ARSD 74:02:01:37.01 suspends the period of nonuse based upon climatic conditions. If climatic conditions do not warrant using both the dugout and Froning pond, then the period of nonuse

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3

from one or both diversion points is suspended. There may be years of sufficient moisture when no pumping is needed, or pumping of water from the dugout suffices with no need to supplement from the Froning pond. If climatic conditions do not warrant diverting from the Froning pond, then pumping for the sake of pumping could be construed as a "waste of water" as mentioned in the rule.

Another rule pertaining to forfeiture of a water right is ARSD 74:02:01:37.02:

74:02:01:37.02. Exceptions to nonuse of water. A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

The purpose of this rule is to prevent forfeiture of a water right provided certain conditions are met. In this case, the works needed to divert appropriated water were a diesel engine and pump (which predated the electric motor and pump used at the Froning pond) with the diesel motor and pump getting replaced by a 4 inch PTO drive pump acquired in September 2012. The works to "convey water" is the 10 inch PVC pipeline which was modified in 2012 to run to the dugout rather than directly to the center pivot.

A final consideration in the rule is that "water diversion works are maintained in working condition for immediate use upon demand." The PTO drive pump was not at the Froning pond site but was being serviced so as to be in "working condition." In regard to a tractor and the pump being available "for immediate use upon demand," I do not believe that means a tractor and PTO drive pump need to be onsite during the entire irrigation season. If the need to use the Froning pond arises, my interpretation is that the equipment to pump the water needs to be readily available but not necessarily onsite. There is a difference of degree in "immediate demand" for irrigation versus a demand for drinking water or fire protection.

RECOMMENDED ACTION

The burden of proof that abandonment or forfeiture has occurred lies with the party bringing the action. In this case, the Chief Engineer has been asked to cancel Water Right No. 2211-3 pursuant to SDCL 46-5-37 and 46-5-37.1. This means the Chief Engineer would need to bring a recommendation to the Water Management Board asking the board to cancel the water right due to abandonment or forfeiture. The Chief Engineer bears the burden of proof in such a proceeding.

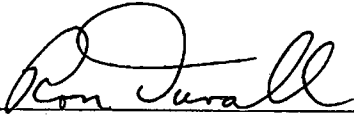
I recommend that the Chief Engineer not pursue cancellation of Water Right No. 2211-3 for the following reasons:

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3

1. Installation of a new 10 inch PVC pipeline and purchase of a PTO drive pump to divert water from the Froning pond to the dugout in section 26 indicates no intent to abandon use of the Froning pond; and,
2. Forfeiture of Water Right No. 2211-3 has not occurred due to provisions of ARSD 74:02:01:37.01 suspending the period of nonuse and ARSD 74:02:01:37.02 providing an exception to nonuse of water.

If the Chief Engineer chooses to not pursue cancellation, the petitioners may have the option of pursuing cancellation through a declaratory ruling process outlined in ARSD 74:02:01:46 through 74:02:01:49. If pursued by the petitioners, I believe the petitioners would bear the burden of proof in showing the water right should be cancelled.



Ron Duvall
Water Rights Permitting Administrator
SD DENR, Water Rights Program

8/5/15
Date

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3

APPENDIX



Picture 1. Concrete pumpsite pad now vacant.



Picture 2. Inlet to pipeline running to section 26.



Picture 3. Close-up of pipeline inlet.

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3



Picture 4. Four inch Berkeley PTO pump. Photo courtesy of Dave Gullickson with Farmers Implement and Irrigation, Brookings SD.



Picture 5. Marathon electric motor and pump in foreground with standpipe outlet for water pumped from Froning pond shown in upper right-hand corner of picture.

August 5, 2015

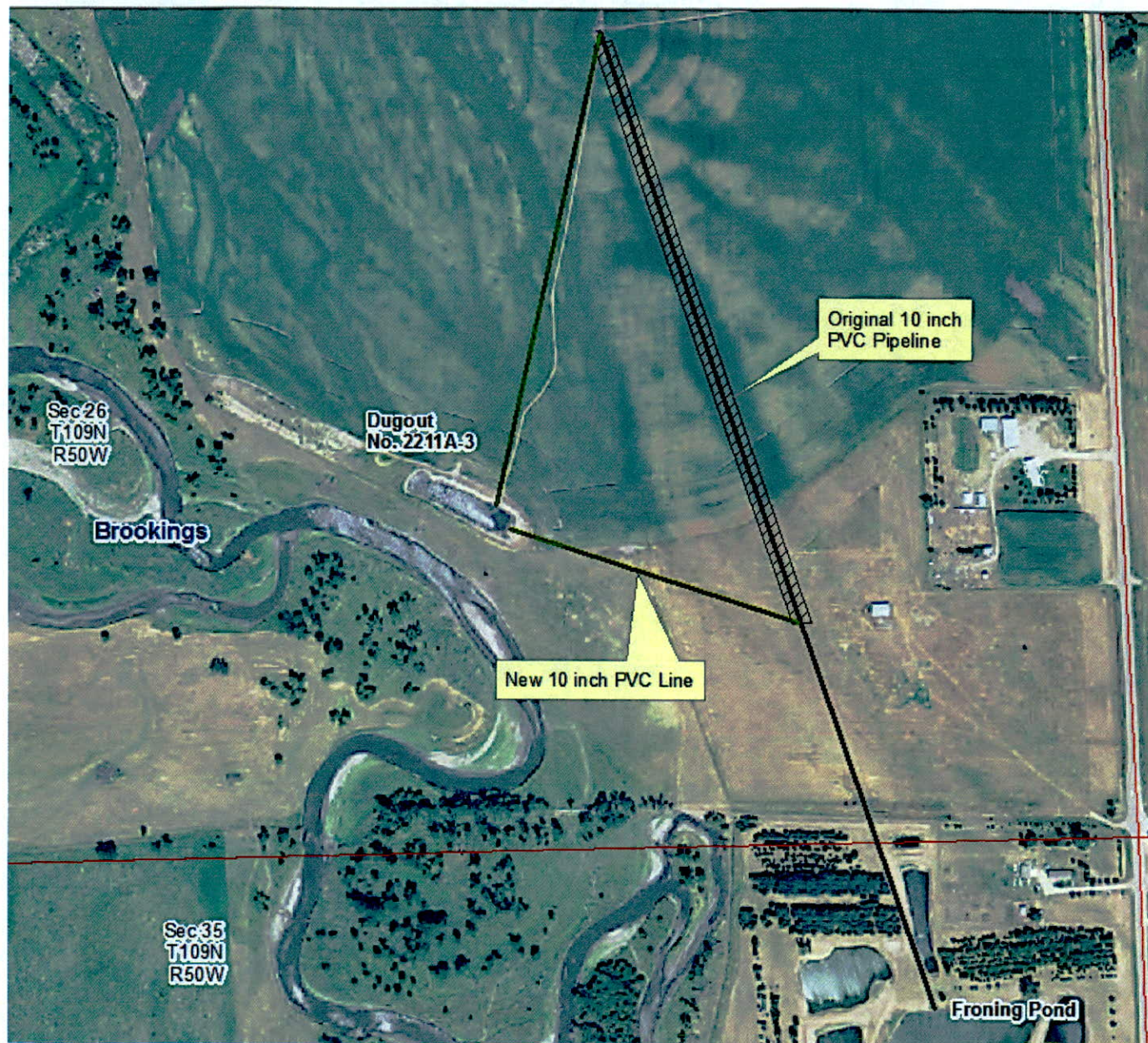
RE: Petition for cancellation of Water Right No. 2211-3



Picture 6. Spare pipe for connecting to standpipe outlet.

August 5, 2015

RE: Petition for cancellation of Water Right No. 2211-3



Map. Location of new 10 inch line approximated based on receipt and description by David Ahlers.

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AUG 24 2015

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC

LAWYERS

412 WEST 9TH STREET – SUITE 1

SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer

Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: paull@schafferlawoffice.com

August 20, 2015

Jeanne Goodman
Chief Engineer, Water Rights Program
Department of Environment and Natural
Resources Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57051

RE: Water Right Number 2211-3

Dear Chief Engineer Goodman:

My clients and I have reviewed the field investigation and the recommendation. The report provides that: "The works to convey water is the 10 inch PVC pipeline which was modified in 2012 to run to the dugout rather than directly to the center pivot." See page 4 of 12. I also have reviewed page 12 of 12, which is a Google Map showing the claimed location of the 10 inch PVC pipeline. It is also my understanding that it is represented that this PVC pipeline was installed in 2012.

According to my clients, they have seen nothing that would indicate that PVC pipe was put in this area in 2012. Furthermore, the pipe would have gone through property owned by Jason Vrchota. My clients have spoken with Jason Vrchota, who is their neighbor and he has not granted an easement for installation of this 10 inch PVC pipe and is not aware of pipe being put in on his property.

We are questioning what documentation and proof Mr. Ahlers provided to you concerning the installation of this pipe. Specifically, we are questioning whether he had an easement over the adjoining property that would allow this installation and whether he provided documentation as to who installed the pipe and the specific date of installation of such pipe.

These are the concerns with the report that I wanted to share with you, and I would like a response as to what documentation was provided concerning the installation of the pipe and any easements to run across the neighboring land owned by Mr. Vrchota as my clients inform me he was unaware of any installation on his land and did not provide permission.

Finally, my clients also wanted to confirm that this PTO pump was not located on the property and was actually being serviced. Furthermore, the only efforts my clients are aware of is one time where Mr. Ahlers had people attempt to use this PTO pump. It is our understanding that they were unsuccessful in utilizing any of this water from this moveable PTO pump. This again raises questions about having any facilities available for use as a standby water source.

Sincerely,

A handwritten signature in cursive script, reading "Paul H. Linde".

PAUL H. LINDE
For the Firm

PHL:aml

cc: Jay Leibel

cc: Mark and Diana Froning



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

September 15, 2015

Paul H. Linde
Schaffer Law Office, Prof. LLC
412 West 9th Street – Suite 1
Sioux Falls SD 57104-3602

Dear Mr. Linde:

I am writing in response to your August 20, 2015, letter concerning the August 5, 2015, Duvall report provided to you. You specifically asked about the location of the 10-inch PVC line, the PTO drive pump, and success of using the pump.

A billing dated October 15, 2013, from Clafin Excavating to Reuben Nicolai for installation of 960 feet of 10-inch pipe was provided to us by Jay Leibel. In addition, a receipt was also provided for purchase of the 4-inch PTO drive pump dated September 3, 2012. I am enclosing a copy of these documents in case they were omitted from Jay Leibel's response to Petition for Cancellation dated July 30, 2015. The cover letter to the response indicates you were copied the information.

The only first-hand knowledge DENR has of the 10-inch pipeline to the dugout was viewing the riser pipe located on the east side of the dugout (Picture 5 in the Duvall report). As to the location of the pipeline shown on the map in the Duvall report, it is an approximation based on the length of pipe buried by the contractor (see enclosed Clafin Excavating billing) and Mr. Duvall's conversation with Mr. Ahlers. The exact route is unknown. A route further north may have been used that does not involve the Vrchota property. However, if Mr. Vrchota's property is involved and there is an easement issue, the property owners need to resolve that matter.

As noted in the Duvall report, the PTO drive pump was not onsite at the Froning pond at the time of Duvall's inspection but confirmation was provided by an employee of Farmers Implement and Irrigation that the pump exists. As noted above, a receipt from Farmers Implement and Irrigation also exists for its purchase by Mr. Nicolai. Finally, Mr. Froning viewed the PTO drive pump in 2013.

Regardless of whether the pumping from the Froning Pond was successful in 2013, cancellation is not warranted at this time based on ARSD 74:02:01:37.01 and 74:02:01:37.02, and I cannot make that recommendation to the Water Management Board. However, the Froning family can pursue cancellation by use of a declaratory ruling as mentioned in my August 6, 2015, correspondence.

Please feel free to contact me or Ron Duvall at (605) 773-3352 if you have further questions.

Sincerely,

Jeanne Goodman
Chief Engineer, Water Rights Program

Enclosures

c: Mark and Diana Froning
Reuben Nicolai
Jay Leibel

From: Claflin Excavating
47629 229th St
Flandreau, SD 57028

10/15/2013

To: Reuben Nicolai
4800 S. 33rd St
LaCrosse, WI 54601

Install 10" Irrigation pipe	960'	X 2.25 per foot	\$2,160.00
on 26-109-50		Excise Tax 2.041%	<u>44.09</u>
		Total	\$2,204.09

Please Remit Payment to Claflin Excavating

Thank You

PURCHASE ORDER

3023 EAST HIGHWAY 14 BYPASS • AG PLAZA
TELEPHONE (605) 692-6153

MAILING ADDRESS:
P.O. BOX 29, BROOKINGS, SOUTH DAKOTA 57006

Customer Ruben Micalai Date 9-3-12
Address 4800 33rd Sts LA Crosse WI Phone 608-787-3685

QTY.	NEW OR USED	STOCK NO.	SERIAL NO.	DESCRIPTION	AMOUNT
				34601	54601
1	✓			pto Berkley pump B3 ZRM ser # 706-5815 540 pto priming valve inlet pipe and connection and screen	8.94

[illegible]

Deliver To:

Approximate Date:

- ☐ FINANCE AGREEMENT: _____
- ☐ SOLD USED AS-IS. No warranty of any kind has been given by the dealer or his agent.
- ☐ SOLD NEW WITH _____
- ☐ BUYER CERTIFIES ABOVE TRADE-INS TO BE FREE OF ENCUMBRANCES. _____

SPECIAL AGREEMENTS

ALL WARRANTY REPAIRS MADE UNDER THIS AGREEMENT must be made in dealer's shop and buyer is responsible for hauling equipment for repair. No warranty is given by the dealer for tires, batteries or accessories, and the buyer is fully responsible for repairs necessitated by accident, misuse or negligence. This guarantee is not transferable.

I hereby agree to the conditions of this order, expressed in the foregoing, constituting a purchase contract, I hereby certify that I am 21 years of age or older and acknowledge receipt of a copy of this order.

Notice to the buyer: Do not sign this contract before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign.

Buyer's Signature

Buyer's Signature Reuben Nicolai by phone Date 9-3-12

Salesman: W. J. Sullivan Accepted by: _____

(Dealership Manager's Signature)

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 2211-3 & 2211A-3

I have this day, July 15, 2015, made a thorough examination of the water use system owned by Reuben Nicolai, 4800 South 33rd Street, LaCrosse WI 54601 holder of Permit No. 2211-3 and 2211A-3, bearing the priority of February 18, 1975 authorizing the diversion of 2.23 cu. ft. per second of the waters of Big Sioux Brookings aquifer for irrigation purposes, in Brookings County.

Inspection contact & relationship to permit holder, if applicable: **David Ahlers, Operator**

A. Works used to divert the water:

Pump:

- 1) Make PTO drive
- 2) Model Berkley B3ZRM
- 3) Ser. No. 706-5815
- 4) Size 4 inch

Comments: PTO drive pump used to divert water from "gravel pit" (Froning Pond – see No. 2211-3) located in NE1/4 NE1/4 section 35 to dugout (see 2211A-3) located in SW1/4 SE1/4 section 26: all in T109N-R50W. Following electric motor/pump divert water from dugout to center pivot in section 26.

Motor:

- 1) Make Marathon Electric
- 2) Frame No. 326 JD
- 3) Horsepower rating 50 hp

Pump:

- 1) Make Berkley
- 2) Model B4JPBH
- 3) S.N. G230797
- 4) Capacity 800 GPM

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

- 1) Type PVC
- 2) Size 10 inches
- 3) Length 3,560 feet

Comments: A change in the pipeline route was made in 2012 to redirect water from the Froning Pond to a dugout constructed in section 26 rather than directly to the pivot developed under No. 2211-3.

C. Works used to apply water to beneficial use:

Center pivot:

- 1) Make Valley
- 2) Low pressure Yes
- 3) Number of towers 9
- 4) End gun Yes
- 5) Capacity 800 GPM

Comments: Following licensing of No. 2211-3, the center pivot was converted from a high pressure to a low pressure system and the gallons per minute reduced from 1,000 gpm to 800 gpm.

Chemigation Equipment:

- 1) Does chemigate No

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes
- 2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes List any extended period of nonuse: **none**
- 3) Exceptions to compliance are: none

E. Condition and Location:

1. The system is in good condition with the points of diversion located as follows: **All in T109N-R50W**
- No. 2211-3 – “Gravel Pit” (Froning Pond) located 540 feet south and 630 feet west from NE corner section 35 (NE1/4 NE1/4 section 35 -- latitude 44.20862, longitude -96.78956)**
- No. 2211A-3 – Dugout (about 4 acre-feet capacity) located 1,040 feet north and 1,860 feet west from SE corner section 26 (SW1/4 SE1/4 section 26 – latitude 44.21294, longitude -96.7944).**
2. The works are capable of diverting and conveying to the place of use 1.78 cu. ft. per second of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

All in Section 26-T109N-R50W

SE1/4 NE1/4	32 acres	NE1/4 SE1/4	37 acres
SW1/4 NE1/4	37 acres	NW1/4 SE1/4	39.5 acres
SE1/4 NW1/4	3 acres	SW1/4 SE1/4	6.2 acres
NE1/4 SW1/4	6.3 acres	SE1/4 SE1/4	3 acres

comprising a total of 164 acres of land and the license should be issued for 1.78 cfs.

3. All structures, wells and lands on map Yes

F. Comments or other permit(s) associated with the project:

Water Right No. 2211-3 is to be incorporated into Water Permit No. 2211A-3 and the authorized diversion rate reduced from 1,000 gpm to 800 gpm (1.78 cfs) for irrigation of the same acres permitted under No. 2211-3. Permit No. 2211A-3 authorized an additional diversion point with no additional water appropriated or additional acres irrigated. Since no additional water or acres was authorized by No. 2211A-3, the permit should have been issued with the same priority date assigned to No. 2211-3. However, a new priority date was assigned in error so Permit No. 2211A-3 should be reissued with the correct priority date which is February 18, 1975, as assigned to No. 2211-3.



Ron Duvall

Water Rights Permitting Administrator
DENR, Water Rights Program

Date report completed: August 6, 2015

Scale: 1 inch = 579 feet

810

Feet



South Dakota
Department of Environment
& Natural Resources
Water Rights

Completed by:

Ron Duvall
Ron Duvall, WR Permitting Administrator
Water Rights Program

Diversion point(s) located using a Garmin eTrex 10 GPS

Date: August 6, 2015

Water Right No. 2211A-3



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

August 12, 2015

2211-3
2211A-3

Reuben Nicolai
4800 S 33rd St
LaCrosse WI 54601

Dear Mr. Nicolai:

On July 15, 2015, Ron Duvall met with David Ahlers as part of a field investigation to look at the water use system authorized under your Water Right No. 2211-3 and Water Permit No. 2211A-3.

Water Right No. 2211-3 was originally licensed back in January, 1979. The license authorized diversion of 2.23 cubic feet of water per second (approximately 1,000 gallons per minute) from a gravel pit (known as the Froning Pond) to irrigate 164 acres. Water Permit No. 2211A-3 was obtained to add a point of diversion (dugout) to the irrigation system with no increase in the amount of water appropriated or the number of acres irrigated.

With the investigation complete, a water license will be issued for the system as it now operates. The investigation found the center pivot system had been converted from a high pressure system operating at 1,000 gpm to a low pressure system operating at 800 gpm. The total number of acres irrigated remained the same.

It is our intent to issue a water license, incorporating the applicable portions of No. 2211-3 into No. 2211A-3. Based on the investigation findings, the license will authorize a combined diversion of 1.78 cubic feet of water per second (800 gpm) from either the gravel pit (Froning Pond) or the dugout to irrigate 164 acres located in portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ Section 26, T109N, R50W. The license would allow diversion from the gravel pit to the dugout prior to irrigation.

Please contact our office by August 30, 2015 as to whether or not you concur or disagree with the investigation findings. We will wait to issue the water license until that time. Thank you in advance for your reply.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

c: Jay Leibel, Issenhuth & Leibel LLP, PO Box 28, Madison SD 57042



RECEIVED

AUG 25 2015

WATER RIGHTS
PROGRAM

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL

PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

August 12, 2015

Reuben Nicolai
4800 S 33rd St
LaCrosse WI 54601

CONFIRM FOR YOUR
INFORMATION

RECEIVED
AUG 14 2015
BY: _____

2211-3
2211A-3

Dear Mr. Nicolai:

On July 15, 2015, Ron Duvall met with David Ahlers as part of a field investigation to look at the water use system authorized under your Water Right No. 2211-3 and Water Permit No. 2211A-3.

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With the investigation complete, a water license will be issued for the system as it now operates. The investigation found the center pivot system had been converted from a high pressure system operating at 1,000 gpm to a low pressure system operating at 800 gpm. The total number of acres irrigated remained the same.

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Please contact our office by August 30, 2015 as to whether or not you concur or disagree with the investigation findings. We will wait to issue the water license until that time. Thank you in advance for your reply.

Sincerely,

Genny McMath

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

*I concur with the investigation
findings. Thanks for your cooperation.*

Reuben Nicolai 8/21/15 608 7875685