

WATER PERMIT NO. 92 5329A-3

Phone: 605 387-5660

Name of Applicant: John Ulmer

Post Office Address: RR 1, Box 109, Menno SD 57045

Amount of Water Claimed: no add'l Total Acres: no add'l

Source of Water Supply: James River

Water to be used for: irrigation County: Hutchinson

Location: 4 miles west of Menno

PRIORITY Date Received: 3-17-95 Fee: \$50

Corrected Application Received: _____ Period of Annual Use: May 1 - Sept 30

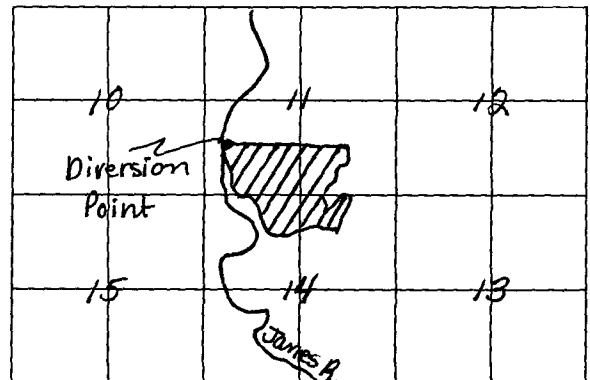
Remarks: Extension of time request

Diversion Point: SW 1/4 Sec 11-T97N-R58W

Land to be Irrigated: Lot 10, Lot 5, SW 1/4

SE 1/4, Section 11 & Lot 1, NW 1/4 NE 1/4

Section 14; all in T97N-R58W



Well Log: Driller: _____ Licensed: YES _____ NO _____

Depth of Well: _____ REMARKS: _____

Type of Map: aerial Prepared By: Robert A. Rennolet Reviewed and the Number

Assigned on: 3-20-95 By: Karen Schlaak

**SOUTH DAKOTA
WATER PERMIT NO. 5392A-3**

Date of first receipt of application March 17, 1995.

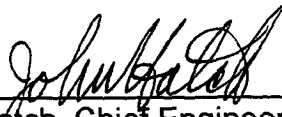
The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 5392A-3 to John Ulmer, RR 1, Box 109, Menno SD 57045 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 5392A-3 extends the length of time allowed for construction of project works authorized by Permit No. 5392-3. Permit No. 5392-3 appropriates 2.11 cubic feet of water per second from the James River to irrigate 148 acres. The point of diversion is to be located between Lot 10, Section 11 and Lot 1, Section 14; and the acreage to be irrigated is located in Lots 5, 10, SW 1/4 SE 1/4 Section 11; Lot 1, NW 1/4 NE 1/4 Section 14; all in T97N-R58W. The permit was approved on May 24, 1990 and the project was to be completed by May 24, 1995 with water being put to beneficial use by May 24, 1999. Permit No. 5392A-3 extends the length of time allowed for construction of project works from May 25, 1995 to May 25, 1998.
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 - September 30.
3. The date from which applicant may claim right is March 1, 1990.
4. The date of approval of Permit No. 5392A-3 is April 24, 1995.
5. All construction is to be completed on or before May 25, 1998.
6. Water is to be put to beneficial use on or before May 25, 1999.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Permit Nos. 5392-3 and 5392A-3 do not authorize diversion of water from the James River after August 10 of each calendar year, nor at any time when the river flow is obviously low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: 
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

SEP 6 1995

date

FORM 2: Application for irrigation in South Dakota

(type or print)

Mail to:
Water Rights Division
Joe Foss Building
523 E Capitol
Pierre SD 57501-3181
605 773-3352

No. 5392A-3 Hydrologic Unit 10160011
Basin James River
Newspaper Freeman Courier, Box 950, Freeman
(office use only)



Application For Permit To Appropriate Water For Irrigation

Type of Application: New Vested Right X Amendment/Correction to Permit No. 5392-3
(check one) (Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. acreage change, change diversion point(s), add diversion point(s), etc.)
Application for an extension of time for Water Permit
NO. 5392-3.

- Name of Applicant John Ulmer Phone 605-387-5660
(check one) Owner Tenant/lessee
- Mailing Address RR1 Box 109 Menno, State SD 57045
(Street, RR, or Box) (City) (Zip Code)
- Amount of water claimed NO Add'l *CFS or **GPM ***AF Total Acreage NO Add'l
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet -- storage capacity of dam/dugout if applicable)
- Source of water supply James River
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) 420 feet West
of the center of the SW⁴ Section 11; T97N R58W.
County Hutchinson
- County or counties where water will be used Hutchinson
- Annual period during which water is to be used May 1 thru September 30
- List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description
Lot 10 Section 11 T97N R58W
Lot 5
SW ⁴ SE ⁴
Lot 1 Section 14 T97N R58W

Acres
9
40
38
32

Land Description
NW ⁴ NE ⁴ Section 14 T97N R58W

Acres
29

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

Waiting for Power Company to move power line
so we can put in center pivot instead of flood system.

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

STATE OF SOUTH DAKOTA)

County of Hutchinson)^{SS}

I, John Ulmer, the applicant, have read this application, examined the attached map, and certify that the matters stated are true. I intend and am able to complete the necessary construction.

Signed John Ulmer

Subscribed and sworn to before me this 15th day of March 19 95

Bary J. Schell
Notary Public

RECEIPT

414438

Division of Water Rights

South Dakota Department of Environment and Natural Resources

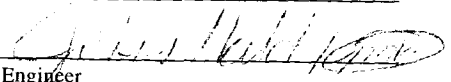
Pierre, _____ March 20 _____, 19 95

RECEIVED OF John Ulmer, RR 1 Box 109, Menno, SD 57045

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

Fee for Application for Permit No. <u>5392H-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	50	00
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 _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	50 00

By 
Chief Engineer

Report on Water Permit Application No. 5392A-3
John Ulmer
March 21, 1995

Background

Water Permit Application No. 5392A-3 requests to extend the length of time allowed for construction of project works authorized by Water Permit No. 5392-3. Permit No. 5392-3 is authorized to appropriate 2.11 cubic feet of water per second (cfs) from the James River to irrigate 148 acres. The point of diversion is located between Lot 10, Section 11 and Lot 1, Section 14, T97N-R58W, in Hutchinson County. The acreage, authorized by Water Permit No. 5392-3 is located in Lots 5, 10, SW1/4 SE1/4 Section 11; Lot 1, NW1/4 NE1/4 Section 14; all in T97N-R58W. On May 24, 1990, the Water Management Board approved Permit No. 5392-3, and the project was to be completed by May 24, 1995, with water being put to beneficial use by May 24, 1999. If application No. 5392A-3 is approved, the applicant proposes to retain the March 1, 1990 priority date assigned to Permit No. 5392-3.

Discussion

The applicant has filed Water Permit Application No. 5392A-3, pursuant to SDCL 46-5-26, which allows for reasonable extensions of time due to delays caused by engineering difficulties, delays caused by operation of law, or delays caused by other exigent circumstances as identified by the Water Management Board.

The application for an extension of time is based on delays caused by engineering difficulties in removing powerlines from the field.

During a telephone conversation, the applicant stated that he was planning to use a center pivot for irrigation. Mr. Ulmer stated that the power company will not start removal of the powerlines until 1997. He stated that it will take about a year to remove all lines.

Conclusions and Recommendation

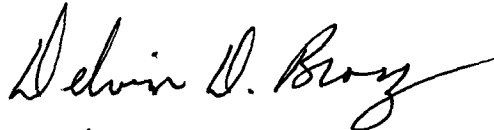
1. Water Permit No. 5392-3 is approved for a diversion rate of 2.11 cfs from the James River for irrigation of 148 acres.
2. In accordance with SDCL 46-5-26, and based on the applicant's engineering difficulties, and based on the Water Management Board's decisions on similar cases in the past, the application should be approved.
3. A three year extension of time for construction of works authorized by Water Permit No. 5392-3 is reasonable and can be granted.

4. Approval of Water Permit Application No. 5392A-3 will not have an adverse affect on existing water uses.



M. Rassool Ahadi
Natural Resources Engineer III

Approved By:



Delvin D. Brosz, P.E.
Natural Resources Engineer IV

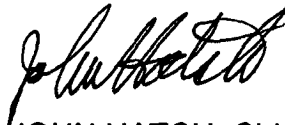
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 5392A-3, John Ulmer**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 5392A-3, John Ulmer, RR 1 Box 109, Menno, SD 57045.

The Chief Engineer is recommending APPROVAL of Application No. 5392A-3 for an extension of time to complete construction of works pursuant to SDCL 46-5-26 because 1) of delays due to engineering difficulties, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Permit Nos. 5392-3 and 5392A-3 do not authorize diversion of water from the James River after August 10 of each calendar year, nor at any time when the river flow is obviously low, unless written orders have been so issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.



JOHN HATCH, Chief Engineer
March 29, 1995



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

March 30, 1995

John Ulmer
RR 1 Box 109
Menno, SD 57045

Dear Mr. Ulmer:

Water Permit Application No. 5392A-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Freeman Courier printed at Freeman, SD (Ph # 605-925-7033). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 30, 1995

Freeman Courier
Box 950
Freeman, SD 57029-0950

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. 5392A-3 to be published twice. Please publish the first notice on April 5, 1995, with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is John Ulmer, RR 1 Box 109, Menno, SD 57045 (Ph # 605-387-5660).

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

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. No action may be taken on the permit application until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

No. _____

Date _____

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

Name

Newspaper

Instruction to Newspaper - Publish first Notice on April 5, 1995, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 5392A-3 to
Amend Water Permit No. 5392-3

Notice is given that John Ulmer, RR 1 Box 109, Menno, SD 57045 has filed an application for a water permit to extend the length of time allowed for construction of project works authorized by Permit No. 5392-3. Permit No. 5392-3 appropriates 2.11 cubic feet of water per second from the James River to irrigate 148 acres. The point of diversion is to be located between Lot 10, Section 11 and Lot 1, Section 14; and the acreage to be irrigated is located in Lots 5, 10, SW 1/4 SE 1/4 Section 11; Lot 1, NW 1/4 NE 1/4 Section 14; all in T97N-R58W. The permit was approved on May 24, 1990, and the project was to be completed by May 24, 1995, with water being put to beneficial use by May 24, 1999. Application No. 5392A-3 is to extend the length of time allowed for construction of project works from May 25, 1995, to May 25, 1998. Application No. 5392A-3, if approved, proposes to retain the March 1, 1990, priority date assigned to Permit No. 5392-3.

Application No. 5392A-3 to amend Permit No. 5392-3 is made pursuant to SDCL 46-5-26 which allows for reasonable extensions of time due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. This application of an extension of time is based on delays caused by engineering difficulties in getting a power line moved.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5392A-3 for an extension of time to complete construction of works pursuant to SDCL 46-5-26 because 1) of delays due to engineering difficulties, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the chief engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting the chief engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 24, 1995.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Division address to request copies of information pertaining to this application. Steven M. Pirner, Acting Secretary, Department of Environment and Natural Resources.

AFFIDAVIT OF PUBLICATION

County of Hutchinson)

) ss.

State of South Dakota)

Tim L. Waltner, of said county and state, being duly sworn, on his oath, deposes and says: That the Freeman Courier is a weekly newspaper of general circulation and a legal newspaper as required by law, printed and published in the town of Freeman in said county and state by Tim L. Waltner, and has been such newspaper during the time hereinafter mentioned: That I, Tim Waltner, the undersigned, am publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the advertisement headed **Notice of Application Water Permit** a printed copy of which is hereto attached, was printed and published in the said newspaper for two successive issues to-wit:

The first publication on:
April 5, 1995

the second publication on:
April 12, 1995

and the third publication on:

That the full amount of the fees charged for publication the same to-wit: The sum of **\$51.53** insures solely benefit of the publisher of the Freeman Courier, there has been made with any other person whomsoever the amount of **\$51.53** is the rate for publishing legal notices.

Tim L. Waltner

Subscribed and sworn to before me that 21st day of
April, 1995.

Mary Ann Piehman

Notary Public

Commission expires: 3/7/96

Publication fee: **\$51.53**

Notary fee:

Total: **\$51.53**

Notice of Application No. 5392A-3 to Amend Water Permit No. 5392-3

Notice is given that John Ulmer, RR 1 Box 109, Menno, SD 57045 has filed an application for a water permit to extend the length of time allowed for construction of project works authorized by Permit No. 5392-3. Permit No. 5392-3 appropriates 2.11 cubic feet of water per second from the James River to irrigate 148 acres. The point of diversion is to be located between Lot 10, Section 11 and Lot 1, Section 14; and the acreage to be irrigated is located in Lots 5, 10, SW 1/4 SE 1/4 Section 11; Lot 1, NW 1/4 NE 1/4 Section 14; all in T97N-R58W. The permit was approved on May 24, 1990, and the project was to be completed by May 24, 1995, with water being put to beneficial use by May 24, 1999. Application No. 5392A-3 is to extend the length of time allowed for construction of project works from May 25, 1995, to May 25, 1998. Application No. 5392A-3, if approved, proposes to retain the March 1, 1990, priority date assigned to Permit No. 5392-3.

Application No. 5392A-3 to amend Permit No. 5392-3 is made pursuant to SDCL 46-5-26 which allows for reasonable extensions of time due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. This application of an extension of time is based on delays caused by engineering difficulties in getting a power line moved.

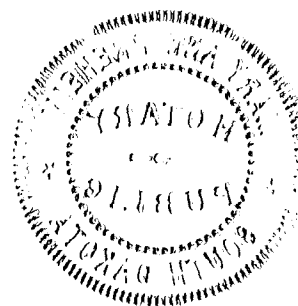
Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5392A-3 for an extension of time to complete construction of works pursuant to SDCL 46-5-26 because 1) of delays due to engineering difficulties, 2) existing rights will not be



unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the chief engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting the chief engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 24, 1995.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Division address to request copies of information pertaining to this application. Steven M. Pirner, Acting Secretary, Department of Environment and Natural Resources.





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

SEP 6 1995

John Ulmer
RR 1 Box 109
Menno, SD 57045

Dear Mr. Ulmer:

Enclosed is Water Permit No. 5392A-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water License may be issued, thus completing your acquisition of a Water Right.

Very truly yours,

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

enclosures

PLEASE NOTE: Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period - i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.



5392A-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 30, 1996

NOTICE

TO: JOHN ULMER, RR 1 BOX 109, MENNO, SD 57045

FROM: Ron Duvall, Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Program

SUBJECT: Violation of Water Permit No(s) 5457-3, 5392A-3

Our records indicate that the 1995 Irrigation Questionnaire has not been submitted for Permit No(s) 5457-3, 5392A-3. The request for the Questionnaire was dated October 20, 1995. The Water Management Board has directed that owners of water permits who have not submitted the 1995 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing held by the Board will determine the action to be taken for violation of Water Permit No(s) 5457-3, 5392A-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 9:45 am, March 6, 1996 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 5457-3, 5392A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before March 1, 1996, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 6, 1996

5392A-3
5457-3

John Ulmer
RR 1 Box 109
Menno, SD 57045

Dear Mr. Ulmer:

I am writing to acknowledge receipt of your 1995 irrigation questionnaires. You may disregard the January 30, 1996, **Notice of Violation of Water Permit Nos. 5392A-3 and 5457-3.**

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



5392A-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 9, 1998

NOTICE

TO: JOHN ULMER, 42963 MAXWELL RD, MENNO, SD 57045

FROM: Ron Duvall, Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 1997 Irrigation Questionnaire(s)

Our records indicate that the 1997 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 5392A-3, 5457-3, 5911-3 & 5912-3. The request for the Questionnaire was dated October 17, 1997. The Water Management Board has directed that owners of water permits who have not submitted the 1997 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 5392A-3, 5457-3, 5911-3 & 5912-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 9:45 am, February 25, 1998 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 5392A-3, 5457-3, 5911-3 & 5912-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before February 20, 1998, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 1998

John Ulmer
42963 Maxwell Rd
Menno, SD 57045

RE: Water Permit Nos. 5392A-3, 5457-3, 5911-3 and 5912-3

Dear Mr. Ulmer:

I am writing to acknowledge receipt of your 1997 irrigation questionnaires and chemical reporting forms. You may disregard the January 9, 1998, "Notices" concerning reporting requirements for Water Permit Nos. 5392A-3, 5457-3, 5911-3 and 5912-3.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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

Permit Nos. 5392-3 and 5392A-3**James River** - Water District**Report Of Examination Of Works And/Or Application of Water To Beneficial Use**

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, August 9, 1999, made a thorough examination of the water use system constructed by John Ulmer of 42963 Maxwell Road, Menno SD 57045 holder of Permit Nos. 5392-3 and 5392A-3, bearing the priority of March 1, 1990 authorizing the diversion of 2.11 cu. ft. per second from the James River for irrigation purposes, in Hutchinson County.

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

A. Works used to divert the water:

Will use portable Berkley pump with 65 HP John Deere motor to be located along the James River (possible that some other portable pump and big gun could be used).

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

Permit holder had approximately 4,500 feet of 6-inch aluminum pipe for transporting water to site of the big gun. The big gun has 660 feet of 4½" flexible hose on a wheel housing

C. Works used to apply water to beneficial use:

A Water Winch big gun with 660 feet of 4½" hose

The system is in the following condition good. The point of diversion is located between points approximately 1,320 feet north and 4,400 feet west of the SE corner (Lot 10) of Section 11 and 1,320 feet south and 3,500 feet west of the NE corner (Lot 1) of Section 14; all in T97N, R58W The works are capable of diverting and conveying to the place of use 1.34 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:

Lot 10 Section 11, T97N, R58W	9 acres
Lot 5 Section 11, T97N, R58W	40 acres
SW ¼ SE ¼ Section 11, T97N, R58W	38 acres
NW ¼ NE ¼ Section 14, T97N, R58W	29 acres
Lot 1 Section 14, T97N, R58W	32 acres

comprising a total of 148 acres of land and the license should be issued for 1.34 cfs.Applicable permit qualifications have been complied with: Yes X NoExceptions to compliance are: none Date Report Completed: November 10, 1999

Eric Gronlund

Natural Resources Engineer

DENR, Water Rights Program

FIELD INVESTIGATION REPORT FOR PERMIT NOS. 5392-3 and 5392A-3, John Ulmer

DATE OF INVESTIGATION:	August 9, 1999
NAME & ADDRESS OF PERMIT HOLDER	John Ulmer 42963 Maxwell Road Menno SD 57045
DIVERSION POINT LEGAL LOCATION	<u>between points approximately 1,320 feet north and 4,400 feet west of the SE corner (Lot 10) of Section 11 and 1,320 feet south and 3,500 feet west of the NE corner (Lot 1) of Section 14; all in T97N, R58W</u>

WATER SUPPLYSource: James River**Pump:**

- 1) Make Berkley
- 2) Serial No. B-4J
- 3) Size 4"
- 4) Capacity approximately 800 GPM

Motor:

- 1) Make John Deere
- 2) Model No. 42190F-01 Serial No. 5878741
- 3) Horsepower rating 65 hp

SYSTEM TYPE:**Big Gun**

- 1) Make Water Winch
- 2) Model T-45, Serial No. 0527
- 3) Nozzle size 1¼"
- 4) End gun yes (100' throw)
- 4) Capacity approx. 600 GPM

Distribution lines

1. Approximately 4,500 feet of 6" aluminum pipe (30' lengths), Two river screens.

CHEMIGATION EQUIPMENT:

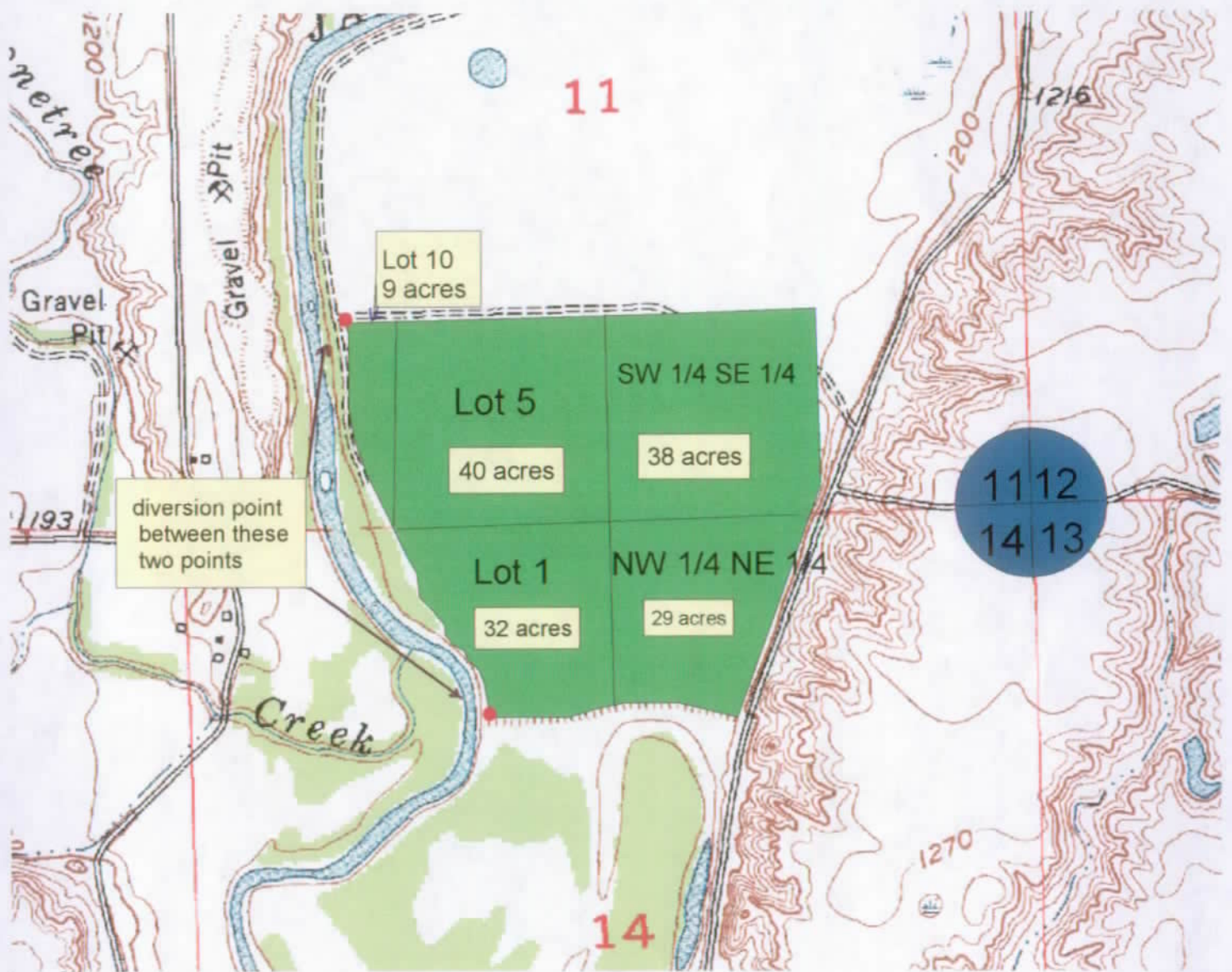
No Chemigation

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Special qualifications to permit being abided by yes
- 2) All structures, wells and lands on map see comments below
- 3) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period see comments below

- ◆ The portable pump and big gun were located at Dan Ulmer's farm. John Ulmer stated that he would use this equipment to irrigate under Water Permit Nos. 5392-3 and 5392A-3. Water Permit No. 5392A-3 was an application for an extension of time. The justification was difficulties in removing a powerline that bisects the property.
- ◆ Mr. Ulmer has all of the equipment to irrigate this ground. However, no actual irrigation has taken place. It was obvious from viewing this ground that this land is very susceptible to flooding and has been flooded the past years. This may constitute legal excuse for the nonuse of water. In writing up this report of examination of works, I included all the acreage on the original application. However, based on my on-site viewing of the property and the USGS quadrangle, I doubt that some of the land would be irrigable except in extreme drought conditions.

Water Permit Nos. 5392-3 and 5392A-3, John Ulmer



1000 0 1000 2000 3000 4000 Feet



Diversion point location - between Lot 10 of Section 11 and Lot 1 of Section 14, T97N, R58W

South Dakota Department of
Environment and Natural Resources



Protecting South Dakota's Tomorrow ... Today

Eric Gronlund

Eric Gronlund
Water Rights Program
Licensing Investigation
Conducted - August 9, 1999



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

November 16, 1999

5392A-3
5911-3

John Ulmer
Rt 1, Box 109
Menno, SD 57045

Dear Mr. Ulmer:

The investigation of your water use systems was conducted on August 9, 1999, by Eric Gronlund, staff engineer. The investigation included the extent of application of water to beneficial use, as developed under Water Permit Nos. 5392A-3 and 5911-3. Your final water right documents, the Water Licenses, can now be issued.

Statutes require that we charge a \$50.00 fee per license (\$100.00 total) for the investigation and issuance of the Water Licenses. Upon receipt of the \$50.00 fee per license from you (\$100.00 total), we will begin processing your Water Licenses.

**Please remit fee to:
Department of Environment & Natural Resources
Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181**

Sincerely,

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

NOTE: On check or money order, please specify your permit numbers. This will insure proper handling of the fee.

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

N2 416296

Pierre, _____ December 15, 19 99

RECEIVED OF John Ulmer, 42963 Maxwell Rd., Menno, SD 57045
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 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. 5392A-3

Fee for Filing Transfer Form _____

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

50 00

50 00

By

John Hatch (C)
Chief Engineer

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 5392A-3

(1) John Ulmer, 42963 Maxwell Road, Menno SD 57045 made Application No. 5392A-3, March 17, 1995 for a water permit to extend the length of time allowed for construction of project works authorized by Permit No. 5392-3. Water Permit No. 5392-3 authorized diversion of 2.11 cubic feet of water per second from the James River, Hutchinson County, South Dakota for irrigation purposes. Permit No. 5392A-3, with a priority date of March 1, 1990 was approved April 24, 1995 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 25, 1998 and for the application to beneficial use of said water on or before May 25, 1999.

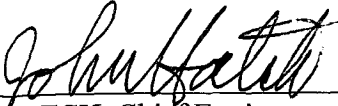
The applicable portions of Water Permit No. 5392-3 are incorporated into this water license.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 1.34 cubic feet of water per second for beneficial use. The location of the diversion point is between points approximately 1,320 feet north and 4,400 feet west of the southeast corner (Lot 10) of Section 11 and 1,320 feet south and 3,500 feet west of the northeast corner (Lot 1) of Section 14; all in T97N-R58W.

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

All in T97N-R58W		
Section 11	Lot 10	9 acres
	Lot 5	40 acres
	SW ¼ SE ¼	38 acres
Section 14	NW ¼ NE ¼	29 acres
	Lot 1	32 acres
Total 148 acres		

(4) Pursuant to South Dakota Water Law 46-5-30.1 John Ulmer, 42963 Maxwell Road, Menno SD 57045 the holder and/or owner of Incorporated Water Right No. 5392A-3 is issued a license to appropriate water, the right to use 1.34 cubic feet of water per second from groundwater (one ) with a priority date of March 1, 1990 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Incorporated Water Right No. 5392A-3 and subject to South Dakota State Law.


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

DEC 30 1999
date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

DEC 30 1999

5392A-3
5911-3

John Ulmer
42963 Maxwell Dr.
Menno, SD 57045

Dear Mr. Ulmer:

Enclosed are Water License Nos. 5392A-3 and 5911-3. These are the final water right documents completing your process of obtaining a Water Right. Enclosed are Receipt Nos. 416296 and 416297 in the amount of \$50.00 each which you paid for the investigation and issuance of the Water Licenses.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the wells authorized by Water Right Nos. 5392A-3 and 5911-3, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

As long as you use the water beneficially, as stated in the Water Licenses, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Very truly yours,

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

ks
enclosures

Note: The applicable portions of Water Permit No. 5392-3 are incorporated into this Water License No. 5392A-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

August 1, 2006

NOTICE OF SHUTOFF ORDER

TO: JOHN ULMER
42963 MAXWELL RD
MENNO SD 57045

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: James River Shutoff Order

Shutoff Order for Water Right No(s). 5392A-3

To protect domestic use on the James River, the department is issuing shutoff orders to water right holders on the James River from the Yankton-Hutchinson county line north to the North Dakota border. Effective immediately, no diversions of water from the James River will be allowed. Previous to this Order, shutoff orders were issued for water right junior to January 1, 1975 located upstream of Huron.

Flow in the James River continues to decline to the point where domestic use of water, which includes livestock watering from the river, has become a concern. USGS gaging stations over this entire river reach are measuring flow levels at or below 20 cubic feet per second, the required bypass for downstream domestic use. This order will remain in effect until the end of the calendar year.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the river.

If you have any questions, please contact Lynn Beck or Mark Rath with the Water Rights Program at (605) 773-3352. Thank you.



5392A-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 6, 2012

**JAMES RIVER WATER RIGHT QUALIFICATION REMINDER
WATER RIGHT NO(s). 5392A-3**

To: JOHN ULMER
42963 MAXWELL RD
MENNO SD 57045

From: Garland Erbele, Chief Engineer
Water Rights Program, DENR
(605) 773-3352

Subject: James River Qualification Reminder for Permit No(s). 5392A-3

Qualifications on your water right indicate that you are not authorized to divert James River water after August 10th. Please, consider this a reminder and cease diversion if you have not already done so. No diversion can take place after August 10th unless under written orders by the Chief Engineer. You may resume diversion on the date stated in the qualifications on your water right.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

August 16, 2021

Dear James River Water Right Holder:

I am writing to water right holders and operators who either use water from the James River or tributaries under permits with the August 10 shutoff date qualification.

Water rights containing this qualification requires a mandatory compliance and pumping under your permit must cease after August 10th unless you contact the Water Rights Program and receive permission to continue to divert water.

Water Rights staff drove along the James River last week after the August 10 shutoff date to spot-check whether water right holders were complying with this qualification. This spot-check found multiple water right holders diverting water in violation of this qualification.

Again, I remind you, compliance with this shutoff qualification is required unless you request and receive permission from the Water Rights Program to continue pumping. Permission may be granted based upon water availability.

Thank you for your cooperation. If you have any questions, please contact Mark Rath, Blaise Hansen, or Nakaila Steen at (605) 773-3352.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 23, 2022

5392A-3

Reuben Nicolai Estate
4535 Morman Coulee Rd
LaCrosse WI 54601

Dear Sir:

I am contacting you regarding ownership of land described in Water Right No. 5392A-3 (copy enclosed). John Ulmer notified us last year that he sold the land. It is our understanding it was purchased by Reuben or the estate.

I know that Mr. Nicolai has passed away and I am wondering if someone is taking over irrigation of his land and if the water rights listed under Reuben's name and the one listed under John Ulmer can be transferred yet.

Enclosed is a partially completed "Notice of Transfer of Ownership" form for use in filing an ownership change on the water right listed under Mr. Ulmer's name. Please review and complete as needed. Upon completion, please sign and return the form to our office with a required filing fee of \$50. The check or money order for the fee can be made payable to the Water Rights Program.

If the ownership changes have been decided for the remainder of the water rights, you can download blank transfer forms on our website at:

<https://danr.sd.gov/OfficeOfWater/WaterRights/default.aspx>

If you have any questions, please give me a call.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

enclosure

5392A-3

RECEIPT**WATER RIGHTS PROGRAM**
South Dakota Department of Agriculture and Natural ResourcesDate January 17, 2023RECEIVED OF Nicolai Apartments 4535 Mormon Coulee Rd., 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	\$ _____
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>5392A-3</u>	<u>\$50.00</u>
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law) TOTAL	<u>\$50.00</u>

By Eric Gronlund
Chief Engineer
me

PAID

IAN 17 2023

CK# 016750

Permit#

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

Mail to: SD DANR, Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 5392A-3

Date: 11/9/23

RECEIVED

IAN 17 2023

OFFICE OF
WATER

I/We request that Water Right/Permit No. 5392A-3 formerly owned by:

Reuben Nicolai Estate (Kentner) be transferred to:

New Owner Name: Steven M. Nicolai

Address: 535 Mormon Route Rd mobile: 408-788-7162

City, State, Zip Lacrosse, WI 54601 email: audra@nicolaiapartments.com

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

Deed

☒ I understand that the validity of Water Right/Permit No. 5392A-3 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below).

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 Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Steven M. Nicolai, the new owner, certify that the above information is true and correct.

Steven M. Nicolai
(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, an inspection is conducted to issue a water right license for the project as developed. A water permit/right may be cancelled for one or more of the following 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.

Document Prepared By:

James R. Myers, P.C.
MYERS BILLION, LLP
Attorneys at Law
230 S. Phillips Avenue, Suite 300
P.O. Box 1085
Sioux Falls, SD 57101-1085
(605) 336-3700



Doc #1513870 Recording Fee \$30.00 Transfer Fee \$0.00
HUTCHINSON COUNTY REGISTER OF DEEDS
Recorded 12/2/2022 at 10:43 AM, Book DP Page 235 5 Pages

Julie Herrboldt Julie Herrboldt, Register of Deeds

Laura Luchessa - Deputy

TRUSTEE'S DEED

Steven M. Nicolai and Ronald Helstad, Co-Trustees of the Reuben Nicolai Revocable Trust, restated as of March 8, 2019, of 4535 Mormon Coulee Road, LaCrosse, Wisconsin 54601 and 3317 Mormon Coulee Road, LaCrosse, Wisconsin 54601, respectively, Grantor, for and in consideration of One Dollar and other good and valuable consideration, hereby convey unto Steven M. Nicolai, a married person as individual property, Grantee, of 4535 Mormon Coulee Road, LaCrosse, Wisconsin 54601, the following described real estate in the County of Hutchinson in the State of South Dakota:

SEE ATTACHED EXHIBIT A

Exempt from Transfer fee pursuant to SDCL 43-4-22(15): Transfer between fiduciary and beneficiary.

A Certificate of Trust executed by the Co-Trustees is attached hereto.

EXEMPT FROM
TRANSFER FEE

Dated this 30th day of November, 2022.

REUBEN NICOLAI REVOCABLE TRUST

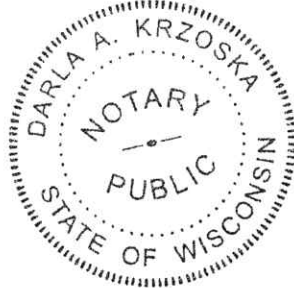
By *Steven M. Nicolai*
Steven M. Nicolai, Its Co-Trustee; and,

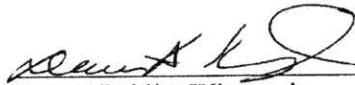
By *Ronald Helstad*
Ronald Helstad, Its Co-Trustee

STATE OF WISCONSIN)
 : SS
COUNTY OF LA CROSSE)

On this the 2nd day of October, 2022, before me, the undersigned officer, personally appeared Steven M. Nicolai, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as Co-Trustee of the Reuben Nicolai Revocable Trust for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.




Notary Public, Wisconsin
My commission expires: is permanent

STATE OF WISCONSIN)
 : SS
COUNTY OF LA CROSSE)

On this the 20th day of October, 2022, before me, the undersigned officer, personally appeared Ronald Helstad, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as Co-Trustee of the Reuben Nicolai Revocable Trust for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



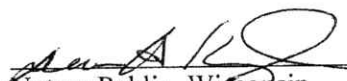

Notary Public, Wisconsin
My commission expires: is permanent

EXHIBIT A

LEGAL DESCRIPTION

Hutchinson County, South Dakota

1. GOVERNMENT LOT FIVE (5) AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (SW1/4 SE1/4) OF SECTION ELEVEN (11), TOWNSHIP NINETY-SEVEN (97) NORTH, RANGE FIFTY-EIGHT (58) WEST OF THE 5TH P.M., HUTCHINSON COUNTY, SOUTH DAKOTA.
2. GOVERNMENT LOT ONE (1) AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW1/4 NE1/4) OF SECTION FOURTEEN (14), TOWNSHIP NINETY-SEVEN (97) NORTH, RANGE FIFTY-EIGHT (58) WEST OF THE 5TH P.M., HUTCHINSON COUNTY, SOUTH DAKOTA.

McMath, Genny

From: audra@nicolaiapartments.com
Sent: Tuesday, February 21, 2023 1:34 PM
To: McMath, Genny
Subject: RE: [EXT] Deed
Attachments: Trustee's Deed - Turner County-Steven-recorded.pdf; Trustee's Deed - Clark County-Steven-recorded.pdf; Trustee's Deed - Hutchinson County-Steven-recorded.pdf

Genny-

The following deeds are attached:

- Permit 4648-3 (Turner County)
 - This paperwork should now be completed by and sent to the farmer.
 - L & L Feeders
28681 459th Avenue
Davis, SD 57021
605-238-5652
- Permit 8189-3 & 8190-3 (Clark County)
 - This paperwork should now be completed by and sent to the farmer.
 - Chris Lamb
43116 182nd St.
Vienna, SD 57271-5421
605-625-5082
- Permit 5392A-3 (Hutchinson County)
 - This paperwork should now be completed by and sent to the farmer.
 - Daniel Ulmer
159 Crestview Drive
Yankton, SD 57078
605-660-0485 & 605-760-3948 (Linda)
- Permits 1723-3, 1504B-3, & 3390-3A (Spink County)
 - This deed was not received with the others, so I've requested it be sent.
 - Will forward as soon as we receive it.
 - This paperwork should now be completed by and sent to the farmer.
 - Matt VanBuskirk
Box 98
Hitchcock, SD 57348
605-690-0100

Let me know if you need anything else from me.

And again, thank you for all of your help with this.

Audra B.

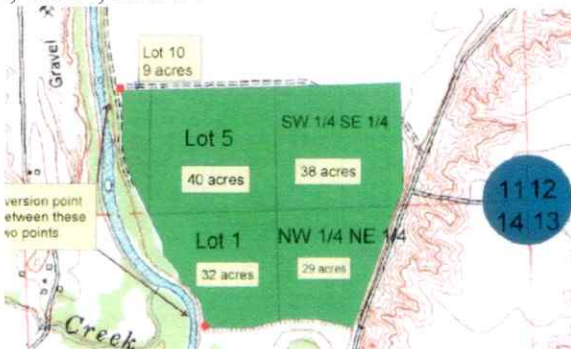
WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

DATE: March 15, 2023

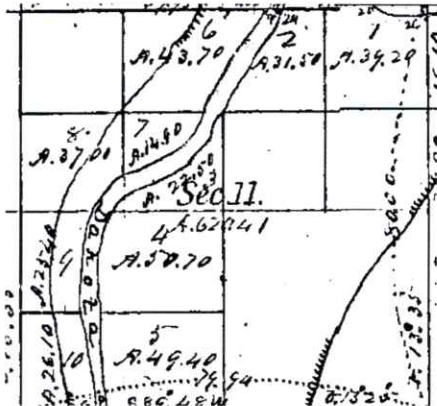
RE: incorrect description on application, map, inspection report and license

COMMENTS:

In 1999, when the project developed under Water Permit Nos. 5392-3 and 5292A-3 was inspected for licensing, the legal description brought forward from the application included Lot 10 of Section 11, T97N, R58W.



It became licensed for Lot 10 in Section 11 for 9 acres. Lot 10 is on the west side of the river and should not have been included. The map above should have shown 49 acres in Lot 5.



The map to the left is from the BLM Website. Lot 5 is right up next to the river and shows 49.4 acres within Lot 5.

Lot 10 is owned by someone else and is not part of the irrigation project developed under Nos. 5392-3 & 5392A-3

An ownership change filed by Steven M Nicolai in January 2023 was submitted with a deed showing the land being transferred. It did not include Lot 10 of Section 11 but after reviewing the BLM map and the water right map, it seems the transfer of No. 5392A-3, can be processed.



Genny McMath
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

March 16, 2023

5392A-3

Steven M Nicolai
4535 Mormon Coulee Rd
LaCrosse WI 54601

Dear Mr. Nicolai:

I am writing to confirm transfer of Water Right No. 5392A-3 from John Ulmer to your name.

It is my understanding through email correspondence with Audra the annual irrigation questionnaire should be directed to Daniel Ulmer. His contact information has been added to the water right for future questionnaire mailings.

Enclosed for your records is a receipt for the filing fee you paid for the transfer of Water Right No. 5392A-3. If you have any questions, please let me know.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

Enclosure: receipt